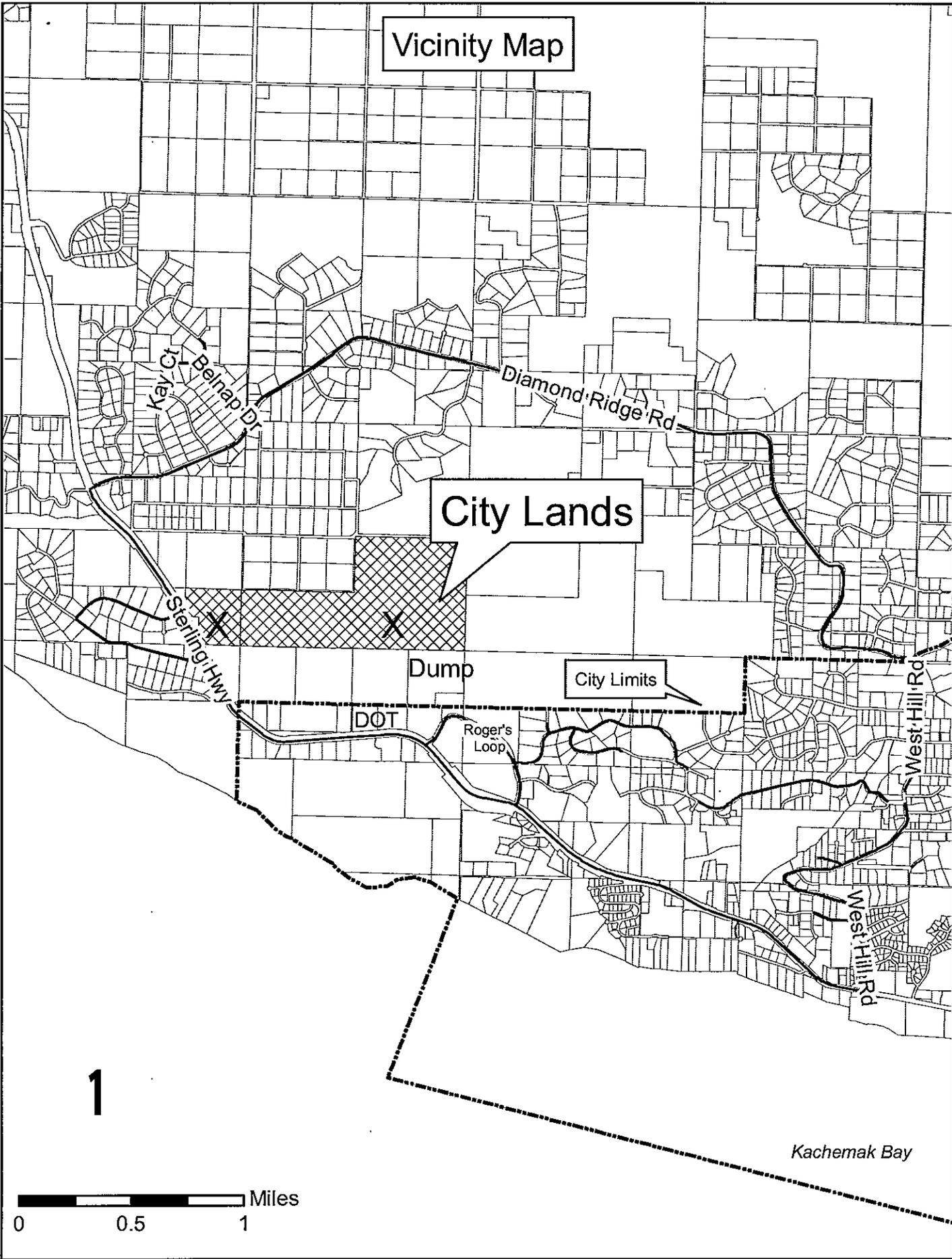


Vicinity Map



City Lands

City Limits

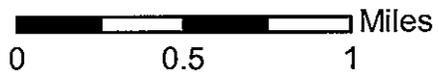
Dump

DOT

Roger's Loop

Kachemak Bay

1



**STATE CONSERVATION EASEMENT
DIAMOND CREEK**

THIS CONSERVATION EASEMENT ("Easement") is made by the **City of Homer** ("City" whose address is 491 East Pioneer Avenue, Homer, Alaska 99603 as grantor, and the **State of Alaska** (together with its successors and assigns, (the "State"), whose address is Department of Natural Resources, 550 West Seventh Avenue, Suite 1050, Anchorage, Alaska, 99501-3579 as gGrantee.

WHEREAS, City is the owner in fee simple of certain property (hereinafter referred to as the "Property"), which is more particularly described as follows:

Section 9: N $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; and the E $\frac{1}{2}$ of the SW $\frac{1}{4}$ of th SE $\frac{1}{4}$ of the SE $\frac{1}{4}$.

Section 10: SE $\frac{1}{4}$ and S $\frac{1}{2}$ of the SW $\frac{1}{4}$.

Subject to: A continuous public access easement fifty (50) feet upland of and along each side of the ordinary high water mark of Diamond Creek:

According to the GLO Survey Plat of Township 6 South, Range 14 West of the Seward Meridian, Alaska approved by the U.S. Surveyor General's Office in Juneau, Alaska on May 17, 1919, situated in the Homer Recording District, Third Judicial District, State of Alaska ("the Property").

WHEREAS, the majority of the funds for the purchase of the Property have been provided from a grant ("Grant") to the State pursuant to the Forest Legacy Program (16 U.S.C. § 2013c) in accordance with the provisions of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624; 104 Stat 3359, as administered by the United States Department of Agriculture, Forest Service.

WHEREAS, the purposes for acquiring the herein described property include protecting environmentally important forest areas that are threatened by conversion to non-forest uses and for promoting forest land protection and other conservation opportunities as well as the protection of important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values.

WHEREAS, title to the estate conveyed by this deed cannot be sold, exchanged, or otherwise disposed, unless the United States is reimbursed the market value of the interest in the land at the time of disposal.

WHEREAS, the Property must be used and maintained in accordance with the requirements of the Forest Legacy Program, other applicable federal laws and regulations and the Grant Agreement between the Forest Service and the State (“Grant Agreement”) and in the event the Property is not so used and maintained the Forest Service may require the State to restore the Property;

NOW THEREFORE, pursuant to the laws of Alaska and the Alaska Uniform Conservation Easement Act, AS 34.17.010 et seq, City does hereby grant and convey to the State, and its successors and assigns, forever, with warranties of title, subject to conditions, restrictions and limitations of record, a conservation easement (the “Easement”) in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

I. Purpose of the Easement.

The purpose of this Easement is to assure that the Property will be used, maintained, and disposed of in accordance with the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement. It is further the purpose of the Easement to provide for reimbursement to the State by the City in the event that the Property is not used, maintained and disposed of in accordance with the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement.

II. Rights of the State.

The State shall be entitled to enforce the terms of the following restrictive covenants against the fee simple owner of the Protected Property;

- a. To prohibit or enjoin any activity on the Property that is not permitted under the requirements of the Forest Legacy Program and other applicable federal laws and regulations and the Grant Agreement;
- b. To enter the Property at reasonable times in order to monitor City’s compliance with and otherwise enforce the terms of the Easement;
- c. To require, enforce or undertake restoration of the areas or features of the Property which may be damaged by any activity or use not authorized by this Easement.

III. Costs and Liabilities.

- a. The City retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.
- b. The State shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property.
- c. The City shall hold harmless, indemnify, and defend the State and its employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of the cause, unless due solely to the negligence of the Indemnified Parties; (2) the obligations specified in this Easement; or (3) the existence or administration of this Easement.

IV. Disposition of the Property.

The City may not dispose of the Property, or encumber its title or other interest in ~~real~~the ~~Property,~~ without prior written permission from:

Commissioner
Department of Natural Resources
State of Alaska
550 West 7th Ave., Suite 1400
Anchorage, AK 99501

and

Forest Supervisor
United States Department of Agriculture, Forest Service
Chugach National Forest
3301 C Street, Suite 300
Anchorage, AK 99503

or their duly authorized designees.

In the event that City disposes of the Property, or encumbers its title or other interest in ~~real~~the ~~Property,~~ without the written permission of the State and the Forest Service as provided herein and the Forest Service requires that the State reimburse to the Service a portion or all of the Grant proceeds, City shall reimburse the State that same amount.

V. Use and Maintenance of the Property.

The Property shall be used or maintained in a manner consistent with the Grant, the requirements of the Forest Legacy Program, and other applicable federal laws and regulations and the Grant Agreement. In the event that the Property is not so used or maintained the City shall at the request of the State cease the violative activity and correct any adverse effects caused by the activity using nonfederal monies. In the event that the City refuses to correct the adverse effects and the State is required by the Forest Service to correct said effects, City shall reimburse the State its costs for correcting the adverse effects using nonfederal monies.

VI. General Provisions.

- a. Nothing herein shall be deemed to create in any third party the right to enforce these covenants.
- b. Nothing in this Easement shall relieve the fee simple owner of the Property from liability for injuries occurring on, and resulting from its activities on the Property, for which it would otherwise ordinarily be liable.
- c. Notwithstanding any provision of this Easement to the contrary, the State is not an owner of the Property nor does the State hold an interest in the Property of the nature that would cause the State to be liable as a responsible party for the discharge or cleanup of hazardous materials under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 – 1975, or similar federal or state statutes or local ordinances or applicable regulations. This Easement does not permit the State to control any use of the Property by the fee simple owner of the Property which may result in the storage, dumping or disposal of hazardous materials or refuse; provided, however, that the State may bring an action to enforce the provisions of this Easement.
- d. If any provision of this Easement, or the application of this Easement to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those to which it is found invalid, shall not be affected.
- e. City hereby covenants to and with the State and its assigns, that City is lawfully seized of the estate in fee simple of the Property, has good and lawful right and power to sell and convey the interests in land here granted, that the title and Easement here granted are free and clear of encumbrances, except as of record, and that City will forever warrant and defend the title thereto and the quiet possession thereof, against the lawful claims and demands of all persons.
- f. This Easement shall run with the Property and shall be binding upon City, its successors and assigns.

TO HAVE AND TO HOLD unto the State, its successors, and assigns forever.

IN WITNESS WHEREOF City and the State have set their hands on this day and year.

GRANTOR
City of Homer

By:

XXXXXXXXXX
City Manager

ACKNOWLEDGMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

| THIS IS TO CERTIFY that on this ____ day of _____ 2010, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioner and sworn as such, personally appeared XXXXXXXXXXXX, to me known and known to be the City Manager of the City of Homer and the person who executed the above and foregoing STATE CONSERVATION EASEMENT on behalf of the City of Homer and who acknowledged to me that he signed in the name of, and for and on behalf of the City of Homer,, freely and voluntarily for the use and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hands and affixed my official seal, the day ad year first written above.

| _____
Notary Public in and for Alaska
My commission expires: _____
(SEAL)

ACCEPTANCE

Pursuant to AS 38-05-035-(a)(11), the Grantee hereby accepts this State conservation Easement conveying to the State of Alaska and its assigns, those interests in lands described therein.

Dated this _____ day of _____, 20109.

By: _____
Richard LeFebvre,
Deputy Ceommissioner
Alaska Department of Natural Resources

ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing State Conservation Easement was acknowledged before me this _____ day of _____, 20109, by Richard Lefebvre, Alaska Department of Natural Resources.

Notary Public in and for Alaska
My commission expires: _____

(SEAL)

STATE BUSINESS – NO CHARGE

AFTER RECORDING RETURN TO:
State of Alaska
Department of Natural Resources
Director
Division of Mining, Land and Water
550 West 7th Ave., Suite 1050
Anchorage, Alaska 99501

LOCATION INDEX: Sections 9 and 10, T. 6 S., R. 14 W., Seward Meridian

**CITY OF HOMER
HOMER, ALASKA**

City Manager

ORDINANCE 07-03

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ACCEPTING OWNERSHIP OF PROPERTY CONVEYED BY THE UNIVERSITY OF ALASKA, CONSISTING OF TWO PARCELS IDENTIFIED BY KENAI PENINSULA BOROUGH PARCEL NUMBERS 173-022-01 AND 173-032-29, AND THE DESIGNATING THE USE AS PUBLIC PURPOSE FOR PARK LAND.

WHEREAS, The Baycrest Ski Trail System in the Diamond Creek watershed is valuable both to the local quality of life and to Homer's winter economy, providing unparalleled recreational opportunities for thousands of residents and visitors; and

WHEREAS, For over 60 years the Baycrest Ski Trail System has been one of Homer's favorite winter recreational areas; and

WHEREAS, The Kachemak Nordic Ski Club maintains more than 30 kilometers of groomed ski trails within the Diamond Creek watershed, which is the largest non-motorized area maintained for cross-country skiers locally; and

WHEREAS, Many special events sponsored by the Kachemak Nordic Ski Club are held on these trails, such as the annual the Sea-to-Ski Triathlon, and each of these activities brings winter revenue to Homer; and

WHEREAS, Homer area schools often log over 2,500 user days per year on these trails, including practice, competition, and outdoor education classes; and

WHEREAS, The Homer Chamber of Commerce promotes the trails in its visitor's guide (distributed to over 110,000 people) and estimates that Chamber of Commerce personnel direct 6,000 to 8,000 visitors annually to the summer hiking trails in the area; and

WHEREAS, Kachemak Heritage Land Trust's Diamond Creek Project, initiated in 2002, was meant to purchase land and protect key historic ski trails in the Baycrest trail system and was approved for federal Forest Legacy Program funding to cover up to 75% of the total project cost; and

WHEREAS, The Homer City Council unanimously approved Resolution 03-58 urging approval of receipt authority by the State of Alaska for Forest Legacy Program funds for this project on April 14, 2003; and

WHEREAS, The Homer Chamber of Commerce, Homer Community Schools, Kachemak Nordic Ski Club, Homer Soil and Water Conservation District, Homer High School, Representative Paul Seaton, and Senator Gary Davis all wrote letters of support for Kachemak Heritage Land Trust's efforts to protect land in the Diamond Creek watershed; and

WHEREAS, Kachemak Heritage Land Trust has completed its due diligence for this purchase, obtaining a Phase 1 Environmental Assessment and an appraisal and federal review appraisal to meet Yellow Book Standards and federal guidelines as required by the Forest Legacy grant; and

WHEREAS, The Kachemak Nordic Ski Club is willing to negotiate a renewable agreement to continue ski trail grooming and maintenance; and

WHEREAS, The federal Forest Legacy grant requires that the property be owned by a municipality or other governmental entity; and

WHEREAS, The Kenai Peninsula Borough does not exercise recreational powers and therefore is not an appropriate steward for the property; and

WHEREAS, The Alaska Department of Natural Resources has stated that it does not wish to hold title to the property and has recommended that the City of Homer accept it; and

WHEREAS, Homer City Code section 18.06 permits the City of Homer to accept ownership of the property even though it is not within City limits; and

WHEREAS, Pursuant to Homer City Code Section 18.06.010 Real property acquisitions, authority, the City may acquire, own and hold real property within or outside the City boundaries by any lawful means or conveyance, and may exercise all rights and powers in the acquisition, ownership and holding of real property as if the City were a private person; and

WHEREAS, Acquisition of the property by the City of Homer is consistent with the Homer Comprehensive Plan (1999 Update), which states that the City will "strive to identify, acquire, dispose of, or exchange lands to satisfy public recreation needs," "acquire land, plan and construct facilities," and "identify, protect and preserve scenic and natural areas, such as greenbelts, for recreation enjoyment".

NOW, THEREFORE, BE IT ORDAINED by the City of Homer:

Section 1. The City of Homer accepts ownership of property conveyed by the University of Alaska, consisting of two parcels identified by Kenai Peninsula Borough parcel numbers 173-022-01 and 173-032-29, with the legal descriptions of HM T06S R14W S09 SE1/4 EXCLUDING THE W1/2 SW1/4 SE1/4 SE1/4 and HM T06S R14W S10 SE1/4 & S1/2 SW1/4.

Section 2. The City of Homer hereby affirms the use designation for public purpose as park land in perpetuity.

Section 3. The City of Homer acknowledges that this property will be acquired with federal funds under the Forest Legacy Program. In the event that the City of Homer determines that it is no longer desirable to hold the property and the property is conveyed, exchanged or otherwise disposed of, after providing notice to the United States Forest Service, the City of Homer shall either reimburse the Forest Service for the fair market value of the property, or, with Forest Service approval, exchange the property for other Forest Legacy Program eligible lands of at least equal market value and of reasonable equivalent location with public purposes that equal or exceed those on the property.

Section 4. This Ordinance is a non-Code Ordinance and is of a permanent nature.

PASSED AND ENACTED by the Homer City Council this 27 day of January, 2007.



CITY OF HOMER
James C. Hornaday
JAMES C. HORNADAY, MAYOR

ATTEST:
Mary L. Calhoun
MARY L. CALHOUN, CMC, CITY CLERK

First Reading: 01/08/07
Public Hearing: 01/22/07
Second Reading: 01/22/07
Effective Date: 01/23/07

Ayes: 5
Noes: 0
Abstain: 0
Absent: 1

Steve Dem, Acting C. Mgr
Walt Wrede City Manager

Gordon J. Tans
Gordon J. Tans, City Attorney

Date: 1/27/07

Date: 8 Feb 2007

Fiscal note: N/A

