

CITY OF HOMER
HOMER, ALASKA

Lord

RESOLUTION 19-091(A)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA REQUESTING THE ALASKA DEPARTMENT OF FISH & GAME EXTEND THE COMMENT PERIOD FOR PROPOSED RULE CHANGE TO THE ~~KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN REVISION~~ **5AAC95.310 OF ALASKA ADMINISTRATIVE CODE DEALING WITH THE PROHIBITION OF PERSONAL WATERCRAFT USE IN THE FOX RIVER FLATS AND KACHEMAK BAY CRITICAL HABITAT AREAS** TO 90 DAYS; AND THAT THEY PROVIDE INFORMATION SUPPORTING THE CHANGE AND WHY IT'S NOT BEING CONSIDERED AS PART OF THE ONGOING REVISION PROCESS FOR THE KACHEMAK BAY CRITICAL HABITAT AREA MANAGEMENT PLAN.

WHEREAS, The natural beauty and rich productivity of Kachemak Bay led the Alaska Legislature to designate Kachemak Bay one of the state's first Critical Habitat Areas in 1974; and

WHEREAS, The declared purpose of the Kachemak Bay Critical Habitat Area is "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"; and

WHEREAS, Kachemak Bay provides important recreational and economic opportunities for local residents, and attracts tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Alaska Department of Fish & Game (ADFG) recently opened a thirty (30) day public notice period to change rules **regulation 5AAC95.310 of the Alaska Administrative Code dealing with the prohibition of personal watercraft use in the Fox River Flats and Kachemak Bay Critical Habitat areas**, adopted to protect the Kachemak Bay Critical Habitat Area; and

WHEREAS, These rules have been in place since 2001, when a strong majority of local residents supported their enactment, and these rules are supported by ADFG staff; and

WHEREAS, ADFG staff have indicated the Governor's Office has already decided to adopt the rule change, despite the fact local residents have not had the opportunity to submit comments or voice their opinions; and

WHEREAS, ADFG adopted the current Kachemak Bay Critical Habitat Area Management Plan in 1993, and has been working with stakeholders, including City of Homer staff, to revise it over the past several years; and

WHEREAS, City of Homer staff have attended at least twenty (20) meetings and spent significant time and resources over the past three years on the Kachemak Bay Critical Habitat Area Management Plan revision process; and

WHEREAS, Rule changes affecting the Kachemak Bay Critical Habitat Area should be included in the management plan revision process; and

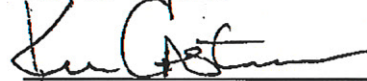
WHEREAS, The State of Alaska has provided no explanation or rationale for the proposed rule change.

NOW, THEREFORE, BE IT RESOLVED that the City of Homer does hereby request the Alaska Department of Fish & Game to:

- Provide scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better-understand and comment on the issues presented;
- Extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change; and
- Provide an explanation why this rule change should not be considered as part of the ongoing revision process for the Kachemak Bay Critical Habitat Area Management Plan.

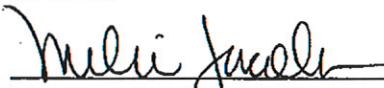
PASSED AND ADOPTED by the Homer City Council this 16th day of December, 2019.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK

Fiscal note: N/A



**CITY OF HOMER
HOMER, ALASKA**

Evensen /Aderhold

RESOLUTION 20-007(S)

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA
URGING THE STATE OF ALASKA TO RETAIN THE BAN ON
PERSONAL WATERCRAFT IN THE KACHEMAK BAY AND FOX RIVER
FLATS CRITICAL HABITAT AREAS UNDER 5 AAC 95.310 UNTIL THE
DEPARTMENT OF FISH & GAME PROVIDES RESPONSES TO THE
CITY'S PREVIOUS CONCERNS, AN ANALYSIS DETAILING THE
CITY'S POTENTIAL LEGAL LIABILITY EXPOSURE, AND ADEQUATE
FUNDING FOR THE CITY TO ADOPT AND ENFORCE NEW RULES IF
5 AAC 95.310 IS REPEALED

WHEREAS, The Homer Spit and Kachemak Bay provide important recreational and economic opportunities for local residents and attract tens of thousands of visitors each year who support a broad range of local businesses and jobs; and

WHEREAS, The Alaska Department of Fish & Game (ADFG) opened a thirty (30) day notice period on December 5, 2019, to repeal 5 AAC 95.310, state code that was adopted with strong community support in 2001 as one protection measure for the Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the Homer City Council passed Resolution 19-091(A), calling on ADFG to 1) provide scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better understand and comment on the issues presented; 2) extend the comment period to ninety (90) days to allow local residents sufficient time to comment meaningfully on the proposed rule change; and 3) provide an explanation why this rule change should not be considered as part of the ongoing revision process for Management Plans of Kachemak Bay and Fox River Flats Critical Habitat Areas; and

WHEREAS, On December 16, 2019, the ADFG issued a supplemental notice extending the public comment deadline for fifteen (15) days, until January 21, 2020; and

WHEREAS, Despite Homer City Council Resolution 19-091(A), to date, the State of Alaska has provided no explanation or rationale for the proposed rule change to the City of Homer or the general public, and has not explained why this policy change should not occur under the management plan revision process; and

WHEREAS, ADFG adopted the current Management Plan for Kachemak Bay Critical Habitat Area in 1993; and

WHEREAS, In 1999 the Homer City Council adopted Resolution 99-111, stating that "extensive research from around the country demonstrates that personal watercraft pose threats to waterfowl, seabirds, shorebirds, marine mammals, other wildlife, and their habitat; cause excessive noise and water pollution; create increased accident rates and user conflicts; and could have a negative impact on Homer's visitor industry;" and

WHEREAS, Over the past several years City of Homer staff have worked as part of a large stakeholder group with ADFG on the revision process of Kachemak Bay Critical Habitat Area Management Plan; since 2016 the City has participated in at least twenty (20) stakeholder meetings, spending significant time and City resources; and

WHEREAS, Rule changes affecting the Kachemak Bay Critical Habitat Area should be included in the management plan revision process, where they can be fully vetted by City of Homer staff and other stakeholders; and

WHEREAS, Personal watercraft (PWC) can be launched from local beaches and boat ramps owned by the City of Homer, and the City of Homer may be forced to adopt new rules to manage the launch and operation of PWCs in City-owned lands and waters; and

WHEREAS, Design and intended use of PWC are inherently different from skiffs and other boats, and a PWC's ability to achieve high speeds, jump waves, and navigate extremely shallow waters in and around beaches, tidelands, and waters owned by the City of Homer presents new and unknown liability concerns; and

WHEREAS, Because ADFG has performed no analysis of the potential effects of PWCs on municipalities located within and adjacent to the Kachemak Bay Critical Habitat Area, the City of Homer has no ability to assess the liabilities and costs of rule implementation and enforcement if 5 AAC 95.310 is repealed, resulting in an unfunded mandate from the State of Alaska; and

WHEREAS, Over 99% of Alaskan waters are open to PWC use and Alaskans and tourists alike have ample access to Kachemak Bay, one of the most heavily used waterways in the State, through the use of private and commercial vessels.

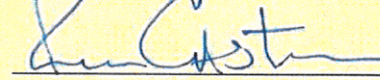
NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska urges the State of Alaska to retain the ban on personal watercraft in the Kachemak Bay and Fox River Flats Critical Habitat areas under 5 AAC 95.310 until the Department of Fish & Game:

1. Provides adequate responses to Homer City Council Resolution 19-091(A);
2. Provides an analysis detailing the City of Homer's potential legal liability exposure if 5 AAC 95.310 is repealed; and

3. Provides adequate funding for the City of Homer to adopt and enforce new rules if
5 AAC 95.310 is repealed.

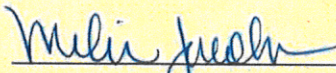
PASSED AND ADOPTED by the Homer City Council this 13 day of January, 2020.

CITY OF HOMER

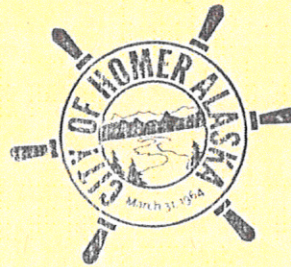


KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK



Fiscal information: N/A



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Fish and Game

OFFICE OF THE COMMISSIONER
Headquarters Office

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Main: 907.465.6136
Fax: 907.465.2332

January 16, 2020

Katie Koester
Homer City Manager
kkoester@ci.homer.ak.us

Ms. Koester:

Thank you for forwarding the Homer City Council Ordinance received in my inbox 12/23/2019 concerning the proposed repeal of 5AAC 95.310.

In the ordinance, the city council asked three requests of the Alaska Department of Fish and Game. I have repeated them here, for clarity, with a response to each.

1. Provide the scientific and technical information supporting its proposed rule change in a timely manner so the City of Homer and local residents can better understand and comment on the issues presented.
 - The science used throughout the process is inconclusive that personal watercraft have any affect, more or less, on fish and wildlife and their uses than other watercraft. Most of the comments received were speculation on “potential” issues arising from behaviors that can also be conducted on other watercraft currently not prohibited from the critical habitat area.
2. Your ordinance asked that the Comment Period be extended for 90 days to allow local residents sufficient time to comment meaningfully on the proposed rule change.
 - Since original comment period was held around a couple of holidays and we had a few requests such as yours, we extended the period for 15 more days to allow all Alaska residents to comment meaningfully.
3. The ordinance asked for an explanation why this rule change should not be considered as part of the ongoing revision process for the Area Management Plan.
 - We are addressing it outside the plan process because it is a stand-alone regulation, outside the plan itself.

If you have any further questions please contact me at rick.green@alaska.gov, or by phone at 907-267-2228.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Rick Green', followed by a horizontal line.

Rick Green
Special Assistant to the Commissioner

CC: Sarah Vance, Representative, Legislature, State of Alaska