



MEMORANDUM

Ordinance 25-27, Amending the Homer City Zoning Map to Rezone A Portion of the Rural Residential (RR) Zoning District to East End Mixed Use (EEMU) Zoning District. Planning Commission.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and Homer City Council
Date: March 10, 2025
From: Ryan Foster, City Planner
Through: Melissa Jacobsen, City Manager

City staff received a completed zoning map amendment application by petition of the property owner, Safron Kusnetsov, per HCC 21.95.020 (e). On February 5, 2025 a public hearing was held at the Planning Commission Regular Meeting for a request to rezone the property at 4787 Kachemak Drive from Rural Residential (RR) District to East End Mixed Use (EEMU) District. The motion to approve the rezoning request by the Homer Planning Commission passed by a vote of 4-1.

A request for reconsideration at the February 19, 2025 Planning Commission Regular Meeting failed by a vote of 3-2. Attached are Staff Report 25-006 and the February 5, 2025 Planning Commission Unapproved Meeting Minutes with detailed information on the application and public hearing. Topics such as spot zoning and wetlands/fill permits were discussed during the February 5, 2025 Planning Commission public hearing and the reconsideration vote at the February 19, 2025 Planning Commission meeting that warrant a further discussion in this memorandum.

Spot Zoning

Spot zoning is when a property/properties are rezoned, typically upzoned, from a lower density and/or residential use to a higher density and/or commercial use, without having any connection/relationship to the surrounding zoning districts. Here are some considerations of why the application from 4787 Kachemak Drive would not be an example of spot zoning:

- The East End Mixed Use zoning district is well represented in the vicinity of 4787 Kachemak Drive, and is by far the largest zoning district west of Kachemak Drive. The proposed use of 4787 Kachemak Drive aligns with the other EEMU uses in the vicinity, with many, including the boatyard, having strong ties to the marine/fishing industries (see attached Zoning Map in Vicinity of 4787 Kachemak Drive).
- It is common for single parcels to be rezoned to move from one district to another adjacent district. Especially vacant properties for infill development projects.

- Irregular borders are not uncommon for zoning districts. The portion of EEMU across from the boatyard crosses Kachemak drive and separates the RR zoned properties to the northeast and south. In addition, the Residential Office district in Homer clearly delineates individual parcels between several zoning districts including Central Business District, Urban Residential, Rural Residential, Medical, and Residential Office zoning districts, resulting in irregular zoning district borders (see attached City of Homer Zoning Map).
- The applicant currently has a fish processing business at 3745 East End Road, at the corner of East End Road and Kachemak Drive. The business is in the same building as The Bagel Shop restaurant. The property is zoned EEMU and is located across Kachemak Drive from properties zoned RR. To our knowledge, the applicant has operated at their current location without negative impacts to neighbors.

Based on these findings, I believe that the requested zoning map amendment would not be spot zoning. While it is important to understand the concept of spot zoning, it is not one of the review criteria in Homer City Code for analysis and consideration of zoning map amendment applications, which are discussed below in “Rezoning Review Criteria”.

Wetlands and U.S. Army Corps of Engineers Fill Permits

The applicant provided a current fill permit for 4787 Kachemak Drive to demonstrate that they have approval from the US. Army Corps of Engineers to create a pad site for future development. A wetlands fill permit is not required documentation for a zoning map amendment application and is immaterial to the consideration of a zoning map amendment. The U.S. Army Corps of Engineers has purview over wetlands fill permitting. This permit is required with the submission of a Zoning Permit for construction.

Rezoning Review Criteria

The Planning Department shall evaluate each amendment to the official zoning map that is initiated in accordance with HCC 21.95.020 and qualified under HCC 21.95.030, and may recommend approval of the amendment only if it finds that the amendment:

a. Is consistent with the comprehensive plan and will further specific goals and objectives of the plan.

b. Applies a zoning district or districts that are better suited to the area that is the subject of the amendment than the district or districts that the amendment would replace, because either conditions have changed since the adoption of the current district or districts, or the current district or districts were not appropriate to the area initially.

c. Is in the best interest of the public, considering the effect of development permitted under the amendment, and the cumulative effect of similar development, on property within and in the vicinity of the area subject to the amendment and on the community, including without limitation effects on the environment, transportation, public services and facilities, and land use patterns.

Essentially, this request for a zoning map amendment can be distilled into two competing interests for the City of Homer. On the one hand is a request to rezone to allow for a fish/seafood processing and packaging facility, helping to support the commercial fishing/marine focused economy of Homer. On the other hand, is the consideration of existing residential property owners in the vicinity of 4787 Kachemak Drive and the impact on their quality of life by this proposed rezoning. The authority to make the final decision on a zoning change resides with the City Council, after receiving a recommendation from the Planning Commission. Reviewing the record and considering the three review criteria noted above in HCC is key to the decision making process.

If the rezoning of 4787 Kachemak Drive is approved: The zoning would be changed to East End Mixed Use and the production, processing, assembly and packaging of fish, shellfish and seafood products would be a permitted use. The applicant would then need a Zoning Permit for the construction of their facility.

If the rezoning of 4787 Kachemak Drive is denied: The zoning district will remain Rural Residential and production, processing, assembly and packaging of fish, shellfish and seafood products would not be a permitted use.

RECOMMENDATION:

The Planning Commission motion to recommend approval of the rezoning request was passed by a vote of 4-1.

Attachments:

Zoning Map illustrating vicinity of 4787 Kachemak Drive

City of Homer Zoning Map 2024

Planning Commission Staff Report 25-006

February 5, 2025 Planning Commission Unapproved Meeting Minutes

February 19, 2025 Planning Commission Unapproved Meeting Minutes

Zoning Map: Vicinity of 4787 Kachemak Drive

City of Homer

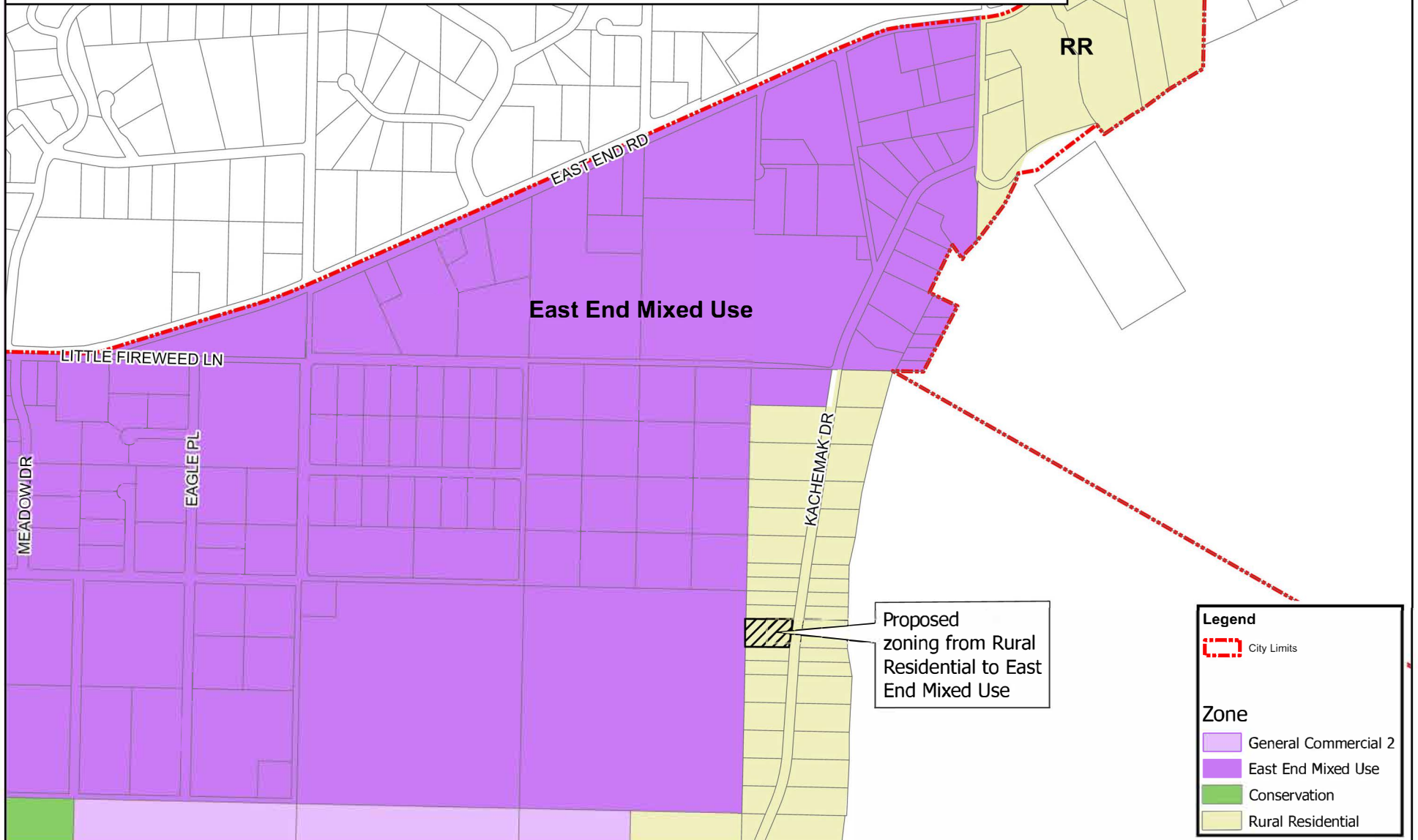
Planning & Zoning Department

February 27, 2025

Disclaimer:

It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.

0 245 490 980 1,470 Feet



City of Homer Zoning Map

Miles

00.250.51

March, 2024

Abbreviations

MC = Marine Commercial

MI = Marine Industrial

OSR = Open Space Recreation

CONS = Conservation

Legend

Zone

Gateway Business District

Central Business District

Town Center

General Commercial 1

General Commercial 2

East End Mixed Use

Marine Commercial

Marine Industrial

Open Space Rec

Conservation

Bridge Creek Watershed

Rural Residential

Urban Residential

Residential Office

Medical

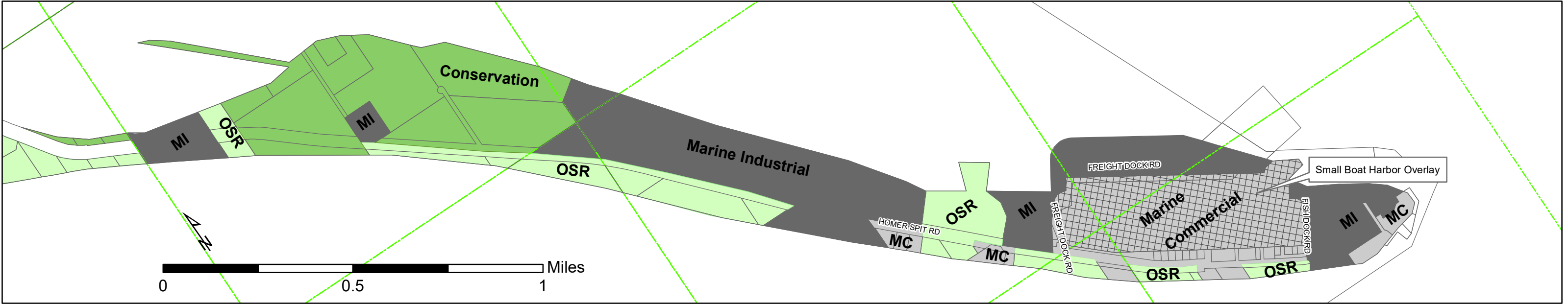
Scenic Gateway Corridor Overlay

Small Boat Harbor Overlay

City Limits

Section Lines

Ordinance No.	Date
83-07	2/15/83
83-30	12/13/82
84-28	10/23/84
85-10	5/28/85
86-18	6/24/86
86-23	8/26/86
86-24	8/26/86
86-25	8/26/86
92-47	9/29/92
92-50	12/15/92
98-14	7/27/98
1-27(S)	5/13/02
02-11	5/13/02
02-42(S)(A)	7/28/03
03-08	2/25/03
03-10	2/25/03
03-11(S)(A)	2/25/03
03-03(S)	3/11/03
03-04(S)	3/11/03
03-05(S)	3/11/03
03-09	3/11/03
03-20	5/13/03
03-37	7/29/03
05-07	3/15/05
05-33	6/28/05
06-20(A)	9/15/06
06-22	4/25/06
06-58	9/15/06
06-51(S)(A)	9/26/06
07-52(A-2)	2/25/08
08-06	2/12/08
08-08(A)	3/25/08
08-20	6/24/08
08-12(S)(A-2)	10/14/08
09-44(S)	10/13/09
09-19	10/26/09
12-10	2/28/12
12-11(A)	3/28/12
13-12(S)	5/14/13
16-34	6/28/16
20-02	1/28/20
20-49	8/25/20
20-59(A)	9/29/20
22-68(A)	10/25/22





City of Homer

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Planning

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STAFF REPORT PL 25-006

TO: Homer Planning Commission
FROM: Ryan Foster, City Planner
MEETING: February 5, 2025
SUBJECT: Application amending Zoning Map via Ordinance

Requested Action: Conduct a public hearing and recommend approval of the zoning map amendment to the Homer City Council

GENERAL INFORMATION

The applicant requests a change in zoning from Rural Residential to East End Mixed Use.

Applicant: Safron Kusnetsov
48881 Morrison Drive
Homer, AK 99603

Location: 4787 Kachemak Drive

Legal Description: T 6S R 13W SEC 14 SEWARD MERIDIAN HM 0880003 - RS THAT PORTION OF LOT 29 LYING WESTERLY OF KACHEMAK DRIVE RECORD OF SURVEY 88-03

Parcel ID: 17909010

Size of Existing Lot: 1.03 acres

Zoning Designation: Rural Residential District

Existing Land Use: Vacant

Surrounding Land Use: North: Vacant
South: Residential
East: Residential
West: Vacant

Comprehensive Plan: Economic Vitality Goal 2 Objective A, Goal 3 Objective B

Wetland Status: Yes, KWF Wetlands Assessment of Drainageway on the lot.

Flood Plain Status: None

Utilities: Public utilities service the site.

Public Notice: Notice was sent to 19 property owners of 19 parcels as shown on the KPB tax assessor rolls.

GENERAL INFORMATION

This application proposes a zoning map amendment to move the East End Mixed Use Boundary (EEMU) east to encompass the subject lot. The applicant states that rezoning the EEMU would allow them to provide fresh, locally sourced seafood, support the fishing industry, and boost the local economy. It benefits the public by offering sustainable, healthy food options and meeting the community's growing demand for local business. The applicant has also provided a letter with detailed information for their application and their future plans for their business at 4787 Kachemak Drive.

HCC 21.95.060 Review by Planning Commission

- a. The Planning Commission shall review each proposal to amend this title or to amend the official zoning map before it is submitted to the City Council.
- b. Within 30 days after determining that an amendment proposal is complete and complies with the requirements of this chapter, the Planning Department shall present the amendment to the Planning Commission with the Planning Department's comments and recommendations, accompanied by proposed findings consistent with those comments and recommendations.
- c. The Planning Department shall schedule one or more public hearings before the Planning Commission on an amendment proposal, and provide public notice of each hearing in accordance with Chapter 21.94 HCC.
- d. After receiving public testimony on an amendment proposal and completing its review, the Planning Commission shall submit to the City Council its written recommendations regarding the amendment proposal along with the Planning Department's report on the proposal, all written comments on the proposal, and an excerpt from its minutes showing its consideration of the proposal and all public testimony on the proposal.

21.95.050 Planning Department review of zoning map amendment.

The Planning Department shall evaluate each amendment to the official zoning map that is initiated in accordance with HCC 21.95.020 and qualified under HCC 21.95.030, and may recommend approval of the amendment only if it finds that the amendment:

a. Is consistent with the comprehensive plan and will further specific goals and objectives of the plan.

Applicant: This proposal aligns with the Comprehensive Plan by supporting local economic growth, promoting sustainable practices, and enhancing access to fresh seafood, which contributes to the community's overall economic vitality and quality of life. The rezoning facilitates the efficient use of land in a manner that is consistent with the plans goals of encouraging compatible and sustainable

development. Additionally, it supports the purposes of rezoning regulations by ensuring land use is appropriately designated to meet community needs, enhance economic opportunities, and maintain compatibility with adjacent zoning districts. This proposal exemplifies responsible planning by advancing the area's commercial potential while adhering to zoning standards designed to minimize negative impacts on neighboring properties.

Analysis: There are multiple goals and objectives from the Economic Vitality Chapter of the 2018 Comprehensive Plan that support this rezoning:

GOAL 2: Encourage the retention and creation of more year-round and higher wage employment.

Objective A: Increase year-round employment that will enable local people to work, live, and raise their families in Homer. While almost all city actions will ultimately affect the course of economic change and job growth, city actions to promote year-round jobs include those listed below:

Implementation Strategies:

- *Consider zoning regulations that support new business opportunities while minimizing negative impacts.*

This rezoning considers zoning regulations that support new business opportunities in the marine industry while minimizing negative impacts to neighboring properties.

GOAL 3: Identify and promote industries that show a capacity for growth.

Objective B: Promote the marine trades including mariculture and shipping industries. Homer's harbor and associated marine trade and services activities are an important component of the local and regional economy. Marine related activities could be expanded to increase the number of living wage, skilled jobs in the community. Local seafood processing, boat building, and fabrication services offer a chance for a local product to reach the local, state and national markets. Homer's public and private port facilities also serve as a staging area for freight destined to more remote parts of the coast.

Implementation Strategies:

- *Work to identify and support infrastructure for marine related industries*

This rezoning application supports the marine related industries in Homer, specifically local seafood processing, which is an important component of the local and regional economy.

Staff Finding: The proposed zoning change is consistent with the Comprehensive Plan and will support economic vitality, including supporting marine related industries.

b. Applies a zoning district or districts that are better suited to the area that is the subject of the amendment than the district or districts that the amendment would replace, because either conditions have changed since the adoption of the current district or districts, or the current district or districts were not appropriate to the area initially.

Applicant: Rezoning of the property at 4787 Kachemak Drive from Rural Residential to Commercial (EEMU) is justified by its alignment with the growing needs of the community and its consistency with the areas development trends. This change addresses a significant public need by addressing the increasing demand for commercial spaces that support local business growth, generate employment opportunities, and enhance services available to residents and visitors. Specifically this rezoning will allow us to provide the local community, and our visitors, with fresh, locally caught seafood, supporting both our fishing industry and the regions commitment to sustainable food sourcing. By establishing a commercial operation at this location, we can directly serve the publics growing demand for high quality, locally sourced products, while creating opportunities for collaboration with local fishermen. The property is ideally situated on Kachemak Drive with close proximity to the Kachemak Gear Shed, the Northern Enterprises Boatyard and the Homer Spit, making it an excellent location for a business such as ours.

Analysis: Conditions have changed since the original adoption of the zoning district boundaries. The west side of the Kachemak Drive corridor consists primarily of properties zoned East End Mixed Use and General Commercial 2. Much of the EEMU has already been developed or does not have infrastructure such as water, sewer, and road accessibility. There is a strong demand for commercial properties in Homer, including those related to marine industries. This proposed rezone would provide much needed acreage for a marine industry related project.

Staff Finding: The amendment would apply a zoning district that is better suited to the area because conditions have changed since the creation of the East End Mixed Use District boundaries.

c. Is in the best interest of the public, considering the effect of development permitted under the amendment, and the cumulative effect of similar development, on property within and in the vicinity of the area subject to the amendment and on the community, including without limitation effects on the environment, transportation, public services and facilities, and land use patterns.

Applicant: Yes the existing public facilities, services, and utilities can accommodate the proposed use without any detrimental effects on adjacent zoning districts. The property already has access to essential infrastructure, including city water, sewage, natural gas, electricity and roadway access, all of which are adequate to support the proposed development without overburdening current systems. Based on current utility capacities and service levels, there is no indication that the additional demand from the proposed use will strain these systems or reduce service quality for surrounding properties. The roadway infrastructure is capable of handling the expected traffic flow. Overall, the availability and capacity of these services ensure that the proposed use will not disrupt or negatively impact adjacent zoning districts.

Analysis:

Public Services and Transportation

City water and sewer are available at Kachemak Drive and access to the subject property would be via Kachemak Drive, an Alaska Department of Transportation maintained road. Full police and fire services are available. Public services and facilities are adequate to serve the property. EEMU district and the Kachemak Drive corridor is the hub of the off-spit marine industry in Homer.

Environmental Conditions: Wetlands Analysis

The KWF wetlands assessment identifies drainageway wetlands on the property. The applicant has provided a US Army Corps of Engineers Permit for fill on the property with their application.

Land Use Patterns

This property is located where Rural Residential and East End Mixed Use districts meet. To the east and south, the existing development is reflective of a rural residential development, and to the west and north are vacant properties, that could be under consideration for both rural residential or EEMU type of development. The majority of the unconstrained EEMU properties in Homer have already been developed, leaving a dearth of zoned commercial space available for future development.

Staff Finding: The rezoning of this 1.03-acre lot to East End Mixed Use is in the best interests of the public as it supports the marine trades industry and has the infrastructure necessary to support this use and development.

STAFF COMMENTS/RECOMMENDATIONS:

Planning staff has reviewed the ordinance per 21.95.050 and recommends the Planning Commission conduct a public hearing, and recommend approval to the City Council.

ATTACHMENTS

1. Application and Letter from the Applicant
2. Petition
3. Map of Rezone
4. Public Notice
5. Aerial Map
6. Zoning Districts Map



City of Homer

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Planning

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Rezoning Application

For Staff Use Only

Fee Amount:	Received by:	Planning Commission Public Hearing Date:
Date application accepted as complete:		HAPC approval or denial date:

APPLICANT INFORMATION

Name: Safron Kusnetsov Phone Number: 907-435-7352

Address: 48881 Morrison Dr. Homer AK 99603 / P.O. Box 265 Homer AK 99603

Property Owner (if different than applicant)

Name: Alexandre Kusnetsov Phone Number: 907-299-2565

Address: 32375 Falls creek East End Rd. Homer AK 99603 / P.O. Box 1719 Homer AK 99603

PROPERTY INFORMATION (if more than one lot, list on separate page)

Street Address: 4787 Kachemak Dr. Lot size: 1.03 Acres Tax parcel number: 17909010

Legal Description: T6S R 13W SEC 14 Seward Meridian HM 0880003-85 that portion of lot 29 lying westerly of Kachemak Drive Record Survey 88-03

Circle one: Is City water available? (YES)/NO City Sewer? (YES)/NO Electrical Service? (YES)/NO

What is the existing use of the property? Rural Residential

What is the proposed use of the property? Commercial

What structures or land uses exist on the neighboring properties? (Examples: residential, commercial, vacant) List the zoning of these adjacent lots.

Structures/land use	Zoning
North: <u>None / vacant</u>	<u>Rural Residential</u>
South: <u>MEZZFO / GENOFF</u>	<u>Rural Residential</u>
East: <u>2+L FRAME GRNHSEFS</u>	<u>Rural Residential</u>
West: <u>None / vacant</u>	<u>Commercial</u>

1. What is the public need and why is this rezone justified?

Rezoning to commercial will allow us to provide fresh, locally sourced seafood, support the fishing industry and boost the local economy. It benefits the public by offering sustainable, healthy food options and meeting the community's growing demand for local business.

2. Describe the benefits and detriments of this proposed rezoning to:

- (a) the community.
- (b) the neighboring landowners.
- (c) you, the property owner.

A) The community gains better access to locally sourced seafood. B) The neighboring land owners may see an increase in property value due to the convenience of a nearby business. C) Allows us to fully utilize the property for business use

3. Can the proposed land use be developed in a manner that is compatible with development in adjacent zoning districts? If so, how? What effect will this change have on the surrounding properties?

Yes, since the property to the west is already zoned commercial, the proposed rezoning creates a natural extension of the existing commercial district.

4. Can the existing public facilities, services, and utilities accommodate the proposed use without any detrimental affect on adjacent zoning districts? If so, how?

Yes the existing public facilities can accommodate the proposed use. The property already has access to essential infrastructure such as water, sewer, electricity and roads.

5. Would rezoning to a district allowing the proposed use permit other uses, which would not be compatible with adjacent land use?

In this case the adjacent property is already commercial, and the proposed seafood business aligns with similar uses, minimizing the risk of incompatible developments, but these would still be regulated by zoning codes and local standards.

6. How does this proposal relate to the Comprehensive Plan and purposes of the zoning regulations?

This proposal aligns with the Comprehensive Plan by supporting local economic growth, promoting sustainable practices, and enhancing access to fresh, local seafood.

7. How would the proposed change affect the public health safety and welfare of the surrounding area?

The proposed change would positively affect the public health, safety and welfare of the surrounding area by providing access to fresh, locally sourced seafood, promoting healthier food choices and supporting local fishermen.

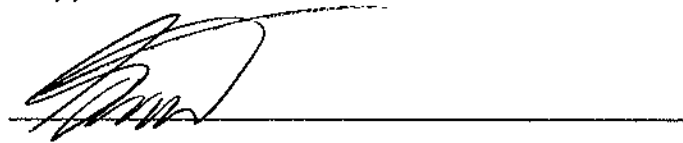
OTHER REQUIREMENTS

1. The applicant shall provide a map showing the area to be rezoned.
2. The applicant shall provide a petition, signed by a majority of the landowners within the proposed zoning area saying that they support the proposed change.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

Owner of record ☒ Lessee _____ Contract purchase duly authorized to act for a person who has the following legal interest, _____ and that the owner of record is knowledgeable of this application if I am not the owner. I also understand that this item will be scheduled for the Planning Commission Agenda only if all application materials are submitted.

Applicant Signature: _____




Property Owner Signature: _____



Petition

Proposed amendment:	The at <u>4787 Kuchemak Dr.</u> consists of one parcel which is <u>1.03</u> acres. Currently the parcel is <u>Rural Residential</u>. This request is to change the zoning of the entire property, <u>from Rural Residential to the Commercial</u>.
HCC 21.95.020(e)(3)(a)	"Each person signing this petition represents that the signer is a record owner of the lot whose description accompanies the signature; that the signer is familiar with the proposed zoning map amendment and the current zoning district of the lot; and that the signer supports the City Council's approval of the amendment."
Statement of Justification	As a natural part of the growth and development of the

Printed Name	Signature of Property Owner or Designated Representative	Legal Description	Tax parcel number
Alexandre Kuchemak		4787 Kuchemak Dr. Homer AK 99603	17909010

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Dear City of Homer Planning Commission,

We are the Kusnetsov family, owners of Invisible Fresh Market Seafood. We are reaching out regarding our application for rezoning the property located at 4787 Kachemak Drive. This letter serves as an introduction to who we are, as well as an extension of the responses provided in the application for rezoning. Our intention is to rezone the property from residential to commercial so that we may establish a retail space and a seafood processing and distribution hub. This rezoning will help us better utilize the property in the above mentioned manner, while ensuring compliance and maintaining harmony with the surrounding area. Below are all of the answers provided in the original rezoning application, with additional details included for your reference. Each response has been listed numerically to correspond with the application format for ease of review.

1) Rezoning of the property at 4787 Kachemak Drive from Rural Residential to Commercial is justified by its alignment with the growing needs of the community and its consistency with the areas development trends. This change addresses a significant public need by addressing the increasing demand for commercial spaces that support local business growth, generate employment opportunities, and enhance services available to residents and visitors. Specifically this rezoning will allow us to provide the local community, and our visitors, with fresh, locally caught seafood, supporting both our fishing industry and the regions commitment to sustainable food sourcing. By establishing a commercial operation at this location, we can directly serve the publics growing demand for high quality, locally sourced products, while creating opportunities for collaboration with local fishermen. The property is ideally situated on Kachemak Drive with close proximity to the Kachemak Gear Shed, the Northern Enterprises Boatyard and the Homer Spit, making it an excellent location for a business such as ours.

2A) Rezoning the property at 4787 Kachemak Drive will benefit the Homer community by providing access to fresh, locally caught seafood while supporting the fishing industry, a key part of the local economy. The business will create job opportunities and contribute to economic growth, while its location along Kachemak Drive offers convenience and accessibility. The rezoning might raise some minor concerns about traffic or the areas character. However, locals are familiar with the high volume of traffic on Kachemak Drive in the summertime so the presence of our business is highly unlikely to alter existing traffic patterns. Additionally, with businesses like the Northern Enterprises Boatyard, the Kachemak Gear Shed, Desperate Marine, In Demand Marine and the Homer

Boatyard just a short drive away, the area already resembles a mixed-use zone. This demonstrates that commercial activity is compatible with the area aligns with its ongoing development.

2B) Rezoning the property at 4787 Kachemak Drive to commercial will bring several benefits to neighboring landowners. The addition of a commercial business will provide convenient access to fresh, locally caught seafood and other potential goods and services, enhancing the quality of life. Furthermore, the presence of a new commercial operation can increase the desirability and value of neighboring properties by contributing to the areas overall growth and infrastructure improvements. For those already engaged in maritime or commercial activities, such as the Northern Enterprises Boatyard and the Kachemak Gear Shed, the business creates the opportunity for shared benefits due to the compatible nature of operations. The proposal may raise concerns about increase traffic, noise, or activity levels. However, it is worth noting that Kachemak Drive already experiences significant traffic during the summer, and the addition of our business is unlikely to create a noticeable change. Some neighbors may also express concerns about transitioning the area to a more mixed-use character. However, the surrounding area already has a mix of uses, with businesses like the Northern Enterprises Boatyard and the Kachemak Gear Shed nearby, which demonstrates that commercial activity nearby is a natural fit. Furthermore, we have already demonstrated our ability to operate in mixed-use environment. For nearly 18 months, we successfully operated just a short drive away at 3745 East End Road, right next door to The Bagel Shop, without any complaints or issues from neighbors. This track record shows our commitment to being a considerate and responsible business. Any potential impacts, such as noise or operational activity, will be mitigated through thoughtful planning, adherence to city ordinances and open communication with neighboring landowners to address concerns promptly.

2C) Rezoning the property at 4787 Kachemak Drive to Commercial will enable us, as the property owners, to use the land to its fullest potential by establishing a business that aligns with Homer's growing demand for locally caught seafood and supporting the local fishing industry. This rezoning provides an opportunity to operate in a prime location near key infrastructure, including the Kachemak Gear Shed, the Northern Enterprises Boatyard, and the Homer Spit, making the property highly advantageous for our business operations. Additionally, it allows us to directly serve the community while contributing to the local economy, which has always been an integral part of our mission. From a financial perspective, the rezoning increases the property's utility and value, offering greater flexibility for commercial purposes both now and in the future. One significant added benefit of

setting up a processing shop on this property is that we will no longer need to spend tens of thousands of dollars paying other businesses to custom process our seafood. This will allow us to bring down the cost of our seafood for our customers, making fresh, locally caught seafood more affordable and accessible. Furthermore, the property's location outside the busier downtown area means we can better meet the needs of local residents and fishermen while minimizing logistical challenges like congestion. All of the business owners involved in this venture have called Homer home for over 25 years. Some of us were even born here, and most of us were raised here. Our deep roots in this community and our commitment to its prosperity drive us to create a business that not only meets local needs but also reflects the values and character of Homer. Additionally, we have a deep vested interest in sustainability because we all make our living from the ability to sustainably catch and process local seafood. This dedication ensures that our operations protect the resources we rely on, allowing us to one day pass this venture on to future generations and preserve Homer's legacy as a thriving fishing community. This rezoning also allows us to build on our proven track record of successfully running a business in a mixed-use area, as demonstrated during our 18 months of operations at 3745 East End Road. While rezoning brings significant opportunities, it also comes with challenges. The process of rezoning and transitioning the property to a commercial use requires financial investment in permitting, site preparation, and ensuring compliance with local zoning regulations. Additionally, operating a commercial property comes with increased responsibilities, such as managing potential concerns from neighbors, adhering to stricter operational standards, and maintaining the property to meet commercial requirements. There may also be a need to address any unforeseen issues, such as community concerns or additional infrastructure needs, which could require additional time and resources. Despite these challenges, the benefits of rezoning far outweigh the drawbacks, as the opportunity to establish a thriving business in a strategic location ensures long-term success, financial savings, and the ability to serve our customers and community more effectively, while preserving the fishing industry for generations to come.

3) Yes, since the adjacent property to the west is already zoned commercial, the proposed rezoning creates a natural extension of the existing commercial district. This alignment facilitates compatibility with surrounding areas by reinforcing the commercial character of the district. The change is likely to enhance property value and economic opportunities. Proper site planning and buffering can ensure that any potential impacts on less intensive neighboring zones are minimized, resulting in a balanced and cohesive development pattern.

4) Yes the existing public facilities, services, and utilities can accommodate the proposed use without any detrimental effects on adjacent zoning districts. The property already has access to essential infrastructure, including city water, sewage, natural gas, electricity and roadway access, all of which are adequate to support the proposed development without overburdening current systems. Based on current utility capacities and service levels, there is no indication that the additional demand from the proposed use will strain these systems or reduce service quality for surrounding properties. The roadway infrastructure is capable of handling the expected traffic flow. Overall, the availability and capacity of these services ensure that the proposed use will not disrupt or negatively impact adjacent zoning districts.

5) In this case the adjacent property is already zoned commercial, and the proposed seafood business aligns with similar uses, thereby minimizing the risk of incompatible developments. While rezoning to a district allowing the proposed use could theoretically permit other uses, these would still be regulated by zoning codes, local standards and permitting processes to ensure compatibility with adjacent land uses. The regulatory framework in place, such as specific use restrictions, design standards, and impact mitigation requirements, provides safeguards to prevent developments that could negatively affect neighboring properties. As a result, the risk of incompatible uses arising from the rezoning is minimal.

6) This proposal aligns with the Comprehensive Plan by supporting local economic growth, promoting sustainable practices, and enhancing access to fresh seafood, which contributes to the community's overall economic vitality and quality of life. The rezoning facilitates the efficient use of land in a manner that is consistent with the plans goals of encouraging compatible and sustainable development. Additionally, it supports the purposes of rezoning regulations by ensuring land use is appropriately designated to meet community needs, enhance economic opportunities, and maintain compatibility with adjacent zoning districts. This proposal exemplifies responsible planning by advancing the area's commercial potential while adhering to zoning standards designed to minimize negative impacts on neighboring properties.

7) The proposed change would positively affect the public health, safety, and welfare of the surrounding area by providing access to fresh, locally sourced seafood which promotes healthier food choices and encourages sustainable dietary habits. It gives local people the option to purchase some of the best wild protein in the world, conveniently available in their own neighborhood. This access helps reduce reliance on ultra processed foods, which are known to be unhealthy, and avoids imported seafood of dubious origin, which may not meet the same quality or safety standards. By supporting local fishermen, the proposal strengthens the regional economy and fosters community resilience. Additionally the localized nature of the business minimizes environmental impact associated with long-distance transportation of seafood, contributing to broader sustainability goals. Proper adherence to health and safety standards will ensure that the operation maintains a safe and sanitary environment, further protecting and enhancing the welfare of the surrounding area.



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
P.O. BOX 6898
JBER, AK 99506-0898

May 31, 2023

Regulatory Division
POA-2022-00373

Alexandre Kusnetsov
32375 Falls Creek Road
Homer, AK 99603

Dear Mr. Kusnetsov:

This is in response to your March 1, 2023, application for a Department of the Army (DA) permit, to discharge fill material into 0.29-acre of wetlands in order to construct a 300-foot-long by 25-foot-wide driveway, eight 25-foot by 25-foot side driveways, six cabins, and a 24-inch-diameter by 25-foot-wide culvert. It has been assigned file number POA-2022-00373, Kachemak Bay, which should be referred to in all future correspondence with this office. The project site is located within Section 14, T. 6 S., R. 13 W., Seward Meridian; USGS Quad Map Seldovia C-4; Latitude 59.659648° N., Longitude -151.443397° W.; in Homer, Alaska.

Based on our review of the information you furnished and available to us, we have preliminarily determined the above project area contains waters of the United States (U.S.), including wetlands, under the U.S. Army Corps of Engineers (Corps) regulatory jurisdiction.

DA authorization is necessary because your project will involve placement of fill material into waters of the U.S. under our regulatory jurisdiction.

Based upon the information and plans you provided, we hereby verify that the work described above, which will be performed in accordance with the enclosed plan (sheets 1-3), dated May 2023, is authorized by Nationwide Permit (NWP) No. 29, Residential Developments. Enclosed is a copy of the NWP No. 29, as well as the Regional and General Conditions. These documents are also available on our website at: www.poa.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/. Regional Conditions D-Site Revegetation for Projects with Ground Disturbing Activities, E-Delineation of Project Footprint, and F-Maintenance of Hydrology Patterns apply to your project. You must comply with all terms and conditions associated with NWP No. 39, as well as with the special conditions listed below:

Special Condition 1: No stockpiling of fill materials shall occur in wetlands or other waters of the U.S. that do not have DA authorization.

Special Condition 2: If human remains, historic resources, or archaeological resources are encountered during construction, all ground disturbing activities shall cease in the immediate area and you shall immediately (within one business day of discovery) notify the Corps, Alaska District, Regulatory Office at (907) 753-2712 or Eric White at Eric.J.White@usace.army.mil and (907) 753-5693. Upon notification the Corps shall notify the appropriate Tribal Historic Preservation Office and State Historic Preservation Office (SHPO). Based on the circumstances of the discovery, equity to all parties, and consideration of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. After such notification, project activities on federal lands shall not resume without written authorization from the Corps. After such notification, project activities on tribal lands shall not resume without written authorization from the SHPO and the Corps.

Special Condition 3 Turbidity Barriers: To prevent sedimentation into adjacent waters of the U.S. outside of the authorized footprint the permittee shall install silt curtain barriers with weighted skirts that extend one foot from the bottom around all in-water work areas to include work that is adjacent to surface waters. The turbidity barriers shall remain in place, monitored for effectiveness, and maintained until the authorized work has been completed and all suspended and erodible materials have been stabilized. Turbidity barriers shall be removed upon stabilization of the work area.

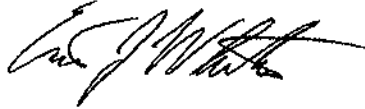
Special Condition 4 Erosion Control: Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized by revegetating (vegetation mats/seeding), using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion and sediment transport to adjacent waters of the U.S.

Further, please note General Condition 30 requires that you submit a signed certification to us once any work and required mitigation are completed. Enclosed is the form for you to complete and return to our office.

Unless this NWP is modified or revoked, it expires on March 14, 2026. If you commence or are under contract to commence this activity before the date that the NWPs are modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWPs to complete the activity under the present terms and conditions of these nationwide permits. It is incumbent upon you to remain informed of the changes to the NWPs. Nothing in this letter excuses you from compliance with other Federal, state, or local statutes, ordinances, or regulations.

Please contact me via email at Eric.J.White@usace.army.mil, by mail at the address above, by phone at (907) 753-5693, or toll free from within Alaska at (800) 478-2712, if you have questions. For more information about the Regulatory Program, please visit our website at www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. White", with a stylized flourish at the end.

Eric White
Regulatory Specialist

Enclosures

ENCLOSURE



**US Army Corps of Engineers
Alaska District**

Permit Number: POA-2022-00373

Name of Permittee: Alexandre Kusnetsov

Date of Issuance: May 31, 2023

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to Mr. Eric White at regpagemaster@usace.army.mil, or the following address:

U.S. Army Corps of Engineers
Alaska District
Regulatory Division
Post Office Box 6898
JBER, Alaska 99506-0898

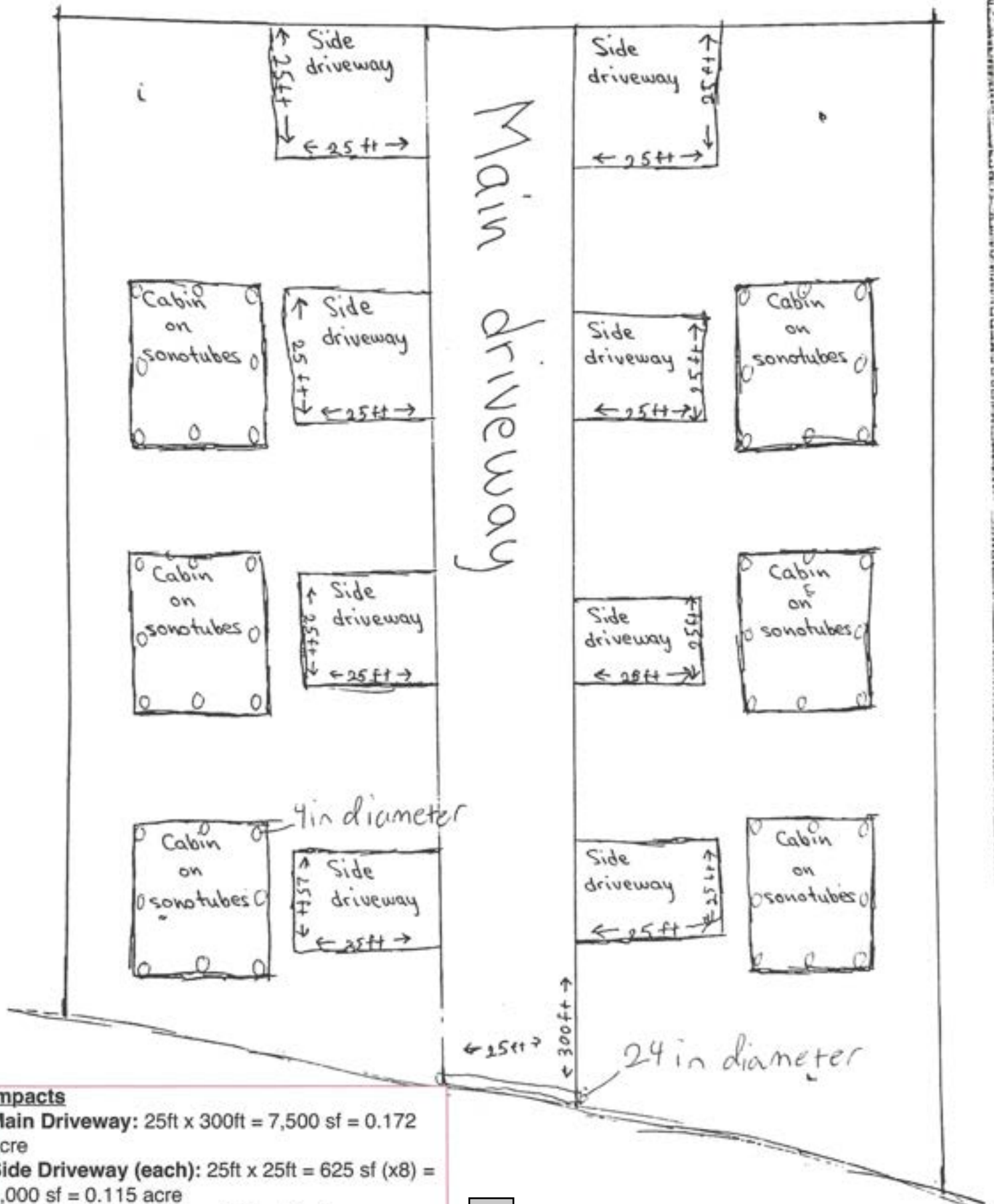
Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date



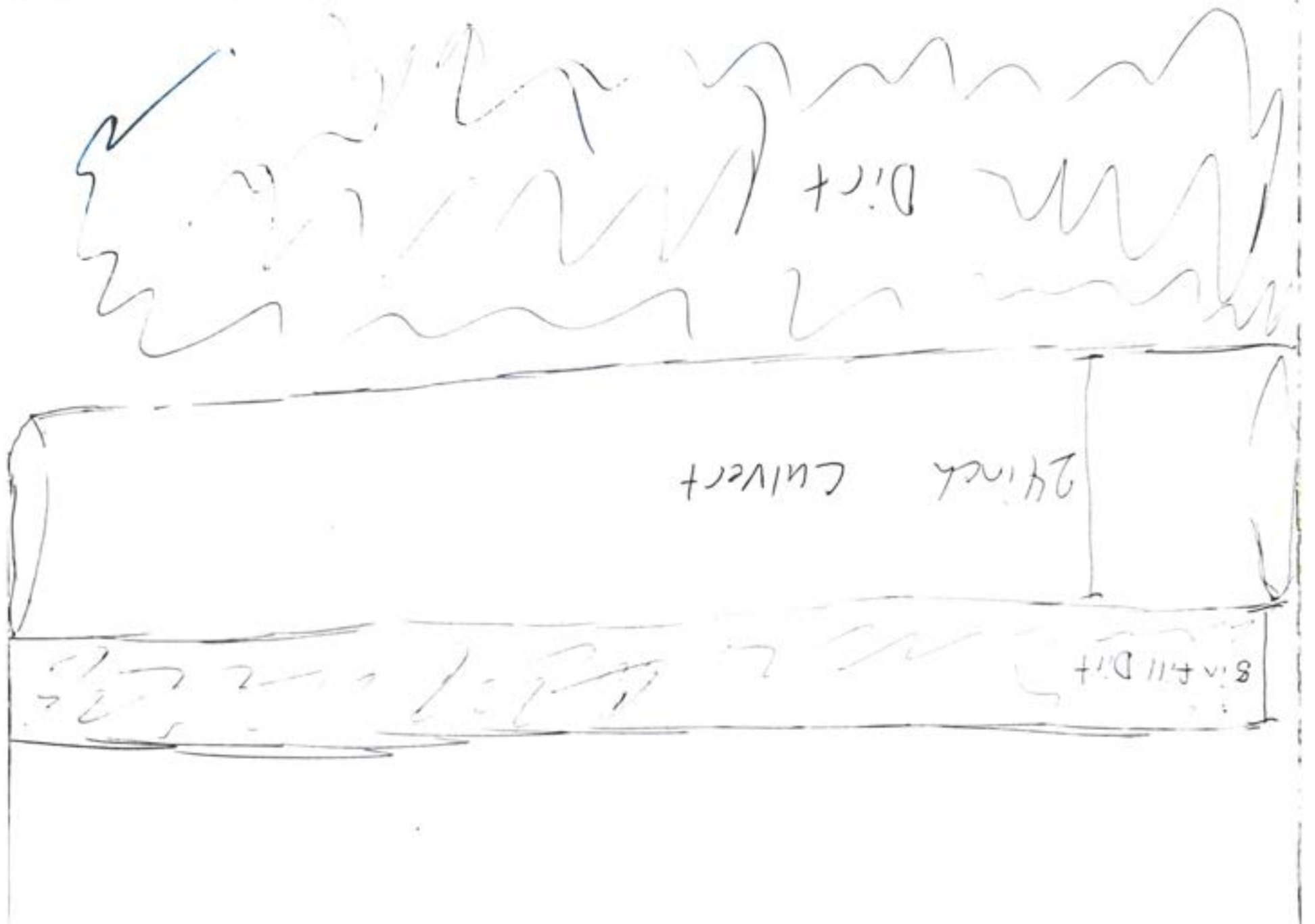


Impacts

Main Driveway: 25ft x 300ft = 7,500 sf = 0.172 acre

Side Driveway (each): 25ft x 25ft = 625 sf (x8) = 5,000 sf = 0.115 acre

Culvert: 25ft x 24 inches (2ft) = 50 sf



29. Residential Developments

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

ALASKA DISTRICT REGIONAL CONDITIONS
for the
2021 NATIONWIDE PERMITS (NWP)

The Alaska District Regulatory Office has issued the following Regional Conditions to ensure that activities authorized by NWPs in the Alaska District cause no more than minimal adverse environmental effects, individually and cumulatively. Before the Alaska District will verify an activity under one or more NWPs, the proposed activity must comply with the NWP terms and all applicable General and Regional Conditions.

APPLICABILITY: The following apply throughout the state of Alaska.

RESTRICTIONS:

Regional Condition A – Revoked Permits: The following NWPs are revoked within Alaska:

- 2. Structures in Artificial Canals
- 24. Indian Tribe or State Administered Section 404 Programs
- 30. Moist Soil Management for Wildlife
- 34. Cranberry Production Activities

Regional Condition B – Additional Pre-Construction Notification (PCN) Requirements

- 1. NWP 13, Bank Stabilization: In addition to the PCN requirements specified by NWP 13, a PCN is required for proposed bank stabilization projects in fresh water when the proposed methods and techniques are not included in the Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions. The Guide is available at: <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>.
- 2. A PCN is required for projects that qualify for NWPs 12, 57 (C), and 58 (D) within the Municipality of Anchorage.
- 3. NWP 48: A PCN is required for impacts to greater than 1/2 acre of special aquatic sites (wetlands, mudflats, vegetated shallows, coral reefs, etc.).
- 4. NWP 12, 57 (C), 58 (D). In addition to other triggers for the PCN, a PCN is required for projects located within permafrost soils identified using the appropriate soil survey or other appropriate data.

REGIONAL CONDITION C - Activities Involving Trenching

Trenches may not be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to a non waters of the U.S. location. The backfilled trench shall achieve the pre-construction elevation, within a year of disturbance unless climatic conditions warrant additional time. The additional time must be approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

REGIONAL CONDITION D - Site Revegetation for Projects with Ground Disturbing Activities

Re-vegetation of all disturbed areas within the project site shall begin as soon as site conditions allow and in the same growing season as the disturbance, unless climatic conditions warrant additional time. Topsoil (the outermost layer of soil, usually the top 2 – 8 inches) removed from the

construction area shall be separated and used for site rehabilitation. When backfilling, topsoil shall be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the project site, local native soil material obtained from an approved site may be used. Species used for seeding and planting shall be certified seed sources free of invasive species and follow this order of preference: 1) species native to the site; 2) species native to the region; 3) species native to the state.

REGIONAL CONDITION E - Delineation of Project Footprint

Prior to commencement of construction activities within waters of the U.S., the permittee shall clearly identify the permitted limits of disturbance at the project site with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.). The permittee shall properly maintain such identification until construction is complete and the soils have been stabilized. The permittee is prohibited from conducting any unauthorized Corps-regulated activity outside of the permitted limits of disturbance (as shown on the permit drawings).

REGIONAL CONDITION F - Maintenance of Hydrology Patterns

Natural drainage patterns shall be maintained using appropriate methods. Excessive ponding or drying adjacent to fill areas shall indicate non-compliance with this condition.

REGIONAL CONDITIONS G, H, I AND J APPLY TO SPECIFIC NWP's

REGIONAL CONDITION G - NWP 40 Agricultural Activities

The following activities are not authorized by NWP 40: a. Installation, placement, or construction of drain tiles, ditches, or levees; and b. Mechanized land clearing or land leveling in wetlands within 300 feet of an anadromous water (anadromous water is defined by the state of AK see <https://www.adfg.alaska.gov/sf/SARR/AWC/index.cfm?ADFG=main.interactive>).

REGIONAL CONDITION H - NWP 44 Mining Activities

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit POA-2014-00055-M1. In Alaska, NWP 44 may only authorize the following activities:

1. Hard rock mining within waters jurisdictional under only Section 404 of the Clean Water Act, not including trenching, drilling, or access road construction.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, or prior to equipment being removed from site, whichever occurs first.

REGIONAL CONDITION I – NWP 48, 55 (A), and 56 (B):

When an Aquatic Farm Lease is required from the Alaska Department of Natural Resources (ADNR) for a new or modified aquatic farm, the applicant must obtain and submit a copy of the ADNR preliminary decision with a Preconstruction Notification to the USACE.

REGIONAL CONDITION J – NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52:

The proposed NWP activity must not cause:

- 1) the loss of anadromous streambed, and/or
 - 2) the discharge of dredged or fill material into waterbodies, including wetlands, adjacent to and/or upstream of an anadromous waterbody;
- unless the district engineer issues a waiver by making a written determination concluding that these discharges will result in no more than minimal individual and cumulative adverse environmental effects.

2021 Nationwide Permit General Conditions:

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties.

(a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will

verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the

undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses

the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the

permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of the United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the

nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

- (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the

additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers

federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) *Agency Coordination:*

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for:

(i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;

(ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and

(iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

**CITY OF HOMER
PUBLIC HEARING NOTICE
PLANNING COMMISSION MEETING**

A public hearing on the matters below are scheduled for Wednesday, February 5, 2025 at 6:30 p.m. during the Regular Planning Commission Meeting. Participation is available virtually via Zoom webinar or in-person at Homer City Hall.

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA AMENDING HOMER CITY CODE 21.10.030 AMENDING THE HOMER CITY ZONING MAP TO REZONE A PORTION OF THE RURAL RESIDENTIAL (RR) ZONING DISTRICT TO EAST END MIXED USE (EEMU) ZONING DISTRICT

The rezone from Rural Residential (RR) Zoning District to East End Mixed Use (EEMU) Zoning District is proposed for the following address:

4787 Kachemak Drive

T 6S R 13W SEC 14 SEWARD MERIDIAN HM 0880003 - RS THAT PORTION OF LOT 29 LYING WESTERLY OF KACHEMAK DRIVE RECORD OF SURVEY 88-03

In-person meeting participation is available in Cowles Council Chambers located downstairs at Homer City Hall, 491 E. Pioneer Ave., Homer, AK 99603.

To attend the meeting virtually, visit zoom.us and enter the Meeting ID & Passcode listed below. To attend the meeting by phone, dial any one of the following phone numbers and enter the Webinar ID & Passcode below, when prompted: 1-253-215-8782, 1-669-900-6833, (toll free) 888-788-0099 or 877-853-5247.

Meeting ID: 979 8816 0903

Passcode: 976062

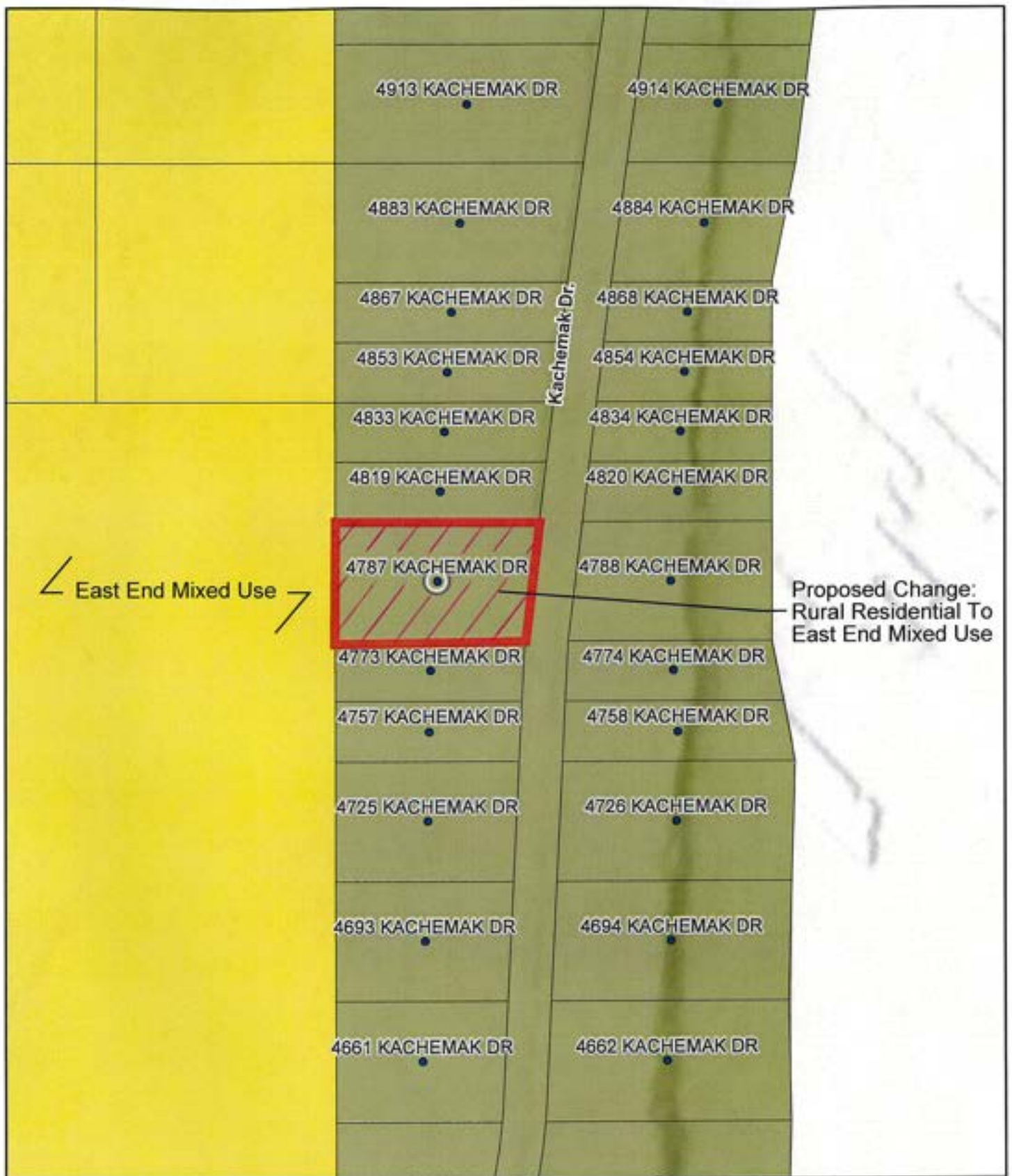
Additional information regarding this matter will be available by 5pm on the Friday before the meeting. This information will be posted to the City of Homer online calendar page for January 31, 2025 at <https://www.cityofhomer-ak.gov/calendar>. It will also be available at the Planning and Zoning Office at Homer City Hall and at the Homer Public Library.

Written comments can be emailed to the Planning and Zoning Office at the address below, mailed to Homer City Hall at the address above, or placed in the Homer City Hall drop box at any time. Written comments must be received by 4pm on the day of the meeting.

If you have questions, contact Ryan Foster at the Planning and Zoning Office. Phone: (907) 235-3106, email: planning@ci.homer.ak.us or in-person at Homer City Hall.

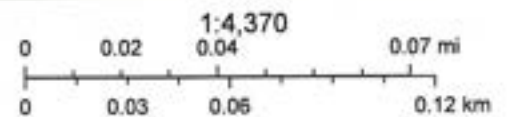
NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY

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1/21/2025

- Address
 - Parcels_Working View
 - Road_Maintenance
- Zoning Districts**
- East End Mixed Use
 - Rural Residential
 - World Hills



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, DS, NMA, Geodatasynthesen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community



Legend

Physical Addresses



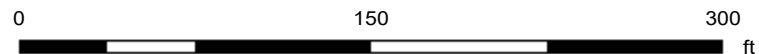
Transportation

Mileposts



Parcels and PLSS

Tax Parcels



NOTE: Every reasonable effort has been made to ensure the accuracy of these data. However, by accepting this material, you agree that the Kenai Peninsula Borough assumes no liability of any kind arising from the use of this data. The data are provided without warranty of any kind, either expressed or implied, including but not limited to time, money or goodwill arising from the operation or modification of the data. In using these data, you further agree to indemnify, defend, and hold harmless Kenai Peninsula Borough for any and all liability of any nature arising from the lack of accuracy or correction of the data, or use of the data.

CALL TO ORDER

Session 25-02, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:30 p.m. on February 5th, 2025 at the Cowles Council Chambers in City Hall, located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar.

PRESENT: COMMISSIONER BARNWELL, VENUTI, S. SMITH, SCHNEIDER, & STARK

ABSENT: COMMISSIONER CONLEY & H. SMITH (BOTH EXCUSED)

STAFF: CITY PLANNER FOSTER & DEPUTY CITY CLERK PETTIT

AGENDA APPROVAL

Chair S. Smith read the supplemental items into the record and requested a motion and second to adopt the agenda as amended.

SCHNEIDER/BARNWELL MOVED TO ADOPT THE AGENDA AS AMENDED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENTS UPON MATTERAS AREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

- A. Unapproved Regular Meeting Minutes of January 2, 2025

Chair S. Smith requested a motion and second to adopt the consent agenda.

SCHNEIDER/BARNWELL MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

- A. Staff Report 25-001, City Planner's Report

City Planner Foster reviewed his staff report included in the packet, covering the following:

- Comprehensive Plan Update
- Update regarding a Landslide Hazard Susceptibility Mapping worksession
- Next Regular Meeting on Wednesday, February 19, 2025
- Next Commissioner report to Council on February 10, 2025 (Commissioner Stark)

PUBLIC HEARINGS

- A. Ordinance 25-xx, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.16 Residential Office District, 21.24 General Commercial 1 District, and 21.26 General Commercial 2 District, Adding Studios as a Permitted Use in Each District, Staff Report 25-02

Public Comment Received

Additional Public Comment Received

Chair S. Smith introduced the item by reading of the title and deferred to City Planner Foster, who provided a summary review of his report included in the packet.

Chair S. Smith opened the public hearing period.

Breezy Berryman, city resident, spoke in favor of the zoning text amending, claiming that it's nearly impossible for her to find any buildings for sale/lease in any of the zoning districts where studios are permitted.

Chair S. Smith closed the public hearing period and opened the floor for comments/questions from the Commission.

SCHNEIDER/STARK MOVED TO RECOMMEND APPROVAL OF THE PROPOSED TEXT AMENDMENT TO THE HOMER CITY COUNCIL ALLOWING STUDIO AS A PERMITTED USE IN THE GENERAL COMMERCIAL 1, GENERAL COMMERCIAL 2, AND RESIDENTIAL OFFICE DISTRICTS.

There was no additional discussion.

Chair S. Smith requested the Clerk to perform a roll-call vote.

VOTE: YES: S. SMITH, SCHNEIDER, STARK, BARNWELL.

VOTE: NO: VENUTI.

Motion carried.

- B. Ordinance 25-xx, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.10.030 Amending the Homer City Zoning Map to Rezone a Portion of the Rural Residential (RR) Zoning District to East End Mixed Use (EEMU) Zoning District, Staff Report 25-006

Chair S. Smith introduced the item by reading of the title and deferred to City Planner Foster, who provided a summary review of his report included in the packet.

Chair S. Smith opened the floor for the Applicant.

Safron Kusnetsov noted that he and his family work in the commercial fishing industry, which has taken a steep dive in the last two years. He elaborated that they've owned the property under review for about 7 years. Mr. Kusnetsov stated that they're hoping to store their equipment on the property and potentially build a processing floor sometime in the future.

Chair S. Smith then opened the public hearing period.

Kiirsten Styvar, city resident, noted that she and her husband own one of the lots directly across from the proposed area. She stated that she wants to and loves to support local seafood operations, but shared concerns she had regarding noise levels and equipment storage.

Chair S. Smith closed the public hearing period and opened the floor for comments/questions from the Commission.

Multiple commissioners raised concerns as to whether or not this rezone, if approved, would be classified as "spot zoning."

Commissioner Venuti asked the Applicant why he needed six cabins on-site for processing fish. Mr. Kusnetsov stated that the cabins aren't needed, and that the original plan with the land was to build rentals.

SCHNEIDER/BARNWELL MOVED TO ADOPT STAFF REPORT PL 25-006 AND RECOMMEND APPROVAL TO THE HOMER CITY COUNCIL OF THE ZONING MAP AMENDMENT TO REZONE A PORTION OF THE RURAL RESIDENTIAL ZONING DISTRICT TO EAST END MIXED USE ZONING DISTRICT.

Commissioner Stark noted that much of the property in that area along the western side of Kachemak Drive is predominately industrial and commercial businesses. He added that the Applicant seems diligent about keeping the property tidy, and that he doesn't foresee this having a significant impact on the surrounding properties.

Chair S. Smith requested the Clerk to perform a roll-call vote.

VOTE: YES: S. SMITH, SCHNEIDER, STARK, BARNWELL.

VOTE: NO: VENUTI.

Motion carried.

PLAT CONSIDERATION

PENDING BUSINESS

NEW BUSINESS

INFORMATIONAL MATERIALS

COMMENTS OF THE AUDIENCE

COMMENTS OF THE STAFF

Deputy City Clerk Pettit thanked everyone for a good meeting.

COMMENTS OF THE MAYOR/COUNCILMEMBER (If Present)

COMMENTS OF THE COMMISSION

Commissioner Venuti thanked everyone for their service tonight. He added that he isn't a big fan of changing zones, especially when people invest in certain zones.

Commissioner Stark thanked everyone for a good meeting.

Commissioner Schneider thanked everyone for their service.

Commissioner Barnwell thanked everyone for a good meeting.

Chair S. Smith thanked the City Staff for their work.

ADJOURN

There being no further business to come before the Commission, Chair S. Smith adjourned the meeting at 7:42 p.m. The next Regular Meeting is scheduled for **Wednesday, February 19th, 2025 at 6:30 p.m.** All meetings are scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Zach Pettit, Deputy City Clerk I

Approved: _____

CALL TO ORDER

Session 25-04, a Regular Meeting of the Planning Commission was called to order by Vice Chair Charles Barnwell at 6:30 p.m. on February 19th, 2025 at the Cowles Council Chambers in City Hall, located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar.

PRESENT: COMMISSIONER BARNWELL, VENUTI, S. SMITH, CONLEY, SCHNEIDER, & H. SMITH

Commissioner H. Smith arrived 49 minutes after roll call

ABSENT: COMMISSIONER STARK

STAFF: CITY PLANNER FOSTER & DEPUTY CITY CLERK PETTIT

AGENDA APPROVAL

Vice Chair Barnwell requested a motion and second to adopt the agenda as presented.

SCHNEIDER/S. SMITH MOVED TO ADOPT THE AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

Ken Castner, city resident, noted that he has municipal interests that the proposed zoning ordinance change would effect. He encouraged the Commission to revisit their decision.

Kim McNett, city resident, encouraged the Commission to reconsider the rezoning of the residential plot on Kachemak Drive. Deputy City Clerk Pettit raised a Point of Order regarding the presentation of new evidence after the public hearing period had closed. No ruling was given.

Bjorn Olson, city resident, encouraged the Commission to reconsider the proposed zoning ordinance.

Andrew Sorensen, city resident, requested that the Planning Commission reconsider the decision made at the last Planning Commission meeting regarding the proposed zoning ordinance.

RECONSIDERATION

- A. Ordinance 25-xx, Amending the Homer City Zoning Map at 4787 Kachemak Drive, Staff Report 25-006
Commissioner Barnwell

Vice Chair Barnwell introduced the item by reading of the title. He noted that he called for the Reconsideration before handing the gavel over to Commissioner Schneider.

Acting Chair Schneider requested a motion and second to reconsider the proposed ordinance.

BARNWELL/VENUTI MOVED TO RECONSIDER ORDINANCE 25-XX, AMENDING THE HOMER CITY ZONING MAP AT 4787 KACHEMAK DRIVE.

Commissioner S. Smith noted that City Planner Foster gave very clear indication that this wasn't a case of spot zoning the first time the Commission was dealing with the proposed ordinance. Addressing Mr. Barnwell's concerns about the sloppy and inaccurate application, Mr. S. Smith asserted that the City doesn't have criteria that forces applicants to have professional drawings. He concluded that the real issue with this project is the wetlands, but that no matter the orientation of the application he views the problem as resolved.

Commissioner Barnwell cited spot zoning concerns, wetlands concerns, and a sloppy and inaccurate application as his reasons for calling for the reconsideration.

Commissioner Venuti voiced his concerns that the application contained false information.

Acting Chair Schneider requested the Clerk to perform a roll-call vote.

VOTE: YES: VENUTI, SCHNEIDER, BARNWELL.

VOTE: NO: S. SMITH, CONLEY.

Motion failed.

Acting Chair Schneider passed the gavel back to Commissioner Barnwell.

CONSENT AGENDA

- A. Unapproved Regular Meeting Minutes of February 5, 2025

Vice Chair Barnwell requested a motion and second to adopt the consent agenda.

S. SMITH/SCHNEIDER MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

- A. City Planner's Report, Staff Report 25-007

City Planner Foster reviewed his staff report included in the packet, covering the following:

- Comprehensive Plan Update
- Update regarding a Landslide Hazard Susceptibility Mapping worksession
- Next Regular Meeting on Wednesday, March 5, 2025
- Next Commissioner report to Council on February 24, 2025

PUBLIC HEARINGS

PLAT CONSIDERATION

A. Bayview Gardens Subdivision Addition 1 Bohrer 2025 Replat Preliminary Plat, Staff Report 25-008

Vice Chair Barnwell introduced the item by reading of the title and deferred to City Planner Foster, who provided a summary of his report included in the packet.

Vice Chair Barnwell opened the floor for the Applicant. Katie Kirsis noted that she was the surveyor for the project, and made herself available to answer any questions regarding the plat.

Vice Chair Barnwell opened the public comment period. With no one wishing to speak, Vice Chair Barnwell closed the public comment period and opened the floor to questions from the Commission.

SCHNEIDER/VENUTI MOVED TO ADOPT STAFF REPORT 25-008 AND RECOMMEND APPROVAL OF THE BAYVIEW GARDENS SUBDIVISION ADDITION 1 BOHRER REPLAT PRELIMINARY PLAT, WITH THE FOLLOWING COMMENTS:

1. THE PROPERTY OWNER SHALL ABANDON THE MUNICIPAL WATER SERVICE FOR FORMER LOT 16 AT THE MAIN.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

B. Baycrest Subdivision 2025 Replat Preliminary Plat, Staff Report 25-009

Vice Chair Barnwell introduced the item by reading of the title and deferred to City Planner Foster, who provided a summary of his report included in the packet.

Vice Chair Barnwell opened the floor for the Applicant. Katie Kirsis noted that she was the surveyor for the project, and made herself available to answer any questions regarding the plat.

Vice Chair Barnwell opened the public comment period. With no one wishing to speak, Vice Chair Barnwell closed the public comment period and opened the floor to questions from the Commission.

SCHNEIDER/VENUTI MOVED TO ADOPT STAFF REPORT 25-009 AND RECOMMEND APPROVAL OF THE BAYCREST SUBDIVISION 2025 REPLAT PRELIMINARY PLAT.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSET.

Motion carried.

PENDING BUSINESS

NEW BUSINESS

- A. Potential CUP Moratorium Applied to Coastal Lots with Multiple Structures, Memorandum 25-011

Vice Chair Barnwell introduced the item by reading of the title and deferred to Commissioner S. Smith, who provided an explanation of his memorandum included in the packet. The Commission discussed the legitimacy of the potential CUP moratorium, ultimately deciding against it and reasoning that it wouldn't be fully defensible.

INFORMATIONAL MATERIALS

- A. 2025 Planning Commission Calendar
- B. 2025 Planning Commission Meeting Dates and Submittal Deadlines

Vice Chair Barnwell noted the informational materials.

COMMENTS OF THE AUDIENCE

Ken Castner, city resident, insisted that the Commission has created spot zoning by approving the rezoning application at 4787 Kachemak Drive. He also encouraged the Commission to create a tiered process for rezoning applications when revising Title 21.

COMMENTS OF THE STAFF

COMMENTS OF THE MAYOR/COUNCILMEMBER (If Present)

COMMENTS OF THE COMMISSION

Commissioner S. Smith thanked everyone for a good meeting.

Commissioner Venuti shared his confusion regarding the status of the reconsideration of the proposed ordinance. He thanked everyone for a good meeting.

Commissioner Conley commended Vice Chair Barnwell for his work tonight. He thanked the City Staff for all its hard work.

Commissioner H. Smith apologized for being tardy, noting that had he been present at the time of reconsideration, the motion would've passed. He added that he viewed the rezone as spot zoning. He concluded that the City will have to answer to the decision of the Commission ultimately.

Commissioner Schneider shared his appreciation for the City Staff and his fellow Commissioners. He commended Vice Chair Barnwell for running a good meeting.

Vice Chair Barnwell spoke to the reconsideration of the rezoning application, adding that he feels it falls under spot zoning and was a hurried decision. He commended Commissioner H. Smith for his work on his memorandum. He thanked his fellow Commissioners and City Staff for their hard work.

ADJOURN

There being no further business to come before the Commission, Chair S. Smith adjourned the meeting at 7:45 p.m. The next Regular Meeting is scheduled for **Wednesday, March 5th, 2025 at 6:30 p.m.** All meetings are scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Zach Pettit, Deputy City Clerk I

Approved: _____