



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

TO: Blaine Gilman, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Mike Navarre, Mayor *MN*
Colette Thompson, Borough Attorney *CT*

FROM: Holly Montague, Deputy Borough Attorney *HM*

DATE: December 8, 2015

SUBJECT: Response to Regis memo regarding Ordinance 2014-32

The December 7, 2015 Regis memo makes arguments on behalf of the state and the federal government which neither governmental entity has asserted to the borough. The borough parcel proposed for conveyance abuts Cook Inlet and was part of a larger parcel that was patented to the KPB in 1979. The borough received approval of the municipal entitlement selection in 1971. The state received its patent from the federal government in 1965.

AS 38.05.127(A)(2) requires the State of Alaska prior to disposing land to provide for easements to ensure access to and along navigable water bodies. The 1979 patent, #4500, states the patent is "subject to AS 38.05.127, Access to Navigable or Public Waters." The borough is complying with this language in the patent by specifying a "to" easement along the south 50 feet of the reserved drainage easement in the proposed quitclaim deed. The borough is further complying with the patent language by reserving a public easement "along the mean high water line (MHWL) of the Cook Inlet extending 50 feet upland of the MHWL." The Regis memo alleges the entire parcel proposed for conveyance is subject to a public access easement. The 1979 map and 1981 amended map upon which Regis relies references at note 2 that an "along" easement exists, which is consistent with the borough's reservation. Nothing submitted by Regis indicates that the entire subject parcel is a public access easement. The borough is not attempting to modify, reduce, or vacate any interest reserved in the state patent. The borough is merely specifying the location of the to and along easements as it has done in numerous conveyances it has made of former state lands patented to the borough. Memorializing the width and location of these easements is consistent with the patent and applicable state regulations regarding "to and along" easements.

With regards to the purported federal ditch right-of-way the Regis memo states “the state of Alaska’s analysis relative to the public access easement must necessarily include an analysis of this federally reserved ditch.” The memo further states the “KPB cannot dig in the ditch or replace the ditch because KPB received from the State no greater right than the State received from the Federal Government.” According to the KPB Land Management division neither the state, nor federal government, has contacted the borough to allege that the borough is engaged in some untoward activity in relationship to reserved state and federal interests. A federal drainage feature, if one exists, is not an impediment to the borough conveying the subject lands as the borough’s reservation includes that drainage feature. The language in the federal patent is not specific to this parcel but is boilerplate language contained in many federal patents to the state. Whether the state or federal government constructed the drainage feature, neither of those governmental entities appears to have an issue with the borough’s conveyance of its patented lands. The Regis memo cites to no legal authority preventing the borough from reserving a drainage easement and conveying the land. The borough’s reservations in its quitclaim deed are broadening public access and reservations on borough land, not decreasing them.