

NOTICE OF APPEAL

Oral Presentation

To: William Seward, Haines Borough Manager

CC: Members of the Haines Borough Assembly
Jan Hill, Mayor

From: Dana Hallett, HC 60 Box 3710, Haines, AK 99827

Re: Heli-ski Map Committee Member(s) Deliberating and Voting on Issues in which
Member(s) has/have a Conflict of Interest

Date: November 29, 2016

The Heli-ski Map Committee chair erred by allowing commercial ski tour permit holders to deliberate and vote on map change proposals. Two points support this conclusion.

First, code clearly prohibits a committee member from deliberating and voting on matters in which the member has a substantial financial interest.

Second, the permit holders on the committee have a substantial financial interest in all map change proposals.

I.

On the first point, the code is clear. Code states, "An assembly member or member of any board or commission may not deliberate and vote on any matter in which the

member has a substantial financial interest.” *HBC 2.06.030 (C)*. Code states a “board or commission” includes a committee such as the Heli-ski Map Committee. *HBC 2.06.990*. Therefore, members of the heli-ski map committee may not deliberate or vote on matters in which they have a substantial financial interest.

II. On the second point, a permit holder has a substantial financial interest in all map change proposals considered by the committee.

A. Financial Interest

To begin, there can be no dispute that permit holders have a financial interest in the activity of heliskiing. There also can be no dispute that permit holders have a financial interest in areas open for heli-skiing. Therefore, permit holders have a financial interest in heliskiing activity in areas that are open for heli-skiing.

Next, code states there is no exclusive right of use for areas open for heli-skiing. (*HBC 2.18.080 A3*). Thus, according to code, **all** permit holders may use **all** designated areas open for heli-skiing.

Now, if a permit holder has a financial interest in heli-skiing activity in areas open for that activity, and **all** permit holders may use **all** areas open for heli-skiing, then **all** permit

holders have a financial interest in **all** designated areas used for heli-skiing.

B. Substantial Financial Interest

To prove a **substantial** financial interest requires a deeper inquiry.

First, the attorney agreed with code that to “substantially and materially” benefit, the benefit the permit holder receives must not be one “that is possessed generally by the public or a large class of persons to which the [committee member] belongs.” I completely agree. In this matter, members of the public do not generally derive a benefit from areas designated for heli-ski operations in the same way a heli-ski permit holder does. Essentially, a permit holder’s benefit in an area open for heli-skiing is substantially greater than the general public’s benefit in that area.

Second, the permit holders in question own substantial percentages in their respective companies. The committee member representing heli-ski interests has a 49% ownership stake in his company. Additionally, the committee member representing resident interests has a 42% ownership stake in his company. There can be no doubt that a 49% and 42% ownership stake in these companies constitutes a “substantial” financial interest in the operations of these companies.

Lastly, because designated areas are non-exclusive, a permit holder's financial interest in these areas is also non-exclusive. The attorney stated a permit holder who submits a map change proposal has a substantial financial interest in the area covered by that proposal. However, code states there is no exclusive right of use for any given area. Therefore, because areas are non-exclusive, all permit holders have a substantial financial interest in all designated areas.

These points support my contention.

The remedy here is straightforward.

The BA must start the process over with a code change.

In order to avoid conflicts of interest, the committee structure should be changed. Industry must not be selected as voting members.

A reconstituted committee could include an industry representative as an ex officio, non-voting member. If not this scenario, then industry could represent their position as any other member of the public is allowed to do.

The Manager and this body must disregard any recommendations that are the result of the heli-ski map committee's work.

Ultimately, a flawed process ensures a flawed result.