

Connor Nelson  
4608 H.P.R.  
Sitka, Ak.

City of Sitka  
A.E. Zimmer, Administrator  
Oct. 17, 2001

Sub: " SUDNIKOVICH ROCK QUARRY"

Dear Tony,

I've received copies of your letters and S&S letters in regards to extended hours of operations at the "SUDNIKOVICH ROCK QUARRY".

The Stipulation for Judgment and Order clearly was aimed at resolving concerns over the impacts of the quarrying and rock crushing operation at the S&S quarry. The document contains the provision quoted by Mr. Eddy in his Aug. 30<sup>th</sup> letter that " in the event" of certain developments the "hours and days of operation may be modified". The recent exchange of letters between the municipality and S&S suggests that there is a belief that this "modification" can be accomplished at the whim of one or two parties to the stipulation.

We disagree with this position.

If the Order is to have any credibility , it must be binding on the parties. Our position is that language permitting modification means that the parties are not precluded from readdressing - and, if necessary, relitigating- the hours and days of operations under certain circumstances. But this is a COURT ORDER. The quoted language does not mean that less-than-unanimous agreement of the parties can nullify "the protection" in the Order.

We are not unalterably opposed to limited modifications of the hours and days of operation. But before we agree that this is an appropriate occasion for a "temporary" modification of the Order, we would expect to see the following at a minimum:

- 1 Copy of the S&S Ousinkie contract;
- 2 a proposed production schedule (dates, hours , delivery dates , etc.)
- 3 proposed start and stop dates for the temporary modification of the Order

In addition to these issues with the procedure used in modifying the Order, we have other concerns about this proposal.

Mr. Eddy's letters of Sept. 24<sup>th</sup> and Aug. 30<sup>th</sup> both stress the need to start producing this product -immediately-by working 12 hr. days, starting on the 1<sup>st</sup> of Oct. However this past weekend on Sat. the 13<sup>th</sup> , the only quarrying activity was hauling rock to some lot project up Cascade str.. On Fri. the 12<sup>th</sup> there was no activity in the quarry. On the weekend of Sat. the 6<sup>th</sup> the only activity was to haul rock to their staging yard out on S.M.C. rd.. Prior to Oct. 1<sup>st</sup> , Sudnikovich Quarry, on their own had extended the hours in violation of the Judgment Order. For example- Sat. Aug. 25<sup>th</sup>- S&S truck hauling to Fleming Subd. . Sun. Sept. 9<sup>th</sup>-White truck hauling from quarry. Sat. Sept. 15<sup>th</sup> 2 McGraw trucks and 1 S&S truck hauling. Sun. Sept. 16<sup>th</sup> McGraw truck hauling.

I'm not opposed to the occasional delivery of material on weekends to say maybe a home owner, that can only receive it during that time, nor do I waste my time monitoring the activities in the S&S quarry for violations of working hours, again this is only a example. Any of the above work could have very easily been accomplished within the working hours per the Judgment

What we're seeing is work outside the hours of the Judgment Order as a matter of convenience. Even their request, addresses extended hours to produce product for Ouzinkie project only. If we can reach an agreement on extended hours for the Ouzinkie project, I have no intention of letting any extended hours becoming a umbrella to work under as a matter of convenience for Sudnikovich rock quarry to sell rock , nor S&S Const. to carry on construction activities.

Page 2 Item 1 of the Judgment " Scope of this agreement" covers the properties involved. The last sentence states very clearly, "this agreement shall not be construed to apply to any other real property". The events of the past month have brought a new awareness of the activities at the "Sudnikovich rock quarry". It appears the quarrying has move onto the adjoining lot which is zoned C-2 and may even included some activity on city property that is zoned R-1. I do not recall any zoning text changes that allow for rock quarrying as a principle nor conditional use in these zones. By Sudnikovichs rock quarries own admission, this is what they're doing.

If the above is factual, then the question of extending the hours is moot, and the city has a duty to issue a stop work order for the rock quarrying, in violation of city ordinance. Also, if the above is factual, then items 6, 10, and 11 of the stipulations for Judgment are being violated.

Feel free to contact me at any time if you have a question.

Thanks, Connor

A handwritten signature in cursive script, appearing to read "Connor".

Connor Nelson  
P.O. Box 2094  
Sitka, AK 99835  
(907) 747-5030

April 2, 1997

City & Borough of Sitka  
100 Lincoln Street  
Sitka, AK 99835

*Jim - This is  
with 1 sent Wells  
2 pages*

Attn: Wells Williams

Dear Mr. Williams:

On January 25, 1994 the assembly, granted S & S a conditional use permit for natural resource extraction. One of the conditions set by the assembly was a 5' high safety fence, to be posted with signs and maintained. A 10' bench was to be maintained between the fence and the beginning of excavations. Neither of these conditions have been met. You will note by the enclosed drawing, these conditions apply to the right, back and left of lot 1A looking to the back of the quarry operations.

S & S quarry is in violation of 22.40.010 of Sitka General Code. Per this requirement, "Any violation of restriction or conditions required by the planning commission or the assembly... shall result in revocation of the permission granted....".

By notice of this letter I am bringing to your attention that S & S quarry has expanded it's operations some 70' onto public property on the right (south) side of lot 1A. The same conditions exist on the left (north) side, where S & S is actively building benches and stockpiling rock. This land is zoned R-1 and natural resource extraction activities are not a permitted use.

Please take enforcement actions as required per Sitka General Code.

Sincerely,

Connor Nelson

cc: Administrator

Jim -

Jim Clare's letter has little value other than his personal overview.

Settling ponds have to be sized to accommodate the collected <sup>water</sup> & retain that volume for 2 to 6 hrs. I'm basing this on Woodward Clyde ~~ree~~ recommendations for the Granite Creek Quarry. What they say is. Run off from normal quarry operations should be retained for 2 hrs - run off from processing (crushing etc) should be retained for 6 hrs. In other words if you had a empty pond & you started to get run off it would take 2-6 hrs as required to fill this pond before it started running out the other end. This way silt etc. has a time period in still water to settle.

As S&S pond is in a drainage channel that drains upland properties - one would need a hydro-engineer to calculate drainage area & size pond. As it now stands it's wide spot in the channel hardly, if at all slows the flow in a good rain. - Jim's statements are not how can he state these things (best part when they haven't done any engineering at all) can be picked up by any engineering class.



11 AAC is amended by adding a new chapter to read:

**CHAPTER 97. MINING RECLAMATION**

**Article**

1. Applicability (11 AAC 97.100)
2. Reclamation Performance Standards (11 AAC 97.200 -- 11 AAC 97.250)
3. Reclamation Plan (11 AAC 97.300 -- 11 AAC 97.350)
4. Reclamation Bonding (11 AAC 97.400 -- 11 AAC 97.450)
5. Exemptions for Small Operations (11 AAC 97.500 -- 11 AAC 97.510)
6. Violations and Penalties (11 AAC 97.600 -- 11 AAC 97.640)
7. Cooperative Management Agreements (11 AAC 97.700)
8. General Provisions (11 AAC 97.900 -- 11 AAC 97.990)

**ARTICLE 1. APPLICABILITY**

**Section**

**100. Applicability**

**11 AAC 97.100. APPLICABILITY.** (a) This chapter applies to the approval of reclamation plans, reclamation bonding, and enforcement of reclamation requirements under AS 27.19 for locatable mineral, leasable mineral, and material mining operations on state, federal, municipal, and private land. AS 27.19 and this chapter do not apply to a recreational placer mining operation using no mechanized earthmoving equipment other than a dredge with a suction hose six inches or less in diameter, powered by an engine of 18 or fewer horsepower.

(b) AS 27.19.020 sets the minimum standard for conduct of mining operations in Alaska, without regard to land ownership. Although nothing in AS 27.19 requires a miner to file a mining plan before beginning operations, most miners operating on public land are required to do so by other laws. Even where that is not the case, the department recommends that the miner develop a mining plan to help the miner meet the mining standard of AS 27.19.020 and to make the reclamation plan or reclamation letter of intent more effective.

(d) Nothing in AS 27.19 precludes a federal or state agency (including the Department of Natural Resources), a state corporation, the University of Alaska, a municipality, or a private landowner, acting under its own regulatory or proprietary authority, from establishing and enforcing additional requirements or higher standards for reclamation. Compliance with this chapter does not waive or excuse compliance with those additional requirements or higher standards.

Special does not apply to:

(1) fuel spills, chemical neutralization, detoxification, or clean-up of hazardous substances used in mineral processing facilities associated with mining operations;

(2) surface coal mining reclamation or related operations regulated under AS 27.21; or

(3) an area disturbed by a mining operation before October 15, 1991. However, if a mining operation disturbs a previously mined area after October 14, 1991, a miner must reclaim to the standards of AS 27.19 and this chapter; if only a portion of the previously mined area is disturbed after October 14, 1991, this chapter applies only to that disturbed portion. (Eff. 7/30/92, Register 123)

Authority: Sec. 2, ch. 92, SLA 1990  
AS 27.19.010  
AS 27.19.020  
AS 27.19.100

## **ARTICLE 2. RECLAMATION PERFORMANCE STANDARDS**

### **Section**

- 200. Land reclamation performance standards
- 210. Disposal of buildings, structures, and debris on state land
- 220. Underground mines
- 230. Heap leach operations
- 240. Acid rock drainage
- 250. Material sites

**11 AAC 97.200. LAND RECLAMATION PERFORMANCE STANDARDS.** (a)  
A miner shall reclaim areas disturbed by a mining operation so that any surface that will not have a stream flowing over it is left in a stable condition.

(1) For the purposes of AS 27.19.100(6) and this section, a stable condition that "allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes" means a condition that can reasonably be expected to return waterborne soil erosion to pre-mining levels within one year after the reclamation is completed, and that can reasonably be expected to achieve revegetation, where feasible, within five years after the reclamation is completed, without the need for fertilization or reseeding. If rehabilitation of a mined site to this standard is not feasible because the surface materials on the mined site have low natural fertility or the site lacks a natural seed source, the department recommends that the miner fertilize and reseed or replant the site with native vegetation to protect against soil erosion; however, AS 27.19 does not require the miner to do so. Rehabilitation to allow for the

reestablishment of renewable resources is not required if that reestablishment would be inconsistent with an alternate post-mining land use approved under AS 27.19.030(b) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land.

(2) If topsoil from an area disturbed by a mining operation is not promptly redistributed to an area being reclaimed, a miner shall segregate it, protect it from erosion and from contamination by acidic or toxic materials, and preserve it in a condition suitable for later use.

(3) If the natural composition, texture, or porosity of the surface materials is not conducive to natural revegetation, a miner shall take measures to promote natural revegetation, including redistribution of topsoil, where available. If no topsoil is available, a miner shall apply fines or other suitable growing medium, if available. However, a miner may not redistribute topsoil and fines over surfaces likely to be exposed to annual flooding, unless the action is authorized in an approved reclamation plan and will not result in an unlawful point- or non-point-source discharge of pollutants.

(b) A miner shall reclaim an area disturbed by a mining operation so that the surface contours after reclamation is complete are conducive to natural revegetation or are consistent with an alternate post-mining land use approved under AS 27.19.030(b) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land. Measures taken to accomplish this result may include backfilling, contouring, and grading, but a miner need not restore the site's approximate original contours. A miner shall stabilize the reclaimed site to a condition that will retain sufficient moisture for natural revegetation or for an alternate post-mining land use approved under AS 27.19.030(b) on state, federal, or municipal land, or for the post-mining land use intended by the landowner on private land.

(c) A pit wall, subsidence feature, or quarry wall is exempt from the requirements of (a) and (b) of this section if the steepness of the wall makes them impracticable or impossible to accomplish. However, a miner shall leave the wall in a condition such that it will not collapse nor allow loose rock that presents a safety hazard to fall from it.

(d) If a mining operation diverts a stream channel or modifies a flood plain to the extent that the stream channel is no longer stable, a miner shall reestablish the stream channel in a stable location. A miner may not place a settling basin in the way of the reestablished channel location unless the fines will be properly removed or protected from erosion. (Eff. 7/30/92, Register 123)

Connor Nelson  
P.O. Box 2094  
Sitka, AK 99835  
(907) 747-5030

April 2, 1997

City & Borough of Sitka  
100 Lincoln Street  
Sitka, AK 99835

*THIS IS  
WHITE 1 SENT WELLS  
2 PAGES*

Attn: Wells Williams

Dear Mr. Williams:

On January 25, 1994 the assembly, granted S & S a conditional use permit for natural resource extraction. One of the conditions set by the assembly was a 5' high safety fence, to be posted with signs and maintained. A 10' bench was to be maintained between the fence and the beginning of excavations. Neither of these conditions have been met. You will note by the enclosed drawing, these conditions apply to the right, back and left of lot 1A looking to the back of the quarry operations.

S & S quarry is in violation of 22.40.010 of Sitka General Code. Per this requirement, "Any violation of restriction or conditions required by the planning commission or the assembly... shall result in revocation of the permission granted....".

By notice of this letter I am bringing to your attention that S & S quarry has expanded it's operations some 70' onto public property on the right (south) side of lot 1A. The same conditions exist on the left (north) side, where S & S is actively building benches and stockpiling rock. This land is zoned R-1 and natural resource extraction activities are not a permitted use.

Please take enforcement actions as required per Sitka General Code.

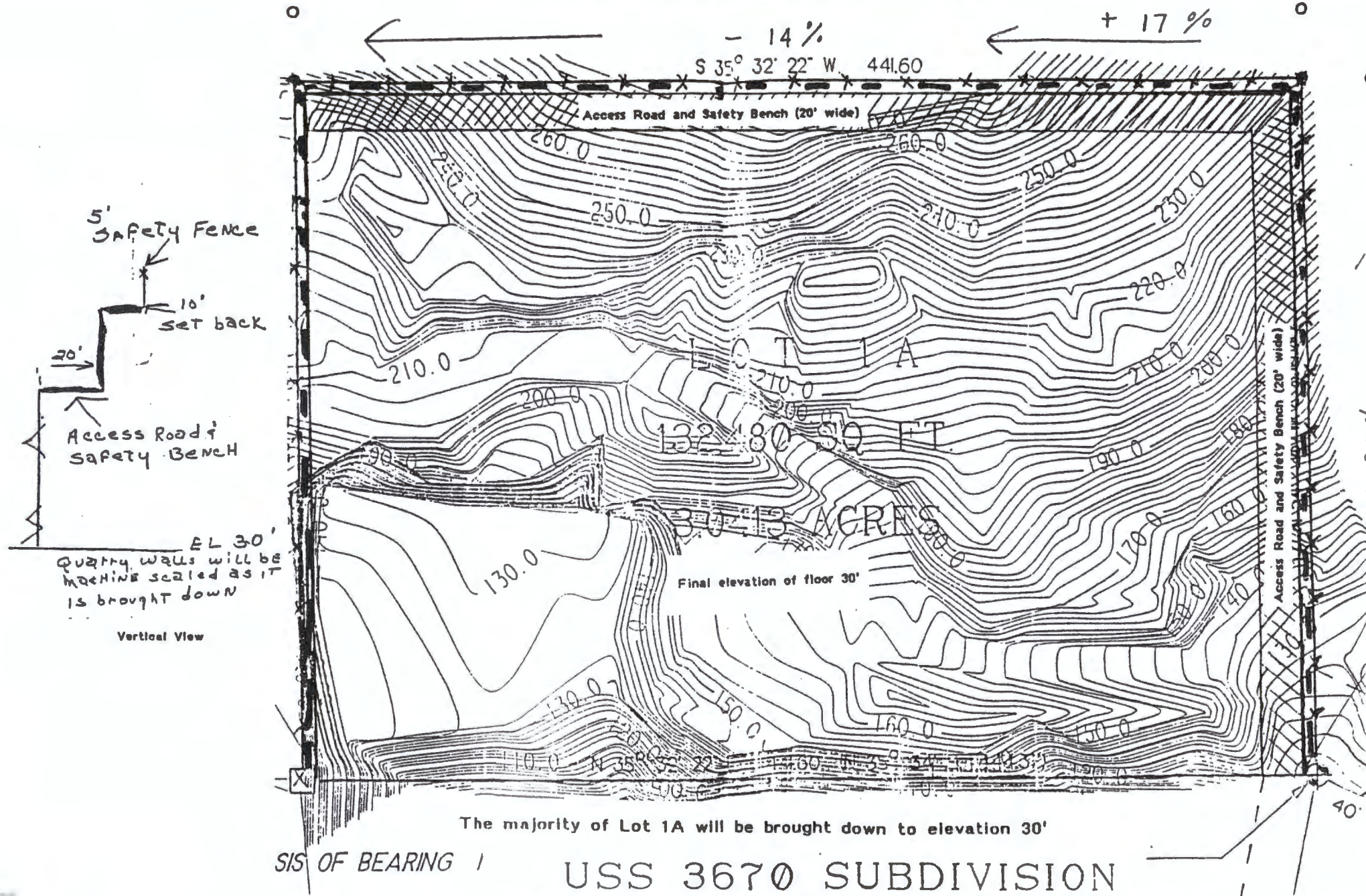
Sincerely,

Connor Nelson

cc: Administrator



UNSUBDIVIDED REMAINDER OF LOT I. USS 3670



USS 3670 SUBDIVISION  
CONDITIONAL USE REQUEST  
FOR A QUARRY ON LOT 1A



Connor & Valorie Nelson  
P.O. Box 1356  
Sitka, AK 99835  
(907) 747-5030

February 26, 1997

City & Borough of Sitka  
100 Lincoln St.  
Sitka, AK 99835

Attn: T.Cole

Re: Your memo 021097

Dear T;

Section 7003 B-6 does not exempt the S & S Quarry from the excavation & grading requirements as set forth in chapter 70 of the U.B.C. It states very clearly "...provided such operations do not affect the lateral support...upon any adjacent or contiguous property." This means that quarrying is to be done in a fashion that not only maintains lateral support for adjacent properties, but at all times maintains lateral support within the property. Stability in doing excavation work is the only thing chapter 70 pertains to. S & S Quarry is a prime example of what happens when these codes are not followed (one excavator rolled over & was damaged in a slide, one fell all the way down to the pit floor in a slide, a drill rolled over and two men were nearly buried in a slide), there has been total failure in the pit walls, damaging adjacent properties, etc.

Item 8 of this section also must be met, "...which does not create a cut slope greater than 5 feet in height and steeper than 1 1/2' horizontal to 1' vertical." This should serve as a guideline as to how much excavation can be done before lateral support becomes a concern, and at which point an excavation permit is required.

The last paragraph of section 7003 states "Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction." So, section 7009 also applies as well as the remainder of the chapter.

One has to wonder what your motivations are in so flagrantly misinterpreting the specifications in regard to the S & S Quarry. Damage to public property started well over 2 years ago, so why has action not been taken to protect the people's property? You received a report from the U.S. Department of Labor and Mine Safety approximately 2 years ago regarding this quarry that was very critical of the mining practices, lack of stabilities and dangers exposed to workman by the poor mining practices being utilized. This report recommended that a mining plan be developed immediately. Why hasn't this been done? You knew that public

City & Borough of Sitka  
February 26, 1997

property was being destroyed and this would have mitigated the ongoing damage. S & S has and will continue to destroy public property unless proper actions are taken.

A stop work order should be issued and no further excavation allowed until such time as S & S has an approved plan by a soils engineer, in accordance with the U.B.C. and the mine safety report of 02/07/95. The plan should show how and that he actually can do further excavation in a stable condition and within the boundaries of his own property.

By notice of this letter I am also inquiring if any restitution has been sought for the taking and destruction of public property. Have any documents to this effect been served upon him? If so, please provide us with these copies. Your prompt attention to this matter will be greatly appreciated.

Sincerely,

*Connor & Valorie Nelson*  
*Valorie L. Nelson*

Connor & Valorie Nelson

cc: Paxton  
Harmon



CITY ATT  
T. COLE

2/11/97

FAX - 747-6160

T.

THANKS FOR RETURNING MY CALL. I CAN SEE PLAYING TAG ON THE PHONE IS WASTING BOTH OUR TIME, SO HERE'S A FAX.

YOU HAVE TAKEN THE POSITION S&S QUARRY DOES NOT REQUIRE A EXC. & FILL PERMIT (GRADING PITHN ETC.)

CHAPTER 70 OF THE U.B.C. WAS ADOPTED INTO THE SITKA GENERAL CODE IN 1987. CHAPTER 19.04 SEC 19.04.010.

THERE ARE A FEW EXEMPTIONS TO THE REQUIREMENTS FOR A PERMIT. HOWEVER THE S&S QUARRY DOESN'T MEET ANY OF THESE.

FOR INSTANT SEC. 7003 B(6) "PROVIDED SUCH OPERATIONS DO NOT EFFECT THE LATERAL SUPPORT OR INCREASE THE STRESSES IN OR PRESSURE UPON ANY ADJACENT OR CONTIGUOUS PROPERTY" A QUICK LOOK AT THE REPORT OF "95" FROM THE DEPT. OF MINE SAFETY TELLS US HE DOESN'T MEET THIS REQUIREMENT. B(8) "WHICH DOES NOT CREATE A CUT SLOPE GREATER THAN 5' IN HEIGHT AND STEEPER THAN 1 1/2' HORIZ. TO 1' VERTICAL" COMMON SENSE - IF YOU CAN'T EXC. DEEPER THAN 5' WITH A 1 1/2 TO 1 SLOPE WITHOUT A PERMIT, THEN CERTAINLY A EXC. OF 300' PLUS & NO SLOPE REQUIRES A PERMIT.

S&S IS REQUIRED TO HAVE A PERMIT PER SEC. 7006 (C). ENFORCEMENT ACTION SHOULD HAVE & BE TAKEN UNDER SEC. 7004. PARTICULARLY IN LIGHT OF THE PROBLEMS ADDRESSED IN THE MINE SAFETY REPORT OF 2/7/95.

I'VE HEARD S&S CLAIMS TO BE WORKING UNDER SOME MINING REGS THAT DON'T REQUIRE BENCHES, SLOPES ETC.. IN MY CONTACT WITH THESE DEPT'S I WAS TOLD THESE REQUIREMENTS ARE NOT SET BY THEM, BUT WAS GOVERNED BY LOCAL CODES. IN ANY CASE, I'M SURE THERE'S SOMETHING IN OUR CODES THAT IN EFFECT SAY - LOCAL CODES OR MOST RESTRICTIVE CODES WILL BE FOLLOWED, ETC..

PLEASE LET ME KNOW WHAT IT IS YOUR HANGING YOUR HAT ON.

THANKS FOR YOUR TIME, CONNOR



Connor K. Nelson  
P.O. Box 2094  
Sitka, AK 99835  
(907) 747-5030

February 3, 1997

City and Borough of Sitka  
100 Lincoln St.  
Sitka, AK 99835

Attn: T.Cole

Dear T;

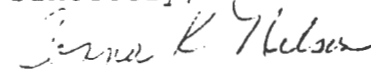
I have reviewed the S&S proposal for the conditional use permit for the crusher, and the first thing that I see is that you do not intend to put all the crushing equipment on Lot 1A as was called for in the agreement as a result of the settlement conference. This was also a requirement of the original conditional use permit.

On June 7, 1996, you, Larry Harmon, Roger, Valorie and I met at the S & S quarry and a couple of commitments were made on your part, the most important was that a close out plan would be forthcoming. In the absence of this plan, we have no way of knowing whether S & S intends to or at this point can comply with chapter 70 of the U.B.C.. One of the requirements of the stipulation for judgement is that all local codes be followed. Obviously if you look at the code requirement, then at the quarry, this commitment is not being met, and after 8 months and no close out plan, there is no evidence of good faith effort to comply.

What is evident is a repeat of what has occurred on Lot 61. It is your responsibility to see that there is an excavation plan in place and that it is followed. At present, the excavation practices on Lot 1A are not in conformance and to some extent have damaged all adjoining public properties. Without a closeout plan or excavation plan, S & S is not in compliance with City codes and you have no idea what further damages will occur to public property.

It is my belief that the prudent action would be for the city to issue a stop work order until these issues are resolved.

Sincerely,



Connor K. Nelson





# City and Borough of Sitka

100 LINCOLN STREET • SITKA, ALASKA 99835

March 4th, 1996

589

Mr. Roger Sudnikovich  
S&S General Contractor and Rental Equipment  
PO Box 1440  
Sitka AK 99835

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
No. 242 401 258

Dear Roger:

The issue of a boundary line fence resurfaced. It is clear that the Assembly specifically required that the "fence shall be maintained and warning signs will be posted as appropriate." The line and warning signs that Judith Sudnikovich referred to in her letter of December 19th, 1995 do not comply with the condition that the "fence shall be maintained."

In light of the liability and life safety issues that have been raised, you are herewith directed to immediately take the necessary steps to insure that the fence complies with this condition of the conditional use permit.

Thank you.

Sincerely,

Wells Williams  
Planning Director

cc: T. Cole, Municipal Attorney  
Gary Paxton, Municipal Administrator  
Larry Harmon, Director of Public Works

March 3, 1996

Subject--Potential liability.

Dear Mr. Paxton:

This letter is to bring up the potential liability concerning both the City of Sitka, and myself.

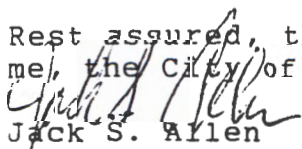
I own the property at 4702 Halibut point road, this is the two acre piece that is next to S&S Constructions rock pit.

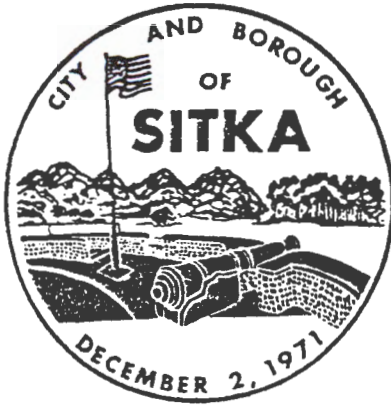
During the time that S&S has been removing rock from their pit, we, as next door owners have never complained about the operation. Even, after having numerous trees uprooted and fall. Even, after having so many rocks come down on my father's trailer and vehicle, that I finally moved him out and into our residence. One tree blew down and caused 14 thousand dollars in damage to his trailer. After the city sold the extra 3 acres to S&S, and they opened up more area, more trees came down. We did not complain about it to him or the city. Now, however, with the size of the pit growing, we have come to realize that he has created a certain death trap for anyone or anything that goes near the upper edge.

As I remember, S&S was supposed to fence off the edges of that pit. This has not been done. The fence that they claim to have put up, is a one or two strand piece of wire across the top edge of the pit. No fence was erected on our line, nor is the fence he did put any safety factor at all.

My concern is that someone while hunting or picking berries will cross my property and walk off the edge of the pit. Lawsuits would immediately erupt. Needless to say, the city would be in the forefront in trying to defend as to why they did not require an adequate fence for safety. As it now stands, I will post my property every 30 feet to try and warn people that they are on unsafe ground. The ratty fence that S&S did put up is now down on the North East corner anyway. I think that the City's tracking of this project leaves a lot to be desired. My suggestion is that you have city staff check the pit and if need be, force S&S to comply with the agreement.

Rest assured, that in the event of a legal issue raised against me, the City of Sitka will also be involved.

  
Jack S. Allen  
5316 Halibut Point Road  
Sitka, Alaska 99835  
747-5602



# City and Borough of Sitka

100 LINCOLN STREET • SITKA, ALASKA 99835

December 6th, 1995

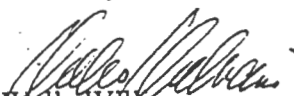
Mr. Roger Sudnikovich  
S&S General Contractor and Rental Equipment  
PO Box 1440  
Sitka AK 99835

Dear Roger:

During the recent discussion on your crusher conditional use permit, the issue of a boundary line fence resurfaced. In researching the Assembly approval of the natural resource extraction permit, it is clear that the Assembly specifically required that the "fence shall be maintained and warning signs will be posted as appropriate." Please take the necessary steps to insure that the fence complies with this condition of the conditional use permit.

Thank you.

Sincerely,



Wells Williams

Planning Director

c. T. Cole, Municipal Attorney  
Gary Paxton, Municipal Administrator



VALORIE L. NELSON  
4608 H.P.R.  
Sitka, AK 99835  
(907) 747-5030

June 27, 1994

Roder Sudnikovich  
S & S Contractors  
P.O. Box 1440  
Sitka, AK 99835

Re: Stipulation for Judgement and Order  
Your Letter of June 8, 1994

Dear Mr. S:

It is unfortunate that you consider my letters to be harassing, as all I have attempted to do is abide by the stipulation.

For your information you have had men working every Sunday since the first week of this month. Normally you have one operating a push cat and another on an excavator and it does cause considerable noise.

In my original letter to you of May 4, 1994, I did not demand that you return to the previous hours of operation but suggested a 12 hour working day, which I feel the court would find a reasonable compromise in lieu of your 17 hour shifts.

I have given up a majority of the office work that I used to do in my home and have taken an outside job so that I am away from the noise, dust and disturbances created by you and your firm for a majority of the hours that you are working. However, you choose to not even allow me 8 hours to rest or sleep as you have people working as early as 4 a.m. until as late as midnight.

As a result of your "bad" shot I have been subjected to numerous blasts made by you, at times with less than a 1 hour notification. If you would give reasonable notice as called for in the stipulation, then I could make arrangements before I leave my home in the morning or at lunch to avoid the area at such times.

Per item 12 of the stipulation, I will be filing a petition for enforcement with the Superior Court in 15 business days.

The serious violations of the stipulation are as follows:

1. Improper notification of blasting.
2. Failure to employ reasonable efforts to minimize the impacts of your operations on our use and reasonable enjoyment of our property.
3. Failure to abide by all applicable federal, state and local laws and regulations.

Sincerely,  
*Valorie L. Nelson*  
Valorie L. Nelson

VALORIE L. NELSON  
4608 HPR  
SITKA, AK 99835  
(907) 747-5030

June 3, 1994

City & Borough of Sitka  
304 Lake Street  
Sitka, AK 99835

Attn: Municipal Attorney

Dear Mr. Cole:

This letter is a follow up to our phone conversation of last Friday, wherein I questioned the practice of allowing S & S to use the Granite Creek Waste Area as his own private storage yard with no compensation to the taxpayers and the City & Borough of Sitka. As discussed in our conversation it is highly unethical as well as illegal to aid private enterprise (McOuillen 39.25). Your acquiescence to their unilateral expansion of working hours also constitutes a breach in the stipulation dated January 24, 1994. Therefore in the event that you did not consider your copy of the May 14, 1994 letter to Mr. Sudnikovich as a 15 day notice of violation, this hand delivered edition should suffice.

Sincerely,

*Valorie L. Nelson*

Valorie L. Nelson

cc: Roger Sudnikovich

*Hand delivered  
10:25 am*



VALORIE NELSON  
4608 H.P.R.  
SITKA, AK 99835  
(907)747-5030

May 14, 1994

Roger Sudnikovich  
S & S Contractors  
P.O. Box 1440  
Sitka, AK 99835

Re: Your letter of 05/06/94

Dear Mr. Sudnikovich:

We have received and reviewed your above referenced letter. We have given your desired hours one week's consideration and find that we do not have reasonable enjoyment of our property. We understand the stipulation for settlement would allow for the work hours and days to be modified, however your unilateral decision to extend the working hours from 7:00 a.m. to 5:30 p.m. Monday through Thursday to 5:00 a.m. to 10:00 p.m. Monday through Sunday certainly falls outside the definition of or intention of modifying.

The relevant portion of the stipulation states: "S & S shall employ reasonable efforts to minimize the impact of it's operations on the Nelson's use and enjoyment of their property. Shall is synonymous with will and may does not indicate mandatory action.

Number 10 of the stipulation states "S & S shall apply for a conditional use permit for the rock crusher." Number 11 states "S & S shall comply with all applicable federal, state and local laws and regulations." Our zoning ordinances require a conditional use permit for screening and other quarrying activities in addition to the conditional use permit for the crusher on lot 61. Screening and other activities now occurring are not covered by the stipulation and should cease immediately subject to the acquisition of a conditional use permit.

Please consider this a 15 day notice of violation per the stipulation for judgement.

Sincerely,

*Valorie L. Nelson*

Valorie L. Nelson

cc: T. Cole, Municipal Attorney

CONNOR & VALORIE NELSON  
4608 H.P.R.  
SITKA, AK 99835  
(907) 747-5030

May 4, 1994

S & S General Contractors  
Box 1440  
Sitka, AK 99835

Re: Stipulation for Judgement

Dear Mr. Sudnikovich:

This letter is being written pursuant to the above referenced stipulation. It appears that your hours of operation have been expanded to include the hours of 5 a.m. to 9:30 p.m. and that you now are choosing to work on Sundays, contrary to promises made by you and the above stipulation. It does not appear that you have any emergencies to deal with, therefore we are writing to request that you limit your hours of operation from 7 a.m. to 7 p.m., effective immediately, as promised during our discussions on January 20 and 21, 1994, and as called out in the stipulation for judgement and order filed January 24, 1994.

We would also like to call to your attention that it does not appear that you are utilizing the fog nozzle on your crusher as also stipulated.

Your prompt attention and response to these concerns are expected. If you have any questions we can be contacted at the above listed telephone number.

Sincerely,

*C.K. Nelson*  
*Valorie L. Nelson*  
Connor K. Nelson  
Valorie L. Nelson

cc: T. Cole, City of Sitka

*Hand Delivered 5 05 94*

11/28/95

I believe that the lies from Mr. Sudnikovich began a long time ago. However, in an attempt not to bore you with too much ancient history, lets begin with his letter of 3/9/92, wherein he requested to purchase 90,000 square feet of municipal property to "allow for proper elevation steps in the rear of the property" (Exhibit A). We all know now that this is not true as evidenced by Exhibit B (pages from a report issued by Mine Safety 2/7/95 which speaks for itself) as well as visual inspection of the sight and his most recent request to obtain more property to expand his operations).

Exhibit C is the conditional use permit issued for the crusher clearly calling for it to be moved by 8/30/95 - and Exhibit D is the stipulation stating the crusher shall be moved. Sudnikovich was aware of his obligations long before the 8/31 move deadline. Had he intended to follow the law, the prudent time to ask for a variance would have been prior to that time, not after the fact.

Sierra General Code clearly calls for termination of a conditional use permit if the terms are violated - Sudnikovich has violated many times over (ie: no fence; no settling ponds, extending working hours without notification to the public works director just to name a few).

Exhibits E through I are proof that not only has your applicant told you stories, but he has drawn on Mr's Paxton, Cole, Stalla & Smith to submit further falsifications.

In closing, I would like to state that I seriously question the wisdom and legality of issuing a new Conditional Use Permit that would be in violation of a court order that the city became party to

by Mr. Cole's signature on page 9 of the stipulation

How long are we going to reward this dork  
for breaking the law & telling lies??

Thank you for your time & hello out there Cousin Connie

No matters  
beyond  
Sud's control  
per the report  
his problems  
resulted from  
poor mining  
practices

March 9, 1992

City Administrator  
City of Sitka  
304 Lake St.  
Sitka, Ak. 99835

Attn: Mr. Stuart Denslow

We would like to purchase, from the City of Sitka, approximately 90,000 square feet of City owned property that was conveyed to the City from the State of Alaska. This property adjoins our lots #61 and #62 presently known as the Sudnikovich rock quarry in the 4600 block of H.P.R.

We would like to enlarge our rock quarry for future development and allow for proper elevation steps in the rear of the property.

Enclosed please find topographical drawings of the existing property, a copy of the State of Ak. survey and an aerial photo of the land in question.

As seen by the photos and topographical drawings, the land in question is extremely steep with a ravine on the town side of the property making it very unsuitable for any other development. Access would be very difficult due to the topographic conditions.

We would like to buy the property at fair market value, The sale of this land would also increase the property on the tax rolls for Sitka.

Sincerely,

*Roger and Judy Sudnikovich*

Roger and Judy Sudnikovich

Exhibit A



UNITED STATES DEPARTMENT OF LABOR  
MINE SAFETY AND HEALTH ADMINISTRATION

TECHNICAL SUPPORT

QUARRY HIGHWALL STABILITY INVESTIGATION  
SUDNIKOVICH QUARRY - (ID NO. 50-01462)

S&S General Contractors and Equipment Rental, Inc.  
City and Borough of Sitka, Alaska

February 7, 1995

By

Robert L. Ferriter  
Supervisory Mining Engineer

Issuing Office  
Ground Support Division  
Robert L. Ferriter, Chief

(3)  
DENVER SAFETY AND HEALTH TECHNOLOGY CENTER

Billy D. Owens, Chief

P.O. Box 25367, Denver Federal Center  
Denver, CO 80225

2-11-95

## SUMMARY

Poor mining practices and mining without regard for existing geologic features and rock mass characteristics have allowed the Sudnikovich Quarry to develop unsuitable highwalls with unstable areas which have failed and subsequently encroached into neighboring properties. The prudent application of accepted rock mechanics principles relating to quarry highwall stability would have alleviated most, if not all, of the existing situations now present in this quarry.

As discussed in this report, the operator should immediately develop a plan for mining the final quarry wall which includes safety catch benches left in place and pit walls laid back at a stable slope angle to insure long-term stability of the abandoned quarry highwalls.

## GENERAL INFORMATION

The Sudnikovich Quarry, located at 4800 Halibut Point Road, City and Borough of Sitka, Alaska, is approximately 5 miles north of the central business area of the city of Sitka, Alaska. The quarry is located entirely on USGS Sitka (A-5) Quadrangle and is described as Lot 61A and Lot 1A, City and Borough of Sitka.

### Persons Contacted:

Todd Baynes - Lead Miner at Quarry  
Jack Teague - Mechanic  
Larry Harmon - City Engineer, Sitka, Alaska  
Robert Casey - MSHA, M&NMS&H Inspector, Juneau, Alaska

## GEOLOGY

The geology of the Sudnikovich Quarry is typical of that found along Alaska's southeastern coast. A soil mantel of varying thickness (depending upon local topography) with dense vegetation covers Precambrian metamorphic rocks with post-metamorphic igneous dikes. These rocks are so highly jointed and fractured that predominant joint planes are hard to discern. As evidenced by the large failure area (September 1994) in the northeast corner of the quarry, these joints may become open and later fill with water and soil or clay-like material. Quarry walls with fractures dipping at an adverse angle may, therefore, suddenly become extremely unstable as buttressing material is being removed from the toe area during load-out operations.

In addition, as depicted in the photographic sequence, igneous dikes have randomly intruded into this fractured rock mass. These intrusions have also contributed to localized fracturing of the quarry walls where the dikes have been exposed.

No major faults are known to exist in the vicinity of the quarry; however, as evidenced by the highly jointed rock fabric, local faulting probably exists.

### DISCUSSION

The Sudnikovich Quarry illustrates numerous examples of poor quarry planning and poor mining practices. Major examples are:

a. The entire north wall of the quarry is without any safety catch benches or other falling rock protection for men and equipment working in the quarry. With quarry walls approaching 100 feet in height, highwalls comprised of a highly jointed and fractured rock mass, and no apparent means for scaling loose material from the highwall, the north highwall presents a very real hazard to workers on the quarry floor. Also, trees and other vegetation are growing along the crest of the wall and in some cases had already fallen over the edge and were dangling into the pit.

The highly jointed and fractured rock mass in which the quarry is located must be considered "of questionable stability" as evidenced by the September 1994 slide of the northeast corner of the quarry (a rock mass moving along a clay-filled fracture); and the "cave-like" overhang created as a lower block of rock moved away from under an upper block as mining operations excavated and undercut the rock mass at a lower elevation (see photos).

b. The north wall of the quarry was mined to the land owners limits. Without prior planning, this practice prohibits access to the top of the highwall for removal of brush, trees, etc. or for scaling of the highwall, if necessary. Mining to the ownership limits also precludes push-back mining and establishing a new series of benches (necessary for highwall stability) in the event future mining requires deepening of the pit.

c. There is an absence of a berm along the edge of the catch bench immediately below the "slide" area in the northwest corner of the pit.

d. Stockpiles placed "tight" against the quarry walls presently limit personal exposure to rock fall hazards from the unbenced highwalls; however, removal of these stockpiles will require equipment to work "close-in" to the quarry walls putting workers at increased risk to falling rock hazards.

Although it was reported that these stockpiles have existed for many years, it can be assumed that the operator will at some future time desire to sell this product. Without safety catch

benches on the highwalls, a considerable portion of the stockpiled material will be irretrievably "lost" because of the hazardous working location at the foot of the unbenched highwall.

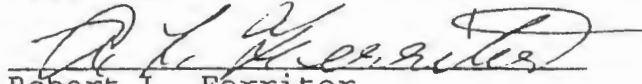
#### RECOMMENDATIONS

1. Shoot off the upper North wall at the northeast corner of the quarry down to the old fracture failure surface. This fracture appears to have been truncated on its west end by vertical jointing exhibited in the quarry wall. However, the east end of this fracture surface may continue under the unmined rock to the east. Considerable caution regarding pit wall stability must be exercised in this area.
2. Access to the unmined rock can most easily be gained along the south side and up to the ridgeline running northeasterly along the east side of the quarry. Mining and benching from the ridgeline down the back side of the ridge appears to be the safest approach to the future mining of this area.
3. The quarry operator should immediately develop a long-term mining and quarry abandonment plan. Visual observations of existing quarry walls indicate that bench heights not exceeding 40 feet in height and not less than 20 feet in width would greatly increase the long-term stability of the quarry walls. A reference publication prepared by the Highway Research Board is appended to this report to facilitate bench development. Geologic structural features (faults, slip planes) encountered during bench development must be considered and accommodated in the mining plan.
4. Additional land acquisition will be required to develop safety catch benches to ensure long-term pit wall stability. Assuming two 20-ft-wide benches and a 1/4 to one backslope, approximately 70 feet plus 10 feet (crest stripping width), for a total of 80 additional feet of ownership will be required.
5. Vegetation, trees, etc., should be removed and debris cleaned back from the existing crests of the quarry walls.
6. A heavy rake or anchor chain attached to a dozer winch should be used to periodically "scale down" and clean weathered, loose material from quarry walls.
7. Stockpiles should be kept away (no closer than 25 feet) from quarry highwalls to prevent rock sloughage from damaging equipment working the stockpiles.

## Attachments

APPROVED:

March 31, 1995



Robert L. Ferriter  
Chief, Ground Support Division



# COVE MARINA

4701 HALIBUT PT RD SITKA AK. 99835

SUPPLEMENT ITEM E

FILED-95

2:30 P.M.

CD

Memo

Jan. 5 1995

To: Board of Adjustment  
City and Borough of Sitka  
From: Bob Perlatti & Dennis Hill  
Cove Marina  
Ref: Conditional use permit for Roger Sudnikovich

To all concerned parties;

We have some very serious concerns about Mr. Sudnikovich's expansion of his rock quarry operation on Halibut Pt. Rd.

Although we did not object to his initial request last year to expand into the hillside, several events this past year have forced us to reverse our position.

First: There is absolutely no provision to stop the siltation of the Cove and the destruction of the Eel grass that grows along the shoreline. The boats moored at the Marina all have a fine gray line of silt every morning during his crushing process (see enclosed photos). This past May a guest of ours who works for Chevron U.S.A and Olympus environmental was appalled at the lack of silting ponds and informed us that "violations like that, in other parts of the country would be levied a \$10,000 fine by the E.P.A. on the spot". This siltation could eventually fill in the Cove to such an extent that it will have to be dredged out because the ebb and flow tides do not completely flush the Cove each cycle.

Second: Last spring a dynamite blast sent 10 pound rocks flying through the air, luckily no one was hurt or killed. However one rock went through the cab of a car parked in front of the house and others landed in the parking lot and rolled up against the house. It is customary in most other areas to use blasting nets to contain the blast and prevent such a hazard.

It is our position that until proper settling ponds are installed and samples of the current tideland mud and shore grass are taken and analyzed by a non bias group like Fish and Game, or the E.P.A the Board should not allow any further development at the Rock Quarry.

If you have any further questions or need any further comments or documentation don't hesitate to call.

Sincerely,

Bob Perlatti  Dennis Hill 



## R Ch. I (7-1-93 Edition)

After the closure is temporary.

by the Office of Management  
get under control number 1219-

## Subpart B—Ground Control

AUTHORITY: 30 U.S.C. 811

SOURCE: 51 FR 36197, Oct. 8, 1986, unless otherwise noted.

## § 56.3000 Definitions.

The following definitions apply in this subpart.

**Rock fixture.** Any tensioned or non-tensioned device or material inserted into the ground to strengthen or support the ground.

**Travelway.** A passage, walk, or way regularly used or designated for persons to go from one place to another.

## MINING METHODS

## § 56.3130 Wall, bank, and slope stability.

Mining methods shall be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned tasks. When benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes.

## § 56.3131 Pit or quarry wall perimeter.

In places where persons work or travel in performing their assigned tasks, loose or unconsolidated material shall be sloped to the angle of repose or stripped back for at least 10 feet from the top of the pit or quarry wall. Other conditions at or near the perimeter of the pit or quarry wall which create a fall-of-material hazard to persons shall be corrected.

## SCALING AND SUPPORT

## § 56.3200 Correction of hazardous conditions.

Ground conditions that create a hazard to persons shall be taken down or supported before other work or travel is permitted in the affected area. Until corrective work is completed, the area shall be posted with a

## Mine Safety and Health Admin. Labor

warning against entry and, when left unattended, a barrier shall be installed to impede unauthorized entry

## § 56.3201 Location for performing scaling.

Scaling shall be performed from a location which will not expose persons to injury from falling material, or other protection from falling material shall be provided.

## § 56.3202 Scaling tools.

Where manual scaling is performed, a scaling bar shall be provided. This bar shall be of a length and design that will allow the removal of loose material without exposing the person performing this work to injury.

## § 56.3203 Rock fixtures.

(a) When rock bolts and accessories addressed in ASTM F432-83, "Standard Specification for Roof and Rock Bolts and Accessories", are used for ground support the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432-83; and,

(2) Make this certification available to an authorized representative of the Secretary.

(b) Fixtures and accessories not addressed in ASTM F432-83 may be used for ground support provided they—

(1) Have been successful in supporting the ground in an area with similar strata, opening dimensions and ground stresses in any mine; or

(2) Have been tested and shown to be effective in supporting ground in an area of the affected mine which has similar strata, opening dimensions, and ground stresses as the area where the fixtures are expected to be used. During the test process, access to the test area shall be limited to persons necessary to conduct the test.

(c) Bearing plates shall be used with fixtures when necessary for effective ground support.

(d) The diameter of finishing bits shall be within a tolerance of plus or minus 0.030 inch of the manufacturer's recommended hole diameter for the anchor used. When separate finishing bits are used, they shall be distinguishable from other bits.

§ 56.3400

(e) Damaged or deteriorated cartridges of grouting material shall not be used.

(f) When rock bolts tensioned by torquing are used as a means of ground support.

(1) Selected tension level shall be—

(i) At least 50 percent of either the yield point of the bolt or anchorage capacity of the rock, whichever is less; and

(ii) No greater than the yield point of the bolt or anchorage capacity of the rock.

(2) The torque of the first bolt, every tenth bolt, and the last bolt installed in each work area during the shift shall be accurately determined immediately after installation. If the torque of any fixture tested does not fall within the installation torque range, corrective action shall be taken.

(g) When grouted fixtures can be tested by applying torque, the first fixture installed in each work place shall be tested to withstand 150 foot-pounds of torque. Should it rotate in the hole, a second fixture shall be tested in the same manner. If the second fixture also turns, corrective action shall be taken.

(h) When other tensioned and non-tensioned fixtures are used, test methods shall be established to verify their effectiveness.

(i) The mine operator shall certify that tests were conducted and make the certification available to an authorized representative of the Secretary.

[51 FR 36197, Oct. 8, 1986, as amended at 51 FR 36804, Oct. 16, 1986]

## PRECAUTIONS

## § 56.3400 Secondary breakage.

Prior to secondary breakage operations, material to be broken, other than hanging material, shall be positioned or blocked to prevent movement which would endanger persons in the work area. Secondary breakage shall be performed from a location which would not expose persons to danger.

Attn: Larry Harmon





# City and Borough of Sitka

## PUBLIC SERVICES

100 Lincoln Street • Sitka, Alaska 99835

Phone (907) 747-1804

Fax (907) 747-3158

November 15, 1994

### MEMORANDUM

TO: Gary Paxton, Administrator

FROM: Larry Harmon, Director of Public Works

SUBJECT: S & S PIT

As a follow-up to the recent discussion with the Assembly about S&S General Contractors request to purchase additional property at their Halibut Point Road pit site, we offer the following information and recommended steps for considering this request.

#### Safety Concerns

As shown in the enclosed drawing, there have been slides along the property boundary between S&S and the City. The slides have occurred in the northeast portion of the pit and have encroached approximately 0-20 feet onto City property. There is a significant section of rock in the very northeast corner that appears very unstable and further sliding is likely to occur. Quarrying work encountered a fault line running at about a 60° angle to horizontal. The slide has occurred along this fault line.

The elevations along the property line are about 200-230 feet above the pit floor. S&S has strung a line with flagging and warning signs above this high face to prevent someone from approaching this unsafe area. This is a short term solution. A more permanent solution is to construct a fence, which will require reconstructing the access lost by the slide to the top of the pit on City property.

Enclosed are Federal Regulations regarding the pit wall stability we have obtained from the Federal Mine Safety Inspector in Juneau and the development plan proposed by S&S General Contractors when their conditional use permit was approved for lot 1A. Contrary to some discussions, there is no federal standard for height of benches. The wall of a quarry can be any height if there is no danger to stability or from falling objects. If benches are constructed, height and width is based on equipment required for scaling walls and cleaning benches. If high faces prove unstable and present a falling debris hazard, the regulating mine safety inspector will close the unsafe area to any activity. In our opinion, the slide area and all of the portion of the pit bordering City property needs to be benched to assure long term stability and safety. Benching will require additional quarry work on City property.

Recommended Steps

To assist the Assembly in making a decision on further quarry activity on City property, we believe that S&S should work with the Planning Commission to prepare a final development plan for the pit. The plan to show the following:

- Final quarry contours with dimensions and elevations of benches, drainage, control features and erosion control details.
- Sequencing plans for rock removal.
- Contingency plans if additional faults or unstable conditions are encountered.

The Planning Commission to evaluate this plan both from the perspective of safety and mitigating long term development impacts on adjacent City property.

The Federal Mine Safety Office has agreed to assist us and will review and approve the plan from a safety standpoint. They may also be able to provide technical assistance to both the City and S&S. The Juneau inspector is currently trying to arrange a visit by one of their Geological Engineers to provide recommendations.

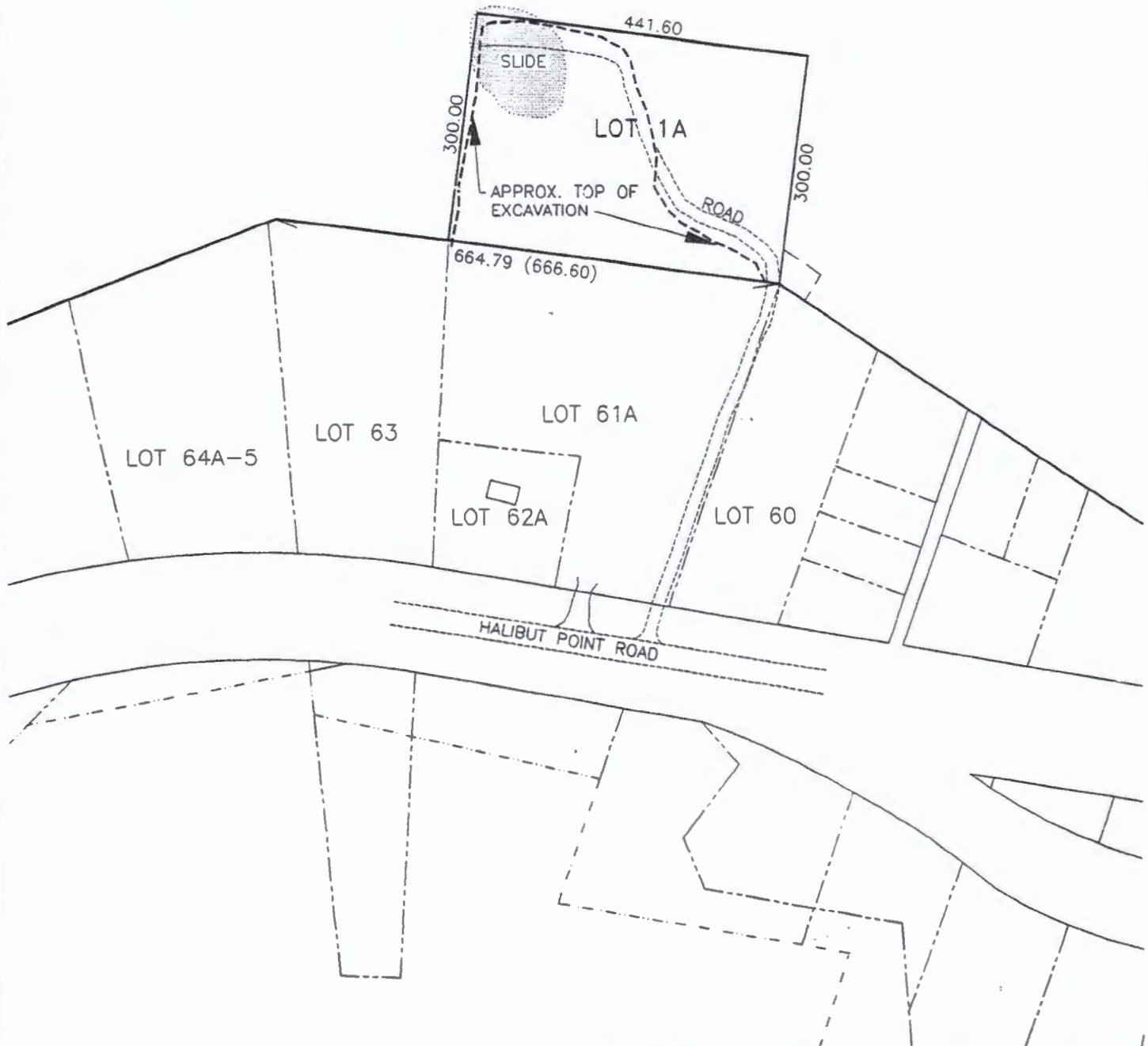
We also recommend that any sale or lease of property to accomplish this plan be:

- Contingent on proper execution of quarry work.
- Be secured by a \$50,000 performance bond renewable every three years if quarrying operations are satisfactory.
- Require 1 million dollars of liability insurance, with the City and Borough of Sitka as an additional insured during the life of the quarry work.

If you and the Assembly agree that this frame work adequately protects the City and public interest, we recommend that the request be forwarded to the Planning Commission for evaluation and recommendations.

LH:tjo





# City and Borough of Sitka

PUBLIC SERVICES

100 LINCOLN STREET • SITKA, ALASKA 99835

TEL (907) 747-3294

FAX (907) 747-3158

DRAWN:	PJW	SCALE:	1" = 200'
CHECKED:		DATE:	11/15/94
DRAWING NAME:			
SHEET NO.			

FEBUARY 4, 1994

Dear Wells;

I will not be attending the public hearing on February 8, but would like to ask if this could be taken into consideration.

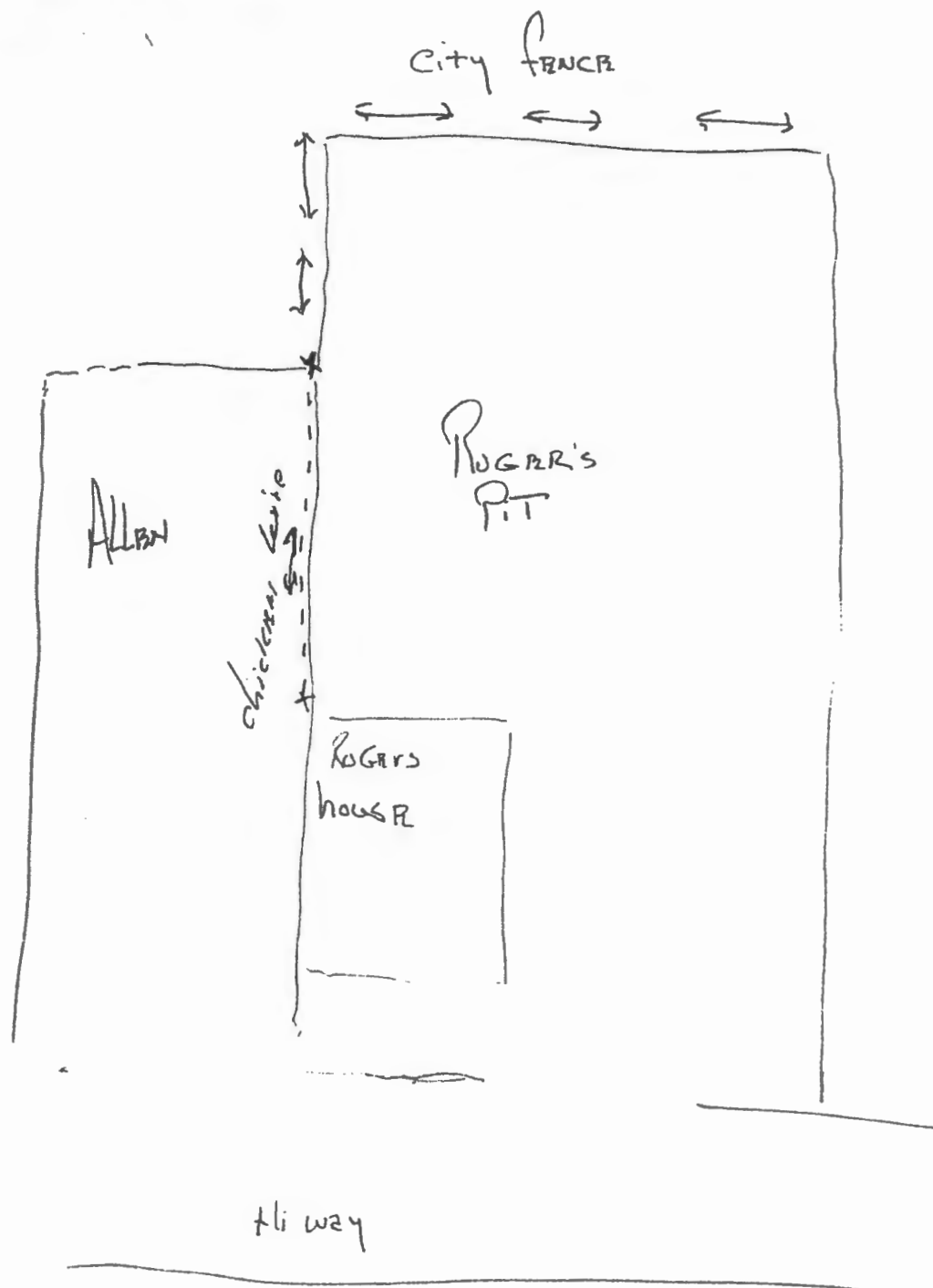
While we have no objection to Roger going ahead with his rock pit, I would like to raise the possibility of him running the protective fence down the property line between his property and ours. At the last meeting, only the fence around the back was discussed, so as to limit the city's liability I suppose.

I do not propose an eight foot fence with razor wire and such as that, as some of the assemble suggested, but would be interested in something like chicken wire. As it would be extremely difficult to bore holes and set posts in concrete, I would suggest that he just hook it to the trees and only take it down about even with his house. That would catch the major area of high bank. If need be, he can hook it onto trees on our property if there is not any left on his.

This might help to hold down our libility <sup>of</sup> if someone decides to cross the property at the upper end. I don't think it is real likely though.

Thank you;

Jack S. Allen





December 16, 1993

Dear Mr. Paxton:

This letter is being written in regard to what has been a blatant miscarriage of justice and I am requesting that you, the mayor and the assembly review this packet that I have put together and take action to rezone Lots 61A & 62A to their correct zoning of C-2. We purchased our property and made considerable expenditures in developing it in reliance of our zoning codes and we are tired of being treated like second class citizens and want to be made whole.

As you may recall, Lots 61A and 62A of USS 3475, also known as the S & S Subdivision were recently rezoned from C-2 to I on the strength of an affidavit from Mr. Mike Schmidt and testimony from Roger Sudnikovich. Both of these people supplied information that would lead the listeners to believe that the property was re-zoned in 1986 from I to C-2 by oversights, mistakes, etc.

Ordinances 92-1083 and 92-1099, both sponsored by the administrator were passed to correct the said oversight. Under Item 3, Purpose they state "The purpose of this ordinance is to correct an oversight that occurred during the adoption of the revision of the official zoning map in 1986. (Exhibit A)

Subsequently, I presented the assembly with information that would lend credence to the question as to whether there ever was an oversight. The assembly chose not to act on this information, and as the assembly was quick to correct this mistake or oversight that never really occurred, I was surprised that they showed so little concern that the so called "correction" in itself wasn't a proper action.

It is my belief that the assembly was mislead into believing that this property should be re-zoned to I. My beliefs are based on the following:

The "affidavit" (Exhibit B) of Mr. Schmidt is merely a letter of his "remembrances" of a portion of his tenure as planner for the City & Borough of Sitka. A true affidavit is normally dated and notarized. In essence, all that the assembly had was a personal letter from a private citizen reflecting his remembrances, offering judgements, etc. This should never have been used as a basis for rezoning Lot 61A & 62A without verifying the information by use of the planning records on file.

Had the planning records been consulted they would have revealed some of the following:

Exhibit C. Public notices of May 2, 1986 and May 14, 1986 along with the mailing list.

Exhibit D. Minutes of Planning & Zoning special meeting of May 13, 1969 and meeting of May 14, 1969 - these minutes clearly show Lot 61 & 62 USS 3475 as being rezoned from R-1 to C-2. Although the question of this property being zoned I after the 69 zoning would be moot, there is no indication that the property was ever I or Industrial.

Exhibit E. The minutes of the April 2, 1969 Planning & Zoning show that Mr. Whitcomb was involved in the rezoning



process in 1987. Mr. Schmidt in the last paragraph of page 1 of his letter states "the area was, at that time, and since continued to have a land use as a quarry or natural resource extraction area which definitely does not conform to the C-2 allowed uses but instead to the I - Industrial category."

Exhibit F. This is taken from the 1972 Zoning ordinance governing land usage in C-2 and to my knowledge the 1972 ordinance was replaced with the 1986 ordinance. Neither quarrying or natural resource extraction was allowed in the C-2 district.

The zoning ordinances clearly show quarrying and natural resource extraction were never a permitted usage in C-2. Is it Mr. Schmidt's rationale that because the operation on 61 and 62 did not conform to C-2 usages and more closely conformed to I use that the land must have been Industrial? Why didn't Mr. Schmidt use the argument that being that the Galli's built a house in the early 80's it must not have been Industrial as private residences were not allowed as a permitted principal use?

There was much testimony from Mr. Sudnikovich before Planning & Zoning and the Assembly as to how he was wrongfully rezoned, never received notification in '86, he just learned he had been re-zoned, etc. All these statements can be found to be unsubstantiated.

On May 12, 1992, the date Ordinance 92-1063 was passed, he gave the following testimony to the assembly in support of "correcting the zoning oversight." "The only thing I'd really like to say is I don't know where Mr. Nelson is coming from, but I think we can all guess. In 1965 Alaska State or Alaska State Housing zoned 2 lots industrial out there. One lot was owned by Mr. Whitcomb, the other was owned by Mr. Anderson. They were zoned at that time for a quarry. Mr. Whitcomb started to develop it and then sold it to us as a quarry. We bought the first piece of property in August of 1978, we bought the second piece from Mr. Galli in March of 83 and we also bought where the house is now in September of 85 still zoned industrial. I don't think there's any question about it, it's industrial land, it's been industrial land since the zoning started. I don't see what the big problem is." These are Roger's exact words as transcribed from a video of that assembly meeting. It is my belief that part of the assembly took these statements to be factual and used them as a basis for the decision to rezone 61A & 62A from C-2 to Industrial.

His first statement is that 2 lots were zoned industrial out there by the Alaska State Housing in 1965 at that time for a quarry. Exhibit D. shows that the lots in question were re-zoned from R-1 to C-2 in 1969. Never could I find any evidence that these lots were industrial. In a recent deposition (December 6, 1993), under oath, Mr. Sudnikovich was asked what he based his knowledge of this "65" zoning on, and he could give no definitive answer. He also goes on to state "Mr. Whitcomb started to develop it" (I'm assuming he's referring to the rock quarry) "and then sold it to us as a quarry." (It should also be noted that



at the same deposition that he admitted to being the first one to drill and blast on the property.) Exhibit F has statements from Mr. Whitcomb which indicate that he was fully aware that the property was zoned R-1 prior to the rezone to C-2 in "69". Now, at any time during the rezoning process of 1969 that I have been able to find did Mr. Whitcomb give any indication he had this property zoned industrial in 63 for a rock quarry or that he was upset that his property was being rezoned to C-2. In fact, at a May 1969 assembly meeting (page 2, exhibit E), Mr. Whitcomb spoke in favor of zoning his and other lots in the area from R-1 to C-2. Under the zoning ordinances for C-2 as shown in exhibit F by what authority could Mr. Whitcomb sell Lot 61 as a rock quarry, and under what criteria did Roger purchase it under. Again, in the recent deposition of his he stated he was the first one to remove rock from Lot 61 and that wasn't until 1977 or 1978.

Exhibits G & H are subdivision requests made by Mr. Sudnikovich in 1978 and 1982. In both cases, the property is listed as C-2. Mr. Sudnikovich is listed as the applicant and he is also on the property owners to be notified list. On page 1 of exhibit G under comments, it states "To combine the back portion of Lot 62 with Lot 62 with intentions to resubdivide sometime in the future." If as he has stated about the Industrial Zoning is true (that this was rezoned to I specifically for a quarry), then why didn't he inform Planning and Zoning and the Assembly of his intentions to do so at that time. Could it have been that had he really stated his true intentions that someone may have noticed that the property was not zoned correctly?

Exhibit I is the grading permit that is referred to by Mr. Dick Smith at the 8/22/78 assembly meeting. Mr. Smith was questioned by then Mayor Grussendorf as to what Mr. Sudnikovich was doing on the property responded "He is presently doing some grading work out there under a granted cut and fill permit." By his signature on this application, he agreed to comply with "all applicable state laws and codes and ordinances of the City and Borough of Sitka." Obviously, he didn't abide by the zoning codes because he moved in a crusher and for the past 15 years has been operating a rock quarry contrary to SGC Title 22.

Also enclosed is a copy of a color coded map obtained from a copy of the 1976 Comprehensive Plan which clearly shows no industrial land across from the Cove Area as well as a memo from the City of Sitka to Alaska Dept. of Transportation & Public Facilities dated 4/22/87 stating that the 76 plan was the most recent comprehensive plan available at the time. In fact when I requested a copy of the comprehensive plan in 1992, the 76 plan is what was handed to me. Some municipal officials, as well as Mr. Sudnikovich have tried to lead us to believe that the rock quarry he is currently operating is mentioned. However, aerial photographs as well as Mr. Sudnikovich's statements show that nothing occurred on this property until after the comprehensive plan was written. To the best of my recollection in the early 1970's rock was being extracted from an area quite a ways off the road in the vicinity of No-Name-Creek, and that was mainly river



run material. I recall no blasting or drilling.

I would also like to call to your attention, that at no time did my husband or myself ever complain about Mr. Sadnikovich's operations while we thought he was a legal operation. We moved onto our property in late 1991, when his operations were winding down and we believed that we could finally start utilizing our property for the uses it is zoned for. Our problems didn't materialize until somebody arbitrarily decided that he could expand on illegal non-conforming use to the detriment of my home and property.

In closing I would like to thank you in advance for reviewing this information and I will see you at the next assembly meeting. In the meantime if you have any questions, I can be contacted at 747-5020.

Sincerely

Valerie L. Nelson



# STATE OF ALASKA

## DEPT. OF ENVIRONMENTAL CONSERVATION

901 Halibut Point Highway, #C Sitka, AK 99835

✓✓ALTER J. HICKEL, GOVERNOR

747-8614

October 27, 1992

Mr. Gary Paxton, Administrator  
City of Sitka  
304 Lake St.  
Sitka, Ak 99835

RE: Subdivision above S&S Gravel Pit

Dear Mr. Paxton:


For many years our office has experienced complaints about and documented water quality degradation resulting from the S&S gravel extraction and processing operations in the 4500 - 4600 Halibut Point Rd. vicinity.

Mr. Sudnikovich, of S&S, has undertaken some measures, with limited effectiveness, and requested our patience during his attempts to remedy the situation through runoff controls above the pit. To effectively control the runoff and stream flows, Mr. Sudnikovich needed title to or permission for use of the upper properties. Those possibilities now appear imminent.

We request your recommendation that the Sitka Assembly or Planning Commission assign specific subdivision plat stipulations, providing for controls to protect water quality and proper treatment of runoff from industrial operations at the gravel extraction site.

Your favorable attention to this matter will be greatly appreciated.

Sincerely,

  
James R. Clare, Jr. P.E.

cc: Roger Sudnikovich, S&S  
Bill Hughes, USFWS  
Dave Hardy, ADF&G  
Wells Williams, City Planner

*plan to put in  
setting ponds  
like Granite Creek*



# City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

April 29, 1992

**TO:** Wells Williams, Planning Director  
**FROM:** Richard Smith, Director of Public Works  
**SUBJECT:** S&S SUBDIVISION REZONE  
4600 HALIBUT POINT ROAD

Attached is a copy of the Assessor's memo to the Assembly which probably should be provided to the Planning & Zoning Commissioners. Your meeting packet memo "policy issues" statement is right-on, however, the decision to not study the options of future development in the name of haste and expediency for the applicant is a dereliction of our duty to inform the Assembly, the Planning Commission, and the public of all the potential benefits or drawbacks to such a land disposal.

- 2.) Sitka General Code 22.04.020 Purpose. "...is to regulate the use of land...by districts in accordance with the Comprehensive Plan,... . These zoning regulations are designed to provide for orderly development, ...."
- 3.) Under the reporting requirement, the Planning Commission is required to report on:
  - A. The need and justification for the zoning revision, and
  - B. The effects of such revision on the Comprehensive Plan.

This is a shall do, not a may do.

As it relates to this commentary, both the Assessor and I agree that the land is accessible and is suitable for R-1 use. In fact, his comments are glowing regarding the magnificent potential residential vista provided at the proposed sale site. Inasmuch as the Municipality does not have the monetary nor spare-labor resources to properly 'study' the proposed project in the fast-track expectation of the applicant, the applicant should probably be asked to bear the costs of outside help.

RS:elb

c: Stuart Denslow, Administrator  
T.Cole, Attorney  
Rick Anderson, Assessor

Exhibit 2



