

Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Marcus Mueller, Acting Planning Director *Ⓢ for M. Mueller*

DATE: August 11, 2020

RE: Vacation of a 10 foot utility easement within Lot A-2, M. L. Stewart Homestead J King Addition (Plat KN 96-63) granted by M. L. Stewart Homestead Subdivision Tracts A, B & C (Plat KN 75-124); within Section 19, Township 5 North, Range 10 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-071V

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.

During their regularly scheduled meeting of August 10, 2020 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed utility easement vacation

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

August 10, 2020 Planning Commission Draft Meeting Minutes
August 10, 2020 Agenda Item G1 Meeting Packet Materials

From: [Mueller, Marcus](#)
To: [Shirnberg, Ann](#)
Subject: Re: Assembly Memo - UEV Needs Attention
Date: Tuesday, August 11, 2020 11:40:16 AM

Ann,

Looks good, go ahead and initial it on my behalf or forward it on without initial, as I am approving via this email.

Thank you
Marcus

Sent from my iPhone

> On Aug 11, 2020, at 12:43 PM, Shirnberg, Ann <ashirnberg@kpb.us> wrote:
>
>
> <image001.png>

~~accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)~~

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

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

MOTION: Commissioner Morgan motioned, seconded by Commissioner Fikes to adopt PC Resolution 2020-21 granting approval of a conditional land use permit to operate a sand, gravel or material site for Township 7 North, Range 11 West, Section 4, Seward Meridian, KN 2010077 Rappe-Gallant Subdivision Unit No. 5 Tract A-1C1, Kenai Recording District

MOTION PASSED BY MAJORITY VOTE:

Yes	8	No	0	Absent	2
Yes	Bentz, Carluccio, Ecklund, Fikes, Gillham, Morgan, Martin, Venuti				
No	None				
Absent	Brantley, Ruffner				

AGENDA ITEM G. UTILITY EASEMENT VACATIONS

1. Vacate the 10-foot-wide by approximately 687-foot-long utility easement within Lot A-2 M. L. Stewart Homestead J King Addition (Plat KN 96-63) granted by M. L. Stewart Homestead Subdivision Tracts A, B & C (Plat KN 75-124); within SW1/4 NW1/4 Section 19, Township 5 North, Range 10 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-071V

Staff report given by Scott Huff

STAFF REPORT

PC Meeting: August 10, 2020

Purpose as stated in petition: The 10' Utility Easement follows a former lot line that is not in use and is cumbersome to develop the lot.

Petitioners: Petitioner: Sue Ann, LLC of Soldotna, AK.

Location: Off Fish Trap Court and Cheechako News Drive in the Ridgeway area.

Notification: Notice of vacation mailings were sent by regular mail to 7 owners of property within 300 feet. Notice of the proposed vacation was emailed to 7 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

Comments Received:

HEA: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

ACS: No objection.

KPB Roads: n/a

SUPPORTING INFORMATION:

Nov. 24, 1975 – M. L. Stewart Homestead Tract A, B, and C was recorded. This plat created former Tract A and granted a 10-foot utility easement on the east and northeast boundaries.

Dec. 6, 1996 – M. L. Stewart Homestead J King Addition was recorded. This plat created Tract A-2, increasing the size of former Tract A from 5.6 acres to 6.8 acres by adding land from the unsubdivided remainder located to the north. The 10 foot by +/- 687-foot utility easement remained located on the former lot line.

The current utility easement is located within the northern portion Tract A-2.

No utilities are located within the easement.

No utility providers objected to the vacation of the utility easement.

No properties will be denied access to utilities as this utility easement is wholly within Lot A-2.

Findings:

1. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
2. M. L. Stewart Homestead Tracts A, B and C, Plat KN 75-124, granted a 10' wide utility easement adjoining the north boundary of former Tract A for 687.51' and the east boundary of former Tract A for 163.89'.
3. M L Stewart Homestead J King Addition, KN 96-63, subdivided Tract A, KN 75-124 and a portion of another parcel, creating Lot A-2, KN 96-63.
4. KN 96-63 carried forward the 10' utility easement on the former north boundary of Tract A
5. The current easement is located within the upper middle portion of Lot A-2, KN 96-63 and not on a parcel boundary.
6. No surrounding properties will be denied utilities.

Staff reviewed the vacation request and recommends granting approval with Findings 1 - 6 supporting the vacation request.

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

1. Consent by KPB Assembly
2. Finalize the approval of the vacation by either
 - a. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
OR
 - b. Recording of a resolution within 90 days of adoption of the resolution by the Planning Commission, with the following requirements
 - i. Provide a sketch, prepared by a licensed land surveyor, clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-18, becoming Page 2 of 2.
 - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
 - iii. The Planning Department is responsible for filing the Planning Commission resolution.

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.**

END OF STAFF REPORT

Chair Martin seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Ecklund motioned, seconded by Commissioner Venuti to adopt PC Resolution 2020-18 granting approval to vacate a 10-foot utility easement within Lot A-2, M.L. Stewart Homestead J King Addition (Plat KN 96-63) granted by M.L. Stewart Homestead Subdivision Tracts A, B & C (Plat KN 75-124); within Section 19, Township 5 North, Range 10 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough.

MOTION PASSED BY MAJORITY VOTE:

Yes	8	No	0	Absent	2
Yes	Bentz, Carluccio, Ecklund, Fikes, Gillham, Morgan, Martin, Venuti				
No	None				
Absent	Brantley, Ruffner				

~~**AGENDA ITEM H. ANADROMOUS WATERS HABITAT PROTECTION DISTRICT**~~

- ~~1. A Conditional Use Permit is sought pursuant to KPB 21.18 to permit a water well within the 50-foot Habitat Protection District (HPD) of the Kenai River. KPB Planning Commission Resolution 2020-17~~

~~Staff report given by Nancy Carver.~~

~~STAFF REPORT~~

~~PC MEETING: 10 August, 2020~~

~~**Applicant:** Ronald Maddox
PO Box 553
Sterling, AK 99672~~

~~**Physical Address:** 35217 Betty Lou Dr., Sterling, AK 99672~~

~~**Legal Description:** Section 23, Township 5N, Range 9W, SM KN 0001129 Bolstridge Kenai River Subdivision Lot 11~~

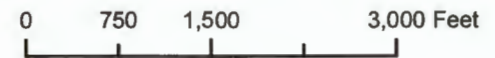
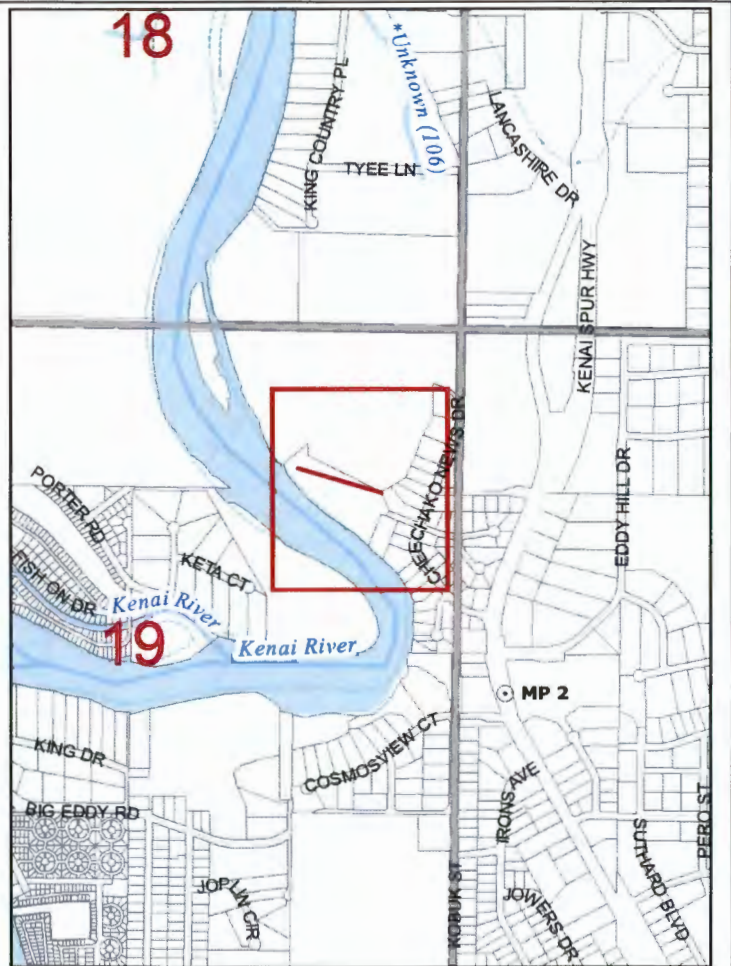
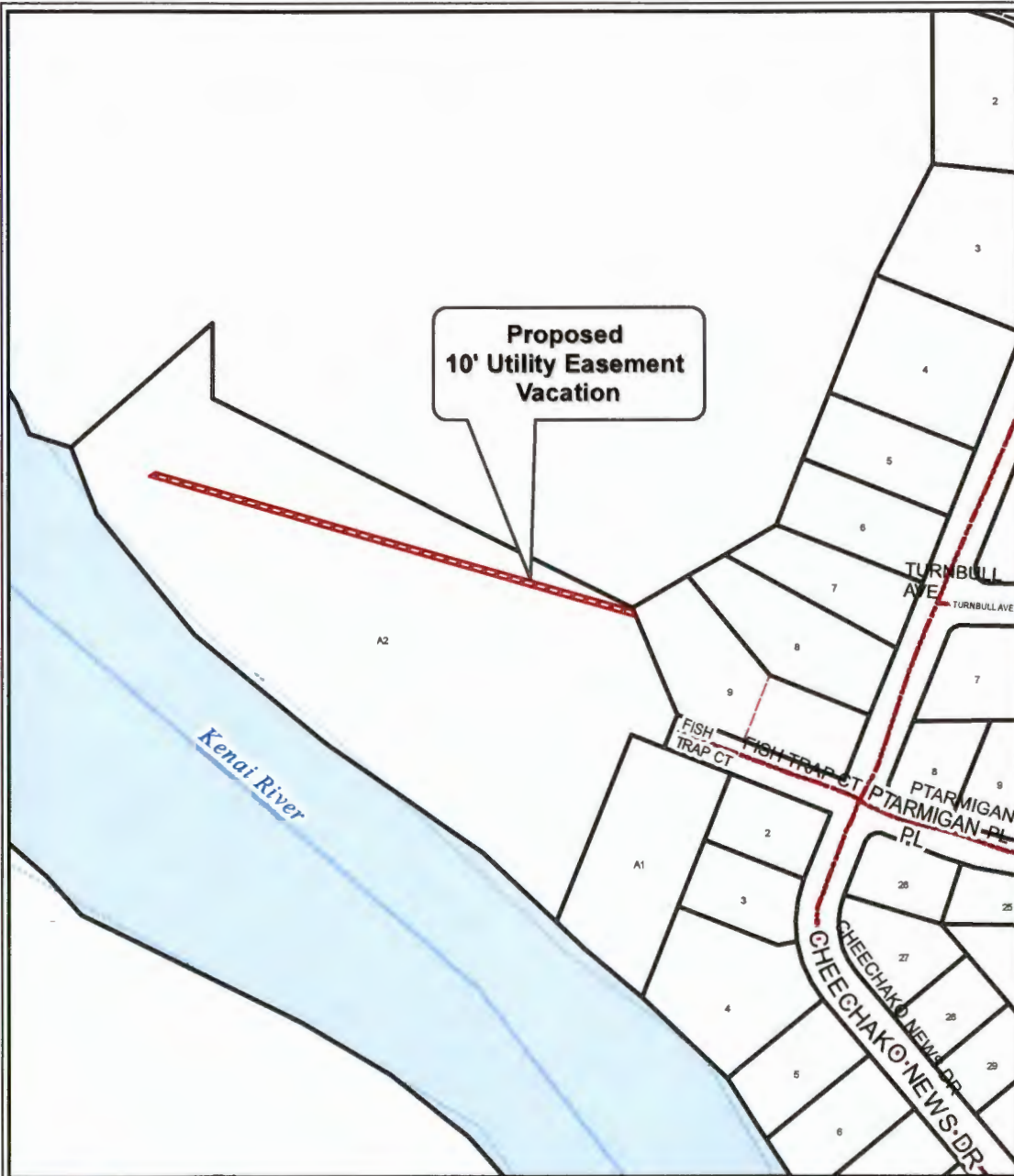
~~**KPB Parcel Number:** 063-170-19~~

~~**Background Information**~~

~~The purpose of this project is to permit a well within the 50-foot Habitat Protection District (HPD) of the Kenai River.~~

G. UTILITY EASEMENT VACATIONS

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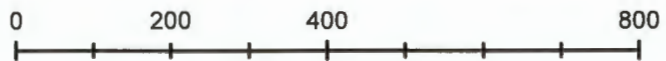
KPB 2020-071V
S19 T05N R10W
RIDGEWAY



PClements, KPB
 Date: 7/16/2020



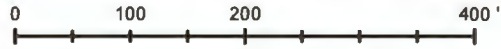
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





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



 Utility Easement Vacation

PClements, KPB
 Date: 7/16/2020
 Imagery: Kenai River 2010

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SUPPORTING INFORMATION:

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The current utility easement is located within the northern portion Tract A-2.

No utilities are located within the easement.

No utility providers objected to the vacation of the utility easement.

No properties will be denied access to utilities as this utility easement is wholly within Lot A-2.

Findings:

1. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
2. M. L. Stewart Homestead Tracts A, B and C, Plat KN 75-124, granted a 10' wide utility easement adjoining the north boundary of former Tract A for 687.51' and the east boundary of former Tract A for 163.89'.

3. M L Stewart Homestead J King Addition, KN 96-63, subdivided Tract A, KN 75-124 and a portion of another parcel, creating Lot A-2, KN 96-63.
4. KN 96-63 carried forward the 10' utility easement on the former north boundary of Tract A
5. The current easement is located within the upper middle portion of Lot A-2, KN 96-63 and not on a parcel boundary.
6. No surrounding properties will be denied utilities.

Staff reviewed the vacation request and recommends granting approval with Findings 1 - 6 supporting the vacation request.

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

1. Consent by KPB Assembly
2. Finalize the approval of the vacation by either
 - a. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
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 - i. Provide a sketch, prepared by a licensed land surveyor, clearly indicating the portion of the utility easement being vacated to be recorded with KPB Planning Commission Resolution 2020-18, becoming Page 2 of 2.
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END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2020-18
KENAI RECORDING DISTRICT**

Vacate the 10-foot-wide by approximately 687-foot-long utility easement within Lot A-2 M. L. Stewart Homestead J King Addition (Plat KN 96-63) granted by M. L. Stewart Homestead Subdivision Tracts A, B & C (Plat KN 75-124); within SW1/4 NW1/4 Section 19, Township 5 North, Range 10 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-071V

WHEREAS, Sue Ann, LLC of Soldotna, AK requested the vacation of the 10-foot-wide by approximately 687-foot long utility easement within Lot A-2, M. L. Stewart Homestead J King Addition (Plat KN 96-63), and

WHEREAS, affected utility companies provided written non-objection to the proposed vacation; and

WHEREAS, per the petition, the easement is not in use by any utility companies; and

WHEREAS, the proposed vacation will not deny utility easement(s) to surrounding properties; and

WHEREAS, on August 10, 2020, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed vacation; and

WHEREAS, the Planning Commission has found that vacating the utility easement will not be detrimental to the public interest; and

WHEREAS, 20.70.140 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. The 10 foot wide by approximately 687-foot long utility easement shown as adjoining the former lot line within Lot A-2 M L Stewart Homestead J King Addition (Plat KN 96-63), is hereby vacated.

Section 2. That a sketch, prepared by a licensed surveyor, showing the location of the portion of the utility easement being vacated be attached to, and made a part of this resolution, becoming Page 2 of 2.

Section 3. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 4. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 10th DAY OF AUGUST 2020.

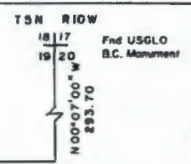
Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

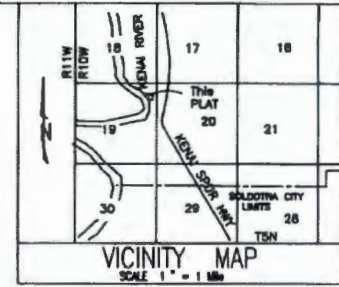
Return to:
Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, Alaska 99669

WASTEWATER DISPOSAL : CONDITIONS MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WATER CARRIED WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST BE DESIGNED BY A REGISTERED ENGINEER AND APPROVED BY THE DEPARTMENT PRIOR TO CONSTRUCTION. ALL WASTE DISPOSAL SYSTEMS MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.



LEGEND

- FOUND 5/8" Steel Rod
- ⊕ Found 1/2" Rebar
- Set 5/8" Rebar



CERTIFICATE of OWNERSHIP and DEDICATION

I hereby certify that I am the owner of real property shown and described hereon and that I hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way to public use and grant all easements to use shown.

Nikishka Lea Stewart
 NIKISHKA LEA STEWART

Notary's Acknowledgement

Subscribed and sworn before me on this 6th day of November 1996, For NIKISHKA STEWART

116-163
 KENAI-1
 12-6-96
 3:20 P
 Swan Survey

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION IN ACCORDANCE WITH SECTION 20.04.070 KENAI PENINSULA BOROUGH SUBDIVISION REGULATIONS.

Dec 3 1996
 KENAI PENINSULA BOROUGH

Michael A. Swan
 Authorized Official

MICHAEL A. SWAN
 REGISTRATION NO. LS-6940



NOTES

1. No direct access to state maintained R.O.R.'s permitted unless approved by State of Alaska Department of Transportation.
2. Building Setback—A setback of 20 feet is required from all street right-of-ways unless a lesser standard is approved by resolution of the appropriate Planning Commission.
3. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
4. Front 10 feet of building setback is also a utility easement and the entire setback to within 5 feet of side lot lines.
5. Lots within this subdivision may be located within a designated flood hazard area. If such is the case, development must comply with Title 21, Chapter 05 of the Kenai Peninsula Borough Code of Ordinances. A survey to determine the elevation of the property may be required prior to construction.

**M.L. STEWART HOMESTEAD
 J KING ADDITION**

OWNER : NIKISHKA STEWART
 2440 E TUDOR RD. # 252
 ANCHORAGE, AK. 99507-1185

This is the subdivision of Tract A, Tracts A,B, and C, M.L. Homestead; Lot One, Block Four, Big Eddy Subdivision Block Four, and a portion of the NE 1/4, Section 19, TSN, R10W, S.M., Ak. all within the Kenai Peninsula Borough, Containing 7.892 Acres.



SWAN SURVEYING

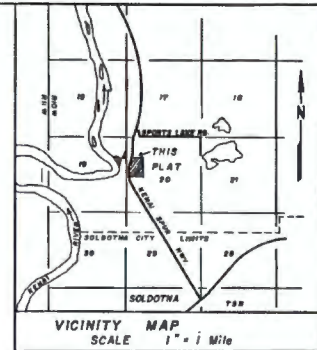
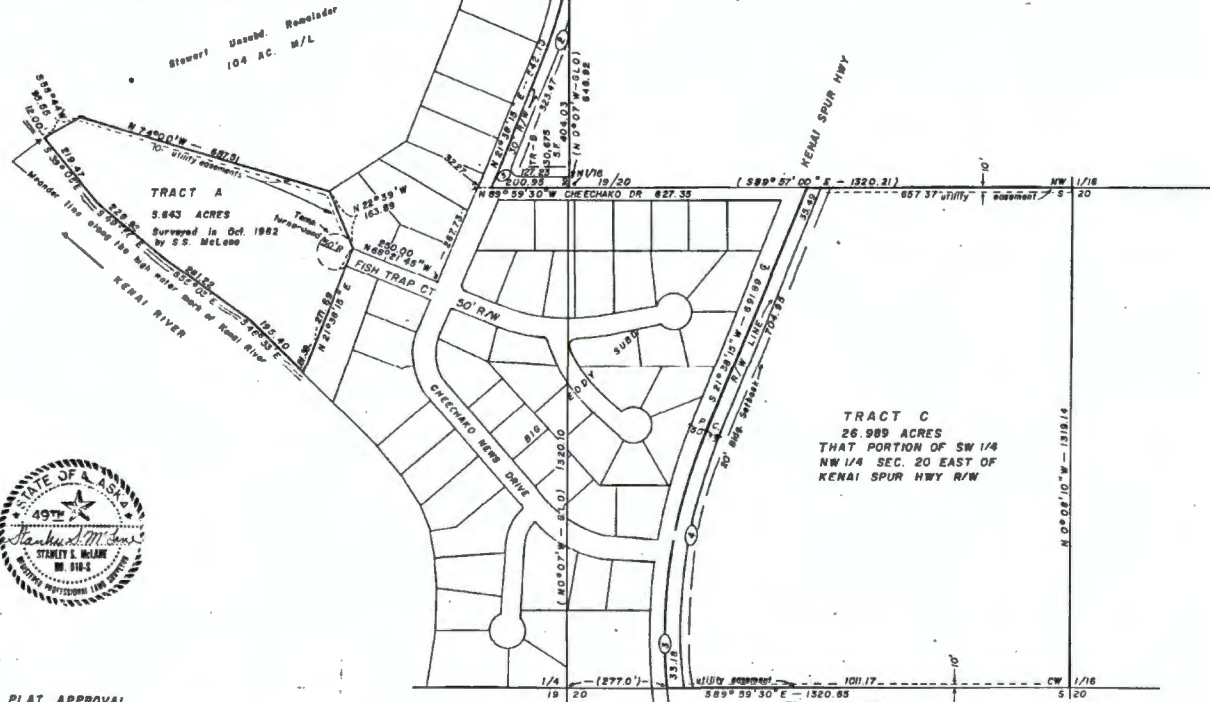
P.O. Box 987
 SOLDOTNA, AK. 99669
 PHONE 907-262-1014

DATE SURVEYED NOV. 1996	SCALE 1" = 100'	DRAWN NAS
K.P.B. FILE NO. 96-252	BLK. NO. AL 9680	KENAI RECORDING DISTRICT

KN 96-63

KPB 2020-071V

CURVE DATA					
CURVE	A	R	L	Ch	T
1	2°40'15"	796.80	286.51	284.79	145.00
2	5°51'32"	784.80	80.35	80.20	40.15
3	27°34'46"	1432.40	879.49	882.89	381.59
4	27°45'13"	1389.40	877.04	870.48	343.29
5	11°37'45"	20.00	38.97	33.08	29.45



NOTES

All data on this plat is based on adjacent property surveys of record within the M.L. Stewart homestead, except Tract A, and no field survey was made by me on this date.

All bearings refer to G.L.O. datum of N 0° 07' W for the section line between sections 19/20 as shown.

Date of record shown in ().

The original patent was issued to M.L. Stewart on Sept. 19, 1949 by the U.S. Gov't. and by the 1969 Opinions of the Attorney General no section line right of ways exist on this property.



PLAT APPROVAL
 Plat approved by the Commission this
 2nd day of June, 1975.
 Stanley S. McLane
 Mayor

CERTIFICATE OF OWNERSHIP AND DEDICATION
 We hereby certify that we are the owners of said property, and request the approval of this plat showing such easements for public utilities, roadways, and or streets dedicated by us for public use
 Date _____
 M.L. Stewart
 owner

 owner

NOTARY'S ACKNOWLEDGEMENT.
 Subscribed and sworn before me this 20th day of October, 1975.
 My commission expires Sept. 26, 1979.
 Connie Wilson
 notary public for Alaska

75-124
 INDEXED - FILED
 Kenai REC. DIST.
 DATE 11/24/75
 TIME 9:43 AM
 Received by KPA

TRACTS A, B, and C OF M.L. STEWART HOMESTEAD

M.L. Stewart, owner
 Drawer O, Kenai, Ak. 99611
DESCRIPTION
 34.872 ACRES SITUATED IN GOV'T LOTS I AND II OF SEC. 19, AND SW 1/4 NW 1/4 SEC. 20, T5N, R14W, S.M. 14N, AND KENAI PENINSULA BOROUGH.
 Prepared by - S.S. McLane, R.L.S.

DATE April 30, 1975	SCALE 1" = 200'
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