

From: [Weishahn](#)
To: [Cheryl Stickler](#); [Gabe Thomas](#); [Tyler Huling](#); [Debra Schnabel](#); [Jerry Lapp](#); [Paul Rogers](#); [Douglas Olerud](#)
Cc: [Alekka Fullerton](#); [Annette Kreitzer](#); [Reporter CVN](#)
Subject: Comments on Resolution 22-09-996, Lutak Dock
Date: Monday, September 12, 2022 4:02:01 PM

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Dear Assembly Members and Mayor,

I believe Resolution 22-09-996 violates Haines Borough Code 18.30.040(I)(1) which requires the Planning Commission to, after a public hearing, "review and report" to the assembly about any plans for public facilities with a value of over \$25,000, starting at the conceptual stage.

Haines Borough Code 18.30.040

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I. State and Borough Project Review.

1. Borough Project Review. The [commission shall](#) review and report to the [borough assembly](#) regarding the location, design, construction, demolition or disposition of any public [building](#), facility, collector or arterial [street](#), park, green belt, [playground](#) or [borough](#) projects. The report and recommendation of the [commission shall](#) be based upon the comprehensive plan and the capital improvements program. Routine maintenance [shall](#) be exempt from this requirement. **Plans for the construction of new [borough](#) facilities with a value over \$25,000 shall come to the [commission](#) for review and a public hearing at the conceptual stage of design.**

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The proposed contract with Turnagain Marine Construction includes a **new design** for the Lutak Dock project in the Owner's Program, Exhibit D.

**EXHIBIT D  
OWNER'S PROGRAM  
HAINES BOROUGH  
LUTAK DOCK REPLACEMENT**

**The Owner's Program consists of the following :**

The Owner's intent is to restore the existing Lutak Dock face and slightly increase the foot print of the Lutak Dock area.

The Owner desires the contractor to design a facility that maximizes the uses, expands the current footprint, and

restores the facility as originally designed. **The design and parameters for the Lutak Dock Restoration Project are that**

**the design will rebuild the existing Lutak Dock to include a new O Pile retaining wall, leaving existing cells in place, and tied back to the existing fill.** This will minimize the environmental impacts and safety concerns related to the removal

of the existing cells. Electrical will provide adequate security/safety lighting and camera coverage for the entire marine

cargo facility while supporting the power needed for the current dock office. The Owner does require the installation

of a fire hydrant from the existing water system at the facility. The Contractor will provide all the milestones on their

"Basis of Design. G101" Concept Drawing with one adjustment: Under Corrosion Protection System, Anode System, the Anodes will be installed at the time of construction. (G101 Basis of

Design is attached to this document).

Contractor will ensure current users are able to maintain operations during construction and re-establish operations post construction as they are currently configured. Contractor must consult with and gain approval from current users prior to any plans that may interrupt or change their current operations.

**This will be a shift from the three phased concept originally submitted with the RAISE Grant application in that there will be no filling of uplands as noted for the planned Phase 1, nor the Phase 3 pass/pass.** The contractor will be responsible for all the required NEPA, USACE, EHP and Section 106 permits and will work with the owner to provide all the documentation needed by MARAD to complete these processes. If required by the Haines Borough, contractor is prepared to shift back to the original conceptual designs for the the Lutak Dock.

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The Owner's Program specifically states that the new plan "shifts" from the most recent plans for Phases 1-3. This is a new design that has not been reviewed by any committee, commission, the assembly or the public.

The proposed contract with Turnagain requires that the new design be the starting point for further design development. The "Standard of Care" is very clear that the Design-Builder must **"perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Program."** Also, the only changes that can be made to the Owner's Program are ones that **"constitute a further development or refinement of the design for the Project."**

From the contract:

1.2.25. Owner's Program are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Program may include conceptual documents, **design criteria**, design performance specifications, **design specifications**, and other Project-specific technical materials and requirements.

1.2.26. Reliable Design Decision is a decision, development, or election that refines the Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. **A Reliable Design Decision cannot change the Owner's Program or the Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent Design Submissions, design submissions and Construction Documents shall be consistent.**

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**GENERAL CONDITIONS OF
PROGRESSIVE DESIGN-BUILD
CONTRACT
BETWEEN OWNER AND
DESIGN-BUILDER**

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2.3 Standard of Care.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time within the State of Alaska. **The Design-Builder shall also perform the**

design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner's Program.

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The Planning Commission has not reviewed, held a public hearing, or made a recommendation to the assembly regarding the new design that is described in Exhibit D, Owner's Program. The Ports and Harbors Committee and Assembly have not reviewed the new design. The new design described in the Owner's Program is different from any design reviewed in 2016-2017.

If Resolution 22-09-996 is adopted, the new design would, by default, also be adopted, thus violating Borough Code 18.30.040(I)(1) and proper public process. In order to comply with borough code and provide proper public process, I ask that Resolution 22-09-996 be removed from the agenda, and the new design be sent to the Planning Commission and Ports and Harbors Committee for review.

Thank you for your service,

Cary Weishahn