

E. NEW BUSINESS

- 7. Ordinance 2022-XX: Amending KPB Chapter 20.65 Relating to Federal Patent Easements.**

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor

FROM: Robert Ruffner, Planning Director
A. Walker Steinhage, Deputy Borough Attorney

DATE: June 23, 2022

RE: Ordinance 2022-____, Amending KPB Chapter 20.65 Relating to Federal Patent Easements (Mayor)

The federal "Small Tract Act"¹ approved June 1, 1938 (52 Stat. 609), authorized the sale of public lands classified as "valuable for residence, recreation, business or community site purposes."² In 1945, the Small Tract Act was made applicable to Alaska. The reservation of easements was by the Government Land Office, the predecessor agency to the U.S. Department of Interior, Bureau of Land Management, and the Bureau of Land Management which became the administering agency for the sale of the federal lands under the small tract patenting procedure. According to the BLM, small tract rights-of-way were common law dedications to the public to provide ingress and egress to the lessees or patentees and to provide access for utility services in order to avoid burdening local governments with having to acquire an easement when the time came to install utilities and roadways.

Though the Small Tract Act eventually was repealed by the Federal Land Policy and Management Act of 1976, under Alaska law, the repeal of the Small Tract Act did not by itself end a small tract classification.³ Presently, there are lands throughout the Kenai Peninsula Borough still classified for small tract use and numerous others subject to federal patent easements since the easements survive conveyance from the federal government to private landowners. Under Alaska law, these rights-of-way serve as express offers of common law dedication to the public, but such dedications are not complete until the offer has been accepted. Legally, there are several ways to accept an offer of dedication, including: 1) formal action; 2) public use consistent with the offer of dedication;

¹ Formally entitled "An Act to provide for the purchase of public lands for home and other sites".

² *McCarrey v. Kaylor*, 301 P.3d 559, 565 (Alaska 2013) (quoting *Mountain States Tel. & tel. Co. v. Kennedy*, 711 P.2d 653, 655 (Ariz.App.1985)).

³ *Id.* at 566.

and 3) substantial reliance on the offer of dedication that would create an estoppel.

Currently, there is no way under Borough code to effectively address federal patent easements, though this is something about which the Planning Department regularly receives requests from surveyors throughout the Borough. The purpose of this ordinance is to establish a policy recognizing and a mechanism to recognize public rights-of-way reserved by United States Government Patents under the Federal Small Tract Act.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 7/5/22
Hearing: 8/9/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTER 20.65 RELATING TO FEDERAL
PATENT EASEMENTS AND PUBLIC RIGHTS-OF-WAY**

WHEREAS, the 1938 federal “Small Tract Act” authorized the sale of public lands classified as valuable for residence, recreation, business or community site purposes; and

WHEREAS, in 1945 the Small Tract Act was made applicable to Alaska; and

WHEREAS, small tract rights-of-way were common law dedications to the public to provide ingress and egress to the lessees or patentees and to provide access for utility services in order to avoid burdening local governments with having to acquire an easement when the time came to install utilities and roadways; and

WHEREAS, there are lands throughout the Kenai Peninsula Borough (Borough) still classified for small tract use and numerous others subject to federal patent easements; and

WHEREAS, these rights-of-way serve as express offers of common law dedication to the public; and

WHEREAS, common law dedications are not complete until the offer has been accepted; and

WHEREAS, currently there is no way under Borough code to effectively address federal patent easements; and

WHEREAS, the Planning Department regularly receives requests from surveyors throughout the Borough to provide an avenue to address federal patent easements; and

WHEREAS, at its meeting held on June 27, 2022, the Planning Commission recommended _____ of this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 20.65 is hereby amended as follows:

20.65.025. - Federal patent easements and public rights-of-way.

- A. The borough recognizes all reservations for road and utility easements contained in U.S. Patents to be public rights-of-way. As public rights-of-way, the borough may establish borough roadways within the easements as provided for in borough code and state statute, vacate and abandon the easements as public rights-of-way under borough code and state statute, and license, regulate and administer as public rights-of-way pursuant to borough code and state statute and its authority as a political subdivision of the State of Alaska.
- B. Before the borough vacates, abandons, or alters federal patent easements, the Planning Department will request comment from the pertinent federal and state agencies. Federal patent easements may not be vacated or abandoned if a federal or state agency objects to the vacation or abandonment within forty-five days of the Planning Department's request for comment. The process to vacate, abandon, or alter federal patent easements otherwise will conform to KPB 20.65.030, 20.65.040 and 20.65.050.

SECTION 2. This ordinance is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ____ DAY OF _____ 2021.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk