

**KODIAK CITY COUNCIL**

**WORK SESSION AGENDA**

**Tuesday, February 26, 2019**

**Kodiak Public Library Multi-Purpose Room**

**7:30 p.m.**

*Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.*

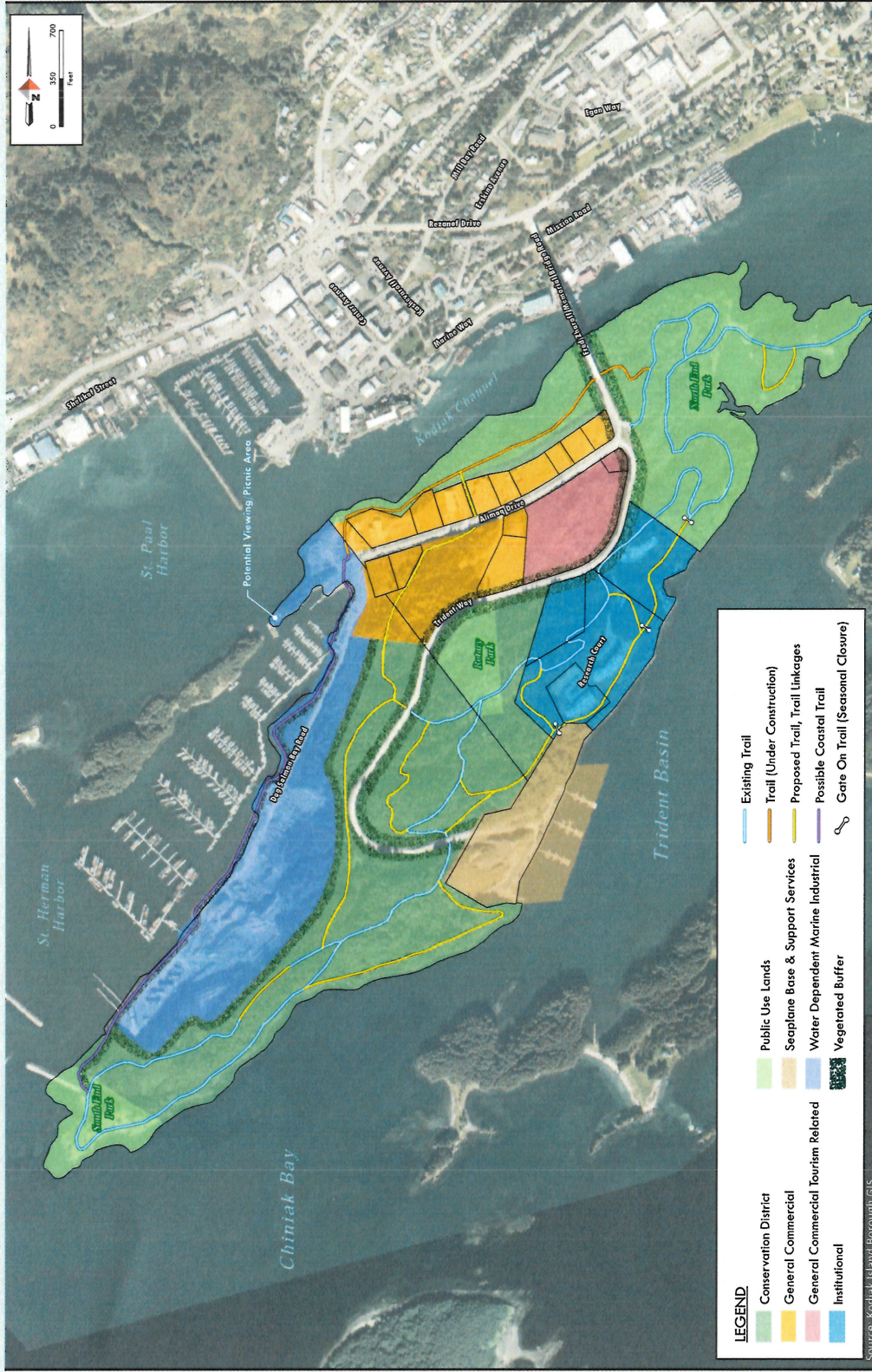
**Discussion Items**

- 1. Public Comments (limited to 3 minutes)
- 2. Near Island Plan Public Comments (limited to 3 minutes).....1
- 3. Attorney’s Report
  - a. Annual Report
  - b. Revised Records Ordinance .....7
  - c. Online Sales Tax .....22
- 4. Discuss Engel Entertainment Production With Kodiak Police Department within the Community .....29
- 5. Continued Discussion for City Participation in Southwest Alaska Municipal Conference (SWAMC) Comprehensive Economic Development Strategy (CEDS) Plan.....37
- 6. Jacobs Presentation for WWTP .....41
- 7. Discuss Federal CIP List.....58
- 8. Review Crime Prevention Funding.....63
- 9. Elected Officials Training/Travel Requests
- 10. February 28, 2019, Agenda Packet Review

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## Concept A Minimized Development

This concept reflects public feedback to not expand the industrial area the original conditional use permit and recent amended boundary. Specifically it limits both the industrial area supporting the harbor and the float plane basin to their current areas of disturbance. This concept does not add any new commercial or institutional land uses.



Source: Kodiak Island Borough GIS

FIGURE 8: Concept A – Minimized Development

During the second public meeting portion attendees were given the opportunity to comment on each of the concepts. The following figures show consolidated comments on each concept (Figures 11, 12 & 13).

## Public Comments - Minimum Development

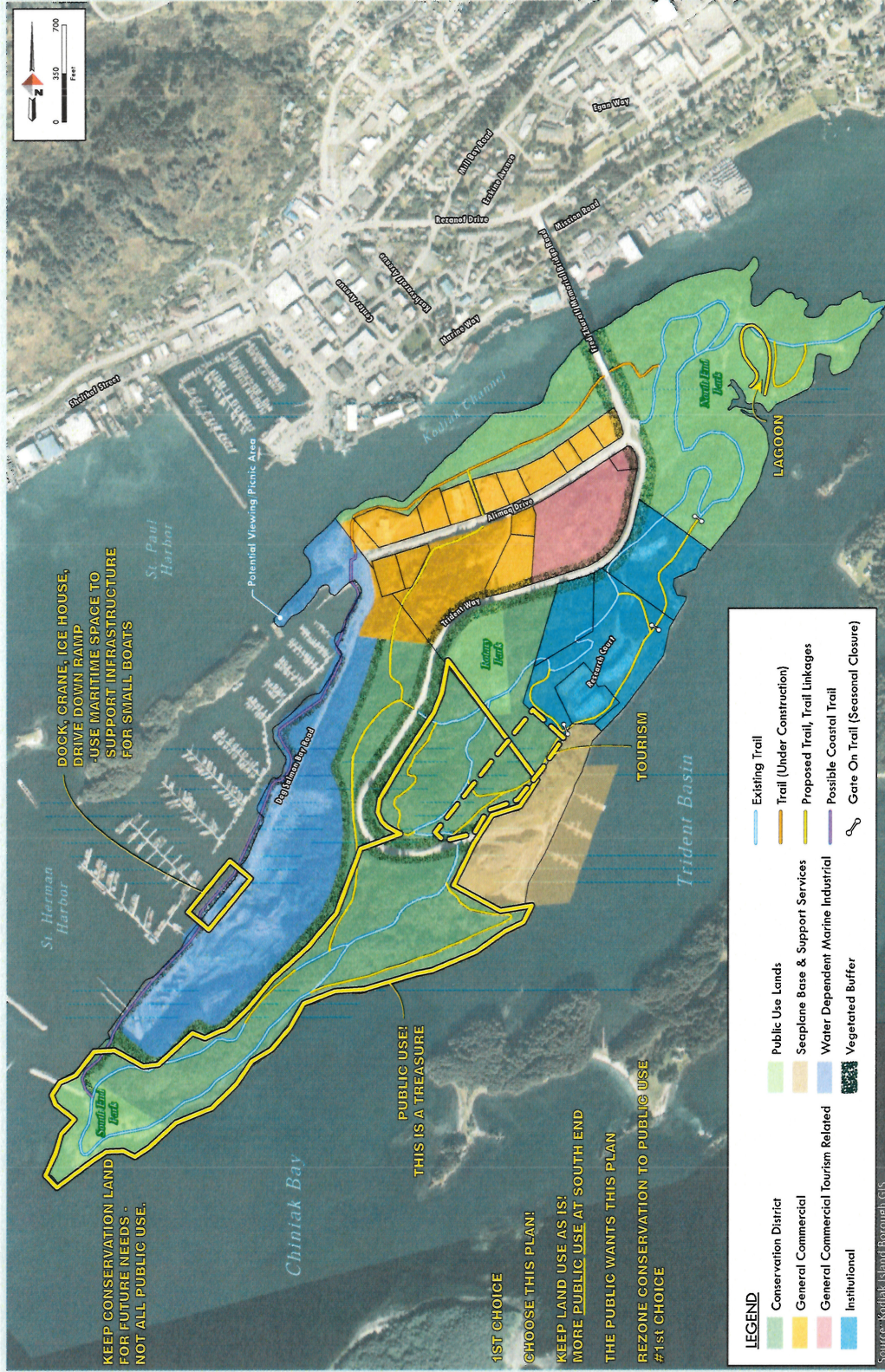


Figure 11: Concept A - Public Comments

## Concept B Moderate Development

This concept reflects public feedback to not expand the industrial area the original conditional use permit and recent amended boundary. The concept also considers concerns that there are limited industrial lands elsewhere. It was noted several times during public outreach that this may be the opportunity to secure additional industrial land needed to support the small boat harbor into the future but limits the area around the float plane basin to its current area of disturbance. This concept also looks at taking advantage of existing infrastructure by expanding general commercial by expanding general commercial southwest (towards Trident Basin) along Trident Way. This additional commercial land could provide tourism supported and/or enhanced business opportunities. This concept also extends the institutional land use designation to the east.

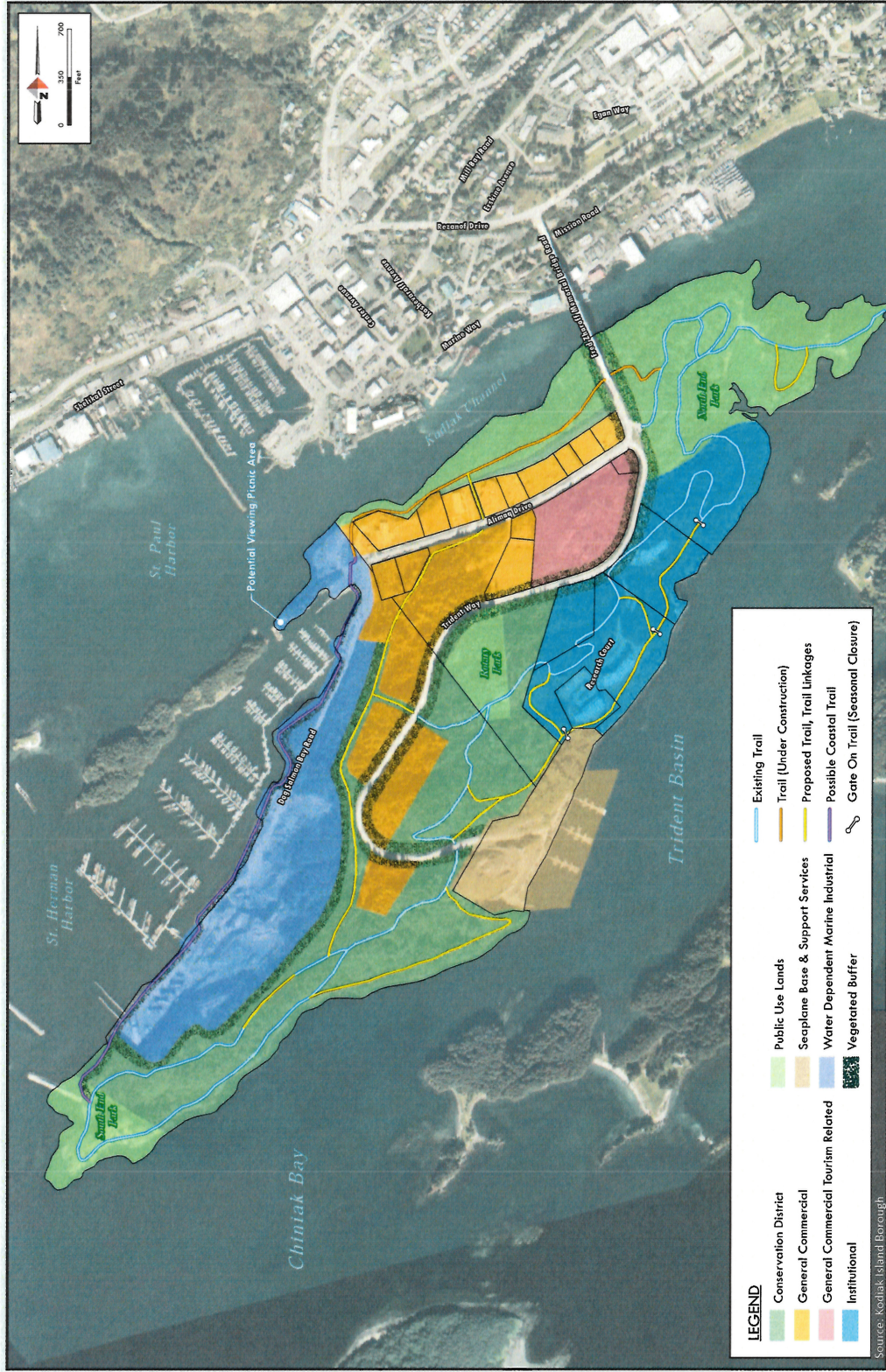


FIGURE 9: Concept B – Moderate Development

## Public Comments - Moderate Development

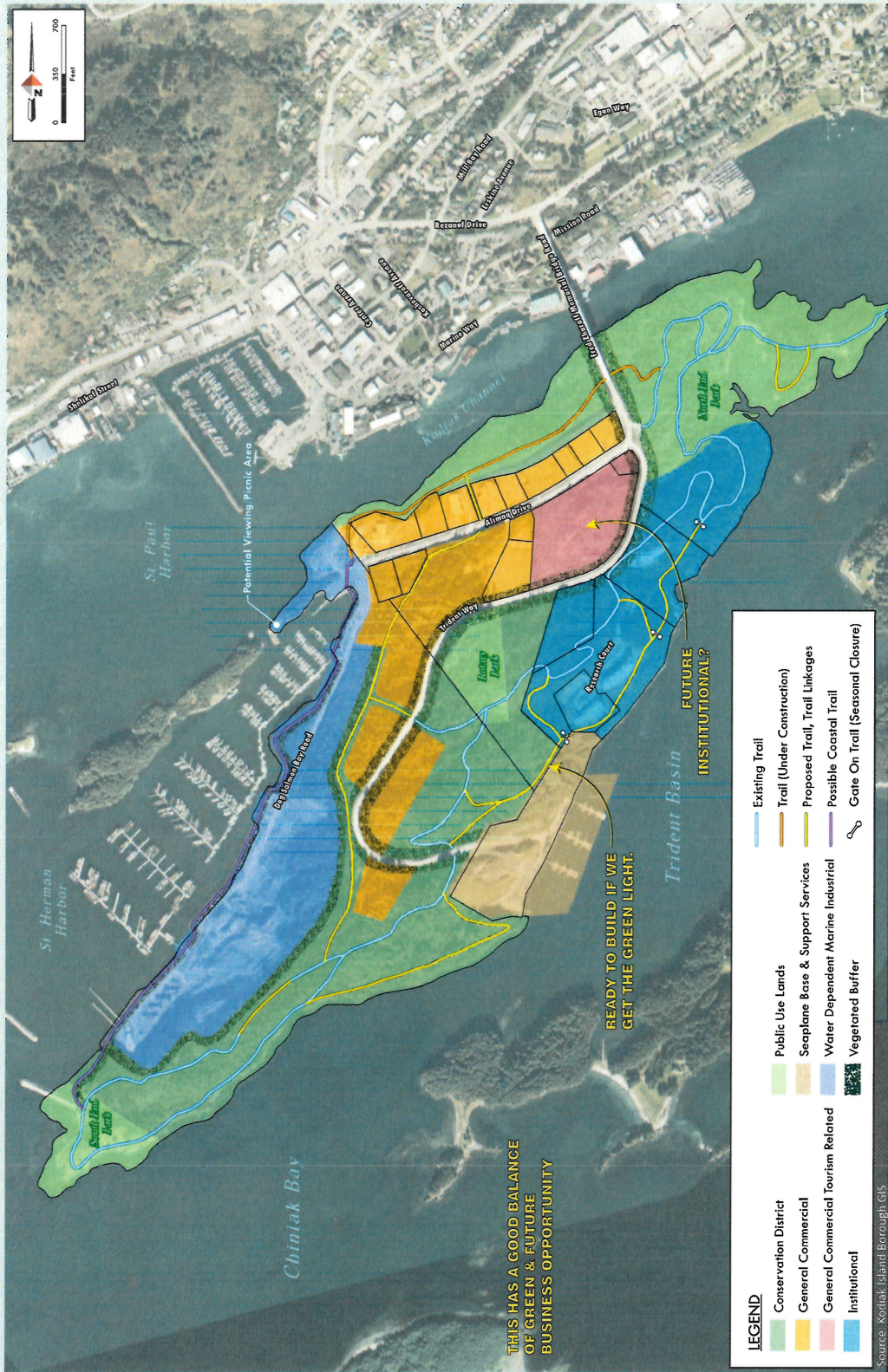


Figure 12: Concept B - Public Comments

## Concept C Maximum Development

This concept reflects public feedback to not expand the industrial area the original conditional use permit and recent amended boundary. The concept also reflects concerns heard that there are limited industrial lands elsewhere and that this may be the opportunity to secure additional water dependent marine and related industrial lands needed to support the small boat harbor into the future as well as providing tourism-related opportunities. This concept extends the industrial area supporting the harbor to the north and east (which would require approval of a conditional use permit), and adds additional general commercial along Trident Way, as well as provides general commercial (tourism related) adjacent to the float plane base and the institutional lands which could be developed to support either use. This concept also extends the institutional lands to the east.

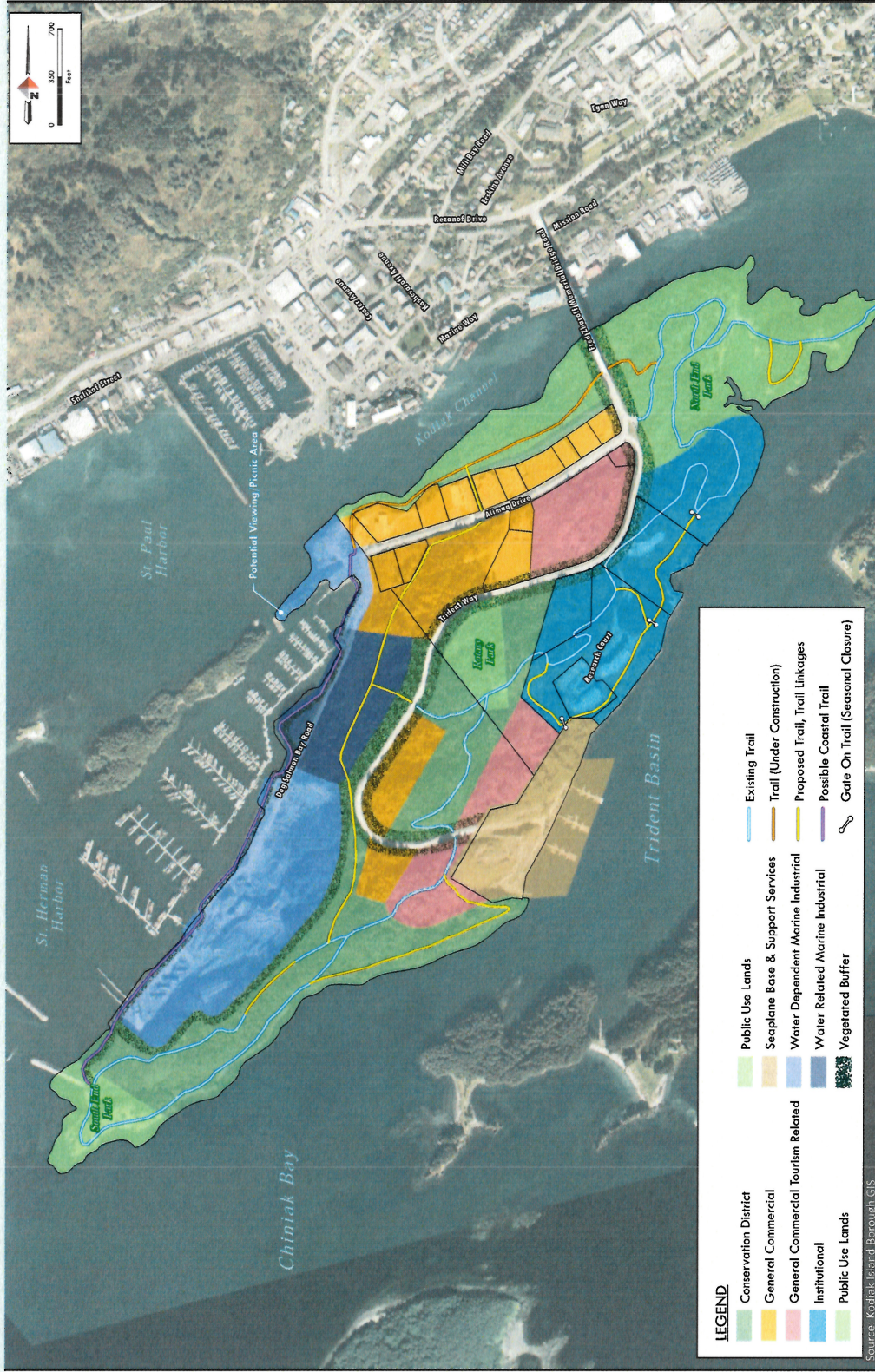


FIGURE 10: Concept C – Maximum Development

Source: Kodiak Island Borough GIS





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**MEMORANDUM**

To: Deborah Marlar  
Kodiak City Clerk



From: Brooks Chandler

Date: February 21, 2019

Re: Records Management Ordinance Public Policy Issues for City Council

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This memorandum identifies the policy choices reflected in the draft records management ordinance. These choices require the council to balance the right of the public to access information about the functioning of the City against rights of privacy contained in the Alaska Constitution and state statutes. These are identified on a section by section basis.

**2.36.060 Access to city records**

(4) deliberative process exemption. It is theoretically possible for the city council to decide as a matter of local policy that the City will waive this privilege.

(15) fire department investigations- this is not specifically addressed by state law except to the extent such an investigation has law enforcement implications. So it is a policy choice for the city council whether to include this exception.

(e) Law Enforcement records-

9) video recordings - the draft ordinance proposes a 30 day waiting period prior to release of video recordings not otherwise exempt from disclosure. The 30 days starts on the date of the video recording. This is not mandated by state law and is a policy decision for the city council. It recognizes the potential the recording could be relevant to an internal administrative investigation while avoiding using this as an excuse to unduly delay access to the video recording to the public.

(g) Personnel Records

(5) - no change has been made to this language, however, whether applications of employees for a lower city position who are subsequently promoted to the city manager or police chief position should be considered a public record is a current issue. This is a policy decision for the city council.

(h) Accident Reports - To the extent this section pertains to information in accident reports other than “personal information” and pertains to non-motor vehicle accidents the provisions are not specifically mentioned in state law but are a policy decision for the city council requiring council to balance individual privacy against the public’s interest in access to city documents.

**2.36.080 Electronic Services** - this is an entirely new section specifying the city is deciding not to provide databases or to assemble information from multiple sources within an existing database. This is a policy choice allowed by AS 40.25.115. This dovetails with proposed KCC 2.36.060 (k) (city will not create a record). The language reflects current policy.

**Sections 3, 4, 5 and 6** – these sections allow the city to make information regarding delinquent water, sewer, airport and harbor bills public. This is a policy choice.

CITY OF KODIAK  
ORDINANCE NUMBER XXXX

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK REPEALING  
AND RENACTING CHAPTER 2.36 OF THE KODIAK CITY CODE PERTAINING TO  
MANAGEMENT OF RECORDS AND AMENDING CHAPTERS 13.04 AND 13.16

WHEREAS, Chapter 2.36 of the Kodiak City Code governs requests for public records maintained by the City of Kodiak; and

WHEREAS, Chapter 2.36 was last updated in 2013; and

WHEREAS, available technology has significantly increased the number of records maintained by the City and the form in which such records are maintained since 2013 and;

WHEREAS, the number of requests for copies of public records submitted to the City Clerk's office has tripled since 2013; and;

WHEREAS, responding to requests for public records frequently requires balancing the individual right to privacy reflected in Article I, Section 22 of the Alaska Constitution with the state policy promoting access to public records reflected in Chapter 40.25 of the Alaska Statutes and;

WHEREAS, it is in the public interest to specify in greater detail the circumstances and procedures to be applied in both managing and providing access to public records maintained by the City of Kodiak

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

**Section 1:** Section 2 of this ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

**Section 2:** Chapter 2.36 of the Kodiak City Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 2.36  
MANAGEMENT OF RECORDS

Sections

2.36.010 \_ Definition of city records

~~(a) City~~ 2.36.020 Ownership of city records ~~include~~

2.36.030 City record management roles and responsibilities

2.36.040 Disposition of city records

2.36.050 Annual records management report to council

[2.36.060 Access to public records](#)

[2.36.070 Administration of access to public records](#)

[2.36.080 Electronic Services](#)

### **2.36.010 Definition of city records**

(a) “City records” means any document, paper, book, letter, drawing, map, plat, ~~photo, photographic file, motion picture film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card~~photograph, video recording, electronic record, or other ~~document of any other material~~item, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved ~~or appropriate for preservation~~ by the city, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city or because of the informational value in them.

(b) City records do not include, and this chapter does not apply to, individual personal information contained in a city record or proprietary, trademark or copyrighted material received by the city from third parties or developed for the city by third parties including software programs, library and museum material developed or acquired and preserved solely for reference, historical, or exhibition purposes, ~~Kodiak Public Library Association materials, those items identified as reference materials~~ maintained by ~~the city clerk, stocks of publications, and processed documents~~any non-profit association, reference documents, or transitory documents. In this section:

(1) “Reference document” means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes, without limitation, notes, calculations, and working papers other than drafts required to be retained according to the records retention schedule.

(2) “Transitory document” means:

- (i) a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests; ~~and~~
- (ii) ~~(c) Elected officials’ correspondence~~ all documents not ~~received at City Hall is excluded~~ required to be retained for any period of time according to the record retention schedule.

(c) “Electronic records” means records that are created or stored in an electronic or magnetic storage medium, and that are retrieved or read by a computer or other electronic device.

(d) “Personal Information” means:

(i) an individual’s passport number, driver’s license number, state identification number, bank account number, credit card number, debit card number, other payment card number,

financial account information, or information from ~~the provisions of this chapter.~~ a financial application; or

(ii) a combination of an individual's

(a) name; and

(b) medical information, insurance policy number, employment information, or employment history

### **2.36.020 Ownership of city records**

~~All city records defined in KCC 2.36.010(a) are the sole property of the city.~~

No city official or employee has, by virtue of his or her position, any personal or property right ~~to~~ in city records.

### **2.36.030 City record management roles and responsibilities**

(a) Accountability. The overall accountability for the city's records management program lies with the city clerk.

(b) Responsibilities.

(1) City council.

(i) Approve all city records retention schedules and any amendments thereto.

(ii) Endorse the records management framework and identify any suggested changes thereto. The records management framework includes guiding principles and directives, policies and procedures, standards and best practices, core competencies, the training program, and the strategic plan.

(2) City manager. Ensure that all departments comply with the records retention schedule and records management framework.

(3) City clerk.

(i) Approve all changes to the records management framework.

(ii) Approve all records disposition requests based on records retention schedules approved by the city council.

(iii) Appraise and identify records of enduring value, i.e., historical records, during the preparation and submission of records retention schedules.

(iv) Assess compliance of city departments with the records management framework and report the status of the records management program to the city council annually.

(v) Identify the city's vital records and develop and implement related policies and procedures.

(vi) Plan and allocate central storage facilities for the city's inactive records (i.e., city records center).

(vii) Develop and implement policies, standards, and procedures for the transfer of archival/historical records during the final records disposition process from individual departments to the city clerk's custody.

(4) Department heads.

(i) Implement ~~and ensure compliance with the~~ records management ~~program~~ within the department according to the city record retention schedule, and standards, policies, and best practices as outlined in the records management framework, including creating departmental electronic records in new software systems only as approved by the records retention schedule.

(ii) Designate a departmental records management coordinator (s) who shall represent the department on the city's matters related to records management ~~advisory committee.~~

(5) City employees ~~and contracted agents. Create, capture,~~ Retain and organize city records of transactions undertaken in business processes according to the city's ~~best practices and procedures.~~ records management program.

## **2.36.040 Disposition of city records**

(a) Record retention program.

(1) The city clerk shall prepare a record retention program and record retention schedule specifying the records to be:

(i) Retained permanently;

(ii) Destroyed;

(iii) Microfilmed or electronically scanned and imaged according to industry standards ~~to ensure their legal admissibility.~~

(2) The records retention schedule shall be adopted by resolution.

(b) Disposal.

(1) The city clerk shall approve all records disposition requests based on the current records retention schedule approved by the city council.

(2) The city clerk or the city clerk's designee shall ~~witness and~~ certify the disposal of city records by means determined to be appropriate by the city clerk.

(3) Upon disposal of city records, the city clerk shall file in the city clerk's office a descriptive list of the records disposed of and a record of the disposal itself. The city clerk shall transmit copies of the list and record of disposal to the city council, and the filing in the office of the city clerk of the list and record of disposal shall constitute a filing and preservation by the council of these documents.

(4) The city clerk shall include in the annual records management report to the city council a description of all record disposal activities taken during the year.

~~2.36.050 Annual records management report to council~~

~~The city clerk shall report the status of the management of city records to the city council annually.~~

**2.36.060 Access to publiccity records**

~~(a) Definition of public records. Public records include books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by the city, or by a private contractor for the city, and that are preserved for their informational value or as evidence of the organization or operation of the city; public records do not include proprietary software programs, reference documents, or transitory documents. In this section:~~

~~(1) "Reference document" means a writing or image that is acquired or created solely for the purpose of creating or incorporation into a record, and includes, without limitation, notes, calculations, and working papers.~~

~~(2) "Transitory document" means a writing or image that after its immediate use has no value as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the city, and includes without limitation transmittals, suspense copies when a reply has been received, routine requests for information, and routine appointment and scheduling requests.~~

~~(b) Open to inspection. All publiccity records shall be open to public inspection under reasonable rules during regular office hours, except as provided in subsections (~~e~~b) through (~~h~~l) of this section.~~

(~~eb~~) Confidential or privileged public records. Public records containing information which is accorded confidential or privileged status under this code, [AS 40.25.120\(a\)](#) or under state or federal law ~~and which has been provided on a condition that the information retain its~~. Confidential or privileged or confidential nature, are open to public inspection only in a manner that does records include but are not disclose such confidential or privileged information limited to:

(1) records or portions of records which if released would constitute an unwarranted invasion of an individual right to privacy set forth in Article 1 Section 22 of the Alaska Constitution.

(2) records or portions of records which, if released would violate rights of crime victims set forth in Article 1, Section 24 of the Alaska Constitution.

(3) records or portions of records which contain protected health information as defined by the Health Insurance Portability and Accountability Act (“HIPAA”) privacy rule including records related to the provision of emergency medical services and patient transportation unless the party making the request for the records has provided the city with written authorization from the patient or a qualified protective order that satisfies the requirements of 45 CFR 164.512( e)(1)(v).

(4) records or portions of records which qualify for the deliberative process exemption from disclosure established by the Alaska Supreme Court including, but not limited to, drafts of decisional documents.

(5) records or portions of records which are an attorney-client communication of the city attorney unless the attorney client privileged is waived by the city manager, city clerk or the city council.

(6) records or portions of records which are the work product of the city attorney unless the attorney work product privilege is waived by the city manager, city clerk or the city council.

(7) records or portions of records which contain the residence or business addresses or telephone numbers of a victim of a crime or a witness to a crime or which if released would violate the rights of a victim of a crime or a witness to a crime set forth in AS 12.61.110.

(8) images made confidential by AS 18.65.903(b).

(9) records or portions of records that identify a minor release of which would violate the privacy rights of the minor set forth in AS 47.10.090, 47.10.093, 47.10.340 and 47.10.396.

(10) personal information contained in driver records required to be confidential as set forth in AS 28.10.505.



(11) records or portions of recorders pertaining to juveniles unless disclosure is authorized by law including AS 47.10.093( c).

(12) records of vital statistics or adoption proceedings

(13) medical records

(14) public health records related to individual medical records

(15) records of fire department investigations while the investigation is ongoing.

(d) Inspection of **public**city records involved in litigation.

(1) **Public**City records sought by a party involved in civil or criminal litigation, including administrative adjudications, with the city, the State of Alaska or a public agency of the city or State of Alaska shall be disclosed in accordance with the rules of procedure applicable in a court or administrative adjudication. Rules of procedure applicable to civil litigation in court include Alaska Rules of Civil Procedure 26 and 34. Rules of procedure applicable to criminal court proceedings include Alaska Rules of Criminal Procedure 16 and 17.

(2) In this subsection, “involved in litigation” means a party to litigation or a party representing a party to litigation, including a person who is obtaining records for the party.

(e) Law enforcement records. Public records including video and audio recordings compiled or maintained for law enforcement purposes are open to inspection and disclosure, except that such disclosure shall not be made if disclosure of the records:

(+)

(1) Could reasonably be expected to interfere with enforcement proceedings including records relating to ongoing, open investigations unless required to be released to a crime victim by Article I, Section 22 of the Alaska Constitution;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness; In evaluating whether release would constitute an unwarranted invasion of personal privacy the city clerk in consultation with the police chief as necessary may consider:

i) whether the information contained in the record was secured pursuant to a search warrant or arrest warrant.

ii) the rights of victims and witnesses set forth in AS 12.61.110 including the right to keep residence or business addresses or telephone numbers of a victim of a crime or a witness to a crime private and the right of victims and witnesses of certain crimes to keep their identity private

iii) the rights of crime victims set forth in Article I, Section 22 of the Alaska Constitution including the right to be treated with dignity, respect and fairness during all phases of the criminal and juvenile justice process

iv) whether the person identified as a suspect was charged or convicted of a violation

v) whether the person requesting the record is a crime victim

vi) whether the suspect, defendant, victim or witness is a minor

vii) whether the information contained in the record was speculative, unsubstantiated, defamatory or irrelevant to a law enforcement investigation

viii) whether the law enforcement agency elicited the information in exchange for a promise of confidentiality

ix) if charges were dismissed or not brought; (i) the length of time that has transpired since conclusion of the investigation; (ii) the severity of the allegations; (iii) the probable truthfulness of the allegations; (iv) whether the suspect is or was a public figure; and (v) whether the allegations involved a potential breach of the public trust

x) the right of citizens to question, investigate and monitor a public law enforcement agency

(4) Could reasonably be expected to disclose the identity of a confidential source;

(5) Would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(6) Would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law;

(7) Could reasonably be expected to endanger the life or physical safety of an individual;

(8) Are criminal history records obtained from state or federal criminal justice databases such as the Alaska Public Safety Information Network unless disclosure is specifically authorized by law including AS 12.62.160;

(9) Are video recordings that do not qualify for any exemptions from disclosure in this section and less than thirty (30) days have passed since the date the original video recording was first created. In determining whether release of a law enforcement record that is a video recording would constitute an unwarranted invasion of privacy the city shall presume that persons depicted in the video recording are identifiable to one or more members of the public in addition to family members.

(f) Identity of complainants.

(1) The name, address, telephone number, or other identifying information about complainants in actions to enforce building, environmental, or other city ordinances or regulations and state statutes or regulations are not open to public inspection.

(2) This subsection does not prohibit disclosure of the contents of the complaint, so long as the complainant is not identifiable.

(3) This subsection does not prohibit the disclosure of the name of the complainant when such disclosure becomes necessary to the fair and just disposition of the charge or complaint in enforcement proceedings.

(g) Personnel records.

(1) Personnel records, including employment applications and examination materials, [and records pertaining to employment disciplinary investigations and actions](#) are confidential and are not open to public inspection except as provided in this section ~~or by court order.~~

(2) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(i) The names and position titles of all city employees;

(ii) The position held by a city employee;

(iii) Prior positions held by a city employee;

(iv) Whether a city employee is in the classified or exempt service;

(v) The date of appointment and separation of a city employee;

(vi) The compensation authorized for a city employee.

(3) A city employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(4) An applicant for city employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(5) Notwithstanding subsection (g)(1) of this section, employment applications for the positions of city manager and police chief shall be open to public inspection.

(h) ~~Harbor and utility customer~~ Accident Records. Accident reports or portions thereof are subject to disclosure after completion of any law enforcement investigation or proceeding to persons involved in the accident or whose property was involved in the accident or their authorized agent (such as their insurer or attorney) unless excepted from disclosure under subsection (d)( litigation with city or state); or(b)(iii) (medical. ~~Information in records maintained for city harbor facilities and~~ ) or (b)(vii)(crime victim or witness). Accident reports are otherwise considered within the scope of an individual's constitutional right to privacy.

(i) Individual Privacy Rights. The city ~~utilities regarding~~ council finds that individuals regardless of age who are outside on or adjacent to a ~~specific identifiable customer,~~ public space including without limitation the customer's address, telephone number, account balance, and payment history, a city facility or a public street do not have a reasonable expectation of privacy. Video images of persons outside on or adjacent to a public space including a city facility or a public street are ordinarily subject to disclosure in response to a public records request unless excepted from disclosure; 1) by reason of the rights of crime victims to be treated with dignity, respect and fairness set forth in Article 1, Section 24 of the Alaska Constitution or; 2) under another subsection of this section including subsection (e)( law enforcement records).

(j) Redactions. When some of the information in a public record is not ~~open to public inspection,~~ subject to disclosure such information shall be redacted after a request for the document has been received. The person requesting the record shall be provided a copy of to the redacted record.

(k) Manipulation of Information or Creation of Record. Nothing in this section obligates the city to create a city record by assembling electronic information. Any request for a city record which requires a record to be created by assembling electronic information or extracting information from city records may be denied.

### **2.36.070 Administration of access to public records**

(a) Requests for access to public records may be made directly to the concerned department(s) or to the city clerk's office, ~~on city approved records request forms.~~ Requests for records may be approved by either the city clerk or the designated records manager of the concerned department. The city clerk is the city official designated to review any denial of access to public records. The city clerk or the clerk's designee shall, consistent with the orderly conduct of City business, make a good faith and reasonable effort to locate records that are adequately identified in the request. The City will provide a reasonably prompt response to each request within the ten (10) business day time limit set for state agencies by 2 AAC 96.325(a).

~~(b)~~

(b) If a request is denied or the requested records cannot be identified or promptly located with good faith and reasonable effort, a brief written explanation will be given.

(c) The council by resolution from time to time shall prescribe the standard unit charge for copies of public records.

~~(e)~~

(d) If the production of records for one requester in a calendar month exceeds five person-hours, the city shall require the requester to pay all the personnel costs required during the month to complete the search and copying tasks.

(e) The fee to search for and duplicate a public record shall consist of:

(1) Actual costs for copying the record in the requested format, including costs for paper, tapes, microfiche, disks, or other media;

(2) Costs incurred by the city to duplicate the record, including computer processing time;

~~(3)~~

(3) Salary and benefits costs for the city employees performing the work, including computer programming work required to extract or copy the records, as provided in AS 40.25.110.

(f) If the time required for production of public records for one requester in a calendar month is less than five hours no fee shall be charged.

(g) If the person is unable to pay a required fee, and signs an affidavit to the effect that he or she is unable to do so, the City Manager may waive the fee.

### 2.36.080 Electronic Services

(a) The City has elected not to provide electronic services and products involving public records to the public except for; (1) providing copies of requested records by electronic mail; and (2) copying requested public records onto a CD, DVD or flash drive device.

(b) The public may access records the city links to or posts on the city internet site without submitting a public records request and without payment of any portion of the costs incurred by the city in making the records available on or through the city internet site.

Section 3: Amendment of Section 13.04.030. Section 13.04.030 of the Kodiak Code of Ordinances is hereby amended by adoption of new subsections ( c) and (d) to read as follows:

### 13.04.030 Water accounts—delinquency—penalty-confidentiality of customer records

(a) All accounts for water will be kept in the name of the owner, who will be liable for payment of all city of Kodiak water utility accounts, and must be paid on or before the

fifteenth day of each current month. All accounts not paid by the fifteenth day of each month are defined as delinquent accounts and subject to the penalty for delinquency.

(b) All accounts for water will be kept in the name of the owner, and must be paid on or before the fifteenth day of each current month. Accounts that have not been paid by the twentieth day of each month will be placed on the delinquent list and will be subject to being disconnected. All disconnected water service shall be charged in accordance with the required fee(s) established by resolution or motion of the city council. "Disconnect" shall mean a physical or interrupted service disconnection or an administrative disconnect, which is a finance department shut-off notice transmitted to the public works department for interruption of service to delinquent accounts.

(c) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (d) of this section, no officer, employee, or agent of the city may divulge any information disclosed in customer account records kept under this chapter. The prohibition of this section shall not prohibit the preparation and use of statistical summaries of customer data that do not disclose customer identities.

(d) Notwithstanding the foregoing subsection (c) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an individual or business is a customer; whether or not a customer is current in paying for water, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published

**Section 4:** Amendment of Section 13.16.150. Section 13.16.150 of the Kodiak Code of Ordinances is hereby amended by adoption of new subsections (b) and (c) to read as follows:

**13.16.150 Billing and payment -confidentiality of records**

(a) Sewer service accounts shall be maintained in the name of the property owner and each account shall be billed monthly after the service has been rendered. Accounts shall be paid on or before the fifteenth day of the month during which the charges are billed. Accounts not paid by the close of business on the fifteenth day are delinquent.

(b) Except in connection with official investigations or proceedings of the city, whether judicial or administrative, involving delinquent accounts, or as otherwise authorized by subsection (c) of this section, no officer, employee, or agent of the city may divulge any information disclosed in customer account records kept under this chapter. The

prohibition of this section shall not prohibit the preparation and use of statistical summaries of customer data that do not disclose customer identities.

(c) Notwithstanding the foregoing subsection (b) of this section, the following information, but not personal information, shall be made available to the public upon request: whether or not an individual or business is a customer; whether or not a customer is current in paying for water, the amount delinquent, and how long an account has been delinquent. The city manager or his or her designee may from time to time publish the names of customers on the delinquent list and the amount of the delinquency; provided, that the name of a customer who has signed a confession of judgment for delinquent charges, penalties, and interest, and a stipulation to postpone execution against such judgment, and who is current in the payments to be made and all other obligations arising as a result of such stipulation as of the date on which the names are submitted to the publisher, will not be published

**Section 5: Effective Date.** This ordinance shall be effective one month after final passage and publication.

\_\_\_\_\_

\_\_\_\_\_  
CITY OF KODIAK

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

First Reading:  
Second Reading:  
Effective Date:

**BOYD, CHANDLER, FALCONER & MUNSON, LLP**

Attorneys At Law  
Suite 302  
911 West Eighth Avenue  
Anchorage, Alaska 99501  
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bcf@bcfaklaw.com

**MEMORANDUM**

**TO:** Mike Tvenge, City Manager  
Kodiak City Council



**FROM:** Brooks Chandler  
City Attorney

**DATE:** February 21, 2019

**RE:** Taxing Interstate Sales: *South Dakota v. Wayfair*

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The Supreme Court of the United States disavowed the physical presence rule that has governed collection of sales tax on interstate transactions since 1967 by a vote of 5-4<sup>1</sup>. In so doing, *South Dakota v. Wayfair* cleared a previously insurmountable barrier to compelling out-of-state sellers to collect sales taxes. The Court essentially replaced the physical presence rule - *one part of the undue burden on interstate commerce principle* - with the substantial nexus rule. But the fundamental question is, was and remains the same: Does the sales tax regime discriminate against or place an undue burden on interstate commerce?

Based on a careful review of the Court's decision we have reached the following conclusions:

1. The current version of the City of Kodiak sales tax ordinance requires companies who sell goods over the internet for delivery within Kodiak to collect the Kodiak sales tax.

<sup>1</sup> Retiring Justice Kennedy wrote the opinion. Should his replacement disagree with his legal reasoning the *Wayfair* decision may be very narrowly applied by the Supreme Court in the future.



2. However, because of possible legal challenges we recommend the City adopt an ordinance amendment changing the definition of when a sale is “made within the city” to specifically reference internet sales.
3. Even if the City changes the sales tax ordinance so as to require internet sellers to collect city sales tax it is possible sellers will successfully resist complying unless cities across Alaska can agree on a set of uniform definitions, exemptions and sales tax collection procedures so as to reduce the burden of tax collection for internet sellers or unless a uniform sales tax process is adopted by state legislation.

The reasons for these conclusions are discussed in greater detail below. We do not have any specific recommendations for the City Council. Whether to tax internet sales is a policy question. We are actively reaching out to other Alaska municipal attorneys to discuss the possibility for adoption of a uniform set of sales tax definitions, exemptions and procedures for possible adoption by agreement among communities who do wish to tax internet sales.

#### I. *Wayfair* Scope and Status.

*Wayfair* is as important for what it does not say as for what it does. Disavowing the physical presence rule is a radical change, but the decision is narrow. After determining that the physical presence rule is outdated and that South Dakota’s sales tax act (“Act”) satisfied the alternative “substantial nexus” requirement as applied to these sellers (large e-commerce companies), the case was remanded back to South Dakota to determine whether, without applying the now-invalidated physical presence rule, the Act still places an unconstitutional undue burden on interstate commerce.

Although the Court’s holding is limited to consigning the physical presence rule to the trash heap, several non-controlling remarks intended to guide the South Dakota Supreme Court implicitly guide all states and municipalities that would have out-of-state sellers collect sales taxes on the same basis as local sellers.

*Wayfair* should be seen as the starting line on a path requiring internet sellers to collect municipal sales taxes. Between here and the finish line are numerous hurdles including further constitutional challenges, the possibility of Congressional intervention, the probable necessity of

coordinated action by municipalities, if not state legislation, to create sales tax uniformity, and, easiest to clear, appropriate local ordinance amendments.

## **I. *Wayfair*: A Vivisection**

The abandoned physical presence requirement was intended as a bright-line *rule* to determine if a tax violated the constitutional *principle* that a state cannot unduly burden interstate commerce. The physical presence rule is dead, but the undue burden principle, and litigation of this case under it, live on. The Court remanded the case to the South Dakota courts to determine whether the Act violates established principles of interstate commerce jurisprudence – whether the local tax discriminates against or unduly burdens interstate commerce.

Although the Court only specifically determined that the Act as applied to these sellers meets the physical presence rule replacement - the substantial nexus requirement - it also suggested reasons why the South Dakota Act would *not* constitute an undue burden on interstate commerce. The Court emphasized the streamlined uniformity of South Dakota sales tax. Alaska's individualized municipal tax ordinances and tax reporting requirements differ from one city to another. The result is the opposite of streamlined uniformity. This creates doubt about whether requiring internet sellers to collect sales tax on purchases made in the more than fifty Alaska communities with a sales tax will be considered an undue burden on interstate commerce.

### **A. Physical Presence: The Antiquated 20<sup>th</sup> Century**

The physical presence rule is familiar to municipal tax officials and attorneys as the constitutional limitation on imposing sales tax across state borders. Although the history and application of the rule to certain transactions can be nuanced, the rule itself is simple. Under the Dormant Commerce Clause of the US Constitution, a state or its political subdivisions cannot discriminate against or unduly burden interstate commerce. From 1967 until *Wayfair*, that meant that a municipality could not compel an out-of-state seller to collect sales taxes on sales to local buyers *unless* the seller had some in-state physical presence. This rule was first adopted in 1967 in *National Bella Hess, Inc. v. Department of Revenue of Ill.*<sup>2</sup> and re-affirmed by the Court in

<sup>2</sup> 386 U. S. 753 (1967)

1992.<sup>3</sup> The essential logic of the rule was that it was too complex and burdensome for out-of-state sellers to comply with the sales taxes imposed by every state and municipality and that requiring a physical presence provided an (allegedly) easy to apply, bright-line rule.

The physical presence rule held on for fifty years, though what constituted an acceptable physical presence broadened over time. (Virtually any physical presence, even an agent of the company, would do.) Most Alaska municipalities codified the physical presence rule in their sale tax ordinances. But many go further than required by the physical presence rule and ordain that the seller has to have a physical presence *in the municipality* rather than anywhere in the state, although the latter satisfied constitutional requirements.

In any case, *Wayfair* does not require any changes to existing ordinances in order to meet the new substantial nexus rule. The policy question *Wayfair* raises is whether an Alaskan community wishes to include internet sales in the universe of taxable sales. If the answer is yes an ordinance change is the first step.

### **B. Substantial Nexus: A *Complete Auto*-mated World**

Although the principle has always been and remains whether the tax places an undue burden on interstate commerce, the way to determine if there's such a burden has changed with changing technology. Instead of asking if a seller has a physical presence in the state, the Court asked if the seller has a "substantial nexus" to it. The substantial nexus test is broader, but is anything but new. It lurked as a confusing and confused alternative to the physical presence rule for the 15 years between the Court's decision in *Complete Auto* in 1977 and *Quill* in 1992.<sup>4</sup>

With *Wayfair*, the Court suggests that the four-pronged test announced in *Complete Auto* guides, but does not necessarily govern, sales tax cases. Under that test, a seller can be compelled to collect taxes if (1) it has a substantial nexus to the taxing state, and the tax is (2) fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the state. But the Court also left open the possibility that sales tax regimes could be attacked as unduly burdening interstate commerce even if all four prongs are met.

Of these four factors, the Court only addressed whether the South Dakota Act, when applied to these sellers, met the substantial nexus prong. A "substantial nexus is established

<sup>3</sup> *Quill Corp. v. North Dakota*, 504 US 298 (1992).

<sup>4</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U. S. 274 (1977); *Quill Corp. v. North Dakota*, 504 US 298 (1992).

when the taxpayer [or collector] ‘avails itself of the substantial privilege of carrying on business in that jurisdiction.’”<sup>5</sup>

Though broader than the physical presence rule, “substantial nexus” is not as clear-cut. The South Dakota Act applied only to sellers that deliver to South Dakota more than \$100,000 or 200 individual sales annually. The Court found that “nexus is clearly sufficient” based on the monetary limitation together with the sellers-litigants’ web presence. \$100,000 in annual sales to the state and a website is *clearly* sufficient, but the Court did not elaborate on what would be *minimally* sufficient to establish a substantial nexus to the taxing state.

The Supreme Court held that these sellers had a substantial nexus to South Dakota as a result of their annual sales and websites. On remand, South Dakota courts must determine if the South Dakota Act, as applied to these collectors, otherwise places an undue burden on interstate commerce. The Court suggested that the Act likely does not unduly burden interstate commerce, in no small part because South Dakota is party to the Streamlined Sales and Use Tax Agreement.

### **C. Undoing Burdens: Streamlined Sales and Use Tax Agreement**

Because of the way the case was litigated, the Court did not definitively say that the Act is constitutional. But the Court approvingly mentioned three features of South Dakota law and the Act “designed to prevent discrimination against or undue burdens upon interstate commerce.” First, the Act has the \$100,000 or 200 transaction safe harbor, identified above, that exempts small sellers who may be unable to economically comply with administrative costs of complying with South Dakota sales tax law. Second, the Act specifically disclaimed any retroactive liability. Finally, the Court noted that South Dakota is party to the Streamlined Sales and Use Tax Agreement (“SSUTA”). As the minimum requirements for a substantial nexus “safe harbor” are unknown and no retroactivity is self-explanatory, only SSUTA remains to be discussed.

The SSUTA is the centerpiece of a multi-state project to develop uniform legislation to enable remote retailers to efficiently collect foreign-state sales taxes. The SSUTA, which 23 states have joined, primarily relied upon voluntary compliance by sellers. But the SSUTA was drafted with the intent that a mandatory collection regime would not constitute an undue burden

<sup>5</sup> *Wayfair*, p. 22.

on interstate commerce should Congress or the Court eliminate the physical presence rule. The SSUTA is, intentionally, the answer to questions raised but left unanswered by *Wayfair*.

The SSUTA focuses on four major requirements for simplification of state and municipal sales tax codes aimed at creating consistency and uniformity: 1) state level administration, 2) uniform tax base, 3) simplified tax rates, and 4) uniform sales sourcing rules. The first three requirements primarily relate to standardizing sales taxes *within* the state. The fourth requirement ensures that all participating locations, states and municipalities, have a shared understanding of whose tax applies

State-level administration means that sales taxes are remitted to a single state agency. Sellers must collect sales taxes for each municipality at the rate set by the municipality, but a single state-wide agency serves as a single point of contact for the sellers and municipalities. The uniform tax base requirement means that the same goods and services would be taxed or exempt the same way *within* each state. In other words, exemptions are state-level, not municipal. With an exception for food and drugs, simplified sales tax rates means that each state and municipality has one sales tax rate. For example, a municipality cannot tax most goods and services at 5% but tobacco products at 7%. This standard does *not* mean that all municipalities within the state must have the same rate, only that each has one rate: Akutan could have a 4% rate, Adak a 6% rate, and Unalaska a 3% rate. Finally, the uniform sourcing requirement is intended to create uniformity among definitions that determine which jurisdiction's - origin or destination - taxes apply. The purpose is to avoid situations where Akutan and Adak use different definitions resulting in both claiming to be the appropriate taxing jurisdiction. The Alaska Municipal League previously prepared an FAQ relating to the SSUTA and Alaska. A copy is included with this memo.

**D. Alaska Municipalities have significant sales tax autonomy, but little uniformity.**

Alaska is not an SSUTA state. *Wayfair* does not say that a state *must* be an SSUTA state in order to tax internet sales. The decision's focus on the SSUTA demonstrates why, without further state or collective action, requiring out-of-state sellers to collect and remit Alaska municipal sales taxes has the potential to be considered an undue burden on interstate commerce. Even if all Alaska municipalities adopted a \$100,000/ 200 annual Alaska transactions safe harbor, out-of-state sellers would still need to contend with dozens of different Alaska tax regimes, each with its own exemptions, definitions, forms, and reporting requirements.

This was not a problem for South Dakota, but Justice Roberts, dissenting, noted the burdens that non-uniform sales taxes would place on sellers: “New Jersey knitters pay sales tax on yarn purchased for art projects, but not on yarn earmarked for sweaters. Texas taxes sales of plain deodorant at 6.25 percent but imposes no tax on deodorant with antiperspirant. Illinois categorizes Twix and Snickers bars—chocolate and-caramel confections usually displayed side-by-side in the candy aisle—as food and candy, respectively (Twix have flour; Snickers don’t), and taxes them differently.”<sup>6</sup> Alaska municipalities may not distinguish between Twix and Snickers, but the burdens of complying with dozens of varying taxing regimes in Alaska alone creates a similar legal issue.

Given *Wayfair*’s emphasis on the how the SSUTA reduces the burdens on out-of-state sellers but simplifying compliance and ensuring uniformity, it appears that the lack of uniformity among Alaska’s many taxing jurisdictions would result in municipal efforts to mandate tax collection by out-of-state sellers being held to as unconstitutional burdens on interstate commerce.

## **II. Conclusion**

*Wayfair* removes a previously insurmountable barrier to requiring out-of-state sellers to collect Alaska municipal sales taxes, but other barriers remain. First, the city must decide whether to tax internet sales. Given the Court’s emphasis on the importance of uniformity in sales tax regimes, it is likely that the cost of compelling out-of-state sellers to collect sales taxes is some loss of autonomy. The Constitution does not require SSUTA membership, but it is unlikely to allow municipalities to each set numerous sales tax rates with each determining what goods and services are not taxed and each having its own reporting and audit requirements. So if a decision is made to tax internet sales additional action to coordinate with other cities in Alaska wishing to tax such sales is likely required,

<sup>6</sup> *Wayfair* (Roberts, CJ., dissenting) (citations omitted), p. 6.

## PRODUCTION AGREEMENT

The following agreement is entered into between Engel Entertainment, a television production company incorporated in New York, its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (collectively hereafter referred to as "Producer") and the City of Kodiak, Alaska, an Alaska municipal corporation (hereafter referred to as "the City") in order to accommodate Producer's desire to create programming depicting activities on City property. This Agreement is entered into for the express purpose of allowing Producer to film Alaska PD (working title) ("Program"). Producer agrees to use reasonable diligence to assure that all necessary photography, video recording, and audio recording to create the anticipated program will be completed by Sept 2019. No photography, video recording, or audio recording will be permissible after Sept 2019 unless Producer and the City enter into a new agreement.

(1) The City hereby grants to Producer permission to photograph, video record, and/or audio record at the City police department and any locations the officers respond to (locations) and use the photographs/recordings in connection with the Program as well as promotion of the Program.

(2) Producer agrees to use reasonable care to prevent damage to the property of the City and injury to employees and volunteers of the City in connection with Producer's photographing, video recording, and/or audio recording the activities of the City engaging in activities in connection with or related to this Agreement. Producer also agrees to use reasonable care to prevent damage to the property of persons or entities other than the City and injury to persons who are not City employees or volunteers in connection with Producer engaging in the conduct.

(3) Producer agrees to defend, hold harmless, and indemnify the City, its departments, divisions, agents, employees, and affiliates as well as all firefighting, emergency response, and law enforcement agencies, firefighting, emergency response, and law enforcement agency employees, volunteer organizations, individual volunteers, search and rescue organizations, individual search and rescuers, and all other persons acting at the request of, or in conjunction with, the City ("City Actors") for any and all claims or demands of any and all non-City actors or entities that arise out of Producer's photographing, video recording, and audio recording the activities of the City in connection with or related to this Agreement. The scope of this duty to defend, hold harmless, and indemnify includes, but is not limited to, pre-production, production, editing, marketing, and publication activities.

(4) Producer shall require that all release agreements it obtains in connection with photographing, video recording, and/or audio recording the activities of the City in connection with or related to this Agreement from non-City actors to protect the interests of Producer also specifically extend the same protection to the City, its departments, divisions, agents, employees, volunteers, and affiliates as well as all firefighting,

emergency response, and law enforcement agencies, fire department, emergency response, and law enforcement agency employees, volunteer organizations, individual volunteers, search and rescue organizations, individual search and rescuers, and all other persons acting at the request of, or in conjunction with, the City or any department of the City.

(5) Producer shall have the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City named as additional insurers on all insurance coverage it secures or has in effect that may provide coverage for Producer's activities in connection with photographing, video recording, and/or audio recording the activities of the City in connection with or related to this Agreement.

(6) The insurance coverage Producer secures or has in effect to provide coverage for Producer's activities in connection with photographing, video recording, and/or audio recording the activities of the City or any department or agency of the City in connection with or related to this Agreement shall not provide for subrogation or any other claim against the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City.

(7) Producer shall secure and maintain in full force and effect the following policies of insurance to provide coverage for activities in which it engages in connection with or related to this Agreement. Written evidence in the form of one or more Certificate(s) of Insurance shall be provided to the City before Producer engages in any activity in connection with or related to this Agreement. These coverage requirements for the stated types and limits are not to be construed as a representation that such insurance coverage is adequate or limits Producer's liability.

Commercial General Liability insurance with coverage of not less than \$5,000,000 per occurrence, which shall include, but not be limited to, premises and operations, independent contractors, products/completed operations, and contractual obligations - including the duty to defend, indemnify, and hold harmless obligation set forth above in paragraph 3 of this Agreement.

Motor Vehicle Liability insurance with personal injury coverage of not less than \$1,000,000 per person and \$5,000,000 per occurrence; property damage coverage of not less than \$100,000 per person and \$250,000 per occurrence; and uninsured/underinsured coverage of not less than \$1,000,000 per person and \$5,000,000 per occurrence. This insurance coverage shall include, but not be limited to, coverage for all vehicles Producer uses while engaging in activities in connection with or related to this Agreement.

Producer shall be solely responsible for workers compensation as required by law for all persons who act on its behalf in photographing, video recording, and/or audio recording the City employees or volunteers or associates engaging in activities in connection with or related to this Agreement.



This insurance coverage shall protect the City, its departments, divisions, agents, employees, volunteers, affiliates, and all other persons acting at the request of, or in conjunction with, the City against any and all claims or demands of any and all persons or entities that arise out of Producer's engaging in activities in connection with or related to this Agreement.

This insurance coverage shall be considered primary to any and all insurance coverage secured or maintained by the City, its departments, divisions, agents, employees, affiliates, and all other persons acting at the request of, or in conjunction with, the City through self-insurance or otherwise.

(8) The City grants Producer all rights to the photographs, video recordings, and audio recordings, in any and all media throughout the world, now known or hereafter devised, of the activities of the City it obtains pursuant to or in connection with this Agreement for use in connection with the Program. Producer may publish the Program locally, nationally, or internationally. Copyright rights in the materials are to be vested with Producer – except Producer agrees to provide, upon written request by the City and with Producer's written pre-approval, the City's limited and reasonable use of materials, without charge, for recruiting, training, and public relations purposes.

(9) Except as provided in paragraph 1 above, Producer shall not use any photograph, video recording, or audio recording it obtains of City Actors or objects/items reflecting the official capacity of City Actors pursuant to or as a result of the terms of this Agreement in connection with any promotion, sale, or endorsement of any product.

(10) Producer shall not use in any manner photographs, video recordings, or audio recordings it obtains pursuant to or as a result of the terms of this Agreement beyond or outside the scope and purpose of this Agreement without entering into a further agreement with the City. Producer is not obligated to actually use the materials in producing the Program. Producer shall notify the City in writing within 30 days of the date it makes the decision not to produce the Program. Notification shall be provided to the attention of the City Manager at the address specified in Paragraph 28 of this Agreement.

(11) Producer agrees that the portrayal of the City, its departments, divisions, agents, employees, affiliates, and all other persons acting at the request of, or in conjunction with, the City will be positive and favorable in any and all promotion, marketing and programming that arises out of or relates to the terms of this Agreement.

(12) A breach or default of any provision of this Agreement by Producer shall result in immediate termination of this Agreement and may result in a claim for damages by the City and other criminal and civil penalties against Producer as applicable under law.

(13) At all times while filming City employees or volunteers or while operating or conducting business on City property, Producer shall abide by any and all instructions, directions, and/or demands made by designated City representatives. Failure to immediately comply with any instructions, directions, and/or demands by the designated

City representative shall result in a breach of this Agreement by Producer. Upon verbal notification by a designated City representative that Producer has violated this section of the Agreement, Producer shall immediately exit City Property and stop any filming activities of City employees, volunteers, or any other personnel, and immediately remove any and all equipment, personnel, representatives, designees, volunteers, and/or employees from City property.

(14) Producer shall comply at all times with relevant laws and all requests by City designed to guarantee compliance with such laws, including but not limited to the blurring of faces or redaction, deletion or exclusion of details upon City request. Producer shall not use any footage, photography, video or audio recording of any third person or the property of a third person while engaging in filming, photographing or recording City Actors without first obtaining written permission from such persons.

(15) Any case or controversy or claim arising under or from this Agreement shall be brought only and exclusively in a court located in Anchorage, Alaska. This provision is a mandatory forum selection clause.

(16) Producer shall provide the City the opportunity to review all formal "sit down" (as opposed to out in the field) interviews of persons associated with or employed by the City or acting at the request of, or in conjunction with, the City which Producer desires to use in promotion, marketing or programming. Producer also shall provide the City the opportunity to review rough cut versions of the Program. The City is to be afforded a period of five (5) working days to review such interviews and rough cut versions of the Program before Producer publically discloses any portion(s) thereof. The City, in its discretion, may waive the requirement of Producer to provide the City the opportunity to review "sit down" interviews for interviews that took place in the presence of the City Attorney, the City Manager or the Manager's designee. Producer shall provide the City the opportunity to review all "sit down" interviews absent a written and signed waiver from the City. The City shall exercise all reasonable efforts to make a representative from the City Attorney's office or the City Manager or her designee present at "sit down" interviews of all City Actors.

(17) Producer agrees that it will not use in any manner in promotion, marketing, programming or otherwise any photograph, video recording, or audio recording it obtains pursuant to or as a result of the terms of this Agreement; or any interview or portion thereof obtained pursuant to or as a result of the terms of this Agreement that the City deems, in its discretion, to be inaccurate or concern sensitive or confidential information. The City acknowledges that, other than to assure accuracy and to protect against disclosure of sensitive or confidential information, creative and editorial control of promotion, marketing, and programming rests with Producer - other than as agreed above in paragraph 11.

(18) Upon request of the City, the crew(s) of Producer will attend briefings prior to any and all photographing, video recording, or audio recording sessions in order to become familiar with safety, local community, and/or cultural issues.

(19) No authorization from the City is necessary to enable Producer to proceed with activities to create the Program beyond full execution of this Agreement and compliance with its terms.

(20) This written document constitutes the entire Agreement between the City and Producer relating to Producer's desire to create the Program. However, the General Release of Liability and Indemnification Agreement executed by the City and Producer regarding Producer's presence on City property continues in full force and effect. No other written or oral agreements exist regarding this matter. Any dispute regarding the terms of this Agreement shall be resolved in Alaska state courts and in accord with Alaska state law.

(21) No employment or agency relationship is created by this Agreement. Producer's employees, representatives, designees, personnel, members, participants, and volunteers shall at all times be considered agents or employees of Producer and not of the City. Producer shall assume full responsibility for the actions or inactions of Producer's employees, representatives, designees, directors, officers, personnel, members, participants or volunteers, and Producer shall be solely responsible for the supervision, direction, and control of such persons.

(22) All applicable taxes or assessments that are relevant or the result of Producer's filming activities shall be the responsibility of and shall be paid for by Producer.

(23) This Agreement cannot be transferred or assigned without the City's prior written consent.

(24) Any provision or clause of this Agreement that is deemed invalid by a court or otherwise by law shall not affect the validity of the remainder of the Agreement.

(25) The failure of the City at any time to enforce a provision or part of this Agreement shall in no way constitute a waiver of such provision or part, nor in any way affect the validity of this Agreement or any part of this Agreement. A waiver by the City of any provision or part of this Agreement shall not be construed as a continuing or future waiver of such provision or part or as a continuing or future waiver of any other provision or part of this Agreement. Any waivers of the Agreement conditions shall be in writing and signed by both parties.

(26) No provision of this Agreement shall be construed to create a partnership or joint venture or any other arrangement between the City and Producer under which the City would be liable for debts, losses or liabilities of Producer.

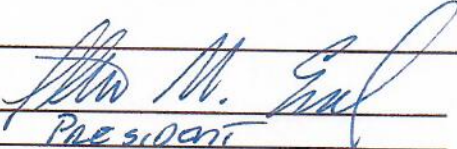
(27) This Agreement has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and shall be interpreted according to its fair meaning and intent and not for or against either party.

(28) At the signing of this Agreement, Producer shall provide the City with the names of two (2) contact persons with authority for activities and events under this Agreement and addresses and telephone numbers for such contact persons that the City may use to communicate and give notices to Producer. All written notices given by Producer to the City shall be either hand delivered or mailed to the City Manager at the following address: City of Kodiak, Attn: City Manager, 710 Mill Bay Road, Kodiak, Alaska 99615. Mailed notices shall be deemed effective when they are sent as determined by the postmark date. All hand delivered documents and notices should be delivered to the City of Kodiak Harbormaster for immediate delivery to City Hall.

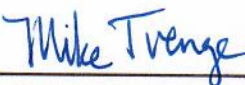
(29) Producer hereby warrants and represents that it has authority to enter into and perform the obligations of this Agreement and that the individual(s) signing this Agreement have the authority to sign this Agreement on behalf of Producer.

The undersigned individuals represent and warrant that they have all rights and authority to enter into this Agreement.

**AGREED AND ACCEPTED:**

By:   
Its: President  
Date: 9/5/2018

**CITY OF KODIAK, ALASKA**

  
Mike Tvenge  
City of Kodiak Manager  
Date: 9-7-2018

## GENERAL RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT

Engel Entertainment, has requested permission from the City of Kodiak, Alaska, to film on City of Kodiak property and to film activities occurring on City of Kodiak property for inclusion in a television program \_\_\_\_Alaska PD (working title)\_\_\_\_, intends to produce and market for commercial distribution. In consideration of City of Kodiak's granting to Engel Entertainment, its request, Engel Entertainment enters into the following agreement with City of Kodiak.

Engel Entertainment, a television production company, hereby acknowledges that presence on or near property during the activities required for the transport, preservation, and cleaning of seafood and activities for the taking off, docking, lifting, or blocking of vessels can be an extremely dangerous environment and may be life threatening. It acknowledges that the City of Kodiak, Alaska, through its employees, attorneys, and other representatives, have repeatedly notified Engel Entertainment of the potential dangers of being within the vicinity of the Port and Harbor and other City facilities and the inability of the City of Kodiak to protect Engel Entertainment from both the foreseeable and the unforeseeable dangers posed by City facilities such as those occurring in the Harbor and other City locations, including activities and actions of individuals and equipment during the course of City business.

Engel Entertainment, on its behalf and on behalf of all its employees, designees, representatives, subcontractors, directors, officers, volunteers, administrators, agents, heirs, beneficiaries, executors, successors, assigns, and other entities or individuals claiming through it or affiliated with it (hereafter collectively referred to as "Producer") hereby covenants and agrees to release, indemnify, and hold harmless the City of Kodiak, Alaska, its employees, volunteers, officials, agents, officers, departments, boards, commissions, or other bodies (hereafter collectively referred to as the "City") from and for any and all demands, claims, suits or causes of action, whether known or unknown, arising from any and all loss, damage, and/or mental or physical injury (including, but not limited to injuries leading to death and death itself) to any property or any person which may occur from any cause whatsoever. This General Release of Liability and Indemnification Agreement ("Release and Indemnification") includes an action against the City for death, damage, or injury resulting from an inherent danger and/or risk of being on City property. This Release and Indemnification also prohibits the Producer from bringing an action, suit, claim or cause of action, or making a demand, whether known or unknown, against the City arising out of the City's negligence, gross negligence, failure to use due care, or any intentional tort and requires Producer to indemnify the City for any such claims brought against the City that arise from or during Producer's use of or presence on City property. Producer also warrants that injuries, death or damage stemming from equipment malfunction or misuse, human error, ignoring a known hazard, and a defect in the property are all within the scope of this Release and Indemnification and Producer is barred from bringing any and all present or future demands, suits, claims or causes of

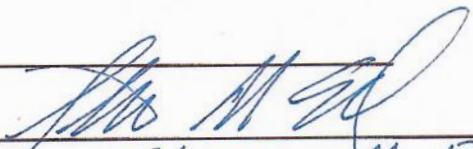
City of Kodiak

action arising from the City's conduct, including demands, suits, claims or causes of action arising from the City's negligence or gross negligence, committed by the City and is obligated to indemnify and hold harmless the City for any such claims brought against the City that arise from or during Producer's use of or presence on City property. The above list of potential causes of injury, death or loss is intended only to provide an example of the broad scope of this Release and Indemnification and is in no way intended to limit the Release to the named causes as this Release and Indemnification is intended to apply to any and all causes of liability.

Producer is familiar with the decision of the Alaska Supreme Court in *Young v. State*, 455 P.2d 889 (Alaska 1969) and it is still the undersigned's true intent and desire to fully release all of the entities and persons described above collectively as City even though all of such entities and persons are not specifically named herein. Producer further acknowledges familiarity with the decision of the Alaska Supreme Court in *Witt v. Watkins*, 579 P.2d 1065 (Alaska 1978) and intends this release to discharge the City from any liability for damages or losses subsequently discovered or incurred or for damages or losses that are different in extent, degree, or kind than those now alleged, known, anticipated, or expected.

Producer hereby acknowledges and covenants that this Release and Indemnification is made in a commercial setting between a municipal corporation and a private commercial enterprise which has the ability and the obligation to purchase insurance and to abstain from entering City property or any other property without prior permission or during the conduct of live fire training or an emergency situation. Consequently, Producer hereby acknowledges that ambiguities in this Release and Indemnification shall be resolved in favor of the City and protecting the City from any and all liability. This Release and Indemnification has been submitted to the scrutiny of all parties and their counsel if desired, and it shall be interpreted without consideration to or weight given to its being drafted by any party or its counsel and interpreted according to its fair meaning and intent and not for or against either party.

Producer hereby warrants and represents that it has authority to enter into this Release and Indemnification and that the representative signing this Release and Indemnification has authority to sign this Release and Indemnification on behalf of Producer. This Release and Indemnification shall be governed by the laws of the State of Alaska.

By:   
Print Name: STEVEN M. ENGEL  
Title: PRESIDENT

Date: 9/5/2018

## **2020 – 2024 Comprehensive Economic Development Strategy (CEDS) for the Southwest Alaska Municipal Conference (SWAMC) Work Plan**

### **Overview**

The Comprehensive Economic Development Strategy (CEDS) is the foundation document and process used by the U.S. Economic Development Administration (EDA) to foster effective economic development in American regions. The preparation of the CEDS through a locally-based, regionally- driven economic development planning process serves to engage community leaders, seek involvement of the private sector, and create a framework for regional collaboration. One of the challenges for SWAMC is the size and diversity of its region. The CEDS is a strategy-driven plan for regional economic development.

### **Mandatory Elements of a CEDS Document**

1. **Summary Background:** A discussion of the economic conditions of the region.
2. **SWOT Analysis:** An in-depth analysis of regional Strengths, Weaknesses, Opportunities, and Threats.
3. **Strategic Direction/Action Plan:** Building from the SWOT analysis, the Direction incorporates elements from other regional plans where appropriate. This is particularly important for SWAMC because it is a “super” Economic Development District (EDD) with two Native regional organizations – Bristol Bay Native Association and Kodiak Area Native Association – with CEDS that obtain funding from EDA under the Native American/Alaska Native Planning Grants Program. Strategic and comprehensive plans from the four boroughs and dozens of cities in the SWAMC region also need to be assessed and addressed.
4. **Resilience:** EDA has placed emphasis on the concept of economic resilience: ability to avoid, withstand, and recover from economic shifts (fishery disasters), natural disasters, and impacts of climate change. This attention to resilience can be a separate section or scattered throughout the CEDS in response to weaknesses and threats in the SWOT analysis.
5. **Evaluation Framework:** The CEDS plan must contain performance measures to evaluate the implementation of the CEDS and its impact on the regional economy.

## **Data Collection and Updates**

SWAMC's present CEDS contains a great deal of data that appears extensively in Appendices of the CEDS Document and more selectively in the body of the CEDS. The plan is to use this data package in roughly the same format with the use of more graphics to emphasize certain data elements that make the SWAMC region unique. The Data appearing in the Appendix are set out as follows:

- Appendix A – Energy
- Appendix B – Geography and Climate
- Appendix C – Workforce Development
- Appendix D – Infrastructure
- Appendix E – Other Economic Indicators

## **Community and Regional Outreach and Involvement**

Making the SWAMC CEDS a “locally-based, regionally-driven” process and document will require strategically deployed outreach and engagement. The engagement tools will be combination of the following approaches:

- Questionnaires for municipalities, tribes, nonprofit organizations, and businesses to capture economic development goals and obstacles.
- Presentations and engagement at regional meetings and the 2019 Economic Summit and Membership Meeting.
- Visits to “hub” Cities in region – Kodiak, Unalaska, and Dillingham + Sand Point, Bristol Bay Borough, and King Cove if budget allows. We need to hold gatherings and meet with municipal officials, businesses, tribal officials, nonprofits, University extensions, and school administrators during time in the community
- Meetings with Local Government Specialists (Division of Community and Regional Affairs, DCEED) working in or for SWAMC region communities

Tentative Schedule:   Travel to Dillingham/UTBB Meeting – January 2019  
                                  Travel to Unalaska – between December 2018 -- February 2019  
                                  Travel to Kodiak – between December 2018 – March 2019

## **Use of Five Topics from the 2014-2019 SWAMC CEDS to Organize Report**

The 2014-2019 CEDS for SWAMC was organized around five “key topics” to help identify and provide context for SWAMC’s approach to economic development. These key topics are: 1) Resources, 2) Infrastructure, 3) Energy, 4) Workforce Development, and 5) Partnerships. This organizational device has proven useful in identifying economic development priorities and allows SWAMC to focus on issues vital to all parts of the region. Use of these key topics will be used in the planning process and will be tested to make sure they are still relevant and useful in organization of the CEDS for the next five years.



## **Use of Infographic SWOT Analysis from 2014 – 2019 CEDS as Primary Engagement Tool**

Using the SWOT Analysis in Infographic form has also proven to be a useful way to convey to stakeholders and decision-makers advantages and disadvantages of promoting economic development in the SWAMC region. The infographic is organized to combine the Strengths, Weaknesses, Opportunities, and Threats into quadrants and then overlays the five key topics in each quadrant. In the center of the SWOT Infographic is a box setting out six “Priority Actions” for SWAMC to work on during the planning period. This graphic SWOT does a good job of capturing the economic development landscape on a one-page document. The current infographic is attached.

# STRENGTHS

Existing relative competitive advantages.

## Resources

### FISH

6 of top 10 ports in U.S. are in SWAMC region



(measured by \$ value of fish harvest, 2012)

18 Communities have land-based seafood processing.<sup>2</sup>



Community Development Quota program<sup>3</sup>

\$21.5 million /year  
1,114 workers employed

### TOURISM

Out-of-state visitors to Southwest AK spent an average of **\$1,514** per person on their trip, compared with the statewide average of **\$941**<sup>5</sup>

3 National Parks in the region



### MINING

52% of 2010 Alaska mining exploration expenditures were made in Southwest AK<sup>4</sup>



22 communities with harbor facilities support a fleet of **1,487** boats<sup>6</sup>



Many potential sources of energy

Fisheries, Seafood and Maritime Initiative - addressing workforce development needs

## Workforce Development

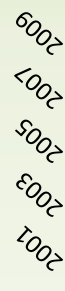
2012 Rural Jobs + Innovation Accelerator Challenge grant: **\$405,023**

## Partnerships

Funded by: U.S. Dept. of Commerce's Economic Development Administration, the U.S. Dept. of Agriculture

Partners: BBNA, SAVEC, University of Alaska, AK Regional Training Centers, Bristol Bay School District and more

Federal Spending in Alaska



Job growth to population growth ratio (1997-2008)<sup>1</sup>

**4.88** Southwest AK vs **0.93** United States

## Energy

Alaska Energy Authority's Power Cost Equalization (PCE) program reimburses up to **70 percent** of residential energy costs in some Southwest Alaska communities.<sup>11</sup>

# WEAKNESSES

Existing relative competitive disadvantages.

## Resources

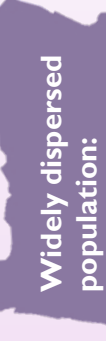
Fluctuating seafood stocks



Seasonality of resource jobs: Unemployment in Aleutians East Borough<sup>7</sup>

**8%** July 2013 vs **26%** December 2013

Widely dispersed population: Less than 30,000 people over an area the size of Oregon



## Workforce Development

Lack of trained local workforce: More than **80%** of fish processing jobs held by non-residents

## Infrastructure

One-way flight costs from Anchorage<sup>8</sup>...

To Adak, Unalaska, St. Paul To Honolulu To London



There is **no area-wide energy plan** to guide investments

Average annual household energy costs: **\$8,410** Lake + Peninsula Borough vs. **\$2,790** Municipality of Anchorage

## Partnerships

There are only **2 Chambers of Commerce** in Southwest Alaska

## Partnerships

**4/6** Regions have higher overcrowding rates than the statewide rate of 6%.  
In Dillingham Census Area, **18% of housing units are overcrowded**<sup>9</sup>

## Resources

- Outer Continental Shelf (OCS) oil + gas potential
- Rich regional mineral deposits
- Arctic development, resources + science

## Value-Added Seafood Processing

- Catch ← Happens in AK
- Process ← Usually happens in AK
- Package ← Sometimes happens in AK

## Energy

Many current and potential efforts to reduce regional energy costs:

- Bulk fuel purchasing
- Natural gas development
- Hydro energy
- Waste-to-heat incinerators
- Pilot project in Unalaska
- Tidal power in False Pass
- Hydrokinetic in Igluig
- Dillingham
- Egegik

## Workforce Development

BBEDC's Permit loan program is increasing the number of locally-owned commercial fishing permits

## Partnerships

- 3 Alaska Native Corporations
- 3 Community Development Quota organizations
- 18 SWAMC Business Council members

## Workforce Development

- Expand Fisheries Cluster
- Implement Alaska Maritime Workforce Development Plan
- Promote Local Guiding Training for Tourism
- Establish Youth Mentorship and Training Program
- Promote Entrepreneurial Enterprise
- Promote Energy and Infrastructure Development

## Resources

### THREATS TO FISH STOCKS

- Climate change
- Oil spill
- Mining accident
- Farmed fish

## Workforce Development

**300** people  
Net migration loss between 2011 - 2012<sup>14</sup>

## Partnerships

Tribal offices are relocating out of the region

Environmental protections limit development<sup>15</sup>



Endangered since 1990

## Infrastructure

Average of **200 earthquakes** ≥ 4.0 per year<sup>17</sup>

Proximity to the Pacific Ring of Fire

**36** of Alaska's **41** active volcanoes are in Southwest AK<sup>16</sup>

cheap energy alternatives



Heavy reliance on public funds. Declining state and federal budgets may result in decreased investment and Employment.

Climate change: current + potential threats  
Erosion  
Flooding  
Melting permafrost  
...and more

# OPPORTUNITIES

Chances/opportunities for regional improvement or

# THREATS

Threats to regional improvement or progress.

City of Kodiak – City Council Work Session

Final Design Services Engineering Proposal  
For  
Wastewater Effluent Disinfection Requirements

By: Floyd Damron, P.E.

Feb 26, 2019

# Your New Permit Requires Effluent Disinfection

- ✓ By July 2019 – Select Treatment Method & Describe Funding Plan
- ✓ By July 2020 – Propose Construction Schedule & Lock Down Funding
- ✓ By July 2021 – State of Alaska Design Approval for Construction
- ✓ By July 2022 – Latest Date to Start Construction
- ✓ By July 2023 – Disinfection Facility Must be in Operation and Meeting All Permit Requirements

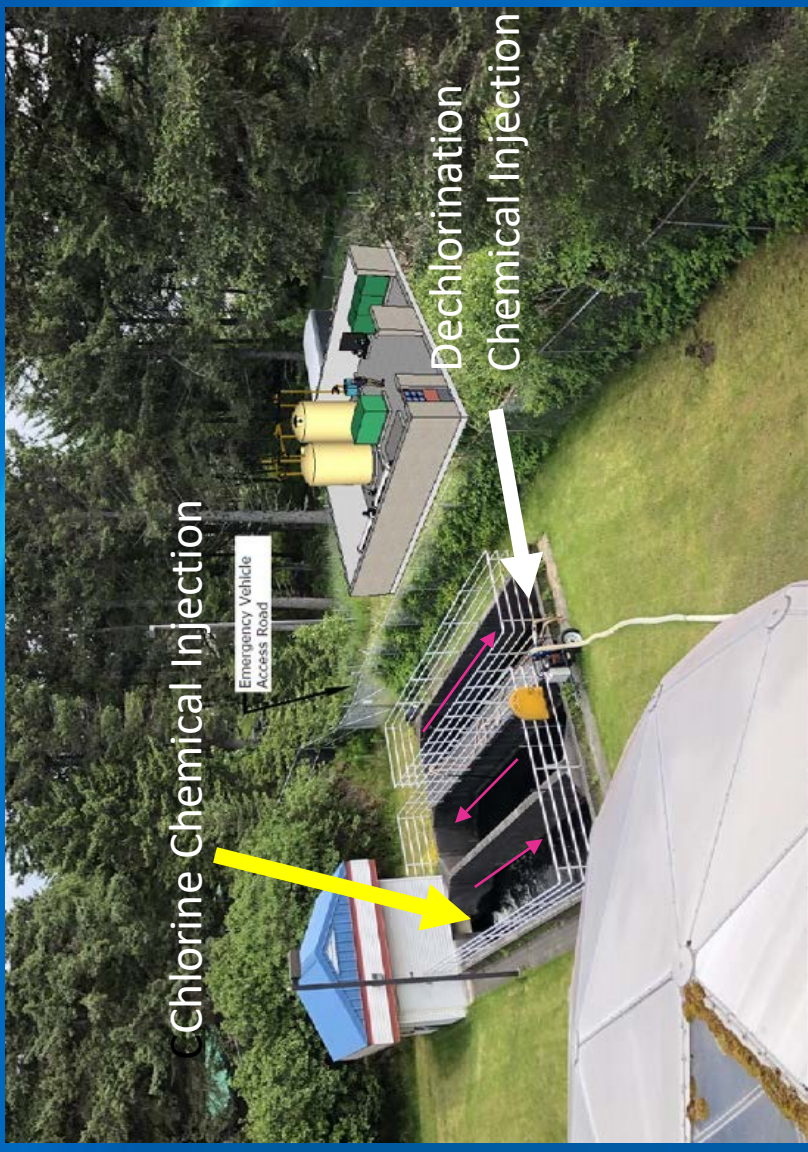
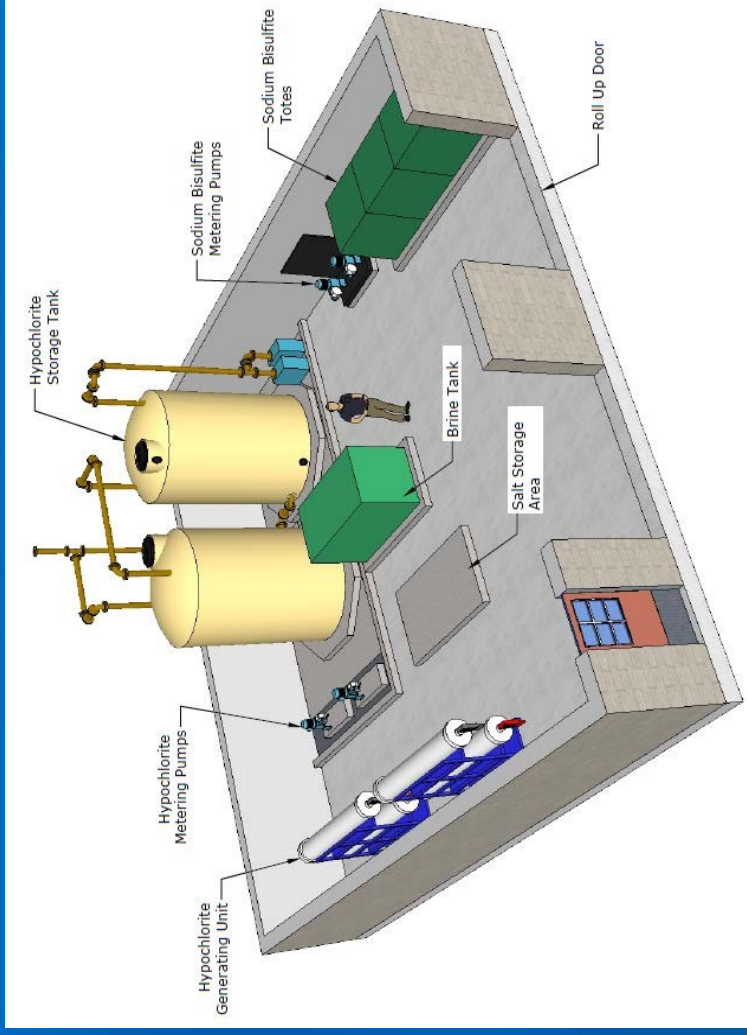
# Jacobs Submitted Its Disinfection Alternative Feasibility Analysis Late 2018

The Two Most Common Disinfection Systems were Compared:

Chemicals: Chlorination and Dechlorination for Permit  
Compliance in 2 Treatment Steps

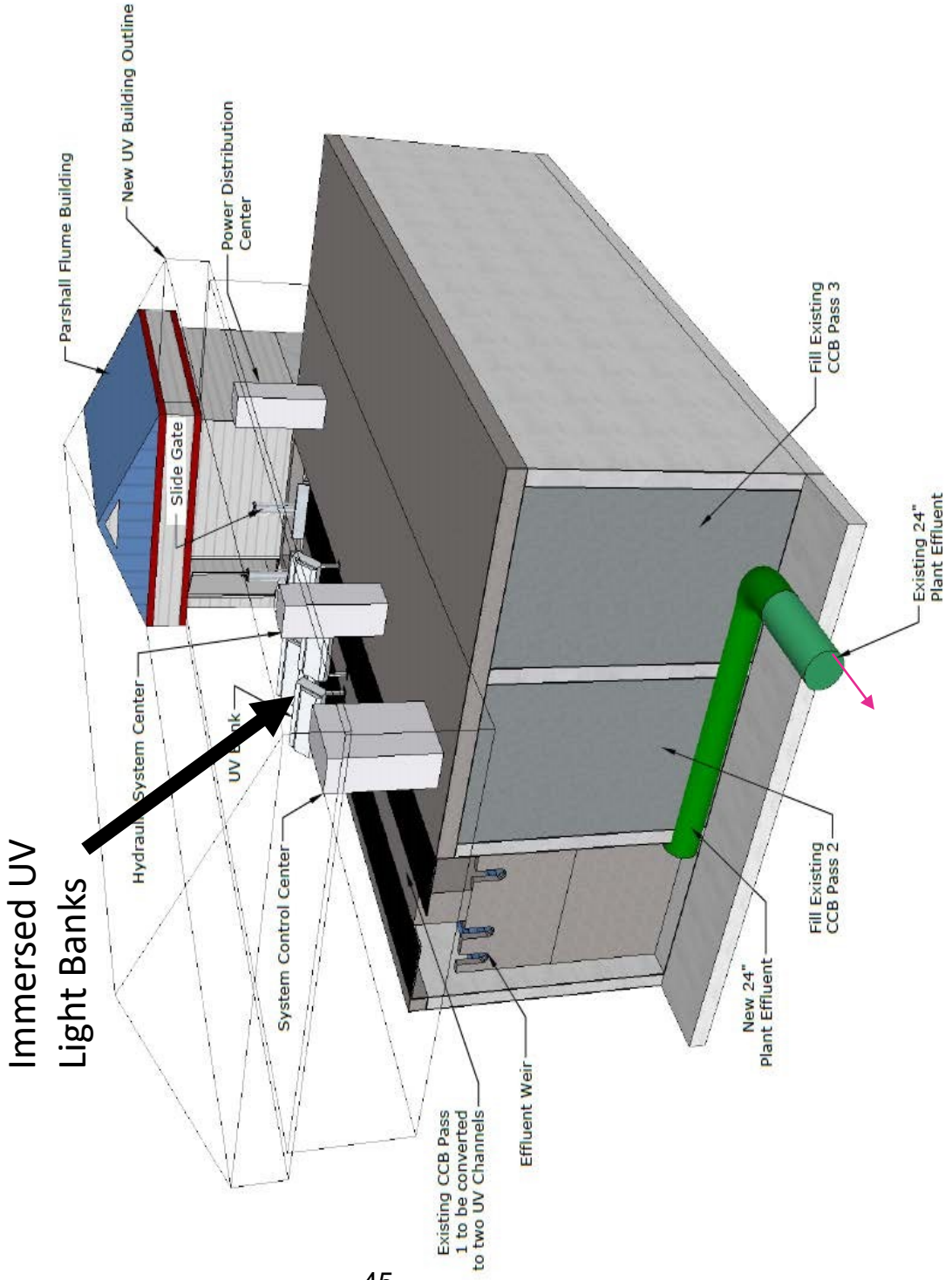
UV Light: Permit Compliance in One Treatment Step

# Typical Chemical Disinfection Components



On-Site Generated Sodium Hypochlorite (Chlorine) plus  
Purchased Sodium Bisulfite (Dechlorination)

# Typical UV Light Disinfection Components

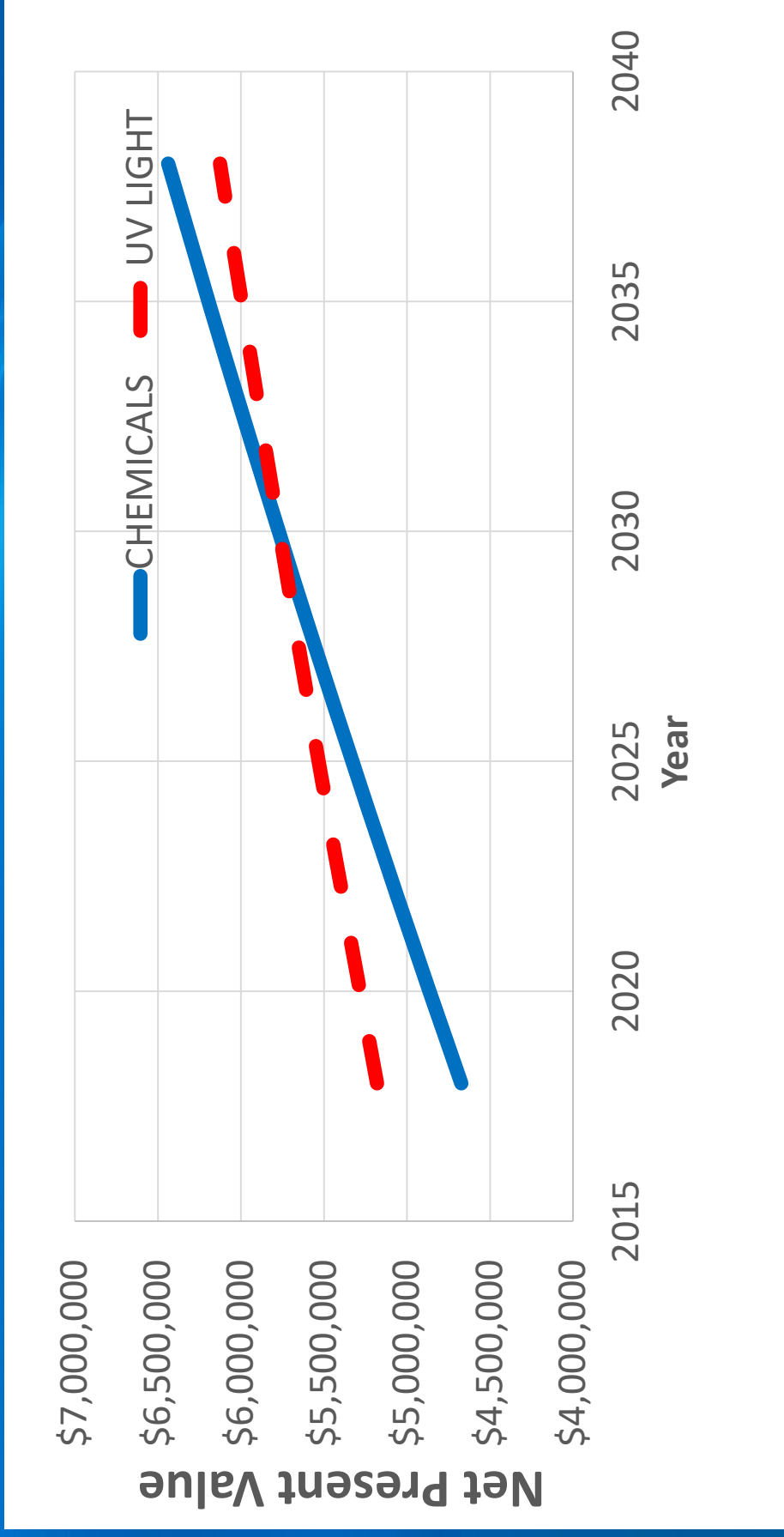


# WWTP Disinfection Cost Comparison Summary

Description	CHEMICAL FACILITY	UV LIGHT FACILITY
Construction Cost	\$3,689,000	\$4,135,000
Capital Cost – Including Design, Permitting, Services During Construction, and Startup	\$4,575,000	\$5,128,000
Annual O&M (including labor)	\$97,500	\$52,200
Annual O&M Labor	\$35,800	\$18,100
20-year Life Cycle (Net Present Value)	\$6,438,000	\$6,126,000



# WWTP Disinfection Cost Comparison Summary



# Alaska Wastewater Disinfection Communities

★ Chemicals

★ UV



# Non-Monetary Considerations Ranked and Rated

Eleven Non-Monetary Disinfection Aspects Considered

- ✓ Environmental Criteria
- ✓ Economic Criteria
- ✓ Social Criteria
- ✓ Technical Criteria

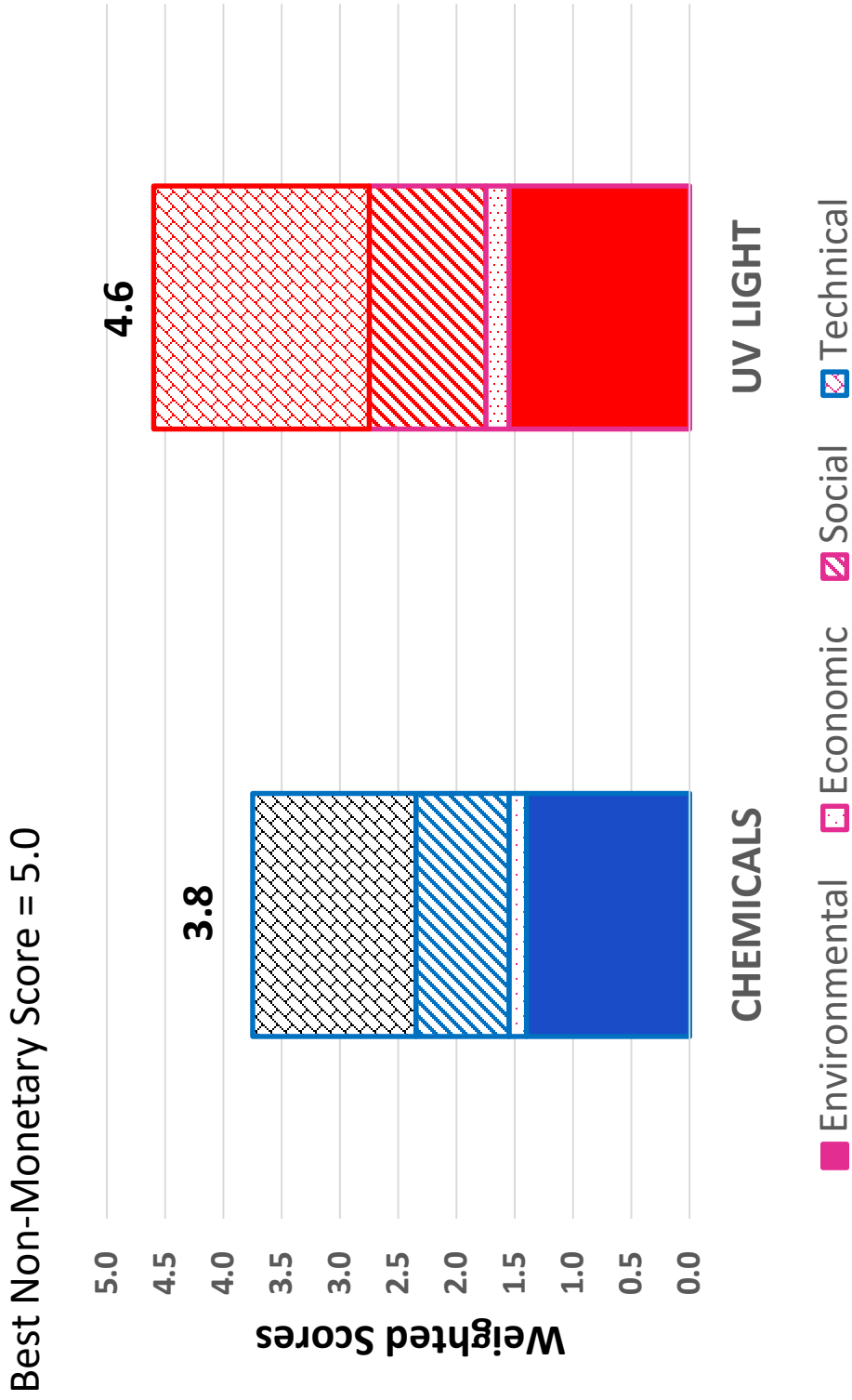
## Non-Monetary Considerations Ranked and Rated

### Eleven Non-Monetary Disinfection Aspects Considered

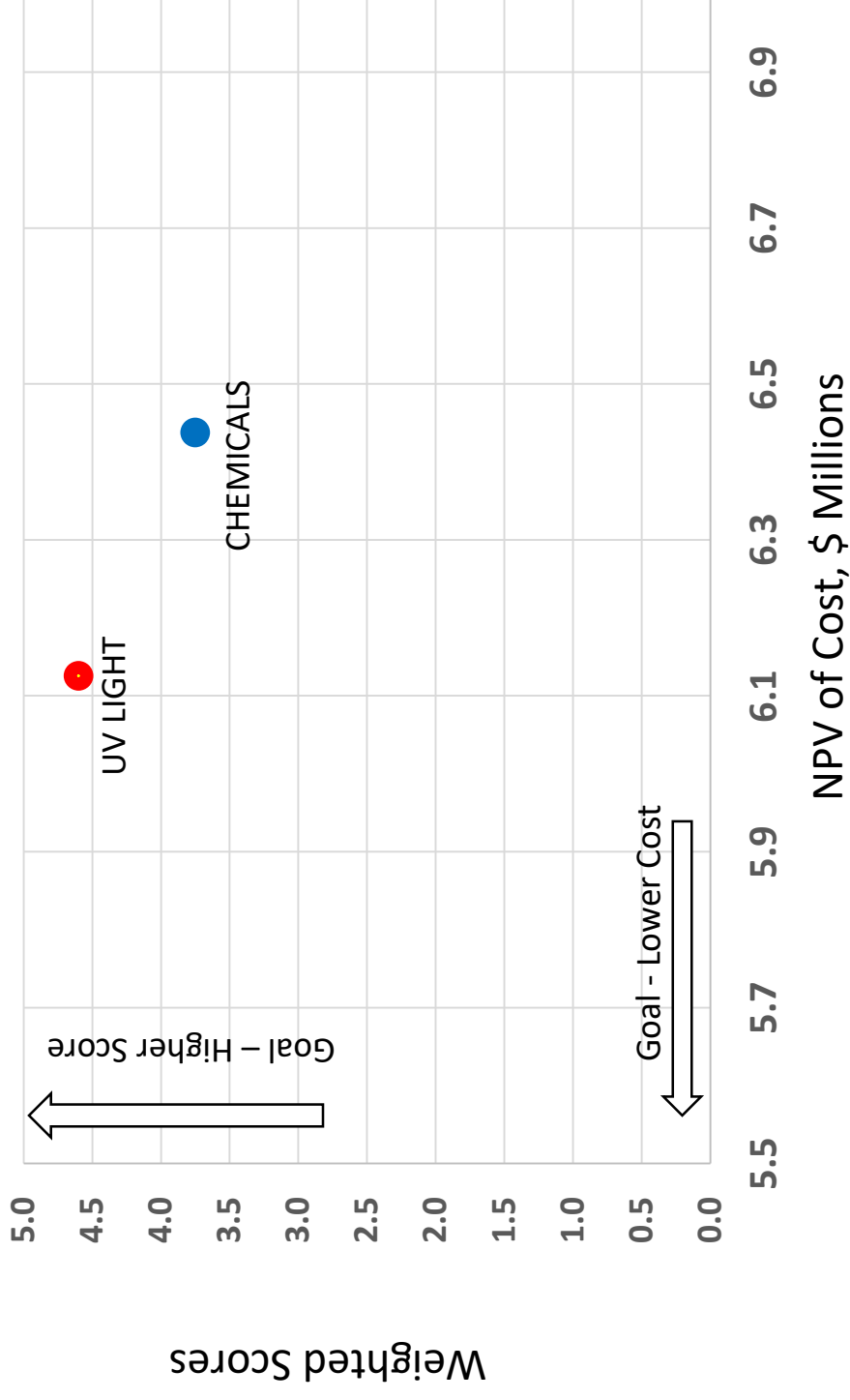
- ✓ Environmental Criteria (1. Meet Permit Requirements, 2. Minimize DBPs\*, 3. Future Regulations on Viruses, 4. Environmental Risks)
- ✓ Economic Criteria (5. Uncertainty of Future O&M Costs)
- ✓ Social Criteria (6. Operator Safety, 7. Public Safety)
- ✓ Technical Criteria (8. Footprint, 9. Reliability, 10. Ease to Operate, 11. WWTP Operational Impacts During Construction)

\*Disinfection By-Products

# Non-Monetary Disinfection Considerations Ranked and Rated



# Combined Monetary and Non-Monetary Results



## Potential Capital Cost Funding Sources

Funding Source	Type of Funding	Available Funding
State Revolving Fund	Loan	100% of Project
EPA Water Infrastructure Finance and Innovation Act (WIFIA)	Loan	49% of Project
US Department of Agriculture Rural Development Program for Alaska	Loans Grants	\$30M in Loans \$8M in Grants
Bond Sale	Bonds	100%
Alaska Municipal Matching Grant Program	Grants	Program eliminated, not likely to be reinstated

# Jacobs Final Design Proposal for City Council Consideration

- ✓ 6 design Tasks from Start to Construction Bidding Phase

Includes UV Equipment Preselection

- ✓ 11 Month Schedule



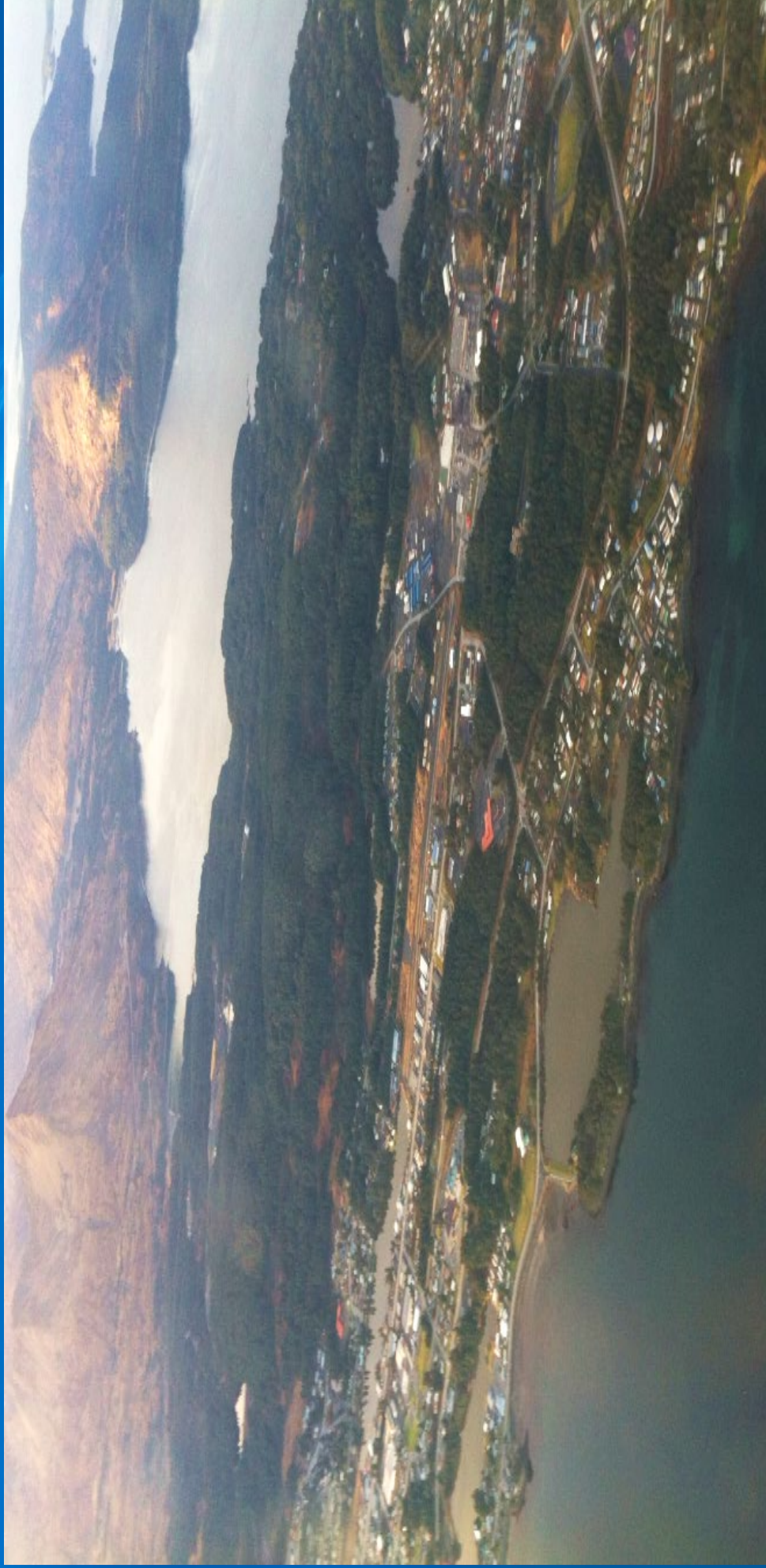


# Future Work To Meet Permit Schedule After Final Design is Complete

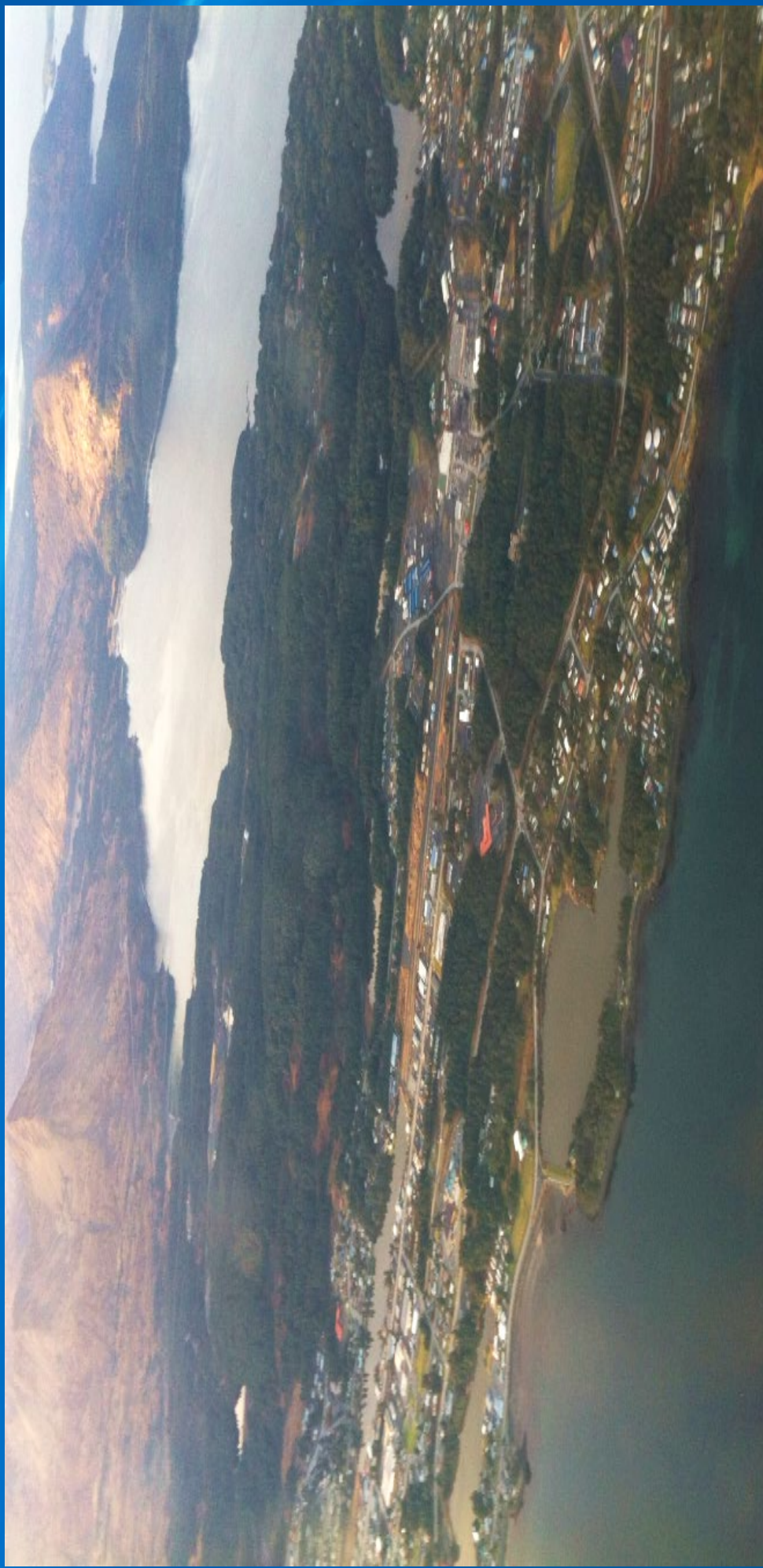
- ✓ Construction by Contractor (Lowest Responsible and Responsive Bidder) 2020 to 2021 (results in more than one-year contingency)
- ✓ City Support Services
- ✓ Engineering Support Services
- ✓ ADEC Issues Approval to Operate
- ✓ Effluent Disinfection Begins



Questions ?



Questions ?



**CITY OF KODIAK  
RESOLUTION NUMBER 2017-28**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF KODIAK ADOPTING  
THE FEDERAL FISCAL YEAR 2018 FEDERAL CAPITAL NEEDS AND ISSUES LIST**

WHEREAS, the City of Kodiak uses a Capital Improvements Program planning process to identify the capital needs of the community; and

WHEREAS, this identification and planning process plays a vital role in directing the City's administration and is utilized as a long-range planning and policy setting tool for City infrastructure maintenance and enhancement; and

WHEREAS, the City of Kodiak is committed to paying its way, to the greatest extent possible, but the cost of some of the City's capital project needs are greater than resources available locally; and

WHEREAS, Kodiak City Council has identified capital project needs for submission to the Alaska Congressional Delegation for funding consideration due to their significance and/or magnitude; and

WHEREAS, changes may be required as to how capital funding contributions for smaller communities like Kodiak, Alaska can be made at the Federal level; and

WHEREAS, the City of Kodiak faces several issues generated by Federal legislation or rulemaking that are of importance to the City of Kodiak, Alaska, and which may adversely impact life in Kodiak by placing undue burdens on those who work and live in the community.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kodiak, Alaska, that the following projects and issues are high priorities for the community and are hereby adopted as the City of Kodiak Federal Fiscal Year 2018 prioritized federal capital project and issues list:

**1. Fire Station Phase II \$14,000,000**

The City of Kodiak identified the need to replace its fire station and has been working toward a replacement plan since 2004. The building has clearly outlived its design life. The building is composed of three structures and sits on a site that is currently very limited as it abuts the tsunami inundation zone. The structure is built of cement block type construction built in the 1940s with two block and wood frame additions added in the 1960s and 1975. The structure poses a significant risk of failure in a seismic event. Cracks in the walls and initial separation of one of the additions from the rest of the structure occurred following the large 7+ earthquake in 2016. It has ongoing plumbing, drainage, and water infiltration issues. The facility houses personnel, fire and rescue apparatus, three ambulances, and many types of specialty equipment and medical supplies that support the Advanced Life Support services offered to

the entire Kodiak area well beyond the City boundaries. The building condition poses constant challenges and problems to the crews who work and live in the structure. Work to replace this building must continue because it is a key emergency response and life-safety facility for Kodiak and continues to require constant maintenance.

The City proposes completion of the project in three phases. Phase I of this project with a budget of \$1,110,000 and funded by the City was used to study the site, for a new facility once a derelict building is removed. It included the removal of the old building, site grading, and other work following the demolition of the old building. Phase I is 95% complete.

Phase II would include a new site acquisition and design completed prior to construction. Relocation would make the project more affordable to do in phases, would reduce the impact to the active fire station, and benefit the transition to a new building. Phase II costs would total \$14,000,000 with site acquisition and building design anticipated during FY2019. Construction would begin during the following year.

The City of Kodiak is requesting Federal funding for Phase II of the New Fire Station project in the amount of \$14,000,000 to ensure the project continues to move forward.

## **2. St. Herman Harbor Infrastructure Replacement \$28,000,000**

The economy of the City of Kodiak is based upon commercial fishing including local, state and federal governmental activities associated with support of the fisheries as well as research and enforcement activities. Each year Kodiak ranks as a top commercial fishing port. In 2015, NOAA statistics again put Kodiak as the second largest commercial fishing port in the United States in terms of volume and third in terms of value. This activity requires an infrastructure from potable water, electrical systems, and harbor and dock infrastructure that is much larger than its population might suggest.

The Kodiak Harbor Department relies on the generation of user fees and the State of Alaska's Harbor Facilities Grant Program to help match municipal costs for dock replacements. The City's request of federal funding assistance in the amount of \$28,000,000 would help the City develop a plan, including replacement of this aging infrastructure which supports the nations scientific and food source needs.

## **3. Waste Water Treatment Plant Facility \$ 19,000,000**

The first phase of a larger project is to evaluate the condition of the Waste Water Treatment Plant facility (WWTP) and design a necessary upgrade to the City of Kodiak facility. The prior upgrade to the facility was in 1999. The condition and evaluation assessment will include all major components such as the building and aeration basins; including equipment replacement needs. Alaska Pollution Discharge Elimination System (APDES) permitting requirements will also be considered during this assessment. The City of Kodiak has received the Alaska Department of Environmental Conservation (ADEC) preliminary draft APDES permit. This new regulation of compliance is expected to require upgrades to our facility which we will factor in our condition and evaluation assessment.

The City of Kodiak is requesting federal funding in the amount of \$19,000,000 to assess, design and construct this WWTP project that will help support the wastewater needs of the community for the next twenty years.

#### **4. Shelikof Street \$1,950,000**

In 2009, the City identified the need for pedestrian improvements from Pier II to downtown Kodiak as the preferred pedestrian route for cruise ship passengers to safely walk the street into the town center and to improve facilities for local residents, workers, and businesses that use the pier, street, and access to the City's adjacent 250 slip boat harbor.

The first phase of the project, construction of an ADA accessible sidewalk, new retaining walls, improved lighting and parking, and utility work was completed in 2013. The second phase of the project was completed in January 2017. This phase covered geotechnical investigation, design, permitting, mapping, preparation for permitting through the Army Corps of Engineers, and 95% completion of the design to accommodate a 30 space bulkhead parking area on the south side of Shelikof Street adjacent to St. Paul Harbor.

The roadway area adjacent to the proposed bulkhead parking is highly congested. Due to lack of adequate parking, vehicles block walkways, equipment operates in the ROW, and access to businesses is often blocked, forcing pedestrians into the roadway. Construction of additional off-road parking will direct pedestrian traffic out of the congested roadway. The net increase in parking will benefit harbor users and retail businesses along Shelikof Street. It will provide improved and safer pedestrian access from Marine Way to the fish processors in the immediate area. The task for this phase will be to complete construction of the bulkhead parking area, including curb and gutter, paving, lighting, and utility relocates.

The City of Kodiak is requesting federal funding assistance for the final construction of this project, including administration, in the amount of \$1,950,000 to enhance pedestrian and vehicle safety.

### **City of Kodiak Supported Federal Issues:**

#### **1. EPA's "Waters of the U.S." Rule**

The Environmental Protection Agency and the U.S. Army Corps of Engineers is moving forward with a proposed "Waters of the United States" rule that would expand Federal permitting and other requirements to many waters currently regulated by State and Local governments. The proposed rule would also apply to private landowners. The key change being proposed would expand Clean Water Act coverage to "other waters" where there is a "significant nexus" to currently covered interstate waters, territorial seas and navigable waterways. That determination is meant to be "case-specific" but has not been fully defined and the concern is that "significant nexus" could be interpreted to include floodplains, certain man-made waterways and ditches, and self-contained water bodies such as ponds or temporary/isolated wetlands. Under this model, Alaska's extensive acreage of wetlands would likely mean that wetlands and other water bodies, including small streams and tributaries, that

are seemingly isolated and geographically far removed from any current CWA-covered waterway would fall under the new definition.

The City of Kodiak feels the proposed rule would add extra layers of bureaucracy to the efforts of Kodiak citizens to use their land and for the City to engage in future public works projects. The City is requesting that the Alaska Delegation support legislative initiatives to curtail this proposed rule.

## **2. EPA’s Fishing Vessel Discharge Rule**

EPA has promulgated two rules to require commercial fishermen to obtain Clean Water Act incidental discharge permits as a condition for operating both small and large fishing vessels. The permits would cover ballast water, fish hold water, anchor chain mud, deck wash/runoff, bilge pump discharge, gray or “stick” water, laundry, shower, and galley sink water. The permits require burdensome reporting, monitoring, inspections and compliance activities – all subject to heavy fines and citizen lawsuits under the Clean Water Act for what seems to be minimal environmental protection.

Congress has imposed a three year moratorium preventing EPA from implementing the Small Vessel General Permit Rule and the Vessel General Permit Rule. Efforts are underway within the Congress to make the moratorium permanent. The City of Kodiak is requesting that the Alaska Delegation actively support a permanent moratorium.

## **3. Pink Salmon Fishery Resource Disaster Declaration**

The Kodiak Management Area had remained closed for 70 percent of the pink salmon run in 2016. The preliminary value of the pink salmon fishery catch was \$2.21 million compared to a five year average value of \$14.64 million.

The United States Department of Commerce Secretary has received a request from Alaska Governor Bill Walker seeking determination of a commercial fishery failure due to a fishery resource disaster for the 2016 pink salmon season. The National Oceanic and Atmospheric Administration’s National Marine Fisheries Service evaluated information provided by the Alaska Department of Fish and Game whether a commercial fishery failure occurred due to a resource disaster. After thorough review, the Department of Commerce Secretary has determined a request for determination of failure meets the requirements under Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act.

This determination provides a basis for Congress to appropriate disaster relief funding. If such funding is provided, the National Marine fisheries Service Alaska Region would work with the State of Alaska to develop a spend plan that would create a more resilient fishery that can better withstand environmental disasters in the future.

The City of Kodiak supports Secretary Pritzler’s findings and asks Congress to appropriate the disaster relief funding.



CITY OF KODIAK

*Pat Krause*

MAYOR

ATTEST:

*Michelle Wherwell-Nelson*

DEPUTY CLERK


Adopted: November 9, 2017



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## MEMORANDUM TO COUNCIL

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**To:** Mayor Branson and City Councilmembers  
**From:** Mike Tvenge, City Manager   
**Thru:** Timothy Putney, Chief of Police  
**Date:** February 26, 2019

**Agenda Item: Crime Prevention and Response and Equipment Funding**

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The Kodiak Police Department would like to submit a funding request to the Department of Public Safety (DPS) Crime Prevention and Response and Equipment Funding for \$126,350. DPS was allotted \$2 million, specifically for crime prevention, response, and equipment in their capital budget (Refer to letter from DPS dated December 20, 2018). The funding is intended to be used to coordinate with local law enforcement agencies statewide to help prevent and respond to drug related crimes, vehicle theft, and violent crime. With Council support, the Police Department would submit two requests: one to purchase portable radios for police officers and one to bring the Hazelden Training, Research and Development Center to Kodiak to help our community respond to the opioid epidemic.

Funding Request 1: Radios: 20 portable radios at \$5,000 each for a total of \$100,000

The portable radios used by police officers are more than 15 years old and are no longer supported by the manufacturer. These radios cost \$5,000 each to replace. Upgrading the radios would allow for better interoperability with the State Troopers. The City has applied for SHSP grant funding to replace portable radios City-wide. This proposal offers another possible funding source if that grant is denied or if the monetary award is not sufficient.

Funding Request 2: Hazelden Training: \$26,350

This would advance the work of the Kodiak Summit Community Coalition that began as the Mayor's Summit in 2016. Hazelden Training, Research and Development Center will create a workshop unique to the concerns and challenges of Kodiak Island. They would send two presenters to provide a one-day workshop to between 45 and 50 participants, with the objective of stabilizing and developing a cohesive and consistent understanding of the use of medication-assisted treatment as part of the community's array of services. Hazelden staff will provide a separate evening facilitated-discussion for agency and organization executives and local governmental leadership with the objective of formulating a cooperative "team" at the upper management levels of the Consortium organization.

DPS has established a process to collect and evaluate requests from local law enforcement agencies. An agency making a preapproved purchase would be reimbursed by DPS. Submissions are due by March 1, 2019. We would like Council's support in these funding request submissions. If funding is approved by DPS, a formal request for action will be brought before Council at a regular meeting for budgetary purposes.



THE STATE  
of ALASKA  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Public Safety

DIVISION OF ALASKA STATE TROOPERS  
Office of the Director

5700 East Tudor Road  
Anchorage, Alaska 99507-1225  
Main: 907.269.5641  
Fax: 907.269.5079

December 20, 2018

Re: Crime Prevention and Response and Equipment Funding

Dear Chief of Police:

During the last legislative session and as part of SB 142 (Capital Budget) the Department of Public Safety was allotted \$2 million for Crime Prevention and Response and Equipment. The money was intended to be used to coordinate with local law enforcement agencies statewide to help local communities prevent and respond to crime in an effort to reduce drug related crimes, car thefts, and violent crimes.

DPS has established a process to collect and evaluate requests from the local law enforcement agencies. The process will be to provide DPS with the following information: The population of your community. The number of sworn officers. The crime(s) your purchase will prevent or assist with the response by officers. What will be purchased to aid in crime prevention or response? What the cost of the purchase will be? What will be the benefit to the agency and community? There is a form attached to aid in the reporting of this information.

The following items will not be approved for purchase vehicles, items with reoccurring costs, and personal services (employment of staff).


DPS will evaluate each request based on community size, department size, and articulation of need and how it will benefit your community.

Submissions will be accepted from all agencies with weight given to smaller agencies in the state. An agency may make more than one submission; however, each purchase request will need to be on a separate request form.

The funds will be distributed as reimbursement. Upon approval your agency will need to make the purchase and DPS will reimburse the preapproved cost when a receipt is provided to DPS. It is important that you do not make any purchases until approval has been received from DPS.

Submissions should be made by the agency head or their designee to Lieutenant Cornelius Sims at [cornelius.sims@alaska.gov](mailto:cornelius.sims@alaska.gov) no later than end of business March 1, 2019.

Sincerely,

  
Major Andrew J. Greenstreet  
Acting Director, Alaska State Troopers

Enclosed: Crime Prevention and Response and Equipment Funding Request