

**BEFORE THE BOARD OF ADJUSTMENT FOR THE CITY OF KENAI**

**IN THE MATTER OF THE APPEAL OF )  
VINCENT GODDARD, WILD PACIFIC )  
SALMON, INC., AND INLET FISH )  
PRODUCERS, INC. REGARDING GRANT )  
OF A CONDITIONAL USE PERMITS TO )  
COOK INLET NATURAL GAS STORAGE )  
ALASKA, LLC (PZ10-41, PZ10-42) )**

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Case No. BA-10-04

**I. DECISION**

The appeal of Vincent Goddard, Wild Pacific Salmon, Inc., and Inlet Fish Producers, Inc. is denied; however, the conditional use permits are amended to modify the conditions attached to each permit.

**II. PROCEDURAL HISTORY**

Cook Inlet Natural Gas Storage Alaska, LLC (CINGSA) is developing a gas storage project in the Kenai area. CINGSA plans to use a partially depleted natural gas reservoir, known as “the Cannery Loop—Sterling C Gas Pool,” to store natural gas at pressures below the field’s original gas pressure. The pool is located approximately 5,000 feet below sea level (4895 feet true vertical depth). CINGSA expects to inject natural gas into the depleted reservoir for storage purposes. CINGSA’s plan calls for it to receive gas from, and later deliver it to, a connection with the existing Marathon Oil Company Kenai Nikiski Pipeline.<sup>1</sup> Injection of the natural gas into the storage reservoir

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<sup>1</sup> We refer to the proposed gas storage facility and operations as “the Project.”

would typically occur during the summer months when the available supply of natural gas exceeds customer demand. The Project, if completed, will enable South-Central Alaska utilities to better meet their customers' energy needs during periods of high demand or peak usage during the winter months.

On September 14, 2010, CINGSA filed applications with the City for two conditional use permits (CUP) to develop station and well facilities for the Project. CINGSA applied for a CUP to develop a compression/gas conditioning facility at 1377 Bridge Access Road in Kenai (Compressor Property).<sup>2</sup> CINGSA also applied for a CUP to develop an injection/withdrawal well pad facility at 1430 Bridge Access Road in Kenai (Well Pad Property).<sup>3</sup> Both properties are located in the City of Kenai's Heavy Industrial (IH) zoning district.

The Kenai Planning and Zoning Commission (Commission) held separate public hearings on the permit applications on October 13, 2010. The City's Planning Department Staff Report recommended issuance of both CUPs subject to a condition that CINGSA obtain approved permits from all City, state, and federal agencies prior to the construction of each facility. After the hearings closed, the Commission voted unanimously to approve the CUP for the Compressor Property. The Commission also

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<sup>2</sup> The legal description of the Compressor Property is SE ¼ SE ¼ Section 4, Township 5N, Range 11W, Seward Meridian. This property was rezoned from Rural Residential to Heavy Industrial under Ordinance No. 2509-2010.

<sup>3</sup> The legal description of the Well Pad Property is Section 9, Township 5N, Range 11W, Seward Meridian, Boat Ramp Subdivision, Tract F.

voted to approve the CUP for the Well Pad Property with four Commissioners voting in favor of the CUP and two against.

On October 28, 2010, Vincent Goddard and two corporations owned by him, collectively referred to herein as “the Inlet Entities,” timely filed a single appeal of the Commission’s decisions to grant the permits to the City’s Board of Adjustment (Board).<sup>4</sup> The Inlet Entities requested that the Board deny both CUPs because of public safety concerns presented by the Project and because of the negative impact on the values of their property in the City of Kenai. The Inlet Entities lease property within the City of Kenai and operate a fish processing business on that parcel. Its leasehold property is located at 2000 Columbia Street in Kenai (Lot 2, Spit Subdivision).

The Board held a hearing on December 13, 2010. Two members of the general public testified in support of the issuance of the permits and two testified in opposition to the issuance of the permits. The Inlet Entities and their legal representative provided testimony and oral argument in opposition to the applications. CINGSA employees and its legal representatives provided testimony and oral argument in support of the applications.<sup>5</sup>

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<sup>4</sup> The appellants include Mr. Vincent Goddard, Wild Pacific Salmon, Inc., and Inlet Fish Producers, Inc. Mr. Goddard is the sole shareholder of the corporate entities. The appellants refer to themselves as “the Inlet Entities,” a reference we preserve for purposes of this decision. The Inlet Entities claim to be aggrieved persons under the City’s Code by reason of their various leasehold interests in property in the City, their occupancy and use of that property, and their business operations in the City.

<sup>5</sup> Proceedings before the Board of Adjustment are conducted as public hearings. After a request by the Inlet Entities at the December 13 Board of Adjustment hearing, the Board agreed to provide the interested parties to the appeal, (the Inlet Entities as the

### III. STANDARD ON APPEAL

An appeal from the Commission is a *de novo* appeal. The Kenai Municipal Code states that “[t]he Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end the Board shall have all the powers of the body from whom the appeal is taken.”<sup>6</sup> The Board does not have to defer to the findings or decision of the Commission. While the Board may take the concerns of the neighborhood into consideration, it may not base its decision solely on neighborhood support for, or opposition to, the action requested.<sup>7</sup> Because appeals of a decision on a CUP to the Board of Adjustment are heard *de novo*, CINGSA carries the burden of demonstrating that it meets the standards for issuance of each permit.

### IV. ANALYSIS

#### A. Criteria for Evaluating CINGSA’s Conditional Use Permit Applications

Gas storage facilities are allowed as conditional uses within the Heavy Industrial (IH) zoning district.<sup>8</sup> Kenai Municipal Code section 14.20.150(d) sets forth the review criteria for granting conditional use permits:

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appellant and CINGSA as the applicant), an opportunity to present additional evidence, testimony, and/or oral argument. The parties were each provided 30 minutes to make additional presentations with an additional 10-minute rebuttal period. The parties could use this time at their own discretion.

<sup>6</sup> KMC 14.20.290(f)(2).

<sup>7</sup> *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n. 11 (Alaska 1993).

<sup>8</sup> KMC 14.22.010, Land Use Table.

Prior to granting a use permit, it shall be established that the use satisfies the following conditions:

(1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;

(2) The value of the adjoining property and neighborhood will not be significantly impaired;

(3) The proposed use is in harmony with the Comprehensive Plan;

(4) Public services and facilities are adequate to serve the proposed use;

(5) The proposed use will not be harmful to the public safety, health or welfare;

(6) Any and all specific conditions deemed necessary by the commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

Under the City's Land Use Table, gas manufacturer/storage allowed as conditional uses within the IH zoning district must also meet additional conditions. In addition to the criteria above, the Board must find that "all applicable safety and fire regulations are met."<sup>9</sup>

B. Findings of Fact and Conclusions of Law

1. The first criterion is whether the proposed use is consistent with the purposes and intent of the zoning district.<sup>10</sup> The IH zone is established to allow for a

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<sup>9</sup> KMC 14.22.010, Land Use Table, note 9.

<sup>10</sup> KMC 14.20.150(d) (1).

broad range of industrial and commercial uses. It applies to lands that are sufficiently isolated from residential and commercial areas to avoid nuisance effects of the industrial use.<sup>11</sup>

The proposed uses are for a gas compressor facility and for a well pad. These uses are both industrial uses. The proposed uses are both compatible with other permitted uses within the IH zoning district, including manufacturing and fabrication operations, automotive repair, airports and related uses, gunsmithing, printing, taxidermy, and communications towers, transmitters and cell sites.<sup>12</sup>

Each proposed use is consistent with the industrial character of the surrounding land uses as well as with the general environment of the area. The Compressor Property is near other authorized industrial uses or vacant land. There are no residential dwellings located within 2,000 feet from the center of the Compressor Property. It is across the street from Carlile Trucking and is next to a mini-storage facility. Other adjoining lands are City-owned lands that are undeveloped wetlands. In addition, the Compressor Property is approximately 40 acres with only about 20 percent of the parcel to be developed for obvious industrial use for the compression/gas conditioning facilities. This footprint blends well with the surrounding industrial and vacant lands in the area.

Further, CINGSA's development plans serve to protect the surrounding lands from unreasonable impacts. It will develop the Compressor Property with a natural vegetative buffer to screen the development from adjoining properties and rights-of-way. CINGSA

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<sup>11</sup> KMC 14.20.140(a).

<sup>12</sup> KMC 14.22.010, Land Use Table

is taking steps to minimize the sound levels from the equipment. The development will be fenced and constructed to minimize impacts on surrounding properties with respect to both sound and light.

With respect to the Well Pad Property, CINGSA's plans also call for constructing the well to be compatible with the purposes and intent of the IH zoning district. It will clear trees, shrubs, and brush from the well pad footprint and remove woody materials and unsuitable soils to construct earthen berms on the east and north edges of the well pad. It will direct drainage away from Boat Launch Creek. And the remainder of the Well Pad Property, about 80 percent, will be generally undisturbed, much in keeping with other surrounding parcels in the area that share mixed heavy industrial uses (such as the nearby Carlile trucking and mini-storage facility) with wetlands areas. As with the Compressor Property, the Well Pad Property is near other authorized industrial uses or vacant land. There are three residential dwellings located closer to the Well Pad Property than to the Compressor Property; but, those dwellings are no closer than 1500 feet from the well pad, all located to the north of the parcel.

For these reasons, we find that the proposed use for both the Compressor Property and the Well Pad Property are consistent with the purposes and intent of the IH zoning district and the first criterion is met.

2. The second of the criteria the Board must evaluate is whether each proposed use will significantly impair the value of the adjoining and neighboring

properties.<sup>13</sup> The Inlet Entities claim that the value of its property in the City will be greatly impaired by the Project and will reduce the value of the Inlet Entities' property by "several million dollars."<sup>14</sup> The impaired value would be caused by the threat to public health and safety caused by the Project and environmental risk factors that would reduce the ability of the Inlet Entities to market and sell its property in the City.

The argument made by the Inlet Entities is not specific to any particular use on either CINGSA property. Instead, the Inlet Entities attribute the impairment in value of their properties to an abandoned and capped well located on its leasehold property, known as KU 13-8 well, and to the eventual operations of the Project more generally. The Inlet Entities argue that the KU 13-8 well has not been properly remediated and, as a result, its property is under significant threat from the re-pressurization of the reservoir and the possibility of a vertical migration and escape of gas through the KU 13-8 well. The Inlet Entities conclude that this possibility creates a peculiar risk of catastrophic explosion on its leasehold property if the Project moves forward. If, however, the KU 13-8 well were properly remediated, Mr. Goddard testified that the Inlet Entities' safety concerns would be 90 percent solved, and the Inlet Entities could recover back 70-80 percent of its claimed loss in value.

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<sup>13</sup> KMC 14.20.150(d) (2).

<sup>14</sup> Letter of Appeal. The Inlet Entities do not distinguish between the individual property interests each may hold. They do not particularize whether the injury to their respective properties is an injury to the value of the leasehold interest in land near, but not adjoining the Compressor Property and Well Pad Property, or if it is an injury to the value of the on-going business concern(s) operated on that leasehold, or both. In their Letter of Appeal, the Inlet Entities discuss selling their operations and the value of its fish processing facility.



Regarding valuation, the Inlet Entities presented evidence through the testimony of real estate broker James Riley. Mr. Riley testified that the Project would require the Inlet Entities to disclose to potential buyers the risk presented by the KU 13-8 well. (Mr. Riley did not provide any testimony specific to the effects of the compressor or Well Pad facilities as such on the Inlet Entities' various property values.) According to Mr. Riley, there is a limited pool of potential buyers for assets like those owned by the Inlet Entities. The KU 13-8 well would eliminate some buyers from considering a purchase of the Inlet Entities' property.<sup>15</sup> Those buyers would go elsewhere, as there would be more attractive properties around the state for purchase. Mr. Riley did not offer a number for the loss in market value of either the leasehold interest of Wild Pacific Salmon, Inc. or of the business of Inlet Fish Producers, Inc. However, like Mr. Goddard, he tied the loss of value in the Inlet Entities' property to proper remediation of the KU 13-8 well. He stated that the property would be a very difficult property to sell in light of the disclosure "unless there's a lot of mitigation being done with the well, being brought up to standards, ... ."

We are not persuaded that either the proposed compressor facility, or the well pad operations, or the Project as a whole, will impair the value of adjoining or neighboring properties to the Compressor Property or to the Well Pad Property. There is no evidence that the respective uses of either parcel would impair the value of any neighboring or

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<sup>15</sup> Again, Mr. Riley spoke generally about a sale of "the property" and was not specific about what property the Inlet Entities would sell—the leasehold interest in Inlet Entities' Kenai property, or the business concerns operated on that property, or both.

adjoining properties to either parcel. The evidence presented on this issue was mostly specific to the Inlet Entities' property interests. And, the Inlet Entities' leasehold parcel neither adjoins nor neighbors the Compressor Property or the Well Pad Property.

The standard in KMC 14.20.150(d) does not address impairment of property values city-wide. The Code demands that the Board look to the values of the adjoining or neighboring properties only. Yet, even if the Code required a more broad analysis, the evidence does not support a different result. The Inlet Entities tie any loss in value, whether due to safety or to environmental/real estate disclosure concerns, chiefly to the idea that the KU 13-8 well is not properly remediated or plugged. We find that the more persuasive evidence was presented by CINGSA.<sup>16</sup> The Alaska Oil and Gas Conservation Commission (AOGCC), a state agency with expertise in this technical area, looked at the KU 13-8 well and the Project as a whole. While it required remediation of other wells, it did not require further mitigation or remediation of the KU 13-8 well bore. We do not find the expert testimony proffered by the Inlet Entities to be persuasive. Absent such a finding by the authorities charged with the permitting of the development and operations of the Project as a whole, this Board cannot conclude that the Project, or the development

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<sup>16</sup> The Board rejects as not supported by the evidence any claim that the Project presents hazards to the City in general due to the development of the storage facility in or near an urban area. To this end, the Board relies upon the findings of the Alaska Oil and Gas Conservation Commission and other permitting entities with expertise on the permitting and development of gas storage facilities. The Board notes that as approved by the Commission, the CUPs are contingent upon CINGSA receiving all permits required by City, state, and federal agencies prior to construction of the facilities.

on the Compressor Property or the Well Pad Property will threaten public safety or impair the value of the Inlet Entities' property.<sup>17</sup>

Further, as observed in our discussion above that the Project is consistent with the purposes and intent of the IH zoning district, we find that the development of the Compressor Property as proposed will be consistent with neighboring developments and unlikely to impair values of neighboring properties. We also find that the development of the Well Pad Property as proposed is consistent with the neighboring developments and is unlikely to impair the values of neighboring properties.

3. The third criterion is whether the proposed uses of the Compressor Property and of the Well Pad Property are each in harmony with the Comprehensive Plan.<sup>18</sup> The 2003 City of Kenai Comprehensive Plan states that industrial districts are reserved for manufacturing, warehousing, trucking, marine-related industry, storage, and similar industrial activities. "City utilities and safe, convenient vehicular access are critical. Buffers between industrial uses and adjacent non-industrial uses are desirable."<sup>19</sup> The Comprehensive Plan also reminds us that the City's land use plan and zoning code should promote an orderly overall pattern of land that "maintains the quality of existing development" and "creates a stable, predictable setting for future investment."<sup>20</sup>

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<sup>17</sup> The AOGCC's Storage Injection Order 9 requires CINGSA to demonstrate that any wells in the pool, which would include the well on the Inlet Entities' leasehold, have been suspended or abandoned in accordance with applicable requirements.

<sup>18</sup> KMC 14.20.150(d)(3).

<sup>19</sup> 2003 City of Kenai Comprehensive Plan at 29.

<sup>20</sup> 2003 Comprehensive Plan at 15.

As discussed in conjunction with the fourth criterion (immediately below), the public utilities available to the Compressor Property, including vehicular access can support the proposed use. In addition, neighboring properties are either vacant wetlands or are already developed with other commercial/industrial uses that are permitted within the IH zoning district. The development plan for the Compressor Property assures that approximately 80 percent of the parcel will also be undeveloped and maintain a characteristic similar to neighboring properties, whether developed or vacant. Likewise, there are other commercial uses in the vicinity. This means that the proposed use will maintain the quality of the existing pattern of development already in the area with respect to both surrounding uses and vacant lands.

With regard to the Well Pad Property (also as discussed immediately below), the public utilities available to the Well Pad Property, including vehicular access, can support the proposed use. The development plan for the Well Pad Property assures that approximately 80 percent of this parcel will also be undeveloped and not disturbed by CINGSA, including tidal wetlands. The plans also call for maximizing the use of a previously constructed drill pad on the site. Likewise, there are other commercial uses in the vicinity. As with the Compressor Property, this means that the proposed use will maintain the quality of the existing pattern of development already in the area with respect to both surrounding uses and vacant lands.

The proposed uses on each parcel are both in harmony with the Comprehensive Plan and each meet this third criterion of KMC 14.20.150(d).

4. The fourth criterion is whether the public facilities are adequate to support each proposed use on the respective parcels.<sup>21</sup> There is no indication that utility services and public facilities are inadequate for either proposed use. CINGSA plans to use the existing municipal water supply for any potable, drilling, hydrostatic testing, operations, or water maintenance needs. No evidence was presented to the contrary.

With respect to the adequacy of the public roads, our review is limited to determining whether the physical conditions of the roadways can support the use. There is no evidence to support a conclusion that the public roads to the Compressor Property are inadequate for the proposed use. The evidence shows that during start up and the initial withdrawal operations for the storage facility, there will be 2-3 persons present on a 24-hour, seven-day-a-week basis. During the seasonal injection operations, this traffic will reduce to operating staff being present for eight hours per day for a five-day work week. The paved roads that provide access to the Compressor Property, including Beaver Loop Road and the internal roads that will be constructed on the Compressor Property by CINGSA, are adequate for this type of employee traffic.

The evidence before the Board shows that the Compressor Parcel has very good vehicular access that will only be improved by the proposed development. CINGSA will provide a 12-foot paved road around the perimeter of the compression/gas conditioning facility. A 20-foot wide paved road will provide access to the facility from Beaver Loop

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<sup>21</sup> KMC 14.20.150(d)(4).

Road. There will be a secondary gravel access road to join the perimeter road to Van Antwerp Avenue for emergency access from the northeast corner of the property.

Similarly, with respect to the Well Pad Property, City water services were recently extended in this area. The property is accessible to commercial electric utilities as well. There is easy access to this parcel by road via Bridge Access Road, which is paved and already supports other commercial and industrial uses. It is otherwise bounded on three sides by roads: Bridge Access Road on the East, Boat Launch Creek to the south and west, and the exit road from the City's Boat Launch passes through Tract E, a parcel immediately to the north. This access will be augmented by a 35-foot wide driveway to provide access to the site from Bridge Access Road. Plus, the operations of the well pad area, when operational, will be largely automated, meaning that activities and visits to the site will be relatively limited to periodic data collection, inspection, maintenance, and waste water disposal. No sanitary waste will be generated and all produced and rinse water will be stored on the site for commercial collection and off-site disposal.

We find the public facilities are adequate to support the proposed uses of each parcel and CINGSA has satisfied this fourth criterion.

5. Under the fifth criterion we must consider whether either of the proposed uses will be harmful to the public safety, health, or welfare.<sup>22</sup> The Board agrees with the assessment of the City in its staff report with respect to this criterion. The Board's responsibility under its Code is to determine whether, under City zoning ordinances, the

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<sup>22</sup> KMC 14.20.150(d)(5)

proposed use of each property could be permitted--a review that chiefly (but perhaps not exclusively) pertains to the surface use of the parcel. The Board is not specifically charged with reviewing the technical aspects of the Project as a whole. To the extent such review is called for, it is appropriate and permissible for the Board to rely upon the expert determinations of permitting agencies such as the AOGCC or the plethora of other agencies for which permits are required.<sup>23</sup>

With that in mind, we find that CINGSA has met its burden with respect to both CUP applications. Neither the Inlet Entities nor any other person presented evidence to demonstrate that the surface use facilities proposed for either parcel, or the use of those facilities when in operation, posed a particular hazard to the public's health, safety, or welfare. With respect to the surface facilities placed on the Compressor Property, the facilities will be constructed in accordance with the International Building Code as applicable in the City of Kenai. CINGSA described its plans with respect to development of the surface area of the parcel. Those facilities will be designed to the U.S. Code of Federal Regulations Part 192 and will use a 100% safety factor for the thickness of pipe. The buildings will have continuous monitoring electronic fire detectors and gas detectors. An automatic emergency shutdown system will block the wells, the gathering header, and the station from the pipeline; it will also vent the compressor area piping in the event of fire or of high gas detection in the compressor building or in the auxiliary building. The perimeter road and emergency road access, along with perimeter fencing, also serve to

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<sup>23</sup> See, Record at pp. 50-52.

protect the public and provide appropriate emergency access to the parcel in light of its expected industrial use.

With respect to the Well Pad Property, the facility will also be completely surrounded by a security fence and equipped with an alarm. It will comply with all building and fire codes and, as with the compressor facility, the facility will comply with all building and fire codes and with AOGCC, ADNR and other applicable laws and regulations.

The City's Zoning Code also requires that gas storage facilities must comply with all building safety and fire regulations as set forth in note 9 of the City's Land Use Table.<sup>24</sup> There was no evidence to support a conclusion that either development will not meet all building safety and fire regulations, or, as the Inlet Entities argue, that the seismic conditions of the area have not been properly considered with respect to the City as a population center or urban area. In fact, the opposite is accurate. For example, Mr. Scarpace, CINGSA's Senior Project Manager, testified that the buildings and foundations are designed to withstand a seismic event using an importance factor of 1.5, more than required for gas storage facilities. The buildings, structures, foundations, vessels, and pipe racks for the Project will all be designed to withstand an earthquake on the magnitude of the 1964 earthquake that hit South-Central Alaska. Mr. Scarpace provided more extensive testimony on other actions CINGSA is undertaking to in terms of fire suppression, building design, emergency shutdown systems, and redundancies with

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<sup>24</sup> KMC 14.22.010.



respect to assuring public safety. Finally, the CUP as approved by the Commission, requires CINGSA to meet requirements of all regulations of the City, state, and federal agencies prior to construction. This condition makes express that failure to do so would be grounds to revoke the CUP.

As for the KU 13-8 well on the Inlet Entities' leasehold property, its presence on the property or state of remediation does not support a contrary finding that the proposed developments create a health or safety hazard to the general public or to the Inlet Entities. The Board is mindful of evidence presented by the Inlet Entities that shows that there were different conclusions reached by various experts with respect to the potential for gas migration via the KU 13-8 well. Although the AOGCC ordered three other wells to be remediated, it did not do so with respect to KU 13-8. The AOGCC found that remediation of the KU 13-8 well was not necessary. And, like the AOGCC, the City is not persuaded by the evidence offered by the Inlet Entities, expert or otherwise, that the KU 13-8 well presents a unique or particular hazard.

Finally, the evidence presented demonstrates that the KU 13-8 well had already been drilled, capped, and abandoned in place in 1964. The leasehold of the Inlet Entities began much later, in 1979, meaning the Inlet Entities took the property willingly with the abandoned well in place. It was only later, in October, 2000, that gas production from the Sterling C Pool of the Cannery Loop Unit commenced. This is significant: it means that for the first 21 years of the leasehold, the reservoir was pressurized with the initial gas in place and with that pressure, the plugged KU 13-8 well did not leak or fail. CINGSA's

development plans for the Project is to initially develop and operate the Sterling C Pool for a total storage volume resulting in pressures only of approximately 70 percent of its initial gas in place. This undercuts the Inlet Entities' claim that re-pressurization poses a major risk of vertical gas migration through the RU 13-8 well. The well withstood greater pressures for many years before gas production began in 2000. Accordingly, the evidence does not support a conclusion that repressurization to 70 percent of its initial gas in place poses a risk of gas migration and catastrophic explosion.<sup>25</sup>

CINGSA has met its burden that the compression/gas conditioning facility and the well pad on their respective parcels are not likely to harm the public's health, safety, or welfare. Accordingly, we find that this fifth criterion has been met.

6. The sixth criterion asks the Board to consider other criteria or conditions deemed necessary by the Commission for the applicant to meet the requirements of the other criteria discussed above. The Commission recommended that both CUPs be conditioned upon CINGSA obtaining approval of "all permits required from City, State, and Federal agencies" prior to construction of the facilities on the Compressor Property. We concur.

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<sup>25</sup> This analysis also bears on our finding that the proposed use does not impair the value of adjoining or neighboring properties, or of the Inlet Entities' property. The leasehold began, and the Inlet Entities agreed to its terms, when KU 13-8 was already abandoned and plugged and under pressure. If the Project goes forward, the same situation will essentially exist, albeit with less pressure because the pool will be pressurized to only approximately 70 percent of what it was with the gas in place before production began in 2000. Under these circumstances, the evidence presented by the Inlet Entities does not overcome the evidence presented by CINGSA that the re-pressurization of the Sterling C Gas Pool will negatively impair value of the Inlet Entities' property.

We also find that there are additional conditions to each CUP that are necessary to protect the public's health, safety, and welfare as operations progress. These additional conditions will assist the City in determining if there are problems or potential problems with the Project that might require its action or investigations in order to protect its citizens. Accordingly, each CUP is amended to add the additional conditions:

- a. CINGSA shall annually provide the City with a list of active permits required for it to operate its gas storage facility; and,
- b. CINGSA shall comply with any and all conditions and requirements of any permit it is required to maintain for operation of the gas storage facility; and,
- c. CINGSA shall provide the City with a copy of any and all annual reports it files with the AOGCC or with any other state or federal regulatory agency regarding the construction and/or operation of the gas storage facility within ten calendar days of its distribution to those agencies; and,
- d. CINGSA shall provide the City with a list of all insurance requirements required by any regulatory body and/or imposed by permit and/or by operation of state and federal law and regulation, along with proof of maintaining that insurance; and,

- e. CINGSA shall provide the City with advance written notice of any proceedings regarding its gas storage operation held before the AOGCC or the Regulatory Commission of Alaska; and,
- f. CINGSA shall provide the City with copies of all incident reports it is required to file with any state or federal regulatory agency related to the operation of the gas storage facility and such information shall be provided within ten calendar days of its distribution to those agencies; and,
- g. CINGSA shall provide the City with all enforcement orders and notices of violation (or alleged violation) received by CINGSA from any state or federal regulatory agency with respect to any permit required for the construction and operation of the gas storage facility and such information shall be provided to the City within ten calendar days of its receipt by CINGSA; and,
- h. CINGSA shall provide the City with all notices of violation or alleged violation of Occupational Safety and Health Administration laws or regulations specific to the Compressor Property and/or to the Well Pad Property; and,
- i. CINGSA shall provide the City with a copy of any plan of corrective action it is required to file with the AOGCC whenever any pressure communication, leakage or lack of injection zone isolation is indicated by injection rates, operating pressure observations, tests, surveys, logs, or other

evidence. CINGSA shall further provide the City with copies of any and all additional documents it may file with or receive from the AOGCC regarding a plan of corrective action. All such documents shall be provided to the City within five calendar days of its filing or receipt by CINGSA.

For purposes of the above conditions, CINGSA shall mean Cook Inlet Natural Gas Storage Alaska, LLC, and any of its affiliates or subsidiaries. All information required by these conditions shall be directed the Kenai City Manager at Kenai City Hall, 210 Fidalgo Avenue, Kenai, AK 99611. Failure to comply with any of the conditions of the CUP is grounds for revocation of one or both CUPs.

#### V. SUMMARY

We find that CIGNSA met its burden of proof with respect to the criteria in KMC 14.20.150(d) (1)-(6). Therefore, we affirm the decision of the Commission to grant the conditional use permits and, consequently, we deny the appeal as to both permits subject to the modifications identified in paragraphs B(6), above. Unless timely appealed, the Commission is authorized to issue the permits subject to the additional conditions set forth herein after the expiration of the 30-day appeal period.

DATED this 26<sup>th</sup> day of January, 2011.

BY:   
Pat Porter, Chair

Robert J. Molloy, Board Member  
Joe Moore, Board Member  
Ryan Marquis, Board Member  
Terry Bookey, Board Member

**Concurrence:**

I write separately to state that while I join in the determination of the Board that CINGSA has met its burden and is entitled to the conditional use permits, I would have imposed an additional condition to each permit. I am troubled by CINGSA's change of position regarding the need to remediate the KU 13-8 well and I am not convinced that the scientific evidence, rather than some other criteria, supported CINGSA's seemingly last-minute change of course and approach to that well. I would have imposed an additional condition to each permit that CINGSA be required to remediate the KU 13-8 well.

Mike Boyle, Board Member

**NOTE: This decision constitutes a final order under Alaska Appellate Rule 602. An appeal of this decision to the Alaska Superior Court must be filed within thirty days (30) days of the date of this decision.**

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ALASKA, LLC (PZ10-41, PZ10-42) )**

Case No. BA-10-04

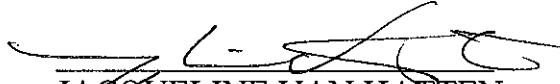
**AFFIDAVIT OF SERVICE**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

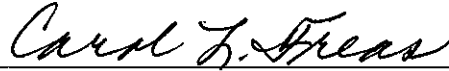
I, Jacqueline Van Hatten, having been first duly sworn on oath, state:

1. that I am the Legal Administrative Assistant for the City of Kenai;
2. that on this date a copy of the Decision of the Kenai Board of Adjustment was mailed and e-mailed to the following:
  - Mike Stehle Donald W. McClintock III  
Stehle & Jarvi, LLC Ashburn & Mason  
1200 R Street, STE B 1227 West Ninth Avenue, Suite 200  
Anchorage, Alaska 99501; Anchorage, Alaska 99501; and,
3. that a copy was given to the City Clerk and the City Planner; and
4. that courtesy copies were mailed to all members of the Board of Adjustment and the Planning and Zoning Commission.

DATED this 26<sup>th</sup> day of January, 2011.



JACQUELINE VAN HATTEN  
Legal Administrative Assistant  
City of Kenai



Notary Public for Alaska

My Commission Expires: *with office*

