

CITY OF GUSTAVUS, ALASKA
RESOLUTION CY24-10

A RESOLUTION BY THE CITY OF GUSTAVUS ASSERTING THAT UNFETTERED PUBLIC ACCESS TO THE FALLS CREEK LANDS VIA THE HYDRO ROAD IS A PUBLIC RIGHT

WHEREAS, Falls Creek lands were transferred from Glacier Bay National Park to the State of Alaska to enable development of the Falls Creek Hydroelectric Facility with the express intention that the lands would remain open and accessible for public recreational use; and,

WHEREAS, the transferred lands are within the boundaries of the City of Gustavus; and,

WHEREAS, the Falls Creek Hydroelectric Project was developed in 2009 by Gustavus Electric Company, the utility then serving the City of Gustavus, and

WHEREAS, the legal basis for public access to and recreation in the Falls Creek Hydroelectric Project area is found in the Federal Power Act (FPA), Section 4e, requiring the Federal Energy Regulatory Commission (FERC) to give **equal consideration to other beneficial public uses**, including environmental and recreational concerns. This stipulation is reflected in the Final Environmental Impact Statement (FEIS) of June 17, 2004, and in the FERC License Order, Project No. 11659-002 of October 29, 2004. The FERC license requires the Project to have an approved Road Management Plan (Article 417) and a Public Access and Recreation Plan (Article 418); and,

WHEREAS, in 2005, the Gustavus Electric Company completed the Road Management Plan and the Public Access and Recreation Plan, and both were approved by FERC; and,

WHEREAS, in 2009, Gustavus Electric Company, as original owner of the Falls Creek hydroelectric facility, purchased and recorded the required access and utility easements along the route of the spur road, now known as the Hydro Road, from adjacent property owners The Olney Trust (Bear Track Inn), Roger Schnabel, and Glen T. Schrank conforming to the license order requirements. All parties knew, or should have known, that public access along the route was an essential element of the project; and,

WHEREAS, the Falls Creek Hydro Road construction was substantially publicly funded, and the road is now maintained by the utility with revenue derived from Gustavus ratepayers; and,

WHEREAS, the first 286 feet, or more, of the Hydro Road north of Rink Creek Road are entirely within the platted, dedicated, access and utility easement along the east edge of the Bear Track Ridge Subdivision, as indicated by the attached 2023 as-built survey by John Bean, RLS; and,

WHEREAS, since construction, the Hydro Road has been a popular hiking and recreation destination for Gustavus residents and visitors to the community; and,

WHEREAS, the Bear Track Inn website has for years advertised the Falls Creek hike as one of the “top hiking trails in Gustavus,” acknowledging that “Falls Creek is part of a hydroelectric project created for the City of Gustavus.” <https://beartrackinn.com/blog/top-hiking-trails-in-gustavus/> [Last accessed March 23, 2024]; and,

WHEREAS, Alaska Power and Telephone Company (AP&T) purchased Gustavus Electric Company, with the Falls Creek Hydroelectric facility, and the FERC license was transferred to Alaska Power Company (APC) a subsidiary of AP&T in 2014; and,

WHEREAS, in 2015, AP&T assessed conformance of the Falls Creek Hydro Project with the requirements of the Public Access and Recreation Plan, confirmed the rights of the public to access via the Hydro Road, and recommended minor amendments in the Plan, which were approved by FERC on March 2, 2016; and,

WHEREAS, AP&T has assured public access and recreation in accordance with the terms of the FERC license and the project Public Access and Recreation Plan as amended, providing recreational amenities such as signage, maintained overlooks, picnic tables, an informational booklet, and a website explaining: “As mitigation for constructing this project, recreation is allowed on project lands as well as providing access to National Park lands and Wilderness Areas around the project.”; and,

WHEREAS, AP&T is the Hydro Road’s responsible operating and maintenance authority and assures public access as required by the FERC License Order; and,

WHEREAS, from initial construction in 2009 until 2022, the public enjoyed unfettered access to the Falls Creek area via the Hydro Road as AP&T “grantees” or “invitees.” This *open and notorious use* has occurred for 13 years with the full knowledge of adjacent property owners who had sold easements for the road; and,

WHEREAS, the Hydro Road hike is a vital location for healthy recreation and exercise for Gustavus residents and visitors; and,

WHEREAS, beginning in 2022, the new management of the Bear Track Inn, David and Michelle Olney, posted the Hydro Road entrance as a “Private Road” and began insisting the public using the road must now seek the Olney’s permission, agree to limitations contrary to the Public Access and Recreation Plan and must sign agreements to use the road; and,

WHEREAS, the members of the public who use the road in accordance with provisions of the FERC license and the Public Access and Recreation Plan have since Summer 2022 been confronted and harassed by the Olney family to the extent that some no longer feel comfortable exercising their public right to travel on the road; and,

WHEREAS, the Olneys have expressed concern that they may be liable for claims made in the case of user accident or injury. However, in the easement that the Olneys sold for the project

the utility company indemnifies, saves the Bear Track Inn and the Olney Trust harmless, and is required to defend the Olney Trust for such claims; and,

WHEREAS, FERC representatives in a video conference meeting with the Olneys, AP&T, and the City of Gustavus on February 2, 2024, confirmed that AP&T must assure unfettered public access from Rink Creek Road via the Hydro Road in compliance with the license terms and that AP&T as project owner controls that access to the Falls Creek project area; and,

WHEREAS, the Olneys continue to assert that they control access to the Hydro Road.

NOW THEREFORE BE IT RESOLVED that the City Council of Gustavus, Alaska, for the reasons above and in defense of the public interest, declares that the public, including both Gustavus residents and visitors to the community, has the right of unfettered access to Falls Creek via the Hydro Road, in accordance with the terms of the FERC License order, the Road Management Plan, and the Public Access and Recreation Plan (as amended).

NOW THEREFORE BE IT FURTHER RESOLVED that the Gustavus City Council urges public travelers on Hydro Road from Rink Creek Road to the Project entry gate to respect private properties and operations along the road. Users should not stray from the graveled road, should drive responsibly, and avoid disturbances that may impact neighboring properties or occupants. Any excursions outside the road easements without permission of the private property owners may constitute trespass. Similar respect is also due the two posted, privately-owned, Native allotments beyond the gate within the State of Alaska lands.

NOW THEREFORE BE IT FURTHER RESOLVED that the Gustavus City Council respectfully asks the Alaska Power and Telephone Company, as the Hydro Road operating authority, to take the following actions:

- Post a notice on the Gustavus Resources page of the AP&T website to this or similar effect: “AP&T as the operating authority of the Hydro Road, in accordance with the terms of its Federal license to operate the Falls Creek Hydroelectric Project, and with the access easements acquired by the utility for the project, is the sole authority controlling access and use of the Hydro Road outside the dedicated public easement along the Bear Track Ridge subdivision. Public access to the Falls Creek area and the National Park lands beyond via the Hydro Road is an absolute condition of the Federal license. To that end, AP&T invites the public to use the Hydro Road within the acquired easements from Rink Creek Road to the project entry gate as provided in the project’s Public Access and Recreation Plan. Responsible transit with respect for private properties on both sides of the road is essential.”
- Notify the owners of the Bear Track Inn that they may not interfere with public recreational use of the Hydro Road and ask them to remove all non-compliant signage within the Hydro Road easements.
- Consider installation of signage at the beginning of the road informing recreational users of the necessity for respectful and safe use of the Hydro Road as informed by the Road Management and Public Access and Recreation Plans.

PASSED and **APPROVED** by the Gustavus City Council this XX day of ____ 2024, and effective upon adoption.

Shelley K. Owens, Mayor

Attest: Liesl M. Barker, City Clerk

Attachments: As-built survey