

1st Reading: February 22, 2016
2nd Reading: April 11, 2016

Presented By:
City Manager

Action Taken:
Yes 4
No 1
Abstain 1

CITY OF NOME, ALASKA

ORDINANCE NO. O-16-03-02

**AN ORDINANCE AUTHORIZING THE PURCHASE AND LEASE OF REAL PROPERTY BY
THE CITY OF NOME FROM SITNASUAK NATIVE CORPORATION BY PROPERTY
EXCHANGE AGREEMENT**

NOW, THEREFORE, BE IT ORDAINED by the Common Council of Nome, Alaska as follows:

Section 1. Authority. This ordinance is adopted pursuant to authority granted by NCO 2.10.00 (a).

Section 2. Classification. This is a non-Code ordinance.

Section 3. Authorization of Purchase of Real Property from Sitnasuak Native Corporation. The City Council hereby authorizes the purchase of certain real property from the Sitnasuak Native Corporation (an approximately 11.7 acre portion of USMS 5270 commonly known as the White Alice Site) from Sitnasuak Native Corporation by way of an exchange of property from the City of Nome to Sitnasuak Native Corporation (Block 63 Lot 13A, Block 63 Lot 13B) with said Nome property to be leased back to the City of Nome for five years substantially upon the terms and conditions contained in the Agreement attached hereto as Exhibit A.

Section 4. Effective Date. This ordinance shall be effective upon the date of approval.

APPROVED and SIGNED this 11th day of April, 2016.



**RICHARD BENEVILLE,
MAYOR**

ATTEST:



**THOMAS C. MORAN,
Manager**



CITY OF NOME
City Manager's Office
P.O. Box 281
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907.443.6600
tmoran@nomealaska.org

AGENDA STATEMENT

Meeting Date: March 28, 2016
From: Tom Moran, City Manager
Subject: O-16-03-02 (White Alice Property Exchange)

Background & Justification:

The City of Nome is currently the owner of a number of properties outside of City limits, including Cape Nome, East Fort Davis Beach, and the Sunset Firing Range. In that regard, ownership of the White Alice Site on Anvil Mountain would be no different.

White Alice has become one of Nome's top tourist attractions and a stalwart destination for our own community members. With this ordinance, you have the opportunity to preserve the towers for future generations. White Alice is a piece of history that may not persevere without your interjection. As such, I urge you to allow the City to acquire title to the property and maintain it as a local park. In the future, with your help, I foresee a boardwalk with various "information stations" (much like the Safety Estuary or the Last Train to Nowhere).

The land that the City would be forfeiting is undeveloped property that is currently used as a laydown area for the Department of Public Works. I assure you that the City owns other properties that could be used for that purpose. Those lots, once developed by Sitnasuak Native Corporation (SNC), would become a valuable contributor to the City's Tax Roll.

Please understand that the White Alice Site is fully remediated environmentally (see attached report). Please also understand that those towers are in need of absolutely zero maintenance. Furthermore, we do not foresee any upkeep costs due to the integrity of the original construction.

For 20 years, my predecessors (and Mayor Beneville's predecessors) have attempted to gain ownership of White Alice. With the finish line finally within sight, I ask that you help us to fulfill all of their hard work.

Recommendation:

That the Nome Common Council approve O-16-03-02, authorizing the City Manager to enter into an agreement with SNC for the acquisition of the White Alice site on Anvil Mountain. If it is the wish of the Council, the leaseback provision could even be stricken (as that was our own suggestion). Furthermore, as the property is not yet owned by SNC, there is no actual agreement for the Council's consideration. Therefore, that portion of the ordinance could also be stricken. All firm "purchase language," in fact, could be softened with the addition of "allow the City Manager to enter into negotiations with SNC, pending successful transfer from the USAF" or something to that effect. All this ordinance is endeavoring to do is show the City's commitment to preserving White Alice as a City of Nome property, while also capping the "cost" of that acquisition.

- Since the 1990s, and possibly even in the 1980s, during the time I was mayor, the City on numerous occasions communicated with the Air Force regarding the Anvil Mountain White Alice Site. The City expressed the strong desire that the area remain as a site of historical significance, and that the towers should remain.
- The Air Force did advise the City it was a federal military withdrawal and they could not just transfer the site to Nome, that BLM would be involved in the disposal process and there would be hurdles to be overcome. But they were supportive of the community's desire and pledged to work with Nome to try to accommodate the desire. Nome also communicated this desire to the federal congressional delegation.
- In August 1996, the City prepared a "petition" asking people who "support the request by the City of Nome and Sitnasuak Native Corporation to the Air Force to leave the four (4) White Alice Communications System (WACS Radar Antennas in tact on Anvil Mountain." This was sent to the Air Force and our Federal delegation. (All pages of the signatures cannot be located now, 15+ years later.) SNC had also expressed wanting to have the Aircraft Monitoring Station near Anvil Rock cleaned up, and this was included in the petition.
- SNC and the City worked to come up with a plan that would allow the completion of 14(c)(3). Through this process, the parties identified area the City should definitely get title to (the seawall, for instance), other parcels that would benefit community development (powerline easements along Nome-Teller and Nome-Kougarok), areas that were commonly being used by the community (dog mushing trails, area for start of the Raft Race near Nome river), the need to develop an area for a shooting range (as Sitnasuak desired to have the commonly used area vacated; Sunset was identified as a new location to be developed), community expansion land, etc.
- Also, as part of this, other land issues were addressed as a "trade", not part of the acreage to be transferred to the City as part of 14(c)3.
- The City wanted Anvil Mountain as part of 14(c)(3), but SNC envisioned being able to develop it for commercial purposes in the future. Being the City was pursuing receiving White Alice from the Federal Government, providing access to Anvil Mountain was agreed to. ("You are getting the White Alice Site; we want to keep the Rock.")
- SNC-City agreed to "balance" the 1,280 acres with some area, yet to be determined, on Newton. In December 1996, the City approved the final 14(c)(3) package. Legal documents were signed and filed with the District Recorder over time during the following period (not all were done at once).
- In March 1997, the City communicated with the Federal government encouraging them to use local workforce for the cleanup efforts. In April 1997, the City again confirmed to the Air Force their interest in keeping the Towers.
- A formal Resolution of the Nome City Council (#R-97-4-5) was adopted later in April 1997. In it, the City expressed desire to have the Towers remain, asked for cleanup of the site, (according to the Resolution, had support of BSNC and SNC to assume the site), and asked that BSNC 8(a) contractor be used to clean up the site so that steps could be taken by the City to acquire title.
- In August 1998, SNC provided the policy approved by SNC Board of Directors, which was agreed would occur as a follow-up on 14(c)(3). This policy allowed the public to continue to use/access Anvil Mountain. The agreement noted that "Sitnasuak reserves all rights for commercial use of the area known as Anvil Rock."

- In 2004, the City communicated with the Air Force to obtain a lease for SPARC for the HAM radio repeater, again noting their interest (and belief) the City would eventually receive the White Alice property.
- The Alaska Land Transfer Acceleration Act was enacted sometime in the intervening period. The City was not aware this would have a connection to the ongoing discussions between the Air Force and the City relating to eventual Anvil transfer. SNC has now selected the Anvil property.
- In July 2010, the City applied to SNC for a "Special Use Permit" for the site.
- In 2011, the City proposed a property exchange for the 11.74 acres on Anvil. It was proposed that the City trade "the Public Works Parking Lot in Block 63 near SNC's Anvil City Station for the Anvil Site. SNC had the Anvil site appraised (about \$75,000). The City's assessment of the property was \$93,200. The City was willing to consider using the assessed value, believed to be lower than an appraisal, as an "even trade." In May 2011, SNC countered asking the City also include the "Ambulance Garage" property. The City Council did not feel they could justify this based on the disparity in values.

While the City found a lease less desirable than ownership, they agreed to continue to negotiate for a lease to meet the end goal: keeping the Towers.

- (Separately, the City also worked diligently with SNC/Nanuaq on a proposal for a new state office building. Nanuaq did offer to sell the property to the City. This has been an on again/off again matter with the State. The City still supports a new State Office Building and is willing to continue working toward this goal.)
- In July 2011, SNC accepted the Air Force's cleanup plan for Anvil that would allow the White Alice Towers to remain. The agreement was that the panels would be removed to avoid any health risks associated with the galbestos panels, the cost of maintaining the coating if the panels remained
- In May 2012, the SNC Land Committee again considered the Anvil site and voted not to approve the City's purchase of the Anvil property, but were open to a lease. The City continued to work with SNC on the lease, and the last draft was in the hands of SNC to respond.
- In August 2012, the SNC Full Board voted to ask the Air Force to demolish the towers. As the City understands it, the over-riding concern of SNC continues to be LIABILITY associated with the towers. Someone could get injured and seek to recover damages by suing SNC. The Board did not want to burden shareholders now or in the future with any direct costs or potential financial exposure.

THE STATE
of ALASKA

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Department of
Environmental Conservation

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File No: 400.38.004

May 5, 2014

Charley Peyton
AFCEC/OLAR
10471 20th St. Suite 348
JBER, AK 99506-2201

Re: Draft Final Clean Sweep Antenna Demolition, Debris Removal and Environmental Remediation at SS003, Anvil Mountain RRS, Cleanup Complete Determination

Dear Mr. Peyton;

The Alaska Department of Environmental Conservation (ADEC) has reviewed the environmental records for the referenced site. This decision letter memorializes the site history, cleanup actions, and specific conditions required to effectively manage remaining contamination. No further remedial action will be required as long as compliance with these conditions is maintained.

Site Name and Location:

Anvil Mt. White Alice Site
64° 33' 48.35" N, 165° 22' 15.28 W

DEC Site Identifiers:

File No: 140.38.004
Hazard ID: 844

Regulatory Authority for Determination:

18 AAC 75

Site Description and Background and Characterization/Cleanup Actions

Anvil Mountain RRS consists of an Upper Camp area. The Upper Camp Area contained all of the installation's facilities which included a composite building, a vehicle maintenance building, an equipment maintenance building, two 70,000 gallon fuel tanks, several aboveground day tanks and associated piping, and four tropospheric antennas. Anvil Mountain RRS was constructed by the United States Air Force (USAF) in 1956 and 1957 as one of the 31 original White Alice Communications sites. Anvil Mountain RRS was operated by the USAF between 1957 and 1979. The site was declared excess in 1981.

A preliminary assessment/site investigation (PA/SI) completed in 1993 concluded that petroleum oil and lubricants (POL), lead, and polychlorinated biphenyls (PCBs) were contaminants of concern. A remedial investigation (RI) completed in 1996 defined known and additional areas of concern that contained PCB and POL concentrations in soil that exceeded ADDEC Method Two, Under 40 inch Zone, clean up levels.

Clean Sweep operations in 1998 entailed the demolition of all of the sites facilities with the exception of the 4 tropospheric antennas and a building foundation slab. Approximately 125 cubic yards (cy) of POL contaminated soil was excavated and disposed of offsite during Clean Sweep operations. The maximum remaining DRO was 2500 mg/kg. Approximately 2 cy of PCB contaminated soil was excavated at the Equipment Maintenance Building Floor Drain area in 1998 and disposed of offsite. The excavations were back filled and graded to fit the contours of the landscape. The building foundation slab for the Composite Building was demolished and the area was graded in 2000.

Based on ADDEC concerns of elevated PCB and lead concentrations in soil remaining at the site, a detailed Field Investigation Study was conducted in 2004. Results from the study concluded that soil contaminated with unacceptable levels of lead (400 mg/kg) had been remediated during the 1998 Clean Sweep Operations and were therefore no longer COC's. The 2004 study failed to provide conclusive data as the full extent of soil contaminated with PCB's greater than 1.0 mg/Kg at SS003, but the study did document PCB concentrations in soil up to 49 mg/Kg.

A Follow-On Remedial Investigation was conducted in 2008 in order to better define the extent and concentration of the PCB contamination at SS003 Anvil Mountain RRS site. The study defined 4 distinct areas at SS003 where the PCB's are concentrated and they are: the Former Composite Building, Equipment Maintenance Building, northeast antenna, and Former Temporary Garage. The highest levels of PCB in soil were located adjacent to the northeast antenna where 2 samples had concentrations of 1,040 and 2,090 mg/Kg respectively. The depth of contamination was generally 6-12" bgs but ranged up to 48" bgs

Excavation of PCB contaminated soil commenced on 8 July 2010. A total of 692 and 78 soil samples were collected in 2010 for onsite and offsite analysis respectively. The total area of the 2010 excavations was approximately 24,148 square feet. From the excavated areas, 3,606,368 pounds of contaminated soil was shipped to Arlington, Oregon in 2010 for disposal and an additional 543,084 pounds of contaminated soil was placed in super sacs and stored onsite awaiting shipping and disposal in 2011. A total of 1276 soil samples were collected in 2011 for onsite analysis. The total area of the combined years excavations exceeds 63,500 square feet. In 2011, 4,502,508 pounds of contaminated soil was shipped to Arlington, Oregon for disposal. This amount includes 305,800 pounds of soil with PCB concentrations greater than 50 mg/Kg. The analytical results illustrate that the PCB concentrations in the soil remaining at the site is below 1.0 mg/Kg.

Contaminants of Concern

The following contaminants of concern, those above approved cleanup levels in, were identified during the course of the site investigations summarized in the Characterization and Cleanup Activities section of this decision letter.

Diesel Range Organics (DRO)
Polychlorinated Biphenyls

Cleanup Levels – soil

Diesel range organics were detected in soil above the ingestion cleanup levels established in 18 AAC 75.341 (d), Table B2. Migration to groundwater soil cleanup levels are not applicable as groundwater is not present. PCB were above the direct contact level in Table B1. The approved cleanup levels for Anvil Mountain are 10,250 mg/kg DRO and 1 mg/kg PCB.

ADEC Decision

Remaining contamination in soil is below approved cleanup levels. This site will receive a “Closed” designation on the Contaminated Sites Database, subject to the following standard conditions.

Standard Conditions

- Any proposal to transport soil or groundwater off-site requires ADEC approval in accordance with 18 AAC 75.325.
- Movement or use of contaminated material in a manner that results in a violation of 18 AAC 70 water quality standards is prohibited.

This determination is in accordance with 18 AAC 75.380 and does not preclude ADEC from requiring additional assessment and/or cleanup action if future information indicates that this site may pose an unacceptable risk to human health or the environment.

If you have questions about this closure decision, please feel free to contact me at 907-269-0298 or Deb.Caillouet@alaska.gov.

Sincerely,



Deb Caillouet
Environmental Program Specialist



TERM SHEET for PROPERTY EXCHANGE

This outlines an agreement between the City of Nome ("City") or ("Nome") and the Sitnasuak Native Corporation ("SNC") for the exchange and lease of real property. Subject to approval by the SNC Board of Directors and the Nome Common Council, the terms set forth herein are as follows:

1. SNC will convey to Nome by warranty deed an approximately 11.7 acre portion of USS 5270 commonly known as the White Alice Site ("SNC Property").

2. Nome to accomplish platting and subdivision of the SNC Property prior to the Closing Date at no cost to SNC. Nome will also plat an existing right-of-way to the White Alice Site previously conveyed to Nome by SNC as part of the 14(c)(3) agreement between City and SNC.

3. Nome will convey to SNC by warranty deed real property listed below ("Nome Property").

Block 63 Lot 13A
Block 63 Lot 13B

4. SNC will lease the Nome Property to Nome for a 5 year term starting at the Closing Date ("the Lease"). Nome shall not be required to pay rent but shall be responsible for payment of all property taxes levied on the Nome Property during the term of the Lease.

5. The SNC deed to Nome will contain a covenant requiring Nome to allow use of the White Alice Site by the public for subsistence and recreational purposes.

6. All property to be conveyed "as is where is" with the Grantee indemnifying the Grantor from any and all claims arising from existing environmental contamination.

7. Nome will publicly recognize SNC contribution to preservation of the White Alice Site.

DRAFT

The buyer covenants and agrees at its sole cost and expense, to protect, defend, indemnify, release and hold seller harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of their counsel, which may be imposed upon, asserted against or incurred by seller as related to the real property described herein and arising from activities occurring on the real property. In addition the buyer covenants and agrees at its sole cost and expense, to protect, defend, indemnify, release, and hold seller harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable fees and actual expenses of their counsel, arising out of any action, suit, claim or liability asserted by any third party including a governmental entity, under any environmental law or regulation including CERCLA or out of any alleged contamination of water, land, or air, on or about the real property resulting from hazardous waste or other substance, whether subsequently determined to be hazardous waste or substance, regardless of when any such alleged contamination occurred.

The seller agrees to defend the buyer, on demand, with attorneys and other professionals reasonable approved by seller. Notwithstanding the foregoing the seller may, in its discretion engage its own attorneys and other professionals to defend or assist seller, if upon seller's reasonable judgment its interests will not be adequately protected by buyer, the buyer agrees, upon demand, to pay or in the discretion of seller to reimburse seller for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals.

All rights of the seller and all obligations of the buyer under this indemnity and duty to defend shall to the extent permitted by law be absolute and unconditional. This indemnity and duty to defend shall be binding upon buyer its successors and assigns and shall inure to the benefit of the seller and its respective successors and assigns.