

New documents reveal coordinated effort to eliminate Campbell Lake public access

NOVEMBER 7, 2019 BY JEFF LANDFIELD AND PAXSON WOELBER

Since September 2019, the Alaska Landmine has published articles revealing that the State of Alaska considers “private” Campbell Lake to be a public navigable waterway and that millions of dollars of taxpayer money have been spent damming, dredging, and engineering public utilities around the lake, even as members of the public have faced persistent harassment after venturing onto the lake.

In our initial story, the Landmine published documentation of now-Senator Natasha von Imhof (R-Anchorage) and husband Rudi’s attempts to use a formal process called “vacation” to eliminate a little-known public access easement leading to the lake. Now, the Landmine has obtained the von Imhofs’ easement vacation request, along with documents supporting the vacation from neighbors, the Campbell Lake HOA, and the Municipality of Anchorage (MOA). These documents contain questionable claims about the easement and demonstrate a persistent, coordinated effort to assert that public access to the largest lake in Anchorage would be counter to the public interest.

Von Imhofs apply for elimination of public easement

Between 2002 and 2006, now-Senator Natasha von Imhof, husband Rudi von Imhof and their agents petitioned to eliminate the public easement crossing “Von Imhof Acres,” a 2.25-acre then-undeveloped property on the southwestern shore of Campbell Lake. This easement connected West 100th Avenue to Campbell Lake, and represented the last remaining option for public access to the lake.

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On June 15, 2004, DOWL Engineering Director of Planning Timothy C. Potter submitted a letter to the MOA on behalf of their clients, the von Imhofs, requesting the easement vacation. The letter notes that the easement predates the creation of Campbell Lake itself, but claims that the easement

“no longer serves or could possibly serve the purpose for which the easement was originally intended, that being public roadway and utilities.” According to DOWL Engineering, the easement does not provide useful access to Campbell Lake because after crossing the von Imhof property it traverses the property of their neighbor, who has improved the public easement with private amenities, including “a dock, a boathouse, an aircraft parking slip, deck, and landscaping.”

sections to minimize the side grade, the lack of parking area for users, and limited area at the lakeshore. The section line easement reaches the lakeshore in the lakeside yard of the private home on the adjacent property where current improvements include a dock, a boathouse, an aircraft parking slip, deck, and landscaping.

In summary, the following refutes addressing the “public need” for this section line easement:

DOWL Engineering summarizes the case for vacating the easement as follows:

- *Existing topography is too steep;*
- *Utilities and roads will not be extended north across the lake or to the south from this location;*
- *The lake is closed to sport fishing so any one attempting to access via this easement for fishing could not fish legally;*
- *Floatplane base and flight safety is not compatible with casual access to the lake by swimmers and boaters unfamiliar with operational safety guidelines and near shore operations, and;*
- *Protection of trail access will result in a variety of parking, access, circulation and security/safety related problems, on the adjacent private property and public roadway.*

Questionable claims about Campbell Lake easement

According to DOWL Engineering, “the entire lakeshore and lake bottom of Campbell Lake is private property. The lake is privately operated by the Campbell Lake Homeowners Association with written rules...” However, **as the Landmine reported on September 20, 2019**, the State of Alaska recognizes Campbell Lake as a navigable waterway, which members of the public have **a constitutional right to access and utilize**. The Alaska Landmine could not find precedent in Alaska for an HOA’s rules superceding the Alaska State Constitution.

DOWL repeatedly claims that the topography of the easement is too challenging to permit the development of a public access point:

The topography of the properties slopes steeply from the south portion of the tracts and lot along West 100th Avenue down to the lakeshore. The steep side-slope to the west and the increasing steepness to the north limit the use of the section line easement as access to Campbell Lake. A topographic map of the properties is attached.

DOWL Engineering claims that “design and construction of any type of access within the easement on Tract B1 would be extremely difficult...” However, satellite imagery demonstrates that neither the vom Imhofs nor their neighbor, Dr. John D. Frost, found the topography especially challenging.

Both the von Imhofs and Dr. Frost were able to build driveways, float plane docks, and residences on and immediately adjacent to the easement:

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According to DOWL Engineering, the fact that Campbell Lake is closed to sportfishing constitutes an argument for the elimination of the public easement to the lake. It is unclear why DOWL Engineering assumes that easement users would want to fish illegally on Campbell Lake, or why other user groups should not be considered.

DOWL Engineering claims that public safety would be “severely impacted” by public use of the lake because of the lake’s status as a designated float plane base. However, as the Landmine has previously reported, Campbell Lake HOA members apparently believe themselves to be fully capable of safe boating on Campbell Lake. **Satellite imagery shows that Campbell Lake residents own and operate hundreds of recreational watercraft on the lake.** Float plane traffic and personal watercraft coexist on countless Alaska lakes.

Last, DOWL Engineering claims that the section line easement crossing the von Imhof property is intended for “public roadways and utilities.” Research by the Landmine indicates that this view demonstrates a fundamental misunderstanding of the purpose of section line easements. Section line easements are dedicated not specifically to “public roadways and utilities” but generally to public access and public access infrastructure—including trails.

Despite their questionable nature, the statements made by DOWL Engineering on behalf of the von Imhofs would be repeated almost verbatim in letters of support for the vacation, both by individuals and by representatives of the Municipality of Anchorage (MOA).

Letters of support for easement vacation

On April 8, 2004, Campbell Lake resident and von Imhof neighbor Dr. John D. Frost wrote a letter of support for the easement vacation to MOA Platting Officer Jerry Weaver. Those who read the Landmine’s initial reporting on Campbell Lake may recall that after we attempted to interview him, Dr. Frost circulated surveillance images of us to the HOA describing us as “**suspicious men.**” The second half of the public easement leading to Campbell Lake crosses the northwestern corner of Frost’s property, overlapping with his driveway, yard and float plane dock. Dr. Frost begins by stating his unequivocal belief that Campbell Lake is a private lake:

“Campbell Lake is a private lake the entire shoreline and all subsurface land being privately owned. There is not currently, nor will there ever be a need for public access to this lake.”

According to Dr. Frost, creating public access to Campbell Lake would make the MOA liable for injuries, responsible for public safety, and “even more” responsible for pollution. Dr. Frost warns the MOA that if it attempts to develop public access, the “NIMBY” Campbell Lake residents and powerful HOA will burden the Municipality with expensive and protracted lawsuits:

...the city would be even more responsible for any pollution that got into the lake. Costs to taxpayers would significantly increase. Major legal expense for the city would be incurred by fighting the landowner’s association for any proposed public access. The potential benefits to the city would not be worth the increased costs that would be born by all city taxpayers. This lake is not a pristine wilderness environment. It is a lot of people’s backyards. If the city has enjoyed the fight for an extension of the Coastal Trail, just imagine fighting the Campbell Lake NIMBYs over public access to their back yards.

Dr. Frost's letter claims that public access to Campbell Lake would lower property values on lakeside homes, thereby decreasing municipal property tax revenue. Dr. Frost concludes by stating that "based on the above considerations it seems unlikely that public access to Campbell Lake will ever be allowed. I would request that you favorably consider the von Imhof's request to vacate the easement across their land."

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To read the full text of Dr. Frost's letter to the MOA, [click here](#).

On June 10, 2004, Anchorage resident Mark Edwards [submitted a letter](#) to Weaver stating "support for the application of Rudi and Natasha von Imhof to vacate the Section Line easement on their Campbell Lake property." Edwards notes that the easement was not currently in use, that developing it would have consequences for public safety, and that it would be difficult to develop the easement due to "the slope and grade at this location."

The Campbell Lake HOA's "[Lake Use Rules](#)" were also submitted to the Municipality in order to bolster the von Imhofs' request. In the document, the HOA asserts ownership of its "private" lake and the right to dictate access. According to the document, "Access to the lake is limited to members of the Corporation, their immediate families, and invited guests." Membership is offered exclusively to the owners of property that abuts Campbell Lake.

Municipality of Anchorage agencies support elimination of public easement

Multiple documents show broad Municipal support for the von Imhofs' easement vacation request, and a widespread belief by Municipal boards and agencies that the public would be harmed by having access to "private" Campbell Lake.

A July 17, 2002 MOA Planning Department analysis states that "Project Management and Engineering, Traffic Engineering, Street Maintenance, and the Planning Department are not opposed to vacation." The analysis notes that "Campbell Lake is a man made lake and the owners

association owns the underlying land of the lake itself. This is a private lake which has been man made with no public access.”

In an [August 2004 Planning Department analysis](#) the Department concurred with the von Imhofs’ request, noting that “Existing topography is steep,” that the lake is closed to fishing, and that “Floatplane base and flight safety is not compatible with casual access to the lake.”

Surprisingly, the Planning Department claims that the Municipality’s failure to provide adequate parking near the easement constitutes a justification for eliminating the easement:

- Protection of trail access will result in a variety of parking, access, circulation and security/safety related problems, on the adjacent private property and public roadway.

Additionally, the easement is not needed for efficient movement of vehicular and pedestrian

According to [minutes from an August 4, 2004 meeting of the Municipal Platting Board](#), board member Bruce Phelps voiced strong support for vacating the easement: “Public access to the lake would not be in the public interest... Vacation of the easement would promote the public health and safety.”

BOARD MEMBER PHELPS supported his motion, noting that there is no public opposition to this request and, in fact there are three letters in support of the request. Public access to the lake would not be in the public interest and could create safety problems. The easement is not needed for the movement of pedestrians or vehicles and granting vacation of the easement would promote the public health and safety.

The Municipal Platting Board voted unanimously to approve the vacation.

In a February 1, 2006 MOA memo, Senior Planner Margaret O’Brien notes that “the topography [on the easement] is steep and utilities and roads will not be extended north across Campbell Lake. Campbell Lake is a man-made lake that is privately owned... Trail access will not be provided.”

vacation request on August 4, 2004.

The Board found that the topography is steep and utilities and roads will not be extended north across Campbell Lake. Campbell Lake is a man-made lake that is privately owned. The lake is closed to sport fishing. The floatplane base and flight safety is not compatible with casual access to the lake by swimmers and boaters. Trail access will not be provided. This 66’ x 225’ section of the section line easement was found to be excess to Municipal need for right-of-way.

This time extension is requested in order to complete the review and approval process

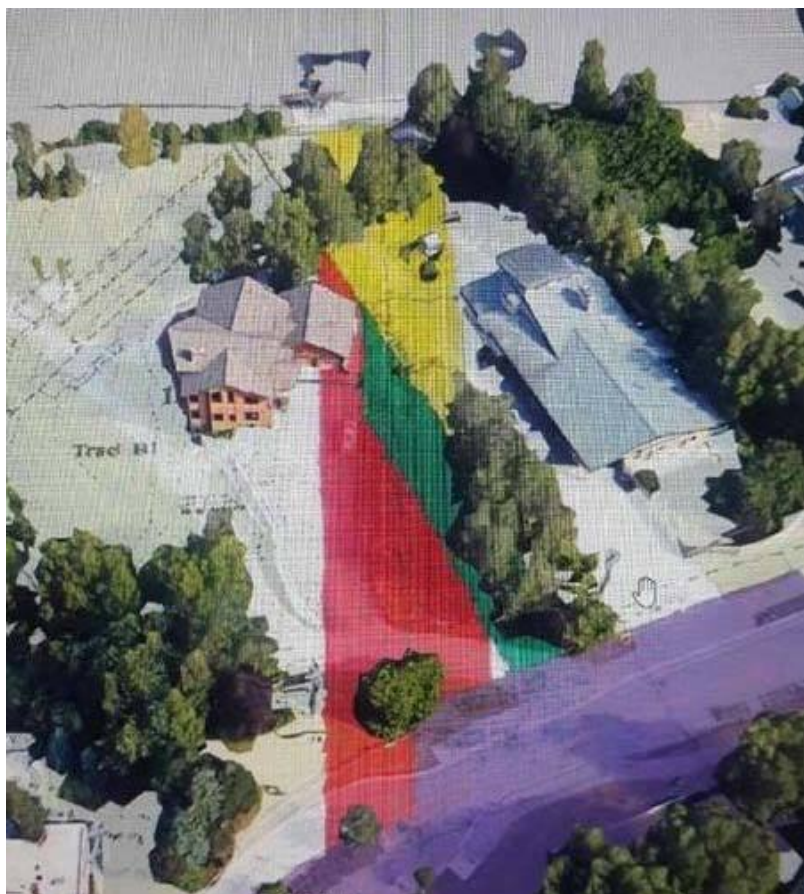
Even municipal organizations dedicated to public parks and trails registered no objection to the easement vacation, which could effectively end the possibility of public access to the largest lake in Anchorage. According to the July 17, 2002 Planning Department analysis, the Parks and Beautification Division wrote that “No park land or trail system will be adversely affected by this re-plat and vacation; therefore Parks and Recreation has no comment.” The August 4, 2004 Planning Department analysis states that the MOA Parks Coordinator and Trails Coordinator registered no opposition to the vacation.

State of Alaska declines to fully vacate the easement

Several MOA documents note that final authority to vacate the easement rested with the State of Alaska, and not the Municipality. The Alaska State Constitution guarantees public access and use of navigable waterways, and the State is known for its rigorous defense of access to public lands and waters. Moreover, State law dictates that easements of the type crossing the von Imhof property cannot be vacated without providing for equal or better alternate access.

As previously reported by the Landmine, the State agreed to partially vacate the original easement across the von Imhof property, but only on the condition that it be replaced with a 25-foot-wide pedestrian easement following the east side of the lot. The von Imhofs were prohibited from erecting barriers or posting signage that would deter public use of the easement. The von Imhofs agreed and built a lakeside home now assessed at \$1.7 million.

For years following the agreement, the easement remained virtually unknown and the belief that Campbell Lake is a “private lake” with no public access went virtually unchallenged.



▲ Rendition of the section line easement crossing the von Imhof and Frost properties. The vacated easement is marked in red; the new 25-foot pedestrian easement is marked in green; the remainder of the original easement is marked in yellow. Image courtesy a Landmine reader and professional surveyor.

Continuing confusion over legality of public access

Following the publication of [The bizarre story of Campbell Lake, the private lake that isn't](#), numerous licensed surveyors and trailbuilders contacted the Landmine to express their desire to develop the public easement. The Landmine, which does not typically coordinate trailbuilding projects, requested the MOA's official position on easement development.

On September 30, 2019, Municipal Surveyor Steven Schmitt responded to the Landmine stating that unauthorized public use or development of the easement would be illegal. According to Schmitt, "The mere existence of an easement does not convey to an individual the right to use said easement; there is a specific process required to do so. A private entity cannot legally enter another person's property without permission, even if an easement exists." Schmitt stated that the easement could only be developed by government institutions or after following a lengthy permitting and engineering process via MOA, DNR, and DOT. Schmitt concluded:

Personal property rights are protected by the Fifth Amendment to the United States Constitution – any 'project' which would make use of these easements would need to rise to the level where it is in the best interest of the public.

To read the full text of Schmitt's email, [click here](#).

The Landmine was surprised by the claim that public use of section line and pedestrian easements constituted a violation of the Fifth Amendment of the United States Constitution. The Landmine forwarded Schmitt's email to Thomas Meacham, a longtime Alaska attorney who has been involved in multiple landmark land use cases in Alaska, including [Sturgeon](#). Meacham took the liberty of responding to Schmitt's response line by line. A portion of Meacham's email is reproduced below. Schmitt's original comments are in italics, and Meacham's replies are in bold italics:

*The mere existence of an easement does not convey to an individual the right to use said easement; there is a specific process required to do so. **Incorrect. No rights are being "conveyed" to an individual. However, if the easement is for public access, any member of the public may use it for that purpose, without any further "special process" needed. I would like to see the authority for your statement here.***

*A private entity cannot legally enter another person's property without permission, even if an easement exists. **Quite incorrect. A landowner whose land is burdened by an easement cannot deny the easement holder (here, the public) use of the easement consistent with its purpose. To make such a claim as you have made, would completely negate the legal purpose of an easement. I would like to see the authority for your statement here.***

To see the full text of Meacham's response to Schmitt, [click here](#). The Landmine highly recommends the read.

On October 2, 2019, Assistant Municipal Attorney Quincy Arms responded to Meacham that the views expressed by Schmitt should not be considered the Municipality's official position.

Municipality and State promise joint statement regarding public use of Campbell Lake

Since late September, the Landmine has pressed both the Municipality of Anchorage and the State of Alaska for official positions regarding public access to and use of Campbell Lake. On October 25, 2019, MOA attorney Rebecca Windt Pearson responded to the Landmine:

Thanks for your patience. Because both navigable waterways and section line easements are a state issue, we are working closely with DNR on issuing a complete joint explanation of our shared position on the ownership/access questions you raise. We will send it to you as soon as it is available. In the meantime, I can tell you that (1) APD has not received or responded to any reports of trespass on Campbell Lake; and (2) the roads surrounding the lake itself are public.

Multiple sources have told the Landmine that both the Municipality and State have received numerous inquires regarding Campbell Lake public access. Sources tell the Landmine that there has been an intense effort behind the scenes by the Campbell Lake HOA and its agents to permanently block the development of public access to the lake.

This is a developing story.

CAMPBELL LAKE SERIES

This article is part of the Alaska Landmine's coverage of Campbell Lake access

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