

Town of Mosel
CONDITIONAL USE PERMIT

(Kohler Co. — Bird Hunting Preserve)

This Conditional Use Permit (the “Permit”) is granted by the Town of Mosel, a body corporate and politic located in Sheboygan County, Wisconsin, with its offices located at W982 CTH FF, Sheboygan, WI 53083 (hereinafter referred to as the “Town”) to the Kohler Co., a Wisconsin business corporation, with its principal offices located at 444 Highland Drive, Kohler, WI 53044 (hereinafter referred to as “Kohler”).

BACKGROUND

1. **History.** On or about December 21, 2007, Kohler applied for rezoning and a conditional use permit to construct and operate a state-licensed Bird Hunting Preserve (the “Preserve”) on approximately 370 acres of land located west of the railroad tracks in Section 28 of the Town, as more particularly shown on the attached Exhibit A which is incorporated herein by reference (the “Subject Property”). The Town Planning and Zoning Commission held a public hearing on Kohler’s rezoning application on February 5, 2008, and considered this issue at meetings held on February 5, and February 21, 2008, after which time it recommended that a field test be conducted of the hunting activities which Kohler proposed on the Subject Property. On March 11, 2008, the Town Board granted Kohler a Special Land Use Permit to conduct field tests, which were done May 15-28, 2008. Kohler consented to its rezoning and conditional use permit applications being put on hold pending evaluation of the field testing and its impact on the neighbors, surrounding properties, and the Town. The Town Board has since considered this matter at open meetings held on June 24, July 8, and November 11, 2008; prior to the final meeting Kohler amended its application to request the Preserve as a conditional use in the existing A-1 Prime Agricultural zoning district.

2. **Authority.** This Permit is issued by the Town Board pursuant to the authority granted in the Town of Mosel Municipal Code (“Town Code”) Sections 7.05.A.(2) and 7.06, particularly 7.06.J.(2)(c). The Subject Property is zoned A-1 Prime Agricultural District which is conditionally suitable for the activities described herein.

3. **Public Hearing.** The Town Board conducted a public hearing on the proposed conditional use permit application on June 24, 2008, in the Mosel Town Hall located at W982 County Road FF, Sheboygan, Wisconsin, pursuant to Town Code Section 7.06.E., and has considered as part of its deliberations the public comments submitted both in writing and in person at said public hearing.

4. **Findings.** The Town Board finds that the conditions set forth below are reasonably necessary to protect the health, safety, and welfare of the Town and its residents, and to fulfill the purpose and intent of Town Code Sections 7.06.F. and 7.01.F.

5. **Permitted Activities.** This Permit authorizes Kohler—subject to the terms and conditions set forth below—to operate the Preserve for upland bird hunting. Exhibit A includes a Site Plan showing the location of hunt fields, setbacks, parking areas, drives, and several proposed Clubhouse locations.

GENERAL CONDITIONS

6. **Default.** Any of the following occurrences shall constitute an Event of Default under this Permit (whatever the reason for such event of default, and whether it shall be voluntary or involuntary or be caused by the operation of law or pursuant to any judgment, order or regulation):

- A. If Kohler sells, conveys, abandons, or transfers any interest in the Subject Property.
- B. If Kohler fails to observe or perform any condition or provision of this Permit within 5 business days of receiving written notice thereof from the Town.
- C. If Kohler fails to comply with any statute, regulation, rule or permit administered by any federal, state or county department, agency or commission within 5 business days after receiving written notice of such violation. Kohler shall notify the Town Clerk in writing of any alleged violation, order or enforcement proceeding within 2 business days of receipt; failure to timely provide such notice is an Event of Default.

7. **Revocation.** Upon the happening of any Event of Default, the Town Board, or its designee, shall provide Kohler with a notice of non-compliance specifying the actions necessary to correct the violation. If corrective action is not taken then the Town shall schedule a hearing in reference to such violation and notify Kohler to allow it the opportunity to respond to the alleged default. If the Event of Default is not timely corrected to the satisfaction of the Town Board, it may revoke this Permit or, in its discretion, take any other action it deems appropriate.

8. **Transfer.** The rights granted by this Permit are not assignable or transferable to any person or entity, whether by operation of law or otherwise, without the express prior written consent of the Town.

9. **Interpretation.** In their interpretation and application, the provisions of this Permit shall be considered minimum requirements. This Permit is granted with the intent that its provisions be liberally construed in favor of the Town. Time is of the essence in the performance of the requirements of this Permit.

10. **Modification.** No provision of this Permit may be modified except upon the written application by Kohler and after public notice and hearing. The Town Board has issued this Permit pursuant to its powers defined by the Town's zoning code. This Permit does not authorize the erection of any buildings or improvements, sanitary/septic installations, driveway and access permits, nor any other permit, license or authorization required by the Town, or by any county, state or federal agency. The Town makes no representations regarding Kohler's ability or right to obtain whatever additional authorizations or permits may be necessary for the operation of a bird hunting preserve, or the construction of the Clubhouse.

11. **Reservation of Rights.** The Town reserves the right to revoke entirely or modify in part this Permit should an Event of Default occur or should Kohler fail to comply with any material term of this Permit or any other obligation lawfully imposed by the Town.

12. **Severability.** Each provision of this Permit shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision herein shall be prohibited or invalid under applicable law as determined by a Court of competent jurisdiction, such provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of the Permit.

13. **Waiver.** No waiver or inaction by the Town or its officials, employees, or agents shall be deemed to be made unless the same shall be in writing and be signed by a duly authorized Town official. Each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Town in any other respect at any other time.

14. **Renewal.** The Town makes no representations to Kohler regarding the renewal of this Permit under the Town's zoning ordinance. All rights available under law or in equity are reserved by the Town in determining whether or not this Permit shall be renewed. Kohler is hereby informed that it has no property right in the expectation of the renewal of this Permit.

15. **Indemnification.** Kohler shall defend, indemnify and hold harmless the Town and its officials, employees and agents from and against any claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities, whatsoever, including reasonable attorneys' fees and court costs (such liabilities together know as "liability") arising out of the activities conducted on or related to the Subject Property, including, without limitation, liability for property or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). In the event of such indemnity the Town shall have the sole and exclusive right to select its own counsel and to make all decisions regarding defense of any claim or litigation. This general indemnification shall survive termination of this Permit and shall not be construed as limiting or qualifying the Town's other indemnification rights available under law.

16. **Governing Law; Venue.** All legal actions brought by the Town or Kohler or their agents or assigns, shall be governed by the laws of the State of Wisconsin and shall be venued in the Circuit Court for Sheboygan County.

SPECIAL CONDITIONS

17. **Term.** The initial Term of this Permit shall commence on the day following Town Board approval and end on ~~August 31, 2009~~ (date changed to **November 30, 2009 and initialed by Scott Anderson, Wayne Warnecke, Dirk Zylman, and Dave Scharinger on 11/11/08**) The Permit shall be in effect, unless earlier terminated as provided herein, for successive two (2) year periods thereafter, commencing on September 1 of each odd year.

18. **Renewal.** This Permit shall be reviewed biannually by the Town Board, and shall be renewed effective September 1 of each odd year unless notification is provided to Kohler by July 15 of that year. Renewal shall not be granted unless the Preserve and the Subject Property are in full compliance with the existing Permit.

19. **Hunting Activities Permitted.** Kohler is permitted to possess, stock, release and allow the hunting of non-native game birds pursuant to a State of Wisconsin Department of Natural Resources Bird Hunting Preserve license, consistent with the terms, conditions and restrictions set forth herein. Deer, turkey, waterfowl, small game, and other types of hunting with firearms is not allowed and will not take place on the Subject Property during the Permit Term. Bow hunting for deer is allowed.

20. **Site Facilities.** During the Term of this Permit Kohler may construct only the following improvements on the Subject Property; no additional structures shall be requested or allowed:

- A. **Clubhouse.** A one-story, timber frame structure of not more than 1,000 ft² of interior space, with a possible wrap-around porch, for year round use by members and their guests, but not the general public; maximum capacity of 20 people; will include bathroom (served by an on-site private septic system), small service kitchen, electricity, telephone, propane/natural gas, and a security system. The final Clubhouse location and floor plan are subject to Town approval.
- B. **Maintenance Buildings.** Storage buildings of not more than 1,000 ft² each and 2,000 ft² in the aggregate, for storage of ATVs and other items specifically used by hunters and on-site staff related to hunting activities.
- C. **Clubhouse Parking Area.** A parking area for not more than 15 cars, located near the Clubhouse.
- D. **Remote Parking Areas.** Two (2) additional gravel or mowed grass parking areas for not more than 5 vehicles each.
- E. **Fire Breaks.** Throughout the property there will be established fire breaks, with the location and design as mutually agreed upon between the Town and Kohler, pursuant to technical assistance provided by the Haven Fire Department and Wisconsin Department of Natural Resources.

21. **State Requirements.** On June 4, 2008, the Wisconsin Department of Natural Resources issued Class A Bird Hunting Preserve License #2380 to Kohler Co. River Wildlife for Farm #1973, which expires May 30, 2009 (the "License", copy attached as Exhibit B and incorporated herein by reference). Kohler shall cause the License to be amended to apply only to the 370 acres of the Subject Property, and shall renew and maintain the License and comply with its terms and conditions during the Term of this Permit. Kohler shall meet or exceed current standards and regulations of any state agency with the authority to regulate hunting activities on the Subject Property. Kohler shall maintain and renew the License and comply with all of its terms and condition,

including all subsequent renewals, extensions, or modifications thereof. Kohler shall also meet or exceed current standards and regulations of any other state agency with the authority to regulate hunting activities on the Subject Property.

22. Dates of Operation. Bird hunting is permitted from October 1 through March 20 of the following calendar year (not allowed March 21 through September 30). Bow hunting for deer is permitted as allowed by Wisconsin DNR regulations.

23. Hours of Operation.

- A. Firearm discharges shall only take place between 9:00AM and 4:30PM.
- B. The Clubhouse and the Subject Property may be used for occasional non-hunting related member social events and business meetings (no more than 5 per calendar month) for no more than twenty (20) guests; hunting or non-hunting related social activities shall take place between 8:00AM and 11:00PM.
- C. No firearms will be discharged in the North Field as shown on the attached site plan during the time funeral, burial, or other graveside services are being conducted at the Town of Mosel Cemetery on Dairyland Drive (Parcel No. 59014-184500). To the extent it is commercially reasonable based on previously scheduled activities and the notice received, Kohler will discontinue or minimize usage of the South Field during such times. The Town will notify Kohler as soon as practical concerning any such scheduled activities.

24. Hunters.

- A. Maximum Number. No more than eight (8) persons shall be actively hunting on the Subject Property at any one time, with a maximum of four hunters in each of the two (2) hunt fields indicated on the Site Plan.
- B. Weekly Restrictions. No more than 40 hunters are allowed to actively hunt on the property during any calendar week. Individual hunters shall be counted each time they participate in a hunt.
- C. All hunters must be experienced and either be a member of Kohler's River Wildlife, a guest accompanied by a River Wildlife member, or a Kohler employee. The minimum age for hunters is the greater of that established by state law, or by Kohler's existing River Wildlife policies.
- D. Kohler will supervise all hunting activities by having with each hunting party at all times when hunting is taking place at least one Kohler River Wildlife associate or a trained River Wildlife member who has taken the training indicated by Exhibit C. A Kohler

associate will be on the Subject Property during all scheduled activities.

25. Specific Restrictions; Prohibited Uses and Activity.

- A. Game birds shall not be kept on-site but will be transported as necessary from Kohler's River Wildlife holding pens.
- B. Birds shall only be planted/released in the areas designated on the Site Plan (Exhibit A) so as to minimize shots being fired from the outer edges of the hunt fields toward the exterior of the Subject Property.
- C. Weapons; Ammunition. Only 12 gauge or smaller shotguns are allowed. No magnum loads may be used.
- D. No guns or ammunition shall be stored on the Subject Property.
- E. There shall be no overnight stays on the Subject Property.
- F. There shall be catered food and beverages only; no on-site food preparation or alcohol sales, with the exception of family sized "weber" grilling at the clubhouse.
- G. There shall be no trap shooting, skeet shooting, 5-stand, sporting clay shoots, target practice, range shooting, gun siting, small game or waterfowl hunting, dog training or kenneling, or commercial fishing on the Subject Property, which is not a "sport shooting range" within the meaning of §895.527 of the Wisconsin Statutes.
- H. Up to four (4) ATVs may be stored on the Subject Property and used River Wildlife staff for activities directly related to bird hunting activities, and not for general recreational riding, off-roading, or racing.
- I. Kohler associate and guest vehicles shall park only in designated parking areas and not on Town Roads.

26. Setbacks. All hunting activities shall take place at least five hundred feet (500') back from the boundaries of the Subject Property, except that the setback in the northeast section shall be measured from the eastern edge of the railroad right-of-way. No firearms shall be discharged within this setback area. The Site Plan identifies the location of the hunting areas and setbacks. Kohler shall not materially alter the location of any hunt field, driveway, or parking area without first obtaining the Town's written consent, which shall not be unreasonably withheld.

27. Signs. Appropriate warning signage shall be posted on the perimeter of the Subject Property.

28. Buffering. Kohler shall transplant and maintain a sufficient number of mature evergreen trees to create or enhance a natural sight and noise buffer between the Subject Property and adjoining land. Specific emphasis shall be given to placing trees along the boundaries with residential properties, as shown on Exhibit A and as mutually agreed on between the Town and Kohler. Kohler shall establish the buffer in the Spring of 2009 in those areas designated on the Site Plan as Landscape Buffer Phase I; Phases II and III shall be established in the Fall of 2009; Phase IV shall be established in the Spring of 2010. Establishment of all phases of the buffer is dependent on weather conditions. The Subject Property shall not be fenced.

29. Notices. At least fifteen (15) days prior to the initial commencement of hunting activities, Kohler will mail to the Town Clerk, Town Board Supervisors, and landowners having property adjacent to, and within 1000 feet of the outside boundaries of the Subject Property, a notice describing when and where hunting will take place and a copy of this Permit. Within 30 days following the issuance of this Permit, Kohler shall contribute \$500 towards the Town's cost of preparing and mailing to all Town residents a summary explanation of this Permit and the Town's issuance of the same.

30. Reporting.

- A. Quarterly Reports. By January 30 and April 30 of each year Kohler shall provide to the Town Clerk a report detailing the specific hunting activities which took place at the Preserve during the prior three month period (October through December; January through March).
- B. Annual Report. By June 1 of each year Kohler shall submit to the Town Clerk a report detailing the status of the Bird Hunting Preserve for the prior hunting year, and any anticipated changes for the coming year. The report shall include a copy of all state hunting permits issued and effective for the Subject Property.
- C. Upon request by the Town, Kohler will provide a representative to appear at a Town Board meeting.

31. Defense of Land Use Decision. In addition to the indemnification described in Paragraph 15, above, Kohler shall reimburse the Town its reasonable attorneys' fees and costs incurred in defending any legal or administrative actions brought by third parties challenging the legality or enforceability of this Permit, any portion thereof, or of any Town land use decision associated with the same.

32. Annual Payment. Upon issuance of this Permit and by September 1 of each year thereafter that this Permit is in effect, Kohler shall pay to the Town an Annual Payment to help defray the cost of providing public safety services within the Town. The initial Annual Payment shall be Two Thousand Seven Hundred Fifty Dollars (\$2,750.00); each year thereafter it shall increase by an amount equal to the previous year's payment times the percentage increase in the Consumer Price Index (all Urban Consumers, Unadjusted Average, All Items, Issued by the Bureau of Labor Statistics of the U.S. Department of Labor; base year 1982-84 = 100) for the prior calendar year.

33. Professional Fees. Kohler will pay the Town its attorneys' and other professional fees and costs incurred in processing and enforcing this Permit. Payment shall be made within 30 days from receipt of the Town's notice or invoice; amounts not timely paid shall accrue interest at 1.5% per month until paid.

34. Notice. Any notice, demand, statement, or request required or permitted to be given under this Permit shall be in writing and be deemed to have been properly given or served when personally delivered to the other party, via overnight courier, facsimile, or upon after deposit in the United States mail, postage prepaid, and addressed as follows:

To the Town: Attn: Clerk/Treasurer, Town of Mosel
W982 CTH FF
Sheboygan, WI 53083
FAX: 920-565-2677

With a copy to: Paul A. Dirkse, Town Attorney
Hopp Neumann Humke LLP
607 North Eighth Street, Suite 400
Sheboygan, WI 53081-4513
FAX: 920-457-8411

To Kohler: To the General Contact set forth below.

35. Contact Information. Kohler designates the following specific contact persons. The Town may make the telephone numbers available to local residents and officials.

A. General Contact (responsible for overseeing compliance with the conditions of this Permit and accepting notice):

Attn: Scott W. Anderson
President, Hospitality and Real Estate Group
KOHLER CO.
444 Highland Drive
Kohler, WI 53044
Phone 920-457-4441
Fax 920-452-3001
Email scott.anderson@kohler.com

B. Site Manager of the Bird Hunting Preserve:

Max Grube, Manager Land Management
Kohler River Wildlife
1116 W. Riverside Dr.
Kohler, WI 53044
Phone 920-457-0134
Cell 920-207-6232
Email max.grube@kohler.com

C. Security/Emergency:

Attn: Security Operations Center
KOHLER CO. Security
444 Highland Drive
Kohler, WI 53044
Phone 920-803-3935
Fax 920-
Emergency Phone 920-

36. Inspections. Representatives of the Town may inspect the Subject Property during all hours that hunting activities are allowed take place pursuant to this Permit, without notice but only after contacting Kohler through its site manager identified in the preceding section. A Kohler representative must accompany any inspector. Any failure to timely arrange for and cooperate with a requested inspection is an Event of Default hereunder.

37. Authority. The persons signing below represent that they have the legal authority to do so from the respective entity for which such signature is made.

This Permit was issued by the Town of Mosel Board of Supervisors on the 11th day of November, 2008.

TOWN OF MOSEL

By _____
DIRK J. ZYLMAN, Chairman

By _____
WAYNE WARNECKE, Supervisor

By _____
DAVID SCHARINGER, Supervisor

CERTIFICATION

This is to certify that this Conditional Use Permit was granted by the Town Board of the Town of Mosel on the date indicated above.

Dated: November 11, 2008

RACHEL REHBEIN,
Clerk/Treasurer, Town of Mosel

ACKNOWLEDGMENT

The applicant acknowledges, approves, and consents to the terms and conditions of this Permit on this 11th day of November, 2008.

KOHLER CO.

By _____
SCOTT W. ANDERSON, President
Hospitality and Real Estate Group

EXHIBIT LIST

- A. Map of the Subject Property/Site Plan of the Bird Hunting Preserve (Kohler Co. Print No. 9999-702-8014-C0005)
- B. Kohler's June 4, 2008, Bird Hunting Preserve License #2380
- C. Kohler's River Wildlife Training Requirements/Verification (Safety Program and Hunting Agreement)

ORIGINAL SIGNED COPY ON FILE IN THE CLERK-TREASURER'S OFFICE