

# MEMORANDUM

CITY/BOROUGH OF JUNEAU  
155 South Seward Street, Juneau, Alaska 99801

**DATE:** June 8, 2005

**TO:** Board of Adjustment

**FROM:** Greg Chaney, Planner  
Community Development Department



**FILE NO.:** VAR2004-00045

**PROPOSAL:** A variance to create a residential subdivision within 330 feet of two eagle nests on public land.

## GENERAL INFORMATION

**Applicant:** CBJ Lands Department

**Property Owner:** City and Borough of Juneau

**Property Address:** Pt Lena Loop Road

**Legal Descriptions:** USS 3809 Lots 2, 3, 4A and 6 TR A

**Parcel Code Numbers:** 8-B33-0-101-013-0, 014-1, 015-0, 016-0

**Site Size:** 103 acres

**Zoning:** D3

**Utilities:** CBJ Water; On-Site Waste Water Disposal Proposed

**Access:** South Lena Loop Road, NOAA Access Road

**Existing Land Use:** Vacant

**Surrounding Land Use:** North -- D3 Single Family Residential  
South - D3 Single Family, Point Lena Loop Rd.  
East - D3 Single Family Residential  
West - D3 Single Family Residential



## **PROJECT DESCRIPTION**

The subdivision will create 48 lots for residential development and three Tracts to remain as public lands for the immediate future (Attachment 1). Residential lots will front on the newly built NOAA access road and the old South Lena Loop Road. Tract "C" consists of a 50.7 acre parcel encompassing the Picnic Creek Drainage that will become a designated greenbelt, ultimately to be incorporated into the CBJ Parks system. The other two Tracts will remain in public ownership for the foreseeable future but will be eligible for disposal in the mid to long term.

Two eagle's nests have been identified on the subject property by the USFWS. These nests have been labeled by the USFWS as #158 and #203 on USGS map Juneau B-3 (Attachment 1). The applicant has submitted this variance request because the CBJ Land Use Code places restrictions on development near eagle nests on public lands:

CBJ49.70.310 Habitat

- (a) Development in the following areas is prohibited:
  - (2) Within 330 feet of an eagle nest on public land

The Land Use Code's "Definition" section CBJ49.80.120 includes:

- Development* means any of the following:
- (2) A subdivision;

Therefore, since no subdivision development is allowed within 330 feet of an eagle's nest on public property, the CBJ Lands Department has submitted this variance request.

## **BACKGROUND**

Nest #158 is an old eagle nest that has not been used in over a decade. Although the nest is still present, it appears to have been abandoned and since it is no longer being maintained by eagles, it will probably decay in the near future (Attachments 2 and 3).

Nest #203 is a well established nest that has been frequently used in the past. It is currently occupied by actively nesting eagles and it will probably be used in the future.

A very similar subdivision was previously approved under SUB2002-00009 and a variance for development within 330 feet of eagle's nests on public property was approved under VAR2002-00040. Layout of SUB2002-00009 was nearly identical to the current subdivision design however SUB2002-00009 required installation of a community sewer system. Under the current proposal, all wastewater will be disposed of onsite, utilizing individual treatment systems.

Under the previous proposal, CBJ Lands submitted the following observations related to the hardship of compliance with eagle nest buffers:

The 330-foot buffers impact most of the western portion of the City's subdivision. Without a variance, ten lots would not be developable at all. Four additional lots would be affected to varying degrees, and the value of the lots potentially diminished. The loss of developable lots would result in higher per-lot development costs for the remaining subdivision.

The loss of lots due to development restrictions could significantly affect the economic feasibility of the subdivision. Like any other developer, the City cannot prudently spend funds in excess of the value of the lots.

### ANALYSIS

As previously approved under SUB2002-00009, the subdivision would have required excavation for sewer lines and pump stations. This construction would have resulted in the potential for greater short-term disturbance to eagle nests than would occur with individual wastewater systems. However, as new houses and drain fields are installed, there will be the potential for disturbance to nesting sites in the future. The timing and severity of this disturbance is impossible to predict. As private property owners undertake development of their lots, they will be subject to the Habitat restrictions of the Land Use Code. Although these regulations may be subject to change in the future, currently they state:

#### CBJ49.70.310 Habitat

(a) Development in the following areas is prohibited:

- (3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;

Since nest #203 has been identified by USFWS as productive, Tract "A" has been set aside to protect the stand of trees in the vicinity of the nest site (Attachment 1). Tract "A" is approximately 2 1/3 acres and the closest lot line is roughly 110 feet to the nest tree. While 110 feet is 220 feet less than the 330 feet required by the Land Use Code, Mike Jacobson from the USFWS has indicated that Tract "A" should provide adequate protection for nest #203 (Attachments 2 and 3).

Unless nest #158 is reoccupied, it will be protected from development within 50 feet under the Habitat section cited above. If the nest disappears, the site will no longer be protected. However, in the unlikely event that the nest is re-occupied by actively nesting eagles, a 330 foot buffer would apply between March 1 and August 31.

Also considered as part of VAR2002-00040 was eagle nest #200 which is located outside of the subdivision. Mike Jacobson from USFWS has indicated that this nest no longer exists and therefore this nest will not receive further consideration in this report.

Improvements needed for the current subdivision are relatively minor. Some clearing of brush along proposed lot lines and establishment of survey markers will be required before final platting. In addition, water lines will need to be installed to lots where water service is not currently available. Installation of these water lines will take place within the developed South Lena Loop Right-of-Way and will not require significant vegetation removal.

Although the current variance application encompasses establishment of the subdivision, development beyond final platting is impossible to predict at this time. Therefore, staff is recommending an advisory condition to clarify that this variance only applies to the current application and projects that take place after final platting will be subject to the provisions of the Land Use Code, including 49.70.310 Habitat.

### **Variance Requirements**

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

1. ***That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

If a variance to this standard is not approved, many of the lots would have to be reduced in size or removed from the subdivision. Granting of the variance will provide substantial relief to the property owner by allowing the creation of a significant number of the new lots in the subdivision. As mentioned above, USFWS has indicated that setting aside 2 1/3 acres in Tract "A" for active nest #203 will provide an acceptable buffer for eagle nest preservation.

Other eagle's nests are present in the neighborhood in close proximity to residential properties and eagles have adapted to living in residential settings. Therefore, granting of this variance would be consistent with justice afforded other property owners in the neighborhood.

Therefore, based on the above analysis, **this criterion is met.**

2. ***That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

In this case, creation of subdivision lot lines is the primary activity which will occur on the property. The active nest site (#203) will be approximately 110 feet from the nearest new lot line created under this proposal and as mentioned in the analysis above, USFWS has determined that Tract "A" is sufficient to protect this nest.

Further development, as property is sold to private parties, will be regulated under Land Use Code including Habitat standard 49.70.310. Evidence presented in the analysis above, indicates that the intent of this title will be observed and public safety and welfare will be preserved.

Therefore, based on the above analysis, **this criterion is met.**

3. ***That the authorization of the variance will not injure nearby property.***

If granted, several new lots will be allowed to be created for the proposed subdivision. Potential impact of developing these parcels on nearby property is being reviewed under SUB2004-00022. If the Planning Commission finds that development of those properties is appropriate under that review, then this variance request can be granted. Furthermore, development on the new lots will be required to meet CBJ codes, therefore staff does not anticipate that granting a variance to this eagle nest setback standard will injure nearby property.

Therefore, based on the above analysis, **this criterion is met.**

4. ***That the variance does not authorize uses not allowed in the district involved.***

Subdivision of property is allowed within a D-3 zoning district through the major subdivision process. SUB2004-00022 is a major subdivision being considered in parallel with this variance request which is allowed under CBJ 49.15.430.

Therefore, based on the above analysis, **this criterion is met.**

5. ***That compliance with the existing standards would:***

- (A) ***Unreasonably prevent the owner from using the property for a permissible principal use;***

Eagles are relatively common in residentially developed coastal areas of Juneau. The intent of protecting eagle nests with a 330 foot buffer is to ensure that eagles continue

to thrive in the community. By consulting with USFWS and setting aside Tract "A", habitat concerns have been addressed. Therefore, it would be unreasonable to restrict use of this property in order to comply with an arbitrary 330 foot standard when acceptable measures have been taken to achieve nest protection.

**Therefore, this sub-criterion is met.**

- (B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;***

If eagle nest buffers around the existing nest sites are enforced as written, a single large lot, several acres in size, would result where multiple lots are currently proposed. As designed, these lots are significantly larger than the minimum lot size allowed for D-3 zoning and are similar in scale to existing lots in the Lena area. In addition, Tract "A" has been set aside for protection of the most active nest. The subdivision has been designed in this fashion to be consistent with the existing pattern of development in the area. It would be unreasonable to prevent the property owner from using the property as proposed since the productive eagle nest site has received adequate protection.

**Therefore, this sub-criterion is met.**

- (C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;***

CBJ Lands Department asserts that compliance with the 330 foot eagle nest buffer for the purpose of platting new lots will prevent a significant portion of the property from being subdivided. This will increase costs of development and significantly affect the economic feasibility of the subdivision, rendering the subdivision unreasonably expensive.

**Therefore, this sub-criterion is met.**

***Or***

- (D) *Because of preexisting nonconforming conditions on the subject parcel the grant of the variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

**This sub-criterion does not apply.**

Since sub-criterion A, B and C have been met, **criteria 5 is met.**

6. *That a grant of the variance would result in more benefits than detriments to the neighborhood.*

Over 50 acres will be set aside in Tract "C" for habitat considerations. The addition of full compliance with the 330 foot eagle nest setback would displace many lots from the subdivision. Since these lots are needed to make the subdivision economical, they would have to be clustered on the east side of the property. This would result in an area of relatively dense development with small parcels nearing the 12,000 square foot minimum lot size for a D-3 zone. By granting the variance, lots will be larger and more dispersed, which is more in character with aesthetics of development in this rural setting. Therefore granting this variance would provide more benefits than detriments to the neighborhood.

Therefore, based on the above analysis, **this criterion is met.**

**JUNEAU COASTAL MANAGEMENT PROGRAM (JCMP)**

The proposed variance to the 330 foot buffer around eagle's nests on public land is listed in the Juneau Coastal Management Program (JCMP), Page 64:

Section 11 Habitat

B. Findings:

Fish and Wildlife

(5) Bald Eagles ...Shoreline areas and old growth forest habitat are prime nesting areas. The US Fish and Wildlife Service (USFWS) recommends a non-buildable buffer zone of at least 330 feet around known eagle nests and retention of shoreline habitat in the vicinity to a depth of one-eighth mile.

The above section establishes that the 330 foot buffer was derived from a broad Borough wide USFWS recommendation. In this case, USFWS has examined the specifics of this subdivision proposal in the context of eagle nests in the area. After consideration of this proposal, USFWS has determined that setting aside Tract "A" is adequate to protect productive nest #203.

Both nests #158 and #203 will continue to be protected under the provisions of the Land Use Code once this subdivision has been platted. Therefore, the proposed variance to the 330 foot eagle nest habitat buffer, for the purpose of platting, is consistent with the intent of the JCMP to protect eagle nest sites.

**FINDINGS**

1. *Is the application for the requested variance complete?*

Yes. Staff finds sufficient information for analysis.

**2. *Will the proposed development comply with the Juneau Coastal Management Program?***

**Yes.** Base on the above analysis, the variance complies with the intent of the JCMP to protect eagle nests.

**3. *Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?***

**Yes.** Base on the above analysis, staff has determined that the requested variance meets the criteria for a variance.

**RECOMMENDATION**

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance. The Variance permit would allow a subdivision development on public land within 330 feet of mapped eagle nests with the following advisory condition:

1. Advisory: This variance applies to the proposed subdivision and required improvements. Private development after final plat recording shall be subject to the provisions of the Land Use Code, including CBJ49.70.310 Habitat.



RAPTOR MANAGEMENT  
U. S. FISH AND WILDLIFE SERVICE  
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(907) ~~586-7243~~ (COMM) 780-1172  
(907) 586-7378 (FAX)

TO: GREG Chaney - CBJ, Community Dev.	FAX PHONE: 586-3365	
FROM: Mike Jacobson	DATE: 5/27/05	TIME:
SUBJECT: LENA Subdivision Eagle Nests	NO. OF PAGES (INCLUDING COVER SHEET): 3	

## MESSAGE:

GREG,

Bald eagle nests # 158 and # 203 are within the South LENA Subdivision. I recently conducted a survey of the area. Nest # 158 is empty. Nest # 203 is occupied by a nesting pair of eagles.

Other nests nearby:

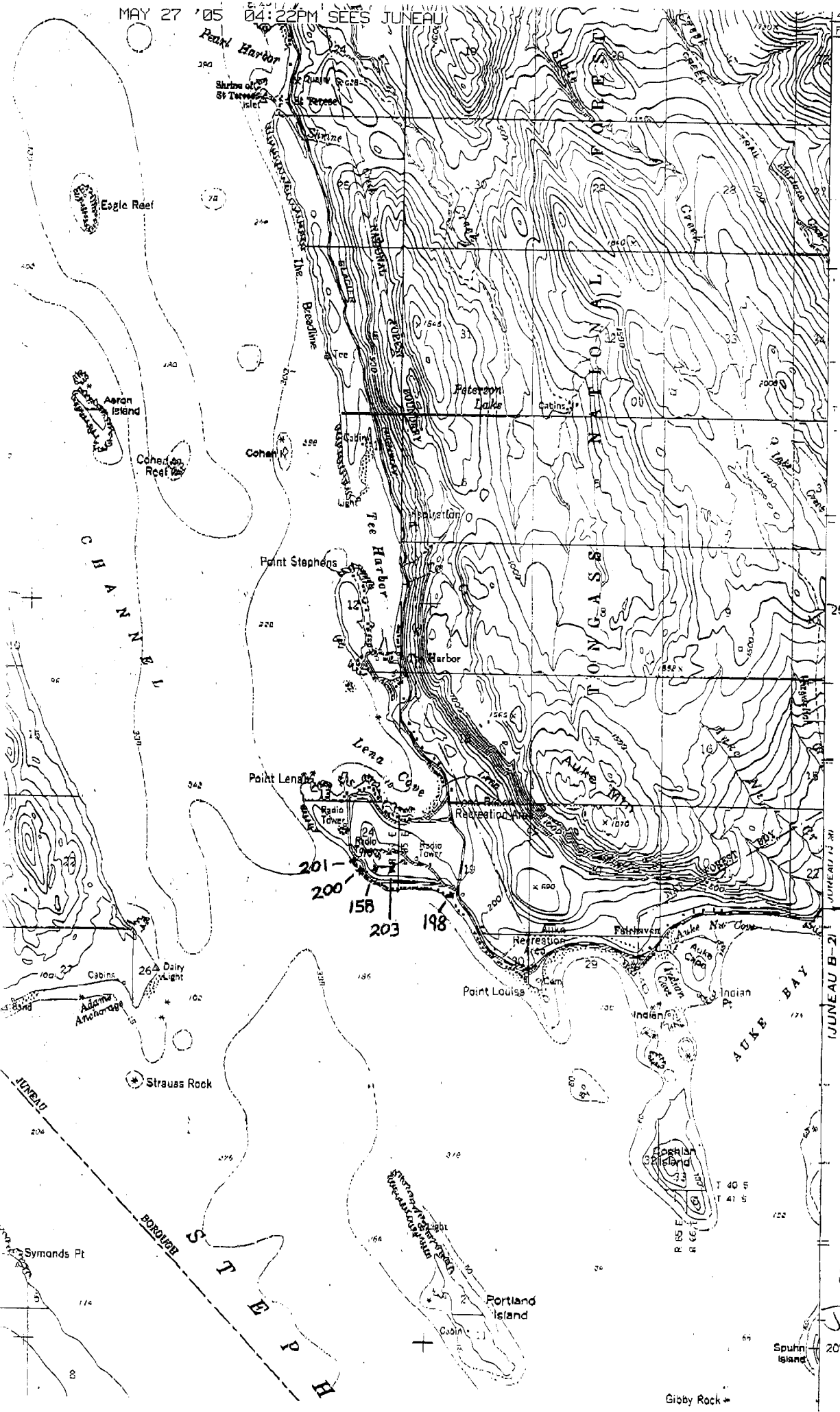
- # 201 is empty
- # 200 no longer exists (fallen out)
- # 198 is occupied by a nesting pair

Modifications of on-lot wastewater disposal, waterlines, and surveyors establishing new lot lines are not likely to have any significant impact on eagles.

As lots are developed, it will be important to retain stands of large trees. This will allow eagles some nesting/perching habitat and they will continue to use the area.

Mike

ATTACHMENT 2



USGS  
Juneau B-3

**Greg Chaney**

**From:** Mike\_Jacobson@fws.gov  
**Sent:** Thursday, June 02, 2005 4:39 PM  
**To:** Greg Chaney  
**Cc:** Phil\_Schempf@fws.gov  
**Subject:** Re: Eagle nest information

Greg,

I feel that retention of Tract A by CBJ is an excellent way to maintain the eagle nest site and provide a protective buffer for nest #203.

Nest #158 has not been occupied by eagles since the early 1990's. I believe the standard protective measures contained in the CBJ Land Use Code are acceptable at this nest site.

Thanks,  
Mike

Greg Chaney <Greg\_Chaney@ci.juneau.ak.us>

To "Mike Jacobson (mike\_jacobson@fws.gov)" <mike\_jacobson@fws.gov>  
cc

06/01/2005 10:11 AM

Subject Eagle nest information

ATTACHMENT 3

Hi Mike,

Thanks for your FAX concerning nests in the Lena Subdivision area.

Nest # 203 appears to be the most important nest in the subdivision. Currently the area around the nest will not be sold to private parties for development. This area designated as "Tract A" will be retained by CBJ to provide a buffer around the nest site. Do you feel this is acceptable mitigation for this nest?

Nest #158 does not appear to be used by eagles again this year. Since it seems to have been abandoned, no special protection is proposed for this nest under the subdivision. The nest will still be protected by the CBJ Land Use Code which protects the area within 50' of the nest and prohibits construction within 330' of the nest if the nest contains actively nesting eagles.

Cheers,

- Greg

6/2/2005

