

SETTLEMENT AGREEMENT

WHEREAS, the Alaska Center for the Environment (Appellant) and the Heritage Land Bank (Appellee) are engaged in a dispute concerning the platting of Section 36, Township 12 North, Range 3 West, Seward Meridian (hereafter "Section 36"); and

WHEREAS, the Appellant and the Appellee are desirous of resolving this dispute in a mutually acceptable manner; and

WHEREAS, the Appellant and the Appellee have negotiated a settlement which they agree will satisfy each of their concerns and objectives; and

THEREFORE, the Appellant and the Appellee agree in good faith to the following:

A. Responsibilities of Appellee

1. To secure the services of a qualified consultant to perform soils testing and groundwater monitoring services within the potentially developable areas of Section 36 identified in Appendix A as Tracts B, C, K, H and I.
2.
 - a) While coordinating closely with the Appellant, have the Habitat Division of the Alaska Department of Fish and Game designate the location of the wildlife corridors specified in the Anchorage Platting Board decision of April 5, 1995, pertaining to Section 36.
 - b) While coordinating closely with the Appellant, have the Department of Community Planning and Development of the Municipality of Anchorage, using the best available information, delineate as undevelopable all wetlands, wetland buffers, stream setbacks, and slopes equal to, or greater than 25 percent, within Tracts B, C, K, H and I. While coordinating closely with the Appellant, have the Department of Community Planning and Development of the Municipality of Anchorage, using the best available information, delineate all slopes equal to, or greater than, 10 percent in each Tract to be tested.
3. A soils testing and groundwater monitoring consultant contract will be executed no later than March 1, 1996, which date may be extended by mutual consent, and shall consist of the following elements.

- a) The consultant shall be selected through the Request For Proposal (RFP) process provided for by Anchorage Municipal Code 7.20, including final selection by a four person RFP Review Committee. The RFP must include the scope of work stated in Appendix B attached hereto and be approved by the RFP Review Committee. The RFP Review Committee shall be comprised of the Executive Director of the Heritage Land Bank and one other representative from the Municipality of Anchorage and of two persons selected by Appellant. The point allocation system used for contract award shall be determined by the committee.
 - b) Review all existing topographic, soil, groundwater, and wetland information and make a preliminary identification of areas which are potentially developable for residential use, excluding areas delineated as undevelopable. Percolation tests will then be conducted in these areas, using the number of test holes sufficient to determine developable and undevelopable areas, through at least a single "break up" season (April, May and June), but not to exceed one year (12 consecutive calendar months).
 - c) Compile all information gathered under Sections A.2. and A.3. above, and issue a report complete with findings and all supporting information. The findings must be supported by the information.
4. Appellee shall notify consultant that Appellant, or its designated agent(s), is authorized to independently observe and record the testing and results thereof. Appellee shall direct consultant to notify Appellant or its designated agent(s) prior to the start of any testing/monitoring effort or meeting concerning the work performed pursuant to the terms of this agreement in sufficient time to permit Appellant, or its designated agent(s), to attend and/or to conduct independent, concurrent testing/monitoring.
 5. It is the intent of the parties that all information will be fully disclosed to both parties and that Appellant, or its designated agent(s), will have access to any and all information used by, or delivered by, consultant to Appellee substantially concurrent with Appellant's receipt of such information. The use of telephonic conferencing and joint meetings is contemplated. Appellee shall direct consultant to comply with this intent.
 6. Upon completion and analysis of the report required by Subsection A.3.c), Appellee will initiate a replat of Section 36 in order to segregate the undevelopable areas from the developable areas. Appellee shall promptly initiate a replat of those areas of land

which are the subject of this agreement, identifying those areas which have been found undevelopable and shall with reasonable diligence initiate and process an application to rezone such undevelopable areas to the classification of PLI-P. Appellee acknowledges that it has no authority to guarantee the successful outcome of the replat and rezoning applications for undevelopable land.

The Director of the Department of Cultural and Recreational Services has indicated by memorandum that the Department is favorably inclined to accept management control of undevelopable land within Section 36 (Appendix C).

7. The Appellee further agrees not to initiate disposal or development of any land in Section 36 until the management of all undevelopable land is transferred to the Department of Cultural and Recreational Services or all undevelopable land is zoned as PLI-P. Until Section 36 is replatted, the Appellee will not contest temporary ingress and egress by property owners and tenants east of Section 36 through Tracts G, H and D on the existing roadway. Future access rights will be addressed at the time Section 36 is replatted.
8. Appellee agrees to promptly refund to Appellant the cost of all documented application fees and record reproduction costs, except for \$237.25 which the parties agree represents a reasonable cost for record reproduction fees.

B. Responsibilities of Appellant and Intervenors

1. Both Appellant and Intervenors agree to dismiss the petition concerning Section 36 before the Anchorage Board of Adjustment (S-9583A) within 48 hours of the ratification of this settlement agreement by the Anchorage Assembly.
2. Appellant and Intervenors agree not to initiate a new petition or other appeal involving any issue settled by this agreement and pertaining to the development of Tracts B, C, K, H, and I of Section 36, provided such development is consistent with the terms of this settlement agreement.
3. In the event that Appellee initiates a replat of Section 36, Appellant and Intervenors agree not to challenge the report prepared in compliance with Section A.3.c.) for the purposes of such replat of Section 36.
4. The Appellant agrees to waive all claims to reimbursement of \$388.50, which were costs incurred by Appellant to obtain copies of transcripts which were part of the record for this case.

5. The Appellant also agrees to waive all claims to reimbursement of \$8,875 in attorney fees incurred by Appellant in this case.

C. Responsibilities of the Parties (Appellant and Appellee)

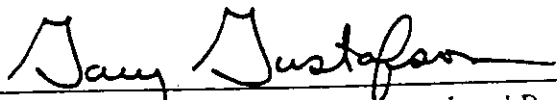
1. The parties shall act with good faith in carrying out this agreement and shall attempt among themselves to resolve any disputes arising under it.

Any disputes which cannot be resolved directly by the parties shall be referred to a mediator. The parties will jointly select a mediator.
3. If the parties cannot agree on a mediator to help resolve the dispute(s), or if the mediator is unsuccessful in resolving the dispute(s), the dispute(s) shall be referred to arbitration.
4. If arbitration is necessary, there shall be three arbitrators. Each party will select one arbitrator and those two arbitrators shall choose a third. The arbitrators' decision over all disputes submitted to them shall be final and binding on the parties.
5. The mediator and arbitrators may refer technical questions to the Municipality of Anchorage's On-Site Wastewater System Technical Review Board.
6. The parties agree that each party will pay one-half the cost of any mediation and/or arbitration, as well as the cost of review by the Municipality of Anchorage's On-Site Wastewater System Technical Review Board. The parties understand that at the present time there is no fee for referral of technical questions to the Municipality of Anchorage's Onsite Wastewater System Technical Review Board, provided such referral originates from the municipality.
7. The parties agree to mutually submit and support ratification of this settlement agreement before the Anchorage Assembly.

D. Definitions

1. "Undevelopable" in this agreement shall mean:
 - a. the wildlife corridors, wetlands, wetland buffers, stream setbacks, and slope areas greater than 25 percent referenced in Section A.2 of this settlement agreement;

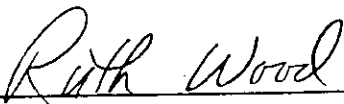
- b. land areas for which percolation tests as described in Appendix B were not done;
- c. all land areas designated undevelopable by the report required in Subsection A.3.c) and prepared in compliance with the soil and groundwater testing provided in this agreement;
- d. all areas which will not support a minimum development consistent with R-10 zoning; or
- e. land which will require more than five acres per unit to support a single-family residential septic system.



Gary Gustafson, Director, Heritage Land Bank,
Municipality of Anchorage, on behalf of Appellee

11/2/95


Date



Ruth Wood, President, Board of Directors,
Alaska Center for the Environment,
on behalf of Appellant

11/2/95

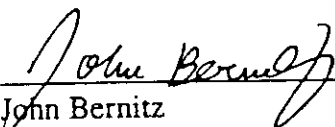
Date



Ann Waller Resch, Deputy Municipal Attorney
Attorney for Appellee

11-2-95

Date



John Bernitz
Attorney for Appellant

11/2/95

Date