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16 February 2011

To Haines Borough Assembly:

The following are my comments on Ordinance 10-10-243

Although I hadn't planned on it, somehow along the way I became the spokesman for the working group. At the initial meeting I stated that my goal was to find a solution that everyone could agree to. I took no position as to whom I was representing. When Mayor Hill left on vacation I was asked to chair the meetings. I presented ideas to the group and listened to ideas from other group members and from people in the audience. Ideas were discussed at length, modified, and either accepted or rejected. The accepted ideas were then brought by me to the manager and formatted into the ordinance. We then sent them to the borough attorney for review. Lately there have been those who have questioned my role in this process. Someone had to be responsible for taking the verbal ideas discussed in the working group and turning them into written language for the ordinance. Otherwise, you would not have an ordinance in front of you today. When no one else jumped up to do this, I decided to take on the responsibility.

My approach to problem solving is to come into the negotiation from a perspective of compassion rather than animosity. If you can understand what all the participants need to get out of the negotiation there is a better chance of achieving a final product that will be satisfactory to everyone. If you approach the negotiation with only self-interest in mind, the process will fail. I think this is what has happened in this group. There are members of the group who have expressed the opinion that they are happy with what they have received through the negotiation, but they are unhappy because they think the other side got too much of what they wanted. This attitude - "I'm not happy because the guy I don't like is happy" is a recipe for failure.

The Map

The map was modified during two meetings in December. The map committee consisted of myself, Scott Sundberg (SEABA), Sean Brownell (AKHeliskiing) and Sean Gaffney (AMG). The first thing we did was to fix many areas that were considered problems by the heli skiers. The old lines were drawn mid-slope, but there were no pick up spots until the bottom. This is why the heli skiers have been resisting using GPS. They knew they were going outside the boundaries, but they had to in order to pick up their clients.

New places for skiing were added in the Summit Creek, Boundary Glacier and Ferebee Glacier areas.

In total, approximately 135 square miles of new terrain were added to the 150 square miles of existing terrain, for a total of approximately 285 square miles.

One small area, the Rainbow Glacier, was removed from the skiing area to correct a mistake that had been made when the original map had been drawn.

There were some areas the heli skiers wanted that were not added to the map. The Takhin Ridge and part of the Takshanuk Ridge were left out because of concerns from subsistence hunters in Klukwan. Scott Sundberg made a presentation in Klukwan. The village council considered his proposal and rejected it.

Scott Sundberg also wanted an area called Haska Bowl and the lower Pyramid Valley. These areas were left off the map because they face residents along the Chilkat River on River Road. The narrow Haska and Pyramid valleys concentrate and amplify the helicopter noise, and then the river reflects it onto the residences.

Complicating the map issue for this season is the fact that BLM has closed all of its lands pending the release of a new management plan. These lands include some areas south of the Takhin and south to the Davidson Glacier, and most of the Ferebee Glacier area. This puts a crimp on the heli skiers, but there is nothing the borough can do about this. There are no other state lands that can be added without causing conflict with other user groups.

Skier Days

I want to say up front that the number of 2600 skier days that I presented at the last assembly meeting did not come from the working group. It came from my own calculations and discussions with the manager. This 2600 number has caused considerable anxiety among a lot of people and has been the source of a lot of anger directed at me. I am not attached to this number, and I ask the assembly to do with it what you will. You have the authority to change it.

I should explain, again, how this number came to be. Currently, the existing ordinance allows 1200 skier days and 140 photographer days. The photographer days include an unspecified number of staff. In the working group, Sean Brownell of AKHeliskiing suggested that we look into converting the photographer days into skier days.

When I looked at the numbers from the past two seasons, I found that on some days there was only one staff person accompanying the photographer and on other days there were ten. The average was 3.4 staff per photographer. 3.4 staff plus one photographer equals 4.4 people. A helicopter load is 5 people. Since 4.4 people in a helicopter has the same impact as 5, I used 5 as the factor. 140 times 5 equals 700. This represents the permitted amount of skier days that comes from 140 photographer days. The actual amount was somewhat less, just as the actual amount of skiers is somewhat less than the permitted amount of 1200.

Adding 1200 skier days plus the 700 from the photographer days equals 1900 skier days. This number, 1900, represents the permitted number of skier days we have had for the past few seasons. I know this is hard for some people to grasp, but we currently allow 1900 skier days, not 1200.

The next number, 500, is the one that is most upsetting to some people. In my discussions with Mark, we talked about the past two seasons. In 2009, the operators came to the assembly to ask for more skier days. It was not a pleasant experience for anyone. In 2010, SEABA ran over their limit, and then came to the assembly to ask for forgiveness. Since there is no provision in the new ordinance for the operators to come to the assembly to ask for more skier days, we decided to suggest adding 500 skier days, divided proportionally between the two operators. This number was not based on anything other than an effort to avoid what has happened the past two years.

Adding 1900 and 500 equals 2400. Dividing proportionally to the way the skier days are apportioned now would give AKHeliskiing 1500 skier days and SEABA 900 skier days.

The final 200 skier days are suggested for AMG. The reasons for permitting them are detailed in the next section.

Number of Permits

The ordinance allows for three heli skiing permits and one for a special event. The permit for a separate film crew was removed. Any film crews will now have to contract with our local operators for guiding services.

Some, including SEABA and AKHeliskiing, are opposed to the addition of a third permit for AMG. Personally, I think including them is a good idea for several reasons. AMG is a very reputable, established company. They have always been more than happy to follow the rules, they are responsive to the wishes of the community and they have been very generous in offering free summer trips to dozens of local youth. They will set the standard of behavior in the heli ski business by which the other companies will be judged. Allowing them 200 skier days from the Haines airport will have little or no impact on anyone. 200 skier days amounts to 40 helicopter loads of people, or 40 take offs and landings. Spread over a typical season of 50 days of skiing, this amounts to an average of less than one take off and landing per day from the airport. This is hardly an impact. SEABA and AKHeliskiing have already made arguments that giving AMG a permit will cause crowding and is a safety issue. I think they are just afraid of a little competition.

Another benefit to Haines that AMG brings is free advertising. Sierra Designs, a huge manufacturer of outdoor gear and clothing, has contracted with AMG for an advertising campaign. Full page ads in all the outdoor magazines will feature AMG guides using Sierra Designs gear. It will be to our benefit if all the spectacular photos say Haines at the bottom instead of Skagway. We can't buy that kind of advertising.

Heliports

On November 4, 2010 the planning commission passed a motion to recommend to the assembly that heliports be added to the list of conditional uses in the general use zone. For some reason, this motion was not forwarded to the assembly. If it had been, I believe we would not now have the controversy surrounding a fourth heliport on Chilkat Lake Road.

Language was inserted into the ordinance that limits the heliports to the airport, 33 Mile and 18 Mile unless approved by conditional use. At the working group meeting of February 8th, Scott Sundberg protested this part of the ordinance. When questioned directly, he admitted that he was planning to use his property on Chilkat Lake Road as a heliport this season. It was apparent to me that he wants to establish this property as a heliport before the new ordinance is in place. The last time he landed a helicopter there, nearby residents protested vigorously. The Eagle Vista subdivision is about a half mile from this proposed heliport, and there are 22 occupied residences within a mile. The ordinance mandates a half mile separation between helicopter landings and mountain goats. I think we should offer our human neighbors at least the same courtesy.

Scott also stated that he had the OK for the new heliport from seven adjoining property owners. I investigated at the borough office and found that he had subdivided off six small lots on the perimeter of his property and sold them to his associates. These are presumably the property owners he was referring to.

It is very disturbing to me that Scott Sundberg never mentioned his plans at the working group meetings, and that he would have kept his intentions secret if I hadn't questioned him. This directly contradicts the spirit of the working group, which has been working toward a solution that promotes community harmony. The sudden appearance of a new heliport in a residential neighborhood will destroy the community harmony we are working to achieve. This will be bad for Haines and bad for business. Our reputation as an argumentative community will grow instead of diminish. No one wants to be a tourist, move to, or open a business in a war zone.

It is difficult for me to imagine someone being this insensitive to the lives of their neighbors.

If SEABA goes ahead and begins flying out of this property, I think it would be grounds for the assembly to revoke their permit.

Shared Use Policy

At the working group meetings we heard a lot of input from backcountry skiers. These are people, myself included, who like to hike up and ski on the same kind of terrain that the heli skiers use. There are more people here who do this than you might imagine. Their issue is that heli skiers have taken over areas that backcountry skiers used to use.

The area mentioned most is called Telemark Ridge, located across the Chilkat River from River Road. I wrote a shared use policy that includes checks and balances to prevent either side from abusing the system. I wanted this shared use policy to include all the heli skiing areas, but the operators were concerned that it would be too difficult to keep track of various groups using multiple areas. We scaled the program back to include just Telemark Ridge. We will assess in May how well the system worked.

Access Routes

This was the least debated part of the ordinance. Everyone agreed that the best policy is for helicopters to stay as far away from residences as possible. A resident of 18 Mile told the group that if the helicopters go downstream from the landing strip, the noise is much less for residents. This is the kind of general guideline that was written into the memorandum of agreement. Since the written flight guidelines are of a general nature, and not specific flight paths, they are not expressed as lines on the map.

GPS

Once the map was revised to include the entirety of the ski runs, the operators readily agreed to use GPS. The question that remains is how to implement it. Sean Cone, a professional helicopter pilot who attended several of the meetings, suggested using hand held Garmin GPS units that can be attached to the dashboard of the helicopter. These cost about \$200 each. He said the drawbacks to this type of system are that people can forget to turn them on, the batteries run low and in some places they cannot get signal from the satellites. Data can be easily transferred to a laptop and then to the borough. Another system is called Spidertracks. This system is more expensive, but it comes on automatically and records data more reliably. There is a dealer in Juneau. I believe the signal from these units can be tracked in real time, since they are used to locate aircraft in distress.

It will be important to have a meeting with the operators soon to work out the details of the GPS data gathering.

Wildlife Concerns

There are many people who brought information to the working group regarding wildlife, specifically mountain goats, bears and wolverines. We had Ryan Scott and Anthony Crupi from ADF&G attend a meeting. I also had extensive conversations with Kevin White, who is in charge of the research project on the local goats. We have written into the ordinance a half mile landing distance between helicopters and mountain goats. There is research that suggests that 1.5 kilometers, or about 9 tenths of a mile is a safer distance. A letter from Ryan Scott also suggests this distance. I, and probably most others in the group, would be happy to change the half mile distance to 9 tenths. My

question is, who is going to be out in the mountains to measure the distance? Any limit we insist on is unenforceable. We have to rely on trusting the operators not to fly near goats and other wildlife. AKHeliskiing has said that their policy is to go somewhere else if they see a goat near an area where they want to ski. The assumption we used in drawing the lines on the map is that heli skiers want deep snow, and goats want areas of little or no snow. The two groups should be mutually exclusive. Ryan Scott, Kevin White and Anthony Crupi agreed that this should be true. We drew in skiing areas on the north facing sides of the peaks where the snow is deepest and left the south sides for the goats. ADF&G currently has 23 GPS collared goats in our area. The most important data is the winter location of the nanny and kid groups. These groups don't move much during the winter. We currently have the location of one nanny, and presumably her group. They are outside the ski boundary. As we get more data, we will enter the locations on the map and pass the information on to the heli skiers.

Transfer of Skier Days

I have heard reasonable arguments on both sides of this one. Personally, I don't think it is a big deal. If one company runs out and another has a surplus, I don't see harm in allowing a transfer or sale. It makes the skier days somewhat like halibut quota. You can sell your quota or have someone else fish it. This doesn't affect the number of fish being caught.

Flight Manifests

The ordinance requires that the operators report to the borough on the number of client and other information. I think that the pilot's flight manifest should be submitted also as verification.

Thank you for considering my comments.

February 16, 2011

To: Haines Borough Assembly Members, Mayor, and Manager
From: Carolyn Weishahn
Re: Ordinance 10-10-243

Serving on the heli-ski working group has been very time consuming and at times frustrating as I'm sure other members of the group will agree. But it is necessary work and is by no means completed. After a year or two of GPS data and helicopter company manifest verification, we can finally begin to gather information the borough needs to make informed decisions for heli-ski management. As I mentioned at the last working group meeting, I feel there is a misconception that the ordinance before you has the consensus of the working group. While there may be some areas of agreement, these so far have not been clearly defined by the group.

The following comments are based on my many years participating in the public discussion on heli-skiing, including my current participation on the working group. They are intended to insure that there is meaningful management of commercial heli-skiing...management that protects residents, non-motorized users, other stakeholders, and wildlife from the unintended consequences of helicopter-supported tours.

In appreciation for the opportunity to serve on the heli-ski working group,
Carolyn Weishahn

Legislative Findings:

N. include: In an election held in 2003, Borough residents supported managed helicopter skiing. **Because heli-skiing has been controversial among residents, the borough has included specific conditions in heli-ski tour permits. These conditions are intended to mitigate the undesirable impacts of heli-skiing to residents, recreationists, and wildlife while allowing these tours to continue.**

Delete: [L]

HBC 5.04.020

Delete: **““Commercial helicopter tour” means a commercial helicopter operation, other than a heli-skiing operation, commercial ski tour or commercial ski production that provides a helicopter-assisted tour to or through an area. It is a commercial tour and requires a permit.”**

This section of code refers to tours that were proposed for the upper Tsirku River area but have never occurred. This definition should be removed and the area in the upper Tsirku River should be removed from the map. If it is left in, the “General Permit Conditions and Regulations” should apply to “commercial helicopter” tours and the following stipulation, which is currently in code, should be included the ordinance.

“A permit for commercial helicopter tours shall require client access to and from the area by fixed wing aircraft, water vessel, or by another form of surface transport.”

HBC 5.04.020

Include the following in the definition of "Commercial ski tour:"

- 4) includes commercial ski productions**
- 5) includes special ski competition events**

HBC 5.04.020

Include the following in the definition of "Skier day":

"Skier day" means one individual skier, snowboarder, **professional photographer**, or a member of the photographer's staff....

As currently written, it is not clear that **each member** of the photographer's support crew must count as one skier day. I believe putting the comma after 'photographer' makes this clearer. If not, there should be an additional statement clarifying this. Also, it should be clear the photographer is a professional photographer, not just a skier with a point and shoot camera.

HBC 5.04.020

Include the following in the definition of "Special ski competition event":

"Special ski competition event" means a skiing or snowboarding competition that includes daily transportation of participants by helicopter to and from the site of the competition **and is of three or more days' duration.**

The original intent of the "special ski competition event" was to allow extra skier days for a special competition such as Red Bull held here some years ago. Special ski competitions last more than one day so we should retain this description. Otherwise, the "special ski competition event" can be claimed to justify a temporary use area and extra skier days for an activity that doesn't rise to the level of a "special ski competition event."

5.18.080

A. Number of Permits

Change: #1 and #3 to state 2 commercial ski tour permits and 2 applicants

We currently have 2 heli-ski companies with permits. Dividing the heli-ski days among 3 companies isn't realistic and there should be no increase in skier days. This is the time to start a waiting list for other companies interested in a permit.

B. Skier Day Limits

Skier day limits has, and always will be, one of the most significant tools for managing heli-skiing in the borough. Unlimited heli-skiing simply does not serve the public interest. Balanced management of public lands serves the public...and we cannot be blinded by one commercial tour interested in unlimited heli-skiing.

As a working group, we are gathering information and making recommendations that will help inform decisions to be made by the assembly for managing heli-skiing. A significant set of information that is needed before changes are made to either the map or the number of heli-ski days is GPS data backed up by verification of helicopter manifests.

As we have just learned from the heli-ski operators, they have not been in compliance with the map for years. This is the reason to change the map? During the state scoping process when the Special Use Designation (SUD) was developed by DNR and during the borough map committee meetings of 2005, no mention was made by the heli-ski operators that the heli-ski areas were a problem. They did not complain that the heli-ski boundaries

cut off some ski-runs. And yet now that GPS data will be collected, this has become an issue.

How do we know skier day data has been reported accurately? Sadly, we don't because the public trust in the heli-ski companies is broken.

Keeping the skier days at 1200 and limiting the heli-ski companies to two will give the borough a chance to evaluate permittee compliance and more fully review the impacts of heli-skiing on residents, other recreational users and stakeholders, and wildlife.

Delete C.2.b) "The economic impact of the allocation on the permittee"

This is an arbitrary factor that should not be used to allocate skier days. It can't be applied in an equitable way to all permittees. Other businesses that receive permits are not evaluated for the economic impact on the permittee.

Include the following in C.2.h):

h) the existence and **compliance with the** terms of any voluntary agreement between the Borough and the applicant pertaining to operational practices of the applicant.

Delete from C.3:

"...subject to transfer of skier days under section 5.18.080(F)."

There should be no transfer of skier days allowed for heli-ski companies. (see comment below)

The following section and Legislative Findings [L] should be deleted.

"E. Transfer of Allocated Skier Days

A permittee may sell or transfer a portion of their skier days allocation for a designated season to another permittee holding an allocation upon the review and approval of the manager."

HBC allows for transfer of a permittee's entire business interest under the permit, not parts of a permit. (see below) Heli-ski days should not be allocated and then used by a permittee for profit. One unintended consequence of placing a monetary value on skier days will be that heli-ski operators will continually ask for more skier days simply to have a product to sell to other heli-ski operators. HBC 5.04.010 defines the purpose and scope of borough permits (see below). The purpose and scope does not include assigning a monetary value to any part of a permit issued under Chapter 5. In fact, assigning a monetary value to one tour permittee and not other permittees goes against the purpose of protecting "local business establishments from unfair competition." It also would serve to confuse accountability for skier days that would be transferred or sold to another heli-ski operator---which tour operator would be liable for any infractions...the operator using the skier days or the operator that sold or transferred the days? We need clear cut accountability for all skier days issued by the borough. Skier days allocated as part of a commercial tour permit should remain the sole responsibility and privilege of the original permittee and should not be sold or transferred.

**Excerpt from HBC:
Chapter 5.04
PERMITS**

5.04.010 Purpose and scope.

B. The purpose of this title is to regulate transient and certain other merchants, commercial tour operations, commercial passenger vehicles, and commercial passenger or tour vehicle parking in order to: protect the public safety and welfare; protect local business establishments from unfair competition; maintain safe and efficient pedestrian access and traffic flow; maintain an attractive community environment for tourism; avoid litter; and ensure the safe, efficient, and fair operation of commercial tours, business enterprises, and related activities.

**Excerpt from HBC:
HBC 5.04.080**

D. Transferability.

1. A permit issued under this title, and any rights or privileges thereunder, may be assigned or transferred by the permittee, together with any right of renewal; provided, that such transfer includes the permittee's entire business interest in activities conducted under the permit.

Add the following to "F. General Permit Conditions and Regulations":

2. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted between the hours of 8:00 a.m. **and 7:00 p.m.**, except that the borough may authorize additional hours for no more than 30 **days for the purpose of commercial filming during low sun angle periods.**

Ending at 7:00 is a requirement for Chugach Powder Guides and is a good guideline for us to use also.

4. **For every commercial ski tour, commercial ski production, and special ski competition event, the operator shall use Global Positioning System ("GP{S}") equipment...**

It is not clear in the current draft that GPS is required for these other heli-ski activities.

5.**Helicopter manifests shall be provided to the borough bi-weekly.**

This is an important addition so that there is verification of the level of heli-ski activity reported by the heli-ski operators.

10. **Delete the term "incidental."**

The wildlife form should report all wildlife observations, not just "incidental" observations.

13.d) **Currently heli-ports or 'heli-pads' are not a conditional use in the General Use zone. This would be desirable if heli-ports are changed to conditional use.**

Add a new section to 5.18.080:

14. **The borough manager will consult with southeast area ADF&G biologists on a yearly basis regarding the most recent information on mountain goats and other wildlife in the Haines area. This information will be used to update the heli-ski map.**

If we just give lip service to incorporating wildlife information in the management of heli-skiing, it won't happen. This should be mandated in HBC and included in the manager's report.

G. Temporary Additions to Approved Commercial Ski Tour Areas.

Add the following:

2. ..The manager will include in the recommendation the most current wildlife information, especially regarding mountain goats, after consulting with southeast area ADF&G wildlife biologists.

3. The Assembly may act on the manager's recommendation following one public hearing...

It takes only one meeting to hold a public hearing on any proposed "temporary addition." We should have as much public input on heli-ski changes as possible and one public hearing allows that to happen.

H. Shared Use Policy

Include in #1:

1. Commercial ski tour permittee shall yield to non-motorized, recreational backcountry users, within the boundaries of the areas known as Telemark Ridge a the head of the Haska Creek drainage, the Kicking Horse drainage, and lower Tsirku River beginning at Devil's Elbow.

Over the years, interest has been expressed that these areas be free of heli-skiing to allow for quiet, back-country recreation. Having a "shared use policy" for these areas will allow for alternatives to commercial heli-skiing.

Comments on the "Agreement Regarding Flight Operations and Practices of Commercial Ski Tours"

Terms and Conditions

A. Flight Rules

1.a) From the Haines Airport...Avoid traversing the south facing slope of Takhin Ridge to avoid sensitive goat habitat.

Change 1.c.

c. maintain a minimum distance of one mile from wildlife on public lands and when landing; helicopters shall not hover over, circle or harass wildlife.

ADF&G biologists recommend a one mile separation from observed goats as does the Northern Wild Sheep and Goat Council.

e) maintain a distance of one mile horizontal (ground level) distance or 1500 feet AGL above observed recreational users except when...

Other recreational users should have at least a buffer of one mile from helicopters during heli-skiing operations.

From Sean Brownell, Heli WG Member, 2/16/11

Greetings Mayor Jan Hill, Borough Assembly Members, Mark Earnest, and Julie Cozzi!

This might sound crazy but I actually enjoyed the time I spent being a part of the heliskiing work group! I thought it was a great forum for myself to express my point of view and to also listen and understand the ideas and concerns of the other members of the working group. There was also opportunity for the public to participate at these meetings so I feel that the document we have created is well founded. A lot of hard work went into this new piece of work and I can almost live with the regulations that have been set forth. My biggest concern now is what is going to happen to this document when it reaches your table next Tuesday! My experience here with local government has shown me that new ordinances that seem to be a good idea when they hit the table sometimes get chewed up and spit out as something completely different through assembly member deliberation. I guess what I am trying to say is I would appreciate it if you chose not to hack away at this new ordinance and make a bunch of changes to it. I would not support this ordinance if you do.

This upcoming season is going to be very challenging for the the two existing heliski operators in Haines. The BLM is not issuing any permits to us this season so we have effectively lost about half of our usual terrain and there is going to be a lot of competition between seaba and Alaska heliskiing for mountains to ski. In the past it has worked out fairly well between us because seaba stays near town and we stay near 33 mile and we are not stepping on each others toes very often. Occasionally we would end up skiing in the same valleys and on some of those days there have been conflicts. Two operators in the same valley at the same time creates potentially dangerous situations where seaba's guides and clients may ski above Alaska heliskiing's guides and clients and my customers will be in the paths of any avalanches that seaba may trigger during their descent. Alaska Heliskiing and Seaba have been working together for many years now and have set up good channels for communications so that this does not happen anymore. A lot of terrain has been lost around the airport so it is painfully obvious to me that seaba will now have to ski around the 33 mile area a lot more and this season is going to be very congested in the areas that my company normally ski's without any competition. It's a very unfortunate and potentially dangerous situation for us this season and hopefully this will be temporary. There is simply not enough terrain out there for two operators to share this season so we are really going to have to try very hard to work together and not ski above each other. One of the best things that has come out of this heliski work group is it actually brought Seaba and Alaska Heliskiing closer together and our relationship has improved greatly because we had to work together to educate the work group about our businesses and the result of that is we can probably operate safely around each other this year, although it will be frustrating at times I am sure. Please do not allow a 3rd operator to obtain a permit this year, you will be creating a situation for the heliskiing industry that will endanger lives because we will all be in the same limited terrain and many scary situations are going to happen. We should wait until the BLM decides what they are going to do with their lands before considering the idea of another operation.

I could banter on and on about user days, mountain goats, gps, maps, commercial filming, blah blah blah but the working group has been doing that for months already, I ask that you trust in our work, leave it all intact and please do not throw another operator in the mix this season. WAIT to see what happens this year with these new regs, and to see what the BLM has to offer the industry. I have been informed that they will be finished with their EIS in April and will be accepting new permit applications at that time. The decisions of the BLM will determine how much skiing activity this valley can accommodate when we find out how much land they are going to open up and we can continue to have happy customers on uncrowded slopes.

Comments to the Haines Borough Assembly : Heli WG Member, Joe Ordonez, 2/16/11

Thank you for including me in this process. I feel that I have a valuable perspective on this, being that I am a unique combination of

- 1) Permit holder with a Title 5 tour permit
- 2) Local Business Owner
- 3) Committed Conservationist
- 4) I do not own a heli-ski company and so do not have a financial stake in the outcome.
- 5) I do not live in a heli flight path.

I want to start by describing the intrinsic structural problem with our Working Group. While I appreciate being invited to be a part of this group, it was, in many ways, set up for failure. There has been a dichotomous process that is now supposed to intersect. On one hand, we have a working group that is supposed to be a consensus and community-building exercise, and on the other hand, the same working group is supposed to advise the assembly as to the action to be taken regarding this revised ordinance. Unfortunately, these are two different processes. The former requires time, the later has an impending deadline.

The scope of the working group was too broad, and so, while there was lots of discussion on a wide variety of topics, it was difficult to focus. The format had one person speaking at a time and the meetings were one and one half hour. Therefore, once someone had a chance to speak, they were unsure whether or not they would get another chance during the meeting, therefore they brought up a wide variety of topics. But the next speaker did not have to acknowledge or respond to what the person before them said.

There were sub-groups formed and separate meetings with select members of the committee, the borough manager, and the borough lawyer. Later, ordinances were brought to the group and presented to the Assembly with the implication that these ordinances were the product of the group and that there was consensus from the group on these matters. This was not the case. More than once, we were surprised by what was included in the ordinance. Even though I was traveling for much of the winter, I attended meetings by phone when I could. I checked my email regularly. The understanding that I had from the start was that we would try to reach consensus at the end of the process, not during the process. So the implication that the ordinances as presented to the Assembly had the group consensus is not, in my opinion, correct.

The outside group that has been independently drafting and feeding the ordinances to the working group has generally provided the documents only hours before our meetings. Yesterday's meeting is a perfect example. This does not give the working group or the public time to prepare.

This is a contentious issue, involving a wide cross section of the community. In order to truly engage in a collaborative, interest-based negotiation, we required a professional facilitator. While Rob Goldberg did his best to try to mediate these issues, he is not a trained professional. There has been some questions raised regarding Rob's integrity. I have known Rob for over twenty years, and know him to have only highest standards of integrity. The problem was not with Rob, the mayor, Borough Manager, nor the members of the Working Group. This was simply too big for the skill sets we had. So to expect us to really come to any type of broad consensus at this time is challenging, to say the least.

The process was supposed to be based on trust and open communication. At the end of the February 8th meeting, any impression that this was truly happening was shattered when Scott Sunberg announced that he had intentions to use his property at 26 mile as a heli-port, and that he has specifically left this out of his tour permit application so that he could do so. This is against the spirit of cooperation and open communication that builds trust. So I believe that we as a community cannot trust at least one of the heli-operators.

Since we cannot operator from a position of trust, it is difficult to proceed. One of the key ingredients of our negotiations was the necessity of voluntary flight paths and GPS verification. I still believe that this is the direction we need to go. Since I cannot trust one of the heli-ski operators, I cannot trust that the information they have provided concerning their operation in the past is reliable. Therefore, we have no reliable base-line data from which to proceed.

Because of this, I think it is premature to discuss any type of increase in the amount of heli-ski days permitted. It is time to implement the GPS as sign a voluntary flight path agreement. The season has already started, is there GPS data available right now?

Also critical here is that we require the **helicopter companies to provide flight manifests in addition to requiring the heli-ski operators to provide GPS**. This is an example of an issue that was mentioned several times, but never incorporated into the ordinance.

One of the problems that we discussed was the map and its relation to the GPS. The argument went like this:

The heli-ski companies have not been following the map. Therefore, they have been dragging their feet on using GPS because it would expose the fact that they have not been following the rules.

So the response was that Rob Goldberg and the heli operators met and made a map based on where they say they have been skiing. This could be compared to someone saying that since they have been driving 50 miles an hour in front of the school, we should change the speed limit to 50mph in front of the school. Since when has it been that once someone admits that they have not been following the regulations

that the appropriate response is to change the regulations? How about working the other direction and saying.....let's spend a season where you follow the rules as they are set and see what happens.

I don't want to sound unreasonable here. Another option to consider: let's agree that we will not fine the skiers for diverting off the map to pick up the skiers, and let's get some base-line data. Then let's draw a map based on where they actually ski, not where they say they ski. As Daymond Hoffman said at the last meeting, trust goes both directions and the heli-ski companies have to trust that the Borough will treat them fairly on this map issue. But let's not re-draw the map until we get this base line data. Once again, because there has been a breakdown in trust, the process gets more difficult.

There has been some misinformation presented that stated that the reason we need to increase the heli-ski days is because there was an issue last year regarding an application for an increase. Let's set the record straight. The emergency meetings that created the public outcry were two seasons ago. Because of this, we set up a procedure for heli-ski operators to request additional skier days if needed. This procedure, which was in the code, was ignored by one of the operators (the same company that has since violated the spirit of cooperation here). So, in effect, last year's procedure and code has never been followed.

I do understand that there is a legal opinion that the Borough's dictating of the flight paths may not be legally tenable. That is why I propose that we move forward with the voluntary flight path agreement, and implement the GPS coordinates. To add another company, to radically increase the number of skier days, to translate film days, to modify the map.....these are all contentious issues that should require an open, unrushed public process.

One thing I am sure of, if we move forward and open up areas, add companies, and add skier days, and/or make it easy for new heli-ports to open without a public process, it will be very difficult to take them away.

So let's proceed with caution. For now, let's keep last year's code in place, except for the voluntary flight paths. Let's keep a watchful eye on the heli-companies, now that the GPS will finally be implemented. And let's spend some of the tax dollars coming from the heli-industry to hire a professional mediator to allow this group, or another, more broad-based group, to come to consensus. The season has already begun. Let's look towards 2012 and allot plenty of time to make informed decisions.

Specific issues to consider:

Since we really have no reliable data on what happened last year, **let's set the limit at 1200 skier days total.** We can always add more later, it will be difficult to move back. Let's look at 2011 as a year to get some base line data. Delete any mention of

film days. (see 5.18.080 Section B1.) Let's give last year's procedure a try where the companies can request additional days as needed.

Do not make skier days transferable with dollar value. If they have dollar value, companies will ask every year for an increase, it only makes business sense. Do we want to have contentious public meetings year after year?

We could really be opening a new can of worms with this one, with all kinds of unexpected consequences. No other tour in Haines has uses this method. Why start now? This idea requires much more deliberation. We have hardly discussed this in the Working Group.

(see 5.18.080 Section E and delete mention of transferability in Section 4 L) Section L needs to be deleted or rewritten.

Let's keep it to two companies. Giving AMG 200 days is, I can almost guarantee, an invitation for them to come back next year and ask for more days. If additional days are not granted in the future, AMG will most likely request parity. If additional days are permitted, increased impact on wildlife, residents and recreational users will be the result. **If we really want AMG to do heli-tours in Haines, let them replace SEABA.** Or have them wait until BLM opens up the area behind the Ferebee and let them operate from Skagway. (See 5.18.080 A 1) I know that AMG applied for the permit because they were worried that heli-skiing would be closed to them in the future. Let's let them know that it is not permanently closed to them, but that we need 2011 to collect some base-line data.

Under 5.18. 080 F

Have **the helicopter companies turn in their manifest to the Borough.**

We must add a provision that the helicopter companies themselves (as opposed to only the heli-ski companies) turn in weekly manifests. Once again, at least one of the ski companies has proven themselves to be untrustworthy. Relying on the heli-ski companies to provide the GPS without another source of info has the potential of being abused. Who said, "trust but verify." ?This is critical.

Under F2 This should read 8am to 7pm and there should be no exceptions (see Chugach Powder Guides permit)

Under G1. Let's keep this for 3 day events, rather than 1 day. This could easily be abused for one day events.

In addition, let's have the Borough Manager consult with ADFand G before making any changes.

Conclusion:

It was said at our last meeting that this new ordinance is a vast improvement over the old ordinance and that this was a compromise. Let's look at from the viewpoint of all the stakeholders (see Section 4, L):

Commercial ski operators- Vast improvement. Huge increase in skier days. Third company added. Map area doubled. They now have to submit GPS but this was required in the past.

Residents- Voluntary flight routes are now clearly marked. But, in the end, an increase in skier days will result in more noise. Heli-ski owners have testified when there are weather and safety issues they deviate from the flight paths. More flights means more potential deviations.

Backcountry recreational users- Increase in skier days will result in more chances for conflict. Telemark Ridge is now included, but not other areas requested, in the shared use policy. Why were they left out. Will this process work?

Wildlife- Wildlife will either be not affected or will lose with this. There can be no advantage for them. And they cannot speak for themselves. We must speak for them.

Subsistence users- Increasing helicopter skiing can only be detrimental to wildlife, it will not increase populations. So subsistence users can only lose from this.

Where is the balance? We need base-line data and we need to build trust. We do not need this ordinance. Let's slow down, back off, and start over with a professional facilitator.

Joe Ordonez

To: Haines Assembly Members

From: Sean Gaffney, Heli Ski Work Group Member

Regarding: Feedback on proposed ordinance 10-10-243 version 11 addressing heli skiing operations

I wanted to start by saying that I believe the heli skiing work group has done a very good job of addressing a difficult subject. The group has made valuable progress in creating standards (GPS) that will help to better regulate the industry. The map changes it has recommended give operators a framework within which to operate that will work for them. I expect heli operations to move forward this season in a well structured and positive way. I believe that the work group should stay intact and that it should at minimum review this seasons operations to identify areas where additional changes are needed. I also think that there is value in maintaining the work group into the future to continue to support management of this industry.

My specific feedback is limited to sections of ordinance 10-10-243 version 11 that are most difficult to address: user days and the number of permittee's to be allowed.

User Days:

I believe that the manner in which the filming/photographer days were redefined and reallocated is a solid solution to addressing the challenges associated with user days. The operators have been using these days, and to give them control over whether they are used with photographers or regular clients is a fair and balanced direction.

Allocating 2600 user days will give the operators a small cushion that will prevent them from coming back to the assembly mid-season requesting more.

Number of Commercial Ski Tour Permits:

Three permits for commercial ski tours is a positive and sustainable number of permits to make available. There is a substantial amount of terrain allocated to heli ski tours that will easily support three operators without compromising safety or quality. I have personally spent more than 20 years leading commercial trips and courses involving skiing and climbing in the areas being discussed. This experience has given me an intimate familiarity with the terrain and my opinion on what is sustainable is in large part built on that knowledge and experience as well as the experience of managing heli ski operations in other locations.

In conclusion, my opinion would be that the new ordinance does a good job of addressing issues in the old ordinance that impacted accountability and enforceability. It also addresses concerns raised by the operators and gives them the tools they need to manage their operations in a positive, successful manner. I think that it is a thoughtful solution to a historically difficult issue. If adopted in its current form the new ordinance will provide a solid framework for moving forward.

I hope that this provides you more to work with.

Please contact me if you have questions on anything or if you would like any additional information.

Thank you for your support of the Work Group.

Highest Regards,

Sean Gaffney

HAINES BOROUGH, ALASKA
ORDINANCE No. 10-10-243

AN ORDINANCE OF THE HAINES BOROUGH AMENDING HAINES BOROUGH CODE TITLE 5 TO REPEAL PERMIT REQUIREMENTS FOR HELI-SKI OPERATIONS AND COMMERCIAL HELICOPTER TOURS AND ADD PERMIT REQUIREMENTS FOR COMMERCIAL SKIING TOURS.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

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

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

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

Section 4. Legislative Findings. The Assembly finds as follows:

- A. The Haines Borough is a place of unparalleled natural beauty.
- B. Part of the natural beauty of the Haines Borough consists of the existence of what is generally described as "peace and quiet".
- C. The Haines Borough is home to a wide variety of wildlife including vibrant populations of grizzly and black bears, moose, mountain goats, and bald eagles.
- D. A strong economy in the Haines Borough is one of the overall goals of citizens of the Borough.
- E. Part of a strong economy for the Borough is the existence of a tourist and visitor industry. This industry includes winter visitors attracted to the Borough to participate in commercial ski tours and summer visitors attracted to the Borough to view wildlife including native populations of grizzly and black bears, mountain goats, lynx, wolves, bald eagles and moose. Many of these visitors view and access wildlife by using non-motorized, as well as motorized conveyance including: all-terrain vehicles, jetboats, airboats, automobiles, buses, and airplanes.
- F. Part of the attraction of commercial ski tours in the Borough is the ability of tour customers to avoid the crowds of skiers typically encountered at ski resorts in other parts of North America and to ski in relative "peace and quiet".
- G. The ability to avoid crowds of skiers on commercial ski tours will be enhanced if the Borough limits both the number of permitted operators of such tours and also limits the total number of days skied by participants in commercial ski tours. This in turn, will enhance the Borough economy by making the Borough a more attractive destination for participants in commercial ski tours.
- H. Helicopter skiing provides the opportunity to enjoy the beauty, freedom, solitude, and untracked snow of the backcountry for those without the desire or physical ability to access the backcountry on foot. Helicopter skiing makes this opportunity available to those who have adequate skiing skills but lack the specialized equipment, avalanche knowledge, and terrain familiarity to ski in the backcountry safely.

- I. Commercial ski tours and commercial ski productions involve risks of multiple injuries from avalanches not present in other types of commercial tours offered in the Haines Borough. EMS volunteers must receive special avalanche training in order to be prepared to provide EMS services to commercial ski tour customers in the event of an avalanche on a scale not generally present in day to day winter life in Haines. Although EMS volunteers willingly volunteer their time in this valuable public service the more participants in commercial ski tours there are in any particular year or on any particular day and the more companies permitted to offer commercial ski tours the greater the chance of the need for the Borough's limited EMS services.
- J. The quality of service provided by commercial ski tour operators in the Borough including strict adherence to safe practices will be enhanced if the number of operators is limited in general and if first priority to a limited number of commercial ski tour permits is provided to operators with previous experience operating commercial ski tours in the Borough. This limited competition between operators will avoid "cut rate" or "low budget" operations or operators either unfamiliar with local conditions or inexperienced which would reduce the reputation of the Borough as a commercial ski tour destination and increase the chance of ski-related accidents.
- K. Various studies related to the impact of commercial ski tours on wildlife have identified possible negative impacts on populations of mountain goats and bears from commercial ski tours. These studies include: "Monitoring Mountain Goat Habitat Fidelity and Population Study in Occupied Habitats with and without Helicopter Supported Commercial Recreation in the Haines-Skagway Area of Alaska" (Deaton, 2006); "Mountain Goat Response to Helicopter Overflights in Alaska (Goldstein et al., 2005); "Mountain Goat Responses to Helicopter Disturbances" (Cole S.D. 1996); "Dall's Sheep Responses to Overflight of Helicopter and Fixed-Wing Aircraft" (Frid, 2003). In addition, the Final Environmental Impact Statement issued by the Chugach National Forest in the fall of 2007 specifically discusses the potential impact of commercially guided helicopter skiing in Chugach National Forest on wildlife. Limiting the number of commercial ski operators and the number of days of skier participation in commercial ski tours in the Borough is likely to limit the negative impacts of commercial ski tours on these species of wildlife.
- L. Operating restrictions on commercial ski tours and commercial ski productions which limit the number of skier days will impact the maximum revenues available to commercial ski tour operators, however, this will be balanced by limiting the number of operators allowed to provide such tours or support such productions in the Borough and by the creation of a transferrable asset (a commercial tour permit and an allocation of skier days) which on balance should ensure a sufficient level of value in this business to allow it to continue as a part of the Borough's overall economic development.
- M. 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.
- N. In an election held in 2003, Borough residents supported managed helicopter skiing.

Section 5. Amendment of Chapter 5.04.020. Section 5.04.020 of the Haines Borough Code of Ordinances is amended by changing the following definitions to read as indicated below:

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

STRIKETHROUGH ITEMS ARE DELETED

"Commercial helicopter tour" means a commercial helicopter operation, other than a heli-skiing operation, **commercial ski tour or commercial ski production** that provides a helicopter-assisted tour to or through an area . It is a commercial tour and requires a permit.

"Commercial ski production" means the professional filming or photographing of persons while skiing or snowboarding for the creation of a film or photography product featuring skiing or snowboarding as the primary subject.

"Commercial ski tour" means a commercial tour as defined in Section 5.18.010(B) that: 1) includes downhill skiing or snowboarding as the primary experience; and 2) includes professionally guided skiing and snowboarding; and 3) includes daily transportation of the customer by helicopter to and from the skiing or snowboarding area as frequently as weather permits.

~~Heli-skiing operations" means a commercially guided heli-ski tour conducted for the purpose of guiding clients who ski or snowboard, and includes a helicopter operation that is related to the commercial filming of such activity, or to downhill skiing or snowboard competitions. It is a commercial tour and requires a permit.~~

~~"Photographer day" means one licensed professional photographer filming a heli-skiing operations for one day, and includes staff who are transported by the helicopter to assist the photographer.~~

~~"Skier day" means one individual skier, or snowboarder, **photographer or a member of the photographer's staff** participating in a **commercial ski tour** heli-skiing operation **or a commercial ski production** on one particular day or any portion of a day excluding guides.~~

~~"Special ski competition event" means a skiing or snowboarding competition supported by heli-skiing operations that is of three or more days' duration.~~

Section 6. Amendment of Chapter 5.04.140. Section 5.04.140 of the Haines Borough Code of Ordinances is amended by changing the following definitions to read as indicated below:

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

5.04.140 Penalties.

A. Operation of any commercial tour or business enterprise for which a permit is required under this title without a permit, or the failure to follow any permit condition, shall constitute an offense punishable, upon conviction, by a fine not exceeding \$300.00 for each offense **plus any surcharge required to be imposed by AS 12.55.039.**

B. The securing of a permit through deceit, fraud, or intentional misrepresentation shall constitute an offense punishable, upon conviction, by a fine not exceeding \$1,000, **plus any surcharge required to be imposed by AS 12.55.039** as well as revocation of the permit.

C. The commission by a permittee of an act of fraud, misrepresentation, or cheating that would constitute an unlawful act or practice under AS 45.50.471, either through the permittee's own act or through the acts of the permittee's employee, agent, or representative, in relation to an activity authorized under a permit, is, upon conviction, punishable by a fine not exceeding \$300.00 for each violation **plus any surcharge required to be imposed by AS 12.55.039.**

D. The borough may institute a civil action against a person who violates this Chapter. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction.

Section 7. Amendment of Chapter 5.04. Chapter 5.04 of the Haines Borough Code is hereby amended by addition of new sections to read as follows:

5.04.150 Offenses separable

Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of any permit issued under this Chapter is committed, continued or permitted by any such person.

5.04.160 Initiation.

A. Fines may be initiated by the Borough Manager or by any Borough police officer by filing an original or copy of a charging document with the Alaska Court System.

B. A citation, notice of violation or complaint must contain the following information:

1. The name or address of the alleged violator or violation;
2. Identification of the section of this Code violated;
3. A brief description of the conduct or condition which is alleged to be in violation;
4. Identification or signature of the person filing the charge indicating that the manager or officer swears that the information is true and correct as of the date of the alleged violation;
5. The date of the alleged violation;
6. Proof of service in compliance with subsection B of this section, including the date of service;
7. Notice advising the alleged violator of his right to a hearing and the manner in which to request a hearing;
8. The penalty proposed pursuant to Section 5.04.140 upon conviction or failure to request a hearing.
9. That the person has a right to
 - (a) a trial;
 - (b) engage counsel;
 - (c) confront and question witnesses;
 - (d) testify; and
 - (e) subpoena witnesses on the person's behalf.

C. A citation, notice of violation or complaint may be served:

1. in person;
2. by first class mail, with return receipt requested, to the last known address of the alleged violator or person responsible for the alleged violation;
3. By affixing the charging document to the property the subject of the violation in the case of movable property; or
4. by delivery to the authorized representative of the alleged violator or person responsible for the alleged violation.

D. Any person charged with a violation shall appear for arraignment at the time and place designated on the citation.

Section 8. Amendment of Section 5.18.020. Section 5.18.020 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.020 Number of Permits available.

The number of available tour permits, **other than the number of permits for a commercial ski tour** may be set by the assembly in September of each year for the following year. Renewal of existing permits by operators who have not had their permit revoked for failure to comply with this chapter shall have priority over new or expanded tour permit applications. The clerk will determine the number of new permits available and allow new applicants to apply based on their position on a waiting list maintained by the clerk.

Section 9. Amendment of Section 5.18.060. Section 5.18.060 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.060 Renewal.

A commercial tour permit issued under this chapter may be renewed upon application to the clerk, in accordance with Chapter 5.04 HBC and this chapter. The review standards that apply to initial permit applications shall apply to applications for the renewal of a permit, except that a renewal application does not require a hearing under HBC 5.18.040 unless the applicant: (1) proposes to provide a new commercial tour not previously provided; (2) proposes to solicit for or sell a tour on public property other than the designated staging area at the Port Chilkoot Dock; or (3) proposes to expand the capacity of an existing tour **other than a commercial ski tour** by 25 percent or more of the capacity of the tour from the time of, and/or as described in, the initial permit issued by the Borough for the particular tour.

Section 10. Amendment of Section 5.18.070. Section 5.18.070 of the Haines Borough Code is hereby amended to read as follows:

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

5.18.070 Permit Revocation ~~or~~ suspension or reduction in skier day allocation.

A commercial tour permit may be revoked or suspended **or the number of**

skier days allocated pursuant to HBC 5.18.080 may be reduced for the reasons identified in HBC 5.04.120 and in accordance with the **procedures set forth in** HBC 5.04.120.

Section 11. Repeal and Reenactment of Section 5.18.080. Section 5.18.080 of the Haines Borough Code is hereby repealed in its entirety and reenacted to read as follows:

5.18.080 Commercial Ski Tours, Commercial Ski Productions and Special Ski Competition Event.

A. Number of Permits

1. No more than three commercial ski tour permits, and one permit for a special ski competition may be issued for any one calendar year.
2. A permit does not create an exclusive right of use of an area by the permittee. However, the Borough may specify areas of the map in which a permittee may operate.
3. If more than three applicants apply for a commercial ski tour permit in any calendar year, preference shall be given to existing permit holders in good standing in the grant of a permit.

B. Skier Day Limits.

The following limitations on skier days shall apply to all commercial ski tours conducted in areas identified on the attached map.

1. Base Limits - No more than a total of 2600 skier days per year will be authorized in an allocation of skier days.
2. Allocation - If the borough receives applications for more than the total number of skier days authorized under subsection (B)(1) of this section, skier days will be allocated under HBC 5.18.080(C).

C. Allocation of Skier Days

1. At the time of an application for each commercial skiing tour permit authorized by this Chapter the permit applicant shall request an allocation of skier days.
2. If the requested number of skier days of all permit applicants exceeds the limits established by section 5.18.080 (B)(1), the Borough Manager shall, after providing each permittee an opportunity for an informal hearing, make an allocation of skier days based on the following factors:
 - a) the quality of the operating and safety plans submitted by the permittee.
 - b) the economic impact of the allocation on the permittee.
 - c) the safety and well being of the general public.
 - d) historic use of skier days by the permittee.
 - e) the interests of the Borough in the promotion of tourism.
 - f) past safety record of the permittee.

What does this include? Is an operator unsafe because a client has a twisting fall and hurts their knee, or a

company has a helicopter crash, but it is not the permittee's fault. This is very vague and do believe it should be removed. Any true unsafe practices will surface, but subjective language should not be in this conditional section. Especially since item c0 is already considered.

- g) the applicant's past record of compliance with Borough ordinance, **insert 10-10-243**, relating to commercial ski tours.
- h) the existence and terms of any voluntary agreement between the Borough and the applicant pertaining to operational practices of the applicant.

3. No later than ten (10) days after conclusion of all informal hearings, the Borough Manager shall issue a written decision establishing the allocation of skier days for each permittee and containing an explanation of the allocation decision. The term of the allocation shall be for one (1) season subject to transfer of skier days under section 5.18.080(F).

4. A permittee receiving less than a requested allocation may appeal the initial allocation decision of the Borough Manager to the Borough Assembly by filing a notice of appeal with the Borough Clerk no later than fifteen (15) days from the date of the decision of the Borough Manager. All permittees shall be included as parties to the appeal and the results of the appeal shall be binding on all permittees.

D. Future Allocation of Skier Days

At or before the expiration of the initial term for an allocation of skier days, each permittee shall apply for a subsequent allocation of skier days for the next season. If the requested allocations exceed the limit for skier days established by 5.18.080(B) the requested days shall be allocated using the same procedure and factors as in the initial allocation.

E. Transfer of Allocated Skier Days

A permittee may sell or transfer a portion of their skier days allocation for a designated season to another permittee holding an allocation upon the review and approval of the manager.

What constitutes approval? Again subjective. Question is the price to much? More than 50% of the days are sold? These need to be quantified.

F. General Permit Conditions and Regulations

1. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted only from February 1st through May 3rd unless a different period is noted on the "Haines Borough Approved Commercial Ski Tour Areas".

2. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted between the hours of 8:00 a.m. and 6:00 p.m., except that the borough may authorize additional hours for no more than 30 days for the purpose of commercial filming during low sun angle periods.

Even though this has been portion deleted, the time of

the season this particularly pertains to is March 20-May 3rd. Permittee's should be able to extend their operating hours during this period to take advantage of usable daylight. Often time's weather keeps an operator out of the mountains for certain period of the day. Let's say the weather on April 10th does clear until 2:30 pm, with the way the permits reads it an operator would have to be on the ground at 6:00pm, unless authorized? (how does this happen, a phone call that day to the borough offices?) Allowing operations to an hour before sunset would allow him to operate safely until around 7:15 pm. These are things that we should consider.

The permit should reflect operating times to be one hour before official sunset and sunrise. On April 10th sunrise is at 6:02 am and sunset is at 8:06 pm thus giving the operators a 12 hour work day using this approach.

The solar calendar starts growing on the 20th of March beyond the 8:00 to 6:00 operating clause in #2.

This also mimics general operation standards for heli operator's flight protocols.

3. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted only in areas identified on the map attached hereto which shall remain on file with the Borough Clerk and labeled "Haines Borough Approved Commercial Ski Tour Areas".

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 biweekly basis during each commercial ski tour season.

5. Every commercial ski tour operator shall submit to the borough clerk, on forms provided by the borough, bi-weekly use reports detailing the number of skier days used during each day of the reporting period, deviations from the flight guidelines and any accidents.

What type of accident?

6. The borough manager shall compile a season-end report to be submitted to the borough assembly annually during the first meeting in July. The report shall include the number of skier days used by each permitted company as compared to previous years, and it shall include any verified permit infractions along with correspondence and other information documenting reasons for the infractions.

7. Every commercial ski tour operator shall submit to the borough clerk annually, a Safety and Operating Plan that, at a minimum, will include (1) avalanche safety (addressing client safety, as well as safety of other backcountry users in the area); (2) helicopter safety; (3) emergency rescue

procedures; (4) guide requirements; and (5) a system for resolving complaints from the public.

8. Explosives shall not be used for avalanche control.

9. Commercial ski tour operators shall annually register contracted helicopters, their N number, color scheme, and pilot's name with the borough.

10. Commercial ski tour operators shall provide mountain goat, and other wildlife sightings to the Borough. The Borough Clerk will provide commercial ski tour operators with incidental wildlife observation forms to be filled out daily. These forms shall be submitted annually upon completion of the permit season.

11. The permittee is responsible for obtaining authorizations required by other agencies for the permitted activity. Each permittee will provide a copy of any other authorizations to the Borough Clerk.

12. Every commercial ski tour operator shall submit to the Borough Clerk a copy of a signed mutual aid agreement requiring all permittees to come to each other's aid in the event of an accident or a mechanical problem that strands a helicopter used to transport participants in a commercial ski tour away from a heliport.

13. Commercial ski tour operators transporting participants in a commercial ski tour or a special ski competition event or commercial ski production by helicopter shall use one of the following heliports;

- a. Haines Airport,
- b. The Stewart landing strip at 18 Mile Haines Highway
- c. The heliport adjacent to the 33 Mile Roadhouse.
- d. Any heliport authorized by the Haines Borough Planning Commission as a conditional use.

13. needs to be stricken from the ordinance and implemented in the M.O.A. with each operator, as every operator may need to adjust their heliports each year. This should be acceptable since considering once title 18 is changed to include heliports as a conditional use permit the language in F. 13 will be obsolete.

G. Temporary Additions to Approved Commercial Ski Tour Areas.

- 1 A permittee, or the Planning Commission, may request the addition of territory to the "Haines Borough Approved Commercial Ski Tour Areas" map for a single season. All such requests shall be made only during a season and shall expire at the end of that season. Requests shall be submitted to the manager. All requests shall be in writing, be accompanied by a diagram showing the proposed additional area with reasonable specificity and shall explain the reasons for the proposal.
- 2 No later than seven (7) days after receipt of a request submitted in compliance with subsection 1 above, the manager shall prepare a written

recommendation to the Assembly.

- 3 The Assembly may act on the manager's recommendation by resolution. If the Assembly approves the temporary addition of territory, the Haines Borough Approved Commercial Ski Tour Areas map shall be amended by designating the additional territory as "temporary" and identifying the season for which the additional territory is approved.

H. Shared Use Policy

1. Commercial ski tour permittees shall yield to non-motorized, recreational backcountry users, within the boundaries of the area known as Telemark Ridge at the head of the Haska Creek drainage, on a by request basis.
2. Recreational backcountry users may contact a permittee by phone or email at least 48 hours in advance of the activity and request to use a specific area on a specific day.
3. Confirmation shall be given by the permittee within 24 hours of the request.
4. The person making the request shall notify the borough clerk of the request.
5. Cancellation of the request shall be communicated to the permittee before 9am on the day of the activity.
6. Failure by recreational users to communicate a cancellation of the activity may result in the loss of request privileges.
7. Failure by a permittee to confirm a request, or to yield an area to recreational users, shall be reported to the borough clerk and recorded for future review.
8. The duration of a recreational activity in any specific area shall be for a maximum of three days consecutively, and for no more than ten days per month.

I think it is premature to add this to the ordinance, it appears in the M.O.A. already and I feel that this will change, specifically areas, in the future after this season.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY
THIS ____ DAY OF _____, 2011.

Janice Hill, Mayor

ATTEST:

Julie Cozzi, CMC, Borough Clerk

Date Introduced: ___/___/11
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___