MEMORANDUM

TO: Alaska Heliskiing LLC

FROM: Julie Cozzi, MMC
Borough Clerk

RE: 2013 Commercial Ski Tour Permit Renewal

DATE: February 1, 2013

Your application for renewal of your commercial ski tour permit for calendar year 2013 is conditionally approved. The permit is attached. Please acknowledge the permit conditions by signing and returning two copies to me, as soon as possible. Your skier day allocations will be made by the Borough Manager at a later date. You will not be authorized to operate within the Borough until you have obtained a state permit allowing use of state land for your commercial ski tour activities. Please provide a copy of your state permit as soon as it is received, and I will sign the permit indicating the condition attached to approval of your permit has been satisfied.

As you know, the status of the Alaska Heliskiing commercial ski tour permit has generated significant interest within and beyond the community. This interest has caused me to set forth in some detail the process and standards I employed as the person responsible to make initial decisions on requests to renew commercial ski tour permits. Although not necessarily binding on future borough clerks, this document may provide helpful guidance in other renewal situations and provide information to the public about how the commercial tour permit renewal process works.

LEGAL STANDARDS

HBC 5.18.060 governs commercial tour permit renewals. This section of the Borough code states:

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

The general review standards that apply to initial permits are set forth in HBC 5.04.070:

A. If an investigation of facts finds that the applicant has violated any applicable local, state, or federal law or regulation, the clerk may deny the application. The clerk shall notify the applicant in writing of the clerk’s determination and inform the applicant that the applicant may request a hearing per HBC 5.04.090.

B. No permit shall be granted to any applicant by the clerk until such applicant has complied with all the ordinances of the borough applicable to the activity for which application for permit is made.

In addition to these general standards the borough clerk “may direct the chief of police or other borough official to investigate the facts stated in a permit application”. HBC 5.04.060.

HBC 5.04.050 indicates, “the review standards and procedures that apply to an initial permit application shall apply to applications for the renewal of a permit . . . A permit shall not be renewed if the clerk determines that grounds exist for the suspension or revocation of the applicant’s expiring permit. Nor shall a permit be renewed unless all sales, real, and personal property taxes payable by the permittee have been paid” (emphasis supplied).

HBC 5.18.070 states, “A commercial tour permit may be revoked or suspended or the number of skier days allocated pursuant to HBC 5.18.080 may be reduced for the reasons identified in HBC 5.04.120”. HBC 5.04.120 indicates a permit may be revoked or suspended for:

1. Substantial noncompliance with any term, condition or provision of the permit;

2. Violation of any provision of this title or other applicable local, state or federal law, ordinance, or regulation;
3. Upon a determination that the operation of the permittee is causing a hazard or a disruption of pedestrian or vehicular traffic;

4. Upon a determination that the permittee secured the permit through deceit, fraud, or intentional misrepresentation; or

5. That the area affected by the permit is required for another public purpose or for other reasons affecting the public safety or welfare.

The terms and conditions of commercial ski tour permits are listed in HBC 5.18.080(F)¹:

General Permit Conditions and Regulations.

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

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

3. Commercial ski tours, commercial ski productions and special ski competition events shall be conducted only in areas identified on the map attached to the ordinance codified in this section which shall remain on file with the borough clerk and labeled “Haines Borough Approved Commercial Ski Tour Areas.”

* * * *

4. Every commercial ski tour operator shall use global positioning system (“GPS”) equipment capable of tracking and preserving information establishing the route taken by the helicopter to and from the skiing and snowboarding

¹ Subsections not relevant to permit applicants have been omitted from this list. The most relevant conditions applicable to this permit renewal have been underlined.
area and all landings. This information shall be cataloged in a manner requested by the borough and provided when requested by the borough during each commercial ski tour season. Borough requests for this information are limited to enforcement of borough-permitted activity.

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

* * * *

8. Every commercial ski tour operator shall submit to the borough clerk annually a safety and operating plan that, at a minimum, will include (a) avalanche safety (addressing client safety, as well as safety of other backcountry users in the area); (b) helicopter safety; (c) emergency rescue procedures; and (d) guide requirements.

9. Explosives shall not be used for avalanche control.

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

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

12. The permittee is responsible for obtaining authorizations required by other agencies for the permitted activity. Each permittee will provide a copy of any other authorizations to the borough clerk.

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

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

a. Haines Airport;

b. The Stewart landing strip at 18 Mile Haines Highway;

c. The heliport adjacent to the 33 Mile Roadhouse;

d. Any heliport authorized by the Haines Borough planning commission as a conditional use.

In addition to these conditions specific to commercial ski tour permits, there are general conditions applicable to all permits set forth in HBC 5.04.080. These include “complying with all municipal, state, and federal ordinances, statutes, and regulations applicable to the permittee’s activities”² and a prohibition on “[u]nfair competitive practices”³.

There are also requirements for the actual materials submitted with a permit application. These are set out in HBC 5.18.030(C):

C. An applicant must provide the following information:

1. Name, address, and telephone number of applicant and all principals.

2. Customer capacity; number of vehicles to be used; location of all phases of the tour(s), including where the tour(s) will be offered for sale and scheduled stops; a summary of the tour(s); a map showing the routes to be taken; and hours of operation. One copy of each published pamphlet or brochure describing each tour must accompany the application.

² HBC 5.04.080(A).

³ HBC 5.04.080(F).
3. Brokers certificate of $500,000 of current commercial general liability insurance naming the borough as additional insured. The policy shall not contain any self-insured retention or deductible in excess of $1,000 and shall include a provision requiring written notification to be given to the borough by the insurance company not less than 30 days before the policy is canceled, modified, or terminated for any reason.

4. Proof of worker’s compensation insurance where applicable by law.

5. A copy of current Haines Borough business license.

6. Current copy of a signed tour operator’s code of conduct agreement which shall be approved by the borough assembly.

7. An explanation of any felony conviction within the past five years.

8. A safety and operating plan for heli-skiing and helicopter tours.

**PROCESS**

The standard renewal process has the following steps:

1. Determine that the application contains all materials required by HBC 5.18.030(C).
2. Verify property and sales tax status of applicant as “paid in full”.
3. Forward applications to police chief, harbormaster and tourism director for review.
4. Decide whether to ask the chief of police to investigate any of the facts stated in the permit application.
5. Review customer complaint history.
6. Determine if any violations of Borough, state or federal law occurred during the previous year.
7. Determine if any violations of permit conditions occurred during the previous year.
8. Determine if any such violations and customer complaints are substantial enough in number or seriousness including prior years operating history to warrant permit suspension or revocation including consideration of whether they evidence a
continuation of past violations over multiple years.

Alaska Heliskiing’s commercial operations in 2012 generated a significant complaint related to the March 13, 2012 death of an Alaska Heliskiing guide and an Alaska Heliskiing customer. Therefore, in addition to the general process above, I also reviewed specific allegations of improper business practices which had been communicated to the Borough via electronic mail. This included a review by the police chief, an attempt (unsuccessful) by the Executive Assistant to the Manager to obtain an autopsy report, communications with the applicant, communications with the mother of the Alaska Heliskiing client killed in an avalanche and communications with the Alaska Department of Natural Resources.

**PREVIOUS PERMIT DENIALS**

In 2005, I was the borough clerk who initially denied Eco Orca Tours’ (David Button) application for commercial tour permit renewal. My decision was appealed all the way to the Alaska Supreme Court who agreed the denial was legal[^4]. That denial decision was based on a number of factors including: more than 85 customer complaints over a 5 year period; a specific warning to the permittee the prior year to come into compliance with permit conditions, the applicant’s conviction of two misdemeanors directly related to operation of commercial tours, multiple violations of applicable Coast Guard regulations (including having a customer pose as a crew member), violations of the Borough’s tour operator code of conduct and the commencement of permit revocation proceedings in August (later suspended to allow operation for the remainder of the 2004 season).

In upholding the permit revocation, the Alaska Supreme Court did indicate that permit applicants are entitled to “due process of law in evaluation of the permit application”[^5]. In considering Mr. Button’s defense that the denial of his renewal application was a “vast overreaction” to “relatively minor events” the Supreme Court concluded that while some individual events could be considered “relatively minor” the entire course of conduct “demonstrate pervasive lack of concern for public safety” and justified denial of the renewal application[^6].

**GENERAL APPROACH TO PERMIT RENEWALS**


[^6]: *Id.* p.209.
The Button case is a good example of how I exercise the decision-making authority that has been placed in my hands by the Borough Assembly. I do not view commercial tour permits as privileges that can be taken away any time for any single violation of law or permit conditions. Rather, a permit is like a piece of property. The Borough should proceed very carefully before this property is taken away. A single accident, even one that results in a customer death and even one that may have resulted from failures of the permittee to meet standards for safe operations, will not automatically result in denial of a permit renewal application. On the other hand, it is not necessary that a customer or member of the public be injured as a result of a permittee’s business practices before a renewal application is denied. I need to be convinced that the number of violations or the severity of violations or the length of time violations have gone on is extensive and possibly would continue before telling a permit applicant they will not be allowed to do business in the Borough. So history beyond the most recent year of operations is considered in renewal decisions. I also recognize that I have a fairly limited range of expertise to examine details of whether a business operation meets standards for safe operation. While I can and did request review of the Police Chief for this particular renewal application I did not decide to engage an independent consultant with specific expertise in heliskiing operations to evaluate the allegations raised by the parents of the deceased customer. In part, this is because the Borough has not previously received any safety-related customer complaints regarding Alaska Heliskiing operations during the entire 8 years they have been receiving Borough permits. In part, this is because compliance with the submitted operating and safety plan is not included in the list of permit conditions in Borough code.

REVIEW OF REQUIREMENTS AND COMPLAINT OF PERMIT VIOLATIONS AND UNSAFE OPERATIONS

With that background in mind, here is how I reached the conclusion to approve the application for a permit renewal. First, all the materials included with the application were reviewed against the requirements of HBC 5.18.030(c). The application as originally received on December 31, 2012 did not include all the required materials. But by January 16, all required materials had been submitted. This included a safety and operations plan. Originally the safety plan did not address safety of other backcountry users. This was corrected. The original renewal application did not contain proof of insurance beyond March 3, 2013. This was also corrected. I did look at the content of the safety plan. Even though I am no expert in this area it appears to me to be a thorough plan with substantial thought behind it.

The application requirement is to have a plan. The Borough has not decided to dictate minimum standards for the safety plan beyond identification of certain topics which must be addressed in the plan. Alaska Heliskiing has a plan. It includes discussion of all required topics. The plan requirement benefits Alaska Heliskiing customers in two ways. First, those interested in comparing safety plans before deciding which company to go with can do so in advance of
making reservations. Secondly, as has been the case with the 2012 fatal accident, the public is able to compare what a company said they would do with what actually happened in the field.

I asked the Chief of Police to review the application materials. The Chief informed me that he was not aware of any violation of Borough ordinances by Alaska Heliskiing that would justify denying the application. I was not aware of any violations of federal law and the customer complaint did not allege any federal law violations. The harbormaster and tourism director also did not indicate any concerns with a permit renewal. Alaska Heliskiing is not delinquent in payment of any Borough taxes.

I determined there was a state law violation. In particular, Alaska Heliskiing had failed to properly register to use the Haines State Forest for its commercial activities and may have (depending on level of use and interpretation of the state regulation) failed to obtain a required state permit for use of state land. My understanding (verified by reviewing communications between the borough manager’s executive assistant, the parents of the deceased customer, and David Kelley, the State employee with responsibility for management of the area used by Alaska Heliskiing for its operations) was that Alaska Heliskiing was not required to obtain a state permit if it’s operations were limited to no more than 11 persons per day on state land. If the average use of state lands was less than 11 customers per day\(^7\), Alaska Heliskiing was required to register with the State in order to let the State know state land was being used for their commercial recreation business. Failing to register with the state or to obtain a permit in advance means Alaska Heliskiing violated a state regulation (11 AAC 96). The State has not brought charges based on this violation and has indicated they do not plan to do so unless Alaska Heliskiing disregards notices to comply with the permit and registration requirements in the future. From this, I conclude that the State does not consider the failure to register to obtain a permit in 2012 to be a significant violation of state law but perhaps would be if the failure continues in 2013. The State has specifically indicated the past failure to obtain a permit will not disqualify Alaska Heliskiing from receiving a state permit in 2013.

Failure to obtain a state permit may impact safety if the State imposes more detailed safety requirements than the Borough. Rather than deny the permit renewal application as a result of past state regulation violations, this borough permit renewal is conditioned on Alaska Heliskiing obtaining a state permit. If Alaska Heliskiing does not obtain a state permit, they are not authorized to conduct commercial ski tours.

I have also examined allegations based on errors on the Alaska Heliskiing website. Information regarding Alaska Heliskiing belonging to an organization called Alaska Helicopter

\(^7\) It is unclear to me if the dividing line is based on an average over the entire year, an average over any shorter period of time or if a single instance of more than 11 customers triggers the permit requirement.
Skiing Association appeared on the Alaska Heliskiing website. This was inaccurate. It has been removed. This Association does not appear to have ever been officially created. According to Alaska Heliskiing, they were approached by another guide to form this association and did put together a group of Alaska Heliskiing owners, guides, employees and instructors to conduct regular training sessions. But the other guiding company never “joined” or participated and thus the “Association” never came into being in the way that term is ordinarily used. What actually occurred was an extended company training program not a group of different companies in the same business establishing joint training programs or standards.

This is relevant because the Borough Code prohibits tour companies from “unfair competitive practices”8. Posting inaccurate or misleading claims on a company website could be considered an “unfair competitive practice”. State law (AS 45.50.471) lists “unlawful acts and practices”. Included in the list is “representing . . . that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have”.9 The Alaska Heliskiing web site did represent an affiliation with an “association” which in fact did not exist. This would likely be found to be a violation of AS 45.50.471 since it would have “a capacity or tendency to deceive”10. Even more significantly, the website references claimed the non-existent association “set strict safety standards” and that Alaska Heliskiing was required to have its own standards “reviewed” by this non-existent Association. In my opinion, the actual impact on potential customers of such a misrepresentation is possibly significant. I also believe the inaccurate statements were specifically intended to attract customers based on false claims directly related to safety. This means the statements on the website were an “unfair competitive practice” as that phrase is used in HBC 5.04.080(F). The fact the information has been removed is the minimum appropriate corrective action.

There were no convictions of any violations of Borough code. But there were violations of permit conditions.

Permit conditions 1 and 2 apply to days and hours of operations. There are no reports of any violations pertaining to days and hours.

Permit condition 3 governs areas of operations. Alaska Heliskiing had two reported deviations from approved areas for operations on March 15 and March 25, 2013. An analysis of the GPS data by the Borough’s contractor provided confirmation. The March 25 incident resulted from an Alaska Heliskiing customer starting in a permitted area but ending up separated from the rest of the group in an unpermitted area by following tracks made by non-heliskiing

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8 HBC 5.04.080(F)
9 AS 45.50.471(b)(4).
backcountry skiers. The two violations resulted in a Borough-imposed fine of $400 for violation of permit conditions. A violation letter sent in August was ignored. Eventually, the fine was paid. There were other reports of out of area operations in 2012 received from citizens but none of the reports identified Alaska Heliskiing.

Permit condition 4 relates to use of GPS equipment. There were no issues regarding permit condition 4 in 2012.

Permit condition 5 related to reporting was indirectly an issue in 2012. Permit condition 5 requires reporting of accidents on biweekly reports. This was done. But Alaska Heliskiing’s own operations plan indicated accidents would be reported to the Borough in 72 hours. Alaska Heliskiing failed to promptly report the March 13 accident to the Borough other than a one sentence statement in the biweekly report which was not filed with the Borough until March 26. The accident report referenced in the operations plan was not filed with the Borough until December 31, 2012. I believe not following through their own operation and safety plan is not exactly the same as a permit condition violation but is properly considered in deciding whether to renew a commercial ski tour permit.

Permit conditions 8-11 did not have any compliance issues in 2012. Alaska Heliskiing’s plan was submitted and included sections on avalanche safety and helicopter safety. Borough review of the operation and safety plan in 2012 did not note any missing portions of the plan.

Permit condition 12 required Alaska Heliskiing to “obtain authorizations” for use of State land. Alaska Heliskiing failed to properly obtain State of Alaska authorizations for use of state land for its operations in 2012. This failure continued for several years before 2012. I assume it will be remedied in 2013.

Permit condition 13 requires submission of a mutual aid agreement. This was not submitted.

Permit condition 14 requires use of particular airports. This condition was met in 2012.

I have also considered the customer complaint submitted to the Borough. The complaint was contained in a series of communications and, in summary, alleged the following deficiencies in Alaska Heliskiing operations related to the March 12, 2012 accident:

1. Failure to evaluate snow conditions prior to run.
2. Failure to ensure clients had access to "air-pack" after zipping up during helo ride.
3. Failure to call off day of skiing due to avalanche danger after first run.
4. Failure to provide clients with extra radio in event of guide's being unavailable due to avalanche.
5. Failure to transport Mr. Dodov directly to the Haines clinic.
6. Failure to warn clients of dangerous snow conditions.
7. Failure to train clients in use of avalanche response devices.  
8. Guide under the influence of marijuana while guiding clients.  
9. Failure to file worker's comp. report of employee death as required by state law.  
10. Failure to file detailed accident report with Haines Borough in time required by permit.  
12. Use of State land in violation of State regulations.  

As indicated above, I do consider failures to follow the field operations and safety plan to be a potential basis for revocation, suspension or failure to renew a permit. But because operations and safety plan procedures are self-imposed by the permittee rather than minimum standards that have been set by the Borough Assembly, in my mind deviations from the safety or operations plan should be less likely to result in revocation, suspension or non-renewal of a commercial ski tour permit. If I considered failures to follow safety plans as identical to a violation of a permit condition, heliskiing operators would have an incentive to submit less rigorous safety plans in order to avoid permit consequences. This is not a good idea and would possibly place customers at greater risk.  

I have reviewed the 2012 operations plan safety requirements to determine if any of the allegations would, if true, be a failure to follow the Alaska Heliskiing operations plan. But there are limits to my own experience and capability to evaluate whether conduct met the plan requirements. In many instances this is not an appropriate determination for the Borough Clerk to make. In other instances (such as the plan’s accident reporting requirement) this is a very simple determination to make.  

With regard to allegations Nos. 1 and 3, the Alaska Heliskiing operations and safety plan says a “weather check will be completed with the National Weather Service over the internet” before each guided trip. The plan also indicates “The Snow Safety Director composes a daily snow stability and weather forecast based on field observations and published weather resources”. It appears the safety plan relies on the Snow Safety Director to make an official evaluation and for the guides to rely on it. But guides are certainly part of this process.  

Alaska Heliskiing also required all guides to “professionally participate in daily avalanche forecast discussions”. These include meeting as a staff before skiing each day to select the areas to be skied after consulting weather information and making a “stability evaluation” using six criteria including “current and past avalanche conditions”, “snow pack structure” and “ski tests”. The operations and safety plan requires guides to carry a “field book” which “compiles onsite snow observations which may include a snow profile charge documenting the current snow stratification and avalanche concerns”. The safety plan states “snow pit surveys” will be conducted “regularly” and that the “[d]etermination as to the safety of the area” to be “made before skiing is permitted. If it is felt that the area is unsafe after observation or control efforts
are completed, skiing will not be allowed”. The blank form for the guide field book included with the safety plan provides space for fairly detailed snow observations to be documented.

There is no evidence Alaska Heliskiing guides on March 13 ignored avalanche warning signs, the Snow Safety Director or weather reports. Clearly skiing was not called off after the first run but I am not able to evaluate whether conditions exhibited warning signs ignored by the Alaska Heliskiing guides.

The avalanche forecast as of 6:00 a.m. of the day of the accident (included in the accident report) describes avalanche probability as 3 on a scale of 1-5 with no change from the danger level the previous day. The accident report describes the avalanche danger rating as “moderate”. Mr. Dodov’s parent believed this danger rating conflicted with one posted on the Haines Avalanche Information Center but the “screen shot” provided by the parent indicated the assessment of “high” avalanche danger expired on March 8 and cannot be considered indicative of conditions on March 13. The last Haines Avalanche Information Center report expired Sunday, March 11 at 11:00 p.m. and indicated the avalanche danger was “considerable” which is one level below “high”. “Considerable” is considered a level “3” on the North American Public Avalanche Danger Scale according to information on the Haines Avalanche Information Center web site. Therefore I believe it is unlikely the Alaska Heliskiing report of the level of avalanche danger was falsified. However, this same scale indicates that at danger level 3, human-triggered avalanches are “likely” and that “careful snowpack evaluation, cautious route-finding and conservative decision making essential”.

The snow stability assessment relied on “test pits” and “ski tests” conducted the prior day 16 air miles from where the accident occurred. No snow pit or stability tests were performed at the site where the accident occurred prior to the run. Therefore, there is some truth to the allegation of a failure to evaluate snow conditions. But the 2012 operations plan does not specifically require test pits or ski tests of each new slope before the first run of each day on that slope.

With regard to allegation number 2, the operations and safety plan does not mention air packs. Any failure regarding air packs is not a violation of the plan.

With regard to allegation number 4, the operations and safety plan does not indicate providing clients with a backup radio was part of Alaska Heliskiing’s standard operations. The plan was for each guide to have a radio. Therefore, the allegation is likely to be true but is not a deviation from the Alaska Heliskiing safety plan.

With regard to allegation number 5, the accident report indicates Mr. Dodov was uncovered at 11:00 a.m. after being buried 20-30 minutes. The accident report indicates he was transported to “waiting EMS” at “33 mile” which is the base for Alaska Heliskiing operations. From there he was transported to the clinic. The accident report indicates he was alive when transported to a medical facility in Seattle. The operations and safety plan mentions transporting
medical personnel to the scene and also mentions direct transport to the Haines Medical Clinic or Bartlett Regional Hospital “if necessary” and in “all accidents that require it”. It appears direct transport to the clinic is contemplated if a “hurry situation (Code 2 or Code 3) exists”. Although the safety plan does not mention what constitutes a “Code 2 or Code 3” it seems likely a situation where someone has been buried in an avalanche and is not responsive upon being located could meet either Code 2 or Code 3. The safety plan assumes some level of judgment being exercised in the field as to what is necessary. I am not qualified to evaluate if direct transport to the clinic should have occurred rather than transport to the Alaska Heliskiing base.

With regard to allegation number 6, the operations and safety plan includes references to specifically informing clients of the risks involved in any heliskiing activity including the risk of dying in an avalanche. Customers are required to sign forms indicating they are aware of and accept these risks. There is no proof such forms were not signed by those skiing on March 13. In my mind, the forms provide a general warning. The accident report indicates both victims had accessed the local avalanche advisory on the day of the accident. I am not qualified to determine if a more specific warning should have been provided on March 13.

With regard to allegation number 7, training of clients in avalanche search techniques is specifically mentioned in the operations plan. If this did not occur, the plan was not followed. The “daily checklist” included with the safety plan requires that customers receive “an avalanche transceiver drill and search practice” each day. There is no evidence this practice did not occur on March 13. No proof clients were not trained in use of avalanche-related equipment has been submitted to the Borough.

Allegation 8 is based on what is supposedly in an autopsy report. The Borough requested but was denied the autopsy report. The alleged levels of THC mentioned are not conclusive of the guide conducting activities while still under the influence of THC. They are consistent with drug use but not conclusive as to drug use the morning of the accident and not conclusive as to the guide being still under the influence of marijuana while guiding clients. Higher THC levels would be required to reach this conclusion.

The Alaska Heliskiing 2012 safety plan did not specifically prohibit drug use by Alaska Heliskiing guides. It does require guides to “posses [sic.] a character which shows sound judgment and temperament [sic]”. Working while under the influence of drugs would obviously not be consistent with sound judgment.

Allegations 9, 10 and 12 are correct. I have discussed the use of State land. The accident report was late. It has been reviewed as part of the permit renewal process. The failure to file a worker’s compensation report has resulted in a state fine. The amount of the fine suggests the State treats this as a relatively minor offense. The State is not proposing to deny Alaska Heliskiing a business license as a result of this violation. I do not think it rises to the level of “substantial noncompliance” justifying denial of the renewal application.
In summary, there are the following permit violations, operating and safety plan violations and state law violations:

1. Failure to obtain a permit for use of state lands over multiple years of operation.
2. Failure to follow operating and safety plan accident reporting.
3. Two out of bounds incidents for which a fine was levied and paid.
4. Failure to submit a mutual aid agreement.
5. Failure to file report of employee death with State of Alaska for which a fine was levied and paid.
6. Posting inaccurate and misleading information on company website directly relating to guide certifications and company safety standards.

Additionally, there are potential problems that I am either not qualified to pass judgment on or feel have not been proven to the degree that justifies denial of the permit renewal application. These are:

7. Possible failures to follow additional requirements of operating plan requiring exercise of judgment as to safety of skiing prior to a run and post-accident procedures (failure to dig test pit or do ski test, failure to transport accident victim directly to clinic).
8. Possibility that company employee was guiding customers while under the influence of marijuana.

The established violations do provide a potential basis for denial of the permit renewal application. But they do not rise to the level of “substantial noncompliance” in my judgment justifying permit revocation in the name of safety of customers or the public. My decision is consistent with the action taken with Mr. Button. Alaska Heliskiing is warned that the above past conduct will be considered in any permit renewal for 2014 and that continuing violations of reporting requirements, failing to follow Alaska Heliskiing’s own operation and safety plan or any other permit violations may result in permit suspension or revocation during the 2013 season or a failure to renew Alaska Heliskiing’s commercial tour permit in 2014.