



CITY OF HOMER

POLICE DEPARTMENT

4080 HEATH STREET HOMER, AK 99603-7609

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Memorandum 15-131

DATE: July 7, 2015
TO: City Manager Koester
FROM: Mark Robl, Chief of Police
SUBJECT: Beach Enforcement Regulations

The Parks and Rec Commission has recommended closing Homer's Beaches to vehicle use most of the year, with limited vehicle use of some beaches for coal gathering during the fall and winter months. They have suggested utilizing the Kachemak Critical Habitat Area (KBCHA), regulations as an enforcement tool.

The Critical Habitat Area Designations are utilized by the Alaska Department of Fish and Game, Division of Habitat to protect and preserve habitat areas deemed to be especially crucial to the perpetuation of fish and wildlife. The laws associated with the enforcement of these regulations are promulgated in the section of statutes relating to fish and game enforcement. The enforcement of this section is the responsibility of the state. We have never taken enforcement action in this area and I strongly suggest we do not do so.

The City has some options it could consider if it chooses to implement the commission's recommendations. First; we could block off all access points to the beaches and only allow access through controlled gates to property owners and maintenance personnel. Second; I recommend we modify HCO 19.16.030, Use of Vehicles Prohibited, to include all other beach areas we want to prohibit vehicle use on. This could include all beaches within the city limits and will provide a proper enforcement tool for use by the police department.

If council decides to restrict beach access, I recommend the city contact the state and request enforcement of the KBCHA regulations. Council should be aware the state has issued a permit to allow motorized vehicle use of some of our beach areas for 2015. (See Special Area Permit 15-V-005-GP-SA, attached.) This permit authorizes vehicle use in the KBCHA between Miller's Landing and the Fox River Trail, between Anchor Point and Bidarki Creek and two other areas in Kachemak Bay. This permit is reissued every year and has been for over ten years.

Any plan involving permits to use beach areas for varied purposes results in more work for someone in the city work force. Given our current budget situation and staffing issues, we are ill-equipped to handle any options council chooses requiring significant staff time. We could make a limited permit system work for the specific purpose of allowing land owners to access their private property. We could structure it similar to the burn permit system which is easy for the users and takes very minimal staff time. Restricting vehicle access to



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of
Fish and Game

DIVISION OF HABITAT
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SPECIAL AREA PERMIT 15-V-0005-GP-SA

ISSUED: December 16, 2014
EXPIRES: December 31, 2015

General Public:

Re: Kachemak Bay Critical Habitat Area – Limited Off-road Use of Motorized Vehicles

In response to public need for access within and through the Kachemak Bay Critical Habitat Area (KBCHA), the Alaska Department of Fish and Game (ADF&G), Division of Habitat has determined that both the public interest and the proper protection of fish and wildlife and their habitat would be served through issuance of a General Permit (5 AAC 95.770) authorizing certain off-road motorized vehicle use in the KBCHA. This general permit authorizes the use of any off-road wheeled and tracked vehicles, 10,000 pounds or less gross vehicle weight, on all unvegetated KBCHA tidelands below mean high tide within four corridors: (1) between Anchor Point and Bidarki Creek; (2) between Miller's Landing and the Fox River Trail; (3) between Martin River and Bear Cove; and, (4) between Seldovia and the portion of Kasitsna Bay, west of the entrance to Jakalof Bay (see enclosed map). Motorized vehicle use in these corridors is for the purpose of providing normal personal and recreational transit within and through the KBCHA.

The KBCHA was created pursuant to AS 16.20.590 to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose. This activity is not expected to adversely impact important habitat values.

In accordance with 5 AAC 95.770, the department hereby issues a Special Area Permit to the general public for off-road use of motorized vehicles in the KBCHA subject to the following stipulations:

1. The off-road use of vehicles greater than 10,000 pounds gross vehicle weight, and the use of construction equipment, including tracked or excavating equipment are **not** included in this authorization.
2. Harassment of wildlife, including any activity that displaces wildlife, is prohibited, excepting legal and permitted hunting, fishing, and gathering of fish and game.

3. No vehicle shall be operated below the ordinary high water line (vegetation line) of any river, lake, or stream specified to contain anadromous fishes.
4. No fuel shall be stored, nor vehicles leaking fuels, oils, hydraulic, or cooling fluids shall be operated on the tidelands of the KBCHA.

The vehicle owner and the operator are responsible for the actions of persons who participate in the approved activity. For any activity that requires an individual Special Area Permit, as identified in 5 AAC 95.20, the individual shall notify the Division of Habitat, at the above letterhead address or telephone number, and obtain written approval in the form of an individual Special Area Permit prior to commencement of the activity. Any action that increases the project's overall scope or that negates, alters, or minimizes the intent or effectiveness of any stipulation contained in this permit will be deemed a significant deviation from the approved plan. The final determination as to the significance of any deviation and the need for a permit amendment is the responsibility of the Division of Habitat. Therefore, it is recommended you consult the Division of Habitat immediately when a deviation from the approved plan is being considered.

This letter constitutes a permit issued under the authority of 5 AAC 95. Please be advised that this determination applies only to activities regulated by the Division of Habitat. This determination does not relieve you of your responsibility to secure other permits; state, federal, or local. You are still required to comply with all other applicable laws.

In addition to the penalties provided by law, this permit may be terminated or revoked for failure to comply with its provisions or failure to comply with applicable statutes and regulations. The permittee shall mitigate any adverse effect upon fish or wildlife, their habitat, or any restriction or interference with public use that the commissioner determines may be expected to result from, or which actually results from, the permittee's activity, or which was a direct result of the permittee's failure to: 1) comply with a permit condition or a provision of 5 AAC 95; or 2) correct a condition or change a method foreseeably detrimental to fish and wildlife, or their habitat.

You shall indemnify, save harmless, and defend the department, its agents, and its employees from any and all claims, actions or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from permitted activities or your performance under this permit. However, this provision has no effect if, and only if, the sole proximate cause of the injury is the department's negligence.

This permit decision may be appealed in accordance with the provisions of AS 44.62.330-630.


General Public
15-V-0005-GP-SA

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Issued: December 16, 2014
Expires: December 31, 2015

Sincerely,

Sam Cotten, Acting Commissioner



By: Ginny Litchfield
Kenai Peninsula Area Manager
ADF&G, Habitat Division

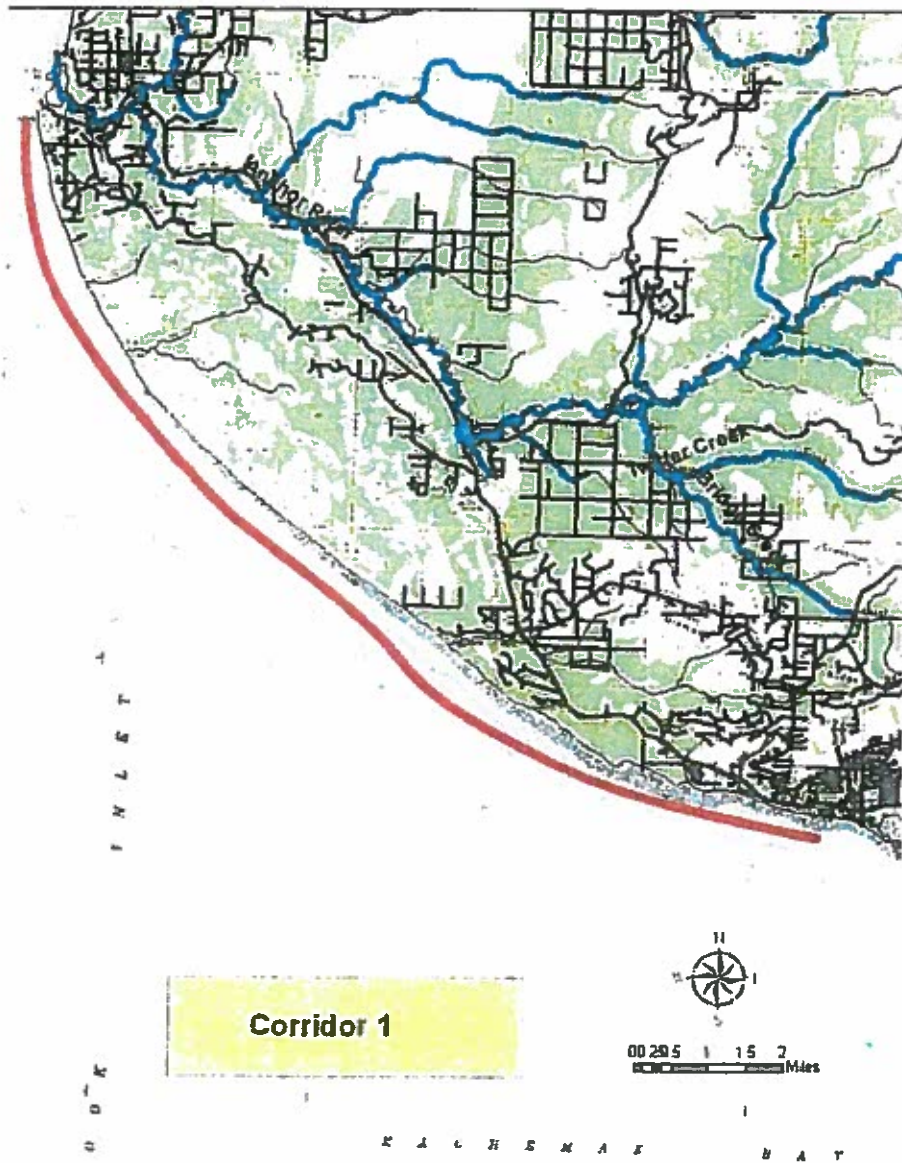
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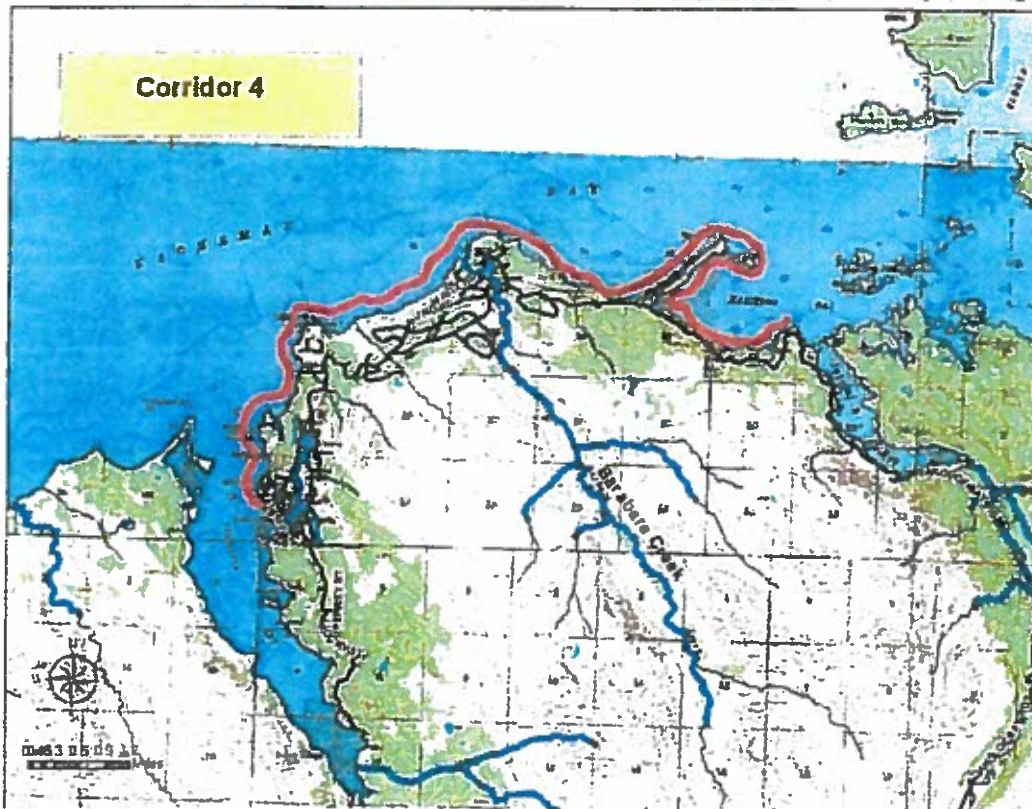
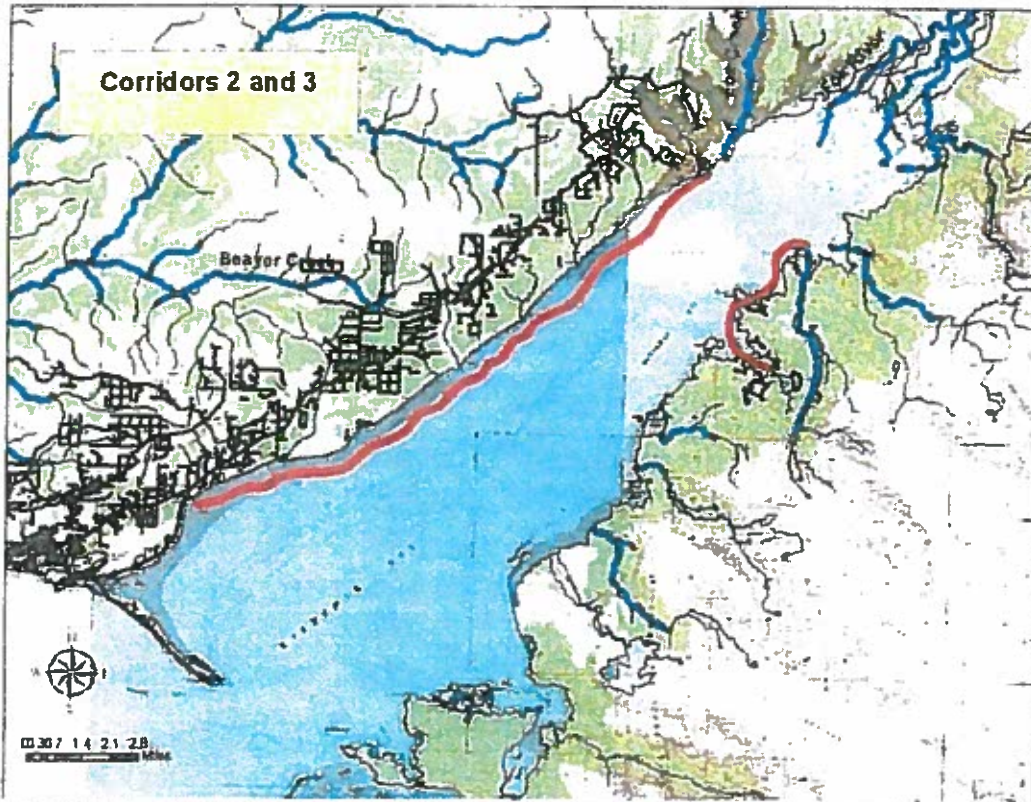
cc: KRC File

By email only:

AWT Homer
ADF&G Homer, Anch.

COE - KFO





Title 5 . Fish and Game

Chapter 95 . Fish and Game Habitat

Section 420. Activities requiring a special area permit

5 AAC 95.420. Activities requiring a special area permit

(a) No person or governmental agency may engage in the following uses or activities within a special area without first obtaining a special area permit following the procedures of 5 AAC 95.700 - 5 AAC 95.760:

- (1) construction, placement, or continuing use of any improvement, structure, or real property within a special area;**
- (2) destruction of vegetation;**
- (3) detonation of an explosive other than a firearm;**
- (4) excavation, surface or shoreline altering activity, dredging, filling, draining, or flooding;**
- (5) natural resource or energy exploration, development, production, or associated activities;**
- (6) water diversion or withdrawal;**
- (7) off-road use of wheeled or tracked equipment unless the commissioner has issued a general permit under 5 AAC 95.770;**
- (8) waste disposal, placement, or use of a toxic substance;**
- (9) grazing or animal husbandry; and**
- (10) any other activity that is likely to have a significant effect on vegetation, drainage, water quality, soil stability, fish, wildlife, or their habitat, or which disturbs fish or wildlife other than lawful hunting, trapping, fishing, viewing, and photography.**

(b) The commissioner makes the final determination as to whether a specific activity is subject to the provisions of this chapter.

History: Eff. 6/5/86, Register 98

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530