

PLANNING COMMISSION
NOTICE OF DECISION

Date: June 28, 2007

File No.: USE2006-000054

Ralph Horecny
P.O. BOX 211474
Auke Bay, AK 99821

Application For: A Conditional Use permit to extract up to 200,000 cubic yards of material from a privately-owned streambed in Lemon Creek over a five year period.

Legal Description: Mendota Park, Parcel 2

Parcel Code No.: 5-B12-0-131-004-1

Hearing Date: June 26, 2007

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memoranda dated May 16, 2007, and June 21, 2007, and approved the project to be conducted as described in the project description and project drawings submitted with the application. In granting approval, the Planning Commission made a finding of public need for the project as stated below:

The Planning Commission finds that the natural watershed characteristics and fish habitat functions of Lemon Creek have been compromised by human activity. Some will never be undone, but consistent with the recommendations in the Interfluve report, CJB has committed to restoring salmon habitat functions to be extent practical and reducing flood hazard for adjacent properties. CBJ has already had the Redimix Bridge, a major flow impediment, removed to reduce the flood hazard. CBJ is committed to working with property owners in Hidden Valley to stabilize the excessive erosion coming from the Valley. Finally, the restoration and remedial mining in the area from Lemon Creek Correctional Facility downstream is another recommendation of the Interfluve report to achieve long term flood hazard abatement and salmon habitat restoration.

Therefore the Public Need test is met to allow CBJ to make an exception to policies CBJ§49.70.950(d) and CBJ§49.70.905(4) with the following conditions:

1. The operator shall stockpile about 50 cubic yards of broken rap, equivalent to Class I rip-rap, near the project area to address emergencies if the flow becomes redirected towards the bank. If the rock is not used it may be sold when the project ends.
2. Prior to issuance of the first year's grading permit and approval of the first year mining plan, the operator shall submit a bond of \$30,000, sufficient to repair any serious bank damage.
3. By November 1, one month before the commencement of each mining season, the applicant shall submit a mining plan. The mining plan shall be processed by the Engineering Department as an annual grading permit. Such plan shall include:

- a. Estimation of material to be removed
 - b. Map of area to be worked (showing property lines)
 - c. Map showing proposed culverts, access roads, bank stabilizations, berm details (including height, location, material composition and removal plan) stream relocations and other proposed features
 - d. Methods for protecting Lemon Creek from oil, fuel and hydraulic fluid (including leaks from heavy equipment)
4. Prior to the commencement of mining, the applicant shall be required to stake property lines and a line offset 10' from property lines.
 5. Prior to the commencement of mining the applicant shall make a video of the entire area and submit the video to the Engineering Department.
 6. The top of excavation slopes shall be prohibited within 10' of any banks or the property lines.
 7. The applicant shall directly hire, or pay permit inspection fees to provide for periodic inspection of the mining area by an appropriately licensed engineer and/or hydrologist.
 8. Periodic inspections shall be made as determined by the engineer and/or hydrologist, sufficient to monitor the operation. Such periodic inspections shall include visits during or after high water events.
 9. Inspection reports shall be submitted to the Engineering Department for each 10,000 cubic yards of material removed from the stream, and those reports shall include the following information:
 - a. Volume of material removed
 - b. Map of area worked
 - c. Verification of compliance with mining plan
 - d. Report of bank destabilizations
 - e. Opinion whether bank/property line setbacks are adequately protecting adjacent properties
 - f. Bank protection/stabilization measures if merited
 10. An inspection report shall be submitted at the end of the mining season which includes all items in above numbers 3 and 7. The report shall be submitted to the Engineering Department within one month of the end of the mining season, or April 15.
 11. The applicant/operator shall confine all excavations to within existing rip-rap banks. Prior to proceeding with annual excavations, the applicant must find and stake adjacent rip-rap banks.
 12. The applicant/operator shall protect the structural integrity of existing stream banks and rip-rap banks. A no-disturbance zone of at least 10 feet horizontal distance from adjacent rip-rap and banks is required. (This condition is necessary because rip-rap boundaries may or may not correlate with property boundaries, as noted in the earlier requirement to mine 10 feet from property boundaries.)
 13. The applicant shall protect all vegetated slopes and maintain a similar non-disturbance zone identified above, unless a site-specific engineering analysis indicates otherwise.
 14. All cut-slopes shall be less than 2 horizontal to 1 vertical unless a site-specific engineering analysis proves that a steeper slope protects adjacent properties.
 15. Truck traffic from the development shall be routed only through the Anka Street/Glacier Highway intersection.

16. Truck traffic and heavy equipment operation associated with gravel extraction is strictly prohibited from the Davis Avenue side of the river.
17. Operating hours shall be 7 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on Saturdays. Operations shall not be allowed on Sundays.
18. Excavated areas within the creek bed must be clearly marked with warning signs. Excavated slopes must be graded to a gentle slope of 4 horizontal to 1 vertical before signs are removed. These measures shall be integrated into the annual grading permit.
19. Gravel extraction shall be limited to 40 days per year.
20. The permit shall expire after 5 years or after 200,000 cubic yards of gravel has been extracted, whichever comes first.
21. Any gravel extraction outside of the project description and supporting documents shall require Planning Commission approval for modification of the permit.
22. One month prior to the start of the mining season, the applicant shall submit an engineered project design for the access road. Design shall include topographic features and an analysis by a licensed hydraulic engineer which demonstrates that the road design and culverts are adequate and the road will not increase the base flood elevation in violation of CBJ Flood Hazard and FEMA regulations. The applicant may also propose an alternative method to transport gravel out of the riverbed to the road such as a conveyor system, or clear span bridge, at that time. The design and analysis shall be approved by CBJ Engineering before mining or construction commences.
23. The even/odd year plan for gravel extraction, as described in the December 28, 2006 DNR-Habitat Draft Title 41 Permit and the June 15, 2007 letter to CDD from NMFS', shall be integrated into the project description and development plan and implemented through the annual grading permit issued by CBJ.
24. If the final approved temporary access road from Lemon Creek to Ralph's Way cannot comply with the permit conditions for the truck scale approved under VAR2007-00010, no grading permits shall be issued until the truck scale project has been revised and a new variance has been approved by the Planning Commission. Alternatively the truck scale may be removed from the site.
25. Gravel operations shall take place between December 1 and March 15. No in-water work shall be allowed between March 16 and November 30 with the following exception:
In-stream work to connect the excavated sections of the creek shall be allowed for one 7 day period between May 15 and June 15. The applicant shall provide notice to CBJ Engineering and DNR-Habitat before work commences.
26. The Applicant will clean up and maintain streets from any material deposited on the streets as the result of their operations.

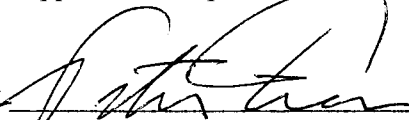
Attachments: May 16, 2007 memorandum from Teri Camery and June 21 memorandum from Greg Chaney, Community Development Department, to the CBJ Planning Commission regarding USE2006-00054.

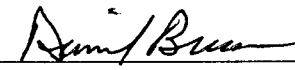
This Notice of Decision does not authorize construction activity. Prior to starting any project, it is the applicant's responsibility to obtain a building permit for any and all improvements requiring such.


This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c). Any action by the applicant in reliance on the decision of the Planning Commission shall be at the risk that the decision may be reversed on appeal (CBJ Sec. 49.20.120).

Effective Date: The permit is effective upon approval by the Commission, June 26, 2007.

Expiration Date: The permit will expire 18 months after the effective date, or December 26, 2008, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to expiration date.

Project Planner: 
Peter Freer, Planner
Community Development Department


Daniel Bruce, Chairman
Planning Commission


Filed With City Clerk Deputy Clerk

7/2/07
Date

cc: Plan Review
Aniakchak, Inc.

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center 1 (800) 949-4232, or fax (360) 438-3208.