

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF A COMMERCIAL LAND USE PERMIT FOR TEMPORARY USE OF BOROUGH-OWNED LAND FOR ALASKA NATURE GUIDES TO OFFER GUIDED HIKES IN TALKEETNA LAKES PARK MSB007553).

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	EK	
	Community Development Director	Q	
	Finance Director	IX	
	Borough Attorney	BS	
	Borough Clerk	Jan 21/20	BS

ATTACHMENT(S): Commercial Temporary Land Use Permit (12pp)

SUMMARY STATEMENT:

Attached is a commercial temporary land use permit authorized pursuant to MSB 23.10.100 for Assembly information and review as directed by Borough administration and the Assembly. The purpose of the permit is to authorize commercial use of borough trails in Talkeetna Lakes Park for a term of five years. The applicant proposes to offer guided nature hikes in Talkeetna Lakes Park. The applicant has been conducting commercial guided in hikes in Talkeetna Lakes Park for the last 10 years.

**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 Alaska Nature Guides, whose address is PO Box 170 Talkeetna, AK 99676, (hereinafter called "the PERMITTEE"), the use of Borough-owned land subject to the terms and conditions set forth herein.

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.

SECTION 3. PROPERTY.

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

E1/2 NW1/4 and S1/2, Section 32, T26N, R04W; GLO Lots 1, 2, 3 and 4, S1/2 N1/2 and S1/2, Section 5, T25N, R04W, Seward Meridian, Alaska 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 *guided day hikes, nature walks, and winter snowshoe tours.*
- B. This permit does not authorize private, non-commercial use of the Property.
- C. Guided day hikes and nature walks are authorized from May 25 through September 11.
- D. Guided snowshoe tours are authorized during periods of sufficient snow depth not to exceed a six-month period in the calendar year in combination with the summer use.
- E. 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 five hundred dollars (\$500.00) 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 execution anniversary date. A commercial use surcharge of two dollars (\$2) per client per day is due to the BOROUGH at the end of each calendar year.

SECTION 6. PERMIT TERM.

This permit is valid for a five-year term from the date of execution by the BOROUGH. Reissuance is not automatic and at the end of the term, the BOROUGH will require the PERMITTEE to apply for a new permit.

SECTION 7. CASH BOND.

As a cash bond, three hundred fifty dollars (\$350) shall be deposited with the BOROUGH before the permit is executed by the Borough Manager. The bond warrants that the PERMITTEE will faithfully observe the terms and conditions of the permit and defray any costs for restoration or rehabilitation of the Property affected by the permitted use. The BOROUGH will return the cash bond to the PERMITTEE after the termination or expiration of the permit, if the BOROUGH determines that all permit conditions have been met and the Property is in satisfactory condition.

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 additional 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. The PERMITTEE must meet the qualifications listed in MSB 23.10.090.
- B. No changes or modifications to the Borough land [or building, if any] may be made, except as specifically authorized in writing by the BOROUGH.
- C. The condition of the Property at the end of this permit term shall be in at least equal or better condition as at the beginning of this permit term.
- D. The discharge of firearms is prohibited on the Property except for personal protection.
- E. The use of explosives, including fireworks, is strictly prohibited on the Property.
- F. 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 or land 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. The PERMITTEE shall be prepared to control and suppress fires at all times. In the event of a fire, 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.
- 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.
- J. Signs. The displaying of signs that advertise goods and services is prohibited on the Property. Signs with the PERMITTEE'S business name and authorization to use the Property is authorized and encouraged.

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.

The 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 by 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. 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 15. INSPECTIONS.

A. The 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. The 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).

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 the PERMITTEE'S neglect, the cash bond will be withheld and used by the BOROUGH to defray the costs of restoration. The PERMITTEE shall be responsible for any additional costs of restoration that exceeds the cash bond held by the BOROUGH, and if not paid by the PERMITTEE, may result in a claim for damages by the BOROUGH as applicable under law.

SECTION 16. TERMINATION FOR CAUSE.

The BOROUGH may terminate this permit immediately with cause, which 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. If the permit is terminated for cause, the PERMITTEE shall have three days (72 hours) 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 17. 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 18. 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 19. 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 20. DEFENSE AND INDEMNIFICATION.

The 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. The PERMITTEE shall be responsible under this clause for any and all legal actions or claims of any character resulting from injury, death, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from the PERMITTEE or PERMITTEE'S officers, agents, employees, partners, attorneys, suppliers, subcontractors, and volunteers performance or failure to perform this agreement in any way whatsoever. 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 loss, failure, violation, or damages. The PERMITTEE shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the BOROUGH, its agents, or its employees.

SECTION 21. PERMITS; LAWS.

The 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 the PERMITTEE under this permit shall comply with all applicable statutes, ordinances, rules, and regulations.

SECTION 22. PROPERTY DAMAGE.

The 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 the PERMITTEE to its original condition and to the satisfaction of the BOROUGH.

SECTION 23. CULTURAL RESOURCES.

The 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 24. SUITABILITY.

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

SECTION 25. SUPERVISION.

The 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. PERMIT ADMINISTRATION.

- A. The Borough Manager has designated the Borough's Community Development Department Director as representative of the BOROUGH administering this permit.
- B. The PERMITTEE'S activities shall be administered, supervised, and directed by:
Name: Howard or Noelle Carbone, DBA Alaska Nature Guides
Address: PO Box 170, Talkeetna, AK 99676
Email: info@alaskanatureguides.com
Phone: 907-733-1237

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 the PERMITTEE'S authorized representative received by the BOROUGH.

SECTION 32. 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 33. 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 34. NOTICES.

All notices shall be sent to both parties as follows:

MATANUSKA-SUSITNA BOROUGH
Land Management Division
350 East Dahlia Avenue
Palmer, AK 99645

PERMITTEE
Alaska Nature Guides
Howard & Noelle Carbone
PO Box 170
Talkeetna, AK 99676

SECTION 35. 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.

IN WITNESS, WHEREOF, the parties hereto have set their hands the day stated in the acknowledgements below.

PERMITTEE:

Alaska Nature Guides

Howard Carbone Jan 14, 2020

Howard Carbone Date

OWNER:

Matanuska-Susitna Borough

John M. Moosey, Manager Date

Noelle Carbone 1/16/2020

Noelle Carbone Date


ACKNOWLEDGEMENTS

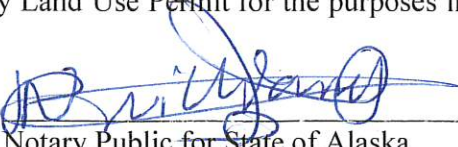
STATE OF ALASKA)
) ss.
Third Judicial District)

1m 20-034

On January 14th, 2020, Howard Carbone, personally appeared before me,
who is personally known to me
✓ whose identity I proved on the basis
of Drivers Licence.
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 corporation.


(SEAL)  **OFFICIAL SEAL**
Natasja Williams
NOTARY PUBLIC-STATE OF ALASKA
My Comm. Expires March 16, 2022

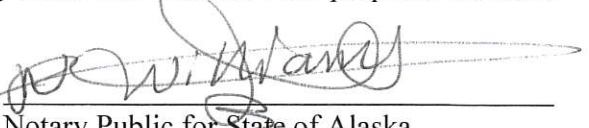

Notary Public for State of Alaska
My commission expires: 1-14-2020

STATE OF ALASKA)
) ss.
Third Judicial District)

On January 16th, 2020, Noelle Carbone, personally appeared before me,
who is personally known to me
✓ whose identity I proved on the basis
of Drivers Licence.
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 corporation.

(SEAL)  **OFFICIAL SEAL**
Natasja Williams
NOTARY PUBLIC-STATE OF ALASKA
My Comm. Expires March 16, 2022


Notary Public for State of Alaska
My commission expires: 1-16-2020

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

