

Submitted by: Chair of the Assembly at the  
Request of the Mayor  
Prepared by: Anchorage Water & Wastewater Utility  
For reading: March 18, 2008

CLERK'S OFFICE

APPROVED

Date: 4-15-08

ANCHORAGE, ALASKA

AR No. 2008-43

**A RESOLUTION OF THE MUNICIPALITY OF ANCHORAGE, ALASKA,  
AUTHORIZING THE USE OF EMINENT DOMAIN AND THE ACCEPTANCE OF  
THE DECISIONAL DOCUMENT FOR THE CONSTRUCTION OF THE AWWU  
PUMP STATION 10 UPGRADE PROJECT, AWWU PROJECT NO. 0000003738**

WHEREAS, the Anchorage Water and Wastewater Utility has engaged in negotiations regarding the acquisition of property rights for the parcel shown in Exhibit A; and

WHEREAS, the Anchorage Water and Wastewater Utility has made every reasonable effort to acquire the property shown in Exhibit A by negotiated agreement in accordance with applicable law; and

WHEREAS, further delay as a result of continued nonproductive negotiations would have a detrimental effect upon the cost and scheduling of the project; and

WHEREAS, the AWWU Board of Directors endorsed this resolution at its regular meeting of March 5, 2008; now therefore

**THE ANCHORAGE ASSEMBLY RESOLVES:**

Section 1. The property shown in Exhibit A is to be acquired for the construction of the AWWU Pump Station 10 Upgrade project, a public project, the design of which has been determined to provide the greatest public good for the least private injury. The Anchorage Water and Wastewater Utility is hereby authorized to acquire the property shown in Exhibit A.

Section 2. The Anchorage Water and Wastewater Utility is authorized to institute condemnation proceedings, including the use of a Declaration of Taking, against the property shown in Exhibit A.


Section 3. The Decisional Document (Exhibit B) has been reviewed and accepted by the Assembly and is approved for use in filing a Declaration of Taking for the property shown in Exhibit A.

Section 4. This resolution shall take effect immediately upon passage and approval by the Anchorage Assembly.

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3 PASSED AND APPROVED by the Anchorage Assembly this 15<sup>th</sup> day of  
4 April, 2008.

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Chairman

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11 ATTEST:

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13   
14  
15 Municipal Clerk

# MUNICIPALITY OF ANCHORAGE

## ASSEMBLY MEMORANDUM

No. AM 163 -2008

Meeting Date: March 18, 2008

**From:** Mayor

**Subject:** Authorization for the Use of Eminent Domain and Acceptance of the Decisional Document for the Construction of the AWWU Pump Station 10 Upgrade Project. AWWU Project No. 0000003738

The AWWU Pump Station 10 Upgrade project is scheduled for construction in the summer of 2008. The pump station will consist of a below ground wet well, a below ground valve vault, and an associated 18'x24' building to house an emergency generator and the control equipment. Also included is site access and landscaping improvements required as part of permitting and agreements with other Municipal Departments.

AWWU and Municipal staff have been engaged in the acquisition process of the parcel shown in Exhibit A since September 2004. At that time, AWWU began acquisition of the subject parcel through negotiations with the last known owner of record. Sometime thereafter, it became apparent that title to the property was disputed. In January 2006, a lawsuit was filed in the Superior Courts to determine ownership of the parcel. This case was tried in early January 2008, and is pending judgment. After the lawsuit was filed in 2006, AWWU approached all interested parties to the pump station site with a proposal to purchase the property. We have reached agreement with three of the four potential owners claiming title to this parcel. AWWU has reached an impasse in negotiations with the fourth potential owner; further delay as a result of continued nonproductive negotiations will have a detrimental effect upon the cost and scheduling of this project as well as that of the Turnagain Heights Lateral Improvement District No. 1415 created under AO No. 2007-52.

Pursuant to AMC 25.20.025, Assembly approval is hereby requested to continue the acquisition process through the use of condemnation in order to allow the construction of the Pump Station 10 Upgrade project to proceed as scheduled. AWWU supports this action. The AWWU Board of Directors endorsed this action at its regular meeting of March 5, 2008.

As part of the acquisition process, a Decisional Document (Exhibit B) summarizing the history of the site selection process and the history of negotiations with the property owners, must be reviewed and approved by the Assembly. Exhibit B is being submitted as an attachment to this memorandum. Anchorage Water and Wastewater Utility will provide the affected property owners with certified notice of the Assembly Public Hearing in accordance with AMC 25.20.025(B).

**THE AWWU AUTHORITY BOARD AND THE ADMINISTRATION RECOMMENDS APPROVAL OF AR NO. 2008<sup>43</sup> AUTHORIZING THE USE OF EMINENT DOMAIN AND ACCEPTANCE OF THE DECISIONAL DOCUMENT FOR THE CONSTRUCTION OF THE AWWU PUMP STATION 10 UPGRADE PROJECT, AWWU PROJECT NO. 0000003738.**

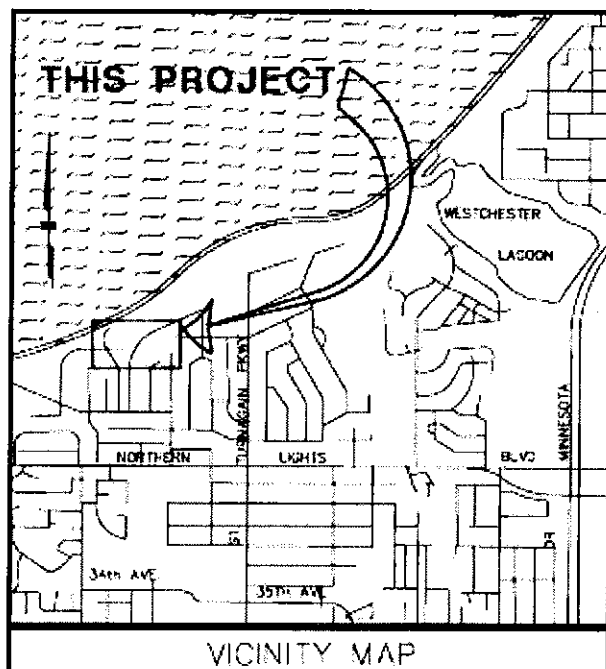
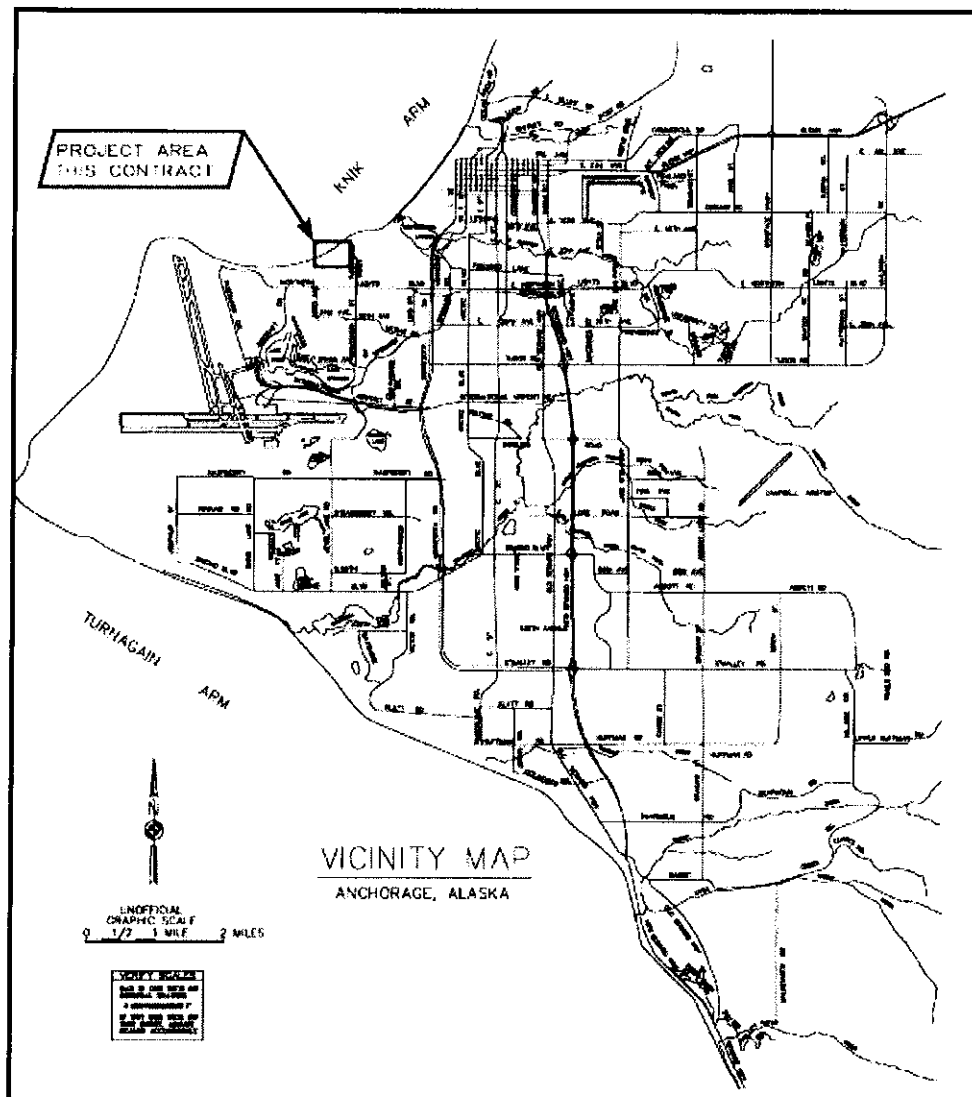
Prepared by: Mark Premo, P.E., General Manager, AWWU

Concur: James N. Reeves, Municipal Attorney

Concur: Michael K. Abbott, Municipal Manager

Respectfully submitted: Mark Begich, Mayor

## **Appendix A. Area Map**



Anchorage Water & Wastewater Utility

Pump Station 10 Upgrade

**AREA MAP**

## **Appendix B. Pump Station 10 Upgrade Project Site Plan**

# Illustrative Plan

## AWWU Pump Station 10



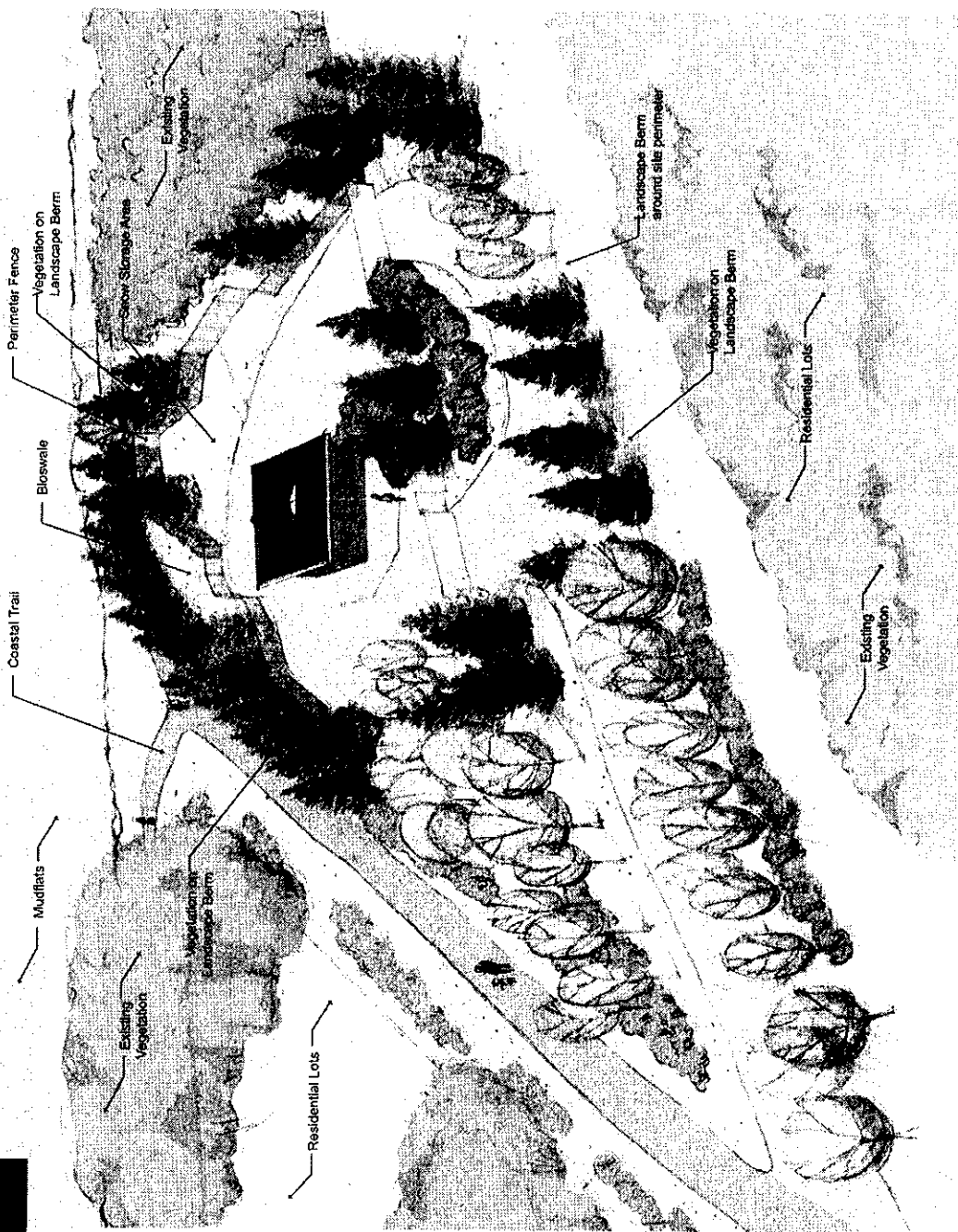
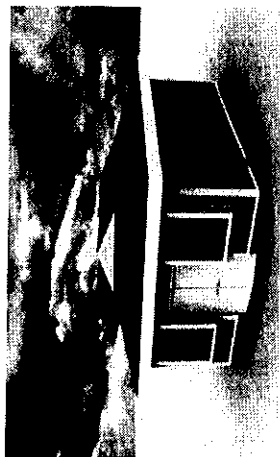
## **Appendix C. Pump Station 10 Upgrade Project Site Renderings**



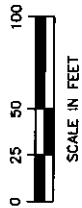
# AWWU Pump Station 10



03.01.07



## **Appendix D. Pump Station 10 Upgrade Alternatives Locations**



ALT-4 LOCATION

ALT-1 LOCATION

ALT-2 LOCATION

ALT-3 LOCATION

GILLIGAN GLENN SUBD

SONSTROM

BLUFF

MCKENZIE NEW WEST

PARK

PETES SUBD

ZIE VIEW SUBD

SONSTROM

Court

KISSEE

WEST MARSTON DRIVE

SUBD 1949

SIMONSON ESTATES

MUNICIPALITY OF ANCHORAGE  
WATER & WASTEWATER UTILITY

PUMP STATION 10 UPGRADE  
ALTERNATIVE LOCATIONS

HORIZ SCALE: 1"=100'  
VERT SCALE: 1"=10'  
DATE: 1/12/06  
PROJ ID: PROJID

GRID: 1526

SHEET

01

## **Appendix E. Preliminary Plat, Simonson Tracts Subdivision, Tracts 1, 2 and 3**



# **Decisional Document**

## **AWWU Pump Station 10**



**Prepared by:**  
**Anchorage Water and Wastewater Utility**  
**3000 Arctic Boulevard**  
**Anchorage, Alaska 99503**

**February 2008**

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## **APPENDIX**

- A. Area Map**
- B. Pump Station 10 Upgrade Project Site Plan**
- C. Pump Station 10 Upgrade Project Site Renderings**
- D. Pump Station 10 Upgrade Alternatives Locations**
- E. Preliminary Plat, Simonson Tracts Subdivision, Tracts 1, 2 and 3**



# **Part 1 – DECISION MAKING PROCESS**

## ***I. PURPOSE***

This Decisional Document explains the basis for the decision by Anchorage Water and Wastewater Utility (AWWU) a Public Corporate Authority of the Municipality of Anchorage to acquire private property for the construction and operation of the public facility as described below. This document shows that the proposed project is in the best interest of the public and the decision to acquire title to the private property has been reached through a systematic process that reasonably considered the needs of the public and of the property owners. This document summarizes relevant project background information, identifies factors and limitations that affect the evaluation of public benefits and private loss, and details the necessity for acquiring the property by exercising the power of eminent domain.

## ***II. PROJECT SUMMARY STATEMENT***

This property is to be the site of a new wastewater pumping station that will serve a significant portion of the Turnagain area homes, schools, and businesses consisting of approximately 3,000 persons. The new facility will replace an existing pumping station that has no excess capacity or reserve storage, no back-up power capabilities, and no additional land for expansion. This location will support both developed properties and those yet to be developed. The facility is designed to blend with the neighborhood and adjacent recreational lands. The project site is currently vacant and acquisition will not displace any existing homes or other structures, or interfere with adjacent public recreational uses. The project will assure continued public wastewater services and the health and safety of the community; a commitment that cannot be said of the existing wastewater pump station facility.

## ***III. GENERAL PROJECT INFORMATION***

### ***A. Background***

AWWU owns and operates a wastewater pumping station along the east side of Sonstrom Drive; it is referred to as Pump Station 10. The project area is shown in Appendix A. This pump station serves a significant portion of the Turnagain community area, supporting nearly 1,200 homes or approximately 3,000 people. The existing facility collects sanitary sewage by gravity and pumps it south across Northern Lights Boulevard to Aero Avenue and a major sewer trunk line that flows by gravity to the Asplund Wastewater Treatment Facility.

The original facility and collection system dates back to the late 1950's and 1960's pre-earthquake. The existing facility was a sewer manhole structure that was upgraded in approximately 1972 to a pumping station. It has since seen several major and minor improvements over the years in an attempt to keep up with population growth and increased wastewater flows. Though these improvements have been made, this existing pump station is in dire need of replacement as it lacks sufficient capacity to store and pump the current amount of wastewater that is flowing into it, and can not support further neighborhood growth. Due to the poor condition of the collection system as a result of the 1964 earthquake, the facility is subject to collecting excess infiltration and inflow, putting an even greater demand on its limited capacity. The existing facility has been operated and maintained well past its design life.

This facility is located within an easement in the yard of private residence, and has no room to expand without the displacement of the residence. This facility has no backup power systems, and is dependent upon maintenance forces rapidly responding to power outages with a portable generation plant prior to the station potentially overflowing.

The proposed replacement pump station to be constructed on the subject lands is the culmination of over two decades of planning, analysis and investigations. The need to address the existing pumping station was first noted in the 1982 *Wastewater Facilities Plan for Anchorage, Alaska*. Over the past dozen years, AWWU has conducted an in-house analysis, and it has also contracted consultants to complete professional reviews and studies for recommendations as to improving or replacing the existing pump station.

Past studies in support of this project include:

- *1995 Anchorage Wastewater Master Plan* by HDR Engineering, Inc.
- *Design Study Report Pump Station 10 Improvements*, dated October 1998 by CRW Engineering Group;
- *Pump Station 10 Service Area Infiltration and Inflow Study*, dated June 2004 by VEI Consultants; and
- *Pump Station 10 Replacement Feasibility Study*, dated June 2004 by VEI Consultants.

These studies and follow-on analyses recommend the construction of a new pumping facility at a location that will provide the most benefit for the local area neighborhood and surrounding area served by the pump station, and that will resolve all the deficiencies of the existing aged facility.

AWWU began design of the replacement station in 2004. At that time, AWWU began acquisition of the subject parcel through negotiations with the last known owner of record. Sometime thereafter, it became apparent that title to the property was disputed. In 2006, a lawsuit was filed to determine ownership of the parcel, and that case is scheduled for trial beginning in January 2008. After the lawsuit was filed, AWWU approached all interested parties with a proposal to purchase the property. AWWU's proposal would have put the purchase money in escrow until settlement of the lawsuit.

At the time the lawsuit was finalized, the party determined to own the property would have received the escrowed funds. AWWU was unable to secure consensus with all potentially interested parties. A detailed history of the negotiation process is included in Part II of this document.

Because litigation is inherently difficult to predict, the intention for this acquisition is to put the condemnation proceeds into the registry of the Superior Court for the Third Judicial District, at Anchorage, for distribution to whoever is determined to own the parcel.

## **B. Statement of Need**

The existing facility and its location cannot meet the current requirements and standards that AWWU places on all new wastewater pumping stations, whether constructed by the public or private sectors. The existing facility's site prohibits any substantial upgrade at the location due to lack of physical space without displacing or significantly impacting nearby residences. The existing facility is dependent upon a rapid response from AWWU maintenance crews during power outages prior to the facility overflowing and discharging into Turnagain Arm or to the surface. These overflows endanger the public health and the environment. The existing facility (though having seen minor upgrades along the time frame) is rapidly approaching 50 years in age, and is well overdue for replacement.

## **C. Project Design**

The Pump Station 10 Upgrade Project has been designed to be built on the selected location. The actual design processes started in 2004, with a site selection analysis (refer to D. Alternatives Considered below), and the final design was completed in August 2007 and is ready to be issued for construction bids.

The pump station will consist of a below ground wet well, a below ground valve vault, and an associated 18'x24' building to house an emergency generator and control equipment.

The design has incorporated the needed technical requirements of having sufficient capacity for near and long term wastewater flows; allowed sufficient space to expand its storage capacity if needed; provided for backup power generation in response to area wide power outages; incorporated a supervisory control and data acquisition system to remotely monitor the facility's real time operations; as well as adhered to environmental stipulations and regulatory requirements of Federal and State agencies.

During the design process, a significant community outreach and public involvement program was accomplished. This program included presentations to the Turnagain Community Council (TCC), project specific meetings at key design phases (DSR, 65% design, and 95% Design), focused meetings with TCC representatives on construction traffic routing as well as meetings and telephone conversations with stakeholders

throughout the Turnagain community. The project was also presented to, reviewed by, and approved by the Municipal Geotechnical Advisory Commission, the Planning & Zoning Board, and the Urban Design Commission.

Because of public input and Municipal review, the design has incorporated mitigation measures to improve the visual quality of the site, address noise issues, and minimize impacts of construction traffic. Appendix B contains a schematic depicting the site layout of the proposed pump station, and Appendix C contains a Site Rendering that depicts the site's aesthetics and landscaping.

The design includes additional landscaping where needed to insure a minimum 25-foot buffer on all sides of the property. The project minimizes the amount of paving and other hard surface area. Coated chain link fencing is included to protect the site while not looking industrial. The building materials were selected to help it fit with the architecture of the neighborhood. The building height has been limited to 14-feet from ground to ridgeline so as not to impede upland property owner's views. Exterior site lighting was designed to prevent glare and minimize off-site light spill over. The generator building has been oriented on the site such that noise created while the emergency generator is in operation, will be directed towards the water and not towards residences. The pump station wet well and pumps were designed to allow for a relatively quick turnaround of wastewater out of the wet well such that it will not have time to sit and become septic creating an odor issue. A subdrain system has been designed into the site to remove localized groundwater from the site to help prevent soil liquefaction in the event of an earthquake.

As a result of the construction traffic focus groups. AWWU incorporated into the design the requirement that the contractor loop its traffic to the largest degree practicable to minimize traffic on any one street; the requirement that trucks remove overspill from truck and trailer bodies and clean their wheels prior to hauling; the requirement that the contractor perform sweeping and use water for dust control; the requirement to restrict hauling hours during the period immediately before and immediately after school; the requirement to close temporary roads after working hours; the requirement to restore temporary roads; the requirement for the contractor to provide public notice prior to beginning construction activities; the requirement to establish a project telephone number for residents to call in the event they have questions or concerns; and the requirement to incorporate temporary pedestrian zones as required by the Municipal Traffic Department.

The project was presented to the Platting Board and a preliminary plat has been approved. A copy of the revised preliminary plat is included in Appendix A. Currently, the Platting Board has allowed an extension to finalize the plat while the court case to determine ownership of the property is on-going.

Furthermore, the design and construction of this project is crucial to the planned improvement districts adjacent to and south of the Pump Station 10 Upgrade project site. In April 2004, the Anchorage Assembly passed Anchorage Ordinance No. 2004-

20, which created the Turnagain Heights Lateral Improvement District 1415. The improvement district is currently at the 65% design stage, is planned to go to construction in spring 2008, and has a dependency on the construction and completion of the Pump Station 10 Upgrade project to collect the wastewater generated by the improvement district. Without the Pump Station 10 Upgrade project, the improvement district will have to be either deferred or require major design modification that will add significant costs, in excess of three-quarters of a million dollars to the lateral improvement district.

## **D. Other Alternatives Considered**

During the planning and study efforts noted above, various alternative sites were identified and summarized to four potential locations that could to be assessed as to their viability. A detailed analysis of the locations was conducted, which resulted in the selection of the proposed location (referred to as Alternative 1) being far and above the best and most suitable location for replacing the existing facility. The other locations considered are described as Alternatives 2, 3 and 4, and are described as follows and as shown on the schematic in Appendix D. Included in these descriptions are highlights as to why these locations are not viable or are less preferred.

### **Alternative 2 – Sonstrom Drive & Kisse Court**

This location is in the expanded rights-of-way south of the intersection of Sonstrom Drive and Kisse Court, and to the west along the south side of Kisse Court. This location would require the pump station and wetwell to be separated by a significant distance from the building housing the backup generator and station controls. This configuration would result in higher costs for construction. The location would pose significant and lengthy periods of impacts to the local neighborhood during construction; and partial to full blockage of the streets during the follow-on routine maintenance operations due to lack of space. Snow removal and storage would be an issue. Due to lack of space, vegetative screening will not be possible. Furthermore, the location has significant geotechnical issues due to subsurface seeps and springs, which may affect the seismic stability of the facility.

### **Alternative 3 – Pocket Park at Pete's Place & West Marston Drive**

This location would require the elimination of the park land at the corner that currently is traversed by a bike trail that provides public access to the Tony Knowles Coastal Trail. This location is higher in elevation, requiring extremely deep wet well structures, and extremely high construction costs. This location will not be able to serve all of the area that is currently planned for development under the improvement districts. .

## **Alternative 4 – Intersection of Tony Knowles Coastal Trail and Pete's Place Trail**

This location will have a significant impact on the Tony Knowles Coastal Trail during construction as well during routine maintenance operations. The location will not meet all expected requirements for landscaping and aesthetics due to the limited space. This location's limited available space means the placement of the generator and controls building will disrupt the adjacent property's view, as well as present a structure immediately adjacent to the coastal trail. Security fencing may well be prohibited due to the limited space. Significant increased lengths of pipe runs will be required to transport wastewater to and from the location.

### **E. Property Information**

AWWU pursued the acquisition of the preferred site for Pump Station 10 Upgrade project based not only on technical reasons but on the interpreted availability of the land. Assumptions that the property's owners were willing and able to sell the property were based on the following chronology and activities that occurred and led AWWU to believe that moving forward with planning and design actions toward timely construction was a prudent decision:

1. A decision was made in 2002 to pursue this land as ownership was interpreted to be the Municipality of Anchorage, Heritage Land Bank.
2. In 2004, further title investigation through the Municipality gave cause to investigate title through a formal title search, which determined that the land was in private ownership with the Estate of Selma Smith.
3. AWWU continued with land acquisition and design of the project assuming that the owner of the land identified by title search would be willing to sell.
4. AWWU entered into discussions with the heirs of the Estate of Selma Smith; progress continued as it appeared an agreement for acquisition was forthcoming. Access was granted by the estate to AWWU to conduct such investigations and surveys as necessary for defining the amount of lands needed for the pump station site.
5. In early 2005, a tentative agreement was struck for the acquisition of the land; included in this agreement was a commitment by AWWU to complete the necessary subdivision of the property encompassing the pump station site lands. AWWU proceeded with the subdivision process in good faith.
6. A result of the subdivision process, a current preliminary plat has been generated under the Municipality Platting Case No. S-11438; the preliminary plat is titled Simonson Tracts Subdivision, Tracts 1, 2 and 3; and is included in Appendix E. The property that is originally intended to be acquired from the Estate of Selma

Smith is referred to as Tract 1, along with an easement for access to the site and for routing utilities which is portion of Tract 2.

7. In January 2006, private property owners adjacent to the proposed subdivision to the south filed a lawsuit in the Superior Court of Alaska, Case No. 3AN-06-04048 CI challenging title to the lands that are defined by the preliminary plat as described in the above bullet 6. These plaintiffs are not a party to the subdivision of the subject lands and have not approved the preliminary plat.
8. In order for AWWU to continue forward with the Pump Station 10 Upgrade Project, an effort was made to enter into purchase and sales agreements with all parties making claim to the lands for the proposed site for the Pump Station 10 Upgrade Project. These efforts are described in further detail under Part 2 to this document, and include the Estate of Selma Smith as well as the property owners of Lots 1, 2 and 3, Block C, Simonson Estates Subdivision 1949. These efforts were initiated in late 2006 and have carried through to fall 2007, at which time it was apparent that AWWU could not come to terms for the purchase and sale of the pump station site with all four parties.
9. The legal challenge for title to the properties that was filed in the Superior Court of Alaska, Case No. 3AN-06-04048 CI, was presented and heard in early January 2008. The rulings by the court on this case are pending.

In light of the legal challenge for the land, the question is begged to be asked "What is the configuration for the land that is needed to meet the Pump Station 10 requirements should the defendant sustain title, and similarly so if the uplands property owners succeed with the lawsuit?"

Basically the answer is two fold:

1. If the findings are for the defendants, then it is assumed that the platting process for the Municipality Platting Case No. S-11438 would continue forward. Should this be the case, AWWU assumes it can re-engage the Estate of Selma Smith for finalizing its initiated agreement. AWWU will be acquiring the proposed Tract 1 (consisting of approximately 0.51 acres), as well as the rights to the "access, sewer and drainage easement" to the southeast of proposed Tract 1 that is part of Tract 2. This easement will provide site access to the pumping station and will be used for routing of the various utilities to and from the pump station site.
2. If the findings are for the plaintiffs, then the lands that are defined by the preliminary plat in Appendix E as Tracts 1 and 2 will need to be divided up to each of the uplands properties that include Lot 1 through Lot 8, Block C, Simonson Estates Subdivision 1949. It is assumed the Superior Court of Alaska will define these property allocations. Should this occur then AWWU will be pursuing to acquire the property for its pump station site through the eminent domain process. The lands that will be needed in this case are slightly different

than as defined by the preliminary plat in Appendix E. The site that will be required under this scenario will include a total of approximately 0.81 acres. This total acreage would consist of the land defined by Tract 1 of the preliminary plat (consisting of approximately 0.51 acres) as well as the land that makes up the "access, sewer and drainage easement" to the south of the proposed Tract 1 (consisting of approximately 0.30 acres). This land requirement is necessary for the proposed pumping station with its appurtenances, as well as for access and for routing of the various utilities to and from the pump station site.

This property proposed for locating the new wastewater pumping station is currently undeveloped and primarily wooded. A portion of an access trail to the Tony Knowles Coastal parallels the property to the west and lies within the property. Additionally, the Tony Knowles Trail crosses the northern end of the proposed Tract 1. Trail easements are proposed to be dedicated for both the access trail and the Tony Knowles Trail.

## **F. Impact of Acquisition on the Property**

The impact of acquisition for Tract 1 will be a change of ownership from a private entity to the Municipality of Anchorage with management authority by Anchorage Water and Wastewater Utility. It will enable the Utility to fulfill its commitment to provide sanitary sewer service to the surrounding area. AWWU will construct a new Pump Station on the property with associated parking and landscaping. This pump station will serve approximately 1,300 residences in the Turnagain area.

The development of the project site is being done in a responsible manner, promoting the character of the surrounding area while still achieving the goal of replacing an aging and under capacity wastewater pumping station. Various amenities are incorporated into the site planning effort such as:

1. The site location has received approval from the Municipality's Planning and Zoning Commission, and a conditional use permit has been issued.
2. The site plan as well as landscaping plan has been reviewed and approved by the Municipalities Urban Design Commission.
3. The site will be fenced with vinyl coated chain link fence, to provide security to the facility while minimizing visual impact.
4. Landscape features include low berms surrounding the site and heavy woody vegetation to screen the building and fence from adjacent trails. Much of the vegetation is consistent with that found in and around the general area, and intended to provide both immediate and long term growth and screening.
5. The area outside the fence will be accessible to the public as they walk, ski, and bike or otherwise enjoy the areas to and along the Tony Knowles Coastal Trail.
6. The only above ground structure is designed to aesthetically pleasing, and consistent with architectural designs used throughout this residential area.



7. Noise mitigation has been incorporated into the design for the generator building. One of the primary considerations is to orient the doorways away from the residential areas, so that escaping noise during the doorway use is projected away from the residences.
8. Concerns over excess stray lighting during night time hours have been addressed by use of both auto on-off sensors, and by use of low intensity lighting.
9. Access to the site will be secured both at the fence line to the pumping station as well as up the hill along the Pete's Place access road. The access road is designed to a "country road" standard to be less intrusive and more appealing to the neighborhood surroundings.
10. Considerations have been taken for realignment of the access trail to mitigate impacts from and conflicts with the access driveway.

As noted above in E. Property Information, as part of this acquisition AWWU is proposing to acquire title to the access and utility easement for Tract 2. The outcome of the previously mentioned lawsuit may affect the final disposition of this portion of the acquisition. In the event the upland property owners prevail in their claim to title of the property, the easement area will remain a portion of the Pump Station 10 site but unencumbered by fencing; therefore, the adjacent property owners will be able to traverse through this area to gain access to the Coastal Trail. In the event the Heirs of Rasmus I. Simonson prevail in the lawsuit, AWWU intends to dedicate this portion as access for the remainder of Tract 2, at no cost to the owners of Tract 2.

As part of the development of the Pump Station site, AWWU will be extending water, sewer, electric, telephone, and gas utilities to the pump station site. Extension of these utilities will benefit some of the adjacent property owners. AWWU does not intend to recover any of its development costs to extend electric, telephone or gas utilities. However, AWWU will be required to assess a Levy Upon Connection cost against adjacent property owners who may take advantage of water and sewer service in accordance with AWWU Water and Sewer Tariffs; this would also include a Sewer Trunk Assessment as well.

## **G. Environmental Factors**

As part of its due diligence process, AWWU commissioned a Phase I and Limited Phase II Environmental Site Assessment (ESA) on the subject property in December 2004. The results of the ESA indicate the property has the potential to be contaminated with petroleum hydrocarbons due to the presence of an existing abandoned 250-gallon fuel tank. Additional contamination could have occurred from off-site sources as a result of the 1964 earthquake. Homes that were located near the property likely utilized heating oil tanks. Due to the local landslide, homes were carried onto the property. From the severe damage done to these homes, the heating oil tanks potentially

released fuel and it is unknown if the tanks and any spilled heating oil were removed or abandoned in-place during post-earthquake restoration activities. Contingency has been incorporated into the project to allow for the removal of contaminated soils and debris which may be discovered during construction.

As part of the permitting process for the design of AWWU's pump station, AWWU went through the Alaska Coastal Management Plan review process. As a result of the review of the questionnaire submitted to the State of Alaska, no consistency review was required; this included the U.S. Army Corps of Engineers making a preliminary jurisdictional determination that the site does not include wetlands.

Additionally, the project was required to go through the Municipality of Anchorage's Planning and Zoning Commission to obtain a Conditional Use Permit. A conditional use permit was granted as a result of that process which allows a utility substation in a residential R-1A zone.

## **H. Summary of Landowner Concerns and AWWU Responses**

Through the negotiation process, AWWU has talked with all of the potential property owners. The following summarizes concerns brought forward from the individual property owners with respect to the desired acquisition of the selected sited during the previous negotiation process and concerns stated in a questionnaire sent to the property owners in December 2007 regarding the desired acquisition. All of these property owners are involved with lawsuit over the claim of title as discussed above in Section A, Background. Each is noted as either the defendant or the plaintiff (either directly or adjoined to the suit).

**Heirs of Rasmus I. Simonson and the Estate of Selma Smith** (owners of the overall parcel of lands per title records and defendants in the noted lawsuit regarding title to the lands): Since initially being contacted about the project and the need for AWWU to acquire the property, the Estate of Selma Smith and heirs of Rasmus I. Simonson have been a willing and agreeable seller based on the offered fair and reasonable compensation. These owners of record have not presented any objections to AWWU's acquisition of this property for the needed Pump Station 10 Upgrade Project.

**Corbett Mothe** (Lot 1, Block C, Simonson Estates Subdivision 1949): Mr. Mothe is adjoined as a plaintiff in the mentioned lawsuit, and has expressed concern about the aesthetics of the pump station and its impacts to views from his upland property and any home he would build upon it. AWWU has responded to both public comments and those of this landowner regarding designed of the facility holistically. AWWU has limited the height of the generator building to 14-feet thereby mitigating visual impact. AWWU has designed the facility to blend in with the surrounding neighborhood, and has added substantial landscaping and screening to enhance the appearance from uplands visibility.

**Lorraine Cupples** (Lot 2, Block C, Simonson Estates Subdivision 1949): This lot owner is adjoined as a plaintiff in the mentioned lawsuit. Several concerns have been raised by Ms. Cupples and her husband, which have come to light through the many correspondences, phone calls and direct discussions. These concerns have repeated and are best summarized in Cupples' latest correspondence to MOA Legal dated December 8, 2007. The following presents the specific issues raised in this latest correspondence on point by point case. Each of the points have a response or rebuttal from AWWU. The point by point concerns are taken directly from the correspondence and restated verbatim in quotations and italics. Each concern or comment is preceded by a reference to the Cupples' Letter or to the Cupples' Concern. Comments to Cupples' concerns raised are each followed by an AWWU response that is preceded with the words AWWU Response: This is to introduce the response and highlight it from the actual concern from the Cupples.

Cupples Letter: This introduction directly from Cupples letter is in support of their concerns raised: *"As you are no doubt aware, the Simonson lot owners are pursuing development of their lots at this time. Owners have been balloted with the assessed cost for development and they have approved the development by the required majority. The Municipal Assembly has approved the various improvement districts and final design for water, sewer and roads is expected near the beginning of 2008.*

*Cost of development for each lot vary by lot but are generally in the \$250,000 range. Upon completion of the project, these costs will be assessed against the individual lot owners with a 30 year amortization.*

*AWWU has identified Tract 1 as the preferred site for the Pump Station 10 project and sought to purchase whatever interest the owners of Lots 1, 2 and 3, of Lot C may have in Tract 1 pending the outcome of a civil suit filed by several upland property owners, including ourselves, to quiet title to tracts 1 and 2.*

*To fairly compensate the owners, an appraisal was sought by AWWU engaging the appraisal firm of Black-Smith, Bethard & Carlson, LLC. Their goal was to arrive at a value for the developed tracts 1 and 2. To accomplish this, the firm decided the highest and best use was as residential single family lots then created a hypothetical subdivision of 7 lots totaling 101,000 sq. ft. and found a developed value of \$23.26 sq. ft. They then consulted Municipal engineers to arrive at a cost for the sewer, water and roads necessary to develop the two tracts. The costs were deducted from the developed retail value to arrive at an offer to make to the three lot owners impacted by the Pump 10 land acquisition."*

Cupples' 1<sup>st</sup> Concern: *The problem we have is that we are being charged for two sets of infrastructure. One is real and will be assessed against us upon completion of the new subdivision and as stated above will be approximately \$250,000. and the second is a hypothetical infrastructure charged against us for the sale of the northern portion of our lots to accommodate Pump 10.*

AWWU Response: AWWU appreciates the position that the Cupples are taking with respect to how the lands were appraised, which is consistent if AWWU was only dealing with the Selma Smith estate. In light of this fact, AWWU has contracted a third full appraisal of the three upland lots, with the assumption that the plaintiffs were

successful. Therefore the lots were reviewed in a before and after approach, with the before configuration being larger lots, that are then reduced in sized for the construction of the proposed Pump Station 10. Damages were also taken into consideration. One key differences, is that the appraisal looked at the three lots as they currently exist today, and does not consider the proposed infrastructure work planned for over the next two years or so.

Cupples' 2<sup>nd</sup> Concern: *"We know that should the upland lot owners prevail in their civil suit then Pump 10 will be built on Tract 1 and Tract 2 will be added to the 10 remaining lots that about the coastal trail and none of the hypothetical infrastructure will ever be built. We will, however, be charged for it and the Municipality will receive our land at an artificially reduced value because of it."*

AWWU Response: AWWU concurs that should the upland lot owners prevail, that ultimately the Lots 4-8 to the east (along the north side of West Marston) could be become larger in size than Lots 1-3, which includes the Cupples' Lot 2; however, this would only occur after either Lots 1-3 agree to sell the land in question to AWWU or if the land is obtained through eminent domain. AWWU plans to fairly compensate Lots 1-3, Block C. AWWU has retained the services of Black, Smith, Bethard and Carlson for a third full appraisal. This appraisal also assesses potential damages that may result if the law suit finds for the plaintiffs.

Cupples' 3<sup>rd</sup> Concern: *"This [referencing the Cupples' 2<sup>nd</sup> Concern] creates a severe imbalance in equity between lots 1, 2 and 3 and the other 10 coastal trail lot owners. The latter will receive larger lots and yet their assessments for development costs will stay near the \$250,000 level while the three owners having their land taken by the city will see their land shrink in size but still be assessed the same \$250,000. In addition these three owners will see an additional \$15.60 sq. ft being deducted from the value of their acquired property as development infrastructure under the hypothetical model created by the appraisal."*

AWWU Response:

1. With regard to the amount of assessment that each of the lots will be charged is not as simple as stated. The formula used for determining the RID costs includes a percentage in the range of 40% that is prorated across all the gross areas of the lots. Therefore, a larger lot will see a percentage of costs applied to every square foot of lot, therefore a larger lot to the east (i.e. Lots 4-8) will see a greater RID assessment.
2. With regards to the assessment of costs for the WID and LID, all lots will be charged an equal assessment. Should the uplands owners prevail in their lawsuit, and Lots 1-3 do have a portion of the land in question sold or taken for the benefit of a pumping station, then they will have smaller lots with the same amount of assessment. There are approximately 20 other lots within the improvement district that are similar or smaller in size as the Cupples' Lot 3 and that will be assessed the same amount without the benefit of having land sold or taken but compensated for.

3. The method of assessment that is being applied for the WID and LID is a method chosen by the property owners within the improvement district, which the Cupples' voted in favor of.
4. With regards to Cupples closing comment, AWWU has retained Black-Smith-Bethard and Carlson to conduct an appraisal of Lots 1-3, Block C. This is being done to demonstrate in good faith that AWWU is attempting to address all concerns that may be valid. This is the third detailed appraisal, and it includes the consideration for damages for the potential loss of use of the lower portion of the property as well as the residual impact for having to look over the top of the proposed pumping facility.

Cupples' 4<sup>th</sup> Concern: *"In the final analysis, lots 1, 2 and 3 end up with smaller lots with a much higher development costs per sq. ft. when compared to their neighbors to the east."*

AWWU Response: AWWU has responded above to this comment and argument. In essence, there are 20 other lots that will be paying the similar amount in assessments for properties that are similar or smaller than the Cupples' Lot 2.

David White (Lot 3, Block C, Simonson Estates Subdivision 1949): Mr. White is adjoined as a plaintiff in the mentioned lawsuit. AWWU is not aware of any concerns raised by Mr. White. He responded directly and timely to the Purchase and Sales Agreement tendered, as well as the relinquishment of a utility easement needed for the project along the west boundary of this property.

## **I Summary of Pump Station 10 Upgrade Project Cost Estimate**

### **Pump Station 10 Project Estimated Total Costs**

Planning and Engineering	\$ 1,240,000
Land Acquisition and Easements	\$ 350,000
Project Construction	\$ 2,652,000
Construction Management	\$ 400,000
Contingency	\$ 468,000
<b>TOTAL</b>	<b>\$5,110,000</b>

## **IV. CONCLUSION**

The acquisition of property rights described in this document is necessary for the AWWU Pump Station 10 project. The project is located and designed in a manner which is most compatible with the greatest public good and causes the least private injury.

## **V. SIGNATURE**

The final site selection was made by:

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Kurt Vause, P.E.  
Director, Engineering Division, AWWU

## **VI. AWWU AUTHORITY BOARD APPROVAL**

The AWWU Authority Board approved this document for use in filing a Declaration of Taking by AWWU Authority Board Resolution BR 2008- \_\_\_\_ on \_\_\_\_, 2008.

## **VII. ASSEMBLY APPROVAL**

The Anchorage Assembly approved this document for use in filing a Declaration of Taking by Assembly Resolution AR 2008 - \_\_\_\_ on \_\_\_\_, 2008.

## **PART 2 -NEGOTIATION PROCESS**

### **I. SPECIFIC PROPERTY OWNER CONTACTS**

AWWU and Municipal staff have been engaged since September 2004 in the acquisition process of the parcel of land that is discussed in detail in Part 1 of this document, as well as shown in Appendix E on the preliminary plat. At that time, AWWU began acquisition of the subject parcel through negotiations with the last known owner of record. Sometime thereafter, it became apparent that title to the property was disputed. In January 2006, a lawsuit was filed in the Superior Courts to determine ownership of the parcel. After the filing of the lawsuit in 2006, AWWU approached all interested parties to the pump station site with a proposal to purchase the property. AWWU was able to reach agreement with three of the four potential owners claiming title to this parcel. However, AWWU has reached an impasse in negotiations with a fourth property owner. Therefore, AWWU has determined that further delay as a result of continued nonproductive negotiations will now have a detrimental effect upon the project cost and the construction schedule for this project. Furthermore, if this project is allowed to continue to be delayed, similar impacts will be felt by the Turnagain Heights Lateral Improvement District No. 1415 created under AO No. 2007-52, as well as its companion improvement districts created under AO No. 2007-51 and AO No. 2007-53.

Following are summaries of conversations and contacts made to the property owners claiming title to the *Proposed Tract 1 and Access Easement to Tract 2*. These contact summaries are with each of the property owners listed in the previous Part 1 section of this document. As noted, all negotiations have been successful, with the exception of the negotiations with Lorane Cupples, Lot 2, Block C, Simonson Estates Subdivision 1949. All records are by AWWU as documented by utility staff or utility contractors as follows: Kurt Vause, AWWU Engineering Director (KHV); Steven Nuss, AWWU Project Manager (SEN); Alan Trawver, Trawver Land Services (TLS); MWH – Bruce Robson, MWH Americas (MWH).

**The following is a summary of the chronology that that occurred along the path of AWWU attempting to consummate purchase/sales agreements with all parties that are making a claim of title for the proposed Pump Station 10 site.**

- January 24, 2007 (TLS) Initial Purchase Sales Agreement (PSA) offerings were transmitted by certified mail to all involved property owners having claims of interest in the proposed PS10 site. Owners are: Bud Ingram (Selma Smith Estate executor); David White, Lot 3; Lorane Cupples, Lot 2; and Corbett Mothe, Lot 1.
- February 2, 2007 (TLS) Signed PSA by Bud Ingram (Selma Smith Estate).
- February 8, 2007 (TLS) Cupples response to AWWU's initial PSA offering; several questions posed and request made for significant cost increases, losses etc. all above and beyond the terms offered to the other three parties.

April 11, 2007	(TLS) Signed PSA by Corbett Mothe.
March 22, 2007	(TLS) Signed PSA by David White.
May 2, 2007	(SEN) AWWU provided a response to Lorane Cupples on questions and concerns raised in their February 8 <sup>th</sup> correspondence.
May 17, 2007	Cupples response to AWWU's May 2 <sup>nd</sup> offering. Response continued to reject AWWU's offerings and requested significant other compensations.
July 10, 2007	Meeting with Lorane & Mark Cupples at AWWU; discussed various issues of concern that the Cupples had identified in previous correspondences. Attending were Kurt Vause & Steve Nuss, AWWU, and Bruce Robson, MWH. AWWU would consider comments received and consider amending their offering. Tentative agreement reached for acquisition of their Lot 2, Simonson Estates Subdivision, and an agreement for their interest in those lands that lie within the proposed PS 10 site.
July 11, 2007	(SEN) E-mail from Mark Cupples regarding tentative agreement terms reached on July 10 <sup>th</sup> meeting. Requests a mutually agreed upon appraiser, requests appraisal be based upon "highest and best use" for the property; requests appraisal be performed using the Subdivision Development Method, requests appraisal be performed on after completion of the lawsuit, and requests they not be named as an interested 3 <sup>rd</sup> party to the lawsuit.
July 12, 2007	(SEN) E-mail from Mark Cupples requesting that they receive an annual rate of return of 10.2% on the money escrowed for the purchase from the time the appraisal is completed until the time the lawsuit is resolved.
July 23, 2007	(TLS) Trawver Land Services (on behalf of AWWU) transmits an offer for acquisition of Lot 2, Simonson Estates Subdivision, and a Purchase Sales Agreement for their interest in those lands that lie within the proposed PS 10 site. This was predicated upon the terms agreed to on July 10 <sup>th</sup> .
July 24, 2007	(TLS) Received an e-mail from Mark Cupples stating that the offer does not include an interest rate of 14.1% from time of appraisal until closing. This request is based upon the January 2007 appraisal of the property which has statement that residential property values have increased 14.1% per year between 2005 and 2006. Also Mr. Cupples states the agreement does not include language protecting him from being named an "Interested 3 <sup>rd</sup> Party".



July 29, 2007	Letter from Lorane Cupples to TLS rejecting offer to sell Lot 2; and continued appeal for significant compensation for their claims and interests if any in the PS 10 site.
August 8, 2007	(KHV) AWWU responds to Lorane Cupples with a final and best offer to either sell Lot 2 and interest in the law suit; or to agree to sell their interest in the proposed PS 10 site should the courts rule in their favor.
August 15, 2007	(TLS) Cupples' letter (email) dated August 14, 2007 received; offer made to either continue discussions or noting their acceptance to defer until after the January 2008 trial date and court case outcome.
August 16, 2007	(KHV) AWWU transmits letter to Lorane Cupples rescinding offers for purchase of their property and any claims made to the property in litigation. Also stated was that AWWU will wait to see if there is a summary judgment or an immediate outcome to the trial scheduled for on January 2, 2008.
November 29, 2007	MOA Legal transmits correspondence to the four parties to query their continued interests in the sale of the property and/or concerns should the MOA pursue eminent domain for the property.
December 8, 2007	Cupples letter to MOA Legal in response to inquiries of impacts to property relative to the MOA exercising eminent domain. Cupples expressing concern that the approach creates inequity should the uplands property owners sustain their claim to title to the property that this site is to be situated on.
January 2, 2008	The trial begins in the Superior Courts of the State of Alaska for Case No. S-11438. Closing arguments were made on or about January 9, 2008. The final judgment is pending.
February 2008	The appraisal firm of Black-Smith, Bethard and Carlson was retained by AWWU to appraise the value of those portions of Lots 1-3, Block C, Simonson Estates Subdivision that would make up the Pump Station 10 site. Damages were also taken into consideration.

**Content ID:** 006111**Type:** AR\_AllOther - All Other Resolutions

AUTHORIZING THE USE OF EMINENT DOMAIN AND THE ACCEPTANCE

**Title:** OF THE DECISIONAL DOCUMENT FOR THE CONSTRUCTION OF THE  
AWWU PUMP STATION 10 UPGRADE PROJECT**Author:** gibsonam**Initiating  
Dept:** AWWU**Date  
Prepared:** 3/6/08 11:03 AM**Director  
Name:** Mark Premo**Assembly  
Meeting Date:** 3/18/08**Public Hearing  
Date:** 4/15/08

<b>Workflow Name</b>	<b>Action Date</b>	<b>Action</b>	<b>User</b>	<b>Security Group</b>	<b>Content ID</b>
Clerk_Admin_SubWorkflow	3/6/08 6:03 PM	Exit	Heather Handyside	Public	006111
MuniMgrCoord_SubWorkflow	3/6/08 6:03 PM	Approve	Heather Handyside	Public	006111
MuniManager_SubWorkflow	3/6/08 6:00 PM	Approve	Heather Handyside	Public	006111
AWWU_SubWorkflow	3/6/08 11:08 AM	Approve	Mark Premo	Public	006111
AllOtherARWorkflow	3/6/08 11:06 AM	Checkin	Alyssa Gibson	Public	006111

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