



City of Homer

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Port and Harbor

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Memorandum 21-111

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

THRU: ROB DUMOUCHEL, CITY MANAGER

FROM: BRYAN HAWKINS, PORT DIRECTOR / HARBORMASTER

DATE: June 24, 2021

SUBJECT: NON-EXCLUSIVE EASEMENT EXPANSION RE: ALASKA COMMUNICATIONS INTERNET, LLC (hereinafter "ACS")

In April of 2019, ACS informed the City of a field survey error that has resulted in a portion of their recent fiber optic cable installation being built outside of the existing utility easements without the pre-approval or permission of the City. ACS requested that the City grant an extension of the easement to include the incorrectly installed fiber optic cable. City staff researched how granting this easement may affect or encumber City land and discussed with ACS the various alternatives. A proposed agreement was drafted and reviewed by City Council, who passed Resolution 19-032 on May 13, 2019. Resolution 19-32 gave the City Manager the authority to enter into an MOU where ACS provided fiber optic cable installation to the City in turn, the City would grant authorization to expand the existing public utility easement on the Homer Spit for Lots 12 through 16 of Plat 89-15 to incorporate ACS's cable that was installed outside the existing easement.

However, further review by ACS of their policies led them to believe that they did not have the authority to fulfill their side of the agreement as they had originally believed they could. It was therefore requested that the property for the additional easement be assessed for market value. On June 19, 2020, the market value of the easement was assessed for \$50,300. The following monetary agreement was reached between JDO Law (representing the City's interests) and ACS's legal team. The agreement reached is contingent upon City Council's approval of the non-exclusive easement expansion and authorization of the City Manager to negotiate and execute the settlement agreement. In addition, a Public Works utility permit is necessary.

Considerations for how granting this easement would affect long term development on these lots:

- The area in question is currently used for parking, which should not be impacted by the widening of the easement.
- The properties have not been listed as land available for lease in the City's land allocation plan.
- Overslope development has been identified in the Land Allocation Plan for a portion of this area.
- If the properties were to experience development in the future it would limit the footprint possibility of structures by the affected square footage of the expanded easement, parking or paving would still be available options.
- Non-exclusive utility easement remains under City control.

Recommendation:

- Authorization for the City Manager to expand and execute a non-exclusive public utility easement to ACS on the Homer Spit affecting the easement for Lots 12 through 16 of Plat 89-15 as recorded at the Homer Recording District. Authorization for the City Manager to negotiate and enter into an agreement with ACS for payment to

the City in the amount of seventy-five thousand dollars (\$75,000) as compensation for the City's efforts in expanding the non-exclusive public utility easement and for the past use of City property without authorization by ACS.

- Attachments:
- 1) Surveyed easement
 - 2) Proposed settlement contract