

Documentation Inventory

2017 Haines Borough Planning Commission Actions on the topic of Resource Extraction

Compiled January 1, 2018 by Holly Smith, Haines Borough Planner

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Haines Borough
PLANNING COMMISSION
RECORD OF MINUTES

DATE: January 1, 2018
TO: Planning Commission
FROM: Holly Smith
SUBJECT: Resource Extraction

Minutes:

From 3/16/2017 Approved PC Minutes

(NEW BUSINESS) Resource Extraction in Mud Bay Zone (HBC 18.70.030). The Mud Bay zoning district does not include provisions for resource extraction nor does it expressly prohibit the use. Goldberg requested time with staff to review code and suggest solutions for commission at a later date.

From 4/13/2017 Approved PC Minutes

(STAFF REPORT) Holly Smith reported on a letter to Mud Bay residents regarding resource extraction, to be brought up as a public hearing item during the May 11 PC meeting.

From 5/11/2017 Approved PC Minutes

(PUBLIC HEARINGS) Amending HBC 18.70.030 (B) to address Resource Extraction in Mud Bay RR Zone - The Commission heard public testimony regarding the options under consideration regarding this topic, which included (1) the allowance resource extraction in some capacity or to prohibit the use in a manner similar to Lutak Zoning code HBC 18.70.030 (C), where "all uses not expressly provided under permitted, accessory or conditional uses are prohibited." Commissioners requested that this item be brought back during the June 2017 to allow time for public sector land owners to provide comments. Public testimony included:

- John Carlson - No change to code; prohibition limits economic development.
- Roger Schnabel - No change to code; prohibition limits economic development; timber is a resource in MB.
- Carol Tuynman - Consider using buffers, easements, selective timber with environment protection.
- Kip Kermoian - Residents worked hard to adopt the intent of the zone. Viewshed and soundscape is important. Referring the Viking Cove CUP, a conditional use permit option is subjective, enforcement is weak, and does not protect neighbors.

- **Sylvia Heinz** - Local resources / local products are important for consumers and business owners and should remain available to promote self-sufficiency and trade economies. Large scale resource extraction is unlikely. Protect all interests, not just our own. The conditional use permitting process hurts small-scale operators.
- **Katey Palmer** - It is a matter of scale with intent of the zone in mind. The current conditional use process pits neighbor against neighbor; not effective. Private owner uses should not impact neighbors negatively or financially. Address CUP process before allowing as CUP. Continue to work on addressing uses for Mud Bay that are not in the zoning use chart.
- **Patty Kermoian** - CUP process is flawed and subjective. Property owners should be able to remove timber, but opposed to large-scale resource extraction in a rural residential area. Do not revise heliport code.
- **George Figdor** - Consider MBLUSA history and zone intent. Zone more dense now than intended. Support commercial timber with permit process with parameters. Use examples of Washington communities RR timber code - they identify the value (environmental and well as monetary), the size of resource, buffers, compatibility with surrounding uses, possibility of incremental extraction, and reclamation. UA used percentages of lots for timber remove within Letnikof covenants.
- **Llewellyn (Dale) Cobb** - Opposed to timber extraction. Volume matters with resource extraction. I bought my property because the neighboring property was not a commercial gravel pit.
- **Michael Machowiak** - Prohibition lowers property values of individual owners with resources, is unjust, and may require compensation. Consider having a board-foot exception. Mob rule should be monitored; is inappropriate.
- **Kristin Hathhorn** - Maintain the intent of the zone.

From 6/8/2017 Approved PC Minutes

(PUBLIC HEARINGS) Amending HBC 18.70.030 (B): Mud Bay Planning/Zoning District.

Continued discussion from May 2017 planning commission meeting, commissioners considered the options of (1) no change; (2) prohibition of some resource extractive activities; and/or (3) allowing resource extraction as a use-by-right or with conditions.

Public Comments:

- **Tina Schmidt** - UA Lands would like no action in code until all research is complete and all parties have had time to consider possible changes.
- **Wyn Menefee** - MHT Lands is not supportive of any restrictions or limits. MTH has the right to utilize assets to help beneficiaries. Development adds to the value of Haines and supports the local tax base.
- **John Carlson** remarked on the number of lots that are under the 3-acre minimum lot size. Prohibition would remove property development potential from the free market.
- **Jack Smith** indicated that prohibition could constitute as a takings and that tree removal is an agricultural use - not extractive - in many other communities because it is a renewable resource.
- **David Kertell** introduced himself as a young, tax-paying carpenter working in Mud Bay. Limits and/or prohibition to selective, small-scale timber removal would inhibit business operations.
- **Sylvia Heinz** present a pie graph on a block of wood showing positive impacts that wood products have on the Mud Bay economy. 70% of her income is from Mud Bay trees; 14 jobs are created by her wood products business compared to 2 jobs in the townsite. Conditional use

permits would force people to either break the rules or deter them from businesses in wood products.

- George **Figdor** recommended that allowable timber removal be based on percent of lot size with setback buffers. The takings argument is spurious. Value of tree retention should be included.
- Carol **Tuynman** and George **Figdor** recommended that the planning commission hold a workshop on the issue.
- Laurie **Dadourian** encouraged the Commission to consider percent of lot size for allowable limits.
- Katey **Palmer**, Heidi **Robichaud**, and Patty **Kermoian** noted that the definition of “commercial enterprise” can already be interpreted for resource extraction.
- Heidi **Robichaud** suggested that any changes in code should follow the intent and that existing zoning should be preserved. A scale for extraction should be clearly defined; clear cutting should not be permitted.
- Laurie **Dadourian** and Heidi **Robichaud** request the application of Lutak RR code to Mud Bay RR.
- Patty **Kermoian** reiterated that code should be interpreted and enforced correctly and that resident vs. non-resident landowners should be taken into consideration.
- Dale **Cobb** explained that resource extraction and externalities thereof is not compatible with the zone and could harm the tourism industry.

Commission members made a request for a legal memo from the borough attorney to answer the following questions:

- Compare the current definition of resource extraction with current allowed uses in code for Mud Bay Rural Residential Zone (HBC 18.70.030 (B)):
 - Cottage Industry
 - Commercial Enterprise (Defined in 18.70.030(B)(3)(e)(7))

Can these definitions be used to allow resource extraction? One point of note here is that both commercial enterprise and cottage industry require “family members” to be the operator of the commercial enterprise where uses must “eliminate or mitigate” adverse effects, including burdens on community utilities and resources.

- Address the specific points from the Baxter, Bruce & Sullivan memo.
- Address the claim in the UA Lands letter that the borough would need to compensate UA if, by prohibiting resource extraction, it causes a “devaluation of UA resources”.
- Were resource extraction specifically allowed, would residents of Mud Bay have a claim for compensation if they felt that resource extraction was not compatible with the intent of the *district* - “to preserve the existing zoning provisions of the former land use service area No. 1 (Mud Bay) and for the people of the Mud Bay community to preserve their lifestyle, community scale, self-sufficiency, self-determination, and the basic rights of health, safety and welfare.” Further, the Rural Residential *zone* “is intended to provide for the establishment of a rural residential area allowing for single-family dwellings and cottage industries”.

From 9/7/2017 Approved PC Minutes

(CHAIRMAN'S REPORT) Chairman **Goldberg** gave a summary of the resource extraction code workshop on September 6th. University of Alaska and Mental Health Trust attended. The committee has decided to focus on changing the definition of resource extraction. Unless commercial activity is the primary purpose, then the activity would not be considered resource extraction. Commissioner **Stephens** would work with Holly on a draft ordinance.

From 11/9/2017 Approved PC Minutes

(PUBLIC HEARINGS) Resource Extraction (HBC 18.20). *First hearing.* Two ordinances presented would redefine resource extraction and are from ongoing conversations since June 2016. Rob **Goldberg** presented his draft, which focuses on limitations to resource extraction material quantity by lot. Jeremy **Stephens** presented his draft, which focuses on resource extraction as a primary or secondary use. **Goldberg** acknowledged a request from the University that the PC postpone action on the draft until December. **Turner** stated that he would have more time to help with the draft if postponed. **Palmer**, **Dadourian**, and **Kermoian** requested an amount type per lot size - not lot - as lots have varying acreages. **Carlson** supported **Stephens'** draft.

Motion: **Stephens** moved to require that the ordinance be heard at the planning commission two more times at minimum with another hearing scheduled for December 14th, 2017. **Turner** seconded and the motion carried unanimously.

From 12/14/2017 Draft PC Minutes

(PUBLIC HEARINGS) Resource Extraction Definition Draft Ordinance -*Second Hearing* - Requested during the November 2017 PC Meeting, the draft ordinances show two different versions of working definitions that seek to establish attributes for regulation with the use of resource extraction. This is part of a discussion ongoing since May 2017. **Goldberg** presented a worksheet to enhance discussion. George **Figdor** recommended approaching the definition in terms of 'marketable resources' where materials for subsistence would be exempt from regulation and allowable quantity levels would be less for residential areas. Laurie **Dadourian** spoke in favor of a combination of the two draft ordinances, including a 25 foot tree buffer in extraction sites. Kate **Palmer** recognized difficulty in assuring that the intent of site preparation is followed (e.g. The University has said that the outcome of a Mud Bay Timber Sale would be to create subdivisions, but how do we know?). She also spoke in favor of allowing varying amounts of resource extraction in each zone depending on the intent of the zone. **Stephens** requested more time to review University of Alaska Comments and requested a workshop in order to go through the scenario worksheet.

Motion: **Stephens** moved to schedule a third hearing on the ordinances during the February 8th, 2018 regular meeting; **Turner** seconded. The motion carried unanimously (7-0).



HAINES BOROUGH, ALASKA

P.O. BOX 1209

HAINES, AK 99827

(907) 766-2231 * FAX (907) 766-2716

Memorandum

Date: January 19, 2016
To: Brad Ryan, Interim Borough Manager; Haines Borough Planning Commission
From: Holly Smith, Borough Planner

Re: Resource Extraction in the Mud Bay Planning/Zoning District

The borough was recently approached about application for selective logging in the Mud Bay Zoning District. In other zones, timber removal is a resource extraction use that requires the issuance of a conditional use permit. However, Haines Borough Code does not address resource extraction in Mud Bay nor does it prohibit the use. The use of 'commercial enterprise', which is a permitted conditional use, does not adequately address industrial effects that often accompany resource extraction as sited in HBC 18.60.020. Consequently, anyone who wishes to engage in resource extraction activities, such as logging, mining, or sand and gravel pits, may do so without Borough approval or public notification.

The planning department recommends the Borough adopt code that either prohibits resource extraction in Mud Bay or allows it under the provisions of a conditional use permit. Additionally, it may be prudent to include the rural residential zones of Lutak Inlet and Mud Bay in the Zoning Use Chart in order to (1) examine other uses not mentioned by zoning district code 18.70.030; and (2) make the code more uniform in structure.

BACKGROUND

The land use code of Mud Bay Planning/Zoning area stems from the intent of the Mud Bay Service Area 1, which was to preserve "lifestyle, community scale, self-sufficiency, self-determination, and the basic rights of health, safety and welfare" (HBC 18.70.030(B)). The comprehensive plan puts particular emphasis on residents' concern with preserving rural residential characteristics of Mud Bay, such as parks and recreation, open spaces, and low density development. There are two zones in the area: Rural Residential and The Cannery. The intent of the rural residential zone is to provide for single-family dwellings and cottage industries (HBC 18.70.030(B)(3)(a)). Conditional uses include schools, fire stations, lodges, public utilities, small scale 'commercial enterprises', cemeteries, and vacation rentals.

The zoning use chart in HBC 18.70.040 only includes townsite zones in its classification. Therefore, although resource extraction is listed as requiring a conditional use permit in rural

residential zones, the provision does not apply to Mud Bay. Also of note is the section in Code that refers to the Lutak Inlet Planning/Zoning District (18.70.030(C)), which gives a fallback provision for any use not covered in code that states "Prohibited Uses Designated. All uses not expressly provided under permitted, accessory, or conditional uses are prohibited" (f).

In code, a resource extraction is defined as "a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics." In HBC 18.60.020, specific approval criteria for the commercial extraction of a natural resource include:

1. Methods and process of reclamation including stockpiling of topsoil for reuse;
2. Initial site conditions including existing land use, vegetation, soils, geology and hydrology;
3. Limits of operational areas;
4. Days and hours of operation;
5. Traffic patterns;
6. Fencing and screening;
7. Control of dust and noise;
8. Phasing of operations and reclamation steps;
9. Final condition of site including:
 - a. Relation to adjoining land forms and drainage features,
 - b. Relation of reclaimed site to planned or established uses of the surrounding area,
 - c. Demonstration that the final land form will have a viable land use compatible with land use trends in the surrounding area;
10. Methods to minimize potential conflict with existing uses that are significantly impacted by the development.

OPTIONS FOR CODE AMENDMENT

Two possible code amendments will either reduce or eliminate resource extraction in Mud Bay.

Option 1: Prohibiting Resource Extraction in Mud Bay

Attached. Adding the same provision listed under (C) Lutak Inlet Planning/Zoning District that states: "Prohibited Uses Designated. All uses not expressly provided under permitted, accessory or conditional uses are prohibited."

Option 2: Resource Extraction as a Conditional Use in Mud Bay

Attached. Adding "Resource Extraction" under (e) conditional uses (HBC 18.70.030).

Option 3: Adding Rural Residential Columns for Lutak Inlet and Mud Bay Zoning Use Chart

The following uses are listed in the zoning use chart, some of which have already been addresses for Mud Bay and Lutak Inlet Rural Residential Zones:

USE	MUD BAY RR	LUTAK INLET RR	RURAL RESIDENTIAL
Accessory Apartment			UBR
Accessory Uses	UBR	UBR (wood sheds)	UBR
Agriculture		CU	UBR
Animal Husbandry		UBR	UBR
Animal Shelter		N/A	CU
Auto Repair		N/A	CU
Auto Sales		N/A	N/A
Auto Service Station		N/A	N/A
Bed and Breakfast		N/A	UBR
Bulk Fuel Storage		N/A	N/A
Campground		CU ¹	N/A
Cemetery	CU	CU	CU
Child Care Facility		N/A	CU
Church		CU	CU
Club, Private		N/A	N/A
Combination R/I/C		N/A	N/A
Commercial: Rental, Sales, and Professional Services		CU	
Commercial Enterprise	CU	N/A	
Commercial, Light		N/A	UBR
Commercial, Medium		N/A	CU
Commercial, Major		N/A	N/A
Communication Commercial	CU	N/A	N/A
Communication Personal	CU	N/A	CU
Community Hall		CU	
Condo/Townhouse		N/A	N/A
Convalescent/Nursing Home		N/A	N/A
Convenience Store		N/A	N/A
Correctional Facility		N/A	N/A
Cottage Industries	UBR	UBR	
Crop Production		N/A	UBR
Domestic Log Mill (Personal Use)		UBR	
Duplex		N/A	CU
Educational Facility		N/A	CU
Fence within Setback on LL		N/A	UBR
Fence not within Setback		N/A	UBR
Fire Station	CU	CU	
Firing Range		N/A	N/A
Group Home		N/A	CU
Guest House	UBR	UBR	CU
Hatchery		CU	
Heavy Equip. Repair		N/A	NA
Heavy Equip. Storage		N/A	CU
Heliport	N/A	N/A	
Home Occupation		N/A	UBR
Hotel/Motel		N/A	N/A
Industrial, Heavy		N/A	N/A
Industrial, Light		N/A	N/A
Institutional Home		N/A	N/A
Junk Yard		N/A	N/A
Kennel		N/A	CU
Landfill		N/A	N/A
Lodge	CU	CU	
Logging		CU	

USE	MUD BAY RR	LUTAK INLET RR	RURAL RESIDENTIAL
Marine Commercial Facility		N/A	N/A
Marine Industrial Facility		N/A	N/A
Mobile Home Park		N/A	N/A
Multiple Single Family Res		N/A	CU
Multi-Unit Dwelling		N/A	N/A
Planned Unit Development		N/A	CU
Play Field/Park	CU	CU	UBR
Public Facility		CU	CU
Recycling Facility		N/A	N/A
Resource Extraction		N/A	CU
RV Park		N/A	CU
School	CU	CU	
Single Dwelling Unit	UBR	UBR	UBR
Solid Waste Transfer Fac.		N/A	N/A
Subdivision Residential		N/A	UBR
Temporary Structure		N/A	UBR
Temporary Use		N/A	UBR
Theme Park		N/A	N/A
Trailer/Mobile Home		N/A	N/A
Utility Facility	CU	CU	CU
Vacation Rental	CU	CU	UBR
Zero Lot Line Commercial		N/A	N/A
Zero Lot Line Residential		N/A	N/A
Zoo		N/A	CU

1. (LIRR Campground) A 50-foot greenbelt separates the campsites from any public road right-of-way and a 20-foot greenbelt separates the campsites from any perimeter property lines; and (b) The campground is at least one-half mile from existing houses or land subdivided for residential purposes at the time of the application for a conditional use permit; and (c) The campground provides facilities for solid waste disposal (e.g., bear-proof dumpsters); and (d) Complies with all Department of Environmental Conservation sanitation requirements contained in [18 AAC 30](#); and (e) The campground has a maximum average density of six individual campsites per commercially developed acre, a minimum distance from center to center of adjacent sites of 75 feet and a maximum of 60 sites overall;

Thank you for your consideration.



Holly Smith

Borough Planner

hsmith@haines.ak.us

Phone: (907) 766-2231 ext. 23

Attached

HAINES BOROUGH, ALASKA
ORDINANCE No. 17-xx-xxx

Draft

An Ordinance of the Haines Borough amending Haines Borough Code Title 18.70.030 Zoning Districts to prohibit any uses not expressly provided under permitted, accessory, or conditional uses in the Mud Bay Planning/Zoning District rural residential area.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Title 18.80: Density and Density and Dimensional Requirements of the Haines Borough Code is hereby amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

18.70.030: Zoning Districts – Zones.

B. Mud Bay Planning/Zoning District.

3. Rural Residential Zone (MBRR).

a. Purpose. This zone is intended to provide for the establishment of a rural residential area allowing for single-family dwellings and cottage industries.

b. Applicability. This zone shall encompass all lands within the Mud Bay planning/zoning district with the exception of the cannery zone.

c. Uses-by-Right.

(1) One single-family dwelling shall be allowed on a lot no less than three acres in area, or on any smaller lot which existed prior to the implementation of any land use ordinances.

(2) Any development which existed prior to the implementation of any land use ordinances.

d. Accessory Uses. Accessory uses in the rural residential zone are:

- (1) Accessory buildings;
- (2) Cottage industries;
- (3) Guest house.

e. Conditional Uses. Conditional uses in the rural residential zone are:

- (1) Public parks, public recreation sites, and nonprofit camps;
- (2) Schools;
- (3) Fire stations;
- (4) Lodges;
- (5) Commercial or public radio and television transmitters and towers;
- (6) Public utility facilities;
- (7) Commercial Enterprise. "Commercial enterprise" means any commercial, manufacturing, sale or service that occurs on a person's private property. A commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the property and with up to six additional employees at any one time. Terms of a conditional use permit for commercial enterprise shall eliminate or mitigate adverse effects to air quality, noise, traffic, parking, waste and sewage, signs, lighting and burdens on any community utilities and resources that may result from such commercial enterprise;
- (8) Cemetery;
- (9) Vacation rentals.

f. Lot Standards. The minimum lot size in the rural residential zone for newly developed lots shall be three acres;

g. Setback Standards.

(1) Structures shall be located no less than 25 feet from the nearest lot line, and right-of-way line, with Chilkat State Park Road being exempt from the right-of-way setbacks.

(2) Structures shall be located no less than 25 feet, measured from the top of the nearest stream bank, from any stream or watercourse used to provide domestic water, and from all anadromous fish streams.

~~h. Prohibited Uses:~~

~~(1) Heliports.~~ **h. Prohibited Uses Designated. All uses not expressly provided under permitted, accessory or conditional uses are prohibited.**

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2017.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: _/_/_/
Date of First Public Hearing: _/_/_/
Date of Second Public Hearing: _/_/_/

HAINES BOROUGH, ALASKA
ORDINANCE No. 17-xx-xxx

Draft

An Ordinance of the Haines Borough amending Haines Borough Code Title 18.70.030 Zoning Districts to include a provision for resource extraction in the Mud Bay Planning/Zoning District.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Title 18.80: Density and Density and Dimensional Requirements of the Haines Borough Code is hereby amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

18.70.030: Zoning Districts – Zones.

B. Mud Bay Planning/Zoning District.

3. Rural Residential Zone (MBRR).

- a. Purpose. This zone is intended to provide for the establishment of a rural residential area allowing for single-family dwellings and cottage industries.
- b. Applicability. This zone shall encompass all lands within the Mud Bay planning/zoning district with the exception of the cannery zone.
- c. Uses-by-Right.
 - (1) One single-family dwelling shall be allowed on a lot no less than three acres in area, or on any smaller lot which existed prior to the implementation of any land use ordinances.
 - (2) Any development which existed prior to the implementation of any land use ordinances.
- d. Accessory Uses. Accessory uses in the rural residential zone are:

- (1) Accessory buildings;
- (2) Cottage industries;
- (3) Guest house.

e. Conditional Uses. Conditional uses in the rural residential zone are:

- (1) Public parks, public recreation sites, and nonprofit camps;
- (2) Schools;
- (3) Fire stations;
- (4) Lodges;
- (5) Commercial or public radio and television transmitters and towers;
- (6) Public utility facilities;
- (7) Commercial Enterprise. "Commercial enterprise" means any commercial, manufacturing, sale or service that occurs on a person's private property. A commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the property and with up to six additional employees at any one time. Terms of a conditional use permit for commercial enterprise shall eliminate or mitigate adverse effects to air quality, noise, traffic, parking, waste and sewage, signs, lighting and burdens on any community utilities and resources that may result from such commercial enterprise;
- (8) Cemetery;
- (9) Vacation rentals.

(10) Resource Extraction.

f. Lot Standards. The minimum lot size in the rural residential zone for newly developed lots shall be three acres;

g. Setback Standards.

(1) Structures shall be located no less than 25 feet from the nearest lot line, and right-of-way line, with Chilkat State Park Road being exempt from the right-of-way setbacks.

(2) Structures shall be located no less than 25 feet, measured from the top of the nearest stream bank, from any stream or watercourse used to provide domestic water, and from all anadromous fish streams.

h. Prohibited Uses.

(1) Heliports.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2017.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: ___/___/___
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___



HAINES BOROUGH, ALASKA

P.O. BOX 1209

HAINES, AK 99827

(907) 766-2231 * FAX (907) 766-2716

11 March 2017

To: Haines Borough Planning Commission
From: Holly Smith, Borough Planner
Re: **Resource Extraction: Discussion**
March 16, 2017 Planning Commission Agenda Item # 10-D-1

SUMMARY

Recent deliberations at Planning Commission meetings and within the Haines community have prompted the Haines Borough to reexamine the way in which resource extraction activities are permitted and regulated. At the request of Commissioner Turner, I have put together a list of discussion topics surrounding this issue. One topic that is not addressed in this memo is the use of enforcement and application of penalties for performing resource extraction without a permit and/or violating the provisions of a permit.

DISCUSSION TOPICS

What is Resource Extraction?

As defined in code, it is a "use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics".

Where is resource extraction permitted / not permitted?

Use By Right: Heavy Industrial and Multiple Use, and General Use zones. Land use permit required.

Conditional Use: Light Industrial, Waterfront Industrial, Commercial, Rural Residential, and Rural Residential zones.

Not Permitted: Waterfront, Recreational, Significant Structures Area, Single and Multiple Residential zones. Lutak Inlet zones allow some resource extraction in some areas, but most are expressly prohibited. Mud Bay has no language either way.

How do other communities define Resource Extraction?

Three boroughs were studied for this question.

In Skagway, conditional uses are listed as (1) sand and gravel operations; (2) mining and quarry operations; and (3) timber harvesting and storage. No other definitions are provided.

In Sitka, "Natural Resource Extraction" means commercial or industrial operations involving the removal of timber, native vegetation, peat, mulch, topsoil, fill, sand and gravel, rock or any operations having similar characteristics. Said use includes the use of heavy equipment such as loaders, dozers, backhoes and other equipment such as crushers. "Industrial" means a use engaged in the manufacture of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products. Sitka has building code. The criteria that determines the impacts of conditional uses is similar to Haines.

In Kenai, there are defined amounts of extraction that trigger a CUP. It is not limited by the commercial/industrial language. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years.

What about the transfer of resources for personal use?

Resource extraction, whether it be for sale or personal use, most often produces the externalities defined as a "Industrial, heavy" use. This is "a use that has potential for significant negative impact on adjoining uses. This category includes uses that incorporate buildings that are large, tall, or unsightly; uses that generate offensive odors, noise, dust, smoke, fumes, vibration or glare; uses that involve large amounts of exterior storage; and uses that, because of their scale or characteristics, create nuisances or hazards such as heavy truck or other vehicle traffic, or other intense activity." Industrial heavy use is permitted the same way resource extraction is permitted.

Are there other requirements for resource extraction beyond the conditional use requirement?

Yes. Haines Borough Code 18.60.20 *Specific Approval Criteria* lists ten (10) requirements for all resource extraction activities. They include:

1. Methods and process of reclamation including stockpiling of topsoil for reuse;
2. Initial site conditions including existing land use, vegetation, soils, geology and hydrology;
3. Limits of operational areas;
4. Days and hours of operation;
5. Traffic patterns;
6. Fencing and screening;
7. Control of dust and noise;
8. Phasing of operations and reclamation steps;
9. Final condition of site including:
 - a. Relation to adjoining land forms and drainage features,
 - b. Relation of reclaimed site to planned or established uses of the surrounding area,
 - c. Demonstration that the final land form will have a viable land use compatible with land use trends in the surrounding area;
10. Methods to minimize potential conflict with existing uses that are significantly impacted by the development.



Holly Smith
Haines Borough Planner



HAINES BOROUGH, ALASKA
P.O. BOX 1209
HAINES, AK 99827
(907) 766-2231 FAX (907) 766-2716

Dear Neighbors,

April 17, 2017

The Haines Borough Planning Commission would like your input on an issue that has recently come up regarding the language in the Mud Bay portion of Haines Borough Code (HBC 18.70.30 [B]). A property owner wanted to have their property selectively logged, with the trees being sold to a local sawyer. The volume of trees was small, only a few truckloads, but it brought up the question of whether or not "resource extraction" is allowed in Mud Bay. The current code does not specifically address this.

The language in the Mud Bay code, as it was written by many of us in the early 1990's, is simple. It specifies Rural Residential zoning with a three acre minimum lot size. Allowed uses are one single family dwelling per lot, accessory buildings, cottage industry, and guest houses. "Commercial enterprise" is allowed with a conditional use permit.

"Resource extraction" is defined in Borough Code as: "a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics."

We have to decide whether or not "resource extraction" is compatible with the intent of the Mud Bay section of the code, which calls for the preservation of a rural residential lifestyle. I think it is a matter of scale. The selling of a few truckloads of logs to be made into local lumber is probably acceptable to most people. A large commercial clearcut probably isn't. Historically, a small gravel pit located near the top of the Chilkat State Park Road has provided material for many of our driveways and building pads. A new gravel pit or rock quarry may not be looked on as favorably.

We have options for amending our code to address this. We could allow resource extraction with a conditional use permit, which would leave it up to the Planning Commission to decide whether each individual case is compatible with the neighborhood. This option seems to be what we have now, as resource extraction would be considered a commercial enterprise. Or, we could prohibit resource extraction similar to the way Lutak has, whereby "all uses not expressly provided under permitted, accessory or conditional uses are prohibited." Or, we could quantify resource extraction as a certain number of board feet of timber, or a certain number of cubic yards of gravel, and then allow amounts below the limit and prohibit amounts above.

The Planning Commission would like your input on this issue. The Borough Planner is Holly Smith. You can email her at hsmith@haines.ak.us or write to her c/o Haines Borough, PO Box 1209, Haines, AK 99827. We will be discussing this at a public hearing on **May 11**. Your testimony is welcome.

Sincerely,

Rob Goldberg
Haines Borough Planning Commission & Mud Bay Resident

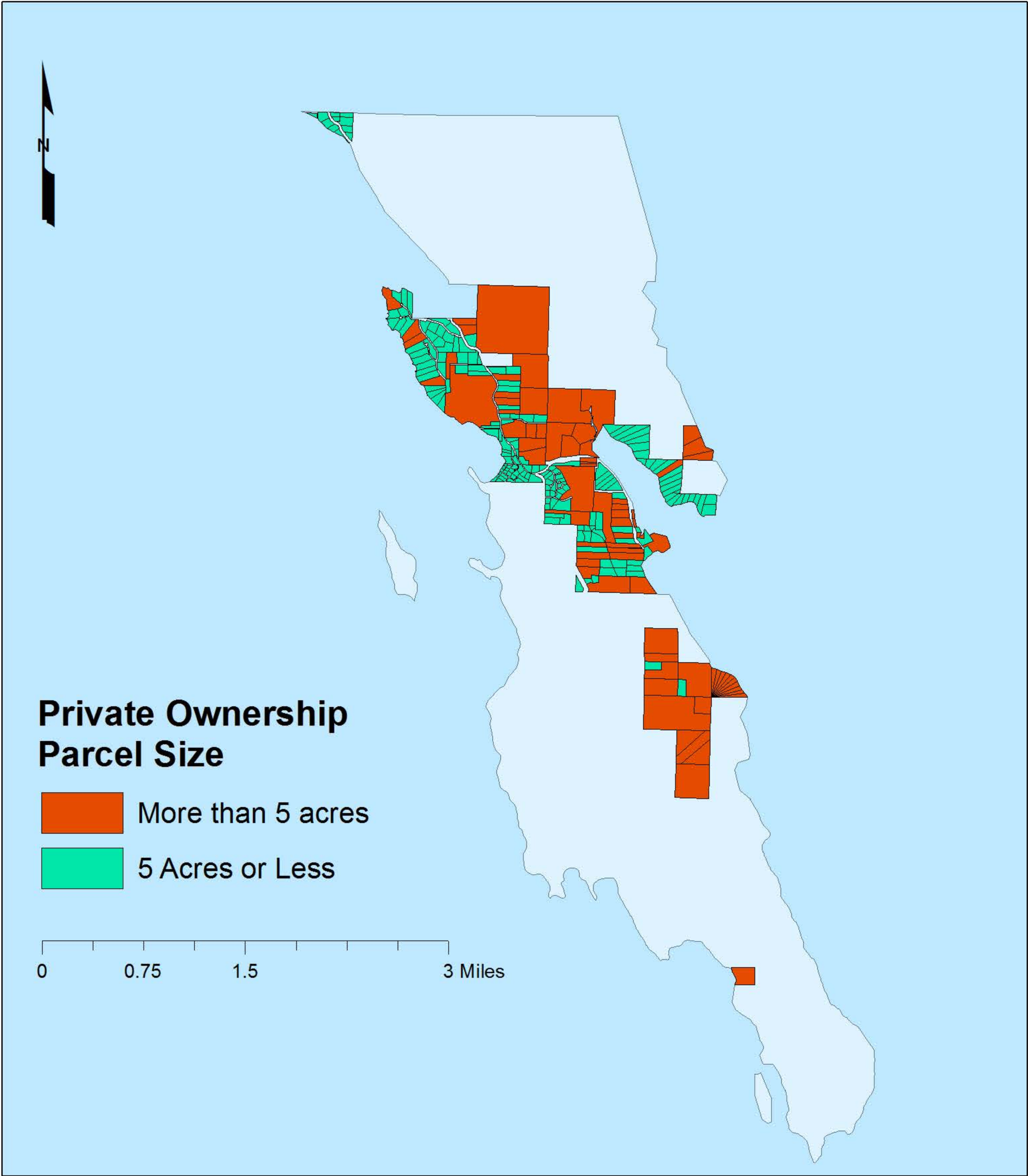
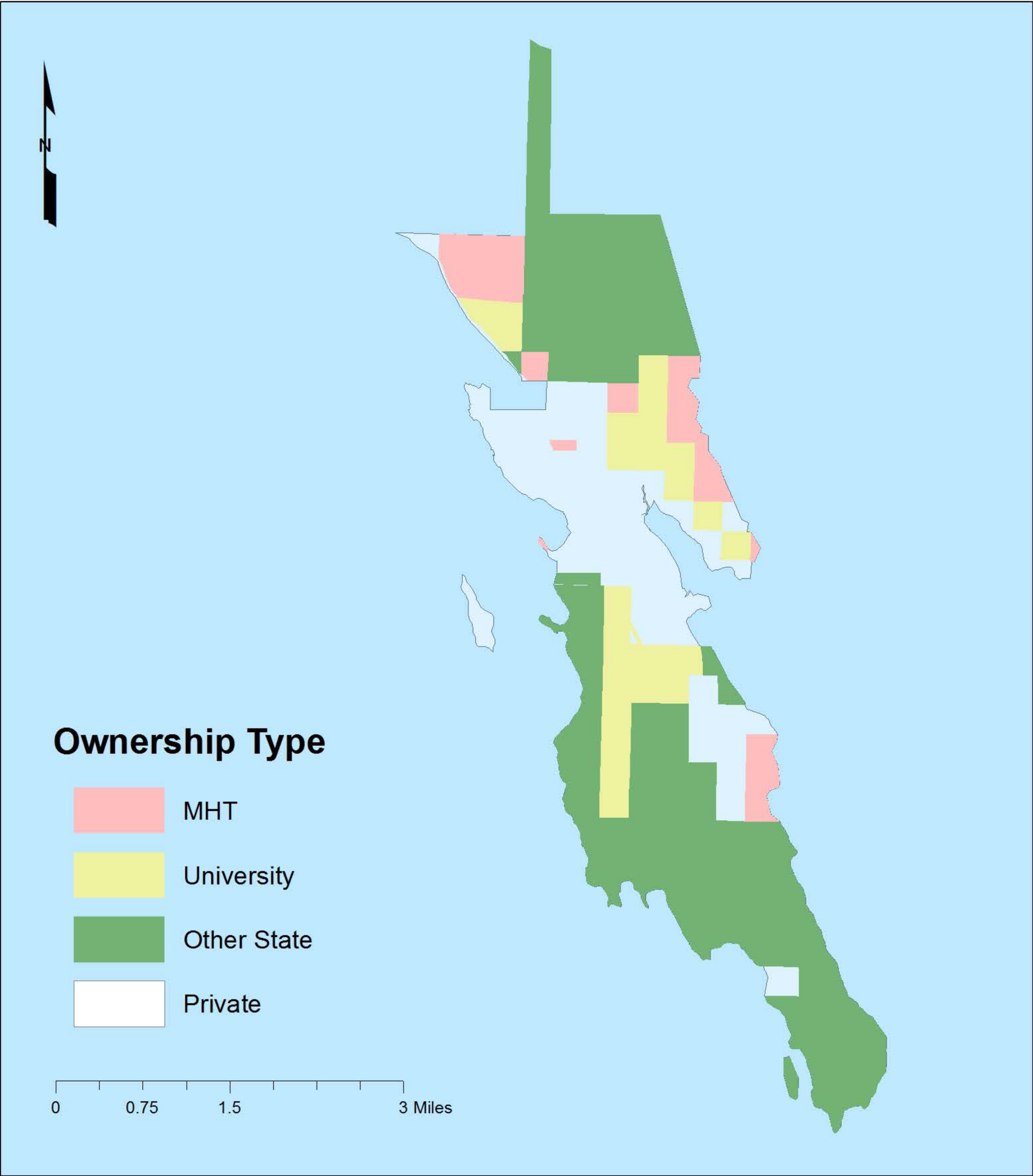


Date: May 4, 2017
To: Haines Borough Planning Commission
From: Holly Smith, Borough Planner
Re: Resource Extraction: Definitions / Planning & Zoning Code

Community	Source	Term	Definition	Notes
American Planning Association	2016 Planner's Dictionary	Extractive Industry	A use involving on-site extraction of surface or subsurface mineral products or natural resources. Typical uses are quarries, borrow pits, sand and gravel operation, mining, and soil mining. Specifically excluded from this use is grading and removal of dirt associated with an approved site plan or subdivision or excavations associated with, and for the improvement of, a bona fide agricultural use.	
Haines	18.20	Resource Extraction	A use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics.	See also: Industrial, heavy (18.20); commercial enterprise (18.70); domestic log milling (18.20). Commercial logging is a CU in Lutak, but not defined (18.70).
	14.34.065	Timber Sales	Sales shall be selective cut only, defined as: removal of mature timber, usually the oldest or largest trees, either as single scattered trees or in small groups at relatively short intervals, commonly five to 20 years, repeated indefinitely, by means of which the continuous establishment of natural reproduction is encouraged and an uneven-aged stand is maintained.	
	Comp Plan 7.3.5 & Goal 10	Resource Development	Harvest, extraction and adding value to the renewable and non-renewable resources in Haines Borough is a primary activity that brings money from outside the community into the local economy. Haines Borough is fortunate to have commercially viable salmon, timber and minerals all within its boundaries. Development of these resources must be done in a manner that protects the recreational and scenic values and places in the Borough upon which tourism, as well as quality of life, is based. The Borough's objective is to achieve responsible development, which is defined as complying with environmental regulations, ensuring fisheries resource and riparian zone protection, providing protection of salmon habitat and Bald Eagle Preserve resources, maintains scenic viewsheds, and buffers operations from adjacent land uses and activities. Location of sand, gravel and rock extraction sites shall be permitted in the following order of priority: a. Existing, approved upland sand and gravel pits; b. Reuse of sand and gravel from abandoned development areas, unless reuse would cause more environmental damage than non-use from the area; c. New upland sites approved for the purpose; and d. Streams that do not provide fish habitat. Where appropriate, couple sand and gravel extraction with salmon habitat improvement. Consolidate access to mineral exploration sites and mines with other access routes where feasible.	
Anchorage	21.05.060 B 6	Natural Resource Extraction	The development or extraction of organic and/or inorganic material from its natural occurrences on affected land. This use includes placer mining operations in which rock byproduct is removed from the premises. This use also includes commercial or industrial operations involving removal of timber, native vegetation, peat, muck, topsoil, fill, sand, gravel, rock, or any other mineral, and other operations having similar characteristics. This use includes only operations of a scale involving 50,000 cubic yards or more of material. Site preparation as part of the development of a subdivision under a subdivision agreement is not included.	
Juneau	49.80.120	Resource Extraction	An industrial use involving the removal of timber, native vegetation, peat, topsoil, fill, sand, gravel, rock, or any mineral and other operations having similar characteristics.	See also: Extraction Permit (49.65.200)

Community	Source	Term	Definition	Notes
Ketchikan	18.05.150 A	Resource Extraction	The extraction of commercially marketable natural resources for sale or trade.	See also: Intent, Provisions, and Duration of resource extraction as a conditional use (18.50.120).
	18.05.150 B	Natural Resource Processing	Activities by which extracted natural resources are refined to create a marketable product. In the case of rock, processing includes crushing, screening, and washing. Processing of timber includes trimming branches, bucking to length, and operations typically found in a sawmill. This does not include cutting nonmarketable timber into firewood, or processing other natural resources to be used for development on the property they came from.	
Sitka	22.08.630	Natural Resource Extraction	Commercial or industrial operations involving the removal of timber, native vegetation, peat, mulch, topsoil, fill, sand and gravel, rock or any operations having similar characteristics. Said use includes the use of heavy equipment such as loaders, dozers, backhoes and other equipment such as crushers.	See also: CU Requirements for (22.24.010-1).
Wrangell	20.40	Timber Management Zone	The timber management district is intended to provide for the management and harvest of timber, extraction of minerals, use and enjoyment of natural resources and recreation, while allowing for the development of compatible, remote, low density cabin sites.	See also: Portable Sawmills (20.08)
	20.54	Temporary Use Permits	The temporary use permit shall be for seasonal operations such as construction or timber harvest or temporary uses such as portable sawmill operations.	
Kenai	21.25.030	Sand and gravel or material site	Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.	
	21.29.010	Material Extraction Exempt from Permitting	Material extraction which disturbs an area of less than one acre that is not in a mapped flood plain or subject to 21.29.010(B), does not enter the water table, and does not cross property boundaries, does not require a permit. There will be no excavation within 20 feet of a right-of-way or within ten feet of a lot line. B. Material extraction taking place on dewatered bars within the confines of the Snow River and the streams within the Seward-Bear Creek Flood Service Area does not require a permit, however, operators subject to this exemption shall provide the planning department with the information required by KPB 21.29.030(A)(1), (2), (6), (7) and a current flood plain development permit prior to beginning operations. C. A prior existing use under KPB 21.29.120 does not require a material extraction permit, but a floodplain development permit is required for all activities within any mapped special flood hazard area.	
	21.29.020	Material Extraction Requiring a Permit	Counter permit. A counter permit is required for material extraction which disturbs no more than 2.5 cumulative acres and does not enter the water table. Counter permits are approved by the planning director, and are not subject to the notice requirements or planning commission approval of KPB 21.25.060. A counter permit is valid for a period of 12 months, with a possible 12-month extension. B. Conditional land use permit. A conditional land use permit (CLUP) is required for material extraction which disturbs more than 2.5 cumulative acres, or material extraction of any size that enters the water table. A CLUP is required for materials processing. A CLUP is valid for a period of five years. The provisions of KPB Chapter 21.25 are applicable to material site CLUPS and the provisions of KPB 21.25 and 21.29 are read in harmony. If there is a conflict between the provisions of KPB 21.25 and 21.29, the provisions of KPB 21.29 are controlling.	
Soldotna	17.10.340 B & C	Resource Extraction	The development or removal and use of a material source of wealth such as timber, fresh water, or a mineral deposit (i.e. gravel, oil and gas) that occurs in a natural state. A CU is required for 1) Commercial, non-reoccurring timber harvests; 2) Surface materials extraction (i.e. dirt and gravel) in a new subdivision for relocation within the same new subdivision tract; and 3) Surface materials extraction on an existing subdivision lot for relocation within the same lot.	See also: Entire section (17.10.340)
Skagway			<i>No definitions for resource extraction, sand and gravel pit, mining, or timber removal, but uses are permitted as CU in "residential conservation zone" (similar to Haines' General Use), but not in "residential low density zone"(riparian).</i>	Permitted as CU in "residential conservation zone", but not in "residential low density zone".

Haines Borough - Mud Bay Rural Residential Zone - Ownership - 2017





Memo

Borough Manager

Date: June 21, 2017

To: Haines Borough Planning Commission

Cc: Holly Smith

From: Debra Schnabel, Manager
Haines Borough

Re: Response to Attorney's memo of June 13, 2017 re: takings relating to resource extraction

Attached is the legal opinion offered by our Attorney in response to your questions raised by the May 23, 2017 correspondence from Baxter, Bruce & Sullivan and the June 2, 2017 correspondence from the University of Alaska addressing the issue of takings.

There are several key comments contained in the attorney's opinion that direct attention to the question at hand and ultimately, to its resolution. These are two that guide my thinking:

Page 5: "It is rare for a court to award just compensation to a property owner as a result of municipal zoning laws prohibiting resource extraction because such properties nearly always retain significant value."

Page 6: "The Commission must therefore consider what the goals of a resource extraction prohibition would be, and could further consider whether lesser measures (such as requiring a CUP instead of outright banning timber harvests) could also achieve those goals."

What the opinion does not address, and what seems basic to the question of how to define and manage resource extraction in the Mud Bay Planning/Zoning District is the nature and purpose of the subject zone: Rural Residential and intended to provide for "the establishment of a rural residential area allowing for single-family dwellings and cottage industries."

To my knowledge, no one is contesting the application of the zone. What is contested is the notion that if a land owner receives cash in payment for an extracted resource, that a prohibited (or an undefined) commercial transaction has occurred. I suggest that the Planning Commission turn positive attention to providing for those activities that support the development of the zone as intended and allow residents to manage their land. We must provide large-track landowners such as State Mental Health, the University of Alaska or Skookum Holdings LLC the ability to subdivide and develop their holdings as provided for in Title 18. This means providing ready process for clearing land to construct roads and easements for utilities. Likewise, residents should have ready process for clearing their property to accommodate a commercial enterprise or a cottage industry on their land, to remove threatening vegetation and otherwise reconfigure their land for improved drainage.

The Planning Commission has identified a need to address the issue of resource extraction in the Mud Bay district. The information provided by the attorneys is directive only in the sense of assuring you that restricting resource extraction is possible without compensation.

I offer the suggestion that the Planning Commission will serve the Mud Bay district and the entire borough more effectively if it directs its attention to the more over-riding need to define resource extraction as it applies to all borough zones.

The decision and appeal of the conditional use permit for resource extraction in Skyline (a mixed use zone) and the current interest in allowing resource extractive activities in Mud Bay (a rural residential zone) together illustrate the need for clarity in distinguishing those elements that define resource extraction as a commercial, industrial or personal use activity, or an environmentally protective or precautionary activity. The public has offered several ways in which this can be addressed: % of property, cubic yards of material, board footage or # of trees, etc.

Our Planner has researched the definitions of resource extraction adopted by several municipalities. It seems evident that defining the term is important to allow land owners to manage their land and lives within the provisions of the zoning classifications that are in effect.

I appreciate your addressing the definition and application of "resource extraction" as you consider these issues. The Planner's memo with various official definitions currently in use by other municipalities is attached for your review.


Thank You for your consideration.

BOYD, CHANDLER & FALCONER, LLP

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MEMORANDUM

TO: Haines Borough

FROM: Patrick W. Munson
Boyd, Chandler & Falconer, LLP
Borough Attorney 

RE: Potential takings issues related to prohibiting resource extraction in Mud Bay RRZ

DATE: June 13, 2017

This memo addresses whether a potential prohibition against resource extraction activities (specifically timber harvests) in the Mud Bay Planning/Zoning District Rural Residential Zone could constitute a “taking” requiring the Borough to pay just compensation to landowners. Such a prohibition would not, as a general rule, require the Borough to compensate all property owners. Compensation could be required as to certain individual properties (1) if, and only if, the prohibition precluded all economically feasible uses of the property (which is extremely unlikely); or (2) if, and to the extent that, the prohibition is deemed to interfere with property owners’ investment-backed expectations that they would be permitted to extract timber or other resources. We have not been asked to provide an opinion on whether any particular property would meet either of these standards and have not attempted to do so. Therefore, the information below should be considered advisory only, and not a definitive or comprehensive opinion regarding any particular property.

A. Background information

The Borough Planner provided a concise summary of the issue presented:

The borough was recently approached about application for selective logging in the Mud Bay Zoning District. In other zones, timber removal is a resource extraction use that requires the issuance of a conditional use permit. However, Haines Borough Code does not address resource extraction in Mud Bay nor does it prohibit the use. The use of 'commercial enterprise', which is a permitted conditional use, does not adequately address industrial effects that often accompany resource extraction as sited in HBC 18.60.020. Consequently, anyone who wishes to engage

in resource extraction activities, such as logging, mining, or sand and gravel pits, may do so without Borough approval or public notification.[¹]

The planning department recommends the Borough adopt code that either prohibits resource extraction in Mud Bay or allows it under the provisions of a conditional use permit. Additionally, it may be prudent to include the rural residential zones of Lutak Inlet and Mud Bay in the Zoning Use Chart in order to (1) examine other uses not mentioned by zoning district code 18.70.030; and (2) make the code more uniform in structure.

The Borough Planning Commission recently began considering both options. Several Mud Bay area property owners objected that prohibiting resource extraction and/or requiring a property owner to obtain a conditional use permit to extract resources from their private property would constitute a “taking” of private property for which the Borough would be required to provide just compensation. You asked our office to analyze *only* the question of whether a *complete prohibition* of resource extraction activities would require compensation of public or private property owners in the Mud Bay RRZ.

B. Does a complete ban on resource extraction constitute a taking *per se*?

Article 1, section 18 of the Alaska Constitution provides: “Private property shall not be taken or damaged for public use without just compensation.” This clause is to be interpreted liberally in favor of the property owner.² The Alaska Supreme Court has held that there are two classes of *per se* takings that, by definition, require payment of just compensation to private³

¹ Attorney note: We believe this conclusion is not quite so clear because a *commercial* timber extraction operation could very well qualify as a “commercial enterprise” for purposes of Title 18. That said, even if logging qualifies as a commercial enterprise, the Borough may certainly choose to clarify this and to regulate logging and other resource extraction activities specifically and separately from other “commercial enterprises” within the RRZ.

² *State v. Doyle*, 735 P.2d 733 (Alaska 1987).

³ Only a private landowner may bring a takings claim. Public entities, such as the University of Alaska, may have other remedies, but they cannot sue the Borough based on the theory that the Borough has taken or damaged their property interests. The Alaska Supreme Court reached that conclusion when it rejected the Alaska Railroad’s argument that it was entitled to just compensation based on land use regulations that severely impacted a quarry the Railroad formerly operated in Anchorage: “This argument is frivolous because the takings provisions of both the United States and Alaska constitutions protect only private property from takings. Since the land at issue here is owned by the Alaska Railroad Corporation, a state

landowners because the land is literally or effectively completely taken by the government: “(1) cases of physical invasion and (2) cases where a regulation denies a landowner of all economically feasible use of the property.”⁴ Therefore, the first question is whether a prohibition on resource extraction in a zoning area constitutes a physical invasion of land or deprives the owner of all economically feasible uses of the property.

Plainly a ban on resource extraction is not a “physical invasion” of land. Therefore, a ban can only be considered a *per se* taking if it would deny a landowner all economically feasible use of the property. Bare assertions that the property’s value is “destroyed” are not sufficient; the property owner would need to prove that the property has no economic value as a result of the new prohibition.⁵

A resource extraction prohibition would not, as a general rule, be likely to reduce to zero the economic value of properties within the RRZ. All or nearly all such properties would remain valuable for development of single family homes, commercial enterprises, cottage industries, lodges, certain public facilities, recreation and other permitted uses.⁶ Because all or nearly all properties within the RRZ would have economically feasible uses even if resource extraction were prohibited, such a prohibition would not constitute a taking *per se*. However, this conclusion would change if a property owner could demonstrate that resource extraction is the *only* economically feasible use for a particular property. This is an extremely high hurdle, and

agency, there is no takings issue.” *Alaska R.R. Corp. v. Native Village of Eklutna*, 43 P.3d 588, 597 (Alaska 2002).

⁴ *Balough v. Fairbanks N. Star Borough*, 995 P.2d 245, 265 (Alaska 2000) (emphasis added).

⁵ Some property owners have argued that the proposed ban would “destroy” a particular property’s value because it would change the economics, cash flow options, or plan for developing their properties. These types of impacts do not rise to the level of a taking *per se* because they do not, in fact, reduce the value of the property to effectively zero. Rather, at most, they arguably reduce the value by some percentage. Therefore, those impacts are properly analyzed using the *Sandberg* factors and do not constitute a taking *per se*.

⁶ *See Balough*, 995 P.2d at 266 (“While the BOA’s decision to deny Balough grandfather rights would terminate her right to use her property as a junkyard, the decision did leave her with economically feasible use of her property. Presumably, Balough could sell her property to someone who wishes to build a house on it, or use it in any other manner permitted in the RR zoning district.”); *Cannone v. Noey*, 867 P.2d 797, 801 (Alaska 1994) (stating that there was no *per se* taking because the parcel could have been sold or it could have been used for a different use).

one that is not likely to be met in any but the most unusual and extreme circumstances.

C. Does a complete ban on resource extraction unreasonably impact the economic use of particular properties such that compensation is required?

This is not the end of the inquiry, however, because a regulation may still qualify as a compensable taking even if it does not completely destroy the economic value of a property. A property owner may have a legally cognizable claim for a compensatory taking if a government action diminishes a property's value to such a degree and in such a manner that a court determines that the property owner is being forced to bear an unjust burden relative to the public interest being regulated. In such cases, courts must consider the following factors (known as the *Sandberg* factors) to determine whether an action constitutes a compensable taking: "(1) the character of the governmental action; (2) its economic impact; (3) its interference with reasonable investment-backed expectations; and (4) the legitimacy of the interest advanced by the regulation or land-use decision".⁷ A land use classification or regulation can, in some cases, qualify as a compensable taking if the impacts on a particular property satisfy the *Sandberg* factors.⁸

There is no single answer to the question of whether a resource extraction prohibition would entitle property owners within the Mud Bay RRZ to just compensation because the factors would apply to each property differently. However, we can provide general guidance regarding the way a court would apply each of these factors and the types of facts that would make a court more or less likely to award compensation to a property owner. We could offer more definitive assessments as to the risks with regard to particular properties as specific questions or facts arise.

The first factor is the character of the government action. Prohibiting resource extraction within a particular area is a legitimate government action.⁹ However, an outright ban is the most extreme form of regulating that particular activity. Consequently, a ban would be evaluated somewhat more critically than, for example, implementing a permitting system that allows extraction under certain regulated conditions (*e.g.*, a conditional use permit requirement). This

⁷ *Spinell Homes, Inc. v. Municipality of Anchorage*, 78 P.3d 692, 702 (Alaska 2003); *Anchorage v. Sandberg*, 861 P.2d 554, 558 (Alaska 1993).

⁸ *Homeward Bound, Inc. v. Anchorage School District*, 791 P.2d 610 (Alaska 1990); *Ehrlander*, 797 P.2d at 632-33.

⁹ See *Spendlove v. Anchorage Mun. Zoning Bd. of Examiners & Appeals*, 695 P.2d 1074 (Alaska 1985) (property owners properly enjoined from extracting resources); *Big Creek Lumber Co. v. County of Santa Cruz*, 136 P.3d 821, 835 (Cal. 2006) (county may prohibit logging in certain areas).

may be especially true where the resource to be extracted is timber located in a heavily forested area long-viewed as appropriate (or used) for timber harvest. Therefore, if it chose to enact a complete ban, the Borough would need to clearly state the reasons and policies supporting the ban and, perhaps, articulate why an outright ban is preferable to a permitting system.

The second factor to be considered is the economic impact on a particular property if resource extraction is prohibited. The most obvious measure of this factor is the difference between a property's fair market value before and after a resource extraction ban is implemented. A property owner would be more likely to be entitled to just compensation if she could demonstrate that her property is significantly less valuable *solely* as a result of a resource extraction ban. A property that is not suitable for construction of *any* non-resource based facilities (such as homes, cabins, or other development) would be the most likely to experience such impacts. A property that is only moderately less valuable as a result of the ban (because, for example, the amount of trees to be harvested was nominal¹⁰) would be less likely to qualify for just compensation because the actual economic impact is not as great. On the other hand, properties sometimes experience an increase in value as a result of such zoning changes. A property may be more valuable for residential development, for example, if potential buyers know that extractive industries are prohibited in the neighborhood.

This "valuation" factor is typically the most highly contested. Such cases tend to become a "battle of appraisers" that are not easily predicted or resolved. However, despite the difficulties of predicting individual cases, we should emphasize that it is rare for a court to award just compensation to a property owner as a result of municipal zoning laws prohibiting resource extraction because such properties nearly always retain significant value.¹¹ It is also not necessarily sufficient for a property owner to simply claim that the land is less valuable; if the property owner has never engaged in the resource extraction activity being prohibited, a court is less likely to find that just compensation is required because it is less likely the property owner

¹⁰ We note that this factor would be at issue in an analysis of the Skookum Holdings, LLC property because the LLC claims it only wants to "sell small amounts" of timber. This claim is not consistent with Skookum's further contention that prohibiting it from doing so would "effectively destroy[] the property's value."

¹¹ *Consolidated Rock Products Co. v. Los Angeles*, 370 P.2d 342, 351 (Cal. 1962) ("[M]any cases have been decided upholding the constitutionality of comprehensive zoning ordinances prohibiting the removal of natural products from lands in certain zones...."); *Zerbetz v. Municipality of Anchorage*, 856 P.2d 777, 782-783 n. 5 and accompanying text (Alaska 1993) (environmental regulations not a taking unless they deprive the owner of all economic advantages of ownership).

has actually suffered an economic loss.¹²

The third factor can be determinative in many cases, especially where the economic impacts of a regulation are otherwise open to a wide range of opinions. Where a property owner has made significant financial investment in a property based on the expectation that he or she will be able to use it for a particular, then-permitted purpose, the courts are more likely to find that a compensable taking has occurred. If, for example, a property owner in Mud Bay RRZ had constructed an expensive commercial scale timber mill on the property, a court would be more likely to conclude that prohibiting timber production on that property interfered with the property owner's reasonable, investment-backed expectation that he would be able to log the property in the future.

These "investment backed expectations" are to be distinguished from mere claims by the landowner that he or she intended to use the property for a certain purpose in the future. Bare assertions of intent are not typically persuasive in demonstrating that a taking has occurred. A court is more likely to be persuaded where a property owner can show that she has made financial investments based on the expectation of being allowed to carry out such an activity.

Finally, the courts will consider whether the interest advanced by the regulation or land-use decision is legitimate. The court's goal would primarily be to prevent arbitrary action that impacts private property owners without advancing a worthwhile public purpose. The Commission must therefore consider what the goals of a resource extraction prohibition would be, and could further consider whether lesser measures (such as requiring a CUP instead of outright banning timber harvests) could also achieve those goals.¹³ The court would likely defer to the Commission/Assembly's decision in that regard as long as both bodies articulated clear reasons why a resource extraction prohibition was appropriate for the RRZ.

In summary, a prohibition against resource extraction in the Mud Bay RRZ would not constitute a wholesale taking of property "across the board." It is possible, however, that such a prohibition could be deemed confiscatory as to individual properties if, and only to the extent that, such a prohibition unreasonably interferes with an owner's economic use of the property.

¹² See *Zerbetz*, 856 P.2d at 783 ("[C]onclusory statements...that government regulations always affect marketability, and...that 'various resource management agencies' wanted the central Klatt Bog area to remain undeveloped, do not prove that the Municipality would reject an RSB plat application....").

¹³ In particular, the Assembly would want to articulate why a ban would be appropriate in the Mud Bay RRZ despite such activities being permitted in other areas, such as the Townsite RRZ.

Because we believe most property owners will not be able to prove significant harm to investment backed expectations, we believe the risk to the Borough of banning timber removal is fairly low. However, if a taking was found, the amount of just compensation ordered could be significant. A less restrictive regulation, such as establishing conditional use permit requirements for resource extraction operations in the RRZ, would pose even less risk of being deemed a taking, but would not change the potential amount of just compensation in the event a taking was found.

Holly Smith

To: Rob Goldberg
Subject: RE: Resource extraction workshop summary

----- Forwarded Message -----

From: Rob Goldberg <artstudioalaska@yahoo.com>
To: Holly Smith <hsmith@haines.ak.us>; Debra Schnabel <dschnabel@haines.ak.us>; Jan Hill <jhill@haines.ak.us>
Sent: Wednesday, August 2, 2017, 10:54:47 PM AKDT
Subject: Resource extraction workshop summary

Hi All,

Commissioners Goldberg, Josephson, Turner, Stephens, and Giese attended, as well as Borough Attorney Brooks Chandler and six members of the public. After much discussion these ideas for code changes seemed to gain approval from most or all in attendance:

Add to the definition of Resource Extraction in 18.20 -

1. The concept is to state a quantity of material removed for commercial purposes, below which would not be considered to be resource extraction. For example, we could say, "The removal from a property in a one year period, for commercial purposes, of an amount below X cubic yards of material or X board feet of timber is not considered resource extraction." Some numbers were given as examples at the workshop, but nothing was agreed upon. The determination of an amount will take careful consideration. The owners of small lots will want the threshold to be a small number, and the owners of large tracts of land will want a higher number. Perhaps the amount of material allowed to be removed could vary with the size of the property.

2. The concept is to allow owners of large properties to remove material from platted rights-of-way when developing a subdivision without it being considered resource extraction. For example, we could say, "The removal, for commercial purposes, of timber, topsoil, rock, gravel, or other resources for the purpose of clearing rights-of-way for roads and utilities in a platted subdivision shall not be considered resource extraction." There was some discussion of having this be an accessory use in the Mud Bay portion of the code, but it really is a borough-wide issue, and it can be addressed as such in the definition section 18.20.

Add to the Mud Bay section of the code 18.70.030 B.3.h:

Prohibited Uses

"All uses not expressly provided under permitted, accessory or conditional uses are prohibited."

This sentence appears in the Lutak section of the code. Adding it to the Mud Bay section will add clarity to what is allowed and what isn't. With the addition of this sentence it will be easy to add Mud Bay and Lutak to the Zoning Use chart.

Thanks,

Rob

Rob Goldberg and Donna Catotti
Catotti and Goldberg Art Studio
PO Box 1154 Haines, AK 99827 USA
907-766-2707
artstudioalaska.com

HAINES BOROUGH, ALASKA
ORDINANCE No. 17-xx-xxx

Draft

An Ordinance of the Haines Borough amending Haines Borough Code Title 18 to create a new definition for “resource extraction”.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Title 18: Definitions for “Vacation Rental” in Haines Borough Code is hereby amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

18.20.020: Definitions – Regulatory.

~~“Resource extraction” means a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics a~~
primary land use involving the removal of any naturally occurring material. If the removal of a naturally occurring material is the result of a primary land use, such as property development, the removal of the naturally occurring material is a secondary land use and is not considered resource extraction.

If the Haines Borough is unable to determine whether the removal of a naturally occurring material is the result of a primary or secondary land use, and resource extraction is not a use by right, the property owner is required to submit a land development plan for review by the planning commission. The planning commission will determine whether the removal of a naturally occurring material is a primary or secondary land use. If a property owner deviates from an approved land development plan without approval from the planning commission, removal of a naturally occurring material will be considered resource extraction.

“Land development plan” means a written explanation of the property owner’s intended use of the property. The land development plan must explain the primary land use, all secondary land uses, timeline, and the methods to be employed in order to achieve the land development plan. A land development plan is only required to determine if the removal of a naturally occurring material is considered resource extraction. A land development plan must be reviewed by the planning commission for the sole purpose of determining if the removal of a naturally occurring material is resource extraction.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2017.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: _/_/_/
Date of First Public Hearing: _/_/_/
Date of Second Public Hearing: _/_/_/

HAINES BOROUGH, ALASKA
ORDINANCE No. 17-xx-xxx

Draft

An Ordinance of the Haines Borough amending Haines Borough Code Title 18 to create a new definition for "resource extraction".

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Title 18: Definitions for "Vacation Rental" in Haines Borough Code is hereby amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
STRIKETHROUGH ITEMS ARE DELETED

18.20.020: Definitions – Regulatory.

~~"Resource extraction" means a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics~~ **the excavation of mineral or soil-based materials including, but not limited to rock, gravel, sand, clay, topsoil, and peat and the transport of those materials off of their property of origin. Exemption: Amounts below 500 cubic yards per lot per year.**

~~---~~

"Commercial timber harvest" or "commercial logging" means the cutting and removal of trees for the purpose of sale. Exemptions: 1. Logging for the purpose of clearing easements for roads, driveways or utilities. 2. Amounts below 40,000 board feet (16 logging truck loads) per lot per year."

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2017.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: _/_/_
Date of First Public Hearing: _/_/_
Date of Second Public Hearing: _/_/_

18.70.030 Zoning districts – Zones.

The borough is hereby divided into the following zoning districts and zones. These districts and zones are depicted on the official borough zoning map.

A. Townsite Planning/Zoning District. The townsite planning/zoning district is defined as that area known as the townsite service area.

...

B. Mud Bay Planning/Zoning District.

1. Intent. The intent of this district is to preserve the existing zoning provisions of the former land use service area No. 1 (Mud Bay) and for the people of the Mud Bay community to preserve their lifestyle, community scale, self-sufficiency, self-determination, and the basic rights of health, safety and welfare. This is in accordance with the goals and objectives of the former Mud Bay land use service area board which were developed from the Haines Borough comprehensive plan.

2. Applicability. This district shall be defined as:

Beginning at the NW corner of Section 14, T31S, R59E, CRM; thence due south to SW corner of Section 26, T31S, R59E CRM; thence southeast to SW corner of Section 21, T32S, R60E CRM; thence due east to SE corner of Section 21, T32S, R60E CRM; thence northeast to NE corner of Section 22, T32S, R60E CRM; thence north-northwest to NE corner of Section 17, T31S, R60E CRM; thence due west to the point of beginning. This describes an area of the Chilkat Peninsula from the southern edge of the Carr's Cove Subdivision to Seduction Point, and including Kochu Island.

3. Rural Residential Zone (MBRR).

a. Purpose. This zone is intended to provide for the establishment of a rural residential area allowing for single-family dwellings and cottage industries.

b. Applicability. This zone shall encompass all lands within the Mud Bay planning/zoning district with the exception of the cannery zone.

c. Uses-by-Right.

(1) One single-family dwelling shall be allowed on a lot no less than three acres in area, or on any smaller lot which existed prior to the implementation of any land use ordinances.

(2) Any development which existed prior to the implementation of any land use ordinances.

d. Accessory Uses. Accessory uses in the rural residential zone are:

(1) Accessory buildings;

(2) Cottage industries;

(3) Guest house.

e. Conditional Uses. Conditional uses in the rural residential zone are:

(1) Public parks, public recreation sites, and nonprofit camps;

(2) Schools;

(3) Fire stations;

(4) Lodges;

(5) Commercial or public radio and television transmitters and towers;

(6) Public utility facilities;

(7) Commercial Enterprise. "Commercial enterprise" means any commercial, manufacturing, sale or service that occurs on a person's private property. A commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the property and with up to six additional employees at any one time. Terms of a conditional use permit for commercial enterprise shall eliminate or mitigate adverse effects to air quality, noise, traffic, parking, waste and sewage, signs, lighting and burdens on any community utilities and resources that may result from such commercial enterprise;

(8) Cemetery;

(9) Vacation rentals.

f. Lot Standards. The minimum lot size in the rural residential zone for newly developed lots shall be three acres;

g. Setback Standards.

(1) Structures shall be located no less than 25 feet from the nearest lot line, and right-of-way line, with Chilkat State Park Road being exempt from the right-of-way setbacks.

(2) Structures shall be located no less than 25 feet, measured from the top of the nearest stream bank, from any stream or watercourse used to provide domestic water, and from all anadromous fish streams.

h. Prohibited Uses.

(1) Heliports.

4. Cannery Zone (CA).

a. Purpose. This zone is intended to create a commercial area for the provision of support functions for the Haines fishing fleet.

b. Applicability. This zoning shall apply to the area as described: Lot 2, SEC 24, T31S, R59E, CRM, lot 3, SEC 19, T31S, R59E, CRM; ATS 192, Tracts A and B; TL-1902, SEC 19, T31S, R59E, CRM.

c. Permitted Uses. Permitted uses in the cannery zone (commercial) are:

(1) Moorage;

(2) Boat and gear storage and maintenance;

(3) Retail sale of petroleum products and miscellaneous fishing supplies;

(4) All residential uses which must be consistent with the provisions permitted within the rural residential zone;

(5) Any use existing prior to the implementation of any land use ordinances.

d. Accessory uses. Accessory uses and buildings shall be consistent with the rural residential zone standards previously stated in this code.

e. Conditional uses. There are no conditional uses in the cannery zone.

f. Prohibited Uses.

(1) Heliports.

C. Lutak Inlet Planning/Zoning District.

1. Intent. The intent of this district is to protect and maintain the water quality, waterfront and watershed of Lutak Inlet and the Chilkoot River system while encouraging a rural lifestyle that includes cottage industry. In addition, there is a desire to maintain the natural environment and its associated fisheries and wildlife by ensuring orderly growth and sensible land use.

2. District Defined. This district is defined as follows:

Beginning at the N.E. Corner of Section 16, Township 30 South, Range 59 East, C.R.M.; thence southwesterly to the summit of Tukagahgo Mt.; thence northwesterly to the summit of Mt. Kashagnak; thence northwesterly to the summit of Klutshah Mt.; thence due East on a straight line to the highest point on the ridge line between the Chilkoot River drainage and the area drained by the Ferebee River; thence in a southeasterly direction from high point to high point along said ridge line to Sanka Point on the West side of Taiyasanka Harbor; thence southwesterly to the N.E. Corner of Borough-owned tidelands off the Lutak Dock; thence in a southwesterly direction along the Townsite Service Area limits to the true point of beginning.

3. Rural Residential Zone.

a. Purpose. This zone is intended to provide for the establishment of a rural residential area allowing for one single-family dwelling per lot and cottage industries.

b. Applicability. This zone applies to all lands within Lutak Inlet land use planning and zoning district excluding those within the riparian zone.

c. Uses-by-Right. Permitted uses are those uses which are allowed outright within a particular zone. In the residential zone those uses are:

- (1) One single-family dwelling per lot;
- (2) Guest houses;
- (3) Cottage industry;
- (4) Domestic log milling (milling for personal use).

d. Accessory Uses. Accessory uses are those uses which are incidental to the permitted use. In the residential zone, accessory uses include but are not limited to:

- (1) Wood sheds, greenhouses, smokehouses, tool sheds, steam baths, saunas, workshops and garages, provided they are within the required setbacks;
- (2) Chicken coops, rabbit hutches, barns, and other structures and enclosures for housing animals and fowl, provided they are within the required setbacks;

e. Conditional Uses. Conditional uses in the rural residential zone are:

- (1) Churches;
- (2) Schools;
- (3) Lodging houses;
- (4) Public parks and recreation sites;
- (5) Public utility facilities;
- (6) Fire stations;

- (7) Community halls;
 - (8) Governmental buildings;
 - (9) Rentals, sales, and professional services;
 - (10) Fish hatchery;
 - (11) Commercial agriculture;
 - (12) Commercial logging;
 - (13) Campgrounds; provided, that:
 - (a) A 50-foot greenbelt separates the campsites from any public road right-of-way and a 20-foot greenbelt separates the campsites from any perimeter property lines; and
 - (b) The campground is at least one-half mile from existing houses or land subdivided for residential purposes at the time of the application for a conditional use permit; and
 - (c) The campground provides facilities for solid waste disposal (e.g., bear-proof dumpsters); and
 - (d) Complies with all Department of Environmental Conservation sanitation requirements contained in 18 AAC 30; and
 - (e) The campground has a maximum average density of six individual campsites per commercially developed acre, a minimum distance from center to center of adjacent sites of 75 feet and a maximum of 60 sites overall;
 - (14) Cemetery;
 - (15) Vacation rentals.
- f. Prohibited Uses Designated. All uses not expressly provided under permitted, accessory or conditional uses are prohibited.
- g. Lot Standards. The minimum lot size in the rural residential zone shall be three acres. The minimum lot width shall be 200 feet.
- h. Building Setback Standards. Structures shall be located no closer than 10 feet from all property lines except for properties located along the Lutak Spur road (from the Chilkoot River bridge to the end of the road) where there will be no minimum setback along the road front right-of-way. Setbacks will apply for all other property lines along the Lutak Spur road.
- i. Building Height Standards. The building height standard is 35 feet maximum height from the plane of the mean building grade.
- j. Sign Standards.
- (1) Signs permanently affixed to structures shall not exceed 32 square feet.
 - (2) Permanent signs not affixed to a structure shall not exceed 16 square feet.
 - (3) Only nonelectrified signs will be permitted.
 - (4) Temporary signs shall be removed within 10 days after the date of sale or the event or condition advertised. Temporary signs shall not exceed 16 square feet per side.

k. Recreational Vehicle (RV) Parking. Recreational vehicles are not to be used as permanent dwellings, such as a single-family dwelling, and may not be inhabited on the lot more than four months annually. Parking will be limited to three RVs per lot. Commercial RV parks are prohibited.

l. Noise Standards.

(1) Heavy equipment operation, other than for house maintenance, building construction, or emergencies, is limited to the hours of 8:00 a.m. to 5:00 p.m., seven days a week with a maximum of seven consecutive days of operation.

(2) All generators used for permanent power must be muffled, enclosed and owners must employ noise reduction measures (a pamphlet describing such measures will be available from the manager). Generators used for construction purposes or emergencies are exempt. It is not the intent of this chapter to place an onerous burden on any property owner but to try to control noise pollution from power generators for the benefit of all within the zone.

4. Riparian Zone (RI).

a. Purpose. This zone is intended to provide for the protection of waterfront property.

b. Applicability. The riparian zone applies to all land from mean high tide to the 21-foot high tide level and 15 feet landward therefrom and/or 15 feet from the vegetated banks of streams or lakes.

c. Permitted Uses. The only permitted use will be water intake structures for domestic water use.

d. Accessory Uses. Accessory uses in the riparian zone are:

- (1) Saunas;
- (2) Cisterns;
- (3) Hot tubs;
- (4) Spring houses.

e. Conditional Uses. Conditional uses in the riparian zone are:

- (1) Hydropower units;
- (2) Parks;
- (3) Fish hatcheries;
- (4) Docks;
- (5) Boat launching facilities;
- (6) Bridges;
- (7) Roads and trails;
- (8) Cottage industries;
- (9) Commercial water intakes.

f. Prohibited Uses Designated. All uses not expressly provided under permitted, accessory or conditional uses are prohibited.

D. GU – General Use Planning/Zoning District.

1. Intent. Recognizing the borough regions with no previous land use regulation and the need to provide a reasonable transition toward land use regulation, the general use planning/zoning district is intended to allow as broad a range of land uses as possible. This district allows any use, but requires a conditional use permit for high impact uses.

2. Uses-by-Right.

- a. Existing uses;
- b. Animal husbandry or crop production;
- c. Residential uses, including duplex and multifamily dwellings, subdivisions, trailers, mobile homes and mobile home parks;
- d. Retail and wholesale commercial businesses;
- e. Vehicle, engine or boat repair shops;
- f. Hotels, motels, bed and breakfasts or other commercial accommodations;
- g. Office buildings, including medical and dental offices;
- h. Recreational vehicle parks;
- i. Parks and campgrounds;
- j. Utility facilities and structures;
- k. Light and heavy industrial uses;
- l. Resource extraction;
- m. Sawmills;
- n. Manufacturing, processing and storage facilities;
- o. Docks, marinas, piers, boat ramps and freight or bulk transshipment facilities;
- p. All other uses not specifically listed above, and any use or structure, which is customarily accessory and clearly subordinate to uses-by-right.

3. Prohibited Uses. There are no prohibited uses in this district.

4. Nonconforming Uses. There are no nonconforming uses in this district.

5. Conditional Uses. Landfills, commercial power plants, cemeteries, heliports, and hazardous materials storage facilities require a conditional use permit.

Applications for conditional use permits in the general use zoning district shall be submitted and processed in accordance with Chapter 18.50 HBC, and definitions under HBC 18.20.020 shall apply. (Ord. 13-10-354 § 4; Ord. 13-09-349 §§ 5, 6; Ord. 11-04-262 § 4; Ord. 11-02-257 § 4; Ord. 07-04-153; Ord. 05-05-106; Ord. 04-06-060)

18.70.040 Zoning use chart.

The following chart summarizes the uses allowed and the standards of review for each use, townsite planning/zoning district and the zones therein. In the commercial and industrial zones, more than one building housing a permissible principal use may be developed on a single lot; provided, that each building and use shall comply with all applicable requirements of this title. Additional requirements may be applicable to developments within some zones. See the definitions in Chapter 18.20 HBC for descriptions of each use.

**ZONING USE CHART
 TOWNSITE PLANNING/ZONING DISTRICT**

UBR = Use-By-Right CU = Conditional Use NA = Not Allowed GFA = Gross Floor Area

[Shaded Box] = Permit Required

[White Box] = Permit Not Required

Under General Classification, uses in UPPER CASE are primary and uses in lower case are secondary.

GENERAL CLASSIFICATION ➔	INDUSTRIAL USES			COMMERCIAL/ Residential Uses			RESIDENTIAL USES ONLY	RESIDENTIAL/ Commercial Uses				REC
	Heavy Industrial	Light Industrial/ Commercial	Waterfront Industrial	Commercial	Waterfront	Significant Structures Area	Single Residential	Multiple Residential	Rural Residential	Rural Mixed Use	Multiple Use	Rec
USES ⬇	I/H	I/L/C	I/W	C	W	SSA	SR	MR	RR	RMU	MU	REC
Combination R/L/C	CU	UBR	CU	UBR	CU	UBR	NA	NA	NA	UBR	UBR	NA
Commercial, Light – Less than 500 sf	CU	UBR	CU	UBR	UBR	UBR	NA	CU	UBR	UBR	UBR	NA
Commercial, Medium – 500 – 5,000 sf	CU	UBR	CU	UBR	CU	CU	NA	NA	CU	CU	UBR	NA
Commercial, Major – More than 5,000 sf	UBR	UBR	UBR	UBR	CU	CU	NA	NA	NA	NA	UBR	NA
Industrial, Heavy	UBR	CU	UBR	CU	NA	NA	NA	NA	NA	CU	UBR	NA
Industrial, Light	CU	UBR	CU	CU	CU	NA	NA	NA	NA	CU	UBR	NA
Junk Yard	UBR	UBR	NA	CU	NA	NA	NA	NA	NA	CU	UBR	NA
Landfill	UBR	UBR	NA	CU	NA	NA	NA	NA	NA	CU	UBR	NA
Resource Extraction/ Proc.	UBR	CU	CU	CU	NA	NA	NA	NA	CU	CU	UBR	NA
Commercial Logging												

RESOURCE EXTRACTION SCENARIOS SURVEY

Planning Commission Chair Rob Goldberg created the following survey in order to enhance the discussion of Resource Extraction definitions. A copy of this survey will be included in your agenda packets for the December 14th planning commission meeting.

Contact Haines Borough Planner Holly Smith at hsmith@haines.ak.us or at (907) 766-4611 for more information.

For each of the following scenarios please answer **yes** or **no** to the question: ***Is this resource extraction?***

TREE CUTTING	Yes	No
A property owner clears a spot for a garage and sells three large logs to local woodworkers.	<input type="checkbox"/>	<input type="checkbox"/>
A person buys a three acre lot and clears two acres for their house and garden. The trees are sold to a local logger for saw logs and firewood.	<input type="checkbox"/>	<input type="checkbox"/>
A five acre lot is sold. The new owners clear cut the lot and sell the trees as saw logs and firewood.	<input type="checkbox"/>	<input type="checkbox"/>
A couple resides on a 20 acre parcel. Every ten years they have a logger come in and selectively cut 10,000 board feet to sell to a local sawmill.	<input type="checkbox"/>	<input type="checkbox"/>
A person owns a 50 acre parcel but does not live there. The property is undeveloped. Every ten years they have a logger come in and selectively cut 50,000 board feet of logs to be sold to a local sawmill.	<input type="checkbox"/>	<input type="checkbox"/>
A residential subdivision is planned for a 30 acre parcel. The lots are all surveyed and platted, and the subdivision is permitted. All the road rights of way are then cleared and the trees are sold to help the developer pay for the subdivision.	<input type="checkbox"/>	<input type="checkbox"/>
A privately owned 150 acre parcel is selectively logged of all its trees big enough to be saw logs. On average, each acre has 6000 board feet of saw logs, for a total of 900,000 board feet on the property. The property is then prepared to be a residential subdivision, and all the remaining trees in the road rights of way are cut and sold for firewood.	<input type="checkbox"/>	<input type="checkbox"/>
A timber sale is offered on Federal, State, Borough, University or Mental Health Trust land.	<input type="checkbox"/>	<input type="checkbox"/>
EARTHWORK	Yes	No
Residents have a gravel deposit on their property. They allow friends and neighbors to take pickup truck loads for free.	<input type="checkbox"/>	<input type="checkbox"/>
A property has an occupied residence on it. There is also an established gravel pit there. The property owners allow large, 10 yard trucks to haul gravel off site for free. The number of trucks coming and going is high enough that neighbors have complained to the Borough.	<input type="checkbox"/>	<input type="checkbox"/>
The same scenario as above, but there is no residence on the property.	<input type="checkbox"/>	<input type="checkbox"/>
A construction company owns a gravel pit and sells rock, gravel and sand for their projects.	<input type="checkbox"/>	<input type="checkbox"/>
In developing a building site for a customer, a contractor removes 50 truckloads of clay, which are discarded off site, and 20 loads of topsoil, which are trucked off site and resold.	<input type="checkbox"/>	<input type="checkbox"/>
In developing a subdivision, a contractor establishes a gravel pit and uses the material on site for roads and building pads.	<input type="checkbox"/>	<input type="checkbox"/>
A construction company excavates and moves rock, sand and gravel from a property it owns to a job site across town.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 10 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>

EARTHWORK CONT . . .	Yes	No
The amount is 100 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 1,000 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 3,000 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
A construction company excavates and moves rock, sand and gravel from a property it owns to a job site across town.		
The amount is 10 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 100 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 1,000 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
The amount is 3,000 truckloads a year.	<input type="checkbox"/>	<input type="checkbox"/>
A construction company operates a large gravel pit with many trucks and other pieces of machinery. The owner lives on the property.	<input type="checkbox"/>	<input type="checkbox"/>
A quarry is developed on a property. Rock is blasted and removed from the site for a road project. Although the area is rural, the neighbors are affected by the noise.	<input type="checkbox"/>	<input type="checkbox"/>
A mine is developed on state land. Large trucks move ore from the mine site to tidewater, where it is loaded onto ships.	<input type="checkbox"/>	<input type="checkbox"/>

From: [jeromey bell](#)
To: [Holly Smith](#)
Subject: mud bay resource extraction
Date: Sunday, April 30, 2017 9:35:23 AM

Hi Holly,

I'm writing in response to the recent inquiry for the selective logging permit in Mud Bay. I am a resident in the area and have chosen that location because it is free of logging and seems to be protected from just this type of "resource extraction" for personal gain. I am opposed to this type of commercial enterprise and would like it noted in the public hearing on May 11th. Please do not amend the current code to appease this land owner. It is in direct conflict with the preservation of rural residential lifestyle sought by many in the mud bay area.

Thank you,
Jeromey Bell
Mud Bay resident

Holly Smith

From: Mark Busby [mbusbyexplor@gmail.com]
Sent: Tuesday, April 25, 2017 11:58 AM
To: Holly Smith
Subject: Mud Bay logging

Hello Holly,

As property owners of lot #30 in the Letnikof subdivision interested in preserving the rural residential zoning atmosphere, please take into consideration our strong opposition to any commercial activity/ uses in the Mud Bay area. This includes logging activities for commercial purposes. While we understand that the proposed activity is minimal, it would set a precedent that commercial land uses are allowed, thus changing the environment intended in rural zoned areas. This also brings uncertainty to area land uses which potentially has a negative impact on any residential rural zoned areas property values where residents and perspectives buyers are looking for assurances of a natural peaceful home setting.

Thank you for the opportunity to comment,

Mark and Bridget Busby

Holly Smith

From: jecarlson [jecarlson@aptalaska.net]
Sent: Wednesday, May 03, 2017 1:27 PM
To: Holly Smith
Subject: Resource extraction

One reason I own land is to be able to use the trees in my business. I make cabinets, furniture, and other wooden items mostly from local wood. I have 2000 board ft. of Mud Bay lumber now in stock, and need more. If I couldn't buy trees from private property owners, and I went out of business, would the Borough compensate me and my employees for the loss of income? If you're going to forbid people to sell their resources from their own land they need to be compensated.

John Carlson

Holly Smith

From: Laurie Dadourian [laurdado@gmail.com]
Sent: Thursday, May 04, 2017 1:22 PM
To: Holly Smith
Subject: Mud Bay Resource Extraction

Dear Holly and Planning Commissioners

I am responding to a letter I received from Rob Goldberg regarding resource extraction in Mud Bay. I strongly feel resource extraction is not compatible with the intent of the Mud Bay Land Use Service Area. I recommend we prohibit resource extraction in any manner in Mud Bay.

Thank you,

Laurei Dadourian
6.5 Mile Mud Bay Road

Holly Smith

From: Drew Degen [drewdegen1@gmail.com]
Sent: Saturday, April 22, 2017 1:17 PM
To: Holly Smith
Subject: HBC 18.70.30

Dear Ms. Smith;

We have lived at Mud Bay for twenty-three years. We *specifically* chose Mud Bay for its declared "rural residential" classification and feel anything that imperils that designation must not be allowed.

We have watched with trepidation as Ken Searight was permitted a private helipad on his property that was extremely noisy and dangerous. We felt this "conditional use permit" was way out of line with the intent of the vast majority of residents. More recently, we were concerned that our immediate neighbor, Tim Ackerman, while excavating the pad for his home had dug so deeply into the hillside that there was a danger of destabilizing the whole rock face (and in fact, he spent several years and considerable money constructing retaining barriers and drainage channels before the hillside stabilized).

The point being: while, to date, the Planning Commission and applicable laws have done a reasonable job of protecting the chosen lifestyles of the residents (minus Searight), large scale "resource extraction" must absolutely continue to be prohibited and even "small scale" resource extraction is fraught with unknowns. Personally, we would feel more comfortable with a Lutak-style approach, but a Planning Commission approval process could continue to work *if* conditional uses are *very* carefully scrutinized and Commission members are scrupulously aware of the potentialities.

Specifically, regarding the "selective logging" desired by a resident, the issue for us is not so much that it is commercial, but rather what are the environmental impacts on nearby neighbors. For instance, when Peter Entiknap put in his driveway at Leitnikof Estates, no one foresaw that it would form a wind tunnel that subsequently created a massive blow-down swath on Mark Sogge's adjacent land. It is this type of difficult predictive effect that must be considered before a resident "selectively logs" for "commercial" reasons. Merely "quantifying" resources that could be extracted (one of the options apparently being considered) is not a guarantee that the repercussions will be either predictable or acceptable. One size does not serve all.

Ironically, while Mud Bay (and really all of Alaska) *looks* rough and formidable, the reality is that, because of extreme and gusty wind patterns, heavy rain and snow, frost heaving, clay layers underlying broken rock, very thin soil with shallow, horizontal tree roots lacking a tap root - and a host of other specific site imponderables, any given property is quite fragile - directly in proportion to the extent of the intrusion (the issue of "scale" that you mention).

Obviously, home builders and property owners have a right and a necessity to alter elements of their property. But prudence, experience, land-use knowledge, thoughtfulness, consideration of impacts on adjacent sites, needs to be the foundational structure upon which *any* regulations are promulgated. The "Mud Bay Code" is and remains such a fundamentally sound starting point. So... we would prefer no commercial development beyond what that code currently specifies and, whether by *careful* Planning Commission judgment or Lutak-like outright prohibition, "commercial" development and "resource extraction" are incompatible to our established community and should remain so. We are tired of seeing impulsive city landowners clearcut their property right up to the property line and then decide Haines is not for them after all and move out - leaving a wasteland of three hundred year-old tree slash and do not want anything like it to spread and infect our incomparably beautiful neighborhood.

Sincerely;

Andrew Degen & Sandra June-Degen

Holly Smith

From: george figdor [figdor@aptalaska.net]
Sent: Friday, May 05, 2017 10:51 AM
To: Holly Smith
Subject: PC comments

holly,

please include the following comments regarding resource extraction within the MB zone in the PC meeting packet:

I want comment specifically on the harvesting of timber within the Mud Bay planning area. The primary intent of the our zone has always been to manage the area as rural residential and that all allowable development within the area first and foremost complies with the desire of residents to preserve the rural character of the neighborhood.

More than any other feature now, it is the trees---as well as the lot size--that enables this, particularly because we are just a few miles from town. Removing a significant amount of the woods would quickly change the character to that of a suburban neighborhood. (Of course, there has never been any objection to necessary cutting of trees for building, gardening and other such purposes.)

In the past, the paving of the road and the extension of the power grid has made it more challenging to maintain the rural feeling. So. really, it's now the greenery that does that. And this rural value serves not only the local residents, but the entire community as well. People from town enjoy being able to take the short ride out into the country that is still possible by driving out Mud Bay Road. In most places the woods provide a buffer between the road and the houses (a valuable greenbelt). The woods also provide sanctuary for some of the wildlife that inhabit our region.

George Figdor

Holly Smith

From: Bill Finlay [kochucove@yahoo.com]
Sent: Saturday, April 22, 2017 9:44 AM
To: Holly Smith
Subject: Input on Mud Bay Resource Extraction

In regards to the issues brought up in the letter from Rob Goldberg dated April 17:

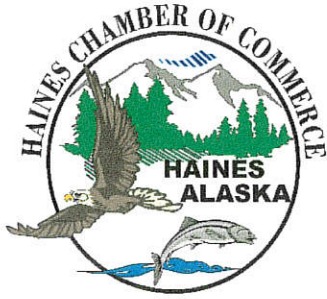
I feel that clearing any trees from a residential-sized lot should be a protected right that is entirely up to the landowner, with adherence to any setbacks required by existing State or Federal law (for example setbacks from stream banks). In other words, if someone owns relatively small acreage - perhaps under 10 acres - and they want to clear it of all vegetation, that is their right. They should also have the right to use or sell the timber as they wish. There are many good reasons for a homeowner to cut trees - driveways, preparing a building site, landscaping, fire suppression, opening lawn or garden space, firewood, lumber, or converting them to cash. We should not place arbitrary limits on tree removal from a residential lot.

Larger tracts of undivided land should be treated differently. I think it is reasonable to put clear limits on commercial-scale logging of large acreage tracts that exist in the Mud Bay Rural Residential zone. At the very least this should require a conditional use permit. However, this idea may run into legal limits for properties owned by University of Alaska or Alaska Mental Health Trust - which are specifically managed to maximize benefit to those entities.

Likewise, the extraction of soil, sand, gravel or rock material for the purposes of landscaping a residential lot should be a protected right.

However, large scale commercial extraction of these mineral resources should either be limited in scope by a conditional use permit, or prohibited. For example, I do not think that a large-scale commercial gravel pit would be a compatible use in a residential zone.

Thank you,
Bill Finlay



Haines Chamber of Commerce

"Working Together to Build Business & Community"

219 Main Street, Suite 14

PO Box 1449 · Haines, AK 99827

907-766-2202

chamber@haineschamber.org · www.haineschamber.org

May 3, 2017

Holly Smith, Borough Planner
Haines Borough
PO Box 1209
Haines, AK 99827

Re: Resource Extraction

Planning Commissioner Rob Goldberg has requested input on code language to clarify under what conditions "resource extraction" might be permitted in the Mud Bay Land Use Service District.

We are writing to request that the Planning Commission broaden the discussion to include clarification of "resource extraction" to allow the activity as a use-by-right or conditional within all zones of the borough. As Rob Goldberg suggests in his letter of April 17, "resource extraction" has a codified definition that, without some qualification as to area, volume or duration, precludes low-impact, small-scale, intermittent or incidental commercial operation that may benefit private land owners and thereby, the community.

The Chamber urges any effort to amend code with clarifying language that eases the public's ability to understand and comply with code.

Sincerely,

John Hagen, President

Copy: Rob Goldberg, Commissioner
Julie Cozzi, Haines Borough Clerk

Holly Smith

From: Ed Hays [hays6780257@yahoo.com]
Sent: Wednesday, April 19, 2017 11:27 AM
To: Holly Smith
Subject: Mud Bay Portion of Haines Borough Code

Hi Holly,

I'm a resident of Mud Bay Rd. After receiving the letter from Rob Goldberg I would like to give my opinion on amending the Mud Bay portion of the code: I don't favor unlimited resource extraction, but I favor allowing resource extraction with a conditional use permit. Or I would also be in favor of quantifying allowable resource extraction, however I don't know what would be a reasonable quantity of timber or gravel.

Thanks for the opportunity to express my feelings on this.

Ed Hays
6.5 Mile Mud Bay Rd
766-3798

Holly Smith

From: Sylvia Heinz [sylviaeh@gmail.com]
Sent: Thursday, May 04, 2017 6:49 PM
To: Holly Smith
Subject: Re: Mud Bay Memo & Resource Extraction Memo

Hello Holly,

If I'm not too late, here is a letter for the planning commission. I hope it's not too long...

Thanks!

Sylvia

To the Planning Commission,

As a consumer of Mud Bay resources, an owner of a local business that generates revenue and sales tax from Mud Bay resources, and a Mud Bay resident who values the self-sufficiency and low environmental impact inherent in the utilization of local resources, I urge the planning commission to relax the parameters that require a conditional use permit for resource extraction.

My family is building our house with Mud Bay trees. Since the State does not have money to maintain Chilkat State Park Road, we have been filling pot holes with Mud Bay gravel. We own a small sawmill; our business gives property owners money for their Mud Bay saw logs, and in turn those trees become Mud Bay lumber, Mud Bay timber frames, and Mud Bay sheds, shops, and businesses. Our property happens to have a sizeable natural gravel pit located at the top of Rutzebeck road. Although we feel the responsibility to make our gravel available for local road maintenance and our neighbors' building projects, we paid a lot of money for our property's gravel pit. In order to be able to afford to live in Mud Bay as a young family "starting from scratch", we need to be able to recoup some of the costs of living here. Our gravel is an environmentally sustainable option to help mitigate some of the costs of living, while at the same time helping our neighbors and doing our part to maintain our roads.

I ask you to consider the following points:

1. As a consumer, it is incredibly important to be able to buy local Mud Bay resources. For example, Michelle LaBrasse has given us gravel from her pit to maintain the Chilkat State Park Road, but as she is currently unable to sell her gravel without a conditional use permit, the neighborhood depends on her generosity. We greatly appreciate her generosity, but we are aware that the next owner of her pit might not be so generous. Although

gravel is affordable to buy, trucking it from town becomes exceedingly more expensive (not to mention less environmentally sustainable). Mud Bay is lucky to be rich in natural resources, which makes a “self-sufficient” life-style a bit more possible. Please do not remove the ability to buy our neighbors’ natural resources. The exchange of money for goods is an easy way to keep our money local, and it benefits the community in many ways.

2. As a business owner, we buy Mud Bay trees from property owners for a few reasons. It benefits our neighbors to be able to offset some of the costs inherent in clearing land, it benefits our business to have as many sources of logs as possible, it gives our neighbors pride in their land and an intrinsic understanding of the process of turning trees into lumber, and it makes sense to utilize our local trees to their highest potential. We realize that it often makes more economic sense to buy trees from the State Forest, as the State stumpage fees are often cheaper and we don’t have to deal with the inefficiencies inherent in dealing with property owners and small-scale operations. However, because we feel it is good for our community and increases the “sustainability” of our business, we continue to buy local trees. When adjusting the code language, please make sure to include that it is OK to sell trees that are already being cut down for development purposes. Also, keep in mind the additional cost of disposing of excess if those trees are off-limits to local firewood suppliers or sawyers. The current system of property owners deciding how they want to deal with their trees benefits residents, builders, business owners, and property owners. Conditional use permits would be ridiculous, expensive, and difficult to enforce.

3. Conditional use permits are costly. If we have to add to our list a conditional use permit every time someone wants us to remove a few trees, we won’t be able to continue buying Mud Bay trees. In addition, our borough does not have extra money to pay for the processing of unnecessary permits. When adjusting borough code, please remember the hidden costs of extra beaurocracy. While this process makes sense for large-scale industry or unusual situations, it is burdensome and unnecessarily restrictive of individual freedom and property rights for small scale situations.

4. It is necessary for the code to protect everyone, including the wealthy, the less fortunate, business owners, employees, tax payers who own property but who live elsewhere, those who built their houses 30 years ago, those who are currently building, and those who will build in 30 years. Although we may not all get exactly what we want, everyone’s rights matter. It worries me that property owners who pay taxes faithfully but who do not live here might not have the opportunity to participate in this decision that affects their property. Often, those who attend meetings and write letters do not have small children to take care of or jobs with long hours. When reading letters and listening to testimony, please consider the situations of those who may not have the time or ability to participate.

For young families such as my own, Mud Bay is an expensive place to live. People in the neighborhood who built their houses decades ago (often with local resources) often forget that the price of property and building materials has sky-rocketed. With spouts of doom and gloom from the State, our “fiscal crises” means that life for young families attempting to make it in Haines and Mud Bay is not likely to get easier. Making money from our resources makes it possible for young families to have local employment, gives us a feeling of self-sufficiency in being able to take care of ourselves, and helps keep gentrification at bay. I believe that the required 3-acre minimum lot size protects property owners’ who desire tranquility, and if property owners want

more there is always the option of making the sacrifice inherent in buying a neighboring lot. For the sake of future Mud Bay families who are trying to make it in more difficult times, please remove the necessity of a conditional use permit for small-scale “resource extraction”, and allow larger scale “resource extraction” when it does not unnecessarily infringe on neighborhood rights and property values.

Thank you for your time and consideration. I’m looking forward to the meeting and the opportunity to hear everyone’s thoughts.

Sylvia Heinz

Chilkat Valley Sawmill

.3 Mile Chilkat State Park Road, Haines, AK, 99827

sylviaeh@gmail.com

314-2038

On Tue, May 2, 2017 at 10:53 AM, Holly Smith <hsmith@haines.ak.us> wrote:

Holly Smith

Borough Planner

Haines Borough

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Fax: [\(907\) 766-2716](tel:(907)766-2716)

Haines Planning & Zoning Commission

Mud Bay Area Property Resource Extraction

May 11th, 2017

Dear Commissioners

I am writing in response to a letter I received dated April 17th, 2017 and signed by Rob Goldberg regarding resource extraction for property owners in the Mud Bay Zoning District. I appreciate that the letter opens with "Dear Neighbors," it introduces the subject in a "friendly" tone.

I do not however, feel that I was treated very neighborly when the MBLUSA was formed and I, as a landowner and tax payer, was excluded from any input and left with no recourse in it's formation or decisions – this was of course by design. And that the Haines Borough would allow such a thing to occur is unconscionable and could hardly be called "Democracy at Work." A few of the landowners had owned property in the area before most of the Mud Bay residence had come to Haines and before some of them were even born, yet these land owners were excluded. By as late as 2001, \$3.8M in property valuations included land with buildings whereas land without buildings represented \$6.5M in property valuations. So, property owners representing almost twice the investment and tax value to the Borough were neglected equal representation. Not very "neighborly." In addition, it brings into question the legality of the original MBLUSA and the subsequent adoption by the newly reclassified Haines Borough of some of those codes. The Annexation under HBC 18.70.030 and the language "based upon existing and proposed land use" would come under further scrutiny since any existing or proposed land use would have been restricted under the ill formed MBLUSA and no further vote by all landholders was taken into consideration in rezoning to "Rural Residential" as apposed to "General Use."

That discussion aside, historic precedence in Alaska has favored the unfettered development and natural resource extraction of rural and remote private property, where such properties where not zoned otherwise – Hence our current discussion. As such, each of these properties has valuable natural resources available to the land owners. It is common practice that a landowner would seek to sell off the timber in the course of putting in roads and building sites when developing a subdivision. Or if that land owner was so fortunate as to have suitable aggregate available on his/her property, then they might benefit from selling to their neighbors for driveways and building pads, which might keep them from stealing it from the State or their neighbors. It is not unheard of for a property owner to sell ALL the trees on their property, clear cutting it, and use the proceeds to pay off the property and subdivision costs. Or perhaps a property owner wants to clear a portion of their property for agricultural purposes – perhaps to grow Marijuana now that it's legal in our State. It would be ridiculous to expect them not to sell the viable timber rather than try to burn it as firewood before it rots.

IF the Borough is to restrict the development of natural resource held by property owners then the property owners need to be compensated for the loss of their resources and the tax rolls would also need to reflect the devaluation of their properties potential:

This could be done by the Borough purchasing those natural resources from the land owners with the absolute restriction that they could never be developed by the borough – of course this wouldn't be fair to other Borough residence who would remain unaffected.

Another possibility is to imitate what has transpired with the fisheries natural resources, whereby access is restricted and participants reduced with a "buyout" program. In this case the Mud Bay residence who did not want property owners to develop their natural resources could form a preservation corporation, secure bonding to purchase those resource rights from the property owners and then make monthly payments to repay the bond. Of course again, those purchased resources could never be used or developed by the preservation corporation.

Whatever course the Borough chooses, it must be clearly depicted in Code. IF special use permits are to be a part of the program, then the code must clearly specify the requirements rather than a case by case evaluation whereby the subjectivity and whim of the reviewing body can allow discrimination (reference paragraph two above). If we are to be a nation of laws, then let's spell it out to protect the unrepresented.

Michael Mackowiak
Haines, Alaska

Holly Smith

From: Joe Ordonez [joeorga@gmail.com]
Sent: Monday, April 24, 2017 12:19 PM
To: Holly Smith
Subject: mud bay

Hi Holly,

I received a letter from Rob Goldberg about zoning in Mud Bay. I've considered the points he made, and my vote is that we mirror the Lutak level of restrictions, and not go with the conditional use process.

I would also be interested in noting where else the Mud Bay and Lutak Service Area restrictions differ.

Thanks.

Joe

--

Joe Ordonez

Rainbow Glacier Adventures LLC

P.O. Box 1103

Haines, Alaska 99827

Phone: 907-766-3576

Fax: 907-766-3580

joe@joeordonez.com

www.tourhaines.com

Ms. Holly Smith
Borough Planner
c/o Haines Borough
P.O. Box 1209
Haines, AK 99827

Dear Ms. Smith,

This letter is in response to the Haines Planning Commission's reexamination of the language in the Mud Bay portion of Haines Borough Code (HBC 18.70.30[B]). We have been property owners in the Glacier View Subdivision in the Mud Bay area south of Haines since the late 1990's, and we are strongly opposed to commercial enterprise in the area, particularly when it includes resource extraction for commercial purposes. At the time of purchase of our property, our understanding was that the area would be residential, quiet, and picturesque, low-population density, and so appropriate as our retirement home, which we subsequently constructed in 2003. Redefining the Borough Code for the Mud Bay area to allow commercial enterprise directly conflicts with our understanding of the area when we chose to purchase the property and build the home for our remaining years.

Sincerely,

A handwritten signature in cursive script that reads "Jerome Pella, Judith Pella".

Jerome and Judith Pella
P.O. Box 210332, Auke Bay, AK 99821
Owners of Lot 2, Glacier View Subdivision,
Haines, AK 99827

Holly Smith

From: Stephanie Scott [sscott@aptalaska.net]
Sent: Thursday, April 27, 2017 8:29 PM
To: Holly Smith
Cc: Rob Goldberg
Subject: Re: trees logged from Mud Bay property

Thanks Holly. Since this case of resource extract also classifies as a commercial enterprise in the Mud Bay Zone; and a commercial enterprise requires a conditional use permit, I think we are OK with letter the code for Mud Bay stand. Alternatively, if it seems more fitting, I suppose the code could include "resource extraction" as a use that requires a conditional use permit. That strategy might be clearer.

Yes, please send me the packet for May 11. That would be great!

Stephanie Scott
On Apr 27, 2017, at 5:23 PM, Holly Smith wrote:

Hi Stephanie,

Thanks for taking the time to comment on the letter. **Would you like me to include your email in the planning commission packet for May 11?**

Just a couple quick notes about your comments:

1. Resource Extraction is defined as *"a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operations having similar characteristics."* Native vegetation is considered part of timber removal in this case. Many other smaller boroughs/municipalities use the same 'one-size fits all' approach to defining resource extraction, while other communities have clear definitions for timber removal, sand and gravel pits, and mining with 'resource amount' triggers for extraction. The "Industrial, heavy" definition is often linked to resource extraction because it can be an externality of resource extraction – but not always.
2. Our definition of resource extraction is wholly linked to commercial sale of the resource. Sometimes this can create a loop hole in code whereby a large developer can claim extraction as part of site development. This negates the need to have a public process surrounding the impacts of the neighborhood, which may or may not occur.
3. It would be useful to think of the size of a property owner's lot in relation to this issue. Many lots in Mud Bay are well over 3 acres, which can trigger the need for a resource extraction permit in other communities.
4. Every property owner has a 'bundle of rights' attached to their land, which include surface and sub-surface rights. Prohibiting a use outright may call into question the need for compensation as addressed in the fifth amendment of the US Constitution.

I hope you'll consider sharing more of your thoughts with the planning commission for the May 11th discussion. Please let me know if I may include your email (or another) in the agenda packet prior to the meeting for commissioner review.

Thanks kindly,
Holly

Holly Smith
Borough Planner
Haines Borough
103 Third Avenue S.
PO Box 1209
Haines, AK 99827
www.hainesalaska.gov
hsmith@haines.ak.us
Phone: (907) 766-2231 ext. 23
Fax: (907) 766-2716

From: Stephanie Scott [<mailto:sscott@aptalaska.net>]
Sent: Wednesday, April 26, 2017 9:31 AM
To: Holly Smith
Cc: Rob Goldberg
Subject: trees logged from Mud Bay property

Dear Holly,

I appreciate that the land owner hoping to selecting log property is aware of the "temper" of the Mud Bay zoning regulations designed to create a rural residential community vs. a commercial community. I do not see an effort to selectively log one's property as necessarily falling into a "resource extraction" as defined in the Haines Borough Code, Title 18: Definitions:

“Industrial, heavy” means a use that has potential for significant negative impact on adjoining uses. This category includes uses that incorporate buildings that are large, tall, or unsightly; uses that generate offensive odors, noise, dust, smoke, fumes, vibration or glare; uses that involve large amounts of exterior storage; and uses that, because of their scale or characteristics, create nuisances or hazards such as heavy truck or other vehicle traffic, or other intense activity.

These uses include airports, landing strips, and heliports; truck or ship terminals and docks; concrete batching plants; asphalt or concrete mixing plants; resource extraction; bulk material or machinery storage; petroleum refineries and trans-shipment facilities; grain elevators; meat packing plants or fish processing facilities; mills; resource recycling facilities; commercial flammable or hazardous material storage; sanitary landfills and solid waste storage/transshipment facilities; large scale sewage treatment facilities and manufacturing plants.

I am not even sure that the activity requires a conditional use permit, not unless the owner plans to replant and log again 20 years from now! Or perhaps use the site for a commercial purpose. Residential owners remove trees for lots of reasons: site preparation, view enhancement, farming. Some of us fell trees on our property simply for fire wood. That's what I do.

Sincerely,

Stephanie Scott

Richard & Bridget Walsh
PO Box 1480
Petersburg, AK 99833
206 605 8747
907 518 9054

May 2, 2017

Holly Smith
Borough Planner,
Haines Borough Planning Commission
Haines Borough
Haines, AK

RE: Possibly Amending Language in the Mud Bay Portion of the Haines Borough Code (HBC 18.70.30) to Include "Resource Extraction."

To: Ms. Smith and Members of the Planning Commission

My wife and I own two undeveloped water front lots in the Lynn Asper Subdivision. It is our hope that you will leave the language as it is and NOT include resource extraction in the Mud Bay portion of the Code.

We don't want to stand in the way of one individual logging a small amount of trees from his/her own property in a one time operation, BUT we don't want to see a commercial logging operation, not in any way related to a Mud Bay residence, taking advantage of the wording change to start logging larger tracts near our property. Nor do we want to see a larger commercial gravel pit in the Mud Bay area.

Finally, it is our understanding that the present drive is a private access road for landowners in this area, not for commercial use.

We would like Mud Bay to retain its Rural Residential zoning. We favor the language in the original code and oppose any change that would add resource extraction.

Sincerely yours,

Richard and Bridget Walsh

Holly Smith

From: neil einsbruch [howclevr@gmail.com]
Sent: Monday, May 08, 2017 5:43 PM
To: Holly Smith
Subject: Resource Extraction

Holly,

I would vote to create a code that does not allow any resource extraction in mud bay. I would not want my neighbor to clear cut in front of my house. Would you?

This code should not have selective conditional permits decided by the planning commission.

Neil Einsbruch

Holly Smith

From: Jim Jurgeleit [jjurgeleit@gmail.com]
Sent: Tuesday, May 09, 2017 8:42 PM
To: Holly Smith
Subject: mud bay zoning

Holly:

As a property owner we received a letter from Rob Goldberg regarding amending the code for land use in the mud bay district.

I feel that resource extraction should be allowed on a small scale without the need to go to the planning commission for approval. The trick will be trying to define what small scale is, perhaps it is a per percentage of the lot size, 5%, 10% ???

If this is allowed then I think a buffer zone to the property line would also be needed to help protect neighbors. Anything over this small scale would need planning commission approval and further requirements to once again protect neighbors, roads etc.

As an example, some people when clearing a lot for a house site sell the trees if they won't be needing them, this is something I think should not need to go to the planning commission for approval - as long as it falls into the "small scale" size.

Regards, Jim Jurgeleit

Holly Smith

To: Reservations by Randa
Subject: RE: MBLUSA feedback

From: Reservations by Randa [<mailto:randaszymanski@gmail.com>]
Sent: Tuesday, May 09, 2017 8:04 PM
To: Holly Smith
Subject: MBLUSA feedback

Rob Goldberg sent me a letter soliciting comments on possible changes concerning resource extraction in the Mud Bay Land Use Service Area.

My simple comment is that I don't feel any further regulations are necessary.

Jim

--

Reservations by Randa
800 572-8006 ~ 907 314-0466
PO Box 645 ~ 134 Lutak Road
Haines, Alaska 99827
www.ReservationsByRanda.com

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*Alan L. and Linda E. Cowles
1121 Stoneridge Drive
Lawrence, Kansas 66049-4772
785-331-2334 and 785-764-0322
TwoCowles@gmail.com*

May 10, 2017

Mr. Rob Goldberg
Ms. Holly Smith
Haines Borough Planning Commission
Haines, Alaska 99827

Dear Mr. Goldberg and Ms. Smith,

As the owners of land in the Mud Bay area, we recommend that you prohibit any use of land, including but not limited to any resource extraction, by any resident that would adversely affect the value of any other resident's land or would impair the peaceful enjoyment of any parcel of land by any other resident.

Thank you,

Alan and Linda Cowles

Christine Klein
Director
Phone: (907) 786-7781
Fax: (907) 786-7733
Email: ceklein@alaska.edu



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Facilities & Land Management
University of Alaska System
1815 Bragaw St, Suite 101
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Web: www.ualand.com

May 10, 2017

Haines Borough Mayor
Haines Borough Planning Commission
P.O. Box 1209
Haines, AK 99827

Dear Mayor Hill and Members of the Planning Commission:

I recently learned that, at its May 11, 2017 meeting, the Haines Borough Planning Commission is considering recommending to the Assembly that it amend HBC 18.70.030. The proposed amendments would further restrict resource extraction in the Mud Bay Rural Residential zone by either prohibiting resource extraction or making it a conditional use. The University of Alaska (UA) owns property affected by this proposed action and opposes the proposed resource extraction restrictions.

Established in 1917 as a Land Grant College, UA received lands granted by the Federal Government prior to and after Alaska Statehood to hold in trust for the benefit of UA. The UA trust lands, while small in total acreage compared to other land grant institutions in the United States, are investments critical to the perpetuity of the trust and UA. Our role is to utilize those investment lands and resources through responsible stewardship and management, which generates funds to support UA programs and initiatives such as the UA Scholars Program.¹ Consistent with Board of Regents' policy, the trust investment lands provide long-term environmental and economic benefits.

UA owns approximately 520 acres in the Mud Bay area that have been impacted through increasing zoning restrictions since the 1980's and continue to be impacted and devalued by attempts to further restrict property owners. It is imperative for us to ensure all UA owned assets maintain their greatest investment value and potential, for highest and best use, to sustain the trust and UA programs. As a major property owner, the Borough did not notify UA when the Mud Bay Land Use Service Area was established while Haines was a third class Borough, nor when zoning restrictions became codified in Haines' transition to a second-class borough.

The Borough's failure to notify UA as an affected property occurred again with regard to this proposed action. I see from the Planning Commission agenda packet that the Commission did send a "Dear Neighbor" letter on April 17, 2016 soliciting input. However, this letter was apparently not sent to UA. Under HBC 18.30.020(C), it is my opinion that the Borough was required to provide notice to UA. The Planning Commission and Borough should afford UA adequate time to analyze the proposed action, provide input, and hopefully work with the Borough to find a solution that allows UA to manage its lands and resources consistent with its mission.

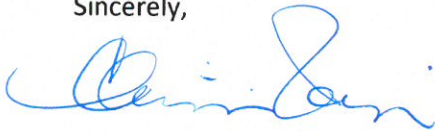
¹ The UA Scholars Program provides scholarships to over 1,800 Alaska students annually.

Haines Borough Mayor
Haines Borough Planning Commission
May 10, 2017
Page 2

If the Borough acts with haste and adopts either version of the ordinance further restricting natural resource and property development potential of the UA land, the Borough should compensate UA. The devaluation of UA resources caused by the proposed Mud Bay land use restrictions is a taking of UA property. UA opposes any changes to HBC 18.70 or related codes, which take away or reduce property owners' rights to their land and resources located in the Haines Borough, without just compensation.

My hope is that the Planning Commission and the Borough will take the time to discuss this issue with UA so that we can address the issues raised in this letter. I look forward to hearing from you.

Sincerely,



Christine Klein
Director

cc: Members of the Borough Assembly

Holly Smith

From: Holly Smith
Sent: Thursday, April 27, 2017 6:00 PM
To: 'desiegfried@alaska.edu'
Subject: Haines Borough - Mud Bay Code Amendment
Attachments: Memorandum_Smith Resource Extraction in Mud Bay Zone.pdf; FINAL Memo Resource Extraction Mar 11 2017.pdf; FINALMudBayLetter.pdf

Hi Diane,

Here is the information you requested about the Mud Bay Code Amendment which would address resource extraction. The planning commission meeting is on May 11th at 6:30 pm. The number to call in is 1-800-315-6338, but please let me know by May 10th if you'd like to call in so I can prepare the call list.

If the department wishes to submit a written comment, the deadline for the planning commission packet is Thursday, May 4th. (You can send by the morning of May 5th if needed, but the packet is due to the planning commission by 2 pm.)

Let me know if you have any questions about the code or process. Happy to help.

-Holly

Holly Smith
Borough Planner
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Fax: (907) 766-2716

Holly Smith

From: neil einsbruch [howclevr@gmail.com]
Sent: Monday, May 08, 2017 5:43 PM
To: Holly Smith
Subject: Resource Extraction

Holly,

I would vote to create a code that does not allow any resource extraction in mud bay. I would not want my neighbor to clear cut in front of my house. Would you?

This code should not have selective conditional permits decided by the planning commission.

Neil Einsbruch

May 11, 2017



Janice Hill - Haines Borough Mayor
Haines Borough Planning Commission
P.O. Box 1209
Haines, AK 99827

2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.trustlandoffice.com

RE: Haines Borough Planning Commission
Amendments to HBC 18.70.030

Dear Mayor Hill and Members of the Haines Borough Planning Commission,

The Trust Land Office (TLO) recently became aware of a proposed amendment by the Haines Borough Planning Commission that is ready for adoption by the Assembly. The proposed amendment is specific to HBC 18.70.030. As proposed, the amendment would further restrict resource extraction in the Mud Bay Rural Residential zone by either prohibiting resource extraction or making it a conditional use. The TLO was not notified by the Haines Borough of this proposal, and finds the lack of notification puzzling.

The TLO is the land management and revenue generating office for the Alaska Mental Health Trust, and owns property that would be affected by the proposed restrictions. The TLO owns approximately 650 acres in the Mud Bay area, and strongly opposes any restrictions. As proposed, these changes would devalue Trust land, and negatively impact its ability to generate revenue.

The TLO opposes any changes to HBC 18.70, and does not support any efforts to prohibit the ability to the TLO to fulfill its mission to generate revenue from its land, and/or interfere with the TLO's fiduciary responsibility to the Alaska Mental Health Trust.

As a significant land owner in the Mud Bay area, we think a proposal like this should be thoroughly discussed with the TLO prior to any decisions being made. We would be interested to learn more about the reasons why the Haines Borough Planning Commission is undertaking this effort, and are ready to begin a dialogue. Please be in touch.

Sincerely,

David Griffin
Southeast Area Lands Manager
(907) 269-7921

Holly Smith

Subject: RE: Fwd: Mud Bay resource extraction

From: Sally Andersen <andersen.sally@gmail.com>

Subject: Mud Bay resource extraction

Date: May 13, 2017 at 5:04:49 PM AKDT

To: mfriedenauer@haines.ak.us, tmorphet@haines.ak.us, mcase@haines.ak.us, tgregg@haines.ak.us, Heather Lende <hlende@haines.ak.us>, rjackson@haines.ak.us

Dear Assembly,

I am writing to weigh in on the issue of resource extraction in Mud Bay. When I purchased my property on Rutzebeck Road in 2010, I carefully read the zoning language. While I find it to be somewhat restrictive, I do appreciate and respect the intent behind it and enjoy the benefits of the zoning. I also can appreciate the desire of property owners wanting to capitalize on their investments. However, I do oppose resource extraction in our zoning area. This is a residential area, not a commercial area. With Viking Cove guest houses right next door (approved via conditional use permit) having the capacity for 30-plus people and a sold-out booking this summer, I am feeling sensitive to the effects of commercial enterprises within my neighborhood.

I think that having each and every property owner go through a conditional use permit application process just kicks the can down the road and will require making the decision over and over again into the future. I'd rather make this decision be made now and be made definitively. Individual hearings turn into personality-specific proceedings and only contribute to the divisive politics in Haines.

This particular request has the potential of being a can of worms as far as commercial logging goes. I do not want commercial logging trucks on my little dirt road, or even on Mud Bay road, which is hazardous enough with its tight turns, non-existent shoulder, walkers, and parked cars. And how do we determine the difference between small scale and large scale? How many board feet, etc.?

I think that land owners should respect the zoning that they "signed up" for and do not believe that resource extraction is in the intent of the Mud Bay zoning. I would like to see Borough code amended to prohibit resource extraction in the Mud Bay zoning area.

Thanks for listening and thanks for the opportunity to comment.

Sally Andersen

Comments to Planning Commission, May 17, 2017

Re: Mud Bay Code and Resource Extraction

After attending the recent planning commission meeting, reading the packet, and looking at existing code, I agree the code needs to be clarified regarding Resource Extraction. However, existing code does not allow for commercial uses other than cottage industry without a conditional use permit.

“Commercial use” includes wholesaling or retailing any material goods, which would include selling logs or gravel. Just because there is no specific language in code regarding resource extraction does NOT mean selling those resources isn’t a commercial use requiring a conditional use permit. (I believe Stephanie Scott alluded to this in her comments.) I request the Borough notify Mud Bay property owners that under current code, selling resources such as logs and gravel requires a conditional use permit.

That said, I support adding code that specifically addresses resource extraction. Given that gravel pits have already caused grief and disturbed lifestyles at two locations in the townsite, I would request that commercial gravel extraction be a prohibited use for our rural residential area.

Tree cutting is more problematic because it’s often essential when building a residence or creating a garden space. What a person does with the logs (using for firewood or selling them) shouldn’t matter. What is allowed could be a question of scale and impacts to neighboring property owners.

I would agree with sentiments expressed at the last meeting that code is not worth much without enforcement. And also I agree with the comment to not delete the heliports prohibited code. It has been my experience that as the faces in government change over time, intent gets muddied, and therefore this should provision should stay in code.

Thank you for the opportunity to comment.

Nancy Berland



BAXTER BRUCE & SULLIVAN

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Juneau, Alaska 99803

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www.baxterbrucelaw.com

May 23, 2017

VIA REGULAR MAIL AND EMAIL (hsmith@haines.ak.us)

Haines Borough, Alaska
Planning Commission
P.O. Box 1209
Haines, AK 99827

**RE: Proposed Amendment of HBC 18.70.030(B)
Our File No. 8493-002**

Dear Commissioners:

This firm represents Skookum Holdings LLC, owners of 157.79 acres within the Mud Bay Planning/Zoning District Rural Residential Zone which would be affected by the proposed amendment of Haines Borough Code (“HBC”) 18.70.030(B). Such action would subject existing property owners to a conditional use process that is inherently politicized and delay or hinder development activity to the point it becomes non-economic to the property owner.

Our clients purchased the property fourteen years ago specifically with the intent, and in reliance on their right, to remove and sell small amounts of valuable timber and use the proceeds to develop the land.

Preventing the commercial removal of the timber would destroy our clients’ ability to develop their property as planned, effectively destroying the property’s value. It appears that other entities such as the University of Alaska and the Alaska Mental Health Trust also would be adversely affected. Such action would be contrary to the Haines Comprehensive Plan which acknowledges that the harvest and extraction of renewable and non-renewable resources brings money from outside the community into the local economy.

Timber harvesting is already subject to a vast number of regulations and ordinances.¹ Adding the conditional use process to this already large and complex regulatory structure will do nothing to enhance public safety, health and welfare but merely subject the property owner to a subject analysis intended to prevent the development.

Preventing the removal would amount to an unconstitutional taking, entitling our clients to an award of damages against the Borough. *Cf. Hageland Aviation Services Inc. v. Harms*, 210 P.3d 444, 449-50 (Alaska 2009) (affirming finding of taking and award of damages to plaintiffs). *Hageland Aviation Services Inc.* states that

¹ AS 41.17.060 Regulations and Administrative Standards; AS 41.17.116 Riparian Standards for Private Land; AS 46.03.070 et seq. Pollution Standards; 18 AAC 70.10 et seq. 11 AAC 95.10 et seq.

[w]e consider three factors to determine whether a government action effects a taking: (1) the character of the government action, which includes consideration of the legitimacy of the interest advanced by the action; (2) its economic impact; and (3) its interference with reasonable investment-backed expectations.

“The finding of a taking ... depends on whether someone has been deprived of the economic benefits of ownership, not whether the State captures any of those benefits.” *Id.* at 450 (citation omitted). If a zoning classification results in little public benefit or gain but inflicts serious injury or loss on property owners, then that existing classification is confiscatory and unconstitutional. *See* 83 Am.Jur.2d *Zoning and Planning* §37. In this case, the character of the government action would be to effectively destroy the property’s value for no legitimate reason, thereby interfering with our clients’ reasonable expectations when they invested in the property.

Allowing the commercial removal of the timber would be consistent with the intent of the Rural Residential Zone, which is “to provide areas for low-density, single-residential, and agricultural uses *along with limited, compatible, low-impact commercial uses.*” *See* HBC 18.70.030(A)(9) (emphasis added).

Commercial removal of the timber would have no adverse impact, and certainly less adverse impact than the accessory uses enumerated in HBC 18.70.030(B)(3)(d) (accessory buildings, cottage industries and guest house) and the conditional uses in HBC 18.70.030(B)(3)(e) (public parks, public recreation sites, nonprofit camps, schools, fire stations, lodges, commercial or public radio and television transmitters and towers, public utility facilities, commercial enterprise, cemetery and vacation rentals). (Commercial removal of the timber would not rise to the level of a “commercial enterprise,” which HBC 18.70.030(B)(3)(e)(7) defines as “any commercial, manufacturing, sale or service that occurs on a person’s private property”; commercial removal of the timber would involve only removal of small amounts of timber from the property, not commercial activity, manufacturing, sale or service, all of which would occur elsewhere.) *Cf. Board of County Commissioners of Weld County v. Hawkins*, 690 P.2d 1299, 1300 (Colo. App. 1984) (affirming denial of injunction against use where plaintiff failed to prove that it was more obnoxious than other allowed uses); *Klem v. Zoning Hearing Board of Jackson Township*, 387 A.2d 667, 668 (Pa. Cmwlth. 1978) (where ordinance allows exception for particular use, objector must show that adverse effect of particular application of that use must exceed that ordinarily expected from such use)(affirming exception).

Commercial removal of the timber is not a prohibited use, since heliports are the only prohibited use in HBC 18.70.030(B)(3)(h) (heliports), and HBC 18.70.030(B) does not prohibit uses not otherwise expressly provided. The Mud Bay Planning/Zoning District Rural Residential Zone is distinguishable from the Lutak Inlet Planning/Zoning District.

Allowing the commercial removal of the timber would be consistent with the purpose and intent of the HBC. HBC 1.04.005 states in part:

The purpose and intent of this code is to enhance and protect the lives, health and safety of the public and government employees; to protect public and private property; and to protect the rights guaranteed in the United States Constitution, the State of Alaska Constitution, and the Haines Borough Charter Preamble and Bill of Rights.

Allowing the commercial removal of the timber also would be consistent with the purposes of HBC Title 18, which are

- A. To ensure that the growth and development of the borough is in accord with the values of its residents;
- B. To identify and secure, for present and future residents, the beneficial impacts of growth;
- C. To identify and avoid the negative impacts of growth;
- D. To ensure that growth is of a type, design and location that conforms to community standards, and is served by a proper range of public services and facilities; and
- E. To achieve the goals and implement the policies of the Haines Borough comprehensive plan.

See HBC 18.10.020.

Further,

[t]he intent of this [Mud Bay Planning/Zoning] district is ... for the people of the Mud Bay community to preserve their lifestyle, community scale, self-sufficiency, self-determination, and the basic rights of health, safety and welfare. This is in accordance with the goals and objectives of the former Mud Bay land use service area board which were developed from the Haines Borough comprehensive plan.

See HBC 18.70.030(B)(1).

Section 3.1.4 of the Haines Comprehensive Plan states in part on p. 28: “Clearly, the success of efforts to increase jobs and economic opportunity in town will influence resident’s [sic] quality of life in a positive manner.”

Section 5.8.10 states in part on pp. 101-02:

Continued state support for individual negotiated sales and small timber sales is important to Haines residents

Depending on markets and demand, periodic consideration to larger sales that are still within sustainable yields should be considered. Support for ADNR management of small timber sales on adjacent University of Alaska and Alaska Mental Health Trust land is also an option. Application of Haines State Forest rules to these lands will protect anadromous fish streams and lakes to ensure harvest occurs in a manner that protects anadromous fish habitat.

In §5.9, Goal 3 in the Implementation Plan states on p. 104:

Achieve a strong, diversified local economy that provides employment and income for all citizens that desire to work while protecting the health of the environment and quality of life. Build on local assets and competitive advantages to create economic opportunity.

Haines Borough, Alaska

May 30, 2017

Page 4

Objective 3M states on p. 110:

Continue sustained yield timber harvest from Haines State Forest, increase value-added wood and forest product use, support use of local wood for biomass heating.

1. Increase recognition of Haines wood-related businesses and activity
2. Support continued small negotiated sales and small timber sales.
3. Encourage value-added wood product businesses, such as but not limited to firewood, sawmills, biomass, finished wood products, pellet production, etc.

For these and other reasons, the Borough should protect our clients' right to remove and sell their timber and develop their land as it was intended by the property owners when they acquired the property.

Please feel free to contact me at dbruce@bbslawyer.com or (907) 789-3166 if you have any further questions regarding this matter.

Best regards,

BAXTER BRUCE & SULLIVAN P.C.



Daniel G. Bruce

DGB/ggk

cc: Skookum Holdings LLC

Holly Smith

From: george figdor [figdor@aptalaska.net]
Sent: Tuesday, May 30, 2017 11:02 AM
To: Holly Smith
Subject: tree-cutting links

holly,

here are some links to some local zoning ordinances and planning documents that deal with tree retention on rural residential areas. there's quite a range of approaches to the issue, but the locales that identify tree retention in certain areas as a community value, seems to have good reasons to justify tree cutting restrictions.

some of the approaches to code language that i have encountered involve either retention of a certain percentage of natural vegetation, a maximum number of board feet that can be cut, the amount that can be cut in one year, or the approval of a tree retention plan. most involve getting a permit of some kind.

the last link—to the anchorage plan for the hillside neighborhood----is interesting because of the degree to which the municipality is committed to developing a plan that identifies how to maintain the character of the neighborhood through natural vegetation retention and other means.

george

<http://www.co.pierce.wa.us/DocumentCenter/View/35704>

<http://www.codepublishing.com/WA/Woodinville/html/Woodinville21/Woodinville21150.html>

<http://www.codepublishing.com/WA/FederalWay/html/FederalWay19/FederalWay19120.html>

<http://www.co.thurston.wa.us/permitting/guide/guide-6review.html>

<https://www.muni.org/Departments/OCPD/Planning/Publications/Hillside District Plan/HillsideDistrictPlan-April2010-CH2.pdf>

Holly Smith

From: Eric Holle [banjorebop@yahoo.com]
Sent: Wednesday, May 31, 2017 10:41 PM
To: Holly Smith
Subject: Mud Bay resource extraction

To Holly Smith,
Haines Borough Planner

Following are my comments regarding resource extraction in the Mud Bay Land Use Service Area:

Until consistent oversight and enforcement of zoning regulations for all residents in MBLUSA is demonstrated, I do not favor resource extraction. If and when there is a clear method for enforcing the conditions of Conditional Use Permits, I would approve of clearly defined parameters for small-scale sale of resources from private property, such as so many board feet/acre for commercial use of logs. I do not favor large-scale commercial extraction of gravel, such as the controversial gravel operation in Highland Estates. Use of the two small gravel areas south of the intersection of Mud Bay and Chilkat State Park Roads should be adequate for filling potholes and surfacing driveways in MBLUSA.

The line between cottage industry and commercial extraction needs to be clearly defined.

Thank you,
Eric Holle

Holly Smith

From: kate palmer [kateypalmer@yahoo.com]
Sent: Wednesday, May 31, 2017 4:25 PM
To: Holly Smith; Katharine Palmer
Subject: mud bay resource extraction

Dear Holly

The following are my comments about resource extraction in the Mud Bay zoning area. Please pass them on to the members of the Planning Commission.

thanks

Katey Palmer

Dear Planning Commission members,

I request that the Mud Bay zoning area adopt the same rules and regulations that the Lutak zoning area has in code. Unless an activity or use is specifically identified and allowed in our Mud Bay zoning code, it should be prohibited.

The following comments explain explain my thinking:

1) I do not want to see commercial resource extraction allowed in the Mud Bay zoning area. I think that most of the property in the Borough is zoned for general use, and commercial resource extraction can occur in most places. Lutak and Mud Bay (and maybe an area near town?) are the only places that have rural residential/cottage industry zoning designation. Those areas provide environments that allow residents to enjoy particular lifestyles just as the townsite and other neighborhoods provide environments suitable for other lifestyles. I think unique zoning areas should be protected to provide for a diversity of inhabitants and lifestyles. I do not believe that every neighborhood must or should provide all of its own resource and service needs. Each neighborhood does not need its own sawmill, gas station, gravel pit, grocery store, etc. Instead, its residents support those businesses elsewhere in the Borough.

2) I would like to see cottage industry better defined in order to understand what small scale industries are allowable. Does any proposed cottage industry require a conditional use permit? Is a sawmill for instance a type of cottage industry? Does that designation depend on the size of the operation? Number of employees? Space it occupies? Visibility? Noise it creates? Hours of operation? How it affects others' environments and qualities of life?

3) I think that whatever a neighbor does on his/her property is his/her business as long as it does not negatively impact the adjacent and nearby residents and property owners. (I do however recognize that what one person thinks is a negative impact, another might see as a positive impact.) The example I mentioned at the last meeting was of Peter Enticknap cutting down his trees to open up his Letnikoff Estate property. It created a wind tunnel that caused the neighbors' trees to fall down.

4) When folks at that meeting mentioned not being able to vote on the rural residential/cottage industry designation of the Mud Bay zone, that was because they did not or do not reside in the "neighborhood". An individual in this country only gets to vote where he/she resides. That protects residents and their rights from an absentee landowner who may want to use his/her property in ways that are not compatible with the environment and lifestyles that the actual residents have chosen.

5) I think if a conditional use permit is granted for some activity, then the Borough must somehow oversee that activity to insure that the permit's requirements are being met. Neighboring residents should not be responsible for monitoring and reporting on the activities of the permittee. That puts an unfair burden on neighbors who prior to the CUP were enjoying their peace and quiet. It also often results in antagonism between neighbors. In every case, a CUP should have a annual renewal date and public review so that the effects of the activity in the neighborhood and the permittee's adherence to the requirements of his/her permit can be evaluated. Some requirements may be dropped, others may be added, or the permit may be rescinded.

I REALLY appreciate that you are all volunteers and are dedicating a lot of time to your responsibilities as planning commissioners. I do think that a CUP should not be granted unless the Borough has a straightforward and effective monitoring and enforcement policy for each CUP.

Sincerely,
Katey Palmer

May 31, 2017

Dear Planning Commission Members,

My husband and I attended the May 11, 2017 Planning Commission meeting in order to listen to public discussion and consider different options for possible amendments to the Mud Bay Planning and Zoning code regarding resource extraction. We attended the meeting with open minds and have given the different options much consideration during the past weeks. After re-reading Haines Borough Code, Chapter 18, that deals with zoning districts and pertinent definitions, we feel the code already disallows resource extraction in the Mud Bay Service area. We support maintaining the distinction of Mud Bay as a rural residential area and disallowing activities, such as resource extraction and small milling operations, which are in violation of current code. To make that distinction clearer, we also support adding language similar to Lutak Zoning code HBC 18.70.030 (C), where “all uses not expressly provided under permitted, accessory or conditional uses are prohibited.”

Mark and I purchased our Mud Bay property in 1995 after the Mud Bay Land Use Service Area was established. As many residents of Mud Bay, we chose our property specifically because of its “rural residential” zoning, knowing that our desire to live in a neighborhood that maintains a lower population density (single family dwellings and 3 acre minimum lots) and disallows commercial ventures, with the exception of cottage industries, would be maintained. In borough code, “cottage industry” is defined as: “...any business or activity occurring on a person’s private property, which meets the following standards:

- Is conducted only by a member or members of a family residing in the residence and no more than three additional employees at any one time;
- Is clearly secondary and incidental to the use of the property as a residence;
- Does not require the installation of heavy equipment or power sources not common to a residence;
- Does not create a level of noise, traffic, parking, waste and sewage, signs, lighting, vibration, dust, smoke, odor, heat or glare which would be objectionable to a reasonable person located on adjoining public or private property;
- Does not place a burden on any community utilities to a greater degree than normal residential activities.

If resource extraction, or small enterprises such as small milling operations, were to be allowed in our Mud Bay neighborhood, “installation of heavy equipment not common to a residence” would be required and, at a minimum, the level of “noise, vibration, and dust would be objectionable to a reasonable person located on adjoining public or private property”.

For these reasons we ask for your support in denying any changes to current code (or the issuing of conditional permitting) that would allow for the disruption of our designation as a “rural residential” neighborhood. We also support discouraging any future attempts to misinterpret code by adding language similar to that in 18.70.030 (C), as stated above.

Kristin Hathhorn

Mark Battaion

Holly Smith

From: Kip Kermoian [alaskakip@yahoo.com]
Sent: Thursday, June 01, 2017 11:18 AM
To: Holly Smith
Subject: amending HBC 18.70.030 (B)

Re: amending HBC 18.70.030 (B),
Mud Bay Planning/ Zoning District

Commercial resource extraction policy in the Mud Bay Rural Residential zone

June 1, 2017 Holly Smith, Borough Planner

To: Haines Borough Planning Commission,

Please consider the following suggestions when formulating policy regarding resource extraction in the Mud Bay Rural Residential zone.

I feel land owners within the Mud Bay Rural Residential zone should have the latitude to determine how their property is utilized without significant negative impacts to others. There are many ways that an activity can negatively impact others adjacent to, or in the "impact area" of, if you will, the activity, such as noise, windthrow, visual degradation and erosion. Certainly, significant is subjective and the only way to eliminate the subjectivity entirely will be to clearly specify which uses are acceptable and which uses are not.

It has been argued that not being able to commercially extract resources may represent a loss of value to the owner, however, that argument becomes moot when the associated negative impacts devalue the property value of others.

Will the Planning Commission make determinations as to what is acceptable?

I have found a previous determination by the Planning Commissions to fall far short of considering potential negative impacts in my neighborhood; by way of example, as I expressed at the last Planning Commission meeting on May 11th, the Planning Commission issued a conditional use permit to the commercial venture Viking Cove, to allow 20 guests at a time, entirely ignoring the expressed concerns of adjacent property owners who reluctantly suggested allowing 10 guest at a time to assess how compatible the impacts would be. We requested a measured approach to what was surely to be a density related impact to existing property owners, but our concerns were disregarded.

Not only have our fears of having the character of our Rural Residential area dramatically changed been realized, but there is now what has been described as an 'Event Center' at Viking Cove that, we've been told, will soon host two wedding, and they have been advertising an additional 8 beds on their web site, bringing the total number of potential guest to 28! In addition to the residents, that is more than 30 people, with the associated vehicles and noise - the soundscape that we and others so much enjoyed, has been shattered. All of which begs the question, when permittees disregard the terms of their permit, how are these conditional use permits being enforced and what is the incentive for recipients of a conditional use permit to adhere to the terms of the permit? Are penalties significant enough to dissuade violations? Are they monetary; are they simply requests to cease the un-permitted activity? Can violators pay the penalty and continue the un-permitted activity? What is to stop them? Is there a time line where impacts associated with a conditional use permit will be evaluated so that adjustments can be made?

An immediate adjacent property owner would never have purchased that home knowing a commercial property with a density of 20 guests (plus the residents) would be engaged in activities all summer long with increased activity, noise, traffic and associated speeding vehicles. The home was purchased assuming the Rural Residential zoning would mitigate any possibility of a high density commercial operation conducting business next door. As a result, the pool of interested parties who might want to purchase that property has been reduced, potential decreasing the property value.

If this experience, a lack of consideration for adjacent property owners, is a harbinger of what is to come regarding commercial resource extraction, I fully support adopting the Lutak Zoning code HBC 18.70.030 (C), where "all uses not expressly provided under permitted, accessory or conditional uses are prohibited." thus eliminating commercial resource extraction.

If, however, there is a measured approach to issuing conditional use permits where adjacent and other property owner's concerns who will be impacted are given due consideration to mitigate negative impacts, and a means to enforce the code are in place, I would only support very small scale commercial timber extraction, with buffers in place. I do not support clear cuts, or other commercial extraction activities in our Rural Residential zone.

Thank you for this consideration,

Sincerely,
Kip Kermoian

Holly Smith

From: Kip & Patty Kermoian [alaskakip@yahoo.com]
Sent: Thursday, June 01, 2017 9:24 AM
To: Holly Smith
Subject: Planning commission comments

Holly Smith, Borough Planner

Holly- Please include my comments in the Planning Commission packet for the June 8th, 2017 meeting.

Thank you.

To: Haines Borough Planning Commission

I am writing in regards to the amending of HBC 18.70.030 (B) , Mud Bay Planning/Zoning District.

I do not want to see the zoning changed to to allow resource extraction in the Mud Bay Rural Residential Zone unless it can be written with very specific and clear language, put in code, and enforced by the Haines Borough, and only with the following allowed.

I would say if those conditions are met, then I would favor resource extraction to mean the cutting of trees on a homeowners lot for building their home/garden/yard and allowing the landowner to sell said trees. I would want to see buffers (set backs) between neighboring properties, and not allow any clear cutting of properties. I am NOT for any gravel pits or mining or any other resource extraction.

I do not wish to see people buy land in a rural residential area, coming in and extracting its resources for profit then selling the land. I feel this is not the intent in the Mud Bay Rural Residential Zoning District and would greatly change the nature/character of our zoning area.

I realize that some land owners feel that if they cannot extract resources it would negatively impact their land values. I feel that my land values would be negatively impacted if the Mud Bay Planning/Zoning District is changed to

allow for resource extraction. The Rural Residential zoning was voted on by Haines Borough residents living in the Mud Bay Zone at that time. (We only get one vote, where we reside as a resident).

The property we bought and have invested in this property/home since before the planning/zoning went into effect. And since then we have been negatively impacted by poor and what I view as illegal, granting of a conditional use permit in my direct neighborhood. The Haines Borough has only one enforcement person (with one assistant) and thus pits neighbor against neighbor to enforce the conditions of a CUP. This is not a good procedure (nor is it healthy) for a Rural Residential Zoning District!

We value our neighbors and the neighborhood we live in. We don't always agree on issues, but we still live in friendly harmony.

I would like to see the language of the Lutak Zoning Code HBC 18.70.030 (C), where "all uses not expressly provided under permitted, accessory or conditional uses are prohibited." , put into the Mud Bay Rural Residential Planning/Zoning District if the above limited resource extraction is not specifically written in code and enforced by the Haines Borough.

Sincerely,
Patricia Kermoian

Holly Smith

From: laurie dadourian [lauriedado@yahoo.com]
Sent: Tuesday, June 06, 2017 2:38 PM
To: Holly Smith
Subject: Mblusa/ planning commission

To the Haines Borough Planning Commission

Re: Mblusa code

I specifically bought my property out Mud Bay Road because of the neighborhood and the restrictions that strive to keep it rural residential. As more property sells, not everyone seems to be aware of the restrictions, and conflicts arise. I believe the planning commission has not always been able to uphold the intent or the letter of the Mblusa code

The issue of resource extraction is leading us to discuss and clarify the code again. Property owners talk about wanting our rights. I doubt it's possible to see everyone's perceived rights are upheld because one person's rights often impacts another's. What I suggest is to amend the Mblusa code as Lutak's code regarding - all uses not expressly provided for under permitted accessory are prohibited. This would prohibit resource extraction and any other unforeseen activities that are not compatible in a rural residential neighborhood.

Thank you for your time. See your Thursday night.

Laurie Dadourian

Holly Smith

From: george figdor [figdor@aptalaska.net]
Sent: Tuesday, June 06, 2017 11:51 PM
To: Holly Smith
Subject: Re: resource extraction

hi holly,

yes, by all means, i'd like it submitted to the PC.

ALSO: below is an updated version of my letter that i've tightened up a bit. please substitute this version for the original.

george

FIGDOR LETTER VERSION 2:

holly,

i've been carefully going over the mud bay (MBRR) zoning code and thinking about how the code applies to timber harvesting (resource extraction). here are some of my conclusions:

1) while it would certainly be useful for the PC to clarify the MBRR code language regarding limits to timber harvesting, i would argue that the existing code already excludes resource extraction simply by virtue of the goals of the zone---as expressed in the intent and purpose sections (18.70.030(B)). it's clear that the desire of the residents--as articulated over the years in the comp plan has been to maintain the area for low impact, quiet single family residential use. the MBRR zone expressly limits uses by right to SF dwellings and cottage industries---and guest houses as well. that's all that is allowable without a permit.

2) i'm not sure that resource extraction would be allowable in the MBRR zone even with a CUP. first of all, the code specifies, as it does with cottage industries, that a commercial enterprise in the zone must be subordinate to the use of the property for residential purposes---and that the enterprise must be operated by property owners actually living in their residence on the property. commercial enterprises within the zone are still subject to the same general limitations as cottage industries, in terms of their impacts on neighbors---except they are allowed to have more employees.

3) the argument that restricting resource extraction in a residential zone represents lost value for the owner, or a "taking" by the borough, is spurious. first of all, the real loss of value from clearing a lot of its timber falls on the neighbors, whose property values would drop considerably if surrounded by clearcut parcels. residential areas normally attract property buyers whose main interest is in the neighborhood's residential values. the more these values are protected the more the buyer's investment is also protected. i think that borough can reasonably expect that someone interested in investing in land from which they hope to be able to sell off the timber should be looking for land in zones that are more compatible with resource extraction related land uses. after all, the "use by right" in each zone clearly lists for the land buyer the development rights that accompany property ownership in each zone.

4) even though resource extraction does not currently seem to be an allowable use within the MBRR zone, i believe that it would be good for the PC to work on clarifying the code by adding language (much like that in the lutak zone) that specifically excludes resource extraction. it would also be worthwhile for the PC to clarify the extent to which tree

removal is allowed under normal residential use—for building site prep, garden space, sunlight, etc. the PC could add language that would create objective standards for tree removal based on a percentage of lot size, total volume, setbacks, visual screens, etc.

5) the zoning codes of many municipalities recognize the multiple values of tree retention in residential areas---including the maintaining of property values, wildlife habitat, erosion control, visual/noise screens, etc. other codes often require that property owners develop, and get approval for, a tree retention plan before being considered for a permit to cut timber above a prescribed volume---and this process is not limited to just commercial harvesting of the timber.

6) although not specifically addressed in the code, the retention of trees is perhaps the single most important value to protect if one is expecting that the zoning code will actually succeed in its goal of maintaining the rural character of the neighborhood. otherwise with a significant amount of tree removal, it quickly transitions into more of a suburban area.

>

Holly Smith

From: george figdor [figdor@aptalaska.net]
Sent: Wednesday, June 07, 2017 11:41 AM
To: Holly Smith
Cc: Rob Goldberg
Subject: university of alaska
Attachments: covenants.docx

holly,

attached are excerpts from the university of alaska letnikof estates subdivision covenants. as you can see, these covenants place significant limitations on the development of parcels within the subdivision—including restrictions on resource extraction, tree removal, commercial uses, and noise disturbances.

i find it ironic that the U of A has now submitted testimony that completely contradicts its past actions. with regards to the nearly 150 acres that the university developed at letnikof, their lands management office focused on protecting the natural and scenic qualities of the land and sought to maintain the land's value by limiting development—which serves as an interesting counterpoint to those who make arguments based on the “takings” theory.

additionally, i wonder if those owners of large parcels who testified against limitations on resource extraction (as a “takings”) realize that under the current borough zoning code (for mud bay) any such use is limited by the requirement that “a commercial enterprise shall be conducted only by a member or members of a family residing in a residence on the property...” [HBC 18.70.030(B)(3)(e)(7)]. i also wonder if some of these property owners are unfamiliar with the inherent land development limitations that exist within most single family residential zones.

george

Excerpts from the University of Alaska Letnikof Estates Covenants

13. Gravel/Subsurface Estate. No Lot shall be used in any manner to explore for or to remove any steam, heat, oil, or other hydro-carbons, gravel, earth or any earth substances or other minerals of any kind; provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of improvements on the Lot. Water may be extracted to the extent permitted by applicable governmental agencies.

15. Clearing and Burning. No Lot Owner shall be permitted to completely clear a Lot on which standing trees of size and beauty exist. Trees may be cleared and thinned to provide adequate building sites, yards, gardens, access, utilities, to enhance views and for reasons of safety, provided that, to the extent reasonably possible, the natural beauty and aesthetic value of the Lots are maintained. Bulldozers and/or other heavy equipment may be used to clear driveway, dwelling, and accessory building sites only. To preserve the natural environment, clearing or thinning of other trees or brush on the Lots shall be hand-cleared. Any slash, stumps, berm piles, and surface debris created by clearing operations are to be disposed of in accordance with state and local permitting requirements, or removed from LETNIKOF ESTATES SUBDIVISION. All cleared or exposed soil surfaces disturbed by construction or landscaping activity will be reseeded to provide a suitable ground cover to prevent soil erosion.

1. Permitted Uses. All Lots, unless expressly designated by Declarant, are Residential Lots for residential use only. Provided, however, professional and administrative activities may be permitted within a residential dwelling or associated outbuilding, provided that (a) it is completely contained within the dwelling, (b) there is no indication from the exterior of the dwelling that it is being used in part for home occupation purposes, and (c) it does not violate any other covenants, conditions and restrictions contained herein, and (d) such uses do not cause or produce health, noise, heat, light, odors, visual or safety impacts noticeable and materially different from a residential use. Activities that cannot be carried out within a dwelling may be permitted, provided the Association specifically consents to such activity in writing and further provided that such activity does not disrupt the enjoyment of other Lots as described above and is screened so as not to be Visible From Neighboring Property. This provision is not meant to prohibit the placement of a sign on the Lot according to the guidelines established in Article VII, Section 8, herein. This provision is not meant to prohibit the placement of fishing gear or boats on the Lot.

4. Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any adjacent Lot, or to its occupant. A "nuisance" shall include, but not be limited to, any of the following conditions:

a. Excessive Noise: Continuous noise disturbances caused by recreational or non-recreational use of motorized vehicles, or excessive noise disturbances caused by any equipment, generator, machine, device, or any combination of same, except for temporary use in construction of a permanent dwelling on the Lot. All equipment, generators, machines, devices, or combination of same shall be muffled and housed so as to minimize noise levels.


Linda J. Palmer
P.O. Box 63
Haines, AK 99827

June 6, 2017

Dear Planning Commission;

The US was founded on freedom and the rights of the people. Most of us are here in the Haines area because we passionately believe in those rights. The rights of all property owners in the Mud Bay area are not being honored. These people want to develop their property. They are not out to clear-cut their property. Lets honor our existing rules and regulations. Lets not give in to a few vocal neighbors. Lets do what is right and hold to it before we lose all of our rights to the few vocal groups. Please do not make any changes to code for more restriction but allow these property owners to use their land as intended when they purchased their land. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Palmer". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Linda J. Palmer

Holly Smith

From: Cecily Stern [cecily.stern@gmail.com]
Sent: Monday, June 05, 2017 4:36 PM
To: Holly Smith
Subject: MBLUSA Code

Hi Holly,

I am a landowner and resident in the MBLUSA. I favor adopting the same policies that are in the Lutak Service Area code regarding resource extraction into the MBLUSA code.

Thank you.

Cecily

Cecily Stern

907-766-2943

From: Holly Smith
To: "alexandria.lawrence@alaska.gov"
Cc: Donna Lambert; Rob Goldberg; "joel.nudelman@alaska.gov"; "greg.staunton@alaska.gov"
Subject: Haines Borough Planning Commission: Proposed Resource Extraction Amendment to Borough Code | Mud Bay Zone
Date: Monday, June 05, 2017 3:52:00 PM
Attachments: [MBRRParcels.xls](#)
[MBRRState.xls](#)
[April 17 2017 MBRR Residents Letter.pdf](#)
[MBRR_Zone_HnsBorough.kmz](#)

Hi Alex,

Please disseminate this email to those in the department who you think might be impacted.

The Haines Borough Planning Commission is considering a recommendation to the Assembly that would amend borough code to either prohibit or allow resource extraction in [the Mud Bay Rural Residential Zone](#) (attaching a kml polygon of the area for google earth reference – **MBRR_Zone_HnsBorough.kmz**). If the commission decides to make a recommendation at its June 8 meeting, it would go to the Assembly for consideration, which is another approximated three-month process before code would be amended.

We are trying to notify the various public entities that possess portions of land within this zone about the proposed amendment, but, aside from MTH and University lands, we are having difficulty locating the correct contacts for each state department/division.

Attached are:

- (1) Ownership information I was able to find for state lands in the Mud Bay zone (**MBRRState.xls**). Some lands are still unaccounted for. The information was pulled from the state's geospatial datasets [website](#). Some information pulled may not be valid – I'm still trying to interpret it.
- (2) Haines borough parcel information for all parcels on record with the Haines Borough (**MBRRParcels.xls**). None of the state parcels list department or contact info, aside from University or MHT parcels, which are likely out of date.
- (3) A letter to Mud Bay Residents sent April 17 (**April 17.pdf**).

The planning commission will have another meeting on this topic on July 13th. Please let me know if your division would like to provide comments or if you know of someone else within the state who would be interested in participating in the conversation.

Thanks kindly for your attention and help. Let me know if you have any questions.

-Holly

Holly Smith
Borough Planner
Haines Borough
103 Third Avenue S.
PO Box 1209
Haines, AK 99827
www.hainesalaska.gov
hsmith@haines.ak.us
Phone: (907) 766-2231 ext. 23
Fax: (907) 766-2716



The green land shown here within the MBRR zone represents land that is state owned, but specific department is not listed with the borough nor with the state.

The light blue land is accounted for within the state's database.

The white land is privately owned.

From: Brenda Josephson [<mailto:brenda@aptalaska.net>]
Sent: Monday, June 05, 2017 9:56 AM
To: Holly Smith
Subject: Re: June 8 Planning Commission Meeting Materials

Hi Holly,

For the PC meeting on Thursday, please provide the commissioners a copy of the zoning map for Mud Bay. Also, please advise the total acres in the Mud Bay zone and the number of acres that have been subdivided in lots of 5 acres or less. That information should be readily available through the Property Accessor's database.

Also, I see responses from University of Alaska, and Mental Health, but I did not see a response from Alaska Department of Natural Resources. Please provide me with a copy of the notification that Alaska DNR received on this agenda item.

Thank you,

Brenda

On 2017-06-03 18:18, Holly Smith wrote:

.

Greetings,

The agenda and packet for the June 8th Planning Commission Meeting has been published and can be viewed here:

http://www.hainesalaska.gov/sites/default/files/fileattachments/planning_commission/meeting/7801/pc_agenda_packet_6-8-2017.pdf

Paper copies of the agenda are available for commissioners at the admin office and one paper copy will be available at the library.

Please let me know if you have any questions.

Thank you.

Holly Smith

Borough Planner

Haines Borough

103 Third Avenue S.

PO Box 1209

Haines, AK 99827

www.hainesalaska.gov

hsmith@haines.ak.us

Phone: (907) 766-2231 ext. 23

Fax: (907) 766-2716



Trust
Land Office

June 2, 2017

2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.mhtrustland.org

Holly Smith
Borough Planner
Haines Borough
103 Third Avenue S.
PO Box 1209
Haines, AK 99827

RE: Haines Borough Planning Commission
Mud Bay Resource Extraction Issue
Proposed Amendments to HBC 18.70.030(B)(3)

Dear Holly,

The Trust Land Office (TLO) is closely following the progress of the proposed amendment to the Mud Bay Rural Residential zone, otherwise known as HBC 18.70.030(B)(3). The TLO has significant land holdings in the Mud Bay area, and is not in support of changes that would restrict, limit, or prohibit the TLO from meeting its mission to generate revenue for the Alaska Mental Health Trust Authority. As proposed, the changes to the Mud Bay Rural Residential zone has the potential to devalue our land, as well as negatively impact our ability to generate potential revenue through a variety of assets, including timber harvest, mineral exploration, and material sites.

We appreciate you reaching out to us, and providing reference materials, including an outline of the schedule that allows the TLO to meaningfully participate in the Haines Boroughs decision making process. Please use this letter in your upcoming Planning Commission meeting taking place on June 8th, and please continue to provide updates as needed.

Sincerely,

David Griffin
Southeast Area Lands Manager
907-222-3846
david.griffin@alaska.gov

Christine Klein
Director
Phone: (907) 786-7781
Fax: (907) 786-7733
Email: ceklein@alaska.edu



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June 2, 2017

Haines Borough Mayor
Haines Borough Planning Commission
P.O. Box 1209
Haines, AK 99827

Dear Mayor Hill and Members of the Planning Commission:

I recently learned that, at its May 11, 2017 meeting, the Haines Borough Planning Commission is considering recommending to the Assembly that it amend HBC 18.70.030. The proposed amendments would further restrict resource extraction in the Mud Bay Rural Residential zone by either prohibiting resource extraction or making it a conditional use. The University of Alaska (UA) owns property affected by this proposed action and opposes the proposed resource extraction restrictions.

Established in 1917 as a Land Grant College, UA received lands granted by the Federal Government prior to and after Alaska Statehood to hold in trust for the benefit of UA. The UA trust lands, while small in total acreage compared to other land grant institutions in the United States, are investments critical to the perpetuity of the trust and UA. Our role is to utilize those investment lands and resources through responsible stewardship and management, which generates funds to support UA programs and initiatives such as the UA Scholars Program.¹ Consistent with Board of Regents' policy, the trust investment lands provide long-term environmental and economic benefits.

UA owns approximately 520 acres in the Mud Bay area that have been impacted through increasing zoning restrictions since the 1980's and continue to be impacted and devalued by attempts to further restrict property owners. It is imperative for us to ensure all UA owned assets maintain their greatest investment value and potential, for highest and best use, to sustain the trust and UA programs. As a major property owner, the Borough did not notify UA when the Mud Bay Land Use Service Area was established while Haines was a third class Borough, nor when zoning restrictions became codified in Haines' transition to a second-class borough.

The Borough's failure to notify UA as an affected property occurred again with regard to this proposed action. I see from the Planning Commission agenda packet that the Commission did send a "Dear Neighbor" letter on April 17, 2016 soliciting input. However, this letter was apparently not sent to UA. Under HBC 18.30.020(C), it is my opinion that the Borough was required to provide notice to UA. The Planning Commission and Borough should afford UA adequate time to analyze the proposed action, provide input, and hopefully work with the Borough to find a solution that allows UA to manage its lands and resources consistent with its mission.

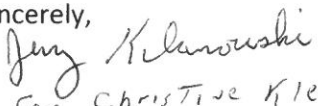
¹ The UA Scholars Program provides scholarships to over 1,800 Alaska students annually.

Haines Borough Mayor
Haines Borough Planning Commission
June 2, 2017
Page 2

If the Borough acts with haste and adopts either version of the ordinance further restricting natural resource and property development potential of the UA land, the Borough should compensate UA. The devaluation of UA resources caused by the proposed Mud Bay land use restrictions is a taking of UA property. UA opposes any changes to HBC 18.70 or related codes, which take away or reduce property owners' rights to their land and resources located in the Haines Borough, without just compensation.

My hope is that the Planning Commission and the Borough will take the time to discuss this issue with UA so that we can address the issues raised in this letter. I look forward to hearing from you.

Sincerely,


For Christine Klein

Christine Klein
Director

cc: Members of the Borough Assembly

To: Holly. Smith
From: Sharon Resnick
8 Mile Mud Bay Road
Haines, AK 99827
907-766-2207

Date: June 15, 2017

Re: resource extraction in Mud Bay Area

I request that the Mud Bay zoning area adopt the same regulations as those of the Lutak zoning area, which says that "all uses not expressly provided under permitted, accessory or conditional uses are prohibited." We are a small community and Mud Bay is not that different from Lutak.

Repeatedly in Haines, lack of either clarity in code or enforcement of it has been the catalyst for rifts amongst the many good people who live here. And, then there is the issue of many people not being familiar with code when they buy their land and then that pits them against neighbors who did.

As it stands now, the code (18.70.030.b.3.a) says that Mud Bay is a rural residential area allowing for single-family dwellings and cottage industries. It also says that conditional use permits are required for anything other than that (18.70.030.b.3.e.7). Yet, still some landholders contest that. That same section of the code also says that a landowner has to be a resident in order to get a conditional use permit to conduct commercial enterprise. Yet, at least three of the big landowners in Mud Bay do not seem to be aware of that according to the letters and documents they have submitted to the borough.

It was the quietness, rural nature, scenic beauty and privacy that drew me to purchase land at Mud Bay in the 1980s. I was happy to go to the Interior for five years to find work to pay for it and the materials to build my home here. I would ask that the borough at least honor its code in preserving what I and many of my neighbors believed we were buying into and at best, make it easier for future residents to be clear about what can happen next door or down the road from them.

Holly Smith

From: george figdor [figdor@aptalaska.net]
Sent: Thursday, June 15, 2017 5:58 PM
To: Holly Smith; Rob Goldberg
Subject: takings
Attachments: takings.pdf

hi holly and rob,

i got curious about the concept of “takings” after the PC meeting last week and started looking for a simplified legal explanation (is that an oxymoron?) of the term. the attached document below—in my opinion--- lays out the issues involved pretty well. from my understanding now, a PC ruling that prohibits or limits resource extraction in the mud bay zone clearly would not constitute a takings.

restrictions on an owner’s use of land is something that zoning boards do routinely. so merely restricting certain uses of roger’s land as discussed would not rise to the level of a “takings.” it appears that a takings (which arises out of the fifth amendment’s protection to property owners against government seizure of their land without compensation) involves only government action that takes land thru eminent domain or that applies restrictions so confining that it essentially has the same effect as a seizure. however, as this article points out, simply restricting certain uses, while leaving other viable uses, is not a takings. is that right?

so, just because roger can’t resource extract, he is certainly not deprived of the zone’s principal use by right—of using the land for residential lots. even with resource extraction restrictions, his right to subdivide and sell off 50 3-acre lots still remains---and is clearly a reasonable and economically beneficial option for developing his land. after all, this is exactly what the university chose to do in an effort to comply with the intent of our zoning in the development of it’s nearly 150-acre parcel at letnikof cove in the 90s.

i think the PC should be able to confidently take actions like restricting resource extraction in residential neighborhoods without having to raise the red flag of takings. the concern here among neighbors is that large nonresident landowners can exercise undo power over zoning decisions because they have lawyers on their payroll. i would like to see the PC discourage this. elevating a community dialogue to a battle of attorneys right from the start undermines the ability of local residents to have input into PC decisions that will significantly impact them.

i think the PC should discourage roger (as well as the MH trust and the U of A) from resorting to legal challenges and should encourage him to work with neighbors in developing his land in a way that is more in the spirit of the university’s letnikof model.

george

(holly, i’m cc’ing rob g., but you can share this with the other pc members as well.)

James R. Johnsen, Ed.D.

President

Butrovich Bldg, Ste. 202, 910 Yukon Drive
P.O. Box 755000, Fairbanks, AK 99775-5000
Phone: (907) 450-8000; Fax: (907) 450-8012
Email: ua.president@alaska.edu
www.alaska.edu



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June 21, 2017

The Honorable Janice Hill
Haines Borough Mayor
P.O. Box 1209
Haines, AK 99827

Dear Mayor Hill:

I understand the Haines Borough is considering amendments to its Borough planning and zoning code. The University of Alaska (UA) owns land in the area that may be impacted, and we are concerned with any zoning changes that may further restrict sustainable economic development of these trust properties.

As a Land Grant College established in 1917, the University received limited land parcels granted by the Federal Government prior to and after Alaska Statehood to hold in trust for the benefit of UA. Because our holdings are tiny in total acreage compared to other institutions in the United States, these lands are critical to UA's trust programs and their perpetuity. The Board of Regents has a fiduciary responsibility to protect and utilize the trust properties, as responsible stewards, to generate revenue for academic programs and initiatives such as our UA Scholars Program¹. Consistent with Board of Regents' policy, the trust provides long-term economic benefit to thousands of Alaskan students whom the UA Scholars Program has funded. Over the years, some of those students have hailed from Haines, and I am pleased to report two more successful University graduates from Haines just this past month. Both were UA Scholars. <http://www.alaska.edu/files/scholars/ScholarsInsert2017-Online.pdf>

Funding for these programs comes from our land management activities, including timber harvesting, gravel extraction, and subdivision lot sales. For example, the University subdivided some of its property in Mud Bay for residential development purpose. These home lots sold and are now occupied by Mud Bay residents. The revenues generated from land and resource development go directly into the trust for the benefit of students. Despite the University's responsible approach to development of its lands, our remaining lands at Mud Bay and additional acreage in the Haines area have faced increasing zoning restrictions that reduce their value as trust investments. It is imperative for us to ensure our properties maintain the greatest investment value and potential for highest and best use in sustaining the land grant trust. This is particularly important in light of the continued cuts to the University's budget by

¹ The UA Scholars Program provides scholarships to over 1,800 Alaska students annually, and is supported by the UA Land Grant Trust.

The Honorable Janice Hill

June 21, 2017

Page 2

the Legislature, and the Legislature's expressed desire for the University to rely more on its real property resources to operate.

We respectfully oppose changes to HBC 18.70 or related codes, which reduce private property owner rights to any UA trust lands located in the Haines Borough.

My request is that the Borough find alternative solutions that allow private property owners to manage their lands and resources consistent with their goals, and that do not adversely affect University and other private landowner investments. The University would be happy to work with you and others in Haines on such alternatives.

Sincerely,

A handwritten signature in black ink that reads "James R. Johnsen". The signature is written in a cursive style with a large initial "J" and "R".

James R. Johnsen

President, University of Alaska

Enclosure: UA Scholar Graduates 2017 (Insert)

cc: Borough Assembly
Planning Commission
Borough Clerk

Holly Smith

Subject: FW: mud bay code

From: Heidi Robichaud [<mailto:scrimqueen@gmail.com>]

Sent: Friday, June 30, 2017 10:32 AM

To: Holly Smith

Subject: mud bay code

Dear Holly and Planning Commission members,

I am writing to express my concerns about expansion of the definitions of resource extraction in the mud bay area. I encourage you to prioritize the existing rights of the residents of the area, as written in current code - as opposed to the concerns of non resident land owners such as Roger Schnabel and Mental Health Trust- regarding commercial uses and resource extraction. Please do not cave in just because of a legal threat. I have already given testimony regarding this so I won't repeat myself, however, I do want to comment on a related issue.

Our neighbors, Chad and Sylvia, have been operating a small portable sawmill as part of their business in Mud Bay. Please understand that my husband and I wholeheartedly support their small business - with one caveat. Their sawmill is located on their property about 200 ft from our from home and garden. When it is running, we hear it loudly even from inside the house and it is extremely disruptive to our otherwise quiet home and garden.

We believe that, according to definition of cottage industry in this area, a commercial sawmill does not meet criteria if it is so close to our home. We are "reasonable" people on adjoining property.

I have heard planning commission members publicly refer to Chad and Sylvia Beiberichs business as a "cottage industry". At this point, they have not used their mill much near our home, but our concern is that if the Planning Commission views this as a cottage industry with the mill in this location, that this might be tacit approval for its use in that location by our home. We do not want this use to be "grandfathered" in.

I want to be on record as follows:

1. My husband and I do not support our neighbors operating their saw mill so close to our home and have clearly expressed this to them several times.
2. Chad and Sylvia have assured us on numerous occasions that they intend to move the mill from its present location so close to our home, and that they are actively seeking another suitable location for it.
3. We strongly support their business as long as the mill is elsewhere when in operation.

We thank you for your consideration.

Heidi Robichaud
and Scott Carey

To: Planning Commission

Topic: Resource Extraction Definitions

As I read through the new definitions for resource extraction, there are a couple of items I feel need to be addressed.

1 - The draft states that: Amounts below 40,000 board feet (16 logging truck loads) per lot per year.

My question is: what lot size are you referring to? Lots sizes vary considerably. I feel the definition of "lot" needs to be more definitive.

2 - Also written is: below 40,000 board feet is allowed per year. The Haines Forest produces between 22,000 to 30,000 board feet/acre. With lot size not defined and 40,000 board feet a year allowed, that would have the potential for small lots to be heavily cut without needing a special use permit. The 40,000 board feet number needs to be revisited and adjusted.

Thank you for taking the time to read my concerns.

Mark Battaion

Christine Klein
Director
Phone: (907) 786-7781
Fax: (907) 786-7733
Email: ceklein@alaska.edu



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November 8, 2017

Haines Borough Planning Commission
P.O. Box 1209
Haines, Alaska 99827

Re: Borough Planning & Zoning Meeting Resource Extraction Definition

Dear Commissioners:

The University of Alaska is requesting that the resource extraction definition discussion, scheduled for the November 9th, 2017 Planning Commission meeting, be tabled for thirty (30) days. We received the agenda and supporting documents just today when it posted on your website.

The University intends to provide proposed language for the resource extraction definition, to be included with the other two draft proposals, for consideration at a future planning commission meeting.

Sincerely,

A handwritten signature in blue ink that reads "Russell Comack".

Christine Klein for Christine Klein
Director

Hi Holly,

I would like to include the following comment in the packet for tonight's PC meeting. I apologize for the lateness.:

To the Planning Commission, regarding Resource Extraction Definitions,

I recently asked local forester Greg Palmieri for an estimate of board feet/acre on the Haines State Forest. It was 22,000 to 30,000 bd ft./acre, with the low range being the more likely for an area such as the Mud Bay Rural Residential Zoning district, and possibly other zoning districts. The proposed definition using 40,000 ft./lot needs to be re-defined in terms of acres, not "lots." Removal of 40,000 bd. feet from a one to three acre lot could have a large impact on a neighborhood, whereas removal of 40,000 ft. in one year from a 50 acre piece of property would have far less impact.

Possibly each zoning district should have their own criteria established to define "resource extraction."

Thank you,

Eric Holle

Christine Klein
Chief Facilities & Lands Officer
Phone: (907) 786-7781
Fax: (907) 786-7733
Email: ceklein@alaska.edu



Facilities & Land Management
University of Alaska System
1815 Bragaw St, Suite 101
Anchorage, AK 99508
Web: www.ualand.com

The Honorable Jan Hill
Mayor of the Haines Borough
P.O. Box 1209
Haines, Alaska 99827

December 5, 2017

Mr. Rob Goldberg, Chairman
Haines Borough Planning and Zoning Commission
P.O. Box 1209
Haines, Alaska 99827

Re: Draft Ordinances for Resource Extraction

Dear Mayor Hill and Chairman Goldberg:

The University of Alaska (UA) appreciates the opportunity to comment on the draft ordinances intended to clarify land use requirements for resource extraction. We understand that the issues the Planning Commission is concerned with are timber harvests within Mud Bay Planning/Zoning District and the task of clarifying in general a process for oversight of “resource extraction” when such use is not one by right or the use is secondary to a primary use such as property development. There are two draft ordinances before the Planning Commission and for ease of understanding the UA’s comments, we will refer to the draft ordinance that references a “land development plan” as Draft A, and the draft ordinance that contains a definition for “commercial timber harvest” as Draft B.

Currently, resource extraction is not specifically referenced in the Mud Bay Planning/Zoning District provisions (18.70.030B). The Borough has previously communicated to the UA that this lack of reference means that commercial timber harvests are implicitly prohibited. The draft ordinances seek to provide guidance around resource extraction, when that activity is secondary to a primary purpose, such as real estate development. This clarity would aid in the Planning Commission’s management of secondary timber harvesting within areas such as the Mud Bay Planning/Zoning District, where according to the Borough, there is no timber harvest allowed as a “use by right”, or as a primary purpose.

While UA does not agree with all aspects of the Planning Commission's legal position, the UA does have an interest in preserving the commercial value of its Mud Bay properties for future property development. To that end, we want to encourage the Planning Commission to adopt ordinances that are unambiguous, and easy to administer and follow. In addition, the UA wants to insure that the ordinances adopted do not have unintended consequences that impact the UA's other properties that are in areas outside of the Mud Bay Planning/Zoning District.

Comments to Draft A:

The UA prefers Draft A because it more directly addresses the problem the Planning Commissioner is trying to solve. The definition for "Resource Extraction" includes only resource removal where the extraction is the primary purpose for activity on the land. It therefore excludes those situations where the resource removal is a by-product or preparatory step to the primary intended use of the land, such as real estate development for homes or businesses. This approach means that the "use by right" authority under 18.70.30 D.2. exists only where the resource removal is the primary purpose and it is not otherwise restricted in the specific zoning district. The UA can accept this approach because it is consistent with the UA intended uses of its own lands in the Borough.

The first paragraph's definition of "resource extraction" is ambiguous when applied to timber harvesting because of the use of the phrase "naturally occurring materials". Most Southeast forests are the result of reforestation practices over past decades and thus it could be argued that "man-aided" reforested areas are not "naturally occurring." In fact state law requires reforestation practices under the Alaska Forest Resources & Practices regulations (11 AAC 95.375-.390). The UA needs language inserted either in the intent language or the ordinance itself to make clear that re-forested areas are still "naturally occurring" within the intent of this ordinance.

The UA offers up for consideration two other definitions of "resource extraction" that have been used successfully in other Alaska zoning ordinances:

Ketchikan Gateway Borough: "Resource Extraction" means the extraction of commercially marketable natural resources for sale or trade. "Commercially marketable natural resources" include rocks and minerals, timber, topsoil, and naturally occurring materials for which a market demand exists or is reasonably expected to exist.

This definition ties "resource extraction" to commercial and market conditions and would exclude a property owner who was clearing trees to build a house and not engaged in

commercial marketing. This would perhaps addresses the same concern that Draft B attempts to address through quantitative measures.

Fairbanks Borough Code: "Resource Extraction" means commercial or industrial operations involving removal of timber, native vegetation, peat, muck, topsoil, fill, sand, gravel or any other operations having similar characteristics.

The second paragraph of Draft A should include a reference to how the land use development plan process works where the resource extraction is a "use by right". We suggest the following rewording to achieve this:

"A property owner is required to submit a land use development plan if the Haines Borough is unable to determine whether the removal of a naturally occurring material is the result of a primary or secondary use; provided, however, that a land use development plan is not required if resource extraction is a use by right in the zoning district where the resource extraction will take place. The planning commission will determine whether the removal of a naturally occurring material is a primary or secondary land use. If a property owner deviates from an approved land use development plan without approval from the planning commission, removal of a naturally occurring material will be considered resource extraction."

With the above suggested edits, the UA could work within this zoning structure and process.

Comments to Draft B:

Draft B provides a simple definition of "resource extraction" that excludes timber harvest and a new definition for "commercial timber harvest." Since "commercial timber harvest" is not addressed elsewhere in the Haines Borough Code, the Planning Commission and Assembly would have to go back through the code and determine where and how to incorporate the new term into existing zoning classifications. At a minimum, this draft ordinance would need to also contain language that added the new term "commercial timber harvest" to the list of "uses by right" in General Use (GU) districts (18.70.030 D.2.) Therefore, Draft B would require additional drafting to ensure that other ordinances properly incorporate the new term. The UA would want to be able to comment further on the additional draft ordinance revisions if this approach were adopted.

Letter to Mayor Hill and Chairman Goldberg

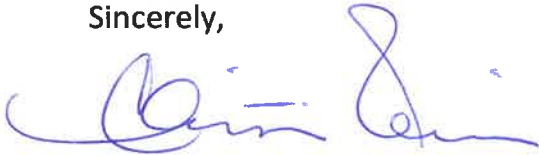
December 5, 2017

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Draft B addresses the issue of timber harvests as a secondary purpose by quantifying amounts of timber removal that could be considered typical of secondary purpose removal and then excluding these activities from the "commercial timber harvest" definition. Depending upon the site specifics, land contours, and the specific land development plans, the 40,000 board feet threshold may not be adequate to cover all secondary purpose timber resource harvesting projects. The Commission should review past developments to confirm that this figure will capture the majority of likely developments.

The UA takes very seriously its trustee duty to manage its limited Land Grant Trust properties, and we deeply appreciate this opportunity to comment on the two draft ordinances.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christine Klein", with a large, stylized flourish at the end.

Christine Klein

Cc: Haines Borough Assembly Members

December 12, 2017



2600 Cordova Street, Suite 100
Anchorage, AK 99503
Tel 907.269.8658
www.mhtrustland.org

Jan Hill, Mayor
Haines Borough
P.O. Box 1209
Haines, AK 99827

Rob Goldberg, Chairman
Haines Borough Planning and Zoning Commission
P.O. Box 1209
Haines, AK 99827

Re: Trust Land Office Comments – Draft Definitions for Resource Extraction

Dear Mayor Hill and Mr. Goldberg,

Thank you for the opportunity to comment on the draft definitions for Resource Extraction the Haines Borough Planning and Zoning Commission is currently reviewing.

The understanding of the Trust Land Office (TLO) is that the Haines Borough Planning and Zoning Commission is seeking to redefine the definition of “Resource Extraction” to clarify ambiguity in zoning ordinances. The TLO is a large landowner in the Haines Borough, and changes to ordinances and/or definitions of terms within ordinances, can impact the generation of revenue for the TLO. Examples of revenue generating activities on TLO parcels include land sales, land use authorizations, timber harvest, mineral extraction, and development of rock, sand, and gravel resources; therefore, the TLO has an interest in preserving the commercial value of its properties, and is opposed to any efforts that the seek to curtail the ability of the TLO to meet its mission of maximizing revenues from it’s land.

Regarding the two proposed draft definitions for “Resource Extraction” (Item 8B3) that’s scheduled for public hearing on December 14, 2017, the TLO has reviewed them, and arrived to the same conclusions as University of Alaska (UA), as explained in their comment letter to you dated December 5, 2017 (attached). The TLO supports, and agrees, with the UA comments; of the two draft definitions, the UA prefers what they refer to as “Draft A”, which is the definition that references a “land development plan”; the second draft is referred to as “Draft B”, and contains examples of definitions for “commercial timber harvest” and “commercial logging”. The UA noted suggested changes, edits, and modifications of the two draft definitions, and the TLO similarly supports the suggested changes.

The TLO is tracking the efforts of the Haines Borough Planning and Zoning Commission with regards to changes in their ordinances, and appreciates the opportunity to comment on the

two draft definitions, furthermore, the TLO looks forward to working with Haines Borough staff and elected officials in developing Trust owned resources at present and in the future. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Griffin". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

David Griffin
Southeast Area Lands Manager
Trust Land Office

Cc: Wyn Menefee, Executive Director, Trust Land Office
Paul Slenkamp, Senior Resource Manager, Trust Land Office
Christine Klein and Patrick Kelly, University of Alaska

Christine Klein
Director
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Facilities & Land Management
University of Alaska System
1815 Bragaw St, Suite 101
Anchorage, AK 99508
Web: www.ualand.com

The Honorable Jan Hill
Mayor of the Haines Borough
P.O. Box 1209
Haines, Alaska 99827

December 12, 2017

Mr. Rob Goldberg, Chairman
Haines Borough Planning and Zoning Commission
P.O. Box 1209
Haines, Alaska 99827

Re: Draft Ordinances for Resource Extraction

Dear Mayor Hill and Chairman Goldberg:

Attached is the University of Alaska (UA) suggested draft ordinance. The UA draft ordinance is essentially the same as the draft proposed by Mr. Stephens with two modifications, consistent with the recommendations in our December 5, 2017 letter.

The UA draft ordinance contains revisions that:

- 1) Clarify that re-forested areas are still “naturally occurring” within the intent of this ordinance.
- 2) Clarify how the proposed “land use development plan” would operate where the resource extraction is a “use by right”.

Sincerely,



Christine Klein

Cc: Haines Borough Assembly Members

HAINES BOROUGH, ALASKA
ORDINANCE No. 17-xx-xxx

An Ordinance of the Baines Borough amending Haines Borough Code Title 18 to create a new definition for “resource extraction”.

BE IT ENACTED BY THE HAINES BOUROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Baines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remained of this ordinance and the application of other persons or circumstances shall not be affected thereby.

Section 3. effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Title 18: Definitions in Title 18 of the Haines Borough Code is hereby amended as follows:

NOTE: **UNDERLINED** ITEMS ARE TO BE ADDED

STRIKETHROUGH ITEMS ARE DELETED

18.20.020: Definitions- Regulatory

~~“Resource extraction” means a use involving clearing or grading of land or the removal, for commercial purposes, of native vegetation, topsoil, fill, sand, gravel, rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other operation having similar characteristics~~ **a primary land use involving the removal of any naturally occurring material. If the removal of a naturally occurring material is the result of a primary land use, such as property development, the removal of the naturally occurring material is a secondary land us and is not considered resource extraction. Timber that is the result of man-initiated reforestation actions are considered naturally occurring material.**

A property owner is required to submit a land use development plan only if the Haines Borough is unable to determine whether the removal of a naturally occurring material is the result of a primary or secondary use; provided, however, that a land use development plan is not required if resource extraction is a use by right in the zoning district where the resource extraction will take place. The planning commission will determine whether the removal of a naturally occurring material is a primary or secondary land use. If a property owner deviates from an approved land use development plan without approval from the planning commission, removal of a naturally occurring material will be considered resource extraction.”

[Insert new term “Land development plan”]:

“Land development plan” means a written explanation of the property owner’s intended use of the property. The land development plan must explain the primary land use, all secondary land uses, timeline, and the methods to be employed in order to achieve the land development plan. A land development plan is only required to determine if the removal of a naturally occurring material is

considered resource extraction. A land development plan must be reviewed by the planning commission for the sole purpose of determining if the removal of a naturally occurring material is resource extraction.

ADOPTED BY A DULY CONSITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS _____ DAY OF _____, 201__.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC Borough Clerk

Date introduced: ___/___/___

Date of First Public Hearing ___/___/___

Date of Second Public Hearing ___/___/___