


MEMORANDUM

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

DATE: May 2, 2007

TO: Board of Adjustment

FROM: Eric S. Feldt, Planner 
Community Development Department

FILE NO.: VAR2007-00012

PROPOSAL: A Variance request to reduce the 330-foot eagle nest tree setback to approximately 250 feet to allow boat harbor renovations.

GENERAL INFORMATION

Applicant: PND Engineers, Inc.

Property Owner: City and Borough of Juneau

Property Address: 120 Savikko Road

Legal Description: ATS 14FR

Parcel Code Number: 2-D04-0-T32-005-0

Site Size: Approximately 10 acres

Zoning: (WI) Waterfront Industrial

Utilities: CBJ Water and Sewer

Access: Savikko Road

Existing Land Use: Douglas Boat Harbor

Surrounding Land Use: North - (Waterfront Commercial) Mayflower/ Juneau Island
South - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena
East - Gastineau Channel
West - (D - 18) Robert Savikko Recreation Park/ Treadwell Arena



ATTACHMENTS

ATTACHMENT A
ATTACHMENT B

EAGLE'S NEST TREE LOCATION
RENOVATION PLANS

PROJECT DESCRIPTION

An eagle's nest sits east side Mayflower Island and development is prohibited within the 330' setback upon public land, as required per §49.70.310(a)(2) (Attachment A). The applicant requests a Variance to develop within the 330' habitat setback, allowing renovation of Douglas Harbor.

BACKGROUND

Douglas Harbor has been built and renovated over time in phases. With each new phase, this harbor is being expanded, renovated, or redesigned. Phase I consisted of the Harbor design and construction of the original three floats (Floats A-C) in 1967. Phase II provided two additional floats (Floats E & F) to accommodate further moorings in 2004. Lastly, this third phase will be the renovation of the original Floats A-C, gangway, pylons, utilities, and shoreline rehabilitation (see Attachment B).

ANALYSIS

The encroachment of the 330' habitat setback shall be regulated as stated below:

CBJ 49.70.310 Habitat:

- (a) Development in the following areas is prohibited:
- (1) On Benjamin Island within the stellar sea lion habitat;
 - (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;

Being near the Gastineau Channel with a high availability of food, high nesting area and being away from threats, the location of the nest is not uncommon. This eagle's nest is used nearly annually and necessary measures should be made to ensure the continued use of the nest. The nest is perched upon an open-view branch and is not hidden from the Harbor or Gastineau Channel. Therefore, the eagles have the view and audio of boats within the Harbor and Channel, automobile traffic from Mayflower Island and the Harbor/ Savikko Park, as well as pedestrians.

The renovation of the Harbor will result in a change of regular activity in the Harbor that will bring increased amounts of mechanical bustle and noise pollution. The removal/ installation of the pylons, which harness the floats, will produce more audible pollution than that of the floats itself. This is due to the driving force of the steel pylons deep into the bottom of the Harbor. The method of pylon

driving is accomplished through using a vibratory pile driver, which uses a horizontal/vertical vibration-method to drive the pylons into the soil instead of repetitive impact hits. A vibratory pile driver has a “vibration suppressor” that may minimize much of the externally-emitted noise. Secondly, this type of pile driver creates fewer disturbances to the surrounding grounds by the controlling impact forces upon the target (See <http://www.iceusa.com/howworks.htm> for vibratory pile driver information in “International Construction Equipment” titled How a vibratory pile driver/extractor works). In the case a hard earthen material is found, an impact hammer may be use. Nonetheless, noise pollution may be regulated by minimizing the decibels produced during the renovation as a condition upon a Conditional Use permit. The following condition would be appropriate to this situation and should be recommended: CBJ 49.15.330(g) (11) *Sound: No more than 65 dBa at the property line during the day or 55 dBa at night.*

U.S. Fish and Wildlife Services have deemed it appropriate to regulate the time of day that construction shall occur. Staff is recommending a condition that between the times 7pm – 7am construction shall not occur, due to the eaglet/ parent feeding times during early mornings and late evenings. Also, U.S. Fish and Wildlife Services recommends that pile driving not take place prior to August 31st, which marks the ending of the eaglet incubation period. Conversely, by using a vibratory machine for pylon extraction/ installation noise pollution and habitat disruption may be minimized compared to an impact hammer. Waiting until September for pile driving to occur would be an unreasonable guideline, because of the type of pile driver used, the fewer hours of sunlight, and changing of the weather. Therefore, a qualified spotter shall be recommended upon the permit to properly view the eagle’s nest for the first week to make sure the development does not severely disturb the eagles.

Alaska Department of Fish and Game prohibits any in-water work between March 15 and June 15 in Anadromous streams. This closed window of construction shall be recommended as a condition due to the out-migratory salmon and herring spawning period within Gastineau Channel.

The location of the eagle’s nest, as stated earlier is used annually due to the habitat and location even though it is adjacent to an industrial use of activity. For that reason, staff recommends the renovation of the Harbor should be permitted within the times and dates as stated above.

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 the recommended methods and times of construction, as stated earlier, are adopted, the encroachment of 250' into the 330' habitat setback shall not discourage the continuation of the eagle's nest. There are also property owners and existing buildings upon Mayflower Island, located much closer to the eagle's nest than the Harbor floats, that haven't disturbed the eagles.

Therefore 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.***

If the recommended conditions are accepted, then the eagles will still be able to successfully utilize the nest.

Therefore this criterion is met.

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

The construction within the 330' habitat setback does not affect any nearby properties negatively.

Therefore this criterion is met.

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

The continuation and renovation of the floats and shorelines within the Douglas Harbor is allowed within the Waterfront Industrial District as listed in Section 10.510 under CBJ 49.25.300 *Table of Permissible Uses* with a building permit.

Therefore 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;***

Strict adherence to the 330' development restriction would prevent a significant portion of the Harbor renovation to occur, as a permissible use as stated above.

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;***

The renovation of Douglas Harbor will expand the size of the floats, but not increase the number of the floats nor be any closer to the eagle's nest. The renovated floats, fingers, and pylons will be consistent to those already existing upon the northern floats. Therefore, the development restriction would unreasonably prevent the owner from renovating the portion of the Harbor.

Therefore this sub-criterion is met.

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

The site does not contain any unique physical features that would render compliance with the standards unreasonably expensive.

Therefore this sub-criterion is not met.

(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.

Not Applicable. No non-conformities exist at the construction site.

Since sub-criterion A & B are met, this criterion is met.

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

The renovation of the three floats and fingers, southern headwalk, pylons, gangway, and shoreline preservation shall be needed not only to accommodate larger moorings but also to ensure public safety due to the aging of the original floats. With the recommended conditions, the use of eagle's nest will not be seriously impacted.

Therefore this sub-criterion is met.

JUNEAU COASTAL MANAGEMENT PROGRAM

Juneau Coastal Management Program (JCMP), Section 11. Habitat B. Findings (5) and (8) identify bald eagles as an important species. JCMP Section 11. Habitat C. Administrative Policies (4) states that it is the policy to protect areas surrounding identified eagle nests from conflicting land uses.

This policy has been implemented in the Land Use Code under CBJ 49.70.310 (2), which prohibits development within 330 feet of an eagle nest on public land. With the recommended conditions and use of machinery for the renovations the impacts to the eagles nest will be minimal.

Therefore, the development can proceed as proposed and the goals of the Juneau Coastal Management Plan will be met.

FINDINGS

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

Yes. We find the application contains the information necessary to conduct full review of the proposed renovation. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.20

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

Yes. Staff's recommended conditions in place find that the proposed development will fully comply with the JCMP. Based upon the opinion of the USFWS, with the proposed time limits, such a development will not negatively affect the eagles, and therefore meets the intent of CBJ §49.70.310 (2).

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

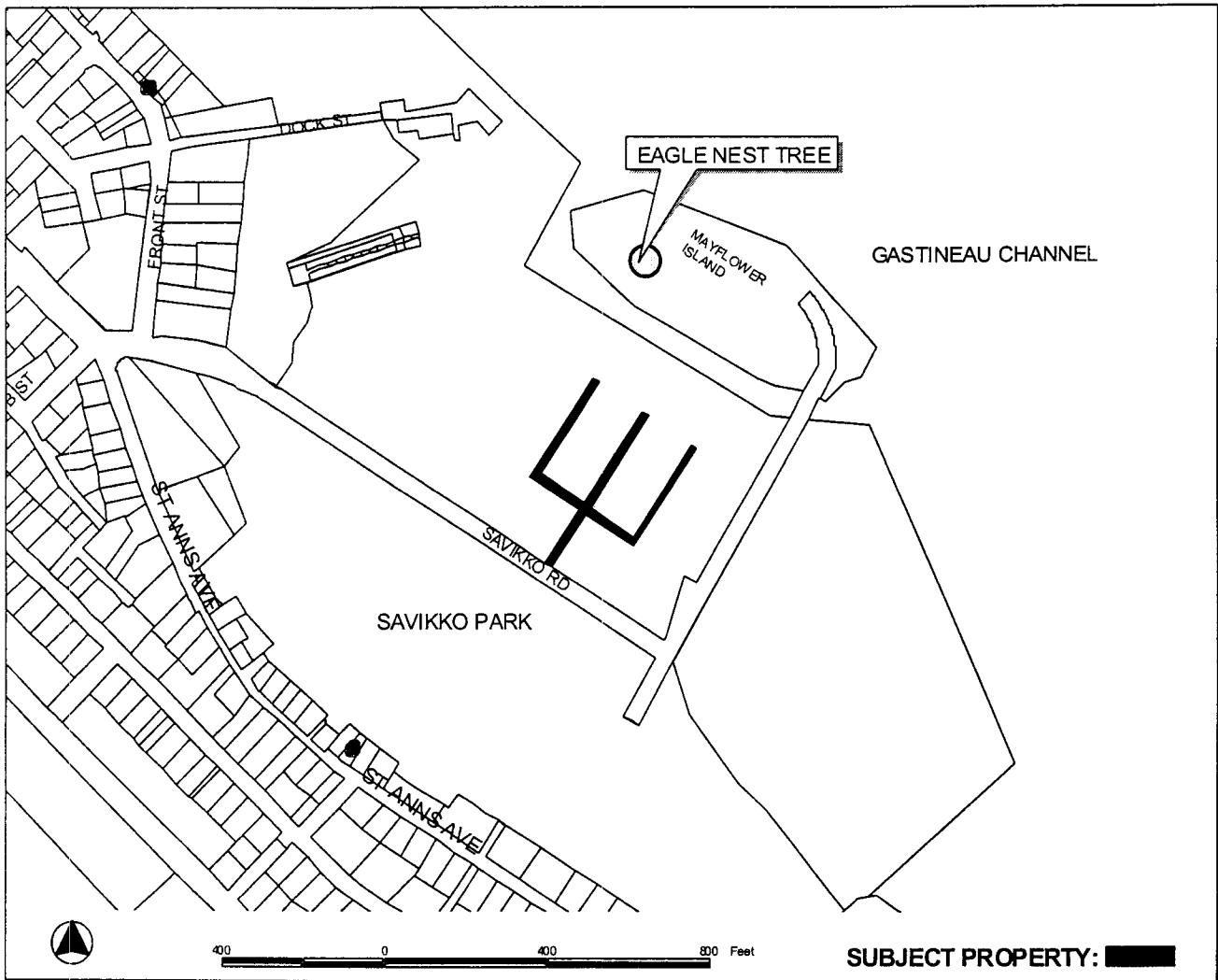
Yes. Based on the analysis above, staff finds that the Variance meets the criteria of CBJ §49.20.250, *Grounds for Variances*.

RECOMMENDATION

It is recommended that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2007-00012. The Variance permit would allow the reduction of the 330-foot habitat setback requirement to 250 feet for the renovation of Douglas Harbor to occur with the following recommended conditions:

1. There shall be no construction between the hours of 7pm – 7am.
2. Noise levels shall not exceed 65 decibels at the property line during the day or 55 decibels at night.
3. In-water construction shall be prohibited between March 15 through June 15, due to the spawning of salmon and herring in Anadromous streams.

NOTICE OF PUBLIC HEARING



PROPOSAL: A City Project Review for the Douglas Boat Harbor renovations, and a Variance request to reduce the 330-foot eagle nest tree setback to 200 feet for the boat harbor renovations.

FILE NO:	CSP2007-00005 & VAR2007-00012		
TO:	Adjacent Property Owners	APPLICANT:	PND ENGINEERS INC
HEARING DATE:	May 8, 2007	PROPERTY OWNER:	CBJ
HEARING TIME:	7:00 P.M.	PROPERTY ADDRESS:	120 SAVIKKO RD
PLACE:	ASSEMBLY CHAMBERS	PARCEL CODE NUMBER:	2-D04-0-T32-005-0
	Municipal Bldg.	ZONING:	Waterfront Industrial
	155 South Seward St.,	ACCESS:	SAVIKKO RD
	Juneau, Alaska 99801		

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 Eric Feldt at 586-0764, or e-mail: Eric_Feldt@ci.juneau.ak.us

Planning Commission Agendas, Staff Reports and Meeting Results can be viewed at www.juneau.org/plancomm.

Date notice was printed: April 25, 2007

VARIANCE APPLICATION

(APPLICANT PLEASE FILL IN SHADED AREAS AS A MINIMUM)

Project Number PR2007-71	Project Name Douglas Harbor Renovation	Case Number VAR2007-00012	Hearing Date 5/8/07	Date Received 4/23/07
VARIANCE TYPE: <input checked="" type="checkbox"/> Setback <input type="checkbox"/> Height <input type="checkbox"/> Bulk <input type="checkbox"/> Other (Describe) _____				

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

As part of a phased-approach renovation project, the City and Borough of Juneau desires to renovate and reconfigure the existing moorage at Old Douglas Harbor. This project includes the removal of items such as A, B, and C floats and associated finger floats, the boat grid, south boat launch ramp and boarding float. Renovations to the facility will provide new moorage floats, new steel pipe piles, and a new ADA compliant covered aluminum gangway.

PREVIOUS VARIANCE APPLICATIONS:

Date of Filing: _____ Yes No

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

Was variance granted? Yes No

EXISTING USE OF LAND OR BUILDING(S):

Existing public harbor facility.

PROPOSED USE OF LAND OR BUILDING(S):

Same.

UTILITIES AVAILABLE

WATER: Public On Site SEWER: Public On Site

PROPOSED SETBACKS (If variance changes setbacks):

Front _____ ft. Rear _____ ft. Side _____ ft. Other _____ ft.

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

Old Douglas Harbor is located on the west side of Gastineau Channel, south of the Juneau-Douglas Bridge. The harbor is projected by Juneau Island Causeway, Juneau Island itself, a rock breakwater, and Dock Street fill, enclosing a 5.2 acre basin.

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

Old Douglas Harbor provides moorage for both transient and resident boaters. Many live-aboard vessels moor within the harbor, providing a home for many local citizens.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Old Douglas Harbor provides transient, or temporary, and permanent small-boat moorage to many resident and visitor vessels each year. If the variance were not granted, renovations could not occur and Old Douglas Harbor would see continued degradation.

REVIEW APPROVALS

	INITIALS	DATE
Buildings	_____	_____
Engineering	_____	_____
Planning	_____	_____

VARIANCE FEES

	FEE	CHECK NO.	RECEIPT	DATE
Application Fees	\$350.00	_____	_____	_____
Adjustment	\$	_____	_____	_____
Total Fee	\$350.00	WC023078	24732	4/23/07

DEVELOPMENT PERMIT APPLICATION

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

Project Number PRJ 2007-00071	CITY and BOROUGH of JUNEAU	Date Received: 4/23/07
Project Name (City Staff to assign name) Douglas Harbor Renovation		

Project Description As part of a phased-approach renovation project, the City and Borough of Juneau desires to renovate and reconfigure the existing moorage at Old Douglas Harbor.
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PROPERTY LOCATION			
Street Address 120 Savikko Road	City / Zip Juneau/99801		
Subdivision (if known) -	Survey (if known) ATS 14FR	Block / Tract (if known) -	Lot (if known) -
Assessor's Parcel Number (if known) 2D040T320050			

LANDOWNER/LESSEE			
Property Owner's Name CBJ	<input checked="" type="checkbox"/> Contact by E-Mail: john.stone@ci.juneau.ak.us	Contact Person John Stone	Work Phone No. 586-0292
Mailing Address 155 S. Seward Street, Juneau, AK 99801		Home Phone No. -	FAX No. 586-0295

LANDOWNER/LESSEE CONSENT (Required for Planning permits not needed on Building/Engineer permits)		INITIAL ALL THAT MAY APPLY	
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	Landowner/Lessee Signature <i>[Signature]</i>	Date APRIL 23, 2007	OWNER'S INITIALS <i>[Initials]</i>
X	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 may visit the property and may do so during the weekend before the scheduled public hearing date.			
SUBDIVISION		OTHER:	

APPLICANT (If same as OWNER, write "SAME" and sign and date at X below)			
Applicant's Name PND Engineers, Inc.	<input checked="" type="checkbox"/> Contact by E-Mail: dsomerville@pnd-inu.com	Contact Person Dick Somerville	Work Phone No. 586-2093
Mailing Address 360 Glacier Highway, Ste. 100, Juneau, AK 99801		Home Phone No. -	FAX No. 586-2099
X	Applicant's Signature <i>[Signature]</i>	X	Date of Application 4/23/07

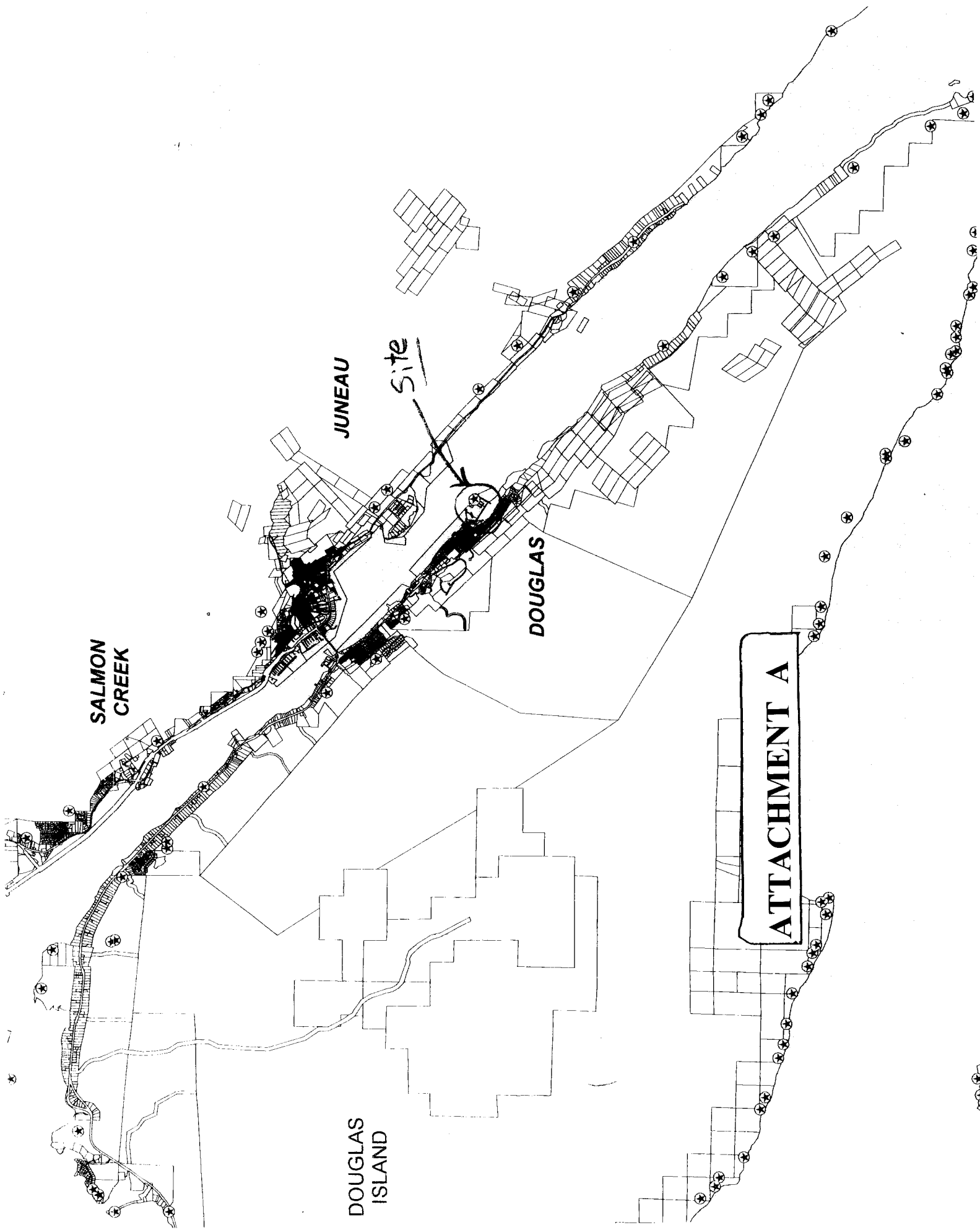
(OFFICE USE ONLY BELOW THIS LINE)

STAFF APPROVALS	C	K	SIGN	DATE RECEIVED	APPLICATION NO.	C	K	DATE RECEIVED	APPLICATION NO.
		ALLOWABLE USE APPROVAL						WATER PERMIT	
		CONDITIONAL USE APPROVAL						SEWER PERMIT	
	X	VARIANCE		4/23/07	VAR2007-12			GRADING PERMIT	
		DESIGN REVIEW APPROVAL						DRIVEWAY PERMIT	
		SUBDIVISION						RIGHT-OF-WAY PERMIT	
		STREET VACATION						PUB. FAC. TRANSMISS. & EXCAV. PERMIT	
		SIGN APPROVAL						OTHER - (Describe)	
		BUILDING PERMIT						Permit Intake Initials	VAR/ESF

Zone	Total Lot Area	Required Setbacks Front _____ Back _____ Side _____ Other _____
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COMMENTS:

NOTE: DEVELOPMENT PERMIT APPLICATION FORM MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS



SALMON
CREEK

JUNEAU

site

DOUGLAS

ATTACHMENT A

DOUGLAS
ISLAND

TIDAL INFORMATION

EXTREME HIGH WATER (EHW)	23.2'
HIGH TIDE (LIME BTLL)	20.0'
MEAN LOWER LOW WATER (MLLW)	15.0'
MEAN LOWER LOW WATER (GALLW)	13.0'
ESTIMATED EXTREME LOW WATER	-0.0'

RECEIVED
MAR 29 2007
PERMIT CENTER / CDD

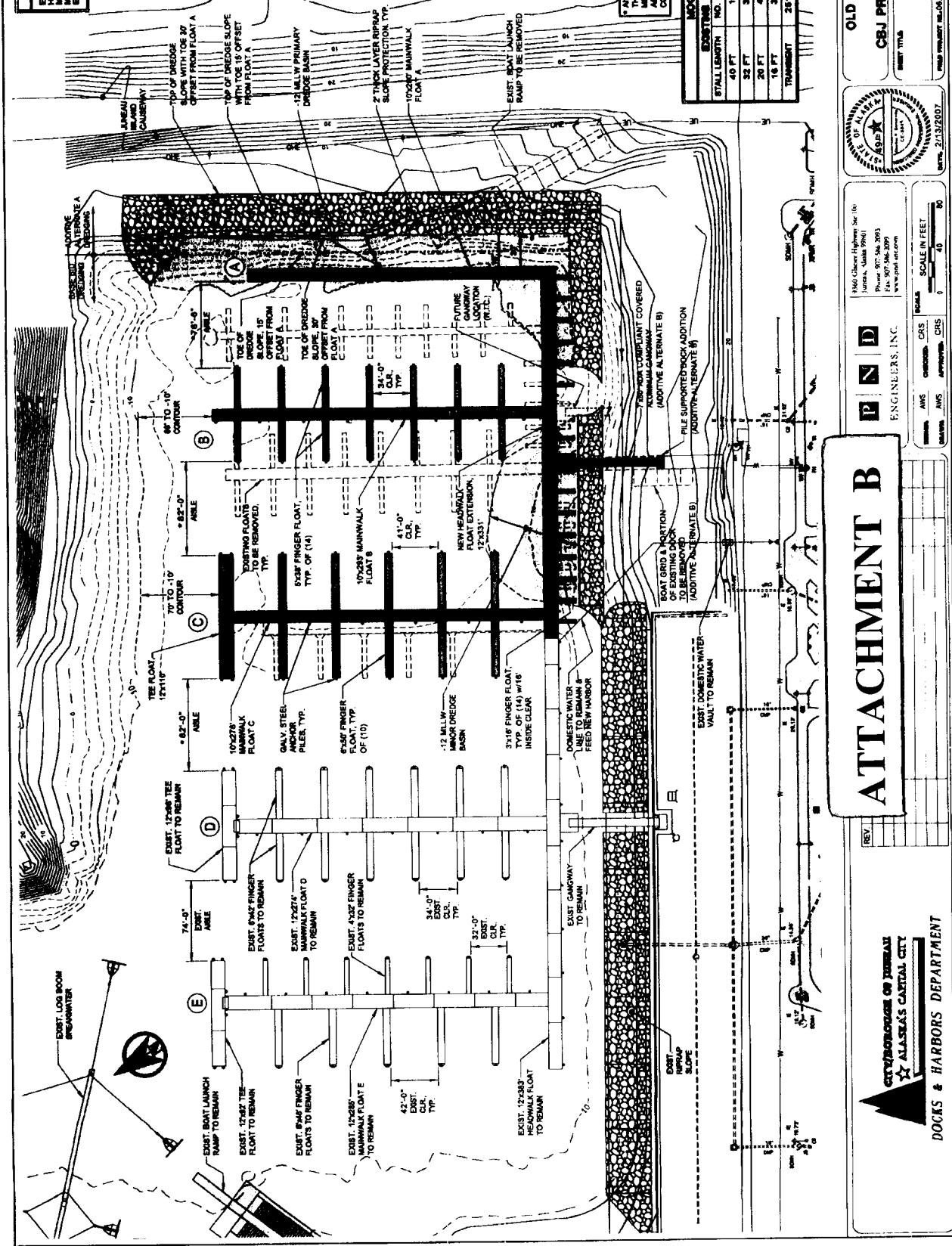


TABLE NOTATIONS ARE LESS THAN RECOMMENDED MINIMUM CLEARANCES PER AISC. OLD OPERATIONAL CONTAINERS RECOMMENDED.

MOORAGE SUMMARY

EXISTING	PROPOSED
STALL LENGTH	NO. SLIPS
40 FT	13
50 FT	24
58 FT	30
62 FT	34
68 FT	43
78 FT	50
18 FT	24
TRANSPARENT	708 LF
	281 LF

ATTACHMENT B

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY
DOCKS & HARBORS DEPARTMENT

PND ENGINEERS, INC.
 1460 Glacier Highway, Ste. 10
 Juneau, Alaska 99801
 Phone: 907.586.2093
 Fax: 907.586.2099
 www.pnd-inc.com

STATE OF ALASKA
PROFESSIONAL ENGINEER
License No. 6927
DATE: 2/13/2007

OLD DOUGLAS HARBOR RENOVATION
CBJ PROJECT NO. DH 06-350
SHEET TITLE: SITE PLAN
 SHEET NO. 1 OF 1

SCALE IN FEET
 0 20 40 60
 ENGINE: AWS
 CHECKED: CRS
 DRAWN: AWS
 APPROVED: CRS