VI. RECONSIDERATION OF THE FOLLOWING ITEMS

USE2012 0019: A Conditional Use Permit to extract 240,000 cubic yards of material from the Lemon Creek Streambed over a 6-year period.

Applicant: Colaska Inc.
Location: Lemon Creek Streambed.

Staff Recommendation:
Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow extraction of 210,000 cubic yards of gravel from the Lemon Creek streambed over a period of six years. The approval is subject to the following conditions:

Annual Grading Permit, Bank Protection, and Seismic Monitoring
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. 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).
   e. Prior to the commencement of mining, the applicant shall verify property line location and delineate offset distance to the extraction area.
4. The top of excavation slopes shall be prohibited within 10' of any banks or the property lines.
5. 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.
6. 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.
7. 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.
e. Opinion whether bank/property line setbacks are adequately protecting adjacent properties.
f. Bank protection/stabilization measures if merited.
8. An inspection report shall be submitted at the end of the mining season which includes all items in numbers 4-7. The report shall be submitted to the Engineering Department and to the Community Development Department within one month of the end of the mining season, or April 15.
9. 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.
10. 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).
11. The applicant shall protect all vegetated slopes and maintain a similar non-disturbance zone identified above, unless a site-specific engineering analysis indicates otherwise.
12. 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.
13. 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.
14. The approved access points at 1721 Anka Street, 1791 Anka Street, and Ralph's Way shall be inspected each year to verify that no changes have been made to the embankment due to heavy creek flows during the previous year. Alterations to the proposed access will require approval by the Community Development Department and the CBJ Engineering Department.
15. Prior to the issuance of a grading permit, the applicant shall provide a vibration control plan that includes the maximum safe threshold for seismic activity at the nearest adjacent residential structure to the operation, as established by a licensed engineer.
16. During extraction activity, the site shall be monitored by the applicant for seismic activity at the nearest adjacent residential property or at a location agreed upon by the project engineer and adjacent property owners, during each day of operation.
17. The applicant shall submit seismic activity reports at the end of each month of mining activity to the CBJ Engineering Department.
18. If seismic activity exceeds the threshold established in Condition #15, the applicant shall cease operations and notify the CBJ Engineering Department and CBJ Community Development Department. The applicant shall not continue with operations until alternative methods that do not exceed the threshold have been identified by the applicant and approved by CBJ Engineering.

Project Expiration and Dates and Times of Operation
19. 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 the Alaska Department of Fish and Game before work commences.

20. 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.

21. Gravel extraction shall be limited to 40 days per year.

22. The permit shall expire after six years or extraction of 210,000 cubic yards of gravel, whichever comes first.

23. The extraction amount shall not exceed 35,000 cubic yards per year.

**Truck Traffic and Street Maintenance**

24. Truck traffic from the development shall be routed only through the Anka Street/Glacier Highway intersection.

25. Truck traffic and heavy equipment operation associated with gravel extraction is strictly prohibited from the Davis Avenue side of the river.

26. Prior to leaving the excavation area, the transport truck bed, with the tailgate locked, shall be raised to a minimum twenty degree angle for a timed 5 minutes to allow excess water to escape. Tilt time may be reduced if water escapement occurs sooner based on the project engineer's visual assessment and approval.

27. The applicant shall protect catch basins along the route from sediment infiltration by use of manufactured Catch Basin filters.

28. The applicant shall inspect the traveled route a minimum of twice daily for escaped material from the haul.

29. The applicant shall sweep and clean the roadway at the end of each day if any water or material has escaped, or if a major spill occurs.

30. The applicant shall immediately respond to any additional clean-up requests during the operation from the project engineer, CBJ or ADOT.

31. The applicant shall construct a rockery lane for debris removal from truck tires prior to entering Anka Street.

**Habitat Protection**

32. No sediment migration from the truck or ramp shall be allowed in the waterway.

33. Prior to commencement of mining and prior to gravel bar coverage with snow and ice, the applicant shall field stake the exact excavation configuration and setbacks from flowing water.

34. The applicant shall place any large woody debris encountered during excavation activities at the surface of the floodplain, upstream or adjacent to the excavation area to encourage gravel bar formation and/or side channel creation. The woody material shall be partially buried to anchor the material during high flows.

35. There shall be no on-site fueling or equipment maintenance performed within 100 feet of the creek banks. This includes fueling or maintenance of portable equipment such as generators and pumps.

36. There shall be no on-site storage of fuel or other chemicals.
Chair Satre: This item was approved at a prior meeting; however, a Commissioner gave notice of reconsideration after that had been approved and before the meeting has been adjourned. At this time, we can take up a motion to reconsider. If that motion receives 5 votes and passes, then it is as if the prior vote to approve that item had never happened and the original motion to approve that item would then be on the floor for further discussion or removal and further Commission action. Do I have a motion to reconsider, Mr. Bishop?

**MOTION:** by Mr. Bishop to reconsider USE2012 0019.

Mr. Bishop: I think this was a complicated case and I think there is a lot of information brought forward to us and I just want to make sure that we are all on the same page with what we think we understand today. What we have heard is that there are substantial problems from the condo owners’ perspective with the application, whether it be noise or whether it be excessive vibration causing damage to the condos. My own opinion: I believe this puts this particular application out of harmony with the residential neighborhood that it’s adjacent to and I don't see how we can make a finding that brings these two together. We have on our board, a licensed realtor who feels that this application also is going to be deleterious fiscally to the condo owners and will have implications or impacts to the value of the condos. I support that finding also, in that we’ve seen this in the newspapers that there has been a fair amount of discussion over the impact to the Condo Associations and I think that we have to accept that; that that is going to be within the community and well discussed and well understood at this point and will have to be then brought forward in any further sale; have to be made known. Further, this application doesn't have any restoration plan for the creek. This is listed as an impaired creek. One of the principle reasons for it being impaired listed by DEC is the gravel mining in the creek.

Without a restoration plan, I don't see how we can make a finding that it isn't going to have an impact on the creek as it has in the past. There are no conditions that go beyond putting woody debris within the creek bed to support a restoration plan. This is put forward as a needed thing for the community to prevent flooding in Lemon Creek and I can recognize that need, but it is not an immediate need. It is not even shown on the Flood Plain Maps as a flood area. So, the flood issue isn't a current issue. It is an issue that we are going to have to address at some point in the future, but it is not an immediate pressing need. There is no shown need to have immediate excavation. Therefore, my own feeling is that moving forward with a plan that has impacts on the adjacent neighborhood and resolving that or justifying that by the mining is only good if the mining has to take place. And, if it has to take place, put it in an area that doesn't have the impacts that it is having to the adjacent neighborhood. Right now, we don't have any limits on where they can mine. They have a pretty open door and they seem to be doing it in one particular area. We have ways to buffer that; to restrict uses; restrict excavation on that and we haven't done that. All the mining has been done directly in front of the River's Edge Condos and in some areas close to 60 feet away. If I lived in one of those condos, there is no way that being woken up at 7 o'clock in the morning by a banging bucket breaking dirt out of the ground I could find harmonious in any way, shape, or form. If we were to say that we could move the mining away from the windows, the doors, and the openings of the River's Edge Condos to areas that would have less impact, then maybe I could make that finding, but I find it hard to do so as it is proposed.
Further, the White paper or the research project that justified the need for the mining, which I support, also indicated that further study needs to be done if there is to be mining in the creek because it could destabilize the banks and create erosion to different areas, whether it be destabilizing the bank at River's Edge Condos or other areas, so that was clearly put forward in the papers that were prepared for justification for this.

So, I just see that there are a lot of issues that are unresolved in this particular proposal and I don't see that our finding covered these bases. It didn't make the application more harmonious. It didn't provide a means of restoration or dealing with the impaired waterway that we have. One of our Commissioners stated that there is no cost to this particular application; that we are getting this mining or this flood amelioration done at no cost. Well I take that to task, I think there is a cost, there is a cost to the residents, their peace of mind, and there is a cost to the community in that we have a creek that is already impaired, that is getting further impaired or has the potential to be further impaired and not being protected in any way, shape, or form, or made better. I just feel that we owe it to our community to take these issues into hand and resolve them and not let them go on. Lemon Creek is an asset to our community for a lot of different reasons. It is a place of habitat. It is also a place where the people walk and find solace and peace in. Creeks are natural places and they have purpose in our community for that. Turning them into mining, into perpetuity, is not what has been shown to be good for a community or good for the ecology of our area. Thank you for your time.

Mr. Watson: I am going to ask if the applicant is here this evening. If that applicant is not, then I may ask for a continuation of this reconsideration.

Chair Satre: The applicant’s representative is present, but if this motion were to pass, then it would be as if that prior vote had not taken place. We would then be at a point in the procedure on the application where a motion would still be on the table. That motion would be up for discussion and another vote unless it was recalled. I believe Mr. Bishop made that motion originally and it would, of course, take a vote to reopen any sort of public testimony. It would actually take a vote of 6 people to suspend the rules and go. So, it is not actually incumbent on the applicant or, quite frankly, any of the affected neighbors to be here, in my opinion on the process. Mr. Bishop has put on the floor a motion to reconsider USE2012 0019. Further discussion on the motion.

Mr. Haight: Yes, I would like to continue to favor Mr. Bishop's motion, largely because I would like to hear what these additional conditions are that we should discuss and I think we do have an obligation to particularly the condo owners and the community to listen to all of these conditions before we finalize or vote again.

Chair Satre: Roll call please.

**Roll Call Vote**
Ayes: Miller, Haight, Bishop, Watson, Satre
Nays: Lawfer, Bennett
Motion passes 5:2.

Mr. Chaney: So, we are back to as if the motion had not been voted on.

Chair Satre: We now go back to the original motion that Mr. Bishop put on the table, which was to approve the staff findings, analysis, and recommendations of USE2012 0019 with all 36 conditions that were recommended by staff. Discussion on that motion.

Mr. Miller: I would speak in favor of the motion that is on the table now; however, I would like to hear from my other Commissioners if they think there is maybe a way to make it a better application. Touching on the points that Mr. Bishop stated earlier – As far as the restoration, I do not agree with you in that there is not a restoration plan. Fish and Game and at the Wetland Review Board, we really looked at that very closely and the fact that it is preventive maintenance and the work that goes on every year there.

If you make a plan to restore it this year for some time in the future, the bank changes, the streambed changes, everything changes so fast that you would be making one every year or every month maybe to have this restoration plan, but the woody debris is being excavated out every time they are in there and Neil Stichert with the U.S. Fish and Wildlife or whoever he is working for, is out there, walks the banks and tells them where to put it all and so they cannot even haul it off. Some people wanted to haul the woody debris off, so that they could use it for other mitigation projects elsewhere and they said no; it needs to stay right there in the streambed and the habitat that they are creating for chum salmon is really a better place now and that is direct from Neil Stichert and those agencies, so they really like what’s going on and they think that the applicant is doing a great job with the work that’s going on in the stream, so that was the restoration.

As far as the flooding thing and whether there is an immediate need for flooding right now, I don’t know. I don’t know if it could flood. What if there was some huge event that happened, a 100-year flood or a 100-year rain next spring and this thing did not happen - all of a sudden, the banks are eroding and all of this work is going on and we have to send an emergency crew in there to take out a bunch of gravel. Maybe now then you’re doing it when there is high water, you are having a risk of contamination, you’re ruining salmon runs because it’s the wrong time of the year, but you have to save properties. So, it really concerns me that we are saying that well, there is no flood potential, so we don’t care whether you go in there or not, when there is a study that says that there is a flood potential. That part is scary to me and us hanging our hat on it that there isn’t one.

The harmonious thing, you got industrial on one side and you got residential on the other and it doesn’t matter; it’s right there, it is what it is. One property owner is industrial and right next to it is residential, so you make it so it’s as narrow and small an impact as possible and I thought that we had kind of done that with the conditions and what not.

As far as if it’s actually doing damage to the buildings, which I don’t know and I don’t know that anybody knows for sure. I think that there is definitely evidence that there is, but I thought we
addressed that with the seismic monitoring, so if there is seismic monitoring and it is too much to where it is causing damage, they get shut down. Maybe making it a 6-year permit is too long. If these conditions might work and if you think they could work, give them a year and let them try it and do the testing and seismic stuff and then maybe if it did work out and it was fine, they did make peace with the neighbors, the seismic activity was okay and they proved it, then next year it would be on the Consent Agenda. But if it’s not and they didn’t do it all, they would have a pretty tough time trying to ask for another 6 years when they didn’t cut it. The only thing that concerns me about that is it’s already so late in the year, what if they don’t get in this year? I think we ought to let them have a chance to do it.

Ms. Lawfer: I can agree with all that Commissioner Miller just was discussing with regards to being in favor of the motion. I do want to thank the Wetlands Board for all their work that they have done. It was a wealth of information to go through all that information and past minutes with regards to this. My concern with regards to the 6 years, it is my understanding that the 6 years was so that it would coincide with all the other permits that they have through Fish and Game and the federal organizations. Is that not true?

Mr. Chaney: I think that was the general idea. It isn’t perfect though. We can’t control the permitting windows of these other agencies. I think there was a general desire to sort of get everyone in step, but I do not think we are going to achieve perfect synchronicity.

Ms. Lawfer: I just wanted to make sure that I wasn’t misunderstanding that. Lastly, as Commissioner Miller did discuss, the original conditions did have many holes in it and these 36 that are now in place, there are a number of places where we can pull the plug if this is not working and if the applicant is not working according to this agreement and I feel that that is enough. I understand the residential and the industrial together and you can ask anybody who lives between Douglas and the cruise ship docks when it’s a foggy day and every 5 to 10 minutes, the ship goes off at 5 in the morning, so I totally understand that. This is a very small time period. We’re talking no more than 40 days between December 1st and March 15th and I feel that that is doable for the simple fact that I do agree with Commissioner Miller, especially looking at routine maintenance of that stream, so that it’s not at a point where we need to deal with it in a crisis situation. I do believe that the whole eastern seaboard just went through something whereby I think that a lot of people said, “Well, it is not going to happen,” and it did. I think that we look for hydrologist’s studies; we’re looking to Fish and Game; we’re looking to the experts to routinely monitor this; and adding the seismic now makes it such that I speak in favor of the motion with the 36 conditions.

Mr. Watson: I think Mr. Bishop made some excellent points, especially with regards to the neighbors, even though the creek and the permits for the mining projects have been there for quite a while; about 40 or 50 years that has been available to be utilized. But, my concern, and I will speak against the motion, because when I asked the question at the last meeting, “Why are we continuing to harvest in the same area consistently when we have a much larger area to utilize,” so basically we are continuing to expose the neighbors to the same conditions that they have had in the past several years and I suspect that the reason that it’s being utilized is because it’s the easiest to access. I believe that the comment was made that there is vegetation on the
other sand pits and obviously that raises the cost of the project, but there are other areas that could be utilized and obviously something that has been dug before and filled back in, that gives you the very best product you can possibly get; but I think we are doing that at the expense of the neighbors. Granted, they were there after; but, nevertheless, they are there. We did condition that or allow that project to be built there. So, I will continue to speak against the motion and I did speak in favor of the original permit. I was concerned at that time but my concerns were allayed by the applicant and now I am not so convinced that those concerns will be allayed this time around.

Ms. Bennett: I speak in favor of the motion, but I do agree with Commissioner Watson about the buffer around the condos. Hopefully, the seismic monitoring at the point of the condos will indicate whether there is continuing damage. I am quite convinced that damage has occurred from all of the testimony that we’ve heard and I was assured by Mr. Short that they do have a liability policy that would cover the damages that have already been rained down on the condos. The issue of noise and disturbance is another issue and I am sympathetic to the condo owners for putting up with that noise. In my previous comments, I said that it was a difficult decision because we are basically weighing the inconvenience and difficulties of the condo owners with the need for gravel for our housing stock and this is a source of gravel that is hard to come by here in Juneau, but is going to be needed if we’re going to build more houses and condos and other units to cover the housing shortage. I think that the only sticking point for me right now is the issue of gravel extraction within 60 feet of the condominiums. There are some other islands of gravel there that do have some vegetation on them, but they might be a little bit more expensive to mine, but I think if we are going to reconsider this, I would argue in favor of encouraging SECON to vacate the area closest to the condominiums to minimize the amount of damage and to go for the other islands of gravel that are there with a little bit of vegetation, but closer to the other shore lines.

Mr. Haight: I will continue to favor this motion. I think that we have two dilemmas primarily. One is the issue of industrial area getting closer and closer to the residential area and this is a topic that we will have to continue to weigh and discuss as we progress in time and determining where we’re going to start moving our industrial facilities to, to better favor our residential areas. The other dilemma is the potential damage to the condos. I think that with our conditions, we’re making a good, solid attempt to mitigate potential damage. I think that that’s the one item that we need to maintain a good vigilance of and if there is a problem, then we need to address it immediately, but we have the handle in there to do it.

Mr. Bishop: I am going to continue to speak against the motion. I appreciate Commissioner Miller's comments regarding the creek and Neil Stichert’s input on that and the restoration being productive. To me, it goes more toward something Commissioner Grewe spoke to last time and that is, at what point does it just not become a feasible thing to have these two uses adjacent to each other. And, I think that we have gotten to the point where you cannot have those two uses harmoniously coexisting. And, if it was a matter of ameliorating the flood risk and getting it done and being finished with that, that would be one thing, I would be all for that; but that’s not what’s happening. What’s happening is every year, it’s filling up to the same amount it was filling up to the year before. So, they are going into the same place every year and they are
taking out the same amount of material and they are not lowering the creek bed one iota from what I have heard from Mr. Short last time. So, we are setting up a mining plan that doesn’t change the flood risk whatsoever. All it does is perpetually take material out of the creek at the expense of the neighbors.

Maybe that would be all right if it met a real need and solved a problem in the community that we have, but it does not. Mining rock in the creek gives us a maximum of 40,000 cubic yards a year; 40,000 cubic yards a year is enough for one large house. There have been many projects in this town that have taken that much fill all by themselves. It does not solve the problem of bringing material to our development needs. It provides a little bit of material, but it does not open up a whole new body of rock that’s really solving a problem. What it does is take out a little bit that SECON is able to utilize for putting on the roads during the wintertime. I appreciate that, that is good, but, is it fair to say that we’re going to put this at the expense of the neighbors for an indefinite period - I don’t think so, I don’t think we can say that. I certainly wouldn’t accept it if I was one of those people living in those condos. I wouldn’t say that it was all right to have this thing waking me up for a month every year. They could be working on the weekend next to my door when I’m trying to have a barbecue every year. I don’t see it as fair and I don’t see it as a compromise or as a fair trade.

**Roll Call Vote**

Ayes: Lawfer, Haight, Bennett, Miller, Satre

Nays: Bishop, Watson

Motion passes 5:2 and USE2012 0019 was approved.