

**CITY OF PALMER ACTION MEMORANDUM**

**SUBJECT:** Ratification of Alaska Railroad Special Land Use Permit For Property More Particularly Described as (A Portion of the ARRC Right-of-way, Containing Approximately 39,805 Square Feet, in the Vicinity of Arctic Avenue, Palmer, Alaska, Approximate ARRC Milepost A-6.5 of the ARRC Palmer Branch) For Use As A Skateboard Park

**AGENDA OF: May 13, 2008**

Ratified

Approved for presentation by B. B. Allen, City Manager *B.B. Allen*

Route To:	Department/Individual:	Initials:	Remarks:
X	Originator – Mayor Combs		
X	City Clerk	<i>JY</i>	
X	City Attorney	<i>[Signature]</i>	
	Director of Public Safety		
	Director of Administration		
	Director of Community Services		
	Director of Public Works		

**Attachment(s):** Alaska Railroad Special Land Use Permit 9071  
Alaska Railroad Letter of April 30, 2008 regarding excavation

**Finance Director's Certification of Funds:**

	No fiscal impact.	
	Funds are budgeted from this account number:	
X	Funds are not budgeted. Budget modification is required. Affected account number:	

Finance Director Signature: *[Signature]*

**Summary statement:** The Alaska Railroad (ARR) has issued a Special Land Use Permit no. 9071 (SLUP) to the City to use ARR land as a skateboard park. The SLUP contains a number of terms and conditions obligating the City to follow. For example, it contains restrictions, an annual permit fee of \$200.00, release, indemnification and insurance requirements, environmental provisions, including indemnity and a prohibition on assignment of the SLUP unless approved by ARR. The SLUP has been signed by a former City Manager and is tonight presented to the Council for ratification in accordance with PMC 3.20.070. Upon ratification and

the approval of companion AM 08-029 the City will proceed to negotiate a lease or assignment of the SLUP with the Palmer Skateboard Association (SBA), depending on the form of document acceptable to the ARR), transferring responsibility for operations, maintenance and oversight of the skateboard park to the SBA. It is contemplated the lease or assignment will contain a number of provisions for the protection of the City and the public's best interests. A copy of the SLUP is attached for your information.

**Administration recommendation:** Approve action memorandum 08-028.



ARRC Contract No. 9071

SPECIAL LAND USE PERMIT

PERMITTEE: City of Palmer

ADDRESS: 231 West Evergreen Avenue, Palmer, Alaska 99645

PERMIT AREA/DESCRIPTION: a portion of the ARRC right-of-way, containing approximately 39,805 square feet, in the vicinity of Arctic Avenue, Palmer, Alaska, approximate ARRC Milepost A-6.5 of the ARRC Palmer Branch.

The Alaska Railroad Corporation (ARRC) hereby grants to Permittee a non-exclusive revocable Permit to occupy and use the above-described Permit Area for the limited purposes and upon the terms and conditions set forth herein.

1. Use by Permittee: The Permittee may use the Permit Area only for the following limited purposes: a skateboard facility.

2. ARRC Use: ARRC reserves for itself, its successors, assigns, permittees and licensees, the right to use the Permit Area for any purpose whatsoever, including without limitation transportation, communication and transmission purposes, which shall be deemed to include but not be limited to the construction, maintenance and operation of existing tracks and existing and additional pipes, communication and power transmission lines, drainage ditches or any other facilities located upon, over and beneath the Permit Area.

3. Specific Restrictions in Permit Area:

3.01 Permittee acknowledges that safety is a primary consideration and that in any area marked "clear zone" on the drawing of the Permit Area attached to this Permit, no structure will be allowed that would restrict the visibility from the track, or if in the vicinity of road crossings, would restrict the visibility of motor vehicles. The opinion of ARRC's Chief Engineer will be final regarding any disagreement on safety. No improvement or facility, including temporary structures and fences, may be constructed in the Permit Area without prior written approval of ARRC. If the Permit Area is within an area governed by local building or land use regulations, any construction must comply with such regulations.

3.02 The general contour of the Permit Area shall not be altered without prior written approval from ARRC. No excavation work shall be performed upon the Permit Area. Permittee's use of the Permit Area shall not interfere with the construction, maintenance, repair, use or operation of any railroad facility, drainage ditch, or related facilities, which may be

located upon, over or under the Permit Area. Watering and irrigation shall be done in such a manner that there will be no flooding or fouling of ARRC's roadbed.

3.03 Vehicles will be allowed on the Permit Area only. No vehicle will be allowed to operate within 20 feet of the centerline of the tracks. Such vehicle access shall be from the Permittee's property and not from the ARRC right-of-way. Any vehicle working within 20 feet of the centerline of the tracks must have ARRC flag protection, which must be arranged in advance through the ARRC Maintenance of Way Department at 265-2490.

4. Term: This Permit shall be for a term of twenty (20) year(s) commencing as of October 1, 2006, and ending September 30, 2026, provided that ARRC shall have the absolute right to terminate this Permit at any time upon thirty (30) days written notice to Permittee. Any continued use of the Permit Area by Permittee after the expiration of the original term, absent prior ARRC approval, shall be under the same terms and conditions as this Permit. Permittee may abandon the Permit Area and give up all rights under this Permit at any time, however, Permittee's obligation to pay an annual fee, and any other affirmative obligations of Permittee under this Permit, will continue until Permittee has given written notification to ARRC that it is abandoning all rights under this Permit, and in addition, has removed any personal property from the Permit Area and restored it pursuant to Section 11 of this Permit.

5. Assignment: This Permit is personal to Permittee and may not be assigned or transferred in any manner, including by operation of law, without prior written consent of ARRC. Any attempt to assign or transfer this Permit shall cause an immediate termination.

6. Permit Fee: As consideration for the use of the Permit Area, Permittee shall pay an annual fee of Two Hundred Dollars and no/100 (\$200.00), due in advance. However, at each subsequent extension of the permit term, the annual fee shall be adjusted to ARRC's then-current fee for similar permits.

7. Release: Indemnification: Permittee shall release, indemnify, defend, and hold harmless ARRC from and against all claims, demands, liability, cost, expense, judgments and consensual settlements for loss of or damage to property, and for injury to or death of any person (including, but not limited to, the property and employees of each party hereto) when arising or resulting from:

7.01 The use of the Permit Area by Permittee, its agents, employees, invitees, or licensees; or

7.02 The breach of the provisions of this Permit by Permittee, whether or not caused or contributed to by any negligent act or omission, active, passive, or otherwise, of ARRC, its employees, agents, contractors, subcontractors, or their employees or agents, or any other person.

8. Insurance:

8.01 Liability Insurance. During the entire Permit Term, and during any holdover thereafter, whether or not authorized by ARRC, Permittee shall keep in full force and effect a

policy or policies of general liability insurance which includes bodily injury, property damage, and personal injury acceptable to ARRC with respect to the Permit Area and the business operated by Permittee in which the limits for each shall be not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate or such higher limits as ARRC may specify from time to time consistent with prudent business practice then prevailing in the State of Alaska; provided, however, that no such limit shall in any way limit Permittee's liability or be construed as a representation of sufficiency to fully protect ARRC or Permittee. The policy or policies purchased pursuant to this paragraph shall name both ARRC and Permittee as insureds, with respect to the Permit Area and the business operated by Permittee on the Permit Area.

8.02 Policy Provisions. Each policy of comprehensive general liability insurance described in Paragraph 8.01 of this Permit shall:

A. Provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for ARRC, Permittee, or any person claiming by, through, or under any of them.

B. Provide that such policy requires thirty (30) days notice to ARRC of any proposed cancellation, expiration, or change in material terms thereof and that such policy may not be canceled, whether or not requested by Permittee, unless the insurer first gives not less than thirty (30) days' prior written notice thereof to ARRC.

C. Contain a waiver by the insurer of any right of subrogation to proceed against ARRC or against any person claiming by, through, or under ARRC.

8.03 Proof of Insurance. Permittee shall deliver to ARRC certificates of insurance on or before the effective date of this Permit or at another date as agreed to in writing by ARRC. Additionally, Permittee shall deliver to ARRC photocopies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as requested by the ARRC from time to time.

## 9. Default and Remedies.

9.01 Default. The occurrence of any one or more of the following events shall constitute a material default by Permittee.

A. The failure by Permittee to make any payments required to be made by Permittee hereunder, as and when due, where such failure shall continue for a period of five (5) days after written notice thereof from ARRC to Permittee;

B. The failure by Permittee to observe or perform any covenant, condition or provision of the Permit which, in the reasonable opinion of ARRC, substantially endangers either the person or property of ARRC or a third party, or human health or the environment, where Permittee does not commence curing the default immediately upon written notice thereof from ARRC to Permittee or does not continue to complete the cure within such reasonable time period

thereafter as is imposed by ARRC or any governmental body having jurisdiction in the matter;

C. Except as otherwise provided in subparagraphs A and B above, the failure by Permittee to observe or perform any of the covenants, conditions or provisions of this Permit to be observed or performed by Permittee, where such failure shall continue for a period of ten (10) days after written notice thereof from ARRC to Permittee;

D. The occurrence of any of the following: (i) the making by Permittee of any general arrangement or general assignment for the benefit of creditors; (ii) Permittee becomes a debtor in bankruptcy; (iii) the appointment of a trustee or receiver to take possession of substantially all of Permittee's assets; (iv) the attachment, execution or other judicial seizure of substantially all of Permittee's assets;

E. The discovery by ARRC that any financial statement given to ARRC by Permittee, any assignee of Permittee, any successor in interest of Permittee or any guarantor of Permittee's obligation hereunder, was materially false at the time given; or

F. Vacation or abandonment of the Permit Area by Permittee.

9.02 Remedies. In the event of any material default by Permittee, ARRC may at any time thereafter, without notice or demand and without limiting ARRC in the exercise of any right or remedy, which ARRC may have by reason of such default:

A. Terminate Permittee's rights under this Permit and ARRC may pursue other remedies.

B. Maintain Permittee's rights under this Permit in which case this Permit shall continue in effect. In such event ARRC shall be entitled to enforce all of ARRC's rights and remedies under this Permit, including the right to recover the payments due hereunder.

C. Pursue any other remedy now or hereafter available to ARRC under the laws or judicial decisions of the State of Alaska.

9.03 Interest on Late Payments. Beginning the day after a payment is due, all unpaid charges and fees required by this Permit shall accrue interest at the highest lawful contract rate in the State of Alaska as defined by AS 45.45.010(a) or as amended. This interest charge does not waive, excuse or cure any default.

## 10. Observance of Laws; Environmental Provisions.

10.01 General Compliance. Permittee, at all times during the Permit Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations which are now in effect or may later be adopted by any governmental authority, including the Alaska Railroad Corporation, and which may be applicable to the Permit Area or any use of it by Permittee.

10.02 Environmental Laws. In furtherance and not in limitation of the foregoing paragraph, Permittee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality related to Permittee's use of the Permit Area. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Permit Area during the Permit Term or any holdover thereafter, Permittee shall immediately notify ARRC and shall, at Permittee's own expense, clean and restore the Permit Area to the satisfaction of ARRC and any governmental body or court having jurisdiction of the matter.

10.03 Hazardous Materials on the Permit Area. Permittee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Permit Area by Permittee, its agents, employees, contractors or invitees without the prior written consent of ARRC, which ARRC shall not unreasonably withhold as long as Permittee demonstrates to ARRC's reasonable satisfaction that such Hazardous Material is necessary or useful to Permittee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials so brought upon or used or kept in or about the Permit Area.

10.04 Environmental Indemnity. Permittee agrees to indemnify, hold harmless and defend ARRC against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the Permit Area, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against ARRC as a result of Permittee's breach of this Section 10 or as a result of any discharge, leakage, spillage, emission or pollution of or by a Hazardous Material by Permittee, its agents, invitees or employees, on or from the Permit Area, without regard to whether such liability, cost or expense arises during or after the Permit Term. The foregoing indemnity shall survive the expiration or earlier termination of this Permit.

10.05 "Hazardous Material". For purposes of this Permit, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto, or such substances, materials and wastes that are or become similarly regulated under any applicable local, state or federal law.

10.06 Environmental Testing. ARRC may, upon the expiration or termination of this Permit, conduct environmental testing of the Permit Area to determine if any environmental impairment exists. Permittee shall be responsible for all costs and expenses associated with such tests if such impairment is discovered and the parties agree or a court of competent jurisdiction determines that the impairment resulted from a breach by Permittee of its obligations under this Permit. Payments from Permittee under this subparagraph shall be due within ten (10) days of the rendering of a bill to Permittee therefore, and shall bear interest at the highest rate allowed by law.

11. Restoration of Permit Area on Termination: Upon the expiration or termination of this Permit, the Permittee shall remove from and off the Permit Area, all property owned or controlled by Permittee and restore the Permit Area to a condition satisfactory to ARRC; and, upon failure so to do, ARRC may perform such work at Permittee's expense. Until said property is removed and the Permit Area restored, either by Permittee or by ARRC at Permittee's expense, this Permit, with all terms contained herein, including the payment of consideration under Section 6, shall, at ARRC's option, remain in effect until said property is removed and Permit Area restored.

12. No Warranties: ARRC does not warrant or represent that the Permit Area is safe, healthful or suitable for the purpose for which it is to be used under this Permit. Absence of markers does not constitute a warranty by ARRC of no subsurface installations.

13. Taxes, Assessments and Charges: If at any time during the Permit Term any new or additional taxes (other than federal or state net income taxes or any other taxes existing on the effective date hereof) are assessed against the Permitted Premises, or any improvement thereon, or any rents payable to ARRC under this Permit, or against ARRC with respect thereto, Permittee shall pay to the taxing authority or ARRC, not less than ten (10) days before they become delinquent and as additional rents, all of such new taxes.

14. Miscellaneous:

14.01 The captions of paragraphs in this Permit are for convenience of reference only and shall not be used in the construction of any term hereof.

14.02 The terms of this Permit shall inure to the benefit of any successor or assign of ARRC, and, subject to the provisions of Section 5, to the successors and assigns of Permittee.

14.03 This Permit represents the entire agreement of the parties with respect to the subject matter hereof, and it may not be modified except by an agreement in writing signed by both parties.

14.04 Time is of the essence with respect to any obligations to be performed under this Permit.

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ALASKA RAILROAD CORPORATION

Dated: 10/24/06

By: Karen J. Morrissey  
Karen J. Morrissey  
Director, Real Estate

CITY OF PALMER

Date: 10/16/06

By: Tom Healy  
Tom Healy  
City Manager

Attest:

By: Janette Bower  
Janette Bower  
City Clerk

Attachments:

Exhibit A - Drawing



REAL ESTATE DEPARTMENT  
TEL 907.265.2617  
FAX 907.265.2450

April 30, 2008

Mayor John Combs  
City of Palmer  
231 W Evergreen Avenue  
Palmer, Alaska 99645

Ref: Alaska Railroad Corporation (ARRC) Contract No. 9071

Dear Mayor Combs:

This letter will confirm that ARRC has no objections to excavation work commencing within the ARRC right-of-way for the skateboard facility, which is covered by the above-referenced contract, in the vicinity of South Valley Way and Arctic Avenue. Please coordinate activities with Rocky Murrill, ARRC District 2 Roadmaster, at 373-0467.

If you have any questions, please feel free to contact me at 265-2617 or Michelle Luedke, Permit Technician, at 265-2465.

Sincerely,

A handwritten signature in black ink that reads 'Karen J. Morrissey'.

Karen J. Morrissey  
Director, Real Estate

cc: ARRC District 2 Roadmaster