



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

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March 4, 2024

Stephen Giesbrecht, Borough Manager
12 South Nordic Drive
Petersburg AK 99833

RE: Unorganized Borough Platting Authority Response to *Certificate of Acceptance of Dedication, South Mitkof Subdivision* dated October 10, 2023

Dear Mr. Giesbrecht,

I would like to thank the Borough Assembly for their interest in the proposed South Mitkof Subdivision and their areas of concern regarding the proposed plat. As I reminded the assembly in my email dated September 13, 2023, any subdivision plat review I perform within the Petersburg Borough outside of Service Area 1 conforms to AS 40.15 and 11 AAC 53.600-53.900. Until Petersburg Borough adopts planning, platting and land use regulations outside of Service Area 1, the simple requirements of AS 40.15 will guide a plat review, rather than your very well-structured subdivision code for Service Area 1 (City of Petersburg Title 18). The sooner Petersburg Borough provides for planning, platting and land use regulations outside of Service Area 1 as required by incorporation (AS 29.35.180 and AS 29.40.010), the sooner Petersburg Borough's standards can be applied to subdivision plats.

Engineering standards including ADEC Minimum Separation Distances, lot size or road widths are not called for under the Unorganized Borough Platting Authority (UB). *Legal access* to and within a subdivision must exist and/or be provided. If a road managed by the Alaska Department of Transportation and Public Facilities (DOT&PF) is impacted by a subdivision, comments from the appropriate regional office of DOT&PF are requested. Comments provided by DOT&PF regarding South Mitkof Subdivision were provided to Liz Cabrera in September via her public records request. There is no requirement for a dedication in fee of the legal access; public access easements are acceptable forms of legal access. Nor does UB require construction of roads. UB policy is to request comments from local emergency response for a right-of-way (ROW) width less than 50 feet, which is the width of the public access provided for on the South Mitkof Subdivision plat. The 50 foot public access and utility easements to be dedicated on the plat are in harmony with the existing public access easements issued by the Division of Mining, Land and Water (ADL 102456 and ADL 103933) prior to the incorporation of Petersburg Borough.

Although both entities are housed within the Division of Natural Resources (DNR), the Alaska Mental Health Trust Land Office (TLO) lands are managed differently than lands owned and managed by the Division of Mining, Land and Water (DMLW) and are subject to different statutes and regulations. Chandler Long will speak to TLO land management under

separate cover. TLO lands are managed under AS 37.14.009 and AS 38.05.801 and are not considered “state land” for management purposes [see 11 AAC 51.990 (15)(B)], South Mitkof Subdivision does not comply with 11 AAC 51.015 standards for public easements or 11 AAC 53.400-450 subdivision standards for separate utility easements, public access easement width for a neighborhood service road or easements along navigable and public waters as required for subdivisions created by DMLW on state land.

The application of AS 19.10.010 for the reservation of a section line easement on state land, 50 feet each side of a surveyed or protracted section line also does not apply to TLO lands. Per the September 2022 agreement¹ between TLO, DNR and DOT&PF, which has not been widely publicized, a 33 foot wide section line easement exists on land that was unreserved, surveyed federal land on July 28, 1956 and the State of Alaska selected those lands under the Alaska Mental Health Enabling Act of 1956. The lands being subdivided are part of DMWL case MH84 and were selected under the provisions of the Alaska Mental Health Enabling Act of 1956. My research² indicates the expansion of the Tongass National Forest in 1909 withdrew these lands from settlement. Since this area was not subject to entry, a 33 foot section line easement did not attach when the rectangular surveys were accepted in 1928³. PLO No. 842, signed 6/19/1952 eliminated these lands (and others) from the Tongass National Forest but the lands remained withdrawn for Small Tract Classification. PLO 2386 signed May 15, 1961, revoked PLO No. 842 and reserved a preference right to the State of Alaska to select lands under the Act of July 28, 1956, the Alaska Statehood Act and 43 CFR 7631-76.18; however, “the lands will not be subject to the disposition under the public land laws unless and until it is so provided by the order of an authorized officer of the Bureau of Land Management.” The state of Alaska selected these lands on 5/29/1961. My interpretation of the chronology is that the lands were withdrawn from settlement and the selection by the State was allowed under a preference right. TLO recently requested a formal opinion on the existence of section line easements within the subdivision. The section line easement determination completed by Joseph Donohue of the DMLW Survey Section and he did not find additional documentation. However, due to the vague nature of PLO 2386 and relying on the fact that lands selected under the Act of July 28, 1956 must be vacant and unappropriated, his conclusion is that 33’ section line easements *may* have attached. I would like to reassure the Assembly and residents of Petersburg Borough that any easement reserved in a patent issued by the State of Alaska in the 1970s & 1980s prior to DMLW conveying the remaining original trust lands in this area to TLO, are not affected by the September 2022 agreement and exist as described in the patent until vacated by the proper authority.

In lieu of section line easements, the TLO is providing 50 foot public access and utility easements throughout the subdivision. ADL 102456 and ADL 103933 easements provide access not only to TLO lands, but to parcels that were conveyed out of state ownership in the 1970s and 1980s adjacent to South Mitkof Subdivision. Many of the state patents issued are subject to section line easements and public access easements, and I believe a graphic showing the entire network of easements, both existing and proposed, would be quite enlightening and helpful. I did request⁴ that the surveyor work with TLO and Petersburg Borough to name the access

¹ Concurrence on Applicability of Section Line Easements on Alaska Mental Health Trust Land, Updated September 2022.

² Research documents are available upon request.

³ Townships include Ts. 59-60 S., Rs. 79 E. C.R.M.

⁴ Copies of UB plat review letters are available upon request.

easements; however, Petersburg Borough declined to assign road names with the subdivision being located outside of Service Area 1 (see email dated June 28, 2023). Access onto the Mitkof Highway is provided at nine locations along the easterly boundary of the subdivision, and at least two of those locations are currently in use. Given the mix of existing and new access easements, the creation of a service area may be more equitable to all landowners adjacent to the subdivision who will benefit from road improvements.

The Unorganized Borough Platting Authority has no authorization to address many of the assembly's concerns, we must work with the TLO to produce a subdivision that may not satisfy all parties involved but will be the best compromise.

Respectfully,

A handwritten signature in blue ink that reads "Amy Orange-Posma". The signature is written in a cursive style with a large initial "A".

Amy Orange-Posma, PLS, CFedS
Land Surveyor 2
Unorganized Borough Platting Officer
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