

38 PASSED AND ADOPTED by the Homer City Council this 25th day of November, 2013.

39

40

41

42

43

44

45

46

47

48

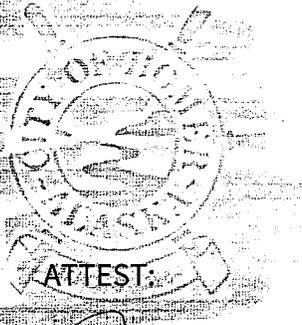
49

50

51

52

53



CITY OF HOMER

Mary E. Wythe
MARY E. WYTHE, MAYOR

Jo Johnson
JO JOHNSON, MMC, CITY CLERK

Fiscal Impact: N/A



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov

(p) 907-235-8121 x2222

(f) 907-235-3148

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) between the City of Homer (City) and the Kachemak Nordic Ski Club (KNSC), a non-profit corporation, is made this 1st day of December, 2013.

This MOA is entered into with respect to operation and maintenance of recreational nordic ski trails on lands owned by the City in the Diamond Creek watershed. The Nordic Ski Club currently maintains about 30 kilometers of groomed ski trails in the watershed. The trail system is more commonly known as the Baycrest Ski Trails and some of the trails cross land recently acquired by the City. The Nordic Ski Club wishes to continue to maintain and operate the ski trails under agreement with the City. The City owned parcels are described as KPB Parcels 173-022-01 and 173-032-29. A detailed legal description is on file.

Recitals:

1. The City accepted title to the parcels referenced above via Ordinance 07-03. The land was conveyed by the University of Alaska through the Department of Natural Resources and the Kachemak Heritage Land Trust.
2. The Kachemak Heritage Land Trust raised the money for purchase of the land through years of hard work and fund raising. A primary source of funding was the Forest Legacy Program.
3. The City Council dedicated the two parcels as park and public lands in perpetuity (Ordinance 07-03) for the benefit of current and future generations.
4. The funding from the Forest Legacy Program contained stipulations and conditions that the property only be used for forestry programs, recreation, and conservation. The Council accepted title to the property with this understanding and all future uses must be consistent with these purposes.
5. The Kachemak Nordic Ski Club currently maintains over 30 kilometers of groomed nordic ski trails in the Baycrest / Diamond Creek area (which includes these parcels) and wishes to continue to do so under the agreement with the City.
6. The City wishes to authorize KNSC use and maintenance of existing ski trails.
7. This MOA is intended to establish the relationship between the City and KNSC.
8. This MOA constitutes a land use permit which specifically authorizes the activities described herein.
9. Nothing in this agreement obligates the City to provide funding or operational, maintenance, or program assistance of any kind.

LAND USE AGREEMENT PERMIT

The City of Homer hereby grants permission to the Kachemak Nordic Ski Club to maintain and operate existing groomed ski trails on the parcels described herein for the enjoyment of the public. A map of existing trails is attached and incorporated herein. This authorization is subject to the terms and conditions described below.

PERMIT: This permit conveys to KNSC no interest in the property. This permit is revocable immediately and without notice. It is issued for authorized purposes to KNSC. The permit represents a non-exclusive privilege authorizing special use of City of Homer land.

Violation of permit conditions or the conduct of activities not authorized by this permit will result in permit revocation and may result in a claim for damages by the City and other civil and criminal penalties as applicable under law. KNSC shall remove all chattels or improvements placed on the land by KNSC within 30 days of permit revocation. The City may, at its option, direct that all activities under this permit stop until a violation of the permit conditions is corrected. Continued activity after notice to stop will be deemed a trespass by the City.

The City reserves the right to permit other land use activities in the permit area, provided that the City determines that such use will not unduly impair KNSC's activities and is consistent with the land use designation (public use/ park) and stipulation associated with grant funding (forestry projects, recreation, conservation).

PERMIT TERM: This MOA / Permit is valid from December 1, 2013 through December 31, 2015. The permit is revocable with or without cause by the City. If KNSC wishes to terminate this permit prior to the end of the term, it must provide written notice 14 days prior to the termination date and comply with the provisions of the section entitled "Expiration" of this permit prior to the termination date. The permit may be renewed if both parties wish and it is understood that this agreement/ permit may eventually be replaced with a more formal lease.

DEFENSE AND INDEMNIFICATION

KNSC shall indemnify, defend, save, and hold the City, its elected officials and appointed officers, agents and employees, harmless from any and all claims, suits, demands, or liability of any nature, kind or character including costs, expenses, and attorney's fees resulting from KNSC's performance or failure to perform in accord with the terms of this permit in any way whatsoever. KNSC shall be responsible under this clause for any and all claims of any character resulting from KNSC or its officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform under this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the City or its agents which are said to have contributed to the losses, failure, violations, or damage. However, KNSC shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the City, its agents, or employees.

LIABILITY INSURANCE

KNSC shall purchase at its own expense and maintain in force at all times during the term of this permit the following insurance policies:

Commercial General Liability and Automobile Insurance for any automobiles owned by KNSC. Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by KNSC in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by the City. KNSC shall comply with the insurance policy requirements to maintain coverage for special events organized by KNSC. The policy purchased shall name the City as an additional insured with respect to the activities conducted on the property.

Proof of Insurance: KNSC shall deliver to the City certificates of insurance. This insurance shall be primary and exclusive of any other insurance held by the City. Failure to provide insurance as required by this section, or a lapse in coverage, is a material breach of the permit terms and the City may revoke the permit. Upon renewal of insurance coverage, during the contract, certificates of insurance shall be delivered to the City.

SPECIAL EVENT COVERAGE

In addition to commercial general liability insurance and automobile insurance, KNSC shall comply with the insurance policy requirements to maintain coverage for special events organized by KNSC.

TRANSFER

This permit may not be transferred or assigned without prior written approval by the City of Homer.

ACTIVITIES

The following activities are specifically authorized under this permit: Special Nordic Ski Events, maintenance of existing ski trails (winter and summer), operations and public use of ski trails, installation of trail signage.

KNSC shall consult with the City Planning Department regarding any substantial signs that may be subject to the sign code. New trails and trail construction, summer trails, and other recreational activities or facilities may be permitted provided that a developmental plan is submitted and approved by the Parks and Recreation Commission and if necessary, the Planning Commission.

SPECIAL AUTHORIZATION

KNSC and the City of Homer recognize and agree that maintaining and operating cross-country ski trails in the safest manner possible, using best management practices common to multi-use, non-motorized trails is in the best interest of both KNSC and the City. KNSC is hereby authorized to employ such best management practices including signs and temporary plastic barrier fencing as it deems necessary to maintain and operate the permitted trails for the safety of cross country skiers and to minimize conflicts with other forms of non-motorized recreation. The City reserves the right to limit this authorization as it deems necessary. Such improvements shall be removed by KNSC at the termination of this permit.

All activities and special authorization shall be conducted in a manner that will minimize land disturbance and will not cause a change in the character of the land or damage water courses, shorelines, or natural drainage patterns. KNSC agrees to consult with the City Planning Department regarding permits and other authorizations that may apply before conducting any such activities.

KNSC shall be liable for damage to any City owned property resulting from this activity. Damages resulting from the activities shall be repaired or replaced by KNSC at its expense; failure to repair damages subjects KNSC to all available remedies available to the City. The election of one remedy will not prohibit the City from pursuing any and all available remedies.

All activities shall avoid harming or disturbing bald eagles or their nest sites in accordance with the Bald Eagle Protection Act (16 USC 668). KNSC is responsible for compliance with all other federal, state, and local environmental laws and shall consult with the Planning Department if it has questions about compliance.

In addition to the above, KNSC's activities shall conform to the following conditions:

FIREWOOD COLLECTION: Cutting of live trees or vegetation is prohibited for the use of firewood. The gathering of wood from dead trees and down trees on the property is allowed within the course of activities listed.

OPEN FIRES: Open fires on the property are prohibited unless specifically authorized by the City Fire Chief and/ or State Fire Marshal.

TEMPORARY STRUCTURES: Only temporary structures may be placed on the property and shall be located not less than 75 feet from the mean or ordinary high water mark of all lakes, streams, or other bodies of water. Temporary structures are defined as being removable within 48 hours of notice.

SANITATION: The property shall be kept in a clean and sanitary condition and every effort shall be made to prevent the pollution of waters. Sanitary facilities are permitted but must be authorized by the City and be in accordance with Department of Environmental Conservation regulations.

SAFETY: KNSC is responsible for the safety of all persons conducting activities on the property under this permit. KNSC agrees to provide clientele with information regarding rules and regulations and other information pertaining to the property and the permit.

PROHIBITIONS: KNSC agrees to the following prohibitions:

VEGETATION: There shall be no clearing of trees, shrubs or vegetation except as permitted for permitted activities or otherwise authorized by the City.

WASTE BURIAL: The burial of waste or trash is prohibited. All waste must be transported off site in a reasonable time frame. The City may authorize other disposal of organic waste.

STORAGE: Storage of petroleum products is allowed in amounts necessary for activities required on the property only upon condition that KNSC exercise proper care, handling, and safe and proper storage. Fuel may not be placed within 100 feet of any wetland or the mean or ordinary high water mark of any lake, stream, or other body of water. Fuel must be stored in leak proof containers and placed in a secondary containment, impermeable berms and basins capable of retaining 155 percent of storage capacity plus 12 inches of free board to minimize uncontained leaks or spills.

ACCESS: KNSC shall not restrict public access to State waters or City owned land except as necessary to create safe working conditions to perform permitted activities, protect personal property, or public safety.

PUBLIC USE: KNSC may not restrict public use of shorelines.

SURVEY MONUMENTS: All survey monuments, witness corners, reference monuments, mining claims, posts, bearing trees, and subdivision monumentation shall be protected against destruction, obliteration, or damage. Any damage or obliterated markers shall be reestablished by KNSC in accordance with accepted survey practice established by the Kenai Peninsula Borough.

RIGHTS-OF-WAY: Activities within rights-of-way must comply with Title 14 of the Kenai Peninsula Borough Code.

ANADROMOUS STREAMS: Activities within 50 horizontal feet of streams designated anadromous must comply with applicable regulations.

CULTUREAL RESOURCES: KNSC shall not disturb historic or prehistoric resources. Should previously undiscovered artifacts of historic, prehistoric or archaeological importance be discovered, the site shall be protected from further disturbance and KNSC shall immediately cease activities and contact the City and the State Historic Preservation office.

WILDFIRES: KNSC shall take immediate action to suppress uncontrolled fires and report them to the proper authorities as soon as possible.

LOCATION: KNSC is responsible for properly locating itself and associated activities on the property.

SUITABILITY: The City of Homer does not represent or guarantee the safety, suitability, or condition of the property for any purpose for which KNSC is using or proposes to use the property. It is solely KNSC's responsibility to determine the value and suitability of the property for its intended uses.

INSPECTIONS: Authorized agents and employees of the City shall have access at all times to the property. At times when the property is in use, KNSC shall have a representative available to receive, on behalf of KNSC, any notices and instructions given by authorized City personnel in regard to performance under this permit and to take such action as required by the terms of this permit. KNSC shall maintain on file with the City, the name, title, address, and telephone number of an individual with overall authority for activities under this permit, and who shall be the point of contact for routine and emergency notices, information and correspondence, relative to the permit. Prior to termination of this permit and release of bond, if any, KNSC shall transport authorized agents of the City for required final inspection.

EXPIRATION: On or before the expiration date of this permit, KNSC shall remove all trash, waste, materials, equipment, and other personal property it has placed or caused to be placed on the property. If materials, equipment, or personal property are not removed by the expiration date, they may become the property of the City and may be otherwise disposed of by the City without obligation to KNSC.

ENVIRONMENTAL HAZARD: KNSC shall not keep any hazardous materials or create any environmental hazards for the public or KNSC's clientele on the property. The defense and indemnification clause set forth above of this agreement specifically extends to violations of this section.

NOTICES: All notices shall be sent to both parties as follows:

City of Homer
City Manager
491 E. Pioneer Ave.
Homer, AK 99603

Kachemak Nordic Ski Club
P.O. Box 1901
Homer, AK 99603

PERMIT FEES: None

TAXES: All applicable taxes or assessments shall be paid by KNSC

SEVERABILITY: Any provision or clause of this permit that is deemed invalid by the court or otherwise by law shall not affect the validity of the remainder of the agreement.

GOVERNING LAW; JURISDICTION: This agreement shall be governed by the laws of the State of Alaska. Any legal action brought in court regarding this permit shall be filed with the trial courts of Alaska, Third Judicial District, Kenai. It is understood and agreed by the parties that consultation and negotiation are the preferred first option for resolving all disputes.

LAWS AND PERMITS; KNSC shall abide by applicable federal, state, and local statutes, ordinances, rules, and regulations. KNSC is responsible for obtaining all applicable permits relative to its activities on City owned land and keeping such permits in good standing.

NO PARTNERSHIP: No provision of this permit shall be construed to create a partnership or joint venture or any other arrangement between the City and KNSC where the City would be in any way responsible for debts, losses, or liabilities of KNSC.

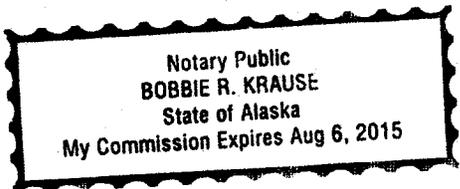
WAIVER: A waiver by the City of any provisions of this permit shall not be construed as a continuing waiver of a provision, or a waiver of other provisions of the permit. Any waivers of the permit conditions shall be done in writing by both parties.

ENTIRE PERMIT: This document sets forth the entire permit granted. No representations or promises not contained in this document have been made by the City. No modification to this permit is binding unless in writing and executed by both parties.

CONSTRUCITON: This permit shall be interpreted according to its fair meaning and intent, and not for or against either party.

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on December 4, 2013,
by ~~David Brann~~ ^{Jan Spurkland}, Board Member of the Kachemak Nordic Ski Club, an Alaskan non-profit corporation,
for and on behalf of the corporation.



Bobbie R Krause
Notary Public in and for Alaska
My Commission Expires: 08/06/15