



City of Homer

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Memorandum

Agenda Changes/Supplemental Packet

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK

DATE: FEBRUARY 8, 2016

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

PUBLIC HEARINGS

Ordinance 16-04(A), An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.18, Central Business District; Homer City Code 21.24, General Commercial 1; Homer City Code 21.26, General Commercial 2; Homer City Code 21.27, East End Mixed Use; Homer City Code 21.40 to Identify the Zoning Districts Permitting Marijuana Facilities and Adopting Chapter 21.62 Entitled "Marijuana Facilities" Regarding General Land Use Requirements for Marijuana Cultivation, Manufacturing, Testing, and Retail Facilities. Planning Commission.

Written public comments

Page 3

Ordinance 16-05, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 1.16.040, Disposition of Scheduled Offenses—Fine Schedule, Enacting Homer City Code Chapter 7.16, Vehicles in Beach Areas, and Repealing Homer City Code Chapter 19.16, Vehicles on Homer Spit Beach, to Restrict the Operation, Stopping and Parking of Motor Vehicles in Beach Areas. Reynolds.

Written public comments

Page 11

RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A

FEB -4 2016

J

Hi I am Carrie Harris;

I am representing myself as a voter, one of many representing the cannabis community, the 54 % of the voters within the city limits who voted to pass the cannabis initiative. I am also a commissioner on the City Cannabis Advisory Commission.

You have seen the planning commissions zoning map for cannabis, and as you heard at the introduction I do not feel this represents what the voters wanted.

At the Cannabis Advisory Commission meetings we regularly have people speaking in favor of cannabis cultivation, retail, manufacturing, and we have someone ready and qualified to open a testing center, we also have had people speaking against being too restrictive.

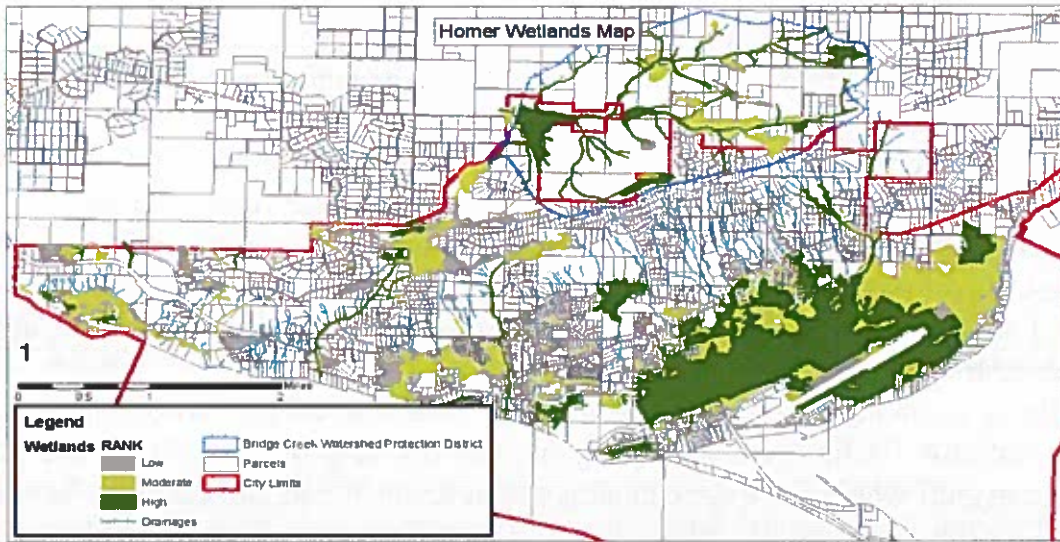
I drove a cab here for a year, I have talked to almost all my customers about the cannabis initiative. In that year of driving the majority of people were very pro cannabis. Many like myself who do not use cannabis are in favor of cannabis, and the benefits it may hold for the city in retail, cultivation, and manufacturing. They were also vocal about local and state government placing too many restrictions on it.

The cannabis advisory commission was a bit surprised when the planning commission decided to take this to public hearings. We did not supported this map, we have argued against it each time Rick brought it in, and there has never been a vote in favor of it. I thought that the planing commission was working with the cannabis commission on zoning. I found out it was going to public hearing when I saw a posting at the library, I went the the meeting.

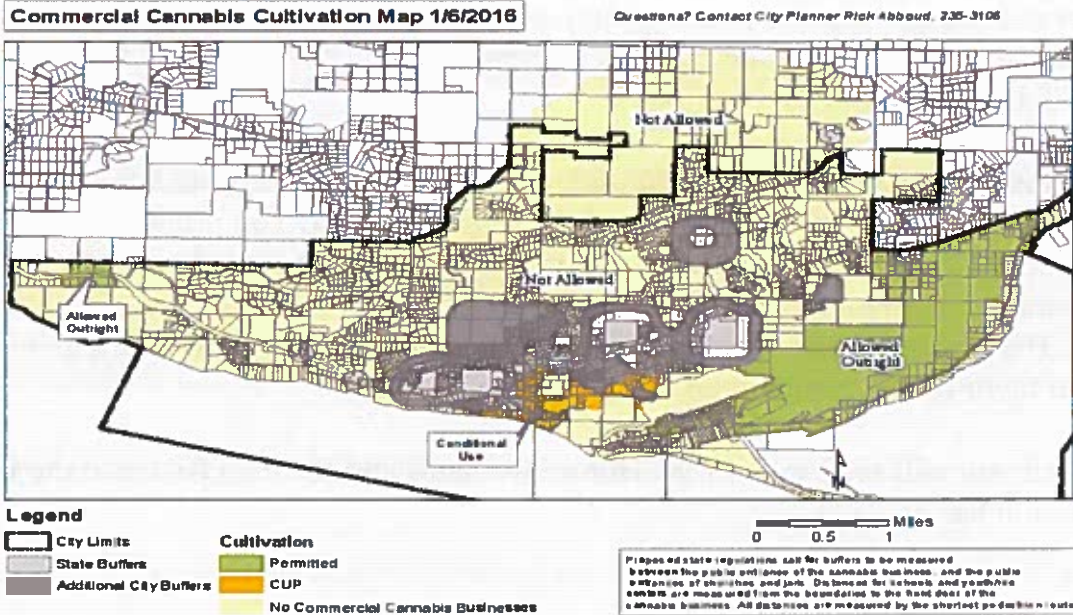
I was at the Zoning meeting for the public hearings, there were a few people who spoke against the cannabis zoning map, including myself. If you printed out a transparency of the zoning map, high and moderate wetlands would match up to where the planning commission has decided to allow cannabis cultivation, manufacturing, and testing. There was not one person at the Planning commission public hearings who spoke in favor of this zoning map.

On page 2 you will see a map of the Homer wetlands and the map Rick and the Planning commission has given to you.

This is the Wetlands Map



This is the map Rick and the panning commission created. The Cannabis Advisory Commission has never agreed with this map.



Even the green corner on Bay Crest Hill is in wetlands. This map is Deceptive and an insult to the voters.

I would like you to introduce option B and pass it, this cannabis plan is more in line with what the voters would like to see. This option would allow for rural residential limited marijuana cultivation as defined by state law, retail on the spit, retail and manufacturing in the town center, and organic cultivation in the watershed area.

See Pages 5-7

An amendment was proposed at the city council meeting, I was happy it opened the discussion. You guys had some great questions, and I am going to answer a few of them for you.

Limited cultivation;

One question that was asked and this is not the exact wording of the question, Does the city currently allow for agricultural activities in rural residential areas, City Planner Rick Abboud answered it, he was a bit vague and disingenuous.

Here is the city code

21.12.010 Purpose.

The purpose of the Rural Residential District is primarily to provide an area in the City for low-density, primarily residential, development; allow for limited agricultural pursuits; and allow for other uses as provided in this chapter. [Ord. 08-29, 2008].

I have included this ordinance and 21.12.020 Permitted uses and structures

On page 6, _____

I believe this clearly states agricultural is in allowed in the area. If you take the time to drive around the rural residential areas you will see green houses, storage sheds, farm buildings, and high-tunnels doted all over it, you will also find business that look far more "commercialized" than what limited marijuana cultivation would look.

Their was concern about buffer requirements.

3 AAC 306.430. Restricted access area. (a) A marijuana cultivation facility shall conduct any operation in a restricted area in compliance with 3 AAC 306.710 and this section.

(b) A marijuana cultivation facility shall conduct any marijuana growing operation within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Where not prohibited by local government, outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscuring wall or fence at least six feet high.

I do not see any issues with requiring a buffer of 20-50 feet from property lines, or even adding shrubbery and State required fence of 6 feet.

I do see an issue with The planning commission requiring a buffer found in the proposed ordinance on starting on line 427 21.62.070; Berms 10 feet wide. That is f*** b.s. Buffering has come up at the Cannabis meeting and they thought my ideas were too strict. This is sicking, it was also never brought to the CAC. Please remember that a limited cultivation facility can not sale or have an odor, they must give public notice when they apply for a license, and those who are opposed to the licenses have the opportunity to protest the license with the state.

Limited cultivation facilities must be under 500sq feet. On any lot over 10,000sq feet a 500sq foot green house will not take up that much room on the land, most people will be using existing structures, or small green houses.

Planning Commissioner Rick Abboud has expressed many times that the regulations make cultivation of cannabis too commercial for the rural residential area.

You must have lights and a camera to record anyone coming into and leaving the growing area.

There is an extensive amount paperwork and tracking involved, as there is with any business. Lights and a security camera directed at the entry and on the cultivation area is no more commercial than what is required for a bed and breakfast, or any business allowed in the RR district. I am sure there are security cameras at many of the rural residential business.

Retail:

The question was asked what would a retail business with a cannabis use area look like. I am not sure, most likely they would have a designated area or room that would allow consumption of cannabis edibles. If they choose to have an area where people could smoke cannabis the area would have to air filtration system so there would be no smell.

Spit:

There was a bit of discussion about the spit.

The spit is not a child friendly area, it is a non-stop construction zone.

The fishing hole is a great family place, but there had better be an adult with that child! The tides coming in can be rough, there are no play grounds or even gardens.

Family's do camp on the spit, Many working for the summer here in homer camp on the spit, most are here to fish and party. The Salty Dog is open late in the summer to serve those in party mode.

The spit would be a prime location for a retail shop, those family's with children will not be forced to walk into a cannabis shop, the religious can walk past the cannabis shop, just as they do the Salty Dog.

“The model that I have observed in Washington and Colorado (without consumption) was one that I saw as having little negative consequences compared to other retail operations such as liquor or convenience stores.” A quote from the planning commission zoning meeting STAFF REPORT PL 16-02 on the map approved, it is from page 361 of your packet from the meeting on 1/25.

A Retail store can not sell more than 1 ounce of cannabis to an individual per state regulations. The City of Homer could take that a step farther if you still fear someone is going to take it on a ship back to Washington and their home state, and limit the sale to non-residence to not more than a ¼ ounce.

What is the value;

I can't give you a number on how much the town could make off of cannabis, the city will receive part of the license fee, sales tax, and any excise tax if one is place on it.

I believe with many towns opting out of the cannabis industry and the limiting areas for the cultivation of cannabis, Homer could export what it grows. There will not be enough legal cannabis to keep retail stores from running out. I believe we will see an influx of instate tourists, homer is a fishing town, and you can get legal pot here.

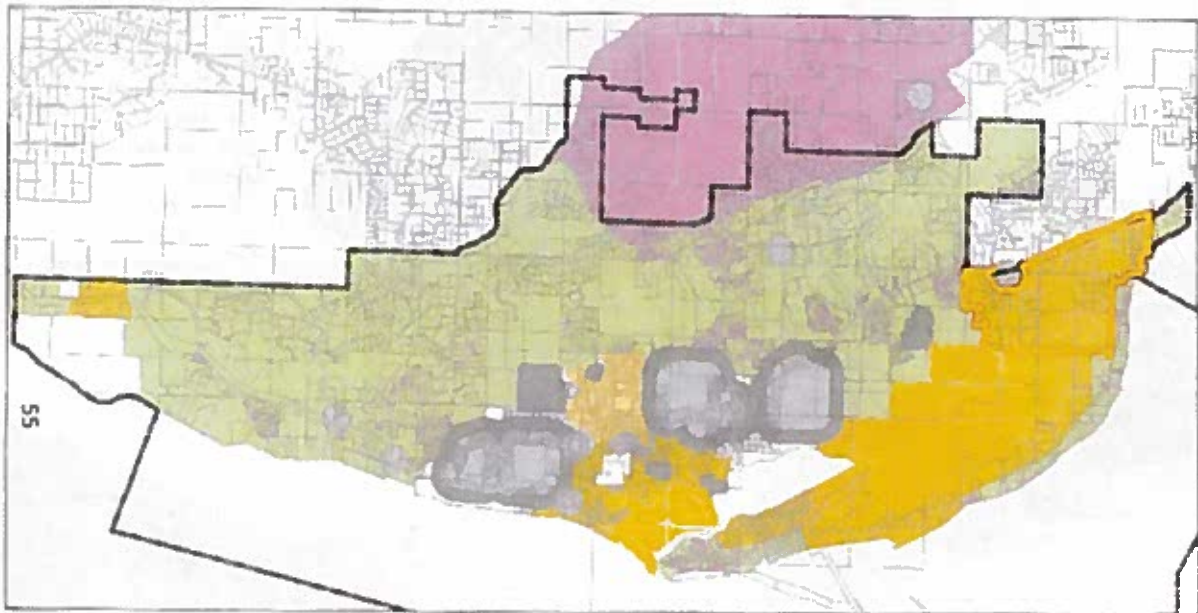
Even if we don't make a lot off legal cannabis, the money we do make will be kept here in our local economy. The Fact still stands that 54% of the voters in this town voted for it, this is not a special interest group WE ARE THE VOTERS!

The planing commission has said they would rather start small and grow later, because it is easier to grow than to ratchet back. The voters did not and have not been concerned with the ease of the planning commission positions If it fails you can blame the voters.

Option B is found below, We hope you will work with the voters and not against us.

This is option B it is what the voters voted for.

Commercial Cannabis Cultivation Map 11/4/2015 Edited 01/21/2016



Legend

- City Limits
- State Buffers
- Additional City Buffers

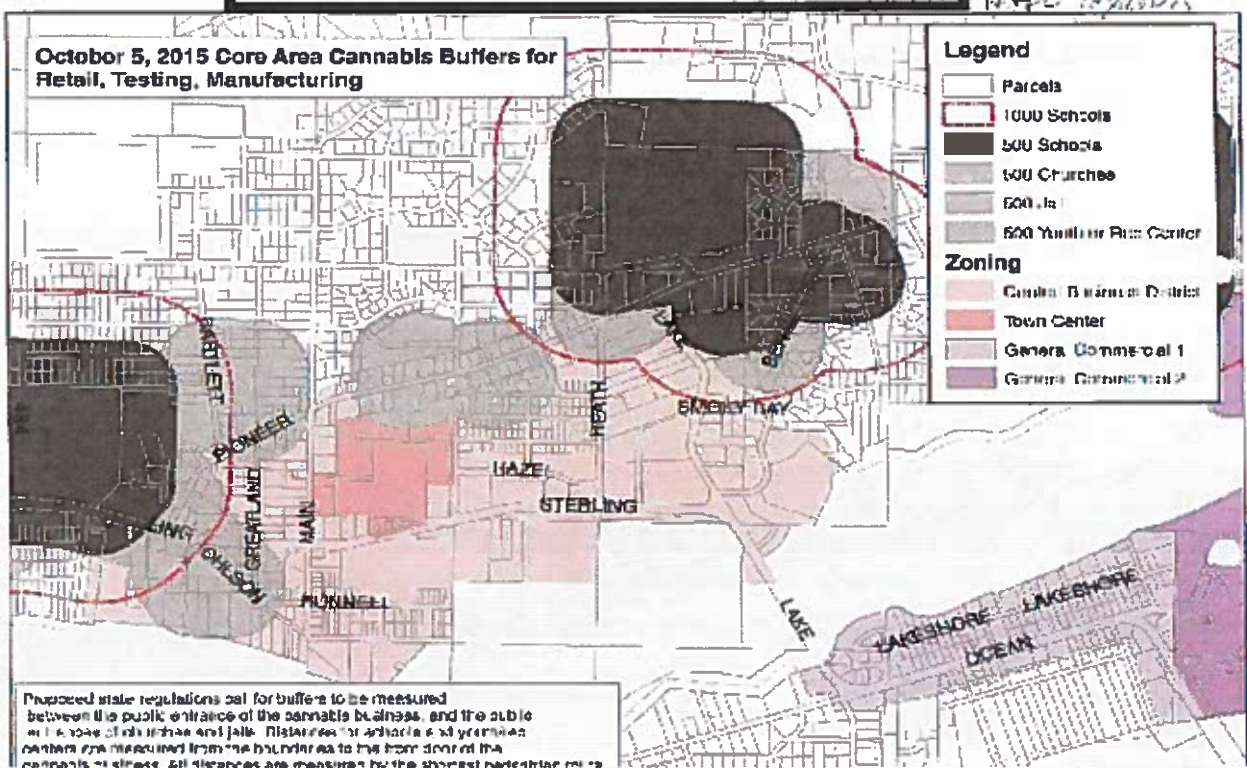
Commercial Cannabis Cultivation

- Small cultivation only, No Cup Required
- Small cultivation only, Cup organic only
- Large and Small Cultivation, Retail and Manufacturing no Cup required

Proposed state regulations call for buffers to be measured between the public entrance of the cannabis business, and the public entrances of churches and schools. Distances for schools and churches cannot be measured from the boundaries to the front door of the cannabis business. All distances are measured by the shortest pedestrian route.

The only condition placed is on the watershed which is in purple and should only be the use of organic fertilizers and pesticides

Cannabis retail, manufacturing, and testing allowed out right in the town center, and the central business district



Amendments to Homer city code

Homer City Code Chapter 21.18 should be amended as follows in bold:

Section 21.18.020 Permitted uses and structures.

Add line 117 **jj. Marijuana testing facility as defined by state law.**

Add line 118 **kk. Marijuana retail facilities as defined by state law.**

Add line 119 **ll. Marijuana testing facilities as defined by state law.**

Changes to city code title 21 definitions.

Addition to definitions to add (in bold)

Homer City Code Title 21 ZONING AND PLANNING

“Agricultural activity” shall mean farming, including plowing, tillage, fertilizing, cropping, irrigating, seeding, cultivating or harvesting for the production of food and fiber products (excluding commercial logging and timber harvesting operations); the grazing or raising of livestock (excluding feedlots); aquaculture; sod production; orchards; Christmas tree plantations; nurseries; **limited marijuana cultivation as defined by state law**; and the cultivation of products as part of a recognized commercial enterprise. “Agricultural activity” excludes private stables and public stables

“Agricultural building” means a building used to shelter farm implements, hay, grain, poultry, livestock, horticulture, **marijuana**, or other farm products, in which there is no human habitation and which is not used by the public.

Amendments to Homer city code 21.22.010 Amendments in bold.

21.12.010 Purpose.

The purpose of the Rural Residential District is primarily to provide an area in the City for low-density, primarily residential, development; allow for limited agricultural pursuits; and allow for other uses as provided in this chapter. [Ord. 08-29, 2008].

21.12.020 Permitted uses and structures. The following uses are permitted outright in the Rural Residential District:

- a. Single-family dwelling;
 - b. Duplex dwelling;
 - c. Multiple-family dwelling, only if the structure conforms to HCC 21.14.040(a)(2);
 - d. Public parks and playgrounds;
 - e. Rooming house, bed and breakfast and hostel;
 - f. Home occupations, provided they conform to the requirements of HCC 21.51.010;
 - g. Agricultural activities, including general farming, **limited marijuana cultivation as defined by state law**, truck farming, livestock farming, nurseries, and greenhouses; provided, that:
 1. Other than normal household pets, no poultry or livestock may be housed and no fenced runs may be located within 100 feet of any residence other than the dwelling on the same lot;
 2. No retail or wholesale business sales office is maintained on the premises;
 - h. Private stables;
 - i. Private float plane tie-down as an accessory use incidental to residential use;
 - j. Storage of personal commercial fishing gear in a safe and orderly manner and separated by at least five feet from any property line as an accessory use incidental to residential use;
- The Homer City Code is current through Ordinance 15-45(S), passed December 7, 2015.

Zoning for retail on the spit. All of the spit should be zoned for Retail.

Thanks

Carrie Harris

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From: Litchfield, Virginia P (DFG) <ginny.litchfield@alaska.gov>
Sent: Thursday, February 04, 2016 8:26 AM
To: Julie Engebretsen
Cc: Litchfield, Virginia P (DFG)
Subject: RE: Kachemak Bay CHA questions

Julie,

My responses to your questions are below. Please feel free to contact me if you need additional clarification on any of the questions.

There is a lot of concern about upper beach habitat. Does the CHA include the storm berms and grassy upland areas? What is the tidal CHA boundary?

Generally, the storm berm and grassy upland areas of the beach are not included in the KBCHA. KBCHA includes tide and submerged land and waters and is described in detail in AS 16.20.590.

State statutes define tidelands in AS 38.05.965(26) as “*land that is periodically covered by tidal water between the elevation of mean high water and mean low water*”. The upland boundary of tidelands, the elevation of mean high water, is ambulatory, moving as the shoreline changes due to the action of the water (erosion, accretion or reliction). In the Homer area this is approximately 17 to 17.5 feet but is determined by data collected according to survey standards found in 11 ACC 53.120(1).

How does the relationship between the state and the City work below Mean High tide? The City is the land owner and, and can decide how people can use these lands as a land owner, and the state also has CHA rules that apply, right?

Yes, certain activities that have the potential to disturb fish and wildlife or their habitat in the KBCHA require a Special Area Permit. Each activity or project is reviewed on a case-by-case basis and all relevant information is considered in reaching a decision to approve, approve with conditions, or deny a permit application based on the criteria set out in the goals and policies in the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (Management Plan).

The state has issued a Special Use Permit, FH 16-IV-GP15-SA, which allows for motorized use within the CHA, i.e. below mean high tide, between Bidarki Creek and Anchor Point, and east of Millers Landing. Can this permit be amended to include parts of the City where vehicles are allowed on the beach, below mean high tide? What’s the process?

The permit allowing motorized use within the boundaries of the KBCHA is 16-V-0005-GP-SA. Yes, this permit can be amended to serve both the public interest and the proper protection of fish and wildlife and their habitat. I will meet with City officials to discuss potential boundary changes to the permit.

What kinds of activities are allowed within the CHA? Coal gathering? Accessing property? Spinning Brodie's and mud bogging?

The gathering of loose coal is an allowable activity on Kachemak Bay beaches. General permit 16-V-0005-GP-SA allows motorized use for the purpose of providing normal personal recreational transit within and through the KBCHA and includes conditions to protect and preserve habitat areas that are crucial to the perpetuation of fish and wildlife. Activities that fall outside of this general permit require an individual permit. Activities such as mud bogging are not covered in the general permit and must be authorized under an individual permit. As in the above response, each application is reviewed individually taking all relevant information into account. Activities that are not compatible with the protection of fish and wildlife and their habitat will not be allowed.

Many folks have testified that the introduction of the Kachemak Bay CHA Plan page 1, states that the rules of the CHA don't apply to federal or municipal lands. Is this true? What was actually adopted in statute?

The statement in the Introduction of the Kachemak Bay and Fox River Flats CHAs Management Plan regarding municipal lands was based on a misunderstanding during plan development and is incorrect. Only the goals and policies of the Management Plan were adopted into regulation (5 AAC 95.610).

The CHA Plan is from 1994. If citizens feel circumstances have changed and the plan should be revisited, what is the process? Is there a plan to update the CHA Plan?

Updating the Management Plan is a public process and initiated by ADFG. Habitat Division is in the process of prioritizing Special Area plan development as well as existing plan revisions statewide. It has not been determined where the Kachemak Bay Management Plan ranks on this list.

If Council or citizens have questions about the CHA, who should they speak with?

Any questions regarding KBCHA please contact Ginny Litchfield at (907) 714-2477 or emailed to ginny.litchfield@alaska.gov.

Ginny Litchfield

(907) 714-2477

Kenai Peninsula Area Manager

ADF&G – Division of Habitat

514 Funny River Road

Soldotna, AK 99669

(State agency housed in Kenai Peninsula Borough Building)

From: Julie Engebretsen [<mailto:JEngebretsen@ci.homer.ak.us>]

Sent: Monday, February 01, 2016 3:37 PM

To: Litchfield, Virginia P (DFG)

Subject: Kachemak Bay CHA questions

Hi Ginny,

I am looking for some clarification of the Kachemak Bay Critical Habitat Area and vehicle use on Homer beaches.

There is a lot of concern about upper beach habitat. Does the CHA include the storm berms and grassy upland areas? What is the tidal CHA boundary?

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If Council or citizens have questions about the CHA, who should they speak with?

Thanks!

Julie

Julie Engebretsen
Deputy City Planner
City of Homer
907-435-3119

