

MEMORANDUM

CITY & BOROUGH OF JUNEAU

155 South Seward Street, Juneau, Alaska 99801

DATE: July 1, 2003

TO: Board of Adjustment

FROM: Greg Chaney, Planner
Community Development Department



FILE NO.: VAR2003-00027

PROPOSAL: A Variance to construct a road and other subdivision improvements within 150 feet of an active eagle nest tree when 330 feet is required.

GENERAL INFORMATION

Applicant: Richard Harris

Property Owner: Richard Harris

Property Address: 1110 Fritz Cove Road

Legal Description: USS 1549, Fraction Tract C

Parcel Code Number: 4-B20-0-102-008-0, 4-B20-0-102-007-0

Site Size: 9.07 acres

Zoning: D1

Utilities: CBJ Water, On Site Septic

Access: Fritz Cove Road, Fox Farm Trail

Existing Land Use: Access Easement and Vacant Property

Surrounding Land Use: North – D1 (Single Family, Duplex) Auke Bay Slough, and 7 lots
South – D1 (Single Family, Duplex) Spruce Point Estates, Fox Farm Trail
East - D1 (Single Family, Duplex) Fritz Cove Road
West - D1 (Single Family, Duplex) Auke Bay



PROJECT DESCRIPTION

The applicant has submitted an application for a 7-lot subdivision (SUB2003-00018) to be heard concurrent with this Variance application. Conceptual approval for this project was provided on March 25, 2003 under SUB2002-00039.

BACKGROUND

When Preliminary Plat SUB2002-00039 was approved, it was known that an eagle's nest was located on Lot 19, Spruce Point Estates. The nest tree is approximately 50 feet from the applicant's property at its closest point, however under the current proposal, road construction and other subdivision improvements will not take place within 150 feet of the nest site (See Attachment A).

Under Article III Sensitive Areas Section §49.70.310 the CBJ Land Use code states:

§49.70.310 HABITAT. (a) There is adopted the sensitive areas map dated September 9, 1987, as the same may be amended from time to time by the assembly by ordinance. **Development in the following areas**, some of which are designated on the map, **is prohibited**:

- (1) On Benjamin Island within the stellar sea lion habitat;
- (2) Within three hundred thirty feet of an eagle nest on public land;
- (3) **Within fifty feet of an eagle nest on private land, provided that there shall be no construction within three hundred thirty feet of such nest between March 1st and August 31st if it contains actively nesting eagles;**

The applicant has submitted a detailed monitoring program to address potential impacts to the nearby eagle nest (See Attachment B). The U.S. Fish and Wildlife Service (USFWS) was contacted and asked to comment regarding work near the subject nest tree. The USFWS response to the applicant's monitoring proposal was that it was acceptable (See Attachment C).

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.***

Since the Leadbetter right-of-way was platted within 150 feet of the nest tree, the road could not be completed at a greater distance from the nest tree than has been requested and still be within the right-of-way.

We therefore find in the **positive** for this criterion.

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.***

We believe that granting this variance, to reduce the required setback from an active eagle nest tree from 330 feet to 150 feet, (with mitigation measures proposed by the applicant and approved by the U.S. Fish and Wildlife Service) would be consistent with the intent of this title to protect nesting eagles. Since no threats to public safety and welfare have been noted, they would be preserved.

We therefore find in the **positive** for this criterion.

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

We have found no evidence that the grant of this variance would injure nearby property. The construction of subdivision improvements will be controlled by an on site monitor. Given that the operation will be conducted in such a fashion that the viability of the nesting eagles is preserved, no impact to the nest is anticipated and therefore, no impact to nearby property is foreseen if this variance is approved.

We therefore find in the **positive** for this criterion.

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

Issuance of this Variance will not allow uses not otherwise allowed in this zoning district. Subdivision of the applicant's property may be permitted only with approval of a major subdivision permit.

We therefore find in the **positive** for this criterion.

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

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

The purpose of CBJ§49.70.310 is to protect the viability of eagle nest sites. Given the monitoring program proposed by the applicant is endorsed by the US Fish and Wildlife Service, the nest will receive sufficient protection. Therefore it would be unreasonable, considering the mitigation measures proposed by the applicant, to prevent the owner from developing subdivision improvements during the nesting season.

We therefore find in the **positive** for this sub-criterion.

- (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;*

The developer could pursue a schedule outside of the nesting season and still develop the proposed subdivision improvements. This would extend development time and require construction to take place in relatively poor weather and potentially significantly extend the timeframe required for overall completion. Even considering these factors, it is possible for the development to be completed with out a variance in such a fashion that it was consistent with existing development in the neighborhood.

We therefore find in the **negative** for this sub-criterion.

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

Leadbetter Way is the only platted right-of-way which abuts this property. The entire length of Leadbetter Way is within 330 feet of the eagle nest tree. To restrict development entirely within the platted right-of-way and require the applicant to purchase private property to establish an alternative right-of-way would be extremely expensive.

We therefore find in the **positive** for this sub-criterion.

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.*

Although the existence of a private road and easement on this lot is a legally non-conforming situation, the grant of this variance would not further aggravate the non-conforming situation.

Therefore we find that this sub-criterion is **not applicable**.

Since sub-criteria A and C have been met, we therefore find that criterion Five (5) has been met.

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

There is evidence to suggest that a grant of the variance would result in more benefits than detriments to the neighborhood. The eventual improvements to the roadway will benefit the neighborhood by expediting improved emergency access to homes in the area currently served by a substandard private road.

The detriments will be in the form of impacts in the immediate area. Expected impacts of noise, traffic, dust and blasting are proposed to be mitigated by conducting operations in a controlled manner in accord with the proposed eagle nest monitoring program. This proposal meets with guidelines recommended by USFWS for protection of eagle nest trees.

We therefore find in the **positive** for this criterion.

JUNEAU COASTAL MANAGEMENT PROGRAM

The proposed development was reviewed for compliance with CBJ §49.70.900, the Juneau Coastal Management Program. The analysis reveals that Section 11. Habitat (B)(5) recommends that eagle nest habitat be protected and specifically recommends a 330 foot buffer around known eagle nests.

The CBJ Land Use Code specifically addresses eagle nest trees in the Habitat Section CBJ§49.70.310. (cited above). The code prohibits development "Within fifty feet of an eagle nest on private land, provided that there shall be no construction within three hundred thirty feet of such nest between March 1st and August 31st if it contains actively nesting eagles."

The staff recommendation in this Variance is based primarily on the conclusion by the U.S. Fish and Wildlife Service that road construction, and associated subdivision improvements, may proceed if the monitoring program proposed by the applicant is implemented to prevent harm to the eagle nest site.

FINDINGS

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

Yes. The applicant has submitted sufficient application and support materials for staff to conduct a review and make findings and recommendations.

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

Yes. The proposed development was reviewed in the above staff report for compliance with CBJ §49.70.900, the Juneau Coastal Management Program. We find that the proposed subdivision operation relative to this variance may be conducted in a fashion that 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 preceding evaluation, the variance, as requested, meets all six criteria of Section §49.20.250, Grounds for Variances.

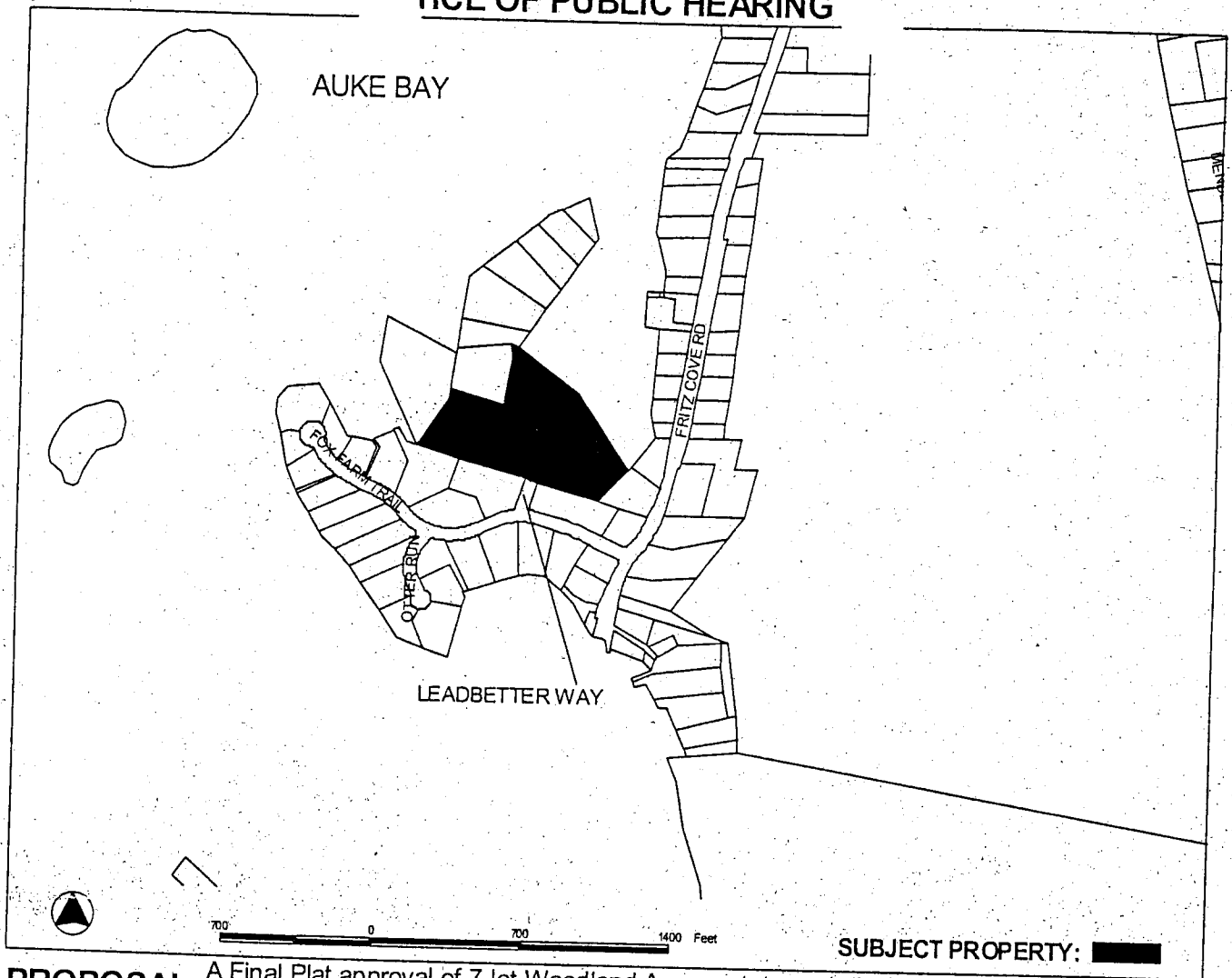
RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and "decision" on the requested Variance. The Variance would allow for construction of a road and other subdivision improvements within 150 feet of an active eagle nest tree when 330 feet is required.

Variance approval shall be subject to the following condition:

1. The applicant shall assure that construction operations are consistent with the monitoring program proposed by the applicant under this application

NOTICE OF PUBLIC HEARING



PROPOSAL: A Final Plat approval of 7-lot Woodland Acres estates subdivision - (preliminary plat approved under SUB2002-00039). Also, a Variance request to construct a road and other subdivision improvements within 150 feet of an active eagle nest tree where 330 feet is required. A Street Name change is also being requested to change Leadbetter Way to Reischl Way.

<p>FILE NOS: SUB2003-00018 - Final Plat; VAR2003-00018 - Variance;</p> <p>TO: Adjacent Property Owners</p> <p>HEARING DATE: July 8, 2003</p> <p>HEARING TIME: 7:00 P.M.</p> <p>PLACE: ASSEMBLY CHAMBERS Municipal Bldg. 155 South Seward St., Juneau, Alaska 99801</p>	<p>APPLICANT: RICHARD HARRIS</p> <p>PROPERTY OWNER: RICHARD HARRIS</p> <p>PROPERTY ADDRESS: 1110 FRITZ COVE RD</p> <p>PARCEL CODE NUMBER: 4-B20-0-102-008-0</p> <p>SITE SIZE: 395,089 Square Feet</p> <p>ZONING: D-1</p> <p>ACCESS: FRITZ COVE RD</p>	<p>SUB2003-00013 - Street Name Change</p>
---	--	--

PROPERTY OWNERS PLEASE NOTE: You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact
 Greg Chaney 586-0761 Greg_Chaney@ci.juneau.ak.us
 Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm

VARIANCE APPLICATION

(APPLICANT PLEASE FILL IN SHADED AREAS AS A MINIMUM)

Project Number	Project Name USS 1549 Subdivision	Case Number VAR03-27	Hearing Date	Date Received 6.23.03
----------------	---	--------------------------------	--------------	---------------------------------

VARIANCE TYPE: Setback Height Bulk Other (Describe) _____

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

*To Do Road construction within a setback of a Eagles Nest
A reduction in setback from 330' to 100'*

*This variance is in conjunction with Major Development permit #
SUB 2002-00039 -FP
SUB2003-00060 -FP*

PREVIOUS VARIANCE APPLICATIONS: Yes No

Date of Filing: _____

Variance from which standards: Setback Height Bulk Other (Describe) _____

Was variance granted? Yes No

EXISTING USE OF LAND OR BUILDING(S):

Vacant

PROPOSED USE OF LAND OR BUILDING(S):

7 LOT SUBDIVISION OF WOODLAND ACRES

UTILITIES AVAILABLE WATER: Public On Site SEWER: Public On Site

PROPOSED SETBACKS (if variance changes setbacks):

Front _____ ft. Rear _____ ft. Side _____ ft. Other *100'* _____ ft.

UNIQUE CHARACTERISTICS OF LAND OR BUILDING (Difference from other properties in the area):

Irregular shape and Limited Access. This would create a safer access than any alternative

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

There is no other Reasonable access to this property other than this location that falls within the 330ft setback.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Construction would be postponed into Fall, winter season Deadlines could not be met

REVIEW APPROVALS

	Initials	Date
Buildings	_____	_____
Engineering	_____	_____
Planning	_____	_____

VARIANCE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ 350			
Adjustment	\$ _____			
Total Fee	\$ _____			

Fee associated with SUB03-27

DEVELOPMENT PERMIT APPLICATION

(APPLICANT - PLEASE FILL IN THE PROJECT/APPLICANT INFORMATION)

6-23-03

Date Received:
5-15-03

Project Number: **CITY and BOROUGH of JUNEAU**
 Project Name (City Staff to assign name): **USS 1549 SUBDIVISION**

Project Description: **FINAL Plat approval of TR-C USS 1549 WOODLAND HOME ESTATES - Preliminary Subdivision - SUB02-34**

PROPERTY LOCATION
 Street Address: **1110 Fritz Loop Rd** City / Zip: **Juneau 99801**
 Subdivision (if known): **USS 1549** Survey (if known): **1549** Block / Tract (if known): **TR-C** Lot (if known): **TR-C**
 Assessor's Parcel Number (if known): **4-B20-0-102-008-0 // 4B20.0.102.007.0**

LANDOWNER / LESSEE
 Property Owner's Name: **Richard Harris** Contact by E-Mail: Contact Person: **Richard** Work Phone No.: **790 4146**
 Mailing Address: **P.O. Box 32403 Juneau AK 99803** Home Phone No.: **790 4148** FAX No.: **790 4147**

LANDOWNER / LESSEE CONSENT (Required for Planning permits not needed on Building/Engineer permits)
 I am (we are) the owner(s) or Lessee of the property subject to this application and I (we) consent as follows:
 A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.
 B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.
 X **[Signature]** **5/15/03**
 Landowner/Lessee Signature Date
 X **[Signature]** **[Date]**
 Landowner/Lessee Signature Date
 NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission and/or the Design Review Board may visit the property and may do so during the weekend before the scheduled public hearing date.

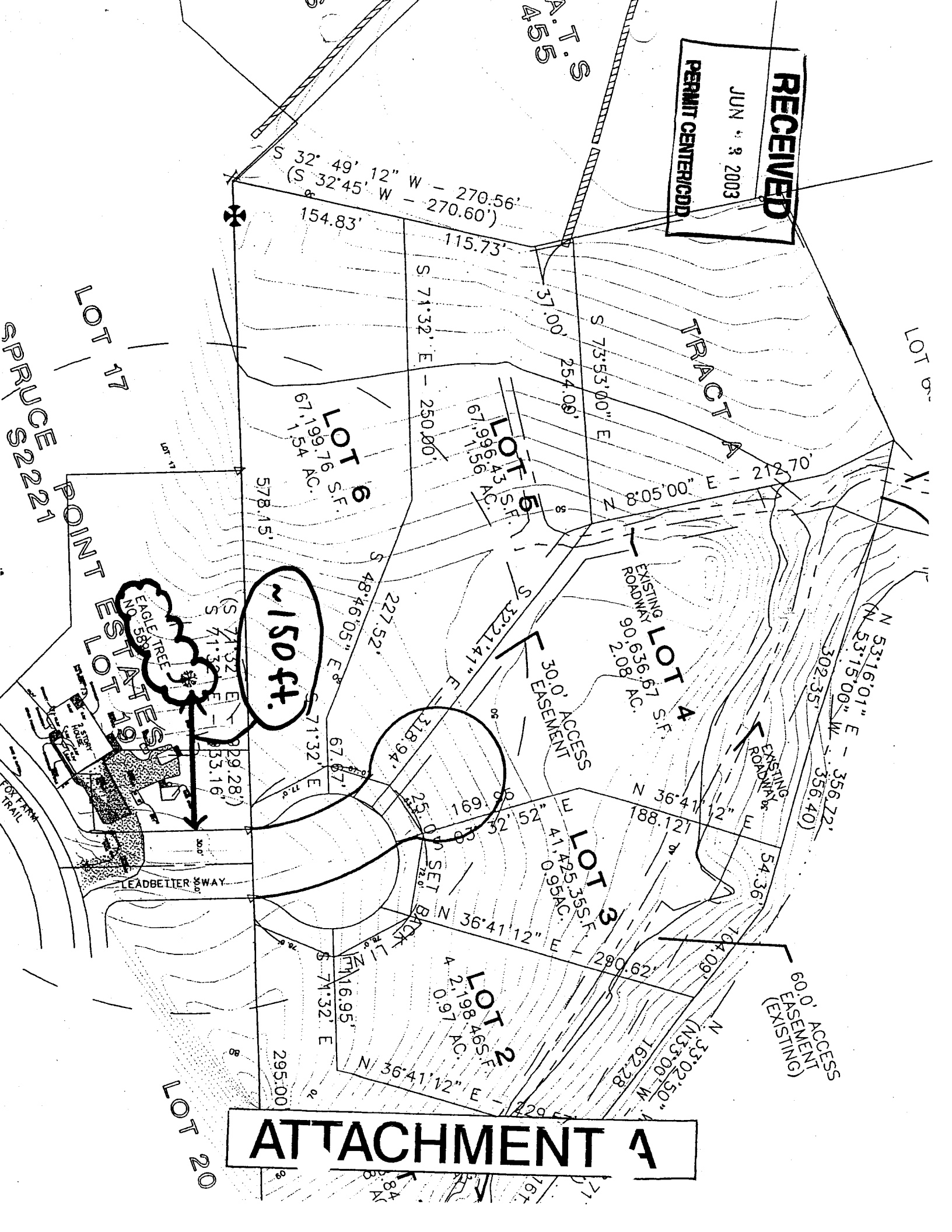
INITIAL ALL THAT MAY APPLY	
APPLICATION TYPE	OWNER'S INITIALS
ALLOWABLE USE	
CONDITIONAL USE	
VARIANCE	
DESIGN REVIEW	
SUBDIVISION	TRH
OTHER	

APPLICANT (If same as OWNER, write "SAME" and sign and date at X below)
 Applicant's Name: **Richard Harris** Contact by E-Mail: Contact Person: **Same as above** Work Phone No.: **[Blank]**
 Mailing Address: **P.O. Box 32403 Juneau AK 99803** Home Phone No.: **[Blank]** FAX No.: **[Blank]**
 X **[Signature]** X **5/15/03**
 Applicant's Signature Date of Application

(OFFICE USE ONLY BELOW THIS LINE)

C K	PERMIT TYPE	SIGN	DATE RECEIVED	APPLICATION NO.	C K	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.
	ALLOWABLE USE APPROVAL					WATER PERMIT		
	CONDITIONAL USE APPROVAL					SEWER PERMIT		
	VARIANCE		6-23-03	VAR03-27		GRADING PERMIT		
	DESIGN REVIEW APPROVAL	MINOR MAJOR				DRIVEWAY PERMIT		
	SUBDIVISION	MINOR MAJOR PLAN	5/15/03	SUB03-18		RIGHT-OF-WAY PERMIT		
	STREET VACATION					PUB. FAC. TRANSMISS. & EXCAV. PERMIT		
	SIGN APPROVAL	LOCATED IN HISTORIC DISTRICT? <input type="checkbox"/> YES <input type="checkbox"/> NO				OTHER - (Describe)		
	BUILDING PERMIT					Permit Intake Initials	GPC / JPM	6-23-03
	Zone	Total Lot Area	Required Setbacks					
			Front	Back	Side	Other		
COMMENTS:								

RECEIVED
JUN 18 2003
PERMIT CENTER/CDD



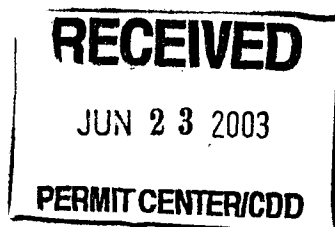
ATTACHMENT A

BALD EAGLE MONITORING PLAN

RH Development Subdivision

**DUNN ENVIRONMENTAL SERVICES
FOR
RH DEVELOPMENT**

June, 2003



ATTACHMENT B

INTRODUCTION

The CBJ ordinance pertaining protection of Bald Eagle nests specifies that no heavy equipment operation shall take place within 330 ft. of an active bald eagle nest during the time period from March 1 through August 31. Currently a bald eagle nest is located within approximately 150 ft. of the proposed access road to the R H Development subdivision off of Fox Farm Trail on Mendenhall Peninsula, Juneau, AK (Attached Figure).

R H Development proposes to construct the proposed road within 330 ft. of the bald eagle nest during this period. Consultation with the US Fish and Wildlife Service (M. Jacobsen, documentation pending) has resulted in their agreement with the activity providing:

- 1). a qualified eagle monitor observes the construction activity / nests,
- 2). Any construction activity seen to be disruptive of the bald eagle nesting activities is stopped and or modified appropriately until normal nesting resumes, upon consultation with the US Fish and Wildlife Service.
- 3). A report detailing bald eagle activities as well as construction activities and any possible disruptions is provided to the CBJ Engineering Department and the US Fish and Wildlife Service weekly during construction, and upon completion of construction activities.

The purpose of the monitor in this case will be twofold:

- First, to monitor bald eagle activity in the vicinity of the nearby nest, and record all eagle activities immediately before, during, and after the construction activity, especially any unusual behavior that may indicate disruption of nesting activities.
- Secondly, to maintain communications with the contractor so that he may alter or halt activities in order to avoid possible "disturbance" of bald eagles carrying out nesting activities.

METHODS

During construction activities, Mr. Dunn will closely monitor the bald eagle nest on Lot 19 by naked eye and binocular from a convenient vantage point. A video camera will be on hand to record any unusual activities on the part of the eagles.

A copy of any videotape will be made and closely examined, with appropriate notes. In addition, Mr. Dunn will take notes of all eagle activities and observed construction effects in a bound notebook. Weekly and final reports will be submitted to the Contractor, the CBJ, and the USF&WS as soon as possible after construction is completed.

Normal bald eagle behavior observed on prior monitoring projects during the nesting period has included:

- Brooding the young in the nest;
- Feeding the young in the nest;
- Perching near the nest and guarding the area from other eagles, this includes vocalizing and chasing other eagles from the area; and
- Fledging activities by the young, including perching and exercising in and near the nest, and short flights from the nest.

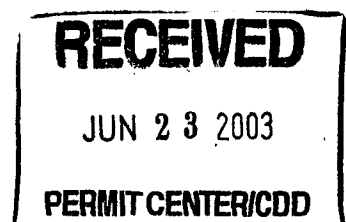
Disruption of these nesting activities by construction operations will be considered as reason to alter operations before a disturbance occurs. A disturbance during the nesting period will be defined as the apparent abandonment of nesting activities or apparent agitation of the nesting eagles that has an apparent causal connection to construction operations.

Monitoring would begin daily 15 minutes to 30 minutes before the contractor begins operations. A sign will be posted near the construction area indicating whether the monitor is on duty.

Because of the large number of bald eagles in the vicinity, as evidenced from observations in 2001 and 2002 in Auke Bay, it is anticipated that there may be some disruption of normal nesting activities due to interaction with other bald eagles. Special care will be taken to record these eagle/eagle interactions so as to distinguish them from eagle / construction interactions.

Qualifications of Monitor

Art Dunn of Dunn Environmental Services has been monitoring bald eagles during the nesting season on construction projects since the 1998 season. He, and associates, have successfully monitored bald eagles at sites on the Auke Rec. Bypass in 1998 and 99; at Stablers Pt. Quarry in 2000, 01, 02, and 03; at the NOAA / Lena Loop road extension in 2002, and at this site early in the nest selection period of 2003, logging literally hundreds of hours of documented observations. In addition, he has developed a monitoring methodology that takes into account the bald eagle nesting season, normal bald eagle activities, indications of bald eagle disruption, and modern construction techniques. This methodology has gained acceptance from the US Fish and Wildlife Service, Raptor Management Division, for limited use in Southeast Alaska.



RAPTOR MANAGEMENT
U. S. FISH AND WILDLIFE SERVICE
3000 VINTAGE BLVD., SUITE 240
JUNEAU, AK 99801-7100

(907) 586-7243 (COMM)
(907) 586-7378 (FAX)

TO: *Greg Chaney - CBJ Planning*

FAX PHONE: *586-3365*

FROM: *Mike Jacobson*

DATE: *6/27/03* TIME:

SUBJECT: *EAGLES - Fox Farm Trail*

NO. OF PAGES (INCLUDING COVER SHEET): *1*

MESSAGE:

Dear Greg,

The bald eagle monitoring plan for RH Development near Fox Farm Trail at Mendenhall Peninsula is agreeable to us. Eagles at nest #74 have a history of tolerance toward nearby human activity. The monitoring plan should allow the proposed access road to be constructed with a reduced risk of disturbance to eagles.

Let me know if you need additional information.

Mike

Mike Jacobson

ATTACHMENT C