



City of Homer

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Memorandum 15-102

TO: Mayor Wythe and Homer City Council
THROUGH: Katie Koester, City Manager
FROM: Julie Engebretsen, Deputy City Planner
DATE: June 22, 2015
SUBJECT: Recommendation from the Parks and Recreation Advisory Commission on changes to the Beach Policy

Introduction and public process

In the fall of 2014, the Commission began hearing from property owners and residents in Old Town that there were increased problems between vehicles and pedestrians on the beach, and more 'bad behavior.' (drinking, drugs, partying on private property, trespass, etc). The Commission began holding meetings to explore these issues, and also became more aware of inappropriate activity in the bird habitat along the grassy berm near Beluga Slough. Speakers were invited to present information to the Commission on topics from dogs, birds, from user groups of all ages. An often repeated theme was the need for enforcement, signage, and education.

The Commission met eleven times in 2015 to discuss the beach policy. Numerous letters were submitted, and many people commented at the meetings. There were several front page articles in local newspapers, a Coffee Table radio show on KBBI, and the City website was updated throughout the process. Beach front property owners were notified by mail of the public hearing in May.

What happens next?

Council will evaluate the proposals, and may adopt them as a whole, in part, or not at all. A resolution will be brought forward at the next Council meeting, to support all the recommendations. Council may choose to hold a public hearing, or amend the resolution. Staff will then work on the various ordinances and other changes to actually enact the changes, and also update the Beach Policy document accordingly.

Proposed changes: The proposed changes are listed two ways: in a list below, and in a table by type of action (budget ordinance, resolution, etc).

- Install fire pits at Bishop's Beach Park, and at the City parcel near the end of Main Street/Ohlson Lane, and make trash cans available.
- Hire two seasonal beach patrol employees
- Draft an ordinance to define and ban reckless driving as it would be applied to all of City of Homer beaches
- Improve signage at Bishop's Beach.

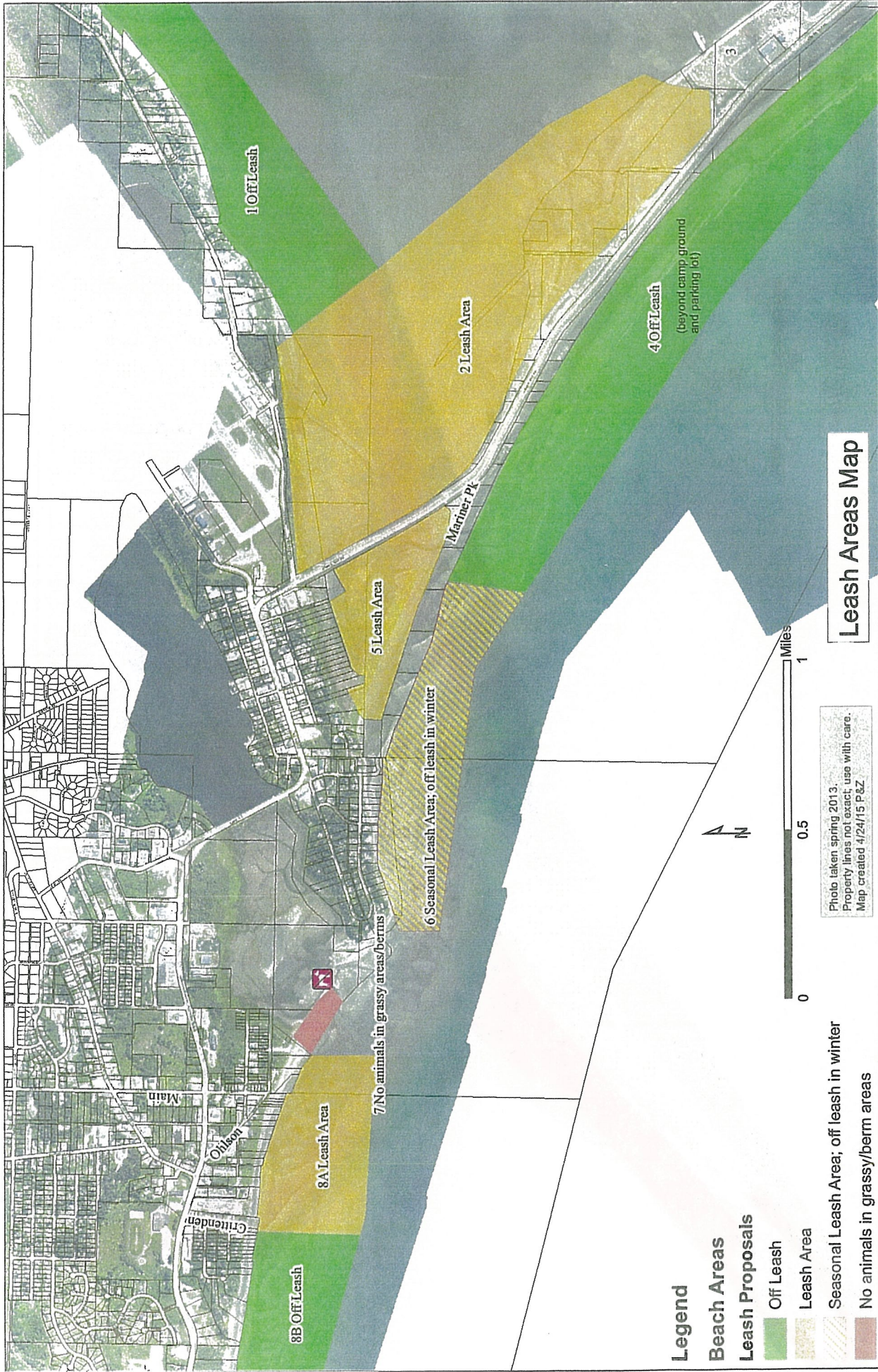
- Close all beaches to vehicles in summer, and allow winter use along a portion of the west part of the Spit. (Land owners of beach front property and their guests are exempt for the purpose of accessing their property. One way to administer this would be a gate and permit system).
- Install security cameras at Bishop's beach Park
- Add Bishop's Beach and Beluga Slough to the existing Western Hemisphere Shorebird Reserve Network. (WHSRN)
- Create areas where dogs must be on leashes. See Attachments.
- Increase dog waste education
- Install dog waste bag dispenses at public buildings, trails and parks and encourage other agencies and businesses to do the same.
- Purchase 500 dog waste dispensers to give away; encourage local businesses to stock baggies supplies and dispensers.
- Educate locals on beach rules. Community outreach: land owners, primary user groups, schools
- Education on beach resources (why we have the rules and how they protect what we have)
- Delineate private property at Bishop's Beach Access
- Place rocks to prevent or mark where vehicles shouldn't go, east at Bishop's Beach
- Consider a park host. (Would need to be willing to testify in Court)
- Ban the burning of pallets on the beach
- Ban glass bottles (containers) on the beach

Attachments:

1. Implementation Table
2. Leash Areas Map
3. Beach Areas Map: Where Vehicles are allowed on the Beach
4. Memo from Attorney Klinkner
5. 2007 Beach Policy
6. Backup Materials

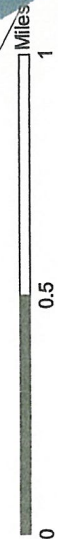
Beach Policy Changes and Implementation	Budget Ordinance	Code	Resolution	Administrative Policy Decision	Notes	Timeframe
Close all beaches to vehicles in summer, and allow winter use along a portion of the west part of the Spit from the Sea Wall south east past Mariner Park and down the Spit. (Land owners of beach front property and their guests are exempt for the purpose of accessing their property, possibly using a gate and permit system).	X	X			May require placement of physical barriers to vehicles If beaches are closed to vehicles, only one may be needed.	Pass ordinance and advertise closure in 2015, implement in spring of 2016
Hire two seasonal beach patrol employees	X				If beaches are closed to vehicles, only one may be needed.	2016 budget
Purchase 500 dog waste dispensers to give away; encourage local businesses to stock baggies supplies and dispensers.	X				May have existing funding	2015 P&R budget? 2016 budget
Delineate private property at Bishop's Beach Access	X				If beaches are closed to vehicles, this may not be needed.	2016 budget
Place rocks to prevent or mark where vehicles shouldn't go, east at Bishop's Beach	X				If beaches are closed to vehicles, this may not be needed.	2016 budget
Install security cameras at Bishop's Beach Park	X				If beaches are closed to vehicles, this may not be needed.	2015/2016
Draft an ordinance to define and ban reckless driving as it would be applied to all of City of Homer beaches	X				If beaches are closed to vehicles, this may not be needed.	2015/2016
Create areas where dogs must be on leashes.	X					Begin by working with Homer Animal Friends and other on education. Install appropriate signage.
Ban the burning of pallets on the beach	X					Implement in 2016 beginning with signage at City Parks
Ban glass bottles (containers) on the beach	X					Implement in 2016 beginning with signage at City Parks
Install dog waste bag dispensers at public buildings, trails and parks and encourage other agencies and businesses to do the same.	X		X		Funding from existing P&R Commission budget	2015/2016
Add Bishop's Beach and Beluga Slough to the existing Western Hemisphere Shorebird Reserve Network. (WHSRN)	X		X			2015/16
Increase dog waste education	X		X		Staff time or volunteers needed. Install signage	2016
Educate locals on beach rules. Community outreach: land owners, primary user groups, schools	X		X		Partner with or support groups that already do this work. Construct signage/educational displays at Mariner and Bishop's Beach Parks	2016
Education on beach resources (why we have the rules and how they protect what we have)	X		X		Partner with or support groups that already do this work	
Consider a park host. (Would need to be willing to testify in Court)	X		X		May need funding	2016

Beach Policy Changes and Implementation	Budget Ordinance	Code Resolution	Administrative Policy Decision	Notes	Timeframe
Increase ticketing efforts	X		X	Schedule officers to have more presence on the beach for a short period of time. A few tickets may have a big impact on behavior.	Immediate
Install fire pits at Bishop's Beach Park, and at the City parcel near the end of Main Street/Ohlson Lane, and make trash cans available.			X		Immediate
Improve signage at Bishop's Beach.			X	Funding required	2016
Investigate firewood consessions in campgrounds and Bishop's Beach			X		2016 summer season



Leash Areas Map

Photo taken spring 2013.
 Property lines not exact; use with care.
 Map created 4/24/15 P&Z

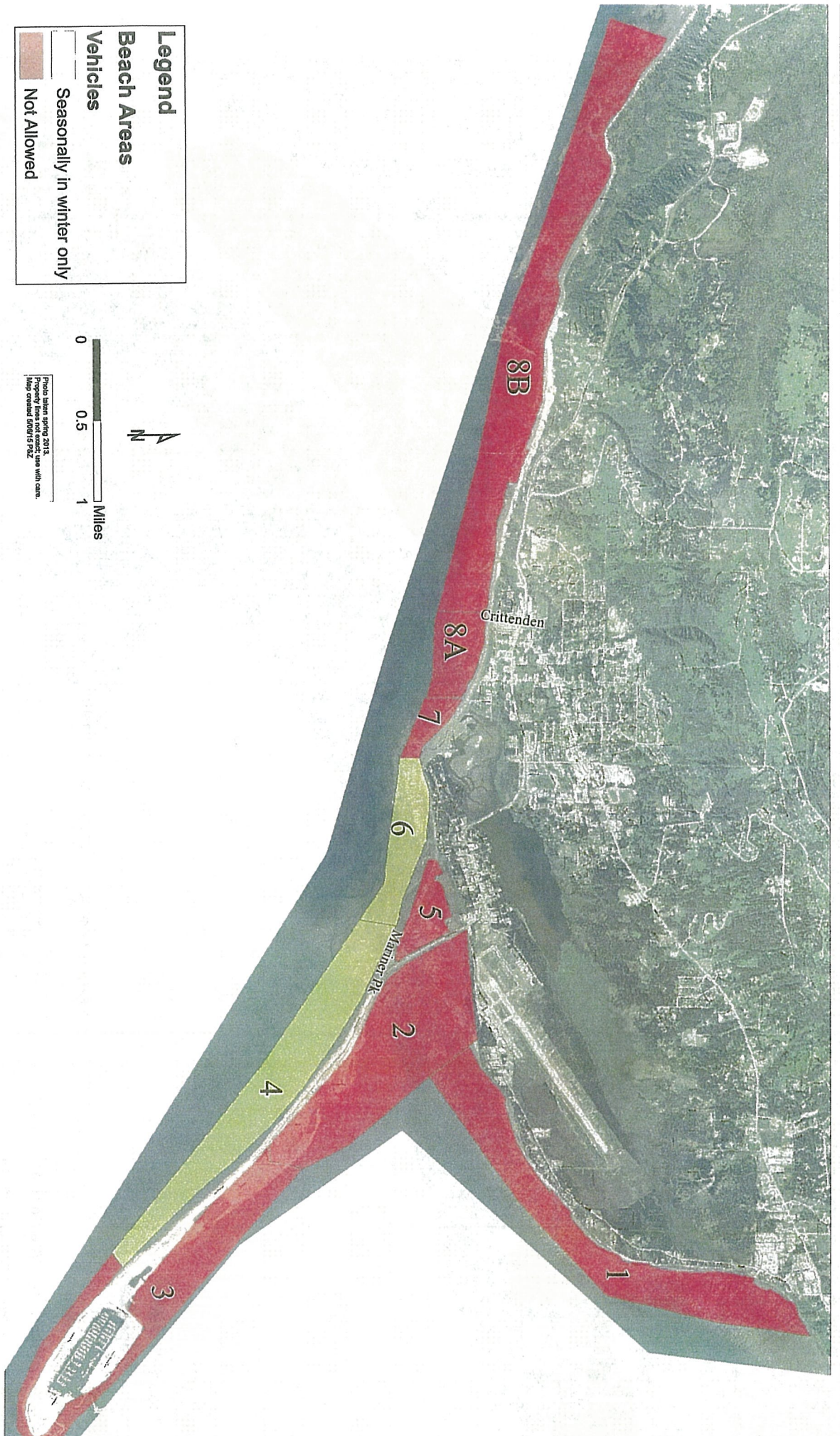


Legend

Beach Areas

Leash Proposals

- Off Leash
- Leash Area
- Seasonal Leash Area; off leash in winter
- No animals in grassy/berm areas



City of Homer Beach Areas

Where vehicles are allowed on the beach

MEMORANDUM

**TO: JULIE ENGBRETSSEN
DEPUTY CITY PLANNER
CITY OF HOMER**

FROM: THOMAS F. KLINKNER

RE: BEACH POLICY REVISIONS

FILE NO.: 506,742.1003

DATE: JUNE 1, 2015

You have asked that I review and comment on proposed changes to the City's Beach Policy. I had intended a more formal treatment of the subject, but time has not been my friend lately. Instead, I will give you the substance of my comments from a legal perspective in a more summary form.

Enforceability. Because the proposed changes focus on regulating conduct by the public, they raise issues regarding their enforceability that I will discuss below. These issues fall into two categories: (i) clear identification of the proscribed conduct; and (ii) the effect of overriding state or federal law principles.

Delineation of Affected Areas. Neither the original Beach Policy nor the proposed changes clearly delineates the areas in which the policies apply. While the policy documents incorporate maps, they are ambiguous, because the area commonly regarded as the "beach" may not be bounded by the property lines that are shown on those maps.

The Beach Policy and the proposed changes do not describe what constitutes the beach area with which they are concerned. In contrast, HCC 19.12.020 and 19.16.020 define the term "beach area" as "the zone of sand, gravel and other unconsolidated materials that extends landward from the low water line to the place where there is a marked change in material or physiographic form." In addition, the definitions of the terms "berm" and "storm berm" in these sections imply that those features are included in the beach area. For the purposes of this discussion, I assume that the Beach Policy and the proposed changes are concerned with the area that these Code sections describe.

The beach area described in HCC 19.12.020 and 19.16.020 consists of three distinct regions: (i) an area below the elevation of mean low water ("submerged lands"); (ii) the area between the elevations of mean low water and mean high water ("tidelands"); and (iii) an area above the elevation of mean high water ("uplands"). The

City owns the submerged lands and tidelands areas. Much, if not most, of the uplands are privately owned. I assume that the City-owned upland parcels are only those identified as such in the City's Land Allocation Policy.

Typically, the boundary between tideland and upland property (regardless of City or private ownership of either) is the current mean high water line. In most cases, this boundary is "ambulatory," moving seaward or landward with the erosion or accretion of material on the beach. There is an exception to this general rule for changes in the mean high water line that are caused by a sudden subsidence or uplifting of the beach area caused by an event such as an earthquake. In such a case, the boundary between tidelands and uplands continues to be located at the mean high water line that existed before the event. This is important for beach areas in Homer that experienced sudden subsidence during the 1964 earthquake. Where such subsidence occurred, the boundary of an upland parcel may extend seaward of the current elevation of mean high water. Thus, if such an upland parcel is privately owned, that private ownership may extend into the beach area. Determining whether a particular upland parcel extends into the beach area would require research of records regarding the effects of the 1964 earthquake at that location, of aerial photographs and other historic records. I am not aware that any such research has been conducted comprehensively for the beach area within the City of Homer.

Application to City-Owned and Privately Owned Beach Areas. The discussion in the preceding paragraphs indicates that any regulation of conduct in the beach area must be drafted to apply on both publicly owned and privately owned property. The City's leash law provides an example of how this may present an issue. HCC 20.08.010(a) provides that it is unlawful to allow any dog to run at large in the City. For this purpose, HCC 20.04.020 provides:

"At large" means an animal is at large when it is ***off the premises of the owner or keeper*** and is not in the company of or under the control of the owner or keeper, a member of his family or other person to which the animal has been entrusted, by leash, cord or chain; provided, however, that such animal shall be deemed to be under control when under competent voice control while actively engaged in an organized activity which requires that the animal not be physically restrained. (Emphasis added.)

Thus, whether a dog on the beach is "at large" may depend on whether the beach area in question is part of an upland parcel owned by the dog's owner.

Generally, the City may regulate conduct on private property to the same extent that it regulates conduct on City-owned property. However, as the discussion above illustrates, care must be taken to draft regulations of conduct in beach areas, so that they apply uniformly to activity on both City-owned and private property.

Public Trust Doctrine. Tide and submerged lands (including those later transferred to the City) that the state received from the federal government at statehood,

are subject to a trust for the people of the state for the purposes of navigation, commerce, and fishing. The City acquired tidelands and submerged lands from the state subject to this trust. At a minimum, this public trust doctrine requires the City to provide the public access across beach areas to the water for navigation, commerce, and fishing purposes.

The entire scope of the public trust doctrine has not been established in Alaska. Courts in other states, though not yet in Alaska, have held that the public trust doctrine extends to use of tidelands for recreation and wildlife habitat protection, as well as the traditional uses of navigation, commerce, and fishing. However, in Alaska it clearly does not permit private persons to conduct purely private activities, such as developing a mining claim, on City-owned tidelands. Moreover, use under the public trust doctrine remains subject to reasonable government regulation. There is no Alaska case addressing whether a particular mode of transportation, such as motor vehicles, may be excluded from a beach area consistently with the public trust doctrine. However, I believe that such an exclusion could be imposed, provided that it preserved reasonable access by vehicle at locations where required for the public to engage in navigation, commerce, and fishing.

Rights-of-Way under Federal Public Land Law. Cortney Kitchen previously provided you with a detailed memorandum on the potential for beach areas to be subject to public rights-of-way under a former federal public land law, RS 2477. I refer you to her discussion of that topic, with the following revisions.

RS 2477 provided for the creation of rights-of-way on federal public land until its repeal in 1976. However, it also would have ceased to apply to particular federal public lands when they were withdrawn from the federal public domain. In the case of tidelands and submerged lands in Homer, that withdrawal would have occurred when those lands were transferred to the state upon Alaska's admission to the Union in January 1959. A right-of-way could be established under RS 2477 only through usage before that date.

While no formal procedure is required to establish an RS 2477 right-of-way, a person who claims that a regulation of conduct in a beach area conflicts with such a right-of-way may challenge the regulation only after proving the existence of the right-of-way either in a court or in a state administrative proceeding.

A recognized RS 2477 right-of-way may be vacated in a state administrative proceeding, if an alternative road access is available. Road access is well developed along all of the City's shoreline, making it likely that the City could obtain a vacation of any RS 2477 right-of-way located in a beach area.

In conclusion, I do not believe that the potential existence of an RS 2477 right-of-way in a beach area should deter the City from adopting regulations that it considers reasonable for the control of vehicle use in beach areas.

TFK:lcj

