

# MEMORANDUM

CITY & BOROUGH OF JUNEAU

155 South Seward Street, Juneau, Alaska 99801

**DATE:** March 5, 2003

**TO:** Board of Adjustment

**FROM:** Mark Jaqua, Planner  
Community Development Department

**FILE NO.:** VAR2002-00040

**PROPOSAL:** A Variance request to reduce the buffer requirement for eagles nest trees from 330 feet to 50 feet on public lands in order to subdivide CBJ lands on South Lena Point.

## GENERAL INFORMATION

**Applicant:** CBJ Lands Department

**Property Owner:** CBJ

**Parcel Code No.:**

8B3301010141	USS 3809 LT 6 TR A
8B3301010150	USS 3809 LT 2
8B3301010160	USS 3809 LT 3
8B3301010130	USS 3809 LT 4A

**Zoning:** D-3 Residential

**Utilities:** Public Water, On Site Sewer

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

**Existing Land Use:** Vacant

**Surrounding Land Use:**

- North - D-3 Residential
- South - D-3 Residential
- East - Glacier Highway
- West - NOAA Facility, ATT Facility, D-3 Residential, Recreational Lands



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ALASKA'S CAPITAL CITY

### **PROJECT DESCRIPTION**

Forty-eight lots and three Tracts are proposed for subdivision and development as D-3 residential lots adjacent to the newly built NOAA facility access road and also the South Lean Loop road. Residences on new lots will be connected to a public water system and have secondary sewage treatment on each lot with a common outfall into Favorite Channel. **ATTACHMENT E.**

Eagle nest sites were located during site surveys of the proposed subdivision. Nests # 158, 200, and 203 are either within the proposed subdivision (#158, #203) or are within 330 of proposed development (#200).

Land Use Code Title 49 Sec 70.950 Habitat, prohibits development:

- (2) Within 330 feet of an eagle nest on public land;
- (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.

Title 49 further defines development to include subdivision of land. The CBJ Lands and Resource Department seeks a Variance to reduce the 330-foot buffer requirement on public land to allow subdivision of the proposed parcels for sale to private buyers. The Variance will also include installation of a sewer main along South Lena Loop Road and a sewer outfall. **ATTACHMENT F.**

### **BACKGROUND**

CBJ Lands Department (Lands) proposes to subdivide City property in Lena Point to create residential lots. A 1996 feasibility study determined that Lena was suitable for residential lots, but costs of development were prohibitive. Development of the NOAA facility property, an upgraded water system and construction of the NOAA access road provide an opportunity for the City to meet Comprehensive Plan objectives and create cost effective residential lots. Construction of the NOAA access road infringed upon the 330-foot buffer for the existing nests and a Variance was granted (VAR2002-00027) to allow road construction to within 240 feet.

CBJ Lands and Resources Division have submitted a Lena Point Master Plan with a proposed 85-lot subdivision, with parcels set aside for a future Planned Unit Development. The Plan shows current private residential lots, Federal and State holdings, recreational, park and greenbelt areas. **ATTACHMENT A.**

### **ANALYSIS**

#### **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.*

Reduction of the 330 no development buffer to a 50-foot buffer will allow CBJ to subdivide the property in accordance with Title 49 as it relates to private development. Lesser variances will give substantial relief in the number of lots created as a result of creating a subdivision.

A lesser relaxation to the 330-foot standard buffer requirement to 135 feet for Nest 203 and 179 feet for nest 200 will provide essentially the same relief.

Relaxation of the buffer requirement to 20 feet would be required for the subdivision for Nest #158 since the lot boundary falls within the 50-foot buffer proposed by the applicant. The 20-foot buffer is a greater relaxation than requested.

The Variance will not provide relaxation from restrictions on disturbance within the 330-foot buffer from March 1<sup>st</sup> to August 31<sup>st</sup> required under §49.70.950. This is in keeping with Federal standards based on nesting activity and is in keeping with restrictions placed on other property owners in the area. Future development of individual lots will be initiated after lots are sold to private buyers. Development of those private lots will be required to conform to Title 49 the same as other private developments.

Hardships as a result of not granting this Variance are described by CBJ Lands in a cost analysis and lot demand study in Attachment K.

Table 1. Buffer analysis.  
 Buffer size and affected lots

Nest	330	250	155	135	50
203	Block B Lots 18,16,17,3,2,1,Track B, Track A. Pump Station Site	Block B lots 17,16,2,1, Track A, Pump Station	Track A, Pump Station	Track A	Track A

Nest	330	188	50	~20 ft	
158	Block C lots 3,2 Block B lots 8,7,6,5,4,3,2,1, Track A, Track B.	Block B lots, 7,6,5,4,3,Trac k B	Track B, lots 6,4,	Block B lot 6	

Nest	330	297	179	50	
200	Block B lots 9,8, Sewer outfall	Block B lot 9, sewer outfall	Sewer outfall	Sewer outfall	

Total	22 lots	12 lots	4 lots	2 lots	
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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.*

The 330-foot requirement for development has the intent to provide greater protection for eagle nests on public land than that required on private land. The lots created as a result of this subdivision will be sold by CBJ for development as residential lots that will meet the standards for development for private lots. Development of private lots will be restricted under Title 49 Sec 70.950 based on eagle nesting activity. This meets the intent of this section. Public safety and welfare will be preserved to a standard equal to that required by all private development. Staff has not identified any current or foreseeable threats to public safety and welfare as a result of this variance.

Based on the above analysis, **this criterion is met.**

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

If granted this variance will result in the creation of 22 additional lots and 2 sewer developments that otherwise would not be allowed. Subdivision of future residential lots will be required to meet land use and building code requirements. Development of those lots by private owners will also be required to meet CBJ codes. Staff anticipates no foreseeable injuries to nearby property as a result of either the subdivision or future development.

Based on the above analysis, **this criterion is met.**

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

Subdivision and development of these lots and related water, sewer and roads are all permissible uses within this district.

**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;*

CBJ Lands and Resources Department asserts that compliance with the 330 buffer standards for the purpose of platting new lots will prevent 10 residential lots from being subdivided for sale and development. Four lots will have restricted development that could result in loss of value. This will increase costs of development and significantly affect the economic feasibility of the subdivision. **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;*

This subdivision is designed to create lots that are larger than the minimum requirement under D-3 zoning. This was done in response to neighborhood concerns regarding the impact of further development on the rural character on South Lena. Larger lot size helps preserve sight buffers, vegetative cover and aesthetics of the area. Compliance with existing standards will likely result in lots that meet the minimum requirement for lot size but will have a greater impact on appearance and features of the development. **This sub-criterion is met.**

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

Residential development of South Lena Point over the last 50 years has retained quality eagle nesting habitat consisting of large mature spruce. Lena Point overlooks productive marine waters, which is also an important physical feature for eagle activity. However, this feature is not unique to S. Lena since active eagle nest habitat is common throughout the CBJ. **This sub-criterion is not met.**

or

- (D) *Because of pre-existing 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.**

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

This variance will allow CBJ Lands and Resources to develop lot in an economical and cost effective manner while providing public water and sewer service to future lots. Essential eagle nests and important habitat for future nesting activity will be preserved as a result of incorporating larger lot sizes than required under D-3 zoning. Larger lot size for the subdivision also retains neighborhood character and aesthetics. Lacking this variance, lots will likely be reduced in size to retain positive economic return to CBJ, but be detrimental to neighborhood character. **This sub-criterion is met.**

## **JUNEAU COASTAL MANAGEMENT PROGRAM**

The proposed variance to eagle nest habitat buffers is consistent with the JCMP. The proposed subdivision will not lessen the requirements for development under Land Use Code Title 49 Sec 70.950 Habitat. Nor will it impose greater restrictions on future private development of residential properties.

### **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. Based on the above analysis, the variance as proposed complies with the JCMP.
3. ***Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?***  
Yes. Based on the above analysis, staff finds that the criteria meet this section.

### **RECOMMENDATION**

It is recommended that the Board of Adjustment adopt the director's analysis and findings and approve the requested variance with the following conditions.

1. The variance be amended to the minimum required (20 feet) to allow a subdivision adjacent to nest 158 for the purpose subdividing lots.
2. Future development on public lands within the 330 buffer is required to obtain variances on a site-specific basis.