MEMORANDUM

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

DATE: August 7, 2013

TO: Planning Commission

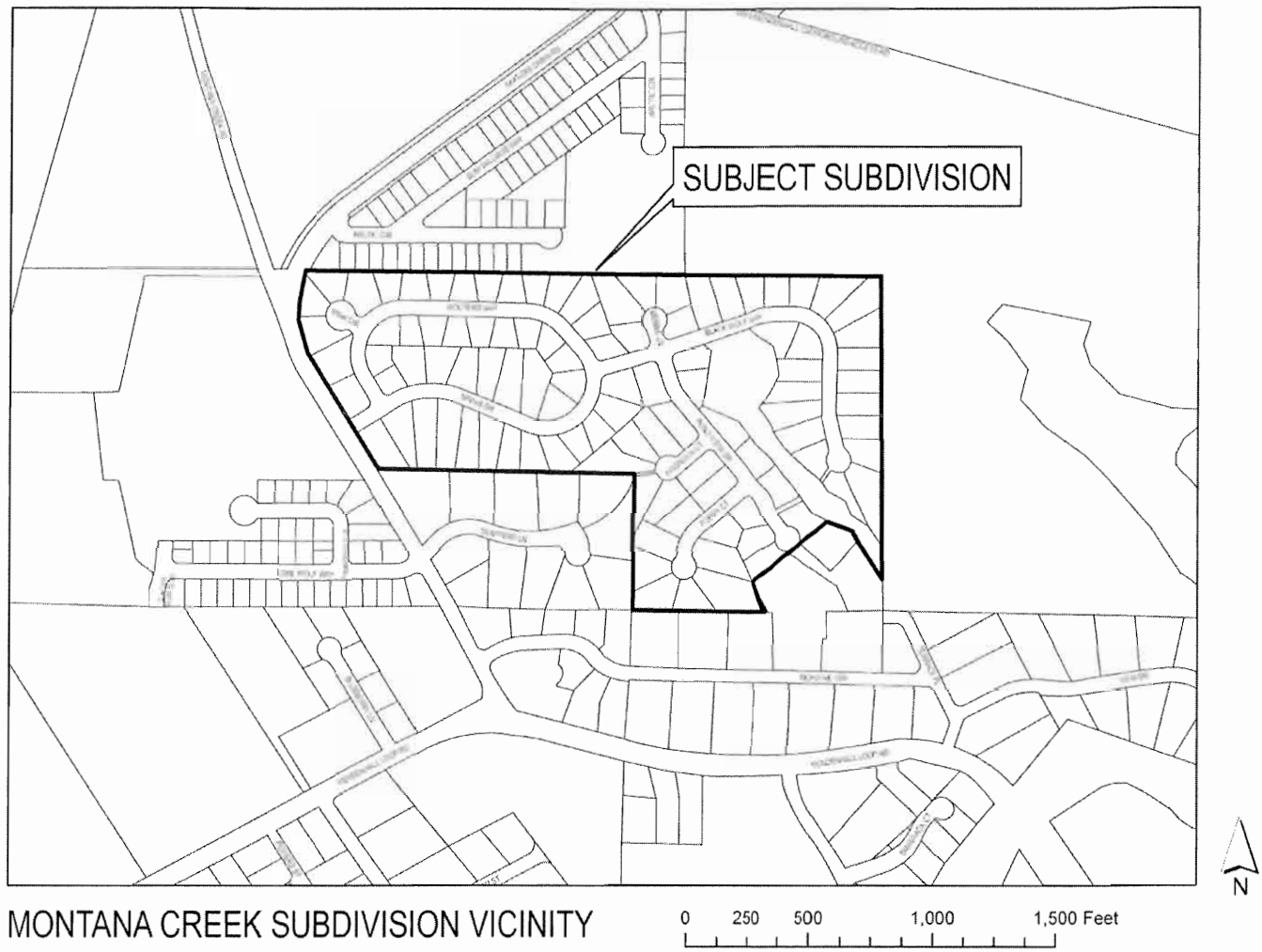
FROM: Laura A. Boyce, AICP, Senior Planner
Community Development Department

FILE NO.: APL2013 0004, Appeal

PROPOSAL: Initial hearing to determine whether the Planning Commission will hear the Appeal of the director's determination to allow fences within the 20' no disturbance greenbelt/visual buffer and 30' no-build structure setback in the Montana Creek subdivision.

GENERAL INFORMATION

Applicant:	Bill Yankee (owner in adjacent Nunatak Terrace subdivision)
Property Address:	Montana Creek Subdivision (subject subdivision)
Comprehensive Plan Future Land Use Designation:	ULDR (Urban Low Density Residential)
Zoning:	D5
Utilities:	CBJ Water & Sewer
Access:	Montana Creek Road
Existing Land Use:	Residential
Surrounding Land Use:	
North:	Brigadoon Subdivision (D5), Forest Service Property (RR)
South	Lupine Acres Subd. (D1), Nunatak Terrace Subd. (D1)
East	Forest Service Property (RR)
West	Montana Creek Road, Montana Creek West Subd. PUD (D3)



MONTANA CREEK SUBDIVISION VICINITY

Parties Referred to:

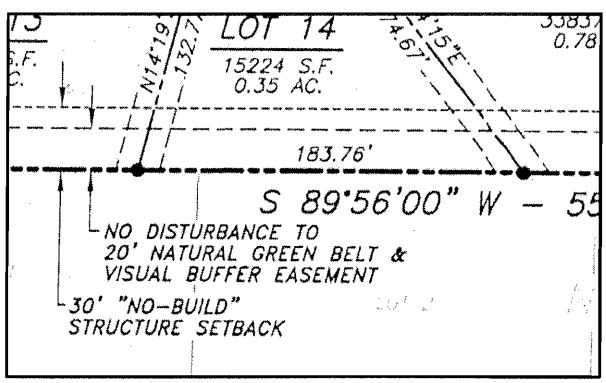
Mr. Bill Yankee, Appellant, Owner of Nunatak Terrace property adjacent to Montana Creek Subdivision
Mr. Hal Hart, Community Development Director

Attachments:

Attachment A	Appeal Application and Supporting Materials
Attachment B	INQ2013 0011 Director's Determination

BACKGROUND

A resident in Montana Creek subdivision placed a fence on his rear and side property lines. He owns an exterior lot in the Montana Creek subdivision. All exterior lots in this subdivision are subject to two plat notes that limit activities on the rear of the lots. These two plat notes are as follows:



Montana Creek subdivision plat excerpt

The Community Development Department (CDD) has allowed fences on Montana Creek subdivision lots in areas that are subject to these plat notes. CDD places limitations on fences for these lots subject to the plat notes by allowing fences if they are placed using only hand tools and if any vegetation is removed, that it must be replaced. This policy is in keeping with the plat notes and has been in place since at least 1999 (see Attachment B for further explanation).

The resident placed the fence along his side and rear property lines in keeping with this CDD policy regarding fence placement in the "no disturbance" areas. The appellant, Mr. Yankee, lives in the adjacent subdivision, Nunatak Terrace, which abuts Montana Creek subdivision and whose rear yard abuts a Montana Creek lot. Mr. Yankee questioned the fence placement since he believed it was contrary to the Montana Creek subdivision plat notes. Mr. Yankee contacted CDD regarding the fence and was told that that the fence was allowed per the CDD policy stated

previously. Mr. Yankee indicated that the plat note uses the term "structure" which is defined in Title 49 to include fences. Based upon this, the appellant thinks it is clear that fences are prohibited in areas that are subject to these plat notes. Based upon his concerns, an Inquiry case, INQ2013 0011, was created in order to research this further and determine whether fences are allowed in the Montana Creek subdivision subject to these plat notes. The Inquiry case was not created to research one specific fence, but to answer whether fences in general are allowed in the entirety of Montana Creek subdivision that are subject to these plat notes. After researching the issue, the director determined in the Inquiry case that fences are allowed in the areas subject to these plat notes. Mr. Yankee, the appellant, filed an appeal of this decision (see Attachment A).

APPEAL PROCEDURE

Appeals to the Planning Commission are regulated under CBJ 49.20.110:

49.20.110 Appeals to the planning commission.

(a) Review by the commission of a decision of the director, may be requested by filing a notice of appeal stating with particularity the grounds therefore with the department within 20 days of the date of the decision appealed. The notice shall be considered by the commission at a regular scheduled meeting. The department and any aggrieved person, including the developer, may appear at that meeting and explain to the commission why it should hear the appeal. The appeal shall be heard unless it presents only minor or routine issues and is clear from the notice of appeal and any evidence offered at the consideration thereof, that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion.

The appeal was filed on July 9, 2013, which is twenty days from the director's determination. Therefore, it was filed within a timely manner.

(b) If the commission decides to hear the appeal, it shall announce whether it intends to review the entire decision, or merely a portion thereof and whether review shall be de novo or on the record. If the commission decides to hear the appeal, it shall give public notice thereof in a newspaper of general circulation in the municipality. The department shall prepare the record on appeal, which shall consist of the original application and supporting materials, written public comment thereon, and all notes, memoranda, minutes and other department material in relation thereto. The burden of proof in the appeal shall be on the party challenging the decision of the director. In a hearing de novo, proof shall be established by a preponderance of the evidence. If the appeal is heard on the record, argument may be heard, but no evidence outside the record shall be admitted and the decision of the department shall be upheld if there is substantial evidence in support thereof and no policy error or abuse or discretion therein. The commission may confirm, reverse, or modify the director's decision, or change the conditions which the director placed on approval. The commission shall support its action with written findings.

(c) Upon its own motion, the commission may certify a case directly to the assembly without review, hearing or recommendation.

Although the Community Development Department stands by its decision to allow fences within the "*30' 'No-Build Structure Setback*" and the "*No Disturbance to 20' Natural Green Belt and Visual Buffer Easement*" for exterior lots within Montana Creek subdivision subject to these plat notes, CDD asks that the appeal be heard so that the Planning Commission can provide guidance as to the intent of the original condition that resulted in the subject plat notes. Additionally, the Planning Commission can provide guidance regarding the definition of "structure" which in Title 49 includes fences as types of structures; CDD believes that when the term was used, it referred to structures such as sheds, and didn't intend to include fences. If the Planning Commission chooses to hear the appeal, staff recommends that the hearing be de novo so that new information may be considered.

RECOMMENDATION

It is staff's recommendation that the Planning Commission hear the appeal, as it does not present only minor or routine issues and it is not clear from the notice of the appeal and any evidence offered at the consideration thereof that the decision appealed was supported by substantial evidence and involved no policy error or abuse of discretion, per CBJ 49.20 110(a). Staff requests a de novo hearing be considered if the Planning Commission chooses to hear the appeal.

Attachment A

NOTICE OF APPEAL OF DIRECTOR'S DETERMINATION

Project Number	Project Name (15 characters)	Case Number	Date Received
		APL 20130004	7/9/13 CM

TO BE COMPLETED BY THE APPELLANT

APPELLANT'S CONTACT INFORMATION:

BILL YANKEE — Appellant's Name
byankee@ptialaska.net — E-mail Address
907 789 9852 — Home Phone
Fax Number
Work Phone
9590 MORAINE WAY — Mailing Address
JUNEAU — City
AK — State
99801 — Zip

X B Yankee — Appellant's Signature

DECISION THAT IS BEING APPEALED

DIRECTOR'S DECISION REGARDING INQ 2013 0011

Date of Director's Determination 6/19/2013

*****Attach a copy of the Director's Decision (E-mail, Notice of Decision, Letter, etc.)*****

GROUNDS FOR APPEAL

(SEE ATTACHED COVER LETTER @ ATTACHMENTS)

SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS

(SEE ATTACHED COVER LETTER @ ATTACHMENTS)

APPEAL SPECIFICS (please fill in all that apply):

Parcel Number Lot 15, Block A, Montana Creek Subdivision — Zoning District
Case Number — Code Section
Current Use of Land or Buildings
Proposed Use of Land or Buildings
Other FENCE built inside perimeter easements needs to be set back 30'.

For more information regarding the process and the submittals required, please see the reverse side.

APPEAL FEE	Fees	Check No.	Receipt	Date
Notice Fees	$ ~~150~~			
Refund (Yes/No)	$			
Total Fee	$ 150	025130	CDD3968	07/09/13

Please attach a cover letter to fully explain the appeal if there is not adequate space on this form.

COVER LETTER ATTACHED TO NOTICE OF APPEAL OF DIRECTOR'S DECISION OF 6/19/2013

GROUNDS FOR APPEAL

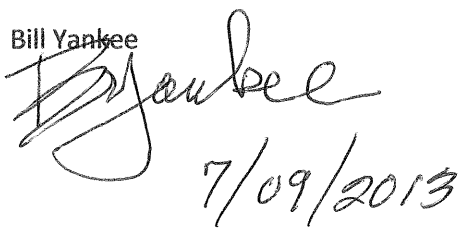
1) Plat note "30' 'No-Build' Structure Setback" prohibits a fence by CDD's own definition of "structure". The Director suggests that somehow the intent of this plat note should allow for a fence, but none of the other structures mentioned in the definition. This opinion is against his own staff determination in an email of 5/23/2013 from Laura Boyce (Planner II and point person for determining the facts, relative to this plat note) to Hal Hart and Jane Sebens where Laura states "It's not clear what the intent of the above rezoning condition and resulting plat note was from reading the staff reports and minutes for the various subdivision approvals." (See attached email)
2) Plat note "No Disturbance to the 20' Natural Greenbelt & Visual Buffer Easement" also prohibits a fence by CDD's definition of "Greenbelt". Note here that the plat note refers to a Natural Greenbelt, which further emphasizes the "natural" and of course there is nothing "natural" about a fence. Also, page 2 of the Director's Decision mentions, as a special condition placed on the property, "the outermost 20 feet of the setback area must be left in natural vegetation and topography." A fence does not qualify as "natural vegetation".
3) The staff report, referred to in Director's Decision on pages 2 and 3, provides that the buffer is to "reduce the visibility of the development" and "mitigate the visual impact of the proposed subdivision". A fence violates both of these purposes for the above plat notes. A fence is part of the development and thus is itself a part of the visual impact of the subdivision. Accordingly, the staff report does not support allowance of the fence.
4) As I understand it, Alaska law requires that a plat unambiguous on its face, is to be interpreted according to the four corners of the plat, without resort to extrinsic evidence such as staff reports, Commission meeting minutes, Notices of Decision, staff interpretation, and past history. Whether the plat note is unambiguous is determined solely from the four corners of the document. Here the two plat notes are unambiguous. One plat note here provides for a "30' 'No-Build' Structure Setback". On its face, the note prohibits building a structure in the setback. A fence is a structure, hence a fence cannot be built in the setback. The other plat note provides "No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement". Construction and existence of the fence is a disturbance of the natural greenbelt. The fence is not itself a natural visual buffer. Hence the fence is prohibited. The Director's resort to the staff reports, etc. to determine intent is legally impermissible and immaterial, since on its face the unambiguous plat notes prohibit the fence.
5) The Director's Decision mention of CDD's long-term policy of allowing fences, as long as they are only constructed with hand tools, that goes back to 1999 and a permitted fence is less than genuine because the 1999 permitted fence was constructed with more than hand tools and the stated policy at the time does not mention anything about hand tools. It appears the policy of CDD is arbitrary, according to the planner on duty, and the "hand tool" limiting factor in the Department's policy is not mentioned in the extrinsic evidence or the plat notes.

SPECIFIC QUESTIONS YOU WOULD LIKE THE PLANNING COMMISSION TO ADDRESS

1) This Director's Decision is little more than a blatant attempt to poke the eye of an earlier Planning Commission (as well as the many people who wrote and testified at the several Planning Commission meetings about this Montana Creek subdivision). And if this decision were to be left intact, what is to prevent this Director from attempting to overturn future Planning Commission decisions?
2) This Director told me over the phone that he felt the decision to allow the fence was in error but that he "didn't want to buy the fence", due to his staff giving the property owners the wrong information. He also told the property owners that it looked like they were given the wrong information. Because this Director is biased here (because of his budget), he has drafted his Decision so that he could avoid "buying the fence". How can the Planning Commission prevent such biases from entering into future land use rulings?
3) This fence is clearly in violation of the plat notes. It is my opinion that this fence needs to be setback the 30' from the perimeter property line, and that CDD should shoulder some of the expense along with the property owner, but the Planning Commission needs to ask itself-What is the remedy, here?

Sincerely,

Bill Yankee



7/09/2013

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

June 19, 2013

Mr. Bill Yankee
9590 Moraine Way
Juneau, Alaska 99801

Re: Director's Decision Regarding INQ2013 0011

Dear Mr. Yankee:

Thank you for your inquiry regarding fences in the Montana Creek subdivision. The purpose of this letter is to clarify the Community Development Department's (CDD) policy regarding fences and to formally notify you of my decision as CDD Director regarding this case.

CDD's longstanding policy has been to allow fences within the platted "*30' 'no-build' structure setback*" and the "*No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement*" for exterior lots in Montana Creek subdivision that are subject to those plat notes (collectively referred to as "greenbelt" throughout this rest of this document). While fences do not require permits for approval, customers sometime call CDD seeking guidance regarding fence placement. CDD responds to these general fence inquiries with three points: 1) Only fences over six feet in height require a permit; 2) sight-obscuring fences must be 20 feet from the traveled way, per CBJ 49.25.430(4)(L); and 3) customers are advised to check with their recorded homeowners' documents (e.g., covenants, deeds) for any additional restrictions regarding fences.

We understand that property owners in the Montana Creek subdivision are subject to specific plat note requirements regarding the greenbelt area. CDD's policy has been to allow fences within the greenbelt as long as installation of the fence requires only hand tools, and that if any vegetation is removed, that it must be replaced. CDD policy also prohibits fill within the greenbelt, because this would require a CBJ grading permit and also a U.S. Army Corps of Engineers wetland permit. This has been CDD's ongoing policy and has not been questioned until your inquiry of May 6, 2013, when you called about your abutting neighbor's, Mr. Chris Gilberto's, fence.

During your May 6, 2013, phone call, you spoke with Laura Boyce, CDD staff, about Mr. Chris Gilberto's fence. Prior to your phone call, Ms. Boyce met with Mr. Gilberto when he visited the Permit Center in order to verify that the location and placement of his existing fence was indeed allowed. A neighbor had advised him of the Montana Creek subdivision plat notes and told him the fence wasn't allowed in its current location. Mr. Gilberto showed an as-built survey that included the plat notes to Ms. Boyce. Upon verifying with another planner at CDD, Laura Boyce told Mr. Gilberto that his fence was okay in its current location per CDD's policy to allow fences in no disturbance areas. Mr. Gilberto relayed this information to you and you called to speak with Ms. Boyce about the fence issue.

The fence in question is located along the side and rear property lines of Mr. Chris Gilberto's Montana Creek lot, located at 8019 Poppy Court. His lot is subject to the two plat notes in question. The rear of

Mr. Gilberto's property, an exterior lot in Montana Creek subdivision, abuts the rear of your property, located in the adjacent Nunatak subdivision. During that phone call, it was your assertion that fences are clearly not allowed in the "*30' 'no-build' structure setback*" as the definition of "structure" in Title 49, the Land Use Code, lists fences as types of structures. You also mentioned that the February 14, 2006 Planning Commission minutes regarding the approval of the Montana Creek West subdivision specifically excluded fences from the exterior greenbelt. Based upon your questioning of the CDD's decision to allow fences within the platted "*30' 'no-build' structure setback*" and the "*No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement*" in Montana Creek subdivision, staff created this Inquiry case in order to research this request.

Subdivision History

Montana Creek subdivision was approved in 1994 (PP-05-94). The property was subject to a zoning upgrade when water and sewer services were extended to the area, which resulted in D-5 zoning on the Montana Creek property. As part of the zoning upgrade, conditions were placed on the proposed subdivision (ZC-01-94). Some of the surrounding subdivisions were developed at more rural density, such as one acre lots. In order to alleviate the concerns of the existing residents regarding the more dense Montana Creek subdivision development abutting their properties, a specific condition was placed on the property:

> *The concept plan must be modified to include a greenbelt and visual buffer setback for all lots on the outer perimeter of the concept plan site including Montana Creek Road. The setback shall provide that no building or structure may be located closer than 30 feet to a perimeter lot line and that the outermost 20 feet of the setback area must be left in natural vegetation and topography. The setback area shall be wider if necessary to retain special features, and shall be maintained to preserve an effective visual screening along the perimeter using vegetation. Existing trees and other vegetation shall be retained as much as possible. Removal of any vegetation from the setback area must be done using methods that will insure the stability of remaining trees and the safety of residents and property. Where necessary to maintain effective screening, for example because of the removal of existing trees, buffers shall be replanted. The developer may propose, and the staff may require that the buffer areas be created as "non-disturbance" areas within lots of greater depth adjoining other property and right-of-way. Alternative methods of accomplishing the recommended buffer may also be considered.*

This condition was summarized and resulted in the two plat notes as follows: "*30' 'No Build' Structure Setback*" and the "*No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement,*" and are applicable to all exterior lots in the Montana Creek subdivision.

Analysis

As stated earlier, Montana Creek subdivision was originally approved in 1994. We do not have institutional knowledge among current staff for the rezone and placement of these conditions as this subdivision was approved almost twenty years ago. In addition, the remaining records available to the City from this rezone are limited for the various subdivision approvals. However, staff reviewed the staff reports, Planning Commission meeting minutes, and the Notice of Decisions for the various phases within the Montana Creek subdivision to check for intent regarding the plat note requirement and also whether fences were to be excluded from the buffer setback area.

The staff reports state that existing subdivisions in the vicinity to Montana Creek subdivision are more rural, with larger lots, generally developed at D-1 density. Montana Creek subdivision was subject to a

rezoning to D-5, and the surrounding neighbors were upset about this higher density subdivision adjacent to their homes. The greenbelt and visual buffer area and the no build area were discussed in the reports as a way to ensure that existing vegetation would be preserved so that the surrounding subdivisions would have vegetation blocking the view of the more dense development of Montana Creek. Upon review of the record, the primary purpose of the buffer area appears to be for screening purposes. As stated in the Montana Creek subdivision Preliminary Plat staff report (PP-05-94) to the Planning Commission, dated October 5, 1994:

> *The proposed development calls for vegetated buffers for screening along the perimeter boundaries of the site. These buffers would reduce the visibility of the development in Montana Creek Subdivision from adjacent property, and thereby would mitigate the visual impact of the proposed subdivision. The proposal indicates that buffers would be augmented with additional landscaping as necessary to maintain effective screening. Buffers deeper than 20 feet may increase the effectiveness of the buffer, and the proposal provides for added depth where necessary.*

While fences are not mentioned in the record available, it should be noted that visual screening methods generally involve a fencing (or walls) or vegetation, or a combination of the two. Fencing as a visual buffer strategy is limited though because fences can only block six feet in height of the proposed development. A vegetation buffer that preserves existing vegetation, such as tall trees, helps block the visual impact from homes that can be built to 35 feet in height. Fences are beneficial for screening purposes, although they can be expensive. It should also be noted that the surrounding subdivisions are allowed to build a fence on their rear property lines that abut Montana Creek subdivision so it appears that it was not the intent to exclude fences from this area.

In the May 6, 2013 phone call, you referred to the Planning Commission meeting minutes of February 14, 2006, for Montana Creek West subdivision (SUB2005-00048). That subdivision approval included a condition that specifically excludes fences from its required greenbelt. Montana Creek West is a separate subdivision and is not part of the subject Montana Creek subdivision. Although the developers are the same, the subdivisions are not related. Montana Creek West was approved as a Planned Unit Development (PUD) which requires a public access greenbelt around the perimeter of the subdivision for open space purposes. Fences were specifically not allowed in Montana Creek West so that the residents could have access to the public greenbelt area; if fences were placed in or across the greenbelt, access would be blocked.. The Montana Creek West greenbelt functions very differently from the greenbelt in the subject Montana Creek subdivision. The greenbelt in Montana Creek subdivision functions as a buffer between land uses and it is not, nor was, intended for public use. The staff report discussion of the perimeter buffer for Montana Creek West states the following (underlined portion added for emphasis):

> *The PUD code requires that no building structures or parking areas be located in the perimeter buffer. In keeping with CBJ actions regarding private yards in "no build" buffers in other residential subdivisions, structures such as storage sheds, patios, decks, and large play systems would not be allowed within the buffer. Elsewhere, CBJ has allowed homeowners to build fences within a no-build buffer provided that they are constructed without heavy equipment. However, in this situation the buffer is also serving as a common area that residents of the development may use for access to the wetland refuge. Therefore staff has recommended a condition prohibiting fences in the perimeter buffer.*

CDD's policy to allow fences within these areas subject to the Montana Creek plat notes goes back to at least 1999. A review of building permit approvals for the Montana Creek subdivision includes approval in 1999 for an eight-foot fence (fences over six feet in height require a building permit) located within the *"30' 'No Build' Structure Setback"* and the *"No* Disturbance *to 20' Natural Greenbelt & Visual Buffer*

Easement" areas. This building permit (BLD99-00143) was approved within five years from the subdivision original approval. The permit includes a note that states "*Fence along rear property line in 'No Build' & 'No Disturbance' easements OK per CDD policy as long as it is constructed with minimal disturbance of natural vegetation in greenbelt & vegetation removed is replanted....*" Over the years, CDD staff has continued to advise Montana Creek property owners that fences are allowed, with the same limitations as noted in the building permit approval. A recent informal survey of the subdivision also confirms that a number of fences exist within the subdivision located within the greenbelt and no build areas, notably at the entry to the subdivision from Montana Creek Road.

The longstanding CDD policy to allow fences in the no disturbance and no build areas in Montana Creek subdivision does not create conflict with the policy's intent to maintain a visual buffer between surrounding subdivisions, such as Nunatak Subdivision, and Montana Creek Subdivision. Only fences are allowed within the setback area; no structures such as greenhouses, garden sheds, or garages, that would create visual impacts, have been constructed, or are allowed, in this area.

The fence in this particular case was constructed in such a way as to be consistent with the standing CDD policy and appears to be of minimal visual impact since it is wire and less than five feet tall. The wire fence allows for the vegetative buffer to show through unlike other fences that might allow for greater privacy. It appears reasonable that the property owner would want to denote where his property line is and where the neighboring properties begin and to do this is a manner that does not impair the neighbor's enjoyment of the greenbelt, since the same right is afforded to the non-Montana Creek subdivision property owner.

Director's Decision

The policy by CDD to allow fences in a greenbelt area, even though fences are considered a structure as defined in Title 49, does not create a conflict with the intent of the Montana Creek subdivision plat notes. The notes are intended to maintain a visual separation, or greenbelt, between the differing land uses (rural subdivision densities adjacent to more urban densities). The exclusion of structures in the greenbelt area would be applied to everything with the exception of a fence, as it has been since at least 1999. Fences can continue to be placed within the areas subject to the Montana Creek plat notes, as long as they are placed with only hand tools and replacement of vegetation if any is removed.

Sincerely,

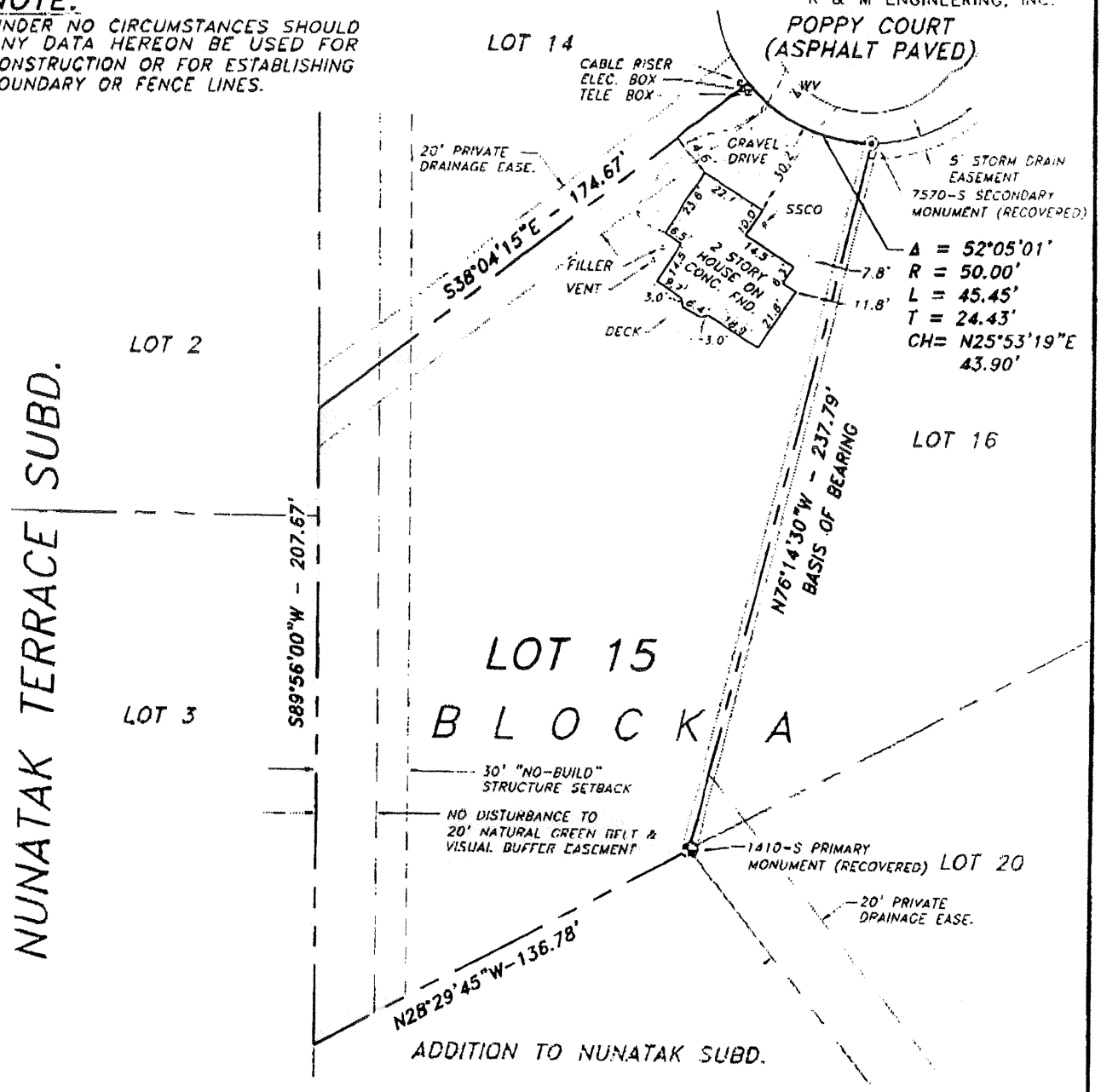
Hal H. Hart

Hal H. Hart, Director
CBJ Community Development Department

Cc: Chris Gilberto
Kim Kiefer, City Manager
Brenwynne Jenkins, CDD Administrative Officer
File

R & M ENGINEERING, INC.

NOTE:
UNDER NO CIRCUMSTANCES SHOULD ANY DATA HEREON BE USED FOR CONSTRUCTION OR FOR ESTABLISHING BOUNDARY OR FENCE LINES.



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT OF LOT 15, BLOCK A, MONTANA CREEK SUBDIVISION-PHASE IV, AND THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS APPEARING ON THE LAND ARE AS SHOWN, AND THERE ARE NO ENCROACHMENTS OR OVERLAPS OF IMPROVEMENTS.

STATE OF ALASKA 49TH
MARK A. JOHNSON
LS | 7570
REGISTERED PROFESSIONAL LAND SURVEYOR

AN AS-BUILT SURVEY PLAT OF
LOT 15, BLOCK A, MONTANA CREEK SUBDIVISION-PHASE IV
CITY & BOROUGH OF JUNEAU, ALASKA

DATE	SCALE	DRAWN BY	CHECKED BY	PROJECT NO.	DRAWING NO.
OCT. 18, 2005	1"=50'	MLL	MAJ	051791	1-1

Geophysical hazard areas means those areas which present a threat to life or property from geophysical or geological hazards, including flooding, tsunami or storm surge run-ups, landslides, snowslides, faults, ice hazards, erosion and littoral beach processes.

Grade (adjacent ground elevation) means the lowest point of elevation of the finished surface of the ground, paving, or sidewalk within the area between a building and a property line or, when the property line is more than five feet from the building, between the building and a line five feet from the building.

Grading means a disruption of the natural soil surface.

Gravel pit means an open land area where sand, gravel or rock fragments are mined or excavated for sale or off-tract use.

Greenbelt means an open area which is cultivated or maintained in a natural state surrounding development or used as a buffer between land uses or to mark the edge of an urban or developed area.

Gross area means the total site area of a parcel of land, measured horizontally and excluding bodies of water.

Gross building area means the total horizontal floor areas of all floors, measured to the exterior of the walls, of a principal building, together with all accessory buildings or structures, exclusive of steps and porches. The gross area of a building without surrounding exterior walls shall be measured to the outside line of the supporting structure.

Gross floor area means the total horizontal floor area measured to the outside of surrounding exterior walls or to the centerline of common interior walls. The gross floor area of a building without surrounding exterior walls shall be measured to the outside line of the supporting structure.

Gross leasable floor area means the total gross floor area designed for exclusive tenant use or exclusive owner use in a commercial building.

Ground cover means grasses or other plants grown to keep soil from being blown or washed away.

Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.

Halfway house means a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.

Street means the entire right-of-way of a public way which affords the principal means of access to properties abutting the right-of-way.

Street, collector, means a street which collects traffic from local streets and connects the minor and major arterials.

Street, cul-de-sac, means a street with a single common ingress and egress and with a turnaround at the end.

Street, local, means a street intended for vehicular access to abutting property and not intended for through traffic.

Street, major arterial, means a street with access control, channelized intersections, restricted parking, and which collects and distributes traffic to and from minor arterials.

Street, minor arterial, means a street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets.

Structural alteration means any change to the supporting members of a structure.

Structure means anything which is constructed or erected and located on or under the ground, or attached to something fixed to the ground, including the following:

(1) A building, regardless of size, purpose, or permanence;
(2) A tower, sign, antenna, pole or similar structure;
(3) A basement, foundation, or mobile home pad;
(4) A fence;
(5) A sign;
(6) A street, road, sidewalk, driveway, parking area, or storage area.

Subdivider means the developer of a subdivision.

Subdivision means the division, redivision, or development of land into two or more lots, or land leases of 55 or more years.

Temporary structure means a structure established in support of and during the construction of a structure.

Tideflats means mostly unvegetated areas that are alternately exposed and inundated tides.

Tideland means land between the lowest and highest tides.

Townhouse means a single-family dwelling in a row of at least three such dwellings, in which each dwelling has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from every other unit by one or more common fire resistant walls.

Transient structures means all forms of short term residence, including hotels, motels, boardinghouses, bed and breakfasts, roominghouses, or any other residential use where capacity is measured by rooms rather than dwelling units.

Transit center means a building or facility adjacent to an area where two or more transit vehicles stop for the purposes of layover, transfer, or route termination. A transit center will typically

Attachment A

Send Insert Save draft Options Cancel Zeke Yankee

Zeke Yankee
yankee1959@live.com

RE: Montana Creek subdivision - 30' "nc

Draft saved at 8:37 AM

To Cc Bcc

Laura Boyce

From: Laura Boyce
Sent: Thursday, May 23, 2013 9:17 PM
To: Hal Hart; Jane Sebens
Subject: Montana Creek subdivision - 30' "no build" structure plat note

Hal & Jane:

As you know, we've had a complaint from an adjoining neighbor about an existing fence on a lot subdivision. Mr. Bill Yankee owns a lot that backs up to a Montana Creek subdivision lot owned Gilberto placed a fence on his property line, along the side and rear property lines, in order to k Mr. Yankee – the neighbor on the backside of the lot (both year yards of their properties back u complain that a fence is not supposed to be built on the rear 30 feet of Montana Creek properti a Montana Creek subdivision plat note that states that there is a 30' "no build" structure setbac to come down ideally. If that can't be done, then he'd like holes cut into the fence so that nestir back and forth over the ponds between the two lots. I've include the as-built survey from of Mr. built survey includes the two plat notes discussed briefly below. The recorded plat for Phase IV attached as reference.

Here are some pertinent facts to know:

- Fences do not require a permit, unless they are over six feet in height.
- Customers sometimes check with CDD to see where they can properly place fences on their
- Mr. Gilberto claims he originally asked CDD if he could place a fence on his property and he could.
- Mr. Gilberto came into our offices approximately two weeks ago to check again to see if his indeed allowed because Mr. Yankee, his neighbor, told him it wasn't. Mr. Gilberto spoke with m staff member, I told Mr. Gilberto that his fence was okay in that area because CDD has a policy t disturbance" areas.
- There is also a "No Disturbance to 20' Natural Green Belt & Visual Buffer Easement" on this the "30' 'No-Build' Structure Setback".
- CDD has regularly allowed fences within "no disturbance" areas as long as only hand tools a fill is brought in and if any vegetation is removed, then is has to be replaced).
- Based on the policy above, staff has allowed fences in no disturbance areas, such as near w
- Staff recently told Mr. Gilberto his fence was okay where it was placed based upon the "No Green Belt & Visual Buffer Easement" note and the CDD policy.
- The definition of structure in the Land Use Code includes a fence as a type of structure.
- The plat note results from a rezoning condition for this property. That rezoning condition st ***concept plan must be modified to include a greenbelt and visual buffer setback for all lots on t concept plan site including Montana Creek Road. The setback shall provide that no building or closer than 30 feet to a perimeter lot line and that the outermost 20 feet of the setback area n vegetation and topography. The setback area shall be wider if necessary to retain special feat to preserve an effective visual screening along the perimeter using vegetation. Existing trees a retained as much as possible. Removal of any vegetation from the setback area must be done insure the stability of remaining trees and the safety of residents and property. Where necess screening, for example because of the removal of existing trees, buffers shall be replanted. Th and the staff may require that the buffer areas be created as "non-disturbance" areas within l adjoining other property and right-of-way. Alternative methods of accomplishing the recomm considered."***
- It's not clear what the intent of the above rezoning condition and resulting plat note was fr and minutes for the various subdivision approvals. What is discussed at the time is that existing more rural, with larger lots. Montana Creek subdivision received a rezoning to D-5, a higher den neighbors were upset about this higher density subdivision adjacent to their homes. The greenb were discussed in the reports as a way to ensure that existing vegetation would be preserved so subdivisions would have vegetation blocking the view of the more dense development.
- As a general note, there are no restrictions on the surrounding subdivisions from having fen lines – the property line that abuts Montana Creek subdivision.

If you need additional information, please let me know.

Thank you,

Laura

BUILDING PERMIT

BLD99-00143
PRJ98-00034

Note: "Building Permit" is a generic term which includes Building Safety Inspections, Grading Permits, and permits for Electrical, Plumbing and Mechanical Work.

Your special attention is called to the following:

This permit is granted on the express conditions that the construction shall, in all repects, conform to the ordinances of the City and Borough of Juneau. It may be revoked at any time upon violation of any provisions of said ordinances.

The granting of this permit does not authorize the violation of any federal, state, or local law regulating construction nor the violation of the terms of any deed or covenant or any zoning or other regulations.

If plan review was required, this permit must be attached to the approval drawings. The permit, plans and record of inspections must be available on site at all times while the construction is in progress.

The yellow posting notice must be prominently displayed to show a permit has been issued and to assist the inspectors in location of the project. This permit becomes null and void if work or construction authorized is not commenced within one year or if work or construction is suspended or abondoned for a period of one year at any time after work is commenced.

Inspection can be arranged by telephoning 586-1703 or by written notification. Work shall not proceed until the inspector has approved the various stages of construction. Call before 8:00 AM for same day inspections.

Please provide the following information: Permit No., Address, Type of Inspection, Date and Time and Contact Name and Phone No.

Job Address: **9057 NINNIS DR** Issued: **3/31/99**

Permit Number: **BLD99-00143** Project: **MONT CRK II L 23 B C** Parcel No: **4-B29-0-132-008-0**

Project Description: **8' fence.**

Subdivision: **MONTANA CREEK 2** Lot# **35** Block# **C**

Zone: Flood Elevation: Firm Zone:

Setbacks: Front: Side 1:
Rear: Side 2:
Comments:

Owner:	**RANDY HULSE**
Address:	**9057 NINNIS DRIVE**
City:	**JUNEAU AK 99801**
Phone:	

Applicant:	**RANDY HULSE**
Address:	**9057 NINNIS DRIVE**
City:	**JUNEAU AK 99801**
Phone:	

Fee Type	Amount Paid	Receipt	Date
Permit Fee	$18.00	2956	3/31/99
Total Fees Paid:	$18.00		

Valuation for Permit Fee Calculations:

Building Permit	$300.00
Total Valuation:	$300.00

Project Conditions and Holds:

1 - No disturbance to natural vegetation in "No Disturbance" easement. If vegetation is disturbed, vegetation shall be replanted.

Inspections Required: Call for inspection before covering or concealing any of the work described below. Inspections may be combined.

800 - Insp - Residential Final

BUILDING PERMIT APPLICATION

Attachment A

(Including Water, Sewer, Driveway, Grading, Mechanical, Plumbing, Electrical, and Building Safety Inspections)

(APPLICANT PLEASE FILL IN TOP PORTION OF PAGE AFTER FIRST LINE)

Project No: PRJ98-0434	Project Name: (City Staff to assign name) Mont Crk II L23 BC	Case No: BLD99-143	Date Received: 3-31-99

APPLICANT AREA

CONTRACTOR/OWNER-BUILDER ☐ Contact by E-Mail _____
Mailing Address: 9057 Ninnis Drive Same
Contact Person: Randy Hulse | Phone No.: 9-2800 | FAX No.: | License Number:

ARCHITECT / ENGINEER ☐ Contact by E-Mail _____
Mailing Address: Same
Contact Person: Randy Hulse | Phone No.: 9-2800 | FAX No.: | License Number:

PERMIT CLASS
☐ NEW ☐ ADDITION ☐ REPAIR/REMOD
☐ ELECTRICAL ☐ PLUMBING ☐ MECHANICAL ☐ WOODSTOVE ☐ WATER ☐ SEWER
☐ DEMOLITION ☐ GRADING ☐ DRIVEWAY ☐ BUILDING SAFETY ☐ OTHER Fence

BUILDING TYPE ☒ Residential ☐ Commercial ☐ Other _____

EXISTING DWELLING UNITS ON PROPERTY _____ NEW DWELLING UNITS THIS PROJECT _____ TOTAL EXISTING BUILDINGS ON PROPERTY _____

DESCRIPTION OF WORK: Build Fence Fence will need To be 8' Tall in some areas due to grade

VALUE: TYPE (ie: house, garage, deck, unfinished)
New: _____ _____ Sq. Ft.
New: _____ _____ Sq. Ft.
New: _____ _____ Sq. Ft.
New: _____ _____ Sq. Ft.
Cost of Remodeling: $_____ (if any)

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other federal, state or local law regulating construction or the performance of construction.

Signature of Owner, Contractor or Authorized Agent: X Randy Hulse Date: X _____

(OFFICE USE ONLY BELOW THIS LINE)

STAFF AREA

BUILDINGS Occupancy Class _____ Type of Construction _____
FCC Code _____ Permit Classification _____

Occupancy	Square Feet	@ Rate	= Valuation
			300.00

Bedrooms _____ Stories _____

BUILDING PERMIT FEES

PLAN REVIEW FEES
___ Building Plan Review $ _____
___ Grading Plan Review $ _____
Total Review Fees $ _____

PLAN REVIEW PAYMENT
___ Date _____ Receipt No. _____ CK _____

LAND USE
PARKING _____
FLOOD ELEV. _____
FIRM ZONE _____
FIRM MAP _____
LAND USE PERMITS:
_____ Case Number
_____ Case Number
_____ Case Number
_____ Case Number

ENGINEERING/PUBLIC WORK
CITY WATER Units: _____
Case No: _____
Service - Size _____
Fire Line - Size _____
Metered _____
Extended Pay # _____
CITY SEWER Units: _____
Case No: _____
BOND Case No: _____
OTHER Case No: _____
ADEC On-site Water No _____ Date _____
ADEC On-site Sewer No _____ Date _____

PLAN REVIEW APPROVALS

	Initials	Date
___ Fire		
___ Zoning	CPC	5.31.99
___ Engineering		
___ Water		
___ Sewer		
___ Architectural		5.31.99
___ Structural		
___ Plumbing		
___ Mechanical		
___ Electrical		
___ Access		
___ Special Inspection Form		

PERMIT ISSUANCE FEES
___ Adjusted Plan Review Fee $ _____
___ Fast Track Fee $ _____
___ Early Start Fee $ _____
✓ Building Permit Fee $ 15.00
___ Water Assessment Fee $ _____
___ Water Inspection Fee $ _____
___ Sewer Assessment Fee $ _____
___ Sewer Inspection Fee $ _____
___ Grading Permit Fee $ _____
___ Driveway Permit Fee $ _____
___ Bond for _____ $ _____
___ Other _____ $ _____
Total Issuance Fees $ _____

Water Connection Permits
I hereby acknowledge receipt of a _____ inch meter yoke.
X _____ Date: _____

APPROVED FOR ISSUANCE
Signature _____
Date 5.31.99

PERMIT ISSUANCE PAYMENTS
✓ Date 3/31/99 Rcpt 29516 Ck 3173 $ 18.00
_ Date _____ Rcpt _____ Ck _____ $ _____
_ Date _____ Rcpt _____ Ck _____ $ _____
_ Date _____ Rcpt _____ Ck _____ $ _____

CONDITIONS AND HOLDS ON PERMIT:
"No disturbance to natural vegetation in "No Disturbance" easement. If vegetation is disturbed, vegetation shall be replanted.

devappbd.xls rev. 9 1/26/99

Continued on Reverse Side

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION *FORM*

DEVELOPMENT PERMIT APPLICATION

Attachment A

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

Project Number	CITY and BOROUGH of JUNEAU	Date Received:
PKJ 98 34		3-31-99

Project Name (City Staff to assign name) Mont Crk II L32 BC

PROJECT / APPLICANT INFORMATION

Project Description: Fence

PROPERTY LOCATION

Street Address	City / Zip		
9057 Nina's Drive			
Subdivision (if known) Montana Creek 2	**Survey (if known)**	**Block / Tract (if known)** C	**Lot (if known)** 35
Assessor's Parcel Number (if known) 4-B29-0-132-008-0			

LANDOWNER /LESSEE

Property Owner's Name	☐ Contact by E-Mail:	Contact Person	Work Phone No.
Randy Hulse			
Mailing Addresss 9057 Nina's Drive Juneau AK		Home Phone No.	FAX No.

LANDOWNER/LESSEE CONSENT

(Required for Planning permits not needed on Building/Engineer permits)

I am (we are) the owner(s) or Lessee of the property subject to this application and I (we) consent as follows:

A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission.

B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.

Randy Hulse — Landowner/Lessee Signature — Date 3/31/99

Kassandra Hulse — Landowner/Lessee Signature — Date 4/4/99

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 and/or the Design Review Board may visit the property and may do so during the weekend before the scheduled public hearing date.

INITIAL ALL THAT MAY APPLY

APPLICATION TYPE	OWNER'S INITIALS
ALLOWABLE USE	
CONDITIONAL USE	
VARIANCE	
DESIGN REVIEW	
SUBDIVISION	
OTHER	

APPLICANT

(If same as OWNER, write "SAME" and sign and date at X below)

Applicant's Name	☐ Contact by E-Mail:	Contact Person	Work Phone No.
Randy Hulse			789-2890
Mailing Addresss 9057 Nina's Drive		Home Phone No.	FAX No.

X Randy Hulse — Applicant's Signature — X 3/31/99 — Date of Application

STAFF APPROVALS

(OFFICE USE ONLY BELOW THIS LINE)

CK	PERMIT TYPE	SIGN	DATE RECEIVED	APPLICATION NO.
	ALLOWABLE USE APPROVAL			
	CONDITIONAL USE APPROVAL			
	VARIANCE			
	DESIGN REVIEW APPROVAL — MINOR / MAJOR			
	SUBDIVISION — MINOR / MAJOR / PUD			
	STREET VACATION			
	SIGN APPROVAL — LOCATED IN HISTORIC DISTRICT? ☐ YES ☐ NO			
X	BUILDING PERMIT		3/31/99	BLD99-143

CK	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.
	WATER PERMIT		
	SEWER PERMIT		
	GRADING PERMIT		
	DRIVEWAY PERMIT		
	RIGHT-OF-WAY PERMIT		
	PUB. FAC. TRANSMISS. & EXCAV. PERMIT		
	OTHER - (Describe)		

Permit Intake Initials GPC

Zone	Total Lot Area	Required Setbacks
D-5		Front ___ Back ___ Side ___ Other ___

COMMENTS: Fence along rear property line in "No Build" & "No disturbance" easements OK per CDD policy as long as it is constructed with minimal disturbance of natural vegetation in greenbelt & vegetation removed is replanted per Laurie Sica.

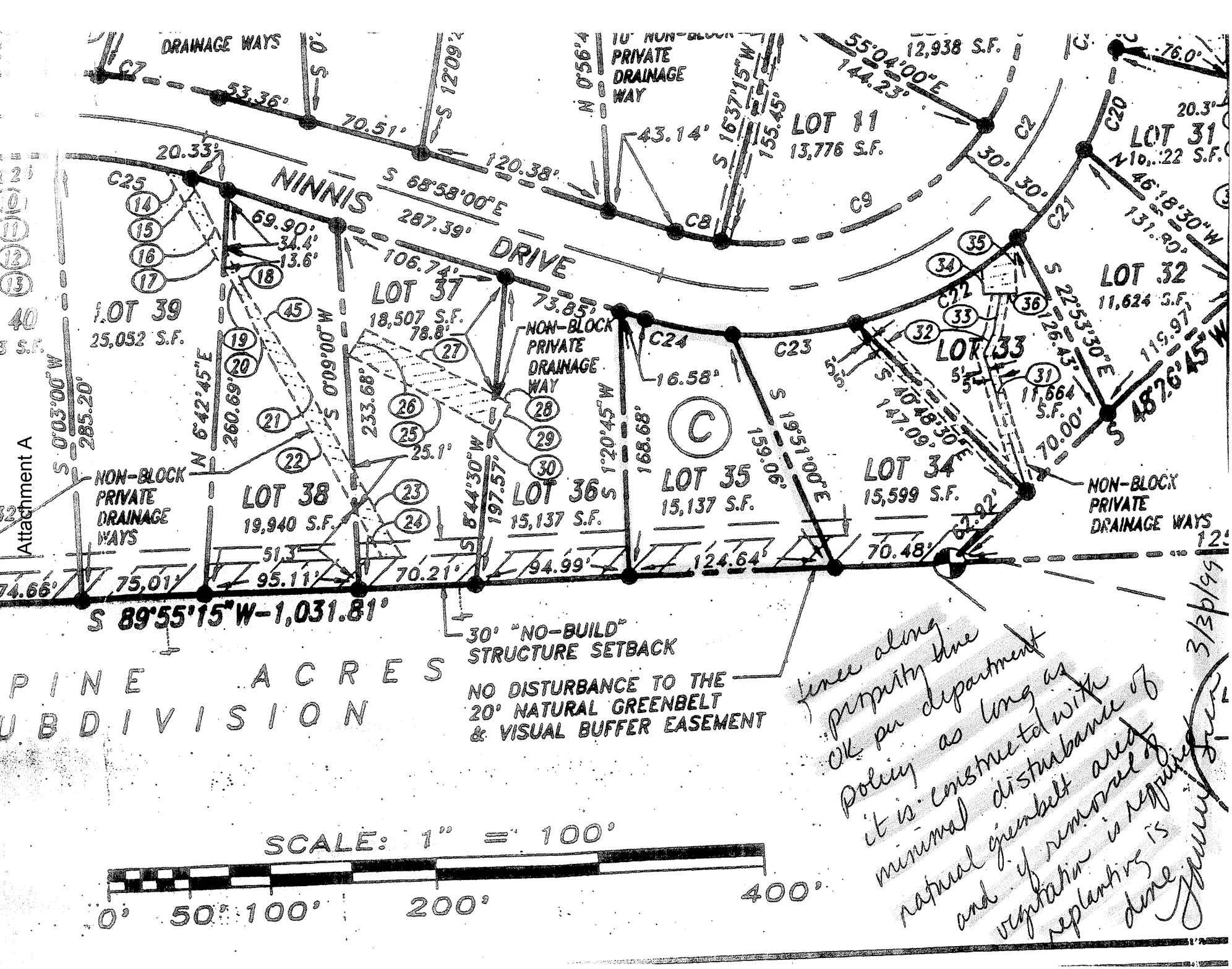
[DEB/PERMFORM.XLS REV. -2/18/99]

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

MAIL ADDR:	BOX 32845		SEWER AVAI: 001
CITY/STATE:	JUNEAU AK	ZIP: 99803	SEWER SYS: 000
STREET NAME:	NINNIS DR	HOUSE NUMBER: 09057	
LEGAL DESCRPTN:	MONTANA CREEK 2 BL C L 35		

PREV OWNER:	H & H CONSTRUCTION			LOT SIZE:	15137.00
LAST TRANSFER:	9804			AREA UNIT:	001
TAX YEAR:	1999	USE CODE:	001	TOTAL SQFT:	002368
LAND PV:	65,000.00	ZONING:	003	ATTIC AREA:	000412
BLDG PV:	200,100.00	NO UNITS:	001	FIN BSMT:	
TOTAL PV:	265,100.00	YR BUILT:	1998	TOT BSMT:	000000
EXEMPT CODE:	0	STYLE:	003	GLA:	
EXMP LND:	0.00	BEDROOMS:	003	GARAGE TYPE:	002
EXMP BLD:	0.00	BATHS:	3.00	GARAGE DESC:	002
EXMP TOT:	0.00	TOT ROOMS:	008	GARAGE AREA:	000672

(En)Find (2)First (4)Prior (5)Next (6/22)List/Search (7)Change Key
(8)Prev Year (10)Inquiry (13)Taxes (14)Utility (15)Print (16)Exit

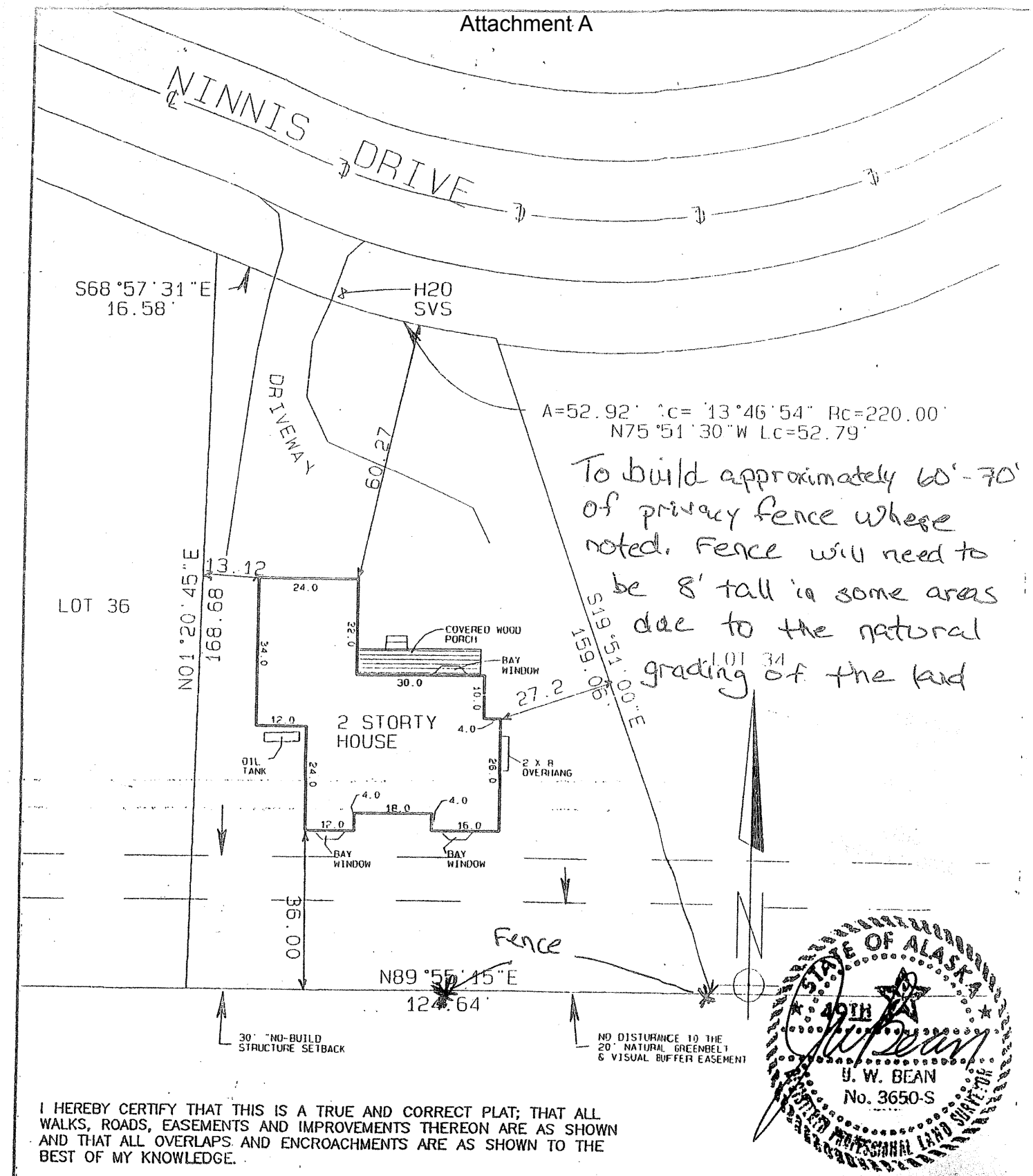


fence along property line ok per department Policy as long as it is constructed with minimal disturbance of natural greenbelt area and if removal of vegetation is required replantings is done

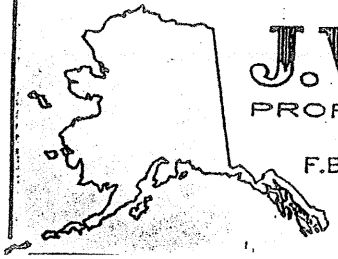
3/2/95

Attachment A

A-17



I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT; THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS THEREON ARE AS SHOWN AND THAT ALL OVERLAPS AND ENCROACHMENTS ARE AS SHOWN TO THE BEST OF MY KNOWLEDGE.

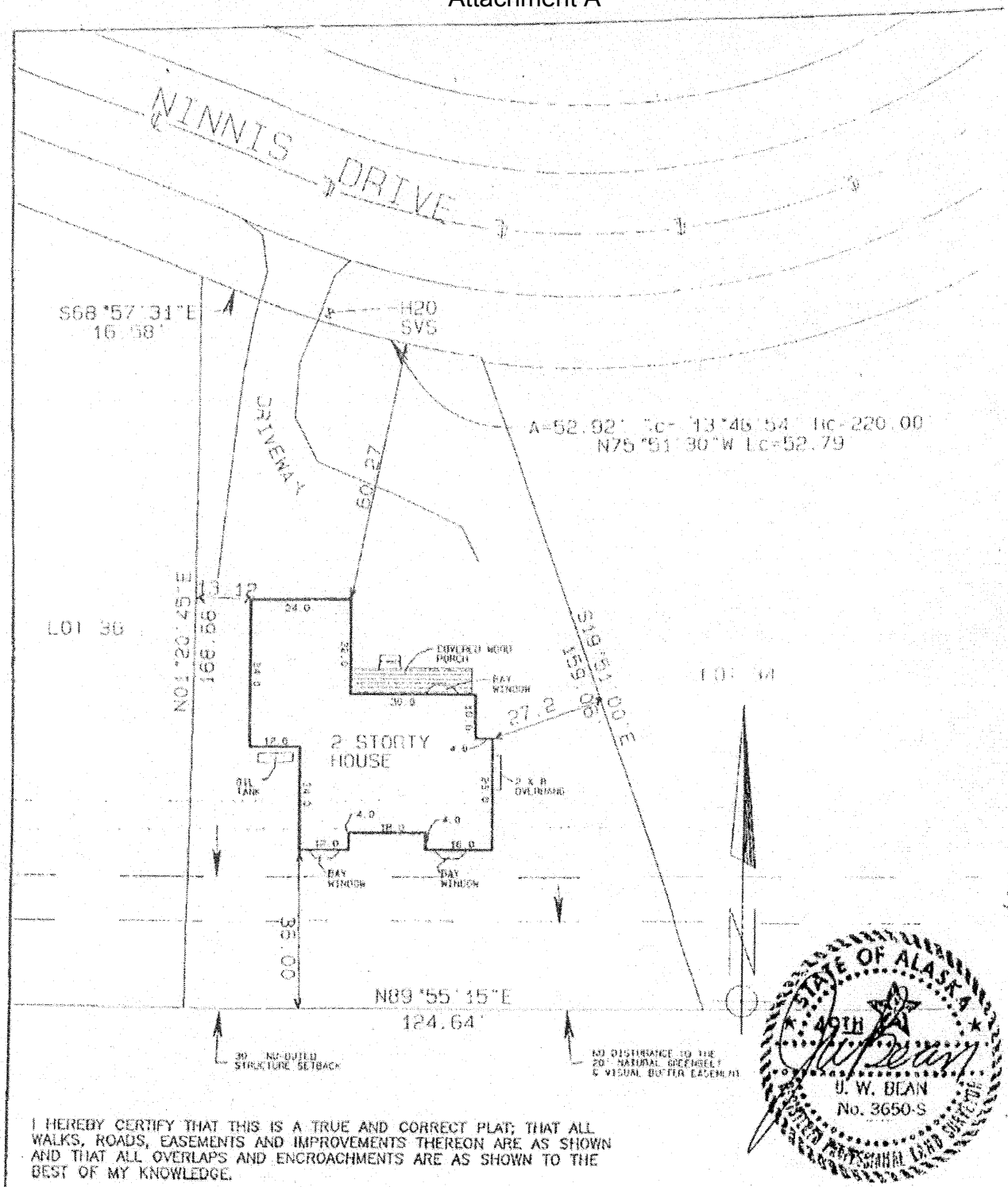


J.W. BEAN
PROFESSIONAL SURVEYOR

F.B. _____ JOB No 12200
SCALE 1" = 30
DATE 11-2-98

AS-Built Survey of
Lot 35 Block C
Montana Creek
within U.S.

Attachment A



I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT PLAT; THAT ALL WALKS, ROADS, EASEMENTS AND IMPROVEMENTS THEREON ARE AS SHOWN AND THAT ALL OVERLAPS AND ENCROACHMENTS ARE AS SHOWN TO THE BEST OF MY KNOWLEDGE.

STATE OF ALASKA
49TH
U. W. BEAN
No. 3650-S
REGISTERED PROFESSIONAL LAND SURVEYOR

J.W. BEAN
PROFESSIONAL SURVEYOR

F.B. _____ JOB No 12200
SCALE 1" = 30
DATE 11-2-98

AS-Built Survey of
Lot 35 Block C
Montana Creek Subd II
within U.S.S.

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

June 19, 2013

Mr. Bill Yankee
9590 Moraine Way
Juneau, Alaska 99801

Re: Director's Decision Regarding INQ2013 0011

Dear Mr. Yankee:

Thank you for your inquiry regarding fences in the Montana Creek subdivision. The purpose of this letter is to clarify the Community Development Department's (CDD) policy regarding fences and to formally notify you of my decision as CDD Director regarding this case.

CDD's longstanding policy has been to allow fences within the platted "*30' 'no-build' structure setback*" and the "*No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement*" for exterior lots in Montana Creek subdivision that are subject to those plat notes (collectively referred to as "greenbelt" throughout this rest of this document). While fences do not require permits for approval, customers sometime call CDD seeking guidance regarding fence placement. CDD responds to these general fence inquiries with three points: 1) Only fences over six feet in height require a permit; 2) sight-obscuring fences must be 20 feet from the traveled way, per CBJ 49.25.430(4)(L); and 3) customers are advised to check with their recorded homeowners' documents (e.g., covenants, deeds) for any additional restrictions regarding fences.

We understand that property owners in the Montana Creek subdivision are subject to specific plat note requirements regarding the greenbelt area. CDD's policy has been to allow fences within the greenbelt as long as installation of the fence requires only hand tools, and that if any vegetation is removed, that it must be replaced. CDD policy also prohibits fill within the greenbelt, because this would require a CBJ grading permit and also a U.S. Army Corps of Engineers wetland permit. This has been CDD's ongoing policy and has not been questioned until your inquiry of May 6, 2013, when you called about your abutting neighbor's, Mr. Chris Gilberto's, fence.

During your May 6, 2013, phone call, you spoke with Laura Boyce, CDD staff, about Mr. Chris Gilberto's fence. Prior to your phone call, Ms. Boyce met with Mr. Gilberto when he visited the Permit Center in order to verify that the location and placement of his existing fence was indeed allowed. A neighbor had advised him of the Montana Creek subdivision plat notes and told him the fence wasn't allowed in its current location. Mr. Gilberto showed an as-built survey that included the plat notes to Ms. Boyce. Upon verifying with another planner at CDD, Laura Boyce told Mr. Gilberto that his fence was okay in its current location per CDD's policy to allow fences in no disturbance areas. Mr. Gilberto relayed this information to you and you called to speak with Ms. Boyce about the fence issue.

The fence in question is located along the side and rear property lines of Mr. Chris Gilberto's Montana Creek lot, located at 8019 Poppy Court. His lot is subject to the two plat notes in question. The rear of

Mr. Gilberto's property, an exterior lot in Montana Creek subdivision, abuts the rear of your property, located in the adjacent Nunatak subdivision. During that phone call, it was your assertion that fences are clearly not allowed in the "*30' 'no-build' structure setback*" as the definition of "structure" in Title 49, the Land Use Code, lists fences as types of structures. You also mentioned that the February 14, 2006 Planning Commission minutes regarding the approval of the Montana Creek West subdivision specifically excluded fences from the exterior greenbelt. Based upon your questioning of the CDD's decision to allow fences within the platted "*30' 'no-build' structure setback*" and the *"No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement"* in Montana Creek subdivision, staff created this Inquiry case in order to research this request.

Subdivision History

Montana Creek subdivision was approved in 1994 (PP-05-94). The property was subject to a zoning upgrade when water and sewer services were extended to the area, which resulted in D-5 zoning on the Montana Creek property. As part of the zoning upgrade, conditions were placed on the proposed subdivision (ZC-01-94). Some of the surrounding subdivisions were developed at more rural density, such as one acre lots. In order to alleviate the concerns of the existing residents regarding the more dense Montana Creek subdivision development abutting their properties, a specific condition was placed on the property:

> *The concept plan must be modified to include a greenbelt and visual buffer setback for all lots on the outer perimeter of the concept plan site including Montana Creek Road. The setback shall provide that no building or structure may be located closer than 30 feet to a perimeter lot line and that the outermost 20 feet of the setback area must be left in natural vegetation and topography. The setback area shall be wider if necessary to retain special features, and shall be maintained to preserve an effective visual screening along the perimeter using vegetation. Existing trees and other vegetation shall be retained as much as possible. Removal of any vegetation from the setback area must be done using methods that will insure the stability of remaining trees and the safety of residents and property. Where necessary to maintain effective screening, for example because of the removal of existing trees, buffers shall be replanted. The developer may propose, and the staff may require that the buffer areas be created as "non-disturbance" areas within lots of greater depth adjoining other property and right-of-way. Alternative methods of accomplishing the recommended buffer may also be considered.*

This condition was summarized and resulted in the two plat notes as follows: "*30' 'No Build' Structure Setback*" and the "*No Disturbance to 20' Natural Greenbelt & Visual Buffer Easement*," and are applicable to all exterior lots in the Montana Creek subdivision.

Analysis

As stated earlier, Montana Creek subdivision was originally approved in 1994. We do not have institutional knowledge among current staff for the rezone and placement of these conditions as this subdivision was approved almost twenty years ago. In addition, the remaining records available to the City from this rezone are limited for the various subdivision approvals. However, staff reviewed the staff reports, Planning Commission meeting minutes, and the Notice of Decisions for the various phases within the Montana Creek subdivision to check for intent regarding the plat note requirement and also whether fences were to be excluded from the buffer setback area.

The staff reports state that existing subdivisions in the vicinity to Montana Creek subdivision are more rural, with larger lots, generally developed at D-1 density. Montana Creek subdivision was subject to a

rezoning to D-5, and the surrounding neighbors were upset about this higher density subdivision adjacent to their homes. The greenbelt and visual buffer area and the no build area were discussed in the reports as a way to ensure that existing vegetation would be preserved so that the surrounding subdivisions would have vegetation blocking the view of the more dense development of Montana Creek. Upon review of the record, the primary purpose of the buffer area appears to be for screening purposes. As stated in the Montana Creek subdivision Preliminary Plat staff report (PP-05-94) to the Planning Commission, dated October 5, 1994:

> *The proposed development calls for vegetated buffers for screening along the perimeter boundaries of the site. These buffers would reduce the visibility of the development in Montana Creek Subdivision from adjacent property, and thereby would mitigate the visual impact of the proposed subdivision. The proposal indicates that buffers would be augmented with additional landscaping as necessary to maintain effective screening. Buffers deeper than 20 feet may increase the effectiveness of the buffer, and the proposal provides for added depth where necessary.*

While fences are not mentioned in the record available, it should be noted that visual screening methods generally involve a fencing (or walls) or vegetation, or a combination of the two. Fencing as a visual buffer strategy is limited though because fences can only block six feet in height of the proposed development. A vegetation buffer that preserves existing vegetation, such as tall trees, helps block the visual impact from homes that can be built to 35 feet in height. Fences are beneficial for screening purposes, although they can be expensive. It should also be noted that the surrounding subdivisions are allowed to build a fence on their rear property lines that abut Montana Creek subdivision so it appears that it was not the intent to exclude fences from this area.

In the May 6, 2013 phone call, you referred to the Planning Commission meeting minutes of February 14, 2006, for Montana Creek West subdivision (SUB2005-00048). That subdivision approval included a condition that specifically excludes fences from its required greenbelt. Montana Creek West is a separate subdivision and is not part of the subject Montana Creek subdivision. Although the developers are the same, the subdivisions are not related. Montana Creek West was approved as a Planned Unit Development (PUD) which requires a public access greenbelt around the perimeter of the subdivision for open space purposes. Fences were specifically not allowed in Montana Creek West so that the residents could have access to the public greenbelt area; if fences were placed in or across the greenbelt, access would be blocked.. The Montana Creek West greenbelt functions very differently from the greenbelt in the subject Montana Creek subdivision. The greenbelt in Montana Creek subdivision functions as a buffer between land uses and it is not, nor was, intended for public use. The staff report discussion of the perimeter buffer for Montana Creek West states the following (underlined portion added for emphasis):

> *The PUD code requires that no building structures or parking areas be located in the perimeter buffer. In keeping with CBJ actions regarding private yards in "no build" buffers in other residential subdivisions, structures such as storage sheds, patios, decks, and large play systems would not be allowed within the buffer. Elsewhere, CBJ has allowed homeowners to build fences within a no-build buffer provided that they are constructed without heavy equipment. However, in this situation the buffer is also serving as a common area that residents of the development may use for access to the wetland refuge. Therefore staff has recommended a condition prohibiting fences in the perimeter buffer.*

CDD's policy to allow fences within these areas subject to the Montana Creek plat notes goes back to at least 1999. A review of building permit approvals for the Montana Creek subdivision includes approval in 1999 for an eight-foot fence (fences over six feet in height require a building permit) located within the *"30' 'No Build' Structure Setback"* and the *"No* Disturbance *to 20' Natural Greenbelt & Visual Buffer*

Easement" areas. This building permit (BLD99-00143) was approved within five years from the subdivision original approval. The permit includes a note that states "*Fence along rear property line in 'No Build' & 'No Disturbance' easements OK per CDD policy as long as it is constructed with minimal disturbance of natural vegetation in greenbelt & vegetation removed is replanted....*" Over the years, CDD staff has continued to advise Montana Creek property owners that fences are allowed, with the same limitations as noted in the building permit approval. A recent informal survey of the subdivision also confirms that a number of fences exist within the subdivision located within the greenbelt and no build areas, notably at the entry to the subdivision from Montana Creek Road.

The longstanding CDD policy to allow fences in the no disturbance and no build areas in Montana Creek subdivision does not create conflict with the policy's intent to maintain a visual buffer between surrounding subdivisions, such as Nunatak Subdivision, and Montana Creek Subdivision. Only fences are allowed within the setback area; no structures such as greenhouses, garden sheds, or garages, that would create visual impacts, have been constructed, or are allowed, in this area.

The fence in this particular case was constructed in such a way as to be consistent with the standing CDD policy and appears to be of minimal visual impact since it is wire and less than five feet tall. The wire fence allows for the vegetative buffer to show through unlike other fences that might allow for greater privacy. It appears reasonable that the property owner would want to denote where his property line is and where the neighboring properties begin and to do this is a manner that does not impair the neighbor's enjoyment of the greenbelt, since the same right is afforded to the non-Montana Creek subdivision property owner.

Director's Decision

The policy by CDD to allow fences in a greenbelt area, even though fences are considered a structure as defined in Title 49, does not create a conflict with the intent of the Montana Creek subdivision plat notes. The notes are intended to maintain a visual separation, or greenbelt, between the differing land uses (rural subdivision densities adjacent to more urban densities). The exclusion of structures in the greenbelt area would be applied to everything with the exception of a fence, as it has been since at least 1999. Fences can continue to be placed within the areas subject to the Montana Creek plat notes, as long as they are placed with only hand tools and replacement of vegetation if any is removed.

Sincerely,

Hal H. Hart

Hal H. Hart, Director
CBJ Community Development Department

Cc: Chris Gilberto
Kim Kiefer, City Manager
Brenwynne Jenkins, CDD Administrative Officer
File