

FAILED

Proposed by:	Mayor Cremata
Attorney Review:	06/22/2023
First Reading:	07/06/2023
Second Reading:	_____
Vote:	1 Aye 5 Nay 0 Absent

MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 23-18

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING SMC CHAPTERS 3.15, 16.08, 16.10, 16.12, AND 16.14 TO DEFINE LAND MANAGEMENT AREA BOUNDARIES AND CLARIFY THE APPLICABILITY OF THESE CHAPTERS.

WHEREAS, the purpose of SMC 16.08 Dyea Flats Management Plan, SMC 16.10 Dyea Management Plan, SMC 16.12 Dewey Lakes Recreation Area Management Plan, and SMC 16.14 Nahku Bay Conservation Area Management Plan is to provide regulations for the governance of certain special land use areas within the borough; and

WHEREAS, recently, the Municipality of Skagway has received all of the legal ownership documents for these areas from the State of Alaska, as part of its municipal entitlements per state law; and

WHEREAS, code must be amended to specifically define the boundaries of these land management areas, now that legal descriptions of each are available; and

WHEREAS, the boundaries of Dyea Flats, Dyea, and West Creek should be reflected in SMC 3.15 to clarify the purview of the Dyea Community Advisory Board; and

WHEREAS, code amendments are needed to clarify how each chapter specifically governs each land management area;

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

Section 1. Classification. Sections 3 through 7 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 3.15 Dyea Community Advisory Board, SMC 16.08 Dyea Flats Management Plan, SMC 16.10 Dyea Management Plan, SMC 16.12 Dewey Lakes Recreation Area Management Plan, and SMC 16.14 Nahku Bay Conservation Area Management Plan to define the boundaries of each land management area and clarify how each chapter governs each land management area.

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 3.15 Dyea Community Advisory Board is hereby amended as follows:

Chapter 3.15

DYEA COMMUNITY ADVISORY BOARD

Sections:

- 3.15.010 Establishment.
- 3.15.020 Appointment.
- 3.15.030 Term of office.
- 3.15.040 Officers.
- 3.15.050 Vacancies.
- 3.15.060 Quorum.
- 3.15.070 Meetings.
- 3.15.080 Record of meetings.

3.15.010 Establishment.

There is established a Dyea Community Advisory Board to advise the borough assembly on issues and policies relating to public lands in ~~the Dyea and West Creek Valleys~~ **the Dyea Flats, Dyea, and West Creek as defined in SMC 16.08 and SMC 16.10,** including, but not limited to, land use, planning, ~~land disposal,~~ land and water conservation, utilities, **and** recreational and commercial ~~development uses.~~ Additionally, the Dyea Community Advisory Board shall be responsible for the periodic review of SMC 16.08 – Dyea Flats Management Plan. The Dyea Community Advisory Board shall consist of five (5) members: three (3) Dyea property owners; and two (2) at-large community members.

3.15.020 Appointment.

Members of the Dyea Community Advisory Board (**DCAB**) shall be appointed by the mayor, subject to confirmation of the borough assembly. The mayor shall consider, but is not limited to, candidates on a list of prospective members submitted to ~~him~~ **the mayor** by the DCAB. A borough assembly member shall serve as the ex officio member of the board, may attend all meetings, **including executive sessions,** and have the privilege of the floor, but shall have no vote.

3.15.030 Term of office.

- A. Members shall be appointed for a term of three (3) years; however, a board member serves until a successor takes office. The term of office begins in October.
- B. The terms shall be staggered so that members shall be appointed each year. Terms shall be first established by drawing, 2 for one (1) year terms, 2 for two (2) year terms, and 1 for a (3) year term.
- C. Appointments to fill vacancies shall be for the unexpired term only.

3.15.040 Officers.

- A. The board shall elect annually a chair, vice-chair, and secretary at its first meeting following the mayor's appointment and the assembly's confirmation of board members.
- B. The term of office for the chair, vice-chair, and secretary shall be one (1) year; however,

officers may serve more than one term.

- C. The chair shall preside over the board and shall have the right to vote.
- D. The vice-chair shall perform the duties of the chair in the absence or disability of the chair.
- E. The secretary shall record the minutes of board meetings and shall keep attendance records and notify the mayor when vacancies occur.

3.15.050 Vacancies.

- A. A vacancy shall be declared and filled as above provided, when a member:
 - 1. Submits ~~his~~ **their** resignation and the resignation is accepted by the mayor;
 - 2. Is physically or mentally unable to attend board meetings for a period of more than ninety (90) days unless excused by the board;
 - 3. Is convicted of a felony; or
 - 4. Any board member may be removed with written notice by the mayor, subject to confirmation by the borough assembly or by a majority vote of the assembly at any time, regardless of whether that person's term on the board has expired.

3.15.060 Quorum.

Three (3) members constitute a quorum. Actions of the board are adopted by three (3) affirmative votes. The final vote on each action must be by a recorded roll call vote. Each member present shall vote on every question, unless required by law to abstain from voting on a question.

3.15.070 Meetings.

The board shall meet monthly, at a regularly established time, determined by the board. Additional meetings may be called at the discretion of the chair, or shall be called at the request of three (3) members.

3.15.080 Record of meetings.

Meetings shall be public, and minutes shall be kept. Minutes and records shall be filed with the borough clerk and retained as public records.

Section 4. 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 16.08 Dyea Flats Management Plan is hereby amended as follows:

Chapter 16.08

DYEA FLATS MANAGEMENT **AREA** PLAN

Sections:

16.08.010 **Applicability.**

~~16.08.0120~~ Statement of Intent and Goals.

~~16.08.0230~~ Allowed/Prohibited Uses.

~~16.08.0340~~ Permits and Fees.

~~16.08.0450~~ Penalties.

16.08.010 Applicability.

- A. The Dyea Flats is defined as municipally owned land encompassed within Tract A of ASLS 97-61 according to the survey plat recorded in the Skagway recording district on February 3, 2006, as Plat 2006-3.
- B. The Dyea Flats Management Area Plan shall solely govern the use of the Dyea Flats Management Area land as defined in SMC 16.08.010(A). Title 19 shall not apply to municipal use of the Dyea Flats Management Area. Other portions of municipal code related to health and safety may apply to the use of the Dyea Flats Management Area.
- C. The Dyea Flats Management Area Plan does not apply to non-municipal land outside of the area defined in SMC 16.08.010(A), and non-municipal land use outside of the Dyea Flats shall be governed by municipal code.

16.08.0120 Statement of Intent and Goals.

- A. The Municipality of Skagway recognizes that the Dyea Flats is an area of local, State and national importance. Its historic value as the “gateway” to the Klondike Gold Rush of 1898 has warranted its inclusion in the Klondike Gold Rush National Historic Park and its designation as a National Historic Landmark. An area of scenic beauty and uncommon open space, the Flats is also valued highly by Skagway residents and visitors to the National Park for its recreational and scenic values and for the opportunity it provides to escape the city environs during the busy summer months. The tidal flats have also been recognized for their biological diversity and the habitat that they provide for waterfowl and other fish and wildlife.
- B. It is the Municipality of Skagway’s intent to be a responsible steward of the resources and values of the Dyea Flats in perpetuity. The citizens of Skagway are fond of the Flats as a familiar place for recreation and relaxation. Public testimony and responses to opinion surveys echoed with stories of recreation activities on the Flats and strong statements regarding the need to keep the Flats in public ownership because of its historical, natural, and recreational values.
- C. The municipality believes that Skagway residents’ use of the Dyea Flats for recreation is an extremely important local “public use” that should receive full consideration, along with the interests of the State and national “public,” in decisions regarding ownership and management of the area. The municipality also recognizes that the Flats have State and national significance, particularly due to the historic events which took place there nearly 100 years ago, and the artifacts that remain from that time. The Flats are integrally connected to the other historic properties in the National Park, and will be managed by the municipality with that consideration.
- D. It is the municipality’s intent to keep the Dyea Flats Management Area in public ownership. The Municipality of Skagway will implement the Dyea Flats Management Area this Land Management Plan, in cooperation with the National Park Service, the State of Alaska, other Dyea property owners, and the public.

16.08.0230 Allowed/Prohibited Uses.

In order to protect the scenic, historical, ecological and archaeological resources of the Dyea Flats, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
1. Walking, Skiing, Bicycling, Snowshoeing
 2. Boating, Canoeing, Rafting, Kayaking
 3. Interpretation, Public Education
 4. Picnicking
 5. Remote control airplanes in designated areas
 6. Fishing, Hunting, Trapping (in compliance with State/Federal regulations, restricted to small game and water fowl as defined by Alaska Fish & Game)
 7. Bird watching
 8. Edible plant gathering
 9. Beach log and seaweed harvest for personal use
 10. Horseback riding
 11. Use of road legal vehicles on designated roads
 12. Use of off-road all terrain vehicles (ATV's) on designated roads and off-road in designated areas.
 13. Camping, (including recreational vehicles) in designated municipal campground camping areas.
 - 14. Municipal cabins within the municipal campground to allow for safer use of the campground in the winter and provide greater opportunity for campers who may be physically challenged by camping.**
 - 15. Rental of municipally owned recreational cabins as allowed by the Assembly.**
 - ~~146.~~ Campfires in provided campfire rings
 - ~~157.~~ Snow machine use on roads and off-roads in designated areas when adequate snow cover is present to protect underlying vegetation.
- B. Allowed Recreational Uses With Permit
1. Use of the Flats by organized groups for "allowed uses" in 16.08.020(A).
 2. Camping outside of the municipal campground areas.
 3. Research and inventory related to historic and biological resources
 4. Use of the Flats for low impact special events, particularly those that benefit non-profit groups.
 5. Commercial recreational uses as provided in 16.08.020(C).
- C. Commercial Uses. There shall be no pre-existing rights. Commercial Recreational Uses are allowed by permit **by the Assembly** with the following provisions:
1. Designation of Areas Open to Commercial Uses. The borough assembly shall, by resolution, establish an area(s) on the Dyea Flats which shall be the portion of the Flats to which commercial use will be confined.
 2. Dyea Flats – Commercial activity is prohibited on the Dyea Flats except for the two (2) existing permit holders providing non-motorized horse and bicycle tours through their existing ownership.
 - a. There shall be a review by the borough assembly after five (5) years;
 - b. Maximum group size of 12;

- c. Each vendor is limited to two (2) tours on the Flats at one time and only one (1) tour south of the northern most parking area;
 - d. Total passenger volume will not exceed that of each operator's 1999 visitor volume for product sold on the Dyea Flats;
 - e. Other elements of the "Agreement for Limited Commercial Use of the Dyea Flats" shall be directly negotiated with each vendor;
 - f. Conditions of the contract with each vendor shall be subject to borough assembly approval; and
 - g. There shall be an annual review of each vendor by the Dyea Community Advisory Board following the end of the tourist season each year.
3. General Provisions
- a. Permit holders are responsible for complying with all State, Federal and local laws applicable to their activities.
 - b. Permit holders shall **promptly** 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 **agreement 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 **arising out of or related to** as a result of the permit holder's activities.
 - e. Prior to issuance of a permit, the prospective permit holder must provide the Municipality of Skagway with a certification of insurance showing the permit holder has obtained at least ~~five hundred thousand dollars (\$500,000)~~ **one million dollars (\$1,000,000)** combined single limit **general** 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. **The failure to provide the certificate showing the municipality as an additional insured shall result in an immediate revocation or suspension of the permit.**
 - 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. Each permitted operator shall provide on an annual basis following each season, a report to the municipality of the commercial activity of that season. Such report shall include daily volumes, monthly totals, and seasonal totals of activity.

- h. 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.
 - i. Permits may be terminated by the municipality at any time.
- D. Prohibited Uses
 - 1. Commercial activities including tours not permitted, rentals, retail sales or any other uses where compensation is made or offered.
 - 2. Grazing
 - 3. Unrestricted road vehicles and ATV access
 - 4. Camping outside of designated areas without a municipal permit
 - 5. Subdivision and/or sale of public lands
 - 6. Residential, industrial and commercial structures or other intensive developments
- E. Campground Provisions
 - 1. Campers are required to self-register at the established kiosk and to familiarize themselves with burn restrictions and possible animal problems in the area.
 - 2. Camping shall be limited to a total of 14 days within a 45 consecutive day time frame. Long-term camping is prohibited. For the purposes of this section long-term camping means a duration of more than 14 days within a 45 consecutive day time frame.
 - 3. Collection of registrations shall be once each week by Public Works employees while picking up the trash.

16.08.0340 Permits and Fees.

- A. Permits – The borough manager shall establish a system for the permitting of uses requiring such permits as identified in section 16.08.0230(B) above, except that the borough assembly shall by resolution establish the permit requirements for **private commercial uses of Dyea Flats. The municipal campground and municipal cabins are not commercial uses requiring a permit.** 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 for uses of the Dyea Flats, when and if such fees are determined necessary.

16.08.0450 Penalties.

~~Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.~~

- 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 resources 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 non-commercial users. Complaints by non-commercial users of public lands filed with the Skagway Police Department against any commercial operator may result in a citation.

- C. Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) 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.

Section 5. 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 16.10 Dyea Management Plan is hereby amended as follows:

Chapter 16.10
DYEa AND WEST CREEK MANAGEMENT AREA PLAN

Sections:

16.10.010 Applicability.

- 16.10.01~~20~~ Statement of Intent and Goals.
- 16.10.02~~30~~ Allowed/Prohibited Uses.
- 16.10.03~~40~~ Permits and Fees.
- 16.10.04~~50~~ Penalties.

16.10.010 Applicability.

- A. Dyea is defined as municipally owned land encompassed within Tract B of ASLS 97-61 according to the survey plat recorded in the Skagway recording district on February 3, 2006, as Plat 2006-3, pursuant to Patent No. 20091.
- B. West Creek is defined as municipally owned land encompassed within ASLS 2007-43 according to the survey plat recorded in the Skagway recording district on February 8, 2022.
- C. The Dyea and West Creek Management Area Plan shall solely govern the use of land in Dyea and West Creek as defined in SMC 16.10.010(A) and (B). Title 19 shall not apply to municipal use of the Dyea and West Creek Management Area. Other portions of municipal code related to health and safety may apply to the use of the Dyea and West Creek Management Area.
- D. The Dyea and West Creek Area Management Plan does not apply to non-municipal land outside of the area defined in SMC 16.10.010(A) and (B), and non-municipal land use outside of Dyea and West Creek shall be governed by municipal code.

16.10.01~~20~~ Statement of Intent and Goals.

- A. It is the Municipality of Skagway's intent to be a responsible steward of the resources and values of ~~the~~ Dyea and West Creek ~~areas~~.
- B. The municipality believes that commercial uses in ~~the~~ Dyea and West Creek ~~area~~ impacts the Flats and private properties in the area.

- C. The Municipality of Skagway will implement this Land Management Plan for ~~municipal property outside the Dyea~~ **and West Creek Flats**, in cooperation with the National Park Service, the State of Alaska, ~~other Dyea~~ **private** property owners, and the public.

16.10.0230 Allowed/Prohibited Uses.

In order to protect the scenic, historical, ecological and archaeological resources of ~~the Dyea and West Creek Valleys~~, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
1. Walking, Skiing, Bicycling, Snowshoeing
 2. Boating, Canoeing, Rafting, Kayaking
 3. Interpretation, Public Education
 4. Picnicking
 5. Fishing, Hunting, Trapping (in compliance with State/Federal regulations)
 6. Bird watching
 7. Edible plant gathering
 8. Beach log and seaweed harvest for personal use on municipal property. Harvest of dead and downed firewood for personal use.
 9. Horseback riding
 10. Use of road legal vehicles on designated roads
 11. Use of off-road all-terrain vehicles (ATV's) on designated roads and off-road in designated areas.
 12. Camping, (including recreational vehicles) in designated camping areas on municipal property.
 13. Campfires in safe campfire rings.
 14. Snow machine use on roads and off-roads in designated areas when adequate snow cover is present to protect underlying vegetation.
- 15. Rental of municipally owned recreational cabins as allowed by the Assembly.**
- B. Commercial Uses. There shall be no pre-existing rights. Commercial Recreational Uses are allowed by permit **by the Assembly** with the following provisions:
1. Designation of Areas Open to Commercial Uses.
 - a. West Creek: There shall be no commercial tour operations ~~on the West Creek Road or into the West Creek Valley~~ **west of the West Creek Bridge and north of the raft put-in.**
 - b. Taiya River: There shall be no commercial tour operations north of the Rafter Put-in on the Taiya River or at the mouth of West Creek where it enters Taiya River.
 2. Limits on numbers of permits allowed. The number of commercial permits allowed in Dyea ~~outside of the Dyea Flats~~ shall be three (3). There shall be a separate permit required for each product offered. The borough assembly may, at its discretion, increase or reduce the number of permits allowed as conditions warrant and as recommended by the Dyea Community Advisory Board.
 3. General Provisions

- a. Permit holders are responsible for complying with all State, Federal, and local laws applicable to their activities.
 - b. Permit holders shall **promptly** 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~~ **agreement** 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~~ **arising out of or related to** the permit holder's activities.
 - e. Prior to issuance of a permit, the prospective permit holder must provide the Municipality of Skagway with a certification of insurance showing the permit holder has obtained at least one million dollars (\$1,000,000) combined single limit **general** 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. **The failure to provide the certificate showing the municipality as an additional insured shall result in an immediate revocation or suspension of the permit.**
 - 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. Each permitted operator shall provide on an annual basis following each season, a report to the municipality of the commercial activity of that season. Annual reports shall include all reports of complaints, accidents or incidents, daily volumes, monthly totals, and seasonal totals of activity.
 - h. 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.
- C. Prohibited Uses.
1. Commercial activities ~~including tours~~ **are** not permitted, **including tours**, rentals, retail sales, or any other uses where compensation is made or offered.
 2. Grazing.
 3. Unrestricted road vehicles and ATV access.
 4. Camping outside of designated areas without a municipal permit.
- ~~D. Campground Provisions.~~
- ~~1. Campers are required to self register at the established kiosk and to familiarize themselves with burn restrictions and possible animal problems in the area.~~
 - ~~2. Camping shall be limited to a total of 14 days within a 45 consecutive day time frame. Long term camping is prohibited. For the purposes of this section long term~~

~~camping means a duration of more than 14 days within a 45 consecutive day time frame.~~

- ~~3. Collection of registrations shall be once each week by Public Works employees while picking up the trash.~~

16.10.03~~40~~ Permits and Fees.

- A. Permits – The borough manager shall establish a system for the permitting of uses requiring such permits as identified in section 16.10.02~~30~~(B) above. **Municipal cabins are not commercial uses requiring a permit.** 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.

16.10.04~~50~~ 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 resources 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 non-commercial users. Complaints by non-commercial users of public lands filed with the Skagway Police Department against any commercial operator may result in a citation.
- C. Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) 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.

Section 6. 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 16.12 Dewey Lakes Recreation Area Management Plan is hereby amended as follows:

Chapter 16.12
DEWEY LAKES RECREATION AREA MANAGEMENT PLAN

Sections:

16.12.010 Applicability.

16.12.01~~20~~ Statement of intent and goals.

~~16.12.020 Description of area.~~

16.12.030 Allowed/prohibited uses.

16.12.040 Permits and fees.

16.12.050 Penalties.

16.12.010 Applicability.

- A. The Dewey Lakes Recreation Area is defined as municipally owned land encompassed within ASLS 2007-36 according to the survey plat recorded in the Skagway recording district on December 22, 2017, as Plat 2017-6, pursuant to Patent No. 24588.
- B. The Dewey Lakes Recreation Area Management Plan shall solely govern the use of the Dewey Lakes Recreation Area land as defined in SMC 16.12.010(A). Title 19 shall not apply to municipal use of the Dewey Lakes Recreation Area. Other portions of municipal code related to health and safety may apply to the Dewey Lakes Recreation Area.
- D. The Dewey Lakes Recreation Area Management Plan does not apply to non-municipal land outside of the area defined in SMC 16.12.010(A), and non-municipal land use outside of the Dewey Lakes Recreation Area shall be governed by municipal code.

16.12.0120 Statement of intent and goals.

- A. The Municipality of Skagway recognizes that the Dewey Lakes Recreation Area is an area of local, State, and regional significance. An area of historic importance and scenic beauty, the Dewey Lakes **Recreation Area** is valued highly by Skagway residents and visitors for its recreational and scenic values and for the opportunity it provides for nature and wilderness experiences. Public testimony and responses to opinion surveys from the Comprehensive Plan and the Comprehensive Trails Plan consistently indicate overwhelming support for continued 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 Municipality of Skagway's intent to preserve the historic and traditional uses and intrinsic values of the Dewey Lakes Recreational Area and to be a responsible steward of its resources in perpetuity.
- B. The municipality believes that Skagway residents' traditional uses of the Dewey Lakes Recreational Area for recreation, quiet, and solitude is an extremely important local "public use" that should receive full consideration along with State and regional interests in decisions regarding ownership and management of the area.
- C. It is the municipality's goal to preserve the Dewey Lakes Recreational 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.

~~16.12.020 Description of the area:~~

~~All municipal property east of the railroad right of way within Township 28SR59E and Township 28SR60E and Township 27SR60E, Copper River Meridian, except those lands designated Industrial in the 1999 Skagway Comprehensive Plan.~~

16.12.030 Allowed/prohibited uses.

In order to protect the scenic, ecological, and archaeological resources of the Dewey Lakes Recreation Area, the following allowed and prohibited uses are adopted.

- A. Allowed Recreational Uses (non-commercial)
 - 1. Walking, skiing, bicycling, horseback riding.
 - 2. Off-leash dog walking.

3. Fishing, hunting & trapping (in compliance with State/Federal Regulations).
 4. Plant gathering.
 5. Use of off-road all-terrain vehicles (ATVs) ~~on~~ in designated areas.
 6. Campfires in provided campfire rings.
 7. Other traditional uses.
 - 8. Rental of municipally owned recreational cabins as allowed by the Assembly.**
- B. Allowed Recreational Uses with Permit:
1. Camping under Municipal Code Section 9.02.050.
 - ~~2. Rental of Upper Lake Cabins.~~
 - 3.** Research and inventory related to historic and biological resources.
 - 4.** Uses of the Dewey Lakes Recreational Area for low impact special events, particularly those that benefit non-profit groups.
- C. Allowed Utility Uses:
1. Watershed and municipal facilities for emergency services water supply.
 2. Watershed and facilities for hydroelectric power generation.
 - 3. Activities required to protect the health and safety of the public.**
 - ~~4.~~ Access for the above uses.
- D. Prohibited Uses:
1. Commercial activities including tours, rentals, retail sales or any other uses where compensation is made or offered.
 2. Use of motor vehicles in undesignated areas.
 3. Camping without a municipal permit.
 4. Campfires outside of designated areas without a municipal permit.
 5. Subdivision and/or sale of public lands.
 6. Residential, industrial, and commercial structures and other intensive developments.

16.12.040 Permits and fees.

- A. Permits – The borough manager may establish a system for the permitting of uses requiring such permits as identified in Subsection 16.12.030(B)1-4. **Municipal cabins are not commercial uses requiring a permit.**
- B. Fees – The borough assembly may establish by resolution a schedule of fees when and if such fees are determined necessary.

16.12.050 Penalties.

Any violation of this code is a non-criminal infraction, punishable by a civil penalty up to three hundred dollars (\$300) per violation. Each act or violation and every day upon which a violation occurs or continues constitutes a separate offense.

Section 7. 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 Applicability.

~~16.14.0120~~ 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 Applicability.

- A. The Nahku Bay Conservation Area is defined as municipally owned land encompassed within USS 3307. For the purposes of this chapter, the "beach area" is defined as the municipally owned lands within USS 3307 located at the head of the Nahku Bay inlet beginning at the ordinary high-water mark and continuing to the Dyea Road. The "Matthews Creek Area" is defined as those municipally owned lands within USS 3307 north of the Dyea Road.
- B. The Nahku Bay Conservation Area Management Plan shall solely govern the use of the Nahku Bay Conservation Area land as defined in SMC 16.14.010(A). Title 19 shall not apply to municipal use of the Nahku Bay Conservation Area. Other portions of municipal code related to health and safety may apply to the use of the Nahku Bay Conservation Area.
- D. The Nahku Bay Conservation Area Plan does not apply to non-municipal land outside of the area defined in SMC 16.14.010(A), and non-municipal land use outside of the Nahku Bay Conservation Area shall be governed by municipal code.

~~16.14.0120~~ 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 ~~m~~Municipality of Skagway and for the protection of its significant natural, scenic, and recreational uses and values. It is the intent of the ~~m~~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 ~~m~~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.~~

~~The "Nahku Bay Conservation Area" is defined as those municipal lands encompassed within U.S. 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 "Matthews Creek Area" is defined as those municipal lands within U.S. Survey 3307 north of the Dyea Road.~~

16.14.030 Allowed/prohibited uses.

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:

- 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.

16. Rental of municipally owned recreational cabins as allowed by the Assembly:

- a. 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.
- b. The log cabin shall be available to rent, with preference to a borough employee, for the purpose of caretaking the NBCA, per subsection (C)(3)(d) of this section. The borough manager shall approve use of the log cabin and facilitate the necessary rental agreement.

c. Specific duties of the caretaker per subsection (C)(3)(c) of this section shall be included in the rental agreement.

- 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 by the Assembly 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)(~~4~~3)(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.~~

- ~~e. The log cabin shall be available to rent, with preference to a borough employee, for the purpose of caretaking the NBCA, per subsection (C)(3)(d) of this section. The borough manager shall approve use of the log cabin and facilitate the necessary rental agreement.~~
- ~~d. Specific duties of the caretaker per subsection (C)(3)(c) of this section shall be included in the rental agreement.~~

43. General Provisions.

- a. Permit holders are responsible for complying with all state, federal and local laws applicable to their activities.
- b. Permit holders shall **promptly** reimburse the ~~m~~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~~ **agreement** 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~~ **arising out of or related to** 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. **The failure to provide the certificate showing the municipality as an additional insured shall result in an immediate revocation or suspension of the permit.**
- 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, 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 Section 16.14.030(B) and (C). **Municipal cabins are not commercial uses requiring a permit.** 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.

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 8. 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 9. 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 ___ day of _____, 2023.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)