

November 10, 2015

As residents of the Eagle Vista subdivision between mile 26 and 27, Haines Highway, we are vehemently opposed to the proposed establishment of a heliport in our long-established, quiet residential neighborhood. In fact, we moved from Juneau to this neighborhood specifically to move to a quieter locale, and escape the noise of helicopters and traffic in Juneau. We believe an introduction of such facilities in our established neighborhood violates the longstanding (and successfully litigated) principle of quiet enjoyment of home property. What is more, a strong majority of our neighbors feel the same way.

In short, this quiet residential neighborhood was here first. The written covenants for the Eagle Vista subdivision clearly demonstrate the value that this neighborhood has always placed on its extremely quiet rural character. Inserting a heliport in our midst would be both disruptive and incompatible. There is no comparing the occasional noise of a local sawmill to that of a busy heliport operating the bulk of daylight hours during season.

The expensive noise study was skewed in its parameters, methodology, and interpretation. There is no way you can mix in A-Stars taking off and landing in sequence in a narrowing, sound-amplifying valley and come up with any manner of relative quiet. We deserve protection from the incursion of helicopters taking off and landing less than a mile from our homes. We obviously moved here because we value that rural peace over convenience. As residents of the Haines Borough, we implore the planning commission to sustain our rights to quiet enjoyment of our property. Our relatively few numbers do not extinguish our rights as residents of the Haines borough. I venture to point out that if this proposed heliport were in the middle of Fort Seward, we wouldn't be having this conversation. Are our rights as borough residents any less because there are fewer of us to raise our voices?

It's not as if Mr. Sundberg's business can't operate profitably without a heliport on his property near Mile 26. His business can continue to thrive with his clients and guides utilizing already-established and permitted heliports with less proximity to so many rural residents who value their peace and quiet.

Sincerely,

Nick and Sherrie Jans

Block 2, Lot 4, Eagle Vista

HC 60 Box 2628

Haines, AK 99827

Kathy Friedle

From: Xi Cui
Sent: Tuesday, November 17, 2015 10:16 AM
To: Kathy Friedle
Subject: FW: Letter from the Chamber prevalent to Tonights meeting
Attachments: SEABA CUP.DOCX

From: Kyle Gray [<mailto:KGray@FNBAAlaska.com>]
Sent: Thursday, November 12, 2015 2:08 PM
To: Xi Cui
Subject: Letter from the Chamber prevalent to Tonights meeting

Good Afternoon Tracy,

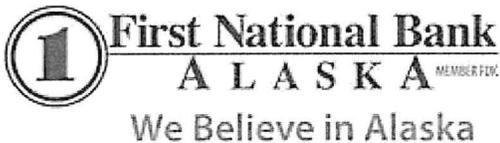
Attached is a letter that the Chamber wrote in regards to heliskiing and condition use permits. Can this get added to the packet for the Commission to review tonight?

Thanks

Kyle Gray | Branch Manager

Haines

NMLS#980429



123 Main Street | Haines, AK | 99827

Office: 907-766-6120 | Fax: 907-766-6105

www.FNBAAlaska.com

If you are not the intended recipient of this email do not read, retain, copy, distribute, or disclose the content of this email. If you have received this email in error, please advise us by reply email @FNBAAlaska.com and destroy the original message and all copies.



Haines Chamber of Commerce

"Working Together to Build Business & Community"

219 Main Street, Suite 14
PO Box 1449 · Haines, AK 99827
907-766-2202 · 907-766-2271 (Fax)
chamber@haineschamber.org · www.haineschamber.org

October 1, 2015

Manager Haines Borough Assembly
PO Box 1229
Haines, AK 99827

Re: Comments on the Application for CUP to operate a heliport
SEABA

The Greater Haines Chamber of Commerce encourages the Borough's support of the business plan advanced by Southeast Alaska Back Country Adventures to develop a winter recreation lodge and associated heliport at Twenty-seven mile, Haines Highway.

The Chamber is of the opinion that the noise study to determine whether helicopter noise levels exceed reasonable thresholds was fairly conducted and interpreted. Whether noise levels exceed the tolerance of any particular neighborhood should not be debatable in considering economic development that impacts the larger community. Locating a winter recreational lodge and associated heliport at 27 Mile has the potential to generate revenue and employment that will result in additional tax revenue to the community. The Chamber supports the endeavor and encourages the Borough to grant the conditional use permit.

Sincerely,

Kyle Gray, President
Haines Chamber of Commerce,

Kathy Friedle

From: Xi Cui
Sent: Tuesday, November 17, 2015 10:16 AM
To: Kathy Friedle
Subject: FW: residential LZ's

From: Heather Lende [mailto:hlende@aptalaska.net]
Sent: Thursday, November 12, 2015 12:20 PM
To: Xi Cui; Rob Goldberg; Don Turner; Robert Venables; Lee Heinmiller; Rob Miller; Brenda Josephson; David Sosa
Subject: Fwd: residential LZ's

This came in my mail for us -- see you tonight

Heather Lende

<http://www.heatherlende.com>

Find the Good

Begin forwarded message:

From: "Scott & Teresa Visscher" <visscher4@gmail.com>
Date: November 12, 2015 at 11:30:18 AM AKST
To: hlende@aptalaska.net
Subject: residential LZ's

I am a supporter of the Heli-ski industry. I make income from renting to Heli guides. My daughter attended guide school. I don't care how many user days there are in the season. The only thing that the borough should be concerned with is establishing flight paths and landing zones to mitigate the impact of the unique noise characteristics of helicopters. Allowing a helicopter landing zone in a residential area is bad precedent for the borough as well as being rude to the neighbors. I am opposed to putting an LZ in the 26 mile residential area or any other residential area. The borough should help this misguided applicant find a more suitable place.

This issue was dealt with in Juneau in the 90's with the growth of Heli-tourism there. For example one flight path to the ice fields was routed over Thunder ridge and away from the subdivisions of the Mendenhall valley. As far as I can tell business is booming and the residents are satisfied. Lets get it right in this valley. We can have happy people and healthy business with smart decisions by our borough and perhaps with more creativity and less combativeness by some in our Heli-ski industry. Imagine if after the first rejection of the LZ at 26 mile the applicant had become proactive and found a more suitable place. Lots of borough time and money would have been saved. The applicant would be well on the way to completion of their lodge. A far better business model than whats transpired.

Thankyou for your consideration, Scott Visscher @ bug lake

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

JESSICA PLACHTA, Appellant, v. HAINES BOROUGH, BIG SALMON VENTURES, LLC., Appellee.	Case No.1JU-14-654 CI
--	-----------------------

ORDER GRANTING MOTION TO DISMISS APPEAL

I. INTRODUCTION

Jessica Plachta filed an appeal in Juneau Superior Court of the First Judicial District of the final administrative decision of the Haines Borough Assembly (“HBA”) granting a temporary conditional use permit (“CUP”) to Big Salmon Ventures LLC (“BSV”) and allowing development of a commercial heliport on its property.¹ Haines Borough filed a Motion to Dismiss on June 5, 2015. For the following reasons, Haines Borough’s Motion to Dismiss is GRANTED and the appeal is moot.

II. FACTS AND PROCEEDINGS

BSV submitted an application with the Haines Borough Planning Commission (“HBPC”) for a CUP to allow the development of a commercial heliport on its property zoned for general use,² Lot 10 Sundberg Subdivision at Mile 26 Chilkat Lake Road.³ HBPC held a public hearing on February 13, 2014, which ended in three yes votes and four no votes in

¹ Notice of Appeal of Haines Borough Assembly Final Decision Granting a Conditional Use Permit for a Heliport to Big Salmon Ventures, 1JU-14-654 CI, May 12, 2014 (“Appeal”).

² Findings of Fact and Conclusions of Law, ITMO Appeal From the Decision of the Haines Borough Planning Commission Denial of a Temporary Conditional Use Permit Application for Development of a Heliport on Lot 10 Sundberg Subdivision, April 10, 2014 (“Findings of Fact”).

³ *Id.*

regard to CUP approval. As such, the application was denied.⁴ However, HBPC passed, with an internal vote of six to one, a recommendation that HBA authorize the Borough Manager to issue a temporary CUP that allowed for a limited pre-approved Borough-monitored number of landings with conditions imposed.⁵

On March 11, 2014, HBA heard BSV's appeal of the denied CUP.⁶ HBA determined that the main factor in HBPC's denial was the noise associated with the proposed use as referenced by objections from members of the public. HBA found that HBPC "erred by giving undue consideration to the statements related to undue noise as opposed to the decibel information and by failing to consider fully the difference in noise impact between a one year permit and a permanent [CUP] which contained the other conditions referenced in [HBPC]'s recommendations."⁷

HBA independently considered the eight criteria laid out in Haines Borough Code ("HBC") 18.50.040(A), along with the recording of HBPC's February public hearing in reaching their conclusion. HBA reversed HBPC's decision and granted BSV a temporary CUP with specific conditions. Importantly, one of the conditions imposed on the CUP was that the CUP was to be temporary, lasting for less than one year and expiring on March 31, 2015.^{8,9}

⁴ *Id.*

⁵ HBA notes in its findings of fact that HBPC's belief that the Borough Manager had such authority was a mistake as a matter of law.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Other conditions imposed on the CUP include the following: (1) operating hours from 8:00 a.m. to 6:00 p.m.; (2) only BSV may use the heliport; (3) Bell 212 helicopters may not be used; (4) fuel storage in accordance with ADEC standards with a fuel spill containment program in place before operations begin; (5) identify specific GPS flight paths after take-off and landing that will create the least amount of noise and impact to nearby residences and take place over state lands to be submitted to the Borough, tracked using GPS tracking and reported in the manner required by SEABA's commercial ski tour permit; (6) allow emergency use for state and federal response, medical, firefighting; and (7) up to one voluntary shut down of operation per month for special nearby events that would be considered a nuisance or would disturb the quality of the planned event.

Ms. Plachta filed the above-captioned appeal in superior court, specifically arguing the following points:

- (1) HBA erred by substituting its judgment for that of HBPC which is charged with land use decisions. HBA further erred by awarding a CUP to BSV for a heliport in an unsuitable location to enable commercial heli-ski operations for BSV's sister company Southeast Alaska Backcountry Adventures ("SEABA");
- (2) HBA erred by ignoring HBC requirement that HBPC's findings of fact were binding on HBA unless those findings could not be supported by the record at HBPC's deciding meeting;
- (3) HBA erred by impliedly concluding that BSV had met its burden of proof, which is on the party challenging the decision of the commission to demonstrate by substantial evidence the facts necessary to resolve the issues on appeal;
- (4) HBA erred by granting a CUP with allowances far beyond what had been applied for by BSV or discussed during the public process, with significant changes made to the CUP after the public process and deciding vote of HBPC;
- (5) HBA erred in its conclusion that the permit "would have met all the eight standards [of HBC 18.50.040(A)]," and that HBPC should have granted the permit if it had incorporated all its recommendations into a CUP. In actuality, the majority of HBPC members expressed discomfort with the idea of a year-long CUP, and allowed their recommendation "For 2014 . . . issue a temporary CUP that allows for a limited, pre-approved, borough-monitored number of random landings . . . with continued noise measurement and monitoring."
- (6) HBA erred by finding BSV had proven each of the eight requirements necessary for granting a CUP. As required by HBC 18.50.040, in order to overturn the HBPC, HBA must find each of the following:
 - a. The use is so located on the site as to avoid undue noise and other nuisances and dangers;
 - b. The development of the use is such that the value of the adjoining property will not be significantly impaired;

- c. The size and scale of the use is such that existing public services and facilities are adequate to serve the proposed use;
- d. The specific development scheme of the use is consistent and in harmony with the comprehensive plan and surrounding land uses;
- e. The granting of the conditional use will not be harmful to the public safety, health or welfare;
- f. The use will not significantly cause erosion, ground or surface water contamination or significant adverse alteration of fish habitat on any parcel adjacent to state identified anadromous streams;
- g. The use will comply with all required conditions and specifications if located where proposed and developed, and operated according to the plan as submitted and approved;
- h. Comments received from property owners impacted by the proposed development have been considered and given their due weight.

(7) HBPC found that the use is not “so located on the site so as to avoid undue noise.” HBA erred by finding that Requirement 1 was met, in the absence of evidence, when their discussion of the issue, and their ordering a noise study to be performed, indicate that HBA knew that Requirement 1 had not been met;

(8) HBA erred by finding that Requirement 2 had not been met when evidence in the record relating to the values of adjacent property showed that property values would be negatively affected;

(9) HBA in 2012 found that a heliport at the site was inconsistent with the Comprehensive Plan. HBA erred in finding that Requirement 4 had been met despite HBA’s previous finding and conclusion that the proposed use was inconsistent with the Comprehensive Plan and with surrounding land uses. No evidence was submitted that would show that the surrounding land use had changed from “residential” or that the Comprehensive Plan had changed with respect to the proposed use. The Comprehensive Plan notes this use had been denied;

(10) HBA erred by finding that Requirement 5 had been met, that the proposed use would not be harmful to the public safety, health, and welfare;

- (11)HBA erred in finding that Requirement 6 was met, and also clearly erred in their specific finding that there was “no evidence in the record that the Property is adjacent to a state-identified anadromous stream,” when in fact, the applicant makes multiple mentions of the “spawning stream . . . Little Salmon River . . . which runs through the southwest section of the 20 acres” in their application. The applicant did not show that a heliport, with attendant fuel storage, and no provisions for sewage, will have no effect on the state-listed anadromous Little Salmon River, which is clearly shown on the map of the property provided by BSV;
- (12)HBA erred in finding that Requirement 7 had been met, particularly in view of BSV’s abysmal record both with respect to safety issues and with complying with both BHC – and with federal law in its operations;
- (13)HBA erroneously concluded that Requirement 8 had been met, when the record clearly shows majority opposition of affected residents to the proposed heliport;
- (14)HBA erred in relying on an unscientific sound report made by a sitting member of HBPC who knew he would be deciding on the CUP for BSV, an action disallowed by the HBPC handbook;¹⁰
- (15)HBA adopted Findings of Fact and Conclusions of Law that are not supported by HBA’s discourse and decision during the appeal meeting;
- (16)HBA erred by ignoring the zoning restrictions set out in HBA.

III. STANDARD OF REVIEW

“To survive a motion to dismiss filed under Alaska Civil Rule 12, ‘it is enough that the complaint set forth allegations of fact consistent with and appropriate to some enforceable cause of action.’”¹¹ A complaint may be dismissed under Alaska Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted.¹² The court shall not grant the motion if “the

¹⁰ This is the single procedural error alleged by Ms. Plachta in her appeal.

¹¹ *Krause v. Matanuska-Susitna Borough*, 229 P.3d 168, 174 (Alaska 2010), quoting *Carlson v. Renkes*, 113 P.3d 638, 641 (Alaska 2005).

¹² Alaska R. Civ. P. 12(b)(6).

complaint sets forth allegations of fact consistent with and appropriate to some enforceable cause of action.”¹³

The standard is a very lenient one.¹⁴ “Motions to dismiss for failure to state a claim are viewed with disfavor and should rarely be granted.”¹⁵ “If, within the framework of the complaint, evidence may be introduced which will sustain a grant of relief to the plaintiff, the complaint is sufficient’ . . . [W]e ‘must presume all factual allegations of the complaint to be true and [make] all reasonable inferences . . . in favor of the non-moving party.’”¹⁶

In addition to the disfavor with which the court gives a motion to dismiss, “[i]f a party submits a motion to dismiss that relies on materials outside the pleadings, the superior court may either exclude the evidence or convert the motion into one for summary judgment.”¹⁷ The superior court must specifically “state whether it considered or excluded certain documents outside the pleadings.”¹⁸ If the superior court does not expressly exclude consideration of outside materials, the court must convert the Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment.¹⁹

IV. DISCUSSION

A. Materials Outside the Pleadings

Ms. Plachta moved to admit numerous attachments through her Response to supplement or take the place of the administrative record. The Court finds no good cause to do so and relies strictly on the pleadings in deciding Haines Borough’s Motion to Dismiss.

¹³ *Linck v. Barokas & Martin*, 667 P.2d 171, 173 (Alaska 1983).

¹⁴ *Krause*, 229 P.3d at 174.

¹⁵ *Reed v. Municipality of Anchorage*, 741 P.2d 1181, 1184 (Alaska 1987), citing *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788, 791 (Alaska 1986).

¹⁶ *Belluomini v. Fred Meyer of Alaska, Inc.*, 993 P.2d 1009, 1014 (Alaska 1999), quoting *Kollodge v. State*, 757 P.2d 1024, 1026 (Alaska 1988)(internal citations omitted).

¹⁷ *Pedersen v. Blythe*, 292 P.3d 182, 184-85 (Alaska 2012), citing Alaska R. Civ. P. 12(b).

¹⁸ *Reed*, 741 P.2d at 1184.

¹⁹ *Id.*

B. The Administrative Record

Appellate Rule 604(b) governs appeals to the superior court from administrative agencies.²⁰ Appellate Rule 604(b)(1)(A) provides: The record on appeal consists of the original papers and exhibits filed with the administrative agency, and a typed transcript of the record of proceedings before the agency. The burden of obtaining a transcript and the costs incurred for such are placed on the appellant, absent an agreement between the parties.²¹ Once the appellant files the original transcript with the administrative agency, the administrative agency “shall forward the transcript to the clerk of the superior court within 40 days after filing of the notice of appeal.”²²

In this case, the parties agreed to use Glacier Stenographic Reporters to prepare the official transcript, as requested by Ms. Plachta.²³ Haines Borough sent Ms. Plachta’s chosen court reporter the required audio to be transcribed.²⁴ While Ms. Plachta produced a receipt showing a partial payment for the transcription, Ms. Plachta ultimately failed to provide a completed transcript to Haines Borough. As such, no administrative record was able to be provided to the Court.

Haines Borough argues in its Motion to Dismiss that the lack of an administrative record is grounds for dismissal. Under Rule 604 the initial burden is on the appellant to pay for and obtain a transcript, which Ms. Plachta has not done. However, Rule 604 ultimately makes it Haines Borough’s burden to file the administrative record with the court, not the appellant’s. Haines Borough cites no authority to support its contention that an appeal should be dismissed based on Ms. Plachta’s failure to provide the administrative record to Haines Borough. Rule

²⁰ Alaska Appellate Rule 604. See also, *Sandidge v. Alaska Professional Teaching Practices Com’n*, 2000 WL 34545802 *3 (Alaska 2000).

²¹ Alaska Appellate Rule 604(b)(1)(B)(iv).

²² Alaska Appellate Rule 604(b)(1)(B)(ii).

²³ See Exhibit B (emails exchanged between the parties discussing this agreement).

²⁴ See Exhibit A. Exhibit A is a letter written on June 18, 2014 to Lynda Barker at Glacier Stenographic Reporters Inc. from Haines Borough’s counsel. Counsel wrote that he was including the flash drive of digital files of multiple public hearings that made up the administrative record in subject to the appeal. Further, he wrote “Ms. Plachta is responsible for payment of your charges. You may send your work product to her and she will be responsible for transmitting the original transcript to Borough Clerk Julie Cozzi. Ms. Cozzi will add it to the remainder of the administrative record for filing with the court.”

604 does not support Haines Borough's contention either. Moreover, Alaska courts have not supported a strict application of procedural filing rules, especially against lay persons.²⁵ As such, the Court does not find the lack of filing of administrative record to be grounds for dismissal in this case.

C. Mootness

"Under ordinary circumstances, we will refrain from deciding questions where events have rendered the legal issue moot."²⁶ "A claim is moot where . . . it has lost its character as a present, live controversy, that is, where a party bringing the action would not be entitled to any relief even if he or she prevailed."²⁷

Haines Borough argues that fifteen of Ms. Plachta's sixteen points on appeal are moot because they address the specific permit at issue, which expired on March 31, 2015. The sixteenth error alleged is that HBA improperly relied on an unscientific sound report made by a sitting member of the HBPC who knew he would be deciding the CUP, which is not allowed under HBPC handbook.

All of Ms. Plachta's points on appeal are moot. The redress on her appeal would be to reverse the HBA finding that granted the permit; however, this cannot be done because the permit has already expired. Furthermore, BSV has not applied for a new CUP so the issue of its permit is non-existent and moot.

This, however, does not end the court's inquiry into Ms. Plachta's appeal and Haines Borough's Motion to Dismiss. "Technical mootness notwithstanding, 'we may choose to address certain issues if they fall under the public interest exception to the mootness doctrine."²⁸

²⁵ See *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Bd. of Adjustment*, 172 P.3d 768, 773 (Alaska 2007), citing *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Baker v. University of Alaska*, 22 P.3d 440, 442 (Alaska 2001).

²⁶ *Kodiak Seafood Processors Ass'n v. State*, 900 P.2d 1191, 1195 (Alaska 1995), citing *Brandon v. Dep't of Corrections*, 865 P.2d 87, 92 n.6 (Alaska 1993).

²⁷ *Rude v. Cook Inlet Region, Inc.*, 294 P.3d 76, 87 (Alaska 2012), quoting *Clark v. State, Dep't of Corr.*, 156 P.3d 384, 387 (Alaska 2007).

²⁸ *Alaska Community Action on Toxics v. Hartig*, 321 P.3d 360, 367 (Alaska 2014), quoting *Kodiak Seafood*, 900 P.2d at 1196.

D. Public Interest Exception

“The public interest exception involves the consideration of three main factors: 1) whether the disputed issues are capable of repetition, 2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues, and 3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.”²⁹ “None of these factors is dispositive; each is an aspect of the question of whether the public interest dictates that a court review a moot issue.”³⁰ The Court must weigh these considerations against the considerations underlying the mootness doctrine.

1. Capable of Repetition

Haines Borough argues that the expired, temporary CUP is not an issue capable of repetition because there is no evidence BSV will repeatedly seek temporary permits. Further, Haines Borough argues that any future permit applications may involve different equipment, a different location on the property, or be proposed with different data and information than was available with the permit application and appeal at issue.

“When disputed issues turn on unique facts unlikely to be repeated, we have refused to find an exception to mootness.”³¹

The Court finds that all of Ms. Plachta’s substantive points on appeal are allegations based on the unique facts of the permit at issue. Furthermore, the Court notes that without the benefit of the administrative record, it is difficult to evaluate the allegations, even if they were capable of repetition. Based on the information the court has before it, it cannot find that HBA erred in its findings of fact or conclusions of law in granting the permit to BSV, despite HBPC’s initial decision to deny BSV’s application. HBA placed many limitations on the permit and the permit was only to last a year and has since expired.

The additional procedural error alleged in Ms. Plachta’s appeal, that HBA improperly relied on an unscientific sound report made by a sitting member of the HBPC, also causes

²⁹ *State, Dept. of Natural Resources v. Greenspace, Inc.*, 96 P.3d 1056, 1062 (Alaska 2004), quoting *Hayes v. Charney*, 693 P. 2d 831, 834 (Alaska 1985).

³⁰ *Mullins v. Local Boundary Com’n*, 226 P.3d 1012, 1018 (Alaska 2010), quoting *Kodiak Seafood*, 900 P.2d at 1196.

³¹ *E.P. v. Alaska Psychiatric Institute*, 205 P.3d 1101, 1107 (Alaska 2009), citing *Wetherhorn v. Alaska Psychiatric Inst.*, 156 P.3d 371, 381 (Alaska 2007).

difficulty for the Court due to the lack of administrative record. There is no way to analyze this allegation without such record. As such, the Court finds that the first prong of the public interest exception test is not met.

2. Repeatedly Evade Review

Haines Borough further argues that any subsequent permit application would not evade review. However, the Alaska Supreme Court has held that temporary permits can pose a “significant possibility they will expire before stay or permit dispute is finally decided [and t]herefore rigorous application of the mootness doctrine makes it nearly impossible to obtain administrative and judicial review of a temporary permit.”³² In *State, Dept. of Natural Resources v. Greenspace, Inc.*, the Alaska Supreme Court found that the six and a half month temporary permit being appealed satisfied the second prong of the public interest exception test.³³ Additionally, in *Alaska Community Action on Toxics v. Hartig*, the Alaska Supreme Court held that a two year pesticide permit met the second prong of the public interest exception and further held that “[i]t is certainly possible that a future challenge to a pesticide permit—even a permit valid for five years—could evade appellate review.”³⁴

The Court finds, based on this precedent, that the second prong of the public exception test is satisfied. The permit at issue in this case was a one year CUP that has since expired, and there is a chance that another temporary CUP will be granted and evade appellate review.

3. Importance to the Public Interest

“[Z]oning authorities are bound by the terms and standards of the applicable zoning ordinance, and are not at liberty to either grant or deny a [CUP] in derogation of legislative – standards. Within the boundaries of such standards, however, the zoning authority is afforded a broad latitude of discretion.”³⁵

Based on the lack of administrative record for review, the Court cannot find with the evidence before it that HBA neglected to follow the standards set forth in making its decision.

³² *State, Dept. of Natural Resources*, 96 P.3d at 1062.

³³ *Id.*

³⁴ 321 P.3d 360, 368 (Alaska 2014).

³⁵ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 174-75 (Alaska 1993), quoting *Thurston v. Cache County*, 626 P.2d 440, 444-45 (Utah 1981).

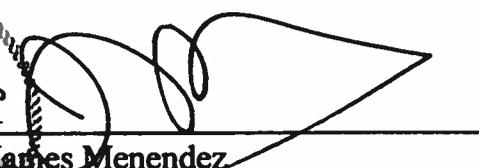
The broad discretion granted to HBA as a zoning authority extends to all Ms. Plachta's points on appeal. As such, the Court does not find that Ms. Plachta's alleged errors of HBA are of such public import that the Court should invoke the public interest exception to the mootness doctrine. The third prong of the public interest exception test is not met.

IV. CONCLUSION

Upon weighing the considerations of the public interest exception to the mootness doctrine, the Court finds that the exception does not apply to Ms. Plachta's appeal, and therefore, the appeal is moot.

For the reasons stated above, the court affirms HBA's decision and Haines Borough's Motion to Dismiss is GRANTED.

Entered at Juneau, Alaska this 3rd day of November, 2015.



Louis James Menendez
Superior Court Judge

CERTIFICATION

Copies Distributed
Date 11-3-15
To Plachta - mail
Chandler - mail
By Salmon Venkatesh - mail
By J. C. ...



DATE: December 11, 2003

TO: Haines Borough Planning Commission

FROM: Barbara Sheinberg, AICP, Sheinberg Associates

SUBJECT: Possible Heliports in Haines Borough - Public Comment Report

1.0 Bulleted Summary Key Comments/Points

- **Many residents were moderately to very dissatisfied with the Heliport Evaluation Survey format and some of the criteria.**
- **Residents seek recognition of the many hours of citizen work, as far back as the early 1990's, that has been spent on this issue, including work by the former Helicopter Service Area Board.** This work should be reviewed and respected. Many comment that the role of elected and appointed officials is to represent residents who live out the highway and heed residents' votes, opinions and rights; the Assembly's job is to work to eliminate the negative impacts of the helicopter industry to residents and existing uses.
- **Virtually all support the airport as a heliport.** The most frequent comment is that the airport is supported as a heliport. Many find this the only appropriate site.
- A "screening level review" was conducted to quantify and compare the number of residents that would be affected by noise at each possible site. To do this the number of parcels and developed parcels (assumed to roughly equate to the number of dwellings) within a 3,000 ft of each possible heliport were counted by the Borough GIS. Note that many factors influence how sound travels including weather and topography; helicopter sounds will often be heard far beyond 3,000 ft.

Possible heliport sites with the fewest number of developed parcels within 3,000 ft of the site are: (5) Devil's Elbow, (8) Tsirku River drainage site, (14) Eldred Rock, and (1) Porcupine. Possible heliport sites with the most developed parcels within 3,000 ft of the site are: (4) 40 acre parcel at Steel Bridge, (15) Excursion Inlet, (10) 18-mile Stewart property, (9) 19-mile slide area, and (2) 33-mile roadhouse.

- **If weather permits, possible heliport sites 9-15 could tend to favor State SUD designated flight path B, along the Takhin River rather than flight path A, along the highway and Chilkat River (thus less flying over dwellings).**

- A general “screening level” review of the impact to anadromous streams, wetlands and bird habitat was prepared. **In general, the sites that raise fewer concerns over impact to the natural environment are the sites that are already developed, including the (11) airport, (12) sawmill, (13) tankfarm, (2) 33-mile (and also (14) Eldred Rock). The already developed 18-mile site (10) is an exception to this generalization as it is near to Bald Eagle Council Grounds and is a designated moose winter concentration area. Sites with a higher level of concern over potential impact to the natural environment include the (4) Steel Bridge parcel, (6) sandy DOT&PF area, (7) Wells Bridge, and (8) Tsirku River drainage. Also, there is an active goshawk nest in the Porcupine area.**
- **Some favor remote sites (Devil’s Elbow, Tsirku) where fewer residents are immediately affected by noise, the “trade-off” for some is concern over possible biological and environmental impact.**
- **Some suggest that only already developed sites should be considered**, such as the airport, saw mill, tank farm, 33-mile, where industrial impacts are already expected and known.
- **Some suggest that it makes no sense to consider sites close to the airport** such as the sawmill or tankfarm, since they are so proximate to the airport where helicopters can already take off and land.
- **(1) Porcupine, (5) Devil’s Elbow, (11) the Airport, and (14) Eldred Rock had higher scores (more favorable) relative to other sites** on the Heliport Evaluation Matrix.
- Many suggest that noise and safety factors be given highest consideration when heliport sites are considered as these impacts are of most concern to residents and are the impacts most difficult to minimize or mitigate.
- Questions and points for clarification that are raised repeatedly include:
 - o Are heli-ski operators and operations now covered by the Borough’s Title 5 Tour Permits?
 - o Hard data on local economic benefits from the heli-ski industry should be prepared to facilitate informed decisions on how much public sector investment is appropriate for the industry.
 - o What exactly does “existing use” in the General Use zoning district mean vis-à-vis helicopters (§18.70.030 M) Is it linked to level of use? Will a Conditional Use permit ever be needed?

2.0 BACKGROUND, PURPOSE AND PROCESS

Helicopter landing and takeoff is allowed at the Haines Airport and heliports are a Use-by Right in the Heavy Industrial zoning district. In addition, Haines Municipal Code §18.70.030 establishes that heliports are a Conditional Use in the General Use zoning district, and it is commonly mentioned that helicopter take-offs and landings are considered an “existing use” at 33-mile and 18-mile.

Other relevant information is that the State recently issued its Special Use Designation (SUD) regulations for heli-skiing in designated areas of Haines. The SUD designates two flight paths from the airport, one along the south side of the highway-Chilkat River where a minimum of 1,500 ft altitude is required, and the other along the Takahin River where a minimum of 5,000 ft altitude is required, to access designated areas of State land where heli-skiing is allowed, during prescribed months. The period within which an appeal to the SUD could be filed closed November 29, 2003. Also, helicopter landings are not allowed in the Chilkat Bald Eagle Preserve.

The Haines Borough Assembly asked that the Planning Commission recommend one (or more) sites for a heliport that could serve ad-hoc, recreational helicopter activities.

This has been requested due to noise and safety concerns that have been raised with periodic use of the 18-mile and 33-mile sites, as well as the fact that designating a heliport could give some stability and predictability to the recreational heli-industries, possibly encouraging investment.

A challenge for the Planning Commission was how to objectively evaluate the pros and cons of possible heliport sites, as this issue raises both a variety of concerns over impacts and emotions. To accomplish this, the Planning Commission:

- Discussed this matter with the public at two Planning Commission meetings: November 13, 2003 (at Mosquito Lake) and December 4, 2003.
- At the December 4 meeting the Commission listened to formal comment on this matter for over two hours.
- The Commission also worked among itself, with Sheinberg Associates community planning consultants, and with the public to ‘brainstorm’ a number of possible heliport sites and criteria against which possible heliport sites could be evaluated. Further, Borough staff used its computer GIS (geographic information system) to count the number of parcels near each possible heliport site and Haines area ADF&G staff supplied general “screening level” information about wetlands and habitat near each possible site. General criteria included Land Use, Noise, Site Acquisition and Development, Safety, Economics and the Natural Environment. The resultant Heliport Evaluation Matrix and 4-page color map series was mailed to over 70 residents and made available to the general public in late November. Residents had just over a week to return the surveys. Fifty-six (56) surveys or comments letters were submitted.

Despite the fact that many residents were moderately to very dissatisfied with the Heliport Evaluation Survey format and some of the criteria, the survey did generate valuable comment on the topic for the Planning Commission¹.

This report summarizes public comment.

¹ Residents felt the survey was confusing, that many of the criteria should more appropriately have been completed by experts rather than the general public, and that the timeframe for responding was too short. Comments made by residents also indicated that some were not familiar with designated flight paths established in the State’s SUD.

3.0 GENERAL COMMENTS

A. Public versus Private Land Ownership and Economics

A survey question asked whether landowners of the various sites were willing to sell or lease the land to the borough. This generated many comments and concerns.

The “cons” of Borough ownership are competition with the private sector, and many comments expressing the sentiment that spending Borough funds to cater to one particular industry, or specifically to the heli-skiing industry which has mixed or negative support among residents, is not an appropriate use of Borough funds – “it is the Borough’s job to zone, not own.”

From a public policy perspective, the “pros” of Borough ownership of a heliport are that the site will be equally open to all (private landowners such as at 33 and 18 mile can limit or choose who uses the site); that the Borough will have more direct control over site design, development and management of the operation; and that a publicly owned facility will be eligible for funding and lower interest rates available only to the public sector.

Note that even if the public (Borough) did own a heliport there does not appear to be a mechanism to require operators to use that site if other allowed sites are functioning satisfactorily.

In response to economic evaluation criteria including whether the site would lead to increased or decreased flight time, the relative proximity of site to heli-destinations, and availability of road, phone and power, as well as proximity to developed accommodations and services, several comment that businesses need to pay for privately-used infrastructure. Others note that it is a “rule of thumb” that acceptable destinations in the heliskiers are 10-35 miles from fueling areas. Given weather factors and destination choices (see State SUD) there does not appear to be a significant difference in flight times to destinations between possible sites 1-10. Many note that proximity to developed accommodations and amenities is not relevant it is the private sector’s job to respond to business opportunities.

Other frequently cited economic concerns are about decreased property value near heliport sites. Several people comment on the year-round economic contribution that residents make to the community through property taxes and daily spending, whereas heli-skiers provide only sporadic income. Some find that helicopters will make an important contribution to the development of year-round tourism. Another comment is that it is businesses’ job, not the Boroughs, to locate and evaluate the appropriateness of sites and present an analysis of the data to justify their proposed heliport site.

B. Noise

Recognizing the value of peace and quiet to resident’s lifestyle and quality of life, disruption of peace and quiet, and the presence of helicopters in residents’ backyards are identified as major concerns. Helicopter noise, especially the duration and frequency of noise, are issues. Many

respondents note that a 3000' buffer between residences and take-off / landing areas is too small².

To quantify and compare the number of residents that would be affected by noise at each possible site, the number of parcels and developed parcels (assumed to roughly equate to the number of dwellings) within a 1,500 ft radius (3,000 ft total) of each possible heliport were counted by the borough GIS. Three thousand feet was chosen because the Juneau Heliport Assessment Study (Michael Baker Jr, September 2001) found the noise level at the edges of a 3,000 ft corridor around helicopter flight paths to be an estimated 65 dBA (the level which starts to interfere with normal conversation)³. Note that many factors influence how sound travels including weather and topography; helicopter sounds will often be heard far beyond 3,000 ft.

- **Possible heliport sites with the least number of developed parcels within 3,000 ft of the site are:** (5) Devil's Elbow, (8) Tsirku River drainage site, (14) Eldred Rock, and (1) Porcupine.
- **Possible heliport sites with the most developed parcels within 3,000 ft of the site are:** (4) 40 acre parcel at Steel Bridge, (15) Excursion Inlet, (10) 18-mile Stewart property, (9) 19-mile slide area, and (2) 33-mile roadhouse.
- Possible heliport sites 9-15 could tend to favor State SUD designated flight path B, along the Takhin River rather than flight path A, along the highway and Chilkat River (thus less flying over dwellings).

C. Impact on the Natural Environment

A general "screening level" review of the impact to anadromous streams, wetlands and bird habitat was expeditiously provided by Haines area ADF&G staff. The public was invited to build upon this by adding local knowledge about specific sites.

- **In general, the sites that raise lesser concern over impact to the natural environment are the sites that are already developed,** including the (11) airport, (12) sawmill, (13) tankfarm, (2) 33-mile, as well as (14) Eldred Rock.
- **The already developed 18-mile site (10) is an exception to this generalization as it is quite close to Bald Eagle Council Grounds and is a designated moose winter concentration area.**

² No assertion is made that 3,000 ft is an appropriate or minimum separation, but this was a common and understandable misinterpretation of the survey's counting the number of parcels within 3,000 ft of each possible heliport site.

³ Many suggest that a 3,000 ft or 6,000 ft flight path from heliport sites to destinations be drawn and the number of developed parcels within this corridor be counted for a more complete assessment and comparison by site of the impact of helicopter noise. This was the technique used by Michael Baker Jr in the Juneau Heliport Assessment study.

- **Other sites with a higher level of concern over potential impact to the natural environment include** the (4) Steel Bridge parcel, (6) sandy DOT&PF area, (7) Wells Bridge, and (8) Tsirku River drainage.

Environmental and biological concerns primarily focus on 1) concern about fuel leaks from helicopter use and associated fuel storage / transfer; 2) the fact that some sites and the area in general is so proximate to the Chilkat Bald Eagle Preserve, a special place that might be impacted by helicopter use and also the foundation for a good deal of tourist-economic activity; and 3) concern about the effect of helicopter noise on wildlife behavior and habitat, particularly for eagles and mountain goat.

D. Safety

General safety concerns include helicopter use adjacent to (or flying low near) roads, the highway, buildings, parking areas, or fuel tanks. Many suggest that residents do not have this expertise and that specific heliport setback requirements from a State highway be obtained from FAA or FHWA. It is noted that Juneau-based FAA staff have reviewed the 33-mile site in the past and not expressed any verbal concerns regarding helicopter use. Others raise liability concerns, both for the Borough if it designates or permits a site, and also for private landowners, if there is an accident.

4.0 SPECIFIC SITE COMMENTS

See Appendix A

APPENDIX A

SITE SPECIFIC COMMENTS REGARDING POSSIBLE HELIPORTS IN HAINES BOROUGH

Site specific comments on possible heliport sites in this appendix are from the Heliport Evaluation Matrix and summarized from letters sent to the Planning Commission, the Helicopter Service Area Board minutes, and testimony offered at November 13 and December 4, 2003, Planning Commission meetings.

How to Use and Not Use the Heliport Evaluation Matrix Results

The Heliport Evaluation Matrix was not designed to create a single average score per site on the suitability for heliports and the results can not be presented that way. Values reported for each criteria are the number of respondents, the average of all scores for that criteria, and the median for all scores for that criteria (median is the value in the middle of a set of numbers; that is, half the numbers have values that are greater than the median, and half have values that are less).

Site Specific Comments: (1) Porcupine

- Fewer number of developed parcels nearby compared to other sites
- Landowner(s) amenable to idea
- Active goshawk nest in area

COMMENTS (# of times comment mentioned in parenthesis)

(4) Regular helicopter use should not be based out of historic sites such as the Porcupine.

(1) Not only is the Porcupine valuable in the historic sense, but could also be used at a later date by a lower-impact type of tour group.

(1) Best site for upper Klehini Valley. Fewest people disturbed. Needs services.

(1) I own land in the Porcupine Mining Area, which is attractive for cross-country skiing, snow machining, and the already designated Heliskiing. There are no people living in this area and I am willing to trade a piece of this land to the Borough to accommodate such activity.

(1) We own a 20-acre tract near the Porcupine townsite. In later stages of development, we intend to build and maintain a fixed-wing airstrip. We hope future restrictions will not prevent us from loading helicopters there as well.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	30	1.8	2.0
Nearby land available for commercial development	29	3.0	3.0
Adjacent land use is compatible with light industrial use/ heliport	31	3.2	3.0
Approx. no. properties, and developed properties within 1500' of site (2,0)	5	3.0	3.0
Approx no. properties, and developed properties, within 3000' of site (6,1)	5	3.0	3.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	2.8	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	28	2.9	3.0
Has sufficient area for onsite firefighting and rescue	28	2.8	3.5
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	21	3.0	3.0
Relative proximity to heli-destinations	28	3.8	5.0
Road, phone and power availability	28	2.2	2.0
Site contains or is adjacent to anadromous stream	Near Porcupine Creek, and another unnamed cataloged anadromous fish stream.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue.		

Economics:

(2) There would be a decrease in flight time to destinations relative to 33 and 18-mile locations.

Natural Resources:

(1) There is no threat to anadromous streams at this site.

(1) There is an active goshawk nest (very rare and sensitive species) in the vicinity of this site.

Site Specific Comments: (2) 33-mile Road house

- An existing helicopter use area though concerns raised over exactly what existing use means and many wish to use Conditional Use permit and review to mitigate impacts and make more compatible.
- One of sites with fewer environmental concerns.
- Higher number of developed parcels nearby compared to other sites.
- Safety concerns with proximity to road and buildings raised but verbal report from FAA Juneau does not indicate concern.

COMMENTS (# of times comment mentioned in parenthesis)

(3) Conditional use should be maintained for 33-mile, so landowners around the site have the right to know if flights or activities will be increased.

(9) 33-mile should not be granted full heliport status.

(2) The current site at 33-mile is adequate.

(1) Essential. Has established heli-port, easy access, services available.

Land Use:

(1) Adjacent land use is residential.

(1) Nearby accommodations are good but small.

Safety:

(1) Approach and take-off surfaces are over the highway.

Natural Resources:

(1) There is no threat to anadromous streams at this site.

(1) Fuel storage is a danger to the water table.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	28	3.9	5.0
Nearby land available for commercial development	24	2.8	2.0
Adjacent land use is compatible with light industrial use/ heliport	34	2.4	2.0
Approx. no. properties, and developed properties within 1500' of site (24,10)	5	1.6	1.0
Approx no. properties, and developed properties, within 3000' of site (34,17)	5	1.6	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	16	2.3	2.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	2	3.0	3.0
Clear approach and takeoff surfaces	31	2.3	2.0
Has sufficient area for onsite firefighting and rescue	29	2.9	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	12	3.0	3.0
Relative proximity to heli-destinations	24	3.6	4.0
Road, phone and power availability	25	4.1	5.0
Site contains or is adjacent to anadromous stream	This developed site should pose little threat a nearby anadromous stream.		
Site may be wetlands	Likely not an issue.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue.		

Site Specific Comments: (3) Highway Turn-out at 31-mile

- Higher number of developed parcels nearby compared to other sites.

COMMENTS (# of times comment mentioned in parenthesis)

(1) Heliport location at 31-mile is unacceptable.

(1) This is the only acceptable heliport site.

(1) This site is best-suited for a spring heli-skiing site.

Land Use:

(1) Accomodations are located from 2 mi. to 33 mi.

(1) Adjacent land use is residential.

(1) Adjacent land could be leased from the state for 2 months.

Safety:

(1) Approach and take-off surfaces are over the highway.

(1) Approach and take-off surfaces could be safe if two trees are removed.

(1) Small, not level, emergency site only.

Economics:

(2) There would be a slight increase in flight time to destinations relative to 33 and 18-mile locations.

(1) The flight time and proximity to destinations relative to 33-mile location would be the same.

(1) Utilities are available.

Natural Resources:

(2) Relative impact to bird habitat is an issue.

(1) Anadromous streams and wetlands are not concerns for a heliport.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	29	2.2	2.0
Nearby land available for commercial development	28	1.9	2.0
Adjacent land use is compatible with light industrial use/ heliport	34	1.7	1.0
Approx. no. properties, and developed properties within 1500' of site (20,12)	4	1.0	1.0
Approx no. properties, and developed properties, within 3000' of site (42,12)	4	1.0	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	3.3	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	2	1.0	1.0
Clear approach and takeoff surfaces	31	1.8	1.0
Has sufficient area for onsite firefighting and rescue	29	2.1	1.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	21	2.6	2.0
Relative proximity to heli-destinations	28	2.9	3.0
Road, phone and power availability	29	2.8	3.0
Site contains or is adjacent to anadromous stream	Near Klehini River and 31 Mile Creek cataloged anadromous fish streams		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue		

Site Specific Comments: (4) 40 acre parcel across Steel Bridge

- Higher number of developed parcels nearby compared to other sites.
- Higher level of concern regarding possible environmental impacts.

COMMENTS (# of times comment mentioned in parenthesis)

(4) I oppose heliport and/or flightseeing development in the 40-acre parcel near the Steel Bridge.

(2) The Little Salmon River area is biologically important for birds and other wetland animals, and should not have a heliport located there.

(1) This area has been described as the “Fastest growing part of the Haines Borough.”

(1) Good site, easy access, large area.

Land Use:

(1) Adjacent land is residential

Safety:

(1) Approach and take-off surfaces are in residential areas.

(1) Approach and take-off surfaces could be good with improvement.

Economics:

(2) There would be a slight increase in flight time to destinations relative to 33 and 18-mile locations if using upper valley, and a decrease if using sunshine.

Natural Resources:

(1) This is a brown bear corridor.

(1) There is a large wetland that supports migratory swans, geese, and other birds.

(1) This parcel is in the middle of a residential area whose residents vehemently oppose disruptions of their peace and quiet.

Helicopter Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	29	2.0	2.0
Nearby land available for commercial development	27	2.3	2.0
Adjacent land use is compatible with light industrial use/ heliport	32	2.0	1.0
Approx. no. properties, and developed properties within 1500' of site (35,10)	5	1.0	1.0
Approx no. properties, and developed properties, within 3000' of site (72,20)	5	1.0	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	19	2.8	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	29	2.6	2.0
Has sufficient area for onsite firefighting and rescue	29	2.8	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	21	2.4	2.0
Relative proximity to heli-destinations	28	3.1	3.0
Road, phone and power availability	27	2.9	3.0
Site contains or is adjacent to anadromous stream	Near the Klehini River, a major migration corridor for pacific salmon.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	There are eagle nests along the Klehini River in the vicinity.		

Site Specific Comments: (5) Devil’s Elbow

- No developed parcels within 3000 feet.
- Those that favor remote location to minimize noise impacts to residents mention this site as possible heliport, though some strongly opposed.

COMMENTS (# of times comment mentioned in parenthesis)

(2) Devil’s Elbow should be considered as a location for a future heliport

Pros and cons specifically discussed during Dec 4 meeting.

(3) Heliport location at Devil’s Elbow is unacceptable.

(1) Too remote to get in and out – should be for emergency use only.

(1) Any heliport site at Devil’s Elbow would mean that the logging roads would need to be plowed, eliminating use for all other winter activities (snowmobiling, skiing, dogsledding, etc.)

Noise:

(1) Consider the risk to water quality and fish habitat.

Economics:

(2) There would be a decrease in flight time to destinations relative to 33 and 18-mile locations.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	1.5	1.0
Nearby land available for commercial development	29	2.3	2.0
Adjacent land use is compatible with light industrial use/ heliport	33	2.5	2.0
Approx. no. properties, and developed properties within 1500’ of site (0,0)	4	4.0	4.0
Approx no. properties, and developed properties, within 3000’ of site (0,0)	4	4.0	4.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	2.9	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don’t know)	2	1.0	1.0
Clear approach and takeoff surfaces	30	2.8	2.5
Has sufficient area for onsite firefighting and rescue	27	2.5	2.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	23	3.1	4.0
Relative proximity to heli-destinations	29	3.4	4.0
Road, phone and power availability	29	2.0	2.0
Site contains or is adjacent to anadromous stream	Near the headwaters of the Little Salmon River, an important sockeye, chum and coho salmon stream.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue		

Natural Resources:

(2) The Little Salmon River area is biologically important for birds and other wetland animals, and should not have a heliport located there.

(1) There is no threat to anadromous streams at this site.

(1) There are brown bear in the area.

(2) Relative impact to bird habitat is an issue.

(1) This site is adjacent to the Eagle Preserve.

(1) This is the richest bird habitat in the valley. Much more research is needed before you can even CONSIDER this site

Site Specific Comments: (6) Sandy Open Area used at times by DOT&PF

- Higher level of concern regarding possible environmental impacts.

COMMENTS (# of times comment mentioned in parenthesis)

(3) Heliport location at the DOT&PF location is unacceptable.

(1) Good site. Large, open area close to highway.

(1) This site is best-suited for a spring heli-skiing site.

Land Use:

- (1) Accommodations are located from 9-mile to 33-mile.
- (1) This area is used by locals in the winter and spring for cross-country skiing and in the summer for swimming.

Noise:

- (1) Too close to the river.

Safety:

- (1) There are clear approach and take-off zones.

Economics:

- (2) There would be a slight increase in flight time to destinations relative to 33 and 18-mile locations.
- (1) There would be approximately 1/2 mile difference in flight time and proximity to destinations relative to 33 and 18-mile locations.
- (1) Utilities are available.

Natural Resources:

- (1) There are brown bear in the area.
- (1) Lots of wildlife is spotted here in the spring and summer.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	2.0	2.0
Nearby land available for commercial development	28	2.4	2.0
Adjacent land use is compatible with light industrial use/ heliport	32	2.4	2.0
Approx. no. properties, and developed properties within 1500' of site (12,3)	5	1.0	1.0
Approx no. properties, and developed properties, within 3000' of site (31,7)	5	1.0	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	15	3.0	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	28	2.9	3.5
Has sufficient area for onsite firefighting and rescue	27	3.1	4.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	24	2.5	2.0
Relative proximity to heli-destinations	27	2.9	3.0
Road, phone and power availability	27	2.6	2.0
Site contains or is adjacent to anadromous stream	Near the Klehini River and 24 mile spawning channel. Possibly in the Eagle Preserve. Important chum salmon spawning areas nearby.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	There are eagle nests along the Klehini River in the vicinity. Designated moose winter concentration area.		

Site Specific Comments: (7) Borough Property Across Wells Bridge

- Higher level of concern regarding possible environmental impacts.

COMMENTS (# of times comment mentioned in parenthesis)

(3) Heliport location across the Wells Bridge is unacceptable.

(1) This site is too close to Klukwan.

Economics:

(2) There would be an increase in flight time to destinations relative to 33 and 18-mile locations.

Natural Resources:

(1) There is a moose concentration in this area.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	2.4	2.0
Nearby land available for commercial development	29	2.6	2.0
Adjacent land use is compatible with light industrial use/ heliport	33	2.4	2.0
Approx. no. properties, and developed properties within 1500' of site (17,7)	5	1.0	1.0
Approx no. properties, and developed properties, within 3000' of site (32,9)	6	1.5	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	15	2.7	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	29	2.5	2.0
Has sufficient area for onsite firefighting and rescue	29	2.7	2.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	24	2.6	2.5
Relative proximity to heli-destinations	29	2.9	3.0
Road, phone and power availability	28	2.8	3.0
Site contains or is adjacent to anadromous stream	Near Muskrat Creek, an important coho salmon stream.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	There are eagle nests along the Chilkat River in the vicinity. Designated moose winter concentration area.		

Site Specific Comments: (8) Tsirku River Drainage within Haines State Forest

- No developed parcels within 3000 feet.
- Higher level of concern regarding possible environmental impacts.

COMMENTS (# of times comment mentioned in parenthesis)

(5) Heliport should not be located at Tsirku River.

(2) Tsirku River Drainage should be considered as a location for a future heliport.

(1) Tsirku River Drainage may be an acceptable site for the heliport.

(1) Too remote to be practical. Should be used for emergency site only.

(1) “The 26 mile community should not be viewed as a “sacrificial zone” for industrial scale tourism.”

Natural Resources:

(1) There are brown bear in the area.

(1) This area is extremely diverse biologically. Do not develop here.

(1) Adjacent land is too close to the river.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	30	1.4	1.0
Nearby land available for commercial development	27	2.0	1.0
Adjacent land use is compatible with light industrial use/ heliport	31	2.0	1.0
Approx. no. properties, and developed properties within 1500' of site (0,0)	5	2.6	1.0
Approx no. properties, and developed properties, within 3000' of site (0,0)	5	2.6	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	16	2.9	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	29	2.7	3.0
Has sufficient area for onsite firefighting and rescue	28	2.2	1.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	23	2.5	2.0
Relative proximity to heli-destinations	30	3.0	3.5
Road, phone and power availability	28	1.9	1.5
Site contains or is adjacent to anadromous stream	Near the confluence of the Little Salmon and Tsirku Rivers; an important run of sockeye and coho salmon. Near important chum and coho spawning areas.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	An eagle nest is nearby and swans are known to use this area.		

Site Specific Comments: (9) 19-mile Slide area

- Geophysical/erosion hazard.
- Higher number of developed parcels nearby compared to other sites.

COMMENTS (# of times comment mentioned in parenthesis)

(4) Heliport location at the 19-mile Slide Area is not acceptable.

(1) This site is too close to Klukwan.

(1) This site is best-suited for a spring heli-skiing site.

Land Use:

(1) Accommodations are located from 14-mile to 33-mile, and from 19-mile to town.

Safety:

(1) There are clear approach and take-off surfaces.

Economics:

(1) The flight time and proximity to destinations relative to 18-mile location would be the same.

(1) Utilities are located in the area.

Natural Resources:

(1) Eagle nest and viewing area.

(1) Wetlands may be impacted because this is a slide area on the Chilkoot.

(1) Chum salmon do not spawn near this site.

(1) There are no eagles in this area in the spring.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	2.0	2.0
Nearby land available for commercial development	29	1.9	2.0
Adjacent land use is compatible with light industrial use/ heliport	34	2.2	2.0
Approx. no. properties, and developed properties within 1500' of site (17,10)	5	1.2	1.0
Approx no. properties, and developed properties, within 3000' of site (38,18)	5	1.2	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	16	2.9	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	32	3.0	3.0
Has sufficient area for onsite firefighting and rescue	30	3.1	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	23	2.7	3.0
Relative proximity to heli-destinations	28	3.0	3.0
Road, phone and power availability	29	3.0	3.0
Site contains or is adjacent to anadromous stream	Near the Chilkat River, chum salmon spawn near this site.		
Site may be wetlands	Likely not an issue.		
Relative impact of helicopters to nearby eagle or important bird habitat	Adjacent or in Council Grounds, a high use area by eagles.		

Site Specific Comments: (10) 18-mile Stewart Property

- An existing helicopter use area though concerns raised over exactly what existing use means and many wish to use Conditional Use permit and review to mitigate impacts and make more compatible.
- Higher number of developed parcels nearby compared to other sites.
- Higher level of concern regarding possible environmental impacts.

COMMENTS (# of times comment mentioned in parenthesis)

(3) Conditional use should be maintained for 18-mile, so landowners around the site have the right to know if flights or activities will be increased.
 (3) Current helicopter use at 18-mile is unacceptable.
 (4) 18-mile should not be considered for future heliport.
 (1) Residents at 18-mile should take precedence over those with new skiing interests because the residents have been there a long time.
 (2) Current site 18-mile is adequate.
 (1) This is private property – if the landowner wants it, great!

Land Use:

(1) Adjacent land use is residential.
 (1) Nearby accommodations are in a private home.

Safety:

(1) Approach and take-off surfaces are in residential areas.

Natural Resources:

(1) There is no threat to anadromous streams at this site.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	28	2.4	2.0
Nearby land available for commercial development	25	2.2	2.0
Adjacent land use is compatible with light industrial use/ heliport	32	2.0	1.0
Approx. no. properties, and developed properties within 1500' of site (16,10)	5	1.6	1.0
Approx no. properties, and developed properties, within 3000' of site (35,19)	5	1.6	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	2.8	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	2	3.0	3.0
Clear approach and takeoff surfaces	28	2.9	3.0
Has sufficient area for onsite firefighting and rescue	27	3.0	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	16	2.7	3.0
Relative proximity to heli-destinations	25	3.1	3.0
Road, phone and power availability	25	3.6	4.0
Site contains or is adjacent to anadromous stream	Near 18 Mile Creek, and another unnamed anadromous fish stream. These are important coho, chum, and pink salmon streams.		
Site may be wetlands	There are likely wetlands in the area that will need to be avoided.		
Relative impact of helicopters to nearby eagle or important bird habitat	There are eagle nests along the Chilkat River in the vicinity. This site also near the Council Grounds high use area by eagles. Designated moose winter concentration area.		

Economics: (1) Relative proximity to destinations is good for lower value.

Site Specific Comments: (11) Haines Airport

- Existing heliport, zoned Industrial-Heavy so heliports are use-By-Right.
- Most actively favor this site for heliport.
- Residents already expect noise, industrial-type impacts.
- One of sites with fewer environmental concerns.

COMMENTS (# of times comment mentioned in parenthesis)

(22) The existing site at the Haines Airport is adequate for heliport needs.

(9) The Haines airport is the only acceptable potential heliport site.

(1) The Haines airport is not an acceptable site.

(1) “Don’t sacrifice our entire neighborhood when the helicopters already have two heliports, not to mention Al Gilliam’s private heliport up the Tsirku drainage.”

(1) The airport meets the economic criteria of the proximity to services that the Haines town can best provide.

Noise:

(1) Noise is not an issue here – it’s already an airport.

Safety:

(1) Approach and take-off surfaces are already set up.

Natural Resources:

(1) There is no threat to anadromous streams at this site.

(1) Eulachon rely on the wetlands, so wetlands are an issue at this site.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	35	4.5	5.0
Nearby land available for commercial development	32	4.3	5.0
Adjacent land use is compatible with light industrial use/ heliport	40	4.6	5.0
Approx. no. properties, and developed properties within 1500’ of site (15,1)	5	4.0	4.0
Approx no. properties, and developed properties, within 3000’ of site (27,3)	5	4.0	4.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	23	2.4	2.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don’t know)	1	1.0	1.0
Clear approach and takeoff surfaces	36	4.8	5.0
Has sufficient area for onsite firefighting and rescue	35	4.8	5.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	26	3.8	4.0
Relative proximity to heli-destinations	31	3.7	4.0
Road, phone and power availability	32	4.8	5.0
Site contains or is adjacent to anadromous stream	Several anadromous streams are nearby, but this is likely not an issue. Eulachon migrate to spawn near this area. Excessive noise may pose impacts.		
Site may be wetlands	Likely not an issue.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue.		

Site Specific Comments: (12) Sawmill

- One of sites with fewer environmental concerns.
- zoned Industrial-Heavy or Waterfront Industrial so heliports are use-By-Right.
- Redundant site as close to airport.

COMMENTS (# of times comment mentioned in parenthesis)

(3) This site is unacceptable.

(2) There is no reason to have a heli-port 3 air miles from the airport. Remove this site from consideration.

(1) This site has good access, but it is ugly.

(1) This site may be acceptable.

Noise:

(1) Lutak Inlet is an echo chamber.

Economics:

(1) Flight time is fair because this site is close to the Ferbee.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	2.6	2.0
Nearby land available for commercial development	29	2.8	2.0
Adjacent land use is compatible with light industrial use/ heliport	35	2.7	2.0
Approx. no. properties, and developed properties within 1500' of site (22,5)	5	1.6	1.0
Approx no. properties, and developed properties, within 3000' of site (40,5)	5	1.4	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	3.1	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	30	3.2	3.5
Has sufficient area for onsite firefighting and rescue	30	3.2	4.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	24	2.0	2.0
Relative proximity to heli-destinations	28	2.3	2.0
Road, phone and power availability	29	3.6	4.0
Site contains or is adjacent to anadromous stream	No anadromous stream nearby, Lutak Inlet provides important migration corridor for anadromous fish access to and from Chilkoot Lake. Likely not an issue.		
Site may be wetlands	Likely not an issue.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue.		

Site Specific Comments: (13) Tankfarm

- One of sites with fewer environmental concerns.
- zoned Industrial-Heavy or Waterfront Industrial so heliports are use-By-Right.
- Redundant site as close to airport.

COMMENTS (# of times comment mentioned in parenthesis)

(3) This site is unacceptable.

(2) There is no reason to have a heli-port 3 air miles from the airport. Remove this site from consideration.

(1) This site has good access, but it is ugly.

(1) This site may be acceptable.

Land Use:

(1) Adjacent land is residential.

Safety:

(1) Approach and take-off surfaces are in residential areas.

Economics:

(1) Flight time is fair because this site is close to the Ferbee.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	31	2.7	2.0
Nearby land available for commercial development	29	2.9	2.0
Adjacent land use is compatible with light industrial use/ heliport	36	2.6	2.0
Approx. no. properties, and developed properties within 1500' of site (30,3)	5	1.6	1.0
Approx no. properties, and developed properties, within 3000' of site (71,13)	5	1.4	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	2.9	3.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	29	3.2	4.0
Has sufficient area for onsite firefighting and rescue	29	3.5	4.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	24	1.9	2.0
Relative proximity to heli-destinations	28	2.3	2.0
Road, phone and power availability	28	3.5	4.0
Site contains or is adjacent to anadromous stream	No anadromous stream nearby, Lutak Inlet provides important migration corridor for anadromous fish access to and from Chilkoot Lake. Likely not an issue.		
Site may be wetlands	Likely not an issue		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue		

Site Specific Comments: (14) Eldred Rock

- No developed parcels within 3000 feet.
- One of sites with fewer environmental concerns.
- Site being transferred from USCG to Museum.

COMMENTS (# of times comment mentioned in parenthesis)

- (3) Eldred Rock is a historic site and should be preserved as such.
- (4) Eldred Rock should be considered for a heliport site. It would provide a truly unique heliski experience.

(5) Eldred Rock may be an adequate alternate heliport site.

(1) Land at Eldred Rock is owned by the US Coast Guard, and is in the process of being given to the museum for non-helicopter uses.

(1) Eldred Rock meets the economic criteria of the proximity to services that the Haines town can best provide.

(1) This site is hard to access, and should be used for emergencies only.

Natural Resources:

(1) Wetlands are an issue for marine biology at this site.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	29	2.5	2.0
Nearby land available for commercial development	26	1.7	1.0
Adjacent land use is compatible with light industrial use/ heliport	31	2.6	2.0
Approx. no. properties, and developed properties within 1500' of site (0,0)	5	4.2	4.0
Approx no. properties, and developed properties, within 3000' of site (0,0)	5	4.2	4.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	17	3.6	5.0
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	30	4.0	5.0
Has sufficient area for onsite firefighting and rescue	27	2.9	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	20	2.1	2.0
Relative proximity to heli-destinations	27	2.5	2.0
Road, phone and power availability	28	1.8	1.5
Site contains or is adjacent to anadromous stream	Not an issue		
Site may be wetlands	Not an issue		
Relative impact of helicopters to nearby eagle or important bird habitat	Not an issue		

Site Specific Comments: (15) Excursion Inlet Fish Processing Facility

- Higher number of developed parcels nearby compared to other sites.

COMMENTS (# of times comment mentioned in parenthesis)

(2) Heliport location at Excursion Inlet is not acceptable.

(1) What do the people in Excursion Inlet say about this?

(1) This is a good site for accessing the Southern Chilkat Range.

Economics:

(2) The increase / decrease in flight time to destinations relative to 33 and 18-mile locations would depend on the destination.

Natural Resources:

(1) There is no threat to anadromous streams at this site.

Heliport Evaluation Matrix Results			
	No. responses	Average	Median
Proximity to place to warm up & eat	24	2.3	2.0
Nearby land available for commercial development	22	2.8	3.0
Adjacent land use is compatible with light industrial use/ heliport	24	2.9	3.0
Approx. no. properties, and developed properties within 1500' of site (34,13)	5	1.4	1.0
Approx no. properties, and developed properties, within 3000' of site (46,19)	5	1.4	1.0
Estimated frequency (relative) of helicopter flights from this site. 5=very few; 1= very many	14	3.1	3.5
Landowner willing to consider sale, lease or trade to Haines Borough for use as heliport (leave blank if don't know)	1	1.0	1.0
Clear approach and takeoff surfaces	22	3.3	4.0
Has sufficient area for onsite firefighting and rescue	20	3.0	3.0
Rate site compared to existing 33 mile and 18 mile site for relative increase or decrease in flight time	17	1.9	1.0
Relative proximity to heli-destinations	21	2.4	2.0
Road, phone and power availability	22	2.3	2.0
Site contains or is adjacent to anadromous stream	Near two important anadromous streams, South Creek supports a run of sockeye salmon important for subsistence use.		
Site may be wetlands	Likely not an issue.		
Relative impact of helicopters to nearby eagle or important bird habitat	Likely not an issue.		

Other Locations

- (1) “Sites near town can be just as profitable to heliski companies if mountains near town are opened to skiing.”
- (1) “Any of the sites in the lower valley could be just as attractive by changing the destinations. Explore other destinations.”
- (2) The Skagway airport should be considered as a potential heliport location.
- (1) “How about considering pulloffs on straight stretch at 35-37-mile, or private owners in that area?”
- (1) Haines needs to support more industry / tourism business. Heliports should be put where they will benefit businesses.
- (1) A heliport near Chilkat Lake Road is inappropriate.

From: Katya Kirsch [<mailto:katyakirsch@hotmail.com>]

Sent: Wednesday, November 11, 2015 5:59 PM

To: Xi Cui

Cc: Brenda Josephson; Don Turner III; Heather Lende; Lee Heinmiller; Rob Goldberg; Rob Miller; Robert Venables; Krista Kielsmeier

Subject: SEABA 26 mile heliport

Dear Haines Borough Planning Commission Members,

Please do not support issuance of a conditional use permit to SEABA for a heliport at 26 mile. The proposed development is not consistent and in harmony with surrounding land uses or with the Haines Comprehensive Plan. The location of the proposed use does not avoid excessive noise, other nuisances, and dangers.

Helicopter noise levels are not acceptable in a residential neighborhood, even in a big city. Helicopter noise would be tremendously louder than the neighborhood's ambient noise levels. The Haines Comprehensive Plan says that heliports should be sited away from residences and the heliport site in question is surrounded by private property, with homes within a couple of hundred feet from the proposed landing pad. Residents who live there will be severely impacted. The proposed SEABA heliport was the subject of an expensive flawed noise study. GPS data showed that SEABA was flying unlawfully during the study, hiding its noise from the sensors. The World Health Organization and EPA recognize health and safety effects of excessive noise, particularly helicopter noise. Health effects include stress-related diseases, cognitive and behavioral disorders, and heart problems. The noise will also likely reduce the value of their property. An FAA study found that an increase in decibels due to aircraft noise resulted in a significant quantifiable decrease in property values. HBC 18.50.040 does not permit this. This residential area should be protected from heavy industrial development, especially by SEABA, which just last year pled guilty to trespassing on BLM land closed to heliporting 54 times – 2/3rd of the time they were operating. The judge increased their sentence because they lied about their illegal behavior.

The heliport is fifty feet from a state identified anadromous stream. The temporary CUP specified that SEABA should have DEC approved fuel containment before commencing operations. SEABA is already violating this requirement. Public processes, including how to use the recent noise study, should be complete before making major development decisions related to heliports. Two times in the past, the Planning Commission has sided with the public and with Borough law and denied the CUP for a heliport at the site. Please do so again.

Thank you very much for your serious consideration.

Katya Kirsch
PO Box 521
Haines, AK 99827

Chilkat Valley News

News

April 24, 2014

Volume 44, Number 16

SEABA fined \$21K, put on 4 years of probation

By Karen Garcia

Local heli-ski company Southeast Alaska Backcountry Adventures on April 17 agreed to pay more than \$20,000 in fines and be placed on four years of probation after pleading guilty to repeatedly and intentionally trespassing on Bureau of Land Management property.

The dozens of illegal landings came to light after a BLM Office of Law Enforcement investigation into the death of SEABA guide Christian Cabanilla revealed the March 2013 fatal accident had occurred on BLM land off-limits to heli-ski companies.

Assistant U.S. attorney Andrea Steward recommended in her April 10 sentencing memo that SEABA be sentenced to two years' probation, \$11,556 in restitution to BLM and \$10,000 in fines.

However, during the April 17 sentencing hearing, Judge Timothy Burgess imposed a harsher sentence, bumping the probation to four years and requiring SEABA to create a compliance plan to protect against future unauthorized use of BLM land.

"(Judge Burgess) wanted a longer period of time to ensure they are complying with everything. They can seek early termination, usually; they still have the potential to get off after two years," Steward said.

Regarding the compliance plan, SEABA attorney Tracy Knutson spoke at the sentencing hearing and said SEABA was already taking steps to ensure compliance "including disassociating with certain guides they had worked with in the past," Steward said.

One of SEABA's probation conditions is that it maintain GPS data and provide it to BLM upon request to ensure the company isn't continuing to operate out of bounds, Steward said.

Steward said cases of trespassing on BLM land are usually resolved outside of criminal courts, with the BLM ticketing companies or users for violations instead of pursuing criminal charges.

"The reason this wasn't handled that way is because through the investigation it was apparent there was a pattern and practice of this over time," Steward said.

When the 2013 accident occurred, SEABA also misrepresented the situation by phoning BLM and claiming Cabanilla's group had "accidentally" been skiing on BLM land. Steward said this misrepresentation also led to the matter being prosecuted criminally instead of administratively.

Federal prosecutors charged SEABA with one count of unauthorized use of BLM land in December. An investigation into SEABA's maps, GPS flight information, flight-following logs, guide meeting notes and company financial information revealed SEABA was on

BLM-managed land approximately 54 days out of 78 total operation days in 2012 and 2013.

Chilkat Valley News | P.O. Box 630, Haines AK 99827
Ph: (907) 766-2688 | cvn@chilkatvalleynews.com | www.chilkatvalleynews.com
Content and information copyright 2015 Chilkat Valley News

[Powered by ROAR Online Publication Software](#)

© Copyright 2015 [Lions Light Corp.](#)

— Software for newspapers & magazines

November 12, 2015

To: Planning Commissioners

Re: SEABA heliport CUP application

This is an update to my comments of August 13, 2015. (see previous comments below)

In order that the commission can review the helicopter noise study **before** considering the two heliport Conditional Use Permit applications, it seems logical to change the order of the agenda to hold the noise study public hearing before the heliport CUP hearings.

The noise study has been completed and is now on the Planning Commissions agenda for tonight. I suggest that there be a second public hearing on the SEABA CUP for the following reasons.

It is unlikely that the commission can complete its review of the helicopter noise study at this meeting, the first time it has reviewed the study. Even if the review is 'completed,' the public would not have a chance to respond in a meaningful way before the heliport CUP hearings.

HBC 18.50.030 Application., (see below) has not been satisfied since there has been no recommendation to the commission from the manager regarding this CUP application. Even if the manager provides a recommendation at this late date, it wouldn't comply with code because the CUP "application" and the "manager's recommendation for action, with or without proposed conditions" must be forwarded to the commission **"together."** This provision in code allows the commission and the public to review the manager's recommendation in a timely manner.

A second public hearing on SEABA's CUP should be scheduled to allow the public to review the commission's action on the noise study and to comply with HBC 18.50.030 Application.

**Title 18
LAND USE/DEVELOPMENT**

**Chapter 18.50
CONDITIONAL USE**

18.50.030 Application.

.....

D. Manager's Review Procedure.

1. The manager shall determine whether the application is complete and accurately reflects the developer's intentions. The manager shall advise the applicant whether or not the application is acceptable, or if it is not, what corrective action may be taken.

2. After accepting the application, the manager shall schedule a hearing before the commission and shall give notice to the developer and the public in accordance with the public notice provisions of HBC [18.30.020](#).

3. The manager shall forward the application to the commission together with a report setting forth the manager's recommendation for action, with or without proposed conditions, and the reasons therefor.

~~~~~

One benefit of the noise study is that it reveals the disproportionate magnitude of helicopter noise in comparison to the ambient noise at the location of the study. One of the criteria that must be met for issuing a CUP is:

**18.50.040 Decision.**

.....

A. Before a conditional use permit is approved, the commission must find that each of the following requirements is met:

1. The use is so located on the site as to avoid **undue noise** and other nuisances and dangers;

**Undue** is defined as:

“unwarranted or inappropriate because excessive or disproportionate”

The noise generated by a heliport in this location, when compared to the ambient decibel levels in the study, is ‘excessive’ and ‘disproportionate.’ The heliport cannot be located on the site so as to avoid undue noise, so this requirement cannot be met. Finding that even one of the conditional use requirements is not met requires the conditional use to be denied.

Please deny the SEABA heliport Conditional Use Permit.

Sincerely,

Carolyn Weishahn

~~~~~

August 13, 2015

To: Haines Borough Planning Commission

Re: Heliport Conditional Use Proposal – 3-CLR-35-0100, Big Salmon Ventures (SEABA)

The manager recommends postponing this decision until the Noise Measurement Study, June 2015 (Study) is completed. The Draft Study is available and there may be additions or changes in the final draft based on public comments received. However, based on current Haines Borough Code and data in the Draft Study, this application does not meet the criteria to “avoid undue noise and other nuisances and dangers.”

The applicant (SEABA) maintains the FAA threshold of 65 DNL as discussed in the Study justifies locating a heliport on their Chilkat Lake Road property. The Study states that the site DNLs can’t be directly compared to the FAA 65 DNL significance threshold and yet they refer to the 65 DNL threshold throughout the report.

For this Study, the measured DNL from the sites above cannot be directly compared to the 65 DNL significance threshold because the annual average was not modeled using Integrated Noise Model. However, the measured average levels at the three sites during the study period (outside of the helipad itself) are generally below what measurements would be expected at the significant 65 DNL or higher level.

Even if the Study had used the Integrated Noise Model, the FAA threshold of 65 DNL is not intended to substitute for local land use decisions based on “locally determined needs and values.”

http://www.faa.gov/airports/environmental/environmental_desk_ref/media/desk_ref_chap17.pdf

14 CFR Part 150 land use compatibility guidelines. FAA established land use compatibility guidelines relative to certain DNL noise levels in 14 Code of Federal Regulations (CFR) Part 150. Chapter 5, Table 1 of this Desk Reference provides a copy of the Part 150 Land Use Compatibility guidelines.

(1) Different local land use compatibility standards. Although residential land uses are considered compatible with noise exposure levels below DNL 65 dB under 14 CFR Part 150:

“The responsibility for determining the acceptable and permissible land uses ...rests with the local authorities...Part 150 is not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses. “ -14 CFR Part 150, Table 1.

In addition, the FAA states, “civil helicopter annoyance assessments utilize the same acoustic methodology adopted for airplanes” and “impulsive helicopter noise has not been fully substantiated by a well-correlated metric.”

[“http://www.faa.gov/regulations_policies/policy_guidance/envir_policy/media/04nov-30-rtc.pdf](http://www.faa.gov/regulations_policies/policy_guidance/envir_policy/media/04nov-30-rtc.pdf)

As discussed in “effects on individuals” (Section 3), there are multiple noise metrics utilized to assess noise (EPNL, ASEL, DNL, etc). However, civil helicopter annoyance assessments utilize the same acoustic methodology adopted for airplanes with no distinction for helicopter’s unique noise character. **As a result, the annoyance of unaccustomed, impulsive helicopter noise has not been fully substantiated by a well-correlated metric. The FAA favors the chartering a technical effort to focus on low-frequency noise metric to evaluate helicopter annoyance.** (emphasis added)

~~~~~

As a result of stakeholder dissatisfaction with the current DNL guideline, the FAA has begun a multi-year study to review their DNL threshold which may result in another methodology for assessing aircraft noise or a lowering of the DNL threshold. Notice in the article below that the FAA currently uses the 65 DNL threshold is used for making environmental review, funding, and mitigation measures, not for making land use decisions.

Use of FAA’s DNL threshold is not appropriate for this CUP decision because the borough is not making environmental reviews, airport funding or noise mitigation decisions. Instead, the borough has the responsibility of making good land use decisions to protect the health, safety, and welfare of the public through the conditional use permit process.

[http://www.kaplankirsch.com/files/Airport\\_Law\\_Alert\\_August\\_2015.pdf](http://www.kaplankirsch.com/files/Airport_Law_Alert_August_2015.pdf)

### **Airport Law Alert - No. 22 August 2015**

#### **FAA to Reevaluate Aircraft Noise Methodology**

On May 7, 2015, the FAA announced that it was beginning work on a multi-year study to update the scientific evidence on the relationship between aircraft noise exposure and its effects on communities. The FAA intends to conduct surveys of residents near 20 airports across the country in order to survey public perception of aircraft noise. The FAA states that this will be the most comprehensive single aircraft noise survey conducted in the United States. The FAA did not identify the communities to be surveyed in order to preserve the scientific integrity of the surveys. **The FAA expects the surveys to be completed by the end of 2016. After that, the FAA will analyze the data to assess whether to update the FAA’s guidelines and methodology for determining exposure to aircraft noise.**

**Since 1981, the FAA has relied on the DNL 65 decibel noise exposure level for its environmental review process and to make funding decisions for most noise projects near airports and for federal approval of noise abatement and mitigation measures pursuant to Part 150 and Part 161.** The DNL metric is based on an average of all community noise over a 24-hour period, with nighttime noise weighted by a factor of 10 to account for the disruptive effects of nighttime noise. **Use of the DNL 65 decibel guideline has not been without controversy, however, and a number of communities and stakeholders have urged the use of a methodology other than DNL and/or the use of a lower DNL decibel level.**

A change in the current 65 DNL decibel guideline could have significant impacts on airport operators. The use of a different noise metric or DNL threshold could increase or decrease the number of homes eligible for federally funded acoustic treatment, home-buyouts, or other noise mitigation measures; could change mitigation obligations; and could change the scope of environmental reviews. In addition to federal issues, a new federal guideline, and publication of the survey results supporting the new guideline could affect airport operators under state lawsuits for inverse condemnation, trespass, and nuisance.\_\_\_\_

~~~~~

SEABA's last application for a heliport CUP was denied by the Planning Commission and subsequently overturned by the Assembly. The decibel ratings in the Study for the helicopters SEABA uses for heliskiing support the denial of heliport CUP at the SEABA property. Criteria #1 for a CUP (avoid undue noise and other nuisances and dangers) would not be met and the noise Study bears this out. In the Study, the decibel level for a helicopter at the proposed heliport ranged from 100-110 decibels. According to a decibel soundproofing chart, a dog kennel is rated at 110 decibels.

<http://static1.1.sqspcdn.com/static/f/605239/14918070/1320157349257/dBSoundproofingChart.pdf?token=tQio%2Fkr1VyonOCh%2BT05%2BAv9qi0M%3D>

The Planning Commission recently turned down an application for a conditional use permit for a dog kennel on the basis of undue noise for that neighborhood. This application for a conditional use permit for a heliport on Chilkat Lake Road would likewise create undue noise and thus does not meet Haines Borough Code, 18.50.040 Decision., Criteria #1, for a CUP. A heliport simply does not belong in this very quiet neighborhood.

I urge the Planning Commission to deny a Conditional Use Permit for a heliport at SEABA's 3-CLR-35-0100, Big Salmon Ventures property.

Thank you for considering my comments.

Sincerely,

Carolyn Weishahn

Patrick Kelly, P.L.S., SR/WA
Regional Resource Manager
Phone: (907) 786-7795
Fax: (907) 786-7733
Email: pkelly1@alaska.edu



UNIVERSITY
of ALASKA

Many Traditions One Alaska

UA Facilities and Land Management,
System Office
1815 Bragaw Street, Suite 101
Anchorage, AK 99508-3438
Web: www.ualand.com

November 11, 2015

Borough Administration Building
103 Third Avenue S.
P.O. Box 1209
Haines, AK 99827

Re: Heliport Conditional Use Permit Public Hearing
Lot 10, Sundberg Subdivision II

Dear Planning Commission Members,

The University of Alaska (UA) appreciates the opportunity to participate in the public comment process for the above-referenced Conditional Use Permit.

UA received the Public Notice on November 6, 2015. This provided only 4 business days for review by the University Land Management Office. Upon completing the review of the public records regarding Heliskiing in the Haines Borough and a review of the August 2015 Noise Measurement Survey completed by BridgeNet International ("**2015 Report**"), the University has the following concerns:

- *The Traffic Pattern (departure and approach path shown on the Public Notice) is directly over UA property at a very low altitude. This is a diminution to the value of UA's property.*
- *In the absence of State of Alaska and Haines Borough land use regulations for acceptable land uses and associated noise levels, the basis of the 2015 Report is the federal standard for noise and land use compatibility developed by the Federal Aviation Administration for helicopter and aircraft activity. UA believes the federal standard is not sufficiently restrictive.*
- *The Day Night Noise Level (DNL) at the heliport exceed levels for residential use, thus requiring the use of sound insulation (Page 4 – Bullet One – 2015 Report). This is an additional diminution to UA's property.*
- *As stated in the 2015 Report, "It is important to note that the measurements detailed in this report are measurements, and not fully modeled annual DNL noise contours, so this report cannot make a full comparison to the annualized 65 DNL." The federal standard requires establishment of the noise contours.*

Heliport Conditional Use Permit Public Hearing: Lot 10, Sundberg Subdivision II

November 11, 2015

Page 2

As context for our comments, UA, State of Alaska – Division of Forestry (DOF), and the Alaska Mental Health Agency – Trust Land Office (TLO) met with Mr. David Sosa and Mayor Hill and local industry in August 2015 as a group of the major land owners in the Haines area. The purpose of the meeting was to begin a collaborative effort in defining long term forest management plans. One eventual goal is to have concurrent land uses that are compatible with each other.

For all of the reasons stated above, UA requests that the Heliport Conditional Use Permit not be issued until further discussion and analysis are completed with participation including UA. I am available to answer any comments or questions regarding this matter. My direct line is (907) 786-7795.

Respectfully submitted,


Patrick Kelly

Cc: Michelle Rizk, Chief Strategy, Planning, and Budget Officer, UA
Mayor Jan Hill, Haines, AK
David B. Sosa, Borough Manager, Haines, AK