

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF A COMMERCIAL LAND USE PERMIT FOR TEMPORARY USE OF BOROUGH-OWNED LAND FOR RAVENWINGS LLC TO MAINTAIN A FLOATPLANE DOCK IN CHRISTIANSEN LAKE PARK (MSB007479).


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	GP	
	Finance Director	CX	
	Borough Attorney	MS	
	Borough Clerk	gml 2/10/20	

ATTACHMENT(S): Commercial Temporary Land Use Permit (6 pp)

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 land in Christiansen Lake Park in Talkeetna for a term of five years. The applicant proposes to maintain and utilize a commercial floatplane dock. The applicant has maintained and operated a commercial floatplane dock on borough land in Christiansen Lake Park for the last five years.

**Matanuska-Susitna Borough
TEMPORARY LAND USE PERMIT
(COMMERCIAL)**

SECTION 1. PARTIES AND PROPERTY.

The Matanuska-Susitna Borough (hereinafter called "MSB"), 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 William Fitzgerald, DBA Ravenwings LLC, whose address is , PO Box 93 Talkeetna, Alaska, 99676 (hereinafter called the "PERMITTEE"), the right to use the following described real property (hereinafter called "**property**"):

Floatplane Dock Site #1, and portions of Christiansen Lake Park, located in Government Lot 15, Section 29, and GLO, Section 30, Township 26 North, Range 4 West, S.M. Alaska as shown on the attached map as Exhibit "A".

SECTION 2. ACTIVITIES.

This permit authorizes the PERMITTEE the use of the **property** to anchor a dock for the tie down of one float plane owned or leased by the PERMITTEE; to use the **property** for access to the dock along the existing roads and trails; and to use the existing parking area (hereinafter called "**activities**").

SECTION 3. PERMIT.

This permit does not convey any interest in the **property**. The permit authorizes use of the **property** by the PERMITTEE only for the authorized **activities** and is subject to the conditions set forth in this permit.

SECTION 4. PERMIT FEE AND METHOD OF PAYMENT.

A non-refundable permit fee of five hundred dollars (\$500) is due and payable to the MSB prior to the execution of the permit by the borough manager and paid in advance on or before the anniversary date of each consecutive year throughout the term of the permit.

SECTION 5. CASH BOND.

Five hundred dollars (\$500) shall be deposited with the MSB 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 cost of restoration or rehabilitation of the **property** affected by the permitted use. The MSB will return the cash bond to the PERMITTEE after termination or expiration of the permit if, at that time, the MSB determines that all permit conditions have been met and the **property** is in satisfactory condition.

SECTION 6. PERMIT TERM.

Permission is granted to the PERMITTEE for use of the property for a term of five years from the date of execution by the borough manager.

SECTION 7. PERMIT CONDITIONS.

A. The PERMITTEE is responsible for properly securing their aircraft. The MSB is not responsible for aircraft loss, damage, theft or pilferage. All equipment, including fuel storage tanks, belonging to the PERMITTEE and used on the property will be properly identified with the PERMITTEE'S name.

B. The PERMITTEE may construct steps and/or a boardwalk from the **property** to a floating dock for floatplane tie-down. The boardwalk, steps, and dock shall encompass 300 square feet or less, and be able to be removed by the PERMITTEE within 48-hours.

C. Fueling and lubricating floatplanes on the **property** shall be done in accordance with State of Alaska, Department of Environmental Conservation regulations. The PERMITTEE shall have readily available absorbent materials designed for the adsorption of petroleum, oils and lubricants. The amount of absorbent materials on hand must be sufficient to handle the maximum amount of fuel in the PERMITTEE's floatplane and supply tank.

D. Unattended fuel tanks or fuel trucks may not be left within 150 feet of the water and may not remain on the **property** for more than eight hours.

E. Wheeled vehicles owned by the PERMITTEE may be parked in the Christiansen Lake Park parking lot overnight if properly identified with the PERMITTEE's name and permit number. Vehicles left overnight in the park, or near the park on MSB roadways are subject to towing.

F. One small sign identifying the PERMITTEE'S dock shall be placed on or near the access to the dock. The advertising of goods and services is prohibited on the **property**.

G. The PERMITTEE shall minimize noise when taxing their floatplane to and from the dock site for takeoff and landings. The PERMITTEE agrees that take-offs and/or landings of floatplanes made from or to Christiansen Lake Park between the hours of 11 p.m. and 6 a.m. by the PERMITTEE will be kept at a minimum.

SECTION 8. TERMINATION FOR CAUSE.

Violation of permit conditions will result in permit cancellation and may result in a claim for damages by the MSB and other civil or criminal penalties as applicable under the law. Termination for cause may disqualify the PERMITTEE from receiving a permit or lease from the MSB for five years.

SECTION 9. TERMINATION FOR THE CONVENIENCE OF THE BOROUGH.

Should circumstances warrant, the permit may be modified or suspended, in writing, by the borough manager to protect resources, health, safety, and the environment, or if the borough manager determines it is in the best interest of the borough to do so.

SECTION 10. COMPATIBLE USES.

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

SECTION 11. TRANSFER.

This permit may not be transferred or sublet.

SECTION 12. 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 injuries, 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 PERMITTEE'S or PERMITTEE'S officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omission by the borough or its agents which are said to have contributed to the losses, failure, violations, or damage. However, 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 employees.

SECTION 13. INSURANCE.

The PERMITTEE shall purchase and maintain insurance with minimum limits as outlined in the attachment Exhibit "B".

SECTION 14. PERMITS, LAWS, AND TAXES.

All **activities** authorized under this permit shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and orders of governmental authorities having jurisdiction over the **property**, now or hereafter. The PERMITTEE agrees to provide documentation of all applicable licenses and permits as requested by the MSB.

SECTION 15. PROPERTY DAMAGE.

The PERMITTEE shall be liable for damage to any MSB-owned property resulting from this **activity**. Damages resulting from the **activity** shall be repaired or replaced by the PERMITTEE at his expense and to the satisfaction of the MSB.

SECTION 16. FUEL STORAGE/HAZARDOUS MATERIALS.

The storage of petroleum or toxic chemicals is prohibited on the **property**. Spills or contamination of the water or land will be controlled and recovered immediately and reported to the State of Alaska, Department of Environmental Conservation and the MSB by the PERMITTEE.

SECTION 17. SAFETY.

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

SECTION 18. LOCATION.

The PERMITTEE is responsible for properly locating themselves and associated activities on the **property**.

SECTION 19. SUITABILITY.

The MSB does not represent or guarantee the safety, suitability, or condition of the **property**.

SECTION 20. 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 21. JURISDICTION; CHOICE OF LAW.

Any civil action arising from this permit shall be brought forward 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 22. NON-WAIVER.

The failure of the MSB 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 MSB thereafter to enforce each and every protection hereof.

SECTION 23. 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 24. 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 25. PERMIT ADMINISTRATION.

A. The borough manager or his designee, will be the representative of the MSB administering this permit.

B. The PERMITTEE'S **activities** shall be administered, supervised, and directed by William Fitzgerald. In the event that the individual named above is unable to serve for any reason, the PERMITTEE shall appoint a successor in interest subject to a written approval of the Matanuska-Susitna Borough.

SECTION 26. 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 27. INTEGRATION.

This instrument 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 28. AUDITS AND INSPECTION.

At any time during normal business hours and as often as the MSB there shall be made available for examination all of its records with respect to matters covered by this permit.

SECTION 29. NOTICES.

All notices shall be sent to both parties as follows

:

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

WILLIAM FITZGERALD
P.O. Box 93
Talkeetna, Alaska, 99676

SECTION 30. CONSTRUCTION.

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

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

PERMITTEE


William Fitzgerald

Date: January 22, 2020

MATANUSKA-SUSITNA BOROUGH

John Moosey

Date: _____

STATE OF ALASKA)
) ss.
Third Judicial District)

On January 22, 2020, John Moosey, Manager of the Matanuska-Susitna Borough, who is personally known to me, appeared and acknowledged before me that he signed the permit on behalf of the municipal corporation.

Notary Public for State of Alaska
My Commission Expires:

STATE OF ALASKA)
) ss.
Third Judicial District)

On January 22, 2020, 2019, William Fitzgerald personally appeared before me,
(check one)

1. ☐ who is personally known to me.
2. ☒ whose identity I proved on the basis of Alaska Driver's License.
3. ☐ whose identity I proved on the oath/affirmation of _____ a credible witness.

and acknowledged before me that he/she signed the acknowledgment for the purposes stated therein.



OFFICIAL SEAL
Geraldine Denkwalter
NOTARY PUBLIC-STATE OF ALASKA
My Comm. Expires January 7, 2022

Geraldine Denkwalter
Notary Public for State of Alaska
My Commission Expires: Jan 7, 2020