

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO PLACING RESTRICTIONS ON USE OF THE
HUNTER CREEK AND RED MOUNTAIN RANCH ROADS IN CONNECTION WITH
THE SETTLEMENT OF *AUSTER V. MCCLOSKEY*, UNITED STATES COURT OF
APPEALS CASE NOS. 02-1324 and 02-1325.**

ORDINANCE # 012 -2005

RECITALS

A. In Resolution No. 142-2004, the Board of County Commissioners of Pitkin County (the "Board") authorized the Chair to execute the Hunter Creek Settlement Agreement (the "Settlement Agreement") in order to resolve the litigation in *Auster et al. v. McCloskey, et al.*, United States Court of Appeals for the Tenth Circuit Case Nos. 02-1324 and 02-1325 (the "Litigation"). The primary question in the Litigation was whether or not the public has the right to access the Hunter Creek Valley over certain roads or trails passing through private lands on Red Mountain.

B. The Settlement Agreement establishes the public's right to access the Hunter Creek Valley over the Hunter Creek Toll Road, but also requires that the County place certain restrictions on the general public's use of that road. In addition, the Settlement Agreement provides for the Red Mountain Ranch Homeowner's Association to grant a license for public use of the Red Mountain Ranch Road subject to essentially similar restrictions. The routes of both the Hunter Creek Toll Road (including its route as may be relocated adjacent to and on the McCloskey property) and the Red Mountain Ranch Road are shown on the map attached as Exhibit H to the Settlement Agreement, and are collectively referred to in this Ordinance as the "Roads".

C. The Settlement Agreement also provides for the appointment of enforcement personnel to enforce the restrictions called for by the Settlement Agreement.

D. This Ordinance fulfills the County's obligations to restrict usage of the public Hunter Creek Toll Road and the licensed Red Mountain Ranch Road. It further establishes a mechanism for appointment of personnel to enforce the restrictions.

NOW THEREFORE, be it resolved by the Board of County Commissioners of Pitkin County Colorado, as follows:

1. Types of Users. The following usage rights and restrictions shall apply to the following users of the public Hunter Creek Road, and of the private Red Mountain Ranch Road so long as the licenses for public use of that road remain in effect:



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a) Non-motorized Uses by the General Public. The Roads may be used by the general public for pedestrian, equestrian, nonmotorized bicycling, snow shoe and cross-country skiing purposes solely for access to and from the Hunter Creek Valley.

b) Motorized Uses by the General Public. The Roads may be used by the public for motorized ingress and egress to and from the BLM Parking Lot and to and from the East Parking Lot (which shall be constructed on the Hunter Creek Toll Road right-of-way through the White River National Forest near the boundary with the McCloskey property).

c) Uses by Hunters. The Roads may be used by persons having valid hunting licenses issued by the State of Colorado for motorized vehicular access into the Hunter Creek Valley, but only during the time such licenses are valid and seven days immediately preceding and following the license dates. Hunters may utilize pick-up trucks up to twenty feet in length, to tow utility or horse trailers during such time periods.

d) Pitkin County Administrative and Emergency Access. The Roads may be used for the following purposes:

I) By Pitkin County for official administrative use, law enforcement, firefighting, emergency medical, transmitter maintenance and all other official business purposes;

II) By Mountain Rescue for emergency medical, rescue and all other official business purposes; and

III) By the Tenth Mountain Trail Association ("TMTA") for maintenance of the Tenth Mountain trail and hut system and all other official business purposes.

e) USA Administrative and Emergency Access. The Roads may be used by the United States of America, its agencies and instrumentalities, and by authorized users of the communication site located in the White River National Forest, for the limited purpose of allowing reasonable motorized access to the Hunter Creek Valley for official administrative use, emergency ingress and egress from Hunter Creek Valley, or official business purposes only.

f) Uses by Landowners. The owners from time to time of private property in Red Mountain Ranch Subdivision and of other properties that use the Roads to access their respective properties ("Landowners"), and, their families, contractors, and invitees may use the Roads for all motorized and non-motorized uses that are permitted under applicable laws and under covenants that are presently in effect and that affect such Landowners, families, contractors and invitees.

2. Generally-Applicable Restrictions on Use. Use of the Roads shall be restricted for all users as follows:



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a) General. Usage of the Roads shall be subject to the following restrictions: (i) no dogs running at large, (ii) no loitering upon or trespassing onto private property, and (iii) no picnicking, camping, camp fires, discharge of fireworks, firearms or other weapons, consumption of any controlled substance, including alcohol, parties, gatherings or public or private nuisances. With regard to motorized vehicular usage, (i) posted speed limits shall be absolutely adhered to and all regulatory signage shall be strictly observed, (ii) there shall be no parking or stopping for other than emergency purposes (e.g., vehicle break-downs) or for the purposes described in ¶ 1(d)(I), and usage shall be limited to those uses specifically permitted by this Ordinance.

b) Limitations on Commercial Use. Commercial use shall be prohibited on the Roads, except for use of the lower Hunter Creek Road to obtain access to the BLM Parking Lot. A "commercial use" is one, which, for compensation or any consideration, transports, guides, escorts, or otherwise uses roads or trails, except those persons specifically authorized by this Ordinance.

(I) This commercial-use limitation shall not apply to taxicabs that are equal to or smaller than the approximate dimensions of full-sized family passenger sedans carrying passengers to access the BLM Parking Lot or the East Parking Lot or taxicabs serving the Landowners. Buses and sightseeing tours shall be prohibited. Lower Hunter Creek Road up to and including the entrance to the BLM Parking Lot may be used by commercial vans, commercial vehicles that are equal to or smaller than the approximate dimensions of full-sized family passenger vehicles (excluding tracked vehicles, all terrain and similar vehicles), and commercial horse trailers. Commercial vehicles serving the Landowners shall be permitted, but nothing herein shall exempt such vehicles from compliance with laws of general applicability, including Pitkin County ordinances and regulations. Utility company vehicles and commercial vehicles serving the purposes described in Paragraphs 1(d) and 1(e) above shall be permitted.

c) Limitations on Vehicle Size. Except where otherwise provided for herein, trailers, tracked vehicles, all terrain vehicles, or vehicles larger than full-sized family passenger vehicles shall not be used on the Roads. The prohibition of this subparagraph shall not apply to vehicles supporting or serving the Landowners or their properties, but such vehicles must stop or park only on the properties of the Landowners that they are supporting or serving. Nor shall this prohibition apply to (a) uses by Pitkin County, Mountain Rescue, TMTA, or USA authorized by this Ordinance, or (b) use of vans up to 25 feet in length by the County, Mountain Rescue, TMTA, USA, schools, and organizations which are tax-exempt for federal income tax purposes for carrying the handicapped or senior citizens, or for carrying K-12 school children on educational outings sponsored by the relevant tax-exempt organization, and dropping them off at the East Parking Lot; or (c) Utility company vehicles, and commercial vehicles serving the purposes described in Paragraphs 1(d) and 1(e) above.

d) Limitations on Use of East Parking Lot.

I) The parking spaces on the East Parking Lot shall be designated for the sole use of TMTA and bona fide handicapped persons and/or senior citizens. Bona fide handicapped

persons shall be those who have or would be entitled to a handicapped automobile license plate, or those who obtain a letter from a physician verifying that a medical condition renders them unable to park in the BLM lot and proceed up the South Trail on the east side of Hunter Creek. Bona fide senior citizens shall be those persons sixty-five (65) years of age or older.

II) The following limitations shall apply to the East Parking Lot: (i) the East Parking Lot may be used as a pick-up or drop-off location for the public; and (ii) vehicles parked in the East Parking Lot must have handicapped license plates or must prominently display appropriate stickers or insignia issued by Pitkin County or its designated agent indicating that the vehicle is being used by a bona fide handicapped person or senior citizen (at least one of the occupants of any car parked in this location must be a bona fide handicapped person or senior citizen), or by TMTA or its users. Parking by a TMTA user shall be confined to the period the individual has reservations for, and is using, a hut. Vehicles parked at the East Parking Lot shall be parked so as to not interfere with or impede any vehicular or non-vehicular use of the Roads as authorized by this Ordinance.

3. No Effect on Inholders. The restrictions in this ordinance shall not apply to any "Bona-Fide Inholder" as that term is defined in the Addendum to the Hunter Creek Settlement Agreement.

4. Authorization for Enforcement Personnel. Pursuant to § 30-15-402.5, C.R.S. (2004), the County Manager, in consultation with the Sheriff and the County Attorney's Office, is hereby authorized to designate one or more persons empowered to enforce the restrictions set forth in this Ordinance. Pursuant to § 30-15-402.5(2), the power of such person or persons to enforce the restrictions shall be limited to issuance of citations and summonses and complaints. Such person or persons shall under no circumstances be authorized to employ the use of force to enforce the restrictions contained herein.

5. Violations, Enforcement and Penalties.

a) Unlawful Activity. It is unlawful to engage in any activity that is in violation of this Ordinance.

b) Penalty. Violations of this Ordinance shall be punishable as follows:

I. Violations of the parking restrictions contained herein shall be punishable by a fine of forty dollars (\$40) for a first offense within a one-year period, and by a fine of one hundred dollars (\$100.00) per violation for each subsequent offense within a one-year period. In addition, enforcement personnel designated pursuant to this Ordinance, or members of the Office of the Sheriff of Pitkin County, are authorized to remove, or have removed at their direction, any vehicle parked in violation of this Ordinance, to any private garage or storage facility in the vicinity of Aspen, Colorado, or to the impound lot at the County Landfill. Such removal and storage shall be



at the sole cost, risk, and expense of the owner or person in charge of such vehicle, and the cost of removal and storage of such vehicle shall be paid by the owner prior to the release of such vehicle. The fee for recovery of towed vehicles shall initially be one hundred dollars (\$100), and shall be adjusted from time to time as costs dictate. This recovery fee shall be separate from and in addition to fines for violations of this ordinance. Towing shall be mandatory upon a third or additional offense within a one-year period.

- II. Violations of firearm restrictions in this Ordinance are punishable by a fine of one thousand dollars (\$1000.00) for each offense.
- III. Violations of provisions of this Ordinance relating to traffic control shall be punished pursuant to § 30-15-402 and treated as a Class B traffic infraction pursuant to § 42-4-1701, C.R.S. Issuance of citations or summonses shall be pursuant to § 42-4-1708 to 1718, C.R.S. (2004), as amended. The first violation shall be punishable by a fine of \$15; a second violation within a one-year period shall be punishable by a fine of \$35; and third and subsequent violations within a one year-period shall be punishable by a fine of \$50.
- IV. Violations of all other provisions of this Ordinance (i.e., the non-traffic, parking, and firearm related provisions of ¶ 2(a)) shall be punishable in accordance with generally-applicable County Ordinances.

c) Criminal Enforcement. Enforcement personnel designed pursuant to this Ordinance and any law enforcement officer may follow the penalty assessment procedure provided in §§ 30-15-402 and 16-2-201 C.R.S., except that enforcement personnel shall not have the power to arrest or to require the payment of penalties as specified in § 16-2-201(1), C.R.S. In the event the penalty assessment procedure is followed, the penalty shall be as set forth in subsection b of this Section 5, and such assessment shall also include a ten dollars (\$10.00) surcharge required by § 30-15-402(2) C.R.S.

d) Civil Enforcement. In the event of any activity in violation of this Ordinance, the district attorney or county attorney may institute an injunction, abatement, or other appropriate action or proceeding to prevent, enjoin, or abate any unlawful activity.

INTRODUCED, FIRST READ, AND SET FOR PUBLIC HEARING ON
THE 11TH DAY OF MAY 2005.

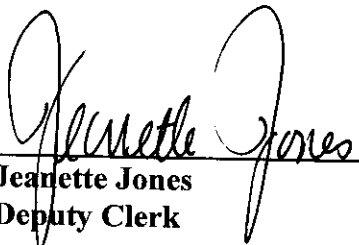
NOTICE OF PUBLIC HEARING PUBLISHED IN THE ASPEN TIMES
WEEKLY ON THE 14TH DAY OF MAY 2005.

APPROVED UPON SECOND READING AND PUBLIC HEARING ON THE 25TH DAY
OF MAY 2005.

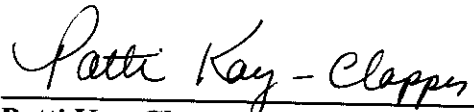
PUBLISHED AFTER ADOPTION IN THE ASPEN TIMES WEEKLY ON THE
5th DAY OF June, 2005.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO




Jeanette Jones
Deputy Clerk

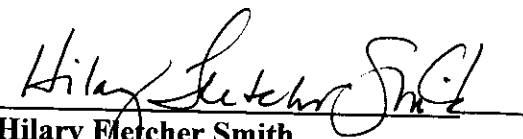


Patti Kay-Clapper
Chair
Date: 06-01-05

APPROVED AS TO FORM:



Christopher G. Seldin
Assistant County Attorney



Hilary Fletcher Smith
County Manager



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