

No. 13-35770

**In the United States Court of Appeals
for the Ninth Circuit**

FREEDOM FROM RELIGION FOUNDATION, INC.,

Plaintiff-Appellant,

v.

CHIP WEBER and UNITED STATES FOREST SERVICE,

Defendant-Appellees,

and

WILLIAM GLIDDEN, RAYMOND LEOPOLD,
NORMAN DEFOREST, EUGENE THOMAS, and the
KNIGHTS OF COLUMBUS (Kalispell Council No. 1328),

Intervenor-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

SUPPLEMENTAL EXCERPTS OF RECORD

Eric S. Baxter
Eric C. Rassbach
Asma Uddin
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Intervenor's Statement of Undisputed Facts

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Exhibit 1

Administrative Record, Docket No. 25

Authorization ID: TAL229
Contact ID: KNIGHTS.C
Expiration Date: 12/31/2020
Use Code: 332

FS-2700-4 (10/09)
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

SPECIAL USE PERMIT

Authority: ORGANIC ADMINISTRATION ACT June 4, 1897

KNIGHTS OF COLUMBUS, Kalispell Council #1328 of P.O. Box 9204, Kalispell, MT 59904 (hereinafter called "the holder") is hereby authorized to use or occupy National Forest System lands in the **Tally Lake Ranger District of the Flathead National Forest**, subject to the terms and conditions of this special use permit ("the permit").

This permit covers **0.14 acres** and is described as **a piece of land 25 feet x 25 feet in the NW1/4 SE1/4 Sec. 35, T. 32 N., R. 22 W., P.M.M., approximately 250 feet south of the top of Chair 2 at the Whitefish Mountain Resort Ski Area (also known as The Big Mountain)** ("the permit area"), as shown on the map attached as Exhibit A.

This permit is issued for the purpose of: **maintaining a religious shrine.**

TERMS AND CONDITIONS

I. GENERAL TERMS

A. AUTHORITY. This permit is issued pursuant to the **Organic Administration Act June 4, 1897** and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Forest or Grassland Supervisor or a subordinate officer with delegated authority.

C. TERM. This permit shall expire at midnight on **December 31, 2020.**

D. RENEWAL. This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit that would renew the use and occupancy by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Renewal of the use and occupancy authorized by this permit shall be at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this permit, the authorized officer shall require that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. AMENDMENT. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR 215.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation,

or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. NONEXCLUSIVE USE. The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

H. ASSIGNABILITY. This permit is not assignable or transferable.

II. IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans, must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

C. CONSTRUCTION. Any construction authorized by this permit shall commence by N/A, and shall be completed by N/A.

III. OPERATIONS

A. PERIOD OF USE. Use or occupancy of the permit area shall be exercised at least 365 days each year.

B. CONDITION OF OPERATIONS. The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

C. INSPECTION BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

IV. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR Part 251, Subpart C, and 5 U.S.C. 704. This

permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. This permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

B. VALID OUTSTANDING RIGHTS. This permit is subject to all valid outstanding rights. Valid outstanding rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

D. SERVICES NOT PROVIDED. This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a governmental agency, utility, association, or individual.

E. RISK OF LOSS. The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, or other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

F. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from damage the land, property, and other interest of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of clause IV.F and section V, "hazardous material" shall mean (a) any substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601(14)); (b) any pollutant or contaminant under section 101(33) of CERCLA (42 U.S.C. 9601(33)); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive, or corrosive materials, pollutant, contaminant, element, compound, mixture, solution, or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as tree, shrubs, and grass), surface water, and groundwater, during the holder's use or occupancy of the permit area. If the environment or any government property covered by this permit becomes damaged during the holder's use or occupancy of the permit area, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. The holder shall be liable for any injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources associated with the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression, or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.I.

3. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

G. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION. The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any activity or condition

arising out of or relating to the authorized use and occupancy that causes or threatens to cause a hazard to public health or the safety the holder's employees or agents or harm to the environment (including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The holder shall prevent impacts to the environment and cultural resources by implementing actions identified in the operating plan to prevent establishment and spread of invasive species. The holder shall immediately notify the authorized officer of all serious accidents that occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use and occupancy authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations and activities of the holder for hazardous conditions or compliance with health and safety standards

H. INDEMNIFICATION OF THE UNITED STATES. The holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification includes but is not limited to acts and omission of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, or damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutants, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

I. BONDING. The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in conjunction with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.), the Oil Pollution Act, as amended (33 U.S.C. 2701 et seq.), the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. 9601 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.), and the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.).

B. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

C. PESTICIDE USE. Pesticides may not be used outside of buildings to control undesirable woody and herbaceous vegetation (including aquatic plants), insects, rodents, fish, and other pests and weeds without prior written approval from the authorized officer. A request for approval of planned uses of pesticides shall be submitted annually by the holder on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time an annual report was submitted. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

D. ARCHEOLOGICAL-PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest, including but not

limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall leave these discoveries intact and in place until directed otherwise by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION. In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall immediately notify the authorized officer by telephone of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the authorized officer certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

F. PROTECTION OF HABITAT OF THREATENED, ENDANGERED, AND SENSITIVE SPECIES. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), or identified as sensitive or otherwise requiring special protection by the Regional Forester under Forest Service Manual (FSM) 2670, pursuant to consultation conducted under section 7 of the ESA, may be shown on the ground or on a separate map. The map shall be attached to this permit as an appendix. The holder shall take any protective and mitigative measures specified by the authorized officer. If protective and mitigative measures prove inadequate, if other sites within the permit area containing threatened, endangered, or sensitive species or species otherwise requiring special protection are discovered, or if new species are listed as threatened or endangered under the ESA or identified as sensitive or otherwise requiring special protection by the Regional Forest under the FSM, the authorized officer may specify additional protective and mitigative measures. Discovery of these sites by the holder or the Forest Service shall be promptly reported to the other party.

G. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

H. CLEANUP AND REMEDIATION.

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR 153, Subpart B, and 40 CFR 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act (33 U.S.C. 1321(a)(1)). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under section 101(10) of CERCLA (42 U.S.C. 9601(10)), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup and remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

I. CERTIFICATION UPON REVOCATION OR TERMINATION. If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the permit-area is uncontaminated by the presence of hazardous materials that there has not been a release or discharge of hazardous materials upon the permit area, into surface water at or near the permit area, or into groundwater below the permit area during the term of the permit. This certification requirement may be waived by the authorized officer when the Forest Service determines that the risks posed by the hazardous material are minimal. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the permit area is in compliance with all federal, state, and local laws and regulations.

VI. LAND USE FEES AND ACCOUNTING ISSUES

A. LAND USE FEES. The holder shall pay an initial annual land use fee of **\$69.00 (the Northern Region minimum fee (reference clause VIII.E))** for the period from **January 1, 2012** to **December 31, 2012**, and thereafter on **January 1**, shall pay an annual land use fee of **\$69.00**. The annual land use fee shall be adjusted annually using the **Implicit Price Deflator-Gross Domestic Product**.

B. MODIFICATION OF THE LAND USE FEE.. The land use fee may be revised whenever necessary to reflect the market value of the authorized use or occupancy or when the fee system used to calculate the land use fee is modified or replaced.

C. FEE PAYMENT ISSUES.

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.
2. **Disputed Fees.** Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.
3. **Late Payments.**
 - (a) **Interest.** Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due
 - (b) **Administrative Costs.** If the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.
 - (c) **Penalties.** A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.
 - (d) **Termination.** This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall remain responsible for the delinquent fees.
4. **Administrative Offset and Credit Reporting.** Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:
 - (a) Administrative offset of payments due the holder from the Forest Service.

(b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.

(d) Disclosure to consumer or commercial credit reporting agencies.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VI.B, the authorized officer shall give the holder written notice on the grounds for revocation or suspension. In the case of revocation or suspension based on clause VII.A.1, 2, or 3, the authorized officer shall give the holder a reasonable time, typically not to exceed 90 days, to cure any noncompliance.

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. APPEALS AND REMEDIES. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR 251, Subpart C, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

D. TERMINATION. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION WITHOUT RENEWAL. Upon revocation or termination of this permit without renewal of the authorized use, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VIII. MISCELLANEOUS PROVISIONS

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

C. SUPERSEDED PERMIT. This permit supersedes a special use permit designated:

Knights of Columbus, permit number TAL11, issued 02/03/2000.

Knights of Columbus, permit number 3003-01, issued 08/08/1990.

Knights of Columbus, permit number 3003, issued 09/11/1953.

D. SUPERIOR CLAUSES. If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

E. MINIMUM FEE (R1-A10). The holder shall pay annually, in advance, to the Forest Service, the sum of \$69.00 for the period of January 1, 2012 through December 31, 2012, and annually thereafter on or before January 1; a sum determined to be the Northern Region minimum fee placed into effect as of January 1, 1991; Provided however, that the fees for this use may be readjusted whenever necessary to place the fees on a basis commensurate with the value of the use authorized. This minimum fee shall be adjusted by an appropriate factor at the beginning of each 5-year period. This authorization shall terminate upon the holder's failure to make the annual payment, the late payment charge, or any other charges when due.

F. NOXIOUS WEED/EXOTIC PLANT PREVENTION AND CONTROL (R1-D4). The holder shall be responsible for the prevention and control of noxious weeds and/or exotic plants of concern on the area authorized by this authorization and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds/exotic plants of concern are defined as those species recognized by the national forest in which the authorized use is located.

The holder shall also be responsible for prevention and control of noxious weed/exotic plant infestations which are not within the authorized area, but which are determined by the Forest Service to have originated with the authorized area.

When determined to be necessary by the authorized officer, the holder shall develop a site-specific plan for noxious weed/exotic plant prevention and control. Such plan shall be subject to Forest Service approval. Upon Forest Service approval, the noxious weed/exotic plant prevention and control plan shall become a part of this authorization, and its provisions shall be enforceable under the terms of this authorization.

G. CONFLICTS WITH NATIONAL FOREST MANAGEMENT (R1-E3). This special-use authorization does not convey exclusive rights, privileges, use, or control of National Forest System lands. When, upon the authorized officer's written notice that the authorized use will or does conflict with National Forest management practices and activities, it shall be the holder's sole responsibility to modify the use. Modifications shall be approved in advance by the Forest Service and completed in a reasonable and timely fashion. The holder's inability or unwillingness to institute acceptable and timely modification shall be cause to either suspend or revoke this authorization; whichever action is deemed by the authorized officer as the more appropriate.

H. INTERFERENCE WITH PUBLIC USE (R1-E4). In exercising the privileges provided by this authorization, the holder shall not interfere with nor obstruct the public's right to the use and enjoyment of National Forest System lands and facilities.

Verified conduct constituting interference with the public's use of National Forest System lands and/or facilities by the holder, its agents or employees, on the area authorized or in relation to the privileges authorized herein, shall be cause for revocation of this authorization.

I. GRIZZLY BEAR PROTECTION (R1-X10). This special-use authorization includes land which is part of the habitat of the grizzly bear. Therefore, in compliance with Forest Service responsibilities under the

Endangered Species Act of 1973 (16 U.S.C. 1531), the following conditions apply to this special-use authorization:

1. The authorized officer may order an immediate temporary suspension of all human activities permitted by this authorization and, if needed, suspend or revoke the special-use authorization when, in his/her judgment, such action is necessary in order to prevent confrontation or conflict between humans and grizzly bears. The holder shall immediately comply with such order. The United States shall not be liable for any consequences from such a suspension or revocation. Such suspension or revocation may be appealed to the next higher level as provided in 36 CFR 251, Subpart C.
2. The holder, his/her agents, employees, contractors and subcontractors will comply with the requirements of the attached Grizzly Bear Management and Protection Plan dated **April 16, 2010 (Special Order #LC-10-D1-01)** in the conduct of any and all activities authorized. The authorized officer may review and revise the plan as needed.
3. The holder assumes full responsibility and shall hold the United States harmless from any and all claims by him/her or by third parties for any damages to life or property arising from the activities authorized by this special-use authorization and encounters with grizzly bears, or from suspension, revocation, or termination of activities authorized by this special-use authorization.
4. Intentional or negligent acts by the holder, his/her agents, employees, contractors and subcontractors that result in injury or death of a grizzly bear will be cause for suspension or revocation of this authorization in whole or in part.
5. Failure to comply with provisions 1, 2, or 3 may result in suspension or revocation of this authorization in whole or in part, and may cause criminal action to be taken against the holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

J. FOREST SERVICE REPRESENTATIVE (R1-X16). The District Ranger, Tally Lake Ranger District, Telephone Number (406)-758-5208, is responsible for administering this special-use authorization. The holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

K. INFORMATION FROM HOLDERS (R1-X17). As a condition of this authorization, the holder is responsible for providing the authorized officer with any information in possession necessary for determining annual rental fees, ownership, or other matters concerning the administration of the authorized use by the Forest Service.

Regarding the submission of such information, the holder understands that it is a crime for any person to knowingly and willfully make false, fictitious, or fraudulent statements to matters under the jurisdiction of the United States Government (18 U.S.C. 1001).

L. SIGNS (X-29). Signs or advertising devices erected on National Forest System lands shall have prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

M. IMPROVEMENT RELOCATION (X-33). This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

N. PERFORMANCE BY HOLDER, SUCCESSORS, OR ASSIGNS (X-68). Notwithstanding the expiration or any renewal of this authorization or its earlier relinquishment, abandonment, or other termination, the provisions of this authorization, to the extent applicable, shall continue in effect and shall be binding on the holder, successors, or assigns, until they have fully performed their respective obligations and liabilities accruing before or on account of the expiration, or prior termination, of the authorization.

O. PERFORMANCE BY OTHER THAN HOLDER (X-69). The acquisition or assumption by another party under an agreement with the holder of any right or obligation of the holder under this authorization shall be ineffective as to the Forest Service unless and until approved by the authorized Forest officer. A subsequent acquisition or assumption shall not:

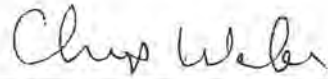
1. Operate to relieve the holder of the responsibilities or liabilities they have assumed hereunder, or
2. Be given unless such other party (1) is acceptable to the Forest Service as a holder, and assumes in writing all of the obligations to the Forest Service under the terms of this authorization as to the incomplete portion thereof, or (2) acquires the rights in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

This permit is accepted subject to the conditions set out above.

KNIGHTS OF COLUMBUS

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: 
WILLIAM GLIDDEN

By: 
CHIP WEBER
Forest Supervisor
Flathead National Forest

Date: Feb 24, 2012

Date: 2/24/12

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, office of Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or call 800-975-3272 (voice) or 202-720-6382 (TDD). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 5523) govern the confidentiality to be provided for information received by the Forest Service.

NW1/4 SE1/4, SEC. 35,
T. 32 N., R. 22 W., P.M.M.
PERMIT SIZE = 25 FT. X 25 FT.
PERMIT AREA = 0.14 ACRE

EXHIBIT "A"

AUTHORIZATION ID. TAL229
ISSUED TO: KNIGHTS OF COLUMBUS

KNIGHTS OF COLUMBUS STATUE

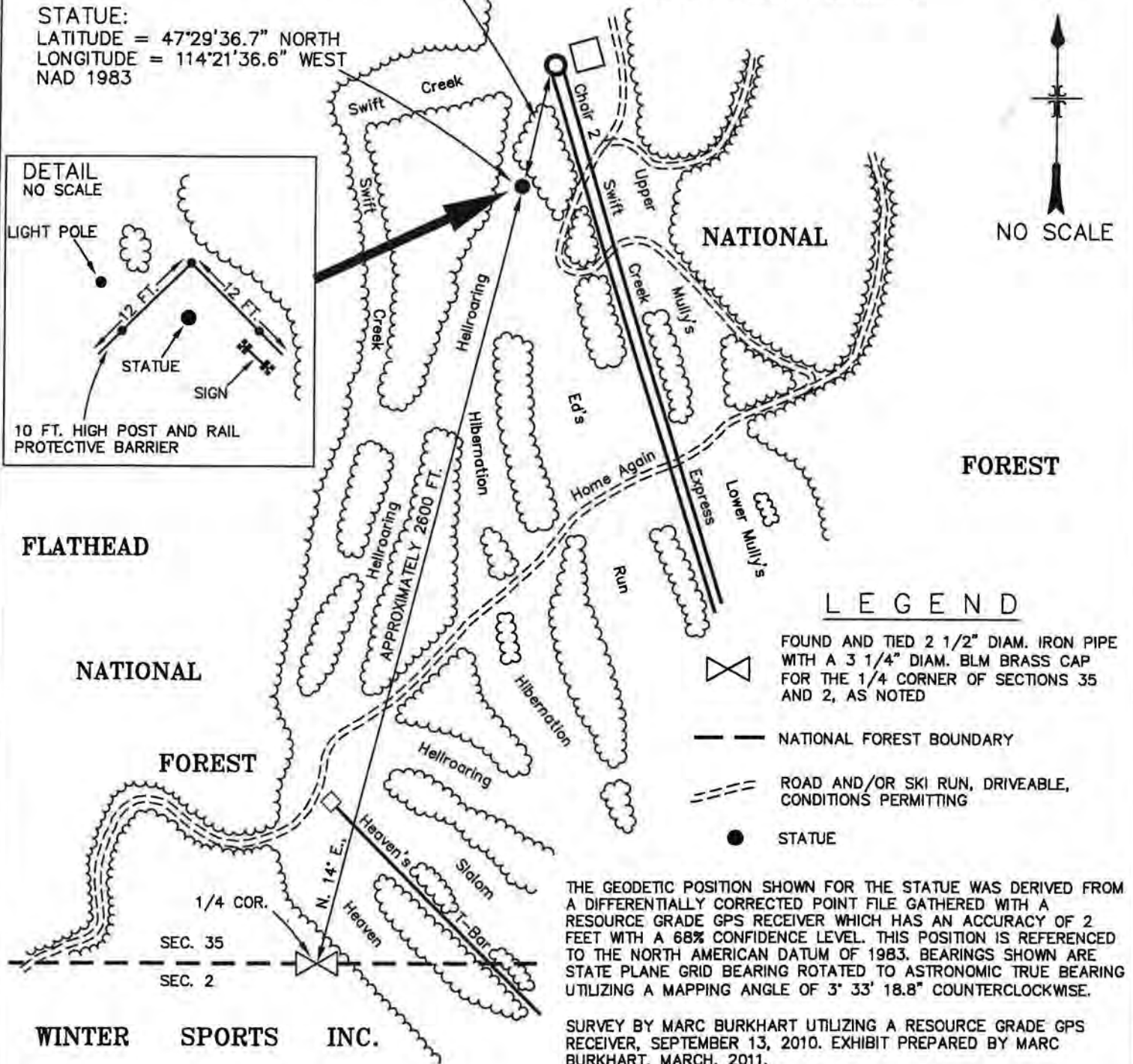
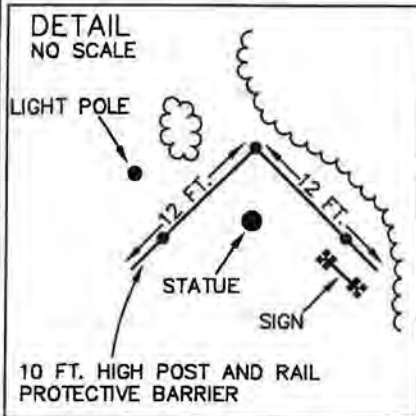
TALLY LAKE RANGER DISTRICT

U.S.D.A. FOREST SERVICE, REGION ONE
FLATHEAD NATIONAL FOREST
FLATHEAD COUNTY, MONTANA

FLATHEAD

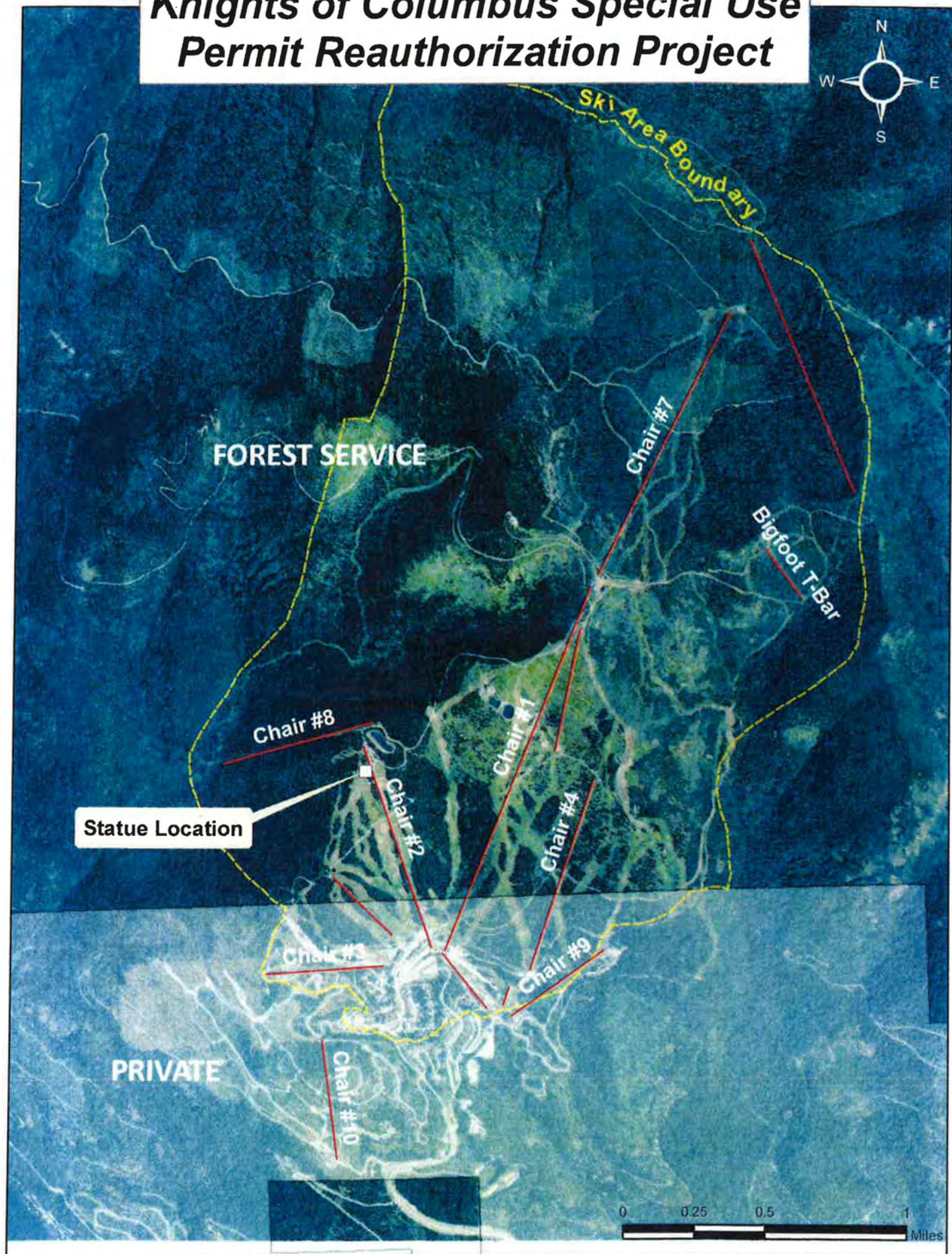
S. 17° W., APPROXIMATELY 380 FT. FROM
THE TOP OF CHAIR 2 TO THE STATUE

STATUE:
LATITUDE = 47°29'36.7" NORTH
LONGITUDE = 114°21'36.6" WEST
NAD 1983

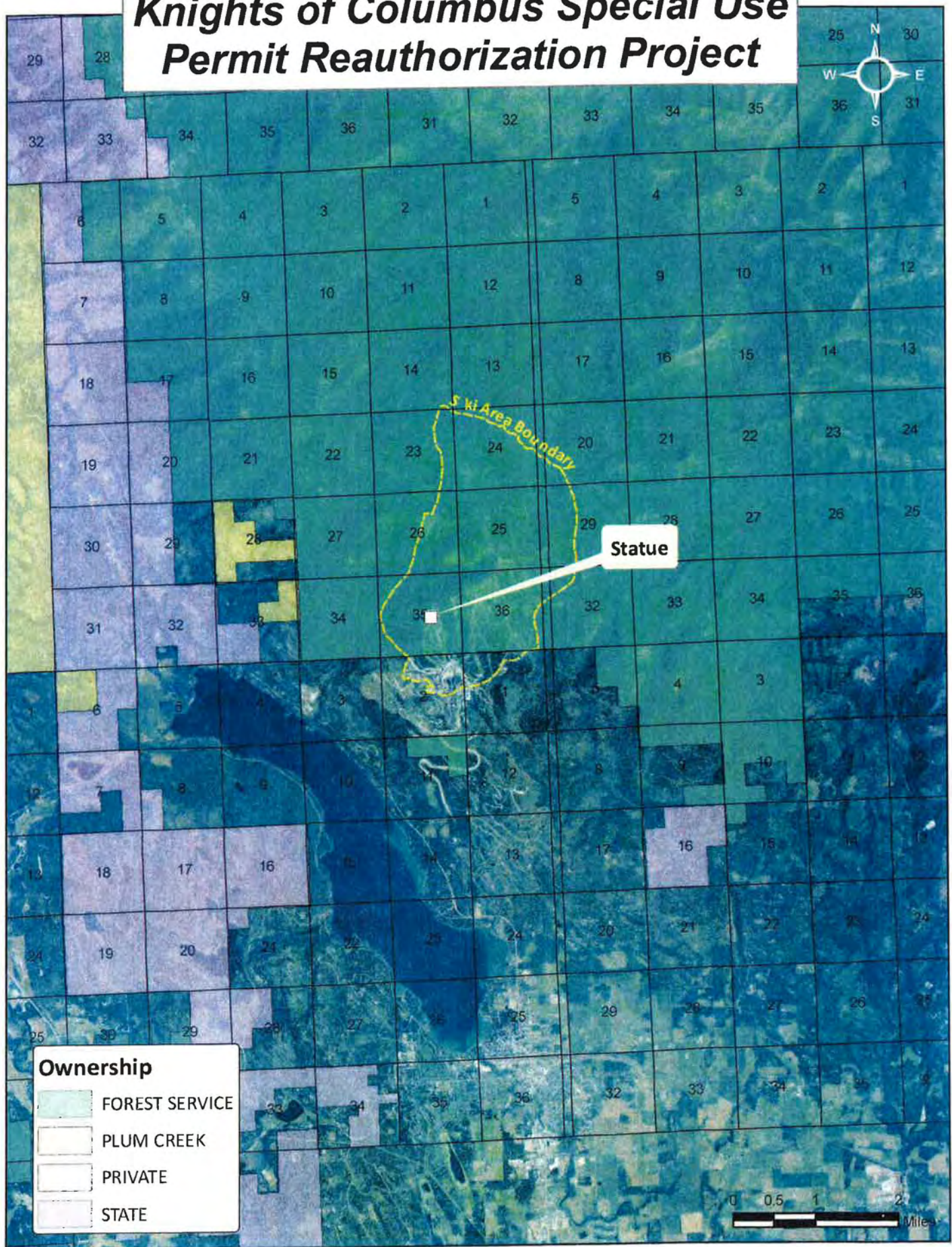


SER 0013

Knights of Columbus Special Use Permit Reauthorization Project



Knights of Columbus Special Use Permit Reauthorization Project



FOOD STORAGE SPECIAL ORDER LC_10_D1_01

OCCUPANCY AND USE RESTRICTIONS

**NORTHERN CONTINENTAL DIVIDE ECOSYSTEM
FLATHEAD, LOLO, HELENA AND LEWIS AND CLARK,
NATIONAL FORESTS
REGION ONE
USDA, FOREST SERVICE**

Pursuant to 36 Code of Federal Regulations 261.50 (a) and (b), the following restrictions are in effect on the Flathead, Lewis and Clark, Lolo, and Helena National Forests, Montana within the Northern Continental Divide Ecosystem (NCDE). These restrictions are in addition to those enumerated in Subpart A, Part 261, Title 36, Code of Federal Regulations and become effective when signed, and shall remain in effect until rescinded or revoked. *They replace the previous Food Storage Special Order #LC0018 invoked on December 21, 2000, under authority of 36 Code of Federal Regulations 261.50 (a) and (b), which is hereby rescinded.*

1. Possessing or storing any food or refuse, as specified in the order from April 1 to December 1, annually for the Flathead, Lolo, and Helena National Forests; and March 1 to December 15, annually for the Lewis and Clark National Forest. [36 CFR 261.58(cc)]
2. Possessing, storing or transporting any bird, fish or other animal, or parts thereof as specified in the order from April 1 to December 1, annually for the Flathead, Lolo, and Helena National Forests; and March 1 to December 15, annually for the Lewis and Clark National Forest. [36 CFR 261.58(s)]

The Northern Continental Divide Ecosystem consists of National Forest System lands included within the boundaries of the Flathead, Lewis and Clark, Lolo and Helena National Forests and is further defined on the attached map, (Exhibit A) and hereby made part of this order. Also attached and hereby made part of this order is Food Storage Special Order Information and Definitions, (Exhibit B).

UNDER THIS ORDER IT IS REQUIRED THAT:


1. Human, pet and livestock food (except baled or cubed hay without additives), and garbage shall be attended or stored in a bear-resistant manner.
2. Wildlife carcasses that are within 1/2-mile of any camp or sleeping area shall be stored in a bear-resistant manner during nighttime hours.

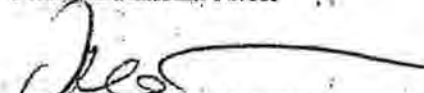
3. Burnable attractants (such as food leftovers or bacon grease) shall not be buried, discarded, or burned in an open campfire.
4. The responsible party shall report the death and location of livestock to a Forest Service official within 24 hours of discovery.

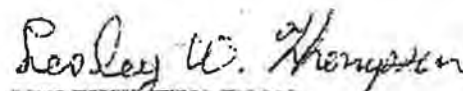
Pursuant to 36 CFR 261.50(e) the following persons may be exempt from this order (Flathead, Lolo, Lewis & Clark, or Helena Forest Supervisors are delegated the authority to grant the exemption in writing):

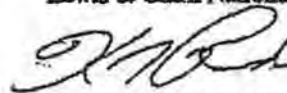
1. Persons with a permit specifically authorizing the prohibited act or omission.
2. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.

Done this 16th day of APRIL, 2010.


EARL APPLEKAMP
Acting Forest Supervisor
Flathead National Forest


DEBORAH L. R. AUSTIN
Forest Supervisor
Lolo National Forest


LESLEY W. THOMPSON
Forest Supervisor
Lewis & Clark National Forest


KEVIN RIORDAN
Forest Supervisor
Helena National Forest

Attractants may be "attended" rather than stored in a bear-resistant manner. However, it is strongly recommended that attractants and all items with odors be stored in bear-resistant containers or suspended 10 feet high and 4 feet away from the supporting structure and stored at least 300 feet from any sleeping area.

The purpose of these restrictions are to minimize grizzly bear-human conflicts and, thereby, provide for visitor safety and recovery of the grizzly bear within the Northern Continental Divide Ecosystem.

Violations of these prohibitions are punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, or imprisonment for not more than 6 months, or both (16 U.S.C 551 and 18 U.S.C. 3559 and 3571).

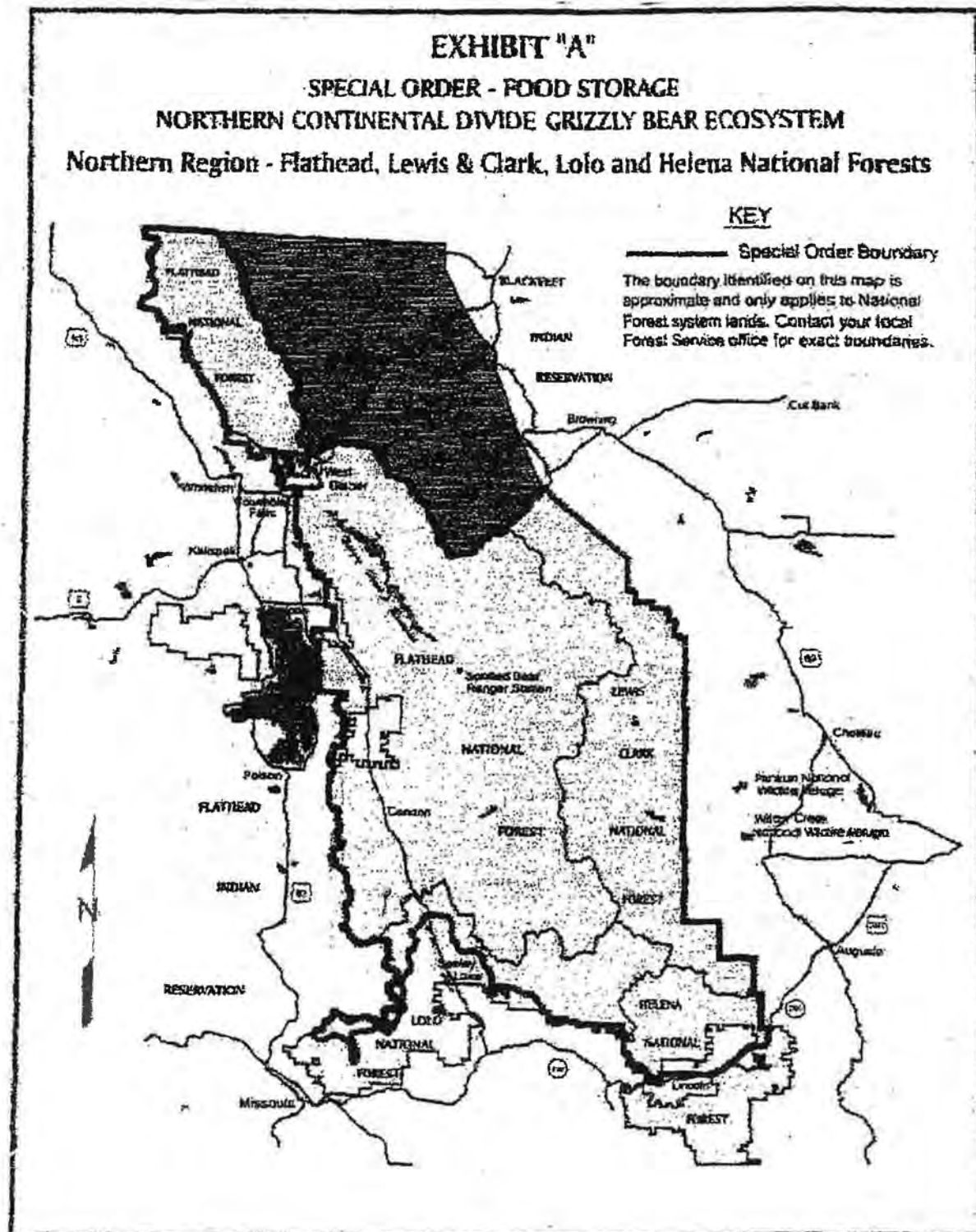


EXHIBIT "B"

INFORMATION

IT IS REQUIRED THAT:

1. Human, pet and livestock food (except baled or cubed hay without additives), and garbage shall be attended or stored in an approved bear resistant manner when unattended
2. Wildlife carcasses, birds, fish or other animal parts that are within 1/2-mile of any camp or sleeping area shall be stored in a bear-resistant manner during nighttime hours. If a wildlife carcass is within an attended camp during daytime hours it may be on the ground.
3. Attractants (such as food leftovers or bacon grease) shall not be buried, discarded, or burned in an open campfire.
 - A. Leftover food or food waste products may be placed in an appropriate, sealed container and packed out with garbage.
 - B. Leftover food or other attractants may be burned in a contained stove fire.
 - C. Attractants may be placed into a suitable container (i.e. tin can) to prevent leaching into the ground and burned over an open campfire. Any remaining attractants unconsumed by burning shall be placed with other garbage and packed out.
4. The responsible party shall report the death and location of any livestock to a Forest Service Official within 24 hours of discovery. In some very remote areas, it may not be possible to meet the 24-hour requirement. In these special cases, the responsible party shall report to a Forest Official the discovery of any dead livestock within 48 hours.
5. Approved bear-resistant containers meet the following criteria: A securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact. A bear-resistant container developed commercially must be approved by the USDA, Forest Service, Missoula Technology and Development Center (MTDC). Bear-resistant containers developed for personal use may be inspected for approval by the local District Ranger or their designated representative(s). For commercial operations, the MTDC has an impact testing machine available to evaluate containers for strength.

EXHIBIT "B"

DEFINITIONS

1. **Attended:** At least one adult person (attendee) is physically present within 100 feet of attractants during **daytime hours**. During the **nighttime hours**, all attractants must be within 50 feet of the attendee, or attractants must be stored in a bear-resistant manner. During the **nighttime hours**, no physical barrier, except tents or containers or attractant packaging material may exist between the attendee and attractants which are not stored in a bear-resistant manner.
2. **Attractant:** Food as defined below and garbage from human, livestock or pet foods.
3. **Food:** Any nourishing substance, which includes human food or drink (canned, solid or liquid), livestock feed (except baled or cubed hay without additives) and pet food.
4. **Attendee:** An adult (18 years of age or older) in control of attractants.
5. **Bear-resistant container:** A securable container constructed of solid material capable of withstanding 200 foot-pounds of energy applied by direct impact. The container, when secured and under stress, will not have any openings greater than one-quarter (1/4) inch, that would allow a bear to gain entry by biting or pulling with its claws.
6. **Bear-resistant manner means** any attractants, including food and garbage, must be stored in one of the following ways if unattended:
 - a. secured in a hard-sided camper or vehicle trunk or cab or trailer cab;
 - b. secured in a hard-sided dwelling or storage building;
 - c. suspended at least 10 feet up (from the bottom of the suspended item) and 4 feet out from any upright support, i.e. tree, pole;
 - d. stored in an approved bear-resistant container;
 - e. stored within an approved and operating electric fence;
 - f. stored in any combination of these methods;
 - g. or stored by methods other than those described in Section #6, a-f, that shall be approved in writing by the Forest Supervisor responsible for their area of jurisdiction.
7. **Contained fire stove:** a metal stove that completely encloses the fire.
8. **Daytime:** 1/2-hour before sunrise until 1/2-hour after sunset.
9. **Nighttime:** 1/2-hour after sunset until 1/2-hour before sunrise.
10. **Livestock:** A domesticated animal, such as mule, horse, llama, or goat.

EXHIBIT "B"

11. **Wildlife carcass:** The body, or any parts thereof, of any deceased wild animal, bird, or fish.
12. **Approved electric fences will meet, as a minimum, the following specifications:**
 - a. **7 Strand Fence** (refer to Forest Service publication 9923-2321-MTDC, "Electric Fence Systems: Requirements for Meeting the NCDE Food Storage Special Order, 1999", for more description of fence specifications and set-up):
 - i) The fence will be set up as a "tight wire" fence. The wire will be tight and under tension, not loose or sagging.
 - ii) Minimum fence height.....4 feet.
 - iii) Minimum post height.....5 feet.
 - iv) Maximum spacing between posts.....8 feet.
 - v) Conductors (wire): Minimum of 7 wires, with 6-10 inch spacing between wires. Bottom wire must be within 2 inches of the ground. All wire must be smooth metal fence wire of at least 16 gauge or poly wire, except the top wire which may be poly tape of at least six strand stainless steel.
 - vi) The system will be set up to operate both as a ground wire return and a grounded system. The 2 top wires will be hot, with all other wires alternating hot and ground. The minimum length ground rod is 2 feet.
 - vii) Fence charger (minimum): (1) energizer output of 0.7 joules; (2) tested peak output of 5000 volts; (3) 40 shocks per minute. User must be able to test electrical output in the field.
 - viii) The charger must be made inaccessible to disturbance from a bear. The charger may be stored within the interior of the fence or located a minimum of 10 feet above ground.
 - ix) Minimum distance between fence and items enclosed by fence.....3 feet.
 - b. **Portable Electric Mesh Fence** (refer to Forest Service publication 0723-2305-MTDC, "Specifications for Portable Electric Fence Systems as Potential Alternative Methods for Food Storage, 2007", for more description of fence specifications and set-up):
 - i) Portable electric mesh fence shall not be left in any location for more than 14 days.
 - ii) Minimum fence height.....33 inches.

EXHIBIT "B"

- iii) Minimum post length.....42 inches.
- iv) Post construction required to be polyethylene with metal spike on bottom.
- v) Minimum of 3 strands of stainless steel wire per horizontal wire.
- vi) Minimum number of horizontal wires.....8.
- vii) Horizontal opening in mesh required to be less than 12 inches.
- viii) Minimum length of ground rod required to be 1 foot. Earth ground is mandatory.
- i) Fence charger (minimum): (1) energizer output of 0.11 joules; (2) Minimum tested peak output voltage (on every hot conductor, with no load other than the fence) required to be 5,000 volts.; (3) Minimum pulse duration (with a 10,000-ohm load applied) required to be 0.05 milliseconds; (4) Minimum shocks per minute.....35. **User must be able to test electrical output in the field.**
- ix) Minimum distance between fence and items inside.....1½ feet.
- x) Readable placard indicating fence is electrified is required.
- xi) Maximum fence length.....60 feet.
- xii) Minimum of 2 LED lights.

Exhibit 3

Raymond J. Leopold, Ph.D.
3360 Whitefish Stage Road
Kalispell, Montana 59901
December 5, 2011

Mr. Derek Milner, Project Leader
Tally Lake Ranger District
650 Wolfpack Way
Kalispell, MT 59901

Subject: Knights of Columbus Special Use Permit Reauthorization Project

Mr. Milner:

It is my professional opinion that the World War II Veteran's statue of the Sacred Heart of Jesus on Big Mountain cannot be moved without damaging the statue.

I have personally worked on the statue between 15 and 20 times over the past few years to make repairs to both the statue and to the pedestal upon which it stands, and I have also helped to re-paint the entire statue and to touch up the paint as it has worn thin or been damaged. My five sons have also worked on the statue as have other members of the local Knights of Columbus and other leaders in the local Boys Scouts of America.

I have come to learn that the statue has been there for over 56 years. It was originally bought from a statue maker in Minnesota and installed atop the pedestal which stands about five or six feet above the ground.

The statue itself is life size, about six feet tall. It is not at all clear how the statue is affixed to the pedestal, but I can assert that it is very solidly affixed, as I have held onto it as I have worked on the statue and it doesn't budge even with my 200 lbs yanking and weighing on it from an angle. It's also not clear whether the pedestal sits upon a footing, but given that the statue doesn't seem to have moved or settled unevenly in over 56 years, I wouldn't be surprised if there is a significant footing beneath the pedestal.

The statue itself appears to be made of a heavy stone-like material which has weathered 56 winters on the mountain. I'd hesitate to try to estimate its weight, but it is, no doubt, quite heavy, and there is no portion of the statue which lends itself to being attached to a lifting device which would sustain its weight. I would guess that the statue maker delivered the statue in a custom-made container which was used to lift the statue into place atop the pedestal, and that container no longer exists.

Permit Reauthorization Project


The pedestal appears to be made of reinforced concrete. I state this because I have observed what appear to be rust marks from the iron reinforcement within the pedestal.

I would also be professionally concerned both about how the structural integrity of the statue may have degraded over the past 56 years during which it has withstood the heat of the summers and the wetness and coldness of the winters, and especially about how the statue may have become permanently attached to the pedestal during that time with the seasonal temperature cycling and also with the changes in humidity over such a long period of time.

I have serious doubt that it can be removed and relocated without damaging the statue significantly.

I will note here that I have three university degrees in engineering, (a bachelor's degree from The United States Air Force Academy, a master's degree from North Carolina State University and a Ph.D. from the University of New Mexico) and I have worked as an engineer for more than 40 years where I have been honored for my engineering work both nationally and internationally. I have also been an engineering professor at The Massachusetts Institute of Technology (MIT), at The United States Air Force Academy and at George Washington University.

Finally, I, am a 24-year veteran of The United States Air Force myself and I strongly feel that the statue should remain right where it is, continuing to honor the World War II veterans who put it there more than 56 years ago.



Raymond J. Leopold, Ph.D.

Permit Reauthorization Project

Revised content: I state this because I have observed what appear to be rust marks from the iron reinforcement within the pedestal.

Revised content: I state this because I have observed what appear to be rust marks from the iron reinforcement within the pedestal.

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SER 0024

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Whitefish, Montana 59937

REPLY TO: 2720 Special Use Permit

September 10, 1970

SUBJECT: Knights of Columbus, Shrine, 9-11-53



TO: Mr. L. J. Reed, Chairman
K. of C. Shrine Committee
Route 1
Box 275
Whitefish, Montana 59937

The Shrine on Big Mountain was inspected this summer on August 13, 1970. At this time the hand on the left arm was broken off and later found near the chair lift above the Shrine.

The general area was in good shape. Your effort to maintain a presentable area to the public is appreciated.

STATE OF MONTANA
FOREST SERVICE
Gary F. Meyer

GARY F. MEYER
Forester

Flathead National Forest.

That piece of land 25 ft. by 25 ft. approximately 400 feet north-northwest of the upper terminal of the Big Mountain ski lift - Sec. 35, T. 32N., R. 22W.

erecting a religious shrine overlooking the Big Mountain ski run.

Form FS-832
(Revised 12-1-49)

16-88077-3

2. Construction or occupancy and use under this permit shall begin within 3 months, and construction, if any, shall be completed within 12 months, from the date of the permit. This use shall be actually exercised at least 250 days each year, unless otherwise authorized in writing.

3. Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Merchantable timber cut must be paid for by the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

4. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

5. This permit is subject to all valid claims.

6. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

7. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

8. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

9. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

11. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

12. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the forest supervisor, issuance of a permit is desirable and in the public interest.

13. In case of change of address, the permittee shall immediately notify the forest supervisor.

14. The temporary use and occupancy of the premises and improvements herein described may not be sublet by the permittee to third parties without the prior written approval of the forest supervisor and the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

16. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses will control.

17. This permit is subject to the conditions set forth above ~~and to conditions~~

~~to be attached hereto and made a part of this permit~~

Date October 15, 1953

[Signature]
Forest Supervisor

(Signature of issuing officer)

(Title)

Form 866



UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

SPECIAL USE APPLICATION

(Case Designation)

Application is hereby made for permit to use the following described lands: That piece of land
25 feet by 25 feet approx. 400 ft. north-north west of the upper
terminal of the Big Mountain Ski lift, and in elevation approx. 70 feet
higher. This land is located in section 35 Range 22 west Township 32
North.

for the purpose of Erecting a Shrine overlooking the Big Mountain Ski run.
(State fully the nature of the intended use)

Construction of intended improvements will begin within 3 months and be completed within
9 months; the premises will be used at least 250 days each year; the contemplated improvements will cost approximately \$800.00 dollars
and will consist of the following: 6x6 base constructed of native stone using
cement to hold together. On this base it is proposed to erect a statue
of our Lord Jesus Christ.

Recommend that this be made a permanent part of the recreation
area on top of Big Mountain.

Sept. 11, 1955

(Date of application)

Knights of Columbus Committee

(Signature of applicant)

Chairman

Box 506 Whitefish, Mont.

(Post office address)

(See reverse side for general conditions under which permits are granted)

16-15559

Permits are usually granted subject to the following general conditions and such special conditions as may be found desirable:

1. That there will be compliance with the regulations of the Department of Agriculture governing the National Forest and with all sanitary laws and regulations applicable to the premises.
2. That the premises will be kept in a neat and orderly condition and all refuse disposed of and outhouses and cesspools located as directed by the forest officers.
3. That all reasonable precautions will be observed to prevent and suppress forest fires.
4. That if engaged in business the permittee will conduct same in an orderly manner and in accordance with State as well as Federal laws.
5. That the permit is granted subject to valid claims.
6. That no timber will be cut or destroyed except under permit obtained from the forest officers.
7. That an annual rental charge will be paid.
8. That when requested by forest officers, a way across the land, covered by permit, will be provided for the free ingress or egress of forest officers and the users of National Forest and purchasers of National Forest products.

U. S. GOVERNMENT PRINTING OFFICE: 1947 O - 726587



SAINT PAUL STATUARY COMPANY
Ecclesiastical designers, sculptors and decorators
318-330 EAST SEVENTH STREET SAINT PAUL, MINNESOTA

June 7, 1954

Mr. J. L. Reed, Chairman
Knights of Columbus Shrine Committee
Whitefish, Mont.

Dear Sir:

We have your letter of June 4th placing an order for one cast stone statue, our No. 7, in height of size 0'1". We are accepting this order at the stipulated price \$650.00 F.O.B., St. Paul in spite of the fact that it will barely cover the cost of the original, but we are doing this in the hope that others may be sold at a future date. This statue is an exceptionally good contemporary model, and we feel confident that you will be very pleased when you receive it.

We are making an effort to see that this statue will be in your hand by September 1st.

We would suggest that in making your pedestal that you leave a cavity in the center, probably a foot in diameter and about 2' deep, so that a dowel or a large pipe can be inserted together with cement around it at the time the statue is installed. This dowel could extend above the pedestal about 1' so that you won't have to raise it so high. On the statue we will also have a cavity to receive the dowel and cement so that the statue and pedestal become like one piece. We have no doubt that if you have a competent stone mason or brick-layer, you will have no difficulty in cementing the two together.

Thanking you for this order, and you may rest assured that it will be given our very best attention.

Yours very truly,

SAINT PAUL STATUARY COMPANY

ST. PAUL, MINN.
Joseph Capecci
J. Capecci

CC:KF

Regarding the Statue of Christ on Big Mountain

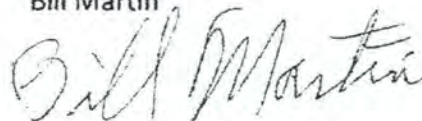
Kalispell, Montana

Jan. 24. 2012

I am Bill Martin, and I was once manager of the Big Mountain Ski Slope at Whitefish Montana. I am not Catholic myself, but my wife Patty was, and she was a classmate and close friend of Ed Shenk's wife Margarite. Through that relationship, I became acquainted with and good friend of Ed Shenk. That is how I became involved with Big Mountain, and I served on the board of directors there for 50 years. I remember distinctly the situation regarding the erection of a statue of Christ on Big Mountain.

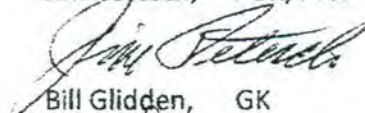
Ed Shenk was an officer in the Army in WWII, and was stationed in Italy with the 10th Mountain Division. He was an avid skier and skied on many of the slopes in Italy. He remembered that almost all of the slopes in Italy had statues of Christ on the slopes. More than one on several slopes, and also other statues and crosses. When Ed returned to Whitefish after the war, he bought some property on Big Mountain where there was an existing ski area. Ed eventually developed the Big Mountain ski area in the late 40's. He had had such an admiration of the Christ statues that he had observed on the slopes in Italy during the war, that he wanted to install one on Big Mountain in memory of the men who had lost their lives in WWII. Somehow he contacted the local Knights of Columbus in Kalispell and asked if they would participate in getting the statue installed. The existing statue was installed in the mid 50's. I can remember that the statue was installed in memory of the veterans with whom Ed had served in WWII, and he wanted it dedicated to them. . The Knights of Columbus were the workhorses who installed it.

Bill Martin

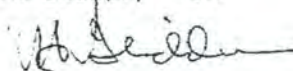


Witness:

Jim Petesch, PGK, PFN



Bill Glidden, GK



[REDACTED]

From: "Dan Graves" <dgraves@skiwhitefish.com>
Subject: RE: Update on the Statue in Whitefish?
Date: November 29, 2011 10:12:59 AM CST
To: "Jeff Mateer" <jmateer@libertyinstitute.org>

I put this on stationary. Here's the pdf.

Daniel Graves

President

Whitefish Mountain Resort - on Big Mountain since 1947

PO Box 1400 • Whitefish, Montana • 59937

www.skiwhitefish.com

e | dgraves@skiwhitefish.com

w | 406.862.2978

c | 406.871.1605

f | 406.862.2955

From: Jeff Mateer [<mailto:jmateer@libertyinstitute.org>]

Sent: Tuesday, November 29, 2011 8:49 AM

To: Dan Graves

Subject: Re: Update on the Statue in Whitefish?

Dan,

If you still have a copy of what you sent to the U.S. Forest Service, would you mind sending me a copy? We may want to reference it in our submission. Thanks.

Jeff

On Nov 28, 2011, at 5:00 PM, Dan Graves wrote:

Thanks for the note. I too received the same letter as Charlie and formally sent a note of support on behalf of the resort. Keep me advised. Hope you have a wonderful Christmas season.

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Freedom From Religion
Foundation, Inc.,

Plaintiff,

v.

Case No. 9:12-cv-19-DLC

Chip Weber, Flathead National
Forest Supervisor; and

United States Forest Service, an
Agency of the United States
Department of Agriculture,

Defendants,

and

William Glidden, Raymond
Leopold,
Norman DeForrest, Eugene
Thomas, and the Knights of
Columbus
(Kalispell Council No. 1328),

Intervenor-Defendants.

DECLARATION OF RAYMOND LEOPOLD

I, Raymond J. Leopold, make the following declaration:

1. I am an engineer by profession. I earned my bachelor's degree in engineering from the United States Air Force Academy, my Master's from North Carolina State University, and my Ph.D. from the University of New Mexico.

2. I have worked in the field of engineering for more than 40 years and have been honored for my work both nationally and internationally.

3. I have also taught engineering as a professor at the Massachusetts Institute of Technology, the United States Air Force Academy, and at George Washington University.

4. I have lived just north of Kalispell, Montana, and just south of Whitefish, Montana, for nearly 10 years and was a part-time resident for a couple years prior to that. I have been a member of the Knights of Columbus, Kalispell Council No. 1328, for the past six or seven years.

5. During that time, I have visited the statue two or three times a year to inspect, clean, paint, and repair both the statue and the pedestal on which it stands. I also visit it several times each winter when I am skiing and report back to our Knights of Columbus Council how it is

weathering the ski season (in terms of both the weather and the skiers).

I most recently touched up the statue's paint on September 14, 2012.

6. We have had recurring problems with the statue's left arm and hand being broken off and have had to repair them almost annually.

7. I helped when my second son repaired, refinished and painted the statue for his Eagle Scout project about five or six years ago. All five of my sons helped to work on that major repair, along with a couple other scout leaders and a couple other members of the Knights of Columbus.

8. Because of these experiences and my curiosity about the statue from an engineering point of view, I have become intimately familiar with the statue.

9. The statue appears to be extremely heavy and firmly settled onto the mountain. The pedestal seems to be solidly attached to footings dug into the mountain. In any case, I do not see any way that the statue and pedestal could be separated without damaging them. I was not surprised to learn recently, from documentation from the statue maker at the time it was constructed, that the statue had been designed to become an integral part of the pedestal and that pedestal has become

an integral part of that portion of the mountain. I have climbed onto the statue and used it to support my weight many times as I have worked on the statue, and I am quite impressed with how solidly the pedestal and statue have remained after so many years of harsh winters and hot summers. The statue does not budge a bit from the pedestal and the pedestal does not budge a bit from the mountain as I have pushed and tugged both with my strength and with my body weight forced upon the statue and the pedestal in the process of making the necessary routine repairs.

10. I have serious doubts about whether the statue could be moved at all without damaging it significantly.

11. I spoke up at two public meetings in Whitefish about the statue. In my remarks, I expressed my concern about vandalism to the statue as a result of the increased publicity and also expressed concern that the statue could not be moved without damaging it. It was my understanding that representatives of the Forest Service were in attendance at the meetings.

12. It is also my understanding that, in a separate meeting with the Knights of Columbus, Forest Service representatives acknowledged that

the statue would likely be seriously damaged or destroyed if it were moved.

13. I have been a regular skier at Big Mountain since 2001. I had skied up there for some time before I came across the statue by accident. I previously did not know anything about it.

14. When I first saw the statue I had skied past it and had to return to it on my next run; it had a small aluminum plaque bearing the words "Knights of Columbus 1954."

15. When the Knights refurbished the statue five years or so ago, we removed the plaque to clean it, with the intention of putting it back. But, the Council then decided to put up a better descriptor, so we never replaced that small aluminum plaque.

16. Before we got around to placing a new marker, the Whitefish Mountain Resort put up its own signage in 2010, which is the signage that stands beside the statue today.

17. In the winter, the only way to see the statue is by taking one of the ski lifts, usually Lift #2, and skiing part way down the top of Ed's Run. In skiing down the slope, you pretty much pass the statue before you see it, unless you know where to look for it.


18. There are only a few months in the summer and early fall when the mountain is dry enough for people to hike to the statue.

19. The statue cannot be seen from the valley except from a few spots, on a very clear day, with binoculars, if you know exactly where to look. Even then I have sometimes had difficulty finding the statue when trying to show it to friends or family from the valley below.

20. As a 24-year veteran of the United States Air Force and as the son of a WWII veteran, I personally feel quite strongly that the statue should remain where it is as a memorial to our nation's WWII veterans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of March, 2013.



Raymond J. Leopold

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Freedom From Religion
Foundation, Inc.,

Plaintiff,

v.

Case No. 9:12-cv-19-DLC

Chip Weber, Flathead National
Forest Supervisor; and

United States Forest Service, an
Agency of the United States
Department of Agriculture,

Defendants,

and

William Glidden, Raymond
Leopold,
Norman DeForrest, Eugene
Thomas, and the Knights of
Columbus
(Kalispell Council No. 1328),

Intervenor-Defendants.



DECLARATION OF DANIEL GRAVES

I, Daniel Graves, make the following declaration:

1. I am the current president of the Whitefish Mountain Resort on Big Mountain near Kalispell, Montana.
2. I have worked at the Resort since November 2006.
3. The Resort is privately owned and operated, but the upper ends of its ski slopes are on land owned by the United States Forest Service.
4. The Resort operates on Forest Service land pursuant to a special use permit issued by the government.
5. The Resort's permit is for "non-exclusive use."
6. The statue of Jesus at issue in this litigation sits toward the west end of the Resort below chairlift 2 and near the top junction of Ed's Run and Hellroaring Run.
7. A stand of trees hides the statue from the top of the chairlift so that the statue can only be seen by going down Hellroaring Run. That is the only place from the entire Resort that the statue can be seen.
8. I had worked at the resort through November and into December of 2006 before I even knew the statue existed. A few weeks after the

mountain opened for skiing I happened across the statue while making my way around the mountain becoming familiar with the terrain and lift system.

9. With regard to the summer months, there are no hiking trails near the statue, and it is not in an area that people could just walk by.

10. The Knights of Columbus own and maintain the statue. They have had a permit, dated October 15, 1953 with the USFS, for a 25-by-25 square foot parcel of land surrounding the statue.

11. That land is also included within the Resort's permit, and skiers often gather around the statue to rest, take pictures, contemplate, as a meeting place, or goof off around the statue.

12. As far as I know, neither the Knights nor the government has ever tried to enforce any level of respect toward the statue. The statue, in fact, takes a fair amount of abuse from skiers who hit it with their poles, or try to climb on it, or slap it on the hand. Unfortunately, vandals often break or saw off the left hand.

13. I am aware that the Knights frequently visit the statue to clean, paint, and repair it.

14. I consider the statue to be a valuable piece of history and an important memorial here at the Resort.

15. It is widely understood to be a World War II memorial honoring our nation's veterans. Many members of the community fought in Europe and with the Army's 10th Mountain Division. There were casualties and injured within this group of community members.

16. I fear that people's memories of World War II are fading, and I believe it is important to remember the efforts of our veterans who fought in that noble effort to rid the world of the horrors of Nazi Germany and Fascist Italy.

17. In 2010, at my instigation, the Resort built a fence around the back and side of the statue and installed a plaque memorializing veterans from the Army's 10th Mountain Division in whose honor the statue was erected. My reasoning to do so was threefold. One, in my many routes past the statue I often see people gathered and discussing when it was erected, why it was erected, and who installed it. I thought providing those answers would be insightful and be good guest service. Second, I was tired of the vandalism and hoped that the fence and the knowledge provided by the plaque would deter some of the vandalism.

Third, I wanted to honor the vets, the community members, and the ski area founders who thought it was important to place the statue on the mountain in the first place.

18. The fence and plaque have been approved by the Forest Service as part of the Resort's permit.

19. In addition to being an important historical memorial, the statue is a significant landmark for the ski resort. It has been the favorite gathering spot for many of our guests over the course of its almost sixty years.

20. Based on feedback from guests, the memorial is one component of their resort vacation that makes skiing on Big Mountain so special.

21. The Resort would lose a meaningful piece of its character and culture if the statue were removed.

22. Prior to the lawsuit brought by the Freedom From Religion Foundation, I never heard anyone complain about the statue.

23. Although the lawsuit has generated controversy and triggered nationwide coverage of the statue's fate, I sense overwhelming support among local residents and Resort guests for allowing the statue to remain as an important piece of the local history and culture.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of January, 2013.


Daniel Graves

Exhibit 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

Freedom From Religion Foundation,
Inc.,

Plaintiff,

v.

Case No. 9:12-cv-19-DLC

Chip Weber, Flathead National Forest
Supervisor; and

United States Forest Service, an
Agency of the United States
Department of Agriculture,

Defendants,

and

William Glidden, Raymond Leopold,
Norman DeForrest, Eugene Thomas,
and the Knights of Columbus
(Kalispell Council No. 1328),

Intervenor-Defendants.

DECLARATION OF BILL MARTIN

I, Bill Martin, make the following declaration under 28 U.S.C. § 1746:

1. I am of sound mind and have personal knowledge of the matters set forth in this declaration.
2. I was once manager of the Big Mountain Ski Slope at Whitefish, Montana.
3. I also served on the board of directors there for fifty years.

4. I was close friends with Ed Schenk, who developed the Big Mountain ski area in the late 1940s.

5. Ed had been an officer in the Army in World War II and was stationed in Italy with the 10th Mountain Division.

6. Ed recounted to me how almost all the slopes in Italy had statues of Jesus on the slopes.

7. Ed wanted to install a statue of Jesus on Big Mountain in memory of the men who had lost their lives in World War II.

8. Ed contacted the Knights of Columbus in Kalispell to help get the statue installed.

9. I can recall that the statue was installed in memory of the veterans Ed served with in World War II.

10. Attached as Exhibit A is a true and correct statement I made on January 24, 2012.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 11 day of January, 2013.

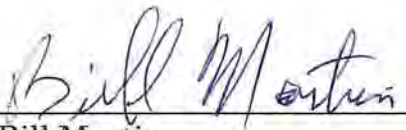

Bill Martin

Exhibit A

Regarding the Statue of Christ on Big Mountain

Kalispell, Montana

Jan. 24. 2012

I am Bill Martin, and I was once manager of the Big Mountain Ski Slope at Whitefish Montana. I am not Catholic myself, but my wife Patty was, and she was a classmate and close friend of Ed Shenk's wife Margarite. Through that relationship, I became acquainted with and good friend of Ed Shenk. That is how I became involved with Big Mountain, and I served on the board of directors there for 50 years. I remember distinctly the situation regarding the erection of a statue of Christ on Big Mountain.

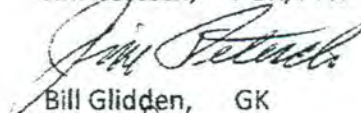
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Bill Martin



Witness:

Jim Petesch, PGK, PFN



Bill Glidden, GK

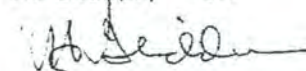


Exhibit 9

Stephanie -

Our morning paper carried a story relating that the FFRF suit against the statue of Jesus on our ski hill has been assigned to Federal District Judge Dana Christensen in Missoula and that the courtroom action is scheduled to begin in early 2013. This news raises two issues for me: (1) Judge Christensen is to me somewhere between a familiar acquaintance and a personal friend – we saw him and his wife a week or two ago at a party, and we spent a week together with them and a dozen other people last summer rafting down the Grand Canyon; this could, I suppose, force a choice upon you between him as a judge and me as a plaintiff; Christensen was appointed barely a year ago and confirmed by the Senate in December. (2) My wife and I have fairly firm plans to be taking a course from our local community college in Venice, Italy, next winter semester from mid-January till mid-April; I know that court schedules can change, but this could make the deposition process complicated, not to mention participation in the trial.

Advice?

Bill Cox

From: Stephanie Schmitt
Sent: Tuesday, June 05, 2012 1:44 PM
To: Bill Cox
Subject: Re: Jesus Statue - MT

Great, thank you!!! I'll alert our litigation attorney and we will keep you informed of any/all updates!

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jun 5, 2012, at 2:39 PM, Bill Cox wrote:

OK! Count me in.
Bill

From: Stephanie Schmitt
Sent: Tuesday, June 05, 2012 1:28 PM
To: Bill Cox
Subject: Re: Jesus Statue - MT

Bill,

Thank you so much for getting back to me. In terms of what is involved with you being a plaintiff, the answer is not a whole lot. There is no cost to you, FFRF will be funding the lawsuit, including the attorneys fees. Plaintiffs eventually will need to submit affidavits to the court (which our litigation attorney draws up after interviewing you). Occasionally, the other side may seek to depose some or all plaintiffs, which may take several hours, but our counsel would also be present. Your name would be public and listed in the legal caption, although FFRF's name is first and the case will remain known as *FFRF v. Forest Service*. We like to have several plaintiffs so no one feels alone. We have about a dozen interested, but I don't know if we'll be naming all of them.

Let me know if you have any other specific questions.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jun 5, 2012, at 2:08 PM, Bill Cox wrote:

Stephanie -

Yes, I would consider signing on as a plaintiff, but I would ask you to spell out just what is involved in doing so. I don't mind going public; I just don't know what kind of legal tangles I could get into. Being neither wealthy nor a lawyer, I am poorly prepared to defend myself against legal actions. How many other potential plaintiffs from Montana do you have?

Bill Cox

From: Stephanie Schmitt
Sent: Tuesday, June 05, 2012 9:24 AM
To: billcox3@bresnan.net
Subject: Jesus Statue - MT

Hi Bill,

I wanted to let you know that we did receive your letter in February. We greatly appreciate hearing from you and for your membership!

I had forwarded a copy of your letter to our litigating attorney. He has asked me to contact you to see if you'd have interest in signing on as one of our plaintiffs. One of our biggest challenges in our lawsuits is convincing the court that we have standing. Because of your exposure to the statue, you would be a strong plaintiff to have on board. At this time we have not named any plaintiffs in our complaint, however, we will need to do so soon.

If this is of any interest to you, please call or email and we can discuss further.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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From: Stephanie Schmitt <stephanie@ffrf.org>
Subject: Re: Veteran Status?
Date: February 16, 2012 12:30:50 PM CST
To: Doug Bonham <doug@hawkowl.com>

That's a great question that I'm honestly not sure of the answer. We have found 2 other people who are veterans, although they did not have any encounters with the statue. It helps, but not as strong!

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Feb 16, 2012, at 11:36 AM, Doug Bonham wrote:

Hi Stephanie, Sorry I'm not a veteran, I can see why that would be really good. I do know an active duty guy, it might take some pushing, are active duty personnel allowed to join such suit?

-Doug Bonham
I'm on my cell this week: 425.218.6006

On 2012/02/15 8:14 AM, Stephanie Schmitt wrote:
Good morning,

I apologize for any repetition, but one angle we'd like to have covered in this lawsuit is a plaintiff who is a veteran. Can you remind me if you are a veteran, or if you know someone who is that would be interested in participating in this case?

Thanks again,

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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From: Doug Bonham <doug@hawkowl.com>
Subject: Re: Plaintiff for shrine on Big Mtn
Date: February 2, 2012 11:59:18 AM CST
To: Stephanie Schmitt <stephanie@ffrf.org>
Cc: "Richard L. Bolton" <rbolton@boardmanclark.com>

Hello,

I'm sure my daughter will continue to ski at Big Mtn, and although I probably won't go every year, I'm sure I'll be back up there again. And very possibly riding the lift in the summer to pick huckleberries with my Jewish (well, formerly Jewish, not practicing) mother. My 15yo daughter is not religious and she and her friends think that the statue is ridiculous.

I'd be happy to help in any way that I can, Doug

Doug Bonham
Hawk-Owl Systems
Essex, Montana
406.888.9187

On 2012/02/02 10:41 AM, Stephanie Schmitt wrote:

Hi Doug,

I have sent your information along to our attorney who is handling this case. He would like to know more about whether you would normally have future plans to ski at Whitfish Mountain? I'm cc'ing him on this email, so you can respond to both of us.

Thanks,
Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jan 30, 2012, at 4:25 PM, Doug Bonham wrote:

The last time I skied past it was eight years ago. My 15yo daughter saw it, I think last year, sometime recently. Just reading about it being up there makes me crazy, however I realize that's not as good as recent and real-time experience. I'd be glad to head up there anytime in the near future, I could go this week if that would help. -Doug

On 2012/01/30 3:18 PM, Stephanie Schmitt wrote:

Doug,

Thank you for contacting FFRF with your interest in this case. Yes, we are currently seeking parties who have had/will have contact with the statue. Have you been on the mountain before or would you have plans to go there in the future? If so, this is the ideal "injury" we are looking for in order to beat any standing issues.

I will add your information to our list.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jan 28, 2012, at 9:47 AM, Doug Bonham wrote:

Hello, I'm sorry my email didn't get to the right place, here's the one that I sent last week.
Thanks, Doug Bonham 406.888.9187

----- Original Message -----

Subject:Plaintiff for shrine on Big Mtn

Date:Sat, 21 Jan 2012 20:23:18 -0700

From:Doug Bonham <doug@hawkwil.com>

To:patrick@ffrf.org, Ian Cameron <ircam2112@gmail.com>

Hello,

I heard about the need for local plaintiffs for the upcoming lawsuit about the Jesus statue on Big Mountain. I'm interested in helping if you think it would be a good fit.

I currently live in Essex, Montana (60 miles from Big Mtn), Whitefish is the closest 'city' to where I live. I regularly have business in Missoula. I own my own business (electronic design) so that it's almost always easy for me to get to Missoula on weekdays.

I'm not yet a member of FFRF but would be glad to join. I don't have any ugly skeletons in my personal closet that could affect the case, and I have a set of emails I exchanged with organizers of a reunion in Glacier Park where I complained about being subjected to a christian blessing at a dinner that should have been secular and religiously neutral. My emails were cordial and thoughtful, but made clear how I felt offended by the service.

I might possibly be moving to Missoula, at least part time, in September 2012, although if so I will maintain an address in Essex, Montana.

Please feel free to call or write with questions.

Doug Bonham

PO Box 689

Essex, Montana

doug@hawkwil.com (the most reliable way to reach me regardless of where I am)

406.888.9187 (land line in Essex, the only way to way to reach me by phone when I'm in Essex 80% of the time).

425.218.6006 (cell when I'm on the road, 10% if the time)

From: Stephanie Schmitt <stephanie@ffrf.org>
Subject: Re: Montana Resident - Plaintiff
Date: February 6, 2012 2:38:46 PM CST
To: Kelly J Thibault <kthibault@midrivers.com>

Kelly,

We are moving forward with the filing of this lawsuit and prior to filing I would like to confirm that you are still willing to be named as a plaintiff. We have 2 other individuals that we are going to include at this time, and plan to add more in the future. I believe Annie Laurie has attempted to call you. If you can either phone us back or email, that would allow us to file. We would like to do so today, tomorrow at the latest.

Thank you,

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

Our staff attorneys represent the Freedom From Religion Foundation and are not the legal representatives of individuals. Neither the above communication, nor any letter(s) or e-mail(s) we send or any other action we take to resolve your complaint, creates an attorney-client relationship. FFRF bylaws protect its members' and prospective members' identities and FFRF will handle all complaints in confidence. FFRF will not divulge your identity without your express permission (or a court order requiring us to do so). However, FFRF cannot guarantee the confidentiality of all communications in all circumstances. At any time, you are free to obtain independent legal counsel to represent you in this matter.

On Jan 31, 2012, at 4:42 PM, Stephanie Schmitt wrote:

Begin forwarded message:

From: Stephanie Schmitt <stephanie@ffrf.org>
Subject: Re: Montana Resident - Plaintiff
Date: January 30, 2012 3:56:27 PM CST
To: Kelly J Thibault <kthibault@midrivers.com>

Thank you Kelly. I will let you know if/what may also be needed!

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jan 27, 2012, at 5:37 PM, Kelly J Thibault wrote:

Stephanie:

Forgot to mention in my last email that I'm available almost any time. I'm disabled and don't work.

Kelly

From: Stephanie Schmitt [mailto:stephanie@ffrf.org]
Sent: Thursday, January 26, 2012 8:28 AM
To: Kelly J Thibault
Cc: Rebecca Markert; Annie Laurie Gaylor
Subject: Re: Montana Resident - Plaintiff

Thanks Kelly, I look forward to hearing from you.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Jan 25, 2012, at 10:01 PM, Kelly J Thibault wrote:

Howdy:

I'll participate, but won't be able to get details to you until Saturday night.

Regards,
Kelly Thibault

November 16, 2011

Project Leader Derek Milner
Tally Lake Ranger District
650 Wolfpack Way
Kalispell, MT 59901

Mr. Milner:

I am a native Montanan and voter, who is a firm believer in the strict separation of church and state. I am writing you to ask that you not reauthorize the Knights of Columbus Special Use Permit, regarding the Jesus statue that sits on Flathead National Forest.

This land belongs to ALL Americans. As such, it cannot be used for a purely sectarian religious display. Proponents of the statue now claim it is a war memorial. This does not hold water since the application for the statue, which should have not been granted in the first place, stated that it is a religious display.

The following concerns the comment period and efforts by Representative Rehberg to preserve the statue. It really doesn't matter if 50 million people want the statue to stay and only a few want it removed. This is because the supreme law of the land, The Constitution, forbids its display on federal land. As a federal employee, you are required to uphold The Constitution.

Before I close, I will leave you with a quote. "The Government of The United States is not in any sense founded on the Christian religion." President John Adams, Treaty of Tripoli, 1797

Regards,

Kelly J Thibault
200 North Merriam Ave.
Miles City, MT 59301
kthibault@midrivers.com

From: "Kelly J Thibault" <kthibault@midrivers.com>
Subject: Letter to Editor - Whitefish Jesus Statue
Date: February 9, 2012 10:26:04 AM CST
To: <editor@flatheadbeacon.com>, <speakup@billingsgazette.com>
Cc: "Kelly Thibault" <kthibault@midrivers.com>

February 9, 2012

Dear Editor:

I am writing today to comment about the Whitefish Jesus Statue, sitting on land owned by all Americans. I find it curious that Christians, and in this case Catholics in particular, want to have things both ways. First they want to violate the First Amendment to the Constitution by keeping the Jesus statue on federal land. Now, they are claiming their First Amendment rights are being violated because President Obama's administration made a rule mandating coverage for contraceptives for those offering insurance. So do you want the government and religion to mix or not? You can't have it both ways.

Kelly Thibault
200 North Merriam Ave.
Miles City, MT 59301
406-853-4973

From: "Pamela Morris" <pml@imt.net>
Subject: confirm okay to act as plaintiff
Date: February 9, 2012 12:18:50 AM CST
To: "Stephanie Schmitt" <stephanie@ffrf.org>

Stephanie,

I am confirming my okay to serve as 1 of 3 plaintiffs in statute law suit, as per my phone conversation with Annie Luie Gaylor yesterday. This law suit has been featured in local news media today. TV said there were 3 MT plaintiffs. -I imagine that I will be named, and therefore may experience some threats. -All this should be interesting. Still, I am going ahead with plans to leave Friday am for a 10 day vacation (back on 2/22), but can be in communication via e-mail or arranged phone call. I am visiting my attorney son's family in St. Paul.

My father was a founder of Showdown ski area south of Great Falls, MT. I have skied several areas in Montana, but, yes, would enjoy skiing Big Mountain if it were indeed a welcome site for all who love nature. The statue is an intrusive icon. Tomorrow, I am skiing at Lost Trail Pass.

MT Rep. Rehberg on TV called you (us) "bullies" in his today's public comment about your law suit. The local newspaper called FFRF a bunch of atheists, and today's local TV said "Atheists and Agnostics." I am neither, but closest friend (an attorney) is. I consider myself spiritual, but not religious and not "Christian." I am a member of Unitarian Universalist's "Church of the Larger Fellowship." and have close connections with both Billings and Missoula UU communities. I have initiated communication on this subject with Glacier UU Fellowship. UU's have a strong "Justice" ministry. I may be able to generate a letter-writing campaign, should that help. I welcome you suggestions.

Also, have you initiated invitations from such as ACLU to join in or support your suit. I suggest a conversation with MT ACLU about this.

Namaste,
Pamela Morris (please, not "Pam:")
"Speak your peace."

From: Stephanie Schmitt [mailto:stephanie@ffrf.org]
Sent: Thursday, February 02, 2012 2:34 PM
To: Pamela Morris
Subject: Montana - Big Mountain

Pam,

It came to my attention that I may need to clarify the information I am seeking from you at this point. We need to know if you are making a deliberate choice to avoid Big Mountain because of the statue and if you would most likely ski there otherwise.

I hope I'm not confusing you! Let me know if you have any questions.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On 11/14/2011 I sent the message strongly protesting allowing a religious icon on federal lands for which I received no reply.

'comments-northern-flathead-tally-lake@fs.fed.us'

"Remove this public religious display from public lands, and confirm the practice that public lands are not to be used to promote any particular ideology. No trade of lands, either, as this is a public view that all deserve to enjoy in its natural state.

Such a display is pollution, as it is both artificial not environmentally beneficial.

No revenue is forthcoming from this to off-set the cost of use.

Permitting this statue is partisanship.

Selling or trading public lands to any religious entity violates separation of church and state.

This Catholic statue is a poor precedent: once allowed to continue, other special interest groups can use this gesture also to use public lands to display their own individual totems."

Pamela Morris
274 Christofferson Lane 406-961-4296
Corvallis, MT 59828

From: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: Fwd: Jesus Shrine in Montana (from our local complainant)
Date: December 19, 2011 1:47:28 PM CST
To: Dan Barker <dbarker@ffrf.org>, Rebecca Markert <markert@ffrf.org>
Cc: Stephanie Schmitt <stephanie@ffrf.org>, Patrick Elliott <patrick@ffrf.org>, Andrew Seidel <aseidel@ffrf.org>

willing to be part of a lawsuit --

That would read better for the media so I think that would be great -- but I don't think we'd need to be restricted to Montana. But a suit in Montana would be in the 9th -

I keep hoping "reason will prevail." The govt was smart to put it off til after the new year.

Annie Laurie

Begin forwarded message:

From: ian cameron <ircam2112@gmail.com>
Date: December 19, 2011 12:09:53 PM CST
To: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: Re: Jesus Shrine in Montana

Hi Annie,

With the ski hill now open and deep snow, it probably won't be possible to get a group photo done until spring. We'll discuss the possibilities at our next meeting in early January though. So far, we haven't been able to get a good, high resolution image of the shrine but will keep trying. I may go skiing over the holiday so will probably be able to get one then.

When you mention "hostile media", are you speaking about local media here? We have started an email campaign to get an article done on the Whitefish Pilot article but it seems that the local newspapers are dragging their feet. The Missoulian (larger city paper 2 hours south of Whitefish) did not call me on Friday as planned. Followed up with an email but no word yet. The suspicious side of me believes that there is a lot of resistance to publishing this story as it contradicts what these newspapers have already presented as the true history of the shrine (as well as a point of embarrassment for Mr. Rehberg).

At least one other person as well as myself, are willing to be plaintiffs if it come down to that. We'll also discuss this more at the Jan. meeting.

My father is doing better but BP still a little high. At 78, he's in pretty good shape.

Hope all is well with you, your family and staff at FFRF.

Ian Cameron
FASHA

On Sat, Dec 10, 2011 at 6:53 PM, Annie Laurie Gaylor <algaylor@ffrf.org> wrote:

Hi Ian,
How about getting the group to get their photo taken in front of the shrine?
We could also just just a pic of it by itself.

We have never encountered such hostile media. We have attempted to buy reprint rights from several dailies and secular TV and radio outlets and they won't let us!

We need large jpegs - preferably something that is very highly saturated in color (take on a blue day) - maybe you already have photos like that?

We need a higher quality, at least 180 dpi and very large - can be sent 1 at a time - for use in our newspaper -

Also, we may need locals to sign on as plaintiffs if we go to court. I'm not sure on the standing requirements. Maybe you can sound out the locals. There's no obligation and everything would be held in confidence.

We got the same as you - and wrote a letter about it - we've been so swamped & besieged with harassment in some creche

complaints we didn't have a chance to do a release but will next week. We did officially get it into the record.

Thanks much and glad to hear from you. Hope your father is OK.

Annie Laurie Gaylor
Co-President
Freedom From Religion Foundation
PO Box 750
Madison WI 53701
608/256-8900

On Dec 7, 2011, at 7:56 PM, ian cameron wrote:

Annie,

I received the two attached files (a 2 page article from the Whitefish Pilot - Sept 10th, 1954) from an anonymous person. It looks as though they also sent you a copy but wanted to make sure you have it on file. I think the article puts to rest the myth that the shrine was erected as a "war memorial". I sent the files to the relevant Forest Service office as they will be making a decision on the permit renewal soon (ending public comments on the 8th). Hope all is well with you and thanks for all your hard work.

Ian Cameron
Flathead Area Secular Humanist Association

P.S. We had our first meeting this past Sunday and it was well attended (10). Not enough were willing to attend a "rally" but still, off to a good start.

<sc0158350d.jpg><sc01580576.jpg>

--

Ian Cameron
www.iancameronphotography.com

From: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: Fwd: Jesus Shrine in Montana update on Ian Cameron
Date: January 18, 2012 8:27:12 PM CST
To: Rebecca Markert <rmarkert@ffrf.org>
Cc: Patrick Elliott <patrick@ffrf.org>, Stephanie Schmitt <stephanie@ffrf.org>

that's bad news ... he's been so helpful.
the rest is just our Scottish correspondence. I never heard Gaylor was Scottish but what do I know?

Begin forwarded message:

From: Ian Cameron <ircam2112@gmail.com>
Date: January 17, 2012 10:28:55 PM CST
To: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: Re: Jesus Shrine in Montana

Annie Laurie "The Bold" Gaylor,



I guess both of us have names that don't get any more Scotch and I don't think you could have a better suited last name!

Thanks for all the info.. I'll start putting the word out tomorrow in trying get as many plaintiffs as I can and the info. will certainly help me answer many of the questions I'm bound to get. Will let you know how it goes.

Unfortunately in my case, if we are able to get other plaintiffs, I will likely bow out of being a plaintiff. My wife and I are planning a move to Oregon as early as next year (weary of the winters here). Sorry for the bad news. I didn't really think it through before. If we aren't able to get other plaintiffs, not sure what the best course would be but am open to doing whatever I can as I am deeply committed to the fight and will do everything I can to see it through or help others in that regard.

The Robbie Burns party sounds like fun. I've yet to have haggis yet. If you haven't had it yet, you'll have to let me know if it is better than it sounds:).

Ian "Crooked Nose" Cameron





p.s. My wife and I are going to the Reason Rally. Hope to meet you and Dan if you are going.

p.p.s. Really sorry to hear of Jessica's A's struggles. I imagine it's pretty tough for her and her family and wanted to thank you all for your ongoing support for her.

On Jan 17, 2012, at 4:20 PM, Annie Laurie Gaylor <algaylor@ffrf.org> wrote:

Hi,

I hesitate to tell you how long Mt Soledad was - over 20 years, but I've never heard of another case like that, and since it's just been fought and won in the 9th circuit, it's actually good timing to avoid something that prolonged. Courts might be impatient with delaying tactics. But I think we could expect some Congressional interference. I don't have a response yet from the litigation attorney I've consulted so we're still in the "mulling over" stage. I can't think of any other remedy tho.

The attorneys do all of the work. Any federal plaintiff would be publicly named in the caption (usually it gets abbreviated to something like "FFRF v. Forest Service") throughout the lawsuit, part of the legal record, possibly mentioned in news articles, etc. Any plaintiff would need to talk with the attorney and give at least 1 affidavit (but this is usually written up by the attorney for your approval after interviewing you). It would be ideal to have at least some plaintiffs who had personally encountered the shrine when skiing or visiting the mountain, and/or knew of it by reputation and disapproved of it prior to the recent controversy. However, someone who didn't know it was there but really objected once they learned would be OK.

There is always the possibility of depositions - where you get interviewed by both sides. If this would happen, it doesn't necessarily involve all plaintiffs. Sometimes they just depose us, or depose us and 1 representative plaintiff. This can take a morning or afternoon. Usually attorneys fly out and come to where the plaintiffs are. The "other side" would likely do this to basically increase the legal costs to FFRF! You are given instructions by an attorney and you answer as briefly as possible/"yes" or "no." These questions may establish residency and your views on religion and against the shrine but don't go far afield. They might ask: when did you become aware of the Jesus Shrine? Why does it bother you? They might ask you some dumb questions - would it be OK if there was a Buddha statue? (easy question - no) It's pretty basic stuff.

There is no cost to plaintiffs. Generally speaking, time involved is minimal but it is a serious commitment. If a case drags on, if we end up losing a plaintiff to an unexpected move etc., that's OK so long as we have several left but we wouldn't want to sign up someone who's planning to move out of state in 2 years.

We have never heard of any fishing expedition on plaintiffs. Character is not an issue - it's a straight state/church violation, but if there were some public conviction that might embarrass the plaintiff or FFRF, we'd better know about it in advance or you might want to consider that before sounding out a prospective plaintiff. We have taken over 50 lawsuits and this has never been an issue. That would be something to talk with a litigation attorney or one of our staff attorneys about, not me by email.

There is only one district - with 5 venues - where courthouses are. The courts there would ask: where does it make the most sense to take the case? We think probably the courthouse closest to Flathead would be chosen. Certainly Missoula would make sense & we really like your description of it. At this point we'd appreciate it if you'd spread the word to freethinkers you know in Montana. We will also send out, if needed, an email to our Montana membership but we're not quite there yet. We don't "sign anybody up" until the

attorney does a complete interview and that gives prospective plaintiffs a chance to ask any questions. The only thing that might be prohibitive is if some people are really far away, from a practical point of view that might make potential depositions harder.

Thanks so much, Ian! Can't get over your Scottish name. Dan and I are going to a Robbie Burns dinner party this weekend!

Annie Laurie

On Jan 17, 2012, at 10:16 AM, ian cameron wrote:

Annie,

Thanks for passing our media struggles on to your publicist. We sent a letter to the editor (co-signed by 5 FASHA members!) in to local newspapers expressing concern about the lack of staff driven coverage on the 1954 Whitefish Pilot article. Our hope is that it might have an impact on public perception and the Forest Service decision (not that public opinion *should* have an impact!). In the end, the letter to the editor will at least let the local papers know that we will "call them out" if and when needed.

I'm disappointed to hear that the feds will likely approve the permit but am on board as far as doing whatever I can to prep. for potential litigation (helping find lawyer, plaintiffs, etc). Wanting to be proactive, I have a couple of questions that I imagine others will ask of me:

- can you give an estimate as far as a minimum of how long similar litigation takes? I imagine there are many variables. e.g. I think the Mt. Soledad case was 13 years? Is that typical?
- how much of a commitment of personal time from plaintiffs is typically needed? Do the attorneys do the vast majority of the work?
- can the plaintiffs "character" be brought up as part of the defense's strategy? e.g. legal history, any skeletons in the closet, etc..
- can the plaintiffs be from outside the local area? e.g. Missoula, which is 2 hours south, has a secular group (Missoula Area Secular Society) and some of their members may be interested, increasing the plaintiff "pool".

For what it is worth, as far as the legal landscape of Montana: I did some research and there are 5 US District Courts in Montana - Billings, Butte, Great Falls, Helena and Missoula. Assuming that the case would initially be heard in one of these courts and that an attorney can be found there, I would pick Missoula. It is a college town, is one of the most liberal/progressive towns in Montana (not sure if that makes any difference), one of the 3 judges in that court is much despised as a "progressive" judge (Molloy), and it would be the closest for Flathead area and Missoula plaintiffs.

I am, maybe naively, encouraged that we are in the US 9th District Court of Appeals which, as judged by the Mt. Soledad case, is a pretty good district to be in for our cause.

As always, thank you and your staff for all the hard work you do:)

Ian Cameron
Flathead Area Secular Humanist Association
Whitefish, Mt
406-261-3195

On Mon, Jan 16, 2012 at 3:47 PM, Annie Laurie Gaylor <algaylor@ffrf.org> wrote:

Dear Ian,

I am letting our staff publicist know about this - maybe she can redouble efforts or will have some ideas for you.

We are getting the scuttlebutt from our sources that the feds will formally approve the Jesus shrine to stay at end of month or in February. We are wanting to line up a lawsuit to be ready to go. Last time we spoke, you were willing to be a plaintiff. We find that it is smart to have 3 or 4 persons, because that dissipates negative attention, plus we usually put FFRF's name first, so we get the crankmail, not local plaintiffs. but it is ideal to have more than 1 local plaintiffs.

I was out of town when this email came in so didn't respond in time for your Sunday meeting -- but perhaps you could spread the word and see if there are others who would join as plaintiffs. Ideally, it's helpful if most of them are (or become) FFRF members because that retains FFRF's standing. We are looking for folks willing to be named, and who have no plans to move from Montana, as lawsuits can take a long time. In a lawsuit, the news article ("smoking gun") you refer to could be part of the initial legal complaint and would go into the record and could be referred to in arguments repeatedly. So whether news media covers it or not, it would be important.

In order to file suit, we need to have/find an attorney in Montana willing to act as local counsel. This is someone who would need

to be admitted already to the federal bar, They are essentially providing "legwork," filing the case locally, etc. for us. We can pay if someone doesn't want to do this pro bono or on spec; but we do ask for a nonprofit hourly rate. They would work directly with our litigation attorney.

If you know such folks or could put out the word, that would be great. Despite the glut of attorneys, finding local counsel to work with us is one of our hardest legal problems believe it or not. I am not familiar with the federal courts in Montana but I imagine you just probably have one district and the attorney, if willing to travel to Helena?, could probably live anywhere in the state. But living close to the federal court would be a plus.

Please let us know what responses you get and how you feel about this. I'm afraid we have no choice but to sue.

Thank you!

Annie Laurie

On Jan 6, 2012, at 9:53 AM, ian cameron wrote:

> Hi Annie,

>

> Hope you had a good winter solstice season. Have been catching up on Freethought Radio podcasts - love em!. Regarding the Jesus Shrine, we are experiencing a media "blackout" in regards to the 1954 Whitefish Pilot article (one paper, the Daily Interlake did publish a FASHA editorial). The Whitefish Pilot is "taking a wait and see approach" according to the editor there. Both are owned by the same media company. I am planning on writing another editorial calling the media out on this issue but wonder if that is a good move. If you or your staff have any suggestions/insights in working with the media, I'd appreciate it. Thanks.

>

> Ian Cameron/members

> Flathead Area Secular Association

>

> p.s. we're having our second meeting this coming Sunday. Should have 20 or so there - a doubling of last month.

--

Ian Cameron

www.iancameronphotography.com

From: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: no new plaintiffs - see media development
Date: January 31, 2012 11:19:12 AM CST
To: Stephanie Schmitt <stephanie@ffrf.org>, Rich Bolton <rbolton@boardmanlawfirm.com>

Begin forwarded message:

From: ian cameron <ircam2112@gmail.com>
Date: January 31, 2012 11:09:56 AM CST
To: Annie Laurie Gaylor <algaylor@ffrf.org>
Subject: Re: any further word?

No luck in finding any other plaintiffs:(. But, one of our local papers did finally refer to the 1954 whitefish Pilot article in an article today - http://www.dailyinterlake.com/news/local_montana/article_651bdeb8c-4bb6-11e1-89da-0019bb2963f4.html?cbsi=53 (small successes!). I have already sent a letter to the House Committee and asked FASHA and other groups to do the same. Hopefully we can head this 'land swap' plan off at the pass. The timing of this press release and the article indicate to me that the Forest Service will make a decision this week.

On Mon, Jan 30, 2012 at 4:37 PM, Annie Laurie Gaylor <algaylor@ffrf.org> wrote:

Ian,

We would love to find people who have recently visited the shrine, either before or after this was in the media. We are going forward without individually naming local plaintiffs at the moment, so we can still add such folks.

Many thanks!
Annie Laurie

On Jan 18, 2012, at 10:57 AM, ian cameron wrote:

- > Annie,
- >
- > Just to let you know I sent out "action alert" emails to every secular/atheist group and members that I know of in Montana - FASHA, Missoula Area Secular Association (MASS), Montana Atheists, National Atheist Party of Montana, Billings Association of Humanists and Bozeman Freethinkers.
- > Hopefully we'll get a few interested in being plaintiffs esp. from our western area (FASHA or MASS). I also asked Missoula members if they could recommend an attorney who might enthusiastically take on the case there. Will Keep you updated. If folks have questions I can't answer, should I refer them to you directly or someone else on your staff e.g.) legal team?
- >
- > Ian Cameron
- > FASHA
- >

--
Ian Cameron (founder and administrator)
Flathead Area Secular Humanist Association (FASHA)
www.flatheadsecular.com
406-261-3195

From: ian cameron <ircam2112@gmail.com>
Subject: Re: Filing suit/Jesus Shrine
Date: February 2, 2012 12:31:35 PM CST
To: Stephanie Schmitt <stephanie@ffrf.org>

Stephanie,

Found it. Here is the video link

<http://www.nbcmontana.com/video/30346072/index.html>

Ian C.

On Thu, Feb 2, 2012 at 11:25 AM, ian cameron <ircam2112@gmail.com> wrote:
Here are the links Stephanie;

Montana National Public Radio - http://www.mnpr.org/podcasts/audio/mtee_newscasts/01-31-2012Newscast.mp3
Daily Interlake - http://www.dailyinterlake.com/news/local_montana/article_dea86d4e-4c3d-11e1-b2bd-0019bb2963f4.html
Flathead Beacon -
http://www.flatheadbeacon.com/articles/article/wisconsin_organization_suing_forest_service_over_jesus_statue_permit_renewal/26460/
KCFW 9 TV (unfortunately, they don't have the video available yet but am checking on it) -
<http://www.nbcmontana.com/kcfw/30346078/detail.html>

Ian C.

On Thu, Feb 2, 2012 at 10:35 AM, Stephanie Schmitt <stephanie@ffrf.org> wrote:
Ian,

I will pass along your gratitude, but we obviously couldn't take this on without supporters like you!
If you want to pass those interviews along, it wouldn't hurt.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

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On Feb 1, 2012, at 7:57 AM, ian cameron wrote:

FFRF staff,

I want to personally thank you all for filing suit in support of freethinkers everywhere. It was quite a pleasure for me to hear both Annie and I in the same news piece on Montana Public Radio yesterday - http://www.mnpr.org/podcasts/audio/mtee_newscasts/01-31-2012Newscast.mp3. In case they may be of some use to FFRF, I did do a few other interviews yesterday (local TV and 2 newspapers) and can send links if needed. I also sent out several emails encouraging others around the state to please consider a membership/donation to FFRF as a gesture of support and appreciation for FFRF's efforts. Thanks again.

--

Ian Cameron (founder and administrator)

Flathead Area Secular Humanist Association (FASHA)
www.flatheadsecular.com
[406-261-3195](tel:406-261-3195)

--

Ian Cameron (founder and administrator)
Flathead Area Secular Humanist Association (FASHA)
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www.flatheadsecular.com
[406-261-3195](tel:406-261-3195)

From: Ian Cameron <ircam2112@gmail.com>
Subject: House hearing on Jesus Shrine
Date: February 2, 2012 12:57:26 AM CST
To: Stephanie Schmitt <stephanie@ffrf.org>

Stephanie,

I realize that with FFRF filing suit, you may not be able to respond to my questions and maintain the integrity of the case. In that case, just let me know as I don't want to do anything that would make your job more difficult. If you think FASHA should "cool it" for a while, just let me know that as well. I did several interviews yesterday and in the back of my mind I had concerns about saying something that could be damaging to the case. I guess I'm asking for a little direction for our activities in an effort to be consistent with the goals of the litigation. Pending all that:

I wanted to make sure that you are aware that Mr. Reberg is presenting his "land swap" proposal to a House Committee on Friday Feb. 3rd. In assuming that this is a major event in this issue, I've submitted a letter to the committee asking them to reject the proposal. Out of interest and if appropriate for you to answer at this point; if the land swap is approved and the shrine is then on private land, do you think there is still a basis for continued litigation? Also, do you think it would help the case if FASHA applies for a Forest Service special use permit to erect a secular statue on Big Mountain e.g.) the AHA logo or other secular symbol? My thinking is that if they reject the permit, it may strengthen your case.

Thanks for your time.

Ian Cameron
FASHA
406-261-3195

From: ian cameron <ircam2112@gmail.com>
Subject: Re: Montana case
Date: February 6, 2012 1:26:57 PM CST
To: Stephanie Schmitt <stephanie@ffrf.org>

I don't have any personal history with the statue unfortunately. I've lived in Whitefish (at the base of the mountain) for 10 years and I've been skiing there before but don't recall seeing the shrine. I do have plans on going up sometime soon though if that is of help. As soon as I found out about it, I sent in a letter to the editor in opposition and a couple of others since then. I'm the founder of Flathead Area Secular Humanist Assoc. and have been the lead spokesperson. I've appeared on local TV news 3 times and several mentions in the local newsprint in opposition. One factor for me is that we do have plans to move out of state within the next couple of years although we would need to sell our home first. Another factor is that I do have a felony on my record. I'm not sure how much of a liability this would present to the case but thought you should know before proceeding too far. Wish I had better news for you but please let me know what you think and how I can help in any way.

On Mon, Feb 6, 2012 at 12:07 PM, Stephanie Schmitt <stephanie@ffrf.org> wrote:

Ian,

I know you've spoken to Annie Laurie the majority of the time, but I realized I'm not aware of what history you have with the statue. We are hoping to file today, but there is a discussion about whether or not to file with an individual mentioned. We may still want to include you as a plaintiff, and if so, I should be in the loop on what connection (if any) you have with the statue.

I will keep you updated, but wanted to get that information from you.

Stephanie Schmitt
Staff Attorney
Freedom From Religion Foundation, Inc.
PO Box 750
Madison, WI 53701
(608) 256-8900

Our staff attorneys represent the Freedom From Religion Foundation and are not the legal representatives of individuals. Neither the above communication, nor any letter(s) or e-mail(s) we send or any other action we take to resolve your complaint, creates an attorney-client relationship. FFRF bylaws protect its members' and prospective members' identities and FFRF will handle all complaints in confidence. FFRF will not divulge your identity without your express permission (or a court order requiring us to do so). However, FFRF cannot guarantee the confidentiality of all communications in all circumstances. At any time, you are free to obtain independent legal counsel to represent you in this matter.

--
Ian Cameron (founder and administrator)
Flathead Area Secular Humanist Association (FASHA)
www.flatheadsecular.com
406-261-3195

10/26/12

Jesus statue saved — for now — Daily Inter Lake: Local/Montana



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Jesus statue saved — for now

Group vows to file suit over permit renewal

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Inter Lake file photo

WWII memorial statue of Jesus

A PERMIT has been renewed for this statue of Jesus on Big Mountain.

Posted: Tuesday, January 31, 2012 7:45 pm | Updated: 8:31 pm, Tue Jan 31, 2012.

By JIM MANN/The Daily Inter Lake | 42 comments

Flathead National Forest Supervisor Chip Weber has approved a special use permit allowing a statue of Jesus to remain on federal land on Big Mountain, but the Wisconsin-based Freedom From Religion Foundation intends to file a lawsuit challenging the Forest Service decision.

Weber announced Tuesday his reauthorization of the 10-year permit for the Kalispell Knights of Columbus to keep the statue on the 25-by-25 foot parcel of land where it has been since 1954.

The decision reversed a determination Weber made last August to deny the permit renewal, which touched off an enormous public response, mostly from statue supporters.

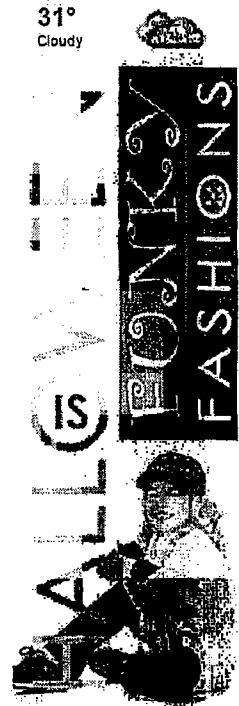
In a statement, Weber explained that "the statue is important to the community for its historical heritage based on its association with the early development of the ski area on Big Mountain."

The statement also cited the statue's eligibility for listing on the National Register of Historic Places as a factor in the decision.

U.S. Rep. Denny Rehberg, R-Mont., praised the Forest Service for having "the courage to do the right thing" and he said the strong public response likely played a part.

In reconsidering the permit request, the Forest Service solicited public input and got 95,000 comments, most of them generated from Rehberg's congressional website and an online letter posted by the American Center for Law and Justice, a national organization that counters groups such as the Freedom From Religion Foundation.

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10/26/12

Jesus statue saved — for now — Daily Inter Lake: Local/Montana

Annie Laurie Gaylor, a spokeswoman for the foundation, said Wednesday that a lawsuit already was prepared and would be filed by today in U.S. District Court in Missoula.

"We were going to sue before this happened so we've got our complaint together and we'll be seeing them in court," Gaylor said, explaining that regardless of the Forest Service decision, the statue's continued presence on federal land was unacceptable to the group.

The foundation maintains that the statue violates the Establishment Clause of the U.S. Constitution.

"We are dedicated to the constitutional principle of separation between church and state," she said, adding that the group is currently engaged in eight lawsuits "related to keeping religion out of government."

Statue supporters do not regard it as being illegal.

"We're delighted that federal officials understood what we have argued all along — that this statue of Jesus does not convey any government endorsement of religion," said Jay Sekulow, chief counsel for the American Center for Law and Justice.

"Instead, this historically important memorial is designed to commemorate the sacrifice made by those killed in World War II. We believe the more than 70,000 concerned individuals we represented in this issue played a vital role in convincing the federal government to make the correct decision to reauthorize a special use permit, which will keep the statue in place."

The Knights of Columbus, veterans and other statue supporters maintain that it is a monument to World War II veterans, particularly members of the 10th Mountain Division who were active in the establishment of the ski area.



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But that claim has been challenged by the recently formed Flathead Area Secular Humanist Association.

A spokesman for that group, Ian Cameron, cites a 1954 Whitefish Pilot article that repeatedly refers to the statue as a shrine and not as a veterans memorial.

Rehberg was prepared to cancel a hearing on Friday for legislation that would clear the way for the Flathead Forest and Whitefish Mountain Resort to swap similar parcels of land, a move that would make the statue parcel part of the resort property and allow the statue to stay where it is.

Because of the pending litigation, the hearing still will be held before the House Subcommittee on National Parks, Forests and Public Lands on Friday and Rehberg said he will continue to push for an official listing of the statue as a historical site.

He said the hearing will allow for the legislation to advance in Congress if the court rules against the Forest Service.

Scheduled to testify at the hearing in Washington, D.C., on behalf of the Kalispell Knights of Columbus is Charlie Harball, Kalispell's city attorney and interim city manager.

Harball said members of the Catholic fraternal organization were "thrilled" with the decision to grant the special use permit.

He speculated that an opinion from the Montana Historical Preservation Office was influential in the decision.

"They determined that the war memorial is a legitimate historical site," Harball said, adding that there will be an effort to get it officially recognized as such.

Keeping the statue in its current location "isn't the biggest thing in the world, but it is something people certainly care about," Harball said.

Reporter Jim Mann may be reached at 758-4407 or by email at jmann@dailyinterlake.com.

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Posted in Local montana on Tuesday, January 31, 2012 7:45 pm. Updated: 8:31 pm

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10/26/12

Jesus statue saved — for now — Daily Inter Lake: Local/Montana

Jesus statue saved — for now

By JIM MANN/The Daily Inter Lake | Posted: Tuesday, January 31, 2012 7:45 pm

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Exhibit 10

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Active Memberships

Membership	Start Date	End Date	Status	Source	
Individual	February 22nd, 2012	February 2nd, 2012	February 1st, 2013	Current	AP newspaper/article

Richard L. Bolton

From: Stephanie Schmitt [stephanie@ffrf.org]
Sent: Friday, October 26, 2012 9:55 AM
To: Richard L. Bolton
Subject: Fwd: Member verifications

Here are the member screenshots. The rest I am working on.

Stephanie

Begin forwarded message:

From: Katie S <katie.s@ffrf.org>
Subject: Re: Member verifications
Date: October 26, 2012 9:45:51 AM CDT
To: Stephanie Schmitt <stephanie@ffrf.org>

Mr. Ian Cameron

Actions Edit Delete Contact

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Household	August 5th, 2011	August 1st, 2012	August 1st, 2014	Current	Freethought Radio		View Edit more ▶

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Active Memberships

Membership	Member Since	Start Date	End Date	Status	Source	Auto Renew	
Individual	September 8th, 2009	February 2nd, 2012	February 1st, 2013	Current	Word of mouth		View Edit more ▶

Pamela Morris

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Membership Type	Start Date	End Date	Status	Source	Auto Renew	
Individual	February 16th, 2012	September 1st, 2012	February 1st, 2014	Current	Referral	View Edit more ▶

Doug Bonham

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Gift	February 16th, 2012	February 2nd, 2012	February 1st, 2013	Current	Other*	View Edit more ▶

Katie Stenz

Publicist

Freedom From Religion Foundation

PO Box 750

Madison, WI 53701

608-256-8900

FFRF.ORG

On Oct 26, 2012, at 9:18 AM, Stephanie Schmitt wrote:

Home » Publications » Freethought Today » News » FFRF suit contests federalizing Jesus

Freethought Today · Vol. 29 No. 2 March 2012
Published by the Freedom From Religion Foundation, Inc.

Ski run statue on legal slippery slope FFRF suit contests federalizing Jesus



Can nonfaith move a mountain religious symbol? The Freedom From Religion Foundation filed suit Feb. 7 in U.S. District Court in Montana, challenging the U.S. Forest Service's decision to renew a special permit to maintain a Jesus shrine on Big Mountain near Kalispell.

FFRF seeks a declaration that the "continued presence of a six-foot-tall statue of Jesus Christ in the Flathead National Forest, on a 25-by-25-foot plot owned and administered by the United States Forest Service, violates the Establishment Clause of the First Amendment to the Constitution of the United States."

The Knights of Columbus, an ultra-conservative Roman Catholic men's organization, applied for a permit for the express religious purpose of erecting "a Statue of our Lord Jesus Christ" in 1953. The shrine, erected in 1954, is similar to Jesus shrines the Knights of Columbus places "on its own extensive real estate holdings." The Knights have has never paid any money for the privilege of appropriating a prominent parcel of federal land for their proselytizing symbol.

The Forest Service has continued to "sanction the looming presence" of the shrine overlooking Big Mountain ski run, until the most recent lease ran out in late 2010.

Chip Weber, Flathead National Forest Supervisor, determined last year, after a complaint by FFRF, that the statue's presence was inappropriate. On Aug. 24, 2011, Weber noted in a formal statement that a shrine on federal land conflicted with Supreme Court decisions and established case law, and that it would be removed no later than Oct. 31, 2012.

U.S. Rep. Denny Rehberg, who is campaigning for the Senate, publicly denounced the decision and started a website, vetsforjesus.com, which takes visitors to his Congressional website and a pitch to retain the shrine.

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Weber capitulated in an Oct. 21 announcement, withdrawing the earlier decision, and calling for a public comment period. Weber's letter referred to "new information" that the Jesus statue is supposedly eligible for listing on the National Historic Register, a suggestion the Forest Service itself made to the Montana Historic Preservation Office. Religious monuments and properties are not eligible for listing on the National Register of Historic Places.

As part of the "public comment" period, FFRF shared samples of the vicious hate mail it has received from shrine supporters. FFRF's legal complaint notes that the shrine's presence on federal property amounts to governmental endorsement of Christianity in general and Catholicism in particular.

FFRF is asking the court to enjoin the defendant from continuing to approve the shrine for federal property and ordering Weber to direct the Knights of Columbus to remove it.

FFRF is bringing the lawsuit on behalf of its Montana membership including members who have had "direct and unwelcome exposure" to the Jesus shrine, some of whom have "altered their conduct to avoid Big Mountain because of the Jesus statue."

The case is filed on FFRF's behalf by attorney Richard L. Bolton and local counsel Martin S. King.

[Read the full Complaint](#)



[FFRF privacy statement](#)

FFRF is a non-profit, educational organization. All dues and donations are deductible for income-tax purposes.

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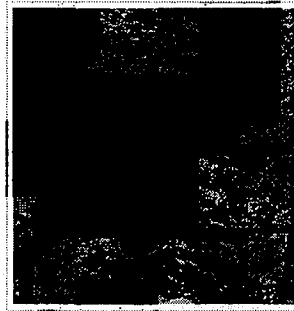
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FILES FEDERAL LAWSUIT

FFRF challenges Catholic shrine on Big Mountain

February 8, 2012



The Freedom From Religion Foundation, a state/church watchdog and the nation's largest association of atheists and agnostics, has filed suit in U.S. District Court in Montana, challenging the Forest Service's decision to renew a special permit to maintain a Jesus shrine on federal property in the Rockies.

The case was filed late yesterday on behalf of FFRF's 17,500 members, including more than 100 in Montana and those "who have had direct and unwanted exposure to the shrine" on Big Mountain near Whitefish Mountain's Resort Chair Two in Flathead National Forest.

FFRF seeks a declaration that the "continued presence of a six-foot-tall statue of Jesus Christ in the Flathead National Forest, on a 25-by-25-foot plot owned and administered by the United States Forest Service, violates the Establishment Clause of the First Amendment to the Constitution of the United States."

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As part of the "public comment" period, FFRF shared samples of the vicious hate mail it has received from shrine supporters. FFRF's legal complaint notes that the shrine's presence on federal property amounts to governmental endorsement of Christianity in general and Roman Catholicism in particular. The Forest Service's actions "diminish the civil and political standing of non-religious and non-Christian Americans."

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Exhibit 11

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FREEDOM FROM RELIGION
FOUNDATION, INC.,
P. O. Box 750
Madison, WI 53701,

Plaintiff,

vs.

CHIP WEBER, FLATHEAD NATIONAL
FOREST SUPERVISOR
UNITED STATES FOREST SERVICE
650 Wolfpack Way
Kalispell, Montana 59901,

Defendant.

Cause No. CV12-19-m-DLB

**DECLARATION OF
WILLIAM A. COX**

I, William A. Cox, do hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following facts set forth below are true and correct to the best of my knowledge:

1. I live in Kalispell, Montana, 15 miles south of Whitefish, Montana. I am a member of the Freedom From Religion Foundation, Inc.
2. I am a frequent skier and I ski past the statue of Jesus on "Big Mountain" many times each winter. I most certainly plan to continue to ski on "Big Mountain" in the future, including this next winter, when I will again have exposure to the Jesus statue.
3. Shortly after the U.S. Forest Service denied the lease renewal for the land beneath the statue of Jesus on Big Mountain last year, proponents of the statue declared that it was a war memorial erected in recognition of the deeds of American servicemen during World War II.

4. Prior to the war memorial explanation that materialized last year, I had never heard or otherwise known that the statue was anything other than an absurd likeness of Jesus in a Roman Catholic style. I knew of no indication that the statue had originated as a war memorial.

5. Earlier this year, while skiing past the statue, I noted a small bronze plaque adjacent to the statue that I presume explains its origin and purpose. I do not know how long the plaque has been in place, but in any event, the statue is utterly inappropriate as a public war memorial. It is an unambiguously Christian religion monument with nothing about it to remind one of the heroism or the heartache of war.

6. As a rationalist and non-believer, I consider the statue of Jesus on public land to be ridiculous and offensive. It is a religious monument, conspicuously Roman Catholic in style, that belongs in the courtyard of a monastery or on the roof of a church, in my opinion.

7. As a regular skier, however, I do have frequent and unwanted contact and exposure to the statue when I am skiing on Big Mountain many times each winter, which I find to be offensive.

Dated this _____ day of August, 2012.

William A. Cox

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2012, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification electronically to all attorneys of record.

/s/ Richard L. Bolton
Richard L. Bolton

F:\DOCS\WD\26318\31\A1459351.DOCX

Exhibit 12



'Big Mountain Jesus' Statue Divides Montanans

December 03, 2012 3:00 PM

Listen to the Story

All Things Considered

4 min 47 sec

A group of atheists has filed a lawsuit seeking the removal of a statue of Jesus on federal land near a Montana ski resort. Melissa Block talks with William Cox of Kalispell, Mont., who is the plaintiff in the lawsuit.

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MELISSA BLOCK, HOST:

If you get off chairlift two at Whitefish Mountain Resort in Montana, you'll swish by a life-sized statue of Jesus wearing a light-blue robe, his arms outstretched. It's known as the Big Mountain Jesus. It's been there since 1955, erected by the Roman Catholic organization the Knights of Columbus, and it stands on a small parcel of federal land. Last year, the U.S. Forest Service decided not to renew the statue's permit, but after a public outcry, the service allowed it to stay.

Well, that in turn triggered a First Amendment lawsuit from the atheist and agnostic group the Freedom From Religion Foundation, which argues the statue violates the principle of separation of church and state. They want the statue taken down. And now, a federal judge in Montana has ruled that suit can go forward because Kalispell resident and longtime skier William Cox has been named as an injured party in the suit.

WILLIAM COX: I've regarded the statue as an absurdity. I resented it the first time I saw it, and it's just - and kind of a bizarre thing to discover Jesus standing there in the snow. So I thought to myself, I think I'll join this organization. I'm no longer a person of faith, and subsequently, they contacted me and asked whether I would care to be a witness.

BLOCK: Mr. Cox, what's the constitutional issue as far as you're concerned?

COX: Well, the First Amendment is the constitutional issue. It provides that Congress should pass no law establishing religion, and by extension, that's been applied to the agencies authorized by Congress of which the Forest Service is one. You know, we live today in a religiously diverse and multicultural society, and it's offensive to many people, some of whom I know intimately. My wife is Jewish, and it's worrisome to them that religion, particularly Christianity, plays such a prominent role in our political life. Often, it appears to me to be a somewhat hypocritical role. In any event, the Constitution provides that in essence the federal government shall not establish religion, and this is a clearly religious shrine.

BLOCK: Let me ask you this: The statue, as I understand it, was put up 57 years ago, and originally it was meant to honor soldiers from the 10th Mountain Division who saw similar shrines when they were fighting in the mountains of Italy during World War II. They say - supporters say it's a military memorial, not a religious shrine.

COX: That may have been the history. I don't know of anyone around here who knew that before this controversy occurred. And it may well be that the soldiers encountered Christian monuments in Europe and in the mountains and found them to be comforting or inspiring, but that doesn't change our Constitution, I think, and this is, as a war memorial, really outrageous. I mean, when did Jesus bless a war?

BLOCK: The permit for the Jesus statue on this mountain has been renewed many times before. Do you think there's some validity to folks who say, look, this is a part of our local culture, it's been here for a very long time, just let it stay?

COX: Well, it is a part of the local culture. I think that's true. And some people regard it with a certain amount of nostalgia and might miss it if it's removed. Whether that's a valid legal argument or not, I'm going to leave it to the judge.

BLOCK: Well, Mr. Cox, thanks for talking with us today.

COX: Thank you.

BLOCK: That's William Cox of Kalispell, Montana, who objects to the Big Mountain Jesus statue. A lawyer for the Knights of Columbus defended the statue in an email to NPR today. Eric Baxter writes this: The government allows all kinds of activity on Big Mountain. It leases land to a private resort for ski runs. It also leases a small piece of land to the Knights of Columbus for maintaining a war memorial. The government cannot discriminate against the Knights of Columbus just

because they are religious, and it is not promoting religion any more than it is promoting skiing.

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Exhibit 13

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION
FOUNDATION, INC., a Wisconsin non-profit
Corporation,

Plaintiff,

VS.

CHIP WEBER, FLATHEAD NATIONAL
FOREST SUPERVISOR, and
UNITED STATES FOREST SERVICE, an
Agency of the United States Department
of Agriculture,

Defendants,

and

WILLIAM GLIDDEN, RAYMOND LEOPOLD,
EUGENE THOMAS, NORMAN DeFORREST,
and the KNIGHTS OF COLUMBUS,

Defendant-Intervenors.

Cause No. CV12-19-M-DLC

PLAINTIFF'S AMENDED ANSWERS
TO FIRST SET OF
INTERROGATORIES BY
DEFENDANT-INTERVENORS

The Plaintiff, Freedom From Religion Foundation, answers the First Set of Interrogatories by Defendant-Intervenors as follows:

REQUESTS

1. Identify each person likely to have discoverable information that you may use to support your claims or defenses, and as to each such person, identify the knowledge or information he or she possesses.

RESPONSE: The following persons are likely to have discoverable information that plaintiff may use to support its claims.

- a. Chip Weber: Information relating to the Jesus Statue that is the subject of this litigation, including information relating to the history of authorization to place the statue on Forest Service Property. He also may have information relating to the decision making process in 2011-12 relating to reauthorization for the statue to remain on government property.
- b. Ian Smith: Information related to the history and perceptions of the Jesus statue that is the subject of this litigation.
- c. Bill Cox: Information relating to exposure and reaction to the Jesus statue that is the subject of this litigation.
- d. Doug Bonham: Information relating to exposure and reaction to the Jesus statue that is the subject of this litigation.
- e. Pamela Morris: Information relating to exposure and reaction to the Jesus statue that is the subject of this litigation.
- f. Kelly Thibault: Information relating to exposure and reaction to the Jesus statue that is the subject of this litigation.
- g. Ian Cameron: Information relating to exposure and reaction to the Jesus statue that is the subject of this litigation.
- h. William Glidden: Information relating to history and maintenance of the Jesus statue that is the subject of this litigation.
- i. Raymond Leopold: Information relating to history, perception and maintenance of the Jesus statue that is the subject of this litigation.
- j. Norman DeForrest: Information relating to history, perception and maintenance of the Jesus statue that is the subject of this litigation.
- k. Eugene Thomas: Information relating to history, perception and maintenance of the Jesus statue that is the subject of this litigation.
- l. Annie Laurie Gaylor: Information relating to FFRF associational status and objections made to the Jesus statue that is the subject of this litigation.
- m. Dan Barker: Information relating to FFRF associational status and objections made to the Jesus statue that is the subject of this litigation.
- n. Stephanie Schmitt: Information relating to contacts with the Forest Service regarding the statue that is the subject of this litigation.

- o. Denny Rehberg: History of the Jesus statue as war memorial modeled on European religious icons.
 - p. Derek Milner: Forest Service Project leader has information related to public comment and decision-making leading to permit renewal for Jesus statue.
 - q. Timothy Light: Forest Service Archeologist has information related to eligibility of Jesus statue for listing on National Register of Historic Places.
 - r. Josef Warhank: State Historic Preservation Office has information related to listing eligibility of Jesus statue on National Register of Historic Places.
 - s. Dan Graves: Whitefish Mountain Resort CEO has information related to history and perception of Jesus statue as war memorial modeled on European religious icons.
 - t. Lisa Timchak: Forest Service District Ranger has information regarding consideration of KOC renewal application for Jesus statue.
 - u. Carl Davis: Forest Service Regional Office has information regarding decision process for reconsideration by Forest Service of decision regarding Jesus statue.
2. Identify each person whom you intend to call as a witness in this litigation.

RESPONSE: Decisions as to persons who will be called as a witness in this litigation have not been made. Plaintiff, however, anticipates that some or all of those persons identified in Response No. 1 will be witnesses.

3. State your theory of why the war memorial with the statue of Jesus at issue in this litigation violates the Establishment Clause and identify all facts on which you intend to rely to support this theory.

RESPONSE: Plaintiff's theory as to why the statue of Jesus at issue in this litigation violates the Establishment Clause, with supporting factual allegations, is detailed in the Plaintiff's Complaint and the proposed Amended Complaint. In a nutshell, the statue of Jesus located on Forest Service property gives the appearance of religious endorsement. The statue of

Jesus was and is still recognizably and exclusively Christian and intended as a religious shrine. Recent claims that the statue is a war memorial do not detract from the fact that the display is distinctly and intentionally religious. In fact, the war memorial claim is based on simulations of alleged religious shrines observed in Europe by American soldiers. Local persons interviewed by Mr. Ian Smith also confirm that the statue is still perceived by many to have religious significance. Religious ceremonies at the site also support its sectarian impression.

Counsel has not yet made determinations as to what evidence will be offered at trial, but the allegations in the Complaint and proposed Amended Complaint, as well as the facts/theory articulated in FFRF's communications with the Forest Service, will inform the plaintiff's evidentiary presentation. Facts included in Ian Smith's report, the deposition of Bill Cox, and documents produced by the Forest Service and Knights of Columbus also are expected to be introduced.

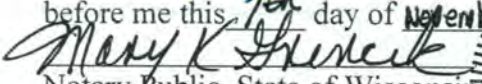


Richard L. Bolton

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Subscribed and sworn to

before me this 7th day of November, 2012.


Notary Public, State of Wisconsin

My Commission Expires 4/17/2016



JULIE M. LAKE
Registered Diplomate Reporter
Certified Realtime Reporter
Martin-Lake & Associates, Inc.
P.O. Box 7765
Missoula, Montana 59807-7765
406/543-6447 office
jml@martin-lake.net
United States Contract Court Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION FOUNDATION,
INC., a Wisconsin nonprofit
corporation,

Plaintiff,

vs.

CHIP WEBER, Flathead National
Forest Supervisor; UNITED STATES
FOREST SERVICE, an Agency of the
United States Department of
Agriculture,

Defendants,

and

WILLIAM GLIDDEN, RAYMOND LEOPOLD,
EUGENE THOMAS, NORMAN DeFORREST,
and the KNIGHTS OF COLUMBUS,

Defendant-Intervenors.

No. CV 12-19-M-DLC

PRELIMINARY PRETRIAL
CONFERENCE

Russell Smith Courthouse
Missoula, Montana

Tuesday, June 5, 2012
10:28 a.m. to 11:33 a.m.

HEARD BEFORE THE HONORABLE DANA L. CHRISTENSEN
UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF MONTANA

Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription.

1 The Plaintiff, Freedom From Religion Foundation, Inc., a
2 nonprofit corporation under the laws of the State of
3 Wisconsin. And I understand you have over 100 members in
4 Montana; is that correct?

5 MR. BOLTON: That's correct.

6 THE COURT: I know that standing is probably going
7 to be a contested issue in this case, but I did read
8 Paragraph 9 of the Complaint which seems to be the
9 essential--although it's repeated later, that seems to be
10 the essential standing paragraph.

11 Are there members of your organization that actually
12 recreate up at Big Mountain, either in the summer or in the
13 winter, either skiing or hiking or biking up there?

14 MR. BOLTON: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. BOLTON: And, in fact, we--if we haven't
17 already, we will be identifying specific members to the
18 Defendants as well. Hopefully, you know, on that issue I
19 know, as you indicated, standing is always an issue in these
20 cases. And it may be that--I mean, we're going to be
21 providing information that hopefully we can at least get
22 that issue focused and perhaps even resolved, but there are
23 individual members.

24 THE COURT: All right. Yeah, I didn't see any--
25 obviously there are no individuals named as plaintiffs and I

1 didn't see any specific allegations in the Complaint that
2 would address the issue of standing. But I assumed, based
3 on the defenses being asserted, that this was probably going
4 to be an issue.

5 MR. BOLTON: And I apologize. Quite frankly, I
6 usually do identify specific members and for some reason we
7 didn't in this particular Complaint. So when that was drawn
8 to my attention, I went back, actually in the last day or
9 so, and have compiled the list of specific members who have
10 had access and exposure that we'll be relying on.

11 THE COURT: Just in terms of facts that seem to
12 be--well, I think they are undisputed in this case as I read
13 through the various answers. In October 1993 the original
14 permit was issued by the Forest Service to the Knights of
15 Columbus--well, that wasn't in '93. That was '53, wasn't
16 it? We'll get that correct. 1953, yes.

17 On August 24 of 2011, the Forest Service determined not
18 to renew the permit and it ordered the statue removed by
19 October 31, 2012.

20 And then on October 21, 2011, the Forest Service
21 withdrew that August 24th decision, to formally assess
22 public sentiment. And then the Montana State Historic
23 Preservation Office got involved about that time. And I
24 realize this is an issue of some contention between the
25 parties but, nevertheless, it's alleged in the Complaint

C E R T I F I C A T E

[illegible]

I, Julie M. Lake, RDR, CRR, CSR, Freelance Court Reporter for the State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the proceedings in the above-entitled cause;

I further certify that the foregoing pages of this transcript represent a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 6th day of July, 2012.

Julie M Lake
Julie M. Lake, RDR, CRR, CSR
Freelance Court Reporter
State of Montana, residing in
Missoula, Montana.

Exhibit 1

Administrative Record, Docket No. 25



United States
Department of
Agriculture

Forest
Service

Flathead
National
Forest

650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5204
Fax (406) 758-5367

Date: November 3, 2011

LEGAL NOTICE

REQUEST FOR PUBLIC COMMENT

Knights of Columbus Special Use Permit Reauthorization Project

USDA Forest Service

Flathead National Forest

Flathead County, Montana

The Flathead National Forest is requesting public input on a proposal to reauthorize a special use permit on National Forest System (NFS) lands. The Responsible Official for this project is Chip Weber, Forest Supervisor for the Flathead National Forest.

This project is located in T32N, R22W, Section 35. Our proposal is to reauthorize, for a period of ten years, the Knights of Columbus special use permit for a statue of Jesus Christ located on NFS land within the Whitefish Mountain Resort permit boundary. No additions or modifications to the permit are proposed. More detailed scoping information and a map can be accessed on the Flathead National Forest internet site at <http://www.fs.usda.gov/goto/flathead/projects>.

The Forest Service, Flathead National Forest, Tally Lake Ranger District has made a preliminary determination that this proposal falls within a category of actions listed in the Code of Federal Regulations (CFR) that are excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) and there are no extraordinary circumstances that would preclude its use: 36 CFR 220.6(e)(15). Category 15 is the issuance of a new special use authorization for a new term to replace an existing or expired special use authorization when the only changes are administrative, there are no changes to the authorized facilities or increases in the scope or intensity of authorized activities, and the applicant or holder is in full compliance with the terms and conditions of the special use authorization.

This comment period provides those interested in, or affected by, this proposal an opportunity to make their concerns known prior to a decision being made by the Responsible Official.



Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record and may be available for public review in accordance with applicable law.

Written, facsimile, hand-delivered, and electronic comments will be accepted for 30 calendar days following publication of this notice. The publication date in the newspaper of record is the exclusive means for calculating the comment period for this proposal. You should not rely upon dates or timeframe information provided by any other source.

Written comments must be submitted to: Project Leader Derek Milner, Tally Lake Ranger District, 650 Wolfpack Way, Kalispell, MT 59901, or fax at (406) 758-5367. The office business hours for those submitting hand-delivered comments are 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. Electronic comments must be submitted in Word (.doc), Word Perfect, Adobe PDF, or rich text format (.rtf) to comments-northern-flathead-tally-lake@fs.fed.us. The subject line must contain the name of the project. For electronically mailed comments, the sender should normally receive an automated electronic acknowledgement. Only the first email from each sender will receive an email confirmation. If the sender does not receive this confirmation on the first email, it is the sender's responsibility to ensure timely receipt by other means.

Published in the Daily Inter Lake
November 8, 2011

Billing:

Region 1 – ACE
Attn: Dan Moe, Jaesen Sheppard, or Karen Peterson
Building 24, Fort Missoula
Missoula, MT 59804
(406) 329-1033
(866) 621-3793
Fax (406) 329-1046



United States
Department of
Agriculture

Forest
Service

Flathead
National
Forest

650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5200
Fax (406) 758-5367

File Code: 1570

Date: October 21, 2011

Bill Glidden
Kalispell Council #1328
PO Box 9204
Kalispell, MT 59904

Dear Mr. Glidden,

I am writing to inform you of my decision to withdraw my earlier decision dated August 24, 2011 in order to consider new information. The new information relates to the information I received on September 19, 2011 from the Montana State Historic Preservation Office indicating that the commemorative marker that is the subject of the permit renewal is eligible for the National Historic Register. The Forest plans to formally seek public comment on a proposed action for reissuing the permit in the next few weeks.

If you have any questions about this process please contact me at 758-5251.

Sincerely,

A handwritten signature in cursive script that reads "Chip Weber".

CHIP WEBER
Forest Supervisor

cc: Jane L Cottrell



USDA Forest Service, Flathead National Forest
Cost Recovery
Processing Fee Category Determination Worksheet

Application ID: TAL-11
Applicant: KNIGHTS OF COLUMBUS
Address: P. O. Box 4535, Whitefish, MT 59937
Agent:
Address:
Application For: Monument
Location: Section 35, T32N, R22W, P.M.M., Flathead County, State of Montana.
Pre-Application Screening Completed on:

Remarks: This monument has been located near the top of Chair 2 at the Whitefish Mountain Resort since 1953. They pay no annual fees for this monument.

Estimated Processing Requirements:

Authorization Authority: FLPMA
< FLPMA, MLA, FLREA, Granger-Thye, Organic Act, Term Permit, or other authority >

NEPA action required: _____ EIS _____ EA _____ CE Category # 1

Total estimated hours to process 8 hours

The appropriate processing category for this application is category 1.

The processing fee for this category is \$ 111.00.

Processing fees for categories 1-4 are non-refundable. Processing fees for categories 5 & 6 will be reconciled upon completion of processing the application. See attached table for Category Fee Schedule.

Prepared By: _____
Case Manager

Date

Reviewed By: David Onda
Cost Reviewer

8/9/10
Date

Approved By: Earl Spilhaus
Authorized Officer

8/12/10
Date

2u10 Processing Fee Schedule		
Fee Category	Hours	Rate*
1 (Minimal Impact)	>1 and up to and including 8	\$111
2	> 8 and up to and including 24	\$392
3	> 24 and up to and including 36	\$738
4	> 36 and up to and including 50	\$1,057
5 (Master Agreement)	Varies	Full actual as specified in the agreement
6	> 50	Full reasonable or full actual as determined case by case

*To be adjusted annually for changes in the IPD-GDP.

Dispute Information

This determination may be disputed in accordance with the regulations contained in 36 CFR Part 251, Subpart B, 251.58 (e)(1 and 2).

Standards for Filing a Dispute

- (1) If there is a disagreement with the processing fee determination, submit a written request before the disputed fee is due,
- (2) Identify an alternative fee category or alternative estimated costs,
- (3) Provide documentation that supports the alternative fee category or alternative estimated costs, and
- (4) Applicant will send the written request to the immediate supervisor of the authorized officer at:

Leslie Weldon, Regional Forest
USDA Forest Service
Northern Region Office
P.O. Box 7669
Missoula, MT 59807

A decision shall be made by the authorized officer's immediate supervisor within 30 calendar days of the immediate supervisor's receipt of the written request from the applicant. The dispute shall be decided in favor of the applicant if the supervisory officer does not respond to the written request within 30 days of receipt. The supervisory officer's decision is the final level of administrative review.

Disputed Processing Fee:

1. If the applicant pays the full disputed processing fee, the authorized officer shall continue to process the application during the supervisory officer's review of the disputed fee, unless the applicant requests that the processing cease.
2. If the applicant fails to pay the full disputed processing fee, the authorized officer shall suspend further processing of the application pending the supervisory officer's determination of an appropriate processing fee and the applicant's payment of that fee.

SPECIAL USES COST RECOVERY ESTIMATION WORKSHEET MINOR CATEGORY DETERMINATION

New Use _____ Renewal X Amendment _____ Applicant Knights of Columbus

	Specialist Name	Date		Hours Worked		Purpose
		Consulted / Completed		Est	Actual	
Case Manager	B Smith-Powell	1/10		2		Renewal
Permit Administration	B Smith-Powell	1/10				
Cost Reviewer	Ondov			2		Reviewer, Needs <u>new map</u> for permit; site visit, GPS
Archeologist						
Biologist						
Botanist						
Fisheries						
Timber/Silviculture						
Soil Scientist						
Hydrologist						
Minerals						
Recreation						
Landscape Arch.						
Fire						
Range						
Engineering						
Surveyor						
NEPA Coordinator						
Other (specify)	Warren			4		SUDs entry and correspondence
Other (specify)						

		Category	Total Hrs.	Total Costs
Processing Level Determined	Minor Category Nos. 1-4	1	8	\$ 111
	Master Agreement & Major Category 6 (Agreement & Work Plan Required)			

USDA FOREST SERVICE BILL FOR COLLECTION			1. BILL DATE: / / 2010 PAGE: 1 OF 1																				
ENCLOSE A COPY OF THIS BILL WITH YOUR CHECK OR MONEY ORDER. DO NOT SEND CASH. PLEASE INCLUDE BILL NO. AND PAYER CODE NO. ON YOUR CHECK. MAKE YOUR CHECK PAYABLE TO: USDA FOREST SERVICE			MAIL PAYMENT TO: USDA FOREST SERVICE C/O CITIBANK P.O. BOX 301550 LOS ANGELES, CA 90030-1550																				
TO: KNIGHTS OF COLUMBUS WHITEFISH COUNCIL 7630 C/O CYRIL APPEL, FINANCIAL SECRETARY P.O. BOX 4535 WHITEFISH, MT 59937			RECEIVED PAYMENT AUG 3 2010 Lockbox Paid Date																				
6. AGREEMENT NO:			CONTRACT NO:		7. DESCRIPTION:																		
8. REMARKS: FAILURE TO PAY FEES BY DUE DATE CONSTITUTES NON-COMPLIANCE WITH AUTHORIZATION.			9. PRINCIPAL: \$111.00 10. INTEREST: 11. ADMINISTRATIVE COSTS: 12. PENALTY: 13. AMOUNT DUE: \$111.00 14. ADJ. + CREDIT: \$.00 15. NET AMOUNT DUE: \$111.00																				
NOTE: PLEASE SEND ALL CORRESPONDENCE, INQUIRIES, AND CHANGE OF ADDRESS TO: USDA, FOREST SERVICE TALLY LAKE RANGER DISTRICT 650 WOLFPACK WAY KALISPELL, MT 59901 406-758-5204 FAILURE TO MAKE PAYMENT BY DUE DATE WILL RESULT IN THE ASSESSMENT OF LATE PAYMENT CHARGES (INTEREST, ADMINISTRATIVE COST, AND/OR PENALTY CHARGES) IN ACCORDANCE WITH YOUR CONTRACT, PERMIT, OR THE DEBT COLLECTION ACT OF 1982, AS AMENDED. POSTMARKS ARE NOT HONORED.																							
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">DATE/PERIOD</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">AMOUNT</th> </tr> </thead> <tbody> <tr> <td>To</td> <td>2720 SPECIAL USES TAL229 Tally Lake Ranger District</td> <td style="text-align: right;">\$111.00</td> </tr> <tr> <td colspan="3" style="padding-top: 10px;">COMMENTS: CATEGORY 1 COST RECOVERY FEE</td> </tr> </tbody> </table>						DATE/PERIOD	DESCRIPTION	AMOUNT	To	2720 SPECIAL USES TAL229 Tally Lake Ranger District	\$111.00	COMMENTS: CATEGORY 1 COST RECOVERY FEE											
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United States
Department of
Agriculture

Forest
Service

Tally Lake
Ranger District

650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5204
Fax (406) 758-3538

File Code: 2720-2

Date: July 16, 201

FILE COPY

Knights of Columbus
P.O. Box 4535
Whitefish, MT 59937

SENT CERTIFIED MAIL

Dear Permit Holder:

The Knights of Columbus monument special use permit (TAL-11), issued on 02/03/2000, will expire 12/31/2010. If you chose to renew your Special Use Road Permit the expiration date will be extended to 12/31/2020. To renew your current Special Use Permit please carefully read this entire letter and complete the attached form. This permit:

Covers .1 acres, approximately 250 feet south of Chair 2 at the Whitefish Mountain Resort and is located on National Forest System land in the T.32N., R.22W., sec. 35 in the Flathead County, State of Montana.

The renewal of your permit is subject to Forest Service cost recovery regulations mandated by Congress under the Fiscal Year 2000 Appropriations Act (Public Law 106-113 as amended); and implemented by the Forest Service in February 2006. Cost recovery fees are separate and distinct from land-use rental fees, and are collected to recover some of the administrative costs associated with processing special use applications and renewals.

It has been determined that renewal of your permit for the improvements described above would take less than 8 hours to process, and will cost \$111 (see the attached Fee Determination Worksheet).

Please fill in all the information on the request form on the back of this letter and mail or bring it to the address listed. A bill-for-collection covering the cost recovery fees will be sent when the Forest Service is ready to start processing your renewal.

If you do not wish to renew your permit, your authorized use will continue until 12/31/2010 at which time you will need to have removed your improvements from and/or have ceased your use of National Forest System land.

If you have any questions about this process, please contact your permit administrator Becky Smith-Powell at (406)-758-3538.

Sincerely,

LISA TIMCHAR
District Ranger
Enclosures

