



**Haines Borough  
Assembly Agenda Bill**

**Agenda Bill No.:** 12-031  
**Assembly Meeting Date:** 1/24/12

Business Item Description:	Attachments:
Subject: Ordinance to make commercial skiing GPS data confidential	1. Ordinance 12-01-279 2. Opinions about GPS data availability from permittees, those who requested 2011 data, and Assembly Member Waterman. 3. Memo from Mayor Scott (new for 1/24/12) 4. LaCourse Comment
Originator: Mayor Stephanie Scott	
Originating Department: Mayor's Office	
Date Submitted: 12/8/11	

**Full Title/Motion:**  
Motion: Advance Ordinance 12-01-279 to a second public hearing on 2/14/12.

**Administrative Recommendation:**  
The manager recommends this ordinance.

**Fiscal Impact:**

Expenditure Required	Amount Budgeted	Appropriation Required
\$ 0	\$	\$

**Comprehensive Plan Consistency Review:**

Comp Plan Policy Nos. :	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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**Summary Statement:**  
The confidentiality provisions of this ordinance mimic HBC 3.80.240 applicable to sales tax records (confidential private business records). The GPS data would still be submitted to the borough and available should violations need to be verified.  
  
The Mayor has offered an amendment in a memo provided.

**Referral:**

Sent to:	Date:
Recommendation:	Meeting Date:
Refer to:	

**Assembly Action:**

Workshop Date(s):	Public Hearing Date(s): 1/24/2012
Meeting Date(s): 1/10/12	Tabled to Date:

**An Ordinance of the Haines Borough Assembly amending Haines Borough Code Section 5.18.080(f)(4) to provide that global positioning data submitted by ski tour operators is confidential.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. Section 4 of this ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

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

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

Section 4. Amendment of Section 5.18.080(F)(4). Section 5.18.080(F)(4) of the Haines Borough Code is hereby amended to read as follows:

NOTE: **BOLDED/UNDERLINED ITEMS ARE ADDED**

**5.18.080 Commercial ski tours, commercial ski productions and special ski competition events.**

F. General Permit Conditions and Regulations.

4. Every commercial ski tour operator shall use global positioning system ("GPS") equipment capable of tracking and preserving information establishing the route taken by the helicopter to and from the skiing and snowboarding area and all landings. This information shall be provided to the borough on a bi-weekly basis during each commercial ski tour season. **Information submitted to the borough as required by this section and in the possession of the borough shall be kept confidential except when its production is required in an official investigation or court proceeding. This restriction does not prohibit the publication of statistics presented in a manner that prevents the identification of particular ski tour operators, or prohibit the publication of lists showing the names of ski tour operators who are delinquent in submission of required information which may assist in the enforcement of this Chapter. Route and landing tax records shall be destroyed as per an adopted retention schedule.**

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
Stephanie Scott, Mayor

ATTEST:

\_\_\_\_\_  
Julie Cozzi, MMC, Borough Clerk

Date Introduced: 01/10/12  
Date of First Public Hearing: 01/24/12  
Date of Second Public Hearing: \_\_\_/\_\_\_/\_\_\_

**From:** Scott Sundberg [mailto:sunny@skiseaba.com]  
**Sent:** Friday, April 29, 2011 10:13 AM  
**To:** Julie Cozzi  
**Cc:** Nicholas Trimble; Shawn McNamara  
**Subject:** Re: FW: Public Requests for GPS Data...

Julie,

When the working group discussed some of the gps options, it was agreed that all GPS Information remained proprietary and that it was the property of the operator until their was infringement upon public domain, or breaking the voluntary agreement. SEABA does not want any gps information released to any individual, organization, no-profit or government agency. We feel very strongly about this and will litigate if any information is released.

In the beginning of discussion we felt that the gps info might be beneficial to ADFnG to delineate between collared goats and our flight paths. However, after discussing this with our attorney and other biologist we feel that it will just become a heel in the efforts to create a positive operating environment, and we cannot be assured that ADFNG will be able to contain this info as well. In the future when ADF n G have established solid and viable multi year information from collared goats , we might be interested in sharing our data. Anything before this we think will lead to initiation of premature red flags and incomplete conclusions that could work against the industry.

As far as Tom Ely is concerned the borough and SEABA have admitted to the mistake, and there is no need to release data to to Tom for this specific purpose. If he continues to whine about this, then we can get him a jpeg of that day that shows the flight paths, as he will not have the software to view the form of data submitted to the borough.

Thank you

Scott Sundberg

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

**From:** Julie Cozzi  
**Sent:** Wednesday, April 27, 2011 4:24 PM  
**To:** 'Scott Sundberg'; Nicholas Trimble; 'Alaska Mountain Guides'; 'Sean Brownell'; 'Vicki Gardner'  
**Cc:** Mark Earnest  
**Subject:** Public Requests for GPS Data...  
Dear Heliski Permittees:

The borough has received three requests for GPS data. The Ely one applies only to SEABA for one particular day. The others apply to all of you for the entire season. Do you have any objections to the release of your GPS data? If you do, please list your specific reasons in detail when you respond to this email. Thank you.

The following documents are attached:

4-14-11 Ely Request for GPS data  
4-18-11 Dyvig Request for GPS Data  
4-19-11 Crupi Request for GPS Data

Julie Cozzi, MMC  
Borough Clerk  
Haines Borough

**From:** Alaska Mountain Guides [mailto:climb@alaskamountainguides.com]  
**Sent:** Wednesday, April 27, 2011 4:59 PM  
**To:** Julie Cozzi  
**Cc:** Mark Earnest  
**Subject:** RE: Public Requests for GPS Data...

Hi Julie,  
We have no objections whatsoever.  
Thanks!  
Have a great day.

Eli

Eli Fierer  
Director of Operations

Alaska Mountain Guides & Climbing School Inc.  
800.766.3396 [www.alaskamountainguides.com](http://www.alaskamountainguides.com)  
International Wilderness Leadership School  
800.985.4957 [www.iwls.com](http://www.iwls.com)

**From:** Julie Cozzi [mailto:jcozzi@haines.ak.us]  
**Sent:** Wednesday, April 27, 2011 4:24 PM  
**To:** Scott Sundberg; Nicholas Trimble; Alaska Mountain Guides; Sean Brownell; Vicki Gardner  
**Cc:** Mark Earnest  
**Subject:** Public Requests for GPS Data...

<<4-14-11 Ely Request for GPS data.pdf>> De <<4-18-11 Dyvig Request for GPS Data.pdf>> ar <<4-19-11 Crupi Request for GPS Data.pdf>> Heliski Permittees:

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Julie Cozzi, MMC  
Borough Clerk  
Haines Borough

From: Sean Brownell [mailto:seandog@alaskaheliskiing.com]  
Sent: Thursday, April 28, 2011 2:07 PM  
To: Julie Cozzi  
Subject: RE: Public Requests for GPS Data...

thanks,  
proprietary information was the term I remember, and the data was for the borough manager to review it to identify any conflicts, not public information!  
sean

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

From: "Julie Cozzi" [jcozzi@haines.ak.us]  
Date: 04/27/2011 08:17 PM  
To: "Sean Brownell" <seandog@alaskaheliskiing.com>  
Subject: RE: Public Requests for GPS Data...

Thank you, Sean. I'll pass this along to the Manager and will get back to you later.

Have a nice evening. :)

Julie

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

From: Sean Brownell [mailto:seandog@alaskaheliskiing.com]  
Sent: Wednesday, April 27, 2011 6:15 PM  
To: Julie Cozzi  
Subject: Re: Public Requests for GPS Data...

the only objection I have is that the gps data was supposed to be for discovery purposes this year and there was talk about a hold harmless clause in the heli advisory board meetings. This was supposed to show where the map was still flawed with lines running halfway through some runs still. My opinion of the current map was that it was not the one I agreed to and was changed between the time I saw it and it was submitted. When I told mark earnest about it and showed him a couple specific areas where the map had been changed he said as long as the were no complaints corresponding to specific days when we crossed a line by a smidge there should be no problem changing the map for next season. I would say wait until the advisory board does it's end of season meeting to discuss these minor problem areas and go over complaints versus our discrepencies and create a presentation or document that verifies these issues. If you give it to them too soon then there will be a headhunt going on and more of the same battle that is totally not necessary. If there is a specific complaint about an area with a date then they could possibly look at the data that corresponds to the complaint. otherwise the info should remain confidential. You will be giving away our trade secrets and competitors in the heliskiing industry would have access to all our research and confidential information about where we ski. This particular issue is very important to me and I don't want other operators or the opposition to pick me apart, I'm getting sick of the bad intentions of the anti heliskiers and they have one thing in mind, and that is to eventually shut us down or widdle our terrain down to something we can't live with. Total manipulative bull shizz if you ask me.

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

From: "Julie Cozzi" [jcozzi@haines.ak.us]  
Date: 04/27/2011 06:24 PM  
To: "Scott Sundberg" <sunny@skiseaba.com>, "Nicholas Trimble" <nick@skiseaba.com>, "Alaska Mountain Guides" <climb@alaskamountainguides.com>, "Sean Brownell" <seandog@alaskaheliskiing.com>, "Vicki Gardner" <vicki@alaskaheliskiing.com>  
CC: "Mark Earnest" <mearnest@haines.ak.us>

Subject: Public Requests for GPS Data...

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ar <<4-19-11 Crupi Request for GPS Data.pdf>> Heliski Permittees:

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Julie Cozzi, MMC  
Borough Clerk  
Haines Borough

**From:** J. N. Waterman [mailto:blackdoghp@yahoo.com]  
**Sent:** Sunday, May 01, 2011 9:56 AM  
**To:** Julie Cozzi  
**Subject:** Proprietary info

Julie,

Here is my two cents worth.

I do not think that the GPS information should be public information. If there are complaints about boundries those complaints should come to the Borough and the Borough will investigate the compaints. Again the GPS information is for Borough use only.....

Joanne

**From:** Thom Ely [mailto:akthome@yahoo.com]

**Sent:** Saturday, April 30, 2011 1:28 PM

**To:** Julie Cozzi

**Cc:** Daymond Hoffman; Mark Earnest; Joanne Waterman; Jerry Lapp; Greg Goodman; Jan Hill; Steve Vick; Lynn Canal Conservation

**Subject:** Re: Information Request...

Thanks for the update Julie. I believe that if there is going to be any accountability on the industry's part and trust in the public process, this information should be available to the public as part of the permit stipulations. These are public lands they are operating on not private, so this is not proprietary information.

Sincerely,  
Thom Ely

--- On **Fri, 4/29/11**, **Julie Cozzi** <jcozzi@haines.ak.us> wrote:

From: Julie Cozzi <jcozzi@haines.ak.us>

Subject: Information Request...

To: "Thom Ely" <akthome@yahoo.com>

Cc: "Mark Earnest" <mearnest@haines.ak.us>

Date: Friday, April 29, 2011, 9:41 AM

Hi, Thom...

The Borough is following up on your information request received April 14 regarding GPS data provided by SEABA for their skiing activity on April 4. We have sent a request to them asking whether they have any objections regarding this release of information and, if so, to state the reasons for their objections. The Borough will then make a determination as to whether or not the raw GPS data is proprietary/undisclosable or if it can be released. I hope we will have a determination within two weeks.

*Julie Cozzi, MMC*

Borough Clerk  
Haines Borough  
P.O. Box 1209  
Haines, AK 99827  
907-766-2231, ext.31  
907-766-2716 (fax)  
[www.hainesborough.us](http://www.hainesborough.us)

**LYNN CANAL CONSERVATION, INC.**  
**Box 964 • HAINES, ALASKA 99827**

Julie Cozzi  
Borough Clerk  
Haines Borough  
P.O.Box 1209  
Haines AK 99827.

May 31<sup>st</sup> 2011

Via Email

Dear Julie,

Re. Public Records request April 15<sup>th</sup> 2011.

Thank you for giving me opportunity to respond to the comments and concerns of Scott Sundberg of SEABA and Sean Brownell of Alaska Heliskiing regarding my Public Records request for GPS helicopter flight path raw data. As you know, I made this request in my capacity of Conservation Director for Lynn Canal Conservation (LCC).

LCC wishes to obtain the requested Public Record to ensure successful wildlife conservation outcomes from the Alaska Department of Fish and Game (ADF&G) monitoring study of Mountain Goat populations on public lands in our locality. Mountain Goats are harvested as an important subsistence food source and also have commercial value to sport hunters. Traditional Chilkat blankets are woven using Mountain Goat hair. Successful outcomes of the ADF&G study will be of benefit to communities outside Haines as well as to local stakeholders.

We acknowledge and understand the concerns expressed by both SEABA and Alaska Heliskiing, however, thorough review of applicable state laws pertaining to public records and proprietary information make clear that the data requested is part of the Public Record. And further, the data record of flight paths alone, within the permitted area of operations, cannot properly be classed a "trade secret" under applicable law.

With regard to the operator's assertions that the Borough gave assurances of "confidentiality" it is worthy of note that the Supreme Court has held that parties cannot immunize otherwise public documents from disclosure by entering into a confidentiality agreement (Attorney general Opinion No. 663-95-0424). Unless subject to specific exclusions - which do not apply in this case - public access to all records developed or recorded by a public agency, or by a private contractor for a public agency is provided for in law.

We also draw your attention to Legislative Finding "M" of Borough Ordinance 10-10-243 which states *"There are many stakeholders in the Haines Borough who must be respected. These stakeholders include, but are not limited to, commercial ski tour operators, residents, backcountry recreational users, subsistence users and wildlife"*. We urge you to act in the best interests of all stakeholders identified in the Ordinance, and in the wider public interest, by providing us with the requested Public Record.

Sincerely,

Alison Dyvig

Conservation Director

Scott Cary

President

# STATE OF ALASKA

SEAN PARNELL, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### DIVISION OF WILDLIFE CONSERVATION

P.O. Box 110024  
Juneau, AK 99811-0024  
PHONE: (907) 465-4265  
FAX: (907) 465-4272

May 31, 2011

Mayor Jan Hill  
Haines Borough  
PO BOX 1209  
Haines, AK 99827

RECEIVED Haines Borough

JUN 01 2011

Clerk's Office

Dear Mayor Hill:

Thank you for the letter dated May 17, 2011 concerning the Department of Fish and Game, Division of Wildlife Conservation's (department) request for heliskiing GPS data. We very much appreciate the information from Alaska Mountain Guides, and hope to receive the remaining GPS information in the future. I can appreciate concerns regarding proprietary information; the department is careful to avoid identifying specific animal locations. In working with the Heliskiing Working Group I was under the impression that the GPS data would be available and there was a sense of cooperation in the process; I hope that the information provided below will address the concerns of all the involved parties.

The department's intent is not to disclose any information related to a specific operator, or to act in a compliance role. I recognize and appreciate the time, energy and expertise required to successfully establish and maintain an enterprise such as heliskiing, and the department's request does not include any research or business related information. As stated in a letter from Mr. Crupi dated April 15, 2011, to Mayor Hill and the Haines Borough Assembly (assembly) the departments' intent is to use the GPS data to identify areas of skiing activity in conjunction with information collected by radio-collared mountain goats. This information can be used to modify the existing heliskiing area map to address potential conflicts between mountain goats and skiing activity, and to identify areas where there is potential for additional skiing activity. The department's current mountain goat project is not intended to evaluate the behavior of mountain goats in response to helicopters. The GPS information will be used to develop a model of each activity (skiing and mountain goat locations). With this information we can create a model to predict areas where conditions would be favorable for skiing, and where goats are likely to be found. Without both data sets it will be difficult to identify the areas described above, and we will not know where skiing and goats may overlap. In other words, we do not intend to depict individual goat locations, ski runs, flight tracks or helicopter landing and pickup locations, we simply need the data to construct the model. In mapping the model information we will use various color gradients to indicate areas where mountain goats and skiing occur. As additional years of data are collected the model will become a stronger representation of both skiing and mountain goats activity, and since the data has been collected it is most efficient to begin working with it now.

The information will be expanded to the entire study area (northwestern Lynn Canal) further reducing the concern that individual or specific operator information will be decipherable. By avoiding specific runs and landing and take-off areas we will not depict information that has been deemed proprietary by the operators. I do not believe the information will reveal anymore than advertising and marketing to promote Haines area heliskiing opportunities.

In the past, the department has been asked to provide recommendations concerning heliskiing areas near Haines, but we have been unable to provide such recommendations because we lacked the necessary data. Mountain goat collars have been downloaded four times since they were deployed in August 2010. We are currently analyzing the data so that it can be presented to the Heliskiing Working Group and Assembly. As additional data is collected the model will be updated. To provide the best recommendations to the assembly, both mountain goat location and skiing activity data are necessary.

If you would like to discuss this request, or if we can be of further assistance, please contact me by email at [ryan.scott@alaska.gov](mailto:ryan.scott@alaska.gov) or phone at (907) 465-4359.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Scott", with a stylized flourish extending to the right.

Ryan Scott  
Area Management Biologist

To: Members of the Haines Borough Assembly  
Cc: Mark Earnest, Borough Manager  
Julie Cozzi, Borough Clerk  
Re: Amendment to HB Ordinance 12-01-279: Commercial skiing GPS Data  
Confidential  
From: Stephanie Scott, Borough Mayor  
Date: January 18, 2012

I offer the following amendment to HB Ordinance 12-01-279.

*The Haines Borough Manager will publish a monthly report, no later than 10 days after the end of each reporting month to the community, that will include the names of ski tour operators who are a) delinquent in submission; and/or 2) are in violation of boundaries and flight paths; or 3) stipulates that all permit holders are operating in compliance for the period.*

The language can be inserted at the end of the last sentence in the proposed ordinance.

I offer the amendment to assure the public that the Borough is committed to balancing the interests of the heliski industry and the concerns of the community that the industry be well managed.

A possible analogy for the management of a private entity operating on and harvesting a public resource for private gain is the management by ADF&G of the halibut fishery. Long liners are required to log and deliver the GPS coordinates for gear placed in the water. Even though anyone passing by via air, sea, or land can "see" the gear being laid, the coordinates are held as confidential.

P.O. Box 961  
Haines, AK 99827  
January 15, 2012

Haines Borough Mayor and Assembly  
P.O. Box 1209  
Haines, AK 99827

Dear Mayor Scott and Assembly:

**I am writing regarding the Assembly's recent introduction of an ordinance to make GPS helicopter skiing data confidential.**

I believe a Haines Borough Permit for helicopter skiing/snow boarding tours is *a privilege not a right*. These permits come with requirements to protect others and the environment from overuse and damage.

Since the inception of this particular type of permit, it has commanded countless hours of debate and scrutiny to formulate something that both the public and companies can work within. Yet within the past few years, the initial agreement and limits have been revised well beyond the original agreement.

It has always been my understanding that GPS data be used to monitor flight paths to and from ski areas and landing areas for *accountability*. This data should be open to the public as well as other agencies such as Fish and Game.

*Anyone flying a helicopter in mountainous terrain will be able to observe other choppers, skiers, ski paths and landing locations. Therefore there is nothing proprietary about the data.*

The companies are using public lands which we all own. The companies are accountable to the public. We should therefore be able to check the data to ensure compliance with the permit. I find it difficult to trust others who want to hide their data.

I am tired of Sundberg's threat to litigate and the inordinate amount of Assembly and Borough resources to placate this company, whereas Alaska Mountain Guides are willing to provide data and cooperate with the Borough.

I believe the helicopter permit is a privilege not a right.

**I ask you to make the GPS helicopter data public, and to issue permits to only those operators who will comply with the conditions of the permit.**

Sincerely,

Diane La Course