

HAINES BOROUGH, ALASKA
 ORDINANCE No. 18-03-001-PC

Draft

An Ordinance of the Haines Borough amending Haines Borough Code Title 18 to create a new definition for “resource extraction” in 18.20.020 and to create exemptions and regulations of the use in 18.60.020.

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: The definition and exemptions and regulations for “resource extraction” 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 removal of mineral or soil-based materials including, but not limited to rock, gravel, sand, clay, topsoil, and peat, or the cutting of trees, and the transport of these materials off their property of origin. See exemptions and regulations under HBC 18.60.020: Special Approval Criteria.**

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18.60.020: Approval Criteria – Specific approval criteria.

A. Resource Extraction.

- 1. Exemptions. In a subdivision with an approved plat, the removal and transport of materials for the construction of road and utility rights-of-way shall not be considered resource extraction. Additionally, removing and transporting less than the following material amounts shall not be considered resource extraction. These figures are limits for each lot:**

	<u>Board Feet Timber</u>	<u>Cubic Yards Material</u>
<u>Zones where 10,000 square feet is the minimum lot size</u>	<u>5,000</u>	<u>500</u>

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<u>Zones where 1 acre is the minimum lot size</u>	<u>15,000</u>	<u>1000</u>
<u>Zones where 3 acres is the minimum lot size</u>	<u>30,000</u>	<u>1,500</u>

2. Permitting. A permit for the commercial extraction of a natural resource **extraction** may be issued with such reasonable conditions as necessary. The use must meet all other pertinent requirements of this title and include an acceptable operation and reclamation plan that addresses the following concerns and assures that the adverse impact of the operation is minimized and the site will be left in a safe, stable and environmentally and aesthetically acceptable condition:

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

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

ATTEST:

 Janice Hill, Mayor

 TBD, Borough Clerk

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

From: george figdor
To: planning commission
Re: proposed language changes to MBRR zone regarding RE

Add to HBC 18.70.030 B.3.

(h) Prohibited Uses. All industrial uses, as well as commercial uses not specifically allowable above, shall be considered prohibited—including, but not limited to:

- (1) helipads**
- (2) resource extraction**

(i) Tree/Natural Vegetation Removal. In the development of a residential house site, trees and other natural vegetation may be cleared and thinned to provide for adequate building sites, access, gardens, sunlight, utilities, and for reasons of safety—provided that, to every extent reasonably possible, the natural vegetation, beauty and aesthetic value of the property is maintained. Such clearing is not considered resource extraction.

In addition, up to 5 trees may be removed per year for firewood and other personal use.

The above allowable tree removal shall not include the clearing of trees within the setback area from adjoining properties, as defined in section (g) above.

In order to gain improved views and sunlight, some tree removal is allowed in the property setback area from adjoining roads. But, in order to maintain as much of a visual screen as possible, such clearing shall be limited to 50% of the coverage, through tree thinning and limbing.

Also, add under conditional uses:

(e)(10). Clearing land for commercial agriculture purposes.

Notes: The rationale for the tree removal language above is to provide for a reasonable amount of clearing associated with normal building site development and to allow for some ongoing clearing for a variety of personal uses within the intent expressed in the first paragraph of section (i) above.

The intent of the setback language is to minimize impacts to neighbors by providing for a noise and visual buffer.

Since clearing for agriculture use is more extensive than typical site development and has unique considerations, it should require a use plan and a CUP.

Holly Smith

From: Nancy Berland [nancyandburl@gmail.com]
Sent: Friday, March 02, 2018 2:11 PM
To: Holly Smith
Subject: RE and Mud Bay code

Hi Holly.

I'm delighted to hear that the University decided not to log their holdings across Mud Bay. If/when the Borough receives written confirmation, I would appreciate hearing about it.

As you may know, I recently had a legal consultation which was very different from the Borough Attorney's opinion. In the interests of moving forward and creating acceptable code to remove ambiguity, I would like to share this legal opinion:

"Commercial logging and gravel mining are nonconforming uses in the Mud Bay rural residential zone and are not permissible under the zoning code. Unfortunately, there are some ambiguities in the zoning code that have led to the mistaken impression that property owners are allowed to conduct these commercial activities. For example, normally a zoning code change would contain a provision requiring property owners interested in nonconforming uses to prove existing use at the time of rezoning and either obtain grandfather rights or go through the conditional use permitting process. The initial zoning effort did not do this. In addition, the Mud Bay Code only included one specific prohibited use - helipads - perhaps under the assumption that commercial logging and mining were encompassed under the provisions for commercial use and cottage industry. And the Lutak rural residential zoning code is different, creating inconsistencies. Because of these ambiguities, the Planning Commission's efforts should focus on housekeeping measures that clarify the intent of the rural residential district, rather than opening up exceptions for resource uses that are inconsistent with the purpose of the district, and the expectations and investments of rural residential property owners."

I would hope any changes to MBRR code are housekeeping measures that are consistent with the purpose and intent of our code. I know that any plan to change or water down the purpose and intent of our code would be met with a great deal of resistance.

Thank you.

Nancy Berland