

**SUBJECT:** INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF A PERMIT FOR TEMPORARY LAND USE OF BOROUGH-OWNED LAND BY THE ALASKA RAILROAD CORPORATION (ARRC) (MSB006822).







**AGENDA OF:** February 18, 2020

**ASSEMBLY ACTION:**

2.18.2020 Approved under consent agenda. KBJ

**MANAGER RECOMMENDATION:** For information only.

**APPROVED BY**  **JOHN MOOSEY, BOROUGH MANAGER:** 

Route To:	Department/Individual	Initials	Remarks
	Originator		
	Community Development Director		
	Borough Finance Director		
	Borough Attorney		
	Borough Clerk		

**ATTACHMENT(S):** Temporary Land Use Permit (13pp)  
Manager's Decision (3pp)

**SUMMARY STATEMENT:**

Attached is a Temporary Land Use Permit authorized pursuant to MSB 23.05.030 for Assembly information and review as directed by Borough administration and the Assembly. The purpose of the Permit is for Alaska Railroad Corporation use of Borough land for a term of 5 years for installation and maintenance of a repeater tower.

**MATANUSKA-SUSITNA BOROUGH  
TEMPORARY LAND USE PERMIT**

**SECTION 1. PARTIES.**

The Matanuska-Susitna Borough (hereinafter called the BOROUGH), a municipal corporation organized and existing under the laws of the state of Alaska whose address is 350 East Dahlia Avenue, Palmer, Alaska 99645, hereby permits the Alaska Railroad Corporation (ARRC) whose address is PO Box 107500, Anchorage, Alaska 99510 (hereinafter called the PERMITTEE), the use of borough-owned land subject to the terms and conditions set forth herein.

The PERMITTEE shall be a qualified applicant in accordance with MSB 23.10.090.

**SECTION 2. PERMIT.**

This permit does not convey any interest in the Property. The permit authorizes the temporary use of the Property by the PERMITTEE only for the authorized activities and is subject to the conditions set forth in this permit. The parties who comprise the PERMITTEE shall be held jointly and severally liable for meeting the conditions and obligations set forth in this permit.

**SECTION 3. PROPERTY.**

The PERMITTEE is authorized to use real property described as follows:

A portion of parcel with Tax ID S28N05W36, located within Section 36, Township 28 North, Range 5 West, Seward Meridian, Talkeetna Recording District, and as shown on the attached map as Exhibit A,  
(hereinafter called the Property).

**SECTION 4. ACTIVITIES.**

A. This permit authorizes the PERMITTEE the non-exclusive use of the Property at the location for installation and maintenance of a repeater tower to relay mud flow monitoring information from a project site near railroad milepost 238 to a railroad communication site at Curry. The temporary structures allowable under this permit include a Rohn 55 twenty foot tall tower with attached solar panels, omni antenna, and box to house radios.

B. All activities shall be conducted in a manner to minimize disturbance of the property and not cause changes in the character of the land, or damage to the water courses, shorelines, natural drainage patterns, or vegetation.

SECTION 5. PERMIT FEE.

A non-refundable annual land use fee of \$1000 is due and payable to the BOROUGH prior to the execution of this permit by the Borough Manager and every year thereafter due by the permit's anniversary date for annual extensions as allowed under Section 6.

SECTION 6. PERMIT TERM.

This permit shall not exceed a five-year term and is valid for a five year period from the date of execution by the BOROUGH. Extension or renewal is not automatic and at the end of the term, the PERMITTEE may be required to re-apply for a new permit.

SECTION 7. CASH BOND.

Waived

SECTION 8. INSURANCE REQUIREMENTS.

The PERMITTEE shall purchase and maintain insurance throughout the permit term as outlined and attached as Exhibit B. The BOROUGH is not responsible for any contents, materials, or possessions placed on the Property. The PERMITTEE shall secure such insurance as it deems prudent for the items owned or brought to the Property by the PERMITTEE.

SECTION 9. PERMIT CONDITIONS.

The following conditions apply to this permit:

- A. No changes or modifications to the borough land may be made, except as specifically authorized in writing by the BOROUGH.
- B. The condition of the Property at the end of this permit shall be in at least equal or better condition as at the beginning of this permit.
- C. The discharge of firearms is prohibited on the Property except for personal protection.
- D. The use of explosives, including fireworks, is strictly prohibited on the Property.
- E. Fuel Storage/Hazardous Materials
  - 1. The storage of petroleum products is prohibited on the Property.
  - 2. The use or storage of hazardous, toxic or persistent chemicals is prohibited on the Property.



3. The use of pesticides for mosquito abatement is prohibited on the Property unless specifically approved by the BOROUGH.
  4. Fuel spills or contamination of the water, land, or building will be controlled and recovered immediately by the PERMITTEE and reported to the BOROUGH and as required by law to the State of Alaska, Department of Environmental Conservation.
- F. Open fires are strictly prohibited on the Property.
- G. Shoreline protection. The PERMITTEE shall take measures to protect the shoreline from erosion and damage and the main activity shall be conducted in a manner to minimize adverse effect to the shoreline.
- H. The PERMITTEE shall avoid damaging trees and natural vegetation.
- I. Bear conflict. The PERMITTEE shall take necessary precautions to minimize the likelihood of bear-caused property damage or human injury. Remove all food waste and garbage, at a minimum on a weekly basis, and store all food in a secure manner so as not to attract bears or other wildlife.

#### SECTION 10. STRUCTURES AND RESTRICTING ACCESS.

No permanent structures shall be erected on the Property by the PERMITTEE other than as specifically authorized in this permit, or by subsequent written amendment as then agreed. Prior to any construction, digging or contouring, all utility and service lines will be located. Service lines may include gas, septic, water, telephone/communications, and electric. The PERMITTEE shall not place or install any gate or structure on any portion of the Property, or adjacent property controlled by the BOROUGH, that would restrict public use or access to public lands.

#### SECTION 11. SAFETY.

The PERMITTEE is responsible for the safety of all persons using the Property under this permit and agrees to provide all users with information regarding rules and regulations and other information pertaining to the Property and the permit.

#### SECTION 12. SITE CLEARING/CONTOURING/DISTURBANCE.

The PERMITTEE, except as already authorized by this permit, must obtain written authorization from the BOROUGH prior to any site clearing or contouring on the Property. All activities shall be conducted in a manner that will minimize disturbance of drainage systems, changing the character of, or polluting and silting of waterbodies and marshes, or disturbance of fish and wildlife resources. Due care shall be used to avoid excessive scarring or removal of ground vegetation cover. Any activity causing harm or disturbance beyond authorized use under this permit

that is not restored immediately, is subject to corrective action as may be required by the BOROUGH. The Borough may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated areas except at designated crossings.

#### SECTION 13. SANITATION.

PERMITTEE shall adhere to the following sanitation requirements:

- A. The Property shall be kept in a clean and sanitary condition, including all waste which shall be properly handled and disposed of in a manner to not adversely affect the land or infrastructure thereon, and every effort shall be made to prevent the pollution of any water, land and building.
- B. Toilets and/or septic facilities shall be maintained in clean, working order and will be provided and maintained for staff or the public, as needed, in accordance with the State of Alaska, Department of Environmental Conservation regulations, if applicable.
- D. Grey water may not be discharged on the ground.
- E. The burial of trash or animals is strictly prohibited. Trash, animal waste and disposal of deceased animals, if any, generated from the activities under the permit shall be removed and disposed of properly at an approved landfill or transfer site or a commercial waste management operator. Trash shall not be allowed to accumulate more than weekly and in any event shall be stored in such a manner as not to attract wildlife or become a nuisance.

#### SECTION 14. EXPLOSIVES.

The use of explosives, including fireworks, is strictly prohibited on the Property.

#### SECTION 15. FIRE CONTROL.

PERMITTEE shall be prepared to control and suppress fires at all times. The PERMITTEE shall take immediate action to suppress uncontrolled fires on the Property and shall immediately report an uncontrolled fire to 1) appropriate fire officials, and 2) the BOROUGH.

#### SECTION 16. ACCESS.

All designated public travel routes must be kept open to traffic and may not be blocked or re-routed by the PERMITTEE, to include on borough-owned land the fifty (50) foot wide area upland from the ordinary high water mark of water bodies reserved for the public to walk upon and cross. Restriction of any public route is disallowed unless otherwise authorized in writing by the BOROUGH or other state or federal authority.

#### SECTION 17. INSPECTIONS.



A. PERMITTEE shall have a representative available to receive, on behalf of the PERMITTEE, any notices and instructions given by an authorized borough administrator in regard to performance under this permit to take such action thereon as required by the terms of this permit.

B. PERMITTEE shall pay all travel costs associated with site inspections performed by the BOROUGH when the inspection is necessary due to a complaint or report that the PERMITTEE is in violation of permit terms or conditions. The inspection fee will be a minimum of fifty dollars (\$50). Due to the remote location of this site, the PERMITTEE shall provide the cost of transportation via helicopter to and from the site for inspections necessitated by complaints.

C. A final inspection of the Property shall be performed by the BOROUGH on or after the expiration date of the permit to determine the condition of the Property. The Property shall be cleared of all personal property, materials, equipment, and structures owned by the PERMITTEE, and waste that the PERMITTEE placed or caused to be placed on the Property.

If materials, equipment, structures, or personal property are not removed by the expiration date, it may become the property of the BOROUGH and may be used or otherwise disposed of by the BOROUGH without obligation to the PERMITTEE.

If the permit site requires clean-up, revegetation or rehabilitation due to PERMITTEE'S neglect, the PERMITTEE shall be responsible for all costs of restoration whether said work is done by the PERMITTEE or the BOROUGH, and if not paid by the PERMITTEE, may result in a claim for damages by the BOROUGH as applicable under law.

#### SECTION 18. TERMINATION FOR CAUSE.

All permits are revocable immediately with cause and may result in a claim for damages by the BOROUGH and other civil or criminal penalties as applicable under the law. The term "cause" means any violation of permit conditions, or any violation of applicable borough code, statutes, or regulations, or a situation in which a continuance of the activity poses a threat to the public health, safety, or welfare. This permit may be terminated by the BOROUGH for cause upon written notice of violation having been delivered to PERMITTEE with an order to "cease and desist" permit activities and providing the PERMITTEE a minimum of three days (72 hours) to remedy the violation(s). If the permit is terminated for cause due to remedy not being made, then the PERMITTEE shall have an additional seven days to vacate the Property.

Termination of this permit for cause will disqualify the PERMITTEE from receiving a permit or lease from the BOROUGH for five (5) years (MSB 23.10.090).

#### SECTION 19. TERMINATION OR SUSPENSION WITHOUT CAUSE FOR CONVENIENCE.

This permit may be suspended or terminated by the BOROUGH without cause for convenience. If this permit is terminated without cause, the PERMITTEE shall be given a minimum of 30 days notice to vacate the Property.

SECTION 20. COMPATIBLE USES.

The BOROUGH reserves the right to permit other land use in the permit area, provided the BOROUGH determines that such use will not unduly impair the purpose or conditions of this permit.

SECTION 21. NO TRANSFER/SUBDIVIDING/ENCUMBER.

A. This permit may not be transferred or assigned.

B. No rights to sublease, subdivide, or encumber the Property have been granted to the PERMITTEE.

SECTION 22. DEFENSE AND INDEMNIFICATION.

PERMITTEE shall indemnify, defend, and hold and save the BOROUGH, its elected and appointed officers, agents, and employees harmless from any and all claims, demands, suits, or liability of any nature, kind, or character, including costs, expenses, and attorney's fees. PERMITTEE shall be responsible under this clause for any and all legal action or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulation, contractual claims, or any other kind of loss, tangible or intangible sustained by any person, or property arising from breach of any condition of this permit. This defense and indemnification responsibility includes claims alleging acts or omissions by the BOROUGH or its agents which are said to have contributed to the losses, failure, violations, or damage. PERMITTEE shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the BOROUGH, its agents, or employees.

SECTION 23. PERMITS, LAWS, AND TAXES.

PERMITTEE shall acquire and maintain in good standing all permits, licenses, and other entitlement necessary to the performance under this permit. All actions taken by PERMITTEE under this permit shall comply with all applicable statutes, ordinances, rules, and regulations.

SECTION 24. PROPERTY DAMAGE.

PERMITTEE shall be liable for damage to any borough-owned property resulting from the activities. Damages resulting from the activity shall be repaired or replaced by PERMITTEE to its original condition and to the satisfaction of the BOROUGH.

SECTION 25. CULTURAL RESOURCES.



PERMITTEE shall not disturb historic or prehistoric resources. Should historic or prehistoric sites or items be discovered on the Property, or on the adjacent borough-owned land, the PERMITTEE shall notify the BOROUGH as soon as possible.

SECTION 26. SUITABILITY.

The BOROUGH does not represent or guarantee the safety, suitability, or condition of the Property for the PERMITTEE'S intended uses.

SECTION 27. SUPERVISION.

PERMITTEE shall maintain adequate supervision to insure that the terms and conditions of this permit and applicable federal, state and borough laws, rules, and regulations are followed.

SECTION 28. MODIFICATIONS.

The parties may mutually agree to modify the terms of the permit. All modifications to the permit shall be incorporated by written amendments to this permit executed by both parties.

SECTION 29. JURISDICTION; CHOICE OF LAW.

Any civil action arising from this permit shall be brought in the Superior Court for the Third Judicial District of the State of Alaska at Palmer. The law of the state of Alaska shall govern the rights and obligations of the parties.

SECTION 30. NON-WAIVER.

The failure of the BOROUGH at any time to enforce a provision of this permit shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this permit or any part thereof, or the right of the BOROUGH thereafter to enforce each and every protection hereof.

SECTION 31. TITLES.

The titles of the sections in this permit are for identification purposes; they are not to be interpreted as limitations on the terms of the permit.

SECTION 32. FORCE MAJEURE.

Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof. Forces majeure include any interruption, suspension, or interference with the project caused by acts of God, acts of the public enemy, wars, blockades, insurrections, riots, and similar occurrences.



SECTION 33. PERMIT ADMINISTRATION.

- A. The borough manager has designated the borough's Community Development Department Director as representative of the BOROUGH administering this permit.
- B. PERMITTEE'S activities shall be administered, supervised, and directed by:

Name: Matt McKee, Avalanche Program Manager, Alaska Railroad Corporation  
Address: PO Box 107500, Anchorage, AK 99510  
Email: mckeem@akrr.com  
Phone: (907) 265-2457

In the event the individual named is unable to serve for any reason, the PERMITTEE shall provide written notification to the BOROUGH of their appointed successor. Any notices sent to the PERMITTEE shall be effective based on the most recent written notification of PERMITTEE'S authorized representative received by the BOROUGH.

SECTION 34. SEVERABILITY.

If any section or clause of this permit is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of the permit shall remain in full force and effect.

SECTION 35. INTEGRATION.

This permit and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this permit shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

SECTION 36. NOTICES.

All notices shall be sent to both parties as follows:

MATANUSKA-SUSITNA BOROUGH

Land and Resource Management Division  
350 East Dahlia Avenue  
Palmer, AK 99645

PERMITTEE

Must be consistent with 33 B above

SECTION 37. CONSTRUCTION.

The PERMITTEE acknowledges that the PERMITTEE has read and understands the terms of this permit, and has had the opportunity to review the same with counsel of their choice, and is executing this permit of their own free will.

M. McKee 1/14/20  
Matt McKee, Avalanche Program Manager Date

John M. Moosey  
John M. Moosey, Manager Date



**ACKNOWLEDGEMENTS**

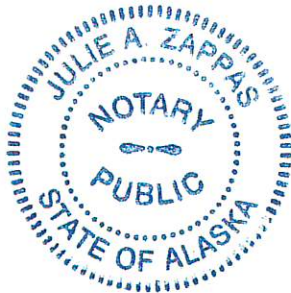
STATE OF ALASKA       )  
                                  ) ss.  
Third Judicial District    )

On January 19, 2020, Matt McKee, personally appeared before me,

✓ who is personally known to me  
\_\_\_\_\_ whose identity I proved on the basis of \_\_\_\_\_  
\_\_\_\_\_ whose identity I proved on the oath/affirmation of \_\_\_\_\_, a  
credible witness

and acknowledged that he/she signed the Temporary Land Use Permit for the purposes intended, and  
as authorized on behalf of the Alaska Railroad Corporation.

(SEAL)



Julie A. Zappas  
Notary Public for State of Alaska  
My commission expires: 3/22/20

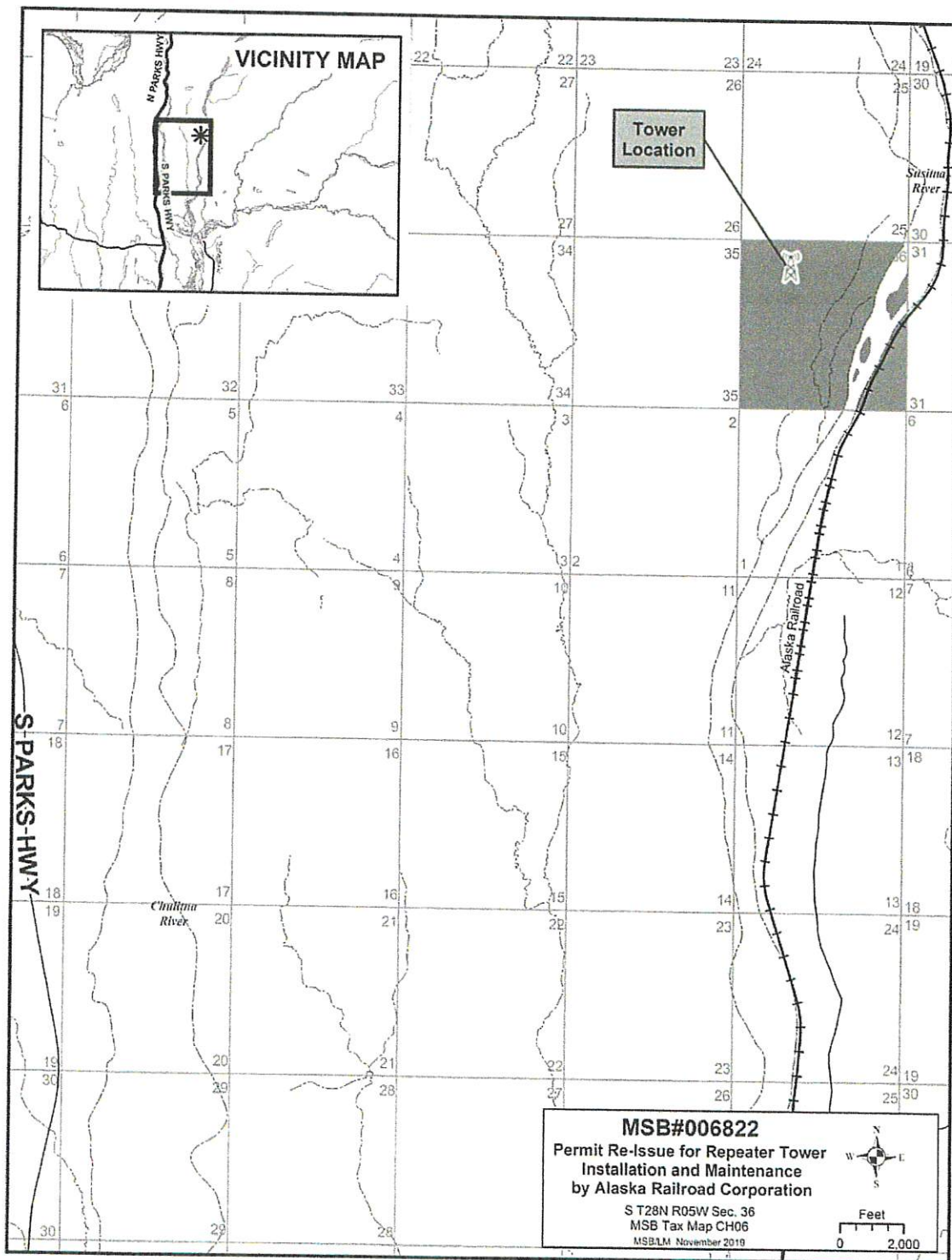
STATE OF ALASKA       )  
                                  ) ss.  
Third Judicial District    )

On \_\_\_\_\_, 20\_\_\_\_, John M. Moosey, manager of the Matanuska-Susitna  
Borough, who is personally known to me, appeared and acknowledged before me that he signed the  
Temporary Land Use Permit on behalf of the municipal corporation.

(SEAL)

\_\_\_\_\_  
Notary Public for State of Alaska  
My commission expires: \_\_\_\_\_

Exhibit A





ALASKA  
RAILROAD

**RISK MANAGEMENT DIVISION**  
**TELEPHONE: (907) 265-2493**  
**FACSIMILE: (907) 265-2443**

January 6, 2020

Mr. George Hoden

RE: MSB#006822

Dear Mr. Hoden:

This letter to advise you of the Alaska Railroad Corporation's ("ARRC") Risk Management program as it concerns the referenced matter. A brief description of ARRC's program follows.

ARRC purchases liability insurance based on perceived risk to the corporation, the availability of insurance in the marketplace, and the premium cost to the corporation. Currently, ARRC's liability policy has a Self-Insured Retention ("SIR") of \$5,000,000, with \$195,000,000 of excess coverage over the stated SIR. The policies are written with major U.S., London and Bermuda underwriters. The policies cover various risks, including pollution, bill of lading, and foreign line rolling stock.

ARRC also purchases \$100,000,000 of property insurance in excess of a \$10,000,000 SIR. The property policy covers all real and personal property of every kind and description including diesel locomotives, rolling stock, work equipment, bridges, buildings, contents, track and roadbed. The insurance includes coverage for the perils of earthquake and flood.

ARRC also purchases \$5,000,000 of Director's & Officer's Liability insurance, \$10,000,000 of Boiler & Machinery insurance, and \$5,000,000 of Fiduciary Liability insurance.

To address exposures falling within the SIR, ARRC maintains a standby line of credit in the amount of \$10,000,000 to specifically respond to insurance contingencies. Wells Fargo Bank currently underwrites the line of credit.

Please feel free to contact me if you need additional information.

Sincerely,



Roberta Highstone  
Risk Manager

Cc: Andy Behrend, ARRC, Chief Counsel  
Barbara Amy, ARRC, Chief Financial Officer