



October 10, 2023

Sent via email: [amy.orange-posma@alaska.gov](mailto:amy.orange-posma@alaska.gov)

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RE: Certificate of Acceptance of Dedication, South Mitkof Subdivision

Dear Ms. Orange-Posma,

Thank you for your email of September 13, 2023, and the opportunity to respond to your questions.

As you know, the Borough Assembly, on September 5, 2023, declined to approve a certificate of acceptance of dedication for the South Mitkof Subdivision, property owned by the Alaska Mental Health Trust Land Office (TLO). This was based on a number of concerns, many of which have already been expressed to TLO (see attached September 18, 2023 letter from the Borough to Chandler Long, Senior Project Manager). These concerns constitute reasonable public cause consistent with applicable municipal ordinances, as contemplated under 11 AAC 53.700(c). In brief, and as expressed in further detail below, the overarching basis for not agreeing to sign the dedication is the Borough's desire to act in the public interest and ensure orderly and safe development of land located within the Borough, consistent with municipal charter, ordinances, and state platting standards. The plat dedication, which states that the Borough "accepts for public uses" the easements and rights of way, would incorrectly advise buyers that Borough services can be immediately provided to the lots, and that the plat is consistent with Borough ordinances and standards. This, however, is not the case.

### **SUBDIVISION IMPROVEMENTS**

The Borough has had significant previous experience with other TLO (Mallard and Goldeneye) and State of Alaska (Frederick Pt. North and East) subdivisions where road and utility improvements were not installed by the developer prior to final plat. These have almost uniformly resulted in substantial development issues, including substandard roads, development of roads outside of established easements/ROWs, or no

development at all for lack of access. These subdivisions have not served the public interest, and the correction of defects, and providing services to these subdivisions, is costly and difficult, and beyond the Borough's financial capacity to correct.

The proposed South Mitkof Subdivision encompasses over 500 acres and creates over 100 lots and is significantly larger in scale than any previous subdivision in the area around Papke's Landing.<sup>1</sup> As a result, the Borough anticipates even further negative impacts from sales of property in this proposed plat than experienced in the past. Property buyers expect the Borough to install the missing roads and utility improvements, which in most cases would require development of, and an election for, a service area (which may, or may not, receive voter approval). See, Borough Charter 14.02A(4)-(5). As a result, significant resources, in staff time and general funds, are spent addressing the lack of installation of subdivision services by the developer.

Under Borough platting requirements, effective within Service Area 1, a final plat cannot be approved until the necessary improvements are installed or improvement security is posted. See, PMC Chapter 18.26. While the Borough recognizes that the TLO may not be required to strictly comply with these ordinances, they are in place to prevent the very issues that have consistently arisen from these earlier plats. Installing improvements would be consistent with municipal code, prevent the persistent conflicts and issues that have arisen in the past in regard to such plats, and provide the Borough a mechanism to ensure orderly development of these properties, all goals consistent with the public interest.

The Borough would hope the TLO recognizes its obligations as a property developer and realizes the substantial public interest issues that arise when subdivisions are created and property sold without required improvements. Creating subdivisions and planning for orderly development will make TLO a welcome partner to communities and increase the value of TLO subdivisions. Otherwise, TLO sells the lots, and the negative impacts of the lack of improvements falls wholly to the Borough to address.

### **Section Line Easements**

General Note #9 on the plat states that the subdivision is subject to "*33' section line easements, if the easements are determined to have attached when the lands were surveyed*". Despite the requirements of 11 AAC 53.690(q)<sup>2</sup>, the proposed plat fails to label and identify any of the purported 33' section line easements. The proposed plat is unclear

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<sup>1</sup> The difference in scale from the plats you cite in your letter is significant. Plat #2019-10 consists of 6 lots over 107.76 acres, Plat #2017-2 consists of 11 lots over 15.87 acres, and Plat #2016-12 consists of 26 lots over 174.23 acres. In other words, the subdivision at issue has anywhere from 4 to almost 20 times more lots than the plats you cite, and the acreage is, at a minimum, almost 3x greater.

<sup>2</sup> "The plat must clearly show the location, width, and use of each easement. Each easement must be clearly labeled and identified. The source document creating easements of record must be cited."

as to whether portions of the section line easements are being vacated, and whether the public access easements being dedicated are merely the existing section line easements of record, or newly created easements. The proposed plat should be a tool to inform property owners, not leave them wondering as to what may or may not be attached to their property.

Moreover, all lots within the subdivision will be required to install on-site wastewater systems and these systems must be setback from property lines and easements. See attached ADEC Minimum Separation Distances. Some of the parcels have easements on three sides limiting the area available for on-site systems. It is important for property owners to be fully aware when purchasing property how much area is available to site these systems and where the systems may be placed.

This is not the first time the TLO has failed to inform a property owner of existing easements. In 2022, the TLO sold two lots along Mitkof Highway and failed to disclose a section line easement and a public access easement on the properties. The new owner discovered the easements only during a later survey of the property following purchase and is now having to apply to vacate the easements rather than constructing a home as planned. Selling property in a subdivision plat that doesn't contain sufficient information for buyers is not in the public interest.<sup>3</sup>

### **Legal Access**

The subdivision is platted without specific dedicated road right-of-ways, rather containing "public access and utility easements". The Borough has received no information as to why the subdivision is platted in this fashion, rather than having orthodox main road access points and road rights-of-way within the subdivision, and whether this decision was that of TLO or ADOT. This platting design results in inadequate access points, and some lots being thousands of feet from Mitkof Highway access, despite being located directly on the highway.<sup>4</sup> This means that thousands of feet of road (past many other lots) would have to be constructed in order for some lots to be accessed and developed.

To address this impediment to functional development, the subdivision should have dedicated internal collector road rights-of-way, which merge into a number of main access points of the subdivision to Mitkof Highway, and TLO should work with ADOT to establish those access points.<sup>5</sup>

### **Road Names**

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<sup>3</sup> Lots that may be affected: Lots 20, 21, 22, 27, 28, 29, and 30, Block 1; Lots 4, 5, 6, 7, and 8, Block 2; and Lots 1 and 2, Block 4.

<sup>4</sup> See, for example, Lot 1, Block 4, Sheet 5 of 5, and Lot 21, Block 2, Sheet 4 of 5.

<sup>5</sup> TLO should also consider shorter maximum road lengths to ensure that all lots can be developed in a reasonable and timely manner, which may require additional highway access points..

Under 11 AAC 53.690(t)<sup>6</sup>, unique street names should have been shown on the proposed plat. Establishing unique street names and an orderly numbering system are vital for emergency response, and a lack of that is contrary to the public interest. See also, PMC 18.24.070E.

### **Anadromous Waters**

In Service Area 1, the municipal code requires a 10' easement along either side of any creek or stream. This easement may be wider if the stream is anadromous. See, PMC 18.24.080C(2). The proposed plat includes several streams found in the Anadromous Waters Catalog ("AWC")<sup>7</sup>, yet the plat provides no notice to the future property owner of the AWC stream, nor any easement or buffer for these important streams. Development of a lot with an AWC stream may require additional permitting and expense, which is important information to a potential property owner. Again, the lack of adequate information is not in the public interest.

Lastly, the Petersburg Borough, like nearly every other community in Alaska, wants and needs land for residential development. If subdividing and selling off lots in the manner proposed by the TLO was a viable solution, every community in the State would implement this low-cost strategy immediately. But no municipalities utilize this methodology because developing land in this fashion is inefficient, ineffective, and ultimately counterproductive.

The Borough is hopeful that the TLO will engage with the Borough to address these important issues. In the meantime, if you have any questions or require additional information, please feel free to contact Stephen Giesbrecht, Borough Manager at 907-772-4425.

Sincerely,



Mayor Mark Jensen

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<sup>6</sup> 11 AAC 53.690 (t) A street name shown on a plat filed for record must be unique within the locality except if the street is an extension of an existing street. An extension of an existing street must be named identically to the existing street.

<sup>7</sup> See AWC Code: 106-44-10065; AWC Code: 106-44-10070; AWC Code: 106-44-10070-2002; AWC Code: 106-44-10080; AWC Code: 106-44-10090 in <https://www.adfg.alaska.gov/sf/SARR/AWC/>