

## **PUBLIC RELEASE NOTICE**

**Document:** Brena, Bell & Walker, P.C. Memorandum re: Transportation of Ore Concentrate Through the Port of Skagway – Policy Considerations and Discussion Points

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**Approved By:** Borough Assembly of the Municipality of Skagway

At the May 7, 2026 regular Assembly meeting, the Borough Assembly approved public release of the attached memorandum.

**The attached memorandum is being made publicly available pursuant to Assembly action.**

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## MEMORANDUM

TO: Emily Deach, Borough Manager  
Rebecca Kameika, Deputy Borough Manager  
Cody Jennings, Port Director

FROM: Robin O. Brena, Esq.  
Tony Guerriero, Esq.

DATE: April 16, 2026

RE: Transportation of Ore Concentrate Through the Port of Skagway-Policy Considerations and Discussion Points

### **I. Executive Summary**

The legal infrastructure necessary to ensure the safe, environmentally sound, efficient, and profitable use of the Port of Skagway for the transportation of ore concentrate raises a series of policy issues for the Municipality of Skagway Borough (“Skagway”). The major policy issues are summarized in the memorandum below. Policy guidance on these major policy issues would assist the legal team in preparing the legal infrastructure necessary to fulfill Skagway’s policy goals.

### **II. Policy Considerations and Discussion Points**

**A. Present Condition and Remediation of the Ore Terminal.** Over the past decades, and up until 2023, the Skagway Ore Terminal was used by Yukon mining operations to transport ore to vessels docked there. Numerous Phase II Environmental Site Assessments conducted in recent years have identified legacy heavy metal contamination to the Ore Terminal, Ore Basin (offshore from the Terminal), and adjoining uplands, all linked to this use. Most recently, the Alaska Department of Environmental Conservation’s (“ADEC”) Contaminated Sites Program has requested that Skagway provide a work plan

to characterize metal contamination associated with the former Ore Terminal and surrounding properties. Skagway is presently working with ADEC and Cox Environmental to establish the scope of the required work plan, which is expected to include a sampling schedule and related details. Once the plan is approved by ADEC, Cox Environmental will conduct the sampling.

Regardless of future uses of the Ore Terminal property, the outcome of ADEC-mandated work will establish the extent of heavy metal contamination and dictate the required remediation efforts. The primary goal of such future efforts should be to restore the contaminated sites to acceptable environmental health and safety standards. Additionally, following these remediation efforts, a baseline condition of the subject properties can be established and used to measure the extent of future contamination that might arise from future uses of the remediated properties. The cost of the required remediation, which may be borne largely by Skagway, may also inform decisions on future uses of the remediated property, and the requirements placed on future users.

**B. Future Uses of Ore Terminal Property.** At some point, Skagway will have to decide whether to permit the continued use of the Ore Terminal property for the transportation of ore from Yukon mines, as proposed by Selkirk, or for some other use. This decision should be made only after due consideration of the anticipated benefits and burdens/risks associated with any such use, potential mitigation of any such risks, past experience, and potential alternative uses.

**C. Non-Containerized (Bulk) vs. Containerized Ore Shipping.** In 2023, Skagway adopted Ordinance 23-23, wherein it determined that all bulk ore imported or exported through or to the Port of Skagway must be transported in sealed containers, and required that all such bulk ore be shipped/loaded onto shipping vessels of any kind using a containerized bulk-ore handling system. This Ordinance was enacted in the acknowledgement of (1) assessments of the surface soil in the Port of Skagway found elevated lead and zinc concentrates in the soil on the historic ore transport routes, which seemed likely to have resulted from the use of an open conveyor system; (2) a desire to act in an environmentally responsible way for the benefit of the health and well-being of current and future citizens and visitors; and (3) containerized bulk mineral handling systems are recognized as an environmentally responsible process for transporting and loading bulk minerals in inclement weather, like that of Skagway.

It should also be noted that the Haines Borough Assembly recently unanimously introduced an ordinance that would require ore moving through the Borough to be fully containerized, with definitions aligned with Skagway's 23-23 ordinance, appearing to begin the process of adopting a regional standard.

**D. Mitigation Measures.** In the event that Skagway elects to proceed with negotiations with Selkirk for the construction of new port facilities that would contemplate the long-term use of the Ore Terminal property for ore transportation/export purposes, any

such agreements should contain measures designed to mitigate risks of future contamination, establish clear lines of responsibility for the environmental integrity of the Ore Terminal, surrounding property, and any other uplands property utilized in ore transportation chain, including buildings, improvements and equipment/machinery thereon (collectively “Facility”), and ensure that financial resources are available to meet the obligations undertaken. Some of these mitigation measures are discussed below.

**1. Generally.** Any Facility user should be required to maintain and operate the Facility in a manner consistent with good practices and industry standards for a functional commercial ore terminal and related facilities. Without limiting the generality of the foregoing, the Facility user and those entities contracted by user (i.e., transporters of ore, vessels utilizing the Facility) shall comply with federal, State of Alaska, Skagway and Port of Skagway codes, rules, and standards, including, without limitation, those established to ensure that Skagway’s waterfront is utilized in a safe, efficient, and environmentally-sound manner, and consistent with industry standards.

**2. Ongoing Environmental Condition of the Facility.** The Facility must be maintained by the user free from environmental contamination and in compliance with all federal, state, and municipal laws and regulations applicable to the operation of such Facility. Under the terms of use, the Facility user should be required to conduct periodic environmental inspections, testing, and studies (e.g., Facility sampling, testing, etc.) to determine whether the use has met the required standard. Such periodic testing should include testing conducted toward the end of the user’s term of use to ensure that the Facility is surrendered to Skagway in compliance with required standards. To the extent that required testing reveals Facility conditions that do not meet the required standards, the user must be required to remediate the Facility.

**3. Financial Responsibility.** User shall be fully liable for all costs and expenses related to the testing and required remediation of the Facility. At all times during the term of use, the user must be able to demonstrate that it has the financial ability to meet its obligations of use. Such demonstration may be in the form of insurance, bonding, letters of credit, parent guarantees, or any combination of the foregoing. The minimum required amount of such financial ability should correspond to the projected costs of any required testing and the projected costs of reasonably foreseeable remediation efforts.

**4. Establishment of Environmental Fund.** In addition to reasonable fees to be paid by the user of the Facility, users should be required to contribute to a general fund established for the environmental restoration of the Facility or any other property owned by Skagway, including, without limitation, the demolition, removal, and restoration of the Facility at the end of its useful life (“Environmental Fund”). The establishment of such a fund has previously been envisioned by Skagway through Ordinance 23-23, which

requires a percentage of designated Port of Skagway ore-shipment-related revenues to be set aside for such purposes.

**E. Disposition of the Facility at the End of the Term of Use.** At the end of the term of the user's use, Skagway should have the option to have the Facility remain as-is when vacated by the user, or to require the user to remove all or any part of the improvements to the Facility, at the user's cost.

**F. Indemnity.** Any agreement for the use of the Facility should require that the user indemnify, defend, release, and hold Skagway harmless from any and all liability of any kind arising from the use of the permitted improvement and use of the Facility

**G. Endowment Fund.** In addition to the Environmental Fund set forth above for the specific purpose of responding to environmental obligations and commitments, Skagway should consider a general endowment fund to support future port-related development and the general welfare of the community. This could take the form of a fee in the port tariff or a contractual provision in the berthing or use agreement with commercial entities that lease and use the Port or other municipal lands.