



HAINES BOROUGH, ALASKA

P.O. BOX 1209

HAINES, AK 99827

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

Memorandum

Date: Tuesday, November 1st, 2016
To: Haines Planning Commission
From: Holly Smith, Borough Planner

Re: Adopting All or Parts of the 2007 Haines Coastal Management Plan into Haines Borough Code

During its regular August 11 meeting, The Haines Borough Planning Commission expressed a need to integrate all or parts of the 2007 Haines Coastal Management Plan (HCMP) into Haines Borough Code and/or the Comprehensive Plan. Since the expiration of the Coastal Zone Management Program in 2011, some references to the State program and statutes are no longer valid, which make it difficult to enforce policies adopted by the plan.

This memo can be used as a roadmap of information gathered on the topic of HCMP integration and may be helpful for extracting parts of the plan that the Commission believes is most valuable within zoning, permitting, recreation, and cultural resources, which will be considered during the November 3rd Workshop.

Included in this memo are:

- HCMP in Haines Borough Code (HBC)
- HCMP in the Comprehensive Plan
- HCMP Sections
- Coastal Management Integration by Other Communities
- HCMP Enforceable Policies
- July 20 Munson Memo
 - Legal Status of HCMP
 - Recommendation
- July 1 Cozzi Memo
 - HCMP Background
 - Draft ordinance

HCMP in Haines Borough Code (HBC)

CODE	REFERENCE
12.08.060	Road, sidewalk, construction, maintenance, and repair – permits may be subject to HCMP requirements.
18.30.040	Planning Commission
(I)	Review of borough projects shall be based upon the coastal management program.
(K)	Every two years, send recommendations to State Coastal Policy Council re: amendments to HCMP. Commission is responsible for enforcing HCMP prior to any issuance of permit.
(L)	Comprehensive Plan may include coastal development and management plan.
18.60.10	General Approval Criteria
(P)	Setbacks: State-identified anadromous fish streams will be consistent with HCMP.
(U)	Waterfront zones: (1) Dredge and fill activities. Corps permit required for wetlands designated by CZMP. (2) Compliance with HCMP shall be strictly enforced.
18.60.020	Specific Approval Criteria
(I)(2)(b)	RV parks prohibited where inconsistent with HCMP
18.100	Subdivision Requirements
070(C)	General Requirements and Design Standards: Proposed subdivision shall conform to HCMP
120	Approval letters: HCMP agency must submit letter of approval to Commission before plat recording.
18.110	Title 18: Section 110: Coastal Zone Management
010	Authority: CZMP
020	Any land use permit must be consistent with the adopted policies of the HCMP.
030	If consistency review is required, Manager makes recommendations to Commission and Commission shall conduct any public hearings and processes required by HCMP, then Commission makes recommendations to Manager for final determination.
040	Commission shall review HCMP every five years and make recommendations to assembly if necessary.

HCMP in Comprehensive Plan

Section / Page	Reference
2.2 The Environment / pp. 15	More detailed information about the environment can be found in the 2006 Haines Coastal Management Plan.
2.2.5 Vegetation and Habitat / pp. 21	Refer to the HCMP and Haines State Forest Plan for more information.
2.2.7 Fish, Marine Mammals, Birds / pp. 23	Refer to the 2006 HCMP, ADNR Northern SE Area Plan, Chilkat Bald Eagle Preserve Plan, and Haines State Forest Plan for more detailed information.
4.5.1 Haines Borough Annual Operating Revenue / pp. 46	The HCMP provided \$14k for planning work in Haines annually, but ended in FY 12.

HCMP Sections

The Haines Coastal Management Plan contains eight (8) sections and three (3) appendices.

- | | |
|---|---|
| 1. Introduction | 7. Implementation |
| 2. HCMP Boundaries | 8. Public Participation |
| 3. Resource Inventory and Analysis | Appendix A. Haines Enforceable Policies |
| 4. Issues, Goals, and Objectives | Appendix B. Haines Enforceable Policies Table |
| 5. Enforceable Policies | Appendix C. Designated Areas Table |
| 6. Former Port Chilkoot/Portage Cove AMSA | |

Coastal Management Integration by Other Boroughs

Community	Date	Type	Description
Sitka	2011	Adoption by Reference	20.05.010 Adoption by reference—City and Borough of Sitka Coastal Management Plan (CMP) enforceable policies.
Skagway	2007	Code Chapter	The code (SMC Title 17) is a six-page summary of the entire plan – not just enforceable policies. It references invalid statutes. It has not been updated since the CZM program expired. Coastal management is not specifically referenced in their Comp Plan.
Ketchikan	2012	None	The KGB did away with all references to the CZMP in code.
Matsu		In Progress	The Matsu Borough has been working on creating their own plan and enforceable policies since 2013. The process is expected to be complete by 2017.
Juneau	1992	Adoption of Enforceable Policies	<p>No updates to code since CZM program expired.</p> <p>49.70.905 - Coastal development.</p> <p>The following policies apply to coastal development throughout the coastal zone:</p> <p>(1)</p> <p>To the extent feasible and prudent, coastal development shall be designed using best available technology to minimize hazards associated with physical conditions such as soil characteristics, slopes, geological features, surface and subsurface drainage, water tables, floodplains and shore forms of the site. (2) To the extent feasible and prudent, coastal development shall be designed and operated to prevent adverse impact upon beaches and other physical shore features in the coastal zone.</p> <p>(3) The placement of structures and the discharge of dredged or fill material into coastal water shall, at a minimum, comply with Parts 320—330, et seq., Title 33, Code of Federal Regulations (Vol. 51 of the Federal Register, pp. 4120641260, November 13, 1986)</p> <p>(4) Dredging and filling shall be prevented in highly productive tideflats and wetlands, subtidal areas important to shellfish, and water important for migration, spawning and rearing of salmon and other sportfish species, unless there is a significant public need for the project and there is no feasible and prudent alternative to meet the public need.</p> <p>(5) Shoreline industrial developments, ports, harbors and marinas shall be sited, designed, constructed and operated such that:</p> <p>(A) Lawful navigation is not impaired; (B) Facilities for proper handling of sewage, refuse, fuel and waste oil are provided;</p> <p>(C) All feasible and prudent steps are taken to prevent water pollution by incorporating best management practices; and</p> <p>(D) Adequate access and utility access are available or can be provided.</p> <p>(6) To the extent feasible and prudent, ports, harbors and docks shall be located away from extensive tideflats and wetlands and so as not to obstruct fish passage along the coast or in waters used by anadromous fish.</p> <p>(7) To the extent feasible and prudent, piers, wharfs, and floating docks shall be installed in waters that have adequate natural flushing capacities. If solid fill must be used, it shall be located and constructed to maintain water circulation in the harbor.</p> <p>(8) Excavation, shoreline alteration and disturbance of anadromous streams, tideflats and wetlands shall be minimized in the construction and operation of port, harbor, dock and industrial facilities. (9) To the extent feasible and prudent, the area immediately surrounding small boat harbors shall be reserved for water-related and water-dependent uses. (10)</p> <p>To the extent feasible and prudent, port and harbor uses shall minimize the negative aesthetic impact of their use and activities, shall enhance and maintain the positive visual aspects of their development, and shall provide opportunities for public viewing of such positive aspects. (11) Navigable waters shall be kept free of unnecessarily hazardous or obstructive development. (12) To the extent feasible and prudent, development shall not detract from the scenic qualities of the shorelines, shall be compatible with its surroundings and shall not significantly block scenic vistas. (13) Filling of intertidal areas below mean high tide, not specifically addressed in section 49.70.960, for the expansion of upland area is specifically prohibited unless clear and convincing evidence is provided showing that all of the following conditions exist that:</p> <p>(A) Strict compliance with the policy would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome; (B) Fill is the only means to allow development of the property which is similar</p>

			<p>to other properties in the vicinity; (C) Less than the proposed fill would prevent the applicant from making a reasonable use of the property or would make compliance unreasonably burdensome; (D) The proposed project meets the requirements of the other enforceable policies of the Juneau Coastal Management Plan; (E) The proposed project will not be detrimental to the public health, welfare and safety or to other properties in the vicinity; (F) Approval of the project will not authorize uses on the property otherwise not allowed by other state, federal and local laws and regulations; and (G) If applicable, the meaning of the phrase "feasible and prudent" has been considered and found to support approval of the proposal to fill. Provided, log and mining transfer facilities and the following public facilities are exempt from this policy: bridges, causeways, boat ramps, utility transmission facilities, pipelines, treatment plant lines and outfalls, and transportation facilities.</p> <p>(14) Floathomes, or any floating structures or watercraft intended for moored or anchored residential use, shall be approved through the conditional use process before they may be anchored or moored in one location for more than 30 days. Floathomes must also have state department of natural resources or City and Borough tideland permits as applicable. Such structures must either be connected to an approved onshore sewage disposal system or have United States Coast Guard approved marine sanitation devices, and may not dispose of sewage by any other means. In addition, floathomes must meet all of the following standards:</p> <p>(A) Floathomes shall not ground at low tide and must be located at least 300 feet from any anadromous fish streams. Mooring shall not obstruct recreational use of the shore. Fuel tanks shall be designed to protect against accidental contamination of the water. Seawater must be protected from contamination by fuel spills, and solid and liquid wastes;</p> <p>(B) Floathomes shall not be located in the "prohibited area" shown on Juneau Coastal Management Plan Map 2, or areas with concentrations of shellfish, waterfowl, shorebirds, marine mammals, extensive tide-flats, salt marshes and kelp or eelgrass beds; sites within 330 feet of eagle nest trees; developed recreation sites; heavily used recreation sites; or known historic and archeological sites. Floathomes may be allowed on privately owned tidelands within the prohibition area provided other provisions of this section are met;</p> <p>(C) The placement of floathomes shall avoid blockage or interference to waterway channels used by waterborne traffic;</p> <p>(D) Views from adjacent shoreline residences shall not be blocked if the main floor of the residence is located below 25 feet above sea level. The owner of any such residence within 500 feet on either side of the proposed floathome location may prevent that site from being used, by submitting a written objection at or before the time of consistency review or planning commission action, under the conditional use process. Such objection may not be considered after the consistency determination is issued, or planning commission action under the conditional use process;</p> <p>(E) Where feasible and prudent, no more than one floathome shall be allowed for every 500 feet of lineal shoreline measured at mean high tide unless multiple floathome moorage is specifically allowed under subsection (15) of this section;</p> <p>(F) Floathomes shall be constructed and maintained to avoid a dilapidated, abandoned, derelict or unattended appearance;</p> <p>(G) All refuse shall be securely stored pending removal; (H) Floathomes shall float generally level and have at least one foot of freeboard; (I) Where the need for upland access to the floathome is anticipated, the floathome shall be sited to ensure that there is proper and adequate legally recorded upland access to the site; (J) Floathomes shall be placed so that required or desired onshore services and facilities can be efficiently extended; (K) Floathomes shall be allowed in an area only after adjacent upland owners are notified; (L) Floathomes shall be sited and operated to avoid creating or increasing noise and air pollution. Emissions from heaters and stoves, if otherwise lawful, may be allowed; (M) Persons wishing to place floathomes adjacent to shorelines having road access must show that at least two onshore legally recorded parking places not on a public right-of-way are available and that floathome residents will have clear access to these parking places across the shoreland adjacent to the floathome; and (N) Floathomes may be allowed without conditional use approval in developed marinas if the owner or operator assumes responsibility for providing fresh water, sewage disposal and solid waste disposal.</p> <p>(15) Floating camps or multipurpose floating structures intended in whole or in part for residential purposes and meant to support mining, fishing, logging, tourist or other activities may be allowed under the conditional use procedure provided they meet all of the standards for floathomes set forth in subsection (14) of this section. (16) Development intended to provide moorage for two or more</p>
--	--	--	--

			<p>floathomes may be allowed as conditional uses in the nonprohibited areas shown on Juneau Coastal Management Plan Map 2, provided the developer:</p> <p>(A) Owns, or has a nonrevocable lease, for at least 30 years in duration, for the upland area adjacent to the water area to be developed; (B) Provides at least two off-road parking spaces for each floathome; (C) Provides fresh water, sewer with approved onshore disposal, and electricity to each floathome; (D) Provides fire control protection approved by the City and Borough fire chief; and (E) Provides to the floathomes, by site selection, physical improvements, or design of the floathomes, protection from storms, such that the floathomes will be safe from waves higher than two feet.</p> <p>(17) Floating structures, other than those addressed in subsections (14), (15) and (16) of this section, intended for commercial or industrial purposes including, fish propagation, mineral extraction, mineral processing, timber extraction or processing, lodging, seafood processing, research, marine service and repairs, which will be fixed in one location for more than 30 days, may do so only after having obtained approval through the conditional use process. Provided, the following are exempt from the conditional use process requirement:</p> <p>(A) Mooring devices for watercraft; (B) Watercraft transiting the City and Borough that are not intended for residential use in excess of 30 days in any 12 calendar months; (C) Seafood processors whose primary purpose is to receive fish and shellfish from harvesting boats and prepare it for further transportation; and (D) Watercraft intended to transport cargo to, from or within the City and Borough.</p> <p>(18) Industrial and commercial uses on or adjacent to the shorelines of navigable waters must be located in the appropriate special waterfront designation established in section 49.70.960 unless:</p> <p>(A) There is no feasible and prudent alternative to meet the public need for the use; and (B) The nature of the use requires a specific location and no other location will suffice.</p> <p>(19) In approving development in coastal areas, priority shall be given, in the following order, to:</p> <p>(A) Water-dependent uses and activities; (B) Water-related uses and activities; and (C) Uses and activities which are neither water-dependent nor water-related, for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.</p>

Appendix A - Haines Enforceable Policies

The enforceable policies of the Haines Coastal Management Program are listed in this appendix.

The HCMP policies flow from the Issues, Goals and Objectives outlined in chapter 4 and the Resource Inventory and Analysis set out in Chapter 3. The enforceable policies of this HCMP apply only to land and water uses and activities within the Haines Coastal Management Area Boundary (Figure 2), which is the same as the former City of Haines corporate boundary. Uses and activities occurring on lands and waters outside the Haines Coastal District Boundary are subject to Haines and ACMP policies only if a proposed action will have a direct and significant affect on coastal resources within the Haines Coastal Management Area coastal district boundaries.

Coastal Development

ACMP Coastal Development Standard (11AAC 112.200)

- (a) In planning for and approving development in or adjacent to coastal waters, districts and state agencies shall manage coastal land and water uses in such a manner that those uses that are economically or physically dependent on a coastal location are given higher priority when compared to uses that do not economically or physically require a coastal location.
- (b) Districts and state agencies shall give, in the following order, priority to
 - (1) Water-dependent uses and activities;
 - (2) Water-related uses and activities; and
 - (3) Uses and activities that are neither water-dependent nor water-related for which there is no practicable inland alternative to meet the public need for the use or activity.
- (c) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in 33 C.F.R. Parts 320 - 323, revised as of July 1, 2003.

CDLU-1. Waterfront property uniquely suited for water-dependent or water related uses are reserved for the following, listed in order of priority and consistent with permitted and conditionally zoned uses:

- a) Water dependent uses and activities. Such uses are economically or physically dependent upon a coastal location, and as such are given a higher priority than those land and water uses and activities that are not water-dependent. The following non-exhaustive list of land and water uses and activities are considered “water dependent”: fish hatcheries; mariculture activities; fish processing; log storage and transfer; float plane bases, boat harbors, freight, fuel, or other docks; marine-based tourism facilities; boat repair, haul

outs, marine ways and accessory attached housing; remote recreational cabins dependent on water access; and facilities that serve as inter-modal transportation links for the transfer of good and services and people between the marine transportation system and the road system.

- b) Water-related uses and activities. The following non-exhaustive list of uses and activities are considered “water-related”, and thus given a lower priority of use than those previously listed as “water dependent”: marine retail stores and commercial activities such as hotels, restaurants, and other similar uses that provide views and access to the waterfront.
- c) Uses and activities necessary to meet the public need for which there is not practicable inland alternative.

CDLU-3. Fill Below Mean High Water. Piling-supported or floating structures shall be used for construction below mean high water unless clear and convincing evidence shows that all of the following conditions exist:

- a) There is a documented public need for the proposed activity;
- b) There are no practicable inland alternatives that would meet the public need and allow development away from the waterfront;
- c) Denial of the fill would prevent the applicant from making a reasonable use of the property;
- d) The fill is placed in a manner that minimizes impacts on adjacent uses, public access easements along the shoreline and water views;
- e) The fill is the minimum amount necessary to establish a reasonable use of the property; and
- f) Development of the property would support a water dependent use.

The following publicly-owned facilities are exempt from this policy: Log and mining transfer facilities, bridges, causeways, boat ramps, utility transmission facilities, pipelines, treatment plant lines and outfalls, and transportation facilities.

CDLU-5. Tidelands Viewsheds. Placement of structures or dredged or fill material in tidelands below mean high water shall minimize to the maximum extent practicable obstruction of the values for which the water views are currently enjoyed.

CDLU-6. Floating Facilities. Floating facilities located in coastal waters in the Haines Coastal District shall be sited and operated to reduce exposure to storm and tidal action, utilize secure anchoring to prevent pulling of the anchor or grounding, and minimize proximity to other floating and fixed facilities.

CDLU-7. Maintenance of Public Access to Coastal Water. Proposed uses or activities shall not impede or degrade access to and within designated recreation areas as identified on Figure 15.

Natural Hazard Designation

The areas mapped on Figure 5 and described in Sections 3.2.4 and 3.5.3 of the Resource Inventory and Analysis are designated as Natural Hazard areas (in accordance with 11 AAC 112.210(a) and 11 AAC 114.250(b)) in the Haines coastal district.

Recreation

Recreation Designation. The following areas in the Haines Coastal district are designated as recreation areas in accordance with 11 AAC 114.250(c and d). These areas are mapped on Figure 15. Information that justifies their designation is provided in the Resource Inventory and Analysis in Section 3.5.2.

Designation as an area for recreation use under the HCMP does not mean that recreation is the only appropriate use of the area. However, uses and activities proposed to take place within these designated areas must comply with the enforceable Recreation policies of the HCMP.

- a) Tlingit Park and Lookout Park
- b) Oslund Park
- c) Beaches and tidal pools within the intertidal zone of Portage Cove as follows:
 - 1. Between the Port Chilkoot Dock and the Downtown Boat Harbor;
 - 2. Between the Klukwan Inc. petroleum dock and the State Park and Campgrounds; and
 - 3. Beyond the developed areas north of the Downtown boat harbor along the beaches of Portage Cove to Nukdik Point.
- d) The Southeast Alaska State Fairgrounds
- e) The Fort Seward Parade Grounds (as long as the current public land use agreement between the private owner and the Haines Borough remains in effect).
- f) Lutak Inlet
- g) McClellan Flats access
- h) Chilkat River Beaches and Tidelands (Carr's Cove to Jones Point, Borough lands south of Jones Point and south of Carr's)
- i) Chilkat Peninsula
- j) Tanani Point beaches

R-1. Protection of Recreation and Tourism Values. Projects and activities on lands and waters designated for recreational activities as shown in Figure 15, shall be located, designed, constructed, and operated to avoid, minimize, or mitigate significant adverse impacts to recreation values include activities such as fishing, beach combing, hiking, bird watching, boating and kayaking, boat anchorages, picnicking, camping and campfires, access, playing outdoor sports, bicycling, skiing, learning about local culture, and hunting.

R-3. Utilities. To the extent practicable, utilities shall be installed underground in the designated recreation use areas for which enjoying scenic views is listed as a recreational use in Section 3.5.2 of the Resource Inventory and Analysis

Subsistence Designation

The following areas in the Haines coastal district are designated for subsistence in accordance with 11 AAC 114.250(g). These areas are mapped on Figure 13. Information that justifies their designation is provided in the Resource Inventory and Analysis section 3.3.

Commercial Fishing and Seafood Processing

Commercial Fishing and Seafood Designation. The following areas in the Haines coastal area are designated as commercial fishing and seafood processing areas in accordance with 11 AAC 114.250(f). These areas are mapped on Figure 14. As described in 3.5.1, the fishing industry is of specific, critical concern to the vitality of Haines' economy, and measures to promote the industry are warranted. Information that justifies their designation is adequately provided in the Resource Inventory and Analysis in Section 3.5.1.

- a) The Port Chilkoot Dock area, and uplands and tidelands lots adjacent to (and north of) the downtown Boat Harbor in Portage Cove, and
- b) The Lutak Dock.

CFSP-1. Permitting Priority. Uses and activities in the designated area on Figure 14 shall avoid or minimize interference with the development and operation of facilities related to Commercial Fishing and Seafood Processing.

Sand and Gravel Extraction Processing

ACMP Sand and Gravel Extraction Standard (11 AAC 112.260)

Sand and gravel may be extracted from coastal waters, intertidal areas, barrier islands, and spits if there is no practicable alternative to coastal extraction that will meet the public need for the sand or gravel.

SG-1. Location of Sand and Gravel Sites. To the extent practicable, extraction of sand, gravel and rock shall be permitted in the following order of priority:

- a) Existing, approved upland sand and gravel pits;
- b) Reuse of sand and gravel from abandoned development areas, unless reuse would cause more environmental damage than non-use from the area;
- c) New upland sites approved for the purpose; and
- d) Streams that do not provide fish habitat.

Prehistoric, Historic, & Archaeological Resources

ACMP Historic, Prehistoric, and Archeological Resources Standard (11 AAC 112.320)

- (a) The department will designate areas of the coastal zone that are important to the study, understanding, or illustration of national, state, or local history or prehistory, including natural processes.
- (b) A project within an area designated under (a) of this section shall comply with the applicable requirements of AS 41.35.010 – 41.35.240 and 11 AAC 16.010 – 11 AAC 16.900.

Prehistoric, Historic and Archaeological Designation. The following areas in the Haines coastal district are designated as important to the study, understanding or illustration of national, state or local history or prehistory in accordance with 11 AAC 114.250(i). These areas are mapped on Figure 12. Information that justifies their designation is provided in the Resource Inventory and Analysis in section 3.3.2 Cultural and Archaeological Resources.

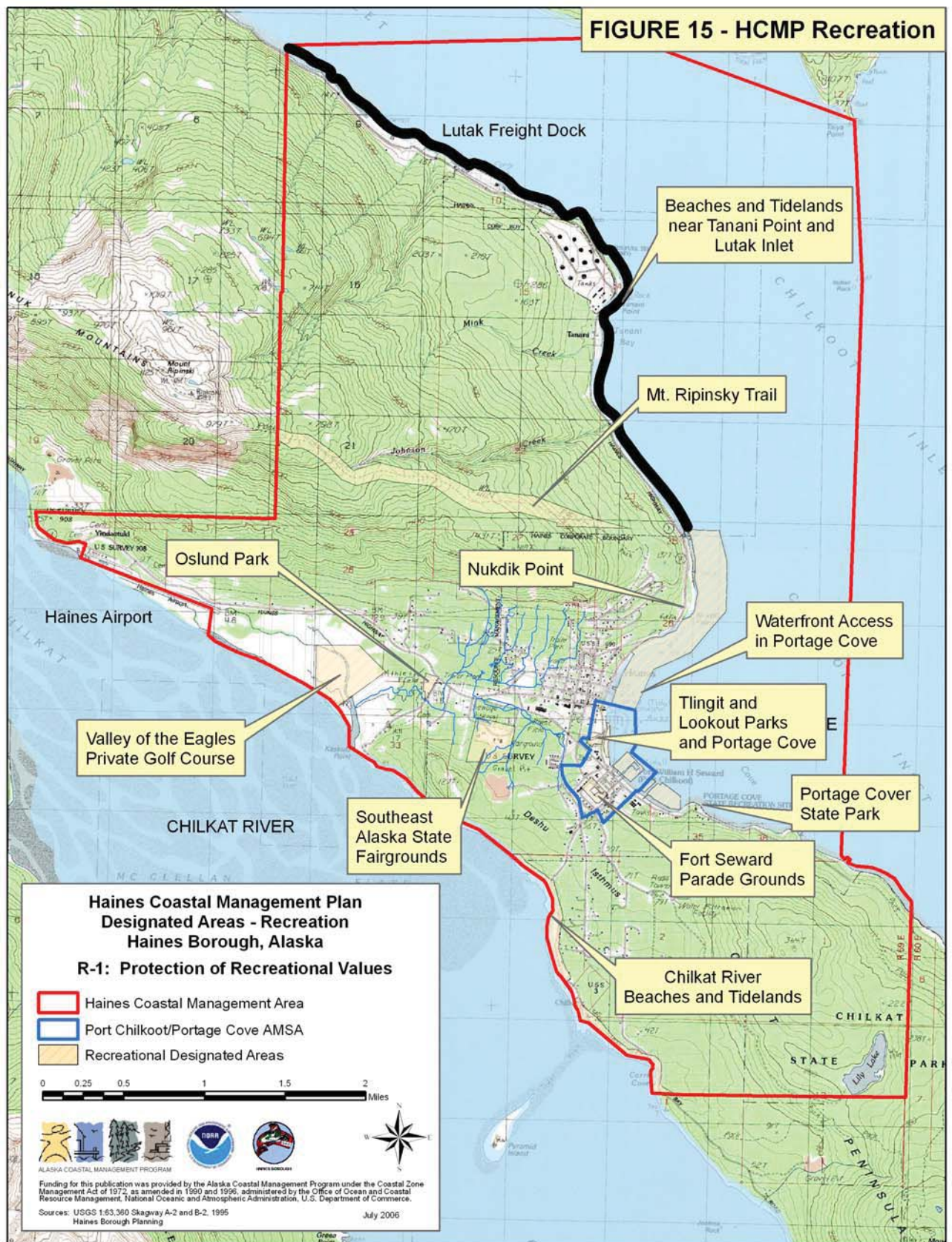
- a) Fort William H. Seward, listed on the National Historic Register as a National Historic Landmark.
- b) The Haines Town site Local Historic District is defined by the boundary lines established in the original 1913 Haines Town site Survey. Within the historic town site, the Division of Parks and Outdoor Recreation, Office of History and Archaeology have inventoried 35 structures. The Deishu Village site is also within the historic district.
- c) Tlingit Park and historic cemetery.
- d) The T'anani Village Site and Nukdik/Tanani Beach Site are within the area annexed to the former City in June 1993.
- e) Presbyterian Mission and Native School site
- f) Portage Cove burial site.
- g) South Portage Cove native fortification site.
- h) Anway Homesite historic structure and property.
- i) Yandeist'akye' historic native settlement.

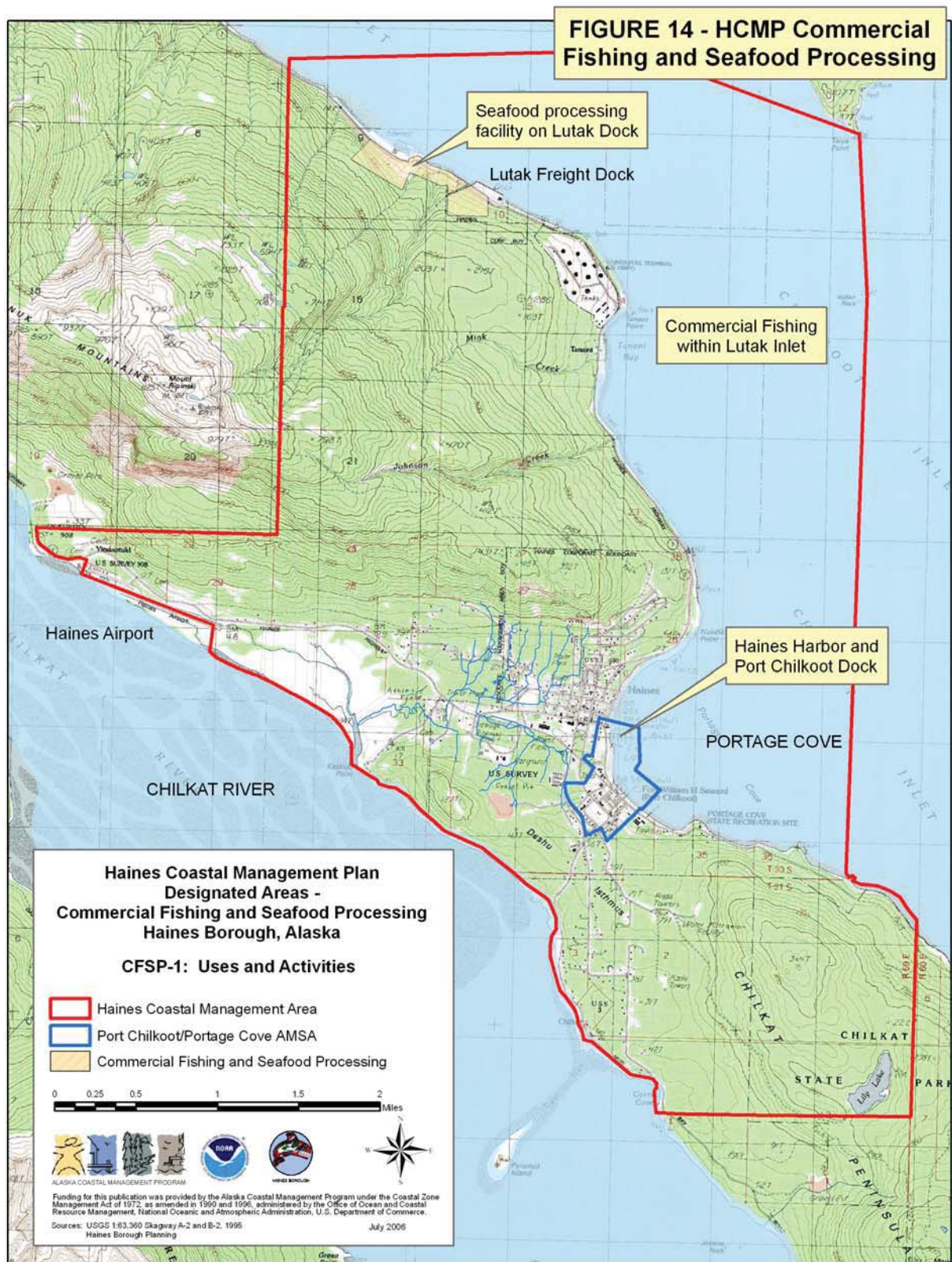
PHAR-1. Coordination. For projects within the historic and prehistoric designated area as shown in Figure 12, if previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance are encountered during development, an artifact curation agreement will be developed between the landowner, appropriate state or federal preservation authorities, and curation facility if artifacts are disturbed by the project.

PHAR-2 Protection of Cultural Resources. For projects within the historic and prehistoric designated area as shown in Figure 12 the applicant shall submit with the consistency review packet an assessment of potential impacts to historic and prehistoric resources and a plan for the protection of those resources. As part of the assessment, the applicant shall consult with the Haines Coastal District and tribal entities.

Appendix B - Haines Borough Enforceable Policies Cross Reference Table

Enforceable Policy Chapter, Name and Page			Supporting Information for Enforceable Policies			
			Issues, Goals, and Objectives	Resource Inventory & Analysis	Maps	Appendices
CDLU-1.	Waterfront property uniquely suited for water-dependent or water related uses	p. A-1	p. 4-6, Obj. E3, E5	p. 3		
CDLU-3.	Fill Below Mean High Water	p. A-2	p. 4-6, Obj. E3	p. 3		
CDLU-5.	Tidelands Viewsheds	p. A-2	p. 4-6, Obj. E4	p. 3		
CDLU-6.	Floating Facilities	p. A-2	p. 4-6, Obj. E6	p. 3, Table 4.1		
CDLU-7.	Maintenance of Public Access to Coastal Water	p. A-2	p. 4-6, Obj. E3,E4	p. 4		
R-1.	Protection of Recreation Values	p. A-3	p. 4-7, Obj. G3	p. 4	p. 3-75 Fig 15	
R-3.	Utilities	p. A-3	p. 4-7, Obj. G7	p. 5, Table 5.2		
CFSP-1.	Borough Permitting Priority	p. A-4	p. 4-9, Obj. K1	p. 5	p. 3-68 Fig 14	
SG-1.	Location of Sand and Gravel Sites	p. A-4	p. 4-10, Obj. N4	p. 3, Table 2.1		
PHAR-1.	Coordination	p. A-5	p. 4-11, Obj. R3	p. 3	p. 3-49 Fig 12	
PHAR-2	Protection of Cultural Resources	p. A-5	p. 4-11, Obj. R3	p. 3	p. 3-49 Fig 12	



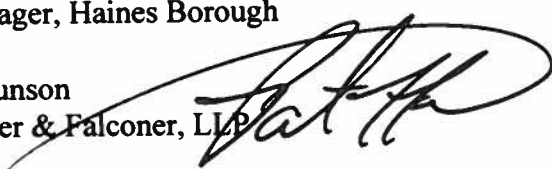




BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcfaklaw.com

MEMORANDUM

TO: Bill Seward
Borough Manager, Haines Borough

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

RE: Legal status of Haines Coastal Management Plan

DATE: July 20, 2016

You asked our office to provide a legal opinion as to whether the Haines Coastal Management Plan (the "Plan") and associated Borough ordinances are enforceable now that the state coastal zone management statutes have been repealed. The short answer is that the Haines Coastal Management Plan is technically still applicable to applications for Title 18 land use permits within the Haines Borough. However, because the Borough Plan refers to and relies upon so many state statutes and procedures that are no longer used, the Plan is not useful and should not be enforced as written. We recommend the ordinances incorporating that Plan into Borough code (HBCO Ch. 18.110) be amended to suspend or terminate the Haines Coastal Management Plan until the Borough decides whether to incorporate similar development policies into Code in another form, such as an updated Plan that reflects the lack of state coastal zone management laws or more conventional land use permit ordinances.

BACKGROUND

The National Coastal Zone Management Program is a voluntary federal-state partnership created by the Coastal Zone Management Act (CZMA; 1970) that attempts to facilitate environmentally sound development along our nation's coasts. The Alaska State Legislature passed the Alaska Coastal Management Act in 1977. The hallmark of the state program was the requirement that certain coastal development proposals receive a "consistency determination" certifying that the proposal satisfied the program guidelines. CZMA § 307. This process typically involved local, state, and federal reviewers and decision-makers.

Under the law, coastal communities are authorized to prepare local coastal management plans to identify local priorities and policies for coastal development. These plans inform the decisions of both local and state decision makers tasked with making consistency determinations.

The current Haines Borough and former City of Haines have participated in the Alaska Coastal Management Program (ACMP) since 1980. The most recent Haines Coastal Management Plan (HCMP) was amended in 2008. It states the broad policies, priorities, goals, and “enforceable policies” applicable in the Haines Borough coastal zone (as defined in the HCMP). A person seeking to carry out a project within the Haines coastal zone was usually required to obtain both a state consistency determination and local approval through the Borough’s Title 18 land use permitting process (often referred to as a “local consistency determination”). HCMP, p. 7-4; HBCO Ch. 18.110.

By operation of Alaska State law, the ACMP expired on July 1, 2011. AS 44.66.020 and .030. Therefore, there is no longer a CZMA program or requirement in Alaska. People are not required to apply for CZMA consistency determinations, nor will federal or state agencies provide same. All of the state statutes and regulations establishing the procedures and standards for receiving such determinations have been repealed.

ISSUE: In light of the expiration/repeal of the state Coastal Zone Management Act, what is the legal status of the Haines Coastal Management Plan and the Borough ordinances purporting to apply it within the Borough?

ANALYSIS

The CZMA is no longer “the law of the land” in Alaska. Developers are not required to submit CZMA applications to the state or obtain consistency determinations in order to carry out projects that would formerly have been subject to the CZMA. Neither the state nor federal government reviews such developments under the CZMA, and all statutes and regulations governing such developments under the law have been repealed. Neither the state nor federal government enforce the Act in Alaska.

However, Borough Code has not been amended to reflect this change. HBCO 18.110.010 states “The coastal zone management plan of the borough, adopted by the borough assembly on ... September 5, 2006, shall apply to all permits issued under this title.” The next section states: “The borough manager, upon application by a developer for any land use or development permit, shall review the proposed development for consistency with the adopted policies of the Haines coastal zone management plan.” HBCO 18.110.020. “If the development is required to have a consistency review and approval, the manager shall advise the applicant of the procedures to be followed and assist as is reasonably necessary..... The planning commission, upon receipt of an application containing a requirement for consistency review, shall conduct any public hearings and processes required in the coastal zone management plan in order to provide a recommendation to the manager for a final determination. Upon receipt by the manager of a

favorable consistency decision, the commission may then proceed to issue any appropriate permits applied for.” HBCO 18.110.030.

These sections are still valid law in Haines notwithstanding the repeal of the underlying CZMA at the state level. The repeal of the state coastal zone laws and regulations does not automatically void the borough ordinances. Rather, the ordinances exist independently and must be read as such. Regardless of the state level laws and requirements (or lack thereof), HBCO 18.110.010 states that the *Haines Coastal Management Plan* “shall apply to all” Title 18 permits. Even though the Plan is not enforceable/enforced by the state or federal government, the code provision applying the HCMP to Borough land use permits does not depend on any state statute to be effective. The Plan is essentially incorporated by reference into Code, and is therefore the equivalent of an enforceable ordinance despite the fact that the statute giving the Plan any “teeth” at the state or federal level has been repealed. The Plan still applies to Title 18 permits.

The text of the Plan supports this conclusion as well, stating “All land and water uses requiring a permit or approval in accordance with Haines Borough Code Title 18.... that are proposed in the Haines Borough coastal zone *that do not require federal or state authorization or that is not a federal activity* will require a determination of consistency from the Haines Borough.... ” (emphasis added). The repeal of the CZMA obviously means that no proposals currently “require federal or state authorization” under that Act. This effectively means that the Borough should evaluate “all land and water uses....that are proposed in the Haines Borough coastal zone” and which require a Title 18 permit for consistency with *the Borough coastal plan*. In short, all proposals that would be subject to the CZMA are technically still subject to the requirements of the Borough’s plan.

That said, enforcing these ordinances and the Borough Plan as written would create significant practical problems. The Borough Plan rests on the assumption that the state and federal coastal zone management laws, regulations, and procedures are still enforced and in use. Since this is no longer true, much—or perhaps “most”—of the Plan is flawed in the sense that it refers to and relies upon procedures and standards that either do not exist or are not used in Alaska. That does not mean the whole Borough Plan is *per se* void or unenforceable, but it does mean that significant portions of the Plan are nonsensical because they refer to laws that no longer exist.¹ This makes the Plan extremely confusing, difficult to use, and problematic to enforce because it would be almost impossible for an applicant to determine what processes and

¹ This should be apparent from reviewing the Plan, but we can provide more detailed examples if desired.

standards apply to his or her application.² We therefore do not recommend the Borough begin enforcing Chapter 18.110 or the Haines Coastal Management Plan at this time.

RECOMMENDATION

Although the Plan is technically enforceable in some respects, it is extremely impractical to implement and enforce it for the reasons noted above. We therefore recommend the Assembly consider amending Chapter 18.110 to suspend or terminate the Haines Coastal Management Plan for the time being at least. If the Borough wishes to have a coastal zone management plan of some kind, we recommend the Assembly either draft a new plan to reflect the repeal of the underlying state laws, or draft more traditional ordinances governing coastal development to include in Title 18's land use permitting standards. These ordinances could include many of the "enforceable policies" set forth in the existing Plan (see Chapter 5). More conceptual elements of the existing Plan could be included in the next update to the Comprehensive Plan.

² For example, the process by which the Borough would make a consistency determination is unclear. Much of the Borough Plan relies upon an assumption that a state consistency determination will generally be required, and essentially relies upon that process to facilitate Borough involvement and review. (*See, e.g.*, HCMP p. 7-4) Since that process no longer occurs, the Borough would need to develop a more detailed process to carry out its own review if it intends to enforce the coastal zone Plan and associated ordinances.



Memo from the Clerk

Date: July 1, 2016
To: Planning Commission
Cc: Borough Manager
From: Julie Cozzi, MMC, Borough Clerk
Re: Draft Ordinance to Remove HCMP References from Code

On June 30, Manager Seward and I had the pleasure of meeting with Chairman Goldberg to discuss the Coastal Management Plan (CMP). We discussed the following points and concluded the meeting in agreement that the code references pertaining to the Haines CMP should be removed, as soon as possible. It was also agreed that since most of the code sections are in Title 18, it is important to bring this to you, the Planning Commission, for an official recommendation prior to submitting it to the assembly.

- The Alaska Coastal Management Program (ACMP) was a program that was in place for approximately four decades. This program involved approving coastal district management plans (including the Haines District), evaluating the effectiveness of the plans, and providing financial assistance to assist the coastal districts in their work. The regulations included statewide standards for the ACMP and district plans.
- The entire program was eliminated in 2011 through a delayed repealer when legislation necessary to continue the program failed to pass both bodies of the legislature during regular session as well as two subsequent special sessions. During the 2012 regular session, the legislature failed to adopt legislation to reestablish the ACMP (HB 325). Then, a citizens' ballot initiative on the August 2012 primary ballot was also defeated:

Statewide Voting Results

YES – 46678 – 37.91%
NO – 76440 – 62.09%

Haines Voting Results

YES – 295
NO – 313

- In 2012, the Haines Borough adopted a revised Comprehensive Plan with the assistance of Barbara Sheinberg who was also involved with the last Haines CMP Plan (2007). It is the opinion of Mr. Goldberg, Mr. Seward, and I that important components of that plan were incorporated into the Comprehensive Plan.

Following certification of the 2012 primary election, the Haines Borough should have followed up with removal of all code references to the defunct program. That did not happen likely due to management and staff turnover. This is one example of the types of obsolete code we believe the new Code Review Commission can help us discover.

We can take the opportunity to address this particular code now, and I have prepared a draft ordinance for planning commission review. This ordinance includes all affected code sections except HBC 18.30.040. That section is excluded since it is currently up for amendment through Ordinance 16-01-429. At the assembly level, we can recommend the following changes to that particular ordinance prior to adoption:

HBC 18.30.040 Planning commission.

I. The commission shall review and report to the borough assembly regarding the location, design, construction, demolition or disposition of any public building, facility, collector or arterial street, park, green belt, playground or other public facility. The report and recommendation of the commission shall be based upon the comprehensive plan, ~~coastal zone management plan~~ and the capital improvements program.

J. The commission shall report to the borough assembly on all preliminary and final plats the commission has processed as the platting authority (see Chapter [18.100](#) HBC).

~~K. The commission shall, at least once every two years, review, prepare and adopt recommendations to the borough assembly and the State Coastal Policy Council respectively for amendments to the coastal zone management plan.~~

~~The commission is responsible for implementing and enforcing the provisions of the coastal zone management program prior to the issuance of any permit approval under this title. (See Chapter [18.110](#) HBC for specific regulations.)~~

Therefore, between the two ordinances, all HCMP references would be removed from the Haines Borough Code.

We ask for your support of the attached ordinance. Thank you.

An Ordinance of the Haines Borough repealing all references to the Coastal Zone Management Plan from the Borough Code since that state program was eliminated in 2011 and components of that plan were incorporated into the 2012 Haines Comprehensive Plan.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

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

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

Section 3. Effective Date. This ordinance shall become effective immediately following adoption.

Section 4. Repeal of Chapter 18.110. Chapter 18.110 of the Haines Borough Code is hereby repealed in its entirety, as follows:

NOTE: STRIKETHROUGH ITEMS ARE DELETED

~~Chapter 18.110~~
~~COASTAL ZONE MANAGEMENT~~

~~18.110.010 Authority:~~

~~The coastal zone management plan of the borough, adopted by the borough assembly on June 16, 1980, revised on September 7, 1993, March 22, 2000, and September 5, 2006, shall apply to all permits issued under this title.~~

~~18.110.020 Application:~~

~~The borough manager, upon application by a developer for any land use or development permit, shall review the proposed development for consistency with the adopted policies of the Haines coastal zone management plan.~~

~~18.110.030 Procedure:~~

~~If the development is required to have a consistency review and approval, the manager shall advise the applicant of the procedures to be followed and assist as is reasonably necessary. The manager shall review the pertinent data provided by the applicant as required under the coastal zone management plan and make recommendations on consistency to the borough planning commission. The planning commission, upon receipt of an application containing a requirement for consistency review, shall conduct any public hearings and processes required in the coastal zone management plan in order to provide a recommendation to the manager for a final determination. Upon receipt by the manager of a favorable consistency decision, the commission may then proceed to issue any appropriate permits applied for.~~

~~18.110.040 CZM plan review:~~

~~The planning commission shall review the coastal zone management plan every five years and make recommendation to the assembly if it feels changes or amendments are necessary.~~

Section 5. Amendment of Section 18.60.010. Section 18.60.010, specifically Subsections P and U, of the Haines Borough Code is hereby amended to read, as follows:

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

18.60.010 General approval criteria.

...

P. Anadromous Fish Stream Setbacks. ~~All development along state-identified anadromous fish streams will be consistent with the Haines coastal zone management program.~~ Unless approved by variance, no development **along state identified anadromous fish streams** shall occur within 25 feet of the banks of anadromous fish streams, designated as such by the Alaska Department of Fish and Game. Variances from this requirement may be granted by the commission based upon the unique conditions of individual properties, the proposed development, and the recommendations of a qualified fisheries biologist.

...

U. Waterfront. The following requirements apply in all waterfront zones:

1. Dredge and Fill Activities. ~~Any person, or~~ Persons or firms planning a development in wetlands ~~designated in the coastal zone management plan~~ are required to apply for and obtain a dredge and fill permit from the United States Army Corps of Engineers prior to commencement of development.

~~2. Compliance with coastal zone management program shall be strictly enforced within the waterfront zones.~~

...

Section 6. Amendment of Subsection 18.60.020(1)(2)(b). Subsection 18.60.020(1)(2)(b) of the Haines Borough Code is hereby amended to read, as follows:

NOTE: ~~STRIKETHROUGH~~ ITEMS ARE DELETED

18.60.020 Specific approval criteria.

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

...

I. Mobile Home Parks/Recreational Vehicle (RV) Parks.

2. Mobile Home/RV Park Specific Criteria.

b. Recreational Vehicle (RV) Park/Specific Criteria. Recreational vehicle (RV) parks are prohibited in any area, regardless of the zoning classification, where they are found to be inconsistent with ~~the Haines coastal zone management plan, the comprehensive plan, or~~ where prohibited by federal, state or local law.

Section 7. Amendment of Section 18.100.070. Subsection 18.100.070 of the Haines Borough Code is hereby amended to read, as follows:

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

18.100.070 General requirements and design standards.

The proposed subdivision shall conform to:

A. The provisions of AS [40.15](#), and AS [29.40](#), as amended from time to time and all other relevant laws and regulations.

B. All applicable ordinances of the borough.

C. The **borough's** comprehensive plan ~~and the coastal management plan of the borough.~~

Section 8. Amendment of Section 18.100.120. Subsection 18.100.120 of the Haines Borough Code is hereby amended to read, as follows:

NOTE: ~~STRIKETHROUGH~~ ITEMS ARE DELETED

18.100.120 Agency approval letters required.

Prior to the approval and recording of the final plat, any required agency approvals must be submitted in written form to the commission. This is in reference, for example, to ~~coastal zone management~~, Army Corps of Engineers, Department of Environmental Conservation, Department of Natural Resources and Department of Transportation. All other state and federal permitting requirements apply and shall be submitted as approved by the appropriate agency to the commission.

Section 9. Amendment of Section 12.08.060. Subsection 12.08.060 of the Haines Borough Code is hereby amended to read, as follows:

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

HBC 12.08 Road and Sidewalk Construction, Maintenance, and Repair

12.08.060 Other requirements not eliminated.

This chapter only establishes design and construction standards and does not eliminate any other requirements that may be established by federal or state statutes, borough ordinances or other regulations adopted pursuant to these laws. Permits may be required in instances involving construction in flood hazard zones, wetlands and fish habitat. Grading, excavation and fill permits, storm water/water separation waivers and ~~coastal management~~ comprehensive plan consistency reviews may be required. The land owner is responsible for knowing the necessity of a permit and acquiring it.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS
____ DAY OF _____, 2016.

ATTEST:

Janice Hill, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: ____/____/____
Date First Public Hearing: ____/____/____
Date Second Public Hearing: ____/____/____