


Kenai Peninsula Borough  
Planning Department

---

**MEMORANDUM**

**TO:** Brent Hibbert, Assembly President  
Kenai Peninsula Borough Assembly Members

**FROM:** Melanie Aeschliman, Planning Director 

**DATE:** February 10, 2021

**RE:** Vacating 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

---

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of February 8, 2021 the Kenai Peninsula Borough Planning Commission granted approval by unanimous vote (9 Yes, 0 No, 2 Absent) to 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.

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

February 8, 2021 Planning Commission Draft Meeting Minutes  
February 8, 2021 Agenda Item E2 Meeting Packet Materials

**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 Council
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				



## Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

# Planning Commission

## Meeting Packet

**February 8, 2021**

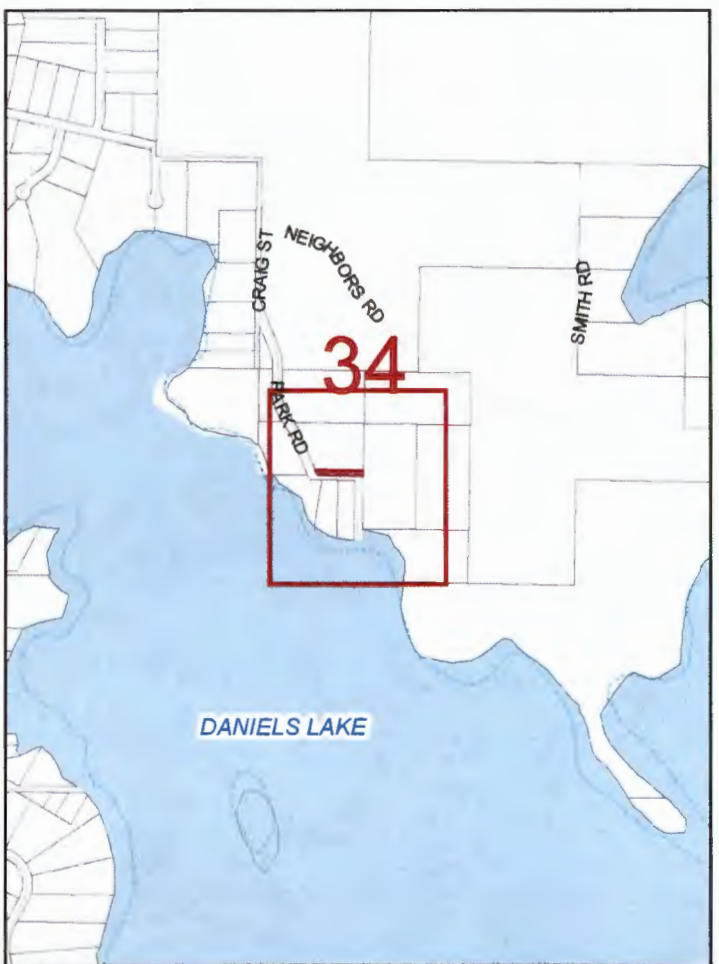
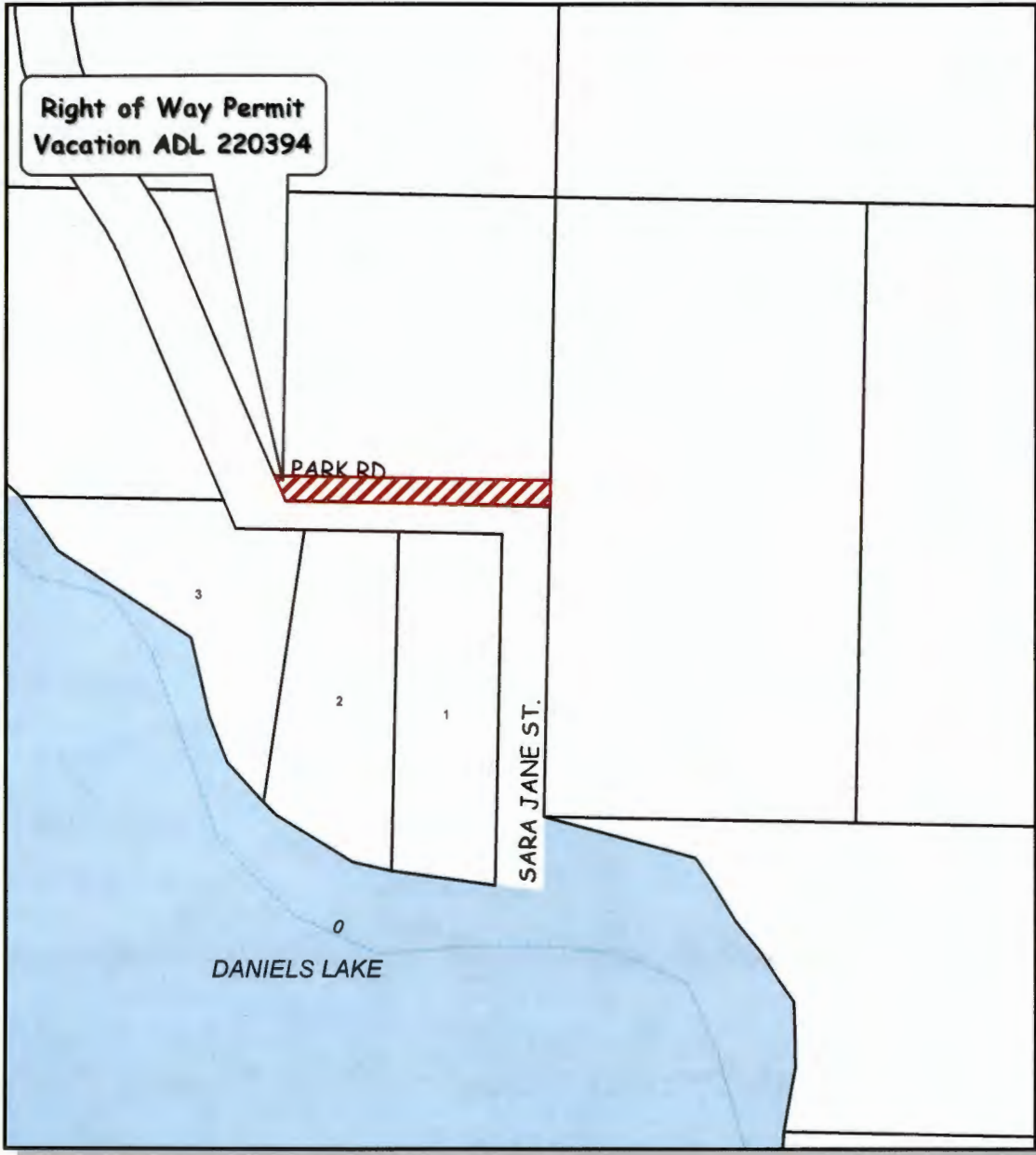
**7:30 p.m.**

**KENAI PENINSULA BOROUGH  
ASSEMBLY CHAMBERS  
144 NORTH BINKLEY ST.  
SOLDOTNA, ALASKA 99669**

## **E. NEW BUSINESS**

- 2. Vacate 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17, Section 34, Township 8 North, Range 11 West as dedicated on ADL 220394. The right-of-way being vacated is developed and located within the NE1/4 SW1/4 of Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-156V. Nikiski Area**

Right of Way Permit  
Vacation ADL 220394



0 500 1,000 2,000 Feet



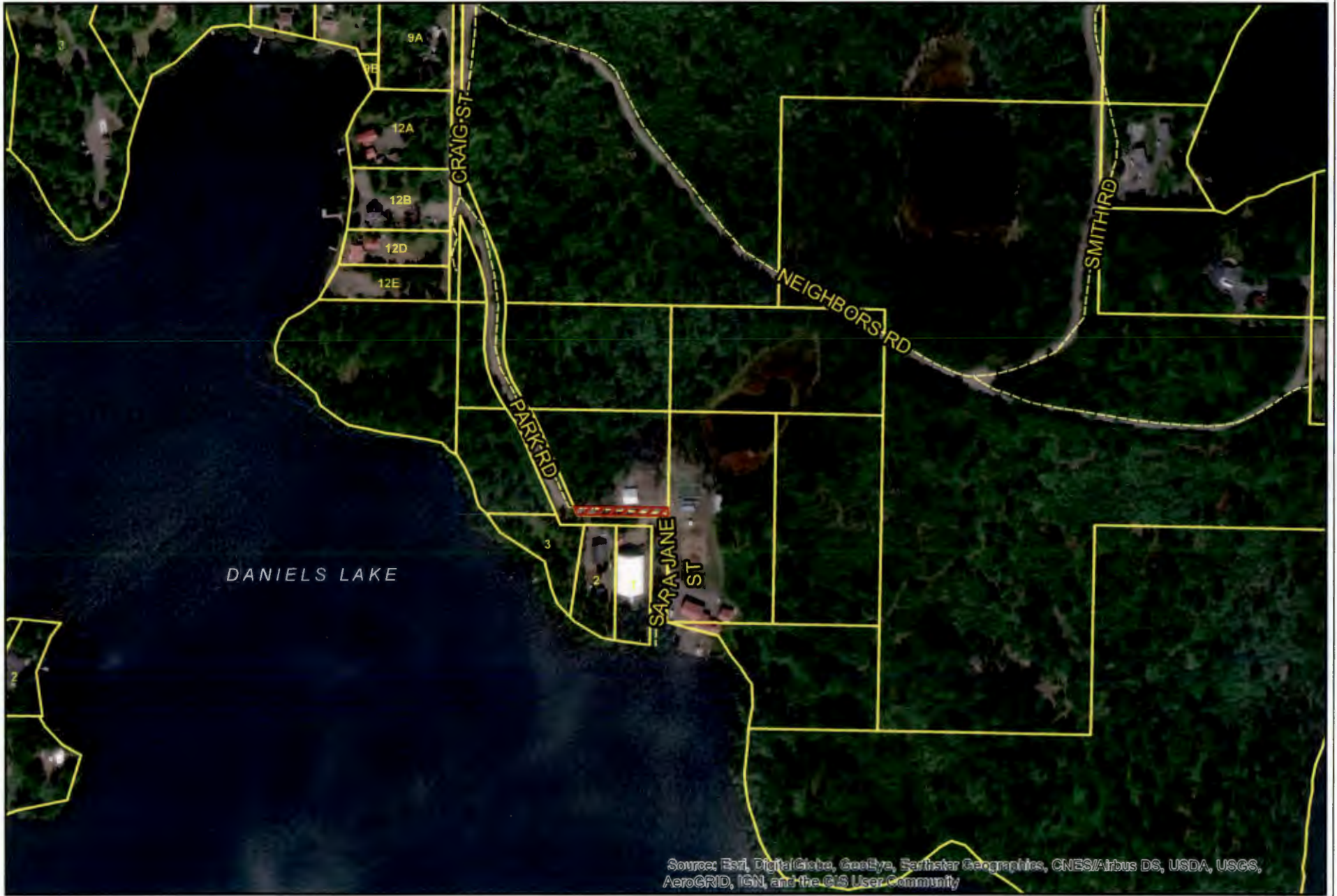
KPB 2020-156V  
S34 T08N R11W  
NIKISKI

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.

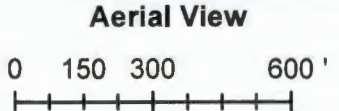
0 150 300 600'




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

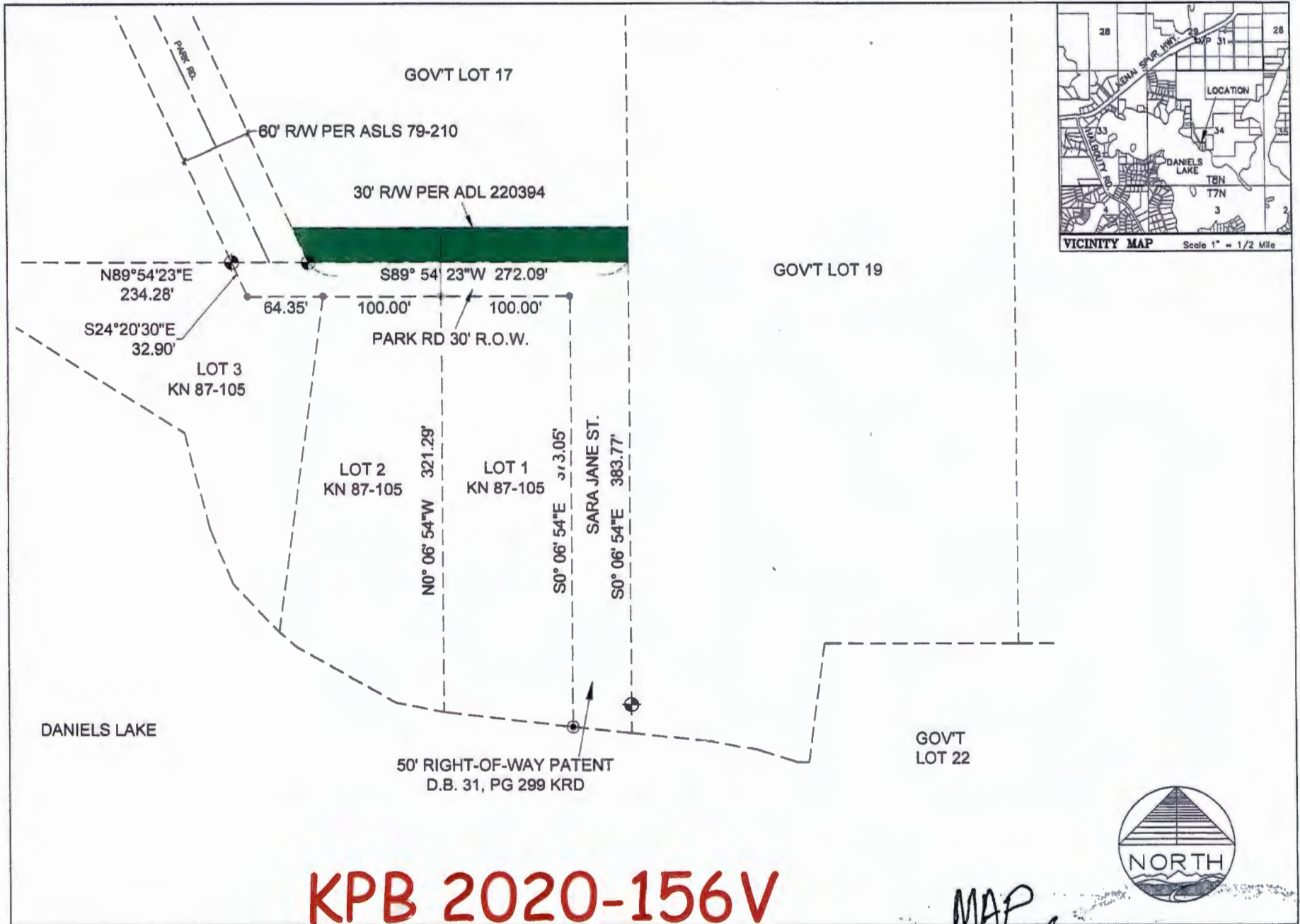


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



 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.

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 and Game	Nikiski Community Council
State of Alaska DNR	Alaska Communication Systems (ACS)
State of Alaska DOT (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:**

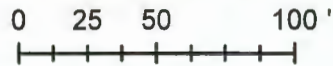
**THE FINAL PLAT MUST BE RECORDED WITHIN FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.**

END OF STAFF REPORT



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**



 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. 7<sup>th</sup> Avenue, Suite 900C  
Anchorage, AK 99501-3579

**STATE BUSINESS NO CHARGE****LEGAL DESCRIPTION:**

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

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.





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  $S89^{\circ}54'41''W$ , 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  $N24^{\circ}20'14''W$ , 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence  $N89^{\circ}54'41''E$ , 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then  $S0^{\circ}06'54''E$ , 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.



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.

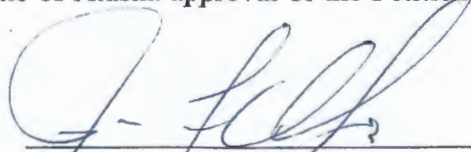
7. **Petitioners' Attorneys.** Attorneys for the Petitioners designated to receive service by mail or email are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice), bob@molloysschmidt.com.

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.

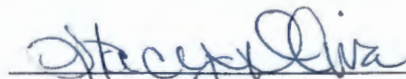
9. **Request.** The Applicants request that the Borough Platting Authority:

- (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: 01/22/2020

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

## Huff, Scott

---

**From:** Dubour, Adam J (DFG) <adam.dubour@alaska.gov>  
**Sent:** Thursday, January 28, 2021 3:24 PM  
**To:** Huff, Scott  
**Cc:** Clements, Peggy  
**Subject:** RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

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.

Scott,

Thanks, this is useful background information, particularly regarding the validity of the patent ROW easements in Lot 19. That's new information for me. As long as the 60' ROW to Daniels Lake will be dedicated on the subsequent platting action, ADF&G doesn't have any comments on this current preliminary plat.

Thank you for your time,  
Adam

**From:** Huff, Scott <shuff@kpb.us>  
**Sent:** Thursday, January 28, 2021 8:24 AM  
**To:** Dubour, Adam J (DFG) <adam.dubour@alaska.gov>  
**Cc:** Clements, Peggy <PClements@kpb.us>  
**Subject:** RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Adam,

Yes, the last request was denied. Since that time it has been determined that the patent ROW easements are common law right of ways where the offer for the ROW has not been accepted. Therefore Govt. Lot 19 is not subject to 50 foot right of ways on the east and west boundary. Also ADL 220394 is under state management and should not have been included in the previous submittal. With this new information the ROW vacation application is allowed to be revisited by the planning department.

KPB has not yet received a new application to vacate dedicated platted right of ways. The overall concept plan is showing the final goal for the land owners.

Scott

**From:** Dubour, Adam J (DFG) [<mailto:adam.dubour@alaska.gov>]  
**Sent:** Wednesday, January 27, 2021 6:07 PM  
**To:** Huff, Scott <[shuff@kpb.us](mailto:shuff@kpb.us)>  
**Cc:** Clements, Peggy <[PClements@kpb.us](mailto:PClements@kpb.us)>  
**Subject:** RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS



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 Scott,

Oh interesting. Thanks for this info. I was under the impression that the last request (2020-059V) was denied by the planning commission. Was it subsequently approved after negotiations with the Olivas? Either way, I think as long as the 60' ROW from Park road to Daniels Lake will be dedicated, then ADF&G's concerns have mostly been addressed. I guess the only other question I had would be if there were any provisions regarding long-term maintenance responsibilities for the newly dedicated ROW to Daniels Lake? Other than that I don't think we'll have any further comments on the matter.

Thanks for your time.

**Adam DuBour**  
**Habitat Biologist**  
**Access Defense Program**  
**Alaska Department of Fish and Game**  
**Division of Wildlife Conservation**  
333 Raspberry Road  
Anchorage, Alaska 99518  
(907)267-2292\*  
[adam.dubour@alaska.gov](mailto:adam.dubour@alaska.gov)

\*Telecommuting, voice mails will be forwarded to email

**From:** Huff, Scott <[shuff@kpb.us](mailto:shuff@kpb.us)>  
**Sent:** Wednesday, January 27, 2021 4:26 PM  
**To:** Dubour, Adam J (DFG) <[adam.dubour@alaska.gov](mailto:adam.dubour@alaska.gov)>  
**Cc:** Clements, Peggy <[PClements@kpb.us](mailto:PClements@kpb.us)>  
**Subject:** RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Adam,

After the petition was submitted KPb met with the applicants and their attorneys. A letter and an overall concept subdivision was submitted to show the final goal of the applicants. The letter and drawing are attached to this e-mail.

The overall conceptual drawing is showing the following

- Vacation of ADL 220394
- Vacation of Park Rd. ROW and Sara Jane Street where fronting Lot 1 Rappe Estates KN 87-105
- Dedication of 30 feet right of way to match the remaining portion of Park Road (same area as where ADL 220394 is being vacated)
- Dedication of a 60 foot right of way from Park Rd. to Daniels Lake. This ROW has already been improved with stairs constructed and dirt excavation to provide pedestrian access to the lake.)

I believe there are two driveways that have been constructed, one in the south 30 feet of Park Rd. and one in ADL 220394. I have been on site last fall (Sept./Oct.) and took pictures of this area. I do not believe that any changes have occurred since that time. The gate located in ADL 220394 (on the extension of Lot 1 and Lot 2 boundary) is probably still there.

The Planning Commission is not expected to ground truth this area but if I have the opportunity I will try to stop by the area to provide updated photos to the commissioners.

Let me know if you have any additional questions.

**Scott**

**From:** Clements, Peggy  
**Sent:** Wednesday, January 27, 2021 2:07 PM  
**To:** 'Dubour, Adam J (DFG)' <[adam.dubour@alaska.gov](mailto:adam.dubour@alaska.gov)>; Huff, Scott <[shuff@kpb.us](mailto:shuff@kpb.us)>  
**Subject:** RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Hello Adam,

I am forwarding your question below to Scott Huff for comment.

Kind regards,

Peggy

**From:** Dubour, Adam J (DFG) [<mailto:adam.dubour@alaska.gov>]  
**Sent:** Wednesday, January 27, 2021 11:13 AM  
**To:** Clements, Peggy <[PClements@kpb.us](mailto:PClements@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

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,

I was just hoping to check in on this ROW Vacation. I assume that this preliminary plat was submitted by the Oliva's. Of course, as in the previous ROW vacation requests, ADF&G's concern is access to Daniels Lake.

Would you have any additional information that would be useful for ADF&G's review of this ROW Vacation. Without a survey its unclear if the 30' ROW for Park road would still be useable (i.e. not blocked by vegetation or structures). Would there be any effort by the Planning Commission to ground truth this?

Thanks,

**Adam DuBour**

**Access Defense Program**

**Alaska Department of Fish and Game**

**Division of Wildlife Conservation**

333 Raspberry Road

Anchorage, Alaska 99518

(907)267-2292

[adam.dubour@alaska.gov](mailto:adam.dubour@alaska.gov)

**From:** Clements, Peggy <[PClements@kpb.us](mailto:PClements@kpb.us)>

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

**To:** Eaton, Belinda L (DOT) <[belinda.eaton@alaska.gov](mailto:belinda.eaton@alaska.gov)>; Biloan, Joselyn (DOT) <[joselyn.biloan@alaska.gov](mailto:joselyn.biloan@alaska.gov)>; Simpson, Danika L (DOT) <[danika.simpson@alaska.gov](mailto:danika.simpson@alaska.gov)>; Horton, George C (DNR) <[george.horton@alaska.gov](mailto:george.horton@alaska.gov)>; Rinke, Hans J (DNR) <[hans.rinke@alaska.gov](mailto:hans.rinke@alaska.gov)>; Kastner, Lorraine S (DOT) <[lorraine.kastner@alaska.gov](mailto:lorraine.kastner@alaska.gov)>; Hooyer, Patricia (DOT) <[louise.hooyer@alaska.gov](mailto:louise.hooyer@alaska.gov)>; 'mark.fink@alaska.gov' <[mark.fink@alaska.gov](mailto:mark.fink@alaska.gov)>; Wilson, Mistee R (DOT) <[mistee.wilson@alaska.gov](mailto:mistee.wilson@alaska.gov)>; 'Neuendorf, Cody' <[CNeuendorf@HomerElectric.com](mailto:CNeuendorf@HomerElectric.com)>; Byron Jackson <[byron.jackson@acsalaska.com](mailto:byron.jackson@acsalaska.com)>; Bradley Beck <[bbeck@gci.com](mailto:bbeck@gci.com)>; ENSTAR ROW <[row@enstarnaturalgas.com](mailto:row@enstarnaturalgas.com)>; Dubour, Adam J (DFG) <[adam.dubour@alaska.gov](mailto:adam.dubour@alaska.gov)>; 'Supertrucker2b4u@yahoo.com' <[Supertrucker2b4u@yahoo.com](mailto:Supertrucker2b4u@yahoo.com)>; Crisp, Bryan <[BCrisp@kpb.us](mailto: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 Girdley 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.

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.<sup>1</sup>

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,

---

<sup>1</sup> 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.

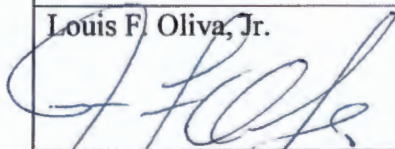
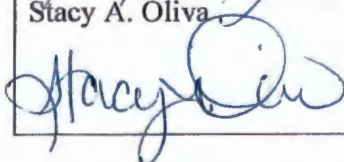
6. **Description of the alternate right(s)-of-way.** Petitioners can access GL 17 directly through original Park Road, and they can continue to use their driveway they built in the ADL 220394 area to access GL 19. Petitioners can also access GL 19 through their new driveway built in 2019, which connects 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 &amp; 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.

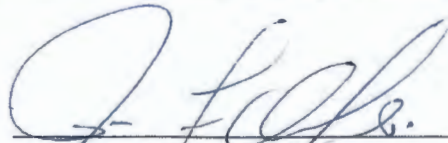
**10. Petitioners' attorneys.** Attorneys for the petitioners designated to receive service by mail are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice).

**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



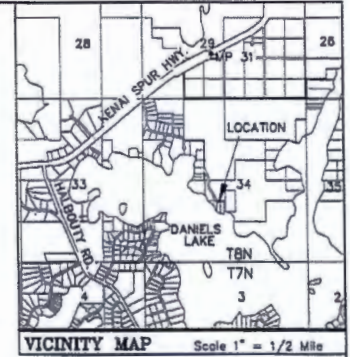
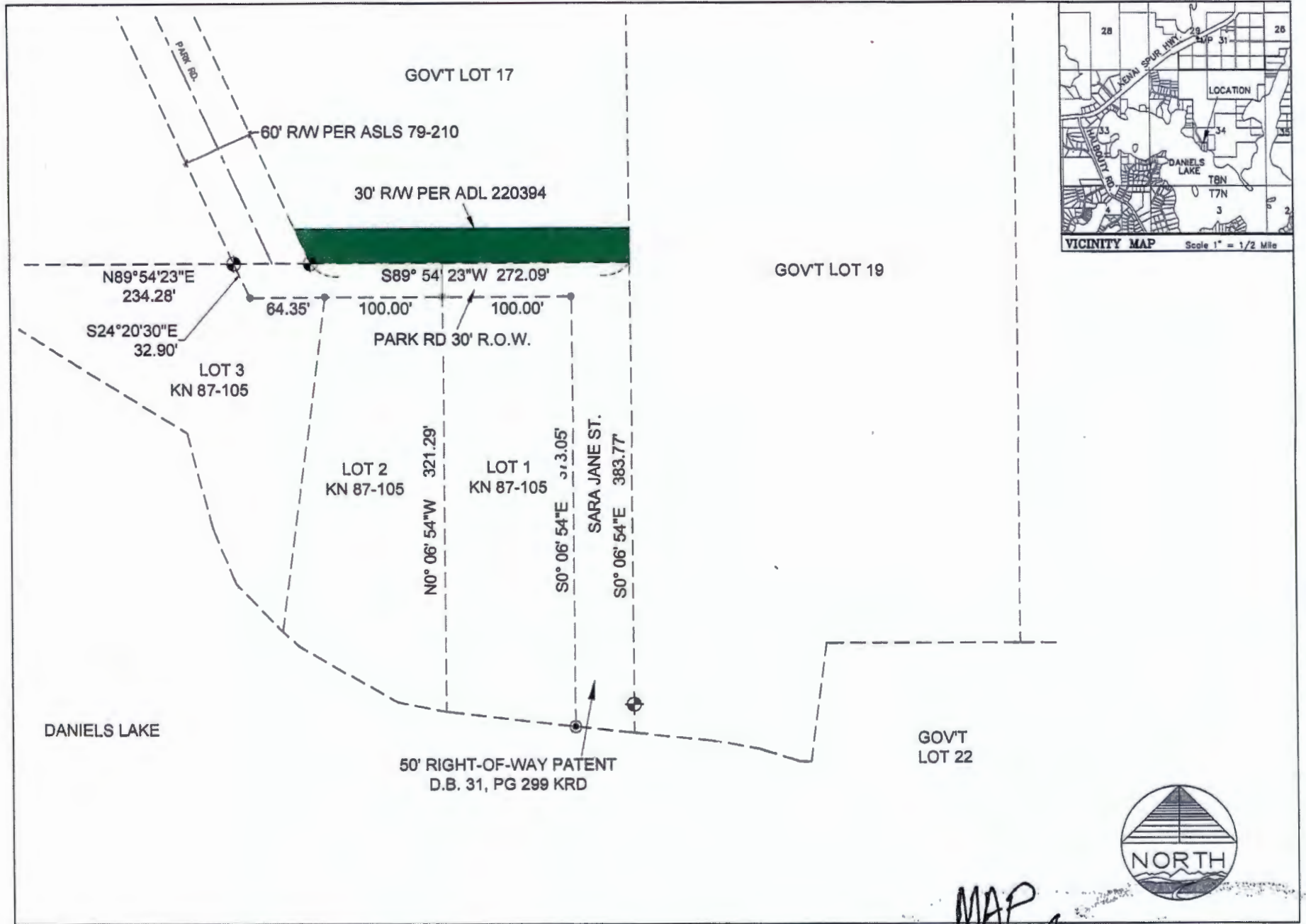
**ATTACHMENT A TO PETITION**

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

EV No: \_\_\_\_\_

**MAPS**

<b><u>No.:</u></b>	<b><u>Description:</u></b>
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

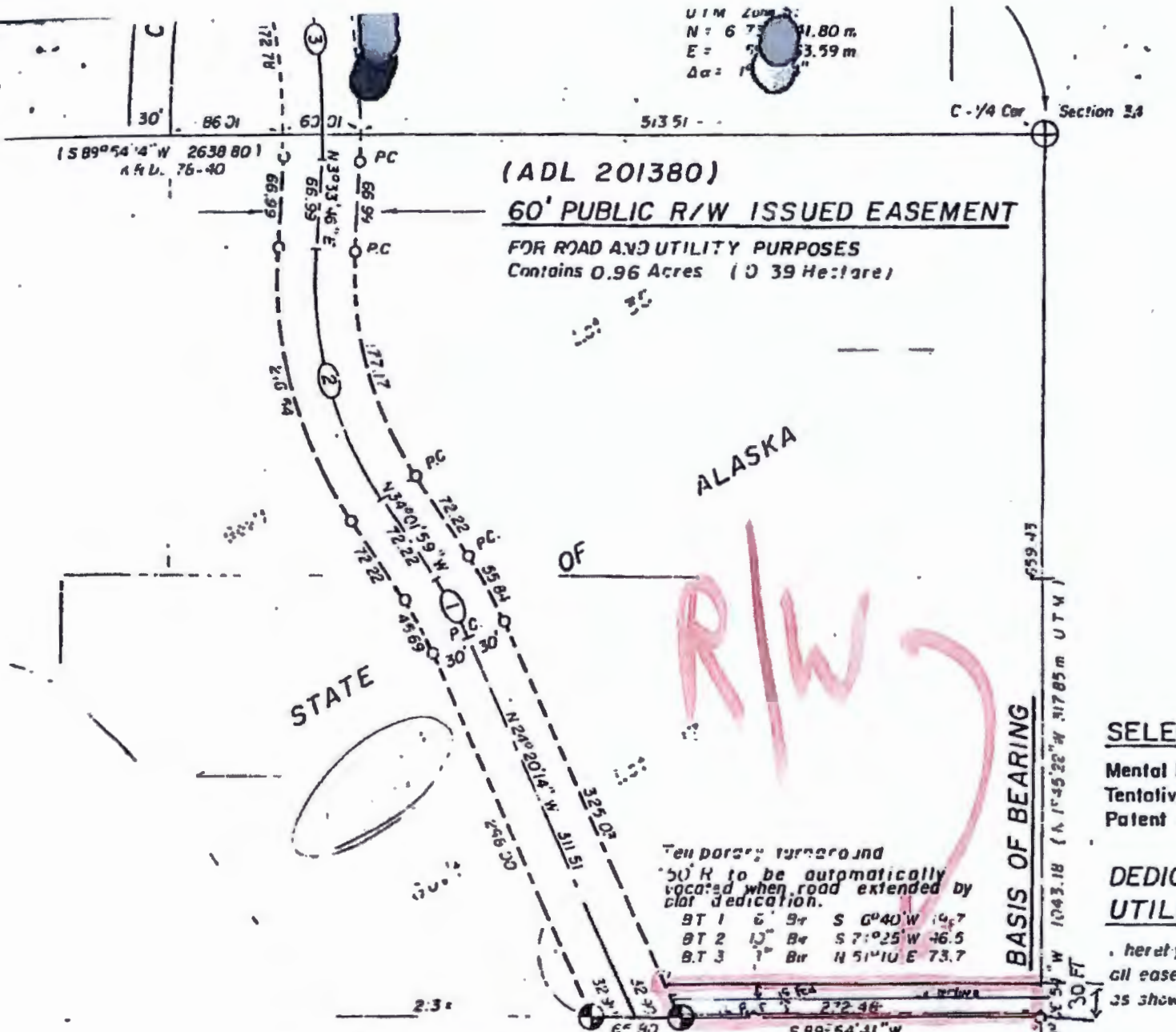
UTM Zone 2:  
 N = 67341.80 m  
 E = 133.59 m  
 Δα = 1"

C-1/4 Cor Section 24

(ADL 201380)

**60' PUBLIC R/W ISSUED EASEMENT**

FOR ROAD AND UTILITY PURPOSES  
 Contains 0.96 Acres (0.39 Hectare)



Temporary turnaround  
 50' R to be automatically  
 vacated when road extended by  
 plat dedication.

BT 1	6' Spr	S 6° 40' W	14.7
BT 2	10' Spr	S 7° 25' W	16.5
BT 3	7' Spr	N 51° 10' E	73.7

BT 1	8' Spr	S 21° 05' E	51.6
BT 2	6' Spr	S 25° 55' W	48.9
BT 3	10' Spr	N 82° 50' W	26.1

BASIS OF BEARING

**SELEC**  
 Mental H  
 Tentative  
 Patent N

**DEDIC.**  
**UTILI**

heret  
 all easen  
 as show:

Date 8/21/80

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.

per 8/21/80  
 Date

*[Signature]*  
 Director  
 Division of Technical Services

Gov't Lot is  
 Private

Ownership

SCR	Lowm
DNR	8/21/80

MAP 2

Page 1 of 4



before me this 21st day of 1980

*[Signature]*  
 Notary for Alaska

END EXIST ROAD

220391



ORTHOMOSAIC  
DRONE PHOTO  
9/12/2020

LOT LINE &  
IMPROVEMENTS ARE  
SPATIALLY CORRECT



SCALE  
1" = 80'  
0 40' 80'

**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**

<b><u>No.:</u></b>	<b><u>Date:</u></b>	<b><u>Description:</u></b>
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



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, SE1/4, S1/2, S3/4, NE1/4, SE1/4, SW1/4, S1/2, SE1/4, SW1/4;
- Sec. 26, Lots 1, 17, 18, 30, 37, 38, 39, 40, 52, SE1/4;
- Sec. 28, Lots 3, 4, 5, SW1/4, S1/2, W1/2;
- Sec. 29, E1/2, NW1/4;
- Sec. 31, NE1/4;
- Sec. 32, NW1/4, W1/2;
- Sec. 33, Lot 30;
- Sec. 34, Lots 17, 20, 22, 23, 35, 36, 37, NW1/4, NE1/4, SW1/4, SE1/4, NW1/4, S1/2, SW1/4;
- Sec. 35, Lots 1, 7, 29, 38, 39, 40, 41, 42, 50, 51, 54, 55, 56, 61, 63, SE1/4, SW1/4, S1/2, SE1/4.

The areas described aggregate 34,133.41 acres, according to the Official Plans 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 SE1/4 Sec. 12, T. 8 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 for 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.

1232750

SEP 30 1981 Alaska State Office  
DATE Anchorage, Alaska

I hereby certify that this reproduction is a true and correct copy of the official record on file in this office.

*Paul D. ...*  
AUTHORIZED SIGNATURE

Page 2 of 3



Anchorage 050380

4-1044  
July 1933

Subject to such rights for natural gas pipeline and oil pipeline purposes as the Alaska Pipeline Company and the Kenai Pipeline Company, respectively, may have under Section 28 of the Act of February 25, 1920 (41 Stat. 637), 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 RIGHT, SURFACE Sec. 4, SURFACE Sec. 5, and the RIGHT 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  
29<sup>th</sup>

RECORDED-FILED  
KENAI REC.  
DISTRICT

Oct 16 3 30 PM '81

REQD. *M. S. O.*  
ADDRESS *701 E. Packer Bldg #400*  
*5371 Anchorage 99503*

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 10/16/81 BY 1043/UC/BAW

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 EIGHTY-EIGHT  
and of the independence of the United States the one hundred and  
EIGHTY-EIGHTH.

In the District of Columbia, at Washington, D. C.

*Elizabeth B. Hucks*  
Ch. I. Patent Section

(SEAL)

RECORD OF PATENTS Patent Number 1232780

SEP 30 1981 Alaska State Office  
DATE Anchorage, Alaska  
I hereby certify that this reproduction is a true and correct copy of the official record on file in this office.  
*[Signature]*  
AUTHORIZED SIGNATURE

Anchorage 041461

BOOK 1443 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. Beak

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, therunto 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. 891, 48 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 <u>2/23</u> 19 <u>65</u>

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. Decker  
Chief, Patent Section

Patent Number 1233765

Page 1 of 1

300

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]

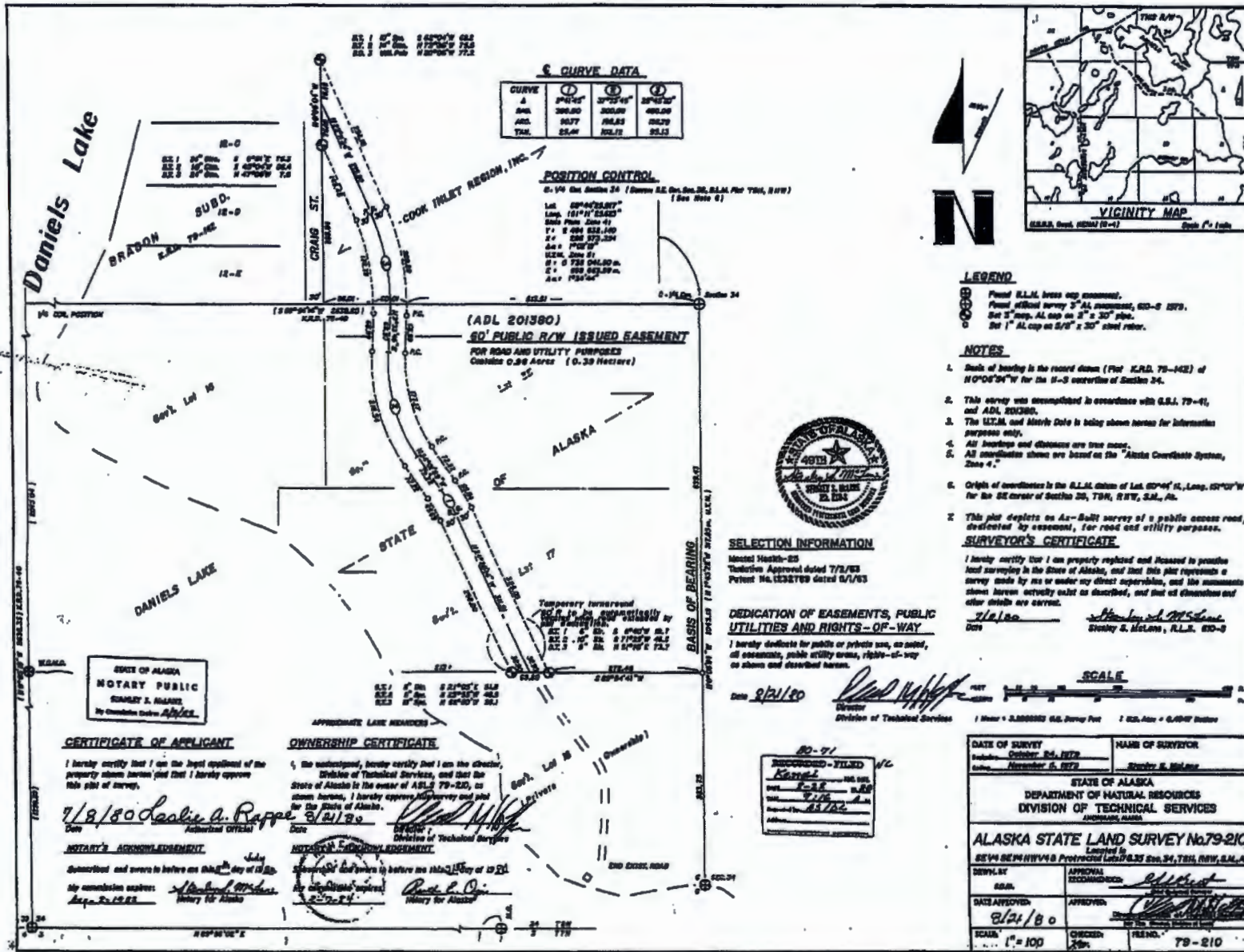
For the Director, Bureau of Land Management.

By Eugene B. Hucks  
Chief, Patents Section

Patent Number 1234325

ENCLOSURE

Page 3 of 4



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 \_\_\_\_\_

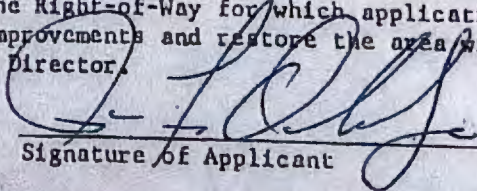
Rt. 1 - Box 835-2, Kenai, Ak. 99611 (Earl Drive, Nikishka, Alaska) hereby applies to the Director of the Division of Lands, Department of Natural Resources, for Right-of-Way 20<sup>(minimum)</sup> feet in width and 272.48 feet in length located in Section 34, Township 8 North, Range 11 West, Seward Meridian, containing an area of (.012) 544.96 sq. ft acres as shown on the plat attached hereto in triplicate copies, for the purpose 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.

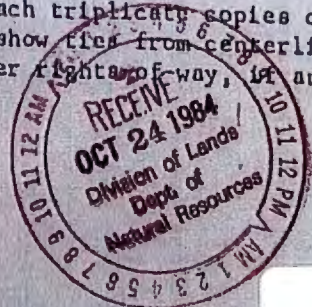
  
Signature of Applicant

(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

**DAY ONE**

11-28-84



10-112 (75)  
10/64

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 262-4441

STAN 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*  
Carolyn Turkington  
Land Management Officer



From Mike Budbill

2/25/05

In a recent phone call with the  
Kenai Penn Bros I discovered that the  
parcel of land this 273 foot driveway  
accesses is private. Owned entirely  
by the Oliva family.

As such I believe that due to  
its private use and no public  
lands are accessed by this  
driveway or (utility easement) that  
we can only grant a right way  
to private non exclusive use.  
As a result -

1) Shall I do this as a private  
easement and a PLFF? ~~X~~  ~~Y~~

2) <sup>comment on the proposed right of way thru the agency review process. I would call & see if they plan to comment.</sup>  
Can I amend the plan, and  
issue part. ease. ~~with~~  
With Bro Planning Com. approval? Like a pub-R/W?

Please give me your recommendations -  
Mike

Mike - you don't need to amend their apln. 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 R/W. Do try  
and get the bros to comment.

Kim





# KENAI PENINSULA BOROUGH

BOX 850 • 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.

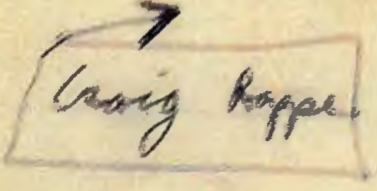
Please contact me if you have any questions.

Sincerely,

*Carolyn Turkington*  
CAROLYN TURKINGTON  
Land Management Officer

CT:gp

11/27/83 call file 31583



Craig Kappel proved no way on Oliva R/W.

OL 730-291

128  
371  
over

(7)

Craig Kappel the adjacent owner of the lot along the south lot line between parcels 17 and 18 see map proved today at 3:30 pm. He was not going to sell or offer any part of his property up for a right of way for Oliva.

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

Mike Budbill-NRO

OLIVA, Lewis F., Jr.  
Right-of-Way Map  
MIL 1983  
SC80

6

Memo to Mr. Kwa & Jim Fildes

Devin Moore ad

Summary of Oliver RM 220394

On October 24 1984 we received

an application for a pole right way  
222 feet long x 20 feet wide. This

into the located area

a driveway and utility easement.

The parcel contains 544 feet on a 130m.

Please see map & plat not attached.

The easement benefits only the applicant

and the adjacent land owner. Other

to public land in already nearby.

Agency comments were requested

1/1/85. A delay <sup>was</sup> experienced

when the applicant <sup>was</sup> a local project

Mr. application was received for

any agency. As comments were

received from a former township

Borough.

On February 2/25/85 I decided that

the applicant ~~was not~~

proceed as a private easement

was easement. Kim Kwas concurs

On 2/28/85 the applicant phone

asking for a status report. He explained

the situation. The applicant explained the

The easement is located for him to

sale

3/1/85 Planning Commission meeting  
 11/2/85 meeting decision that decision was to recommend a 30 foot wide public access at utility easement.  
 2/13/75 KPB letter arrives that on

meeting. She said she would present it to the planning commission at the next meeting regarding the 30 foot wide easement. She said she would present it to the planning commission at the next meeting regarding the 30 foot wide easement. She said she would present it to the planning commission at the next meeting regarding the 30 foot wide easement.

for them. I plan to bring Tracy back to meet with me on the project. I plan to bring Tracy back to meet with me on the project. I plan to bring Tracy back to meet with me on the project. I plan to bring Tracy back to meet with me on the project. I plan to bring Tracy back to meet with me on the project.



Mike are  
what to  
public  
law

the brought  
with that I decide  
apparent that the  
house decision  
assessments in  
the probable  
(the KPB) even  
even though  
immediately  
in use. As  
land owner  
probably  
rise as  
of the KPB  
want a  
we

3/85  
Notes recommending  
a Public ROW

in mind it occurs  
in  
in a private  
vested.  
land owners  
public account  
a family  
will enjoy  
adjacent  
appeal will  
its value  
improved  
owner

Notes by  
to KMK & Jim F.  
for Mike BB  
Sorry about handwritten  
notes but it types  
3/19

Mike  
I can w/ your recommendations.  
Prepare a permit of stipulation regarding  
summary of ROW.  
I think you should have your  
decision accounts typed - so as to  
include it a legible portion of the  
case file (later time points). Jim F.

SR 85089

Shirley  
Hughes  
Ally

on Wed/Thursday  
hard to get my  
field trip

Johns further problems? — yes —

usually  
want  
the medical  
to help  
1st  
after that  
read the  
at 1:30  
1:45

OLIVA, Louis F. Jr.  
ADL 2203

Notes  
3/85

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

<b>10-24-1984 APPLICATION RECEIVED</b>		
RIGHT-OF-WAY FOR PUBLIC YEARLONG USE.		
<b>03-28-1985 COMMENTS</b>		
LUP ISSUED TO AUTHORIZE APPLICANT TO ENTER UPON STATE LANDS TO CLEAR AND CONSTRUCT DRIVEWAY AND PLACE UTILITIES SUBJECT TO SPECIAL STIPS.		
<b>09-11-1985 ISSUED</b>		
STATUS 23	23	EASEMENT CREATED
R/W PERMIT ISSUED FOR A PUBLIC ROAD & UTILITY ACCESS.		
<b>08-02-1986 CASEFILE CUSTOMER DOCUMENTED</b>		
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		
<b>09-20-1996 COMMENTS</b>		
MHPAR SM-1434, A PORTION OF THE PARCEL.		
<b>01-02-2003 STATUS CODE STANDARDIZED</b>		
STATUS CODE	35	ISS/APPRV/ACTV-AUTH
***** STATUS CODE STANDARDIZATION *****		

<b>STATUS CODE CHANGED BY BATCH UPDATE</b>		
<b>02-20-2018 COMMENTS</b>		
EASEMENT DOCUMENT SENT TO KENAI RECORDERS OFFICE		
<b>03-01-2018 DOCUMENT RECORDED</b>		
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		
<b>03-07-2018 COMMENTS</b>		
SUBTYPES WERE RESTRUCTURED ON 3.7.2018 FOR 581 AND 582 EASEMENTS TO SIMPLIFY LAS REPORTING. NO AFFECT ON MANAGEMENT IS INTENDED.		
<b>08-10-2018 DOCUMENT RECORDED</b>		
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		
<b>12-13-2018 DOCUMENT RECORDED</b>		
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		
<b>07-09-2020 COMMENTS</b>		
EASEMENT CORRECTION DOCUMENT IS COMPLETED TO ADDRESS RECORDATION ERROR		
<b>07-14-2020 DOCUMENT RECORDED</b>		
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)

State of Alaska )ss.  
)

This is to certify that on the 9<sup>th</sup> 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.

Donald Witt

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 11<sup>th</sup> 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.

Donald Witt

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  $S89^{\circ}54'41''W$ , 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  $N24^{\circ}20'14''W$ , 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence  $N89^{\circ}54'41''E$ , 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then  $S0^{\circ}06'54''E$ , 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.

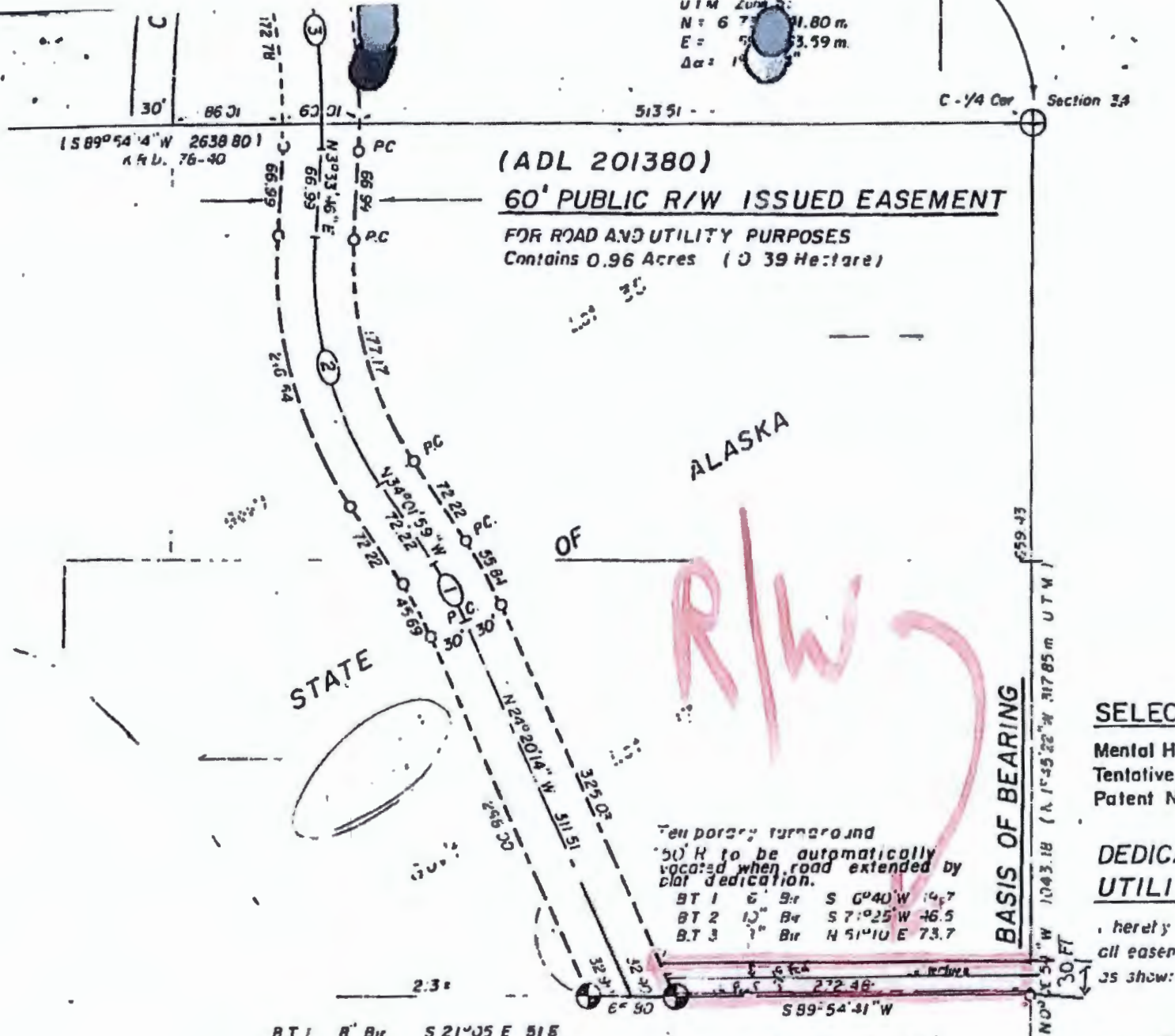
Basis of bearing is Alaska State Land Survey #79-210.

UTM Zone:  
 N = 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20  
 E = 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20  
 Δα = 1°

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)



Temporary turnaround  
 to be automatically  
 vacated when road extended by  
 plat dedication.

- BT 1 6' Spr S 60° 40' W 14.7
- BT 2 10' Spr S 71° 02' W 46.5
- BT 3 10' Spr N 51° 10' E 73.7

- BT 1 8' Spr S 21° 05' E 51.5
- BT 2 6' Spr S 25° 55' W 48.9
- BT 3 10' Spr N 82° 50' W 26.1

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 herein. I hereby approve this survey and plat  
 for the State of Alaska.

per 8/24/80  
 Date Director  
 Division of Technical Services



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

30' x 272.46'  
 3/28/85

Ownership  
 SCR/LWM  
 DNR/State

Page 5 of 5

END EXIST ROAD

220391

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

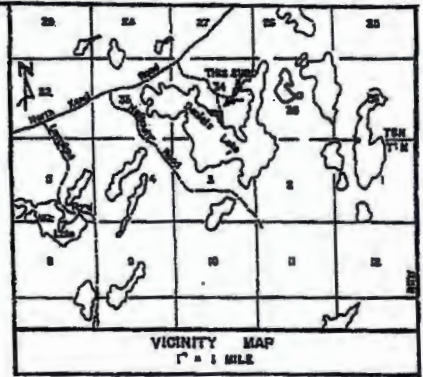
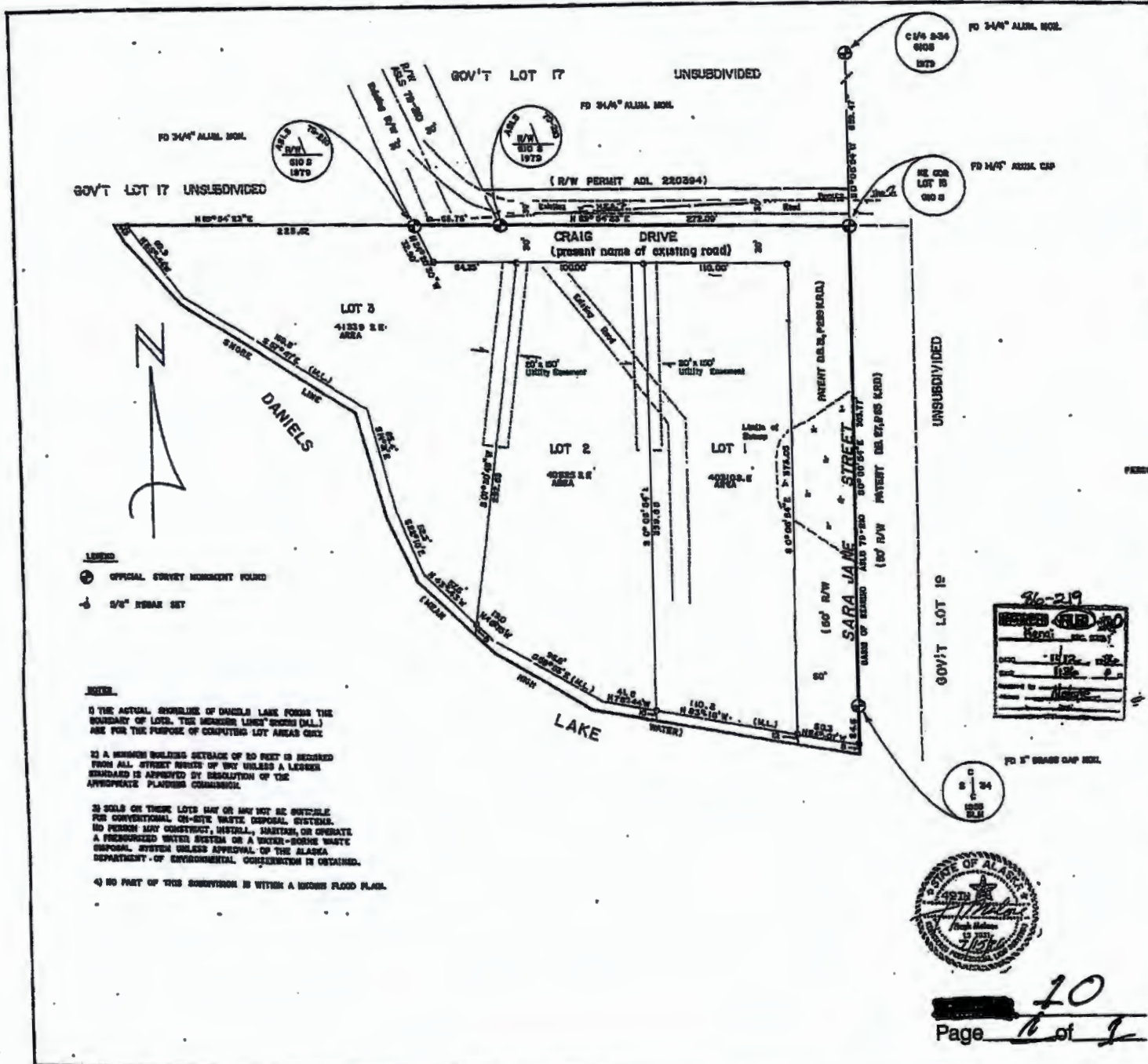
Mr. Troeger read the staff report outlining background and staff recommendations.

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 herein, and that, on behalf of the estate of Leslie A. Rappe, I hereby dedicate 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  
 LESLIE A. RAPPE  
 BOX 12062  
 ANCHORAGE, ALASKA 99512  
 PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE

**NOTARY'S ACKNOWLEDGEMENT**

For Leslie A. Rappe  
 Subscribed to and sworn before me  
 this 16th day of August, 1986.  
 My commission expires 5/1/89

Oliver P. Ward  
 Notary Public for Alaska

**PLAT APPROVAL**

This plat was approved by the Alutian Peninsula Borough Planning Commission at the meeting of  
JUNE 16, 1986  
 Alutian Peninsula Borough  
 By Robert T. Taylor  
 Authorized Officer

36-219

RECORDED FILE NO. 36-219

DATE RECORDED 8-17-86

BY Alutian Peninsula Borough



Page 10 of 1

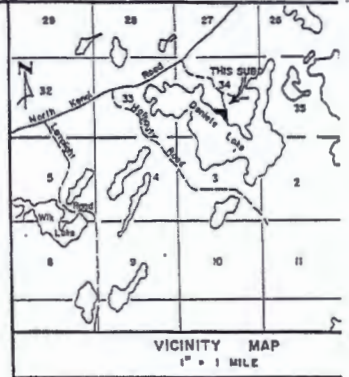
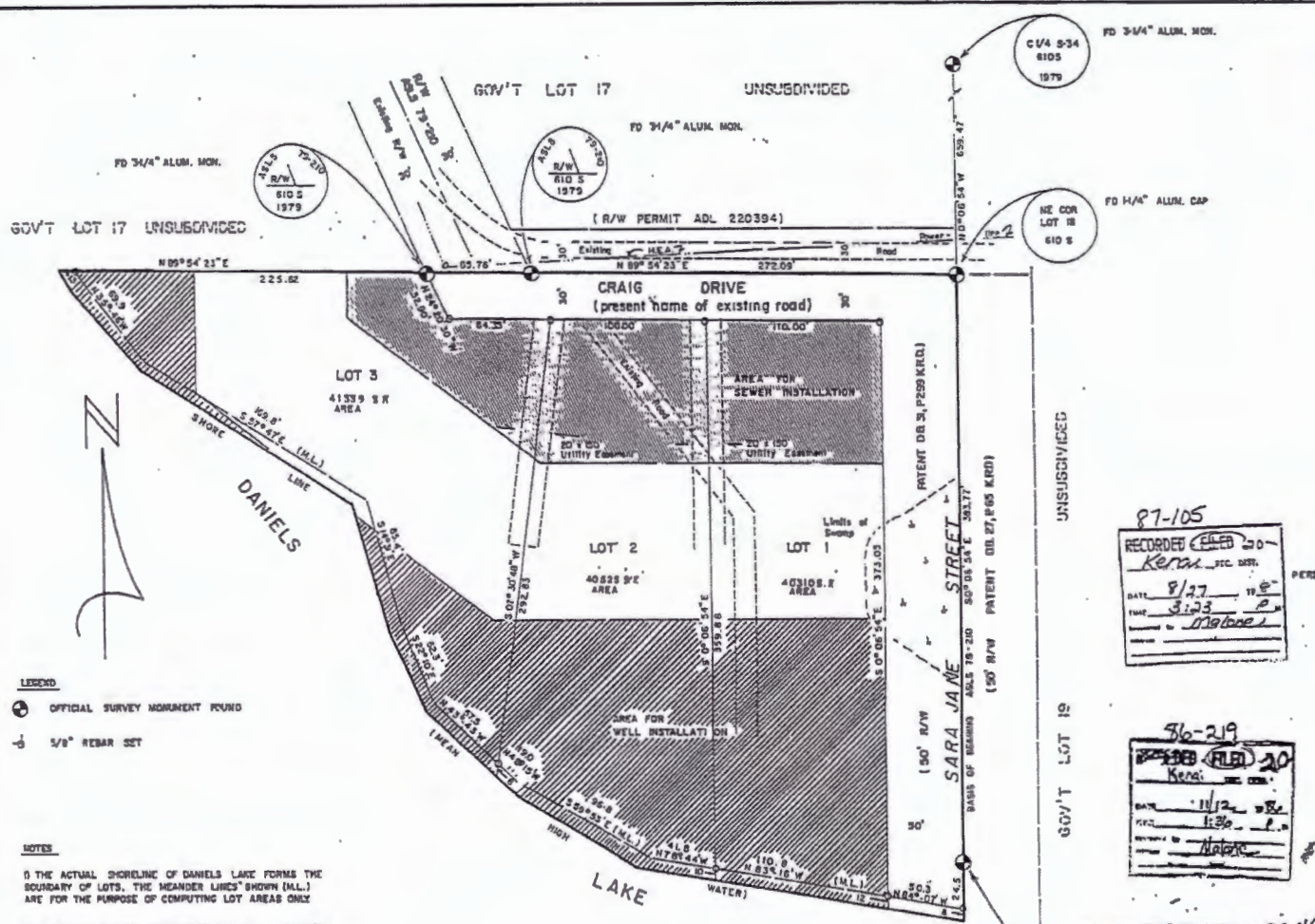
**RAPPE PARK SUBDIVISION**

GOV'T LOT 19 IS IN THE NE 1/4 SW 1/4 SECTION 34 T8N R11W SEWARD MERIDIAN, ALASKA

CONTAINING 3.46+ ACRES  
 KENAI RECORDING DISTRICT

FOR CRAG RAPPE BOX 12062 ANCHORAGE, ALASKA 99512	MELROSE SURVEYING BOX 596 KENAI, ALASKA 99821
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE	DATE OF SURVEY 7/2/86
SCALE 1 inch = 50 feet	S.E.S. FILE NO. 88-287





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  
CRAG RAPPE  
BOX 18262  
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

Olav A. Noid  
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 P. Torgerson  
Authorized Official

AMENDED

RAPPE PARK SUBDIVISION

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

CONTAINING 3.464 ACRES  
KENAI RECORDING DISTRICT

FOR CRAG RAPPE BOX 18262 ANCHORAGE, ALASKA 99511	MALONE SURVEYING BOX 566 KENAI, ALASKA 99511
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE	JOB NO. 88-08 DATE OF SURVEY 7/3/86
DRAWN BY dvw	CHECKED Hm 7/15/86
SCALE 1 inch = 50 feet	K.R.B. FILE NO. 86-187

87-105  
RECORDED  
Kenai REC. DIST.  
DATE 8/27 1986  
TIME 3:23 P.  
BY Malone

36-219  
FILED 20  
Kenai  
DATE 11/12 1986  
TIME 1:30 P.  
BY Malone



Page 1 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

12  
Page 2 of 5

BOOK 0493 PAGE 441

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

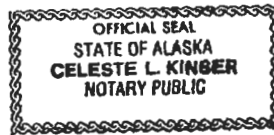
State of Alaska )  
                                  ) ss.  
Third Judicial District )

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. Kinser  
Notary Public in and for the State of Alaska

My Commission Expires: 4-4-97



ATTACHMENT A

BOOK 0493 PAGE 468

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-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

27

Page 3 of 5

ATTACHMENT A

EDM 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

96-0027  
KENAI REC *NC*  
DISTRICT  
REQUESTED BY *DNR*  
  
'96 SEP 25 PM 1 00

*12*  
Page *5* of *5*

A  
L  
A  
S  
K  
A

2019 - 007580 - 0

Recording District 302 Kenai  
08/30/2019 10:28 AM Page 1 of 3



**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:

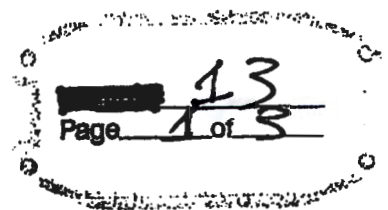
**Lot 17, containing 5.16 acres more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on May 8, 1959.**

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 27<sup>th</sup> day of August, 2019.

GRANTOR:

ALASKA MENTAL HEALTH TRUST AUTHORITY

By: Wyn Menefee

Wyn Menefee, Executive Director  
Alaska Mental Health Trust Land Office

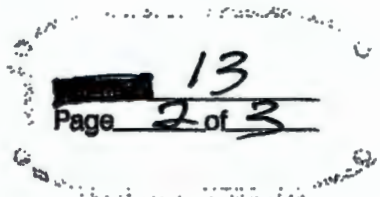
Quitclaim Deed No. 928

Page 2 of 3



Page 2 of 3

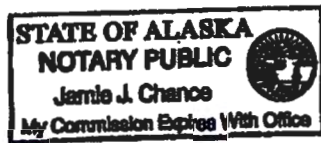
2019-007580-0





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  
2019-0107660-0

13  
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](mailto:bob@molloysschmidt.com)

[kristine@molloysschmidt.com](mailto: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 51.065  
Consideration of Petition to State of Alaska To Vacate A ROW Permit**

Dear Ms. Aeschliman:

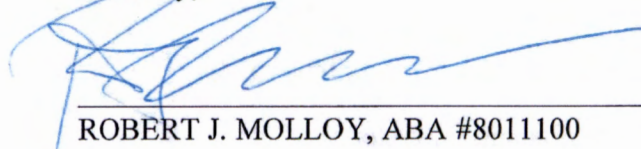
Louis and Stacy Oliva provide additional information, and a conceptual drawing, for the Borough Planning Commission in support of the Oliva's submission to the Borough Platting Authority of their Petition For Right of Way Permit Vacation filed with the Alaska Department of Natural Resources, DNR File 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.

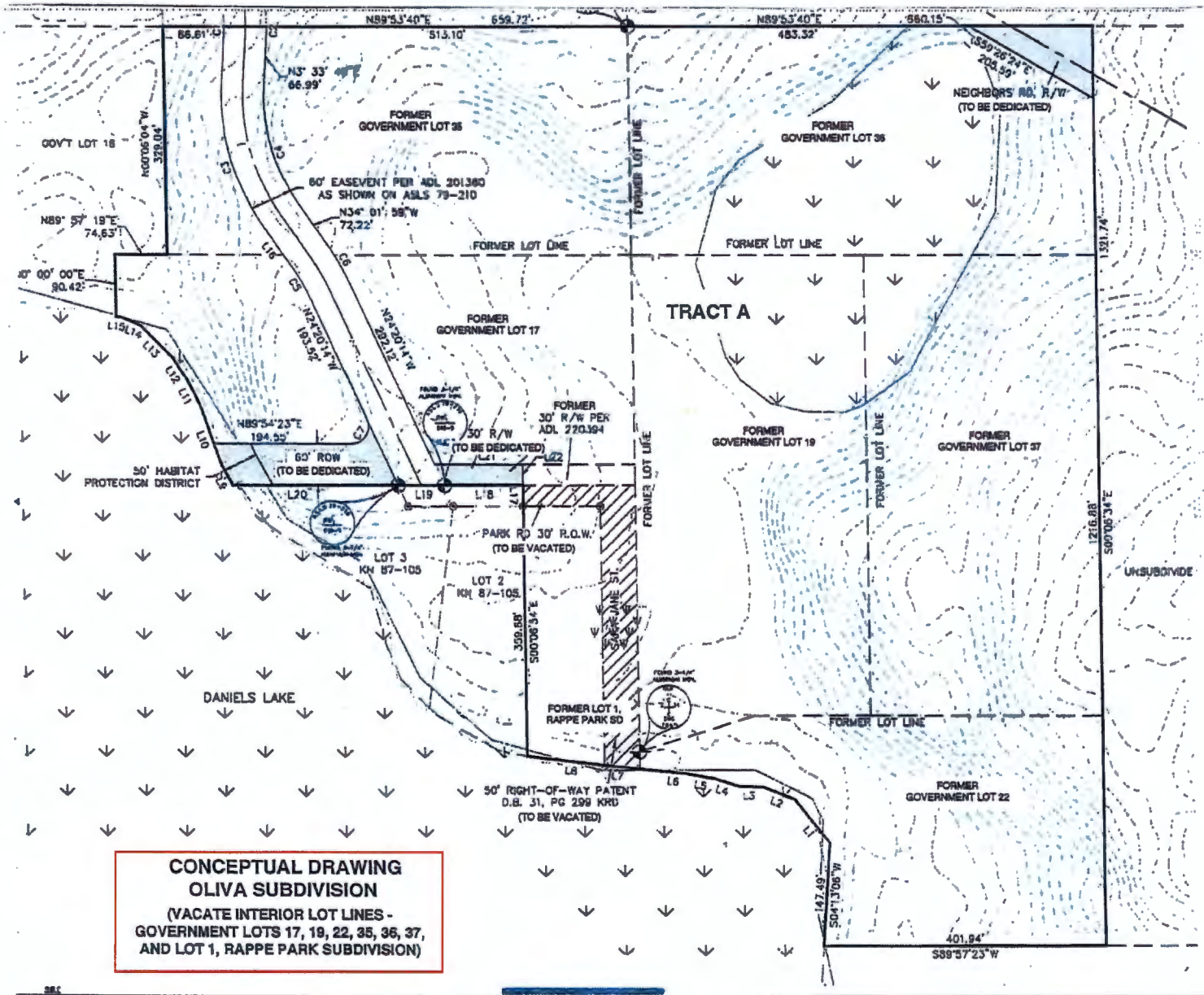
Please provide this letter and attachment to the Borough Planning Commission for its information. Thank you.

Sincerely,



ROBERT J. MOLLOY, ABA #8011100

cc: J. Poydack, Survey Section, DNR  
Clients



# **Kenai Peninsula Borough**

## **PLANNING COMMISSION DESK PACKET**

**February 8, 2021**

**7:30 p.m.**

**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. 7<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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 31<sup>st</sup> 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 7<sup>th</sup> 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.):**

<b>Name (clearly printed) and Signature (required)</b>	<b>Legal Description</b>	<b>Mailing Address/ Phone Number</b>	<b>Date</b>
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.

23-STAT/enc11a

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](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 <sup>th</sup> 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@mollovschmidt.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 Judd 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 7<sup>th</sup> Ave., Suite 900C, Anchorage, AK 99501  
(907) 334-2542

From: Bob Molloy [mailto:bob@mollovschmidt.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  
3  
~~Exhibit~~  
Page 2 of 1

**PUBLIC HEARING NOTICES SENT TO THE  
FOLLOWING LANDOWNERS**

Parcel: 01341037  
OLIVA LOUIS F JR & STACY ANN  
PO BOX 8567  
NIKISKI, AK 99635

Parcel: 01341051  
WEST JEFFREY R LIVING TRUST & WEST  
BONNIE J LIVING TRUST  
PO BOX 7994  
NIKISKI, AK 99635

Parcel: 01341052  
WEST JEFFREY R LIVING TRUST & WEST  
BONNIE J LIVING TRUST  
PO BOX 7994  
NIKISKI, AK 99635

Parcel: 01341053  
TRIPLE-KNOT LAND & LIVESTOCK LLC  
PO BOX 173  
KENAI, AK 99611

Parcel: 01341069  
OLIVA LOUIS F Jr  
PO BOX 8567  
NIKISKI, AK 99635

Parcel: 01341069  
OLIVA STACY A  
PO BOX 8567  
NIKISKI, AK 99635

Parcel: 01341035  
WERTZ JEFFERY ALAN & MAUDE ELSIE  
5780 N BOLSENA AVE  
MERIDIAN, ID 83646

Parcel: 01341070  
OLIVA LOUIS F Jr  
PO BOX 8567  
NIKISKI, AK 99635

Parcel: 01341070  
OLIVA STACY A  
PO BOX 8567  
NIKISKI, AK 99635

Parcel: 01341071  
ALASKA MENTAL HEALTH TRUST AUTHORITY  
3745 COMMUNITY PARK LOOP STE 200  
ANCHORAGE, AK 99508

Parcel: 01341072  
ALASKA MENTAL HEALTH TRUST AUTHORITY  
3745 COMMUNITY PARK LOOP STE 200  
ANCHORAGE, AK 99508

Parcel: 01341073  
ALASKA MENTAL HEALTH TRUST AUTHORITY  
3745 COMMUNITY PARK LOOP STE 200  
ANCHORAGE, AK 99508