



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

AGENDA ITEM:

Case No: CUP 18-10
Proposal: Conditional Use Permit – Natural Resource Extraction and Mining Support Facilities
Applicant: Roger Sudnikovich
Owner: Roger/John/Judith Sudnikovich
Location: 4660 and 4670 Halibut Point Road (4702 HPR shown on applicant's material)
Legal: Lot 1A USS 3670 Subdivision and Lots 61A and 62A S&S Subdivision (Lot 63 USS 3475)
Zone: I Industrial – But 4702 HPR is C-2 General Commercial/Mobile Home
Parcel ID: 25905000, 25900000, 26004001, 25910000
Existing Use: Residential, Undeveloped, Quarry
Adjacent Use: Commercial, Industrial, Public, Residential
Utilities: Unknown
Access: Halibut Point Road

KEY POINTS AND CONCERNS:

- **Application has different lots, which create confusion as to the scope of the location of the proposed use**
- **Application appears to identify a parcel that is not currently zoned to allow the proposed use**
- **Fencing is not current and a potential violation of prior conditional use permit**
- **Proposed hours of operation are not inline with past conditional use permit and also the past court order (this can be looked at with fresh perspective)**
- **Landslide and rock instability are concerns and should require geotech analysis and proposal for mitigation and operations**
- **Reclamation plan and storm water management should be included**
- **More detail is needed**
- **Applicant should propose mitigation to identified impacts as well as any other issues that are reasonably related but have yet to be identified. Due to lack of detail staff cannot identify all potential impacts and do a proper analysis**
- **Notice did not include 4702 as it isn't eligible for a conditional use permit**

- **Lot 63 appears to be the legal lot description, not lot 63A and 63B**
- **Sunset of past CUPs, though applicable conditions still run with land (e.g. fencing, etc)**
- **Legal Department has opined that the past court order also is not applicable to a new CUP**
- **At this time, staff can either recommend denial or postponement**

RECOMMENDATION:

Staff recommends that the Planning Commission postpone the request for a “Natural Resource Extraction and Mining Support Facilities” conditional use permit and direct the applicant to provide past conditions of approval, past court orders, amend application to incorporate past conditions of approval, incorporate relevant and applicable court orders, and to better describe the locus and scope of the proposal as well as address impacts and suggested conditions. This should include, but is not limited to engineering to address soil and rock stability, landslide risk, quarry development plan, stormwater run-off, applicable past conditions of approval, and mitigating conditions. Further, the proposal shall meet all federal, state, and local laws (Please see staff report for types of information that should be included).

MAY 18, 2018 UPDATE

Staff have not received additional information from the applicant as requested at the May 10th hearing. Valorie Nelson and Richard Guhl submitted additional supplemental materials, which can be found in the attachments. A site visit is scheduled for noon on Tuesday, May 22nd.

BACKGROUND:

The project area and vicinity have been subject to past conditional use permits to allow for a ‘quarry’ and a ‘rock crusher.’ Please note that our code now identifies the use as “Natural Resource Extraction and Mining Support Facilities” and that includes quarrying operations and rock crushing and other integral operations. In addition, the burden is upon the applicant to present the proposal and evidence to support their request, to address any impacts, and to propose mitigating conditions if necessary, directly proportional, and with a nexus to the proposed conditional use. It is also important to note that prior conditions of approval run with the land, even though the active use of the quarry has expired and sunset (i.e. has been abandoned). Also very critical is that parcel 2-5910-000, which is addressed as 4702 is zoned C-2 and the proposed conditional use is not an option under our current Title 22 land use tables¹. Further, it is apparent that rock quarrying and/or natural resource extraction has occurred on this parcel and may be a violation of existing zoning and past conditions of approval. The past conditional use permits were also subject to a court orders and

¹ See Table 22.16.015-5

stipulations (see attached); though that does not mean the court order still applies to a new conditional use permit request. Finally, the record is not clear on past conditions and filed documentation that staff have reviewed (for example the 1994 file contained only documents from 1997).

Sitka needs rock to promote development. This is known and undeniable. However, Sitka also needs to protect the best interests of the community and prevent negative impacts to the public's health, safety, and welfare (this includes safe quarries and compatible land use and appropriate operations and conditions of approval; and also includes promoting affordable development and rock sources).

PROJECT DESCRIPTION

Per the Applicant's application, the request is for a conditional use permit for a Natural Resource Extraction and Mining Support (Rock Crusher, Loaders, and Load scales, and excavators and conveyors) at Lot 61A-1, Tax ID No. 2-6004-001 Tract M-176, US Survey 3670 1 A Plat 92-22 (provided address 4670 HPR).

In addition the applicant provided the following information, which is also attached in its entirety, but to sum includes and is described as follows:

1. Grading Permit 17174G:
 - a. Lot 63B HPR (4702 HPR) (Excavate 10,000cy of burden and rock from lot 63B in order to access lot 63A. (Lot 63 appears to not be legally described as 63 A & B, please clarify)
 - b. Building Plan and Review for 4670 HPR Lot 62 A-1
 - c. Building Permit (signed by Building Official 9/18/17) for demolition of 4670 HPR Lot 62 A-1 (signed by Troy Bayne 7/28/17). Including Site plan, payment, and inspection record
 - d. A site plan showing excavation area and setback of minimum 10 feet for Lot 63B and 63A, as well as driveway widths across lot 63B and Lot 62A-1.
 - e. AN aerial photo numbered 1-4 showing address parcels 4660, 4702, 4670, and 4660, and adjacent properties, with rock removal across 4702 and 4660.
 - f. Plat 83-18
 - g. Statutory warranty deed (book 60- page 60)

- h. Statutory warranty deed (book 71- page 120)
- i. Side elevation for grading permit dated received September 22, 2017 and approved September 27, 2017
- j. April 23, 2018 letter from Troy Baynes indicating 5 bullet points of proposed rock screening as the S& S Rock Quarry
- k. A signed conditional use application 4/23/18
- l. March 30, 2018 Letter from SECON scope of work letter to Mr. Bayne.
- m. US Survey 3475
- n. Quit Claim Deed (Book 99, page 426).
- o. Statutory Warranty Deed (Book number is illegible, and page number is 488)

ANALYSIS

1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.²

a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses: Applicant's information indicates at least 10,000 CY yards of rock and burden. This would create traffic impacts, but it is unclear to what extent. More information is needed. Brake noise was an identified impact in the past (see court order).

b. Amount of noise to be generated and its impacts on surrounding land use: Unclear to what extent, but noise from blasting, trucks, and machinery would be impacting the area. No decibel levels or mitigating conditions have been presented outside of hours of operation.

c. Odors to be generated by the use and their impacts: Blasting can create odor and particulate matter in the air which can be impactful. No mitigation conditions past hours of operation have been submitted

d. Hours of operation: The proposal indicated Monday through Saturday 7-5pm, which are different than the prior court order and prior conditional use permit conditions. This may be a problem; though there is discretion here. However, staff would recommend a time that does not impact adjacent uses.

² § 22.24.010.E

e. Location along a major or collector street: Access from Halibut Point Road. State DOT has jurisdiction. Traffic control should be a required condition.

f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario: Hikers could fall into the pit due to lack of fencing, which was a past condition of approval. And would be a highly recommended condition of approval.

g. Effects on vehicular and pedestrian safety: Blasting is an abnormally dangerous activity and has been known to impact surrounding areas. Further, large dump trucks carrying rocks could impact vehicle and pedestrian safety. Safety and stops along HPR would be required through state and perhaps locality. In addition, lack of fencing along ridge is required and was not proposed.

h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site: For most purposes, response would not be impacted. However, should the emergency involve explosives or rock instability or landslide, there could be impacts to emergency personnel or delay in their ability to respond to emergent circumstances at the proposed use and also down the road.

i. Logic of the internal traffic layout: None provided.

j. Effects of signage on nearby uses: No proposed signage.

k. Presence of existing or proposed buffers on the site or immediately adjacent the site: Grading plan showed a minimum setback of 10 feet. However, 10 feet is not an adequate buffer for rock stability or for blasting. Further, benching would need to occur and is difficult or impossible to do, due to existing conditions of the parcel including non-benching of existing open pit.

l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan: The proposal does not comply with the following goals and objectives of the existing comp plan. While the draft Comp Plan also recognizes a need for rock, it similarly identifies the need to promote compatible land use to prevent impacts to public health safety and welfare. The following is the current Comprehensive Plan section that most applies.

2.6.2. To encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas, and to: A. Encourage sensitive master planning for commercial and industrial developments. Page 21 of 100 B. Ensure that commercial and industrial uses occur in areas where adequate transportation and services are available or can eventually be developed. C. Encourage clean industry, which minimizes pollution and adverse impacts on surrounding land uses, including the disposal of fish waste by commercial seafood processors. D. Minimize conflicts between new commercial and/or industrial development with surrounding land uses. E. Amend the zoning regulations, as appropriate, to require that any new or

reconstructed commercial or industrial facilities will provide screening of the outdoor storage area from roadways, walkways, and adjacent residential properties. F. G. Revise land use regulations to better differentiate between commercial and industrial uses. H. Explore creating sub-zones within commercial and industrial zones to provide buffer areas between conflicting land uses. I. Consider amending the zoning ordinance to clarify that manufacturing and fabrication, other than for personal use, of hazardous/toxic materials, and any manufacturing or fabrication facility which causes excessive noise, light, and/or significant increases in traffic to and from the site shall be considered industrial uses; to clarify which manufacturing and fabrication uses are allowed in Commercial zones. J. K. Encourage the development of facilities to accommodate visitors, such as bed and breakfasts, hotels, restaurants, and recreation areas, however, short term rentals and bed and breakfasts proposed to be located in residential areas should be designed and developed such that noise, traffic, lighting, and visual impacts from the facilities are no more significant than impacts from ordinary residential uses in neighborhoods where they will be located. L. Encourage the construction of for-profit animal boarding facilities in general commercial areas. (Emphasis Added).

m. Other criteria that surface through public comments or planning commission review: staff have included public comment and material that shed light on the potential adverse impacts to surroundings land uses, the environmental, aesthetics, and tourism – all of which would be negative impacts to the public’s health, safety, and welfare (see attached and information below).

- **The following information is staff summary of important past conditions and communications. This is not all of the information, but just a small, but important portion. In addition, staff have attached extensive information to the packet from the City’s files and from recent comments received (and this does not even include all the information available).**

5Jan95 Memo from T. Cole and W. Williams to Mayor and Assembly

It is recognized that Lot 1A of USS 3670 Subdivision and Lot 61A and Lot 62A of S&S Subdivision are zoned industrial. The developed property in the immediate vicinity is zoned C-2 General Commercial and Mobile Home and I Industrial.

We recommend the following conditions for the above referenced permit. The conditions shall only allow for rock crusher activities. Hours of operation shall be defined as applying only to the time that rock is physically processed by the equipment. Warm up operations, the movement of rock, and loading of equipment is specifically allowed at times other than those stated.

Conditions:

1. Hours of operation of the crusher:
(these hours match S&S Construction’s normal shifts by season)
 - a. March through October
7:00 AM to 5:30 PM Monday through Thursday

- b. November through February
7:30 AM to 4:30 PM Monday through Friday
 - c. Demand for product and weather may vary the hours of operation when there are specific requirements in contracts for these unusual hours of operation. In these cases, a written request must be made to the Director of Public Works. The Director of Public Works may approve the request. Any appeal shall be made to the Municipal Administrator.
 - d. The hours do not preclude earlier starting of equipment in preparation for work.
2. Dust
- a. S&S will use a fog nozzle on the rock crusher to keep down dust from the crusher.
 - b. S&S will keep the fog nozzle in good working order.
 - c. S&S will make reasonable efforts to reduce dust.
3. Location
- a. By August 30, 1995, the crusher and other accessory equipment shall be moved away from the highway to minimize impact upon neighbors.
4. Regulations
- a. S&S shall comply with health and safety standards required by the US Bureau of Mines and OSHA.
 - b. S&S shall also comply with applicable DEC and EPA standards.
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Board of Adjustment of the City and Borough of Sitka

S&S General Contractors and Equipment Rentals Inc.'s Crusher Conditional Use Permit

Findings

Based upon the Planning Commission's report and testimony at the Public Hearing on April 8, 1997, the Board of Adjustment grants S&S's application for a Conditional Use Permit for their Crusher with the following findings:

- 1. The Application is complete in accordance with Section 22.32.020B of the Sitka General Code.
- 2. A site investigation was made on behalf of the Planning Commission on January 10, 1997.
- 3. Based upon that investigation and independent investigations made by the commissioners, the proposed use is found to be consistent with the comprehensive plan and not injurious to health, safety or welfare or detrimental to other properties in the vicinity.
- 4. S&S is to apply for applicable permits prior to operation of the Crusher on Lot 1A.

Dated this 27th day of May, 1997.

Peter S. Halgren, Mayor

Kathy Hope Erickson, Municipal Clerk

18Feb97 memo from Planning Commission Chair Doris Bailey to Administrator and Assembly
Subject: Conditional Use Permit Request for Rock Crusher Filed by Roger Sudnikovich for Lot
of USS 3670 Subdivision w/ Conveyor Belts and other Rock Moving Equipment on Lots 61A
and 62A of S&S Subdivision

This memorandum represents the official report of the Planning Commission on the case above.
It was prepared in accordance with SGC Section 22.32.020 Conditional Uses – Approval or
Denial.

The Sitka Planning Commission is recommending approval of a conditional use request filed by
Roger Sudnikovich for a crusher on Lot 1A of USS 3670 Subdivision. Included in the request is
the placement of conveyors and other rock moving equipment on Lots 61A and 62A of S&S
Subdivision. The request was filed after the Court raised questions concerning the validity of the
amended conditional use permit for the crusher that was issued in November of 1995. The
Planning Commission's unanimous recommendation for approval was made on February 3rd,
1997.

Relevant Excerpts from the Staff Report for the February 3rd Planning Commission Meeting

Background

On November 28th, 1995, the Assembly passed a motion to approve a conditional use permit
that required that the S&S crusher be moved to Lot 1A no later than November 1st, 1996. This
action followed the Planning Commission's action on the matter. The movement of the crusher
onto Lot 1A had been a long standing goal.

A recent opinion by the court has raised questions concerning the validity of that permit. The
request in front of you is intended to resolve any questions by creating an entirely new permit.

At this time the crusher is on Lot 61A and is not operating.

The Request

The specific request that is in front of you is for a conditional use permit to operate the crusher
on Lot 1A of USS 3670 Subdivision. Included in the request are the placement and operation of
accessory earth moving equipment such as conveyor belts on Lots 61A of S&S Subdivision.
The applicant has provided an application, a topographic map, and a two page narrative as a part
of the submittal. A permit from EPA to operate a quarry, dated November 1994, has also been
submitted. The application does not show exactly where the crusher will be placed on Lot 1A.

The Site Investigation

The property was inspected by the Planning Director on the morning of January 29th, 1997. The

Assessor accompanied the Planner on the inspection. The quarrying of Lot 61A, 62A, and Lot 1A has continued to progress. There were large piles of various grades of rock on the parcels. Heavy equipment, conveyors, and a crusher were also on the parcels. They were not in operation.

It is the finding of this investigation that the proposed use is in accordance with the comprehensive plan and will not be injurious to public health, safety, or welfare or detrimental to other properties or uses in the vicinity.

The movement of the crusher onto Lot 1A has previously been approved by the Assembly. Lot 1A has steep banks and these banks force the noise up and decrease the effects on adjacent properties. Quarrying is recognized by the 1976 Comprehensive Plan as a use in the cove area.

Portion of the February 3rd, 1997 Planning Commission Meeting Pertaining to the Request

The owners of S&S General Contractors wanted to operate a rock crusher on Lot 1A of USS 3670 and set up the related heavy equipment on adjacent Lot 61A of S&S Subdivision. The applicant was represented by Stahla.

Staff recalled an amendment to the permit of November 1995 required the move of the crusher onto Lot 1A November 1996 (see 4/1/96). The crusher was shut down but could not be moved for lack of space. The applicant wanted a new permit issued to clarify permission, since the Superior Court had raised questions on the amended permit.

C. Nelson requested the applicant first be required to comply with all government regulations, pointing to the steep walls and discharge in the water runoff as infractions. He also reiterated (letter 2/3/97) that all the equipment was to be moved onto Lot 1A.

V. Nelson supplemented her letter (2/3/97), saying there were two errors in the staff report. First, she had been sent the application for review but not the permit from the Environmental Protection Agency for quarry operation. Secondly, the industrial use recognized for the Cove area in the current comprehensive plan was for a barging company. Moreover, the zoning ordinance of that time did not allow quarrying except in the Watershed & Reserve Zone.

Stahla responded the above objections were related to the quarry, not the crusher, which was a separate issue. The court stipulation held that the Nelsons were not to oppose or appeal the permit for the crusher. The permit was for moving the crusher away from the highway; it did not require it to be put onto Lot 1A. There was not intent to move the crusher once it was placed there.

Staff responded to the issues that Mrs. Nelson raised in her letter dated February 3rd about the schedule and the timing of the proposed development. Williams indicated that “timing” is addressed in the last sentence in Item I. of page 2 of the application attachment and the “schedule” is addressed in Item D of the application attachment.

MOTION by Denslow to recommend approval of a new conditional use permit for a rock crusher filed by Roger and Judy Sudnikovich for Lot 1A of USS 3670 and for the conveyor belt and other rock moving equipment on Lot 61A and 62A of S&S Subdivision because a) the application was complete per Section 22.32.020B of the Zoning Code; b) a site investigation was made on behalf of this commission on January 10, 1997; and c) the Commissioners made independent investigations that the proposed use was in accordance with the Comprehensive Plan, was not injurious to health, safety or welfare or detrimental to other properties in the vicinity; with the proviso that conditions listed in the application apply. Seconded by Reif, PASSED 4-0.

Handwritten note by Wells: During the Planning Commission consideration of this memo on February 18th, the board unanimously recommended that an additional condition be added to the permit requiring that “S&S General Contractors and Rental Equipment apply for applicable permits prior to movement of the crusher onto Lot 1A.

Second Email from Dan Tadic 27Apr2018

The regulations in the vintage 1995 CUP are more broad and probably better than my 2 and 3 below.

First Email from Dan Tadic 27Apr2018

Not being privy to any prior legal decisions surrounding the Sudnikovich quarry, I offer the following suggestions for conditions of approval:

1. Hours of operation – suggest 7 am to 7 pm or whatever was the historic limitations.
2. Applicant agrees to adhere to all applicable US Dept of Labor Mine Safety and Health Administration (MSHA) regulations concerning quarry activities.
3. Applicant obtains and adheres to the requirements of a Storm Water Pollution Prevention Plan as required by the Alaska Department of Environmental Conservation.

From Court Stipulation for Judgment and Order dated 24Jan1994

1. Hours of Operation:
 - a. March through October – 7:00 AM to 5:30 PM – Monday through Thursday
 - b. November through February – 7:30 AM to 4:30 PM – Monday through Friday
 - c. Demand for product and weather may vary hours and days of operation
 - d. Hours do not include earlier starting of equipment in preparation for work
 - e. Days and hours may be modified due to barge activities, possible Thompson Harbor contract, or other contracts
 - f. Reasonable efforts to minimize the impacts on the Nelsons

- g. No Sunday operations except for emergencies and occasional barge activity
- 2. Use good faith efforts to respect other property uses, such as elimination of compression brake usage
- 3. Dust – install fog nozzle and keep it in good working order, use reasonable efforts to reduce dust. Some dust is inherent.
- 4. Rock crusher shall be moved away from highway and Nelson home no later than October 1, 1994. This may be delayed until August 30, 1995 if S&S obtains the Thomsen Harbor contract.
- 5. Truck traffic – S&S to construct ramp by June 30, 1994.
- 6. Future Operations of Rock Quarry – when all rock (estimated 500,000 cubic yards (have been extracted and used, quarry operations on Lot 1A, USS 3670 will cease.
- 7. Noise – city and S&S will pay Nelsons \$9000 for noise remediation by February 27, 1994.
- 8. Drilling and blasting – such equipment shall have properly installed and maintained mufflers. Shall give 6 hours notice to Nelsons of any blasting.
- 9. Information sharing – S&S will give copies of governmentally required reports (OSHA, CBS, etc.) to Nelsons upon request.
- 10. Conditional use permit – S&S shall apply for CUP, Nelsons shall not oppose or appeal CUP
- 11. Compliance with all laws and regulations required. Parties will contact each other before contacting government.
- 12. Enforcement can be pursued through Superior Court.
- 13. Public communication – No communication to public media by the parties without consent of all parties.

RECOMMENDATION

Staff recommends that the Planning Commission postpone the conditional use permit request for a Natural Resource Extraction and Mining Support Facilities and direct the applicant to provide past condition of approval, past court orders, amend application to incorporate past conditions of approval, incorporate relevant and applicable court orders, and to better describe the locus and scope of the proposal as well as address impacts and suggested conditions. This should include, but it not limited to, an engineer to address soil and rock stability, landslide risk, quarry development plan, stormwater run-off, applicable past conditions of approval, and mitigating conditions. Further, the proposal shall meet all federal, state, and local laws. (Please see staff report for types of information that should be included).

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Motion: I move to postpone the conditional use permit for natural resource extraction and mining support facilities at 4660 and 4670 Halibut Point Road in the Industrial District to allow the applicant to provide more information as directed in the staff report. Please note the burden is upon the applicant to propose a conditional use that is compatible with the zoning, the surrounding land uses and adjacent properties, and that does not negatively impact the public's health, safety, and welfare. The properties are also known as Lot 1A USS 3670 Subdivision and Lots 61A and 62A S&S Subdivision. The request is filed by Roger Sudnikovich. The owners of record are Roger, John, and Judith Sudnikovich.