



MEMORANDUM

Ordinance 24-60, An Ordinance of the City Council of Homer Alaska Amending Homer City Code Section 7.16.020 Operating, stopping or parking of motor vehicles in beach areas prohibited – Exceptions by Changing the Time Frame Allowing Coal and Sand Collection Access from the Mariner Beach Access. City Clerk/Parks, Art, Recreation & Culture Advisory Commission.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and City Council
Date: November 12, 2024
From: Renee Krause, MMC, City Clerk
Through: Melissa Jacobsen, City Manager

Background:

At the regular meeting on May 16, 2024 Commissioner Keiser requested the Commission to consider a request from a member of the public to be given a special permit so he could collect coal from the prohibited areas from April 1st through September 30th. The Commission was provided the current Beach Policy and Management Plan, Ordinance16-05(A) and several memorandums supporting the current policy. This topic was postponed at the request of the Commission to the June meeting as it was determined that the required three-year audit/review of the Policy was due and the Commission was not prepared to perform that full policy review.

At the regular meeting on June 20, 2024 the Commission postponed discussion and review of the Beach Policy and Management Plan until their regular meeting in October due to the number of priority projects and topics on the next several agendas and the Commission did not meet in July.

At their regular meeting on October 17, 2024 the Commission conducted their review and considered the request for a Special Permit from a member of the community to allow coal and sand collection in prohibited areas and after considering the recommendation from the Chief of Police, supported by the Recreation Manager, Parks Maintenance, and City Clerk recommended extending the period of time that coal collection was allowed in specific areas.

The Commission supported the staff recommendation to amend the audit/review timeframe from every three years to as needed but expressed concerns regarding amending it could make it a monthly topic.

The Commission approved the amendments to the Beach Policy and Management Plan by motion the excerpt of the minutes have been provided as an attachment.

The amended Beach Policy and Management Plan is to be adopted by resolution which will be on the November 25, 2024 meeting agenda contingent upon adoption of Ordinance 24-60 by Council.

Recommendation: Approve Ordinance 24-60 Amending Homer City Code Section 7.16.020 Operating, stopping or parking of motor vehicles in beach areas prohibited – Exceptions by Changing the Time Frame Allowing Coal and Sand Collection Access from the Mariner Beach Access.

Attachments:

Memorandum PARC-24-033 with attachments

Memorandum PARC-24-042

Meeting Minutes for May 16, 2024, June 20, 2024, October 17, 2024



MEMORANDUM

Amending the Beach Policy and Homer City Code to Allow Vehicular Access by Special Permit to Closed Areas of the Beach

Item Type: Action Memorandum
Prepared For: Parks, Art Recreation and Culture Advisory Commission
Date: May 7, 2024
From: Janet Keiser, Commissioner
Through: Mike Illg, Recreation Manager/PARC Staff Liaison

Commissioner Keiser has requested this item for consideration of the Commission:

Background submitted by Commissioner Keiser:

John Fouts is a 76+ year old gentleman who's been heating his house, 10 miles past Fritz Creek, for over 50 years, with coal. He drives his truck on the beach between Bishop's Beach and beyond, sometimes driving in the no-drive zones, to get the coal. While he can burn wood in his stove, it is easier to use coal because he doesn't have to buck up and chop the coal.

Sometime recently, he was driving on the beach, in the no-drive zone. A couple of people spotted him, yelled at him, and called the police. When he got back to the Bishop's Beach access, there was a squad car waiting for him. He was given a ticket. He's worried about his ability to get the coal he needs to heat his house. Most years, he can collect all the coal he needs in the winter. He can go through 3-4 buckets of coal a day. Last winter, there was little to no coal on the beach because of the winds we had all winter. He was out there chopping coal out of the ice, in the blowing snow, to get what he could. Even so, he didn't get enough to get him through the winter. When he runs out of coal, he has to go out and chop wood, regardless of the weather. He said it almost killed him.

I'm remembering the Eagle Lady, who fed the eagles out on the Spit. She did it for years, becoming a local legend. When they made feeding the eagles illegal, she was given a special permit to continue to feed the eagles until she died.

How about if the Commission supports providing Mr. Fouts a special permit to collect coal, in view of his age and traditional practice that goes back 50 years? There'd be no danger of widespread abuse of this special permit because few other people would be able to cite this long history of continuously collecting coal.

I tried to think of a solution that wouldn't open up the beach to racing 4-wheelers. I think the Special Permit idea would be a reasonable accommodation for him that wouldn't cause much harm. He goes out there maybe every 10 days or so.

Requirements:

If the Commission adopts the recommendation the following actions will be required:

- Amending the Beach Policy to include a section on Special Permits that includes the process and application.
 - A Resolution would be needed to have Council adopt the amendment so a Councilmember would need to be a sponsor.
- Amending Homer City Code 7.16 to address the Special Access Permit
 - An ordinance would be required to allow a special permit to be issued
- A recommendation to City Council in support of issuing a special permit to allow vehicles on the beach April 1-September 30th for the purpose of collecting coal would be required in addition to the resolution and ordinance.

Recommendation:

PARCAC discuss implementing a Special Access Permit.

Attachments Provided by Staff:

Excerpt from the City of Homer Beach Policy pages 8, 9, 10, 11, 12, 13, 14

Ordinance 16-05 (S-2)(A-2)

Memorandum 15-131 from Chief Robl dated July 15, 2015

Memorandum 16-031 from City Attorney dated August 26, 2015

Memorandum 20-109 from Interim City Manager dated July 17, 2020

Amendments
made to Sections 1c2
upon codification 3/11/16
J. J. J.

**CITY OF HOMER
HOMER, ALASKA**

Lewis

ORDINANCE 16-05(S-2)(A-2)

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.

THE CITY OF HOMER ORDAINS:

Section 1. Subsection (c) of Homer City Code 1.16.040, Disposition of scheduled offenses—fine schedule, is amended by adding new lines to read as follows:

Code Section	Description of Offense	Fine		
		1st offense	2nd offense	3rd & subsequent offenses
7.16.020	Motor vehicle in beach area	\$25	\$250	\$500
7.04.030 7.16.030	Motor vehicle on storm berm	\$25	\$250	\$500

Section 2. Homer City Code Chapter 7.16, Vehicles in Beach Areas, is enacted to read as follows:

7.16.010 Definitions.

In this chapter:

“Beach area” means all of the following, whether publicly or privately owned: submerged land, tideland, and the zone of sand, gravel and other unconsolidated materials that extends landward from the elevation of mean high water to the place where there is a marked change in material or physiographic form.

“Berm” means a natural, linear mound or series of mounds in a beach area composed of sand, gravel, or both, generally paralleling the water at or landward of the elevation of mean high water.

“Motor vehicle” means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over land, that is self-propelled except by human or animal power.

35 "Storm berm" means a berm formed by the upper reach of storm wave surges or the
36 highest tides. Storm berms generally include an accumulation of seaweed, driftwood, and
37 other waterborne materials. A beach area may have more than one storm berm.

38 "Submerged land" means land covered by tidal water from the elevation of mean low
39 water seaward to the corporate boundary of the city.

40 "Tideland" means land that is periodically covered by tidal water between the
41 elevation of mean high water and mean low water.

42
43 7.16.020 Operating, stopping or parking of motor vehicles in beach areas prohibited;
44 Exceptions.

45 a. Except as provided in subsections b through d of this section, no person may
46 operate, stop or park a motor vehicle within or upon any beach area.

47 b. A person may operate, stop or park a motor vehicle within and upon the beach area
48 east of a line extending south from the southern end of a line extending south from the
49 southern end of the vacated easement formally known as Shirlene Circle, and within and
50 upon the beach area west of Bishops Beach Park Access.

51 c. A person may operate, stop or park a motor vehicle within and upon the beach area
52 between the south end of Mariner Park beach to the east end of the seawall from October 31
53 through March 1 solely for the purpose of gathering sand and coal.

54 d. An owner of property immediately adjacent to a beach area may operate, stop and
55 park a motor vehicle within or upon a beach area as is reasonably necessary to maintain the
56 owner's property, in accordance with the terms of a permit issued for that purpose by the
57 chief of police.

58 e. Nothing in this section permits a person to operate, stop or park a motor vehicle
59 within or upon privately owned property in a beach area without the permission of the
60 property owner.

61
62 7.16.030 Operating, stopping or parking of motor vehicles on storm berms prohibited.
63 No person may operate, stop or park a motor vehicle upon a storm berm.

64
65 7.16.040 Impoundment authorized.

66 A vehicle that is stopped or parked in violation of this chapter may be impounded as
67 provided in HCC Chapter ~~7.08~~ 7.10

68
69 Section 3. Homer City Code Chapter 19.16, Vehicles on Homer Spit Beach, is repealed.

70
71 Section 4. This Ordinance is of a permanent and general character and shall be
72 included in the City Code.

73
74 ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, this 22 day of
75 February 2016.

CITY OF HOMER

Mary E. Wythe
MARY E. WYTHE, MAYOR

ATTEST:

Melissa Jacobsen
MELISSA JACOBSEN, CMC, ACTING CITY CLERK



AYES: 6
NOES: 0
ABSTAIN: 0
ABSENT: 0

First Reading: 01/25/16
Public Reading: 02/08/16
Second Reading: 02/22/16
Effective Date: 02/23/16

Reviewed and approved as to form:

Mary K. Koester
Mary K. Koester, City Manager

Date: 2.24.16

Thomas F. Klinkner
Thomas F. Klinkner, City Attorney

Date: 2-26-16



CITY OF HOMER

POLICE DEPARTMENT

4080 HEATH STREET HOMER, AK 99603-7609

EMERGENCY 911
TELEPHONE (907) 235-3150
TELECOPIER (907) 235-3151

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
Kenai Peninsula Office

514 Funny River Road
Soldotna, Alaska 99669-8255
Main: 907.714.2475
Fax: 907.260.5992

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.

Sincerely.

Sam Cotten, Acting Commissioner



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

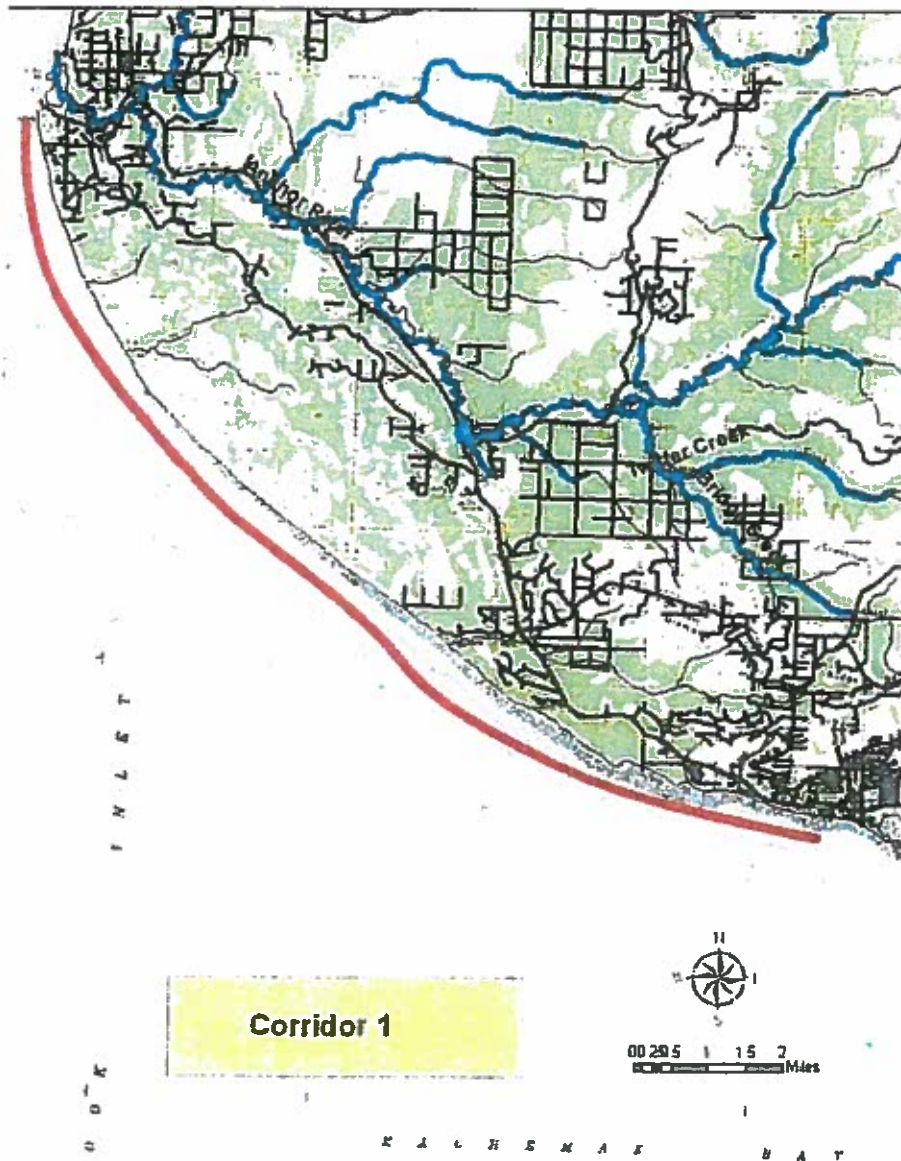
Enclosures: Maps

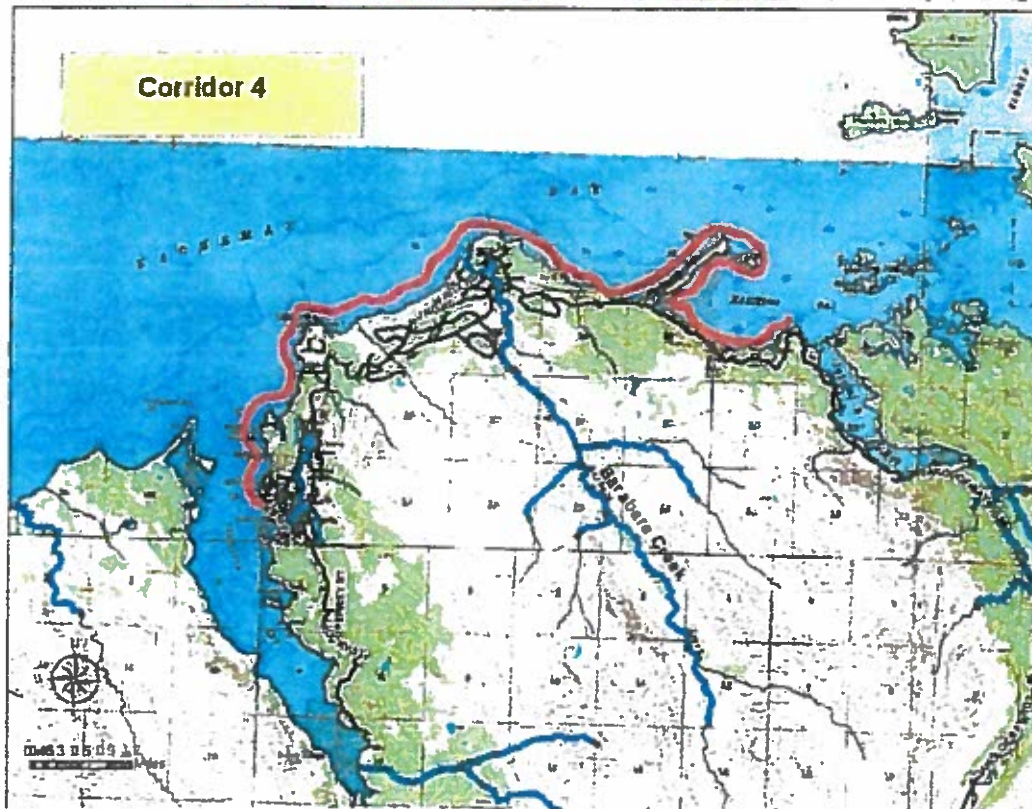
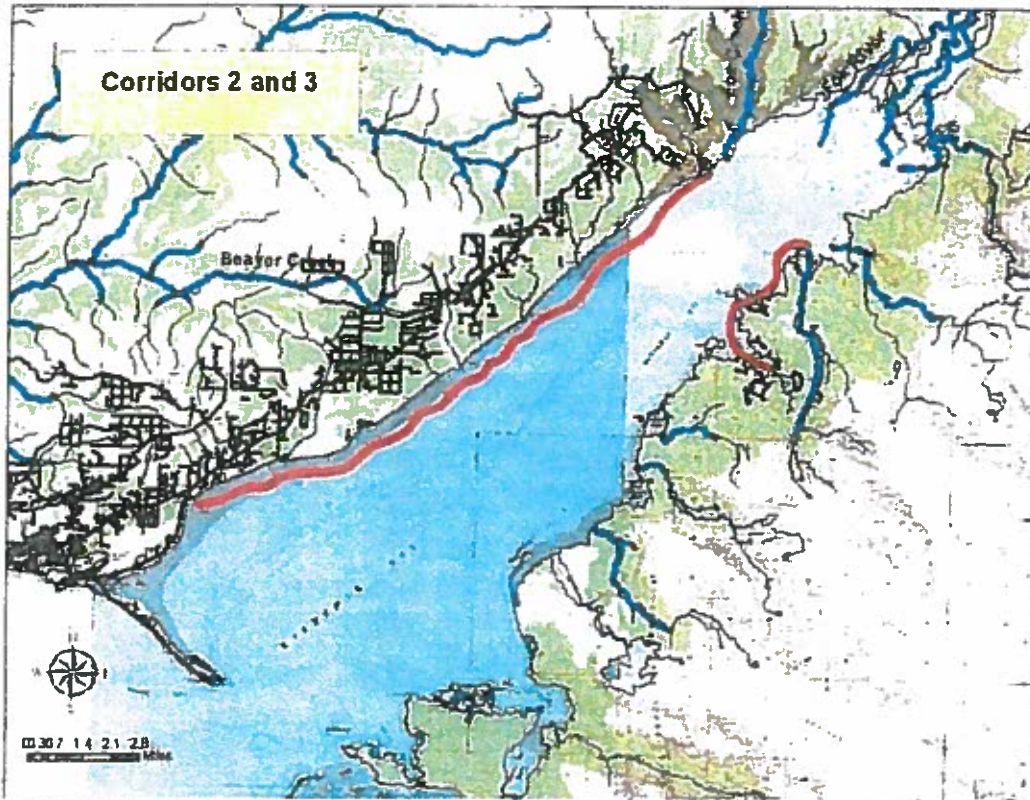
cc: KRC File

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



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Memorandum 16-031

**TO: KATIE KOESTER
CITY MANAGER, CITY OF HOMER**

FROM: THOMAS F. KLINKNER

RE: REGULATION OF MOTORIZED VEHICLES ON BEACHES

FILE NO.: 506,742.1003

DATE: AUGUST 26, 2015

This memorandum supplements and replaces my memorandum of August 18, 2015, on this subject, providing supporting citations and a more detailed analysis of the relationship between City regulation of motorized vehicle use in beach areas and state regulation of activities in beach areas within the Kachemak Bay Critical Habitat Area ("KBCHA"). I begin by discussing what constitutes the "beach area" under the current Homer City Code and proposed Ordinance 15-29, the geographic terms conventionally used to categorize the components of the "beach area," and how those terms are related to property boundaries in the "beach area." I then describe state regulation of motorized vehicle use in the KBCHA, and compare it to the regulation of motorized vehicle use under proposed Ordinance 15-29.

What is the "Beach Area"? Both current HCC 19.16.020 and proposed Ordinance 15-29 define the term "beach area" to include "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." This definition differs from the usual categorization of areas along a shoreline: (i) the area below the elevation of mean low water, referred to as "submerged lands"; (ii) the area between the elevations of mean low water and mean high water, referred to as "tidelands"; and (iii) the area above the elevation of mean high water, referred to as "uplands".¹ The "beach area" as defined in HCC 19.16.020 and proposed Ordinance 15-29 begins at the elevation of mean low water—the boundary between submerged lands and tidelands—and extends landward to a "place where this is a marked change in material or physiographic form"—the bottom of road and other embankments on the Spit, and the toe of the bluff at most other locations—which includes uplands above the elevation of mean high water as well as tidelands.

¹ *City of Saint Paul v. State, Dept. of Natural Resources*, 137 P.3d 261, 262 (Alaska 2006).

Property Ownership in the "Beach Area." Subject to the exception discussed below, the City owns the tidelands within the beach area,² while most of the uplands within the beach area are privately owned.³ In most cases, the boundary between tideland and upland property is "ambulatory," moving seaward or landward with the erosion or accretion of material on the beach that determines the current mean high water line.⁴ The exception to this general rule occurs when the mean high water line changes as the result of a sudden subsidence or uplifting of the beach area caused by an event such as an earthquake. In such a case, the boundary of property ownership continues to be located at the mean high water line that existed before the sudden subsidence or uplifting event.⁵ This exception may affect property boundaries in beach areas in the City that experienced sudden subsidence during the 1964 earthquake. Where such subsidence occurred, the boundary of an upland parcel may extend seaward of the current mean high water line, resulting in private ownership of some beach areas that presently are tidelands. Determining the precise boundary of property ownership in such cases would require a detailed investigation of changes in the beach area topography at and after events such as the 1964 earthquake.

Regulation of Motorized Vehicle Use in the KBCHA. The KBCHA initially included all beach areas within the City that are below mean high water.⁶ In 2014, the legislature excluded certain areas on the north side of the Spit in and around the Homer Harbor from the KBCHA.⁷ This was done to accommodate the long-term docking of a jack-up rig at the Deep Water Dock, which it was believed otherwise would conflict with the regulations governing the KBCHA.⁸

Two regulations govern activities in the KBCHA. One regulation, 5 AAC 95.610, adopts by reference the goals and policies of the Kachemak Bay and Fox River Flats Critical Habitat Areas Management Plan (the "Plan"). Although the Plan provides that off-road use of motorized vehicles generally is not permitted in the KBCHA, the Plan states that it does not apply to City of Homer lands.⁹ Thus, the Plan's provisions regarding off-road use of motorized vehicles do not apply to beach areas in the City.

² Before Alaska statehood, the federal government owned all of the tide and submerged lands in Alaska. Upon Alaska's admission as a state, the Alaska Statehood Act transferred tide and submerged lands to the State of Alaska. *City of St. Paul*, 137 P.3d at 262 n. 1. The state later transferred to the City the tide and submerged lands located within the City limits.

³ Upland parcels owned by the City are identified in the City's Land Allocation Plan.

⁴ *DeBoer v. United States*, 653 F.2d 1313, 1314-1315 (9th Cir. 1981).

⁵ *Honsinger v. State*, 642 P.2d 1352, 1354 (Alaska 1982).

⁶ AS 16.20.590(a).

⁷ Ch. 3 SLA 2014, enacting AS 16.20.590(b).

⁸ 5 AAC 95.420(a)(5) requires a special area permit for "natural resource or energy exploration, development, production or associated activities" in the KBCHA.

⁹ "The plan does not apply to federal or municipal lands within the critical habitat areas." Plan, p. 1. "Both state land and private land are included in the critical habitat areas but

The other regulation, 5 AAC 95.420, requires a special permit from the Commissioner of Fish and Game to engage in certain activities in the KBCHA. Among those restricted activities is "off-road use of wheeled or tracked equipment unless the commissioner has issued a general permit under 5 AAC 95.770."¹⁰ The restrictions in 5 AAC 95.420 are not subject to an exception for City of Homer lands, and therefore apply within the beach areas in the City that lie within the KBCHA. However, the Commissioner of Fish and Game has invoked the exception in 5 AAC 95.420(a)(7) by issuing a general permit under 5 AAC 95.770 that permits the off-road use in the KBCHA of vehicles of 10,000 pounds or less gross vehicle weight on unvegetated tidelands below mean high tide in motorized vehicle corridors that extend westward from Bidarki Creek and eastward from Miller's Landing, to provide "normal personal and recreational transit."¹¹

Comparing Proposed Ordinance 15-29 to the KBCHA Regulations. Proposed Ordinance 15-29 would permit motorized vehicle use in beach areas (i) on the southern side of the Spit from October 1 through March 31, and (ii) by owners of property immediately adjacent to a beach area as reasonably necessary to maintain the owner's property, in accordance with the terms of a permit issued for that purpose by the chief of police. There are three distinct parts to the relationship between the permission of motorized vehicle use under proposed Ordinance 15-29 and the state's regulation of motorized vehicle use in the KBCHA:

- To the extent that Ordinance 15-29 permits motorized vehicle use in beach areas above the mean high water line, it does not conflict with the state's regulation of motorized vehicle use in the KBCHA, as beach areas above the mean high water line lie outside the KBCHA.
- To the extent that proposed Ordinance 15-29 permits motorized vehicle use in beach areas below the mean water line, it does not conflict with the Plan as incorporated in 5 AAC 95.610, because the Plan does not apply to City of Homer lands.
- The permission of motorized vehicle use in beach areas below the mean water line in proposed Ordinance 15-29 does conflict with 5 AAC 95.420(a)(7), which prohibits such use except under the general permit for motorized vehicle use in the areas west of Bidarki Creek and east of Miller's Landing.

TFK/lcj

municipal (City of Homer and City of Seldovia tidelands) and federal lands are not under critical habitat area authority." Plan, p. A-1.

¹⁰ 5 AAC 95.420(a)(7).

¹¹ Special Area Permit 15-V-0005-GP-SA, issued December 16, 2014.



City of Homer

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Memorandum 20-109

TO: Mayor Castner and Homer City Council
FROM: Rick Abboud, Interim City Manager
DATE: July 17, 2020
SUBJECT: Backup Information Concerning the City's Beach Policy

PARCAC reviews the City of Homer's Beach Policy every two years as part of their Commission activities. The next scheduled review of the document is November 2020. Should Council wish to revisit vehicular use on Homer beaches either sooner than what is scheduled or with a new management approach, a resolution of the City Council providing direction to PARCAC would be appropriate. Under *HCC 2.60.040 Duties and responsibilities of the Commission*, the Commission acts in an advisory capacity on matters involving public beaches. The City's Beach Policy currently in effect can be found online here: https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/city_clerk039s_office/page/6550/beach_policy_042516.pdf. This policy was developed in consultation with PARCAC; an abbreviated history of how this policy came to be is provided below.

History:

In June 2001, the Beach Policy Task Force made final recommendations to the City. These recommendations included limitations on where vehicles could travel on Homer's beaches, recognition of the importance of beach and storm berms, and new rules about driftwood harvesting. At the time, these were very large changes for public beach use and behavior. The recommendations were formatted into a Beach Policy document adopted by Council under Resolution 2001-44(A). Other actions included amending Homer City Code Title 7 regarding vehicles on beach areas, definitions, and the harvest of driftwood.

The 2001 policy was then reviewed in 2005 by PARCAC. From 2014 to 2016 under Council's direction, PARCAC again reviewed and made revisions to the beach policy in a yearlong public process. There was general public consensus that coal gathering was important, so Mariner Park Beach is open in the winter (only) for coal gathering.



Red = No vehicles

Yellow = Vehicles only under the terms of HCC 7.16,
Seasonal coal gathering



There was also consensus that if the eastern portion of Bishops' Beach were to be closed, then the western portion should be open both for coal gathering and to provide the ability to drive to Anchor Point or out the beach (as people have done here since the mining and homestead era). A gate was installed to block cars from traveling east to Beluga Slough.

Vehicles are allowed west from Bishop's Beach Park access, and prohibited to the east.

For the Kachemak Drive Area, it is still legal to drive on the beach, but there are no public access points. The state placed a gate at the top of the airport, and a key is available for land owners by request. Using the state access point also entails trespass on private property. It is not often used.



Below is a selected history of the 2014-2016 process.

https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/memo/4851/memo_15-102_beach_policy.pdf

https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/memo/8904/memo_16-031_beach_policy_kbcha_legal_memo.pdf



MEMORANDUM

Beach Policy Review – Special Permit Coal Collection

Item Type: Recommendation
Prepared For: Parks, Art Recreation and Culture Advisory Commission
Date: June 14, 2024
From: Renee Krause, MMC, Acting City Clerk

Summary

This item was postponed from the May meeting to be included in a full review of the Beach Policy.

It is recommended that the Commission periodically review documents related to items that are under the Commission purview to make sure that the content is still relevant or requires updating. It is also an opportunity for Commissioners to become familiar with the various policies and standard operating procedures that the various departments and relevant staff refer to when dealing with various attributes of their duties and or the public.

Commissioners should consider the following request for special allowance and or consideration of vehicular use in prohibited areas for the collection of coal as outlined in Memorandum PARC-24-033 and make a recommendation by motion.

Commissioners are requested to review the policy and provide any recommendations for amendments in the form of a motion. These will be discussed and voted on by the Commission as a whole and a Public Hearing will be held on the recommended changes if any to allow the public to comment.

The Beach Policy is one document that the Commission actually holds a Public Hearing on any amendments prior to submitting to City Council for approval.

Recommendation

Review and make a recommendation on issue regarding Special Access Permits related to Coal Collection and any other additional amendments needed as determined by the Commission.

CALL TO ORDER

Session 24-05, a Regular Meeting of the Parks, Art, Recreation and Culture Advisory Commission was called to order by Chair David Lewis at 5:30 p.m. on May 16, 2024 from the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar. The Commission met at 4:30 p.m. for a worksession with Agnew::Beck on the Comprehensive Plan Update.

PRESENT: COMMISSIONERS ARCHIBALD, HARRALD, LEWIS, KEISER, ROEDL, PARSLEY

ABSENT: COMMISSIONER FAIR (EXCUSED)

STAFF: ACTING CITY CLERK KRAUSE
RECREATION MANAGER ILLG
PARKS MAINTENANCE COORDINATOR FELICE

AGENDA APPROVAL

KEISER/ARCHIBALD MOVED TO AMEND THE AGENDA TO POSTPONE NEW BUSINESS ITEM D TO THE JUNE AGENDA.

There was a brief discussion of the Commission's responsibility to review the Beach Policy every two years and it would be appropriate to address the subject in the broader sense of the policy review.

VOTE.(Amendment) NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

ARCHIBALD/HARRALD MOVED TO APPROVE THE AGENDA AS AMENDED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENTS ON MATTERS ALREADY ON THE AGENDA (3 minute time limit)

Scott Adams, city resident, commented in support of the proposed Karen Hornaday Master Plan.

Melissa Jacobsen, Interim City Manager, commented on the budget requests under Memorandum PARC-24-034 for Additional Parks Maintenance Personnel providing clarification on funding.

VISITORS/PRESENTATIONS (10 minute time limit)

A. Kachemak Nordic Ski Club

Bob Glen, president of the Nordic Ski Club, and Anna McCarthy discussed the construction of an equipment shed to store the club's ski equipment. The club, which promotes Nordic skiing through 90

kilometers of trails and various events, including Junior Nordic programs for 175 kids, spends a significant portion of its budget on ski equipment. The decision to build the shed was prompted by the need to protect the equipment from the elements, particularly during winter, and was made possible by a change in management and volunteer efforts from Dave Brann. The shed will be located near the Rogers Loop trailhead on city property.

RECONSIDERATION

CONSENT AGENDA All items on the consent agenda are considered routine and non-controversial by the Parks Art Recreation & Culture Advisory Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

- A. Unapproved Meeting Minutes for April 18, 2024

ARCHIBALD/HARRALD MOVED TO APPROVE THE CONSENT AGENDA.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

STAFF & COUNCIL REPORT/COMMITTEE REPORTS (5 minute time limit)

- A. Parks Monthly Report – April/May 2024
Memorandum PARC-24-029 from Parks Maintenance Coordinator Felice

Parks Maintenance Coordinator Felice reviewed his report and noted the following:

- the new tractor was delivered and is in use
- A track grader was employed for the Karen Hornaday park road and its doing fine for now but not sure how long it will last since Little League has started.
- Serve the City event is this weekend (April 20th) and working on the coordination
- New swing set installed at Ben Walters Park and swings will be hung on Monday April 22
- Working on electric and lighting for Karen Hornaday Park

Mr. Felice facilitated a discussion on Parks Staffing and lowered seasonal staffed.

- B. Community Recreation Report – May 2024
Memorandum PARC-24-030 from Recreation Manager Illg

Mr. Illg provided highlights on the following:

- use of the Mobi mats that were requisitioned by the ADA Advisory Board
- Birding Backpacks
- new Youth Volleyball game schedule
- Youth Recreational Summer Programming, Gymnastics and Tumbling opportunity provided by a new business, Frontier Tumbling
- Safe and Healthy Kids Fair was off the charts this year and commended the organizers.
- Part-time Rec person and seasonal person until June

C. PARCAC Staff Liaison Report – May 2024

Memorandum PARC-24-031 from Recreation Manager Illg as backup.

Recreation Manager Illg reviewed his report noting that council adopted the resolution approving fees and that they will be bringing forward a budget request for bringing the part time person into full time by using the funding for seasonal temporary staffing.

PUBLIC HEARING

PENDING BUSINESS (15 minute time limit)

A. Performance of A SWOT Analysis and Creating a Strategic Plan

Memorandum PARC-24-032 re: Setting Priorities

Mr. Illg reported that he has facilitated discussions with various entities that are willing to work within the budget. He has narrowed it down to Wellspring.

Commissioner Harrald supported that option noting the company was great to work with.

Discussion ensued on the intent of the worksession by the Commission and that none of the commissioners did their homework on prioritizing the proposed strategic goals. They discussed having a worksession prior to the next meeting.

ARCHIBALD/HARRALD MOVED TO HAVE A WORKSESSION TO REVIEW AND DISCUSS THE PROPOSED STRATEGIC PLAN.

Discussion on Commissioners submitting their prioritized review to the Clerk by June 12th.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. Karen Hornaday Park Master Plan
Memorandum PARC 24-036 from Community Development Director as backup

Chair Lewis introduced the item and deferred to Community Development Director Engebretsen

Ms. Engebretsen reviewed the proposed draft of the Karen Hornaday Park Master Plan.

Discussion and points made on the plan were as follows:

- Have ADA Parking at trails and paths
- Cost estimates needed
- Geotechnical Reports needed for the proposed access road on the west side
- Restrooms will be in place this summer
- Addressing the “low hanging fruit” method of items in the plan
- Drainage issues
- Running electrical to the area between the two upper fields
- Seasonal Traffic Calming measures
- Corvus Design to attend June meeting

NEW BUSINESS (15-20 minute time limit)

- A. Recommendation to Propose the City Construct a Pedestrian Trail and Viewing Platform in the South B Street Right of Way.

Memorandum PARC 24-035 from Commissioner Keiser as backup

Chair Lewis introduced the item by reading of the title and invited Commissioner Keiser to present her request to the Commission.

Commissioner Keiser explained that the city has the right of way and can construct a pedestrian pathway to a viewing platform to replace the one that was removed.

Commissioner Archibald noted that it is a platted road and has been used as a social trail.

Discussion facilitated by Staff ensued on the concept and feasibility. Staff stated that the Commission can make a motion to request City Council approve the Commission’s request and direct staff. The Commission cannot direct staff to perform the work.

ARCHIBALD/ PARSLEY MOVED TO SUBMIT A MEMORANDUM TO CITY COUNCIL REQUESTING STAFF TO CONDUCT THE FEASIBILITY OF CONSTRUCTING A PEDESTRIAN PATHWAY AND VIEWING PLATFORM IN THE B STREET RIGHT OF WAY SOUTH OF BAY AVENUE.

There was no discussion.

VOTE. NON-OBJECTION UNANIMOUS CONSENT.

Motion carried.

B. Comprehensive Plan Update Recommendations

Chair Lewis introduced the item by reading of the title and open the floor to discussion and recommendations by the Commission.

Discussion facilitated by the Chair made points on the following:

- top three recommendations are related to Parks and outdoor/indoor recreation
- Parks and Recreation deserve their own section within the Comp Plan rewrite
- Planning Commission and Parks Art Recreation & Culture should have a joint worksession
- A memorandum can be provided to the planning regarding comments from the commission
- Pending business item a future meeting
 - o Review the document and determine what items go into the section

C. Mid Biennial Budget Amendment - Parks FTE and Community Recreation Equipment
Memorandum PARC-24-034 from Commissioner Keiser as backup.
Budget Request form - Community Recreation for Equipment

Chair Lewis introduced the item by reading of the title and deferred to Commissioner Keiser

Commissioner Keiser commented on her memo noting that the Commission can submit memorandums to Council in support of budget requests.

HARRALD/ARCHIBALD MOVED TO RECOMMEND CITY COUNCIL AMEND THE OPERATING BUDGET TO ADD ONE FTE TO PARKS MAINTENANCE.

A brief discussion was entertained on the comments of Interim City Manager Jacobsen regarding funding and PARCAC responsibility.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

HARRALD/ROEDL MOVED TO REQUEST CITY COUNCIL AMEND THE CAPITAL BUDGET BY \$4500 TO PURCHASE A VOLLEYBALL NET SYSTEM.

D. Amending the Beach Policy and Homer City Code to Allow Vehicular Access by Special Permit to Closed Areas of the Beach.

Memorandum PARC 24-033 from Commissioner Keiser as backup

Excerpt from City of Homer Beach Policy pgs 8-14

Memorandum 15-131 from Chief Robl dated July 7, 2015

Memorandum 16-031 from City Attorney dated August 26, 2015

Ordinance 16-05 (S-2)(A-2) Vehicles on Beaches

Memorandum 20-109 from Interim City Manager/City Planner dated July 17, 2020

Chair Lewis noted that this item was postponed to the June meeting.

E. Long Term Memorandum of Agreement with Kachemak Nordic Ski Club

Memorandum PARC 24-037 from Community Development Director as backup

Chair Lewis requested a motion and second.

Commissioner Harrald requested clarification on the project as reflected in the CIP versus what is being proposed in the new amended agreement.

HARRALD/ROEDL MOVED TO SUPPORT THE AMENDMENT TO THE MEMORANDUM OF AGREEMENT WITH KACHEMAK NORDIC SKI CLUB.

There was a brief discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

F. Welcome New Commissioner, Lucas Parsley

The Commission expressed a warm welcome to Commissioner Parsley.

G. Letter to the Editor Topic Recommendation

The Commission discussed various topics for Commissioner Keiser to write a draft Letter to the Editor. She will provide a draft for the June meeting approval.

INFORMATIONAL MATERIALS

A. PARCAC Annual Calendar 2024

B. City Manager's Report for City Council May 13, 2024

Commissioner Harrald commented on errors in the date shown on the Annual Calendar and speaking at the next Council meeting.

COMMENTS OF THE AUDIENCE (3 minute time limit)

Scott Adams, city resident, expressed his appreciation for the Commission discussion on the B Street proposed project, Harbor revenues for the Haul Out Facility versus the camping and he has requested the funding information used for the purchase of the parcels, private campgrounds charge \$100 a night and not everyone can afford. He has been a proponent on using existing facilities and commented on the need for a full recreational facility. He recounted the revenues made by camping.

COMMENTS OF THE MAYOR/COUNCILMEMBER (If Present)

COMMENTS OF THE CITY STAFF

Acting City Clerk Krause noted it was a fun meeting as always.

Recreation Manager Illg noted that it was a good meeting.

COMMENTS OF THE COMMISSION

Commissioner Keiser commented that it was a pleasure working with everyone on the Commission.

Commissioner Archibald expressed his appreciation for staff and commented it was a good meeting.

Chair Lewis noted that they got through all the items and it was still before 8 pm

Commissioners Harrald and Roedl did not comment.

ADJOURNMENT

There being no further business to come before the Commission Chair Lewis adjourned the meeting at 7:55 p.m. The next Regular Meeting is **Thursday, June 20, 2024 at 5:30 p.m.** A worksession is scheduled for 4:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar.

Renee Krause, MMC, Acting City Clerk

Approved:_____

Borough, crafting the Letter to be neutral not literal with the use of the word “shabby”. Further recommendations were made on the proposed “letter to the editor” to address the recent accomplishments and donations and that the Clerk can make the edits and submit for publication.

HARRALD/ROEDL MOVED TO ACCEPT THE LETTER TO THE EDITOR WITH THE AMENDMENTS PROVIDED.

There was no further discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

D. Memorandum PARC-24-042 re: Beach Policy Review and Special Permits

Vice Chair Archibald introduced the item and opened the floor for discussion.

Discussion ensued on the following:

- Having a worksession on the beach policy
- The process involved in making amendments to the policy
- Having a discussion when interested people will be available to attend a meeting to provide comment.
- Receiving input from the Police Department and Port & Harbor

HARRALD/ROEDL MOVED TO POSTPONE DISCUSSION ON THE BEACH POLICY TO SEPTEMBER MEETING.

Mr. Foust arrived and proceeded to speak from the audience and was provided clarification by Vice Chair Archibald when the appropriate time to comment on the topic would not be now but during Comments of the Audience stating that he was not present when the earlier opportunity was available.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

E. Memorandum PARC-24-044 re: Vessel Haul Out Recommendation

Vice Chair Archibald introduced the item by reading of the title and opened the floor for discussion.

Recreation Manager Illg reviewed the memorandum outlining the actions requested by the Commission.

Discussion was facilitated by Staff with points made on the following:

- Line 56 - Delete the words, “Moral obligation” and amend to state “Strong financial benefit to ensure this is available and accessible.”
 - o This statement could be debated regarding the financial benefits of the vessel haul out proceeds;
- State the questions listed in the proposed memo as bullet points not questions
- Quality of life impacts
 - o Camping creates memorable experiences

STAFF & COUNCIL REPORT/COMMITTEE REPORTS (5 minute time limit)

- A. Parks & Trails Report for September 2024
Memorandum from Parks Maintenance Coordinator as backup.

Parks Coordinator Felice reviewed his report for the Commission noting the following:

- Maintenance on the road up to Karen Hornaday Park to help with rain and drainage
- Trail maintenance in preparation for winter including cutting back brush on trails
- West lot, Lucky Shot, and Story Trail are completed
- Bayview Park: Walkway to be paved by East Road Services, playground and swing set are installed, concrete is set
- Jack Gist: Water and sewer hookups are in place for restrooms, fall cleanup on fields
- Winter prep around the city: transplanted peonies, wrapped flower beds and barrels, ditching alongside Ben Walters Trail

- B. Community Recreation Report for October 2024
Memorandum from Recreation Manager as backup.

Recreation Manager Illg reported on the following:

- Purchase of score clock console at Homer High School for Adult Basketball League
- Rec Champions met to talk about the multi-use community center. Investigating HEA property, city's town center property, borough land behind Homer Middle School, focusing on cost for water, sewer, and electric for each site.
- Local community members working with the Homer Foundation to potentially start a 'Friend of the Community Center' organization
- Update on attendance to National Recreation Parks Association Conference in Atlanta, Georgia

Mr. Illg responded to questions on the potential lots for the Community Center and if assessment of each lot is allowing for future growth.

- C. Staff Report for September 2024
Memorandum from Recreation Manager as backup

Recreation Manager Illg reviewed his report for the Commission noting the upcoming City Council worksession on October 28 to talk about the Land Allocation Plan. He noted the Commission had made some recommendations, as well as the Port and Harbor Commission. Mr. Illg concluded with indication of a potential worksession in 2025 to discuss the property more specifically.

PUBLIC HEARING

PENDING BUSINESS (15 minute time limit)

- A. Beach Policy Review
Memorandum from Recreation Manager as backup

Chair Lewis introduced the topic and deferred to Recreation Manager Illg.

Mr. Illg reported reaching out to multiple staff from different departments to review the beach policy for potential proposals and changes. Mr. Illg received feedback from Police Chief Robl including a recommendation to consider changing the access dates from October 1st through March 31st to September 15th through April 15th. He noted there were conversations with staff to strike audit and review of beach access points and documentation from 'every 3 years' to 'as needed.' Mr. Illg also reminded the Commission of any proposed changes brought forward would need final approval by City Council due to changes needed in city code.

Chair Lewis opened discussion of Beach Policy.

Commissioner Archibald brought up concern over 'as needed' wording of audit and review of beach access points and documentation.

Commissioner Harrauld agreed with this point, expressing concerns that the beach policy review would turn into a monthly discussion issue.

Commissioner Parsley asked the last time the beach policy was reviewed since being created; discussion followed including last amendment date.

ARCHIBALD/KEISER MOVED TO CHANGE THE DATES OF OPEN VEHICLE ACCESS TO SEPTEMBER 15TH THROUGH APRIL 15TH.

There was a brief discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

KEISER/ARCHIBALD MOVED TO CHANGE THE AUDIT REVIEW OF UPDATES TO THE BEACH POLICY FROM 'EVERY 3 YEARS' TO 'AS NEEDED' TO ADDRESS CHANGED CIRCUMSTANCES.

There was no discussion

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

B. City of Homer PARC SWOT Analysis- Review and Discussion

Chair Lewis introduced topic for discussion.

Commission agreed analysis was time well spent and information gathered will be helpful in forward thinking for the City. The Commission noted the information will be utilized creatively to build capacity and funding in the future with further discussion revolved around the term 'underlying contradictions' in terms of budget challenges and scale back, possible existing revenue streams, and organizational structure.

KEISER/ARCHIBALD MOVED TO ACCEPT THE SWOT ANALYSIS DATED AUGUST 15, 2024 AND FORWARD TO THE CITY COUNCIL.

There was no discussion