

Lounsbury & associates, inc.

ESTABLISHED 1949

Memorandum

October 8, 2013

From: Tim Mullikin, P.L.S., Survey Manager

To Mark Earnest

Re: Ability of Haines Borough to grant easements at Excursion Inlet

Dear Mr. Earnest,

Lounsbury was hired in 2009 to complete the Municipal Entitlement survey at Excursion Inlet after a failed effort started in 1995 by another company. That Municipal Entitlement work is complete--the signed Mylar is at the State of Alaska, Department of Natural Resources (DNR) waiting for the Haines Borough to give permission to file the survey. The survey plat is being held awaiting resolution of easement issues.

The short answer to the question of whether the Borough can grant an easement prior to receiving patent is that the State of Alaska, in its land transfer final decision document, granted management authority of the land to the Haines Borough years ago.

After the final decisional document is finalized by DNR, then an Alaska State Land Survey (ASLS) needs to be performed to define the parcels to transfer. Part of that State platting process involves running the plat through the Haines Borough Planning Commission and to grant easements along existing utilities.

Ocean Beauty, through its predecessors in title, claim rights to water and other utility lines dating back to the early 1900's, and also receiving rights from the Army to those lines after the Army's leaving the property after World War II. Some of these claims were formalized by the U.S. Forest Service in documents as early as the 1950's, and were brought forward through the State of Alaska as Department of Lands (ADL) permit applications. The final land decision transferred management authority over some of the land to the Haines Borough, but reserved four specific existing ADL applications for utilities and roads from that management authority.

Normally these easements would be created on the ASLS plat, but they were sufficiently complex that DNR wanted easements to be shown on a separate survey document. The platting process moved forward under the assumption that the State had authority to grant these utility easements under the reservation in the Final Decision document. DNR Land department required Ocean Beauty to hire a Land Surveyor to create an as-built survey to



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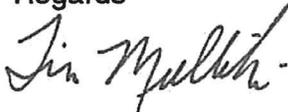
perfect their ADL permits for the utilities so they could be noted on the ASLS plat and reserved from the eventual patent to the Borough.

Ocean Beauty hired Lounsbury to survey the pipelines and utilities and prepare a Record of Survey. Much discussion ensued between attorneys for Ocean Beauty and the Haines Borough, Lounsbury, with the Attorney General's office representing the State, regarding who had authority to grant easements and what method should be used to grant those easements.

During this analysis the Attorney General's office concluded that the State did not have the ability to finalize the ADL's for the utility lines due to the long passage of time (the easement negotiations with the Borough and state survey for the Borough's Municipal Entitlement dates back to 1995).

Following this news, Ocean Beauty and the Haines Borough agreed to move forward with an easement document and accompanying Record of Survey to present to the Assembly to grant utility easements to Ocean Beauty *as prior existing rights*. The Haines Borough Planning Commission recognized the need to grant these easements to Ocean Beauty during their plat approval process, but the DNR did not want them created on that plat due to legibility problems of showing them both on the same plat. The Haines Borough and Ocean Beauty have also entered into several Memorandums of Understanding, the last expiring in 2010, that agreed to grant utility easements to Ocean Beauty.

Regards



Tim Mullikin