



HAINES BOROUGH, ALASKA
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Memorandum

Date: December 7, 2018

To: Haines Borough Planning Commission
From: Holly Smith, Borough Planner

Re: Resource Extraction Draft Ordinance

For the planning commission's consideration, the attached ordinance is the latest draft since the May 2018 regular meeting when the Commission directed staff to review and recommend changes. If the planning commission approves, please recommend that the assembly adopt the draft ordinance. If the commission does not approve, please schedule a public hearing for a later meeting, noting what specific actions staff can do to help you prepare or how you would like to see the ordinance changed.

BACKGROUND:

All commissioners should review the [May 4th, 2018 Memo](#), which presents a summary of planning commission actions related to this topic. It also lists concerns about the previous draft ordinance.

https://www.hainesalaska.gov/sites/default/files/fileattachments/planning_commission/meeting/12231/item8c.pdf

During its May 10th meeting, the Commission moved to send the "draft ordinance and concerns outlined in the memo for staff review and recommendation" (see ROD). Borough Staff contacted our legal consultant, Brooks Chandler, to review and make recommended changes to the draft based on staff concerns (see Chandler Corresp 9-5-2018). The draft was then forwarded to Commissioners Goldberg and Turner for their review.

SUMMARY OF REVISIONS:

The following summarizes the revisions in the draft before you:

- The definition of resource extraction has been split into two types: "Minor" and "Major". As Chandler notes in his correspondence, "The specific permit criteria set by HBC 18.60.020 will only apply to "major" resource extraction. The general approval criteria will apply to "minor" and "major" but whether any permit at all is required for "minor" resource extraction will be established on the "use chart" of 18.70.040."
- The definition "Minor" resource extraction clarifies that the cumulative amounts are based per lot on a three year period.

- **Subjective a/or cloudy language and requirements that appear to be unnecessary have been removed from HBC 18.60.020 Special Approval Criteria.** The language that was changed is not new; it exists in our current code.
- **In the Mud Bay Rural Residential zone and the Lutak Rural Residential zone, the designation that “Minor” resource extraction is allowed as an accessory use.** Any activity associated with minor extraction need only be declared on a construction declaration; the approval criteria of 18.60 would not apply.
- **In the Mud Bay Rural Residential Zone, the designation that “Major” resource extraction is prohibited.** The majority of residents in Mud Bay who provided testimony on this issue have asked that resource extraction of this type be prohibited.
- **In the Lutak Rural Residential Zone, the designation that “Major” resource extraction is a conditional use.** Commercial logging is a conditional use in this zone, though the code is silent about gravel extraction in particular. Rather than prohibit gravel extraction outright, it is reasonable to allow an applicant to go through the conditional use process, especially considering that extractive activities are already allowed in some form.
- **The zones listed in the use chart of 18.70.040 allow “Minor” resource extraction as a use-by-right with permit required.**
- **The use of “Resource Extraction/Proc” is now “Resource Extraction, Major” in the use chart of 18.70.040.** None of the use designations (allowed/not allowed) have been changed.

Note that the General Use zone (18.70.30 (D)) remains unchanged with the proposed draft ordinance. Resource extraction is already a use-by-right in this zone and is not subject to the approval criteria of 18.60 because it is outside of the townsite.

ADDRESSING MAY 2018 CONCERNS:

Large Land Owners: The ability to develop large lots in zones prohibiting RE is allowed as a UBR with the new definition. However, we may have a loophole whereby a developer can create a subdivision, declare extractive activities as accessory to subdivision development, remove as much material as allowed under the ‘cumulative amount chart’, then re-subdivide and repeat.

Remedy: It is unlikely that it would be economically feasible for most developers to use this loophole. If there are still concerns, we could change subdivision regulations to prohibit long plats from being changed for a period of five years, similar to what we already require for short plat criteria.

Site Development: The new definition of “minor” resource extraction now clarifies that the allowable amounts for each lot are based on a three-year time frame. However, there is still no provision in code for site development per se, except when it is declared as accessory to future construction.

Sometimes developers will grade a lot without needing to construct. The usual intent is to prep the site in order to make it more marketable for a buyer. The problem is that grading or site preparation or site development does not require a permit from the borough. Grading can have impact on drainage patterns, anadromous streams, and possible encroachment of other properties. It is the reason we have general approval criteria J, N, O, P, T, and U of our code in HBC 18.20. Developers can get around those requirements if they don't have to go through a permitting process.

Remedy: Most communities require development permits of some type. If the Commission agrees, I will bring a draft ordinance for review during the December 27th meeting.

Use Designations for Mud Bay and Lutak Zones: The revised draft ordinance provides use designations for the Mud Bay and Lutak zones (see above section for changes).

Material Amounts: There is a discrepancy between the allowances of the two types of materials listed in our 'cumulative amount chart'. The new definition would allow many more truck loads for earthen materials as would be allowed for timber. If we assume that an average 23 ft. by 8 ft. dump truck holds 10 cubic yards of material or 2,500 board feet, we can assume that the number of truck loads for each amount type would be the following:

Lot Size	Board Feet	Truck Loads	Cubic Yards	Truck Loads
10,000 sq. ft.	5,000	2	500	50
1 acre	15,000	6	1,000	100
3 acres	30,000	12	1,500	150

Remedy: The Commission needs to agree on an amount that is more equal for each extractive type. If the Commission believes that 12 truck loads for any one lot in the Mud Bay zone is an acceptable level relative to impacts from traffic and noise for subdivision development, it should reduce the allowable amount for earthen material. Or vice versa. The Commission should also consider using an interval amount rather than an integer for material amounts (i.e. 1,000-5,000 board feet) to prevent small extractive activities (i.e. the removal of one tree) from needing a land use permit.

Enforcement: The ability to enforce the regulations is improved with the addition of the three year time frame with "minor" extraction. It is also improved because requiring developers to be regulated (before they were exempt) will help staff monitor development.

Draft

HAINES BOROUGH, ALASKA
ORDINANCE No. 18-xx-xxx

An Ordinance of the Haines Borough amending Haines Borough Code Title 18 to create new definitions for “resource extraction”, “minor resource extraction” and “major resource extraction” in 18.20.020; to create exemptions and regulations of the use in 18.60.020; and to designate allowed uses in 18.70.030 and 18.70.040.

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 Section 18.20.020 of the Haines Borough Code is hereby amended to revise the definition of “resource extraction”, and to add new definitions for “minor resource extraction” and “major resource extraction” to read 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 natural gas, coal, metal ore, or any other 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 beyond the legal boundaries of the property of origin.**

“Resource extraction, major” means all Resource Extraction other than Minor Resource Extraction.

“Resource extraction, minor” means:

In a subdivision with an approved plat:

(a) resource extraction within platted road and utility rights-of-way in the same subdivision.

(b) resource extraction from a single lot within the

Subdivision in less than the following cumulative amounts per lot within a three year period.

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

Section 5. Amendment of Subsection 18.60.020(A). Subsection 18.60.020(A) of the Haines Borough Code is hereby amended to read as follows:

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

18.60.020: Specific Approval Criteria.

The following uses are subject to the preceding general criteria and these additional specific approval criteria:

A. **Major** Resource Extraction.

1. **Permitting.** A permit for ~~the commercial extraction of a natural major~~ resource **extraction** may be issued with such reasonable conditions as necessary **to limit or minimize the adverse impact of the permitted extraction.** The **permitted** 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;~~
- a. Limits of operational areas;

- b. Days and hours of operation;
- c. Traffic patterns;
- d. Fencing and screening;
- e. Control of dust and noise;
- f. Phasing of operations and reclamation steps;
- g. 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;
 - (4) Relation of reclaimed site to initial site conditions including land use, vegetation, soils, geology and hydrology.**
- h. Methods to minimize potential conflict with **other** existing uses **within the neighborhoods adjacent to the development and traffic corridors used by the development** ~~that are significantly impacted by the development.~~

Section 6. Amendment of Subsection 18.70.030(B). Subsection 18.70.030(B) of the Haines Borough Code is hereby amended to read as follows:

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

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.

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. 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;
 - (4) Marijuana testing facilities.
 - (5) Resource extraction, minor.**
 - 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) Marijuana cultivation (indoor/outdoor, small, large, limited, unlimited) and marijuana manufacturing (small), provided the establishments conform to the requirements of a "commercial enterprise."
- 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.
 - (2) Resource extraction, major.**
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.

(2) Resource Extraction, major.

Section 7. Amendment of Subsection 18.70.030(C). Subsection 18.70.030(C) of the Haines Borough Code is hereby amended to read as follows:

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

18.70.030: Zoning Districs - 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.

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);
 - (5) Marijuana testing facilities.
- 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;
 - (3) Resource extraction, minor.**
- 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~~ **Resource extraction, major;**
 - (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;
- (16) Marijuana cultivation (indoor/outdoor, small, large, limited, unlimited) and marijuana manufacturing (small).
- 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.

Section 8. Amendment of Section 18.70.040. Section 18.70.040 of the Haines Borough Code is hereby amended to read as follows:

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

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.

UBR = Use-By-Right CU = Conditional Use NA = Not Allowed GFA = Gross Floor Area [Shaded Box] = Permit Required [White Box] = Permit Not Required												
USES	I/H	I/L/C	I/W	C	W	SSA	SR	MR	RR	RMU	MU	REC
Resource Extraction/ Pr... Major	UBR	CU	CU	CU	NA	NA	NA	NA	CU	CU	UBR	NA
<u>Resource Extraction, Minor</u>	UBR											

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____ DAY OF _____, 2018.

ATTEST:

 Janice Hill, Mayor

 Alekka Fullerton, Borough Clerk

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

Holly Smith

To: Brooks Chandler
Subject: RE: Review: Resource Extraction

From: Brooks Chandler [<mailto:BChandler@bcfaklaw.com>]
Sent: Wednesday, September 5, 2018 3:48 PM
To: Debra Schnabel
Cc: Holly Smith
Subject: RE: Review: Resource Extraction

Greetings:

Here is a revised version of the ordinance.

The concept is that all resource extraction activity will either be “minor” or “major”. The specific permit criteria set by HBC 18.60.020 will only apply to “major” resource extraction. The general approval criteria will apply to “minor” and “major” but whether any permit at all is required for “minor” resource extraction will be established on the “use chart” of 18.70.040. In the same way marijuana-related uses were recently added to the left hand side of that chart “resource extraction, major” and “resource extraction, minor” will be added and policy decisions made as to whether such uses are prohibited, permitted as a UBR but require a land use permit, permitted as a “UBR” and do not require a permit or require a conditional use permit can be made for each zoning district. That is the second phase of addressing the issue. Phase 1 is reaching agreement on the definitional language.

I have highlighted two areas where the draft makes assumptions about the preferred policy choice. The historical background informed these assumptions but they need to be reviewed. And the final comment identifies a remaining policy decision.

There is a potential loophole resulting from the “per lot” limits. A property owner who owned a large parcel could intentionally create a subdivision with the smallest lots possible, maximize “minor” resource extraction on each of the lots (thereby creating impacts equal to a major resource extraction”) and then replat with larger lot sizes. This loophole could be prevented by changing the “per lot” limitation so as to apply to “all lots owned by the same person within the subdivision”. I did not include this in this draft as it may merit further discussion before being reflected in a proposed ordinance or may have already been considered in calculating the “per lot” limits or may be of limited applicability/concern.

Brooks Chandler
Boyd, Chandler & Falconer LLP
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Suite 302
Anchorage, AK



Haines Borough
Planning Commission
RECORD OF DECISION

DATE: May 10, 2018
TO: Borough Assembly
FROM: Planning Commission
Subject: Resource Extraction Draft Ordinance

BOARD DECISION:

Motion: Heinz moved to “send current draft ordinance and concerns outlined in the memo for professional review” and the motion was amended,

Primary Amendment: Stephens moved to include “staff review and recommendation” and the amendment carried unanimously.

The motion as amended carried 4-1 with Turner opposed.

RATIONALE:

See staff report.

SUBMITTED BY  (signature)
Lee Heinmiller, Vice-Chair



HAINES BOROUGH, ALASKA
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(907) 766-4600 * FAX (907) 766-2716

Memorandum

Date: May 4, 2018

To: Haines Borough Planning Commission

From: Holly Smith, Borough Planner & Planning Commission Chair Rob Goldberg

Re: Summary of Planning Commission Actions: Resource Extraction Draft Ordinance

For the planning commission's consideration, the following summarizes how the issue of resource extraction has developed over time and a list of ordinance components that the Commission has not yet resolved.

BACKGROUND:

The issue of resource extraction came to light in January, 2017 when a logger came into the Borough office to see if he needed a permit to take a half dozen truckloads of trees from a large, privately owned parcel at the end of Mud Bay Road. Haines Borough Planner Holly Smith determined that under the definition in Borough Code this activity is Resource Extraction, but that there is no mention of Resource Extraction in the Mud Bay portion of the Code. She didn't know whether to permit it or not, so she turned it over to the Planning Commission.

At first, this seemed like a Mud Bay Code issue, and the Commission set out to fix it. Then, over the summer of 2017, two examples of people moving earthen materials through town without getting a Conditional Use Permit came to light. The current definition of Resource Extraction in Borough Code says that the material has to be extracted for commercial purposes. People were circumventing this by claiming that their excavating and moving of material wasn't for commercial purposes. The Assembly and Manager asked the Planning Commission to come up with a new definition for Resource Extraction that could be applied borough-wide. This became the Commission's top priority; moving clarifying the Mud Bay portion of the Code to a time after a new definition is codified.

During its March 21, 2018 workshop, the Commission agreed to bring an ordinance (option 1) to the May PC meeting as a public hearing item. Holly requested that commissioners meet with her individually to discuss tenants of the staff report that accompanies the draft ordinances (all but one have), which would address how commissioners made their decisions over the last year, public comments received, and unresolved issues of the ordinance.

Meetings:

Since last summer the Planning Commission has held four public workshops and ten public hearings. Public testimony was welcomed, and we heard many hours of it. Most of the testimony centered on peoples' desires not to have Resource Extraction in the Mud Bay Rural Residential zone. To date, the Commission has heard from approximately 56 participants.

THE NEW DEFINITION:

The Commission considered many ideas for a definition of Resource Extraction.

For a time, the concept of intent was considered, but ultimately it was decided that it would be too easy to circumvent because of subjective language. A good definition has to be clear, concise, workable with real-life activities, and enforceable.

The Commission felt that the definition of resource extraction, for local land use regulation purposes, should be directly related to potential impacts of health, safety, and welfare from the use. Changes to traffic patterns or noise levels weighed more in the creation of the definition than aesthetics and environmental concerns. Aesthetics are difficult to regulate and definite. Environmental impacts are already regulated by state law.

The new proposed definition of Resource Extraction focuses on the transport of materials off their site of origin. Most of the impacts seem to come when materials are trucked through neighborhoods. The definition does not apply to the cutting of trees or moving of earthen materials on the lot of origin.

Exemptions:

The Commission created a two page survey of real-life scenarios that sought to narrow down what commissioners and the public thought was, and wasn't, resource extraction. The scenarios had varying activities, lot sizes, and amounts of material removed. This survey helped us to create exemptions to the definition of resource extraction.

Unanimously, commissioners and the public agreed that the removal of material, when developing rights-of-way in a permitted subdivision, is not resource extraction. The Commission then worked on the exemption for small amounts of logs and earthen materials that are commonly transported in the course of site development and small scale commerce. Under the current definition, even the sale of one log is considered resource extraction, and is disallowed in many zones. An audience member suggested that the amount of material allowed to be removed change with the minimum lot size allowed in a zone, and the Commission went with this concept. We have zones that have a 10,000 square foot minimum (about a quarter acre) lot size, a one acre minimum, and a three acre minimum. (The three acre minimums are in the Lutak and Mud Bay Rural Residential zones.)

The Commission created a matrix for the amounts that should be allowed to be removed in each zone and asked commissioners and the public to fill in the amounts – the results were surprisingly consistent. The amounts in the matrix are meant to represent a level of material that is transported during site development. As a reference, the average board-feet-per-acre in our area is around 20,000 BF per acre, and ten yards of earthen materials fit in a typical dump truck. The Commission thinks that exempting this amount of activity is not going to lead to an increase in tree cutting or gravel extraction on peoples' lots. It is merely legalizing an activity that is already happening.

The Commission will take on the issue of resource extraction in the different zones after we have a definition that works borough-wide.

DRAFT ORDINANCE CONCERNS

Members of the Commission and the public have expressed some concerns with the current draft ordinance. The concerns should be addressed as the draft moves to the Assembly or to staff for legal review.

Enforcement

In most land use violations, enforcement happens after-the-fact. In other words, violations are processed rather than prevented by borough staff. It is difficult to know how the Borough would create enforcement policy for monitoring the materials that move off a site-of-origin over time, especially for material that is moved for non-commercial purposes.

Material Amounts

By some, the material amounts designated as 'exempt' from resource extraction are arbitrary. The Commission looked at material amount exemptions for Kenai (2.5 cumulative acres are exempt) and Anchorage (50,000 cubic yards of material is exempt). It considered material amounts as a qualitative quantity (resource extraction survey) and gathered input from local knowledge about average cubic or board-feet per acre within the area.

Resource Extraction for Site Development

In exemptions, the approval criteria do not clarify whether material amounts are exempt for the life of the property or for the duration of a project. This creates a missing temporal element in the definition. Attaching material exemptions to site development was considered, but the definition would then be easy to circumvent because some landowners can develop their properties for many years without needing a land use permit or submitting a construction declaration. However, allowing someone in a residential zone to sell an exempted amount range could be considered antithetical towards the intent of the zone.

Large Land Owners

The ability for large landowners to develop properties is not addressed with this definition. We believe it would be beneficial for this to be addressed by a legal professional.

Use Designations for Mud Bay and Lutak Zones

Going forward, the commission may request legal and/or assembly input on how to address resource extraction allowances/prohibitions in Mud Bay and Lutak. In Lutak, commercial logging is allowed as a conditional use, but other types of resource extraction are prohibited and the definition addresses resource extraction as a whole. In Mud Bay, the vast majority of public participants have requested that resource extraction be prohibited because the use does not conform to the intent and purpose of the zones. The Commission is concerned about (1) the legal risk of prohibition from large public landowners; and (2) whether or not it is legal to prohibit a property owner from developing their property based on residency status. (Commercial uses are restricted to owners who dwell on their properties).

Inventory of Public Comment Participants

Note: This list may be incomplete.

Name	Dates	MBRR-Related?	Comment Type(s)	Notes
Jeromey Bell	4-30-2017	X	Letter	Prohibit RE in MBRR
Mark Busby	4-25-2017	X	Letter	Prohibit RE in MBRR
Bridget Busby	4-25-2017	X	Letter	Prohibit RE in MBRR
Llewellyn Cobb	5-11-2017, 6-8-2017	X	Testimony	Prohibit RE in MBRR
Carol Tuynman	5-11-2017, 6-8-2017	X	Testimony	Timber retention, Community input
Roger Schnabel	5-11-2017	X	Testimony	Allow RE in MBRR
John Carlson	5-3-2017, 5-11-2017, 11-9-2017	X	Letter, Testimony	Allow RE in MBRR
Laurie Dadourian	5-4-2017, 6-6-2017, 6-8-2017, 11-9-2017, 12-14-2017	X	Letter, Testimony	Prohibit RE in MBRR, tree retention, allowances for site development
Andrew Degen	4-22-2017	X	Letter	Prohibit RE in MBRR
Sandra Degen	4-22-2017	X	Letter	Prohibit RE in MBRR
George Figdor	5-5-2017, 5-11-2017, 5-30-2017, 6-6-2017, 6-7-2017, 6-8-2017, 6-15-2017, 12-14-2017, 3-8-2018	X	Letter, Testimony	Prohibit RE in MBRR, create tree-retention code, allow an amount for site development
Bill Finlay	4-22-2017	X	Letter	Allow partial RE in MBRR, prohibit large-scale
John Hagen (Chamber)	5-3-2017	X	Letter	Clarify definition
Ed Hays	4-19-2017, 3-7-2018	X	Letter	Allow small-scale RE as CUP in MBRR, prohibit large-scale, allow for site development
Sylvia Heinz (Resident)	4-4-2017, 5-11-2017, 6-8-2017	X	Letter, Testimony	Allow RE as CUP in MBRR
Michael Mackowiak	5-11-2017, 3-7-2018	X	Letter, Testimony	Allow RE in MBRR
Joe Ordenez	4-24-2017, 3-7-2018	X	Letter	Allow logging in MBRR as CUP, allow for site development, clarify code
Jerome Pella	4-25-2017	X	Letter	Prohibit RE in MBRR
Judith Pella	4-25-2017	X	Letter	Prohibit RE in MBRR
Stephanie Scott (Resident)	4-27-2017	X	Letter	Allow RE in MBRR as CUP
Richard Walsh	5-2-2017	X	Letter	Prohibit RE in MBRR
Bridget Walsh	5-2-2017	X	Letter	Prohibit RE in MBRR
Neil Einsbruch	5-8-2017, 3-8-2018	X	Letter	Prohibit RE in MBRR
Jim Jurgeleit	5-9-2017	X	Letter	Allow small-scale RE as UBR, Allow large-scale as CUP in MBRR
Jim Szymanski	5-9-2017	X	Letter	Allow RE in MBRR
Alan Cowles	5-10-2017	X	Letter	Prohibit RE in MBRR
Linda Cowles	5-10-2017	X	Letter	Prohibit RE in MBRR
Christine Klein (University)	5-10-2017, 6-2-2017, 11-8-2017, 12-5-2017, 12-12-2017	X	Letter	Allow RE in MBRR, clarify code
Dave Griffin (MHT)	5-11-2017, 6-2-2017, 12-12-2017, 3-8-2017	X	Letter, Testimony	Allow RE in MBRR, clarify code
Sally Andersen	5-13-2017	X	Letter	Prohibit RE in MBRR

Name	Dates	MBRR-Related?	Comment Type(s)	Notes
Nancy Berland	5-17-2017, 3-8-18	X	Letter, Testimony	Allow logging for site development, prohibit commercial logging and sand and gravel pits in MBRR
Daniel Bruce (Roger Schnabel Representative)	5-23-2017	X	Letter	Allow RE in MBRR
Eric Holle	5-31-2017, 11-9-17	X	Letter	Prohibit RE in MBRR, disagree with matrix
Katey Palmer	5-11-2017, 5-31-2017, 11-9-2017, 12-14-2017, 4-12-2018	X	Testimony, Letter	Prohibit RE in MBRR
Kristin Hathhorn (Resident)	5-11-2017, 5-31-2017	X	Testimony, Letter	Prohibit RE in MBRR
Kip Kermoian	5-11-2017, 6-1-2017	X	Testimony, Letter	Prohibit RE in MBRR
Patty Kermoian	5-11-2017, 6-1-2017, 6-8-2017, 11-9-2017	X	Testimony, Letter	Prohibit RE in MBRR
Linda Palmer	6-6-2017	X	Letter	Allow RE in MBRR for site development
Cecily Stern	6-5-2017	X	Letter	Allow logging as CUP, prohibit sand and gravel
Jack Smith	6-8-2017	X	Testimony	Allow RE in MBRR
Tina Schmidt (University)	6-8-2017	X	Testimony	Clarify definition
Sharon Resnick	6-15-2017, 3-5-2018	X	Letter	Prohibit RE in MBRR
James Johnsen (University)	6-21-2017	X	Letter	Allow RE in MBRR
Heidi Robichaud	6-8-2017, 6-30-2017	X	Testimony, Letter	Sawmills not allowed in MBRR
Scott Carey	6-30-2017	X	Letter	Sawmills not allowed in MBRR
Mark Battaion	11-9-17		Letter	Clarify Definition
Nelle Jurgeleit-Greene	3-6-2018	X	Letter	Prohibit RE in MBRR
Audrey Smith	3-7-2018	X	Letter	Prohibit RE in MBRR, allow for site development
Elizabeth Van Burgh	3-7-2018	X	Letter	Prohibit RE in MBRR, allow for site development
Burl Sheldon	3-7-2018	X	Letter, Testimony	Prohibit RE in MBRR, simplify code, allow for site development
Gene Cornelius	3-7-2018	X	Letter	Prohibit RE in MBRR
Michele Cornelius	3-7-2018	X	Letter	Prohibit RE in MBRR
Irene Alexakos	3-8-2018	X	Letter	Prohibit RE in MBRR, allow for site development
Ben Kirkpatrick	3-8-2018	X	Letter	Prohibit RE in MBRR, allow for site development
Tom Morphet (resident)	3-5-2018		Letter	Disagree with PC recommendation, consider aesthetics, RE is site-dependent
Peter Dohrn	4-11-18	X	Letter	Prohibit RE in MBRR

Inventory of Meetings

Date	Meeting Type	Notes
3-16-2017	PC Meeting	New business – discussion item – MBRR Code and RE
4-13-2017	PC Meeting	Staff report
5-11-2017	PC Meeting	Public Hearing
6-8-2017	PC Meeting	Public Hearing
8-2-2017	PC Workshop	Commissioners focus on borough-wide definition, exemption idea introduced
9-7-2017	PC Meeting	Chairman's Report of workshop summary
11-9-2017	PC Meeting	First public hearing on draft ordinance
12-14-2017	PC Meeting	Second public hearing on draft ordinance
1-3-2018	PC Workshop	
2-8-2018	PC Meeting	Third public hearing on draft ordinance
2-28-2018	PC Workshop	25 Participants; MBRR focus due to public notice error
3-8-2018	PC Meeting	Fourth public hearing on draft ordinance
3-21-2018	PC Workshop	Commissioners agree to bring borough-wide definition for a motion during May 10 meeting with staff summary of PC work
5-10-2018	PC Meeting	Fifth public hearing on draft ordinance