



City of Homer

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Office of the City Manager

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Memorandum

TO: Mayor Wythe and Homer City Council
FROM: Katie Koester, City Manager
DATE: October 5, 2016
SUBJECT: City Manager's Report – October 10, 2016

Real Estate Sales

The City has finalized the sale of several parcels in the Kachemak Drive area. They were recommended for sale in the Land Allocation Plan and by Resolution 16-069. These parcels are now on the tax rolls, and several are now on the assessment rolls for water and sewer along Kachemak Drive. The proceeds from these transactions are deposited into the Land Reserve fund.

Cooper Landing Bypass

The Borough has asked municipalities to weigh in on the preferred alternative for Cooper Landing Bypass (MP45-60), a project with over 30 years in the planning stages. The Borough has significant concerns with the G-South Alternative, which exposes a lot of traffic, and potential for contamination to the Kenai River. They are advocating for a delay in the Record of Decision for this project, increased opportunity for public comment on the alternatives, and a more thorough consideration of the impacts of the alternatives of the Kenai River and watershed. I have attached information from the Borough on this topic, including Resolution 2016-049 that they passed with an accompanying memo that is quite informative. They have also drafted a sign-on letter for Borough municipalities to consider. Would Council be interested in signing this letter and/or weighing in with a resolution?

Potential Changes to Title 4, Regulation of Alcoholic Beverages

I have been following a statewide issue that I want to bring Council up to speed on and solicit any input you have. Changes to Title 4 of Alaska's Statutes, which regulates alcoholic beverages, have been undergoing review over the past several years to address some needed updates and revisions. The set of recommended revisions to Title 4 has recently been released.

One of the recommendations, P-3, regarding Public Convenience Licenses, could potentially have long-term consequences for Homer's robust restaurant industry. Homer has 12 Public Convenience Licenses, and while the report states these licenses have not been associated with significant enforcement problems, Title 4 reviewers claim their issue circumvents the population limitation system intended to control the number of retail access points to alcohol in a community and is an administrative burden on the ABC Board.

Recommendation P-3 would place a permanent moratorium on issuing new Public Convenience Licenses, and convert existing licenses to a new license type, Seasonal REPL Tourism License. These function similarly as a Public Convenience License, but can only be operated for six months of the year. Seasonal REPL's are intended to respond to the demands of the seasonal visitor market; their number will be limited by a city's population, modified by DCCED-generated visitor counts.

I have been contacted by other Kenai Peninsula cities and have discussed potential consequences with the Chamber of Commerce's Legislative Affairs Committee: negative impact on important year-round businesses (Fat Olives, Café Cups, Two Sisters Bakery for example) and the lost potential to attract new businesses – including the emerging micro-brewery/winery industry. The Kenai Peninsula holds nearly half the 57 Public Convenience Licenses in the state and will feel the impact of this rolling-back proportionally more than other parts of the state.

I will be following this issue closely as I believe it has the potential to adversely economic impact Homer. I will keep Council updated on any opportunity for formal input from the City. I have attached an excerpt from the extensive review of Title 4 that is relevant to this issue and a letter that the City of Soldotna wrote that sums up the concerns of small peninsula hub cities.

ENC:

KPB Resolution 2016-049 and accompanying backup

Draft letter from Peninsula Mayors to ADOT on Cooper Landing Bypass

Excerpt from Alaska Title 4 Review

Letter of comment from City of Soldotna on Title 4 Review



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Mike Navarre, Mayor *MN*

DATE: August 25, 2016

SUBJECT: Resolution 2016-049, A Resolution Opposing the Selection of G-South as the Preferred Alternative for the Sterling Highway MP 45-60 Project and Supporting the Juneau Creek Alternative (Mayor)

This resolution opposes the selection of G-South as the preferred alternative for the Sterling Highway MP 45-60 project, and supports the selection of Juneau Creek Alternative as the preferred route.

The Sterling Highway MP 45-60 Project, commonly referred to as the Cooper Landing Bypass, has been under consideration by the Alaska Department of Transportation and Public Facilities ("DOT&PF") since the early 1980's. The current Supplemental Environmental Impact Statement ("SEIS") process for the highway was initiated in 2000.

The purpose of the project is to bring the Sterling Highway through MP 45-60 up to current design standards, reduce highway congestion, and improve highway safety. In achieving this purpose, DOT&PF and the Federal Highway Administration ("FHWA") recognized the importance of protecting the Kenai River corridor. Benefits of the project include increased safety for motorists and pedestrians; improved access to local properties and recreation opportunities along the existing highway; improved travel time through the area; reduced noise, dust, and traffic in Cooper Landing proper; and reduced risk of spills in the Kenai River.

After the assessment of various alternative routes for the highway throughout the years, four build alternatives were analyzed in detail in the 2015 Draft SEIS: G-South Alternative, Juneau Creek Alternative, Juneau Creek Variant, and Cooper Creek Alternative. The Draft SEIS was released in April 2015, and DOT&PF and the FHWA announced the selection of G-South as a preferred alternative in December 2015. A Final SEIS and Record of Decision ("ROD") are expected before the end of 2016. There will not be a formal comment period after the release of the Final SEIS before a ROD on the route.

Attached to this memo is the DOT&PF project overview, which outlines the costs and proposed routes of each of the considered alternatives. Of particular note, the G-South Alternative has an estimated construction cost that is almost \$54 million more than the Juneau Creek Alternative.

Concerns with G South Alternative

There are significant concerns with the selection of the G-South Alternative and the continued risk that it poses to the Kenai River. While it is recognized that this is a complicated process and that each alternative will have an impact on important habitat and recreational opportunities, sustained impacts to the Kenai River were shown less concern in the selection process than impacts to the Mystery Creek Wilderness Area, Resurrection Pass Trail, and the Juneau Falls Recreation Area. The selection process also failed to recognize long term protection of the Kenai River Corridor as a key element of the purpose of this project.

Comments from the Kenai Watershed Forum concerning the impacts of G-South are attached to this memo. The G-South Alternative maintains substantial encroachments on the Kenai River Corridor, and does not significantly decrease traffic immediately adjacent to the river. A significant portion of this alternative would be built on the existing alignment near the river, and an additional bridge would be built over the Kenai River. Forty-five percent of the G-South Alternative remains within 500 feet of the Kenai River or other Tier 1 Waterbody, compared to 25 percent of the Juneau Creek Alternative. The separation provided by 75 percent of the Juneau Creek Alternative gives first responders more time to protect the Kenai River in the event of a hazardous spill.

When the Kenai River is given as much emphasis as other significant areas along the proposed route, the G-South Alternative is neither the least harmful nor does it achieve one main purpose of the project – moving traffic away from the Kenai River. The benefit that G-South does offer over other alternatives is an easier path to completion due to avoiding administrative boundaries associated with the congressionally-designated Wilderness.

Your consideration is appreciated.

Introduced by:
Date:
Action:
Vote:

Mayor
09/06/16

**KENAI PENINSULA BOROUGH
RESOLUTION 2016-049**

**A RESOLUTION OPPOSING THE SELECTION OF G-SOUTH AS THE PREFERRED
ALTERNATIVE FOR THE STERLING HIGHWAY MP 45-60 PROJECT AND
SUPPORTING THE JUNEAU CREEK ALTERNATIVE**

- WHEREAS**, the Sterling Highway MP 45-60 (Cooper Landing Bypass) project has been under consideration by the Alaska Department of Transportation and Public Facilities (“DOT&PF”) and Federal Highway Administration (“FHWA”) for numerous years; and
- WHEREAS**, a Draft Supplemental Environmental Impact Statement (SEIS) and Draft Section 4(f) Evaluation were released for public review in April and May 2015; and
- WHEREAS**, on December 11, 2015, DOT&PF and FHWA announced the identification of the G-South Alternative as the preferred alternative for the project; and a final SEIS and Record of Decision (ROD) are expected in 2016; and
- WHEREAS**, the DOT&PF and FHWA recognized the importance of protecting the Kenai River Corridor in the purpose of the project and included reduced risk of spills in the Kenai River as a benefit of the project; and
- WHEREAS**, the G-South alternative does not adequately protect the Kenai River Corridor; and
- WHEREAS**, the Juneau Creek Alternative bypasses all crossings of the Kenai River, while the G-South route will require an additional crossing and replacement of an existing bridge; and
- WHEREAS**, a substantial portion of G-South would be built on the existing alignment near the river, such that 45 percent of the G-South Alternative is within 500 feet of the Kenai River or another Tier 1 stream, as opposed to 25 percent of the Juneau Creek Alternative.
- WHEREAS**, a small portion of the congressionally-designated Mystery Creek Wilderness Area and the southern end of the Resurrection Pass trail would be impacted by the Juneau Creek Alternative; and
- WHEREAS**, long-term protection of the Kenai River, the opportunity to prevent a major chemical spill in the river, and the opportunity to significantly decrease traffic adjacent to the river, should take priority in the selection of an alternative;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough opposes the selection of the G-South alternative as the preferred alternative for the Sterling Highway MP 45-60 Project.

SECTION 2. That the Kenai Peninsula Borough supports the selection of the Juneau Creek Alternative as the preferred alternative for the Sterling Highway MP 45-60 Project.

SECTION 3. That the Kenai Peninsula Borough urges Governor Bill Walker, all state legislators representing the Kenai Peninsula Borough, Marc Luiken, Commissioner of DOT&PF and Sandra Garcia-Aline, the Division Administrator of the FHWA to reevaluate the selection of G-South, and give adequate weight to the protection of the Kenai River.

SECTION 4. That a copy of this resolution shall be provided to DOT&PF, FHWA.

SECTION 5. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2016.

Blaine Gilman, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Sterling Highway MP 45–60 Project

Project Overview



Updated January 2016

Originally completed in 1950, the Sterling Highway is the only road that links western Kenai Peninsula communities (Kenai, Soldotna, and Homer) to the rest of the state. Since 1978, the Alaska Department of Transportation and Public Facilities (DOT&PF) has recognized the need for improved safety and traffic flow to accommodate the increased Kenai population growth, recreation, and tourism.

DOT&PF has prepared a Draft Supplemental Environmental Impact Statement (SEIS) and Draft Section 4(f) Evaluation that examines alternatives for improvements to the Sterling Highway between mileposts (MP) 45 and 60. With public input, FHWA and DOT&PF will select an alternative that meets the best overall public interest based on a balanced consideration of these transportation problems and the potential social, economic, and environmental impacts.

Purpose and Need

There are three major needs that the MP 45–60 Project would address:

- » Need 1: Reduce Highway Congestion.
- » Need 2: Meet Current Highway Design Standards.
- » Need 3: Improve Highway Safety.

The purpose of the project is to bring the highway up to current standards for a rural principal arterial to efficiently and safely serve through-traffic, local community traffic, and traffic bound for recreation destinations in the area, both now and in the future. In achieving this transportation purpose, DOT&PF and FHWA recognize the importance of protecting the Kenai River corridor.

Project Benefits

Any of the build alternatives would:

- » Increase safety for motorists and pedestrians,
- » Improve access to local properties and recreation opportunities along the existing highway,

- » Improve travel time through the area,
- » Reduce the risk of fuel spills in the Kenai River by moving some traffic away from the river, and
- » Reduce noise, dust, and traffic in Cooper Landing proper.

None of the alternatives would induce further residential or commercial development more than would be anticipated under the No Build Alternative because of DOT&PF's decision to prohibit driveway or side street access to new sections of highway from adjacent property.

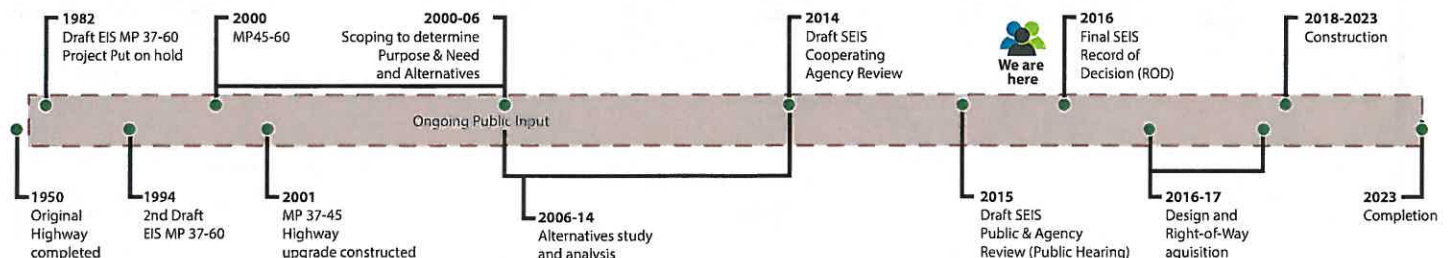
The Issues

The SEIS process considers several important issues.

These include:

- » Increased traffic flow and safety in areas where there are many vehicles turning onto and off of the highway.
- » How to balance the need for safe and efficient transportation and the potential social, economic, and environmental impacts
- » How to balance local desires to keep traffic passing existing businesses with alternatives that would route traffic away from existing businesses.
- » The potential changes in the community of Cooper Landing that may result from a highway upgrade.
- » How to balance desires to avoid impacts to Kenai River with desires to avoid impacts to bear, moose, and other wildlife habitat and movement corridors.
- » How Cooper Landing area's undeveloped private, borough, and state lands are likely to develop with and without the project.
- » Impacts to Federal public lands important for recreation, cultural resources, and wildlife protection.
- » An evaluation of "Least Overall Harm" to support decision making.

Project Schedule



Sterling Highway MP 45-60 Project

Project Overview



Updated January 2016

Alternatives under Consideration

Five alternatives are considered in detail in the Draft SEIS – four build alternatives and the No Build Alternative. All build alternatives would have 12-foot wide lanes, 8-foot-wide shoulders, and passing lanes in new and rebuilt sections of the highway. Many other alternative alignments were considered, but not advanced for full analysis. These were dismissed for engineering or environmental problems, or were very similar but not as good or preferable as the proposed alternatives.

Cost and Funding

This is a Federal Aid Highway project, and Federal Highway Trust Funds are anticipated to cover 90% of costs, with the State covering 10%. Construction costs are estimated in 2014 dollars and are as follows:

- » No Build Alternative, \$0
- » Cooper Creek Alternative, \$290.7 M
- » G South Alternative, \$303.5 M
- » Juneau Creek Alternative, \$249.6 M
- » Juneau Creek Variant Alternative, \$257.0 M

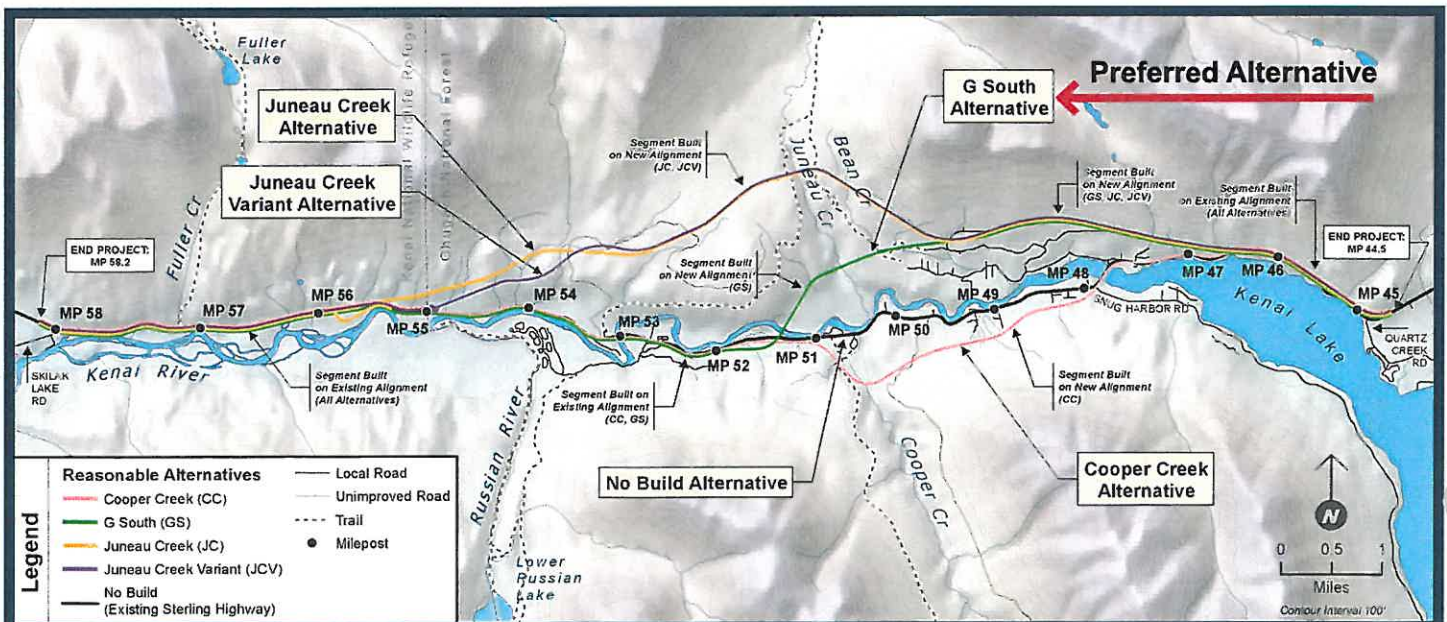
Comments or Questions? Contact us!

- » Via the project website www.sterlinghighway.net
- » Email: sterlinghwy@hdrinc.com
- » Standard mail:
- » DOT&PF Central Region
- » Sterling Highway MP 45-60 Project
- » PO Box 196900 Anchorage, AK 99519-6900

G South Alternative Preferred

On December 11, 2015, DOT&PF and FHWA announced the identification of the G South Alternative as the preferred alternative for the Sterling Highway MP 45-60 project. DOT&PF and FHWA have examined the Draft Supplemental Environmental Impact Statement and technical reports, and have considered the issues raised in hundreds of public and agency comments on the Draft SEIS. G South provides the best balance between meeting the project needs and minimizing impacts to the human environment. The routing avoids impacts to the Resurrection Pass Trail, the Juneau Falls Recreation Area and important cultural properties, and avoids using designated wilderness land within the Kenai National Wildlife Refuge. The alternative skirts the Cooper Landing community to reduce community impacts associated with traffic, noise and property acquisition.

The G South Alternative largely avoids the Cooper Landing community to the north, would not impact undeveloped lands to the extent that the Juneau Creek alternatives would. Its natural environment impacts are between those of the Cooper Creek Alternative and the two Juneau Creek alternatives, but its function for traffic would be much better than the Cooper Creek Alternative, and it would have much less impact on the community. The G South can be seen as a compromise between the Juneau Creek alternatives and the Cooper Creek Alternative.



From: Jack Sinclair
To: Ramponi, Angela
Subject: Cooper Landing Bypass
Date: Wednesday, August 24, 2016 9:02:12 AM

Angela,

The Kenai Watershed Forum urges the Kenai Peninsula Borough to seek a reconsideration of the State of Alaska DOT's decision to move forward with the G South Alternative for the Cooper Landing Bypass project, MP 45-60 of the Sterling Highway.

From an environmental perspective, there are no ideal options offered by any of the alternatives. Each will have its own impact on important habitat for a variety of plant, fish, and wildlife species. An argument can be made for each one being better than the other depending on how you prioritize brown bear and moose habitat versus fish habitat, or loss of wetlands versus potential water quality degradation etc. The fact is that each alternative will result in negative environmental consequences. That being the case, the DOT highlights the Juneau Creek alternatives' impact on wetlands and human recreation, while showing less concern for the fact that the G South route will sustain substantial encroachments on the Kenai River and other noted Tier I Waterbodies.

The key difference between the G South and Juneau Creek alternatives is that the Juneau Creek Alt has the ability to direct major traffic flow (especially commercial vehicles transporting hazardous materials) **away from** the river. With 75% of the Juneau Creek alternatives being 500 ft or more from the river, response personnel will have additional time to contain potential HAZMAT spills before they cause serious harm to the Kenai River and its tributaries. The Juneau Creek alternatives bypass all crossings of the Kenai River, whereas the G South route will require an additional crossing and the replacement of the existing bridge at Schooner Bend.

Additionally, several more small stream and drainage crossings are required under the G South alternative. Although the greater percentage of wetlands and wildlife habitat impacted by the Juneau Creek routes are concerning, it does not outweigh the opportunity to prevent a major chemical spill or the opportunity to dramatically decrease general traffic adjacent to the river.

A possible compromise that needs to be investigated further is to extend the western end of the G South Alternative out to MP 55 to avoid a longer portion of the Kenai River AND do away with the building of an additional bridge across the Kenai River, perhaps saving \$50 million from this alternative.

It is unfortunate that every alternative to this point has its shortcomings where challenges must be faced regarding sensitive cultural resources, wildlife habitat and congressionally-designated Wilderness. Weighing the potential impacts to each of these against those to the Kenai River and other Tier I Waterbodies is a difficult but necessary task from which we must now make a decision.

Thanks for allowing Kenai Watershed Forum to provide our input.

Sincerely,
Jack Sinclair

Jack Sinclair
Executive Director
Kenai Watershed Forum
44129 Sterling Highway



KENAI PENINSULA BOROUGH

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Mike Navarre
Borough Mayor

September XX, 2016

Kelly Peterson, PE
Project Manager
Alaska Department of Transportation and Public Facilities
P.O Box 196900
Anchorage, AK 99519-6900

RE: Sterling Highway Milepost 45-60 Project

Dear Ms. Peterson:

We are writing this letter to request a delay of Record of Decision (ROD) on the Sterling Highway MP45-60 project until a determination is made on the prospective land exchange between the Cook Inlet Region Inc. and the Kenai Wildlife Refuge. This exchange, authorized in the Russian River Land Act¹, is currently under consideration and would result in a change in land status of the potentially impacted portion of the Mystery Creek Wilderness Area.

Upon this determination, we request a reconsideration of the selection of G South Alternative as the preferred alternative. We ask that this selection is reevaluated in consideration of both the land exchange and the following comments in opposition to the selection of G South.

We have significant concerns regarding the analysis that led to the selection of the G South alternative. There are three areas of concern this letter discusses.

1. **Purpose and need:** The DSEIS fails to recognize the long term protection of the Kenai River as a key element of the purpose and need for this project.
2. **Impacts of the G South alternative to the Kenai River:** We have concerns that the assessment does not fully consider the impacts to the Kenai River, and have concerns with the relative lack of weight that these impacts were given in the selection of a preferred alternative.
3. **Lack of input on G South Alternative:** A number of historical factors, including the previous selection of different preferred alternatives and the length of time this project has been ongoing, create a unique situation where stakeholders and the public were unlikely to provide input specific to G South. As such, ADOT&PF and the FHWA should formally solicit, consider, and respond to, comments on their selection prior to the ROD.

¹ Russian River Land Act, Pub. L. No. 107-362, 116 Stat. 3021

If the Kenai River were given the proper weight in the analysis and if the protection of the Kenai River were recognized as part of the purpose and need for this project, we believe a different preferred alternative would have been selected.

1. Purpose and need

Draft SEIS 1.2.1 Project Purpose

“The purpose of the project is to bring the highway up to current standards for a rural principal arterial to efficiently and safely serve through-traffic, local community traffic, and traffic bound for recreational destinations in the area, both now and in the future. In achieving this transportation purpose, DOT&PF and FHWA recognize the importance of protecting the Kenai River Corridor”

Although DOT&PF and the FHWA recognize the importance of protecting the Kenai River Corridor in the overview of project purpose, this importance is not carried through to any of the three listed needs. We believe that - although not explicitly stated as a need in this DSEIS - protection of the Kenai River Corridor has historically been understood by the public and stakeholders as an important reason for this project. Failing to move a substantial amount of traffic away from the river and accepting the risk of a catastrophic hazardous spill in the Kenai fails to realize a fundamental benefit of this project. We believe that an alternative that does not move the highway off of the Kenai River Corridor does not meet the purpose and need of this project. As such, regardless of the 4(f) analysis, G South should not be selected.

In addition inadequately protecting the Kenai River Corridor, G South Alternative does not meet the stated purpose and need as well as the Juneau Creek Alternatives. While G South does bypass Cooper Landing proper, it fails to bypass Segment 5 (MP 51.3 - 55.09), the section of the project with the highest crash rate cited in the DSEIS. This area, particularly the segment between the Russian River Ferry Entrance and Russian River Campground, is a frequently congested area with multiple parked vehicles and pedestrians along the road during peak summer fishing season.

Bringing the highway up to current design standards but failing to bypass this segment does not improve safety for recreational users and pedestrians as well as moving the majority of traffic away from the area. Many fishermen will continue to travel along and cross this section of the road, and the higher traffic speeds may increase the potential severity of an accident if it does occur.

II. Impacts to the Kenai River

We believe that, in the analysis that lead to the selection of G South as the preferred alternative, impacts to the Kenai River were not given adequate weight. While we recognize the complexity of this process, and are aware of the impacts each alternative will have on important habitat and recreational opportunities, sustained impacts to the Kenai River were shown less concern in the

selection process than impacts to the Mystery Creek Wilderness Area, Resurrection Pass Trail, and the Juneau Falls Recreation Area.

Failure to Avoid Impacts of Potential Spills

Draft SEIS 3.17.2.4 G South Alternative P 2 Spill Risk

“Approximately 6.4 miles of the alignments (45 percent) would be within 500 feet of the Kenai River and other Tier 1 streams, of which about 4.7 miles (33 percent of the total) would be within 300 feet. The G South Alternative has moderate exposure to Tier II streams and wetlands that are hydrologically connected to the Kenai River. A substantial portion of this alternative would be built on the existing alignment near the Kenai River”

Draft SEIS 3.17.2.5 Juneau Creek and Juneau Creek Variant Alternatives

“Both of these alternatives have moderate exposure to steep side slopes and high exposure to wetlands. However, these alternatives provide separation from the Kenai River and other streams over the longest distance, likely providing responders more time to protect the Kenai River in the event of a spill.”

Forty-five percent of the G South Alternative remains within 500ft of the Kenai River or other Tier 1 Waterbodies, compared to 25% of the Juneau Creek Alternative. 33% of G South is within 300 feet of a Tier 1 stream, compared to 15% of Juneau Creek. The separation provided by the Juneau Creek Alternative, which moves 75% of the route more than 500ft away from a Tier 1 waterbody, provides responders with extra time to protect the Kenai River in the event of a hazardous spill. This difference is acknowledged within the DSEIS; however, these risks are minimized citing that “the highway would be reconstructed throughout to meet current standards and improve safety”. Improved safety along the corridor - while marginally decreasing the likelihood of an accident - does not eliminate the risk nor does it mitigate the impact a spill will have when it occurs. In order to mitigate the impact a hazardous spill will have, the road must be moved away from the river to the maximum degree reasonably possible.

Limitations of Emergency Response and Cleanup Capabilities

Emergency Response Assessment Hazardous Materials Spills (HDR 2003b) 3.4 Constraints to Emergency Response and Cleanup

The distance over which some emergency response teams would have to travel to reach a hazardous materials spill along the Sterling Highway between MP 45 and MP 60 can increase the risk of release to resources within the spill migration pathways. In addition, the ability of regional responders to respond to and clean up an accidental spill can be impaired by weather conditions and the accessibility of the spill. Temperatures along this section of the Sterling Highway are often near freezing, which frequently

causes “black ice” on the roadway surface, which creates hazardous driving conditions. Snow on the roads can slow travel to the spill site, as well as hinder spill control activities. Steep slopes can make access to the spill difficult and impair the ability to set up spill control equipment.

Limited regional capability to respond to significant spills in this area, due to both the capacity of local volunteer agencies and the geographic limitations of the area, considerably increase the risk posed by failing to move the majority of traffic off of the Kenai River Corridor. The 2003 risk evaluation, *Emergency Response Assessment and Hazardous Material Spill Control* lays out these limitations in detail. Due to the constraints of the area, and the likelihood of a delayed response to a spill, the additional response time that the Juneau Creek Alternative gives local responding agencies is a crucial consideration and should be given high priority in the analysis.

Sustained impacts on the Kenai River and other Tier I Waterbodies

In addition to the potential impact of hazardous spills, G South also sustains or increases a number of existing impacts to the Kenai River and riparian habitat. G South not only fails to move the majority of traffic away from the corridor – maintaining current general runoff impacts due to heavy traffic immediately adjacent to a Tier 1 waterbody – but also requires additional river crossings. The Juneau Creek alternatives bypass all crossings of the Kenai River, whereas the G South route will require an additional crossing and the replacement of the existing bridge at Schooner Bend. Additionally, several more small stream and drainage crossings are required under the G South alternative. We maintain that, by selecting G South as the preferred alternative, DOT&PF and FHWA have highlighted the Juneau Creek alternatives' impact on wetlands and human recreation, while showing less concern for these substantial encroachments on the Kenai River.

Relative weight of the Kenai River compared to other elements

Protecting the Kenai - a resource crucial to the environmental, cultural, recreational, and economic health of this region - should receive as much, if not more, weight in the decision making process as an administrative boundary such as the Mystery Creek Wilderness Area. The Mystery Creek wilderness area is an extremely small portion of this project, yet carries an outsized weight due to the administratively complex process needed to build in the area. Conversely, moving the road away from the Kenai River - an important resource heavily impacted by a large portion of the project area - is not being given high priority consideration in this project.

Additionally, we recognize that the Juneau Creek Alternative will bisect the south end of the Resurrection Pass Trail and the Juneau Falls Recreation area. We recognize that planning efforts and restraint in development are necessary to mitigate the impacts of the Juneau Creek Alternative to this area. However, we are confident that, were the Kenai River given the appropriate consideration in this analysis, the value of long term protection of the Kenai River would outweigh the impacts of shortening the trail.

Should an accident due to the location of the road negatively impact the health of the Kenai River, the environmental impacts would be extensive and the economic wellbeing and livelihood of borough residents would be significantly impacted. Although the impacts of the Juneau Creek

routes are concerning, they do not outweigh the opportunity to prevent a major chemical spill or the opportunity to dramatically decrease general traffic adjacent to the river.

III. Lack of Agency and Public Comments on G South Alternative

This project has been ongoing in some form since the early 1980's. There have been multiple DEISs, scoping periods, and public comment periods. It is not practical to assume continuous extensive public engagement with the process over such a long time period. Upon DOT&PF and FHWA making a noteworthy announcement about the preferred route, numerous stakeholders that were otherwise disengaged voiced significant concerns. Given that it failed to meet a perceived need of the project, many of these stakeholders did not consider G South a likely option and therefore, did not submit comments specifically regarding this alternative. As such, comments focused on the impacts of the other options and the necessity for further study and mitigation of those impacts. Given the unique history and the likelihood of public disengagement over such a lengthy project period, we believe that ADOT&PF and the FHWA should solicit and respond to comments on their preferred alternative before a final decision is made.

We recognize there are numerous concerning impacts of all alternatives that need to be addressed. We request awareness of those issues and that mitigating steps are taken to minimize impacts on wildlife for all of the alternatives. However, we strongly oppose the selection of any alternative that fails to protect the Kenai River and believe that the protection of such a crucial resource should receive the highest priority in the decision making process.

Please consider these comments in your reconsideration of the alternative.

Sincerely:


Mike Navarre - Kenai Peninsula Borough Mayor;



ALASKA TITLE 4 REVIEW

FOR THE
Alaska Alcoholic Beverage
Control Board

Recommendations for Statutory Change
February 2015



formally empowered, but not required, to issue an advisory opinion on active legislation for proposed changes to Title 4 to benefit legislators as they deliberate on the implications of the proposed statute. The Board could issue an opinion on its own, or seek public and stakeholder input to inform its opinion on matters with significant impacts.

Recommendation P-3. Seasonal Tourism Restaurant License | Place a permanent moratorium on issuing new Public Convenience licenses, and replace existing licenses with a new license type that allows for seasonal REPL licenses in small communities and unincorporated areas.

INTENT OF PROPOSED CHANGES

As noted in Recommendation P-1, most but not all license types are subject to the statutory population limits. A Public Convenience License is one exception: subsection (e) and (g) of the Population Limitations (AS 04.11.400) allows an REPL to be located 18 or more miles outside of a city's limits or with a signed petition of nearby residents. Public Convenience Licenses are not transferrable, and therefore have no market value. There are currently 57 Public Convenience Licenses, nine of which are seasonal. Most are located in small communities that have otherwise been issued the maximum number of allowed REPLs, notably in Homer (12), Seward (7) and the rural Kenai Peninsula (10). To date, Public Convenience licensees have not been associated with significant enforcement problems, but circumvent the population limitation system. From the public health perspective, this weakens the control on the number of retail access points to alcohol in a community. From the industry perspective, exempt license types create loopholes to obtain a retail license at a lower cost. The process for obtaining a license is administratively cumbersome for the ABC Board when determining whether petition signatures are valid, and the Board faces difficulty in determining what constitutes "public convenience" in each case.

The ABC Board would like to respond to the demands of the seasonal visitor (tourist, traveler and worker) market in small communities with few retail licenses allowed under the population limits while addressing issues with Public Convenience licenses. The subcommittee proposes a permanent moratorium on issuing new Public Convenience licenses and converting existing Public Convenience Licenses to a new license type (Seasonal REPL Tourism). Existing licenses would be grandfathered for the short term and allowed one transfer of ownership at the same location to provide an opportunity to sell the business, or pass it to the current owner's family or business partner. Following the one allowed transfer, the license would be retired. The REPL Tourism is a parallel concept to the BDL Tourism, but with a different set of parameters and a different scheme for determining eligibility. The REPL Tourism License would function as a standard restaurant but would be a seasonal license, with an operating limit of 6 months of each calendar year. The 6 months would not need to be contiguous, to accommodate businesses with summer and winter visitors. The license would require annual renewal, including documentation of the intended season start and end date(s).

The number of REPL Tourism licenses would be limited by a modified population limit, which the ABC Board would calculate using a formula and publish annually for each catchment area. REPL Tourism Licenses would only be available within local government jurisdictions with a population under 20,000, which excludes larger cities and boroughs outside of small communities. To determine the number allowed per community, the Board would rely on a modified population count for

numbers published by DCCED, which tracks visitor counts above 4,000 annually in each community (the license type would only be available in communities with more than 4,000 visitors annually). Using a rolling multi-year average of visitor counts and the current number of year-round residents, the formula would use a modified population calculation as follows:

$$(Average\ annual\ tourism\ count) / (Length\ of\ season\ [6]) = Estimated\ average\ monthly\ visitor\ population$$

This number would yield a modified monthly population estimate during the standard tourist season (6 months), which would be used in the existing formula to yield the number of additional REPLs available to serve this population:

$$(Modified\ population\ estimate) / 1500 = (Number\ of\ Tourism\ REPLs,\ rounded\ to\ nearest\ whole\ number)$$

REPL Tourism Licenses would be transferrable and would require the same application and transfer process as other license types, including the regulation of where the license can be transferred. To account for existing Public Convenience Licenses in a catchment area, the number of allowable REPL Tourism Licenses will take into account any current Public Convenience Licenses in the same area. For unincorporated areas without a local government, the ABC Board will follow the petition procedure outlined in AS 04.11.460(b), which is administratively cumbersome but provides a process for rural areas with very few residents and limited local government structure.

Recommendation R-1. Multiple Licensed Premises with a Beverage Dispensary License | Clarify the parameters that would allow and require multiple fixed counters for a Beverage Dispensary License (AS 04.11.090): create a Multiple Fixed Counter Endorsement, a Hotel/Motel Endorsement, and a Large Resort Endorsement.

INTENT OF PROPOSED CHANGES

Beverage Dispensary Licenses (BDLs) have a specific definition of licensed premises. “Licensed premises” is defined as one room with a fixed counter or service bar. Additional rooms in one establishment require Duplicate licenses, even in the same building. Duplicates are not allowed at non-contiguous establishments, even under the same ownership. Exceptions include hotels, motels and similar businesses, which are permitted a Duplicate license “within convenient walking distance” of the original license. In addition, resorts and other large hotel properties that have multiple establishments on a multi-acre property have also been granted Duplicate licenses to execute their concept, even when in separate buildings. Lack of clarity regarding duplicate licenses has made it difficult for the ABC Board to consistently determine when a Duplicate License is appropriate and should be issued. Single establishments with multiple bar rooms have had Duplicates, while other establishments, not meeting the definition of hotel or motel, have used Duplicates to create what appear to be two different establishments, but physically adjacent and under the same business entity. Others have applied to use a Duplicate elsewhere in a larger property, citing the example of existing resorts or hotels that have been granted Duplicates as precedent.

This recommendation presents a logical framework for authorizing multiple licensed premises, and clarifying when this option is available to the holder of a BDL. The proposals below allow businesses some flexibility in operation decisions, but restricts the situations in which more than a single room would be allowed. The definition of BDL Premises remains the same: a single room with a fixed, plumbed bar.



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September 12, 2016

(via email)

Dear Senator Micciche and ABC Stakeholder Group:

Thank you for your work to re-write Alaska's Title 4, our State Statutes regulating alcohol. We commend the Alcohol Control Board and agency staff, numerous stakeholders, and others who have devoted countless hours to this re-write process, and appreciate an opportunity to provide our comments. The purpose of this letter is to highlight how the State's current population-based system of liquor license allocation breaks down in a small municipality like ours, by failing to account for the broader regional population served by our community.

We understand that the current Public Convenience system will be eliminated, but hope that the re-write of Title 4 can incorporate a better system. One that continues to provide additional flexibility to local municipalities, but with more workable and effective controls. In a challenging state economic climate, we want to promote economic growth and opportunity in our community. We also understand the primary goals of the Title 4 re-write are to promote a fair business climate while protecting public health and safety – especially limiting youth access to alcohol and reducing overconsumption. We share these goals, and hope our proposal for enhanced local municipal control in establishing licensing limits is a solution you will embrace. Thank you for your consideration.

Limiting licenses by population sometimes misses the mark

Soldotna is a City of approximately 4,300 residents living in 7.35 square miles. On paper, we are quite small: the third largest city on the Peninsula by population; and a footprint roughly 1/5 the area of nearby Kenai. In reality, our city serves a much broader regional population of borough residents who work, attend school, shop, and recreate in our community every day but aren't tallied as official City residents.

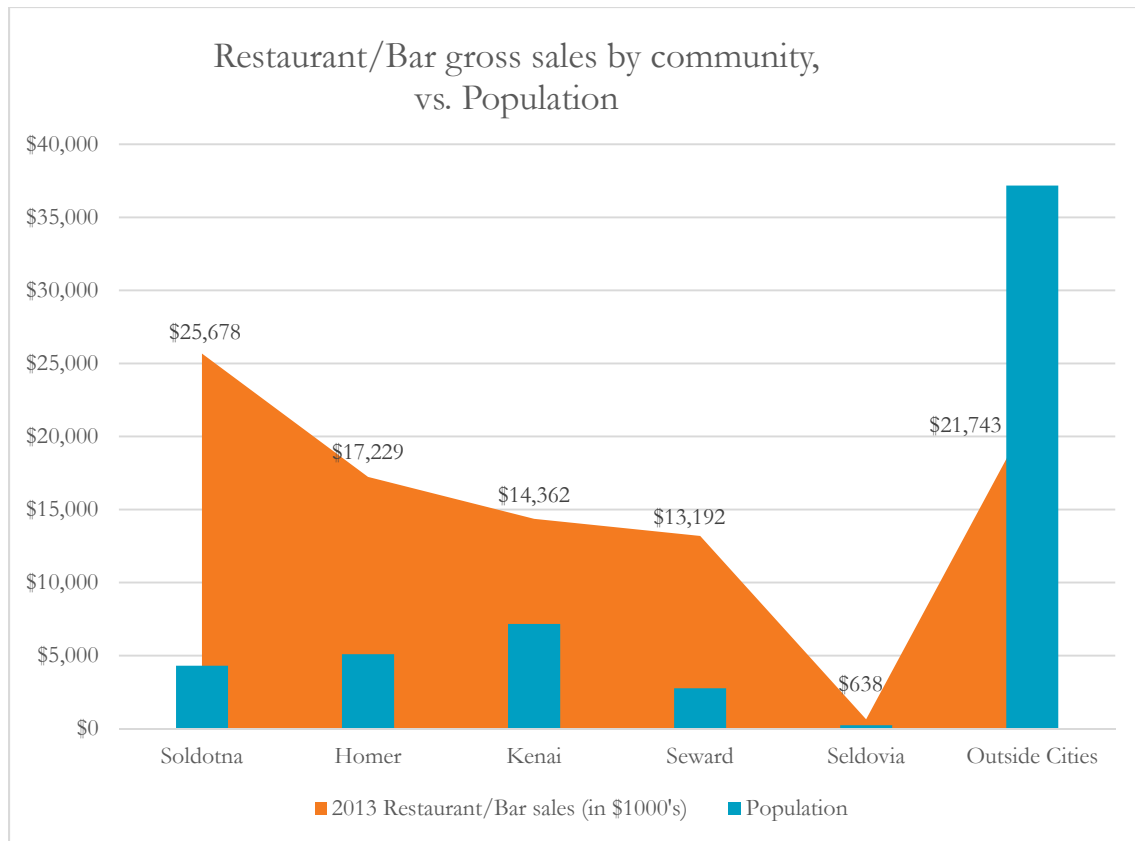
The amount of traffic driving through our downtown, which exceed 22,500 vehicle trips per day on average in 2014, is one way to gauge this situation. The section of Sterling Highway in our downtown core serves local and commuter traffic as well, and has the highest traffic levels of any road segment on the Kenai Peninsula. By comparison, roughly the same number of vehicles per day drive on the Old Seward Highway at Dimond Boulevard in Anchorage¹.

¹ Alaska Department of Transportation and Public Facilities, 2014

The figure below shows the population living within 3-, 5- and 10-miles of a point in downtown Soldotna where the Sterling and Kenai Spur Highways intersect. When we consider users for various city services, we often consider these broader regional populations as a more accurate count in figuring demand.



By examining sales, we can see that demand for goods and services is not necessarily driven by municipal population. The graph on the following page compares the volume of restaurant/bar sales for each city in the borough as well as the combined area outside incorporated cities (in orange), versus each area's population (in teal). It is clear that the two are not correlated.



Though Soldotna has a small population, our businesses within the city limits reported the highest gross restaurant/bar sales of any borough municipality in 2013 at more than \$25 million. The trend is true of other cities in the borough as well, where sales are consistently concentrated within cities, despite the majority of population residing in the unincorporated areas of the borough. **Because state statutes are only concerned with population of a municipality (per AS 04.11.400), there is a mis-match of where licenses are available, versus where the demand is greatest.** And while it remains important to allow for licenses to be distributed geographically throughout our very large borough, we feel the statutes should recognize that cities act as regional hubs of goods and services, in a way that is not reflected by their official populations.

Consequences of our current system

One consequence of the current system has been a proliferation of Public Convenience licenses in small communities – particularly on the Kenai Peninsula². Public convenience licenses have allowed businesses like St. Elias in Soldotna, Two Sister’s Bakery and Fat Olive’s in Homer, and the Tide Pool Café in Seldovia to serve beer and wine in their restaurants. These businesses are important to our communities, and would not have been allowed if the strict population limitations were employed.

² In looking at the database of active licenses in the fall of 2015, approximately half of all Public Convenience licenses in the state were located in the Kenai Peninsula Borough.

Another consequence of the current system is that it encourages development outside of established cities. Though these unincorporated areas of the borough do not have local police presence, land use controls such as zoning, nor the same level of infrastructure development. But that's where the liquor licenses are available. In Soldotna, we see significant development outside but very near the city limits, including restaurants, bars, and package liquor stores.

PC licenses were a solution for some, but not all existing businesses. The owner of Senor Pancho's Mexican restaurant in Soldotna has been unable to achieve the 770 signatures required for his PC license. When Walgreen's expanded to the Peninsula and opened a store at the Soldotna Y, they built their typical footprint without realizing that no package liquor licenses were available. To this day, that square footage of the store remains empty.

An additional concern is that Soldotna will lose out on the potential to attract new businesses to our area. Our city currently has two thriving breweries (one brewery and one brewpub), and have had conversations with an entrepreneur who has purchased land and equipment with the intent of opening a third. The proposal under SB99 would only allow one

brewery to obtain a retail endorsement in Soldotna (since the ratio is the most restrictive of any license type at one per 10,000 population), and would be a step backward for our community and this thriving industry. Tasting rooms in breweries are a draw for tourists, and an important place where our community comes together. They are not places where we have experienced problems with overconsumption nor minors consuming.

Similarly, we have several locations in Soldotna where restaurants may be interested in locating. We feel that by not allowing any new restaurant to serve beer and wine, we're essentially shutting them out of our community. And like breweries, restaurants are important for our quality of life, and not particularly risky locations for alcohol consumption.

Public Convenience licenses

The current system of issuing public convenience licenses based on collecting signatures within a 1-mile radius of the business is difficult to administer, produces very uneven results, and we agree has got to go. But at the same time, we believe it served a valid purpose by allowing some measure of flexibility to the otherwise rigid population ratios. Though some consider it a loophole that has been exploited, we feel that it allowed additional businesses to establish and thrive in our community, and that it provided additional licenses where there exists a valid demand and public need.

After the Public Convenience license type goes away, as proposed in SB99, all existing PC licenses will eventually be phased out over time. They will have the option to convert to a seasonal license, or will otherwise be allowed a single transfer of ownership at the same location. With almost half of all public convenience licenses in the entire state, Kenai Peninsula businesses will feel the impact of this rolling-back significantly, with other areas of the state having little or no impact. We question the logic of trying to close these existing

businesses over time, when the state recognizes there have been no significant enforcement issues with them to date³.

The proposal to allow PC licenses to convert to Seasonal Tourism Restaurant Licenses would not be an appropriate solution for most of our year-round businesses. The stakeholder report issued in February 2015 elaborates on how visitor statistics collected by the State of Alaska Department of Commerce, Community and Economic Development would be used to calculate the number of seasonal licenses allowed. Unfortunately, the annual visitor data described does not exist at the community level. The most recent visitor count at the community level is from 2011, and that report lumped “Kenai/Soldotna” together as a single destination. If we plug in the 2011 statistics and use the formula contained in the Title 4 stakeholder report, the Kenai/Soldotna area would be allowed significantly more liquor licenses under the new seasonal type system than exist now. The four year-round PC licenses operating in our area would be eliminated over time, but then 22 new seasonal licenses would be created, and allowed to operate any 6 months out of the calendar year. **We feel this approach deserves more consideration.**

The most-recent, detailed visitor data from AK DCCED for our community, was from 2011, and the report lumped “Kenai/Soldotna” together as a single destination.

Promoting responsible growth

The state of Alaska is experiencing a boom in the craft brewing industry, and Soldotna has definitely benefitted. As a City, we’ve embraced our local breweries as a key component of our economic development strategy. They employ a lot of people, produce a product and atmosphere that tourists and residents appreciate, and further our goal of being a great place to live and work.

Tourism remains a bright spot for our state economy, and our eating and drinking establishments are important in continuing to attract visitors to our area.

But quality of life isn’t just for tourists, it’s also a way Soldotna and other communities on the peninsula can retain talented Alaskans, and attract new talent. We continue to invest in parks and programming, public safety and infrastructure, and programs to promote a healthy business climate. Facilitating growth and success of our existing businesses, including bars, restaurants and breweries, is something we are focused on.

Our proposal – enhanced local government control

Alaskans know that one size does not often fit all, especially in a state as diverse as ours. We believe that local municipalities are best suited to understand their unique attributes. Local residents can best balance community health concerns, public safety, and economic and

³ “To date, Public Convenience licensees have not been associated with significant enforcement problems, but circumvent the population limitation.” (Alaska Title 4 Review Stakeholder Report, February 2015)

community development needs. We know that raising the limits for additional licenses across the State does not make sense. But we also believe that relying on population alone, without considering a community's broader context, is not always an accurate metric for a community's capacity or demand.

We propose that the updated Title 4 include a mechanism to allow local municipalities to petition the ABC Board for additional licenses, if certain criteria are met. This would put critical decisions about public health and safety, and a community's goals about growth, with local decision-makers, law enforcement, business owners, and community members. The state has adopted a system of maximum local control when it comes to regulating commercial marijuana, and we feel it is appropriate for municipalities to also be provided an opportunity to assist in regulating alcohol within their borders.

Rather than the current system of individual businesses petitioning ABC for a license (through the Public Convenience process), we propose that local governing bodies be given the authority to petition the board. For example, Section AS 04.11.400 could be amended to include an additional section similar to the following:

An incorporated city within an organized borough may apply for additional licenses to be issued within its city if:

- a. The incorporated city is a primary provider of goods and services to the population residing outside the corporate boundary;
- b. The incorporated city maintains a law enforcement agency;
- c. The city has a comprehensive zoning and land use code;
- d. The city has established findings that it is in the best interest of the public to site additional licensees within the city limits; and
- e. The organized borough within which the incorporated city is located does not, upon good cause shown, object to the issuance of additional licenses.

The exact wording deserves to be thoughtfully debated. But I hope we are able to engage the stakeholder group in a dialogue about opening up additional licenses in limited instances. Thank you for your consideration, and I am happy to attend an upcoming meeting of the working group, if this item is added to the agenda for discussion.

Best,



Stephanie Queen, AICP
Director of Economic Development and Planning
City of Soldotna