

# WASILLA

• ALASKA •

Date of Action: 2/10/2014	
Approved <input checked="" type="checkbox"/>	Denied <input type="checkbox"/>
By: K. Smith	

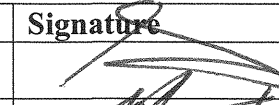



## CITY COUNCIL ACTION MEMORANDUM


**AM No. 14-06: Authorizing the Mayor to purchase wetlands credits in the amount of \$67,240 for the South Mack Drive/Clapp Street Extension project.**

Originator: Public Works Director

Date: January 30, 2014

Agenda of: February 10, 2014

Route to:	Department Head	Signature	Date
X	Public Works Director		1/30/14
X	Finance Director		1/30/14
X	Deputy Administrator		1-30-14
X	City Clerk		1/30/14

Reviewed by Mayor Verne E. Rupright: 

**Fiscal Impact:**  yes \$67,240

**Funds Available:**  yes

**Account name/number:** S. Mack Drive/160-4320-432-45-65

**Attachments:** Mitigation Credit Contract (14 pages)

**Summary Statement:** This project includes a road crossing of Lucile Creek where there are wetlands along the creek. As a requirement to obtain a wetlands permit from the Army Corps of Engineers, the City is required to purchase wetlands mitigation credits that will preserve a similar amount and type of wetlands in the Borough.

**Staff Recommendation:** Adopt AM No. 14-06.

**CONTRACT FOR PURCHASE AND SALE OF MITIGATION CREDITS OF SU-KNIK  
MITIGATION BANK**

**THIS CONTRACT FOR PURCHASE AND SALE OF MITIGATION CREDITS OF SU-KNIK MITIGATION BANK** (the “**Agreement**”) is made as of January\_\_\_\_ 2014 by and between **SU-KNIK ENVIRONMENTS, LLC**, an Alaska limited liability company, (hereinafter “**Seller**”), and the **City of Wasilla**, a municipal corporation (“**Buyer**”). Seller and Buyer are each referred to in this Agreement as a “**Party**” and are referred to collectively as the “**Parties**”.

**RECITALS**

**A.** Seller operates a mitigation bank (the “**Bank**”) and owns mitigation credits (the “**Bank Credits**”), under the terms of an authorization from the United States Army Corps of Engineers (the “**Banking Authorization**”), attached hereto as **Exhibit “A”** (the “**Banking Permit**”).

**B.** Buyer intends to construct upon, improve, and/or develop real property commonly known as the South Mack Drive (Clapp Street) Extension (POA-2012-931, Lucile Creek) (the “**Project Property**”), more particularly described in **Exhibit “B”** to this Agreement.

**C.** The development of the Project Property will involve permitted impacts upon aquatic resources. For that reason, Buyer is required to obtain a permit (the “**Project Permit**”) from the United States Army Corps of Engineers (the “**Corps**”) allowing such impacts. The Corps will condition the issuance of the Project Permit and the permitted impacts upon aquatic resource on the Project Property upon Buyer’s satisfaction of certain mitigation obligations to offset those impacts.

**D.** Buyer desires to purchase Bank Credits from Seller to satisfy those mitigation obligations.

**E.** Seller is willing to sell Bank Credits to Buyer for that purpose on the terms and conditions set out in this Agreement.

## AGREEMENT

**THEREFORE**, the Parties hereby agree as follows:

1. **Purchase and Sale of Credits.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller one and forty two hundredths (1.42) Palustrine Emergent/Scrub Shrub Bank Credits, and one and eleven hundredths (1.11) Riverine Bank Credits (the “Credits”), on the terms and conditions set out in the Agreement.
2. **Purchase Price.** Buyer shall pay Twenty Thousand Dollars (\$20,000.00) for each Palustrine Bank Credit and Thirty-Five Thousand Dollars (\$35,000) for each Riverine Bank Credit, for a total purchase price (the “**Purchase Price**”) of sixty seven thousand and two hundred and forty dollars (\$67,240).
3. **Statement of Credit Availability.** Immediately upon Buyer’s delivery to Seller of an executed copy of this Agreement and the Purchase Price, Seller shall deliver to the appropriate officer of the Corps a statement of credit availability (the “**Statement of Credit Availability**”) representing to the Corps that Seller has reserved and set aside the Credits, that the Seller will not transfer the Credits to any person other than the Buyer, and that Seller has agreed to transfer the Credits to Buyer on the terms and conditions set forth in this Agreement.
4. **Obligation of Seller.** Seller shall comply with all conditions and requirements of the Banking Permit. The provisions of this **Section 4** shall survive this Agreement.
5. **Obligations of Buyer.** To the extent applicable, Buyer shall comply with the following conditions. In the event Buyer applies for a modification of any Project Permit, copies of any such permit modification application shall be provided to Seller within five (5) days of submittal. Buyer shall timely deliver to Seller any Project Permit it obtains upon its receipt of such permit or as soon thereafter as is practicable. Buyer shall provide Seller at the address for notices set out in **Section 10** below any documents reasonably requested by Seller relating to the approval of the use of the Credits at the Project Property.
6. **Purchase and Sale of Credits.** Within three (3) business days of Seller’s receipt of the Purchase Price, Seller shall provide to Buyer (and, if required, to the Corps) the documentation that the Corps requires for the transfer of the Credits on the bank ledger of Seller from Seller to Buyer.
7. **Debit of Credits and Transfer.** The Corps’ delivery of the Project Permit to either Party and the Corps’ statement that it has debited the Credits on the Seller’s credit ledger shall be conclusive evidence as between the Parties that the Credits have been transferred. Upon notification of the debit of the Credits by the Corp, Buyer and Seller shall exchange any other executed document(s) necessary or proper to evidence the purchase and sale of the Credits.

8. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.
9. **Applicable Law.** Any civil action arising from this Agreement shall be brought in Anchorage, Alaska. The law of the State of Alaska shall govern the rights and obligations of the Parties without regard to the conflict of laws rules of that State.
10. **Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

Notices to Seller shall be sent to: **SU-KNIK ENVIRONMENTS, LLC,**

Attention: Jerome Ryan  
Su-Knik Mitigation Bank  
645 G Street, Suite 100 #1216  
Anchorage, AK 99501  
Telephone: (707)874-2780  
Telecopy: (415)366-1606

With a copy to:

James B. Hodge, Esq.  
PO Box 1341  
Wilson, WY 83014  
Telephone: 415.515.6976  
Telecopy: 307.734.2402

Notices to Buyer shall be sent to: Archie Giddings, Public Works Director  
City of Wasilla  
290 East Herning Avenue  
Wasilla, AK 99654

Notice may be given, delivered or made by United States Postal Service (in which case it shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, by recognized overnight delivery service (in which case it shall be deemed so given, delivered or made on the second business day after the

same is delivered to such service), or by facsimile (in which case in which case it shall be deemed so given, delivered or made on the first business after the date shown on any recognized evidence of transmittal). Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this Section.

11. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Buyer and Seller.
12. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the Parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any Party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other Party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
13. **No Joint Venture or Partnership or Agency Relationship.** The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither Party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither Party shall hold itself out as an agent, partner or joint venturer of or with the other and each Party shall defend and indemnify the other against any claim of liability arising out of an asserted agency, partnership or joint venture by the other contrary to the express provisions of this Section.
14. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
15. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall in any way be affected thereby.

16. **Calculation of Time.** Unless otherwise expressly indicated, time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.
17. **Effective Date.** This Agreement is effective as of the date first appearing above.
18. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the Parties and shall be deemed one original instrument.
19. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
20. **Attorneys Fees and Costs.** In the event of litigation between the Parties, attorney fees and cost shall be awarded under the Alaska Rules of Civil Procedure Rule 82.
21. **Construction.** Buyer has had every opportunity to have this Agreement reviewed and approved by its counsel. This Agreement shall be interpreted as if drafted by both Parties hereto equally, and no rule of construction or interpretation shall be applied against any Party.
22. **Payment in Ready Funds.** All payments that Buyer makes to Seller under the terms of this Agreement shall be made by wired federal funds to the account of or in the name of Seller.
23. **Confidentiality.** Except as required in their dealings with the Corps, the Parties shall comply with the following terms and conditions. The Parties shall maintain confidentiality with respect to and keep confidential all matters relating this Agreement , to the subject matter of this Agreement and to the transactions referred to in this Agreement, including but not limited to the financial terms and conditions of this Agreement, and shall not disclose the terms of this Agreement to any third party (except to an Affiliate, or third party consultant, or as required by applicable law, rule or regulation or court order or by the terms of this Agreement). All information given by any Party to another Party pursuant to this Agreement shall be considered confidential and shall be used only for the purposes intended. The provisions of this **Section 23** shall remain in force and effect notwithstanding any termination of this Agreement and shall survive the purchase and sale of the Credits. Without limiting the terms of this **Section 23**, no Party nor any of its or their the Affiliates shall make any announcement or disclosure, public or private, of any kind or nature, concerning the transactions contemplated by this Agreement without the prior written approval of the other Party, except as required by law. If any Party or any of its or their Affiliates determines upon

advice of counsel that an announcement or disclosure is required by applicable law, it shall first notify the other Parties so that they may coordinate concurrent announcements and/or other disclosures and review the proposed text of such announcement. Each Party may communicate with its members, government agencies and third parties currently involved in the operation of that Party.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES APPEAR ON FOLLOWNG PAGE(S)].**

**SIGNATURE PAGES FOR CONTRACT FOR PURCHASE AND SALE OF  
MITIGATION CREDITS OF SU-KNIK MITIGATION BANK**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date first written above.

**SELLER:**

Su-Knik Environments, LLC, an Alaska limited liability company

By: SE Alaskan, LLC, an Alaska limited liability company, its Managing Member

By: \_\_\_\_\_  
Jerome Ryan, its Member

**BUYER:**

The City of Wasilla, a municipal corporation

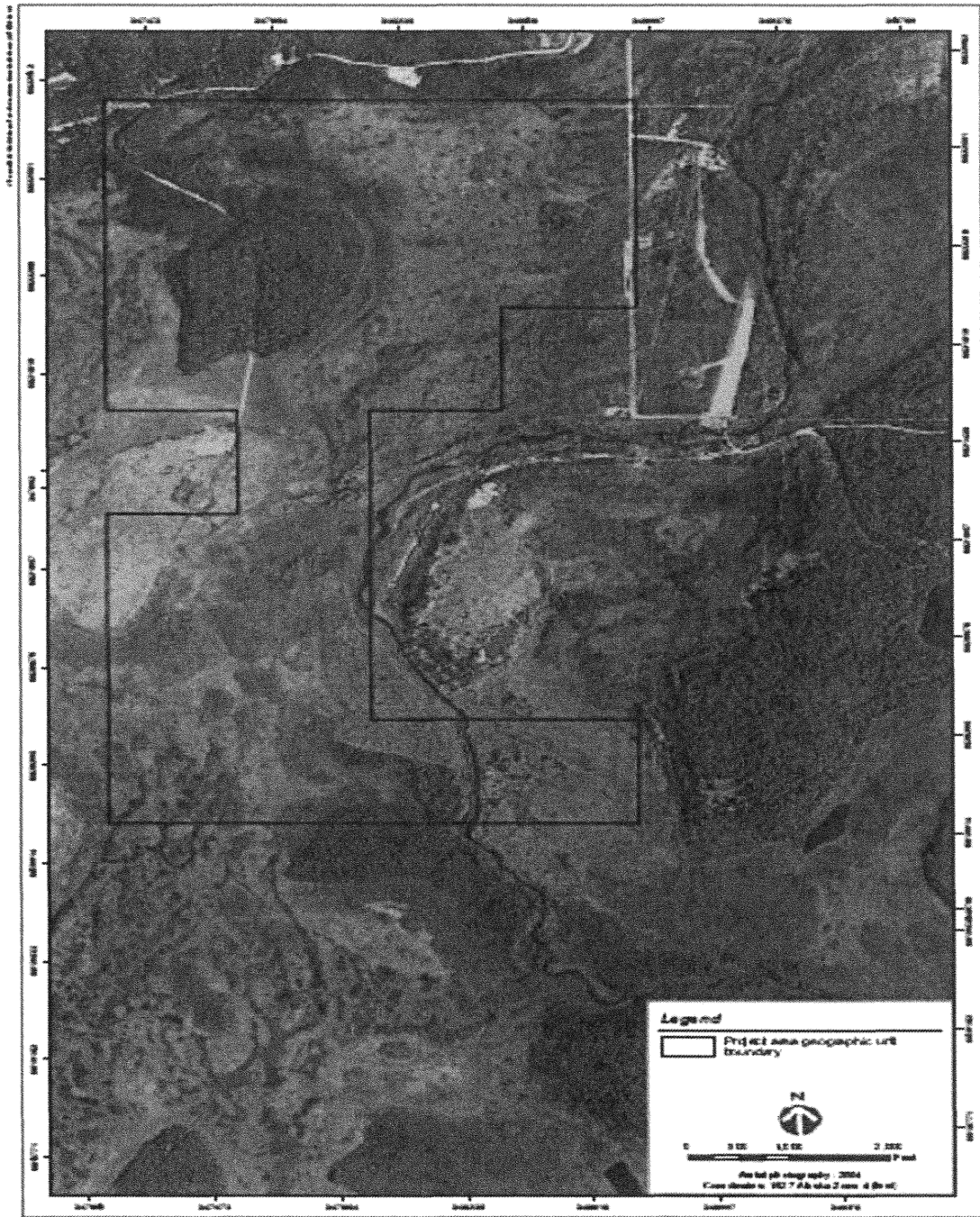
By: \_\_\_\_\_  
Printed Name: Honorable Verne Rupright  
Title: Mayor of Wasilla



EXHIBIT A

DESCRIPTION OF MITIGATION PROPERTY AND BANKING AUTHORIZATION

SU-KNIK MITIGATION BANK



The South one-half of the North one-half ( $S\frac{1}{2}N\frac{1}{2}$ ), the Southwest one-quarter ( $SW\frac{1}{4}$ ), the North one-half of the Southeast one-quarter ( $N\frac{1}{2}SE\frac{1}{4}$ ), and the Southwest one-quarter of the Southeast one-quarter ( $SW\frac{1}{4}SE\frac{1}{4}$ ) of Section 5, Township 16 North, Range 3 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

The Northeast one-quarter of the Northwest one-quarter ( $NE\frac{1}{4}NW\frac{1}{4}$ ), the South one-half of the Northwest one-quarter ( $S\frac{1}{2}NW\frac{1}{4}$ ), the Southwest one-quarter ( $SW\frac{1}{4}$ ), and the South one-half of the Southeast one-quarter ( $S\frac{1}{2}SE\frac{1}{4}$ ) of Section 8, Township 16 North, Range 3 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, ALASKA  
REGULATORY DIVISION  
P.O. BOX 6998  
ELMENDORF AFB, ALASKA 99506-0898

DEC 4 2009

Regulatory Division  
PCA-2006-1606

Mr. Jerome Ryan  
Su-Knik Environments, LLC  
Post Office Box 2261  
Sebastopol, CA 95473

Dear Mr. Ryan:

The U.S. Department of the Army, Corps of Engineers (Corps), in collaboration with the Interagency Review Team (IRT), by this letter is authorizing release of mitigation banking credits in the Fish Creek parcel of the Big Lake South Mitigation Bank. The Su-Knik Umbrella Mitigation Bank Instrument dated February 5, 2009, and the Conservation Easement for the Fish Creek parcel recorded September 11, 2009, both meet the goals identified in 40 CFR Part 230 Compensatory Mitigation for Losses of Aquatic Resources; Final Mitigation Rule, 33 CFR Part 332, dated April 10, 2008, and Alaska District Regional Guidance. The Alaska District of the U.S. Army Corps of Engineers, hereby grants mitigation credits for preservation of 794.8 acres of functional capacity wetlands as follows:

Slopes/Flat wetlands:	FCI	Credits(acre)
PFO	0.99	340.6
PSS	0.96	238.9
PEMPSS	1	166.7
PEM	1	34.4
<b>TOTAL</b>		<b>780.5</b>

Riverine Wetland:	FCI	Credits(acre)
PFO	0.92	1.7
PSS	0.96	10.3
PEMPAB	0.97	2.3
<b>TOTAL</b>		<b>14.3</b>

Implementation guidance is outlined in the February 5, 2009, Su-Knik Umbrella Mitigation Instrument prepared for the Interagency Review Team. Annual monitoring reports documenting beginning and ending credit balances, with short and long-term management activities, are required. These reports are due to the Corps' Mat-Su Regulatory Field Office within 12 months from the date of this letter, and every year thereafter, until Corps releases this

responsibility. The Corps will track credit exchanges using the Regional Internet Bank Information Tracking System (RIBITS), accessible to the public over the internet, in addition to the tracking described in the Umbrella Mitigation Bank Instrument. Communications with the Corps must be timely to reflect current credit transactions.

In addition, legal responsibility for providing the compensatory mitigation credits to Department of the Army permittees lies with the sponsor, Su-Knik Environments, LLC., once the permittee secures credits from said sponsor.

Nothing in this letter excuses the sponsors from compliance with other Federal, State, or local statutes, ordinances, or regulations. A copy of this letter is also being sent to the IRT members.

Thank you for all your work in providing ecologically valuable mitigation opportunities at the Fish Creek parcel of the Big Lake South Mitigation Bank within the Matanuska Susitna Borough. You may contact Ms. Karen Nelson, Big Lake South Bank Chair, at [Karen.L.Nelson@usace.army.mil](mailto:Karen.L.Nelson@usace.army.mil), by mail at the Mat-Su Regulatory Field Office, Century Plaza Building, 1075 South Check Street, Suite 102, Wasilla, Alaska 99654, or by phone at (907)357-4423, for any questions regarding the mitigation bank. For additional information about our Regulatory Program, visit our web site at [www.poa.usace.army.mil/reg](http://www.poa.usace.army.mil/reg).

Sincerely,



William A. Keller  
Chief, North Branch

## EXHIBIT B

### DESCRIPTION OF PROJECT PROPERTY

#### **Project Description**

**Project Description:** To construct a 32-foot wide, 1.5-mile long, paved road with an 8-foot wide paved pedestrian pathway and a 19-foot and 10-inch by 7-foot and 8-inch aluminum arch culvert crossing at Lucille Creek. The project will extend South Mack Drive 1.5 miles from the Curtis D. Menard Sports Center to the Knik Goose Bay Road. The project will permanently impact and involve the placement of approximately 12,906 cubic yards of fill materials in up to a total of 0.94-acre of waters of the U.S., including wetlands, over the entire length of the project. In addition, the project will temporarily disturb up to 0.56-acre of waters of the U.S. over a 15-foot wide by 508-foot long (total distance over the three jurisdictional areas being filled) work zone in areas adjacent to permanent wetland fill areas.

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**EXHIBIT C**

**DESCRIPTION OF PERMIT**

**[Found on next page]**

## DEPARTMENT OF THE ARMY PERMIT

Permittee: City of Wasilla

Permit No.: POA-2012-931

Issuing Office: U.S. Army Engineer District, Alaska

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** To construct a 32-foot wide, 1.5-mile long, paved road with an 8-foot wide paved pedestrian pathway and a 19-foot and 10-inch by 7-foot and 8-inch aluminum arch culvert crossing at Lucille Creek. The project will extend South Mack Drive 1.5 miles from the Curtis D. Menard Sports Center to the Knik Goose Bay Road. The project will permanently impact and involve the placement of approximately 12,906 cubic yards of fill materials in up to a total of 0.94-acre of waters of the U.S., including wetlands, over the entire length of the project. In addition, the project will temporarily disturb up to 0.56-acre of waters of the U.S. over a 15-foot wide by 508-foot long (total distance over the three jurisdictional areas being filled) work zone in areas adjacent to permanent wetland fill areas.

All work will be performed in accordance with the attached plan, sheets 1-7, dated 07/24/2013.

**Project Location:** The proposed project is located within Section 18, T. 17 N., R. 1 W., Seward Meridian; USGS Quad Map Anchorage C-7; Latitude 61.5690° N., Longitude 149.5266° W.; South Mack Drive southward to Knik-Goose Bay Road and Fairview Loop Roads; in Wasilla, Alaska.

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on **November 30, 2018.**

If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.