

Kenai River Special Management Area Advisory Board

*** Meeting Minutes***

Thursday, November 10, 2016
5:30 p.m. Gilman River Center
Soldotna, AK

I. CALL TO ORDER

- A. Roll Call: Ted Wellman, Dwight Kramer, Jeanne Swartz, Monte Roberts, Keith Baxter, Joe Connors, Ricky Gease, Bill Tappan, Brandon Bornemann, Joel Todd, Jack Blackwell, Marion Glaser, Steve Miller and Matt Kelly
Special Guest: DNR Department of Law, Anne Nelson and Director of State Parks Ben Ellis.
- B. Minutes: Approved as written
- C. Agenda: Keith Baxter added under new business the recommendation for the Corr property. The agenda was approved as amended.
- D. Public Comments Public Presentation: Kelly Summers, ADOT Cooper Landing Bypass. She will discuss the preferred alternative which is the G-South Alternative over the three other alternatives. The project is to reduce highway congestion, highway safety and to bring the highway up to current highway standards.
The board recommended the Juneau Creek alternative and it was recommended that the KRSMA board should submit another letter to support the Juneau Creek Alternative to ADOT.

II. REPORTS

1. Agency and Government Reports:

a. State Parks

Jack Blackwell provided the board with the following report: The Bing's landing access improvement which includes a new parking area and access to the river will be completed in the spring 2017. Park is currently ready to issue a request for bids for the floating dock that will be placed downstream from the Bing's landing boat launch and walkways. This will be a dock design similar to the Pillars dock. The EVOS Trustee Council met last Thursday and approved six Kenai Area State Park projects. Four of the six projects are on the Kenai River and two are in our South district area.

Kenai River Flats KRSMA Riverbank Protection	\$ 287,330*
Eagle Rock KRSMA Riverbank Protection	\$ 410,450
Crooked Creek SRS Riverbank Restoration	\$ 445,900
Kenai River Ranch KRSMA Riverbank Restoration	\$ 166,200
Pipeline Crossing KRSMA Riverbank Restoration	\$ 282,450
Anchor River SRA Riverbank Protection	\$ 426,600
TOTAL	\$ 2,018,930

*The Kenai River Flats project received partial funding only with the intent of pursuing an FHWA grant (ATAP) to fund the rest of the project. If unsuccessful with the grant, we'll have the opportunity to request full funding through EVOS in the future. The total cost estimate for the project is \$1,436,650. These projects are slated for the 2019 construction season.



Ben Ellis provided the board with the following report: The EVOS projects process will begin in 2017. The Kenai River Flats KRSMA Riverbank project only requested a portion of the funding from EVOS the remaining funds are being requested for the Federal Highway funds. If the Federal Highway funds are not secured, EVOS recommending coming back for the additional funding, they are very supported of the project. State Parks is always looking for ways to match funds for projects. The budget for FY 18 needs to be released by the Governor by December 15; the KRSMA meeting is the week before that announcement. Ben Ellis is offering to attend the January advisory meeting to discuss any questions or concerns about the budget. Senate bill 101 was passed by the legislature which allows State Parks to sell merchandise. We are currently purchasing a small amount of merchandise such as t-shirts, note cards, wall pictures of some state park areas and holiday cards. At a Make it Alaska program we were able to sell approximately \$8000.00 dollars in t-shirt. The public appears to be very supportive and we are currently working toward on an online store.

b. DEC-Jeanne Swartz provided the board members with the following reports:

- DEC has put out a request for proposal for technical assistants for the integrated report which contains the turbidity determinations for the Little Su and the Kenai River. The position would review DEC work and add or make changes if required to the report.

c. ADF&G –No report.

d. USF&WS- Steve Miller provided the board members with the following report:

- The bank restoration and angler access project at the confluence of the Russian and Kenai River is 90% completed.. Next spring the rail fence along the top of the bank will be installed. Moore’s landscaping will be back in the spring to water all of the vegetation to help insure success.
- There has been a considerable amount of heaving and shifting of the walkway at the Moose Meadows site on Keystone Drive. There are currently completing some GeoTech work to determine what will work best for the platforms to reduce heaving. Work on the project is schedule for 2017.

e. USFS/Chugach National Forest-Marion Glaser provided the board members with the following report:

- A company called HazTech is drilling some test holes at the area were the road is eroding down the back. This is to help determine what will be the best method to fix this area. This project is currently not scheduled for repair for a few years.
- The first phase of the Russian River Campground is the switching of the entrance with the exit. This will eliminate traffic from crossing each other. They will also redesign the contact station and the second phase is to stabilize the area where the road is eroding down into the Kenai River near the entrance of the campground.
- The Forest Service is scheduled to meet with the State and the railroad about the access to the Vagt Lake trail access.
- The Chugach National Forest completed an assessment for climate projections over the next 30 years. The assessment found that it was hard to project the climate for there are some very large confidence levels. It was also determined that the years common to this

last year may become more common in the future when it comes to weather. Winters may become shorter and snow levels at lower elevations will become less, but precipitation may increase especially for snow levels at higher elevations.

Ted was interested in obtaining a copy of the report on the climate projections.

- Marion is currently working on updating all of the agreements with all of the partners that the agency works with on the Russian River.

f. City of Kenai – Matt Kelley provided the board with the following report:

- December 1 will be a meeting of the City of Kenai Council and Park and Recreation department to go over the 2016 dip net report. Public is welcomed.
- City of Kenai will require a conditional use permit for any work that is completed at the Eagle Rock State recreation area. This process will take several months to complete.

g. City of Soldotna- Joel Todd provided the board members with the following report.

- The City of Soldotna has completed closing all the campgrounds and all stairways have been removed from the river.
- The numbers of campers appear to be up this summer. This may be due to the fact that camping fires were allowed this year and boat launching is up at Centennial Campground for the 2016 season.

h. Kenai Peninsula Borough- No Report

2. Committee Reports

- a. President's Report-**Ted Wellman appreciate everyone's passion on the questions and answers that were provided by the Department of Law, but we all need to maintain our civility in the matter. We don't use derogatory words or statements. Ted also stated historical the board has not taken a position on board of fish issues. He believes that there are many issues in front of the board of fish that have habitat and social implications. Our management plan prohibits the board from commented on allocation issues and we have always encouraged individuals to comment on issues. Ted believes there are many board of fish issues that the board could comment on. Ben Ellis stated the bylaws state that the board should advise the commissioner and governor on matters that related to the Kenai River other than fish. Such as putting a number on the number of public versus guides is an allocation of the users groups. So those are the kinds of things to express their personnel opinion and the board should not take a position. When it is a habitat issue not related to allocation the board could provide a recommendation, there is a place for it. Ted asks the board if there were any proposals that would be appropriate for the board to discuss and make a recommendation and these will be discussed at the next habitat meeting. The board determined that they should only discussed proposals that are related to safety or habitat issues.
- b. Guide Advisory –**Monte Roberts provided the board with the following report: The guide advisory committee continued working on the Kenai River guide stipulations. The committee was able to get through 18 of the 28 stipulations with plenty of work ahead. The committee is hoping for a final package for review by the board by next month.



Joe Connor's commented that has been a change of leadership at the Guide Association and Monte also said that the guides feels a sense of cooperating help from State Parks and are willing to participate more in meetings.

- c. Habitat –Keith Baxter provided the board with the following report: The committee had 13 in attendance. There was no discussion of the BOF proposals that were included on the committee agenda. It was pointed out that in addition to the 5 habitat-related proposals that that were included on the agenda (178, 179, 180, 181 and the non-regulatory Title 16 proposal) that Proposal 201, to amend the area open to dip netting from shore in the Kenai River personal use dip net fishery should also be considered. There was some question as to whether or not the KRSMA BOD could or should weigh in on BOF proposals or not. The committee reviewed the Habitat Committee's Action Items which include that the committee expressed an interest in further discussion about Title 16 authority for Fish Habitat and Special Area permitting. The committee reviewed the 2016 action items and decided to wait to update or focus until we get a chance to hear a presentation from John Morton (KNWR) about ongoing interagency planning efforts regarding Kenai River Habitat and combining existing habitat action plans at our next Habitat Committee meeting on December 8th. Corr Homestead / EVOS Land Acquisition-In 2016 one of the Habitat Committee's action items was to "Identify strategic land acquisitions for EVOS Trustee consideration within KRSMA." Over the summer it came to our attention that the Corr family may still be interested in parting with their river frontage near the college. Last month our committee conducted a site visit lead by Tom Corr. Today, as a follow-up to our visit, we discussed bringing a recommendation to the Board to advise State Parks to solicit a proposal from the Corr family about the future disposition of their riverfront property near the Kenai Peninsula College, including any stipulations.

After much discussion about the habitat value of the parcel and whether pursuing future action to acquire this property was a worthwhile use KRSMA and DNR time, the committee did decide to make a recommendation to advise Alaska State Parks to move forward with the request for proposal with the following stipulations:

1. That the parcel does in fact satisfy the Alaska Department of Fish & Game's definition of fish habitat.
2. That the KRSMA Board will not decide whether to support the pursuit of acquisition until we are able to review the ruling of habitat significance from ADF&G and the terms laid forth by the Corrs in their response.

Keith Baxter made a motion that the KRSMA Board request to advise Alaska State Parks to solicit a proposal from the Corr family detailing their interest in, and any stipulations of, the future disposition of their property. This direction is contingent upon the previously stated requirements.

Joe Seconds the motion.

It passed unanimously.

- a. River Use –Dwight Kramer provided the board members with the following report: Big turnout. The whole meeting was State Parks dissertation about the requested comments on the legal questions that were asked of them.

- d. Legislative/Government Activities-Ricky Gease provided the board members with the following reports: State Parks and Fish and Wildlife Service provided the committee with a list of project and approximate coast for supporting information for the Sockeye Salmon stamp.
- The committee also discussed the cost of additional law enforcement on the park versus the additional over time hours that are allotted during the month of July.

III. OLD BUSSINESS

- a. Sockeye Salmon stamp for the Kenai and Kasilof Rivers-Ricky Gease provided the board members with the following report. This is to get additional monies for state parks do to the dwindling general funds that are being allocated each fiscal year. Capital improvement projects are being recommended for the revenue that the stamp would provide with the caveat that matching funds are also in place. The funds from this stamp could be used for management, possible set net by back and matching funds.

IV. NEW BUSINESS:

- a. Sportfishing Access to the Kenai River Special Management Area- Director Ben Ellis and Anne Nelson from the Department of Law provided the board with the following report.

Ben Ellis thanks Anne Nelson for taking the time to spend the day with the Kenai River Special Management board committee meetings and board meeting. Anne Nelson is the Assistant Attorney Office and one of her many departments is DNR Alaska State Parks. Over the past year the board had sent five questions to the Department of Law and a response has been completed. This is not a legal opinion; it is a structure of the questions.

Anne Nelson provided the board with the following response:

1. What information or legal requirements might be necessary for consideration of a reasonable standard for limiting public access or opportunity if resources or habitat are burdened or threatened?
 - *Limitations on admission to resource user groups trigger the common use, no exclusive right of fishery, and uniform application clauses of the Alaska Constitution. See Tongass Sport Fishing Ass'n v. State, 866 P.2d 1314, 1318 (Alaska 1988).*
 - *Direct limitation of guides implicates the common use and no exclusive right of fishery clauses of the Alaska Constitution.*
 - *Article VIII of the Alaska Constitution is "intended to permit the broadest possible access to and use of state waters [and fisheries] by the general public." Owsichек v. State, 763 P.2d 488, 492 (Alaska 1988).*
 - *The common use clause of the Alaska Constitution imposes "as a minimum requirement" a "prohibition against any monopolistic grants or special privileges." Owshichek, 763 P.2d at 496.*



- *Access restrictions may be defensible if necessary to mitigate demonstrated harm to the resource and that the access restrictions are necessary to protect the resource.*
 - *Limitation must address damage or threat to resource that cannot be addressed in ways that don't raise constitutional concerns.*
 - *A pure lottery system with permits of limited duration (<5 years) might be defensible.*
 - *A concession/bid system also might be constitutional but could be viewed as favoring the wealthy.*
2. Did the Whitaker study satisfy the legal requirements for DNR to consider a fair and acceptable method of limiting the number of guides on the river? What are the legal requirements or formula to determine the optimal number of commercial operators on the Kenai?
- *Whitaker study focused on river user/visitor impacts, which could support facially-neutral access restrictions that apply equally to all users, such as drift-only days/river segments or scheduled closures of facilities. KRSMA Advisory Board can assess impact and propose management measures for DPOR to consider and develop. LAW provides legal advice to DPOR.*
3. Does Parks have the authority to limit boating if crowding or safety become an issue on certain segments of the river in the future?
- *See responses above regarding constitutional issues with access restrictions.*
4. What are the legal requirements to vacate a public section line easement or road right of way?
- *See DNR, Division of Mining, Land & Water website at <http://dnr.alaska.gov/mlw/survey/ev/index.htm>*
 - *See 11 AAC 51.025(b) & 11 AAC 51.065, attached.*
5. Does DNR have the authority to enact a temporary moratorium on guide numbers while it develops a method for setting a numeric limitation?
- *DNR would need to establish an emergent situation or threat to the resource to justify a moratorium.*
 - *Any temporary moratorium would likely need to meet the requirements of a permanent numeric limitation because of the constitutional interests implicated.*

Ted recommends that we should set standards and then set the goals to reach those standards.

V. CORRESPONDENCE: None

VI. PUBLIC COMMENT:

VII. Board Comments;

- Ricky Gease apologize for his language to Kelly Summers during here presentation about the Cooper Landing Bypass. He is just frustrated with the ADOT process.

- Dwight Kramer states that the response from the Department of Law, Anne Nelson has taken the winds out of the board's sails. The River Use committee is not sure how to move forward with recommendation on guide limitation on the river.
- Monte Roberts is thankful that there are provisions in place protecting our natural resources.
- Bill Tappan hopes that this board move forward to continue to support the Juneau Creek alternative.
- Brandon Bornemann was great that Ricky apologizes for his reaction to Kelly's presentation and found it not appropriate to treat a guest in that manner.
- Joe is really worked up about the Cooper Landing bypass. Joe asked is the boating safety was an option on the River. Monte stated that Jack commented that there is not enough data with such things a accidents that happen. People are not reporting there accidents.



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