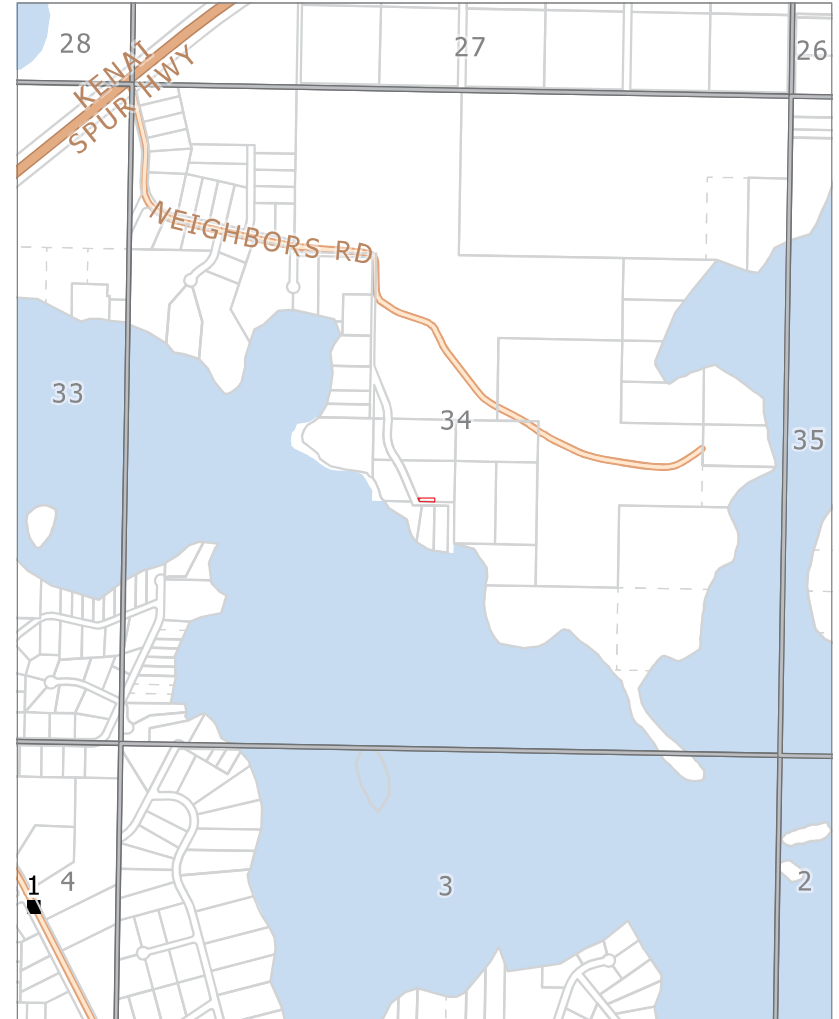


E. NEW BUSINESS

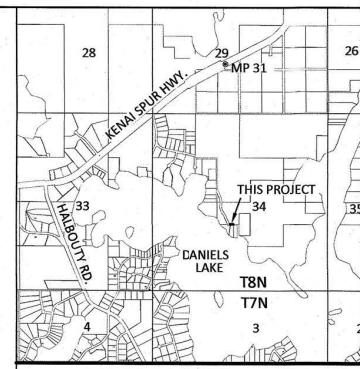
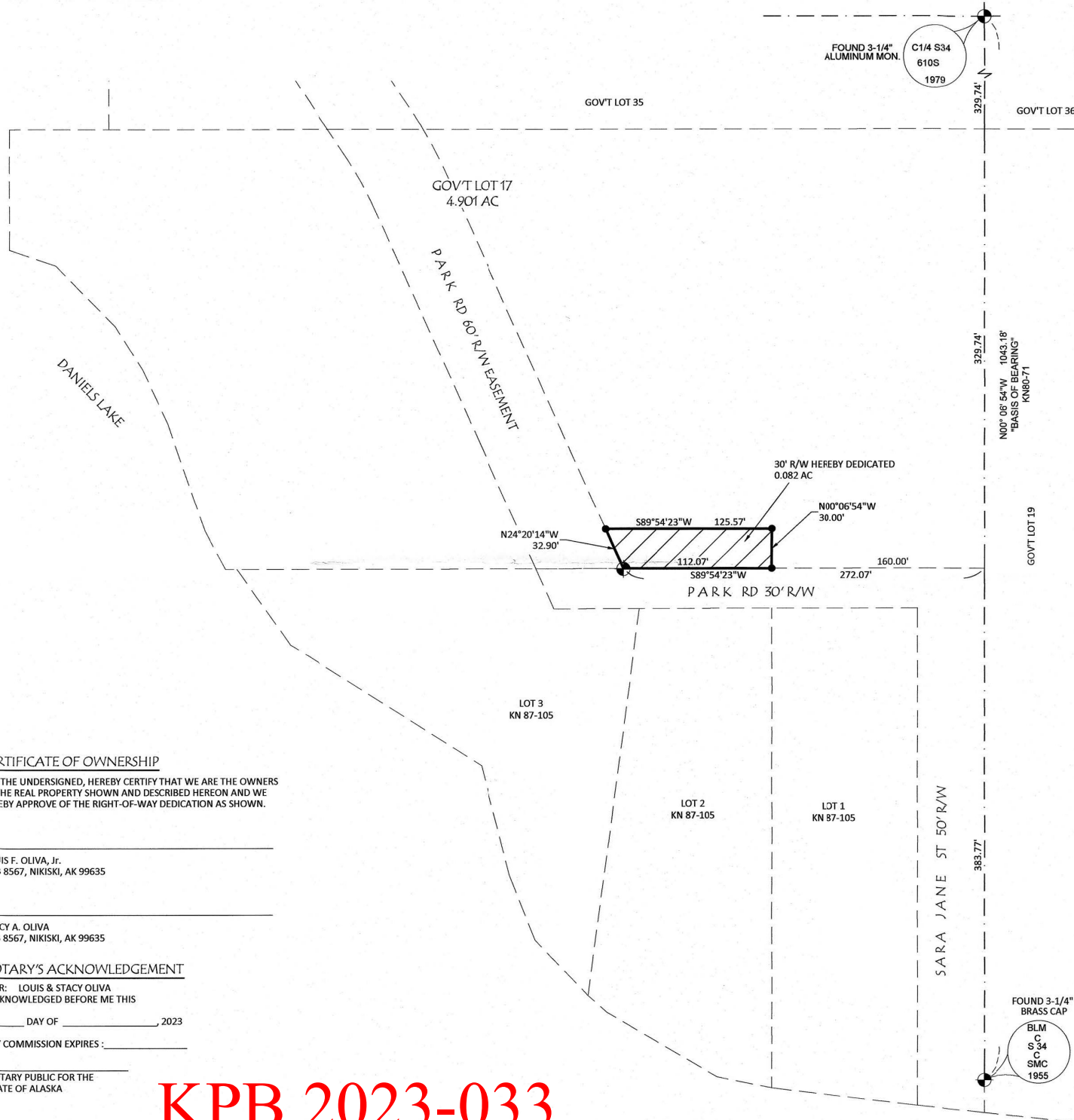
- 4. Right-Of-Way Acquisition Park Road
KPB File 2023-033**



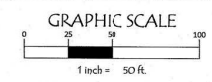
KPB File # 2023-033
S34 T08N R11W
Nikiski



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



VICINITY MAP Scale 1" = 1/2 Mile



LEGEND

- 30' RIGHT OF WAY DEDICATION
- FOUND PRIMARY MONUMENT
- SET 5/8"x30" REBAR w/ 1" STAINLESS STEEL CAP 85032-S



PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION IN ACCORDANCE WITH KPB 20.10.070 AT THE MEETING OF _____.

AUTHORIZED OFFICIAL _____

Plat #	
Rec Dist	
Date	20
Time	M

RIGHT-OF-WAY ACQUISITION PLAT			
LOUIS F. OLIVA, Jr. PO BOX 8567 NIKISKI, AK 99635		STACY A. OLIVA PO BOX 8567 NIKISKI, AK 99635	
4.983 AC. M/L SITUATED IN GOV'T LOT 17 OF SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, AND THE KENAI RECORDING DISTRICT, ALASKA.			
ENGINEERING - TESTING SURVEYING - MAPPING P.O. BOX 488 SOLDOTNA, AK 99689 VOICE: (907) 283-4218 FAX: (907) 283-3265 WWW.MCLANECG.COM	KPB File No.		2023-xxx
	Project No.		192018
Scale 1" = 50'		Date : MAR 2023	Drawn by : JAH

CERTIFICATE OF OWNERSHIP

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND WE HEREBY APPROVE OF THE RIGHT-OF-WAY DEDICATION AS SHOWN.

LOUIS F. OLIVA, Jr.
POB 8567, NIKISKI, AK 99635

STACY A. OLIVA
POB 8567, NIKISKI, AK 99635

NOTARY'S ACKNOWLEDGEMENT

FOR: LOUIS & STACY OLIVA
ACKNOWLEDGED BEFORE ME THIS

____ DAY OF _____, 2023

MY COMMISSION EXPIRES : _____

NOTARY PUBLIC FOR THE
STATE OF ALASKA

KPB 2023-033

AGENDA ITEM E. NEW BUSINESS

ITEM 4 – RIGHT-OF-WAY ACQUISITION PARK ROAD KPB 2023-033

KPB File No.	2023-033
Plat Committee Meeting:	April 24, 2023
Applicant / Owner:	Louis and Stacy Oliva of Nikiski, Alaska
Surveyor:	James Hall / McLane Consulting Inc
General Location:	Park Road, Nikiski, Nikiski APC

Parent Parcel No.:	013-410-69
Legal Description:	Government Lot 17 of Section 34 Township 8N Range 11W

STAFF REPORT

Specific Request / Scope of Subdivision: Dedicating a 30-foot wide by approximate 120 feet in length bringing a portion of the east-west Park Road right-of-way to a 60-foot-wide dedication.

Location and Legal Access (existing and proposed): This parcel is located at approximately mile 30.5 along the Kenai Spur Highway at access point to Neighbors Road then to Parks Road. Neighbor Road and Parks Road are both Borough maintained. Parks Road maintenance ends at the turn to the east. The portion proposed for acquisition is not maintained.

There is a half dedication of 30 feet wide by 210 feet on the south side of Park Road previously known as Craig Drive, dedicated by Rappe Park Subdivision Amended KN 87-105. This acquisition will provide a match to a portion to the western part of the previously mentioned dedication. This dedication is 30 by 112 feet approximately. Previously the north part of Park Road utilized an ADL for access.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Griebel, Scott Comments: I assume this to be prelude to vacation request for the end of Park and Sara Jane. No department protest concerning the dedication on this plat.
SOA DOT comments	No comment – Engineering
SOA DNR	1. There is no Ownership certificate on the vacation plat. 2. The 30' dedication shall be depicted on the vacation plat <u>with its source labeled</u> or it should be noted as being dedicated. 3. If the two plats are being recorded simultaneously, recording information for the dedicated 30' ROW will need to be added to the vacation plat.

Site Investigation: There are no wetlands or steep terrain in the area of this acquisition.

There does appear to be items in the area of the acquisition and the southern part of the road. This will need to be verified and identified if found. If items are found in the acquisition area, all encroachments will need to be removed.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
-------------------------	--

	<p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w kpb\maldrige</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	

Staff Analysis This item falls under KPB 20.10.070 – Right-of-way acquisition plat. The approval of this item is only subject to the requirements of 20.10.070 and not subject to other portions of Chapter 20 except for those outlined within 20.10.070.

- If dedications are being granted for rights-of-way an ownership and dedications certificate shall be provided in accordance with KPB 20.60.190.
- Minimum survey monumentation is required. Reinforced bars with appropriate identification caps are required on the margin of the right-of-way at all points marking the beginning and end of each curve and on tangents so that no distance between monumented points exceed 1,320 feet or by an alternate method using centerline points.
- The plat must be surveyed and monumented in conformance to applicable provisions of KPB 20.60.200.
- There shall be no remainder parcels that do not conform to KPB code unless a note is added that damages have been paid to the owner and that the remainder cannot be developed without being replatted to comply.
- The remainder lots must meet the requirements for an exception under KPB 20.30.200(C) or KPB 20.50.010.

The Kenai Peninsula Borough Planning Commission heard a petition to vacate an ADL north of the existing Park Road dedication on February 8, 2021. The ADL is a state managed easement. The Planning Commission recommended approval. The Kenai Peninsula Borough Assembly reviewed that decision on March 2, 2021 and consented to the Planning Commission decision. The owner proceeded to work with the State of Alaska on the vacation of the ADL. A final decision was approved on June 14, 2022. Approval of the vacation was granted subject to the western portion of the ADL being dedicated prior to final approval. Staff provided a copy to the State to verify the proposed dedication is the area they were requiring. This right-of-way acquisition is to fulfill the requirements outlined by the state to allow the approved vacation of the ADL to record.

Notices were sent to 3 interested parties regarding the project.

Nikiski Advisory Planning Commission minutes were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available. The Nikiski APC did review at the April 6, 2023 meeting and recommended approval.

If approval is granted, the preliminary approval is valid for 48 months. Additional time extensions may be granted by the planning director for specified time periods upon finding that it is in the public interest to do so.

Utility Easements Existing utility easements shall be carried over. Any new utility easements required by providers should be granted.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	No comments
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Lay, Bobbi Affected Addresses: NONE</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: PARK RD; SARA JANE ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: NO ADDRESSING COMMENTS AT THIS TIME</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Windsor, Heather Comments: No comment</p>
Advisory Planning Commission	Recommended approval

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

- Certificate of Acceptance should be added to be signed by the Kenai Peninsula Borough.
- Place the following note on the plat: *Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).*
- Add to the right of way to the south and northwest the source of the dedications and access documents.

- Provide monument information for the primary monument located on the southwest.
- Update the Certificate of Ownership to comply with 20.60.190.

The approval of the vacation is subject to the dedication. The owners have elected to finalize the two parts of the project by two separate plats. As the vacation cannot be recorded prior to the acquisition, **staff recommends approval of the right-of-way acquisition subject to:**

1. *The corrections as noted within the staff report.*
2. *Compliance with 20.10 and all related KPB Code.*
3. *The right-of-way acquisition will be required to be recorded prior to the vacation plat.*
4. *Grant approval for 24 months with additional time extensions allowed by the planning director if found that it is in the public interest to do so.*
5. *Disclosure of any encroachments within the proposed right-of-way in writing.*
6. *Any known encroachments will be required to be removed prior to final approval.*

RECOMMENDATION:

STAFF RECOMMENDS:

- GRANT APPROVAL SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.10.

NOTE: 20.25.120. - REVIEW AND APPEAL.

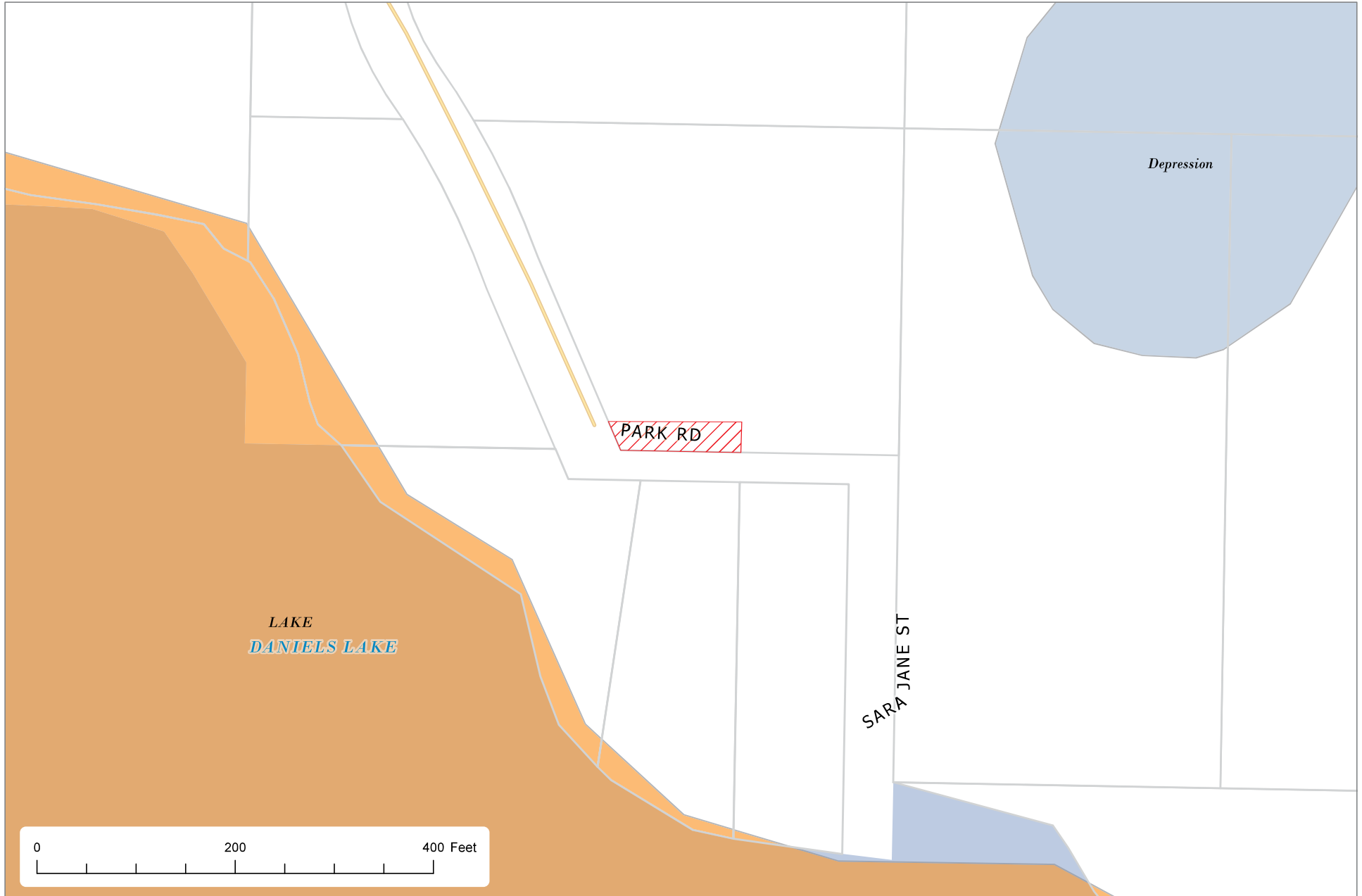
A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

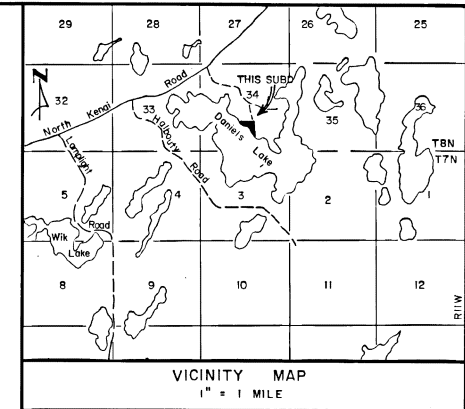
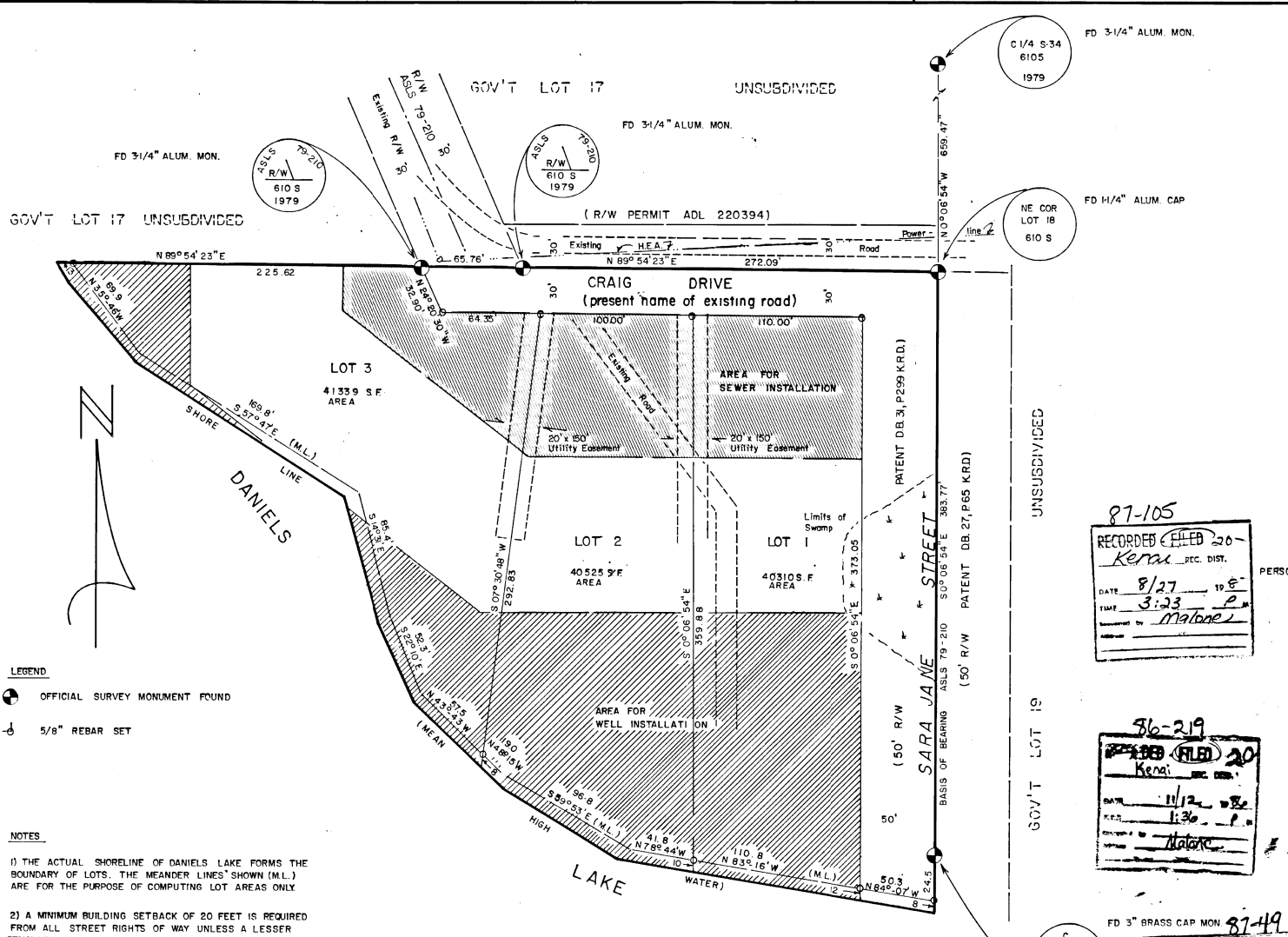


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The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





CERTIFICATE OF OWNERSHIP AND DEDICATION

I certify that I am the representative for the estate of Leslie A. Rappe, which is the owner of the property shown and described hereon, and that, on behalf of the estate of Leslie A. Rappe, I hereby adopt this plan of subdivision and dedicate all rights-of-way to public use and grant all easements to the use shown on.

Craig Rappe
CRAIG RAPPE
BOX 112062
ANCHORAGE, ALASKA 99511
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE

NOTARY'S ACKNOWLEDGEMENT

For Craig E. Rappe
Subscribed to and sworn before me
this 20th day of August, 1986.
My commission expires 5/14/89.
Dawn A. Mait
Notary Public for Alaska

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of
JUNE 16, 1986
Kenai Peninsula Borough

By Richard B. Torgerson
Authorized Official

AMENDED

RAPPE PARK SUBDIVISION

GOV'T LOT 18 IN THE NE 1/4 SW 1/4 SECTION 34
TBN R/W SEWARD MERIDIAN, ALASKA

CONTAINING 3.464 ACRES
KENAI RECORDING DISTRICT

FOR CRAIG RAPPE BOX 112062 ANCHORAGE, ALASKA 99511 PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE	MALONE SURVEYING BOX 566 KENAI, ALASKA 99611		
	JOB 86014	FB 86-08	DATE OF SURVEY 7/3/86
SCALE 1 inch = 50 feet	DRAWN BY dpm		CHECKED 7/15/86
	K.P.B. FILE NO. 86-187		

87-105
RECORDED FILED 20-
Kenai REC. DIST.
DATE 8/27 1986
TIME 3:23 P.
Surveyed by Malone

86-219
FILED 20-
Kenai
DATE 11/12 1986
TIME 1:36 P.
Surveyed by Malone

FD 3" BRASS CAP MON 87-49
Kenai
FILED 20-
DATE April 18 1987
TIME 1:55 P.
Surveyed by Malone



- LEGEND**
- OFFICIAL SURVEY MONUMENT FOUND
 - 5/8" REBAR SET

- NOTES**
- THE ACTUAL SHORELINE OF DANIELS LAKE FORMS THE BOUNDARY OF LOTS. THE MEANDER LINES SHOWN (M.L.) ARE FOR THE PURPOSE OF COMPUTING LOT AREAS ONLY.
 - A MINIMUM BUILDING SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS OF WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
 - SOILS ON THESE LOTS MAY OR MAY NOT BE SUITABLE FOR CONVENTIONAL ON-SITE WASTE DISPOSAL SYSTEMS. NO PERSON MAY CONSTRUCT, INSTALL, MAINTAIN, OR OPERATE A PRESSURIZED WATER SYSTEM OR A WATER-BORNE WASTE DISPOSAL SYSTEM UNLESS APPROVAL OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS OBTAINED. IN ADDITION ALL SEWER SYSTEMS SHALL BE INSTALLED WITHIN THE DESIGNATED AREA SHOWN ON THIS PLAT.
 - NO PART OF THIS SUBDIVISION IS WITHIN A KNOWN FLOOD PLAIN.
 - WATER WELLS AND SEPTIC SYSTEMS MAY ONLY BE INSTALLED IN THE AREAS DESIGNATED FOR SUCH INSTALLATION.

AMENDMENTS

- THE DELINEATION OF THE WATER AND SEWER INSTALLATION AREAS HAS BEEN ADDED TO THIS PLAT.
- THE ABOVE REVISION CONSTITUTES THE SOLE CHANGE MADE TO THE PLAT, ASIDE FROM THE NOTATION THEREON.
- THE ABOVE REVISIONS DO NOT ALTER LOT AREAS AND DO NOT AFFECT OR INFLUENCE ANY CHANGE OF OWNERSHIP, DRAINAGE FEATURES, RIGHTS-OF-WAY OR ANY OTHER ITEM WHICH WOULD ADVERSELY AFFECT THIS OR ADJACENT PROPERTIES. WE THEREFORE ARE SUBMITTING THIS PLAT FOR REFILE AS CORRECTED.



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

550 West 7th Avenue, Suite 650
Anchorage, Alaska 99501-3576
Main: 907.269.8523
TDD: 907.269.8411
Fax: 907.269.8916

September 16, 2022

James Hall
McLane Consulting, Inc.
38240 Kenai Spur Hwy
Soldotna, Alaska 99669

File: EV-3-344

Subject: First Review/ ADL 220394 Easement Vacation Plat Assoc w/Gov't lot 17, Sec 34, T8N, R11W, SM

Dear ~~Mr. Hall:~~ *James,*

A review has been completed on the above referenced vacation plat and the following items have been noted:

1. To the plat title in the Title Block add 220394 after ADL
2. The 30-foot wide ROW dedication overlapping the west portion of the ADL easement being vacated shall be dedicated prior to final approval of this ADL easement vacation plat.
3. Revise the ADL vacation certificate to the format noted below.

CERTIFICATE OF PUBLIC ACCESS EASEMENT VACATION

The State of Alaska, acting by and through the Commissioner of the Department of Natural Resources, does hereby state and declare that the State of Alaska vacates and releases all rights and title to any and all portions of the Public Access Easement (ADL 220394) managed by the Department of Natural Resources. (Specific area delineated by diagonal hatching on this plat)

4. Add notes stating:
 - a. This ADL easement vacation is in compliance with the Final Finding and Decision EV-3-344 approved June 14, 2022.
 - b. An alternate access route in accordance with 11 AAC 51.065 for the subject ADL vacation action is not required.
5. Verify that the text in the "Approval" box in the title block meets the minimum text size requirement. Minimum text size is 0.08" and must be uppercase.

Please correct all other items as shown in red on the enclosed paper print.

6. Prior to submitting the final mylar to this office for final approval submit a paper copy, incorporating the above revisions, to the KPB Planning Department for their review and comments.
 - a. Enclosed is a Platting Authority Plat Approval Status form to be submitted to the platting authority along with your next plat review submittal. After the borough's final review and their approval for final mylar submittal, please request that they complete and return the signed form to you. The items noted below must be included with the mylar submittal to DNR:
 - i. The signed Platting Authority Plat Approval Status form.
 - ii. A copy of the borough's final revisions.
7. **With the final mylar submit a Certificate to Plat current within 90-days.**

Upon completion of the above-mentioned corrections, please make one blackline print from the original Mylar. Both the Mylar and the blackline print shall have original signatures. Therefore, the required blackline print is to be made from the original Mylar prior to signing certificates or applying official seals on the Mylar original. The print and the original Mylar shall be sealed and signed individually in BLACK INK. Then submitted together to the Division of Mining, Land and Water, Survey Section.

Care should be taken to ensure that all owners sign on the proper line, that the notary's acknowledgement date corresponds with the owner's signature date on the mylar and the blackline print, that the notary hand letter in the name or names of the people whose signatures are being acknowledged **on the "by" line**, and that the notary affix his/her signature and seal.

The plat shall be submitted on good quality tracing cloth or Mylar. The use of typewritten transparent paste-on materials such as Dulseal is not acceptable although a good readable quality reverse reading direct positive Mylar photocopy at 100% scale is permissible. Reproducible mylars duplicated by ammonia process are not acceptable due to lack of definition, inferior reproductive capability, and relatively short storage life.

Margin lines must be placed so as to leave a one-half inch margin on each of the three sides and a one and one-half-inch margin on the binding side.

Sincerely,



George Horton

Land Surveyor I

Enclosures:

Redlined Print
Plat Approval Status Form

Copy: Vince Piagentini, Kenai Peninsula Borough
Jay Rokos, DML&W, SCRO
Robert Keiner, DOT/PF Central Region
Survey Tracking & Monitoring



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

550 West 7th Avenue, Suite 650
Anchorage, Alaska 99501-3576
Main: 907.269.8523
TTY: 711 or 800-770-8973
Fax: 907.269.8916

PLATTING AUTHORITY PLAT APPROVAL STATUS

Platting Authority: Kenai Peninsula Borough

Platting Authority Case #: _____

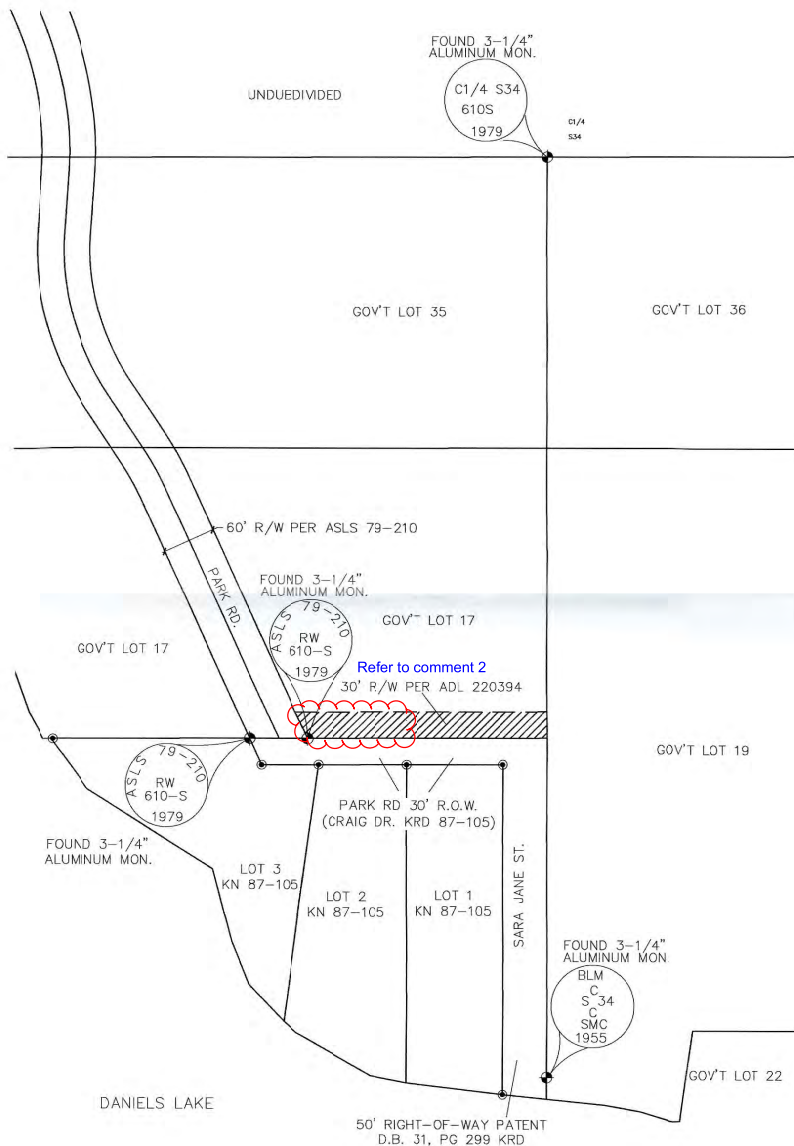
DNR File #: EV-3-344

I have reviewed the ADL 220394 ROW Vacation Plat associated with Gov't Lot 17, Section 34, T8N, R11W, SM and have determined that the plat requires no further correction at this time and is ready for signatures. DNR will be notified if further corrections or additions are required by the platting authority after the final plat mylar has been signed by DNR and submitted for approval and recording.

X _____
Platting Officer

Date

Comments:



Refer to comment 3

**ADL VACATION CERTIFICATE APPROVAL
RECOMMENDATION**

**STATE OF ALASKA DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

THE VACATION STATEMENT, AS SHOWN HEREON, HAS BEEN REVIEWED BY THE
CENTRAL REGIONAL OFFICE AND IS HEREBY RECOMMENDED FOR APPROVAL BY
THE COMMISSIONER.

RECOMMENDED BY: _____ DATE: _____

TITLE: REGIONAL CHIEF RIGHT-OF-WAY AGENT

STATE OF ALASKA DIVISION OF MINING, LAND & WATER

THE VACATION STATEMENT, AS SHOWN HEREON, HAS BEEN REVIEWED BY THE
DIVISION OF MINING, LAND AND WATER IS HEREBY RECOMMENDED FOR APPROVAL
BY THE COMMISSIONER.

RECOMMENDED BY: _____ DATE: _____

TITLE: DIRECTOR, DIVISION OF MINING, LAND AND WATER

THE STATE OF ALASKA, ACTING BY AND THROUGH THE COMMISSIONER OF THE
DEPARTMENT OF NATURAL RESOURCES AND THE COMMISSIONER OF THE
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, DOES HEREBY STATE
AND DECLARE THAT THE STATE OF ALASKA VACATES AND RELEASES ALL RIGHTS
AND TITLE TO ANY AND ALL PORTIONS OF SECTION LINE EASEMENTS FOR PUBLIC
HIGHWAYS RESERVED TO IT UNDER AS 19.10.010 (SPECIFIC AREA DELINEATED BY
DIAGONAL HATCHING ON THIS PLAT).

DATE: _____ APPROVED: _____
COMMISSIONER
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

DATE: _____ APPROVED: _____
COMMISSIONER
DEPARTMENT OF NATURAL RESOURCES

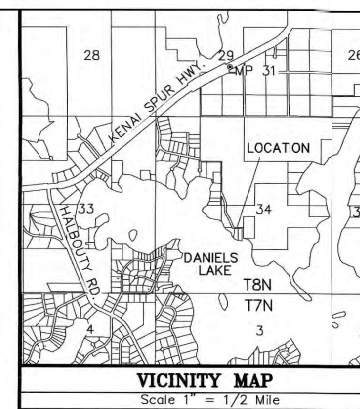
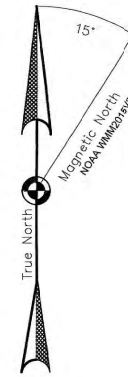
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM PROPERLY
REGISTERED AND LICENSED TO PRACTICE LAND
SURVEYING IN THE STATE OF ALASKA, AND THAT
THIS PLAT REPRESENTS EXISTING RECORD
INFORMATION COMPILED AND DRAFTED UNDER MY
DIRECT SUPERVISION, THAT THE DATA IS TRUE
AND CORRECT AS SHOWN HEREON.

DATE

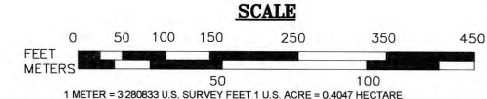
STAN A. McLANE 4637-S
REGISTERED LAND SURVEYOR

These redline prints and the associated plat
review letter complement each other.
Where indicated in blue refer to comments
in said plat review letter.



- NOTES:**
1. DIAGONALLY HATCHED AREA INDICATES THE ADL BEING VACATED WITHIN SECTION 34, T8N, R11W, S.M., ALASKA. IT IS NOT THE INTENT OF THIS PLAT TO VACATE ANY OTHER DEDICATED PUBLIC RIGHTS-OF-WAY OR EASEMENTS.
 2. FIELD SURVEY CONDUCTED 11/4/2019.
 3. This ADL easement vacation is in compliance with the Final Finding and Decision EV-3-344 approved June 14, 2022.
 4. An alternate access route in accordance with 11 AAC 51.065 for the subject ADL vacation action is not required.

- LEGEND**
- FOUND PRIMARY MONUMENT
 - FOUND SECONDARY MONUMENT
 - ▨ RIGHT-OF-WAY
 - ▨ VACATED THIS PLAT



Plat #

Rec Dist _____

Date _____ 20 _____

Time _____ M

DATE OF SURVEY 11/4/2019	SURVEYOR: McLANE CONSULTING INC. 38240 KENAI SPUR HWY SOLDOTNA, AK 99669 LICENSE # AECC981/907-283-4218
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND AND WATER ANCHORAGE, ALASKA	
ADL RIGHT-OF-WAY VACATION PLAT 220394 ASSOCIATED WITH GOVERNMENT LOT 17 SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, KENAI RECORDING DISTRICT, ALASKA	
DRAWN BY: BSB DATE: AUGUST 8, 2022	APPROVAL Statewide Platting Supervisor Date
SCALE: 1" = 100'	FILE NO. XX-XXX EV-3-344

- c. **A government agency affected by the decision which appeared before the planning commission with either a written or oral presentation.**

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Ben Nabinger, 46155 Grant Avenue, Kenai, AK 99611: Mr. Nabinger is the power of attorney for the landowner Ben Nabinger. The encroachment into the building setback was discovered as while they were in the process of closing on the sale of the home. Mr. Nabinger would ask the commission to approve their exception request so that they can close on the sale.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-04 granting an exception to the 20-foot building setback limit for only the encroaching portions of the buildings for Lot 1, Block 5 Homewood Subdivision (KN 77-81), citing findings 3, 4, 6-10 in support of standards one, two and three.

Commissioner Carluccio stated from what she has heard it appeared the structures in the setback could be moved. The only reason the request is being made is they do not want to move them during the winter. She has difficulty approving a setback exception when it appears the items can be removed. Mr. Huff replied there might have been a misunderstanding; the house is approximately one foot over into the setback and is not removable. The greenhouse is unable to be moved during the winter, so they requested that it be included in the setback request. Commissioner Carluccio thank Mr. Huff for the clarification.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Chesser, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Ecklund, Ruffner				

2. Vacate a 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17 within Section 34 Township 8 North Range 11 West

Staff report given by Scott Huff.

Purpose as stated in petition: On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1 Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about the petitioners' property rights in GL 17, the petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was the petitioners' driveway and utilities, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that

the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of the petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own lots 2 and 3, Rappe Park Subdivision – at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in ASLS 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests' cross over from their residence to access original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests' currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

Petitioners: Louis F. Oliva Jr. and Stacy A. Oliva, of Nikiski, AK

Notification: Public notice appeared in the January 28, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the February 4, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

3 certified mailings were sent to owners of property within 300 feet of the proposed vacation as well as 1 certified mailing to the applicants' attorney. Zero receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 2 owners within 600 feet of the proposed vacation.

15 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish & Game	Nikiski Community Concil
State of Alaska Dept. of Natural Resources	Alaska Communication Systems (ACS)
State of Alaska Dept. of Transportation (6)	ENSTAR Natural Gas
State of Alaska DNR Forestry	General Communications Inc. (GCI)
Emergency Services of Nikiski Fire Service	Homer Electric Association (HEA)

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Nikiski Post Office and Nikiski Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Not available when the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: No comments.

KPB Addressing: Not available when the staff report was prepared.

KPB Planning: Not available when the staff report was prepared.

KPB River Center: Not within a flood hazard area. Not within an Anadromous Waters Habitat Protection District.

KPB Roads Department: The legal Department notified the property owner and the RSA (9/15/2017) that ADL 220394 is a state-managed public right-of-way. The RSA has no objection.

State Parks: No comments.

Staff Discussion: A completed petition was received on January 15, 2021 for the vacation of ROW Permit ADL 220394. Please note that this ADL easement had been previously considered by the Planning Commission on October 26, 2020 as part of a petition to vacate a combination of right-of-ways, patent right of way easements, and ADL easements in conjunction with new right of way dedications. That petition was denied by majority vote.

This current petition is only for the vacation of ROW Permit ADL 220394. Review of this new application within one year is allowable as it is not the same as the previous petition and the applicant is applying with the State to vacate ROW Permit ADL 220394. The applicant stated that they should not have included the ADL in their original petition since the State has jurisdiction over the ADL.

Per the submittal, the applicants request that the Planning Commission either:

- a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

11 AAC 51.065(c) states

"If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice."

The procedures as set out in AS 29.40.120 - 29.40.150 are as follows:

"Sec. 29.40.120. Alteration or replat petition.

A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing.

The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140. Hearing and determination.

(a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording.

If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded

in accordance with AS 40.15.010 40.15.020.”

Per state statute, the Planning Commission does have the authority to decline comment to the state. The Planning Commission also has the ability to review the petition to vacate the ROW Permit and provide a recommendation to the State of Alaska DNR. Staff feels that the review and decision of the KPB Planning Commission is valuable and provides a venue where public comments can be provided and discussions can be held. **Staff recommends** that the Planning Commission review the proposed vacation and provide comments and recommendations to the State of Alaska DNR.

Per the letter dated December 28, 2020 to the Planning Direct (Kenai Peninsula Borough Submittal Letter), *“Borough Code, KPB 20.70.220, currently covers a petition to the State to vacate a section line easement, but there is nothing in Borough Code regarding the vacation of a State of Alaska right-of-way permit; so it is not clear what the Borough process is for consideration under 11 AAC 51.065.”*

11 AAC 51.065 regards the Vacation of Easements. Kenai Peninsula Borough code does not specifically address an application to vacate an ADL ROW permit. Kenai Peninsula Borough Code Chapter 20.70 – Vacation Requirement outlines how to evaluate vacations for public rights-of-way and other public areas, including rights-of-way under State jurisdiction.

In reviewing this concern staff conclude that ADL 220394 is a public right of way based on the following,

- ADL 220394 application for right of way permit shows that Lou Oliva requested a right of way for public yearlong use. (See application for right of way permit ADL 220394 dated Oct. 24, 1984)
- The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the right-of-way application – ADL 220394. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit. (See letter from KPB Land Management Officer dated January 22, 1985)
- The Kenai Peninsula Borough Planning Commission met on March 11, 1985 to again review right-of-way application – ADL 220394. The Commission reaffirmed its action from the January 21, 1985 meeting to recommend a 30 ft. wide public access and utility easement. (See letter from KPB Land Management Officer dated March 12, 1985)
- ADL 220394 states that the State of Alaska DNR is the grantor and Southcentral District, Division of Land and Water, acting as representative of and on behalf of the public is the permittee. (See ADL 220394 right of way permit)
- ADL 220394 states that the permit is for a public road and public utilities access. (See ADL 220394 right of way permit)

KPB staff has reviewed this request like any other public right of way vacation by following the requirements of state statutes and Kenai Peninsula Borough Code 20.70. The Planning Commission's decision will be forwarded to the Kenai Peninsula Borough Assembly as outlined in 20.70.110 where the Assembly can either uphold or veto the Planning Commission recommendation.

Final decision rests with the State of Alaska. The State of Alaska DNR website lists 'Alaska Division of Lands (ADL) right of way, as one of the easements that require DNR approval. The Planning Commission may make recommendations to approve or deny the vacation, but the State of Alaska will have the final decision to vacate the ADL ROW permit.

The petition states that the ROW Permit ADL 220394 terminated on September 25, 1996 when Government Lot 17 transferred ownership to Alaska Mental Health Trust Authority as it was transferred without a contract. ADL 220394 does state that if it was sold under contract it would be subject to the permit. It does not state that any other conveyance would terminate the permit. The land was transferred to Alaska Mental Health Trust Authority as part of a settlement. Per 11 AAC 51.010(d)

“Unless it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state.”

The review is based on the decision the permit did not terminate with the transfer of title.

Petition to the State, Item 4 - Original Purpose, explains that the petitioner applied for a driveway permit to cross Government Lot 17 to access his property, Government Lot 19 and the petitioner was not aware that the state was then going to issue the ROW Permit ADL 220394. It also states that the driveway and utilities were installed in 1985 and that no other persons use or have need to use the driveway or utilities. The

application dated October 24, 1984 for right-of-way permit shows the petitioner requesting a public yearlong right of way. The application was presented to the KPB Planning Commission on January 21, 1985. At the time the Borough had selected the lands in question as part of their municipal entitlement. The Planning Commission's recommendation was to approve the public right of way permit of not less than 30 feet in width, adding the clause that the property be returned to the borough if it is not used. The motion passed unanimously.

Within the petition are notes from the DNR offices. On February 25, 1985 it was questioned if instead of public it should be private and if the application should be amended. The internal response was that the application did not need to be amended as they could still issue a private easement but that the borough should be allowed to comment on the discussion of issuing a private instead of public easement. The right of way application was brought back before the Planning Commission on March 11, 1985. Per the State's notes in the packet that would result in the only access to Government Lot 19 would be through state land selected by the KPB. Staff still recommended a public easement and that if a private permit was granted the borough would treat it like a lease and a yearly payment would be required. The commission upheld their request for a 30 foot wide public right of way by a motion that passed unanimously.

Petition to the State, Item 5 Reasons for Vacation Request states the applicant was unsure why the ADL was recorded multiple times. The recording on March 1, 2018, serial 2018-001832-0 KRD, was to index the location. By recording the permit, it would now be found during a title search. On August 10, 2018, serial 2018-007092-0 KRD, the permit was recorded again to correct the legal description. The original ADL was recorded again on December 13, 2018, serial 2018-011190-0 KRD. On July 14, 2020, serial 2020-006563-0 KRD, the permit was once again recorded. That recording outlines that the December 2018 recording was inadvertently recorded and it did not contain the corrections. The 2020 recording provided the correct description as well as explain the multiple recordings. This would explain the multiple recordings the petitioner is questioning.

The petitioners have submitted an overall development subdivision plat for the Planning Commission's benefit. A complete plat submittal has not been received. The proposed subdivision plat shows the following,

- Vacation of entire ADL 220394
- Vacation of Sara Jane Street (50 foot dedicated ROW per Rappe Park Subdivision Amended)
- Vacation of a portion of 30 foot wide Park Road (where fronting Lot 1 Rappe Park Subdivision Amended)
- Dedication of a 30 foot right of way to provide a 60 foot wide right of way where fronting Lot 2 and Lot 3 Rappe Park Subdivision Amended)
- Dedication of a 60 foot right of way from Park Road to Daniels Lake
- The combining of all lands owned by Lou Oliva and Stacey Oliva

This overall development subdivision plat will provide:

- legal dedicated 60 foot right of way access to all lots.
- 60 foot width for all right of ways.
- Access to the lake in exchange for the vacation of the right of way to the lake.
- A T-type turnaround, as opposed to a cul-de-sac, at the end of the road to provide an area where vehicles can turn around.

This overall development subdivision plat will require exceptions to:

- KPB 20.30.030 (appropriate projection of all streets to provide reasonable means of ingress) and KPB 20.30.170 Block Length requirements.

These two sections of code are often combined into one exception request. To comply with these sections of code a ROW connection would be required between Park Road and Neighbors Road. This is to provide a continuous block and two points of legal access.

KPB 20.70 – Vacation Requirements.

Platting staff comments: *Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:*

20.70.050. Petition—Information required.

- A. A recorded plat may not be altered or replatted except by the platting authority on petition of the

state, the borough, a public utility, or the owners of the majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or the owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved with requirements that change property lines or require right of way dedication a subdivision plat will be required.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.140. Vacation resolution—easement. Upon approval of an easement vacation not associated with the vacation of a right-of-way or not requiring transfer of title or platting action, a vacation resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the vacation. The petitioner is responsible for the recording fees.

Platting Staff Comments: If the vacation is approved with no additional requirements the State should determine the method they wish to remove the permit.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: The area being discussed is a public easement with the underlying property owned by the petitioner.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: KPB standards require a 60 foot wide dedicated right of way.

Staff recommendation: *All right of way dedication comply with the minimum width standard of 60 feet.*

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential

use.

Platting Staff Comments: The petitioners own multiple lots surrounding the proposed vacation. They have constructed a new access from Neighbors Road, a borough maintained roadway. While this does provide them additional access as owners, staff has reviewed and notes that the access is still going through multiple lots. To state that equal or superior access to their property has been given does not eliminate the need for all lots to have adequate legal access. The vacation of the 30 foot wide ADL will result in a 30 foot wide right of way, Park Road, when requirements are for 60 foot width. The ADL and Park Road also lead to a 50 foot wide right of way, Sara Jane Street. Sara Jane Street currently provides access to Daniels Lake.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: ADL 220394 provides access to Sara Jane Street. Sara Jane Street is affected by a low wet area but may provide pedestrian access to Daniels Lake.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: It has been stated that the ADL was for public right of way and public utilities. The petitioner states that utilities have been placed within ADL 220394. Reviews have been sent to the utility companies.

Staff recommendation: *Petitioner should work with the utility companies and grant any easements requested by the providers.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

Platting Staff Comments: The proposed vacation is not direct access to public waters but does provide access to Sara Jane Street which is legal access to Daniels Lake. Previously the petitioners offered to dedicate a new access to the lake in exchange for the vacation of Sara Jane Street.

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: While this is not a section line easement it does fall under DNR jurisdiction and will be subject to DNR review.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the vacations as petitioned subject to providing a matching 30 foot right of way dedication for Park Road by subdivision plat, the recommendation is also subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within four years of vacation consent (KPB 20.70.130).

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Stan McLane, P.O. Box 468, Soldotna, AK 99669: Mr. McLane is the surveyor on this project. This ADL easement was requested by the Olivas years ago to provide access to their property. The Olivas have submitted with this request a conceptual drawing of their plans for re-platting all their properties into one tract. Mr. McLane noted there had been public comment made in the past regarding access issues. This vacation request will not limit anyone's access to his or her properties or access to Daniel's Lake. In particular, he noted this vacation does not affect the West's (neighbors of the Olivas) driveway. He stated the Olivas agreed with the findings in the staff report, and would ask that the commission approve the vacation request.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

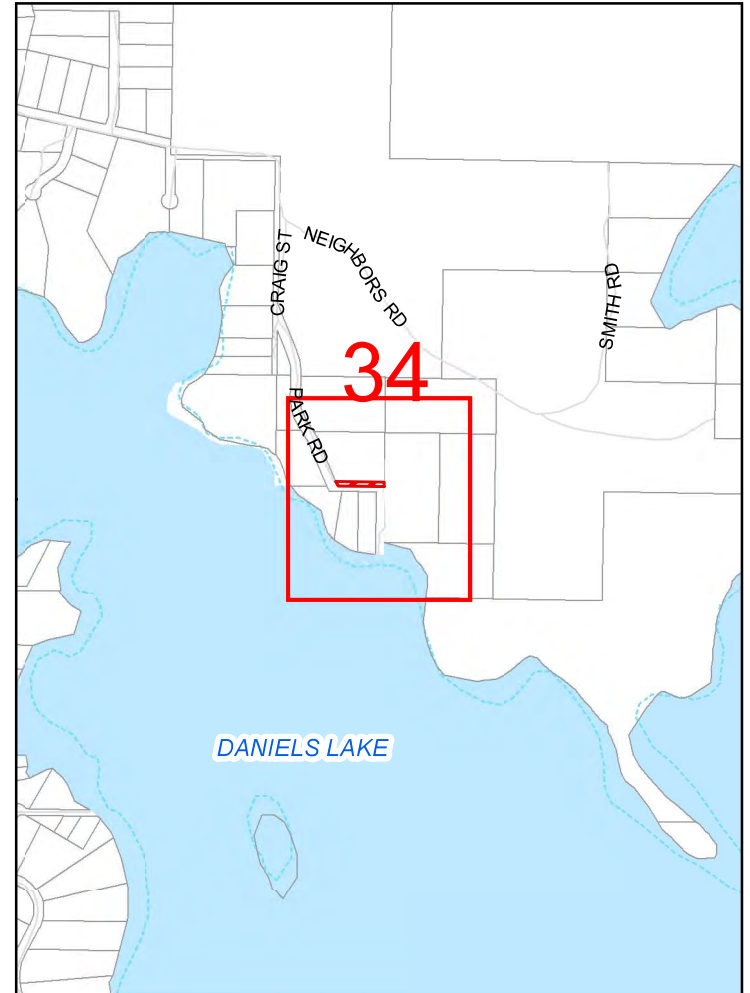
MOTION: Commissioner Gillham moved, seconded by Commissioner Chesser to approve the vacation as petitioned, subject to providing a matching 30-foot right-of-way dedication for Park Road by subdivision plat, based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Chesser, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Ecklund, Ruffner				

Right of Way Permit
Vacation ADL 220394



0 500 1,000 2,000 Feet



KPB 2020-156V
S34 T08N R11W
NIKISKI

Date: 12/31/2020
PClements, KPB 2020-156V



The information depicted hereon
is for a graphical representation
only of best available sources.
The Kenai Peninsula Borough
assumes no responsibility
for any errors on this map.

0 150 300 600'



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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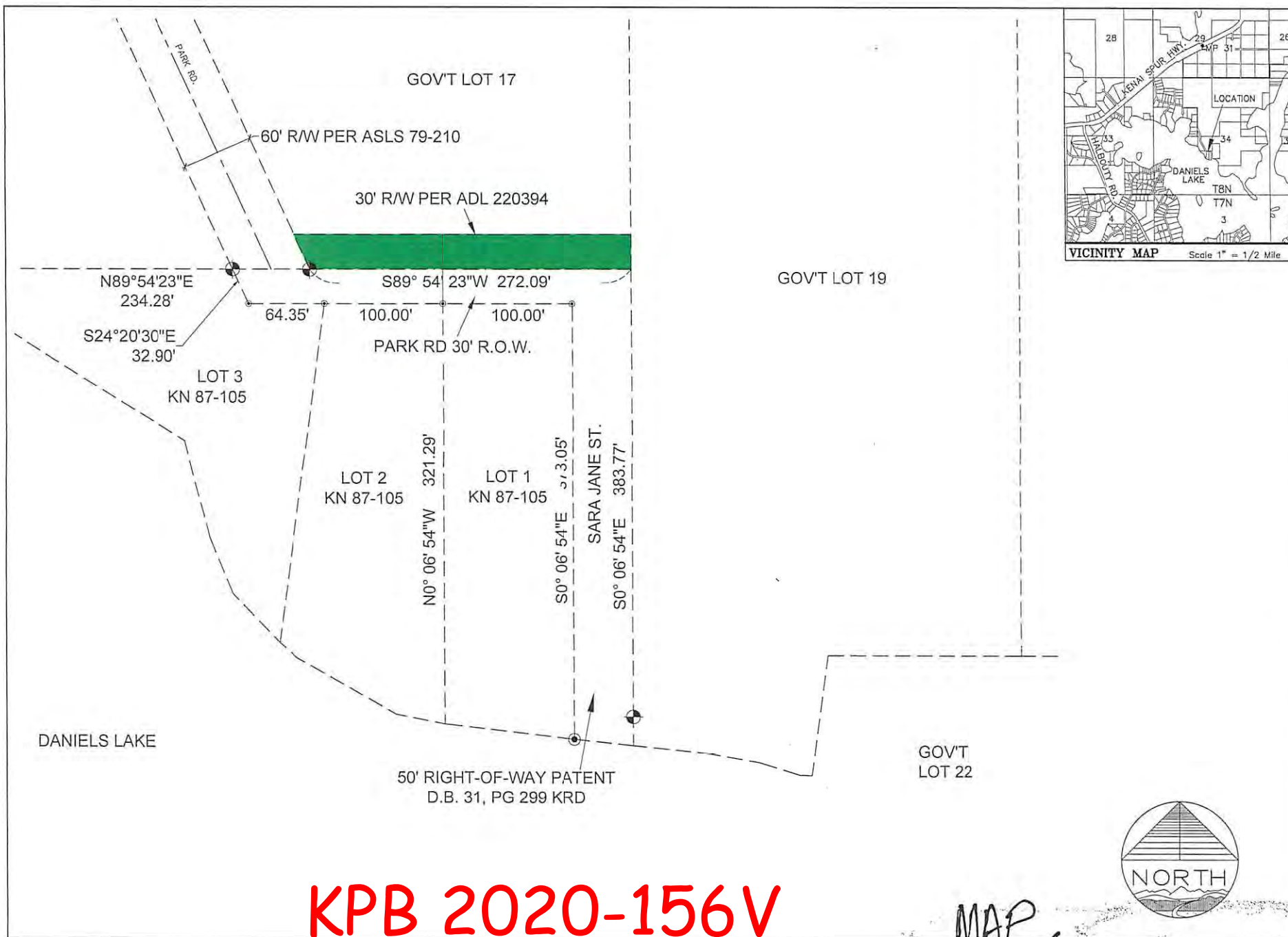
Aerial View

0 150 300 600'



Right of Way Vacation

PClements, KPB 2020-156V
Date: 12/31/2020
Imagery World



KPB 2020-156V



MAP 1
 Page 1 of 2

AGENDA ITEM E. PUBLIC HEARINGS

2. Vacate a 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17 within Section 34 Township 8 North Range 11 West

STAFF REPORT

PC Meeting: February 8, 2021

Purpose as stated in petition: On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1 Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about the petitioners' property rights in GL 17, the petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was the petitioners' driveway and utilities, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of the petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own lots 2 and 3, Rappe Park Subdivision – at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in ASLS 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests' cross over from their residence to access original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests' currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

Petitioners: Louis F. Oliva Jr. and Stacy A. Oliva, of Nikiski, AK

Notification: Public notice appeared in the January 28, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the February 4, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

3 certified mailings were sent to owners of property within 300 feet of the proposed vacation as well as 1 certified mailing to the applicants' attorney. Zero receipts had been returned when the staff report was prepared.

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State of Alaska DNR
State of Alaska DOT (6)
State of Alaska DNR Forestry
Emergency Services of Nikiski Fire Service

Nikiski Community Council
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Nikiski Post Office and Nikiski Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Not available when the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: No comments.

KPB Addressing: Not available when the staff report was prepared.

KPB Planning: Not available when the staff report was prepared.

KPB River Center: Not within a flood hazard area. Not within an Anadromous Waters Habitat Protection District.

KPB Roads Department: The legal Department notified the property owner and the RSA (9/15/2017) that ADL 220394 is a state-managed public right-of-way. The RSA has no objection.

State Parks: No comments.

Staff Discussion: A completed petition was received on January 15, 2021 for the vacation of ROW Permit ADL 220394. Please note that this ADL easement had been previously considered by the Planning Commission on October 26, 2020 as part of a petition to vacate a combination of right-of-ways, patent right of way easements, and ADL easements in conjunction with new right of way dedications. That petition was denied by majority vote.

This current petition is only for the vacation of ROW Permit ADL 220394. Review of this new application within one year is allowable as it is not the same as the previous petition and the applicant is applying with the State to vacate ROW Permit ADL 220394. The applicant stated that they should not have included the ADL in their original petition since the State has jurisdiction over the ADL.

Per the submittal, the applicants request that the Planning Commission either:

- a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

11 AAC 51.065(c) states

"If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice."

The procedures as set out in AS 29.40.120 - 29.40.150 are as follows:

"Sec. 29.40.120. Alteration or replat petition.

A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing.

The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140. Hearing and determination.

(a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording.

If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 40.15.020."

Per state statute, the Planning Commission does have the authority to decline comment to the state. The Planning Commission also has the ability to review the petition to vacate the ROW Permit and provide a recommendation to the State of Alaska DNR. Staff feels that the review and decision of the KPB Planning Commission is valuable and provides a venue where public comments can be provided and discussions can be held. **Staff recommends** that the Planning Commission review the proposed vacation and provide comments and recommendations to the State of Alaska DNR.

Per the letter dated December 28, 2020 to the Planning Direct (Kenai Peninsula Borough Submittal Letter), *"Borough Code, KPB 20.70.220, currently covers a petition to the State to vacate a section line easement, but there is nothing in Borough Code regarding the vacation of a State of Alaska right-of-way permit; so it is not clear what the Borough process is for consideration under 11 AAC 51.065."*

11 AAC 51.065 regards the Vacation of Easements. Kenai Peninsula Borough code does not specifically address an application to vacate an ADL ROW permit. Kenai Peninsula Borough Code Chapter 20.70 – Vacation Requirement outlines how to evaluate vacations for public rights-of-way and other public areas, including rights-of-way under State jurisdiction.

In reviewing this concern staff conclude that ADL 220394 is a public right of way based on the following,

- ADL 220394 application for right of way permit shows that Lou Oliva requested a right of way for public yearlong use. (See *application for right of way permit ADL 220394 dated Oct. 24, 1984*)
- The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the right-of-way application – ADL 220394. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit. (See *letter from KPB Land Management Officer dated January 22, 1985*)
- The Kenai Peninsula Borough Planning Commission met on March 11, 1985 to again review right-of-way application – ADL 220394. The Commission reaffirmed its action from the January 21, 1985 meeting to recommend a 30 ft. wide public access and utility easement. (See *letter from KPB Land Management Officer dated March 12, 1985*)
- ADL 220394 states that the State of Alaska DNR is the grantor and Southcentral District, Division of Land and Water, acting as representative of and on behalf of the public is the permittee. (See *ADL 220394 right of way permit*)
- ADL 220394 states that the permit is for a public road and public utilities access. (See *ADL 220394 right of way permit*)

KPB staff has reviewed this request like any other public right of way vacation by following the requirements of state statutes and Kenai Peninsula Borough Code 20.70. The Planning Commission's decision will be forwarded to the Kenai Peninsula Borough Assembly as outlined in 20.70.110 where the Assembly can either uphold or veto the Planning Commission recommendation.

Final decision rests with the State of Alaska. The State of Alaska DNR website lists 'Alaska Division of Lands (ADL) right of way, as one of the easements that require DNR approval. The Planning Commission may make recommendations to approve or deny the vacation, but the State of Alaska will have the final decision to vacate the ADL ROW permit.

The petition states that the ROW Permit ADL 220394 terminated on September 25, 1996 when Government Lot 17 transferred ownership to Alaska Mental Health Trust Authority as it was transferred without a contract. ADL 220394 does state that if it was sold under contract it would be subject to the permit. It does not state that any other conveyance would terminate the permit. The land was transferred to Alaska Mental Health Trust Authority as part of a settlement. Per 11 AAC 51.010(d)

"Unless it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state."

The review is based on the decision the permit did not terminate with the transfer of title.

Petition to the State, Item 4 - Original Purpose, explains that the petitioner applied for a driveway permit to cross Government Lot 17 to access his property, Government Lot 19 and the petitioner was not aware that the state was then going to issue the ROW Permit ADL 220394. It also states that the driveway and utilities were installed in 1985 and that no other persons use or have need to use the driveway or utilities. The application dated October 24, 1984 for right-of-way permit shows the petitioner requesting a public yearlong right of way. The application was presented to the KPB Planning Commission on January 21, 1985. At the time the Borough had selected the lands in question as part of their municipal entitlement. The Planning Commission's recommendation was to approve the public right of way permit of not less than 30 feet in width, adding the clause that the property be returned to the borough if it is not used. The motion passed unanimously.

Within the petition are notes from the DNR offices. On February 25, 1985 it was questioned if instead of public it should be private and if the application should be amended. The internal response was that the application did not need to be amended as they could still issue a private easement but that the borough should be allowed to comment on the discussion of issuing a private instead of public easement. The right of way application was brought back before the Planning Commission on March 11, 1985. Per the State's notes in the packet that would result in the only access to Government Lot 19 would be through state land selected by the KPB. Staff still recommended a public easement and that if a private permit was granted the borough would treat it like a lease and a yearly payment would be required. The commission upheld their request for a 30 foot wide public right of way by a motion that passed unanimously.

Petition to the State, Item 5 Reasons for Vacation Request states the applicant was unsure why the ADL was recorded multiple times. The recording on March 1, 2018, serial 2018-001832-0 KRD, was to index the location. By recording the permit, it would now be found during a title search. On August 10, 2018, serial 2018-007092-0 KRD, the permit was recorded again to correct the legal description. The original ADL was recorded again on December 13, 2018, serial 2018-011190-0 KRD. On July 14, 2020, serial 2020-006563-0 KRD, the permit was once again recorded. That recording outlines that the December 2018 recording was inadvertently recorded and it did not contain the corrections. The 2020 recording provided the correct description as well as explain the multiple recordings. This would explain the multiple recordings the petitioner is questioning.

The petitioners have submitted an overall development subdivision plat for the Planning Commission's benefit. A complete plat submittal has not been received. The proposed subdivision plat shows the following,

- Vacation of entire ADL 220394
- Vacation of Sara Jane Street (50 foot dedicated ROW per Rappe Park Subdivision Amended)
- Vacation of a portion of 30 foot wide Park Road (where fronting Lot 1 Rappe Park Subdivision Amended)
- Dedication of a 30 foot right of way to provide a 60 foot wide right of way where fronting Lot 2 and Lot 3 Rappe Park Subdivision Amended)
- Dedication of a 60 foot right of way from Park Road to Daniels Lake
- The combining of all lands owned by Lou Oliva and Stacey Oliva

This overall development subdivision plat will provide:

- legal dedicated 60 foot right of way access to all lots.
- 60 foot width for all right of ways.
- Access to the lake in exchange for the vacation of the right of way to the lake.
- A T-type turnaround, as opposed to a cul-de-sac, at the end of the road to provide an area where vehicles can turn around.

This overall development subdivision plat will require exceptions to:

- KPB 20.30.030 (appropriate projection of all streets to provide reasonable means of ingress) and KPB 20.30.170 Block Length requirements.

These two sections of code are often combined into one exception request. To comply with these sections of code a ROW connection would be required between Park Road and Neighbors Road. This is to provide a continuous block and two points of legal access.

KPB 20.70 – Vacation Requirements.

Platting staff comments: *Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:*

20.70.050. Petition—Information required.

- A. A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of the majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or the owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the
- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested

by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved with requirements that change property lines or require right of way dedication a subdivision plat will be required.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.140. Vacation resolution—easement. Upon approval of an easement vacation not associated with the vacation of a right-of-way or not requiring transfer of title or platting action, a vacation resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the vacation. The petitioner is responsible for the recording fees.

Platting Staff Comments: If the vacation is approved with no additional requirements the State should determine the method they wish to remove the permit.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: The area being discussed is a public easement with the underlying property owned by the petitioner.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: KPB standards require a 60 foot wide dedicated right of way.

Staff recommendation: *All right of way dedication comply with the minimum width standard of 60 feet.*

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: The petitioners own multiple lots surrounding the proposed vacation. They have constructed a new access from Neighbors Road, a borough maintained roadway. While this does provide them additional access as owners, staff has reviewed and notes that the access is still going through multiple lots. To state that equal or superior access to their property has been given does not eliminate the need for all lots to have adequate legal access. The vacation of the 30 foot wide ADL will result in a 30 foot wide right of way, Park Road, when requirements are for 60 foot width. The ADL and Park Road also lead

to a 50 foot wide right of way, Sara Jane Street. Sara Jane Street currently provides access to Daniels Lake.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: ADL 220394 provides access to Sara Jane Street. Sara Jane Street is affected by a low wet area but may provide pedestrian access to Daniels Lake.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: It has been stated that the ADL was for public right of way and public utilities. The petitioner states that utilities have been placed within ADL 220394. Reviews have been sent to the utility companies.

Staff recommendation: *Petitioner should work with the utility companies and grant any easements requested by the providers.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

Platting Staff Comments: The proposed vacation is not direct access to public waters but does provide access to Sara Jane Street which is legal access to Daniels Lake. Previously the petitioners offered to dedicate a new access to the lake in exchange for the vacation of Sara Jane Street.

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: While this is not a section line easement it does fall under DNR jurisdiction and will be subject to DNR review.

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the

vacations as petitioned subject to providing a matching 30 foot right of way dedication for Park Road by subdivision plat, the recommendation is also subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within four years of vacation consent (KPB 20.70.130).

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View

0 25 50 100'



Right of Way Vacation

PClements, KPB 2020-156V
Date: 12/31/2020
Imagery Anadromous 2014

ADL 220394
RIGHT OF WAY PERMIT



Recording Cover Sheet

This document may have been recorded at a previous time, and if so, the prior recording date takes precedence.

Please record this cover sheet as the first page of the document. The document should be indexed as follows:

RECORDING DISTRICT:

Kenai

DOCUMENT TITLE:

Easement

FILE TYPE/NUMBER:

ADL 220394

GRANTOR:

1. State of Alaska
2. Department of Natural Resources
3. Division of Lands
4. Division of Mining, Land and Water

GRANTEE:

1. State of Alaska
2. Department of Natural Resources
3. Division of Lands
4. Division of Mining, Land and Water

AFTER RECORDING RETURN TO:

Department of Natural Resources
DNR Division of Mining, Land & Water
Southcentral Region Land Office
Easement Unit, Attn: Recording Project
550 W. 7th Avenue, Suite 900C
Anchorage, AK 99501-3579

LEGAL DESCRIPTION:

Index document according to location
index and legal description listed on
page(s) 1 and 3.

STATE BUSINESS NO CHARGE

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

ADL No. 220394

RIGHT-OF-WAY PERMIT

THIS AGREEMENT made and entered into this 5th day of September, 1985, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Land and Water Management, hereinafter referred to as the grantor and Southcentral District, Division of Land and Water Management, acting as representative of and on behalf of the public hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: public road and public utility access with the Division of Land and Water Management together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit: a 30 foot by 273 foot right-of-way located within the Seward Meridian, Township 8 North, Range 11 West, Section 34: the North 1/2 of the South 1/2; also described on the attached legal description, containing 0.192 acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein.

The as-built legal description revealing the right-of-way granted herein has been attached hereto and made a part hereof. See attachment Number 1.

In the event that the right-of-way granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefor has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Land and Water Management and all other Federal,

10-119 (72)
Rev. 4/83



Page 2 of 5
2018-011190-0

State or municipal laws, regulations or ordinances applicable to the area herein granted.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

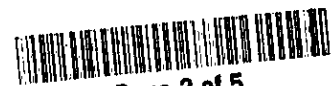
Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall be terminated by usual and customary easement vacation process with the Kenai Peninsula Borough.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

Permittee:

Richard A. LeFebvre
Richard A. LeFebvre
Acting Southcentral Regional Manager
Division of Land and Water Management

UNITED STATES OF AMERICA)

State of Alaska)

)ss.

This is to certify that on the 9th day of SEPTEMBER, 1985, before me, personally appeared RICHARD A. LEFEBVRE to be known and known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

This is a true and correct copy as the same appears in the records of the Department of Natural Resources.

Stuart Greenfield
Department of Natural Resources

Date 11/17/2017

Donnell Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989

Grantor:

Tom J. Hawkins
Director
Division of Land and Water Management

UNITED STATES OF AMERICA)

State of Alaska)

)ss.

This is to certify that on the 11th day of September, 1985, before me, personally appeared TOM J. HAWKINS, Director to be known and known by me to be the person named in and who executed said document and acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Donnell Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989



Right-of-Way Permit, ADL 220394

Attachment 1

A parcel of land within the Kenai Peninsula Borough, Third Judicial District, Alaska more particularly described as follows:

Beginning at the Southeast corner of Government Lot Thirty-Five (35), Section Thirty-Four (34), Township Eight North (T8N), Range Eleven West (R11W), Seward Meridian, Alaska, said corner being established by Alaska State Land Survey Plat No. 80-71, Kenai Recording District, the true point of beginning and corner number one of this parcel.

Thence S89°54'41"W, 272.4 feet along the south line of Government Lot Thirty-Five (35) to an Alaska State Land Survey monument of the easterly boundary of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then S0°06'54"E, 30.00 feet along the east boundary of Government Lot 35 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey #79-210.



KENAI PENINSULA BOROUGH
SUBMITTAL LETTER

RECEIVED

DEC 30 2020

TO: Platting Authority
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Borough Clerk's Office
Kenai Peninsula Borough

SUBMISSION TO PLATTING AUTHORITY FOR CONSIDERATION
OF PETITION TO STATE OF ALASKA TO VACATE A RIGHT OF WAY PERMIT
[11 AAC 51.065]

1. We, the undersigned Petitioners, being the owners of the property described in Right-of-Way ("ROW") Permit ADL 220394, have filed a Petition for Right of Way Permit Vacation Within A Local Platting Authority ("Petition"), with the State of Alaska, Department of Natural Resources, Survey Section, 550 W 7th Avenue, Suite 650, Anchorage, AK 99501.

2. In the Petition, we requested the State of Alaska's vacation of ROW Permit ADL 220394. A copy of the Petition, together with a copy of Attachment A to Petition, *Maps*, a copy of Attachment B to Petition, *Petition Documents Table*, and copies of the records attached to Attachment B, are all attached to and submitted with this submission.

3. **Authority for filing with State.** The Petitioners filed their Petition with the State of Alaska under the authority of 11 AAC 51.065, if 11 AAC 51.065 applies to vacation of ROW Permit ADL 220394, and without waiving Petitioner's claim that ROW Permit ADL 220394 terminated on 9/25/1996 in accordance with its own terms and conditions when the State granted Government Lot 17 to the Alaska Mental Health Trust Authority without a contract to purchase.

4. **Authority for filing with Kenai Peninsula Borough.** Under 11 AAC 51.065(b), a vacation petition must also be submitted to the platting authority for consideration, including notice and a public hearing, in accordance with the procedures set out in AS 29.40.120--150, if the platting authority is established by a municipality, unless the platting authority, under 11 AAC 51.065(c), declines to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted.

5. **Permit Location; Permit Unplatted.** The location of ROW Permit ADL 220394 is along the southern boundary of Petitioners' Government Lot 17 ("GL 17"), T8N R11W, S.M., as depicted on the map and ROW Permit ADL 220394 itself. ROW Permit ADL 220394 is unplatted, and is not a section line easement. See Attachment A to Petition, *Maps*, page 1; and Attachment B to Petition, *Petition Documents Table*, Document No. 8 listed on and attached to the *Petition Documents Table*.

6. **Other Information.** Other information submitted in the Petition includes information on the land ownership, the original purpose, the reasons for the vacation request, and a description of alternate rights-of-way. The records attached to Attachment B To Petition, *Petition Documents Table*, document the relevant history of the land ownership of GL 17, as well as other relevant land, including Government Lot 19 ("GL 19"), former Government Lot 18

("GL 18") and its later subdivision into the three lots of Rappe Park Subdivision, Plat No. 86-219.

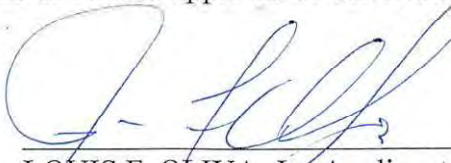
7. **Petitioners' Attorneys.** Attorneys for the Petitioners designated to receive service by mail or email are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice), bob@molloysschmidt.com.

8. **No Waiver.** By filing this application, Applicants do not waive their claim that ROW Permit ADL 220394 has terminated in accordance with its terms and conditions; or that AS 29.40.120-.150 and KPB 20.70 do not apply to this vacation because ADL 220394 is not a platted or dedicated right of way.

9. **Request.** The Applicants request that the Borough Platting Authority:

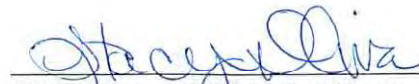
- (a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- (b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

DATE: 12/22/2020



LOUIS F. OLIVA, Jr., Applicant
P.O. Box 8567
Nikiski, AK 99635
(907) 776-8656

DATE: 12/22/2020



STACY A. OLIVA, Applicant
P.O. Box 8567
Nikiski, AK 99635
(907) 776-8656

STATE OF ALASKA DEPT. OF NATURAL RESOURCES
SUBMITTAL LETTER

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION FOR ROW PERMIT VACATION
WITHIN A LOCAL PLATTING AUTHORITY

1. We, the undersigned Petitioners, being the owner of the property across which Right-of-Way ("ROW") Permit ADL 220394 is located, request the vacation of ROW Permit ADL 220394.

2. **Permit Location.** The location of ROW Permit ADL 220394 is along the southern boundary of petitioner's Government Lot 17 ("GL 17"), T8N R11W, S.M., as depicted on the accompanying map and the permit itself. For the map, see **Attachment A to Petition, Maps**, Map No. 1; the area proposed to be vacated is highlighted in green. For the permit, see **Attachment B to Petition, Petition Documents Table**, Document No. 8 listed on and attached to the *Petition Documents Table*.

3. **Land Ownership.** The Petitioners are the owners of the properties described as follows:

Government Lot 17 ("GL 17"), Sec. 34, T8N, R11W, S.M., Kenai Recording District, Third Judicial District, State of Alaska; and

Government Lot 19 ("GL 19"), Sec. 34, T8N, R11W, S.M., Kenai Recording District, Third Judicial District, State of Alaska.

The Petitioners' business, Triple-Knot Land & Livestock, LLC, is the owner of the property described as follows:

Lot One (1), Rappe Park Subdivision, according to Plat No. 86-219, Kenai Recording District, Third Judicial District, State of Alaska.¹

These three properties are adjacent to each other.

4. **Original Purpose.** On 10/23/1984, Petitioner Lou Oliva applied for a permit to build a driveway across GL 17, which was then owned by the State of Alaska (and believed to be under selection by the Kenai Peninsula Borough), in order to access his adjacent GL 19, since that lot was landlocked. On 3/28/1985, DNR issued a Land Use Permit ("LUP") to Mr. Oliva, which authorized him to build a driveway and place utilities on GL 17. Unbeknownst to Mr. Oliva, DNR then issued ROW Permit 220394 on 9/9/1985 for the location, construction,

¹ This is the original plat. Amended plats 87-49 and 87-105 were recorded later, which were not approved by the Kenai Peninsula Borough; so their legal status is uncertain.

operation and maintenance of a right-of-way. See, Attachment B to Petition, *Petition Documents Table*, Documents Nos. 5, 6, 7, 8.

In 1985, Mr. Oliva built his driveway on GL 17 and had utilities put in; and he and his family have used the driveway and utilities ever since. No other persons use or have any need to use their driveway or utilities.

5. Reasons for Vacation Request. The petitioners request the vacation of ROW Permit ADL 220394 for the following reasons.

On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, Petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the Petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1, Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about Petitioners' property rights in GL 17, the Petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was Petitioners' driveway and utilities, which no one else uses or needs to use. There is no public necessity or purpose to use Petitioner's driveway, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of Petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own Lots Two (2) and Three (3), Rappe Park Subdivision -- at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394 area.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in Alaska Land Survey 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests cross over from their residence to access

original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

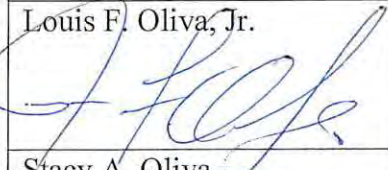
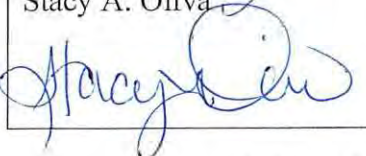
6. **Description of the alternate right(s)-of-way.** Petitioners can access GL 17 directly through original Park Road, and they can continue to use their driveway they built in the ADL 220394 area to access GL 19. Petitioners can also access GL 19 through their new driveway built in 2019, which connects with Neighbors Drive, a Borough-maintained right of way, to Petitioners' residence on GL 19. There is an alternate 30' right of way adjacent to the ADL 220394 area, platted as Craig Drive on the Rappe Park Subdivision Amended plat; renamed in 1997 as Park Road ("Park Road Extension"). Park Road Extension has been improved in sections, which are currently used by the Petitioners' neighbors Jeffrey and Bonnie West to access their Lots 2 and 3; and is almost completely built. Therefore, a new alternate right-of-way is not necessary.

As stated above, the Wests, who own Lots 2 and 3 in Rappe Park Subdivision, have public and private access to their properties through original Park Road, which crosses GL 17, as shown in Alaska Land Survey 79-210, Craig Drive/Park Road Extension, and the original road to Daniels Lake through their Lot 2, Rappe Park Subdivision Amended.

7. **Authority for filing.** The petitioners file this petition under the authority of AS 29.40.120 and 11 AAC 51.065, if AS 29.40.120 and 11 AAC 51.065 apply to vacation of ROW Permit ADL 220394, and without waiving petitioner's property rights in any of their properties or their claim that ROW Permit ADL 220394 terminated on 9/25/1996 in accordance with its own terms and conditions.

8. **Signatures.** The undersigned Petitioners by their signatures certify that they are the owners of and have possessory rights in the property described next to their signatures.

PETITIONERS:

<u>Name & Signature</u>	<u>Legal Descriptions</u>	<u>Mailing Address/Phone</u>	<u>Date</u>
Louis F. Oliva, Jr. 	See paragraph 3, above	P.O. Box 8567 Nikiski, AK 99635 (907) 776-8656	12/22/20
Stacy A. Oliva 	See paragraph 3, above	P.O. Box 8567 Nikiski, AK 99635 (907) 776-8656	12/22/20

9. **Additional Information** The accompanying **Attachment B To Petition, Petition Documents Table**, describes the records attached to **Attachment B**. Those attached records document the relevant history of the land ownership of GL 17, as well as other relevant

land, including Government Lot 19 ("GL 19"), former Government Lot 18 ("GL 18") and its later subdivision into the 3 lots of the Rappe Park Subdivision.


10. Petitioners' attorneys. Attorneys for the petitioners designated to receive service by mail are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice).

11. Petitioners' Surveyor. Surveyor for the petitioners is S. A. Sam McClane, McLane Consulting, Inc., P.O. Box 468, Soldotna, AK 99669, (907) 398-1054 (Voice).

12. No Waiver. By filing this position, Petitioners do not waive their claim that ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

At a later date, Petitioners may also submit additional information regarding those records and other records which relevant to the history of land ownership and this petition.

DATE: 12/22/2020



LOUIS F. OLIVA, Jr. Petitioner

DATE: 12/22/2020



STACY A. OLIVA. Petitioner

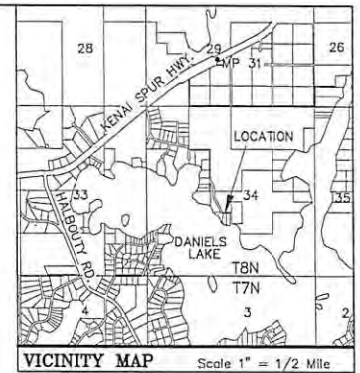
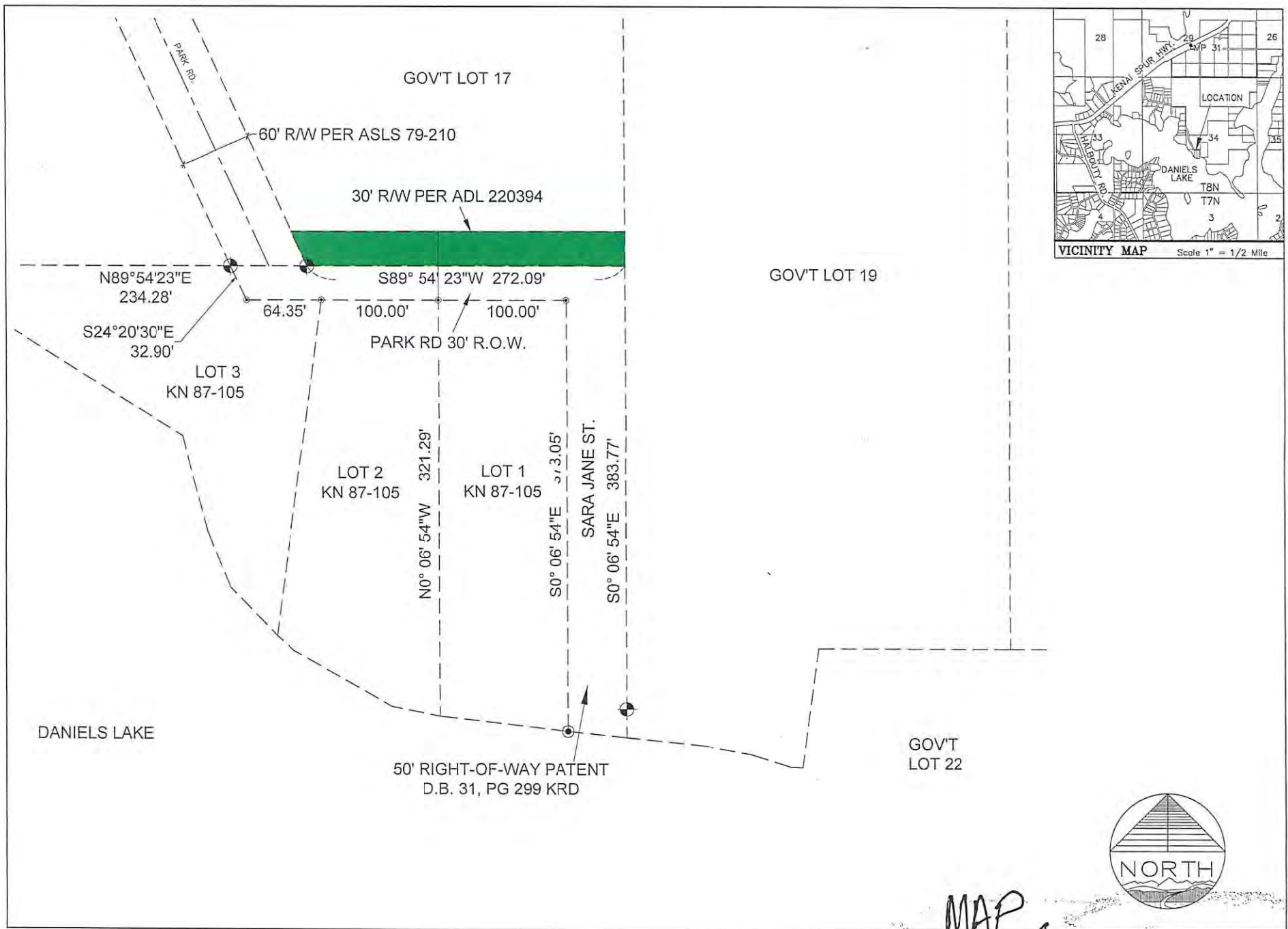
ATTACHMENT A TO PETITION

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

MAPS

<u>No.:</u>	<u>Description:</u>
1	Map -- with area to be vacated highlighted in green
2	Map -- from LUP and ROW Permit 220394
3	Map -- Orthomosaic Drone Photo 9/12/2020 with area to be vacated highlighted in green cross-hatched



MAP 1

Page 1 of 2

UTM Zone 18
 N = 6 73 1.80 m.
 E = 5 53.59 m.
 Δα = 14"

C - 1/4 Cor Section 34

(ADL 201380)
60' PUBLIC R/W ISSUED EASEMENT
 FOR ROAD AND UTILITY PURPOSES
 Contains 0.96 Acres (0.39 Hectare)

ALASKA

OF

STATE

Temporary turnaround
 50' R to be automatically
 located when road extended by
 plat dedication.
 BT 1 6" Br S 6°40'W 14.7
 BT 2 12" Br S 7°25'W 46.5
 BT 3 1" Br N 51°10' E 73.7

BASIS OF BEARING

SELEC
 Mental H
 Tentative
 Patent N
 DEDIC
 UTILI

herety
 all easen
 as show:

Date 8/

BT 1 8" Br S 21°05' E 51.8
 BT 2 6" Spr S 25°55' W 48.9
 BT 3 10" Spr N 82°50' W 26.1

30' x 272.46'

APPROXIMATE LAKE MEASUREMENTS

OWNERSHIP CERTIFICATE

I, the undersigned, hereby certify that I am the director,
 Division of Technical Services, and that the
 State of Alaska is the owner of ASLS 79-210, as
 shown hereon. I hereby approve this survey and plat
 for the State of Alaska.

8/21/80

[Signature]
 Director
 Division of Technical Services

Gov't Lot 19
 Private

Ownership
 SCR LWM
 DNR State of Alaska

MAP 2

Page 1 of 1

END EXIST ROAD

220391



before me this 21st day of 1980
Ruth E. Oja
 Notary for Alaska



ORTHOMOSAIC
DRONE PHOTO
9/12/2020

LOT LINE &
IMPROVEMENTS ARE
SPATIALLY CORRECT



SCALE
1" = 80'
0 40' 80'

MAP 3
Page 1 of 1

ATTACHMENT B TO PETITION

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION DOCUMENTS TABLE

<u>No.:</u>	<u>Date:</u>	<u>Description:</u>
1	8/01/63	Patent 1232789 (excerpt) by U.S.A. to SOA of Government Lots 17, 20, 22, 23, 35, 36, and 37
2	10/15/63	Patent 1233765 by U.S.A to Rene N. Beek of Government Lot 18
3	12/5/63	Patent 1234325 by U.S.A to Jesse D. Nichols, Sr. of Government Lot 19
4	8/21/80	Alaska State Land Survey No. 79-210
5	10/23/84	Application for Right-Of-Way-Permit - Applicant: Louis F. Oliva, Jr. - File: ADL 220394
6		Documents from DNR File: ADL 220394: <i>Page 1:</i> Letter 1/22/85 by KPB Staff to DNR [KPBPC non-objection to 30' wide public ROW permit] <i>Page 2:</i> DNR Memo 2/25/85 [issue private, non-exclusive easement to Oliva] <i>Page 3:</i> Letter 3/12/85 by KPB Staff to DNR [KPBPC recommends 30' wide public access and utility easement] <i>Page 4:</i> DNR Memo 3/15/85 [Rappe will not allow use of his adjacent property for Oliva's access] <i>Pages 5 - 8:</i> DNR Memo 3/18/85 [plan was to issue private, non-exclusive easement to Oliva; KPB may select land, KPBPC recommends 30' wide public access and utility easement; decision not to object to KPBPC recommendation and to issue a land use permit to Oliva for entry onto the land for the purpose of construction]
7	10/24/84 - 10/14/20	Case File Abstract, Summary, File: ADL 220394
8	9/11/85	Right-Of-Way-Permit ADL 220394
9	6/16/86	Minutes of Meeting of Kenai Peninsula Borough Planning Commission on Preliminary Plat, Rappe Park Subdivision

10	11/12/86 Filed	Plat No. 86-219, Rappe Park Subdivision
11	8/27/87 Filed	Plat No. 87-105, Rappe Park Subdivision Amended
12	9/25/96 Recorded	Quitclaim Deed No. 8000072 (excerpt), SOA to AMHTA
13	8/27/19	Quitclaim Deed, QCD No. 928, MHT 9200669A, AMHTA to Oliva

Anchorage 050580

4-211421

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the grant of lands under the Act of Congress of July 28, 1956 (70 Stat. 711), as supplemented by the Act of July 7, 1958 (72 Stat. 336), the State of Alaska has selected the following described lands:

Seward Meridian, Alaska.

- T. 3 N., R. 3 W.,
- Sec. 1. S1/2E1, S1/2;
Sec. 2. Lots 1 and 4, S1/2E1;
Sec. 3. Lots 1, 2, 3, 4, S1/2E1, S1/2;
Sec. 4. Lots 1, 2, 3, 4, S1/2E1, S1/2;
Sec. 5. Loc. 1, SE1/4E1, E1/4E1, S1/2;
Sec. 6. Lots 2, 3, 4, 5, 6, 10, 11, 15, 16, 17, 18, 20, 22, 23, 24, 26, 27, NW1/4E1, SE1/4E1;
Sec. 7. Lot 3;
Sec. 8. E1/4, SE1/4;
Sec. 9. N1/4, SW1/4, W1/2E1;
Sec. 10. N1/4E1, NE1/4E1;
Sec. 11. N1/4E1, S1/2NW1/4, N1/2SW1/4, NW1/4E1, SW1/4E1;
Sec. 17. N1/2E1;
Sec. 19. Lots 1, 2, 4, E1/4NW1/4, SE1/4SW1/4, S1/2E1;
Sec. 20. SE1/4E1, SW1/4NW1/4, S1/2;
Sec. 21. Lots 2, 7, 11, 12, 13, 14, 17, 18, 32, 34, 35, 36, 37, 39, E1/4E1, N1/2NW1/4E1, SE1/4NW1/4E1, E1/4SW1/4NW1/4, NW1/4SW1/4NW1/4, S1/2SW1/4NW1/4, S1/2NE1/4SW1/4NW1/4, SW1/4;
Sec. 22. Lots 1, 2, 3, NW1/4, N1/2SW1/4, SE1/4SW1/4, W1/2E1;
Sec. 23. E1/4;
Sec. 24. Lots 1, 2, 3, 4, 5, S1/2E1, E1/4E1, NW1/4SW1/4;
Sec. 25. Lots 1, 2, 3, NE1/4E1, S1/2N1/4, N1/2S1/4, N1/2SW1/4SW1/4, SE1/4SW1/4SW1/4, S1/2E1SW1/4, S1/2E1;
Sec. 26. Lots 2, 3, 4, 8, 9, 11, 12, 15, 16, 17, 20, 21, 24, 25, 26, 27, 28, 30, 31, 33, E1/4NW1/4, SW1/4NW1/4, NE1/4, N1/2NE1/4SW1/4, N1/2N1/4E1, SE1/4NW1/4E1, S1/2NE1/4E1;
Sec. 27. Lots 1, 4, 5, 8, 9, 10, 17, 18, 19, SE1/4NW1/4, W1/2SW1/4;
Sec. 28. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, S1/2E1, NW1/4NW1/4, SE1/4SW1/4, SE1/4;
Sec. 29. Lots 1 and 5, E1/4E1, NW1/4, W1/2NW1/4, NE1/4SW1/4, NE1/4E1;

Alaska State Office	
Anchorage, Alaska	
SEP 30 1961	DATE
I hereby certify that this reproduction is a copy of the official record on file in this office.	
[Signature]	
AUTHORIZED SIGNATURE	

Seward Meridian, Alaska.

- T. 8 N., R. 11 W., (continued)
- Sec. 25, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Sec. 26, Lots 1, 17, 18, 30, 37, 38, 39, 40, 52, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
- Sec. 28, Lots 3, 4, 5, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;
- Sec. 29, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$;
- Sec. 31, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
- Sec. 32, NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
- Sec. 33, Lot 30;
- Sec. 34, Lots 17, 20, 22, 23, 35, 36, 37, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$;
- Sec. 35, Lots 1, 2, 29, 38, 39, 40, 41, 42, 50, 51, 54, 55, 56, 61, 63, S $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 34,133.41 acres, according to the Official Plats of the Surveys of the said Lands, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said State of Alaska, and to its assigns, the Tracts of Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatever nature, thereto belonging, unto the said State of Alaska, and to its assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.

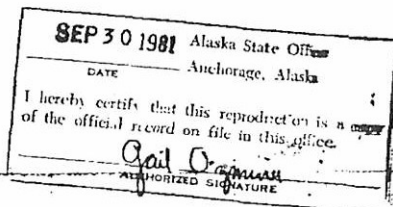
There is, also, reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 303; 48 U.S.C. Sec. 305).

Reserving unto the United States, its permittee or licensee, the right to enter upon, occupy and use, any part or all of that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, T. 5 N., R. 9 W., lying within 100 feet of the center line of the transmission line right-of-way of the Crescent Lake Project No. 2171, for the purposes provided in the Act of June 10, 1920 (41 Stat. 1063), and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 846).

There is also reserved a right-of-way for a Federal Aid Highway and a material site under 23 U.S.C. 317.

Except that this patent shall not convey the oil and gas rights in the following lands until the oil and gas leases listed shall terminate or be relinquished, but upon such termination or relinquishment of the said leases, all the rights and interests to the oil and gas deposits in the said lands shall automatically vest in the patentee.

1232789



Anchorage 050380

4-1044
July 1952

BOOK 178 PAGE 552
Kani Recording District

Subject to such rights for natural gas pipeline and oil pipeline purposes as the Alaska Pipeline Company and the Kani Pipeline Company, respectively, may have under Section 28 of the Act of February 25, 1920 (41 Stat. 437), as amended by the Act of August 21, 1935 (49 Stat. 674).

Reserving unto the United States that certain communication path and all appurtenances thereto, constructed by the United States, through, over, or upon the N1/2 Sec. 4, S1/2 Sec. 5, and the N1/2 Sec. 8, T. 5 N., R. 10 W., S. M., and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

81-007820
29⁰⁰

RECORDED-FILED
KANI REC.
DISTRICT

OCT 16 3 38 PM '81

REQD. *DR 10*
ADDRESS *701 E. Pular Rd #100*
5371 Anch 99503

(SEAL)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/10/81 BY 1044
1044 OF 1044
The United States makes these letters to be made Patent and the Act of the Bureau to be made Patent.

GIVEN under my hand in the District of Columbia, the
FIRST day of AUGUST in the year of
our Lord one thousand nine hundred and SIXTY-THREE
and of the independence of the United States the one hundred and
EIGHTY-EIGHTH.

For the Director, Bureau of Land Management,

Elizabeth B. Hucker
Chief, Patents Section.

RECORD OF PATENTS: Patent Number

1232780

8

SEP 30 1981

Alaska State Office
Anchorage, Alaska

DATE

I hereby certify that this reproduction is
of the official record on file in this office.

April D. Quinn
AUTHORIZED SIGNATURE

Page 3 of 3

Anchorage 041461

BOOK 299 PAGE 299
Kenai Recording District

KENAI

Serial No. 65-288

The United States of America

(To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of Renee M. Beek

has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Seward Meridian, Alaska.

T. 8 N., R. 11 W.,

Sec. 34, Lot 18.

The area described contains 3.71 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat. 391, 43 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat. 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the east boundary of said land.

RECORDED - FILED

REC. DIST.

DATE

3/23 1965

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FIFTEENTH day of OCTOBER in the year of our Lord one thousand nine hundred and SIXTY-THREE and of the Independence of the United States the one hundred and EIGHTY-EIGHTH.

For the Director, Bureau of Land Management.

By

Elizabeth B. Hucks

Chief, Patents Section.

Patent Number 1233765

Page 1 of 1

Anchorage 047793

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of Jesse D. Nichols, Senior, has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Seward Meridian, Alaska.

T. 8 N., R. 11 W.,

Sec. 34, Lot 19.

The area described contains 5.19 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the east and west boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the
FIFTH day of DECEMBER in the year of
our Lord one thousand nine hundred and SIXTY-THREE
and of the Independence of the United States the one hundred
and EIGHTY-EIGHTH.

[SEAL]

For the Director, Bureau of Land Management.

By *Elizabeth B. Hucker*

Chief, Patents Section

Patent Number 1224325

EXHIBIT

Page 3 of 1

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

ADL 220394

APPLICATION FOR RIGHT-OF-WAY PERMIT

Date: 10/23/84

The undersigned Louis F. Oliva, Jr. residing at _____
Rt. 1 - Box 835-2, Kenai, Ak. 99611 (Earl Drive, Nikishka, Alaska) hereby applies to the Director of
the Division of Lands, Department of Natural Resources, for Right-of-Way 20^(minimum) feet
in width and 272.48 feet in length located in Section 34, Township 8
North, Range 11 West, Seward Meridian, containing an area of
(.012)
544,96 sq. ft acres as shown on the plat attached hereto in triplicate copies, for the pur-
pose of constructing and maintaining thereon a right-of-way
for ~~private~~, public, ~~intermittent~~, yearlong use (strike inapplicable words).

State briefly the standards of construction of proposed improvements:

Gravel on gravel road; underground main gas line, underground telephone
line & overhead electric line.

Constructed _____ Construction to begin As soon as permit is issued.
Would like to have started Oct. 1, 1984.
To be completed within 30 days of my receiving right-of-way permit.

If this application is approved, I agree to construct and maintain the improvements
authorized in a workmanlike manner, to keep the area in a neat and sanitary condition; if
said right-of-way is to be constructed across leased lands, I agree to reimburse the lessee
for all damages to crops and improvements, to the extent of the fair market value thereof,
which may be damaged or destroyed as the result of the construction of said right-of-way,
and to comply with all the laws, rules and regulations pertaining thereto; and *provided
further that upon termination or relocation of the Right-of-Way for which application is
herein made, I agree to remove or relocate the improvements and restore the area without
cost to the State and to the satisfaction of the Director.

[Signature]
Signature of Applicant

(Instructions for preparation of plat: Attach triplicate copies of letter-size plat, show
centerline and boundaries of right-of-way, show ties from centerline to establish monuments
and section corner, show conflicts with other rights-of-way, if any, scale 4" to 8" per
mile, type of survey.)

*Not applicable to State Agencies

10-112 (75)
10/64

DAY ONE

11-28-84



220394

5
Page 1 of 2

October 23, 1984

State of Alaska
Dept. of Natural Resources
Land & Water Management
South Central Region
Pouch 7-005
Anchorage, Alaska 99510

ATTN: Mike Budville

RE: Right-of Way Application

Dear Mr. Budville:

I would like a permit to use part of your land for a minimum 20' right-of-way for road and utilities. This Will be used to access my property which will begin construction hopefully this year if your permit is issued.

I have been in the excavating business for eight years now and can assure you of a neat, orderly, and professional job, completed in a very timely manner.

Thank you,

Anita L. Oliva

Louis F. Oliva, Jr.
By: Anita L. Oliva

220394

**KENAI PENINSULA BOROUGH**BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441STAN THOMPSON
MAYOR

January 22, 1985

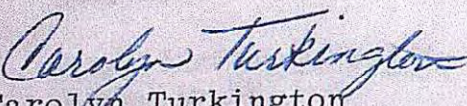
Mary Sims-Walter
Natural Resource Officer
State of Alaska
Department of Natural Resources
Division of Land & Water Management
3601 C Street - Pouch 7-005
Anchorage, AK 99510

RE: Right-of-way Application - ADL 220394
Sec. 34, T8N, R11W, S.M.

The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the above. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit.

Should you have any questions or desire additional information, please contact us.

Sincerely,


Carolyn Turkington
Land Management Officer



2/25/05

From Mike Rudbill

Am a recent phone call with the
 parcel of land this 273 foot driveway
 access is private. Curved entirely
 by the Oliva family
 as said I believe that due to
 the private use and no public
 lands are accessed by this
 driveway (likely easement) that
 we can only grant a right way
 for a private non exclusive use.

1) Still a ~~right~~ ~~as a private~~
 easement ~~add a P/FF?~~ X
 + the planning group - they had the opportunity to
 comment on the proposed right of way then the agency review
 process. I would call & see if they plan to comment/review
 on the easement. ~~add a P/FF?~~ X
 2) ~~add a P/FF?~~ X
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Mike - you don't need to amend their opin. We can issue
 them a private non exclusive as a result of
 the adjudication process. They should know we
 are considering the priv non-ex. Do try
 and get the bore to comment.
 Kluw



KENAI PENINSULA BOROUGH

BOX 650 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

March 12, 1985

Mike Budhill
State of Alaska
Department of Natural Resources
Land & Water Management
Pouch 7-005
Anchorage, AK 99510



Re: ADL 220394 Right-of-Way Permit
Applicant: F. J. Olivia, Jr.

Dear Mr. Budhill:

At the meeting of March 11, 1985, the Kenai Peninsula Borough Planning Commission again reviewed the referenced permit application. The action taken by the Commission was to affirm its January 21, 1985 decision which is to recommend a 30 ft. wide public access and utility easement along the south line of Lot 17, Sec. 34, T8N, R11W, S.M. AK. lying easterly of Neighbors Avenue.

Please contact me if you have any questions.

Sincerely,

Carolyn Turkington
CAROLYN TURKINGTON
Land Management Officer

CT:gp

CH 2412 1st. Jly

3/15/83

→
Craig Kupper

phoned no way thru
Oliver R/D

GD 220394

128
371
ocns
Craig Kupper the adjacent owner of the
lot along the south lot line between
parcels 17 and 18 saw map phoned today
at 3:30 p.m. He was not going to
sell or offer any part of his property
up for any highway way for Oliver.

As a result of this the only
access is through state land, selected
by the KP Borough.

Mike Budbill-NRO

Memo to Kim Kruse & Jim Fichione

Decision Memo and

Summary to Oliva R/W 220394

On October 24 1984 we received an application for a public right of way 272 feet long x 20 feet wide. This was located ^{entirely} on state land for a driveway and utility easement. This would require 5449 ^{square} feet or a .13 acre. Please see map & plat set attached.

This easement benefits only the applicant and the adjacent land owner. Access to public land is already provided.

Agency comments were requested 1/7/85. A delay was experienced when the applicant ^{we asked the} to submit a Coastal Project Questionnaire. No objections were received ^{by} any agency. No comments were received from the Kenai Peninsula Borough.

On February 2/25/85 I decided that the apln ~~should be changed and~~ processed as a private non-exclusive use easement. Kim Kruse concurs.

On 2/28/85 the applicant phones asking for a status report. We explain the situation. The applicant explains that the easement is essential for him to

(2)

acquire the 5.19 acre parcel. He said that the bank/ASHA will not finance his loan for the parcel and a house w/out an easement. I explain the processing requirements. He tells me he will lose his earnest money if a easement isn't granted by mid march. I explain the situation ~~again~~ concerning the tenet Peninsula Borough selection of the parcel, and that I have no information from them.

I phone the borough, finally reach Carolyn Turkington. I explain that I need some comments; objection or not for us to proceed. Especially in light of our creating a private easement on KPB selected lands.

She said she would present the case to the planning commission at its next regularly scheduled meeting.

3/13/85 KPB letter arrives that on 3/1/85 the Planning Commission reaffirms its 1/2/85 meeting decision. That decision was to recommend a 30 foot wide public access and utility easement.

3/85
Notes recommending
a Public ROW

the Borough's

With that 1 decision in mind it becomes apparent that the ~~one~~ earlier in -
rouse decision to require a private
easement is less is weakened.

Mike are
atracted
insist
what to
you think
him

the probable - eventual land owners
(the KPB) recommends a public easement
even though only one family ~~will~~
immediately (to now) will enjoy
the use. And Another adjacent
land owner Craig Rape will
probably see his property value
rise as the result of improved access.

If the KPB (as eventual owners)
want a public easement should
we object? — yes — no X.
Shall we issue a LUP for entry
onto the land for the purpose
of constructing a 30 foot ^{public} right of
way. — X yes — no

We are going down there on Wed/Thursday
3/20 or 21/85

May I have a permit in hand signed by
and ready to give them if the field trip
girls no ^{further} problems? — yes — no

usual
want
the apples
to high
1st
after the
read the
at 11:30
12

July 1st
Sally & Co.
of the
1st
of
the
year

I find you should have your
 down - so as
 to make a people party of the
 one you (don't like) party. (D.F.)
 Schuyler
 Pitts

show
Hugs
R/W

I think you should know your
 own mind.

[illegible]

Wm.

617E

probably as to KMK & Inf. for Mike B. & going about 10000000 of money had to supply to X

3/18/85
KMK & Jim F.

the use of a Public Row
recommendation
advised
and ensure
probably
the value

3/85
NOTES
a Public Recommendation

With that I decide
 against that the
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 (the KFB) occur
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 3/8 Notes
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the benefit

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ADL 2203

OLIVER, Louis F., Jr.

OLIVA, Louis F. J.

We are now accepting payments online for case agreements and mining claims bills! To make a payment by credit card or from your bank account, click here.

Results - Case File Abstract

Summary

File: ADL 220394

This case contains Mental Health Trust Lands.

Customer: 000168445 OLIVA, LOUIS F JR
BOX 8567
NIKISKI AK 99635

Case Type: 581 PUBLIC EASEMENT

DNR Unit: 200 LAND MANAGEMENT

File Location: LWMCEN LWM CENTRAL OFFICE

Case Status: 35 ISSUED

Status Date: 09/11/1985

Total Acres: 0.012

Date Initiated: 10/24/1984

Office of Primary Responsibility: LSC LND-SOUTHCENTRAL REG

Last Transaction Date: 07/14/2020

Case Subtype: 8003 ACCESS

Last Transaction: DR DOCUMENT RECORDED

Land Records

Meridian: S **Township:** 008N **Range:** 011W **Section:** 34 **Section Acres:** 0

Case Actions

10-24-1984 APPLICATION RECEIVED		
RIGHT-OF-WAY FOR PUBLIC YEARLONG USE.		
03-28-1985 COMMENTS		
LUP ISSUED TO AUTHORIZE APPLICANT TO ENTER UPON STATE LANDS TO CLEAR AND CONSTRUCT DRIVEWAY AND PLACE UTILITIES SUBJECT TO SPECIAL STIPS.		
09-11-1985 ISSUED		
STATUS 23	23	EASEMENT CREATED
R/W PERMIT ISSUED FOR A PUBLIC ROAD & UTILITY ACCESS.		
08-02-1986 CASEFILE CUSTOMER DOCUMENTED		
CUSTOMER NUMBER	000168445	OLIVA, LOUIS F JR
UNIT CODE	200	LAND MANAGEMENT
RELATIONSHIP CODE	10	OWNER
THIS TRANSACTION WAS GENERATED BY THE CONVERSION TO THE NEW CUSTOMER SYSTEM TO DOCUMENT THE UNIT AND RELATIONSHIP CODES		
09-20-1996 COMMENTS		
MHPAR SM-1434, A PORTION OF THE PARCEL.		
01-02-2003 STATUS CODE STANDARDIZED		
STATUS CODE	35	ISS/APPRV/ACTV-AUTH
***** STATUS CODE STANDARDIZATION *****		

STATUS CODE CHANGED BY BATCH UPDATE		
02-20-2018 COMMENTS		
EASEMENT DOCUMENT SENT TO KENAI RECORDERS OFFICE		
03-01-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-001832-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
03-07-2018 COMMENTS		
SUBTYPES WERE RESTRUCTURED ON 3.7.2018 FOR 581 AND 582 EASEMENTS TO SIMPLIFY LAS REPORTING. NO AFFECT ON MANAGEMENT IS INTENDED.		
08-10-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-007092-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: PUBLIC ACCESS AND UTILITY EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
12-13-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-011190-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
07-09-2020 COMMENTS		
EASEMENT CORRECTION DOCUMENT IS COMPLETED TO ADDRESS RECORDATION ERROR		
07-14-2020 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2020-006563-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT CORRECTION GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		

Legal Description

APPLICATION LEGAL DESCRIPTION 10-24-1984

RIGHT-OF-WAY 20 FEET MINIMUM IN WIDTH AND 272.48 FEET IN LENGTH
LOCATED WITHIN SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST,
SEWARD MERIDIAN, CONTAINING APPROX. 0.012 ACRES, MORE OR LESS.

ISSUED LEGAL DESCRIPTION 09-11-1985

RIGHT-OF-WAY 30 FEET IN WIDTH AND 273 FEET IN LENGTH LOCATED WITHIN
THE N1/2 S1/2 OF SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST, SEWARD
MERIDIAN, CONTAINING 0.192 ACRES, MORE OR LESS.

ISSUED LEGAL DESCRIPTION UPDATED/ CORRECTED 07-09-2020

Beginning at the Southeast corner of Government Lot 17, Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, said corner
being established by Alaska State Land Survey No. 79-210. (Kenai Recording District, Plat 80-71), the true point of beginning and corner number
one of this parcel.

Thence S89°54'41"W, 272.48 feet along the south line of Government Lot 17 to an Alaska State Land Survey monument of the easterly boundary
of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 17 and corner number four.

Thence S0°06'54"E, 30.00 feet along the east boundary of Government Lot 17 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey No. 79-210.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

ADL No. 220394

RIGHT-OF-WAY PERMIT

THIS AGREEMENT made and entered into this 5th day of September, 1985, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Land and Water Management, hereinafter referred to as the grantor and Southcentral District, Division of Land and Water Management, acting as representative of and on behalf of the public hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: public road and public utility access with the Division of Land and Water Management together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit: a 30 foot by 273 foot right-of-way located within the Seward Meridian, Township 8 North, Range 11 West, Section 34: the North 1/2 of the South 1/2; also described on the attached legal description, containing 0.192 acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein.

The as-built legal description revealing the right-of-way granted herein has been attached hereto and made a part hereof. See attachment Number 1.

In the event that the right-of-way granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefor has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Land and Water Management and all other Federal,

10-119 (72)
Rev. 4/83

State or municipal laws, regulations or ordinances applicable to the area herein granted.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall be terminated by usual and customary easement vacation process with the Kenai Peninsula Borough.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

Permittee:

Richard A. Lefebvre
Richard A. Lefebvre
Acting Southcentral Regional Manager
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.
State of Alaska)

This is to certify that on the 9th day of SEPTEMBER, 1985,
before me, personally appeared RICHARD A. LEFEBVRE to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

Samuel W. Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989

Grantor:

Tom J. Hawkins
Director
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.
State of Alaska)

This is to certify that on the 11th day of September, 1985,
before me, personally appeared TOM J. HAWKINS, Director to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

Samuel W. Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989

Right-of-Way Permit, ADL 220394

Attachment 1

A parcel of land within the Kenai Peninsula Borough, Third Judicial District, Alaska more particularly described as follows:

Beginning at the Southeast corner of Government Lot Thirty-Five (35), Section Thirty-Four (34), Township Eight North (T8N), Range Eleven West (R11W), Seward Meridian, Alaska, said corner being established by Alaska State Land Survey Plat No. 80-71, Kenai Recording District, the true point of beginning and corner number one of this parcel.

Thence S89°54'41"W, 272.4 feet along the south line of Government Lot Thirty-Five (35) to an Alaska State Land Survey monument of the easterly boundary of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then S0°06'54"E, 30.00 feet along the east boundary of Government Lot 35 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey #79-210.

UTM Zone 5:
 N = 6 7 3 41.80 m.
 E = 5 3 3.59 m.
 Δα = 14"

C - 1/4 Cor Section 34

(ADL 201380)
60' PUBLIC R/W ISSUED EASEMENT
 FOR ROAD AND UTILITY PURPOSES
 Contains 0.96 Acres (0.39 Hectare)

ALASKA

OF

STATE

Temporary turnaround
 50' R to be automatically
 vacated when road extended by
 plat dedication.
 BT 1 6" Br S 6°40'W 19.7
 BT 2 10" Br S 7°25'W 46.5
 BT 3 7" Br N 51°10'E 73.7

BASIS OF BEARING

SELEC
 Mental H
 Tentative
 Patent N

DEDIC.
 UTILI

I hereby
 all easen
 as show:

Date 8/

BT 1 8" Br S 21°05'E 51.8
 BT 2 6" Spr S 25°55'W 48.9
 BT 3 10" Spr N 82°50'W 26.1

30' x 272.46'

[Signature] 3/28/85

APPROXIMATE LAKE MEASURES

OWNERSHIP CERTIFICATE

I, the undersigned, hereby certify that I am the director,
 Division of Technical Services, and that the
 State of Alaska is the owner of ASLS 79-210, as
 shown hereon. I hereby approve this survey and plat
 for the State of Alaska.

8/21/80

[Signature]
 Director
 Division of Technical Services

Gov't Lot 19
 Private

Ownership

SCR/LWM
 DNR/State

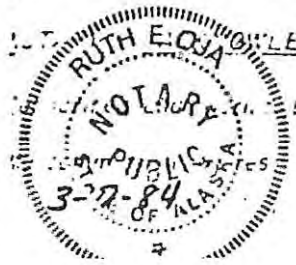
Page 5 of 5

END EXIST ROAD

SEC 34

220394

E4-79



before me this 21st day of 1980
Ruth E. Oja
 Notary for Alaska

AGENDA ITEM H. CONSIDERATION OF SUBMITTED PLATS, Continued17. Rappe S/D - Preliminary
KPB File 86-187 (Malone Surveys)

STAFF REPORT STATED:

GENERAL LOCATION: North shore of Daniels Lake

USE: Residential

CURRENT ZONING: -

SEWER: On Site

WATER: On Site

Supporting Information or History:

A subdivision of Gov't Lot 18, into three lots. ROW is being dedicated along north to match ROW granted by ADL 220394.

50' ROW shown along east boundary is a right-of-way for roadway and public utilities as set out in patent.

Subdivider intends to petition to vacate a portion of ROW at some time in the future.

Lot 1 exceeds the 3:1 depth to width ratio but no exception has been requested. Staff would recommend approval if so asked.

EXCEPTIONS REQUESTED: Exception to turn around requirement at south end of ADL 201380 RW since street will continue to east. Exception no required.

STAFF RECOMMENDATIONS: Grant approval of preliminary plat subject to following conditions:

1. REVISE OR ADD TO THE PRELIMINARY PLAT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN KPB 20.12.060 AS FOLLOWS:
 - a. Provide date of this survey.
 - b. Correct the vicinity map to show: section this subdivision is in; correct number of adjacent sections to north and west.
 - c. Indicate approximate location of area subject to inundation by storm or tidal flooding. If applicable, cite study identifying flood plain.
 - d. Show ordinary or mean highwater line.
 - e. Identify by name and width all streets to be dedicated.
2. ADDITIONAL REQUIREMENTS FOR ADMINISTRATIVE APPROVAL OF FINAL PLAT IN ACCORDANCE WITH KPB TITLE 20:
 - a. Show all dimensional data required by Ordinance.
 - b. Boundary of subdivision must be wider line weight.
 - c. Identify existing easements and label use or cite record reference.
 - d. Provide or correct the dedication and approval statements with notary's acknowledgement as needed.
 - e. Survey and monumentation to meet Ordinance requirements.
3. Chapter 20.20, Design Requirements:
 - a) Show building setback statement according to 20.20.230.
4. Conform to conditions stated in KPB Planning Commission Resolution 78-6.
5. Near Title block - show Recording District.
6. Comply with the stipulations contained in KPB Planning Commission Resolution 86-05 (ADEC Regulations).

END OF STAFF REPORT

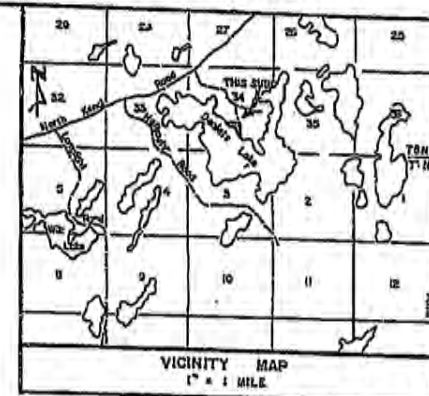
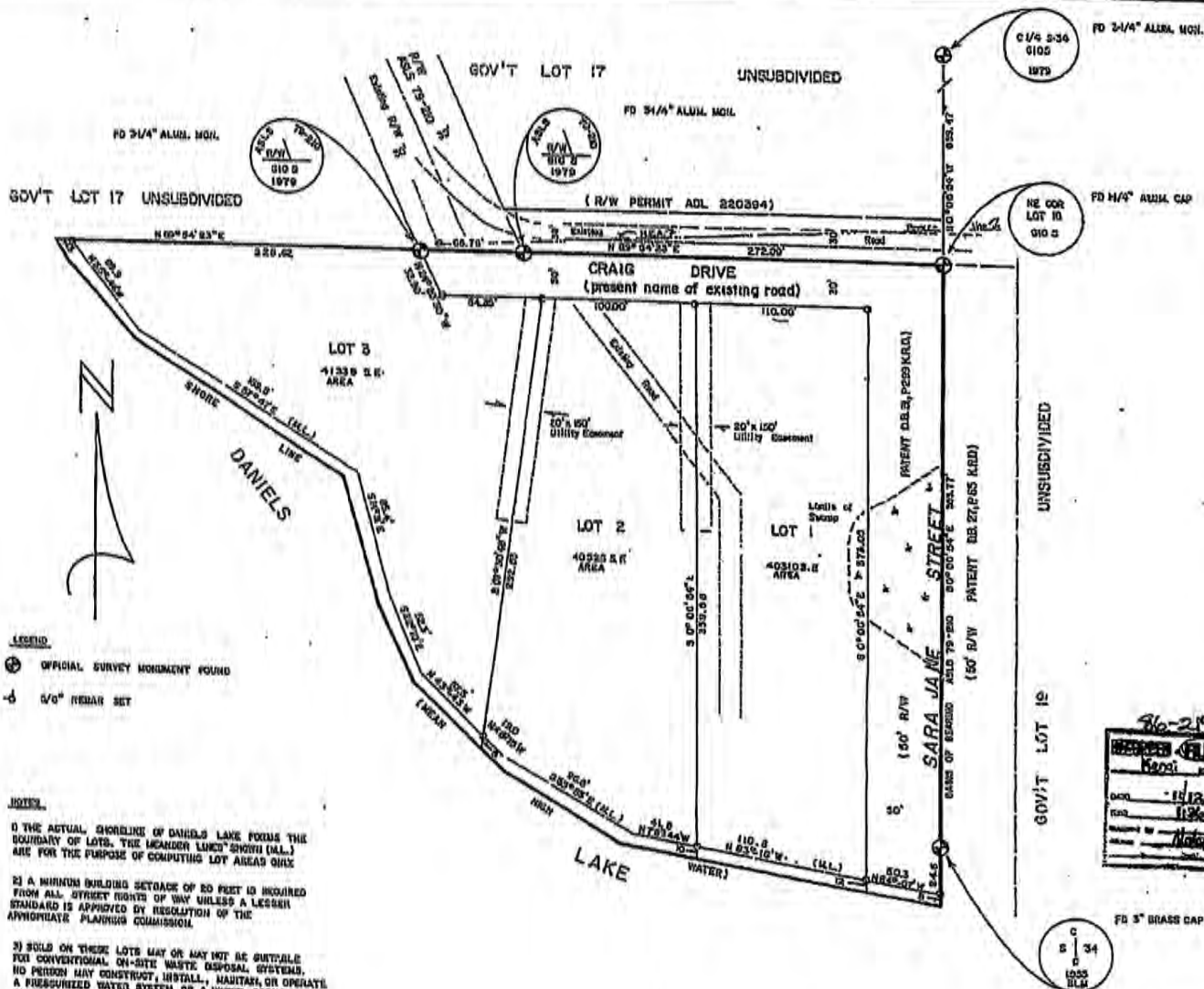
Mr. Troeger read the staff report outlining background and staff recommendations.

Commissioner Hursh: That cabin down by the lake looks like it is inaccurate.

Mr. Troeger: I think the intent is to get the cabin wholly within this lot 2 and that will probably be determined by the final field surveyor. If it comes through the cabin, I will of course ask them to revise it. The preliminary plat is not a result of the lot staking. It is just the topog. I am sure that they will keep the cabin on one lot.

MOTION: Commissioner Butler, seconded by Commissioner Hursh, made a motion to approve Rappe S/D - Preliminary plat subject to staff recommendations including an exception of 3:1 depth to width ratio for Lot 1.

Hearing no further discussion or objection, the motion carried unanimously.



CERTIFICATE OF OWNERSHIP AND DEDICATION

I certify that I am the representative for the estate of Leslie A. Rappe, which is the owner of the property shown and described hereon, and that, on behalf of the estate of Leslie A. Rappe, I hereby adopt this plan of subdivision and dedicate all rights-of-way to public use and grant all easements to the use shown on.

Leslie A. Rappe
CRAIG RAPPE
BOX 112062
ANCHORAGE, ALASKA 99511
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE

NOTARY'S ACKNOWLEDGEMENT

For Leslie A. Rappe
Subscribed to and sworn before me
this 22 day of August, 1986.
My commission expires 5/1/90
Alvin P. Mendenhall
Notary Public for Alaska

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of
JUNE 16, 1986
Kenai Peninsula Borough

By Robert J. Torgerson
Authorized Official

RAPPE PARK SUBDIVISION

GOV'T LOT 18 IS IN THE NE 1/4 SW 1/4 SECTION 34
T8N R11W SEWARD MERIDIAN, ALASKA

CONTAINING 3.464 ACRES
KENAI RECORDING DISTRICT

FOR CRAIG RAPPE BOX 112062 ANCHORAGE, ALASKA 99511 PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE		MALONE SURVEYING BOX 566 KENAI, ALASKA 99501	
JOB 8609	FD 86-08	DATE OF SURVEY 7/5/86	
DRAWN BY CRA	CHECKED HWA	DATE 7/5/86	
SCALE 1 inch = 50 feet		K.R.D. FILE NO. 86-187	



Page 10 of 1

BOOK 0493 PAGE 440

State of Alaska
Mental Health Trust Land:
Fee Estate

Quitclaim Deed
No. 8000072

The Grantor, the STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, 3601 C Street, Suite 960, Anchorage, Alaska 99503-5936, for valuable consideration hereby grants, conveys and quitclaims to the Grantee, ALASKA MENTAL HEALTH TRUST AUTHORITY, Trustee, whose mailing address of record is 3601 C Street, Suite 742, Anchorage, Alaska 99503-5936, all interest, in and to that real property situated in the KENAI Recording District, State of Alaska, as described, and designated as mental health trust land, in Section 40, Chapter 5, FSSLA 1994, as amended by Chapter 1, SSSLA 1994, and as further described by the attached parcel numbers and legal descriptions.

See Attachment A

QCD 8000072

Page 1 of 2

Page 12 of 5

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Land, Department of Natural Resources, State of Alaska, pursuant to delegated authority, this 20th day of September, 1996.

By: Carol L. Shobe
 Carol L. Shobe
 For Jane Angvik, Director
 Division of Land

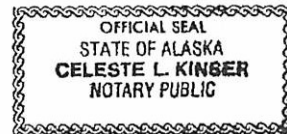
State of Alaska)
) ss.
 Third Judicial District)

This Is To Certify that on the 20th day of September, 1996, appeared before me CAROL L. SHOBE, who is known to me to be the person who has been lawfully delegated the authority of Jane Angvik, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that Carol L. Shobe executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.

Witness my hand and official seal the day and year in this certificate first above written.

Celeste L. Kinsler
 Notary Public in and for the State of Alaska

My Commission Expires: 4-4-97



ATTACHMENT A

BOOK 0493 PAGE 468

Parcels

Legal Description

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1420

SECTION 32: SW1/4NW1/4, NW1/4SW1/4;

CONTAINING 80.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY MAP EXAMINED AND APPROVED BY THE U.S. SURVEYOR GENERAL'S OFFICE IN JUNEAU, ALASKA ON JUNE 26, 1923.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1434

SECTION 34: LOT 17;

CONTAINING 5.16 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1435

SECTION 34: LOT 20;

CONTAINING 2.29 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1436

SECTION 34: LOT 22;

CONTAINING 3.28 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1438

SECTION 34: LOT 35;

QCD Number 8000072

ATTACHMENT A

BOOK 0493 PAGE 469

Legal Description

Parcels

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1439

SECTION 34: LOT 36;

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1440

SECTION 34: LOT 37;

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1442

SECTION 34: E1/2SW1/4SW1/4NE1/4, SE1/4SW1/4NE1/4, E1/2NW1/4SE1/4, NW1/4NE1/4SE1/4;

CONTAINING 45.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 007 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-5011

SECTION 21: SW1/4SE1/4NE1/4;

CONTAINING 10.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 12, 1966.

Aggregating 12164.149 acres, more or less.

QCD Number 8000072

28

12
Page 4 of 5

BOOK 0493 PAGE 470

Kenai Recording District

Grantor:

State of Alaska
Department of Natural Resources
Division of Land/Realty Services
Mental Health Settlement Unit
3601 "C" Street, Suite 960
Anchorage AK 99503-5936

Return to Grantee:

Alaska Mental Health Trust
Trust Land Office
Department of Natural Resources
3601 "C" Street, Suite 880
Anchorage, AK 99503-5935

96-8027

KENAI REC NC
DISTRICT
REQUESTED BY DNR

'96 SEP 25 PM 1 00

12
Page 5 of 5



State of Alaska
Alaska Mental Health Trust
Authority
Quitclaim Deed

QCD No. 928
MHT 9200669A

Record this document in the
Kenai Recording District

The GRANTOR, the ALASKA MENTAL HEALTH TRUST AUTHORITY, a public corporation within the Department of Revenue (AS 47.30.011 et seq.), by its agent pursuant to AS 37.14.009(a)(2), the Alaska Mental Health Trust Land Office, Department of Natural Resources, whose address is 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503, pursuant to AS 38.05.801 and regulations promulgated thereunder, for TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and quitclaims to the GRANTEE, **Stacy A. Oliva and Louis F. Oliva, Jr.**, husband and wife, as tenants by the entirety with full rights of survivorship, whose mailing address is P.O. Box 8567, Nikiski, Alaska 99635, without warranty, all right, title and interest of the Grantor, if any, in the following described real property situated in Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

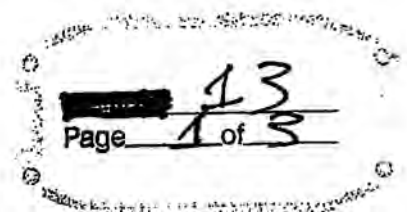
Lot 17, containing 5.16 acres more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on May 8, 1959.

TOGETHER with all the tenements thereon, if any; and all rights of the Grantor to any and all hereditaments and appurtenances thereto belonging or in anyway appertaining.

SUBJECT to valid existing rights, including reservations, easements, and exceptions in the

Quitclaim Deed No. 928

Page 1 of 3



U.S. Patent or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights of way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any; and encumbrances or interests of record noted on the records maintained by the Department of Natural Resources, or otherwise existing on or before the date that the land was designated as Mental Health Trust Land pursuant to Section 40, Chapter 5 FSSLA 1994, as amended by Chapter 1, SSSLA 1994.

The Grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable material, geothermal resources and fossils. The Grantor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part of parts thereof, at any and all times for the purpose of opening, developing, drilling and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Executed this 27th day of August, 2019.

GRANTOR:

ALASKA MENTAL HEALTH TRUST AUTHORITY

By:

Wyn Menefee
Wyn Menefee, Executive Director
Alaska Mental Health Trust Land Office

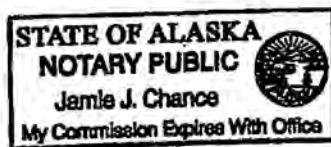


STATE OF ALASKA

)
) ss.

Third Judicial District

This is to certify that on this 27th day of August, 2019, personally appeared Wyn Menefee, the Executive Director of the Alaska Mental Health Trust Land Office, known to me to be the person who acknowledged that he executed the foregoing instrument, on behalf of the Alaska Mental Health Trust Land Office, as agent for the Alaska Mental Health Trust Authority, freely and voluntarily and for the purposes therein stated.



Jamie J. Chance
Notary Public for the State of Alaska
My Commission expires with office.

MHT QCD 928
MHT 9200669A
Parcel No. SM-1434

Location Index:
Township 8 North, Range 11 West, Seward Meridian, Alaska
Section 34

AFTER RECORDING, RETURN DOCUMENTS TO:
ORIGINAL TO GRANTEE:
Stacy & Louis Oliva, Jr.
PO Box 8567
Nikiski, AK 99635

CERTIFIED COPY TO GRANTOR:
Alaska Mental Health Trust Land Office
2600 Cordova Street, Suite 100
Anchorage, AK 99503

Official State Business – NO CHARGE

Quitclaim Deed No. 928

Page 3 of 3



Page 3 of 3
2019-007580-0

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Page 3 of 3

KENAI PENINSULA BOROUGH
ADDITIONAL INFORMATION
SUBMITTAL LETTER
JAN. 22, 2021

MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101
Kenai, Alaska 99611

(907) 283-7373

(907) 283-2835 (Fax)

bob@molloysschmidt.com

kristine@molloysschmidt.com

January 22, 2021

Melanie Aeschliman, Planning Director
Planning Department
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

**RE: Additional Information in Support of
Submission to Local Platting Authority Under 11 AAC 51.065
Consideration of Petition to State of Alaska To Vacate A ROW Permit**

Dear Ms. Aeschliman:

Louis and Stacy Oliva provide additional information, and a conceptual drawing, for the Borough Planning Commission in support of the Oliva's submission to the Borough Platting Authority of their Petition For Right of Way Permit Vacation filed with the Alaska Department of Natural Resources, DNR File No. EV 3-344, for platting authority comment. The attachment is the conceptual drawing showing proposed Oliva Subdivision, which would be the next step in the property development plans of Louis and Stacy Oliva and their business, Triple-Knot Land & Livestock, LLC, if the DNR approves the vacation of ADL 220394.

This next step would involve a petition to the Borough to: (1) vacate interior lot lines and combine Government Lots 17, 19, 22, 35, 36, 37 and Lot 1, Rappe Park Subdivision Amended into one large Tract A; (2) partially vacate platted Craig Drive (re-named Park Road) east of the Lot 1 property line, and (3) vacate the right-of-way shown on the Rappe Park Subdivision plat as Sara Jane Street. In exchange for the partial vacation of a portion of Craig Drive-Park Road and Sara Jane Street, the Olivas and their business propose to: (1) dedicate a portion of vacated ADL 220394, so that there would be a 60' right-of-way in front of Lots 2 and 3, Rappe Park Subdivision; (2) dedicate a triangle in the northeast corner of Government Lot 36 which currently includes a portion of Neighbors Drive; and (3) dedicate a 60" right-of-way in Government Lot 17 to Daniels Lake. The portion of ADL 220394 proposed to be dedicated was improved by the Olivas with a driveway. The proposed 60' right of way in Government Lot 17 is an improved roadway to the Habitat Protection Area line, where it becomes pedestrian access to Daniels Lake.

The DNR's approval of the vacation of ADL 220394, and that vacation, is the necessary first step in the Oliva's and Triple-Knot's property development plan, so the next step is contingent upon DNR approval of the vacation of ADL 220394.

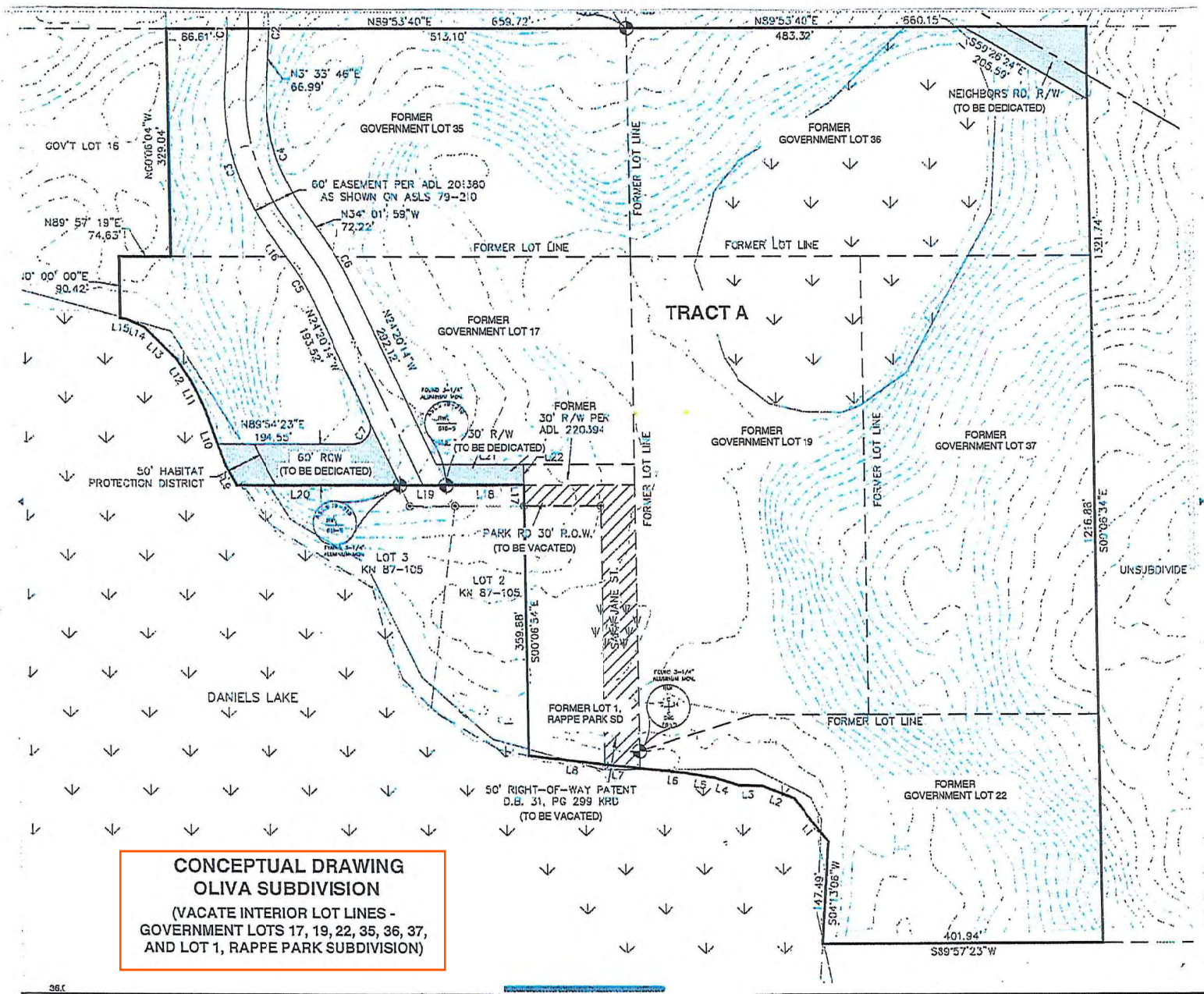
Please provide this letter and attachment to the Borough Planning Commission for its information. Thank you.

Sincerely,



ROBERT J. MOLLOY, ABA #8011100

cc: J. Poydack, Survey Section, DNR
Clients



From: [Horton, George C \(DNR\)](#)
To: [Clements, Peggy](#)
Cc: [Rokos, Jay M \(DNR\)](#); [Bow, Kevin J \(DNR\)](#); [Brown, Stanley C \(DNR\)](#)
Subject: <EXTERNAL-SENDER> Proposed ADL 220394 ROW VACATION - KPB 2020-156V
Date: Wednesday, February 3, 2021 3:06:58 PM
Attachments: [image001.png](#)
[Plat Prelim KPB 2020-156V Revised 011521 Reduced.pdf](#)
[Organized Borough-EV petition packet January 2019.pdf](#)

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Peggy,

Sorry for being late with my comment.

It appears from the attached sketch that ADL 220394 is proposed to be vacated by this action.

If KPB has sole management authority over ADL 220394 (that the public easement has been conveyed in full to KPB) the DML&W Survey Section does not have any comment.

HOWEVER, if said ADL is still managed by DNR, DML&W, please let the petitioner know they will have to petition the state as well as KPB to vacate any public access rights; the current fee is \$2000. Attached is DNR's petition packet. Any questions they have can be directed to me at the phone number below.

Regards,

George Horton, PLS, CFedS

Land Surveyor I

DNR, DML&W, Survey Section

550 W. 7th AVE; Suite 650

Anchorage, Alaska 99501

(907) 269-8610

<http://dnr.alaska.gov/mlw/survey/>

"It's a dangerous business going out of your door. You step into the Road, and if you don't keep your feet, there is no knowing where you might be swept off to." Bilbo Baggins

From: Clements, Peggy <PClements@kpb.us>

Sent: Tuesday, January 19, 2021 12:38 PM

To: Eaton, Belinda L (DOT) <belinda.eaton@alaska.gov>; Biloan, Joselyn (DOT) <joselyn.biloan@alaska.gov>; Simpson, Danika L (DOT) <danika.simpson@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Rinke, Hans J (DNR) <hans.rinke@alaska.gov>; Kastner, Lorraine S (DOT) <lorraine.kastner@alaska.gov>; Hooyer, Patricia (DOT) <louise.hooyer@alaska.gov>; 'mark.fink@alaska.gov' <mark.fink@alaska.gov>; Wilson, Mistee R (DOT) <mistee.wilson@alaska.gov>; 'Neuendorf, Cody' <CNeuendorf@HomerElectric.com>; Byron

Jackson <byron.jackson@acsalaska.com>; Bradley Beck <bbeck@gci.com>; ENSTAR ROW
<row@enstarnaturalgas.com>; Dubour, Adam J (DFG) <adam.dubour@alaska.gov>;
'Supertrucker2b4u@yahoo.com' <Supertrucker2b4u@yahoo.com>; Crisp, Bryan <BCrisp@kpb.us>
Subject: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA,
ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Hello,

Attached sketch to be reviewed for the **February 8, 2021** meeting. Please provide comments by
January 29, 2021 to ensure the comments will be included in a right-of-way vacation staff
report. Right-of-way vacation comments will be accepted until the Planning Commission's review
has concluded.

PIN 01341069

Kind regards,

Peggy Clements

Platting Technician
Planning Department
907-714-2207

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of
Alaska Statutes and may be made available to the public upon request.



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

550 West 7th Avenue, Suite 650
Anchorage, AK 99501-3576
Main: 907.269.8523
TDD: 907.269.8411
Fax: 907-269-8914

Subject: Petition process for Easement Vacation within a local Platting Authority

Dear Petitioner:

This letter outlines the process for vacating an easement managed by the Department of Natural Resources, when the easement lies within the jurisdiction of a local platting authority. Section-line easement vacations are the most common, but this process applies to all easements requiring DNR approval to vacate, including RS2477 rights of way and easements to and along public waters under AS 38.05.127.

RS 2477 right-of-way and section-line easement vacations must be approved by the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT&PF).

I. PETITION:

- A. A petition form completed by the petitioner or his/her representative containing the signatures of the landowners directly affected must be submitted. (A copy of the petition form is enclosed.)
- B. In order to ensure that the public interest is also addressed at the local level, **DNR requires that the applicant apply for the vacation with the local borough or municipal platting authority.** The borough considers local concerns and transportation infrastructures. The state considers these issues statewide. The applicant may apply with DNR before the local platting authority but, **the Division of Mining, Land & Water will not issue a Final Finding and Decision until the conditions of approval from the local platting authority are received. This step is not required where there is no local platting authority.** If time is critical, it is advisable to apply with the local platting authority at the same time you apply with DNR.
- C. ***Required Submittal:***
In addition to A and B above, obtain or prepare a map or plat of the area showing the following information:
 - 1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the easement proposed for vacation and the alternate access and whether they are constructed.
 - 2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
 - 3. Map or as-built identifying existing structures on petitioner's property.
 - 4. Map identifying existing section-line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.
 - 5. Map identifying available access to lands that are affected by the proposal.
 - 6. Aerial photograph (if available) and/or topography map showing contours.

7. It is not required, but it may also help the decision process if the petitioner specifically addresses, in writing, the following points concerning the existing easement **and** the alternate route:

Underlying Land Ownership
Current Public Use Patterns
Practicality of Use

- D. A RS 2477 or section-line easement vacation, must comply with Chapter 26 SLA 98, AS 19.30.410. It states that agencies of the State “may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless:

1. **a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses.”**

Alternate Means of Access

Before the vacation of a RS 2477 or section-line easement is approved, the petitioner **must** satisfy the department that equal or better access is available. “Equal or better access” means access protected by an easement of record that is adequately wide for the purpose, and at least equally usable considering length, type of terrain, and level of improvement, as the easement to be vacated.

The vacation of a public right-of-way involves giving up of a public right in favor of the landowner. DNR will not approve a vacation unless it determines that the action is in the state’s interest.

- E. Mail the above information and a check for the application fee to the Survey Section; Division of Mining, Land & Water; 550 W 7th Avenue, Suite 650; Anchorage, AK 99501-3576.

II. APPLICATION FEE, ADVERTISING AND POSTAGE COSTS:

The petitioner must pay the application fee and the cost of advertising the public notice (including –if applicable - reimbursement for all postage associated with public notice). The petition must be accompanied by a check for the APPLICATION fee and made payable to the Alaska Department of Natural Resources. See current Director’s Fee Order for applicable fees. After the department determines the cost to advertise the public notice in a newspaper and the cost for associated postage, you will be notified and must then submit to this office a check made payable to Alaska Department of Natural Resources.

III. STATE ACTION:

The DNR Survey Section will review the petition for completeness and verify the state’s jurisdiction under **AS 40.15.305(e), AS 19.30.410 or AS 29.35.090** for this area, and that fees have been paid.

Prior to issuance of the Preliminary Finding and Decision the department requests comments from interested State agencies, including Department of Transportation & Public Facilities (DOT&PF), Department of Fish and Game (DFG), DNR Division of Mining, Land & Water (DMLW), DNR Division of Parks and Outdoor Recreation (DPOR), and Alaska Mental Health Trust Land Office (TLO). Before a “Public Notice of Preliminary Finding” is published in a newspaper of statewide circulation it will be the applicant’s responsibility to address their concerns and/or requirements.

Then public notice will be published. After the close of the 30-day written comment period, the Director of the Division of Mining, Land & Water will approve or disapprove the petition. This written Final Finding and Decision will be subject to a 20 day appeal period. If no appeal is filed, this decision goes into effect as a final order and decision on the 31st day after issuance; and only then will the vacation plat or document be signed.

The department's decision of whether to vacate is based on consideration of the comments received by mail and E-mail, the recommendation of the local platting board, DOT&PF, and research by DNR staff. In addition to the comments received, DNR staff will also consider the existing easement and the possible alternate access in terms of underlying land ownership, land management policies, current public use patterns, and practicality of use. These factors, and others, establish the scope of the department's administrative review and finding.

Occasionally, the department may require a field investigation to be conducted by DNR staff. This inspection is to determine the current existing use and condition of the area proposed for vacation, and the adequacy of the proposed alternate route.

IV. *Vacation Document:*

- A. If the petition is approved, at the petitioner's expense, a survey plat must be prepared by an Alaska Registered Land Surveyor and submitted for review and approval. These submittals are subject to a review fee of \$192.00, for up to 6 hours of staff time.
- B. The petition approval becomes null and void if a survey plat is not submitted and recorded within 24 months of the Final Finding and Decision effective date.
- C. **DNR and DOT&PF approval of the final vacation document is required.**

V. *Alternative:*

Option other than vacating: An owner of land affected by an unplatted RS 2477 right-of-way may request the department's approval to relocate the right-of-way elsewhere on that owner's land. The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land. Such a realignment of an RS 2477 right-of-way within a parcel of land does not constitute a vacation under this section.

Should you have any questions, please contact Joe Poydack at (907) 375-7733, George Horton at (907) 269-8610, or myself at (907) 269-8521. A fact sheet on RS 2477 vacations is enclosed for your information.

Sincerely,

STANLEY BROWN
Land Surveyor II

Enclosures: Petition Form;
DOT&PF Information Required Handout;
RS 2477 and Section Line Easement Vacation Fact Sheet

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION FOR: EASEMENT VACATION WITHIN A LOCAL PLATTING AUTHORITY

I (We) the undersigned petitioner (petitioners), being the owner (owners) of a majority of the property (abutting) (lying within). *(Provide a legal description of the property. PO Boxes, street addresses, tax parcel ID numbers and/or mile posts are not acceptable).*

request the (vacation) (replat) (amendment) (change of basic configuration) of

as depicted on the accompanying (plat) (map) (plan) (document).

Description of the alternate right(s)-of-way: *(Required by 11 AAC 51.065(f))*

The reasons for this request are: *(Why do you need the ROW or easement vacated? Be specific!)*

The petitioner (petitioners) file this petition under the authority of AS 29.40.120 and 11 AAC 51.065.

The undersigned petitioner (petitioners) by their signature (signatures) certify that I am the owner (they are the owners) of and have possessory rights in the property described next to my (their) signature (signatures).

Submitted this _____ day of _____, 20 _____

PETITIONERS:

Name <i>(clearly printed)</i> and Signature <i>(required)</i>	Legal Description	Mailing Address/ Phone Number	Date
1. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
2. _____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

PETITIONERS (cont.):

	Name (<i>clearly printed</i>) and Signature (required)	Legal Description	Mailing Address/ Phone Number	Date
3.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
4.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
5.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
6.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
7.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
8.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Add additional pages as necessary

Petitioner or attorney for the petitioner designated to receive service by mail.

Name _____ Address _____

AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT/PF)

Research Information REQUIRED from Petitioner for DOT/PF Review of Section Line Easement Vacation Proposals

1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the proposed and whether the proposed are constructed.
2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
3. Map identifying existing structures on petitioner's property or as-built.
4. Map identifying existing section line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.
5. Map identifying available access to lands that are affected by the proposal.
6. Aerial photograph (if available) and/or topography map showing contours.

Items requested and listed above can be combined therefore we do not require a separate map for each. However we ask that the information be presented in a legible format.

SLA Template

4/02

Fact sheet:



VACATION OF SECTION-LINE EASEMENTS UNDER A LOCAL PLATTING AUTHORITY

Division of Mining, Land and Water • July, 2018

"Vacating" a right-of-way means officially removing it. When a vacation occurs, the access right merges into the landowner's property right, and the public is no longer entitled to travel that route. Landowners are sometimes surprised to learn there is a section-line easement across their property. They want to know how to move the right-of-way, narrow it, or remove it altogether. Others ask how public access rights can be protected and used. This fact sheet explains applicable requirements.

What are section-line easements? And what do they have to do with R.S. 2477

rights-of-way? A section-line easement is a public right-of-way, 33, 50, 66, 83 or 100 feet wide, that runs along a section line of the rectangular survey system. All 33- and 66-foot-wide section-line easements were acquired by the state under R.S. 2477, regardless of whether trails have ever been developed along them. Also, some 50- and 100-foot-wide easements along section lines have narrower R.S. 2477 rights-of-way "inside" them. An R. S. 2477 right-of-way is a type of public easement that the State of Alaska acquired under long-standing federal law. To learn more about R.S. 2477 rights-of-way, look for DNR's fact sheet on that topic or visit http://dnr.alaska.gov/mlw/trails/rs2477/rst_srch.cfm.

Does every section line have an easement? How can I determine if an easement exists? Not every section line has an easement. There is a technical procedure for researching whether or not a section-line easement exists, which depends on land status during periods when specific laws were in effect. See the editor's note following 11 AAC 51.025 for more information. If land status is complex, a professional land surveyor, title company or attorney could research the existence of an easement.

I have a section-line easement on my land. I don't want to vacate the easement, just make it narrower. Narrowing a right-of-way is a partial vacation and still requires an official process.

Why doesn't the borough platting office handle the vacation? The 1999 legislature passed a new state law, AS 29.35.090, prohibiting local government from vacating RS 2477 rights-of-way. DNR believes that the local platting authority's role is still very important, allowing representation of local interests and legal notice to nearby landowners who might be affected by a vacation. (Unlike tax records kept by a borough, DNR's land status plats do not show private landholdings.) However, to ensure that a statewide perspective is taken, only DNR and the Department of Transportation and Public Facilities, or the legislature itself can make the final decision to vacate an RS 2477 right-of-way. AS 19.30.410.

What if I want to vacate a section-line easement that is not a R.S. 2477? By regulation, DNR uses the same general process for vacations of all easements managed by the department, including all section-line easements. 11 AAC 51.065.

What policy rules does DNR use in deciding on a vacation? Because a vacation means giving up a state-owned access right, DNR cannot approve it unless DNR determines that the vacation is in the state's interest, and that other access is available that meets standards set by state laws and regulations. See 11 AAC 65.065. DNR's general policy is that the replacement access must be equal to or better than the access provided by the section-line easement. AS 19.30.410 applies to R.S. 2477 vacations:

...(an) agency of the state may not vacate...unless
(1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses; [or]
(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the

How does a person apply for a vacation? To apply for a section-line easement vacation, file a "Petition to Change or Vacate an Easement" (available on request). The petition must include a map showing the portion of the route proposed for vacation and the alternate access route. Also, begin the local process by applying to the platting authority (usually this is the borough).

Are there any application costs? Yes. See current Director's Fee Order for applicable fees. The petitioner must pay public notice costs. The platting authority will probably charge fees also.

Will there be any public review? Yes. Before DNR can vacate a right-of-way, people who may want to use it, now or in the future, must have the opportunity to comment. The platting authority will probably publish notice locally and hold a hearing. Meantime, DNR will prepare a formal notice describing the proposal, opening a comment period; and:

- 1) Publish it in a newspaper of statewide circulation
- 2) Notify adjacent land owners (or the platting authority may)
- 3) Post it on the State of Alaska's public notice website
- 4) Send it to other state agencies such as the Division of Parks and Outdoor Recreation, the Department of Transportation and Public Facilities, and the Department of Fish and Game
- 5) Notify other parties likely to be interested
- 6) Posting on or near the easement (optional)

Will DNR decide the vacation entirely on its own? No, DNR will base its decision on:

- Public and agency comment DNR received
- In some cases, the results of a field inspection at the petitioner's expense to check the current existing use and condition of the route proposed for vacation, and the adequacy of the proposed alternate route
- The recommendation of the platting authority, after its own hearing
- Dept. of Transportation and Public Facilities' consent as the state's transportation authority
- Dept. of Fish & Game comments

In considering public comment, what factors will DNR look at? The department will not vacate or change a section-line easement unless it finds that the action is in the state's best interests and that the replacement access meets the standard of 11 AAC 51.065, after considering the existing easement and the possible alternate access in terms of underlying land ownership, land management policies applicable to both routes, current public use patterns, and practicality of use. See 11 AAC 51.065(e).

What if the replacement route isn't ready for use? The department might grant "contingent approval" for a vacation. After the petitioner fulfills conditions such as obtaining an easement or constructing a trail, the vacation will be finalized.

What agency in DNR is responsible for section-line easement vacations, and how can I follow the process? Various DNR personnel will coordinate to gather and review information on the proposal. DNR's Land Survey Unit staff will receive the petition, prepare the public notice, consider the comments, and draft the vacation decision, for signature by the director of the Division of Mining, Land and Water. Regional land management staff will recommend in writing whether the proposal meets the standard of 11 AAC 51.065 and is in the state's interest. Anyone may inspect DNR's vacation case file at any stage of this process. When finished, the file will contain the signed petition, the public notice and documentation of how it was distributed, the platting authority's conditions of approval or recommendation for disapproval, written comments received, a field investigation report (if applicable), and the final decision.

What are the final steps in a vacation? People who commented on the proposal will receive a copy of the final decision and may appeal it. The vacation will not be finalized until the conditions of approval have been completed and ownership verified. The vacation of a section-line easement requires a plat prepared by a land surveyor.

For additional information, contact Department of Natural Resources:

Public Information Center 550 W 7 th Ave., Suite 1360 Anchorage, AK 99501-3557 (907) 269-8400 TDD: (907) 269-2259	Division of Mining, Land and Water Public Information Office 400 Willoughby Ave., Suite 400 PO Box 111020 Juneau, AK 99801 (907) 465-3400	Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705
--	--	---

From: Sowerwine, James E (DNR)
Sent: Tuesday, September 4, 2018 1:15 PM
To: 'Bob Molloy' <bob@molloy-schmidt.com>
Subject: RE: Status Update

Bob,

Please accept my apologies for my delayed response to your email and letter below. As I believe we discussed previously over the phone, I have waited to respond until our office had an opportunity to record a technical correction to the ADL 220394 public easement that is the focus of our discussion. I can report that our office did make and record that correction, which can now be found in the recorder's office here as Kenai Recording District Document 2018-007092-0.

You note in your correspondence that your clients would like to apprise the "DNR/SCRO Easement Unit of the Olivas' general plans for future development when the negotiated purchase and sale of the MHTA's five parcels is accomplished, including eventual application for vacation of ADL 220394 and dedication of other access to Daniels Lake". Can you clarify if such a plan for vacation and relocation will require use of the land that was the subject of the Trust's sale and subsequent lawsuit? If this is the case I will suspend all work related to ADL 220394 and ask that you direct future correspondence through DNR's attorney until such time as the lawsuit has been settled as your questions will fall within the scope the issues related to the lawsuit.

FYI, I sent this email, together with a copy of the technical correction, on Friday. It bounced back as undeliverable from your address, so I'm resending without the attachment. I've also removed Mitch Behr and Jusdi Doucet, who were CC'd, in case I need to resend, so I don't spend unnecessary spam to others.

James

James Sowerwine
Natural Resource Manager I
Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region, Easement Unit
550 W 7th Ave., Suite 900C, Anchorage, AK 99501
(907) 334-2542

From: Bob Molloy [mailto:bob@molloy-schmidt.com]
Sent: Tuesday, September 4, 2018 1:14 PM
To: Sowerwine, James E (DNR) <james.sowerwine@alaska.gov>
Subject: Status Update

Hi James:

Thank you for your phone call & status update,

Bob

Robert J. Molloy

Attachment
2
Exhibit-
Page 2 of 12