

MEMORANDUM

CITY & BOROUGH OF JUNEAU

155 South Seward Street, Juneau, Alaska 99801

DATE: May 2, 2012

TO: Board of Adjustment

FROM: Teri Camery, Senior Planner
Community Development Department

FILE NO.: VAR2012 0008

PROPOSAL: Driveway construction and grading within 330' of an active eagle nest.

GENERAL INFORMATION

Applicant: Carl & Kathryn Carl

Property Owner: Carl & Kathryn Carl

Property Address: 17590 Point Lena Loop Road

Legal Description: USS 3264 Lot 11

Parcel Code Number: 8-B35-0-100-009-0

Site Size: 1.52 acres

Zoning: D-3 Residential

Utilities: CBJ Water; private septic

Access: Point Lena Loop Road

Existing Land Use: Single family home

Surrounding Land Use:

North	- D-3 residential; single family home
South	- D-3 residential; single family home
East	- Point Lena Loop Road; D-3 Residential
West	- D-3 residential; vacant City and Borough of Juneau property



CITY & BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

ATTACHMENTS

Attachment 1	Vicinity Map
Attachment 2	Development Permit Application
Attachment 3	Variance Application
Attachment 4	Applicant Project Narrative
Attachment 5	U.S. Fish and Wildlife Service comments
Attachment 6	Eagle Tree map
Attachment 7	Site Plan

PROJECT DESCRIPTION

The applicant requests a Variance to allow construction of a driveway, parking pad, and on-lot wastewater disposal system located approximately 300 feet from an eagle nest. The applicant needs to begin construction in June because this is the only time that the necessary machinery is available for the entire season. A Variance is required for conformance with CBJ Land Use Code 49.70.310(a)(2), as follows:

49.70.310 Habitat.

- (a) Development in the following areas is prohibited:
- (3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;

Staff and the applicant consulted with U.S. Fish and Wildlife Service (USFWS) biologists to determine the status of the eagle's nest. USFWS reported that the nest was last noted and still visible in May/June 2010, but it was not active at that time. It is too early in the nesting season to conclusively determine if the nest will be active this year. USFWS states:

"If the nest were to become active this year, we would not anticipate that the proposed construction would cause a disturbance to eagles because eagles in the vicinity are likely to be habituated to the significant level of activity that already exists in the residential area."
(Attachment 5)

Only active nests require a 330-foot buffer. When the nest is not active, the setback is reduced to 50 feet. The proposed development is approximately 300 feet from the nest. The applicant has chosen to go through the Variance process as a precautionary measure if the nest does become active. CBJ staff saw an eagle in the nest on April 13, 2012 so it's reasonable to assume that the nest may become active this year. There may also be a second nest within 330-feet of the proposed development, but neither USFWS nor CDD have been able to definitively map the location of that nest. This Variance would cover construction activity within 330-feet of the mapped nest and also of any other nests

located within the buffer zone.

Currently the residents park on a parking pad within the Lena Loop Road right-of-way and walk up stairs on a slope to their home. The construction activity is necessary because the on-lot wastewater disposal system on the lot has failed. This requires construction of driveway up the slope to allow for installation. The owner is taking this opportunity to establish an additional parking area at the top of driveway, next to the home, so parking will be available for the residence at the site and outside of the right-of-way.

ANALYSIS

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

- 1. That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

The relaxation applied for would allow construction of a driveway, parking pad, and new on-lot wastewater disposal system within 330-feet of the mapped eagle nest and other eagle nests in the buffer area. This would provide substantial relief to the property owner and be consistent with justice to other property owners, since all property owners need functional wastewater systems and parking areas that are outside of right-of-ways, since the right-of-way could be developed or used by the city. Other property owners in the neighborhood are also within 330-feet of eagle nests.

This criterion is met.

- 2. That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

The intent of Title 49 is established in Section 49.05.100 Purpose and Intent as follows:

- 1) To achieve the goals and objectives and implement the policies of the Juneau Comprehensive Plan and the coastal management program;
- 2) To ensure that future growth and development in the City and Borough is in accord

- with the values of its residents;
- 3) To identify and secure, for present and future residences, the beneficial impacts of growth while minimizing the negative impacts;
 - 4) To ensure that future growth is of the appropriate type, design, and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;
 - 5) To provide adequate open space for light and air; and
 - 6) To recognize the economic value of land and encourage its proper and beneficial use.

The proposed Variance meets the intent of Title 49 by allowing construction of a driveway, parking area, and new wastewater system to address health and safety issues and to provide access to the home and parking outside of the right-of-way. USFWS has stated that eagles are habituated to activity in this area, therefore disturbance to eagles in the nearby nest or nests will be minimal. Therefore the proposed Variance meets intent numbers 3, 4, and 6.

This criterion is met.

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

No evidence indicates that authorization of the Variance will injure nearby property. Authorization of the variance will reduce injury to nearby property by allowing the replacement of a failing wastewater system and by allowing parking outside of the Lena Loop right-of-way

This criterion is met.

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

Construction of a driveway, parking area, and septic system is an authorized use in the D-3 Zoning District, therefore the Variance does not authorize uses not allowed in the district.

This criterion is met.

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

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

The permissible principal use in the D-3 Zoning District is a residential home. Construction of a driveway, parking area, and septic system is not a permissible principal use.

This sub-criterion is not met.

- (B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;***

Compliance with the standard would unreasonably prevent the owner from constructing a new wastewater system which is an essential service and public health and safety requirement for homes outside of the Urban Service Boundary. Compliance with the standard would also prevent the owner from constructing a driveway and a parking pad outside of the right-of-way. These are common features and amenities in this neighborhood, and parking pads within right-of-ways may present safety hazards in some situations. Many homes in the neighborhood are within 330-feet of active eagle nests. Therefore compliance with the existing standard would prevent the owner from using the property in a manner consistent with existing development in the neighborhood of the subject property.

This sub-criterion is met.

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

The project site has a significant slope, which is why a driveway was not constructed to the home earlier and why the parking pad has been located at the base of the slope within the right-of-way. However construction of a new septic system would be required regardless of the slope, and most of the parcel is within 330-feet of an eagle nest or nests. So the slope is not the primary factor in the need for the variance.

This sub-criterion is not met.

or

- (D) Because of preexisting nonconforming conditions on the subject parcel the grant of the Variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

Staff is unaware of any pre-existing non-conforming conditions on the subject parcel.

This sub-criterion is not met.

Criterion Number Five is met because sub-criterion 5b has been met.

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

A grant of the Variance would allow the applicant to construct a parking area, driveway, and a new

wastewater system, which would benefit the neighborhood. USFWS has indicated that eagles are habituated to disturbance in this area, and the proposed construction equipment is small-scale. No significant negative impacts are expected even if eagles actively use the nest or other nests within the 330-foot buffer this season. Therefore a grant of the Variance would result in more benefits than detriments to the neighborhood.

This criterion is met.

FINDINGS

1. Is the application for the requested Variance complete?

Yes. We find the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

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

Not applicable. CBJ Land Use Code eagle regulations are not part of the Juneau Coastal Management Program.

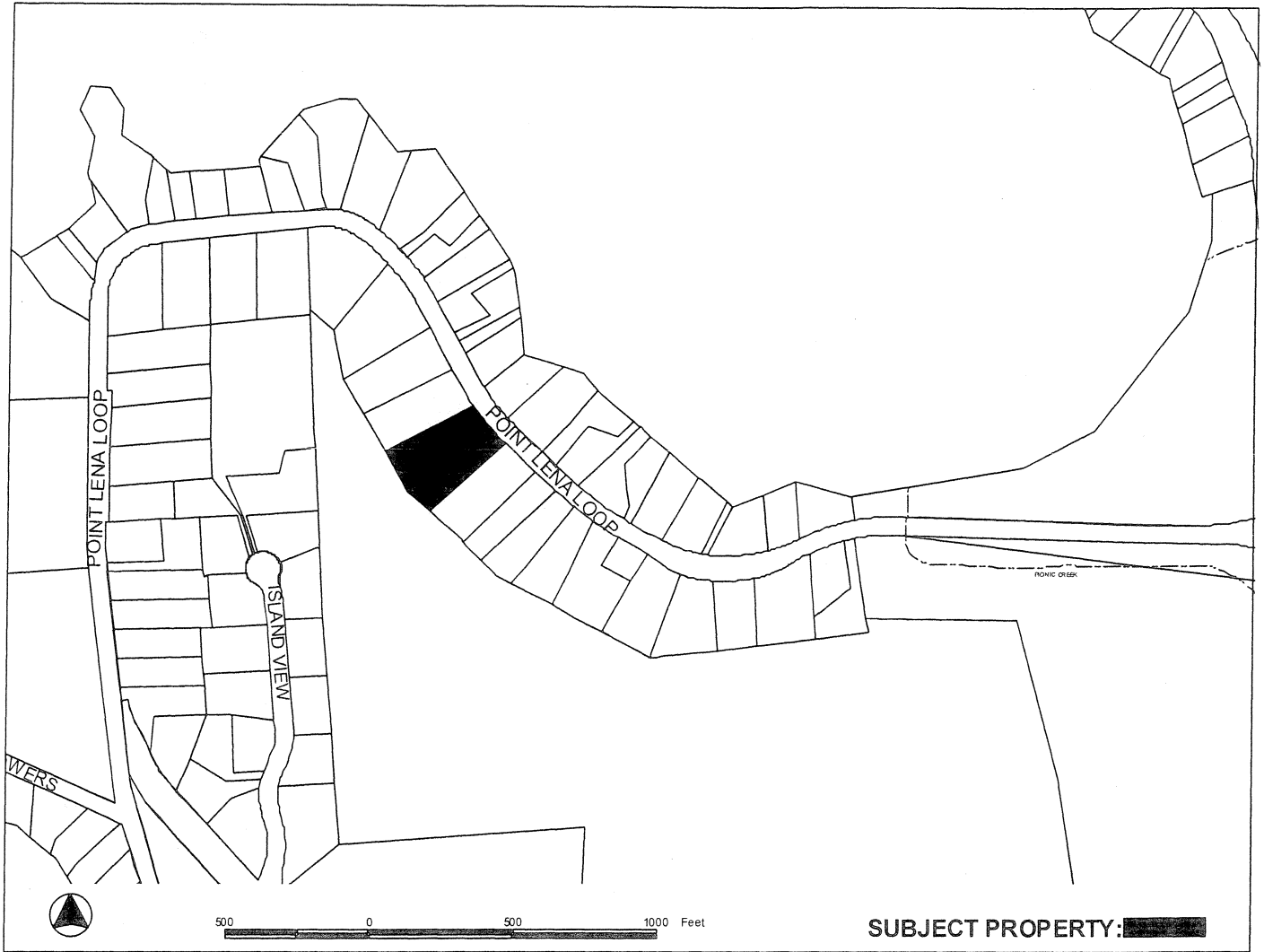
3. Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?

Yes. The Variance meets criteria 1, 2, 3, 4, 5b, and 6.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant requested Variance, VAR2012 0008. The Variance would allow for construction of a driveway, parking pad, and on-lot wastewater disposal system within 330-feet of an eagle nest or nests in the area.

NOTICE OF PUBLIC HEARING



PROPOSAL: A Variance Request for grading and driveway construction within 330 feet of an active eagle nest.

<p>FILE NO: VAR2012 0008</p> <p>TO: Adjacent Property Owners</p> <p>HEARING DATE: May 08, 2012</p> <p>HEARING TIME: 7:00 PM</p> <p>PLACE: ASSEMBLY CHAMBERS Municipal Building 155 South Seward St Juneau, Alaska 99801</p>	<p>APPLICANT(S): CHARLES & KATHRYN CARL</p> <p>Property PCN: 8-B35-0-100-009-0</p> <p>Owner(s): CHARLES & KATHRYN CARL</p> <p>Parcel Size: 1.52 acres</p> <p>Zoned: D3</p> <p>Site Address: 17590 PT LENA LOOP RD</p> <p>Accessed via: PT LENA LOOP RD</p>
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PROPERTY OWNERS PLEASE NOTE:

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

If you have questions, please contact Teri Camery at 586-0755 or email her at teri_camery@ci.juneau.ak.us

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

Date notice was printed: April 25, 2012

ATTACHMENT 1

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: <u>4/17/12</u>
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description <u>DRIVEWAY + Grading within 330' of Eagle nest.</u>		
	PROPERTY LOCATION		
	Street Address <u>17590 Point Lena Loop Road</u>	City/Zip <u>99801</u>	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot) <u>USS 3264 Lot 11</u>		
	Assessor's Parcel Number(s) <u>8B3501000090</u>		
	LANDOWNER/ LESSEE		
	Property Owner's Name <u>Charles W Carl + Kathryn M Carl</u>	Contact Person: <u>Chuck</u>	Work Phone: <u>(907) 580-2377</u>
	Mailing Address <u>P.O. Box 774 Haines AK 99827</u>	Home Phone: <u>(907) 580-7377</u>	Fax Number:
	E-mail Address <u>bossea@hotmail.com</u>	Other Contact Phone Number(s):	
	LANDOWNER/ LESSEE CONSENT ****Required for Planning Permits, not needed on Building/ Engineering Permits****		
I am (we are) the owner(s) or lessee(s) of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.			
X	<u>Charles W Carl</u> Landowner/Lessee Signature	<u>04/17/2012</u> Date	
X	_____ Landowner/Lessee Signature	_____ Date	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission may visit the property before the scheduled public hearing date.			
APPLICANT If the same as OWNER, write "SAME" and sign and date at X below			
Applicant's Name <u>Same</u>	Contact Person:	Work Phone:	
Mailing Address	Home Phone:	Fax Number:	
E-mail Address	Other Contact Phone Number(s):		
X	_____ Applicant's Signature	_____ Date of Application	

-----OFFICE USE ONLY BELOW THIS LINE-----

STAFF APPROVALS	<input checked="" type="checkbox"/>	Permit Type	**SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action			
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
		Mining Case (Small, Large, Rural, Extraction, Exploration)			
		Sign Approval (If more than one, fill in all applicable permit #'s)			
		Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
		Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
	<input checked="" type="checkbox"/>	Variance Case (De Minimis and all other Variance case types)		<u>4/17/2012</u>	<u>VAR 2012 0008</u>
		Wetlands Permits			
	Zone Change Application				
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments: <u>Associated w/ BLD 2012 0155</u> <u>Eagle nest was found to be active dump site visit conducted on 4/12/12 - 10:55</u>					Permit Intake Initials <u>NKJ</u>

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVE

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <i>VAR20120008</i>	Date Received <i>4/17/2012</i>
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TYPE OF VARIANCE REQUESTED:

<input type="checkbox"/> Variance to the Sign Standard (VSG)	<input type="checkbox"/> Variance to Dimensional Standards (VDS)
<input checked="" type="checkbox"/> Variance to Habitat Setbacks (VHB)	<input type="checkbox"/> Variance to Parking Requirements (VPK)
<input type="checkbox"/> Variance to Setback Requirements (VSB)	

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

Septic System HAS FAILED, need DRIVEWAY TO BRING IN Septic System STONE + GRAVEL + SAND TO REPLACE WITH NEW SYSTEM. WE DO NOT HAVE A DRIVEWAY AT THIS TIME.

Previous Variance Applications? YES NO Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted? YES NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S): *NO DRIVEWAY AT THIS TIME TO HOUSE. FAILED SEPTIC SYSTEM IS NOT LOCATED ON THE PROPERTY. THE SYSTEM IS IN STATE - ROW, NEED TO REPLACE SYSTEM ON PROPERTY.*

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

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

BECAUSE OF THE WELL LOCATED WITHIN 330' OF PROPERTY.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

FAILED SEPTIC SYSTEM WILL STILL BE A HEALTH HAZARD. SYSTEM WILL NOT BE INSTALLED WITHIN THE DRYEST TIME OF YEAR. THE SYSTEM MAY NOT BE INSTALLED THIS YEAR, THE ONLY TIME EQUIPMENT IS AVAILABLE IS JUNE.

For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.

If you need any assistance filling out this form, please contact the Permit Center at 586-0770.

VARIANCE FEES

	Fees	Check No.	Receipt	Date
Application Fees	\$ <i>400.00</i>	_____	_____	_____
Adjustment	\$ _____	_____	_____	_____
Total Fee	\$ <i>400.00</i>	<i>7122</i>	<i>2593</i>	<i>4/17</i>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

ATTACHMENT 3

TO BE COMPLETED BY THE APPLICANT

Charles W. Carl
P.O. Box 34053
Juneau, AK 99803

April 18, 2012

City Borough of Juneau
Community Development Planner
153 South Seward ST.
Juneau, AK 99801

Attn: Nicole Jones

RE: Project Narrative for Variance of lot 11, Point Lena Loop Rd, Juneau, Alaska.

#1 Justice to other property owners to Include:

- A. Failed Septic System Replaced
- B. Health and Safety of Community restored by Replacement of Septic System.

#2 Intent of this Title will be Observed By:

- A. Most of the work is at about the 300' of the restricted area.
- B. The equipment being used on this job is small in scale, 80 hp hoe, with about the same noise level as a pick up truck.
- C. The job time-line is about four weeks or less.

#3 Authorization of Variance will not Harm or Injure near by property:

- A. All work is within the boundaries of Lot 11 and permitted by DOT, DEC, Army Corps of Engineers.
- B. The Health and Safety Issues will be corrected by the Replacement.
- C. None of the water will be running into any other property and filters will be in place. Silt fencing will be used as needed.
- D. A Safety Plan is on file with DOT and will be followed.

#4 All Work will be as directed by the Permits from DOT, DEC, Army Corps of Engineers and CBJ.

#5 Compliance with the existing standards would:

- A. Prevent the owner from living at this property due to Failed Septic System. Not having a Driveway to get the sand and stone for the Septic System up to the site.
- B. Prevent Owner from having access to the house by driveway.
- C. The only time the Hoe Rental was available is for June and that would be in the dryer time of year. This was the last machine they had for the entire building season.
- D. Because of the conditions here at the site a driveway is needed to get the materials up to the site. The Variance will not result in a net decrease in overall compliance of land use code or building codes.

RECEIVED

APR 19 2012

PERMIT CENTER/CDD

ATTACHMENT 4

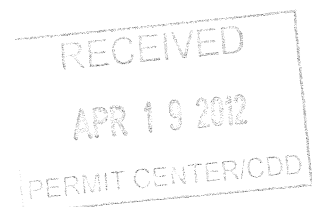
#6 A grant of the Variance would result in more benefits than detriments to the neighborhood:

- A. The Health and Safety issues will be addressed by new Septic System.
- B. The Septic System will out of the State ROW and will be with in the boundaries of Lot 11.
- C. A Driveway will allow the Septic System to be put in.

If you need anything form us please call 907-317-1543 our cell.

Thank you for your time;

Charles W. Carl



Nicole Jones

From: Scott_Frickey@fws.gov
Sent: Thursday, April 12, 2012 8:43 AM
To: Nicole Jones
Subject: Re: Another eagle tree
Attachments: Lena.jpg

Nicole,
 Nest 179 has not been surveyed since 1994. I did conduct an onsite survey in May/June 2010 and the nest was still visible but not active.

If the nest were to become active this year, we would not anticipate that the proposed construction would cause a disturbance to eagles because eagles in the vicinity are likely to be habituated to the significant level of activity that already exists in the residential area.

(See attached file: Lena.jpg)

Scott Frickey
 U.S. Fish & Wildlife Service
 Eagle Permit Biologist
 3000 Vintage Blvd Suite 201
 Juneau, Alaska 99801
 Office: 907-780-1184
 Fax: 907-586-7154

✉ Nicole Jones <Nicole_Jones@ci.juneau.ak.us>

Nicole Jones
 <Nicole_Jones@ci.juneau.ak.us>

04/11/2012 04:07 PM

To: "Scott_Frickey@fws.gov"
 <Scott_Frickey@fws.gov>

cc

Subject: Another eagle tree

Another eagle tree on Point Lena Loop Road! I have a property owner that is requesting a grading permit to install a driveway. Do you have any information for this eagle tree?

Thanks,

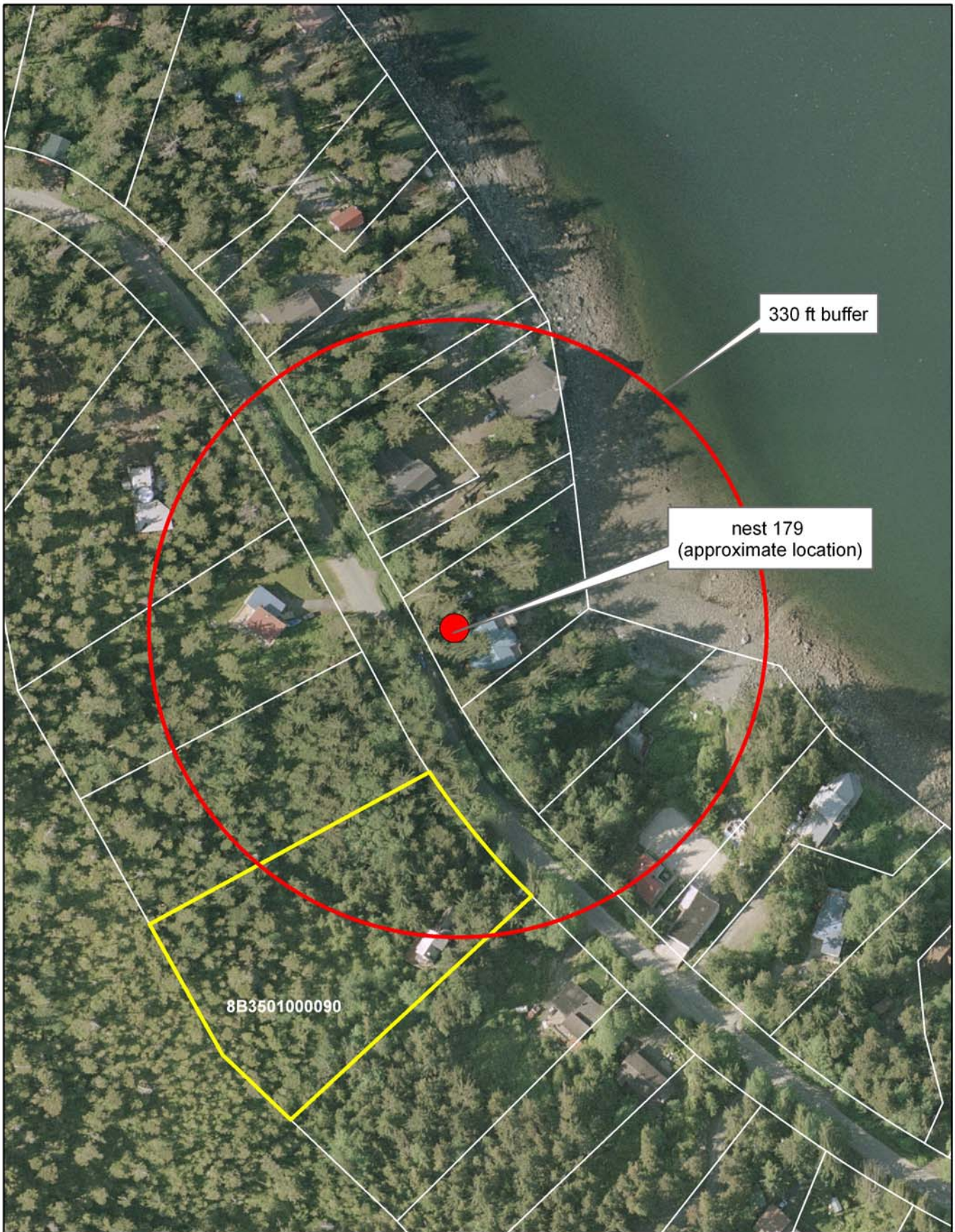
Nicole Jones, Planner I, CFM
 CBJ Community Development Department
 155 S. Seward St.
 Juneau, AK 99801
 Ph: 907.586.0218
 Fax: 907.586.3365

From: Quinn Tracy
Sent: Wednesday, April 11, 2012 4:02 PM
To: Nicole Jones
Subject: eagle nest



ATTACHMENT 5

4/17/2012



0 100 200 400 Feet



Aerial Image Date: June 2006
This is not a survey. Property lines are approximate.

ATTACHMENT 6

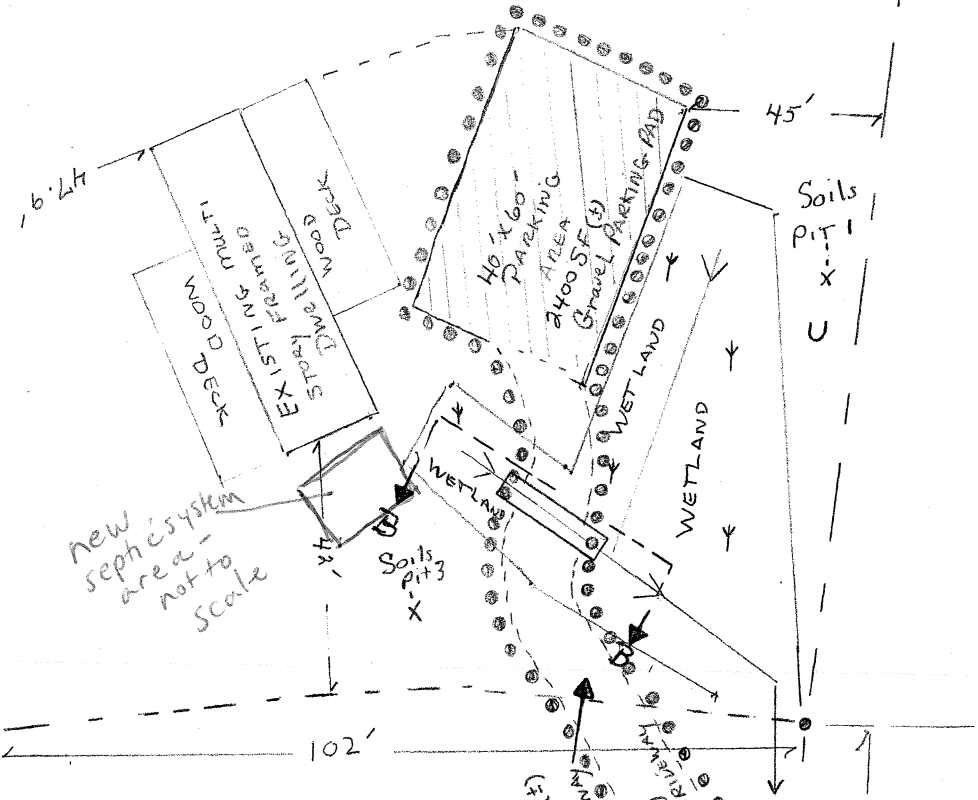
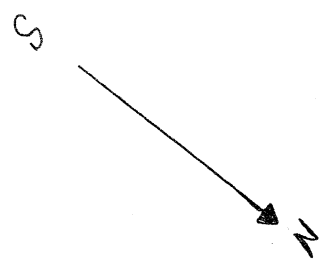
123.07'

452.96'

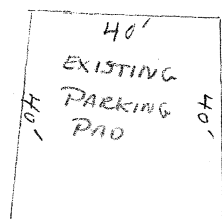
LAT. 58.3925 Long. 134.757E

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APR 17 2012

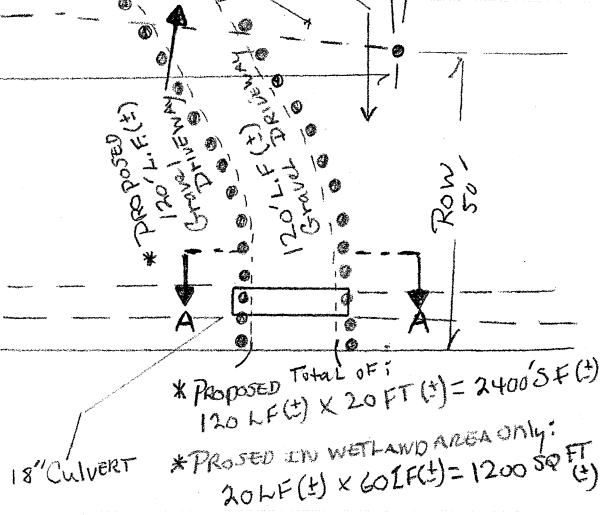
660.53'



50' ROW



Point LENA LOOP ROAD



* Proposed Total of:
120 LF (±) x 20 FT (±) = 2400 SF (±)
* Proposed in Wetland Area Only:
20 LF (±) x 60 FT (±) = 1200 SF (±)

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PERMIT CENTER/CDD
MAR 9 2012

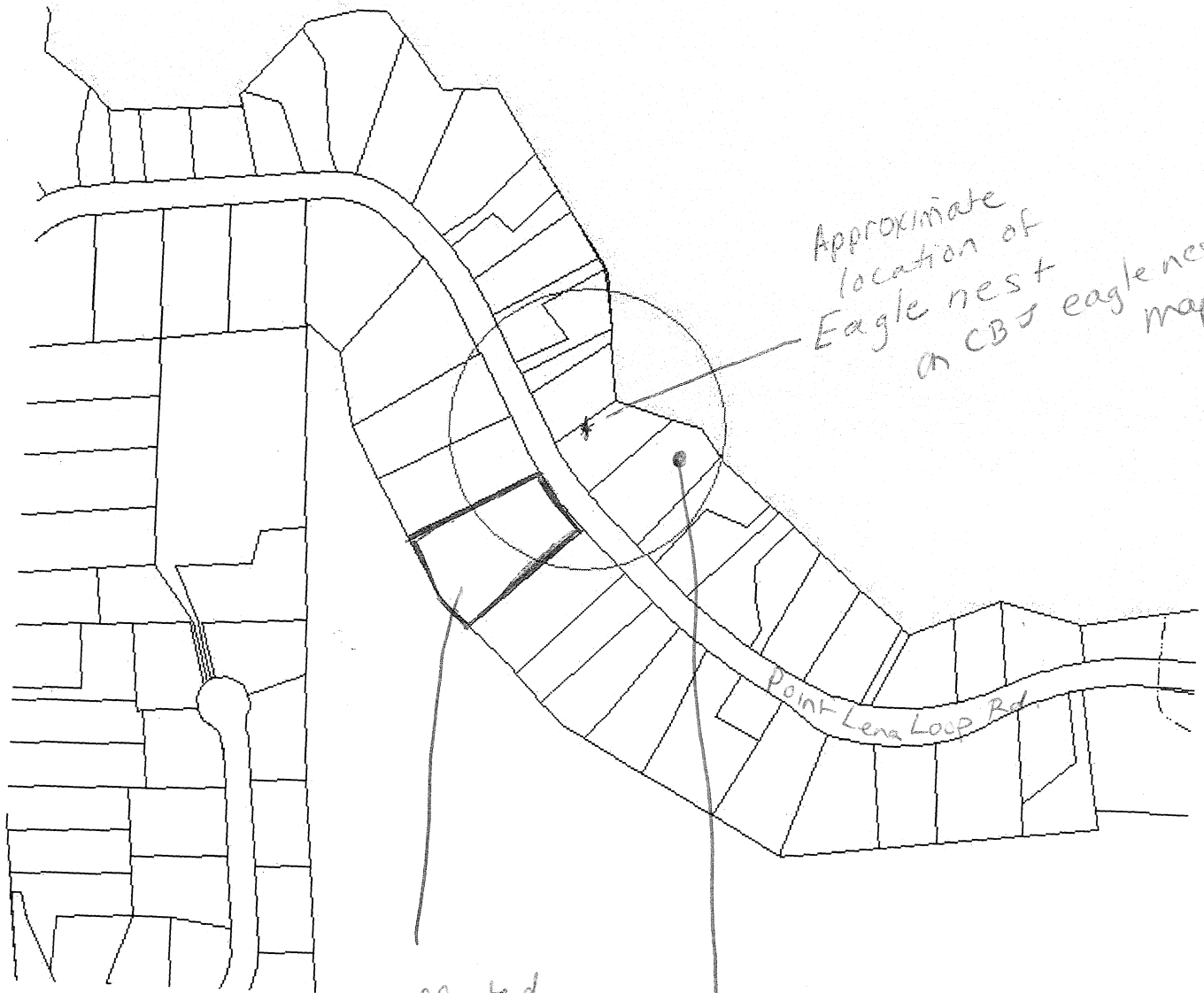
ATTACHMENT 7

PROPOSED

LOT 11, USS-3264, 17590 Point LENA Loop

K.M. CARL

PLAN VIEW



Approximate location of Eagle nest on CBJ eagle nest maps

affected property within the 330 ft. buffer

Approximate location of where CBJ staff spotted an eagle in a nest 2 weeks ago (Ron King's property)

17590
Pt. Lena Loop Rd.

SO - what are the GPS coordinates for the nest according to USFWS?

thanks!
Teri