



HAINES BOROUGH, ALASKA

P.O. BOX 1209

HAINES, AK 99827

(907) 766-6411 * FAX (907) 766-2716

To: Planning Commission

October 4th, 2019

From: Savannah Maily, Planning and Zoning Technician

Re: Conditional Use Permit for Heliport (#19-90); Tax ID # 3-CLR-35-0010; General Use zone
Big Salmon Ventures LLC (c/o Scott Sundberg); Lot 10, Sundberg Sub. II

SUMMARY

This memorandum serves as the borough manager's recommendation under Haines Borough Code (HBC) 18.50.040 (A) for the above referenced permit (see attached application). Our staff (Debra Schnabel, Borough Manager; Alekka Fullerton, Borough Clerk; and Savannah Maily, Planning and Zoning Tech) has evaluated the application against the criteria listed in borough code. It is our opinion that the development adheres to the pertinent criteria if issued with the following conditions:

- 1. The heliport is only permitted for construction and operations in conjunction with commercial heli-ski businesses. All commercial business operations for tours shall be compliant with HBC Title 5. If the applicant does not demonstrate an investment for infrastructure by November 2022 the permit shall expire.**
- 2. Within FAA flight rules for operations, regular hours of operation shall be limited to 8 am to 6 pm unless operations involve Search and Rescue.**
- 3. Adequate access for emergency vehicles must be provided as required by HBC 18.60.010 before construction of the heliport begins.**
- 4. Flight paths (departure and approach of helicopters) must be based on the submitted materials for this application and must adhere to the Haines Borough approved heli-ski map. Flight paths will not be conducted over any residential properties.**
- 5. Fuel storage will be done in accordance with Department of Environmental Conservation standards with a fuel spill containment program in place before operations begin.**
- 6. The applicant will conform to any terms and conditions set forth by the FAA.**
- 7. Anadromous Fish Stream Setbacks. Unless approved by variance, no development shall occur within 25 feet of the banks of anadromous fish streams, designated as such by the Alaska Department of Fish and Game.**

Per HBC 18.50.040 (B), the Planning Commission may alter the proposed conditions or impose its own. The Commission is encouraged to reconsider the conditions after the public hearing once all public comments have been received.

If the Commission wishes to propose other conditions, here are examples from HBC 18.50.040B:

- 1. Use.** The conditions may restrict the use of the development to specific uses indicated in the approval.
- 2. Dedications.** The conditions may require conveyances of title, licenses, easements or other property interests to the public or to public utilities. The conditions may require construction of

public utilities or improvements to public standards and then dedication of public facilities to serve the development and the public.

3. Construction Guarantees. The conditions may require the posting of a bond or other surety or collateral (which may provide for partial releases) to ensure satisfactory completion of all improvements required by the commission.
4. Commitment Letter. The conditions may require a letter from a utility company or public agency legally committing it to serve the development if such service is required by the commission.
5. Covenants. The conditions may require the recording of covenants or other instruments satisfactory to the borough as necessary to ensure permit compliance by future owners or occupants.
6. Design. The conditions may require the adoption of design standards specific to the use and site.

BACKGROUND

Big Salmon Ventures LLC, which is represented by Scott Sundberg, has applied for a conditional use permit to operate a heliport at the above listed property in the General Use Zoning District (GU), located approximately 22 miles from the townsite and referred to as “Mile 26”. In HBC Title 18, “heliport” means:

a use or designated site for the routine commercial or private general operations, landing, takeoff, parking, storage, fueling, and/or maintenance of helicopters.

The GU zone, as defined in HBC 18.70.030(D), is intended to allow as broad a range of land uses as possible. Any use is allowed but a conditional use permit is required for landfills, commercial power plants, cemeteries, heliports and for a hazardous materials storage facilities (HBC 18.70.030(D)(5)). *See also: attached correspondence from Brooks Chandler.*

Note that our definition of “heliport” does not focus on commercial tours or whether a heliport will be used for heliskiing. It is based on “routine” commercial or private use. Commercial tours are regulated by HBC Title 5 whereby helicopter tours are currently only allowed for commercial ski tours during the winter season.

Permit History

Over the last decade, the borough has received four other applications from the applicant for a heliport in this area. In 2011, a permit was denied by the planning commission. In 2014, a temporary permit was approved for a period of one year while the Borough conducted a noise study in the area (this report can be viewed here: <http://www.hainesalaska.gov/tourism/noise-study-final-draft>). In 2015, the permit was denied by the planning commission because of failure to satisfy criteria 1, 2, 4, 5, 6, and 8 of HBC 18.50.040 (noise, property values, consistency with other uses, public safety, water contamination, and comments from property owners, respectively). The decision was appealed. Ultimately, the Superior Court upheld the Commission’s decision (the full decision is attached). After a certain period of time has passed following a denial, the borough may receive a permit for similar proposals. The borough received an application in April of 2019. The application was withdrawn by the applicant the day of the public hearing. The reason stated was that they wanted to resolve the road access issue before the permit went to the Planning Commission.

Adjacent Properties

The nearer lots in this area can be characterized as having a mix of industrial, agricultural and residential uses, but trending more towards industrial over the last few years. Adjacent to the

subdivision (west and south) are approximately 4,000 acres of vacant lands owned by the University of Alaska. These lands are currently scheduled for timber removal within the next decade. A property to the immediate east has become an airstrip for commercial use and to the east of the airstrip is a 5 acre property that was approved for a marijuana cultivation business in 2017. Residential uses are concentrated in the immediate area and in the Woods Subdivision (north, 2,000 feet) Eagle Bluff Subdivision (northeast, 2,500 feet), Eagle Vista Subdivision (east, 2,500 feet), and the Covenant Life properties (southeast, 4,000 feet).

Current Review

Haines Planning Department received a conditional use permit application for a heliport on the above listed property on September 16th, 2019. We held a pre-application conference on October 2nd, 2019 this report is a result of that conference.

REVIEW

This review is based on borough code and the comprehensive plan. Other studies and past decisions will be noted in the review as they relate to historical context. I recognize that this issue has an extensive and controversial history, but I also recognize the need to review this application as a new proposal based on current zoning, land use, and the changing nature of the area. I encourage commissioners – especially members that were seated on the Commission in 2015 – to do the same.

Commission Action on Application

In order for a conditional use permit to be approved by the commission, it must meet two sets of criteria – general approval criteria of HBC 18.60.010 and conditional use criteria under HBC 18.50.040. Finding that even one of the general standards is not met requires the conditional use be denied without consideration as to whether any of the other general standards are met.

General Approval Criteria (HBC 18.60.010): A land use permit, or conditional use permit, or a platting action permit for a subdivision, may be granted if general approval criteria are complied with. This report notes which criteria may not have been met and therefore should be included as part of the conditions for this permit.

C. Fire and Emergency Access: In order to reduce risks that may pose a fire danger, fuel storage must be compliant with Department of Environmental Conservation (DEC) standards with a fuel spill containment program in place. Additionally, the applicant must show how current access routes are adequate for emergency services. *Reflected in condition #3.*

The applicant shall submit a drainage plan specifically addressing the anadromous fish stream along the southern property line before construction of the heliport begins.

O. Habitat. A reclamation or landscaping plan may be required as a condition of approval of any use within 100 feet of a state-identified anadromous stream. The purpose of the reclamation or landscaping plan includes the control of dust, soil erosion, water runoff and siltation which otherwise would be generated on the lot and affect the surrounding area. The commission may adopt borough landscaping standards that establish the type of vegetation and acceptable methods to be used for compliance. The owner of the property shall be responsible for maintenance of the landscaping for a minimum of one year to allow the establishment of the planted materials and stability of other physical improvements such as earthen berms. The borough shall not impose requirements inconsistent with the permit requirements of any other governmental entity permitting the development, but may impose more stringent requirements and may work with the developer to reach a satisfactory compromise with any other governmental entity. If a suitable plan is already in existence, it may fulfill the requirements of this section. The plan shall contain elements as may be required by the landscaping standards adopted by the commission and may in any event include any or all of the following:

- A grading and site plan, indicating the areas excavated or filled, the proposed finished grades and contours, drainage directions and any control structures to be installed;
- The methods to be employed for reclamation of the site during and after the activity along with a time table for completion;
- A description of all roads, parking areas and buildings and a site map showing the locations of all improvements which will be built;
- A description of any known permit requirements of any other governmental entity and a copy of any permit stipulations under consideration or in existence for the development;
- All maps shall be submitted at an accurate scale and extend a suitable distance beyond the site area.

Conditional Use Permit Criteria. Under HBC 18.50.040, there are eight criteria to be considered in deciding whether to grant a conditional use permit. The Commission may grant the permit, but shall first consider each of the following areas (as listed below) and may impose restrictions as may be necessary to protect the public health, safety, and welfare.

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

Fire safety and emergency access has been noted within the general approval criteria standards and should be addressed within the conditions of approval.

Regarding Noise: Whether noise is undue or acceptable should be determined by land use regulations, which was the primary recommendation of the [2015 Noise Measurement Survey](#). Regulations were not adopted and the code does not contain metrics. Absent those metrics, we must rely on public comment.

There is no question by the borough administration that helicopters generate noise at industrial levels. However, considering the zone where the heliport is proposed, some amount of industrial noise is to be expected. *Undue* noise can be mitigated using natural or constructed buffers, limited flight operation times, annual durations, number of landings, proximity, or by using noise reduction technology. I have recommended measures within the conditions of approval that, if initiated, will likely mitigate occurrences of undue noise to meet this criterion.

2. The development of the use is such that the value of the adjoining property will not be significantly impaired.

There is no evidence to support that property values have decreased with the establishment of other heliports in the General Use zone.

3. The size and scale of the use is such that existing public services and facilities are adequate to serve the proposed use;

The issue with this criterion was addressed under the topics of ‘access’ and ‘emergency services’ in general criteria. If the applicant must construct a road able to support commercial traffic and be located wholly within the boundaries of the platted rights-of-way of the subdivision before any heliports are constructed or used. This criterion would be met as long as approval is granted with the condition to construct a road. The size of the property is adequate to serve a heliport.

4. The specific development scheme of the use is consistent and in harmony with the comprehensive plan and surrounding land uses;

The comprehensive plan supports the proposal in some ways and does not support it in others. A review of (1) the current surrounding land uses as noted above; (2) the increasing community support for winter tourism (see [HEDC baseline study](#)); and (3) the community concerns surrounding wildlife and helicopter noise suggests that the comprehensive plan may not be adequate for this review. I believe this criterion is met, however, because the proposal appears to be consistent with surrounding land uses, which is a change from 2015.

The following comprehensive plan goals, objectives and actions are relevant to the review:

Supportive	Non-Supportive
3.1.4 The Economy and Lack of Jobs are Most Important Issues in Next Five Years In the Community Opinion Survey respondents were asked about the single most important issue facing Haines Borough over the next five years (Chart 3-4). The two most common answers were the economy (34%) and lack of jobs (14%). Clearly, the success of efforts to increase jobs and economic opportunity in town will influence resident's quality of life in a positive manner	5.8.5 Tourism A number of concerns have been raised by residents and businesses regarding winter heli-sport tours out the Haines Highway, including helicopter noise, impact on wildlife, customer safety while on the mountain, helicopter use close to roads or residences, the quality of customer experience, and confidentiality and competition among tour companies. Given these concerns, the Borough has actively managed heli-skiing from its inception in the area. The Borough does this by regulating the number of total skier days and allocating these among companies, identifying where heli-skiing can take place, the hours of operation, requiring GPS reporting of flight paths and landings, bi-weekly reporting and more.
4.5.2 Local Sales and Property Tax & Revenue Trends Many have asked about tax and economic contribution that can be attributed to winter tourism activity. Tax revenue from the few business that provide heli-ski or similar activities doesn't capture the full impact because the eating, drinking, shopping and lodging of these winter patrons is also part of the economic contribution. To estimate the contribution, the difference between sales tax revenue from tourism, and eating and drinking establishments, in January and in March was reviewed – assuming that the primary difference between these two months is due to winter tourism. The difference in sales tax revenue (averaging 2009 and 2010) is \$16,400 between January and March.	In 2011 one business proposed development of a heliport on its land on the Chilkat Lake Road, which raised concerns about neighborhood character, noise and safety. The planning commission and assembly denied the permit based on health, safety and welfare issues, but this raised a larger question of whether a heliport on public land should be developed to consolidate helicopter activity. To effectively plan for future heliport use the Borough should work to establish a criteria that clearly defines the public health, safety and welfare issues it desires to address, define the characteristics a suitable site would have such as acceptable noise levels and distance from residences, systematically evaluate possible sites, and if a site is identified and developed, offer incentives (e.g. increased skier days) and disincentives to encourage its use.
4.5.2 Local Sales and Property Tax & Revenue Trends The steepness of the rise in sales tax collected during February-April 2010 compared to 1995 is an indication of the impact of heli-skiing and other winter tourism.	Summer heli-tourism has been a very contentious issue and thus Haines has positioned itself away from summer helicopter tours and worked with the cruise industry to focus heli-tours out of Skagway and Juneau. Many fixed-wing flightseeing opportunities exist in Haines where the majority of summer visitors still prefer the more "grounded" adventures of hiking, boating or floating the many trails and rivers in the Chilkat Valley.
5 Economic Development GOAL 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.	Figure 7-10 Haines Borough Comprehensive Plan Future Growth - this area is marked for future rural settlements. The Rural Settlement Land Designation is large-lot residential living outside of downtown where the lack of public water and sewer requires large lots so that wastewater discharge does not harm neighboring properties or the environment. In these areas a more rural lifestyle is valued and protected (through zoning) from incompatible and disruptive activities.

Supportive	Non-Supportive
<p>5.1 Introduction</p> <p>Haines should employ two common and over-arching economic development strategies to provide more employment and business activity:</p> <p>1. Support and grow the local businesses, industries and economic sectors already providing employment and income in Haines. In addition to more employment, this will also increase capture of spending that could otherwise escape the community. 2. Build upon Haines' competitive advantages and unique assets to diversify the economy and attract new business and industry.</p>	<p>Goal 5. Guide infrastructure and land development to provide an adequate supply of land for commercial and industrial development, varied residential living, and diverse recreational opportunities.</p> <p>Objective 5G: Protect homeowner's investments by minimizing adjacent incompatible land development. 1. To promote efficient land use, good neighbors, and protect homeowner investments and lifestyles, require buffers between residential and non-residential land uses, between differing types/densities of residential development, or when home occupations or light (approved) commercial uses are adjacent. Depending on the situation, common measures could be landscaping, retained or additional vegetation, setbacks, fences, sound barriers, restriction on hours of operation of noise-generating equipment or activity, control of traffic speeds, and requiring off-street parking. 2. Organize meetings in General Use zoning areas where land use conflicts are occurring or are likely to determine interest in more specific zoning.</p>
<p>TABLE 5-2 RESIDENT'S LEVEL OF SUPPORT/OPPOSITION FOR POTENTIAL ECONOMIC DEVELOPMENT OPPORTUNITIES</p> <p>Promotion and development of winter-based tourism such as snow machining, skiing, and the Alcan 200 83% net support, 3% net opposed. The most common theme is tourism, with a number of residents specifically mentioning heliskiing as needing more promotion. Several residents are also interested in promoting Haines as an artists or writers' retreat, and several just want to see more tourism in general.</p>	
<p>Goal 3: 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.</p>	
<p>Objective 3D #3</p> <p>Develop a winter recreation marketing and outreach program.</p>	
<p>Objective 3D #4</p> <p>Provide certainty for both businesses and residents by preparing a heli-ski management plan that addresses safety, neighborhood quality, heliports, routes and areas of use, monitoring, quality experience etc. Don't re-invent the wheel; build on existing permits and decisions.</p>	
<p>7 Land Use and Future Growth</p> <p>GOAL</p> <p>Guide infrastructure and land development to provide an adequate supply of land for commercial and industrial development, varied residential living, and diverse recreational opportunities.</p>	

- 5. The granting of the conditional use will not be harmful to the public safety, health or welfare;**

See comments regarding criterion #1.

- 6. The use will not significantly cause erosion, ground or surface water contamination or significant adverse alteration of fish habitat on any parcel adjacent to state-identified anadromous streams;**

There is one anadromous stream that runs across the property to the south owned by Juan and Carlota Corona. At its closest point the stream is roughly 100 feet from the property line.

- 7. The use will comply with all required conditions and specifications if located where proposed and developed, and operated according to the plan as submitted and approved;**

If the above conditions are implemented, there is no reason this criterion would not be met.

- 8. Comments received from property owners impacted by the proposed development have been considered and given their due weight.**

All property owners within an area of 1,000 feet from the applicant's property were notified in writing of the proposal on September 23rd. Additionally, property owners within the Eagle Vista, Eagle Bluff, and Woods subdivisions were notified in writing on September 23rd.

As of this date, we have received one public comment in support of the proposal and one comment in opposition to the proposal.

If we receive additional comments prior to the October 10th, 2019 planning commission meeting, we will forward them to you via email.



Haines Borough

Planning and Zoning

103 Third Ave. S., Haines, Alaska, 99827. Box 1209

(907) 766-6401 * Fax: (907) 766-2716

APPLICATION FOR CONDITIONAL USE PERMIT

Permit#: _____

Date: _____

Use this form for approval by the Planning Commission. **\$150 non-refundable application fee**

I. Property Owner/Agent		Owner's Contractor(If Any)	
Name: <u>Scott Sundberg / B.S.V. LLC</u>		Name: _____	
Mailing Address: <u>P.O. Box 1368</u>		Haines Borough Business License #: _____	
Contact Phone: <u>907 314 0445</u>		Alaska Business License #: _____	
Fax: _____		Contractor's License #: _____	
E-mail: <u>Sunny@skiseaba.com</u>		Mailing Address: _____	
		Contact Phone: _____	
		Fax: _____	
		E-mail: _____	
II. Property Information			
Size of Property: <u>15.14</u>			
Property Tax #: <u>CLR-35-0010</u>			
Street Address: <u>16 Chilkat Lake Rd.</u>			
Legal Description: Lot (s) <u>10</u> Block _____ Subdivision <u>Sundberg</u>			
OR			
Parcel/Tract _____ Section _____ Township _____ Range _____			
[Attach additional page if necessary.]			
Zoning: <input type="checkbox"/> Waterfront <input type="checkbox"/> Single Residential <input type="checkbox"/> Rural Residential <input type="checkbox"/> Significant Structures Area			
<input type="checkbox"/> Rural Mixed Use <input type="checkbox"/> Multiple Residential <input type="checkbox"/> Heavy Industrial <input type="checkbox"/> Waterfront Industrial			
<input type="checkbox"/> Commercial <input type="checkbox"/> Industrial Light Commercial <input type="checkbox"/> Recreational <input type="checkbox"/> Mud Bay Zoning District			
<input type="checkbox"/> Lutak Zoning District <input checked="" type="checkbox"/> General Use			
III. Description of Work			
Type of Application (Check all that apply) <input type="checkbox"/> Residential <input type="checkbox"/> Commercial _____ sq. ft. _____ seating capacity if eating/drinking establishment <input type="checkbox"/> Industrial <input type="checkbox"/> Church <input type="checkbox"/> Other <u>Heliport</u>	Project Description (Check all that apply) <input type="checkbox"/> Single Family Dwelling <input type="checkbox"/> Change of Use <input type="checkbox"/> Multi-Family Dwelling Total # of Units _____ <input type="checkbox"/> Cabin <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure <input type="checkbox"/> Other _____	Water Supply Existing or Proposed <input type="checkbox"/> None <input type="checkbox"/> Community well <input type="checkbox"/> Private well <input type="checkbox"/> Borough Water System <input type="checkbox"/> Other _____	Sewage Disposal Existing or Proposed <input type="checkbox"/> None <input type="checkbox"/> Septic Tank <input type="checkbox"/> Holding Tank <input type="checkbox"/> Borough Sewer System <input type="checkbox"/> Pit Privy <input type="checkbox"/> Other _____

Per HBC 13.08.100 and 18.60.010, If a property on which a use is proposed is within 200 feet of an existing, adequate public water and/or sewer system, the developer shall be required to connect to the public systems. Failure to connect will result in a minor offense subject to penalties.

Valuation of Work:

\$20,000

Current use of adjacent properties:

Light Industrial Rural Residential, Commercial

Attach the following documents to the permit application:

☒ Site plan (see Attachment A) showing lot lines, bearings and distances, buildings, setbacks, streets, etc. *see digital file sent to borough email.*

PREAPPLICATION (Required)

Pre-application Conference Date: _____

Prior to submission of an application, the developer shall meet with the manager for the purpose of discussing the site, the proposed development and the conditional use permit procedure. The manager shall discuss these matters with the developer with special attention to policies and approval criteria that may pose problems or constraints on the site or the proposed development activity and policies or approval criteria that may create opportunities for the developer.

APPLICATION

Please provide a written narrative explaining how your project will meet the following requirements. You may use the space provided on this form or attach your answers. A variance may only be granted if the Planning Commission finds that these six standards are met.

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

Describe what safeguards are being provided (i.e. setbacks or buffers) to meet the condition.

See digital materials

2. Explain how the development of the use is such that the value of the adjoining property will not be significantly impaired.

see digital materials

3. Explain how the size and scale of the use is such that existing public services and facilities are adequate to serve the proposed use.

see digital materials

4. Describe how or why the specific development scheme of the use is consistent and in harmony with the comprehensive plan and surrounding land uses.

//

5. Explain how the granting of the conditional use will not be harmful to the public safety, health or welfare.

//

6. Describe the safeguards that will be provided so that the use will not significantly cause erosion, ground or surface water contamination or significant adverse alteration of fish habitat on any parcel adjacent to state-identified anadromous streams.

//

NOTICE

Per HBC 18.50.040, Comments received from property owners impacted by the proposed development will be considered and given their due weight. Additionally, the Planning Commission may impose one or more of the following conditions:

1. Development Schedule. The conditions may place a reasonable time limit on construction activity associated with the development, or any portion thereof, to minimize construction-related disruption to traffic and neighbors, to ensure that lots are not sold prior to substantial completion of required public improvements, or to implement other requirements.
2. Use. The conditions may restrict the use of the development to specific uses indicated in the approval.
3. Owner's Association. The conditions may require that if a developer, homeowner or merchant association is necessary or desirable to hold or maintain common property, that it be created prior to occupancy.
4. Dedications. The conditions may require conveyances of title, licenses, easements or other property interests to the public, to public utilities, or to the homeowners association. The conditions may require construction of public utilities or improvements to public standards and then dedication of public facilities to serve the development and the public.
5. Construction Guarantees. The conditions may require the posting of a bond or other surety or collateral (which may provide for partial releases) to ensure satisfactory completion of all improvements required by the commission.
6. Commitment Letter. The conditions may require a letter from a utility company or public agency legally committing it to serve the development if such service is required by the commission.
7. Covenants. The conditions may require the recording of covenants or other instruments satisfactory to the borough as necessary to ensure permit compliance by future owners or occupants.
8. Design. The conditions may require the adoption of design standards specific to the use and site.

IV. CERTIFICATION

I hereby certify that I am the owner or duly authorized owner's agent, that I have read this application and that all information is correct. I further certify that I have read, understand and will comply with all of the provisions and permit requirements outlined hereon. I also certify that the site plan submitted is a complete and accurate plan showing any and all existing and proposed structures on the subject property and that the use will comply with all required conditions and specifications, will be located where proposed and when developed, will be operated according to the plan as submitted. All contract work on this project will be done by a contractor holding valid licenses issued by the State of Alaska and the Haines Borough. **I am aware that if I begin construction prior to receiving permit approval, I will be assessed a \$250.00 "After-the-Fact" fee.**

Owner or Agent

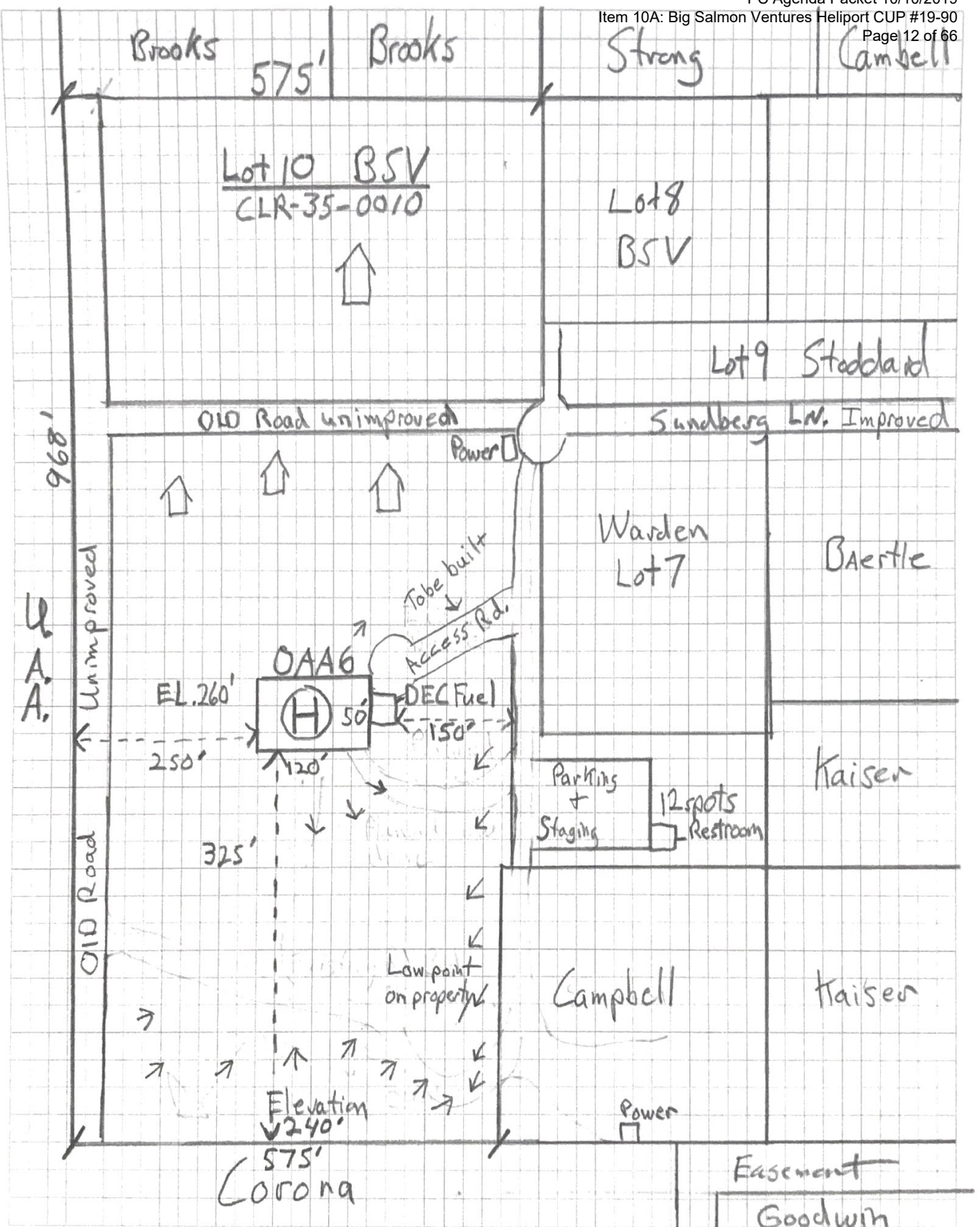
Date

PROVISIONS: The applicant is advised that issuance of this permit will not relieve responsibility of the owner or owner's agents to comply with the provisions of all laws and ordinances, including federal, state and local jurisdictions, which regulate construction and performance of construction, or with any private deed restrictions.

Office Use Only Below This Line

Non-Refundable Application Fee \$ _____		Information/Documentation			
Payment Method: _____		Req'd Rec'd			
Receipt #: _____		<input type="checkbox"/> <input type="checkbox"/> State Fire Marshal			
Received By: _____		<input type="checkbox"/> <input type="checkbox"/> State DEC			
Date: _____		<input type="checkbox"/> <input type="checkbox"/> Variance/Conditional Use Permit			
		<input type="checkbox"/> <input type="checkbox"/> Sign Permit			
Zoning	Bldg. Height	Lot Coverage %	Const. Type	Occupancy	# Stories
If Application is Complete: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Notified Via: _____			Notified By: _____		
Date: _____					
If yes,			If no,		
Approved By: _____ Planning Commission Chairman			Denied By: _____ Planning Commission Chairman		
Permit ID #: _____			Date: _____		
Permit Effective Date: _____			Reason: _____		
Approval Special Requirements: This application meets all applicable Borough policies and a permit is issued, conditional on the substantial completion of construction within two years and the following special requirements:					

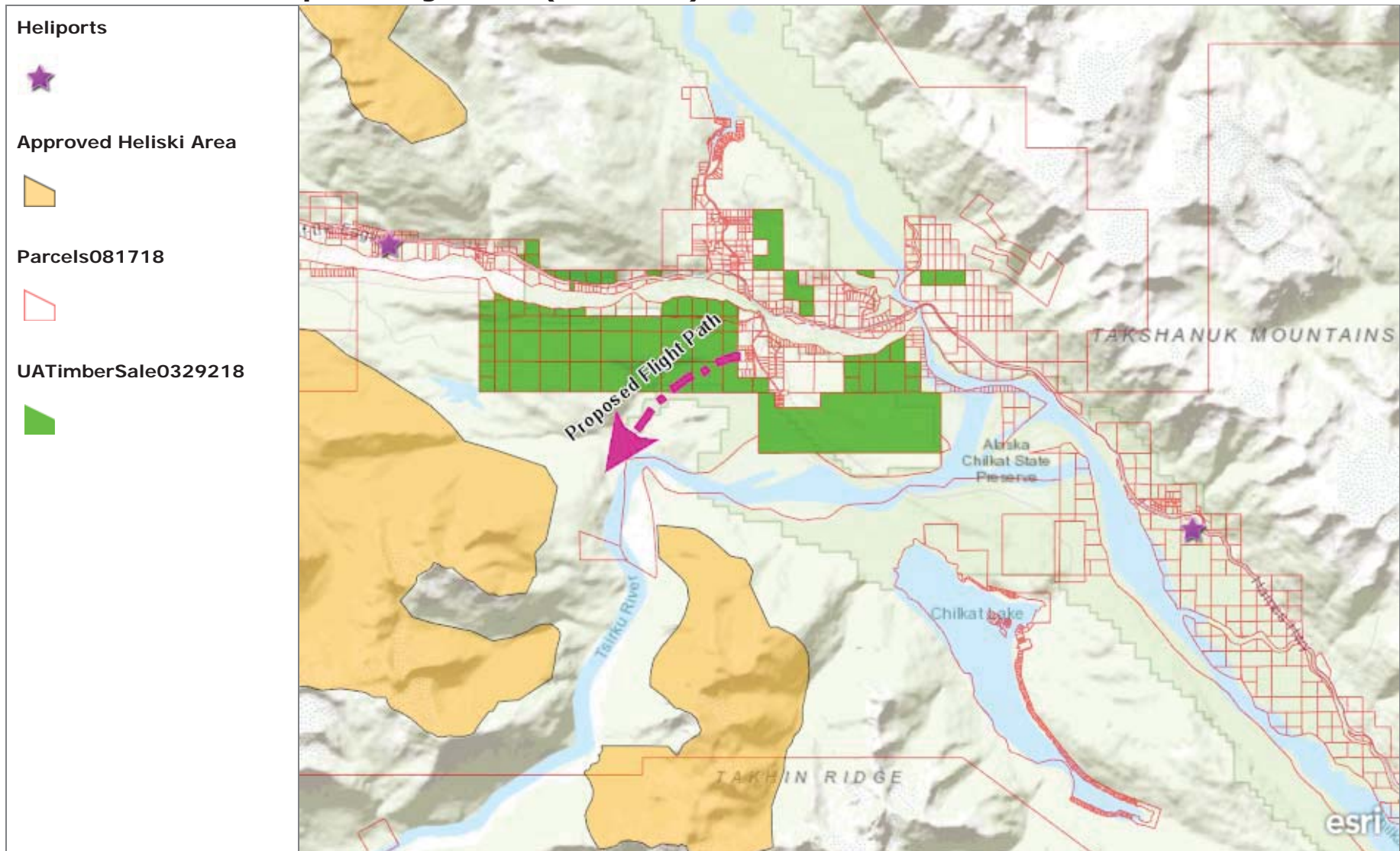
Notice of Right to Appeal: All decisions of the Borough Officials are appealable per HBC 18.30.050



B.S.V. Heliport Site Plan

Arrows indicate drainage.
 ↑ indicates future lodging or recreation facility

BSV CUP 040219 - Proposed Flight Path (Estimated)





August 22, 2016

TO:

Scott S. Sundberg
Big Salmon Ventures, LLC
Box 1368
Haines, AK 99827
sunny@seaba-heli.com

NOTICE OF HELIPORT AIRSPACE ANALYSIS DETERMINATION
ESTABLISH PRIVATE USE HELIPORT
****NO OBJECTION****

The Federal Aviation Administration (FAA) has conducted an aeronautical study under the provisions of Title 14 of the Code of Federal Regulations, Part 157, concerning:

RE: *(See attached Table 1 for referenced case(s))*

Table 1 - Letter Referenced Case(s)

ASN	Prior ASN	Heliport Name	Description	Location	Latitude (NAD83)	Longitude (NAD83)	Heliport Elevation (feet)
2016-AAL-57-NRA		BIG SALMON	Establish private-use heliport.	Haines, AK	59-24-11.00N	136-00-49.00W	292

We have completed an airspace analysis of the proposed private use airport. As studied, the location is approximately 23 nautical miles W of Haines, AK.

Our aeronautical study has determined that the subject private use heliport will not adversely affect the safe and efficient use of airspace by aircraft. Therefore, we have no objection to the proposal.

This determination does not mean FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of airspace by aircraft and with respect to the safety of persons and property on the ground. In making the determination, the FAA has considered matters such as the effect the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA) and known natural objects within the affected area would have on the heliport proposal.

The FAA cannot prevent the construction of structures near a heliport. The heliport environs can only be protected through such means as local zoning ordinances or acquisitions of property in fee title or aviation easements, letters of agreement, or other means. This determination in no way preempts or waives any ordinances, laws, or regulations of any government body or agency.

PC Agenda Packet 10/10/2019
Item 1A: Big Island VFR Helipad
Be advised, in accordance with 14 CFR Part 157, any construction, alteration or abandonment of the subject heliport requires notice to the FAA for aeronautical review. Notice for these actions can be given using FAA Form 7480-1, "Notice for Construction, Alteration, and Deactivation of Airports".

If you have any questions concerning this determination or completion of the Airport Master Record 5010 Form, please contact me at Mike.Edelmann@faa.gov or at (907) 271-5026.

Sincerely,

Mike Edelmann

DivUser

Big Salmon Ventures LLC

AK Entity # 100622

Box 1368 Haines, Ak 99827

.6 mile Chilkat Lake Rd.

Property Id# 3-clr-35-0010

Big Salmon Ventures Winter/Summer Recreation Village with Heliport

Background:

In 2007 Big Salmon Ventures purchased said property with the intent to build and run a lodge in conjunction with a Nordic, Heli Skiing, and Snow-cat clients. When the property was purchased, heliports in the borough were not a conditional use, but a use by right in the GU.

Since 2008 we have been improving the basic needs of the property like access and road infrastructure to accommodate the potential use.

In the meantime SEABA has been working with Big Salmon to develop better winter access and infrastructure to accommodate this use. This is mainly comprised of SEABA acquiring fuel tanks, a phone line, power, and a structure for existing snow-cat operation to properly utilize the property for existing commercial activities.

There are many ideals to this property that influenced Big Salmon Ventures purchase of this property. In consideration of the multi season activities listed in our business plan, we felt that it served the community at large as well as the business.

Reasoning Supporting CUP

First, departure and approach routes to the commercial skiing areas, would utilize existing flight paths that are close, within 1.5 miles of the property. These flight paths only cross over Haines State Forest Lands, and the UA proposed timber sale lands. These lands are identified in the 2025 Comprehensive Plan as multi use with an emphasis on resource extraction and resource development. This identifies that a heavy industrial uses, like mining and timber harvesting are allowed in the area. Big Salmon's property borders this and is identified as rural settlement.

This classification of lands under the flight path to and from skiing destinations is compatible. It also demonstrates that properties under these paths would not be hindered in terms of value, or disturbance based on proposed use.

In terms of economic development Big Salmon Ventures its members and associated investors, has intent to develop a multi million dollar Winter/Summer Recreation Village on its properties, that would increase property tax revenues, sales,

and bed tax to the borough. We have stated in the past that cost of doing business in Haines are high, therefore all supporting sources of revenue are important to the viability of a business endeavor. A heliport would support the economic feasibility of this project.

Big Salmon has sold 6 properties to the east of the proposed lodge/ heliport site and have short platted three more to allow for commercial retail growth in this area. Two of these properties were sold to an individual that is building a commercial shop for heavy equipment to help develop land in the upper valley, and the second property was to be developed as ski in ski out cabins that could be rented to heliskiing and snow cat enthusiasts, as well as summer clientele.

In the last few years the borough has worked towards rewriting the tour permit related to helicopter skiing and provided much new relevant content around this issue.

Since the adoption of the Conditional Use Legislation in regards to Heliports accompanying heliskiing permitting in title 5, Big Salmon Venture's interest in securing this property with the original intended use has increased. Other factors included are the addition of a third operator that has dramatically increased congestion at the Haines airport, adding to increased traffic of current flight paths. The heliports used by the heliskiing industry are in flux because of the lack of ownership by heliskiing operators. The only anomaly in this is the 35 mile heli port is now owned by Alaska Heliskiing, ultimately giving them an unfair advantage, as Seaba or Alaska Mountain Guides must pay high rent for heliports in the upper valley.

By affirming that Big Salmon Ventures property rights to include a heliport would secure safe future operations for the heliski industry. It would also help engage development of a three season rural setting eco-lodge and a commercial Winter/ Summer Village concept that other local and non local entrepreneurs can participate in.

In a world market, which Haines heli skiing is very much a part of, the market and demand of its clients ultimately rests with the operator providing door to heli accommodations, with non fly day support activities on site or nearby. We are in the service industry as much as the adventure travel industry. So in order to compete globally, Big Salmon/Seaba would like to exercise its right to fly guest from its properties, even with conditions.

The airport has been an obvious spot for operations. Seaba uses it for 70% of its business. However, lodging and other services are not allowed at the Airport, and we have found through trial and error that even the rental of the Fort Seward Lodge as a supportive ski lodge is lacking the key function described above. Heliskiing clients over the last 6 years that lodged at the Fort Seward have commented often that being closer to the snow cat, snow machining, Nordic, backcountry skiing, and a heliport at the facility would help propel Haines to the next level in global heliskiing. This advancement in a competitive market would benefit all of the community. Clients have mentioned this because their other experiences heli skiing around the world with other heliskiing operators have provided these offerings, and theses are often staged in a rural settlement.

A winter/ summer village at 26 mile is a fit for long term growth, would allow for growth, diversity, and would diminish the desire to create other heliports on the road

base in Haines by other non-industry based developers. With acceptable noise levels generated during business hours, we feel that this is a good solution to a long term problem. By affirming the use for Big Salmon the borough can effectively plan for the next 25 years based on this location.

What has Changed since 2016?

Since the Denial of BSV CUP in 2016, the Eagle Vista neighborhood and others had an opportunity to change how future use and potential other impacts might affect their lifestyle and neighborhood. They have not however organized and petitioned zoning changes to make sure other potential invasive activities would not occur in the surrounding area.

In fact, in the summer of 2017 Airkat LLC began its development of a private use airport, FAA identifier 9AA9. The owners, the Campbells, have invested a lot of money developing what will and can be a private commercial airstrip. Since this development has occurred, Big Salmon has become more interested in developing its property also as it was given a FAA identifier 0AA6, rural heliport also in 2016. I believe that having these Federal identifiers issued by the FAA, are weighted heavily in qualifying this area as aviation friendly.

Second, outside but bordering the Eagle Vista subdivision to the west Aretail Marijuana grow operation was licensed, Alaska Mountain Guides is running UTV tour's 3 times a day out of a property north of BSV's, and The University of Alaska is looking to get back into the logging business. All of these things create noise or are commercial, but more importantly they are taking advantage of opportunities in the area to create economy.

These specific changes, along with the desire to promote Haines Adventure Based Economy, which is heavy on the tourism side, is why we continue to pursue this endeavor.

In the 2025 Comprehensive plan it states:

Capitalize on Haines' existing reputation and 'brand' as a recreation destination, and "Adventure Capital of Alaska" by expanding related businesses, jobs and commerce.

*1. Continue to support a diversity of Haines Borough marketing efforts that promote and celebrate these qualities, including re-initiation of the "Move to Haines" campaign and targeted marketing to cruise ships, about Haines festivals, and **winter recreation**.*

3. Develop a winter/summer recreation marketing and outreach program.

4. Provide certainty for both businesses and residents by preparing a heli-ski management plan that addresses safety, neighborhood quality, heliports, routes and areas of use, monitoring, quality experience etc. (September 2012 page 94 Objective

3D) This has not happened but the community has had an opportunity to address this.

This falls in line with Big Salmon giving due process to the surrounding land owners in Eagle Vista, which has occurred. The Haines borough needs to provide certainty for this business as residents have had an opportunity to adjust and fulfill their specific needs.

The Big Salmon Ventures Plan along with the heliski industry is attempting to reach some of these goals identified in the plan on its own. We feel that there is sustainability and compromise in the plan. 90% (proponents) of the residents of Haines get to keep their quality of lifestyle, and the other 10% (opponents) should share this with the outside world.

If Big Salmon cannot secure this use, then much of Big Salmons investment into property and infrastructure would be negligible. It would also impede the growth and security of the heliski industry and its ability to operate in an efficient, and ultimately, the safest manner.

An affirmation of BIG Salmon CUP would also reduce flight times and overall aircraft noise as a whole by reducing time spent flying over borough and state lands getting to commercial skiing areas. It also would reduce vehicle traffic commuting up and down the highway, which we have plenty of in the summer. With this affirmation comes a more viable operation, with long term stable infrastructure creating a better industry. we feel that we have been planning, been professional and have stayed the course showing our desire to be a committed partner in Haines.

Big Salmon proposes the following criteria for conditional use for helicopter support at 26 mile:

1. Hours of operation to follow FAA flight rules for operations. This activity would be allowed unless conditions of permit are violated and the permit is terminated.
2. Fuel storage will be done in accordance with D.E.C. standards with a fuel spill containment program in place before operations begin:
3. Allowance of emergency use for state response, medical, and firefighting.
4. Specific and identified GPS voluntary flight path that will create the least amount of noise and impact to nearby GU residents. Flight paths will not be conducted over any residences.
5. All access issues to be reconstructed or resolved before operation begins.

Criteria to be met for consideration:

The following are line item responses to code considerations under 18.50.040:

The use on the property is so located to avoid undue noise other nuisances and dangers

1. The heliport site as explained and can be viewed on the map entitled Big Salmon heliport, will show departure and approach to the west of the property. All property to the west of 3-CLR-35-0200 belongs to the State of Alaska, including the Haines State Forest and University of Alaska State Lands.

A small dividing esker or ridge formed by glaciation and fluvial processes helps buffer residents to the east of this property. This ridge is approximately 35-50 feet in height and provides a natural buffer to initial startup and liftoff. (per written example below)

On December 4th 2013 decibel testing for the area proposed for Heli landings was conducted. A calibrated decibel meter from Northern Construction was used to conduct tests These were taken approximately at approx. 1100 feet and 1500 feet from the Chilkat Lake Rd. nearest the year round residence in the area. This is now a state licensed marijuana grow operation.

The following sound references are generated from a report from Daniel Gonce Ex Vice-Chair of the Planning Commission. 2013

“Scott Sundberg was contacted via VHF radio who was aboard the helicopter, to begin the approach. The flight path of the aircraft on approach was perpendicular to the Chilkat Lake along the Little Salmon State Forest Road. (See map provided by borough)

At all times the closest the helicopter approached Chilkat road was the landing site itself. I was told that the plans would be for the aircraft to actually touchdown in attitude parallel to the road, to allow for an in place rotation of 90 degrees for a takeoff run to the West from the landing site. The site of the 1st landing is a new landing pad location for Big Salmon. Nick stated that Big Salmon had spent some of the summer clearing the new site and approach zone. The new site is approximately 90-100 yards to the West of the previously proposed landing site. On final approach I noticed that the sound level decreased noticeably before the aircraft touched down, which is

consistent with dropping down to the lower landing zone, below the rim of a visible ridge where the previously proposed landing zone was located.

Additionally the sound level dropped off quickly once on the ground which was affirmed via radio from The helicopter pilot. Readings were observed while the aircraft was on the ground at an idle state simulating a “hot refueling” for 3 or 4 minutes, then the aircraft departed back the same flight path as it had arrived. According to Nick, a typical “hot” refueling operation lasts 8 –10 minutes, before the aircraft is reloaded for the next departure.

After the departure, the aircraft returned for a second approach to the older or previously proposed landing zone. This location is higher and closer to the Chilkat Lake Road. He also stated that because of a large tree near the landing zone the final approach is higher than an approach to the new, lower site. I did not notice the drop off in sound level immediately before touchdown as with the 1st landing. The aircraft again simulated a “hot refueling” operation, and then departed, again to the West, the same route as the approach.

In both cases, the aircraft was at a lower elevation than what I was expecting, and the flight paths where the aircraft was observed was at treetop height. The point of first observation of the aircraft Nick had to point it out to me as it was not where I expected it to be. If I was traveling on Chilkat Lake Road in a vehicle and did not know there was a helicopter flying at that location, I most likely would not have had a clue of its presence.

Eurocopter B-2 A-Star, which is the same model that SEABA operates.

The sound level meter: Digital Sound Level Meter by EXTECH Instruments, model 407727.

The documentation indicated accuracy of ± 2 dB at 94dB. The settings as noted were: Auto-

Range mode; Fast time weight averaging; “A” weighted sound scale. The minimum scale

of the meter is 40dB. Any reading below, displays: “LO”.

Sound Observations:

While in the truck traveling along Chilkat Lake road on an icy surface:

81.1dB, 83.3dB, 83.6dB

Ericka Merklin’s friendly dog barking at us from the driveway when we first stepped out of

the truck: **62-63dB**.

Aircraft on approach to “new” LZ: starting at **LO** (dog done barking at us after coming to check us out) increasing steadily through 42dB to a peak of **62.1dB** before dropping quickly to a touchdown.

Aircraft “hot refueling” at the “new” LZ: **46-47dB**

Aircraft departing: peak of **62.3dB**, before tapering steadily back down to a “LO” reading.

Aircraft on approach to “old” LZ: starting at **LO** increasing steadily through 42dB to a peak

of **64.6 dB** at near touchdown.

Aircraft “hot refueling” at the “old” LZ: **51.5dB**

Aircraft departing from “old” LZ: peak of **68.5dB**, before tapering steadily back down to a

“LO” .

On a decibel scale 60 is considered equal to conversational speech and 70 is an average radio or street noise.

The esker Ridge between BSV and the Campbell’s airstrip, the change in elevation is capable of reducing the majority of noise exposure to under 60 decibels for those living across Chilkat Lake Rd. When the helicopter was Idle or fueling noise was recorded at the high 40 low 50 dB’s. This low level noise is 90% of the noise generated over the time of the activity, the take off and landing/approach comprise the other 10%.

I think this is significantly recognized in the Haines Borough Commissioned noise study as why most of the noise after Lmax, (highest decibels recorded during event) does not reach the outlying testing sites like the neighboring estate and Chilkat lake road.

In Feb of 2014, the borough assembly reversed the P n Z decision to not give a permit to BSV to do a noise study by a third party to get objective noise information during the actual operations from the proposed heliport site. On Mach 9-15 2015 this study was completed and released in mid June of 2015.

In the study titled, “Noise Measurement Survey Spring 2015 Haines, Ak”(Prepared by Bridget International, Airports Division, Newport , CA. Prepared By Cindy Gibbs, for Mead and Hunt, Tulsa OK.

http://www.hainesalaska.gov/sites/default/files/fileattachments/administration/haines_noise_report_june

[_2015_v2.pdf](#) **detailed** information and scientific data collected determined that initial recordings by Daniel Gonce in 2013 were very similar to the findings at the same location.

In fact several things of the study discovered pertains directly to this condition.

The study was done through empirical methods, it was meant to be objective and without the subjective content that has made this CUP so difficult to interpret.

I think the last paragraph of the study below sums up the considerations of this study:

“As stated above, the three sites outside the helipad ranged from 30-51 DNL. Typical noise measurements at an average “wooded residential” land use is generally around 51 DNL. This means that the measured average noise level at the three sites closely matches, or is quieter than what would be expected in wooded residential or quieter land use types. However, it is important to note that these comparisons do not link to any specific noise standard or regulation, but rather give a generalized comparison between what is typical in similar land uses and the results measured during this Study”.

Also, after reading through it a couple of times, it dawned on me that the noise levels that are near or close to light commercial noise determined by the study only could affect 5% of residences out in the 26 mile area. In effect information stating otherwise was not present.

Different contexts present different considerations.

Context number 1:

This area is zoned generally allowed use, which encompasses about every imaginable use from private residential, commercial, and even heavy industrial. The report stated that during this testing and information gathering period that the dnl levels stayed very close to what one might experience in a wooded residential area. This is stated as 30-51 DNL.

In this context the DNL levels could be much higher and still be compatible with all the allowed land uses in this area.

In the chart that they use to compare noise in figure 2-2 they group these same decibel levels, 30-51 as quiet.

Context number 2:

The Lmax time duration of the event is limited to when the heli is going to take off and land. In the appendixes you can look at each event and determined

that the average amount of noise generated at the location averaged around 4 minutes and 45 seconds, the LMAX averages total 85 seconds per occurrence. 75% of the remaining noise is 90% lower.

If you had a rock crusher or a sawmill running at this site,(both do not need a permit under current zoning) which at the industrial scale both generate peak noise over 110 decibels, with an average length of time for peak noise could be 6 plus hours a day.

A helicopter landing and taking of 20 times a day would have a LMax duration of 1700 seconds or 30 minutes over the course of the working day. This would account for only 10 percent of the industrial noise generated by a permitted activity like a rock crusher or sawmill.

Comparatively one could conclude that the allowed uses are much more intrusive, probably could create a level of undo noise, and generate a more continuous LMAX and SEL levels. So why is this activity supposedly given so much attention? Why are we even discussing this issue.

Context 3:

In everyday life through the borough, along highways, and in the commercial and residential areas of the borough, sound is generated from 7 in the morning to 11 at night in some circumstances.

Turner Construction operates a CUP gravel pit at the top of 4th street next to residences. Large equipment cut into the hillslopes above the residences, load trucks with gravel, and then proceed down the hill through the residential area to deliver their product to customers.

In terms of noise there are probably similar if not slightly higher noise levels involved with this activity. It also would qualify that unlike the 4th street gravel pit, helicopters noise moves away from all residences over public lands identified near the test site,into and over lands allocated as resource development and multi purpose recreation.This includes recreation machinery that delivers high levels of noise. This happens both in personal recreation, as well as commercial operations. Noise is part of everyday life in economy and in enjoyment. For true quiet one must retreat to wilderness, and even then a Commercial jet can disturb the solace.

This noise study identifies that while there is noise, it is no greater than what has been and is accepted throughout communities throughout the US, including ours, especially noting the examples like 4th street.These occur and can operate in commercial and more importantly in line with rural residential areas.

Without a doubt I feel that this study demonstrates that this is a compatible use for this area, giving the current zoning, and the relatively infrequent amount of noise that will contribute to the area.

Through Big Salmons CUP process and public testimony, the lack of physical evidence of actual noise disturbance, or factual, scientific, and tangible evidence that this activity affects the health, safety, and wellbeing of the greater good were simply not present. SEABA had identified studies and other municipal ordinances that were good examples of existing compliant uses. SEABA also established noise gradients for the area on a map that showed noise levels at certain locations. These gradients were of acceptable levels of very light commercial and compliant with the higher noise limits.

In actual tests done for Big Salmon Ventures under its 2014 CUP, the predicted noise generation at specific locations came in lower than the examples produced by SEABA in its CUP application in 2011

Finally the other comment is that noise is apart of any economy, and this zoning, G.U. within the borough was specifically left open so private landholders had options to do what they want. Under consolidation this was requested and lobbied for during consolidation by the people who owned property outside of the town site.

This was most recently noted when the expansion of the police service area was not accepted, but turned down.

When the borough assembly added the requirement to get a CUP from the Planning and Zoning, under title 5, if a person wanted to develop a heliport, it erred by not excluding G. u. zone. This study shows that if the proposed development of a heliport would have been proposed in a residential or commercially zoned area, then the validity of getting a CUP has merit.

Safety

In terms of safe operation at the site the area has been cleared of excess trees and when the improved helipad is put in place other hazards that could be a safety risk to the helicopter and its passengers will be removed as well. This includes brush and low lying natural litter.

In consideration of the area and the airspace evaluation please See **0AA6 FAA Notice of Heliport Airspace Analysis Determination Establishment of Private Heliport**

Property Values

2. BSV has sold some adjoining property in recent years with disclosure that a commercial ski business would be operating from the proposed area. Sale prices have averaged above current property values in the area. Purchasers in some sales showed interest that this proposed use increased their desire to build a commercial entity. The property bordering the heliport site has been for sale by owner, and people wanting to be near an activity and business like our have made offers to the owners. There is a direct connect between the benefit of a multifaceted business and the increase in property values in the immediate area. However, there are people and businesses that would like to be next to this activity, so that they too can create business. One lot CLR-35-0250 adjacent to new runway was sold to Hans Baertle during construction of the runway. Noise and commerce were apart of his decision to buy his property in 2018.
3. **The size and scale of the use would be similar to 18 mile heliport and 33 and 35 mile heli port.** This means that on average one helicopter would primarily be using the area, and a second could be added at times. This would mean an average of 10-16 take offs and landings could be conducted per day during the heliski season and at a random rate during other parts of the year. This would include 4-5 refueling trips per day, for a total of 20. We are also very confident that access for EMS services would not be impaired and that access exists in the form of easements to and from the property. Currently we have worked out a deal to realign the existing road coming off of Chilkat Lake Rd that adjoins Sundberg Ln. this road bed will be to borough standards with adequate drainage and a good solid driving surface. There no other public services besides EMS/Fire that are in the area. To keep adequate access the road will be plowed in winter to the BSV property.
Our plan with this development would be to include the Klehini and Haines Volunteer fire departments in developing a plan of action to coordinate access to the site, any logistics that need to be considered and sticking to this plan. Neighborhood traffic patterns are quite, the easement into this area is not public, but would be allowed for guest and any necessary personal or ems. The Neighborhood is developing a road maintenance plan along with the realignment of the road into the easement this summer. There are cul de sacs for adequate space for turning vehicles around as well pull offs for large vehicle two way traffic.
4. **The 2010 comprehensive plan (old) had determined that there are no specific areas identified in the GU that this use does not conform with. We purchased said property while this was the existing plan with the borough.** The surrounding uses range from rural residents to light industrial including saw mills, heavy equipment operators, , gravel sifting, and salvage yards. The updates 2025 comp plan just recognizes the area as Rural Settlement in the GU.

However, in the updated Comprehensive plan, (2012) it mentions, “ To promote efficient land use, good neighbors, and protect homeowner investments and lifestyles, require buffers between residential and non-residential land uses, between differing types/densities of residential development, or when home occupations or light (approved) commercial uses are adjacent. Depending on the situation, common measures could be landscaping, retained or additional vegetation, setbacks, fences, sound barriers, restriction on hours of operation of noise-generating equipment or activity,” We feel that we are mitigating these slight noise interruptions at residential noise thresholds of 69dB and below by utilizing existing vegetation, the geomorphology of the property and hours of operation. We would also point out that 95% of opposing individuals supporting the failed rezoning petition of 2012 in the 26 mile area of Chilkat Lake Rd live beyond the 65 dB threshold to the east and are separated from our properties by a multi-use road that by itself delivers much higher Dnl ratings year round as well as the AirKat Runway.

5. **The use proposed is deemed adequate in Big Salmon opinion and is not harmful to the public safety, health and welfare.** Although the borough assembly upheld a 4-2 denial of the CUP from the planning commission in regards to a similar denial of a CUP in 2015, Big Salmon recognizes that this was based on non scientific and objective reasoning, or lack of supportable evidence on behalf of the submitting parties. Big Salmon Ventures have prepared a better fact based application at this time.

It is to be understood that the intended use in the GU is very broad and that there are acceptable levels of noise during business hours both in commercial zones and residential zones. It is also recognizes that the land designation of the properties in the G.U. was an designation entered based on consolidation testimony, leaving it open to a change in zoning that was to come by only by demand, proven recently by the denial of an extended emergency service area borough wide which is the GU.

Landowners West of the Chilkat Lake road were against the zoning petition, and favored open regulation if not use by right.(Verbally confirmed by Chairman Goldberg in PC meeting regarding failed rural residential zoning attempt spring of 2013)

An additional note; The noise study was also commissioned to determine if different zoning districts like commercial, residential, industrial, should be given decibel or noise rating to help determine use and tolerance. The borough has not acted on this, and the GU still remains largely open to all uses.

It will be argued that other residents also have profound investments also. However, it should be recognized that when “all” investments in property were made in the area, they were done with disclosure. All land that was

purchased and developed under general use zoning or with CCR's of the University of Alaska properties in Eagle Vista.

However, we feel that based on the low duration of activity and the mild decibel ratings, impacts are at a minimum and this is a sustainable model. No direct evidence or empirical evidence has come to light to show that the welfare of year round residents has had or would have a significant impact. only subjective opinion. when the CUP process asks about undue noise, health and welfare, it means that. Are people losing sleep, getting ailments, suffering from hearing loss. These are measurable and are not justified impacts and that is why they were included in the criteria for the Haines CUP application. They are not meant to be subjective questions.

With the addition of Airkat runway, the future of noise and commercial operation of aircraft in this area is secured in perpetuity and that the new comprehensive plan along with borough planning should embrace this as an upper valley location where this will be accepted and allowed.

On page 151 of the Comprehensive plan it states, "The Haines Borough also recognizes the rights of private landowners to use their land without Undue restriction."

6. There is no significant concern regarding ground or surface water contamination, and that there is no scientific proof that fish will stop spawning in surrounding creeks or wildlife will stop utilizing historic corridors in the immediate area. At this point in time no material evidence or scientific study has been brought forth that conclusively demonstrates otherwise. In Alaska we often see wildlife congregate around airstrips and airports. Ducks and geese are often shooed off for safety reason and fencing helps keep large ungulates from grazing
7. We have included in our conditional use stipulations that any fuel stored on site will be to standards set by the Department of Environmental Conservation and that there will be a Fuel spills response plan in place during operations to adhere to these standards. BSV's tank will be less than 1000 gallons, sit within a catchment equal to storage capacity, in the case of tank rupture, and have a fuel response kit with it when in operation.
8. We have submitted letters of support in from some of the adjoining property owners in 2011, 2012, 2014, 2015, and under this current application. All other comments must be weighed by the planning commission to determine their appropriate weight when considering this conditional use.

We appreciate your consideration on this matter and if we can answer any questions you might have prior to the meeting representatives of Big Salmon Ventures can be reached at 907 314 0445.

Thank you

Scott Sundberg

Owner/ Member of Big Salmon Ventures

Nicholas Trimble

Owner /Member of Big Salmon Ventures

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

BIG SALMON VENTURES, LLC,)	
)	
Appellant,)	
)	
v.)	
)	
HAINES BOROUGH,)	
)	
Appellee.)	Case No.1JU-15-992 CI

DECISION ON APPEAL

I. FACTS AND PROCEDURAL HISTORY

Big Salmon Ventures, LLC, owns property at Mile 26, Chilkat Road in Haines on which it wishes to operate a winter sports lodge. Big Salmon applied for a conditional use permit to operate a commercial heliport to run heliski tours from the property.

Under the property's "General Use" (GU) zoning, the applicant must establish that its proposal meets each of eight criteria set forth in the Borough code. At a hearing on November 12, 2015, the Haines Borough Planning Commission denied the permit application. On November 17, an Administrative Assistant in the Borough's Lands Department signed a letter to Big Salmon formally notifying it of the Commission's decision, and setting out specific reasons why the Commission concluded that the application did not meet six of the eight criteria. Sometime after that, the Chair of the Planning Commission transmitted to the Borough Assembly by e-mail a document setting out in greater detail what purported to be the Planning Commission's "Record of Decision."

Big Salmon filed a timely request for rehearing before the Haines Borough Assembly, which voted on December 1, 2015 not to rehear the matter. This appeal follows.

II. STANDARD OF REVIEW

In reviewing the denial of a conditional use permit by a municipal zoning board, the court applies the substantial evidence test. Under this test, the zoning body's decision "shall not be reversed if, in light of the whole record, [it] is supported by substantial evidence."¹ Substantial evidence is "evidence that a reasonable mind might accept as adequate to support a conclusion."² In applying this test, judicial review of the zoning body's decision is narrow and a presumption of validity is accorded to the decision below.³

The sufficiency of the factual findings below is a legal question which the court decides by exercising its independent judgment.⁴ The test of the sufficiency of an agency's findings of fact is "a functional one: do the [agency's] findings facilitate this court's review, assist the parties and restrain the agency within proper bounds?"⁵ The question is "whether the record sufficiently reflects the basis for the board's decision so as to enable meaningful judicial review."⁶

In reviewing questions of law which involve agency expertise, the court applies the reasonable basis test. As to questions of law which do not involve agency expertise, the court applies the substitution of judgment test.⁷

¹ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 173 (Alaska 1993).

² *Griswold v. City of Homer*, 55 P.3d 64, 67 (Alaska 2002).

³ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d at 173.

⁴ *Horan Peninsula Borough Board of Equalization*, 247 P.3d 990, 997 (Alaska 2011).

⁵ *Id.*, quoting *Faulk v. Bd. of Equalization*, 934 P.2d 750, 751 (Alaska 1997); *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d at 175.

⁶ *Fields v Kodiak City Council*, 628 P.2d 927, 932 (Alaska 1981).

⁷ *Griswold v. City of Homer*, 252 P.3d at 1020.

III. DISCUSSION

A. Introduction:

Big Salmon's arguments on appeal can be broadly divided into three categories. The first category includes several procedural challenges to the Planning Commission action. The second category includes a claim that the conditional use permit ordinance is void for vagueness, and a substantive challenge to the Planning Commission decision on its merits. And the third category involves a challenge to the decision of the Borough Assembly not to rehear the matter.

B. Procedural Challenges to the Planning Commission Action:

1. *Did the Planning Commission Properly Record its Vote?*

When it came time for the Planning Commission to vote, the Chairman did not call for a roll call, but instead called for a show of hands. He noted that two members of the Commission ("Donnie and Brenda") voted to approve the permit. He then asked for those opposed to raise their hands, but did not specifically note which Commissioners were opposed. The Commissioner then said "So opposed has it," and noted that the permit was denied.

There can be no serious dispute that "Donnie" is Commissioner Donnie Turner, and "Brenda" is Commissioner Brenda Josephson. No other members of the Commission share those first names, and the failure to note their last names can hardly be dispositive.

Big Salmon does not contend that those two votes could have been sufficient to grant the permit. Thus the failure to record the vote more specifically does not require reversal.⁸

2. *May the Court Consider the Commission's Written Findings?*

Big Salmon argues that the court may not consider the November 17, 2015 letter signed by an Administrative Assistant in the Borough's Lands Department as a statement of the findings of the Commission. Big Salmon notes that there is no evidence that the Commission approved the letter, or that each of the Commissioners who voted against the grant of the permit endorsed each of the findings in the letter.

There is no requirement in Alaska law that a zoning agency adopt formal written findings. On the contrary, in reviewing the findings of a planning agency, the court may look to the record as a whole to clarify the agency's reasoning and conclusion.⁹ In some cases, even in the absence of any formal findings, the basis for the decision will be clear from a review of the record.¹⁰ Thus the Alaska Supreme Court has never held that any particular level of formality is necessary in agency findings.

Here, a staff person employed by the Borough's Lands Department issued a letter setting out the Commission's findings. The record is silent about who actually wrote this letter, or which members of the Commission specifically read and approved it before it was issued.

⁸ There is no question, however, that a public body ought to make a more formal record of its actions than simply noting the first names of the two commissioners who voted in the affirmative. The Planning Commission is cautioned to record its votes more formally in the future.

⁹ See, e.g., *Horan v. Kenai Peninsula Bd. of Equalization*, 247 P.3d at 997.

¹⁰ See, e.g., *Mobil Oil Corp. v. Local Boundary Comm'n.*, 518 P.2d 92, 97 (Alaska 1974); *K & L Distributors, Inc. v. Murkowski*, 486 P.2d 351, 360 (Alaska 1971); *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d at 175.

Big Salmon, though, speculates that the members of the Commission may not have been aware of this letter before it was sent.

Absent any authority requiring a particular level of formality in agency findings, or any evidence that the Commission did not approve the letter, I see no reason to disregard it. As noted above, a presumption of validity is accorded to an agency's decision.¹¹ Absent any authority for such requirements, I am not willing to require that the Commission reconvene to formally adopt the findings set out in its staff person's letter, or that each Commission member individually sign the letter.¹² I thus will consider that letter – in the context of the entire record – as a statement of the Commission's findings.¹³

I reach a different conclusion as to Commission Chair Goldberg's subsequent written statement entitled "Record of Decision." The Borough concedes that this document was not adopted by the Commission, and I will not consider it as part of the Commission's findings.

3. *Did the Commission Make Sufficient Findings to Permit Judicial Review?*

Big Salmon's final procedural argument is that the Commission did not set out sufficient findings to permit judicial review. As noted above, the test of the sufficiency of an agency's findings of fact is "a functional one: do the [agency's] findings facilitate this court's review, assist the parties and restrain the agency within proper bounds?"¹⁴ The question is

¹¹ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d at 173.

¹² One could compare the letter to the orders the Clerk of the Supreme Court regularly issues, setting out an order issued "at the direction of the court."

¹³ The Borough would be well advised, however, to make it clearer in the future that a letter of this type is written on behalf of the Planning Commission, or to document that the Commission has approved the letter as a statement of its findings.

¹⁴ *Id.*, quoting *Faulk v. Bd. of Equalization*, 934 P.2d 750, 751 (Alaska 1997); *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d at 175.

“whether the record sufficiently reflects the basis for the board’s decision so as to enable meaningful judicial review.”¹⁵

Big Salmon compares this case to *Alaska Mountain Guides Adventures, Inc. v. Municipality of Skagway*,¹⁶ in which this court held that the Skagway Planning Commission failed to make sufficient findings to permit judicial review.

In *AMG*, though, the Commission’s findings were entirely conclusory. The Commission merely recited the requirements of the Code, and stated without explanation that those requirements were not met.

Here, by contrast, the Commission’s letter referenced the specific evidence upon which its conclusions were based, and described the Commission’s reasoning. While the description was brief, it is sufficient to permit review of the Commission’s action. I thus reach a different conclusion than I did in *AMG*. In my view, the findings set out in the Commission’s letter are sufficient to permit judicial review.

C. Was there Substantial Evidence to Support the Commission’s Decision?

1. *The Ordinance:*

The Haines Borough Code, §18.50.040, sets out eight criteria which must be met before a conditional use permit may be issued:

1. The use is so located on the site as to avoid undue noise and other nuisances and dangers;
2. The development of the use is such that the value of the adjoining property will not be significantly impaired;

¹⁵ *Fields v Kodiak City Council*, 628 P.2d 927, 932 (Alaska 1981).

¹⁶ Case Number 1JU-15-498 CI (decision issued November 3, 2015).

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

The Commission found that Big Salmon's application failed to satisfy criteria 1, 2, 4, 5, 6 and 8 (noise, property values, consistency with other uses, public safety, water contamination, and comments from property owners, respectively).

The Borough correctly argues that it is not necessary to review each of these findings. The decision of the Commission must be affirmed if there is substantial evidence to support any one of these findings.

2. *Vagueness:*

Before discussing whether there is substantial evidence to support the Commission's decision, it is necessary to deal with Big Salmon's argument that the requirements of the ordinance would be void for vagueness if they were used to deny Big Salmon's application. Big Salmon argues that the Haines Borough ordinance is unconstitutionally vague because its

criteria are entirely subjective. Big Salmon relies for this argument on *Lazy Mountain Land Club v. Matanuska-Susitna Borough Board of Adjustment & Appeals*.¹⁷

In *Lazy Mountain Land Club*, the Supreme Court held that a Mat-Su conditional use permit ordinance was not void for vagueness. The challenged ordinance required a conditional use permit for junkyards and refuse areas which were “potentially damaging to the property values and usefulness of adjacent properties and/or potentially harmful to the public health, safety and welfare.”¹⁸ A property owner who wished to open a disposal site for used building materials challenged this ordinance, arguing that the definition of a “junkyard and refuse area” in the ordinance was unduly broad.

In ruling on this challenge, the Supreme Court noted that it will consider whether there has been a “history of arbitrary enforcement or if the language of the statute is so conflicting and confused that arbitrary enforcement is inevitable.”¹⁹ Because the court found no evidence of arbitrary enforcement, and because it was sufficiently clear that the ordinance applied to the applicant’s proposal to put the applicant on notice, the Court found that the ordinance was not unconstitutionally vague.

In support of its argument that there has been arbitrary enforcement, Big Salmon points to the Borough’s treatment of a previous permit application by Big Salmon.²⁰ In the previous case, the Planning Commission denied Big Salmon’s application, but the Assembly reversed

¹⁷ 904 P.2d 373 (Alaska 1995).

¹⁸ *Id.* at 376.

¹⁹ *Id.* at 385.

²⁰ The prior application was the subject of a prior appeal to the Superior Court, case number 1JU-14-654 CI. That case was heard by Superior Court Judge Louis Menendez. Big Salmon seems to mistakenly assume that the undersigned heard that case, and therefore that the undersigned is familiar with its history.

this decision and granted a temporary permit. A third party appealed that decision to the Superior Court, which dismissed the appeal as moot after the temporary permit expired. Big Salmon does not clearly explain what about the previous application establishes a history of arbitrary enforcement. Nor does Big Salmon point to any other evidence of a history of arbitrary enforcement.

The Supreme Court's decision in *Lazy Mountain Land Club* dealt with a different issue than the one here. In *Lazy Mountain*, the issue was whether the definition in the ordinance was so broad as to be void for vagueness. As to the substantive ordinance, though, the ordinance challenged in *Lazy Mountain* was no less "subjective" than the ordinance challenged here. There is nothing in *Lazy Mountain* which supports the claim that a zoning ordinance is void for vagueness if it calls for the agency to consider "subjective" factors in deciding whether to issue a permit.

The ordinance at issue in *Lazy Mountain* called upon the commission to determine whether the proposed use was "potentially damaging to the property values and usefulness of adjacent properties and/or potentially harmful to the public health, safety and welfare," which are essentially identical to subsections 2 and 5 of the Haines ordinance.²¹ The Supreme Court noted that the "underlying purpose" of this ordinance is to "allow the Planning Commission to make a case by case determination about the appropriateness of placing a noxious use in a

²¹ Indeed, the provisions at issue in *Lazy Mountain* are arguably broader than the Haines ordinance, because they seem to authorize denial of a permit on the basis of "potential" harm to property values or to the public health, safety and welfare.

particular area....”²² This “case by case determination” of the appropriateness of a proposed development is essentially the “subjective” analysis objected to by Big Salmon.

Given that, I cannot conclude that the Supreme Court’s decision in *Lazy Mountain Land Club* supports the argument that this ordinance is void for vagueness. There is no authority for the proposition that a municipality may not base a permitting decision on subjective factors. I thus do not find that this ordinance is void for vagueness.

Having dealt with the constitutional claim, I will turn to the substantive issues. The issue to which the most attention was devoted in the Planning Commission hearing was noise. I will, therefore, turn to the issue of noise to determine whether there was substantial evidence to support the Commission’s findings.

3. Noise

In response to Big Salmon’s permit application, the Haines Borough commissioned a Noise Measurement Survey performed by a noise consulting firm, which measured both existing noise levels and noise levels during helicopter operations. Measurements were taken at four locations at and near the heliport site, one of which was a nearby home.

The noise consultant measured several different parameters, including “LMax,” the maximum sound level during helicopter operations, and “DNL,” the average noise level measured at one minute intervals over a 24 hour period. DNL, of course, would be considerably lower, because under Big Salmon’s proposal there would be 20 helicopter takeoffs and landings per day each of which would last only 6-12 minutes.

²² *Id.* at 385.

Much of the parties' dispute concerns which of the parameters measured by the noise consultant should have been given the most attention. Big Salmon argues that it was not clear that the Commission made any findings about whether it was appropriate to focus on DNL, the average noise level, or LMax, the maximum level.

The Commission's findings – as described in the November 15 letter – refer to a number of specific sound readings, however, which are LMax levels. The letter refers to a reading of 94 dBA at a home by the helipad, 90 dBA at a neighboring estate, and 77 dBA on Chilkat Road. These are LMax levels.²³ Thus the Commission's own findings represent the adoption of LMax levels as the appropriate measure.

If a very loud freight train ran past a person's otherwise quiet home 20 times a day, taking 6 to 12 minutes to pass each time, the average noise level might remain quite low, but the noise of each passing train might be unbearable. Given this, I certainly cannot find that it was unreasonable for the Commission to use LMax levels, and not DNL levels, to determine whether the project would create undue noise.

Along with the noise consultant's opinion that helicopter noise was "very loud" at a nearby residence, the Commission heard testimony, and received comments, from members of the public who objected to helicopter noise in their neighborhood, which they described as "very quiet."

The noise consultant's measurement of sound levels at a nearby home at 94 dBA, a level described by the survey as "very loud," during helicopter operations certainly supports the Commission's decision. Without question, though, the determination of whether such noise

²³ ER 22.

levels reach the standard of “undue noise” is a subjective determination. This is no more subjective than the determination of whether the truck traffic generated by a gravel pit is incompatible with a nearby residential use,²⁴ or whether a dog kennel would produce “appropriate” drainage.²⁵ In each of these cases, the local agency’s subjective determination was upheld on appeal. Thus there is no basis for concluding that the exercise of subjective judgment in permitting decisions is impermissible under the law.²⁶ Many land use determinations are not susceptible to mathematical formulae.

The determination of whether this proposal meets the subjective standards set forth in the Borough code involves the determination of what sort of community Haines wants to be. These “subjective” determinations about community standards are intended to be made by the Assembly elected by the people of Haines, and the Planning Commission appointed by that Assembly, not by the court. The role of the court is to ensure that those local bodies follow the standards set forth in the Borough code, that their decision is supported by substantial evidence, and that their decision complies with the law. It is not the role of the court to substitute its judgment for that of the local body.

I find that the noise study, together with the testimony of residents about the disruption caused by helicopter noise and their objections to the proposal, constitutes substantial evidence in support of the decision of the Planning Commission that the project would cause “undue noise.”

²⁴ *South Anchorage Concerned Coalition v. Coffey*, 862 P.2d 128 (Alaska 1993).

²⁵ *Luper v. City of Wasilla*, 215 P.3d 342 (Alaska 2009).

²⁶ *See, e.g., South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage*, 172 P.3d 774, 781-2 (Alaska 2007).

Because I find that there was substantial evidence supporting the Commission's finding about "undue noise," it is not necessary to address the other five findings on which the Commission's denial of the permit was based.

D. Rehearing Before the Assembly:

Under Alaska law, the Borough is required to provide for an appeal to the superior court from the decision of a municipal board.²⁷ The Haines Borough Code provides for such an appeal, and this case is that appeal. Alaska law also permits, but does not require, the Borough to provide for intermediate review by the Borough Assembly.²⁸

The Haines Borough Code provides that the Assembly "may choose to rehear the commission's decision."²⁹ Under that provision, any aggrieved party may appear before the Assembly and explain to the Assembly why it should rehear the commission's decision.

Big Salmon filed a written request on November 17, 2015 for the Assembly to rehear the decision of the Planning Commission. At its meeting December 1, 2015, after hearing a presentation from a representative of Big Salmon, the Assembly voted 4-2 not to rehear the matter. While there was considerable discussion among the members of the Assembly, the Assembly as a body made no written findings or statements of its reasons for declining a rehearing.

Big Salmon argues that this decision was arbitrary and capricious, because the Assembly made no findings setting out its reasons for denying rehearing. The Borough, on the other hand, argues that the Assembly has complete discretion to decide whether to grant

²⁷ AS 29.40.050.

²⁸ *Id.*

²⁹ §18.30.060.

rehearing, and therefore the Assembly is not required to give any reasons for denying rehearing.

Big Salmon points to no provision of law which required the Assembly to afford an opportunity for any rehearing before the Assembly. Nor does Big Salmon point to any authority for the proposition that the Assembly was required to make formal findings in support of its decision not to exercise its discretion to rehear the matter. In light of my conclusion that the decision of the Planning Commission was supported by substantial evidence, however, I cannot conclude that the Assembly abused its discretion in declining to hear the matter.

This conclusion does not violate due process, since Big Salmon was afforded a hearing before the Planning Commission and an appeal to this court. Big Salmon cites no authority which would entitle a permit applicant, as a matter of due process, to a rehearing in the Assembly as well.³⁰

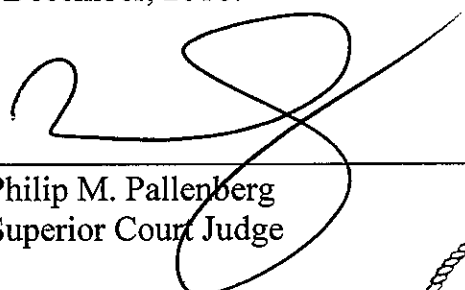
IV. CONCLUSION

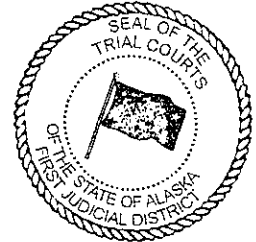
The Haines Borough Planning Commission denied Big Salmon's application for a conditional use permit to operate a heliport, and the Commission set out its reasoning in a November 15, 2015 letter signed by a staff member. That decision was supported by substantial evidence in the record. The ordinance upon which this decision was based is not void for vagueness. The Haines Borough Assembly acted within its authority in denying

³⁰ In light of the uncertainty about when the Assembly should grant rehearing, the Borough should consider whether language should be added to the Borough Code clarifying when a rehearing will be granted.

rehearing of this decision without explanation. For each of those reasons, the decision of the Haines Borough Planning Commission denying the permit is AFFIRMED.

Dated at Juneau, Alaska this 6th day of December, 2016.


Philip M. Pallenberg
Superior Court Judge



CERTIFICATION
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By Khalwa



HAINES BOROUGH, ALASKA
P.O. BOX 1209
HAINES, AK 99827
(907) 766-6400 FAX (907) 766-2716

August 30, 2018

To: Mile 26 Property Owners

Re: Campbell Airstrip: Access, Zoning, and Enforcement of Borough Code

Dear Neighbors of the Campbell Airstrip:

The Borough acknowledges that many of you have concerns about the airport being developed by George and Lynnette Campbell in your neighborhood. In addition to access, many have asked: What can the Borough do to ensure that our quality of life is protected?

This letter describes the Borough's understanding of the situation, and the basis for future decisions that this administration may make relative to land use and regulation in the area.

Access:

Neighbors in the Big Salmon, Brooks, Radie and Sundberg subdivisions have a platted, legal 30-foot access easement from Chilkat Lake Road south to Lot 1 of the Radie Subdivision. Access easements are different than public right-of-ways. Right-of-way roads must go through a public process and meet construction standards before the Borough can accept and maintain them. Easements, however, are constructed and maintained by the property owners of the subdivisions they pertain to. Easements are also generally restricted to access to and from private lots whereas public right-of-ways are used by the public for multiple purposes.

Owners that share this easement are concerned that it is now blocked by the Campbells. The Campbells assert that the easement was never constructed within its platted boundaries; rather, it was constructed within the boundaries of the Campbells' private property. Whether or not an easement was constructed within its legal boundaries is not for the Borough to decide. As this is a private easement, the dispute is solely between the private property owners within the subdivisions, and it is your issue to resolve

Zoning:

Nearly all land uses regulated by the Borough, including airports, are designated in Borough Code Title 18: Land Use/Development. The regulations and requirements of uses vary from zone to zone. Your neighborhood is part of the *General Use Zone* – an area that begins at Haines Highway Milepost 4 and extends to the border. The intent of the General Use Zone is to allow as broad a range of land uses as possible. There are no prohibited uses in this zone primarily to satisfy the pre-consolidation status of no regulation outside of the townsite. The only uses that require permitting and Commission review

are landfills, power plants, cemeteries, hazardous storage facilities, and heliports. Since the Campbells' operation is not intended for helicopter traffic, their use does not qualify as a heliport at this time.

Any other use is allowed outright without permit approval from the Borough. Only zones within the townsite are subject to approval criteria of land use permits.

Until residents of the General Use Zone petition the Borough Planning Commission to introduce discretionary zoning that can be enforced by code, the Borough cannot engage in resolving land use issues beyond what I've identified. It is reasonable for citizens to ask for guidance from the Borough in resolving issues so I am introducing some ideas to consider in resolving this matter:

1. A public right-of-way can be created through the longplat process. [Borough Code 18.100.050 – 18.100.112] This would require all property owners with an existing 30 ft. easement to resubmit a new plat including all lots dedicating the easement as a right-of-way. The benefit of creating a public right-of-way instead of an easement is that the Borough could eventually be responsible for assuring access and maintaining the road directly or through a Road Maintenance Service Area (RMSA).
2. After public rights-of-way are created and accepted by the Borough through a longplat process, residents could petition the Borough to form a Local Improvement District [LID] to construct the road. The procedure for establishing an LID is described by Borough Code Title 3.90. The procedure for creating a RMSA is described by Borough Code Title 7.04. In each of these forms of localized control, residents from within the LID or RMSA share in the costs of construction and maintenance. Of course, nothing would preclude residents from working together informally to achieve either of these goals.
3. If neighbors are thinking that they would like to have more control over development in the area, you could petition the planning commission to recommend a change to Borough Code. The planning commission meets every second Thursday of each month. Please note, however, that the conditional use process would not be applied to the Campbell's airport unless they expanded operations in the future. Their airstrip is now grandfathered into existing law.

Be considerate of your neighbors' needs for access and quality of life. Keep an open dialogue with one another and try to build consensus as you explore a way forward.

I have attempted to describe the situation and offer several options for remedy. I would like to be more helpful; it does not feel good to be unable to affect a solution.

Please contact me if you have any questions or suggestions.

Sincerely,



Debra J. Schnabel
Borough Manager

PIN	Owner1	Owner2	Address1	Address2
3-CLR-35-0100	NANCY WOODS	c/o RICHARD WOODS	P.O. BOX 1058	HAINES AK 99827
3-CLR-35-0650	HIGHLAND'S ESTATES INC	ROGER SCHNABEL	HC 60 BOX 4800	HAINES AK 99827
3-CLR-35-020A	CHRISTOPHER S. BROOKS		BOX 558	HAINES AK 99827
3-CLR-35-0210	CHARLES STRONG	KANDUS STRONG	HC 60 BOX 2617	HAINES AK 99827
3-CLR-35-0640	ERIKA MERKLIN		HC 60, BOX 2618	HAINES AK 99827
3-CLR-35-0630	GREG WHITMORE		3900 PACIFIC, UNIT 3	MARINA DEL REY CA 90292
3-CLR-35-0301	JUAN CORONA	CARLOTA CORONA	3475 S. OCEAN BLVD., UNIT 408	PALM BEACH FL 33480
3-RAD-35-0100	ROBERT GOODWIN	TERESE GUE	P.O. BOX 62	DODGE ND 58625-0062
3-CLR-35-0620	GEORGE R. HORECZKO	MARY HORECZKO	20 PACKET ROAD	RANCHO PALOS VERDES CA 90274
3-CLR-35-0240	RUSSELL TAYLOR	KITTIE MARIE DARIN TAYL	P.O. BOX 92	HOQUIAM WA 98550
3-CLR-35-0250	HANS BAERTLE	NATALIIA BAERTLE	BOX 240266	HAINES AK 99827
3-CLR-35-0270	KEITH P. KAISER	BONNIE L. KAISER	P.O. BOX 1406	HAINES AK 99827
3-CLR-35-0010	BIG SALMON VENTURES LLC	SCOTT c/o SUNDBERG	P.O. BOX 1368	HAINES AK 99827
3-CLR-35-0090	KEVIN FLOYD STODDARD		BOX 1527	JUNEAU AK 99801
3-CLR-35-0290	SE ALASKA BACK COUNTRY ADVENTURES LLC	SCOTT SUNDBERG	P.O. BOX 1426	HAINES AK 99827
3-CLR-35-05A0	GEORGE & LYNETTE CAMPBELL	GEORGE & LYNETTE CAMI	P.O. BOX 458	HAINES, AK 99827

Holly Smith

To: Brooks Chandler
Subject: RE: Please Clarify: Are Heliports a Conditional Use in the General Use zone?

-----Original Message-----

From: Brooks Chandler
Sent: Friday, April 5, 2019 11:06 AM
To: Holly Smith
Cc: Debra Schnabel
Subject: RE: Please Clarify: Are Heliports a Conditional Use in the General Use zone?

Greetings Holly:

I only looked at the statement as to whether CUP's are needed for heliports located in the general use zone. Since March 22, 2011 the answer is YES. If you need to pull the ordinance it is 11-02-257. A 2015 memorandum pertaining to a grandfather rights issue for a heliport at Mile 35 which references this is attached but if you need something more specific let me know. The code section is 18.70.030(D)(5):

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

The 2015 memorandum was prepared in response to a previously submitted CUP application for a heliport. The fact someone applied for a CUP for the Mile 35 heliport is a very clear indication a CUP is required in the General Use zoning district. The property owner did not argue otherwise. The only issue was whether pre- March 22, 2011 use of the property for helicopter landings qualified as a non-conforming use.

My recollection is that after the manager denied the CUP the Planning Commission overturned the manager's decision so you would need to pull that file to make sure the PC did not make a finding that a CUP was not necessary.

Let me know if you have any other questions about this.

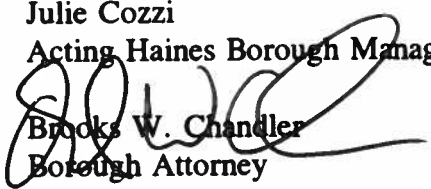
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MEMORANDUM

CONFIDENTIAL ATTORNEY CLIENT/COMMUNICATION ATTORNEY WORK PRODUCT

TO: Julie Cozzi
Acting Haines Borough Manager

FROM: 
Brooks W. Chandler
Borough Attorney

DATE: December 28, 2015

SUBJECT: WILSON HELIPAD CONDITIONAL USE APPLICATION

You have asked for our analysis of whether information submitted by the property owner of past historical use of a property generically referenced as "Mile 35" for helicopter landings constitutes a nonconforming use allowed by right by Title 18 of the Haines Borough Code of Ordinances. We have examined the history of use of the relevant property for helicopter landings and takeoffs as well as applicable provisions of Title 18 and general legal principles pertaining to nonconforming use property rights. Based on that review we have concluded as follows:

1. The past use of the property for helicopter landings does constitute a valid nonconforming use.
2. The scope of this nonconforming use should be limited to a specific number of helicopter landings per calendar year based on past historical levels of use.
3. The proposed use of the heliport in connection with commercial ski tours is a material change in the intensity of the nonconforming use for which a conditional use permit is required.

Based on these conclusions we recommend you inform the Planning Commission that seasonal use of the property as a substitute heliport for the Mile 33 heliport previously used

Wilson Helipad Conditional Use Application Memorandum
December 28, 2015
Page 2

by Alaska Heliskiing does not qualify as a nonconforming use and requires a conditional use permit.

The reasons for these conclusions and recommendation are discussed in greater detail below.

FACTS

Ownership History of Property

On November 3, 2008 Vicki Gardner and Michael Wilson were deeded a portion of U.S. Survey 3426¹. Two deeds were issued by the previous owners. One deed indicates the property was "also showing of record as Lot 2 Choate Subdivision, First Addition according to Plat 94-20". The second deed only references Lot 3 of the same subdivision. The referenced plat predated the existence of a platting authority and divides a portion of U.S. Survey 3426 into 3 lots. Lot 2 ("the Property") is immediately adjacent to the Haines Highway and is shown as 10 acres in size. Lot 3 abuts Lot 2 and is also shown as 10 acres in size. The plat contains metes and bounds legal descriptions for Lot 1 and Lot 2 but not for Lot 3². The metes and bounds description of Lot 2 on the 2008 deed appears intended to match the metes and bounds description on the plat.

Zoning Regulations

Title 18 of the Haines Borough Code was amended effective March 22, 2011 by Ordinance No. 11-02-257 to require persons wishing to use property in the general use district as a heliport to obtain a conditional use permit. Prior to March 22, 2011, a heliport was a permitted use in the general use district.

¹ Ms. Gardner signed a deed conveying her interest in Lot 2 and the adjacent 10 acre Lot 3 parcel to Mr. Wilson on August 19, 2015.

² Borough property tax records separately track "lot 3 Choate Subdivision" (tax ID # 3-HHY-36-0300) and "A tract of land in USS 3626 (tax ID # 3-HHY-36-3426). The CUP application references 3-HHY-36-3426. This is presumed to be Lot 2 on the 1994 plat.

Wilson Heliport Conditional Use Application Memorandum
December 28, 2015
Page 3

**Heliskiing and Helicopter Business Operations and Ownership Relevant to
Historical Use of the Property**

On January 12, 2005, an Alaskan limited liability corporation called Alaska Heliskiing LLC was incorporated. The company ("Alaska Heliski"), identified its business as "providing heliskiing tour services". Its principal office was located at 33 Mile Haines Highway. The members were Sean Brownell (49% owner) and Vicki Gardner (51% owner)³. Alaska Heliski receives an annual "skier day" allocation from the borough. The 2014 allocation was 1,400 skier days. Due in part to poor conditions, 792 skier days were used by Alaska Heliski in 2014.

Mr. Wilson is an employee of Coastal Helicopters ("Coastal")⁴. Coastal has been in business since 1989. Coastal contracts with Alaska Heliskiing to transport Alaska Heliskiing clients between a heliport located at 33 Mile and whatever terrain is being skied on a particular day. Alaska Heliskiing rents the 33 Mile heliport location from Robert Harris on a seasonal basis.

Historical Use of the Property

The current owner provided two versions of a "Notice of Landing Area Proposal"⁵ on a preprinted federal form. One signed and dated December 3, 2008 and a second signed and dated January 18, 2009. We have reviewed information contained in both forms but have not determined if both were actually submitted. The forms indicated a plan for "establishment or

³ As of February 4, 2014, Ms. Gardner had transferred her ownership interest to Powderfish LLC. Powderfish is owned by Ryan Johnson.

⁴ Coastal is a wholly owned subsidiary of THI, Inc. which itself is a wholly owned subsidiary of Survey Point Holdings, Inc. Survey Point has 3 shareholders including a fourth corporation Carrix, Inc.

⁵ The FAA does not "approve" private heliports and has recently decided not to certify public heliports. As of the time the application was submitted, federal regulations (14 CFR Part 157) required 90 days advance notification to FAA of any "activation" of a "civil airport". "Airport" was defined to include a Heliport. For reasons discussed in footnote 8 below, the property owner did not notify FAA they were "activating" the landing area until 2012.

Wilson Heliport Conditional Use Application Memorandum
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activation” of a heliport for private use⁶. The identified dimensions of the final approach and take off area were listed as 150' X 150' with the lift-off and touch down area dimensions listed as 100' X 100' (10,000 sq. ft.). The estimated number of monthly landings identified in the notice as of 2008 was 40 with an estimate of 65 landings per month projected by 2014.

The FAA inspected the site in June of 2009 and “determined that the proposed private use landing area will not adversely affect the safe and efficient use of the navigable airspace” on August 24, 2009. The FAA determination letter requested the property owner “notify the FAA within 15 days of completing the landing area by calling the FAA . . . to let them know you are activating the landing area”. An Airport Master Record Form was enclosed with the FAA determination letter⁷. The heliport is currently identified on the FAA Airport Master Record form as the “35 Mile Lodge” private use airport with location number AA35.

There are some deteriorated structures on the property. It does not appear the structures have been used for residential or commercial purposes. The Borough assessor indicated no physical improvement of the property consistent with “construction” of a heliport has been made⁸. The property does have existing flat areas conducive to helicopter landings. A fueling station was placed on the property in 2009 or 2010. We assume this is not much more than drums of fuel with a dispensing device.

Helicopters owned by Coastal landed on the property before the zoning change in 2011. Landings occurred during Alaska Heliski operations when snow conditions made the Old Haines Highway impassable limiting use of the usual 33 mile heliport. This occurred a few days each year over the course of 4 years. Refueling landings of Coastal occurred three

⁶ The “private” designation meant that the heliport was intended for use only by the property owner and persons authorized by the property owner.

⁷ The August 24, 2009 letter was not received by the property owners because it was addressed to “35 Mile Old Haines Highway” rather than a mailing address. This resulted in the 2009 application lapsing effective February 24, 2011. A new application was submitted January 31, 2012. The second approval was issued by FAA on June 21, 2012.

⁸ A construction declaration permit would have been required for any heliport facilities involving construction that exceeds \$5,000 in value or exceeds 500 square feet. HBC 18.30.010(A)(2)(c).

Wilson Helipad Conditional Use Application Memorandum
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times in 2010, once in 2011, 3 times in 2012, once in 2013 and once in 2014⁹. Constantine Mine landed a helicopter on the property to inspect the fuel system in 2011 and used the site when working on a communications system in 2015. FAA landed a helicopter on the property for a site inspection in 2012. Landings occurred related to site clearing and upkeep of the fuel system in April 2015. In summary, the landing information supplied by the property owner references between 15 and 30 landings over the past 6 years¹⁰. The Property has also been used for “unscheduled maintenance” of helicopters owned or operated by Coastal.

No written agreement between Coastal and Mr. Wilson or between Alaska Heliskiing and Mr. Wilson regarding use of the Property for helicopter landings has been provided. We assume any use of the property for landing helicopters between 2008 and 2011 was with the permission of the property owners without payment of rent or any use fee¹¹.

Conditional Use Permit (“CUP”) Application

A conditional use permit application was submitted on September 24, 2015 by Micheal Wilson. The CUP was for development of a helipad on a 10.4 acre property and for use of the property for helicopter operations. A property tax ID number corresponding to Lot 2 was referenced in the CUP application. The narrative indicated Mr. Wilson intended to “allow Alaska Heli-Skiing operation to move from the road side operation among residences at 33 mile” to the Property. The Property was described as having “a residence on the property” with accommodation facilities, restrooms and kitchen facilities with an existing 40' X 60' foundation intended to facilitate construction of a lodge. The application indicated there were “plans” for additional lodging, restrooms and food service on the Property.

⁹ It is not clear if Coastal purchased and stored the fuel at the site or whether fuel was sold by Mr. Wilson to Coastal.

¹⁰ The property owner was not able to provide precise information about the frequency of “snow day” landings. The estimate assumes 5-20 total snow day landings.

¹¹ Such fees would have been subject to Borough sales tax unless “not made in the regular course of business”. HBC 3.80.030(A), 3.80.050(1). No sales tax reports reflecting rent or lease of the property to Coastal or Alaska Heliski for use as a heliport between 2008 and 2011 are in borough records.

Wilson Heliport Conditional Use Application Memorandum
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On December 10, 2015 the CUP application came before the Planning Commission for consideration. At that meeting Mr. Wilson and Mr. Brownell presented information regarding historical use of the Property as a heliport which “made the commissioners question whether this heliport was pre-existing and did not need a conditional use permit”¹². The planning commission adopted a motion to refer this nonconforming use question to the acting borough manager for a decision¹³.

LAW

Haines Borough Code of Ordinances

The general purposes of regulation of the use of private property in the Borough are set forth at HBC 18.10.020. These include ensuring “that the growth and development of the borough is in accord with the values of its residents”, that “growth is of a type, design and location that conforms to community standards” and “[t]o achieve the goals and implement the policies of the Haines Borough comprehensive plan”.

Title 18 of the Haines Borough Code designates property within the Borough into various zoning districts. The Property is located in the general use district. As mentioned above, Title 18 of the Haines Borough Code was amended effective March 22, 2011 by Ordinance No. 11-02-257 to require persons wishing to use property in the general use district as a heliport to obtain a conditional use permit.

HBC 18.20.020 defines “Heliport” as “a use or designated site for the routine commercial or private general operations, landing, takeoff, parking, storage, fueling, and/or maintenance of helicopters”. Heliports are also specifically referenced in the definition of a “Industrial, heavy” use.

Title 18 also contains what is commonly known as a “grandfather rights” provision whose more legal sounding name is “nonconforming use”. Such a provision which exempts existing uses from complying with new restrictions “is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate

¹² Goldberg e-mail to Cozzi (Dec. 11, 2015).

¹³ Regardless of your interpretation relative to the property owner’s rights, Alaska Heliskiing cannot be issued a commercial ski tour permit based on use of a heliport on Lot 2 unless this site has received a conditional use permit from the Planning Commission. HBC 5.18.080(F)(14).

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discontinuance of nonconforming uses.”¹⁴ The concept of a nonconforming use exception to otherwise applicable zoning code provisions can be succinctly stated as “allowing someone already doing something to continue doing it even if they would be stopped by the new restriction¹⁵”.

HBC 18.60.020(M)(2)(A) identifies a nonconforming use as a “use which is prohibited or conditional under this title, but which was lawful prior to the effective date of this title or any subsequent revisions.”(emphasis supplied)¹⁶. “Use” is defined as “any significant activity on a lot” and includes “ [c]hange in the use or material increase in the use of a site”¹⁷. A nonconforming use “may be changed to an allowed use or another nonconforming use with approval of the manager”¹⁸.

The borough manager is authorized to administer Title 18. Questions regarding the manner in which Title 18 is administered by the manager may be appealed to the planning commission¹⁹. This includes any manager interpretation of Title 18 provisions²⁰.

There is no specific code reference to “enlargement” of a nonconforming use²¹. Therefore this question is properly determined initially by the borough manager as an

¹⁴ County of San Diego v. McClurken 234 P.2d 972, 975 (CA. (1951).

¹⁵ Black's Law Dictionary 629 (5th ed.1979).

¹⁶ This is consistent with the general definition of non conforming use. HBC 18.20.020 states: “Nonconforming use” means a lot, building, use, or portion thereof, which was lawfully erected, altered or maintained, but no longer conforms to the provisions for the zone in which it is located.”

¹⁷ HBC 18.20.020.

¹⁸ It does not make sense to require manager approval of an “allowed” use. If a use is allowed manager approval should not be required.

¹⁹ HBC 18.30.050.

²⁰ HBC 18.30.110.

²¹ This differs from nonconforming structures. HBC 18.60.020(M)(2) specifies a nonconforming building cannot be enlarged or replaced but can be repaired provided the repair does not “extend or expand the previously existing nonconformity”.

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interpretation of Title 18. Court decisions in Alaska and other states on the subject of nonconforming uses provide useful guidelines.

Court Decisions

The legal principles relating to nonconforming uses attempt to balance the competing policies of protecting property interests and avoiding the expansion of uses that are no longer appropriate to a neighborhood²². Generally, the burden is on the property owner to establish a particular use qualifies as a nonconforming use²³. To qualify as a nonconforming use, the existing use must have been more than intermittent or occasional²⁴. The continued nonconforming use must be similar to the use existing at the time the zoning ordinance became effective²⁵.

In order to determine whether a use should be considered a "continuation" of a prior use or a "change" in use, courts have considered whether the use has a substantially different effect on the neighborhood²⁶. Intensification is permissible, however, where the nature and character of the use is unchanged and substantially the same facilities are used. The test is whether the intensified use is "different in kind" from the nonconforming use in existence

²² Wende v. Board of Adjustment of City of San Antonio, 27 S.W.3d 162 (Tex.App. 2000).

²³ SNPCO, Inc. v. City of Jefferson City, 363 S.W.3d 467, 474 (Tenn.2012).

²⁴ 1 R. Anderson, Zoning § 6.32, at 550 (3d ed. 1986); Meridian Minerals Co. v. King County, 810 P.2d 31, 37 (Wa. App. 1991). See also, *Zoning: Changes, After Adoption of Zoning Regulations, in Respect of Nonconforming Existing Use*, 147 A.L.R. 167, 168 (1943).

²⁵ Hansen Brothers Enterprises, Inc. v. Board of Supervisors, 907 P.2d 1324, 1330 (Ca. 1996); Salerni v. Scheuy, 102 A.2d 528, 532 (Conn. 1954)(change in restaurant operations from selling beer only to selling beer and liquor is a change in character and improper expansion of a nonconforming use). See also 8A McQuillin, *Municipal Corporations*, § 25.206, p. 114.

²⁶ Town of Wolfeboro v. Smith, 556 A.2d 751, 759 (N.H. 1989).

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when the zoning ordinance was adopted²⁷.

Factors used by courts in determining whether an activity is within the scope of a nonconforming use include: “(1) the extent to which the current use reflects the nature and purpose of the original use; (2) any differences in the character, nature and kind of use involved; and (3) any substantial difference in effect upon the neighborhood resulting from differences in the activities conducted on the property.”²⁸

Helicopter Associates, Inc. v. Stamford, 519 A.2d 49 (Conn. 1986) is the closest factual case. The property owner had made an oral agreement with a helicopter company to allow use of his property as a heliport. The helicopter company planned to provide helicopter transportation services to local businesses. The company purchased two helicopters, hired pilots and began business operations on the property. The property owner made improvements to facilitate use of the property as a heliport including paving the site, painting landing lines and installing a windsock. In July of 1980 the helicopter company applied for a state license to operate a commercial heliport on the property. Such a license was required if more than 36 takeoffs and landings would take place each year. Two months after the license application was submitted city zoning regulations were changed to delete heliports as a permitted use. As of the date of this ordinance change ten takeoffs and landings had occurred. The state license was issued 8 months after the zoning change. The state license did not have a “cap” on the number of permitted takeoffs and landings from the property.

The trial court found that allowing an unlimited number of helicopter flights would constitute an improper expansion or change in character of the previous nonconforming use. The court found that the prior commercial flights were “merely casual” and prohibited all use of the property as a commercial heliport. This decision was modified on appeal by the Connecticut Supreme Court. The court first concluded that the prior operations as of the date of the zoning code change constituted use of the property as a commercial heliport. The

²⁷ Keller v. Bellingham, 600 P.2d 1276, 1281 (1979)(adding 6 electrolytic cells to the production line of a chlorine manufacturing plant was a permitted intensification rather than a prohibited enlargement of a nonconforming manufacturing use); quoted in, Meridian Minerals Co. v. King County, 810 P.2d at 38-39(increase of about 3.4 times the annual average production of quarry rock a prohibited enlargement of the prior nonconforming use).

²⁸ Connecticut Resources Recovery Authority v. Town of Wallingford, 626 A.2d 705 (Conn. 1993).

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court also found that the legal extent of this use as of the time of the zoning ordinance change was limited to 36 flights per year. The court held that up to 36 flights per year could be conducted on the property as a valid nonconforming use but that unlimited commercial flights would constitute an impermissible expansion of the nonconforming use.

In doing so, the court said “a mere increase in the amount of business done pursuant to a nonconforming use is not an illegal expansion of the original use . . . A change in the character of a use, however, does constitute an unlawful extension of the prior use.” The court felt that an unlimited number of flights was a “change in character”.

In Stephan and Sons, Inc. v. Municipality of Anchorage, 685 P.2d 98 (Alaska 1984) the Alaska Supreme Court considered whether a nonconforming use of property as a gravel pit was limited to thirteen acres of a 53 acre parcel or was allowed to continue on the entire 53 acres. The Anchorage nonconforming use ordinance specifically prohibited expansion of existing nonconforming uses “to occupy a greater area of land”. The Alaska Supreme Court approved a “doctrine” specific to mineral extraction uses of property called the “diminishing asset” doctrine. This rule allows a property owner to continue nonconforming resource extraction activity despite a prohibition on expansion adopted by ordinance if the property owner can prove an “objectively manifested intent” based on historical use to extend the historical use over the entire property. But the court found the property owner failed to establish such an intent because at the time gravel pit restrictions were added to the Anchorage code the existing operation covered only a small area of the property. This outcome is consistent with decisions in other states which have held that “mere preparation” for a specific use is not enough to establish a pre-existing non-conforming use. Rather “substantial steps” in commencement of a use are required²⁹.

ANALYSIS

The issue presented is whether the past use of the property as a heliport for less than 50 takeoffs and landings creates a legal right to use the same heliport for an unlimited number of takeoffs and landings without obtaining a conditional use permit. In our opinion, the answer is no.

²⁹ City of Pharr v. Pena, 853 S.W.2d 56, 64 (Tex.Ct.App.1993); Dickson County v. Jennette, 2000 WL 1121550 (Tenn.Ct.App. Aug. 9, 2000)(property owner was not “in operation” for mineral extraction use when had only blasted on two occasions and made one sale of rock prior to change in zoning code).

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We believe at best any “nonconforming” use of the Property as a heliport should be limited to a number of annual takeoffs and landings similar to the number that occurred between November of 2008 and the 2011 revision to the general use district zoning ordinance. The past use of the property as a heliport was intermittent and not at a commercial level. Arguably, this use fails to establish a legal nonconforming use at any level of commercial activity. There is no indication of any pre-2011 formal agreement between Coastal and the property owner such as a lease for a specific term or a per landing fee. Neither the property owner, Alaska Heliski nor Coastal identified this location on a pre 2011 borough business license or commercial tour permit as a location where helicopter takeoffs and landings were occurring or were anticipated to occur. There is no indication of any pre-2011 investment in improvements related to development of a heliport intended for more than infrequent intermittent use.

The FAA approval effort is consistent with a general desire for future commercial use of the property as a helipad with up to 40 landings per month. This desire may have included possible winter heliski operations. However, nonconforming use status should be based on actual historic use as of the date of a change in the zoning regulations not possible or contemplated future use. Actual historic use was quite limited. In our opinion, this limited historic use is not sufficient to qualify the property for unlimited use as a commercial heliport.

We believe it is obvious unlimited use of the property for commercial heliport operations will have a substantial impact on the neighborhood compared to pre-2011 use of Lot 2 as a helipad. The likely expansion in use can be estimated based on the amount of skier days either allocated to or used by Alaska Heliski in 2014. Using a conservative estimate of a single take off and landing from the heliport per ski day (no return for lunch) and filling the helicopters used to maximum capacity a level of use of between 100 and 200 landings per season is a reasonable estimate. This is an increase of 10-40 times a historic level of use prior to the change in zoning code requiring a conditional use permit. In our opinion, such an increase in use cannot meet applicable legal criteria for an existing nonconforming use.

RECOMMENDATION

We recommend you inform the property owner and the Planning Commission that nonconforming use status is limited to documented past levels of historic use between 2008 and 2011. A suggested letter to the Planning Commission chair is attached.

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Because SEABA is currently threatening to sue the Borough and may assert nonconforming use rights as part of its lawsuit, we recommend you keep this memorandum confidential at this time.

If you have any questions regarding this topic, please let me know.

NOTICE of PUBLIC HEARING

Haines Borough
P.O. Box 1209
Haines, AK. 99827

SHIP TO:



APPLICATION HEARING

CONDITIONAL USE PERMIT FOR Heliport

Big Salmon Ventures, Scott Sundberg & Nicholas Trimble

3-CLR-35-0010

Lot 10 Sundberg Subdivision

Dear property owner,

You have been identified as owning property within 500-1000 feet of the above listed property. This is notification that there will be a public hearing regarding a conditional use permit for a Heliport. This matter will be heard October 10, 2019 at 6:30pm in the Assembly Chambers. You are invited to provide testimony at the meeting or submit written comments to the Borough Planning & Zoning Tech. at sjmaidy@haines.ak.us. For more information, please call the Lands Dept. at 766-6400 ex3 or visit <https://www.hainesalaska.gov/pc/planning-commission-42>

Public Hearing Date: October 10, 2019

Meeting Time: 6:30 pm

Place: Assembly Chambers 213 Haines Highway

Mailing List:

OWNER1	OWNER2	ADDRESS1	ADDRESS2
ALEXANDER HORECZKO		20 PACKET RD	RANCHO PALOS VERDES CA 90275
BIG SALMON VENTURES LLC	SCOTT c/o SUNDBERG	P.O. BOX 1368	HAINES AK 99827
CHARLES STRONG	KANDUS STRONG	HC 60 BOX 2617	HAINES AK 99827
CHRISTOPHER S. BROOKS		BOX 558	HAINES AK 99827
ERIKA MERKLIN		HC 60, BOX 2618	HAINES AK 99827
GEORGE & LYNETTE CAMPBELL	GEORGE & LYNETTE CAMPBELL LIVING TRUST	P.O. BOX 458	HAINES AK 99827
GEORGE R. HORECZKO	MARY HORECZKO	20 PACKET ROAD	RANCHO PALOS VERDES CA 90274
GREG WHITMORE		222 OLD CREEK RD	CAYUCOS CA 93430
HANS BAERTLE	NATALIIA BAERTLE	BOX 240266	JUNEAU AK 99801
HIGHLAND'S ESTATES INC	ROGER SCHNABEL	BOX 1129	HAINES AK 99827
JUAN CORONA	CARLOTA CORONA	3475 S. OCEAN BLVD., UNIT 408	PALM BEACH FL 33480
KEITH P. KAISER	BONNIE L. KAISER	BOX 1406	HAINES AK 99827
KEVIN FLOYD STODDARD		BOX 1527	HAINES AK 99827
NANCY WOODS	c/o RICHARD WOODS	P.O. BOX 1058	HAINES AK 99827
ROBERT GOODWIN	TERESE GUE	P.O. BOX 62 301 W. KEMPER AVE.	DODGE ND 58625-0062
RUSSELL TAYLOR	KITTIE MARIE DARIN TAYLOR	P.O. BOX 92	HOQUIAM WA 98550
SE ALASKA BACK COUNTRY ADVENTURES LLC	SCOTT c/o SUNDBERG	P.O. BOX 1426	HAINES AK 99827
UA Lands Department	University of Alaska	1815 BRAGAW ST STE 101	ANCHORAGE, AK 99508

NOTICE of PUBLIC HEARING

Haines Borough
P.O. Box 1209
Haines, AK. 99827

SHIP TO:



APPLICATION HEARING

CONDITIONAL USE PERMIT FOR Heliport

Big Salmon Ventures, Scott Sundberg & Nicholas Trimble

3-CLR-35-0010

Lot 10 Sundberg Subdivision

Dear property owner,

You are receiving notice that there will be a public hearing regarding a conditional use permit application for a heliport at the planning commission meeting on October 10, 2019 at 6:30 pm at the Assembly Chambers. Our records indicate that your property is located more than 500 feet away from the proposed use, but close enough that you might be impacted. You are invited to provide testimony at the meeting or submit written comments to the Borough Planning & Zoning Tech. at sjmaidy@haines.ak.us. For more information, please call the Lands Dept. at 766-6400 ex3 or visit <https://www.hainesalaska.gov/pc/planning-commission-42>

Public Hearing Date: October 10, 2019

Meeting Time: 6:30 pm

Place: Assembly Chambers 213 Haines Highway

OWNER1	OWNER2	ADDRESS1	ADDRESS2
ALBERT GILLIAM	PAMELA A. COULTER	BOX 124	HAINES AK 99827
CALARY L BLUE	Calary L Blue Revocable Li	737 SHOTWELL STREET	SAN FRANCISCO CA
CARLA ELLEN PALMIERI		2414 ABBEYWOOD CT.	CLARKSVILLE IN 47129-
CHARLES W. CARL JR.	KATHRYN M. CARL	BOX 774	HAINES AK 99827
DANIEL L. FITZPATRICK	NATASHA D. COLEMAN	HC 60 BOX 2622	HAINES AK 99827
DARSIE P. CULBECK	COURTNEY L. CULBECK	BOX 805	HAINES AK 99827
DAVID MOREY		BOX 1264	HAINES AK 99827
DENISE K. SHERMAN	JOHN A. MARQUARDT	HC 60 BOX 2840	HAINES AK 99827
DON A. PHILLIPS		BOX 718	HAINES AK 99827
DONALD L. BOYD		BOX 1362	HAINES AK 99827
FLOY McDOWELL		1143 NW 57TH ST	SEATTLE WA 98107-3720
FRANCES PERRY		BOX 216	HAINES AK 99827
GEE WHIZ ENTERPRISES	KEN c/o WALDO	P.O. BOX 1082	HAINES AK 99827
GEORGE & LYNETTE CAMPBELL	GEORGE & LYNETTE CAMPBELL LIVING TRUST	P.O. BOX 458	HAINES AK 99827
GEORGE M. WHITMAN		P.O. BOX 244	HAINES AK 99827
HIGHLAND'S ESTATES INC	ROGER SCHNABEL	BOX 1129	HAINES AK 99827
JAMES CHAINEY		P.O. BOX 314	MCKENNA WA 98558-0314
JASON W. VERHAMME		BOX 884	HAINES AK 99827
JOHN MARQUARDT		HC 60, BOX 2840	HAINES AK 99827
JOSHUA ZAHNOW	KATRINA ZAHNOW	HC 60, BOX 2627	HAINES AK 99827
KEITH HOULBERG	CATHY HOULBERG	BOX 797	HAINES AK 99827
KURT REINWAND	LYNN REINWAND	P.O. BOX 32291	JUNEAU AK 99803-2291
LAUREN MCPHUN		HC 60 BOX 2616	HAINES AK 99827-9702
LLC BARN DOOR		P.O. BOX 1294	HAINES AK 99827
MATTHEW STOTTS	JULIE STOTTS	BOX 689	HAINES AK 99827
MEADOW BEJARANO		2535 VAN BUREN ST	EUGENE OR 97405
MICHAEL HOY	BRANDON FERRIER	BOX 1206	HAINES AK 99827
MICHAEL WARD		BOX 1309	HAINES AK 99827
NICHOLAS A. JANS	SHERRIE A. JANS	HC 60 2628	HAINES AK 99827
NICHOLAS SZATKOWSKI		HC 60, BOX 2621	HAINES AK 99827
PETER PAQUET	MARIA PAQUET	HC 60, BOX 2619	HAINES AK 99827
PROFESSIONAL PROP MANAGEMENT	c/o GAFFNEY & FIERER	P.O. BOX 1081	HAINES AK 99827
ROBERT P. MAREK		8510 MENDENHALL LOOP RD.	JUNEAU AK 99801
ROSEMARY JACKSON		10672 KENAI SPUR HWY SUITE 1	KENAI AK 99611-7858
RYAN PANKRATZ	JACOB LISKA	1508 KURTZ ST.	OCEANSIDE CA 92054-5532
SALLY RENO		HC 60, BOX 2626	HAINES AK 99827
SEAN B. COPELAND	HEATHER SHADE	P.O. BOX 1248	HAINES AK 99827
SQUIBBWICK LLC		BOX 211076	AUKE BAY AK 99821
STACIE J POWLISON	BRYCE R POWLISON	HC60 BOX 2615	HAINES AK 99827
STAN MILOS	ADRIANNE MILOS	HC 60, BOX 2623	HAINES AK 99827
TAIGA BELL	RYLAND BELL	P.O. BOX 115	ELFIN COVE AK 99825
UA Lands Department	University of Alaska	1815 BRAGAW ST STE 101	ANCHORAGE, AK 99508
VICKI L. GARDNER		P.O. BOX 1582	HAINES AK 99827

From: Monkey Wrench [<mailto:sfmonkeywrench7@yahoo.com>]
Sent: Tuesday, October 01, 2019 11:14 AM
To: Savannah Maidy
Subject: Public Hearing 10/10/19

Hello There,

I have lived full time and seasonally in Haines Borough for over 35 years. And I know how special of a place the Borough is. The beauty is unapparelled in Southeast and the people are simply the best. I have a little home at 26 mile on the mountain side and I do not want to hear helicopters flying over my head. The noise is very disruptive to me and frightening for the animals. If the Hell-a-Ski people insist on flying the Helicopters then, how about choosing a path that has no people below? Seems like a reasonable solution to me. If you do not think the noise is ungodly then I invite you to position yourself under one as it is flying over your head.

Thank you,

Calary Blue

HIGHLAND'S ESTATES, INC.
P.O. Box 1129
Haines, AK 99827
(907) 766-2821

October 1, 2019

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

Re: Notice of Public Hearing – CUP Big Salmon Ventures
3-CLR-35-0010

Dear Planning Commissioners:

Highland's Estates, Inc. owns land in the vicinity of 3-CLR-35-0010. We are in receipt of a notice of a public hearing regarding a conditional use permit application for a heliport to be held on October 10, 2019. We have no objection to the proposed activity.

Thank you for providing an opportunity to comment on the application.

Sincerely,



Roger J. Schnabel
Director