

Proposed by:	Assembly
Attorney Review:	03/20/2018
First Reading:	04/05/2018
Second Reading:	04/19/2018
Vote:	6 Aye 0 Nay 0 Absent

MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 18-06

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC 16.14 NAHKU BAY CONSERVATION AREA MANAGEMENT PLAN AND REPEALING SMC 16.15 MATTHEWS CREEK AREA MANAGEMENT PLAN.

WHEREAS, in 2016 the Municipality of Skagway acquired USS 3307 from Bud Matthews, with the intent to preserve the area for public enjoyment and historically allowed uses; and

WHEREAS, the Nahku Bay Property Management Oversight Ad Hoc Committee was tasked by the Assembly with providing recommendations for management of USS 3307; and

WHEREAS, in 2017 the committee facilitated the addition of SMC 16.14 per Ordinance No. 17-02 to outline regulations for the beach area of USS 3307; and

WHEREAS, the committee has recommended further amendments to address management of the uplands area of the property; and

WHEREAS, guidelines for management of the uplands area are recommended to be added to SMC 16.14 instead of SMC 16.15, so SMC 16.15 Matthews Creek Area Management Plan is no longer necessary and should be repealed; and

WHEREAS, at its meeting of March 15, 2018, the Borough Assembly voted to introduce this ordinance, based on the recommendations of the committee;

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. Sections 3 and 4 of this ordinance are of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To amend SMC Chapter 16.14 Nahku Bay Conservation Area Management Plan to provide for regulations to manage the uplands area of USS 3307, and repealing SMC 16.15 Matthews Creek Area Management Plan because it is unnecessary.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. SMC 16.14 Nahku Bay Conservation Area Management Plan is hereby amended as follows:

Chapter 16.14

NAHKU BAY CONSERVATION AREA MANAGEMENT PLAN

Sections:

16.14.010 Statement of intent and goals.

16.14.020 Description of area.

16.14.030 Allowed/prohibited uses.

16.14.040 Permits and fees.

16.14.050 Penalties.

16.14.010 Statement of intent and goals.

- A. The municipality of Skagway recognizes that the Nahku Bay Conservation Area **(NBCA)** is an area of local, regional and state significance. An area of historic importance and scenic beauty, the Nahku Bay Conservation Area is valued highly by Skagway residents and visitors for its recreational and scenic values and for the rare opportunity it provides for a wilderness experience in a wild, rustic, and natural environment. Since previous land owner Bud Matthews' death, public testimony and responses consistently indicate overwhelming support for public ownership of the area by the municipality of Skagway and for the protection of its significant natural, scenic, and recreational uses and values. It is the intent of the municipality of Skagway to preserve the historic and traditional uses, intrinsic values and the spirit of Bud Matthews and his land, while maintaining minimal change to the Nahku Bay Conservation Area, and to be a responsible steward in the protection of its resources.
- B. The municipality believes that traditional uses of the Nahku Bay Conservation Area for recreation, quiet and solitude is an extremely important local public use that should receive full consideration regarding ownership and management of the area.
- C. It is the municipality's goal to preserve the Nahku Bay Conservation Area, to maintain its public ownership and to preserve the traditional and historic recreational uses of the area. To this end, the municipality of Skagway shall implement this land management plan, in cooperation with the state of Alaska, other adjoining property owners and the public.

16.14.020 Description of area.

~~All municipal property of US Survey 3307 that is located at the head of the Nahku Bay inlet and south of the Dyea Road, referred to below as the beach area.~~

The Nahku Bay Conservation Area is defined as those municipal lands encompassed within US Survey 3307. The "Beach Area" is defined as those municipal lands within U.S. Survey 3307 located at the head of the Nahku Bay inlet and south of the Dyea Road. The "Matthew's Creek Area" is defined as those municipal lands within US Survey 3307 north of the Dyea Road.

16.14.030 Allowed/prohibited uses.

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In order to protect the scenic, historical, ecological and archaeological resources of the Nahku Bay Conservation Area the following allowed and prohibited uses are adopted for the beach area:

- A. Allowed Recreational Uses (Noncommercial).
1. Walking, skiing, bicycling, snowshoeing;
 2. Boating, canoeing, rafting, kayaking, stand-up paddle boarding;
 3. Off-leash dog walking;
 4. Interpretation, public education;
 5. Picnicking;
 6. Beachcombing;
 7. Swimming;
 8. Remote control airplanes;
 9. Fishing (in compliance with state/federal regulations);
 10. Bird/wildlife watching;
 11. Edible plant gathering;
 12. Driftwood and seaweed harvest;
 13. Horseback riding, **in Beach Area only**;
 14. Fire in provided fire ring in **Beach Area**;
 15. Other traditional/day use recreation uses compatible with the management intent of the area.
- B. Allowed Recreation Uses with Permit (Noncommercial).
1. Use of the Nahku Bay Conservation Area by organized groups for "allowed uses" (as in subsection (A) of this section);
 2. Research and inventory related to historic and biological resources;
 3. Use of the Nahku Bay Conservation Area for low impact special events, particularly those that benefit nonprofit groups;
 4. Use of the Nahku Bay Conservation Area for public safety training, such as cold water rescue and kayak safety, **provided that users dispose of waste properly, take steps to minimize site alteration, minimize fire impacts, and generally strive to return the site to the state in which it was found.**
- C. Commercial Uses. There shall be no preexisting rights. Commercial recreational uses are allowed by permit with the following provisions:
1. Commercial activity is prohibited in the Nahku Bay Conservation Area except for permit holders for low impact, sustainable harvesting of plants, driftwood and seaweed for cottage industry usage.
 - a. Exempt from subsection (C)(34)(e) of this section.
 2. Commercial activity is prohibited in the Nahku Bay Conservation Area except for permit holders providing cold water rescue and kayak safety training.
 - a. The number of permit holders shall be restricted to four (4);
 - b. Maximum group size of twelve (12);
 - c. Each vendor is limited to one (1) training in the Nahku Bay Conservation Area at one (1) time and only two (2) per year;

- d. Other elements of the "Agreement for Limited Commercial Use of the Nahku Bay Conservation Area" shall be directly negotiated with each vendor through the borough manager;
- e. Conditions of the contract with each vendor shall be subject to borough manager approval; and
- f. There shall be an annual review of each vendor by the borough manager following the end of the tourist season each year.

3. Commercial activity is prohibited in the Nahku Bay Conservation Area except for summer season log cabin rental and daily A-frame rental.

- a. **Rental of the log cabin and A-frame are exempt from subsection (C)(4)(e) of this section.**
- b. **The A-frame shall be available to rent on a daily basis to nonprofit groups. The A-frame shall not be used for housing. The borough manager shall provide written guidelines for use of the cabin, provide forms for requesting rental of the A-frame, and review and approve rental requests. Fees for daily rental of the A-frame shall be established by the borough assembly via resolution.**
- c. **The log cabin shall be available to rent, with preference to a borough employee, for the purpose of caretaking the NBCA, per SMC 16.14.030(d). The borough manager shall approve use of the log cabin and facilitate the necessary rental agreement.**
- d. **Specific duties of the caretaker per SMC 16.14.030(c) shall be included in the rental agreement.**

4. General Provisions.

- a. Permit holders are responsible for complying with all state, federal and local laws applicable to their activities.
- b. Permit holders shall reimburse the municipality of Skagway for any damages to municipal property caused by the permit holder's activities.
- c. Permit holders shall have in their possession at all times the permit issued pursuant to this section.
- d. Permit holders, as a condition of receiving a permit, shall execute an instrument under the terms of which the permit holder will agree to indemnify, defend and hold harmless the municipality of Skagway from any and all claims for injury or damage to person or property as a result of the permit holder's activities.
- e. Municipality of Skagway requires a certification of insurance showing the permit holder has obtained at least two million dollars (\$2,000,000.00) combined single limit public liability insurance. This certificate must establish that the municipality is named as an additional insured on such policy, and that the insurer thereof shall notify the municipality twenty (20) days before the policy is modified, canceled, or terminated.

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- f. Permit holders are responsible for compliance with permit conditions. Any person listed on a permit issued shall be deemed to be jointly and severally liable for any violation of this chapter by any person or employee operating under the permit.
- g. Permits authorized under this chapter are not transferable, and shall revert back to the municipality in the event of any abandonment or failure to perform.
- h. Permits may be terminated by the municipality at any time.

D. Prohibited Uses.

- 1. Commercial activities including tours, rentals, retail sales or any other uses where compensation is made or offered;
- 2. Operation of any motor vehicle (including snow machine, ATVs, motorcycles and mopeds);
- 3. Camping;
- 4. Fires outside of designated **fire ring in Beach Area**;
- 5. Tree cutting/gathering ~~except deadfalls used for fires in the Nahku Bay Conservation Area's designated fire pit~~; excluding municipal maintenance activities;
- 6. Dumping of any fill or refuse;
- 7. Subdivision and/or sale of public lands;
- 8. Residential, industrial and commercial structures or other intensive developments;
- 9. Grazing;
- 10. Any regular stops on a public or private commercial transportation route, with the exception of transportation for permitted events.
- 11. Horseback riding in the Matthews Creek Area (uplands north of the Dyea Road);**
- 12. Discharge of any material into the creek;**
- 13. Hydropower stations or dam.**

16.14.040 Permits and fees.

- A. Permits. The borough manager shall establish a system for the permitting of uses requiring such permits as identified in SMC 16.14.030(B) and (C). Permits shall be obtained prior to the conduct of any of the intended uses.
- B. Fees. The borough assembly shall establish by resolution a schedule of fees when and if such fees are determined necessary.

16.14.050 Penalties.

- ~~A. Damage to Public Property or Resources. The permit holder shall be responsible for any damages to any public land, road, trail, facility or natural resource including trees, waters or wildlife, and shall pay actual costs of remediation of these damages.~~

- B. ~~Impact upon the Quiet Enjoyment of Public Lands by Noncommercial Users. Complaints by noncommercial users of public lands filed with the Skagway police department against any commercial operator may result in citation.~~
- C. ~~Any violation of this code is a noncriminal infraction, punishable by a civil penalty up to three hundred dollars (\$300.00) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.~~
- D. ~~Grievance Procedure. Any reported violation of this code may result in a correction order issued by the borough manager under SMC 5.01.050. An appeal of such correction order may be filed as provided in SMC 5.01.070, Appeal to borough assembly.~~

For violations of this chapter, refer to Chapter 1.20, General Penalty. Violations of this chapter are subject to civil fines established by resolution.

Section 4. Repeal. The Skagway Municipal Code is hereby amended; (strike through) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. SMC 16.15 Matthews Creek Area Management Plan is hereby repealed as follows:


~~Chapter 16.15~~
~~MATTHEWS CREEK AREA MANAGEMENT PLAN~~

~~Chapter 16.15 is reserved as a placeholder to address future management of the uplands area of USS 3307 described as the Matthews Creek Area.~~

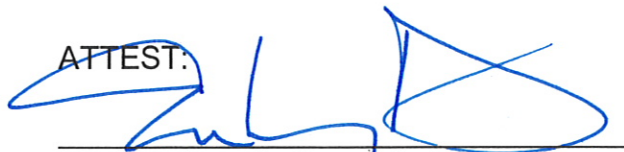
Section 5. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 6. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 19th day of April, 2018.



Monica Carlson, Mayor

ATTEST:


Emily A. Deach, Borough Clerk

(SEAL)

