



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Planning Commission

Monday, June 27, 2022

7:30 PM

Betty J. Glick Assembly Chambers

Zoom Meeting ID 907 714 2200

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes per person
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Staff may respond to any testimony given and the Commission may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.
- 8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk () are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.*

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

1. Time Extension Request
2. Planning Commission Resolutions
3. Plats Granted Administrative Approval

- [KPB-4363](#)
- a. Duncan Subdivision No. 5; KPB 2021-142
 - b. Folz Subdivision 2021 Addition; KPB File 2021-036
 - c. Gold Acres Subdivision 2022 Replat; KPB File 2022-014
 - d. Poachers Cove PDM 2022 Replat; KPB File 2022-002

Attachments: [C3. Admin Approvals Packet](#)

4. Plats Granted Final Approval (KPB 20.10.040)

- [KPB-4364](#)
- a. Riverview Deluxe Subdivision; KPB File 2022-012
 - b. Seward Original Townsite 2021 Replat; KPB File 2021-105
 - c. Soldotna Junction Subdivision Creekside Estates; KPB File 2022-049

Attachments: [C4. Final Approvals Packet](#)

5. Plat Amendment Request
6. Commissioner Excused Absences
7. Minutes

- [KPB-4365](#) June 13, 2022 PC Meeting Minutes

Attachments: [PC Minutes 061322 Draft](#)

D. OLD BUSINESS**E. NEW BUSINESS**

1. [KPB-4366](#) Utility Easement Vacation; KPB File 2022-070V
Lot 4, Block 2, Bruhn Subdivision, Plat KN 86-143
Attachments: [E1. UEV Bruhn Sub Packet](#)
2. [KPB-4367](#) Right-of-way Vacation; KPB File 2022-076V
Hough Road
Attachments: [E2. ROWV Hough Packet](#)
3. [KPB-4368](#) Right-of-way Vacation; KPB File 2022-077V
Hanks Mill Road
Attachments: [E2. ROWV Hank Mill Rd Packet](#)
4. [KPB-4369](#) Conditional Use Permit; PC Resolution 2022-24
Petitioner: AK Dept. of Transportation & Public Facilities
Attachments: [E4. CUP DOT Packet](#)
5. [KPB-4370](#) Ordinance 2022-XX: Amending KPB Chapter 21.50 relating to
stop-work orders and fine amounts in stipulated agreements.
Attachments: [E5. ORD 2022-XX Stop Work Order Packet](#)
6. [KPB-4371](#) Ordinance 2022-XX: Amending KPB Chapters 7.20, 7.30 & 21.44
relating to marijuana establishments and processing application for
marijuana establishments.
Attachments: [E6. ORD 2022-XX Marijuana Packet](#)
7. [KPB-4372](#) Ordinance 2022-XX: Amending KPB Chapter 20.65 relating to federal
patent easements and public right-of-ways.
Attachments: [E7. ORD 2022-XX Federal Patents Packet](#)
8. [KPB-4373](#) Ordinance 2022-XX: Amending KPB 21.25 to add definition of
"Aggrieved Party", and amending KPB 21.29 to remove the term
"Impartial", to clarify the well monitoring timeline, to define
"Quarterly" and to add a "Definitions" section.
Attachments: [E8. ORD 2022-XX KPB 21.25 & 21.29 Packet](#)

F. PLAT COMMITTEE REPORT

G. OTHER

H. PUBLIC COMMENT/PRESENTATION

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)

I. DIRECTOR'S COMMENTS**J. COMMISSIONER COMMENTS****K. ADJOURNMENT****MISCELLANEOUS INFORMATIONAL ITEMS****NO ACTION REQUIRED****NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING**

The next regularly scheduled Planning Commission meeting will be held Monday, July 18, 2022 in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

CONTACT INFORMATION**KENAI PENINSULA BOROUGH PLANNING DEPARTMENT**

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: planning@kpb.us

website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, 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.

C. APPROVAL OF CONSENT AGENDA

- *3. Plats Granted Administrative Approval**
 - a. Duncan Subdivision No. 5; KPB File 2021-142**
 - b. Folz Subdivision 2021 Addition; KPB File 2021-36**
 - c. Gold Acres Subdivision 2022 Replat; KPB File 2022-04**
 - d. Poachers Cove PDM 2022 Replat; KPB File 2022-02**



Planning Department

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

Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Duncan Subdivision No 5
KPB File 2021-142
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on November 29, 2021. Approval for the plat is valid for two years from the date of approval.

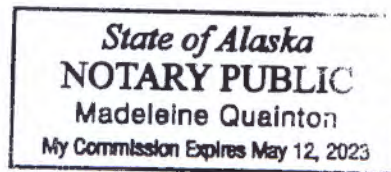
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on June 13, 2022.

Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 13 day of June 2022
by Julie Hindman.

Notary Public for the State of Alaska



My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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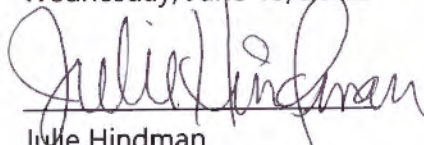
Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Folz Subdivision 2021 Addition
KPB File 2021-036
Seward Recording District

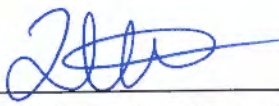
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 12, 2021. Approval for the plat is valid for two years from the date of approval.

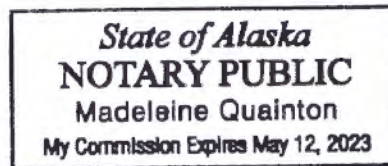
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, June 15, 2022.


Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15 day of June 2022 by Julie Hindman.


Notary Public for the State of Alaska



My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



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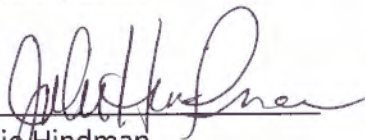
Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Golf Acres Subdivision 2022 Replat
KPB File 2022-014
Kenai Recording District

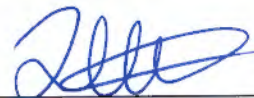
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 28, 2022. Approval for the plat is valid for two years from the date of approval.

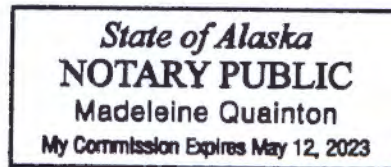
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on June 14, 2022.


Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 14 day of June 2022
by Julie Hindman.


Notary Public for the State of Alaska



My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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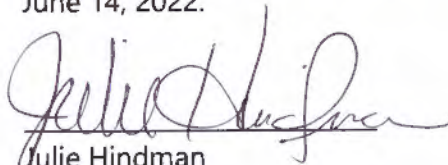
Charlie Pierce
Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision: Poachers Cove PDM 2022 Replat
KPB File 2022-002
Kenai Recording District


The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 14, 2022. Approval for the plat is valid for two years from the date of approval.

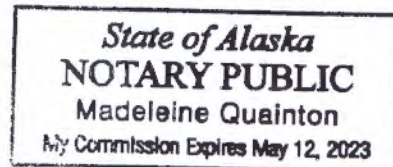
The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on June 14, 2022.


Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 14 day of June 2022
by Julie Hindman.


Notary Public for the State of Alaska



My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

C. APPROVAL OF CONSENT AGENDA

- *4. Plats Granted Final Approval**
 - a. Riverview Deluxe Subdivision; KPB File 2022-12**
 - b. Seward Original Townsite 2021 Replat; KPB File 2021-105**
 - c. Soldotna Junction Subdivision Creekside Estates
KPB File 2022-049**



Planning Department

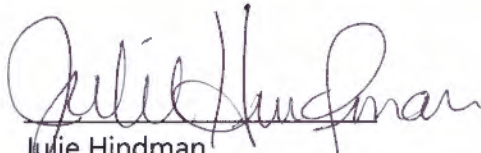
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Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Riverview Deluxe Subdivision 2022 Replat
KPB File 2022-012
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on June 13, 2022.

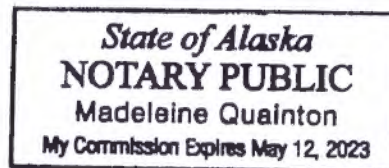

Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 13 day of June 2022
by Julie Hindman.



Notary Public for the State of Alaska



My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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

Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Seward Original Townsite 2021 Replat
KPB File 2021-105
SewardRecording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on June 14, 2022.

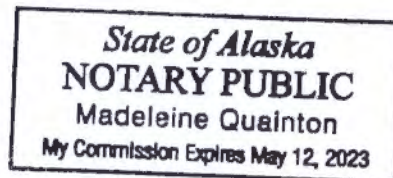
Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 14 day of June 2022
by Julie Hindman.

Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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

Charlie Pierce
Borough Mayor

FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Soldotna Junction Subdivision Creekside Estates
KPB File 2022-049
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on June 13, 2022.


Julie Hindman
Acting Platting Manager

State of Alaska
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 13 day of June 2022
by Julie Hindman.


Notary Public for the State of Alaska

State of Alaska
NOTARY PUBLIC
Madeleine Quinton
My Commission Expires May 12, 2023

My commission expires: 5/12/23

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

**JUNE 13, 2022
7:30 P.M.
UNAPPROVED MINUTES**

AGENDA ITEM A. CALL TO ORDER

Chair Martin called the meeting to order at 9:00 p.m. (Plat Committee meeting went over time and adjourned at 8:55 PM)

AGENDA ITEM B. ROLL CALL

Commissioners Present

Syverine Abrahamson-Bentz, District 9 – South Peninsula
Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
John Hooper, District 3 – Nikiski
Michael Horton, District 4 – Soldotna
Blair Martin, District 2 – Kenai
Virginia Morgan, District 6 – East Peninsula
Franco Venuti, City of Homer

With 8 members of an 11-member seated commission in attendance, a quorum was present.

Staff Present

Robert Ruffner, Planning Director
Walker Steinhage, Deputy Borough Attorney
Julie Hindman, Platting Specialist
Morgan Aldridge, KRC Planner
Derek Haws, KPB Addressing Officer
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. King Rapids Subdivision Hansen's Addition; KPB File 2021-168
- b. Mac McGahan Subdivision 2020 Replat; KPB File 2021-096
- c. Playle Estates; KPB 2021-159R1
- d. The Stordahle Subdivision; KPB File 2021-161

***4. Plats Granted Final Approval**

- a. Anglers Crest Subdivision Tikahtnu Heights Addition 2022 Replat; KPB File 2022-016
- b. Eastberg Dominish 2021 Replat; KPB file 2021-027
- c. Koala Acres 2022 Replat; KPB File 2022-026
- d. Sumpter Subdivision 2022 Replat; KPB File 2022-050

***6. Commissioner Excused Absences**

- a. Pamela Gillham, District 1 – Kalifornsky
- b. David Stutzer, District 8 – Homer
- c. Charlene Tautfest, City of Soldotna
- d. District 7 – Central, Vacant
- e. City of Seward, Vacant
- f. City of Seldovia, Vacant

***7. Minutes**

- a. May 23, 2022 Planning Commission meeting minutes.

Chair Martin asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked Ms. Shirnberg to read into the record the consent agenda items.

MOTION: Commissioner Venuti moved, seconded by Commissioner Hooper to approve the consent and regular agendas.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Tautfest

AGENDA ITEM E. NEW BUSINESS

Chair Martin asked Ms. Shirnberg to read into the record the rules for public hearing.

**ITEM E1 - SECTION LINE EASEMENT VACATION
VACATE SECTION LINE EASEMENTS ASSOCIATED WITH TRACTS A, B, AND C OF QUARTZ
CREEK SUBDIVISION PLAT NO SW 94-11**

KPB File No.	2022-060V
Planning Commission Meeting:	May 23, 2022
Applicant / Owner:	Three Bears Alaska Inc of Wasilla, AK and Kenai Peninsula Borough of Soldotna, AK
Surveyor:	John Segesser / Segesser Surveys
General Location:	Cooper Landing / Cooper Landing APC
Legal Description:	50-foot section line easements associated with the SW1/4 Section 30, Township 5 North, Range 2 West, SE1/4 Section 25 and the N1/2 Section 36, Township 5 North, Range 3 West

Staff report was given by Platting Specialist Julie Hindman.

Chair Martin open the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Morgan moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, 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 - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Tautfest

ITEM E2 - UTILITY EASEMENT ALTERATION
 VACATE PORTIONS OF UTILITY EASEMENTS LOCATED WITHIN
 LOT 5 OF COLE'S CORNER, PLAT KN 85-31

KPB File No.	2022-052V
Planning Commission Meeting:	June 13, 2022
Applicant / Owner:	Estate of Josephine S. Knapp of Anchorage, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Kalifornsky Beach Road, Capstan Street, Kasilof / Kalifornsky APC

Staff report was given by Platting Specialist Julie Hindman.

Chair Martin open the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, 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 - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Taufest

ITEM E3 – SN RESOLUTION 2022-02
NAMING PUBLIC RIGHT-OF-WAYS WITHIN SECTIONS 36, T05N, R01W; SEWARD MERIDIAN;
WITHIN EMERGENCY SERVICE NUMBER (ESN) 601
&
NAMING PUBLIC RIGHT-OF-WAYS WITHIN SECTIONS 01, T04N, R01W; SEWARD MERIDIAN;
WITHIN EMERGENCY SERVICE NUMBER (ESN) 601

SN Resolution	2022-02
Planning Commission Meeting:	June 13, 2022
Petitioner	Kenai Peninsula Borough
General Location:	Moose Pass Area

Staff report given by Addressing Officer Derek Haws.

Chair Martin open the item for public comment.

Bruce Jaffa; P.O. Box 107, Moose Pass, AK 99631: Mr. Jaffa is a member of the Moose Pass APC and requested that this item be postponed until the Moose Pass APC has a change to weigh in on the names.

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

MOTION: Commissioner Morgan moved, seconded by Commissioner Horton to postpone action on this item until the Moose Pass APC has an opportunity to review.

Commissioner Brantley asked staff if everyone who lived on these unnamed roads was noticed regarding the name changes. Mr. Haws replied that notices had been sent out to all landowners living on these roads. He also noted that one landowner suggested a different name for his road and that name was approved. Commissioner Brantley asked if any landowners established addresses will change with the naming of these roads. Mr. Haws replied that one landowner will have a new physical address, the landowner is aware of this and has not objected. Commissioner Brantley then stated that it was more important to him that the landowners living on the renamed roads are satisfied with the names than the area APCs and that

Commissioner Morgan stated that she would like to postpone action on this matter until the APC has a chance to review these names. Area residents are often aware of potential conflicts with road names than those who do not live in the area.

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

MOTION PASSED BY MAJORITY VOTE:

Yes - 7	Bentz, Fikes, Hooper, Horton, Martin, Morgan, Venuti
No – 1	Brantley
Absent - 3	Gillham, Stutzer, Taufest

**ITEM E4 – CONDTIONAL USE PERMET
PC RESOLUTION 2022-23
GRANTING A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A FENCE WITHIN THE
50-FOOT HABITAT OF THE KENAI RIVER**

KPB File No.	2022-23
Planning Commission Meeting:	June 13, 2022
Applicant	Michael Lavallee
Mailing Address	45920 Retreat Ct.; Soldotna, AK 99669
Legal Description	T 5N R 10W SEC 19 SEWARD MERIDIAN KN 2003038 DENISON HOMESTEAD SUB PART 4 TRACT B-1
Physical Address	45920 Retreat Ct
KPB Parcel Number	05763031

Staff report given by Planner Morgan Aldridge.

Chair Martin open the item for public comment.

Michael Lavallee, Applicant: 45920 Retreat Ct., Soldotna, AK 99669: Mr. Lavallee requested that the commission approve his permit request and made himself available to answer any questions.

Paul Michelsohn; 3410 Balchen Dr., Anchorage, AK 99517: Mr. Michaelson is a neighboring landowner and owns property at 45825 Retreat Ct. Mr. Michelsohn spoke in opposition to this permit.

Bob Shirley; 36351 Harbor Dr., Soldotna, AK 99669: Mr. Shirley is a neighboring landowner and spoke in support of granting this permit.

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

MOTION: Commissioner Brantley moved, seconded by Commissioner Horton to adopt PC Resolution 2022-23 granting a conditional use permit pursuant to KPB 21.18 for the construction of a fence within the 50-foot Habitat Protection District of the Kenai River.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Taufest

**E5 – ORDINANCE 2022-22
AUTHORIZING A NEGOTIATED LEASE OPTION AND SUBSEQUENT GROUND LEASE OF
CERTAIN REAL PROPERTY CONTAINING 40 ACRES MORE OR LESS TO UTOPIAN POWER FOR
THE DEVELOPMENT OF A SOLAR FARM FACILITY**

Ordinance	2022-22
Planning Commission Meeting:	June 13, 2022
Lessee:	Utopian Power
General Location:	Sterling Area

Staff report given by Planning Director Robert Ruffner.

Chair Martin open the item for public comment.

Bruce Jaffa; P.O. Box 107, Moose Pass, AK 99631: Mr. Jaffa spoke in favor of recommending adoption of this ordinance.

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

MOTION: Commissioner Fikes moved, seconded by Commissioner Hooper, to forward to the Assembly a recommendation to adopt Ordinance 2022-22: authorizing a negotiated lease option and subsequent ground lease of certain real property containing 40 acres, more or less, to Utopian Power for the development of a solar farm facility.

Commissioner Brantley spoke in favor of recommending adoption of this ordinance. He is aware of the history of this particular parcel of land and believes that this is a good use for this parcel.

Commissioner Martin spoke in favor of recommending adoption of this ordinance. Commissioner Martin also spoke in support of developing these kinds of alternative energy resources.

Commissioner Horton spoke in favor of recommending adoption of this ordinance. He noted that he agreed with both Commissioners Brantley & Martin.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Taufest

**E6 – RESOLUTION 2022-XX
AUTHORIZING THE ACQUISITION OF REAL PROPERTY LOCATED IN SOLDOTNA, AK ON
BEHALF OF CENTRAL EMERGENCY SERVICES FOR THE PURPOSE OF A REPLACEMENT SITE
FOR CES STATION ONE**

Resolution	2022-XX
Planning Commission Meeting:	June 13, 2022
General Location:	Soldotna

Staff report given by Planning Director Robert Ruffner.

Chair Martin open the item for public comment.

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

CES Deputy Chief Dan Grimes: Deputy Chief Grimes spoke in support of adopting this resolution.

MOTION: Commissioner Brantley moved, seconded by Commissioner Fikes, to forward to the Assembly a recommendation to adopt Resolution 2022-XX: authorizing the acquisition of real property located in Soldotna, Alaska on behalf of Central Emergency Services for the purpose of a replacement site for Central Emergency Services Station 1.

Commissioner Brantley

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Bentz, Brantley, Fikes, Hooper, Horton, Martin, Morgan, Venuti
Absent - 3	Gillham, Stutzer, Taufest

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Brantley reported the plat committee reviewed eleven plats, granted preliminary approval to ten and postponed action on one.

AGENDA ITEM G.

1. Plat Committee – June 27, 2022
 - Brantley
 - Fikes
 - Horton
 - Martin
 - Morgan

AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS

Chair Martin asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

Bruce Jaffa; P.O. Box 107, Moose Pass, AK 99631: Mr. Jaffa thanked the commission for their work and spoke in support of the public process he witnessed at the night's meeting.

AGENDA ITEM I. DIRECTOR'S COMMENTS

Planning Director Ruffner reviewed his director's report with the commission.

AGENDA ITEM J. COMMISSIONER COMMENTS

AGENDA ITEM K. ADJOURNMENT

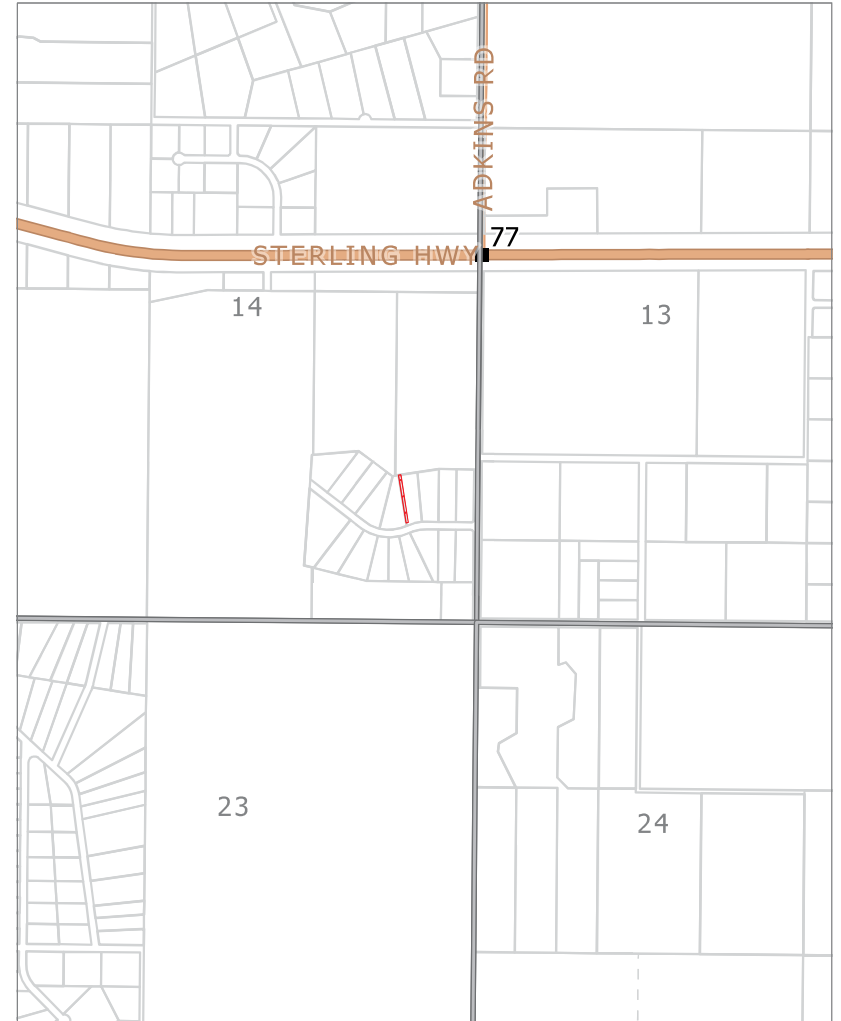
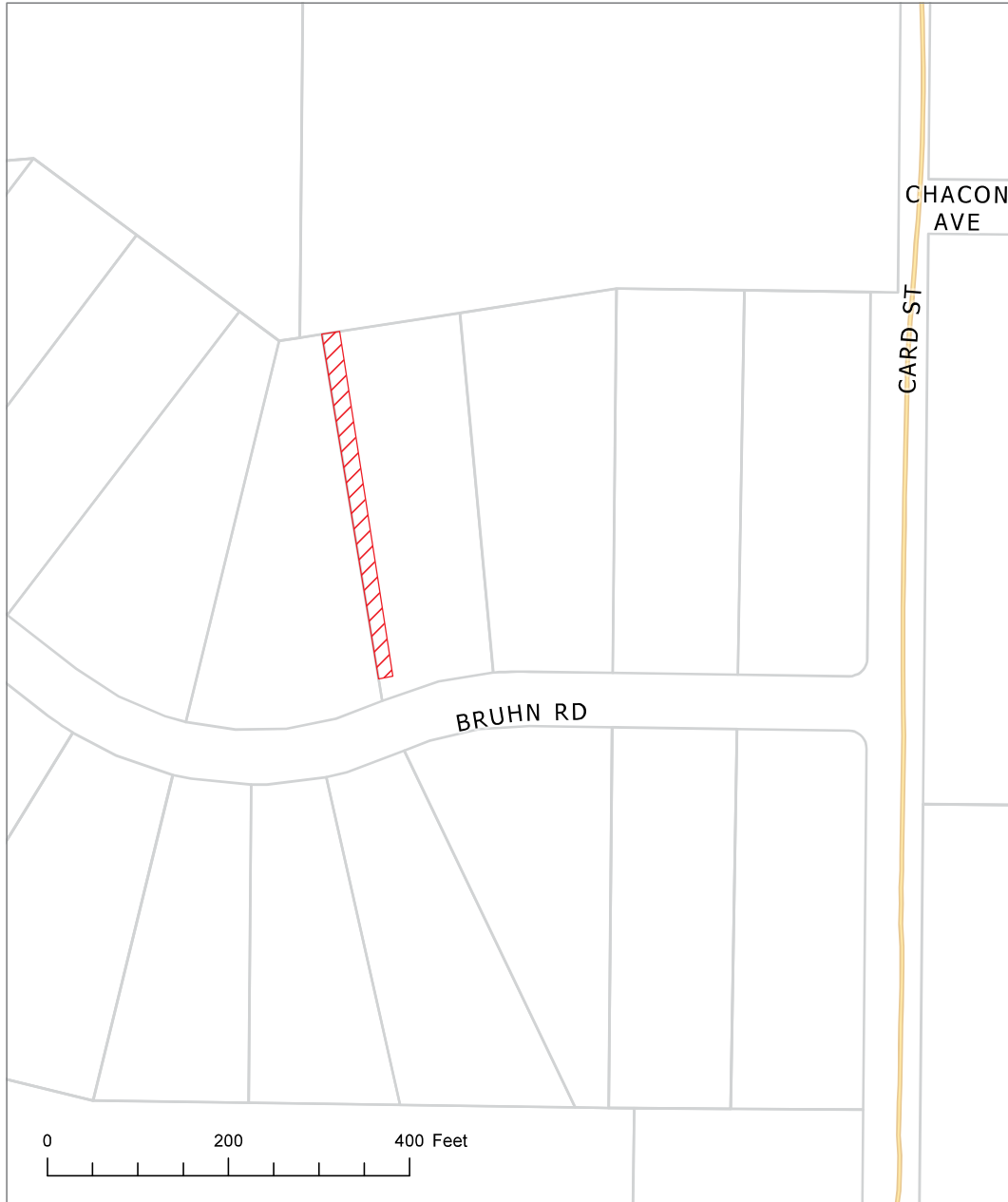
Commissioner Brantley moved to adjourn the meeting 10:06 PM.

Ann E. Shirnberg
Administrative Assistant

E. NEW BUSINESS

1. Utility Easement Vacation; KPB File 2022-070V

Request: Vacate a portion of a 10' utility easement along the west boundary of Lot 4, Block 2, Bruhn Subdivision, Plat KN 86-143

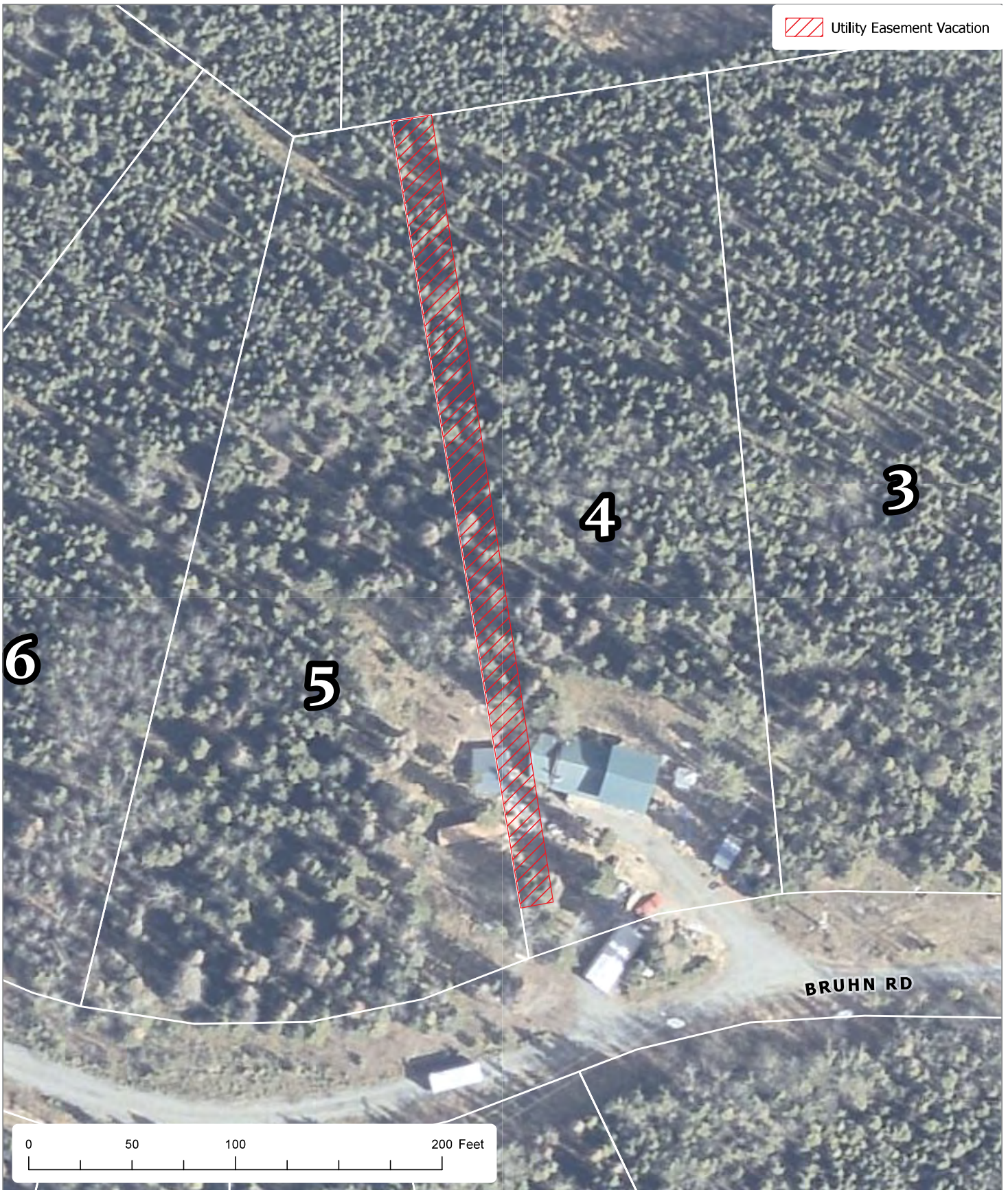


KPB File # 2022-070V
S14 T05N R08W
Sterling

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



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.

3	2 Bear Rd	1 T5N R8W SM
10	11 Atkins Rd	12 Johns Rd
15	14 Lot Location	13 Card St
STERLING		HIGHWAY

VICINITY 1" = 1 mile MAP

Bruhn Subd.

Lot 4 Block 2 As-Built Survey

Located in the SE1/4 Section 14, T5N R8W, SM, Alaska.
Kenai Peninsula Borough Kenai Recording District plat 86-143

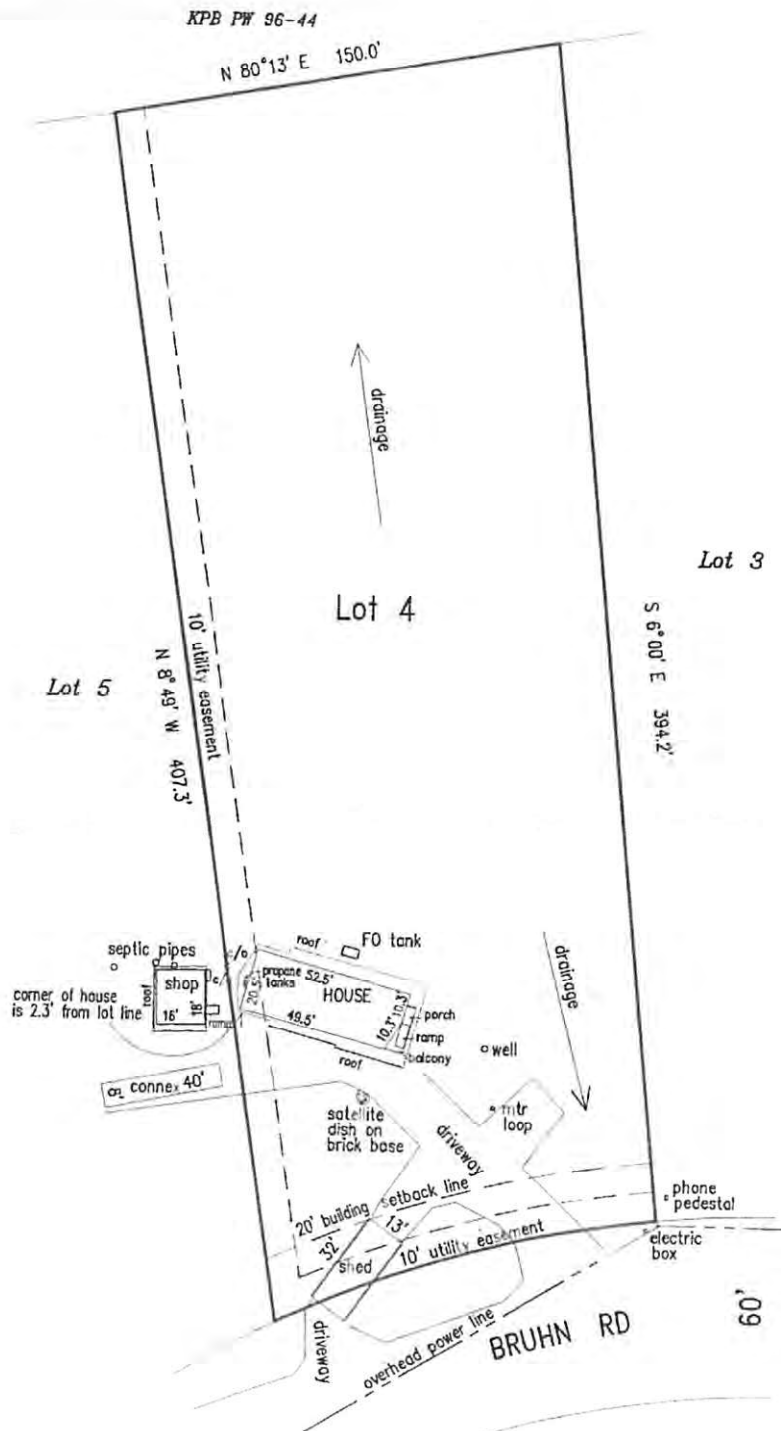
Prepared for

Kim Gomez Tiffany Clyde
Century 21 Freedom Realty
170 N Birch Ste 102
Soldotna, AK 99669

Prepared by

Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99568

SCALE 1" = 40' 13 May, 2022



ITEM 1 – UTILITY EASEMENT ALTERATION
BRUHN SUBDIVISION LOT 4 BLOCK 2

KPB File No.	2022-070V
Planning Commission Meeting:	June 27, 2022
Applicant / Owner:	Tanley Martinez of Sterling, AK
General Location:	Bruhn Road, Sterling

STAFF REPORT

Specific Request / Purpose as stated in the petition: Owner requests alteration on utility easement due to home being built within the setback. HEA has signed off on vacating the west boundary. ENSTAR has no gas out there, therefor no objection.

Notification: Notice of vacation mailings were sent by regular mail to fourteen owners of property within 600 feet. Notice of the proposed vacation was emailed to six agencies and interested parties.

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

Staff Analysis: This is a utility easement alteration for Lot 4 Block 3 of Bruhn Subdivision, Plat KN 86-143. There were no prior subdivisions for the property within Bruhn Subdivision. The plat created a 20 foot wide utility easement that was centered along the shared lot line of Lots 4 and 5 of Block 2. 10 foot utility easements were also granted adjacent to the dedicated right-of-way, Bruhn Road, as well as the creation of a 20 foot building setback.

The as-built that was submitted with the requests indicates a house within the western utility easement. A shed is also present within the setback, utility easement, and right-of-way dedication of Bruhn Road. The comment submitted with the application and comments from the utility providers indicate that the petition is to resolve the encroachment within the western utility easement.

This platting action will be to remove the entire 10 foot wide utility easement along the western boundary of Lot 4 Block 2 of Bruhn Subdivision with the exception of the front 20 feet along Bruhn Road. A 10 foot utility easement will remain along Bruhn Road that will increase to 20 feet within 10 feet of the side lot line. The 10 foot utility easement is still in place along the eastern lot line of Lot 5 Block 2.

The as-built indicates that there are structures associated with this lot within the neighboring lot. The depiction of the neighboring utility easement is not present but it appears that the shop and connex may be within the utility easement. The owner of Lot 5 Block 2 should contact the owners of Lot 4 Block 2 to resolve any encroachment issues if there is not an agreement in place.

KPB Code Compliance has gone to the site to review the encroachments along Bruhn Road and verified the KPB Code violations. A cease and desist notice is being prepared to be sent by certified mail.

A new drawing that is prepared by a licensed land surveyor will need to be prepared that visually shows the areas approved for vacation. That drawing will be recorded with the resolution to finalize the alteration.

The petition is for the western utility easement only. As this action is to alter an easement for utility providers use for the benefit of land owners there are several options available to the Planning Commission in there review of this item.

1. Approve the alteration and adopt PC Resolution 2022-026.
2. Approve the alteration by granting a one year approval and a resolution to be presented in the future for adoption. The approval would be subject to:
 - a. KPB Code violations being resolved and the following are demonstrated;

- b. KPB Road Department acknowledges in writing to the planning department all encroachment issues are resolved,
 - c. KPB Code Compliance acknowledges in writing that the violations have been resolved and the owners are no longer in violation of KPB Code,
 - d. A new as-built be provided that demonstrates code violations have been resolved to the satisfaction of the terms agreed upon.
3. Open public hearing and table the item. Direction on when or what will warrant the item to be brought back should be provided to staff.
 4. Deny the petition to alter the utility easement if found to be in the public's best interest to not grant approval.

Utility provider review:

HEA	HEA does not object to the vacation of the 10 foot wide utility easement adjoining the west boundary of Lot 4 Block 2, excluding the 20 feet segment adjoining Bruhn Road. HEA objects to the vacation of any portion of the 10 foot utility easement adjoining Bruhn Road. HEA notes that the as-built drawing depicts a shed located within the easement. HEA reserves the right to have the landowner remove the shed from the easement at the expense of the homeowner.
ENSTAR	No comments or recommendations
ACS	No objection to the vacation or encroachment of the utility easement on the west side of Lot 4 with the exception of the front 10 feet along the ROW.
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 29108 BRUHN RD</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: BRUHN RD</p> <p>Existing Street Name Corrections Needed: ATKINS RD on vicinity map should be ADKINS RD. 3 JOHNS RD on vicinity map should be THREE JOHNS ST.</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 29108 BRUHN RD will remain on lot 4.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: It appears that there are structures in the ROW and 20ft Set back both issues are code violations. Additionally structures on the neighboring property</p>
Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>

Assessing	Reviewer: Wilcox, Adeena Comments: Parcel appears to have improvements encroaching on adjoining parcel 06516405.
KPB Roads Department	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: The as-built indicates that there is an active unauthorized encroachment of the Bruhn Road ROW and the utility easement. I recommend that all platting action is tabled until the encroachments are fixed.

Findings:

1. The petition does not state that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation but a portion shall remain along Bruhn Road.
3. Bruhn Subdivision, Plat KN 86-143, granted a 20 foot wide utility easement centered along the shared lot line of Lots 4 and 5.
4. Bruhn Subdivision, Plat KN 86-143, created a 20 foot building setback along Bruhn Road.
5. Bruhn Subdivision, Plat KN 86-143, created a 10' utility easement along Bruhn Road.
6. A 10 foot wide utility easement will remain along the common lot line and will be within Lot 5.
7. Several violations to KPB Code exist due to the shed shown within Bruhn Road, the building setback, and the utility easement.
8. Encroachments appear to exist within Lot 5.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends if the utility easement alteration as petitioned is approved that it be subject to:

1. Grant utility easements requested by the utility providers.
2. Finalizing the approval of the easement alteration by either;
 - a. The recording of a subdivision plat within 12 months or,
 - b. The recording of a utility easement alteration resolution within 90 days of the adoption of the resolution by the Planning Commission, with the following requirements:
 - i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.
 - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
 - iii. The Planning Department is responsible for filing the Planning Commission resolution.

20.65.070 Alteration of platted utility easements

E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement 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. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.

F. An appeal of the planning commission decision under this section must be filed in the superior

court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2022-026
KENAI RECORDING DISTRICT**

Vacate a portion of a 10' utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143, granted by Bruhn Subdivision KN 86-143 (KN0860143); within S14, T05N, R08W, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2022-070V

WHEREAS, a request has been received from Tanley Jo Martinez of Sterling, AK to vacate a portion of a 10' utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143 granted by Bruhn Subdivision KN 86-143 (KN0860143); and

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

WHEREAS, the Kenai Peninsula Borough Roads Department provided written comments to table the item until other encroachment issues are resolved; and

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

WHEREAS, no surrounding properties will be denied utilities; and

WHEREAS, on June 27, 2022, the Kenai Peninsula Borough Planning Commission addressed all concerns about the proposed vacation; and

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

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

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

Section 1. That the above described 10 foot utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143, excluding the front 20 feet along Bruhn Road, is hereby vacated.

Section 2. That an as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the locations of the portions of the utility easements being vacated be attached to, and made a part of this resolution, becoming page 2 of 2.

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

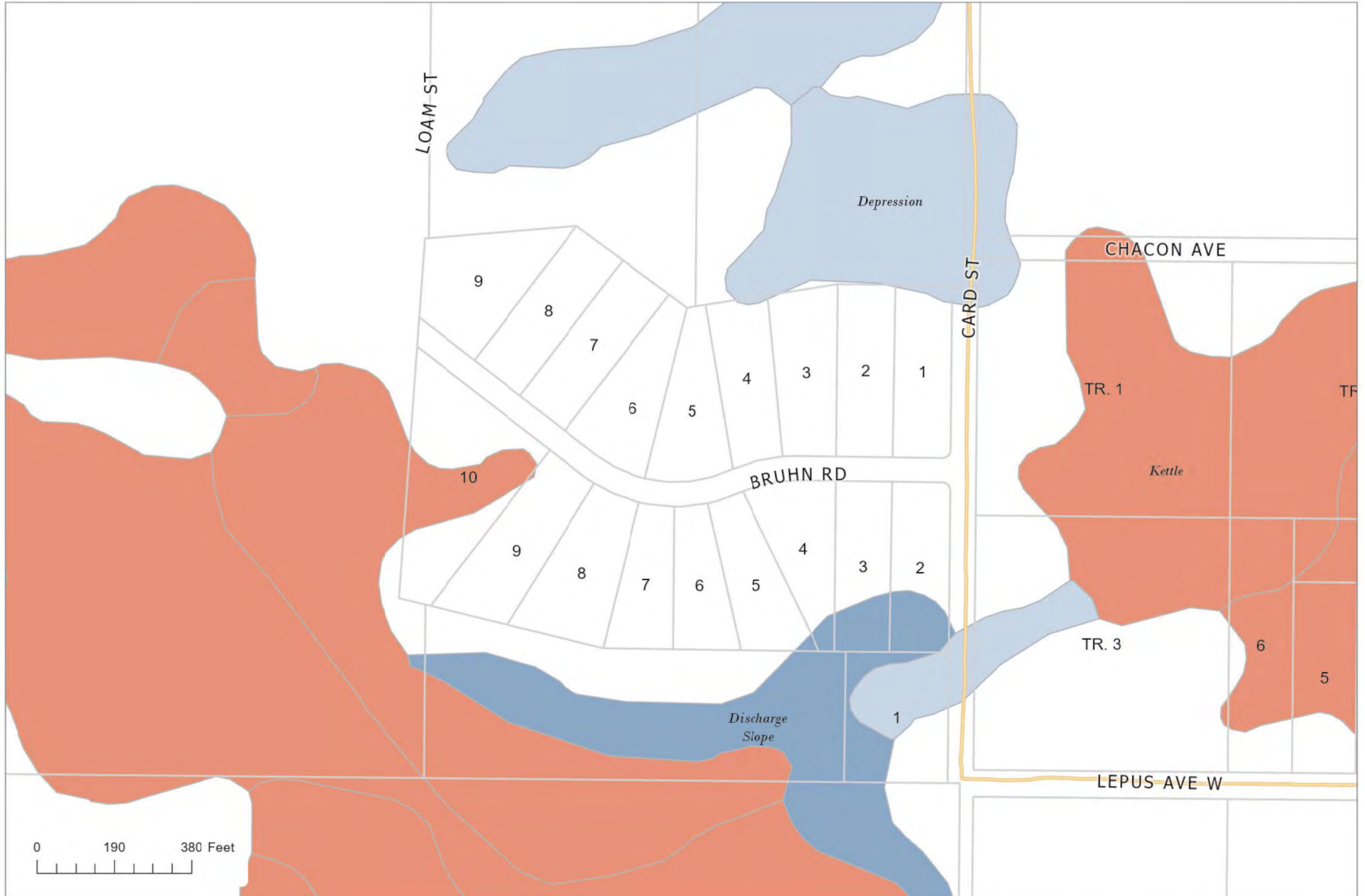
Section 4. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 2022.

Blair J. Martin, Chairperson
Planning Commission

ATTEST: _____
Ann Shimberg,
Administrative Assistant

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



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



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

On May 17, 2022, at 3:10 PM, Tanley Martinez <tanleymartinez@rocketmail.com> wrote:

Thank you so much. No I don't think I need them anymore. Thanks again.

Tanley Martinez

Sent from my iPhone

On May 16, 2022, at 4:00 PM, Huff, Scott <shuff@homerelectric.com> wrote:

Ms. Martinez,

Please find attached the utility review to vacate the 10 foot wide utility easement that adjoins the west boundary of Lot 4 Block 2. HEA does agree to the vacation of the utility easement on the west boundary common with Lot 5, but does not agree to the vacation of the utility easement on the south boundary common with Bruhn Road right of way. The asbuilt drawing depicts a shed within the 10 foot utility easement on the south boundary. HEA reserves the right to have the homeowner remove the shed from the utility easement at the homeowner's expense.

Please let me know if you would like for me to send you the paper copies back to you, or you can stop by and pick them up, or if the paper copies are not needed any more.

Thank you,

SCOTT HUFF | Land Management Officer – Land Surveyor

Homer Electric Association, Inc.

280 Airport Way | Kenai, Alaska 99611

office 907.335.6209 | toll free 800.478.8551 | www.homerelectric.com

Your Member-Owned Electric Cooperative

CONFIDENTIALITY NOTICE: The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure.

<Bruhn Subd Lot 4 Block 2.pdf>

3	2	1
	Rear Rd	T5N R8W SM
10	11	12
	Atkins Rd	Johns Rd
STERLING		HIGHWAY
15	14	13
Lot Location	Card St	

VICINITY 1" = 1 mile MAP

Bruhn Subd.

Lot 4 Block 2 As-Built Survey

Located in the SE1/4 Section 14, T5N R8W, SM, Alaska.
Kenai Peninsula Borough Kenai Recording District plat 86-143

Prepared for
Kim Gomez Tiffany Clyde
Century 21 Freedom Realty
170 N Birch Ste 102
Soldotna, AK 99669

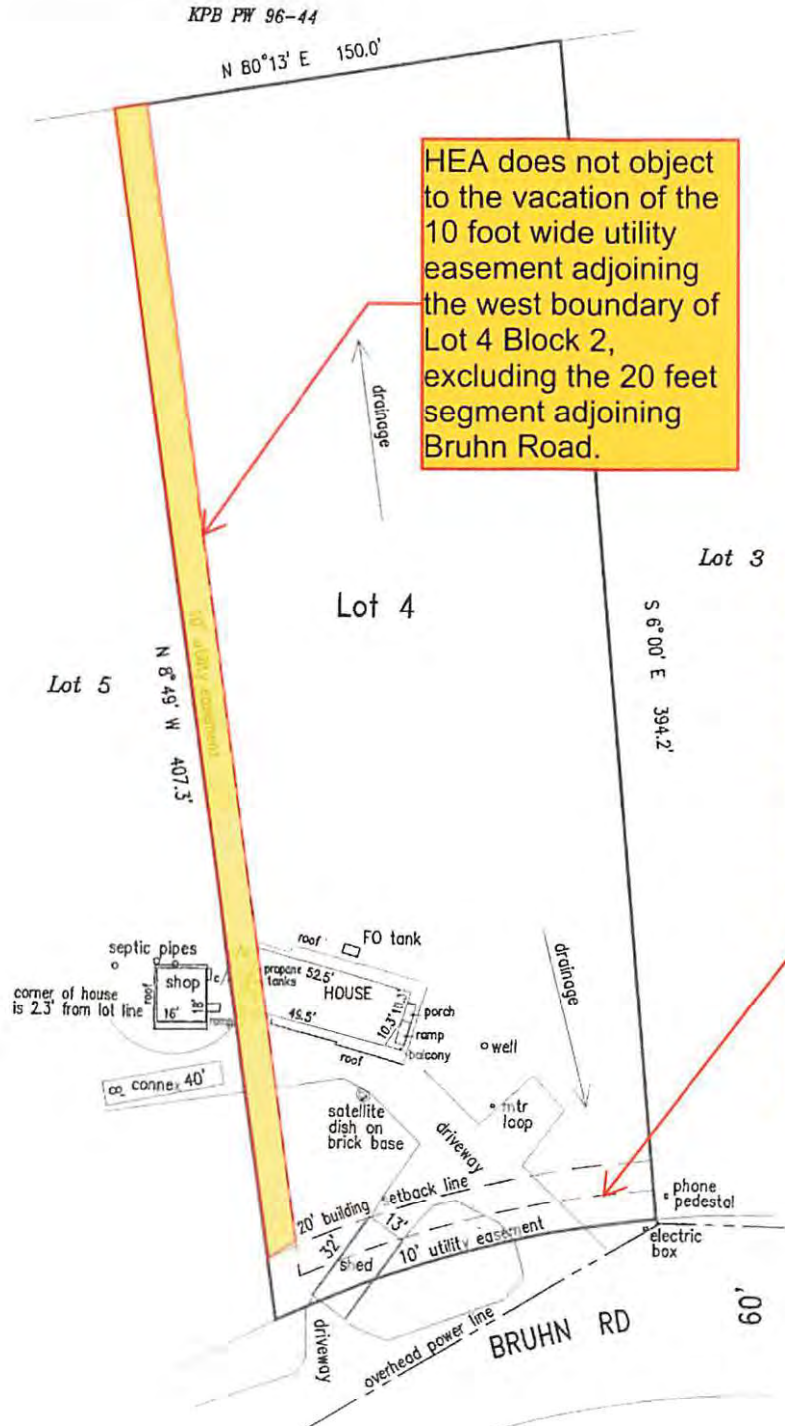
Prepared by
Johnson Surveying
P.O. Box 27
Clam Gulch, Ak 99568

SCALE 1" = 40' 13 May, 2022



Digitally signed by Huff, Scott
DN: cn=Huff, Scott
e=shuff@HomerElectric.com
Reason: I am the author of
this document
Location:
Date: 2022-05-16
15:52-08:00

Scott Huff



HEA does not object to the vacation of the 10 foot wide utility easement adjoining the west boundary of Lot 4 Block 2, excluding the 20 feet segment adjoining Bruhn Road.

HEA objects to the vacation of any portion of the 10 foot utility easement adjoining Bruhn Road. HEA notes that the asbuilt drawing depicts a shed located within the easement. HEA reserves the right to have the landowner remove the shed from the easement at the expense of the homeowner.

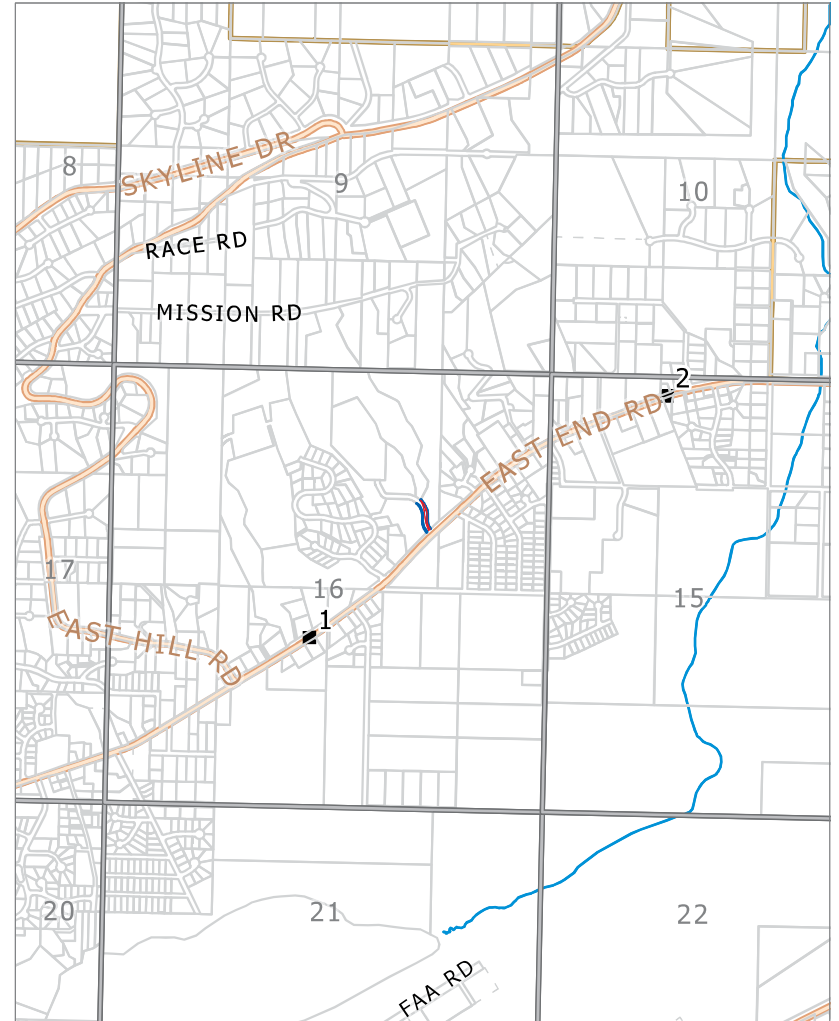
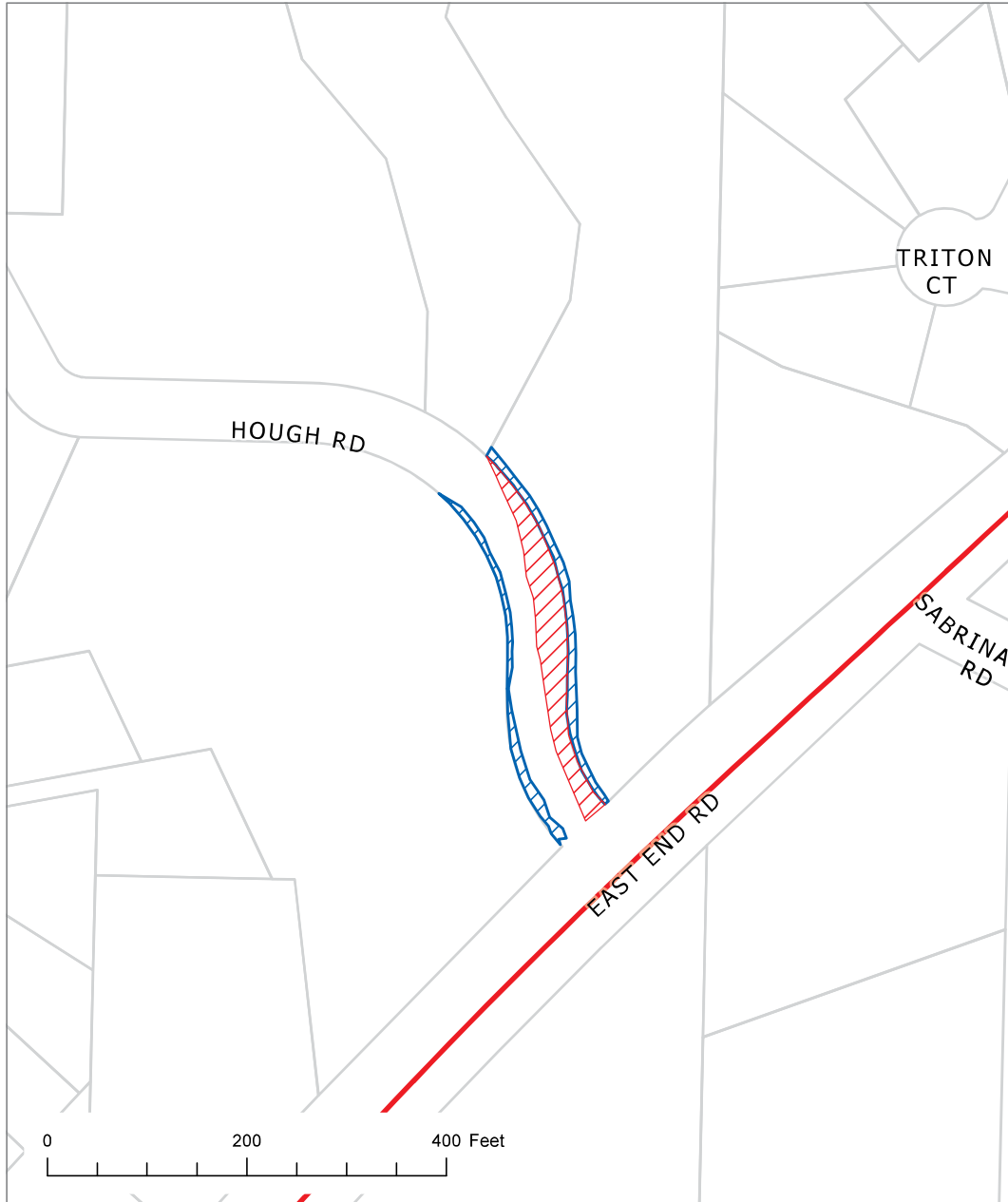
Owner requests alteration on utility easement due to home being built within the setback. HEA has signed off on vacating west boundary (see attached email from Scott Huff along with as-built alterations). Enstar has no gas out there therefore no objection.

E. NEW BUSINESS

2. ROW Vacation: KPB File 2022-076V

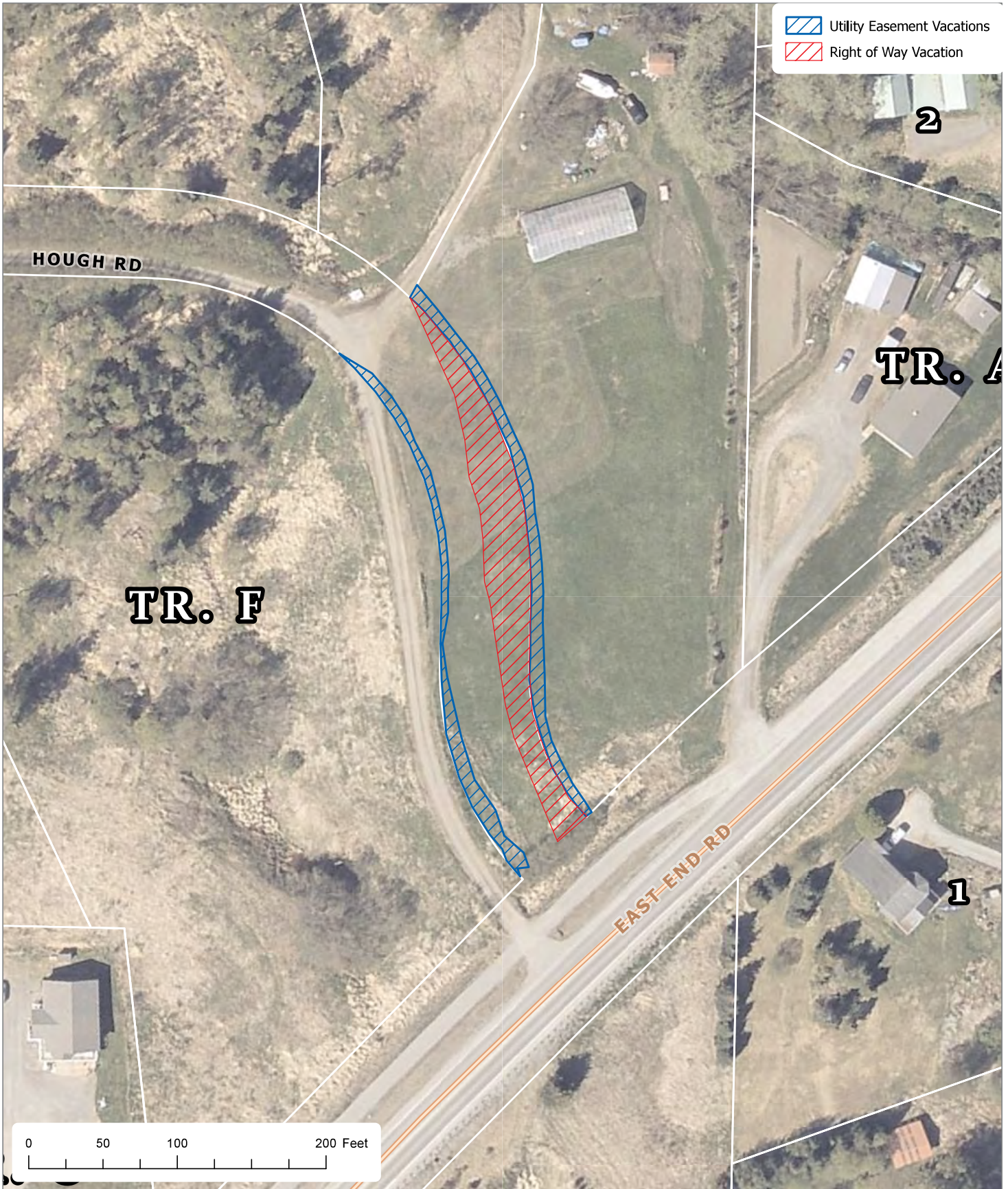
Request: Vacate a portion of Hough Road, a 60' right-of-way and associated utility easement

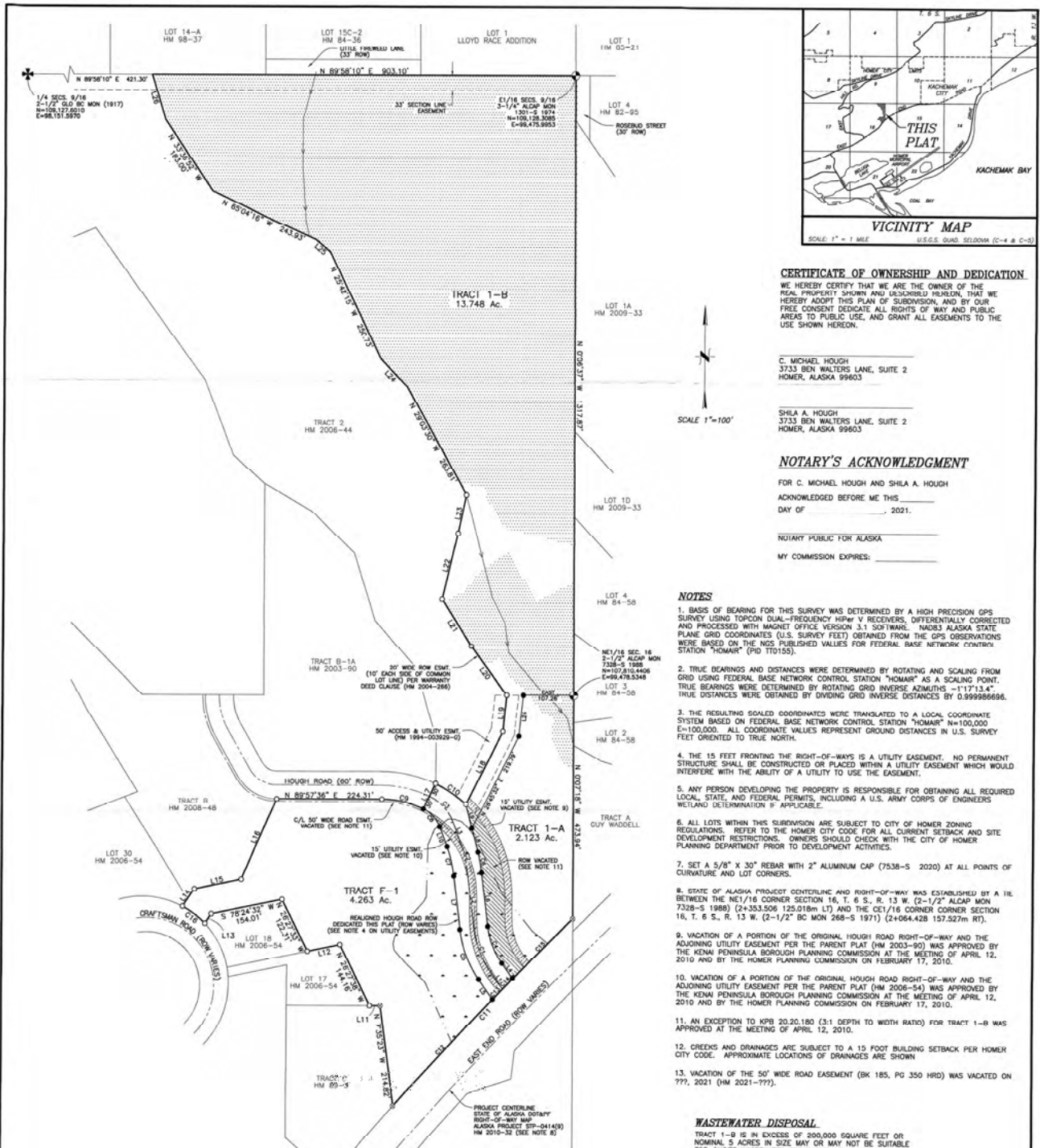
**Petitioners/Landowners: Michael & Shila Hough
City of Homer**



KPB File # 2022-076V
S16 T06S R13W
Homer

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





CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREIN, THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION, AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

C. MICHAEL HOUGH
3733 BEN WALTERS LANE, SUITE 2
HOMER, ALASKA 99603

SHILA A. HOUGH
3733 BEN WALTERS LANE, SUITE 2
HOMER, ALASKA 99603

NOTARY'S ACKNOWLEDGMENT

FOR C. MICHAEL HOUGH AND SHILA A. HOUGH
ACKNOWLEDGED BEFORE ME THIS
DAY OF _____, 2021.

NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES: _____



NOTES

1. BASIS OF BEARING FOR THIS SURVEY WAS DETERMINED BY A HIGH PRECISION GPS SURVEY USING TOPCON DUAL-FREQUENCY GPS RECEIVERS, DIFFERENTIALLY CORRECTED AND PROCESSED WITH MAGNET OFFICE VERSION 3.01 SOFTWARE. NADE3 ALASKA STATE PLANE GRID COORDINATES (U.S. SURVEY FEET) OBTAINED FROM THE GPS OBSERVATIONS WERE BASED ON THE NGS PUBLISHED VALUES FOR FEDERAL BASE NETWORK CONTROL STATION "HOMAR" (710 17055).
2. TRUE BEARINGS AND DISTANCES WERE DETERMINED BY ROTATING AND SCALING FROM GRID USING FEDERAL BASE NETWORK CONTROL STATION "HOMAR" AS A SCALING POINT. TRUE BEARINGS WERE DETERMINED BY ROTATING GRID INVERSE AZIMUTHS -117.13.4". TRUE DISTANCES WERE OBTAINED BY DIVIDING GRID INVERSE DISTANCES BY 0.999986668.
3. THE RESULTING SCALED COORDINATES WERE TRANSLATED TO A LOCAL COORDINATE SYSTEM BASED ON FEDERAL BASE NETWORK CONTROL STATION "HOMAR" N=100,000 E=100,000. ALL COORDINATE VALUES REPRESENT GROUND DISTANCES IN U.S. SURVEY FEET ORIENTED TO TRUE NORTH.
4. THE 15 FEET FRONTING THE RIGHT-OF-WAY IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
5. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE, AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
6. ALL LOTS WITHIN THIS SUBDIVISION ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS. REFER TO THE HOMER CITY CODE FOR ALL CURRENT SETBACK AND SITE DEVELOPMENT RESTRICTIONS. OWNERS SHOULD CHECK WITH THE CITY OF HOMER PLANNING DEPARTMENT PRIOR TO DEVELOPMENT ACTIVITIES.
7. SET A 5/8" X 30" REBAR WITH 2" ALUMINUM CAP (7538-S 2020) AT ALL POINTS OF CURVATURE AND LOT CORNERS.
8. STATE OF ALASKA PROJECT CENTERLINE AND RIGHT-OF-WAY WAS ESTABLISHED BY A 1:6 BETWEEN THE NE1/4 CORNER SECTION 16, T. 6 S., R. 13 W. (2-1/2" ALCP MON 7328-S 1988) (2+333.506 125.016m LT) AND THE CE1/4 CORNER CORNER SECTION 16, T. 6 S., R. 13 W. (2-1/2" BC MON 268-S 1971) (2+064.428 157.527m RT).
9. VACATION OF A PORTION OF THE ORIGINAL HOUGH ROAD RIGHT-OF-WAY AND THE ADJOINING UTILITY EASEMENT PER THE PARENT PLAT (HM 2003-90) WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF APRIL 12, 2010 AND BY THE HOMER PLANNING COMMISSION ON FEBRUARY 17, 2010.
10. VACATION OF A PORTION OF THE ORIGINAL HOUGH ROAD RIGHT-OF-WAY AND THE ADJOINING UTILITY EASEMENT PER THE PARENT PLAT (HM 2006-54) WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF APRIL 12, 2010 AND BY THE HOMER PLANNING COMMISSION ON FEBRUARY 17, 2010.
11. AN EXCEPTION TO KPB 20.20.180 (3:1 DEPTH TO WIDTH RATIO) FOR TRACT 1-B WAS APPROVED AT THE MEETING OF APRIL 12, 2010.
12. CREEKS AND DRAINAGES ARE SUBJECT TO A 15 FOOT BUILDING SETBACK PER HOMER CITY CODE. APPROXIMATE LOCATIONS OF DRAINAGES ARE SHOWN.
13. VACATION OF THE 50' WIDE ROAD EASEMENT (BK 185, PG 350 HRD) WAS VACATED ON ???, 2021 (HM 2021-???)

WASTEWATER DISPOSAL

TRACT 1-B IS IN EXCESS OF 200,000 SQUARE FEET OR NOMINAL 5 ACRES IN SIZE MAY OR MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY FUTURE SUBDIVISION OF THIS LOT INTO LESS THAN 200,000 SQUARE FEET MUST MEET THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

TRACT 1-A AND TRACT F-1 HAVE SOIL CONDITIONS THAT HAVE BEEN FOUND UNSUITABLE FOR CONVENTIONAL ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS. PLANS SHOWING A SUITABLE ALTERNATE WASTEWATER DISPOSAL SYSTEM THAT COULD BE USED ON TRACTS IN THIS SUBDIVISION ARE INCLUDED IN THE ENGINEER'S SUBDIVISION AND SOILS REPORT AND ARE AVAILABLE FROM THE KENAI PENINSULA BOROUGH. ALL ALTERNATE ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS MUST BE DESIGNED FOR THE SPECIFIC INSTALLATION BY A QUALIFIED ENGINEER REGISTERED TO PRACTICE IN ALASKA, AND THE DESIGN MUST BE APPROVED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION PRIOR TO CONSTRUCTION.

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	CHORD BRNG	CHORD DIST
C1	28.3044°	200.00'	99.53'	N 21.0727° W	98.50'
C2	13.2713°	300.00'	70.44'	N 13.3841° W	70.29'
C3	4.2018°	1000.00'	22.76'	N 4.2018° W	22.76'
C4	28.3044°	170.00'	84.60'	N 21.0727° W	83.73'
C5	28.3044°	170.00'	84.60'	N 21.0727° W	83.73'
C6	28.3044°	170.00'	84.60'	N 21.0727° W	83.73'
C7	28.3044°	170.00'	84.60'	N 21.0727° W	83.73'
C8	13.2713°	300.00'	70.44'	N 13.3841° W	70.29'
C9	28.3044°	170.00'	84.60'	N 21.0727° W	83.73'
C10	17.6818°	203.78'	91.51'	N 7.1030° W	90.74'
C11	32.4240°	8254.80'	502.18'	N 42.2372° W	522.05'
C12	0.1718°	8524.80'	30.52'	N 44.1818° W	30.52'
C13	0.1718°	8524.80'	30.52'	N 44.1818° W	30.52'
C14	0.1718°	8524.80'	30.52'	N 44.1818° W	30.52'
C15	1.1270°	8524.80'	180.60'	N 44.1818° W	30.52'
C16	18.4142°	185.00'	60.38'	N 52.9112° W	60.10'

LINE TABLE

LINE	BEARING	DISTANCE
L1	N 82.2249° W	45.62'
L2	N 82.2249° W	45.62'
L3	N 82.2249° W	45.62'
L4	N 82.2249° W	45.62'
L5	N 82.2249° W	45.62'
L6	N 82.2249° W	45.62'
L7	N 82.2249° W	45.62'
L8	N 82.2249° W	45.62'
L9	N 82.2249° W	45.62'
L10	N 82.2249° W	45.62'
L11	N 82.2249° W	45.62'
L12	N 82.2249° W	45.62'
L13	N 82.2249° W	45.62'
L14	N 82.2249° W	45.62'
L15	N 82.2249° W	45.62'
L16	N 82.2249° W	45.62'
L17	N 82.2249° W	45.62'
L18	N 82.2249° W	45.62'
L19	N 82.2249° W	45.62'
L20	N 82.2249° W	45.62'
L21	N 82.2249° W	45.62'
L22	N 82.2249° W	45.62'
L23	N 82.2249° W	45.62'
L24	N 82.2249° W	45.62'
L25	N 82.2249° W	45.62'
L26	N 82.2249° W	45.62'

- LEGEND**
- INDICATES 1917 2-1/2" BC GLO PRIMARY MONUMENT RECOVERED THIS SURVEY
 - INDICATES PRIMARY MONUMENT RECOVERED OR SET AS SHOWN
 - INDICATES 5/8" X 30" REBAR WITH 2" ALCP (5780-S, 2008) RECOVERED THIS SURVEY
 - INDICATES 1/2" REBAR RECOVERED THIS SURVEY
 - INDICATES 5/8" X 30" REBAR WITH 2" ALCP (7538-S, 2021) SET THIS SURVEY
 - INDICATES DISCHARGE SLOPE PER KENAI WATERSHED FORUM 2013 COOK INLET WETLANDS MAPPING
 - INDICATES CENTERLINE OF DRAINAGE
 - INDICATES AREAS WITH SLOPES GREATER THAN 20%

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF APRIL 12, 2010



BY: _____ AUTHORIZED OFFICIAL KENAI PENINSULA BOROUGH DATE: _____



HOMER RECORDING DISTRICT KPB FILE NO. 2010-024

CHRISTENSEN TRACTS 2009 ADDITION

THE SUBDIVISION OF
TRACT 1, CHRISTENSEN TRACT NO. 4 (HM 2006-44)
AND TRACT F, STREAM HILL PARK UNIT 2 (HM 2006-48)
AND
THE VACATION OF A PORTION OF THE HOUGH ROAD
RIGHT-OF-WAY INCLUDING ASSOCIATED ADJOINING
UTILITY EASEMENTS
LOCATED WITHIN THE NE1/4, NE1/4 SECTION 16,
T. 6 S., R. 13 W., SEWARD MERIDIAN, CITY OF HOMER, KENAI
PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA
CONTAINING 20.775 ACRES

OWNERS:
C. MICHAEL HOUGH AND SHILA A. HOUGH
3733 BEN WALTERS LANE, SUITE 2 HOMER, ALASKA 99603

GEOVERA, LLC
PO BOX 3235
HOMER ALASKA 99603
(907) 399-4345
EMAIL: scsmith@gci.net

DRAWN BY: SC5 DATE: MARCH 2021 SCALE: 1" = 100'
CHK BY: SC5 JOB #2021-10 SHEET 1 OF 1

KPB 2022-076V

AGENDA ITEM E. NEW BUSINESS

**ITEM 2 - RIGHT OF WAY VACATION
VACATE A PORTION OF HOUGH ROAD AND ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2022-076V
Planning Commission Meeting:	June 27, 2022
Applicant / Owner:	C. Michael and Shila A. Hough of Homer Alaska
Surveyor:	Stephen Smith / Geovera, LLC
General Location:	East End Road, Hough Road, City of Homer
Legal Description:	Hough Road, Tract F of Stream Hill Park Unit 2, HM 2008-048 and Tract 1 of Christensen Tracts 2009 Addition, HM 2006-44, Section 16, Township 6 South, Range 13 West.

STAFF REPORT

Specific Request / Purpose as stated in the petition: The existing road was not constructed within the existing ROW. The ROW is being re-aligned so that it is centered on the existing road. Only a portion of the existing ROW is being vacated, along with the adjoining 15 foot utility easements. New 15 foot utility easements are being dedicated adjoining both sides of the re-aligned ROW.

Notification: Public notice appeared in the June 16, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the June 23, 2022 issue of the Homer News as part of the Commission’s tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Homer

Post Office of Homer

Thirty-nine certified mailings were sent to owners of property within 300 feet of the proposed vacation. Twenty-three receipts had been returned when the staff report was prepared.

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

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

- | | |
|--|------------------------------------|
| State of Alaska Dept. of Fish and Game | Ninilchik Traditional Council |
| State of Alaska DNR | Alaska Communication Systems (ACS) |
| State of Alaska DOT | ENSTAR Natural Gas |
| State of Alaska DNR Forestry | General Communications Inc, (GCI) |
| City of Homer | Homer Electric Association (HEA) |
| Emergency Services of Homer | |

Legal Access (existing and proposed): The access will remain as Hough Road. The right-of-way is not constructed within the dedication. The owners are proposing to vacate portions of the right-of-way and then dedicate new portions to provide a realignment that will allow the existing right-of-way to be within the dedication.

KPB Roads Dept. comments	Out of Jurisdiction: Yes Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: There are some wetlands associated with the right-of-way. The roadway is already constructed and has been for some time. There is sloping terrain in the area but the portion to be vacated is consistent with the slopes for the proposed realignment.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Homer Comments: Located in an unregulated D Zone</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
-------------------------	--

Staff Analysis: The proposed vacation is to remedy the alignment issues of Hough Road, a 60 foot right-of-way. The proposal is to vacate approximately a half width of Hough Road for 390 feet including the adjoining 15 foot utility easements. If approved, a dedication of additional right-of-way atop the constructed road, including 15 foot utility easements along each side of the new dedication, will be completed by recording a new plat.

The original access is depicted on Christensen Tracts Amended, HM 89-3 as a 50 foot private access easement (HRD Book 185 Page 349). The access easement was also shown on plat Christensen Tracts No. 4, HM 2006-44.

Christensen Tract No. 3, HM 2003-90, dedicated the eastern 30 foot of Hough Road right-of-way. Stream Hill Park Unit 1, HM 2006-54, dedicated the western 30 feet of Hough Road right-of-way.

Vacation of the dedicated right-of-way will not remove the private access easement. If they owners wish to remove the private access easement it will need to be done by separate documents and recorded with the Homer Recording District. If this is completed prior to the recording of the plat, add a plat note with the recording information that terminated the private access easement.

There are some gas lines within the associated utility easements. The final plat has been reviewed and an agreement from ENSTAR is required to make sure all their easement needs are being met.

This vacation and the associated plat were originally heard under KPB old code in 2010. The KPB Planning Commission heard the vacation on April 12, 2010. The Planning Commission approved the vacation by unanimous consent. The Homer City Council upheld the Planning Commission decision at their April 26, 2010 meeting. The plat finalizing the vacation was not recorded within one year.

The KPB Plat Committee approved the preliminary plat on April 12, 2010. Various time extensions have been granted for the preliminary plat. The last time extension was granted in 2020, with the consent of the City of Homer Planning Commission. The time extension was granted through June 8, 2022, subject to the plat being recorded prior to April 13, 2021 to be reviewed under old code. The original surveyor retired and a new surveyor has been hired.

Due to design changes, and the requirement to comply with current subdivision standards, the plat was brought back before the Plat Committee to receive new approval including exceptions requests. The Plat Committee heard the plat at the May 10, 2021 meeting and granted approval. The right-of-way vacation was heard and approved by the Planning Commission on April 26, 2021. The Homer City Council consented to the vacation on May 10, 2021. The right-of-way vacation must have been finalized by May 10, 2022. The owners were still working out other

details of the project and did not finalize in time. They have submitted a new petition and are requesting approval of the vacation.

If approved, plat Christensen Tract 2021 Addition will finalize the proposed right of way vacations. The plat received its approval on May 10, 2021 and the approval is valid until May 10, 2023. No time extensions have been required at this time but may be issued in accordance with KPB 20.25.110. A final was submitted for review on January 31, 2022 with a review letter being sent to the owner and surveyor on February 9, 2022. If the vacation is approved, there will need to be some revisions to plat notes to include new meeting dates.

The other petitions and applications had been reviewed by the City of Homer Planning and Zoning Commission. The surveyor was notified that we would require documentation from the City of Homer that was either minutes from the P&Z Commission or a memo stating that a new hearing was not required. Staff had not received any communication when the staff report was prepared. If information is provided to staff it will be included in the desk packet. Staff will not finalize the vacation until a letter of consent from the City of Homer Planning Department has been received that shows all their concerns have been addressed. The approval will require consent from the City of Homer City Council.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right-of-way is in use but not constructed in the dedication.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Already constructed
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: New easements will be granted along the new dedication
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: N/A
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: Will not limit, will only realign with constructed right-of-way
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: None of been requested or appear needed
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a 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 utility easement be granted in place of the right-of-way.
Staff comments: If any utility easements are requested by providers shall be reviewed and unless the owner works out a resolution shall be granted.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: This is a road realignment.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Homer City Council will hear the vacation within 30 days.

KPB department / agency review:

Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat. Review Not Required</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 4580 CRAFTSMAN RD 4630 HOUGH RD</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: CRAFTSMAN RD HOUGH RD EAST END RD</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: City of Homer will advise on affected addresses.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

Utility provider review:

HEA	No comments
ENSTAR	
ACS	No objections
GCI	

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

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

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, 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.**
- J. A planning commission decision denying a vacation application is final. 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.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas*

that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.

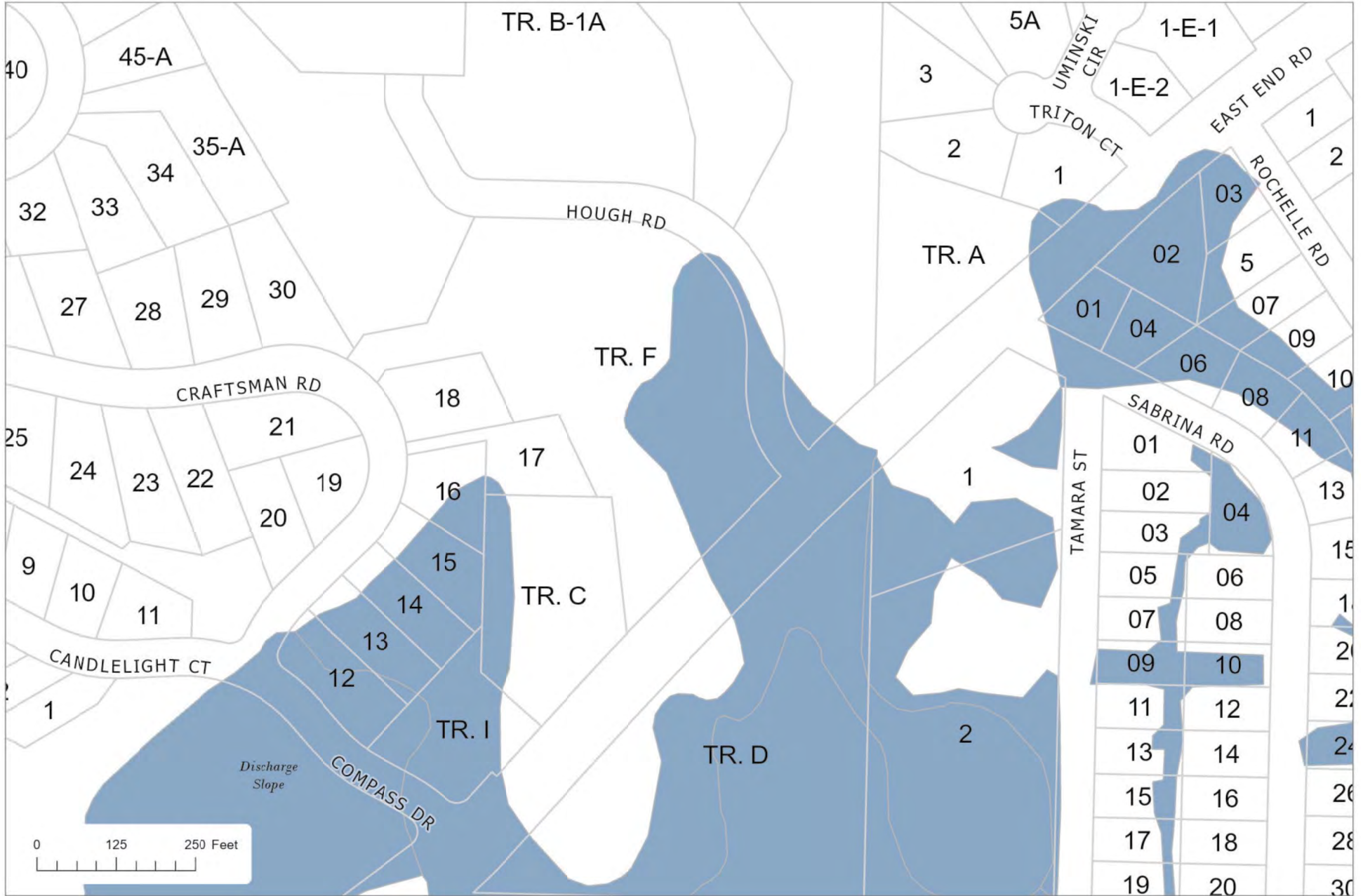
Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- Focus Area: Transportation

o Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.

- Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
- Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

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.



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.

CURVE TABLE

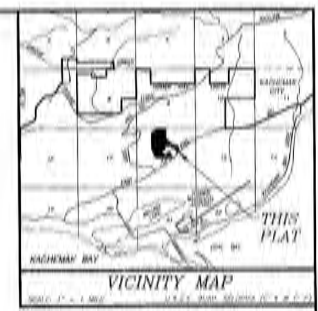
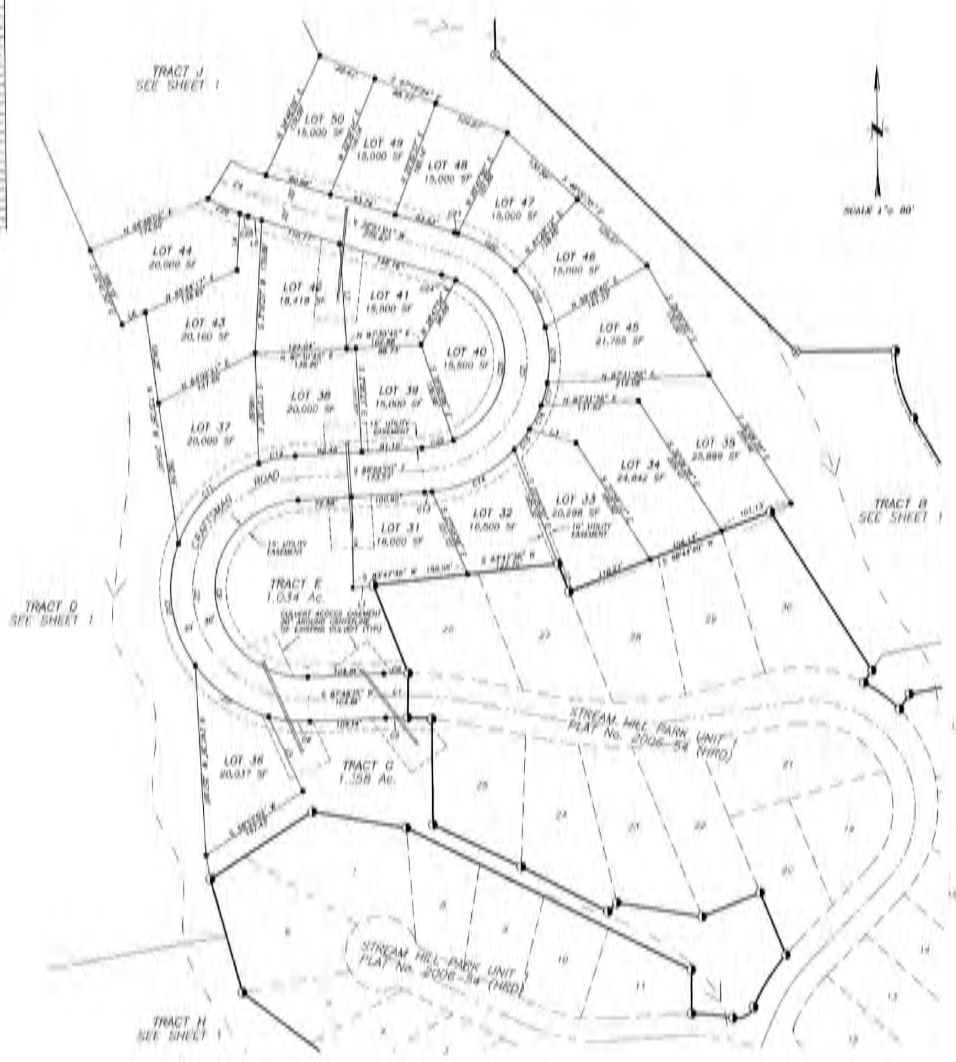
CURVE	DELTA	RADIUS	CHORD	CHORD DIST
C1	3°36'09"	500'		
C2	1°29'05"	150'		
C3	159°45'01"	150'		
C4	14°38'00"	200'		
C5	2°27'19"	475'		
C6	18°01'31"	180'		
C7	32°19'50"	180'		
C8	3°36'09"	500'		
C9	1°29'05"	150'		
C10	35°19'14"	180'		
C11	30°34'13"	180'		
C12	16°06'49"	180'		
C13	3°11'05"	180'		
C14	40°43'54"	180'		
C15	17°55'01"	180'		
C16	11°29'26"	180'		
C17	10°03'17"	180'		
C18	24°09'20"	180'		
C19	27°50'14"	180'		
C20	29°51'23"	180'		
C21	1°59'17"	180'		
C22	21°08'31"	120'		
C23	128°49'04"	120'		
C24	6°42'24"	120'		
C25	2°33'08"	230'		
C26	11°44'54"	230'		

LINE TABLE

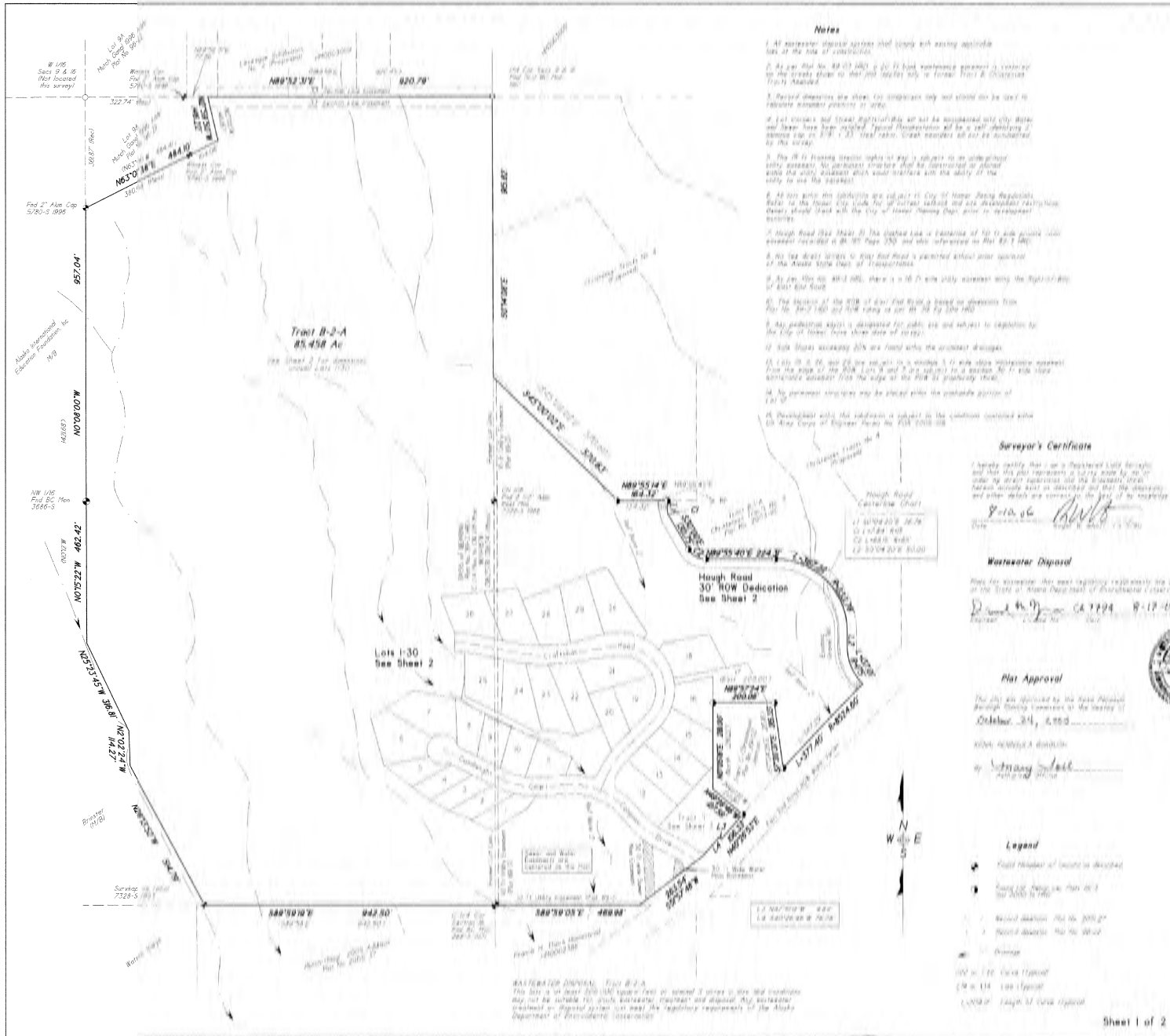
LINE	BEARING	LENGTH
L1	N 83°47'36" E	100.00
L2	S 21°05'01" E	100.00
L3	S 2°27'39" E	100.00
L4	S 3°18'47" E	100.00
L5	S 22°51'01" E	100.00
L6	S 63°02'51" W	100.00
L7	S 8°11'58" E	100.00
L8	S 2°38'43" E	100.00
L9	S 24°17'57" E	100.00

LEGEND

- INDICATES 5/8" X 30" REBAR WITH 3" CLEAR (5700-S, 2004) RECOVERED THIS SURVEY
- INDICATES PROPERTY CORNER OF RECORD RECOVERED THIS SURVEY AS SHOWN
- INDICATES 5/8" X 30" REBAR WITH 3" CLEAR (7060-S, 2004) SET THIS SURVEY
- ↘ INDICATES EXISTING DRAINAGE



HOMER RECORDING DISTRICT RFD FILE No. 2008-043		
STREAM HILL PARK UNIT 2		
A REPLAT OF TRACT B-2-A, STREAM HILL PARK UNIT 1 (2006-54 HWD)		
LOCATED WITHIN THE NW 1/4 AND DE 1/24 SEC 16, T 5 S, R. 11 W, SEWARD MERIDIAN, CITY OF HOMER BOUND, PENINSULA BOROUGH, THIRD CENSUS DISTRICT, ALASKA CONTAINING 80,323 ACRES		
SEABRIGHT SURVEY & DESIGN		
1044 EAST ROAD, SUITE A HOMER ALASKA 99603 (907) 235-4247 [EMAIL] seabright@alaska.net		
DRAWN BY: SCD	DATE: FEBRUARY 2008	SCALE: 1" = 80'
CHK BY: R.R.	JOB NO.: 42	SHEET 2 OF 3



- Notes**
- All waterway disposal system shall comply with existing applicable laws at the time of construction.
 - As per Plat No. 89-03 (MS) a 20 ft bank easement is provided on the streets shown on this plat and applies only to Tract B-2-A (Division 1) and Division 2.
 - Partial easements are shown on this plat and shall not be used to relocate easement positions as shown.
 - All easements and (small) right-of-way shall be maintained until they have been fully established. Typical easements shall be a full 20-foot easement with a 2:1 or 3:1 "fill" ratio. Easement shall not be maintained on the street.
 - The 20 ft bank easement shall not be subject to any other utility easement. No parking structures shall be constructed or placed within the 20-foot easement which would interfere with the ability of the utility to use the easement.
 - All lots within this subdivision are subject to City of Homer zoning regulations. Refer to the Homer City Code for all zoning setbacks and all development restrictions. Owners should check with the City of Homer Planning Dept. prior to development activities.
 - Hough Road (See Sheet 2) The distance between the centerline of Hough Road and the centerline of the 20 ft ROW is 100.00' as shown on Plat 82-1 (MS).
 - All lots shall comply with the 20 ft ROW as shown on this plat.
 - As per Plat No. 89-03 (MS), there is a 10 ft wide utility easement along the right-of-way of Hough Road.
 - The location of the ROW of Hough Road is based on information from Plat No. 89-03 (MS) and Hough Road is 100 ft wide as shown on Plat 82-1 (MS).
 - All parking spaces are designed for public use and subject to regulation by the City of Homer, from above date of survey.
 - All lots shall comply with 20 ft setback within the easement boundaries.
 - All lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 shall comply with the 20 ft ROW as shown on this plat.
 - All easement structures may be placed within the easement portion of the ROW.
 - Development within the easement is subject to the conditions contained within the Homestead Copy of Engineer Record No. 204-2008-008.

Ownership Certificate

We hereby certify that we are the owners of the two parcels shown and described herein and that we hereby grant this plat of subdivision and all other final plat maps of subdivision to the public use and view of reference to the plat shown.

We further certify that the State of Alaska affecting this property does not contain any restrictions which would prohibit the subdivision or require restriction on disposal of the property.

Donald M. Jell 8-11-06
 Surveyor
 No. 801
 Home AK 99501

Anthony M. Jell 8-11-06
 Surveyor
 No. 801
 Home AK 99501

Surveyor's Certificate

I hereby certify that I am a Registered Land Surveyor and that this plat represents a true and correct survey of the land shown and that the description and other details are correct to the best of my knowledge.

Donald M. Jell 8-11-06
 Surveyor
 No. 801
 Home AK 99501

Waterway Disposal

Plan for waterway disposal system shall comply with applicable laws at the time of construction. This plan is subject to the regulatory requirements of the Alaska Department of Environmental Conservation.

Donald M. Jell 8-11-06
 Surveyor
 No. 801
 Home AK 99501

Plat Approval

This plat was approved by the State of Alaska through the State Department of Environmental Conservation on October 31, 2006.

Anthony M. Jell
 Surveyor



Neighborhood Map 1" = 2000 ft



- Legend**
- Symbol: Road Right-of-Way (Shaded Area)
 - Symbol: Road Right-of-Way (Dashed Line)
 - Symbol: Easement (Dotted Line)
 - Symbol: Utility Easement (Dashed Line)
 - Symbol: Boundary (Solid Line)
 - Symbol: Easement (Dotted Line)
 - Symbol: Utility Easement (Dashed Line)
 - Symbol: Boundary (Solid Line)
 - Symbol: Easement (Dotted Line)
 - Symbol: Utility Easement (Dashed Line)
 - Symbol: Boundary (Solid Line)

Stream Hill Park Unit 1

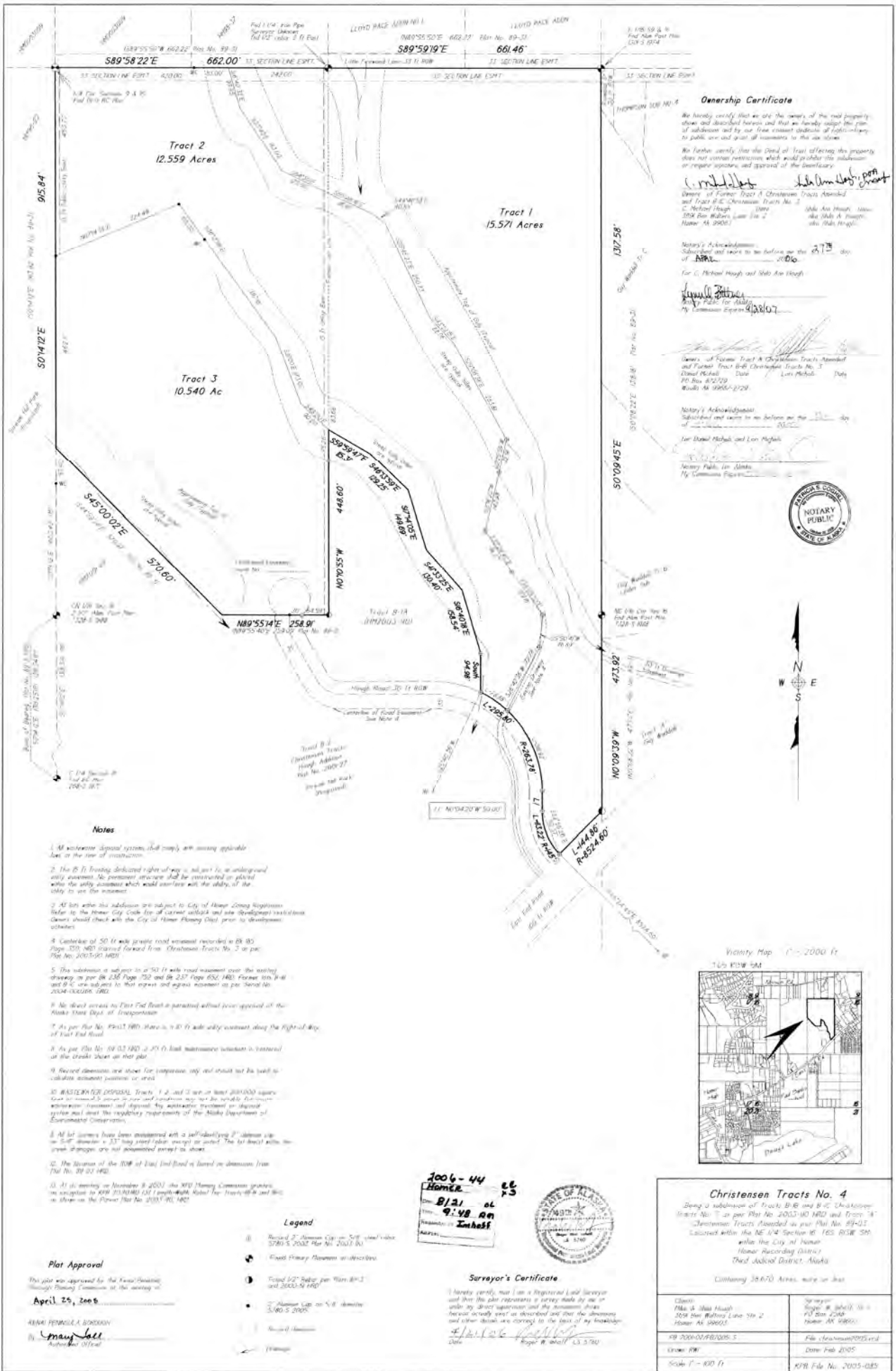
Being a subdivision of Tract B-2 of Chosenland State through Section 10 per Plat No. 2000-02 (MS) and Tract A, Subdiv. 1000 Section 10 per Plat No. 98-03 (MS) and including tract of land described in the State of Alaska per Plat No. 508 (MS) located within the NW 1/4 and NE 1/4 Section 10, T14N, R10E, 1st within the City of Homer.

Homer Planning District
Third Judicial District, Alaska

Containing 41.867 Acres, being in less

Case No. 2006-02-000000-0	File Number/Title
Case No. 2006-02-000000-0	File Number/Title
Case No. 2006-02-000000-0	File Number/Title
Case No. 2006-02-000000-0	File Number/Title

Homer Sheet 1 of 2 2006-54



Ownership Certificate

We hereby certify that we are the owners of the real property shown and described herein and that we hereby release the claim of subdivision and by our true consent declare all rights relating to public use and grant of easements to the abutments.

No further action by the Clerk of Court offering this property does not constitute permission which would prohibit the subdivision or require approval and approval of the boundary.

[Signatures]

Owners of Former Tract A Christensen Tracts Assessed and Tract B & C Christensen Tracts No. 2
 C. Michael Hough 2004 Shilo Ann Hough, Owner
 3524 Ben Walker Lane Str 2 Shilo Ann Hough, Owner
 Homer AK 99603 Shilo Ann Hough

Notary's Acknowledgment:
 Subscribed and sworn to me before me on the 21st day of April, 2005.
 For C. Michael Hough and Shilo Ann Hough
[Signature]
 Notary Public for Alaska
 My Commission Expires 4/30/07

Owners of Former Tract A Christensen Tracts Assessed and Former Tract B & C Christensen Tracts No. 2
 Daniel McNeil Date Lori McNeil Date
 PO Box 452729 Honolulu HI 96866-2729

Notary's Acknowledgment:
 Subscribed and sworn to me before me on the 21st day of April, 2005.
 For Daniel McNeil and Lori McNeil
[Signature]
 Notary Public for Alaska
 My Commission Expires 4/30/07



- Notes**
- All waterways disposal systems shall comply with existing applicable laws to the best of its capability.
 - The B.F. existing dedicated right-of-way is subject to an underlying utility easement. No permanent easement shall be constructed or placed within the utility easement which would interfere with the utility's ability to use the easement.
 - All lots within the subdivision are subject to City of Homer Zoning Regulations Refer to the Homer City Code for all current setbacks and site development regulations. Owners should check with the City of Homer Planning Dept prior to development activities.
 - Centerline of 50 ft wide private road easement recorded in ER 83 Page 150, N60°55'14"E 258.01' (1992-407) (253-09) Plat No. 89-2.
 - The subdivision is subject to a 50 ft wide road easement over the existing driveway as per SR 236 Page 752 and SR 237 Page 652, 1403. Former lots B-1 and B-2 are subject to that right-of-way and easement as per Serial No. 2004-000208, 1403.
 - No street access to Fair Field Beach is permitted without prior approval of the Alaska State Dept. of Transportation.
 - As per Plat No. 19413, 1403 there is a 20 ft wide utility easement along the right-of-way of Fair Field Road.
 - As per Plat No. 19413, 1403 a 20 ft wide easement easement is reserved at the creek drain on that plat.
 - Revised dimensions and notes for easements only and should not be used to calculate easement positions or areas.
 - WASTEWATER DISPOSAL Tracts 1, 2 and 3 are in total 200,000 square feet or more 25 acres in area and easement may be available for water treatment treatment and disposal by wastewater treatment or disposal system that meet the regulatory requirements of the Alaska Department of Environmental Conservation.
 - All lot corners have been monumented with a galvanized pipe 2" diameter x 5'-0" diameter x 33" long steel pipe except as noted. The lot lines with the creek easements are not monumented except as shown.
 - The location of the 100 ft of Fair Field Road is based on dimensions from Plat No. 39-21, 1403.
 - All lots were approved by the NFD Planning Commission (previously Homer Planning Commission) at the meeting of April 25, 2005.

Plot Approval

This plot was approved by the NFD Planning Commission (previously Homer Planning Commission) at the meeting of April 25, 2005.

REAR: PENNELL A. GROSSMAN
 Notary Public Official

- Legend**
- Boundary of adjacent lots with bearings and distances
 - Fixed Primary Easement or easements
 - Fixed 1/2" Right-of-Way 10' x 10' and 2000'-0" NFD
 - 1" diameter pipe x 5'-0" diameter 5/8" x 5' 2005
 - Proposed Easement
 - Proposed

1006-44
 Home
 B/A
 9.18 AM
 Zahoff

Surveyor's Certificate

I hereby certify that I am a Registered Land Surveyor and that the plan represents a survey made by me or under my direct supervision and the dimensions thereon are true and correct and that the dimensions and other data are correct to the best of my knowledge.

[Signature]
 Date: April 21, 2005
 Roger B. Zahoff, L.S. 5740

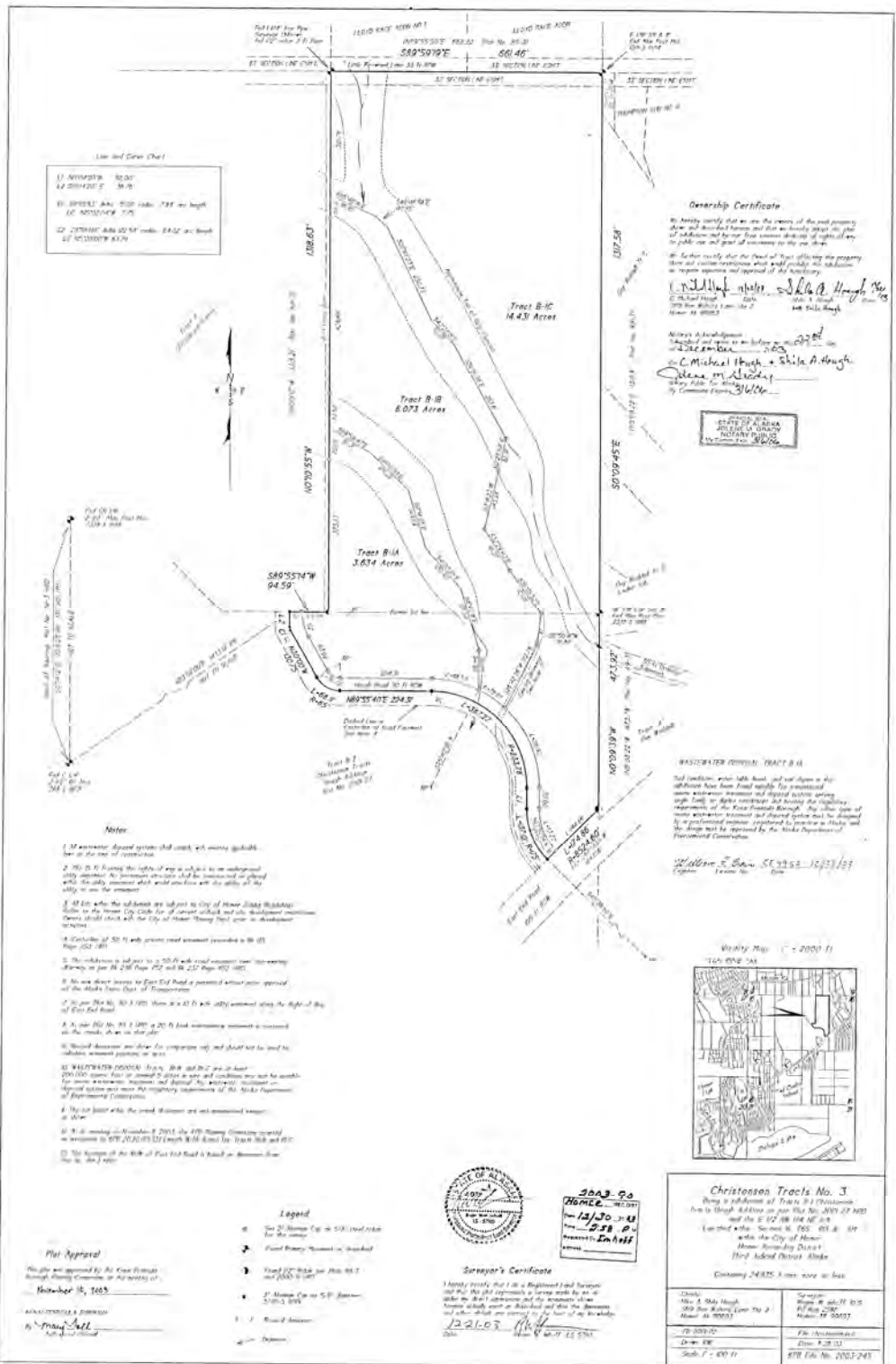


Christensen Tracts No. 4

Being a subdivision of Tracts B & C and B & C Christensen Tracts No. 2 as per Plat No. 2003-140, 1403 and Tract A Christensen Tracts Assessed as per Plat No. 89-2 located within the NE 1/4 Section 05, T6S, R35E, S9E within the City of Homer, Homer Recording District, Third Judicial District, Alaska.

Containing 38,670 Acres, more or less.

Client: Mike & Shilo Hough 3524 Ben Walker Lane Str 2 Homer AK 99603	Surveyor: Roger B. Zahoff, L.S. 5740 1403 State 2364 Homer AK 99603
FB 2003-01/1403-2	File: chrtrnsn005.rvt
Drawn: RW	Date: Feb 2005
Scale: 1" = 600 ft	KPR File No. 2005-085



- Site and Data Chart**
1. APPROXIMATE TOPO
 2. SURVEYED TO THE
 3. SURVEYED AND TO THE
 4. SURVEYED AND TO THE

Ownership Certificate

I hereby certify that in the return of the said property...
 I, William A. Hough, do hereby certify that the said property...
 C. Michael Hough & Shila A. Hough
 2000 West 1st Street, Anchorage, Alaska 99503

WASTEWATER DIVISION, TRACT B & C

This condition, when taken together with other...
 William E. Sam, Sr. 51,235-1223/107
 Director

- Notes**
1. If wastewater disposal system shall comply with various guidelines...
 2. This is to certify the rights of each party to the land...
 3. All lots within the subject are subject to City of Homer Zoning Ordinance...
 4. The lots are 50 ft wide...
 5. The subject is subject to a 20 ft wide easement...
 6. No new sewer lines to Front End Road...
 7. In per Sec. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100...
 8. A 20 ft wide easement to 20 ft wide easement...
 9. Wastewater Division...
 10. The lots are 50 ft wide...
 11. The lots are 50 ft wide...
 12. The lots are 50 ft wide...



2003-20
Home
12/10/03
122103

Surveyor's Certificate

I hereby certify that I am a Registered Land Surveyor...
 122103

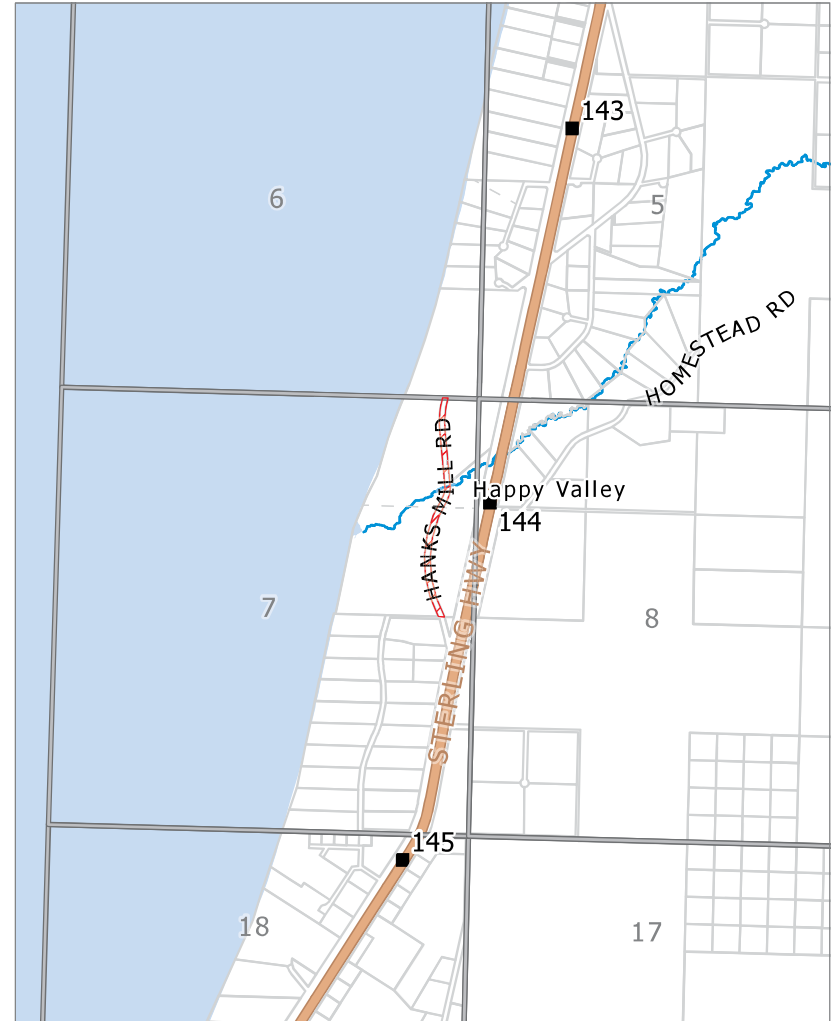
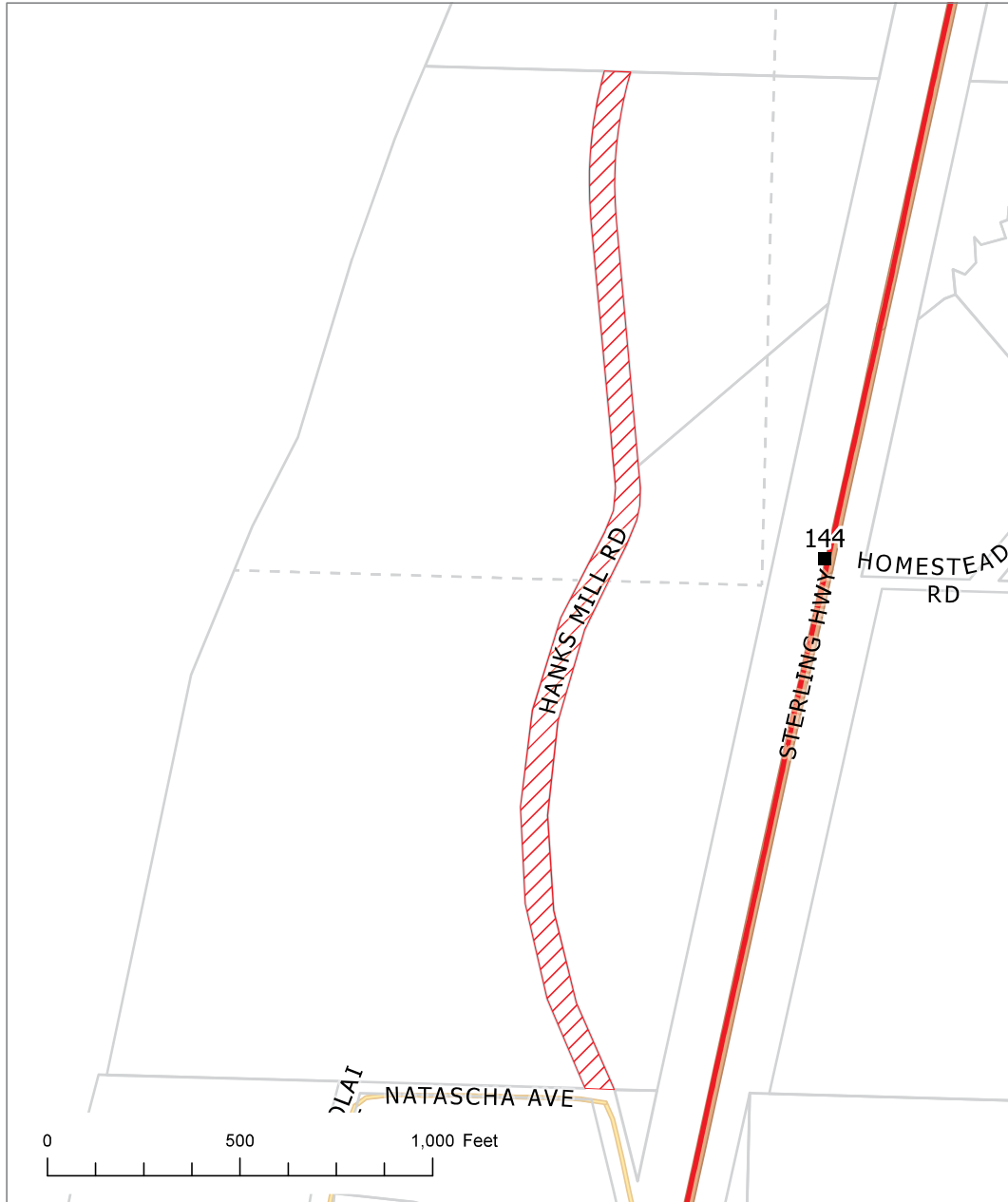
Christenson Tracts No. 3
 Being a subdivision of Tract B & C...
 William E. Sam, Sr. 51,235-1223/107
 Director

Check	Survey
Home 51,235-1223/107	Home 51,235-1223/107
Home 51,235-1223/107	Home 51,235-1223/107
Home 51,235-1223/107	Home 51,235-1223/107
Home 51,235-1223/107	Home 51,235-1223/107

Not Approved
 November 10, 2003

E. NEW BUSINESS

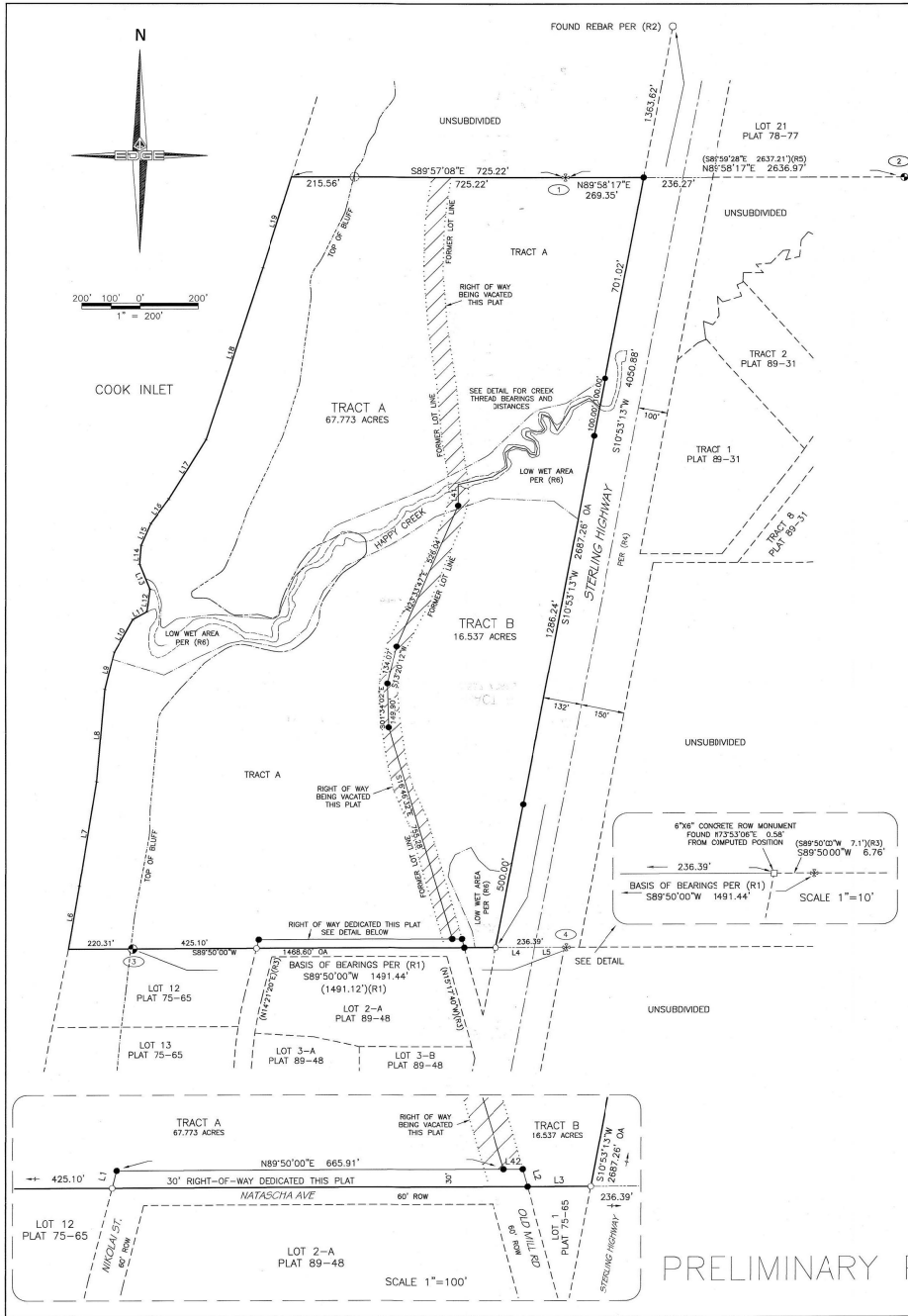
- 3. ROW Vacation; KPB File 2022-077V
Request: Vacate Hanks Mill Road, formerly known as Old Sterling Highway**



KPB File # 2022-077V
S07 & 08 T03S R14W
Happy Valley

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.





LEGEND

- FOUND BLM MONUMENT AS REFERENCED
 - ⊙ FOUND PRIMARY MONUMENT AS REFERENCED
 - ⊙ FOUND 2" ALUMINUM CAP MARKINGS ILLEGIBLE
 - ⊙ FOUND 5/8" REBAR
 - FOUND 6"X6" CONCRETE RIGHT OF WAY MONUMENT
 - SET PROPERTY CORNER 5/8" X 30" REBAR WITH 2" ALUMINUM CAP STAMPED EDGE SURVEY LS-13022 2022
 - ④ MONUMENT REFERENCE NUMBER
 - (R1) RECORD DATA, SEE REFERENCE
- SUBDIVISION BOUNDARY
 - INTERIOR LOT LINE
 - - - ADJACENT PROPERTY LINE
 - - - CENTERLINE
 - - - 20 FOOT BUILDING SETBACK
 - - - 10 FOOT UTILITY EASEMENT
 - - - LOW WET AREA
 - - - TOP OF BLUFF
 - - - FORMER LOT LINE
 - ▨ RIGHT OF WAY BEING VACATED THIS PLAT

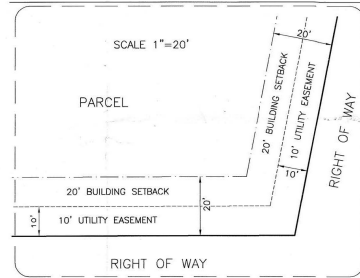
REFERENCES

- (R1) PLAT NO. 89-48, HAPPY VALLEY VISTA TOO, HOMER RECORDING DISTRICT
- (R2) PLAT NO. 78-77, BIG VALLEY SUBDIVISION, HOMER RECORDING DISTRICT
- (R3) PLAT NO. 75-65, HAPPY VALLEY VISTA SUBDIVISION, HOMER RECORDING DISTRICT
- (R4) STATE OF ALASKA, RIGHT OF WAY PLAT, PROJECT NUMBER F-021-1(2) SERIAL NUMBER 63-423, HOMER RECORDING DISTRICT
- (R5) PLAT NO. 89-31, PERRY-VEATER TRACTS, HOMER RECORDING DISTRICT
- (R6) KENAI WATERSHED FORUM WETLANDS INVENTORY DATA

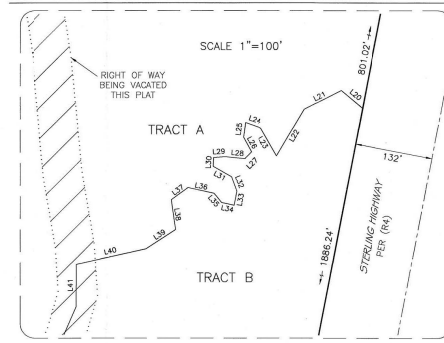
MONUMENT SUMMARY

MONUMENT ID	DESCRIPTION	CONDITION
1	GLD T33 R14W 1/4 35 57 1977	FOUND 2-1/2" BRASS MONUMENT IN CORNER FLUSH WITH GRADE GOOD CONDITION
2	GLD 1" PIPE	FOUND 1" PIPE 0.2' BELOW GRADE MARKING OF RECORD (R2) GOOD CONDITION
3	1/4" 208-S + S 1977	FOUND 2-1/2" BRASS MONUMENT 1.3' BELOW GRADE GOOD CONDITION
4	GLD 1/4" 37 58 1979	FOUND 2-1/2" BRASS MONUMENT 0.1' ABOVE GRADE GOOD CONDITION

UTILITY EASEMENT AND BUILDING SETBACK TYPICAL

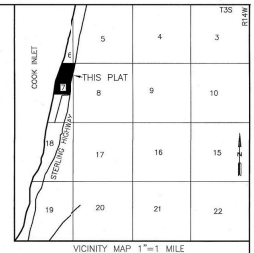


HAPPY VALLEY CREEK THREAD BEARING AND DISTANCE DETAIL



LINE TABLE

LINE	BEARING	DISTANCE
L1	N14°21'20"E	30.99'
L2	N15°17'40"W	31.08'
L3	N89°50'00"E	108.40'
L3(R3)	N89°50'00"E	108.40'
L4	N89°50'00"E	134.50'
L4(R3)	N89°50'00"E	134.50'
L5	N89°50'00"E	101.89'
L5(R3)	N89°50'00"E	101.9'
L6	S09°52'49"W	219.15'
L7	S09°21'35"W	360.78'
L8	S05°07'17"W	317.25'
L9	N13°48'07"E	133.12'
L10	S29°43'26"W	129.54'
L11	S61°19'32"W	55.82'
L12	S07°11'38"W	76.98'
L13	S22°25'33"E	92.37'
L14	S04°53'23"W	64.92'
L15	S23°18'18"W	81.47'
L16	S37°22'47"W	105.38'
L17	N32°03'10"E	238.53'
L18	S18°15'21"W	619.30'
L19	S17°41'03"W	328.86'
L20	N50°07'46"W	47.33'
L21	N62°39'38"E	70.15'
L22	N30°35'50"E	92.18'
L23	N29°39'08"W	54.74'
L24	S70°18'17"E	27.43'
L25	S07°53'14"W	25.28'
L26	N02°41'15"W	28.11'
L27	S45°01'07"W	16.35'
L28	N84°37'38"W	32.91'
L29	N06°38'11"E	19.09'
L30	N04°24'08"E	15.07'
L31	N60°25'31"W	35.90'
L32	S20°31'08"E	26.09'
L33	N10°58'48"E	24.15'
L34	N77°49'31"W	21.80'
L35	N39°12'44"W	20.30'
L36	S77°31'11"E	44.63'
L37	N54°02'19"E	34.94'
L38	N08°15'31"W	51.24'
L39	N56°53'52"E	58.28'
L40	N77°25'29"E	122.69'
L41	N00°29'07"E	71.92'
L42	S89°50'00"W	33.00'



CERTIFICATE OF SURVEYOR

I, MARK ANONETTI 13022-S, HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE MONUMENTS SHOWN ON THIS SURVEY ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONAL AND OTHER DETAILS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



KPB FILE NUMBER 2022-000

HAPPY CREEK REPLAT

A REPLAT OF GOVERNMENT LOTS 1 AND 2 LYING WEST OF THE OLD STERLING HIGHWAY, PORTION OF GOVERNMENT LOT 1 LYING EAST OF THE OLD STERLING HIGHWAY & PORTION OF NW 1/4 NW 1/4 IN SECTION 8, PORTION OF GOVERNMENT LOTS 1 AND 2 IN SECTION 7 & NW 1/4 NW 1/4 IN SECTION 8 AND THE VACATION OF A PORTION OF OLD STERLING HIGHWAY

OWNERS:
CLIFFORD AND JANA INVESTMENTS, LLC
1564 N ALMA SCHOOL ROAD
MESA, ARIZONA 85201
ANI
ROSEMARY H. JOHNSON
PO BOX 114
ANCHOR POINT, ALASKA 99556

LOCATED WITHIN THE NE 1/4 SECTION 7 AND NW 1/4 SECTION 8 T33 R14W, SEWARD MERIDIAN, ALASKA KENAI PENINSULA BOROUGH HOMER RECORDING DISTRICT CONTAINING 84,797 ACRES



12501 OLD SEWARD, C ANCHORAGE, AK 99515 Phone: (907) 344-5900 Fax: (907) 344-7794

APPROVAL RECOMMENDED		DATE	
STATEWIDE PLATING SUPERVISOR	DATE		
DRAWN BY: JY	SURVEY DATE: 5-20-22	SCALE: AS SHOWN	PROJECT NUMBER: 21-443
CHECKED BY: MA	DRAWN DATE: 06-01-2022	DNR FILE No: 21-000000	PAGE 1 OF 2

PRELIMINARY PLAT **KPB 2022-077V**

C:\Users\jason_young\Documents\11-Acres John 2022.DS 27x17-14-4 CTR Johnson Happy Valley\06131-443 Happy_R05.dwg PLOTTED: 6/7/2022 12:25:32 PM

NOTES

1. BUILDING SETBACK - A SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
2. THE FRONT 10 FEET ADJACENT TO THE RIGHTS-OF-WAY IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
3. THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVED THE VACATION OF A PORTION OF OLD STERLING HIGHWAY AT THE MEETING OF JUNE 27, 2022. THE VACATION RECEIVED CONSENT BY THE KENAI PENINSULA ASSEMBLY AUGUST 00, 2022.
4. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE, AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLANDS DETERMINATION IF APPLICABLE.
5. ROADS MUST MEET THE DESIGN AND CONSTRUCTION STANDARDS ESTABLISHED BY THE BOROUGH IN ORDER TO BE CONSIDERED FOR CERTIFICATION AND INCLUSION IN THE ROADS MAINTENANCE PROGRAM PER KPB 14.06.
6. NO PRIVATE ACCESS TO STATE MAINTAINED RIGHT OF WAYS PERMITTED UNLESS APPROVED BY THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION.
7. RESERVATIONS AND EXCEPTIONS AS CONTAINED IN U.S. PATENT, AND/OR ACTS AUTHORIZING THE ISSUANCE THEREOF.
8. THIS SUBDIVISION IS SUBJECT TO RIGHTS OF THE PUBLIC AND OR GOVERNMENTAL AGENCIES IN AND TO THAT PORTION OF SAID PREMISES LYING BELOW THE MEAN HIGH WATER MARK OF COOK INLET AND ANY QUESTIONS OF RIGHTS OF ACCESS TO COOK INLET IN THE EVENT SAID LANDS DO NOT IN FACT ADJUT THE INLET.
9. THIS SUBDIVISION IS SUBJECT TO A GENERAL EASEMENT FOR WATER COURSE OVER THAT PORTION OF THE PREMISES WHICH LIES WITHIN THE LINES OF THE HEREIN NAMED CREEK (HAPPY VALLEY CREEK) AND TO ANY CHANGES IN THE BOUNDARY LINES OF SAID CREEK, AS IT NOW EXISTS, BY NATURAL CAUSES.
10. THIS SUBDIVISION IS SUBJECT TO A GENERAL ELECTRICAL EASEMENT, WITH NO DEFINED LOCATION, GRANTED TO HOMER ELECTRIC ASSOCIATION ON JUNE 30, 1959 IN BOOK 17 PAGE 27, HOMER RECORDING DISTRICT.
11. SECTION LINE EASEMENTS AFFECTING THIS SUBDIVISION HAVE BEEN VACATED BY PLAT 68-55, HOMER RECORDING DISTRICT.
12. WASTEWATER DISPOSAL: LOTS WHICH ARE AT LEAST 200,000 SQUARE FEET IN SIZE MAY NOT BE SUITABLE FOR AN ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT AND DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 27, 2022.

KENAI PENINSULA BOROUGH

AUTHORIZED OFFICIAL

PRELIMINARY PLAT

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT KGA FAMILY TRUST IS THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT ON BEHALF OF CLIFFORD AND JANA JOHNSON INVESTMENTS, LLC, I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAYS AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

CLIFFORD AND JANA JOHNSON INVESTMENTS, LLC
CLIFFORD JOHNSON, CO-MANAGER
1564 N. ALMA SCHOOL ROAD
MESA, ARIZONA 85201

NOTARY ACKNOWLEDGEMENT

FOR: CLIFFORD JOHNSON
ACKNOWLEDGED BEFORE ME

THIS _____ DAY OF _____, 2023

NOTARY PUBLIC SIGNATURE



CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAYS AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

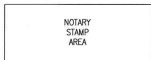
ROSEMARY H. JOHNSON
PO BOX 114
ANCHOR POINT, ALASKA 99556

NOTARY ACKNOWLEDGEMENT

FOR: ROSEMARY H. JOHNSON
ACKNOWLEDGED BEFORE ME

THIS _____ DAY OF _____, 2023

NOTARY PUBLIC SIGNATURE



KPB FILE NUMBER 2022-000

HAPPY CREEK REPLAT

A REPLAT OF
GOVERNMENT LOTS 1 AND 2
LYING WEST OF THE OLD STERLING HIGHWAY,
PORTION OF GOVERNMENT LOT 1 LYING EAST OF THE OLD STERLING HIGHWAY
& PORTION OF NW 1/4 NW 1/4 IN SECTION 6,
PORTION OF GOVERNMENT LOTS 1 AND 2 IN SECTION 7
& NW 1/4 NW 1/4 IN SECTION 8
AND THE VACATION OF A PORTION OF OLD STERLING HIGHWAY

OWNERS:

CLIFFORD AND JANA INVESTMENTS, LLC
1564 N. ALMA SCHOOL ROAD
MESA, ARIZONA 85201

AND

ROSEMARY H. JOHNSON
PO BOX 114
ANCHOR POINT, ALASKA 99556

LOCATED WITHIN THE NE 1/4 SECTION 7 AND NW 1/4 SECTION 8
T3S R14W, SEWARD MERIDIAN, ALASKA
KENAI PENINSULA BOROUGH
HOMER RECORDING DISTRICT
CONTAINING 84.797 ACRES



12501 OLD SEAWARD, 5
ANCHORAGE, AK 99515
Phone (907) 344-2290 Fax (907) 344-7794

APPROVAL RECOMMENDED

STATEWIDE PLATTING SUPERVISOR		DATE	
DRAWN BY: JY	SURVEY DATE: 5-20-22	SCALE: AS SHOWN	PROJECT NUMBER: 21-643
CHECKED BY: MA	DRAWN DATE: 06-01-2022	DMR FILE No: EV-000000	PAGE 2 OF 2

KPB 2022-077V

**ITEM 3 - RIGHT OF WAY VACATION
VACATE PORTION OF HANKS MILL ROAD (FORMALLY OLD STERLING HIGHWAY)**

KPB File No.	2022-077V
Planning Commission Meeting:	June 27, 2022
Applicant / Owner:	Rosemary Johnson of Anchor Point, Alaska and Cliff and Jana Johnson of Mesa, Arizona
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
General Location:	Hanks Mill Road, Natascha Avenue, Sterling Highway / Happy Valley, Anchor Point, APC
Legal Description:	Hanks Mill Road, formally known as Old Sterling Highway, within Section 7, Township 3 South, Range 14 West.

STAFF REPORT

Specific Request / Purpose as stated in the petition: To vacate Hanks Mill Road (Old Sterling Highway). Findings for justification of right-of-way vacation of Old Sterling Highway.

1. The section of the Old Sterling Highway proposed for vacation terminates at the North boundary, parcel to the north has had right-of-way vacated.
2. The section of Old Sterling Highway proposed for vacation provides access to large tract parcels, two of which will be combined with this platting action. Large parcel to the North has sufficient access from the Sterling Highway. Parcels created by this platting action will have sufficient access from the Sterling Highway to the East and Natascha Avenue to the south.
3. The current condition of the right-of-way is unmaintained and not traveled. The historical culverts at the Happy Creek crossing have washed out and created 70+ foot vertical banks making it unsafe and impractical to cross.
4. The current public use patterns of the section of right-of-way proposed for vacation has had a history of promoting trespass across private land. With a pattern of public leaving the right-of-way to cross west adjacent to Happy Creek to the Cook Inlet. Along with this trespass has been a history of vandalism and large-scale littering.
5. The current underlying land ownership is all private large tract parcels adjacent to proposed right-of-way vacation.
6. Alternative right-of-ways are in place and are the current public use patterns. The “New” Sterling Highway to the East provides the public necessary North-South right-of-way. The shore of the Cook Inlet to the West also provides the public necessary North-South right-of-way. The large parcel to the North does not and cannot use the right-of-way proposed for vacation for access due to unmaintained conditions.
7. The practicality of use of right-of-way proposed for vacation is poor. The right-of-way dead ends and leads to nowhere. The current conditions promote only foot travel and the washed out culverts at the Happy Creek crossing are unsafe conditions and a public safety hazard.

Notification: Public notice appeared in the June 16, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the June 23, 2022 issue of the Homer News as part of the Commission’s tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Anchor Point

Post Office of Anchor Point

Six certified mailings were sent to owners of property within 300 feet of the proposed vacation. Two receipts had been returned when the staff report was prepared.

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

Twenty-one public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game	Kenai Peninsula Borough Land Management
State of Alaska DNR	Ninilchik Traditional Council
State of Alaska DOT	Alaska Communication Systems (ACS)
State of Alaska DNR Forestry	ENSTAR Natural Gas
Anchor Point Advisory Planning Commission	General Communications Inc, (GCI)
Emergency Services of Anchor Point	Homer Electric Association (HEA)
Kenai Peninsula Borough Office	

Legal Access (existing and proposed): Hanks Mill Road was originally Old Sterling Highway. The name was changed by Street Name Resolution SN 2010-01. The Alaska DOT&PF ROW Research Map indicates the management falls under the Kenai Peninsula Borough. Hanks Mill Road is located near mile 144 of the Sterling Highway. The southern portion of Hanks Mille Road is maintained by the borough to the intersection with Natascha Avenue. The portion of the right-of-way north of Natascha Avenue appears to be the remains of an old road with no clear travel way shown. Per the submittal this is not a widely used right-of-way that has not been maintained for years.

There are currently two government lots located west of Hanks Mill Road that are along the coast of Cook Inlet. Two additional lots are between Hanks Mill Road and the Sterling Highway. The proposed vacation will be finalized with a plat that will reconfigure the lots to create two tracts. Tract A will have access from the Sterling Highway and Natascha Avenue to the south. Tract B will front along the Sterling Highway and will have some frontage from the remaining portion of Hanks Mille Road and Natascha Avenue. Any access from the Sterling Highway will require approval from the State of Alaska DOT.

The property to the north does not indicate the current status of the right-of-way. The legal description for the property does not indicate that the right-of-way is in existence. Staff was unable to determine the status but did not find any indication that a formal vacation had been done. A thorough title report may indicate if the property is subject to any public easements that would provide a connection of the Old Sterling Highway. The lot will continue to have frontage along the Sterling Highway and currently has an existing driveway that is near the Lofty Heights Court dedication. The former travel way within the property but does appear to be grown over.

The plat will be dedicating a 30 foot wide matching dedication to bring Natascha Avenue, a borough maintained right-of-way into compliance for width.

The section line easements within the subject property as well as the property to the north have all been vacated per the Section Line Easement Vacation Plat, HM 88-55.

The existing block does not comply with block requirements. The property is between Cook Inlet and the Sterling Highway. Section Line easements can be used to provide a compliant block but there were vacated in 1988. The location of the existing right-of-way does not provide a compliant block and the vacation will not improve nor worsen the block requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Sterling Highway appears to be shown correctly. However, the vacation area appears to be a portion of the Old Sterling Highway that has not been previously relinquished or vacated by DOT. I have a query into our Property

	Management group about how they would like to proceed with the action proposed, and what steps would be necessary to vacate the State DOT interest.
--	---

Site Investigation: Happy Creek runs through the property and the existing right-of-way crosses it as well as the associated wetlands. There are some steep slopes present within the right-of-way proposed to be vacated. Per the findings provided with the petition, the washout of culverts and lead to some erosion within the right of way that has resulted in steep areas.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: VE,D Map Panel: 02122C-1830E In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
Alaska Fish and Game	No objections. The proposed actions will not affect fish, wildlife, habitat, or public access to public lands or waters. All lands surrounding the ROW are privately owned and the only identified water along the ROW, Happy Creek, is not identified as anadromous.

Staff Analysis: The petition is to vacate Hanks Mills Road. The vacation will be the entire width for approximately 2,700 feet. The property involved with the project is government lots and portions of aliquot lands. There is not a plat showing the dedication of Hanks Mill Road. The property descriptions do exclude the portions of the right-of-way. Hanks Mill Road was formally the Old Sterling Highway. At some point after the construction of the new Sterling Highway, the old portion stopped receiving maintenance. The jurisdiction appears to be under local authority, KPB, per the DOT mapper but there may be some state interest still associated with the right-of-way. The portion to be vacated is nothing more than slight trails that receive no maintenance for the borough.

The right-of-way provides access to lands owned by one owner that will be proposing a replat to make sure all lots have legal access. The neighbor to the north has additional access. The right-of-way proposed for vacation does appear to continue to the north through the neighbor's property but there is no indication at this time of the existence and it only appears to be a trail at this time.

20.65.050 – Action on vacation application

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;

Staff comments: It is only a trail that per the submittal is being used for trespass, loitering, and littering.

2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Due to years of neglect, the right-of-way is in disrepair and provides a safety issue due to terrain.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: Subdivisions have occurred to the south with proper right-of-way dedications and utility easements. Property to the north is a large acreage parcel with potential to be subdivided to provide its own access and easements.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: The right-of-way does not provide direct access to Cook Inlet, although it is being used for access by trespass per the submittal.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed replat will provide access to new lots, no lots will be denied access and larger lots may provide dedications in the future.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: The right-of-way could be used for pedestrian use but per the submittal, there are safety concerns due to years of no maintenance and terrain.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a 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 utility easement be granted in place of the right-of-way.
Staff comments: Any requested utility easements by providers will be required unless the owner works with the utility providers to change or reduce the request.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: Additional steps may be required and State approval prior to finalization.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

If approved, the Assembly will hear the vacation at their scheduled July 5, 2022 meeting.

The authority of the ability to vacate this right-of-way is being questioned. The Certificate to Plat supplied for the plat did not provide any insight in to the right-of-way. Staff looked through some state documents but did not find reference this right-of-way. The State of Alaska DOT is reviewing to determine their interest in the right-of-way. If it is determined to still be a State of Alaska right-of-way, the approval may be used as a recommendation to the State. The State may have additional requirements or processes needed in order to finalize this process if they agree to the vacation. The surveyor and owners will need to work with the State of Alaska for resolution. The planning department will not allow for the finalization of the vacation until written permission is received from the State of Alaska.

If approved, Happy Creek Replat, KPB File 2022-077, will finalize the proposed right-of-way vacation. The Plat Committee is scheduled to review the plat on June 27, 2022.

KPB department / agency review:

Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 23215 HANKS MILL RD 23015 STERLING HWY 23145 STERLING HWY</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: STERLING HWY NIKOLAI ST NATASCHA AVE</p> <p>Existing Street Name Corrections Needed: OLD MILL RD should be HANKS MILL RD per SN2010-01.</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 23215 HANKS MILL RD will be deleted. 23015 STERLING HWY will remain on tract A. 23145 STERLING HWY will remain on tract B. Approximately 520ft of HANKS MILL RD remains connecting STERLING HWY to NATASCHA AVE.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>
Advisory Planning Commission	Comments not available when the staff report was prepared

Utility provider review:

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

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Consent or requirements be met as outlined by State of Alaska DOT in regards to their interest in the right-of-way.
3. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
4. Grant utility easements requested by the utility providers.
5. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, 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.**
- J. A planning commission decision denying a vacation application is final. 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.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing*

local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

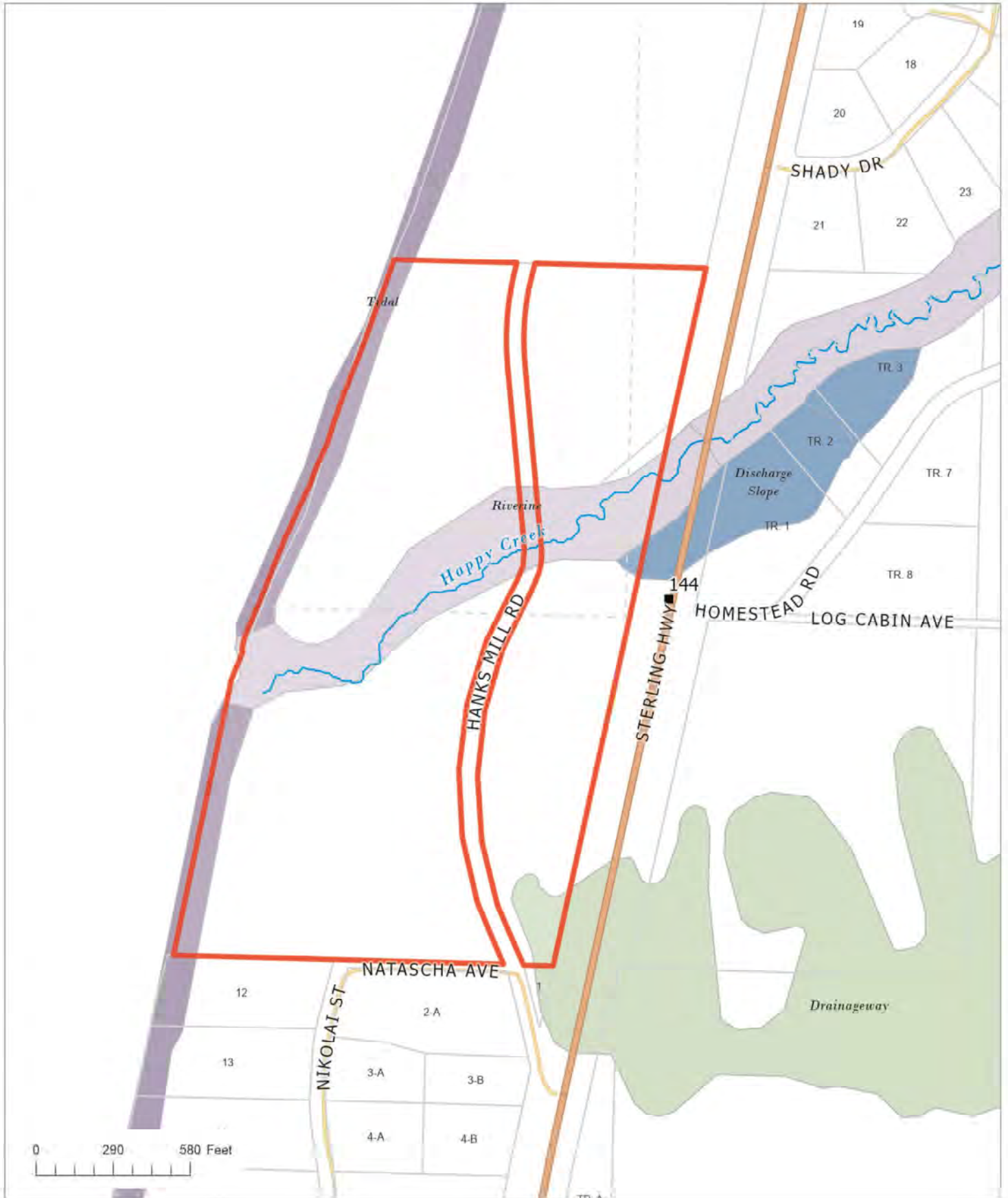
- Focus Area: Transportation

- o Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

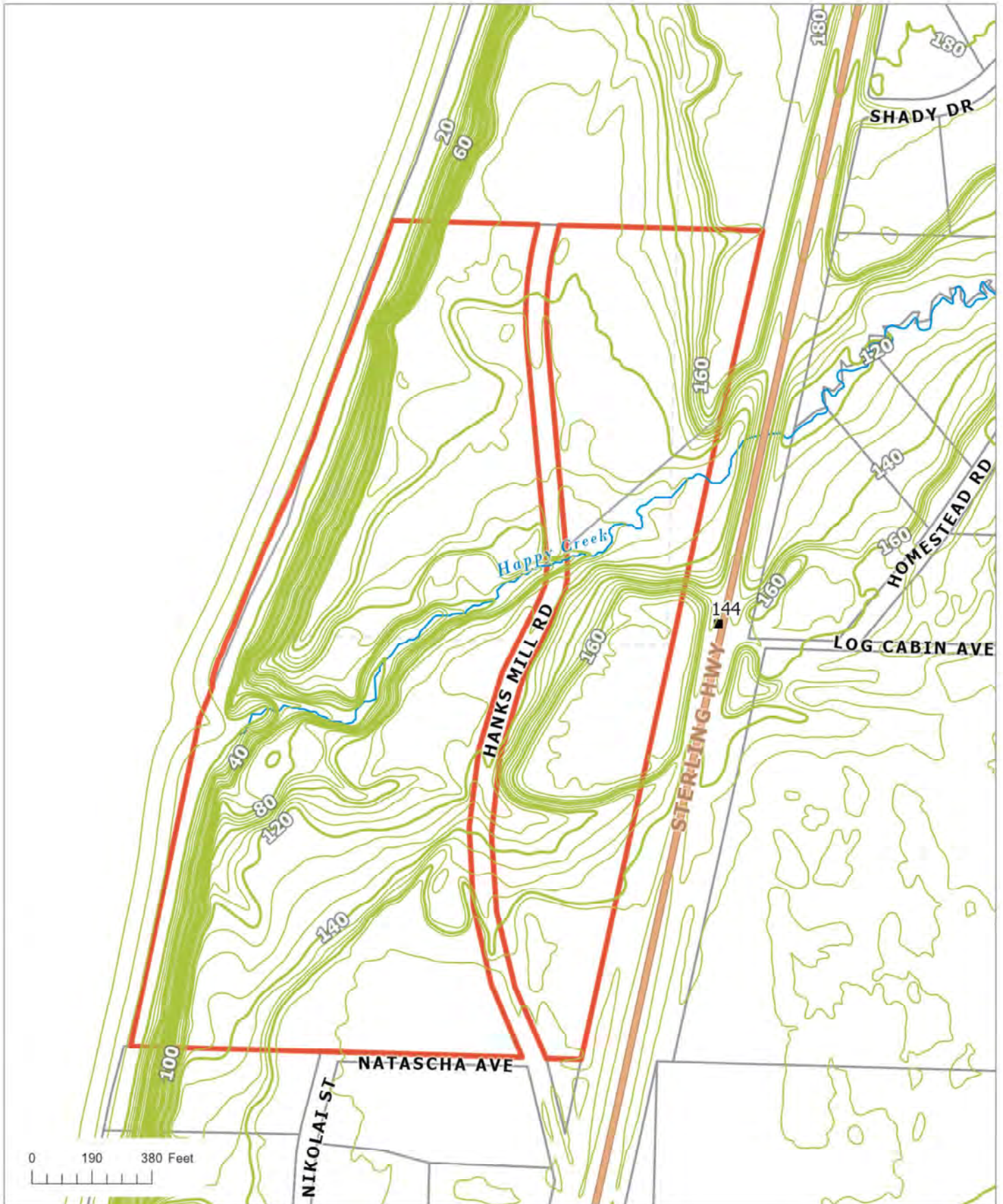
END OF STAFF REPORT



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.



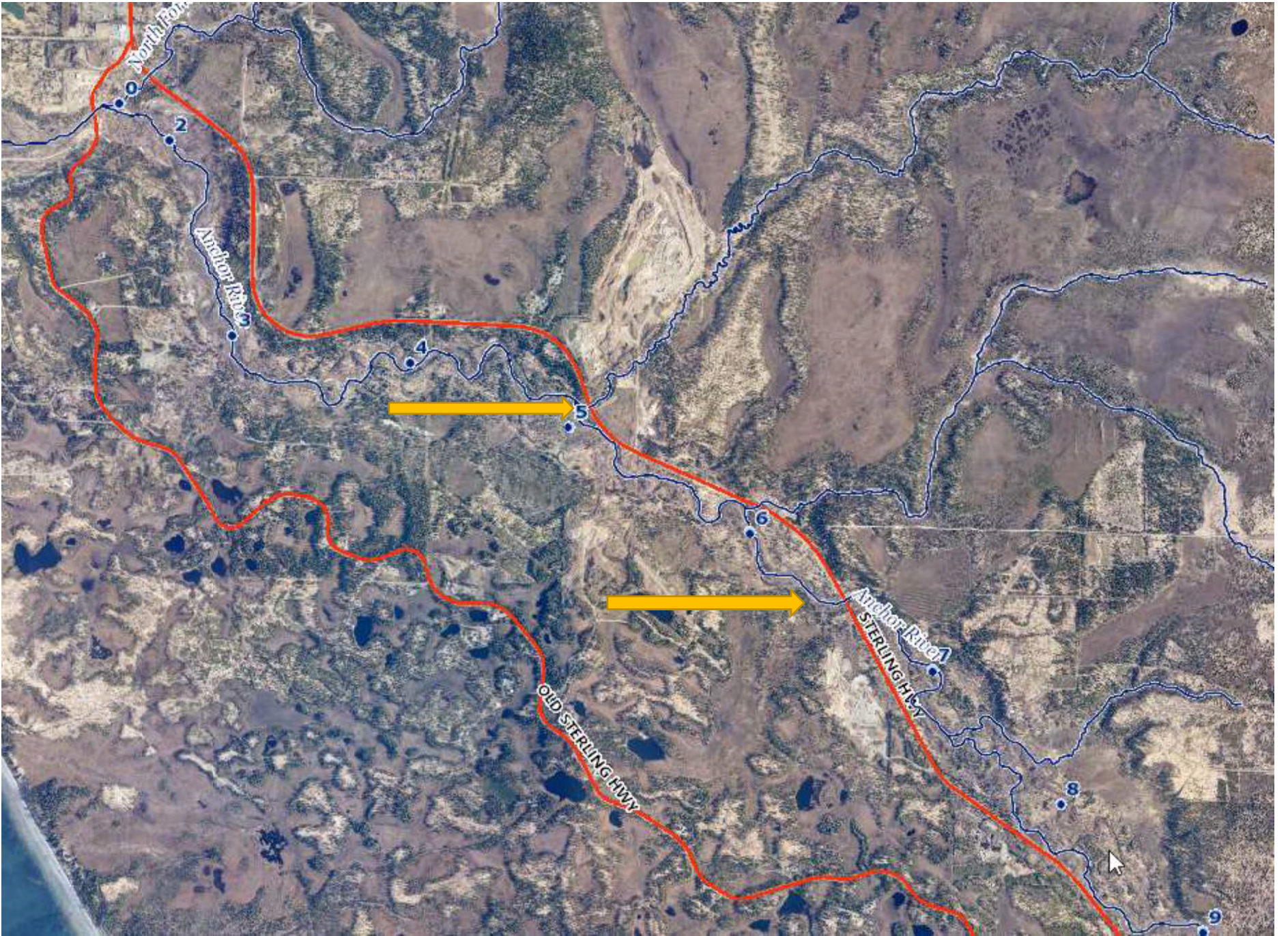
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



E. NEW BUSINESS

- 4. Conditional Use Permit; PC Resolution 2022-24
Request: Bank Stabilization with Rip Rap**





**Conditional Use Permit
Anadromous Waters Habitat Protection District
Staff Report**

KPB File No.	2022-24
Planning Commission Meeting:	June 27, 2022
Applicant	Alaska Department of Transportation and Public Facilities
Mailing Address	PO Box 196900 Anchorage, AK 99519-6900
Legal Description	NA
Physical Address	Alaska Department of Transportation Right of Way
KPB Parcel Number	NA

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of bank stabilization with rip rap within the 50-foot Habitat Protection District of the Kenai River, Anchor River and Two Moose Creek, as established in KPB 21.18.040.

Background Information

ADOT is seeking a permit to add fill to three locations on the Kenai Peninsula, along the Sterling Highway, to the embankments along the Habitat Protection District. The project is to replace and repair guardrails along the highway and the existing embankments are not providing adequate support. At MP 55.5, there will be 20 Cubic Yards of Type 2 rip rap added. At MP 159.5, there will be 1.9 Cubic Yards of Type 2 rip rap. At MP 161, there will be 60 Cubic Yards of Type 2 rip rap added.

Project Details within the 50-foot Habitat Protection District

1. Adding additional rip rap fill to current embankments and enlarging the footprint within the HPD.

General Standards

Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent;
5. Applicant's or owner's compliance with other borough permits and ordinance requirements.

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
3. Placement of riprap in Cooper Landing location (20 cubic yards of Type 2), and placement of riprap in Anchor Point Location(s) (62 Cubic Yards of Type 2).
4. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
5. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
6. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
7. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
8. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:

"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."
9. The River Center found the application complete and scheduled a public hearing for June 27, 2022.
10. Agency review was distributed on June 10, 2022. No comments or objections have been received from resource agencies to date.
11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on June 10, 2022. A total of 11 mailings were sent. No comments have been received.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on Jun 16, 2022 and June 23, 2022.
13. The applicant is currently in compliance with Borough permits and ordinances.

Permit Conditions

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River, Anchor River and Two Moose Creek.
2. The embankment enlargement must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter,

in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).

10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

Attachments

Multi-Agency Application
Draft Resolution 2022-24

Recommendation

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for any habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2022-24

Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT



April 19, 2022

Project: HSIP: Central Region Guardrail Inventory and Upgrade
Project No.: CFHWY00564

Samantha Lopez
Kenai River Center Manager
514 Funny River Road
Soldotna, AK 99669

Subject: HSIP: Central Region Guardrail Inventory and Upgrade

Dear Ms. Lopez,

The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to repair, rehabilitate, or replace guardrail segments and bring the existing guardrail runs, end terminals, and hardware up to current safety standards. This project encompasses the entire Central Region, and many locations are within the Kenai Peninsula Borough. A Kenai River Center (KRC) Multi-Agency Permit Application is being submitted to your office because elements of the proposed project require work within 50 feet of anadromous water bodies and within Zone AE/Zone D floodplains. The purpose of the project is to increase roadside safety by bringing deficient guardrails into conformance with current standards.

Project Description

The project has evaluated existing guardrails along multiple routes in Central Region and is proposing to update or replace any guardrail segments not meeting the current Alaska Department of Transportation and Public Facilities (DOT&PF) and Federal Highway Administration (FHWA) standards. Project improvements may include the following activities:

- Milling and paving
- Digouts
- Embankment reconstruction and stabilization
- Updating guardrail to meet current safety standards
- Utility relocation
- Replacing roadside hardware, end terminals, and signage
- Drainage improvements
- Vegetation clearing and grubbing

“Keep Alaska Moving through service and infrastructure.”

Impact Summary

Several locations have been identified where the guardrail does not meet length requirements and needs to be extended. To extend the guardrail, select embankments need to be widened (Table 1). The proposed project would place 37 cy of fill (riprap, borrow, topsoil) over 0.037 acres of wetlands in order to widen select embankments and extend the length of guardrail. Impact details are provided in the attached Supplemental Information Sheet and permit figures.

Permits Required

The following permits are anticipated for construction of the proposed project: KPB floodplain permit, KPB Permit to authorize work within designated Habitat Protection Area (as work will be conducted within 50 ft of an anadromous water body). Project work in wetlands and other waters of the US has been authorized under USACE NWP 3 – Maintenance.

If you have any questions or require additional information, please contact me at 907.269.0535 or amber.cozad@alaska.gov, or Chris Bentz, P.E., Project Manager at 907.269.0652 or chris.bentz@alaska.gov.

Sincerely,



Amber Cozad

Enclosures: Kenai River Center Multi-Agency Permit Application
KRC Multi-Agency Permit Supplemental Information Sheet

Figure 1: Location and Vicinity Map

Figure 2-7: Wetland Involvement Figures

Table 1: Location of Guardrail and End Terminals Recommended for Repair or Replacement

Table 2: Guardrail Extension Locations by Roadway

Table 3: Locations of Work within 50 Feet of Anadromous Waterways

Cc: Chris Bentz, P.E. Project Manager

Project Questions:

Note: Use Ordinary High Water (OHW) for non-tidal waters, and Mean High Tide (MHT) for tidal waters.

1. Start date: Spring 2023 End date: Fall 2024 Estimated Days of Construction: 240
2. Is the project located within 50 feet of OHW or HTL a waterbody? Yes No
3. Does any portion of the project extend **below** the OHW or HTL of the stream or waterbody? Yes No
4. Does any portion of the project cantilever or extend **over** the OHW of the waterbody? Yes No
5. Will anything be placed below OHW or HTL of the waterbody? Yes No
6. Will material be extracted or dredged from the site? Yes No
7. Including areas below OHW or HTL, what is the total area (in acres) that will be excavated or dredged?
 Total Area: _____ Type of Material: _____
 Location you will depositing fill: _____
8. Will any material (including soils, debris, and/or overburden) be used as fill? Yes No
 Type of material: See Sup. Info Amount: 0.037 acres Permanent or Temporary
 Will fill be placed below OHW or HTL: Yes No
9. List all motorized equipment to be used in this project, including access route to site, any stream or waterbody crossings, and (if applicable) how long equipment will be used below OHW or HTL: See Supplemental Information

10. Is any portion of the work already complete? Yes No
 If yes, describe: _____

Signature & Certification:

This application is hereby made requesting permit(s) to authorize the work described in this application form. I certify the information in this application is complete and accurate to the best of my knowledge.

If applying for a tax credit: I certify that I have not begun construction of the project on this the property and that the proposed project will be constructed in a manner consistent with KPB 5.12 Real Property and Personal Property Taxes, KPB 5.14 Habitat Protection Tax Credit, and other applicable ordinances.

Amber Coped

 Applicant Signature (required)

4/19/2022

 Date

 Agent Signature (if applicable)

 Date

KENAI RIVER CENTER MULTI-AGENCY PERMIT APPLICATION
SUPPLEMENTAL INFORMATION SHEET

Project: HSIP: Central Region Guardrail Inventory and Upgrade

PROJECT LOCATION

The proposed project encompasses the entire Central Region with multiple locations in the Kenai Peninsula Borough (Figure 1). Table 1 lists the locations of guardrail and end terminals that are proposed for repair or replacement. Table 2 lists the locations where guardrail extension and embankment widening are proposed.

PROJECT DESCRIPTION

Proposed Improvements

The proposed project will update or replace any guardrail segments not meeting the current Alaska Department of Transportation and Public Facilities (DOT&PF) and Federal Highway Administration (FHWA) standards in the Central Region. Project improvements may include the following activities:

- Milling and paving
- Digouts
- Embankment reconstruction and stabilization
- Updating guardrail to meet current safety standards
- Utility relocation
- Replacing roadside hardware, end terminals, and signage
- Drainage improvements
- Vegetation clearing and grubbing

Wetlands Involvement and Fill and Dredging Activities

The project has been designed to avoid work within wetlands and other waters of the US (OWUS) to the maximum extent practicable; however, minor wetland involvement was necessary to meet the project's purpose and need. The proposed project would permanently place up to 37 cubic yards (cy) of fill (riprap, borrow, topsoil) over 0.037 acres of wetlands in order to widen the embankments in two locations. At milepoint (MPT) 111.0 of the Sterling Highway, the project would widen the embankment by 2.5 feet and place fill in approximately 0.001 acres of wetlands (Figures 2-4). At MPT 120.5 of the Sterling Highway, the project would widen the embankment by 11.5 feet and place fill in approximately 0.036 acres of wetlands (Figures 5-7).

Water Body Involvement and Vegetation Clearing

The proposed project does not include any work below OHW. The project encroaches into the Flood Zone AE associated with Anchor River at MPT 120.5 of the Sterling Highway (Figures 5-7). The guardrail would be extended by 125 feet and widen the embankment by 11.5 feet. The project will not raise base flood elevations or have a significant impact to the floodplain.

Table 3 lists the work locations in the KPB within 50 feet of anadromous waterbodies. At most locations within 50 feet of an anadromous waterbody, the existing guardrail will be replaced in-kind, without improving or expanding the embankment. Vegetation clearing at these sites is anticipated to extend approximately 10 feet behind the guardrail, and expected to be within currently maintained areas without

trees. Five locations require embankment widening in order to lengthen the guardrail to meet current standards. Vegetation clearing in these areas is anticipated to extend 10 feet beyond the limits of disturbance. Only the minimum amount of vegetation will be removed. Although tree removal is not anticipated, a minimal number of trees within 50 feet of anadromous waterbodies may need to be removed. If this becomes necessary, more trees would be planted at a 2:1 ratio relative to trees removed. The contractor will be responsible for clearing during the appropriate windows and revegetating as needed. The total area to be cleared has been estimated at about 1 acre.

Vegetation clearing will follow the US Fish and Wildlife Service *Recommended Time Periods for Avoiding Vegetation Clearing in Alaska* in order to protect migratory birds, unless otherwise allowed and approved by the Project Engineer.

Construction Methods and Types of Equipment

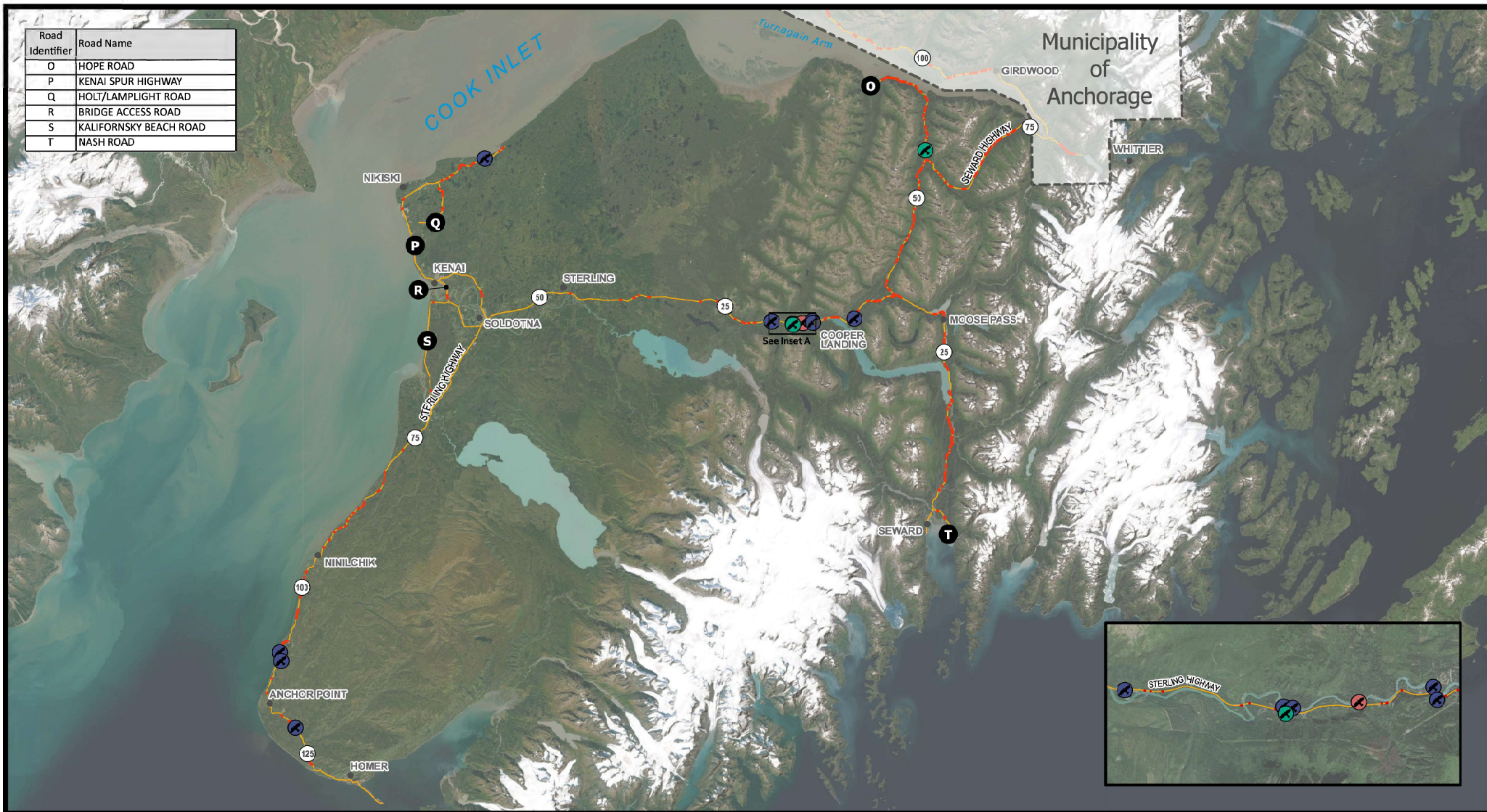
Construction means and methods as well as project phasing will be determined by the Contractor. All temporary fill or structures placed in jurisdictional areas would be removed after construction and the site will be restored to as close to preconstruction conditions as possible. Disturbed areas will be revegetated as appropriate.

The Contractor will be responsible for determining the type and quantity of construction equipment necessary to complete the project and will be expected to use standard construction, excavation, and blasting methods and equipment. Equipment and vehicle fueling and/or maintenance would be done offsite as much as possible. Fueling and maintenance areas, as well as the types and quantities of fuel stored on the site, will be determined by the Contractor. Spill kits appropriate to respond to the hazards on site will be present at all times.

The Contractor will prepare a Storm Water Pollution Prevention Plan (SWPPP) for the project that follows the general guidance provided by the DOT&PF's Erosion and Sediment Control Plan (ESCP). The SWPPP will identify Best Management Practices intended to minimize erosion and sedimentation of adjacent surface waters during construction. The SWPPP will also include fuel storage locations, quantities, and the types of fuel to be used on the project. When dewatering or diversion is required, the Contractor would secure a Temporary Water Use Authorization from the Alaska Department of Natural Resources (ADNR).

As appropriate, disturbed areas will be covered in topsoil and reseeded with species recommended for the region by ADNR's A Revegetation Manual for Alaska. Temporary erosion and sediment control measures such as fiber rolls and temporary seeding would be used to stabilize disturbed soils until final stabilization is achieved.

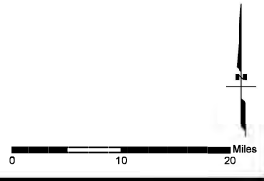
Road Identifier	Road Name
O	HOPE ROAD
P	KENAI SPUR HIGHWAY
Q	HOLT/LAMPLIGHT ROAD
R	BRIDGE ACCESS ROAD
S	KALIFORNSKY BEACH ROAD
T	NASH ROAD



Eagle Nest Location within 760' of Failed Guardrail¹

- A** Road Identifier
- ⓪** Highway Milepoint
- New Nest Discovered During Field Survey
- USFWS Eagle Nest Location- 330' to 760'
- USFWS Eagle Nest Location- Field Verified within 330'
- +** Recommended Repair or Replace Guardrail

1 USFWS Eagle Nest Data, DOWL Assumes Accuracy is within 100 feet



Expedited Categorical Exclusion Overview

Kenai Peninsula Borough



STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DOT & PF Project No. CFHWY00564
 Federal Project No. 0001665
 HSIP: CR Guardrail Inventory

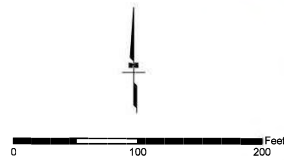
Matanuska Valley to Kenai Peninsula

January 13, 2022

K:\50163129-01\60GIS\Carto\Environmental\Project Overview\Wetland Overview.aprx Jan 13, 2022 3:06 PM User: tjameson
 Service Layer Credits: World Imagery: Earthstar Geographics



- Additional Areas Mapped**
- Upland
 - DOT&PF ROW
 - Cook Inlet Wetland
 - DOT&PF Milepost



Wetland Areas Mapped

Matanuska Susitna Borough,
Municipality of Anchorage, &
Kenai Peninsula Borough

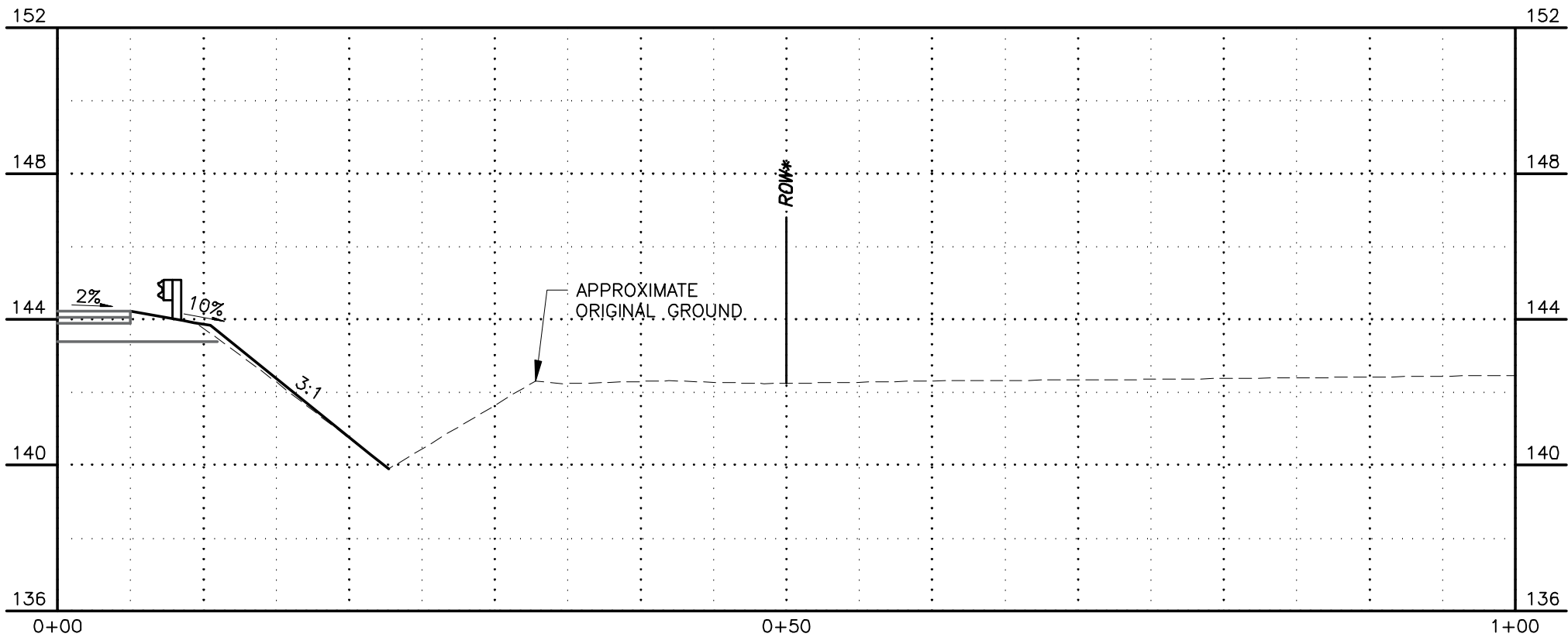


STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

DOT & PF Project No. CFHWY00564
Federal Project No. 0001665
HSIP: CR Guardrail Inventory

Matanuska Valley to Kenai Peninsula

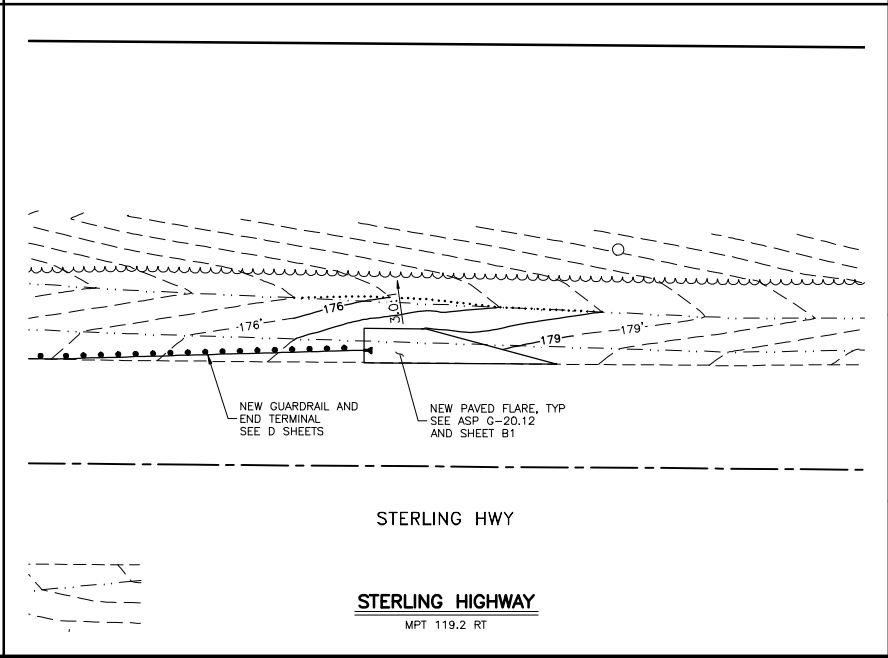
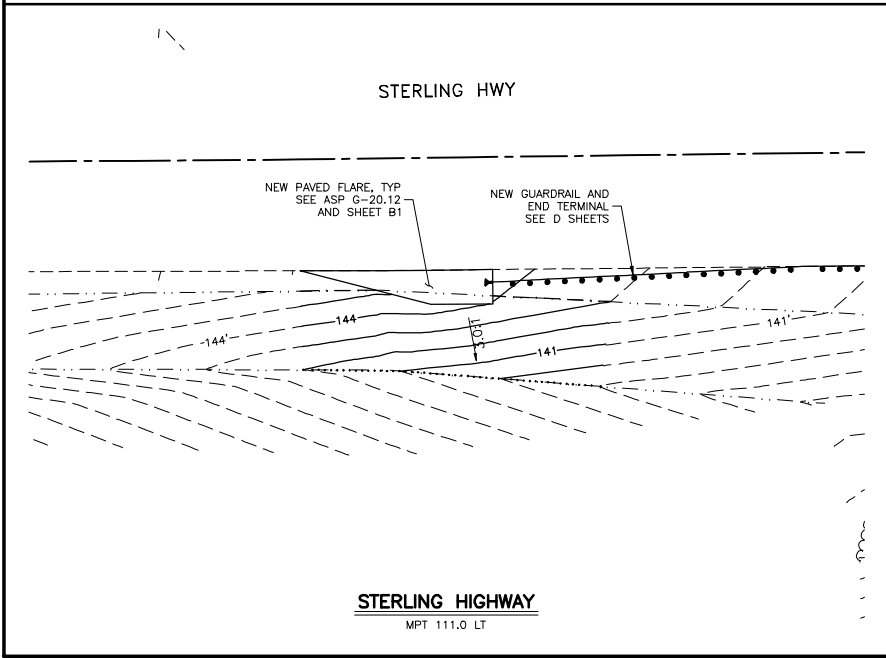
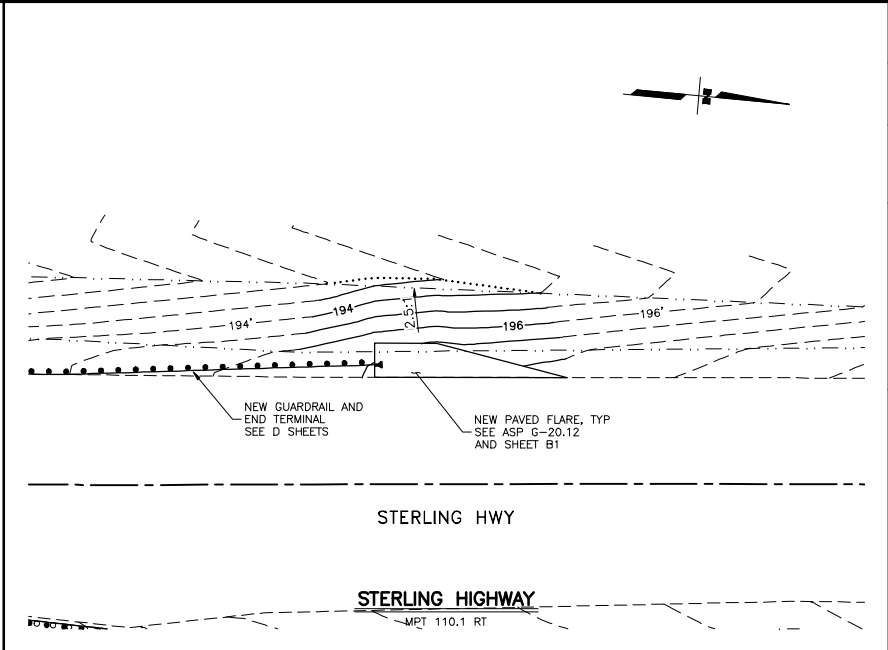
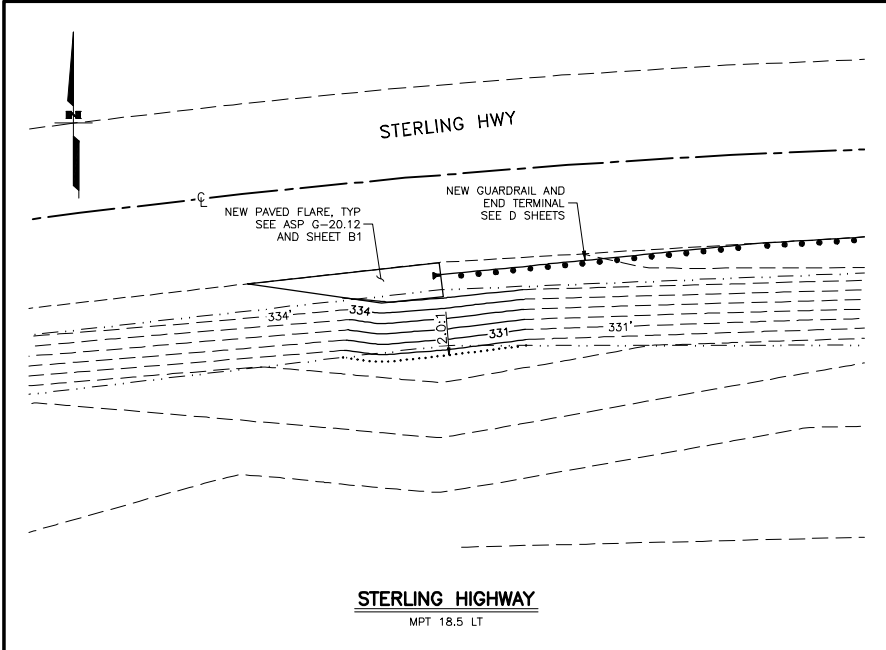
January 13, 2022 | Figure 2 of 7



MPT 111.0

*ROW LOCATED 50' FROM EDGE OF PAVEMENT

PLANS DEVELOPED BY: LOUNSBURY & ASSOCIATES ADDRESS: 3230 C ST. SUITE 201, ANCHORAGE AK 99503 PHONE: (907) 272-5451 CERTIFICATE OF AUTHORIZATION NUMBER: AEC0391
 FILE: D:\PMS\FILE\DM56489\PL-20-001_6 SHEETS\STERLING.DWG DATE/TIME: 1/14/2022 11:16 AM DESIGNED: SM CHECKED: JC D.J.



SHEET NO.	TOTAL SHEETS
G10	G11
STATE	YEAR
ALASKA	2022
PROJECT DESIGNATION	
TBD/CFHWY00938	
NO.	REVISION
DATE	
NO.	REVISION
DATE	
NO.	REVISION
DATE	

Figure 4 of 7

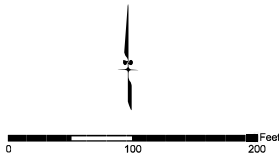


STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
HSIP: CR GUARDRAIL
INVENTORY AND UPGRADE
(SOUTH)
STERLING HIGHWAY
MPT 18.5 LT TO 119.2 RT



- Additional Areas Mapped**
- Wetland
 - DOT&PF ROW
 - Cook Inlet Wetland

DOT&PF Milepost



Wetland Areas Mapped

Matanuska Susitna Borough,
Municipality of Anchorage, &
Kenai Peninsula Borough



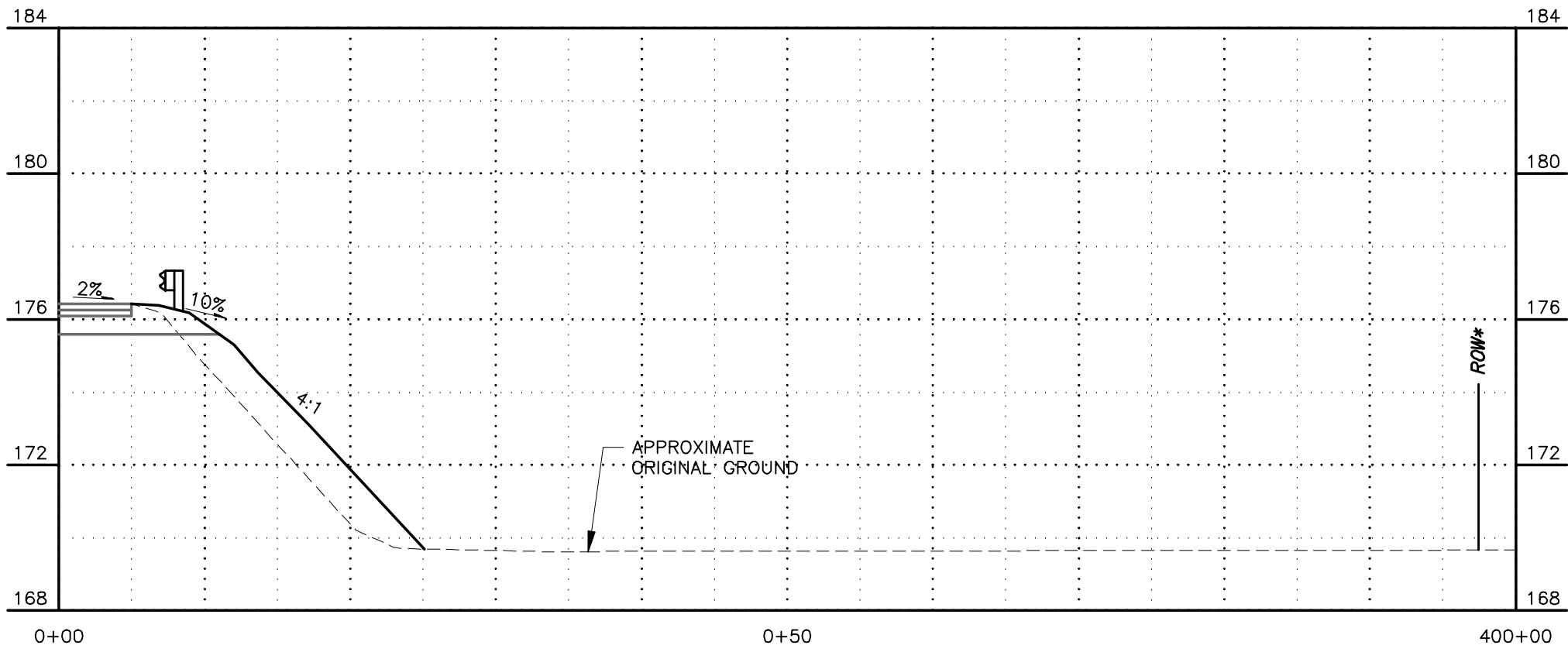
STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

DOT & PF Project No. CFHWY00564
Federal Project No. 0001665
HSIP: CR Guardrail Inventory

Matanuska Valley to Kenai Peninsula

January 13, 2022 | Figure 5 of 7

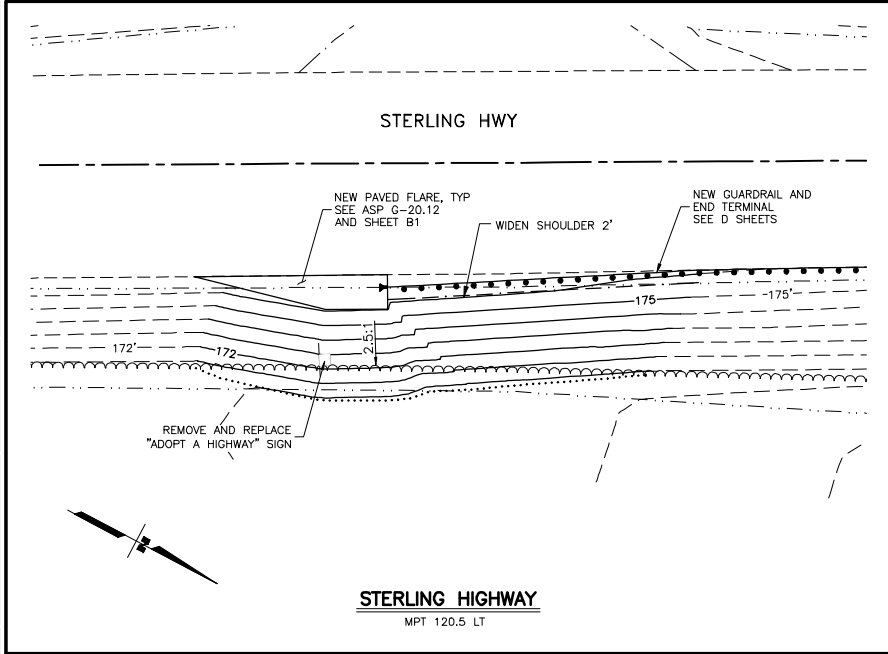
K:\5063129-01\60\GIS\Carto\Environmental\Project Overview\Project Overview.aprx Jan 13, 2022 5:21 PM User: tjameson
Service Layer Credits: Writings, Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



MPT 120.5

*ROW LOCATED 380' FROM EDGE OF PAVEMENT

PLANS DEVELOPED BY: LOUNSBURY & ASSOCIATES ADDRESS: 3230 C ST. SUITE 201, ANCHORAGE AK 99503 PHONE: (907) 272-5451 CERTIFICATE OF AUTHORIZATION NUMBER: AECC391
 FILE: E:\A\PROJECTS\11\11-20-001\0 SHEETS\STERLING.DWG DATE/TIME: 1/14/2022 11:16 AM [C] [X] [O] [V] [D] [DESIGNED] [SM] [CHECKED] [JC] [DRAFTED] [DJ]



SHEET NO.	TOTAL SHEETS
G11	G11
STATE	YEAR
ALASKA	2022
PROJECT DESIGNATION	
TBD/CFHWY00938	
NO.	REVISION
DATE	
NO.	REVISION
DATE	
NO.	REVISION
DATE	

Figure 7 of 7



PLANS DEVELOPED BY:
LOUNSBURY & ASSOCIATES INC.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES
HSIP: CR GUARDRAIL
INVENTORY AND UPGRADE
(SOUTH)

STERLING HIGHWAY
MPT 120.5 LT

Table 1: Location of Guardrail and End Terminals Recommended for Repair or Replacement by Route, Milepoint (MPT), and Lounsbury and Associates, Inc. (LAI) Identification number (ID) for Guardrail Segments and End Terminals, and Recommendations (**Bold** denotes guardrail end terminals which may need to be extended to meet length of need standard and *italic* denotes additional guardrail proposed for repair or replacement)

Route Name	MPT	Failing Guardrail Segments LAI IDS	Failing End Terminals LAI IDS	Recommendations
Big Lake Road	0.1	N/A	2407	Replace end terminal
Bogard Road	4.1 to 9.4	5259, 5261, 5264, 5267, 5268, 5269, 5270, 5271, 5272	2436, 2438, 2441, 2442, 2443 , 2440, 2429 , 2430, 2428, 2427, 2426, 2434 , 2424, 2433, 2432 , 2431, 2432, 2422, 2421, 2420	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
Bridge Access Road	2.5 to 2.8	5636	3082, 3084, 3078, 3080	Replace bridge connection, maintenance repair, replace entire segments, and replace end terminal
C Street	6.1	5019	N/A	Replace guardrail
East Seldon Extension	4.9 to 5.0	N/A	2681	Replace end terminal
Fairview Loop Road	1.3 to 8.4	5254, 5253, 5252, 5258,	2418, 2416, 2417, 2415, 2413, 2109, 2411, 2412, 2408, 2410	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair

Glenn Highway	0 to 36.3, 41.3 to 84.6, 92.7 to 109.9	5001, 5003, 5005, 5006, 5008, 5035, 5036, 5037, 5038, 5039, 5043, 5044, 5045, 5046, 5049, 5050, 5051, 5052, 5055, 5056, 5059, 5064, 5065, 5072, 5074, 5076, 5086, 5087, 5089, 5090, 5095, 5101, 5102, 5103, 5104, 5108, 5124, 5126, 5127, 5128, 5130, 5131, 5132, 5133, 5134, 5135, 5137, 5138, 5139, 5143, 5144, 5145, 5148, 5150, 5151, 5153, 5154, 5155, 5156, 5158, 5163, 5165, 5168, 5173, 5181, 5184, 5188, 5199, 5200, 5208, 5209, 5210, 5212, 5215, 5216, 5220, 5221, 5223, 5225, 5226, 5228, 5237, 5243, 5249, 5250, 5152, 5164, 5504, 5507, 5521, 5537, 5539, 5540, 5541, 5542, 5544, 5545, 5546, 5547, 5549, 5557, 5565, 5567, 5569, 5570, 5572, 5573, 5574, 5575, 5577, 5580, 5582, 5584, 5586, 5593, 5594, 5596, 5611, 5615, 5617, 5618, 5621, 5622, 5623, 5626, 5631, 5632, 5633, 5634, 5509, 5512, 5516	2005, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2057, 2058, 2059, 2060, 2065, 2066, 2067, 2068, 2070, 2071, 2072, 2074, 2075, 2077, 2079, 2087, 2089, 2092, 2093, 2095, 2096, 2097, 2101, 2103, 2104, 2105, 2108, 2109, 2112, 2113, 2116, 2117, 2118, 2119, 2120, 2126, 2128 , 2129, 2130 , 2133, 2134, 2135 , 2136, 2137, 2138, 2139, 2140, 2141, 2143, 2145, 2147, 2153, 2154, 2157, 2158, 2160, 2161, 2164, 2165, 2166, 2167, 2169, 2174 , 2178, 2179, 2180 , 2184, 2185, 2187, 2188 , 2192, 2194, 2198, 2200 , 2202, 2204, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2216, 2218, 2219, 2221, 2222, 2223, 2224, 2225, 2226, 2228 , 2229, 2232, 2233, 2234, 2235, 2236, 2238 , 2239, 2241, 2243 , 2246, 2247, 2248, 2249, 2254, 2255, 2256, 2260, 2262, 2263, 2264, 2268, 2269, 2273, 2274 , 2280, 2281, 2283 , 2289, 2290, 2291, 2292 , 2293, 2294, 2296, 2297 , 2298, 2299, 2300, 2159, 2186, 2213, 2258, 2261, 2266, 2270, 2303 , 2304, 2305, 2307, 2308 , 2312, 2326, 2330, 2331, 2333, 2336, 2337, 2341, 2344, 2345, 2346, 2347, 2350, 2351, 2353, 2354, 2355, 2362, 2363, 2366, 2367, 2369, 2373, 2376, 2379, 2380, 2382, 2383, 2386, 2387, 2388, 2391 , 2393, 2395, 2397, 2399, 2403, 2404, 2318, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2868, 2869 , 2870, 2873, 2875, 2876, 2879, 2881, 2889, 2892, 2893, 2896, 2897 , 2898, 2899 , 2900, 2901 , 2902, 2903, 2904, 2905 , 2906, 2908, 2909, 2910, 2911, 2914, 2915, 2922, 2925, 2926 , 2927, 2928, 2929, 2930, 2931, 2939, 2941, 2942, 2944, 2945, 2949, 2950, 2951, 2952, 2953, 2954, 2955, 2957, 2958, 2959, 2960, 2961, 2962, 2964, 2965, 2966 , 2969, 2970, 2971, 2972, 2974, 2977, 2978 , 2979, 2980 , 2981, 2982, 2983 , 2985, 2986, 2987, 2988 , 2989, 2990 , 2991, 2992, 2994 , 2996, 2997, 3002, 3004, 3007, 3010, 3011, 3012, 3014, 3016 , 3017, 3020 , 3021, 3023, 3026 , 2037, 3030, 3031, 3032, 3040, 3041, 3042, 3043 , 3044, 3046, 3048, 3050, 3052, 3053, 3054, 3055 , 3056, 3057 , 3058, 3060, 3061, 3062, 3063 , 3064, 3065, 3068 , 3069, 3070 , 3071, 3072, 3073, 3074, 3076 , 2842, 2855, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2148, 2172, 2244, 2220, 2240, 2214, 2168, 2286, 2073, 2091, 2124, 2328, 2385, 2309, 2932, 2967, 3034, 3006, 3015, 3013, 3019, 3018, 3022, 3024,	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
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Holt/ Lamplight Road	0.9 to 4.0	6060, 6061, 6069, 6079	3804, 3803, 3794, 3795, 3805, 3807, 3809, 3798 , 3812, 3813, 3802	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
Hope Road	0.8 to 14.9	5434, 5435, 5438, 5439, 5444, 5445, 5452, 5453, 5454, 5455, 5460	2700, 2701, 2702, 2703, 2704, 2705, 2706 , 2707, 2708 , 2709, 2710, 2711, 2713, 2715, 2716 , 2717, 2718 , 2719, 2720 , 2721, 2722 , 2723, 2724 , 2725, 2726 , 2729, 2731, 2732 , 2734, 2735, 2736 , 2737, 2739, 2740, 2742 , 2743, 2744 , 2746, 2747, 2748 , 2750 , 2751, 2752, 2753, 2754 , 2755, 2756 , 2758 , 2759, 2760 , 2762 , 2763 , 2764 , 2765, 2766 , 2767, 2768 , 2769, 2770, 2771, 2772 , 2773 , 2775, 2776 , 2777, 2712, 2714, 2727, 2728, 2730, 2733, 2738, 2745, 2749, 2757, 2761, 2774,	Replace entire segments, replace end terminals, and maintenance repair
International Airport Road	0.3 to 1.7	5471, 5473, 5474, 5477	2781 , 2791	Replace entire segments, replace end terminal, replace guardrail, and maintenance repair
Kalifornsky Beach Road	2.5 to 2.6, 14.1 to 14.2	6290, 6291	4115, 4111	Replace guardrail, replace end terminal, and maintenance repair
Kenai Spur Highway	3.2 to 6.1, 21.8 to 23.2, 28.7 to 38.2	6052, 6058, 6055, 6293, 6294, 6307, 6295, 6296, 6309, 6297, 6312, 6299, 6313, 6314, 6300, 6303, 6317	3782, 3783, 3790, 3791, 3786, 3787, 3789, 4139, 4140, 4118, 4119, 4142, 4144 , 4120, 4121, 4122, 4145 , 4123, 4146, 4149 , 4150, 4151, 4124, 4125, 4126, 4127, 4152, 4155, 4130 , 4156, 4158, 4131 , 4133, 4132 , 4134 , 4135, 4136, 4161, 4163, 4137	Replace entire segment, maintenance repair, and replace end terminal
Knik River Road	0.3 to 11.0	5483, 5488	2803, 2804, 2808, 2807, 2818, 2819	Maintenance repair and replace end terminal

Knik-Goose Bay Road	12.2 to 16.1	5500, 5490, 5491, 5492, 5493, 5495	2820, 2823, 2821, 2822, 2830, 2831, 2832, 2834 , 2835, 2838, 2836, 2837, 2824, 2827, 2825, 2841 , 2839	Replace entire segments, replace end terminal, and maintenance repair
Nash Road	0.5 to 2.1	5384, 5386	2609 , 2610, 2611, 2623 , 2624, 2612 , 2615, 2616, 2627, 2628, 2617 , 2625 , 2626, 2629, 2619, 2631, 2620, 2632, 2621,	Replace end terminal, maintenance repair, and replace entire segment
Old Glenn @ Palmer	13.0 to 17.4	5393, 5394, 5402, 5403, 5404, 5405, 5406, 5407, 5408, 5409, 5410, 5397, 5411, 5412, 5413, 5399, 5416	2651, 2635, 2652, 2637, 2656, 2663, 2666, 2668, 2643, 2648, 2672, 2673, 2671, 2674 , 2650, 2653, 2667, 2670	Replace entire segment, replace guardrail, and maintenance repair
O'Malley Road	0.43 to 3.83	521, 5028, 5022, 5022, 5027, 5026, 5025, 5023, 5024	2056, 2041, 2042, 2055, 2043, 2054, 2044, 2053, 2052, 2051, 2050, 2049, 2045, 2048, 2046, 2047	No repair or replacement recommended because the O'Malley Road Reconstruction Project will remove all existing guardrail
Palmer-Fishhook Road	2.6 to 8.4	N/A	2685, 2684, 2694, 2698, 2695, 2697, 2693, 2688, 2690 , 2686	Replace end terminal and maintenance repair

Parks Highway	0 to 4.5, 10.0 to 39.4, 45.6 to 108.7, 124.6 to 128.1	5883, 5887, 5888, 5884, 5866, 5869, 5873, 5874, 5897, 5899, 5361, 5376, 5375, 5378, 5368, 5369, 5370, 5367, 5365, 5377, 5362, 5363, 5364, 5875, 5878, 5903, 5904, 5905, 5907, 5910, 5913, 5918, 5921, 5924, 5925, 5932, 5933, 5934, 5935, 5937, 5938, 5939, 5942, 5944, 5947, 5948, 5950, 5955, 5958, 5960, 5961, 5962, 5963, 5964, 5965, 5966, 5967, 5968, 5906, 5880, 5882, 5970, 5973, 5975, 5976, 5977, 5978, 5985, 5990, 5994, 5997, 5999, 6000, 6001, 6002, 6005, 6006, 6009, 6012, 6017, 6018, 6021, 6024, 6027, 6028, 6029	2569, 2571, 2583, 2584, 2585, 2586, 2590, 2592, 2592, 2593, 2594, 2597, 2598, 2601, 2602, 2603, 2605, 2606, 2607, 2568, 2578, 2581 , 3438, 3439, 3441, 3442, 3444, 3445, 3448, 3454, 3457, 3462, 3463, 3464, 3465, 3466, 3468, 3469, 3471, 3474, 3475, 3479, 3483 , 3485 , 3486, 3488, 3489, 3491, 3492, 3493, 3498, 3503, 3504, 3505, 3507 , 3508, 3509, 3513, 3516, 3517, 3518, 3520, 3521, 3523, 3524, 3525, 3526, 3527, 3528, 3529, 3530, 3532, 3533, 3534, 3536, 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3547, 3548, 3549, 3550, 3551, 3552, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3560, 3561, 3562, 3564, 3565, 3566, 3567, 3568, 3569, 3570, 3571, 3572, 3573, 3574, 3575, 3576, 3577, 3578, 3579, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3590, 3591, 3592, 3593, 3595, 3596, 3598, 3600, 3602, 3603, 3604, 3605, 3607, 3608, 3609, 3610, 3612, 3613, 3614, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 3625, 3626, 3627, 3629 , 3630, 3631, 3633, 3636, 3642, 3643, 3649, 3650, 3651, 3652, 3653, 3654, 3656, 3657, 3658, 3659, 3660, 3663, 3666, 3667 , 3668, 3673, 3674, 3675, 3677, 3678, 3680, 3681, 3682, 3683, 3686, 3690, 3691, 3692, 3693, 3695, 3696, 3697, 3698, 3699, 3700, 3704, 3707, 3708, 3711, 3712, 3715, 3718, 3719, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3730, 3731, 3732 , 3733, 3734 , 3735 , 3736, 3737, 3738, 3739, 3740, 3741, 3496, 3472, 3535,	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
Portage Glacier Road	1.9 to 4.1	5859, 5858, 5857, 5861, 5863	3420, 3436, 3435, 3419 , 3416, 3411, 3412, 3422, 2423, 3424, 3433, 3425, 3429, 3431, 3409, 3413, 3421, 3428, 3432,	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair

Seward Highway	6.0 to 19.5, 22.4 to 31.2, 35.9 to 74, 89.7 to 98.9, 104.2 to 114.3	5321, 5323, 5290, 5324, 5325, 5312, 5328, 5311, 5319, 5329, 5288, 5287, 5333, 5334, 5286, 5335, 5331, 5330, 5332, 5308, 5285, 5341, 5306, 5343, 5284, 5344, 5350, 5303, 5302, 5301, 5279, 5280, 5278, 5277, 5297, 5294, 5706, 5745, 5746, 5747, 5748, 5749, 5750, 5752, 5755, 5758, 5759, 5760, 6762, 6763, 5766, 5767, 5769, 5740, 5720, 5729, 5716, 5730, 5741, 5731, 5708, 5709, 5735, 5711, 5712, 5736, 5713, 5714, 5738, 5715, 5717, 5773, 5774, 5777, 5779, 5781, 5782, 5784, 5787, 5788, 5791, 5792, 5796, 5797, 5798, 5801, 5803, 5804, 5805, 5806, 5807, 5808, 5809, 5810, 5811, 5814, 5819, 5820, 5821, 5822, 5824, 5825, 5826, 5827, 5828, 5829, 5831, 5832, 5834, 5837, 5838, 5841, 5846, 5847, 5849, 5852, 5854, 5856, 6236, 6237, 6238, 6244, 6245, 6246, 6253, 6254, 6256, 6257, 6259, 6260, 6261, 6263, 6264, 6265, 6268, 6269, 6271, 6272, 6277, 6278, 6279, 6280, 6284, 6285, 6286	2450, 2451, 2452, 2453, 2521 , 2522, 2523 , 2524, 2468, 2528, 2504, 2505 , 2506, 2507, 2508, 2513, 2516, 2518, 2519, 2520, 2529 , 2503 , 2530, 2465 , 2502, 2501 , 2531 , 2532, 2533 , 2534, 2535, 2464, 2500 , 2538, 2540, 2541 , 2542, 2499, 2498, 2496 , 2497, 2495, 2461 , 2494, 2493 , 2547, 2491, 2492, 2550 , 2551, 2460, 2553, 2554, 2457, 2458, 2459, 2463, 2471, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2486, 2487, 2488, 2489, 2490 , 2563, 2564, 2566, 2567, 2455, 2454, 3200, 3201, 3202, 3210, 3209, 3208, 3211, 3242, 3212, 3241, 3243, 3215, 3239, 3199, 3237, 3238, 3203, 3218, 3219, 3191 , 3220 , 3221 , 3192, 3193, 3194 , 3224, 3195 , 3196 , 3225, 3226, 3198, 3227, 3228, 3230, 3244, 3245, 3246, 3248, 3249, 3250, 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3256, 3260, 3261, 3262, 3263, 3264, 3265 , 3266, 3267, 3268, 3269, 3271, 3272, 3273, 3274, 3277, 3278, 3280, 3282, 3283, 3284, 3286, 3287, 3288, 3289, 3290, 3293, 3295, 3297, 3298, 3300, 3301, 3302, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311 , 3312, 3313, 3314, 3315, 3316, 3318, 3319, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332 , 3333, 3334, 3335 , 3336, 3337, 3338, 3339, 3340, 3341, 3342 , 3345 , 3347, 3348, 3350, 3352, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365 , 3366, 3369, 3371, 3373, 3374, 3375, 3376, 3377 , 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3389, 3391, 3392, 3393, 3394, 3395, 3396 , 3397, 3398, 3403, 3404, 3405, 3406, 3407, 3408, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040, 4041, 4043, 4049, 4052, 4053, 4057, 4058, 4059, 4060, 4062, 4063, 4064, 4065, 4067, 4072, 4073, 4074, 4077, 4079, 4081, 4086, 4088, 4089, 4090, 4091, 4092, 4093, 4094, 4097, 4098, 4100, 4101, 4102, 4104, 4106, 4107, 4108, 4110, 2525, 2552, 2556, 2557, 3223, 3259, 3387,	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
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Sterling Highway	0.5 to 7.2, 14.0 to 38.9, 77.4, 81.1 to 104.3, 107.5 to 115.2, 119.2 to 121.7, 126.6 to 126.9	5639, 5642, 5653, 5659, 5661, 5662, 5663, 5664, 5665, 5669, 5672, 5674, 5677, 5678, 5683, 5684, 5687, 5688, 5690, 5692, 5693, 5694, 5696, 5700, 5701, 5704, 6117, 6123, 6128, 6130, 6133, 6171, 6177, 6179, 6183, 6191, 6192, 6193, 6194, 6195, 6198, 6200, 6203, 6205, 6209, 6210, 6211, 6213, 6215, 6218, 6227, 6223, 6225, 6080, 6132, 6115, 6092, 6094, 6113, 6100, 6102, 6144, 6103, 6155, 6145, 6146, 6112, 6147, 6105, 6154, 6148, 6106, 6150, 6153, 6109, 6107, 6108, 6149	3086, 3087, 3089 , 3090, 3091, 3092, 3093, 3095, 3097 , 3099 , 3100, 3101 , 3103, 3104, 3107, 3108, 3110, 3113 , 3114, 3116, 3117, 3118 , 3120 , 3121, 3124, 3125, 3126, 3127 , 3128, 3131, 3132, 3136 , 3137, 3138, 3139, 3140, 3141, 3145, 3146, 3147, 3149, 3150, 3151, 3153, 3160, 3161, 3163, 3165, 3167, 3168, 3169, 3170, 3171, 3172, 3177, 3179, 3182, 3184, 3186, 3833, 3834 , 3835, 3836, 3837, 3838, 3841, 3842 , 3843, 3844, 3845 , 3846, 3847, 3849, 3850, 3851 , 3582, 3856, 3857, 3858 , 3859, 3862 , 3864, 3865, 3866, 3867, 3868, 3869, 3870, 3871, 3872, 3874, 3875, 3876, 3877, 3879, 3880, 3881, 3887, 3892, 3893, 3894, 3895, 3896, 3897, 3898, 3900, 3901, 3902, 3903, 3904 , 3905, 3906, 3907, 3910, 3912 , 3913 , 3915, 3917, 3920 , 3921, 3922, 3923, 3925 , 3927 , 3928, 3929, 3930, 3931, 3932, 3933, 3934, 3935, 3936, 3946, 3953, 3954, 3955, 3956, 3957, 3959, 3960, 3961, 3964, 3965, 3966, 3956, 3957, 3959, 3960, 3961, 3976 , 3986, 3987, 3990, 3993, 4032, 3964, 3965, 3966, 4006 , 4031, 3995, 4020, 4021, 4023, 4024, 4026, 4029, 4008, 4009, 4010, 3891, 4011 , 4017, 3994, 3989, 3860, 3852, 3854, 3916	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair
Talkeetna Spur Road	5.1 to 5.5	6051	3780, 3781	Replace entire segment
Trunk Road	0.8 to 0.9	6030, 6031, 5418	3743, 3744, 3746, 2676, 2679, 2677	Replace end terminal and replace guardrail
Willow Fishhook Road	16.6 to 31.2	6046, 6050	3757 , 3748, 3759, 3760 , 3762 , 3763 , 3765, 3747, 3749, 3750, 3751, 3755, 3766, 3767, 3768, 3769, 3770, 3772, 3773, 3775, 3776, 3778, 3779	Replace entire segments, replace end terminals, replace guardrail, and maintenance repair

Table 2: Guardrail Extension to Meet Safety Standard for Length of Need and Requires Embankment Widening with Summary of Potential Impacts to Resources [Floodplains, Wetlands, and Cultural Resources (Alaska Heritage Resource Survey Review)] by Roadway

Roadway Name	LAI #	Extend End Terminal (ft)	Widen Embankment (ft)	Within Existing Disturbance (i.e., ditch-to-ditch) ¹	Floodplain Impact	Flood Zone	Wetland Impact	Area (ac)	AHRS Present	AHRS #
Bogard Road	2431	100	5	Y	N	-	N	0.000	N	-
	2091	100	2	Y	N	-	N	0.000	N	-
	2188	175	2	Y	N	-	N	0.000	N	-
	2220	87.5	3	N	N	-	N	0.000	N	-
	2228	50	1	N	N	-	N	0.000	N	-
	2238	275	12	N	N	-	N	0.000	N	-
	2283	187.5	4	Y	N	-	N	0.000	N	-
	2303	150	5	Y	N	-	N	0.000	N	-
	2305	187.5	5	Y	N	-	N	0.000	N	-
	2328	100	2	Y	N	-	N	0.000	N	-
Glenn Highway	2391	200	5	Y	N	-	N	0.000	N	-
	2869	37.5	5.5	Y	N	-	N	0.000	N	-
	2897	87.5	7	N	N	-	Y	0.014	N	-
	2965	100	3.5	N	N	-	N	0.000	N	-
	2980	125	1	N	N	-	N	0.000	N	-
	2983	37.5	1	Y	N	-	N	0.000	N	-
	2994	50	0	Y	N	-	N	0.000	N	-
	3055	50	1	Y	N	-	N	0.000	N	-
	3074	25	4	N	N	-	N	0.000	N	-
	3076	125	1	Y	N	-	N	0.000	N	-
Hope Road	2712	75	6	N	N	-	N	0.000	Y	SEW-01008, SEW-00366
	2726	125	3	Y	N	-	N	0.000	N	-
	2730	50	0	V	N	-	N	0.000	Y	SEW-00366
	2744	50	16	N	N	-	N	0.000	N	-
	2748	100	3	Y	N	-	N	0.000	N	-
	2754	75	4	N	N	-	N	0.000	N	-
	2768	162.5	3	Y	N	-	N	0.000	N	-
	2772	87.5	10	N	N	-	N	0.000	N	-
	2773	50	2	Y	N	-	N	0.000	Y	SEW-00366

¹ Y equals Yes, N equals No, and V equals activities consist of vegetation clearing up to 37 feet beyond new guardrail extended to access approach
 HSIP: Central Region Guardrail Inventory and Upgrade Design Services

	2776	112.5	2	Y	N	-	N	0.000	N	-
Kenai Spur	4132	50	0*	V	N	-	N	0.000	N	-
Knik River	2819	125	17	N	N	-	N	0.000	N	-
Old Glenn Highway	2653	87.5	3	N	N	-	N	0.000	N	-
Parks Highway	3629	50	0	V	N	-	Y	0.007	N	-
	3667	125	4.5	N	N	-	N	0.000	N	-
Portage Glacier	3409	125	2	Y	Y	D	N	0.000	N	-
	3421	125	10	N	Y	D	N	0.000	N	-
	3413	112.5	2	N	Y	D	Y	0.000	N	-
Seward Highway	3195	100	15	N	N	-	N	0.000	Y	SEW-00573
	3220	100	1	Y	N	-	N	0.000	N	-
	3311	50	1	Y	N	-	N	0.000	Y	SEW-01224
Sterling Highway	3136	200	20	N	N	-	N	0.000	Y	KEN-00156
	3845	112.5	6	N	Y	D	N	0.000	N	-
	3858	50	0	V	Y	D	N	0.000	N	-
	3862	75	2.5	Y	Y	D	Y	0.001	N	-
	3904	112.5	5.5	Y	Y	D	N	0.000	N	-
	3912	137.5	2.5	Y	Y	D	N	0.000	N	-
	3920	125	11.5	N	Y	AE, D	Y	0.036	N	-
	3925	125	3.5	Y	Y	D	N	0.000	N	-
Willow Fishhook Road	3927	50	0	V	Y	D	N	0.000	N	-
	3757	125	7	N	N	-	N	0.000	N	-
	3762	50	0	V	N	-	N	0.000	N	-

HSIP: Central Region Guardrail Inventory and Upgrade
Kenai River Center Permit Application

Road Name	Anadromous Water Body	Milepoint of Guardrail Replacement	Milepoint of Embankment Widening
Bridge Access Road	Kenai River	2.5	
Holt Lamplight Road	Bishop Creek	3.6-3.7	
Hope Road	Turnagain Arm	10.2-10.4	11.0-13.4 (right side)
Kalifornsky Beach Road	Coal Creek	2.5-2.6	
Kenai Spur Highway	Swanson Creek	38.1	
Nash Road	Salmon Creek	0.5-0.6	
	Small Creek	1.9	
	Sawmill Creek	2.1	
Seward Highway	Grouse Creek	8.1-8.2, 8.5-8.6, 9.2-9.3, 10.6-10.7	
	Unnamed Creek	1.0	
	Snow River	13.6-14.1, 15.2-15.4	
	Ptarmigan Creek	22.6-22.7	
	Lower Trail Lake	25.0-25.3	
	Upper Trail Lake		29.5-31.2
	Canyon Creek	55.6-55.8	
	East Fork Sixmile Creek	60.5-60.7	
	Granite Creek	62.4-62.5, 65.1-65.2	
	Unnamed Creek	67.6-67.9	
Sterling Highway	Daves Creek	0.5-3.1 (Left side)	
	Quartz Creek	4.0-4.1, 5.6-6.0, 6.1-7.2	
	Kenai River	14.0-14.3, 15.2-15.5, 16.0-16.1, 17.5-17.9	18.0-18.5
	Stariski Creek	111.1-111.2	
	Two Moose Creek		119.2-119.4
	Anchor River	121.6-121.7	120.5

Table 1. Work within 50 ft of Anadromous Waters

KENAI PENINSULA BOROUGH PLANNING COMMISSION

RESOLUTION 2022-24

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE CONSTRUCTION OF BANK STABILIZATION WITHIN THE 50-FOOT HABITAT PROTECTION DISTRICT OF THE KENAI RIVER, ANCHOR RIVER AND TWO MOOSE CREEK.

- WHEREAS,** Chapter 21.18 provides for the approval of Conditional Use Permits for certain activities within the habitat protection district; and
- WHEREAS,** KPB 21.18.081 provides that a conditional use permit is required for construction not meeting the standards of KPB 21.18.071; and
- WHEREAS,** KPB 21.18.091 provides for mitigation measures by the planning department staff to address impacts to the Habitat Protection District from a proposed, ongoing, or completed project; and
- WHEREAS,** public notice was sent to all property owners within a 300-foot radius of the proposed activity as provided in Section 21.11.030; and
- WHEREAS,** public notice was published in the Peninsula Clarion on June 16, 2022 and June 23, 2022 as provided in Section 21.11.020; and
- WHEREAS,** public testimony was received at the June 27, 2022 meeting of the Kenai Peninsula Borough Planning Commission;

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

That the Planning Commission makes the following findings of fact pursuant to KPB 21.18:

Section 1. Project Details Within the 50-foot Habitat Protection District

1. Adding additional rip rap fill to current embankments and enlarging the footprint within the HPD

Section 2. Findings of fact pursuant to KPB 21.18.081

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.

5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. Placement of rip rap to stabilize the embankments and hold the guardrail in place is part of critical infrastructure work and public safety.
7. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
8. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:

"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."
9. The River Center found the application complete and scheduled a public hearing for June 27, 2022.
10. Agency review was distributed on June 10, 2022. No comments or objections have been received from resource agencies to date.
11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on June 10, 2022. A total of 11 mailings were sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on June 16, 2022 and June 23, 2022
13. The applicant is currently in compliance with Borough permits and ordinances.

Section 3. Permit Conditions

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River, Anchor River and Two Moose Creek.
2. The bank stabilization must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).

10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

Section 4. Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems; **Conditions 1-4 and Findings 2, 6 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-2, 9-12 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 7 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Finding 8 appears to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Finding 13 appears to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON _____ DAY OF _____, 2022.

Blair Martin, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg
Administrative Assistant

Note: An appeal of a decision of the Planning Commission may be filed to the hearing officer, in accordance with the requirements of the KPB Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

E. NEW BUSINESS

- 5. Ordinance 2022-XX: Amending Chapter KPB 21.50 Relating to Stop Work Orders & Fine Amounts in Stipulated Agreements.**

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor

FROM: Robert Ruffner, Planning Director

DATE: June 23, 2022

RE: Ordinance 2022-__ Amending KPB Chapter 21.50 Relating to Stop-Work Orders and Fine Amounts in Stipulated Agreements (Mayor)

Having appropriate mechanisms to address violations of code is an important means of ensuring code compliance. Presently there is a large gap between the kindest, gentlest approach and the heaviest mechanisms to achieve compliance. In many cases, this means stipulated agreements (SA) which are settled for half of the daily fine, regardless of how impactful the violation may be to residents and taxpayers. Stipulated agreements are an important tool and have been successfully used in many cases to keep violations from escalating to court or administrative proceedings. We are not proposing to eliminate the SA approach, but are seeking to make it more appropriate by providing the flexibility to make the fine commensurate with the violation(s). This should result in more timely responses and with violators coming into compliance through terms contained in the SA.

A tool we presently lack is a stop-work order which would assist in addressing violations without necessitating an SA. In those cases where a cease-and-desist order is issued and not followed—but eventually resolved with an SA—there is little incentive for the violator to actually stop, since the end fine as currently established in code results in half of a daily fine, regardless of what happened between issuing an order and signature on a stipulated agreement. This new stop-work tool adds the incentive to actually stop work with real consequences if work is not stopped.

Finally, many of the violations we are now addressing require substantial expense to the borough. Investigations, field surveys, repeat site visits and compliance efforts can easily cost thousands of dollars only to be settled for \$150 with the tools presently available; short of court or administrative action. These changes add more flexibility to help us resolve issues more quickly and more in line with the expenses borne by the taxpayer.

Your consideration of this ordinance is appreciated.

Introduced by:
Date:
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTER 21.50 RELATING TO STOP-WORK
ORDERS AND FINE AMOUNTS IN STIPULATED AGREEMENTS**

WHEREAS, Kenai Peninsula Borough (Borough) code at KPB 21.50.040 presently provides for various remedies for violations of KPB Title 21, including initiation of a civil action, initiation of an administrative enforcement proceeding, and permit revocation; and

WHEREAS, Borough code 21.50.090 allows the Borough to enter into stipulated agreements with an owner or occupant of property for violations on the property; and

WHEREAS, the presently-enumerated remedies are often inappropriate for first-time violators, minor violations, or an initial enforcement, thereby hampering the Borough's ability to take appropriate enforcement action or scale up enforcement action; and

WHEREAS, the availability of a stop-work order as an additional remedy provides Borough staff with a tool for less-severe enforcement action and a better starting point for any potential enforcement action or stipulated resolution; and

WHEREAS, the present maximum stipulated fine amount of one-half the fine for a one-day violation unnecessarily limits the Borough's ability to recoup enforcement costs such as assessment, investigation, surveying, and pursuing violations; and

WHEREAS, providing the Planning Director with greater discretion in the amount of a stipulated fine will allow the Borough to more effectively address and resolve violations without drawn out enforcement hearings or court actions;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.50.030(A) is hereby amended as follows:

21.50.030. - Violations.

A. Each of the following is a violation of borough code:

1. A use or occupancy of land or a structure that conflicts with a provision of KPB Title 20 or 21, or a permit, entitlement or enforcement order issued under these titles.
2. The construction, alteration, repairing or moving of a structure or part thereof that conflicts with a provision of, or a permit issued under KPB Title 20 or 21.
3. The violation of the terms of an enforcement notice issued under this chapter.
4. The development, occupancy or use of any land or structure for which KPB Title 20 or 21 requires a permit, variance or exception without first obtaining the permit, variance or exception, or after a required permit has been suspended or revoked.
5. Acting in any manner that this title declares to be prohibited, unlawful, a violation, or an offense.
6. To cause or permit another to commit a violation of KPB Title 20 or 21.
7. Failure to obtain a permit required by this title is a violation. An application for a permit, permit modification, or variance may not be processed once an enforcement notice has been issued until the enforcement notice is resolved.
8. Ownership, control or the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of KPB Title 20 or 21, or a permit issued under this title.
9. Failure to abide by a stop-work order.

SECTION 2. That KPB 21.50.040 is hereby amended as follows:

- A. For any violation of this title the borough may bring a civil action against the violator for any one or more of the following:
 1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
 2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
 3. To recover damages to the borough caused by the violation.
 4. To recover a civil penalty not exceeding \$1,000.00 for each violation.
- B. For any violation of this title, the borough may bring an administrative enforcement proceeding under this chapter against the violator for any one or more of the following:

1. To correct or abate the violation.
2. To recover a civil penalty not exceeding \$1,000.00 per day for each violation in accord with the fine schedule set forth at KPB 21.50.055.
3. To cease and desist a violation set forth in KPB 21.50.030.

C. Permit Revocation.

1. A permit may be revoked for failure to comply with the terms of the permit or with applicable provision of Title 21. Staff shall issue an enforcement notice pursuant to KPB 21.50.100 and make a request for a revocation hearing and a written recommendation to the hearing officer by filing the same with the borough clerk. The clerk shall issue notice to the permittee of the revocation hearing at least 20 but not more than 30 days prior to the hearing. The permittee and staff shall file all evidence relevant to the permit revocation with the borough clerk 7 days prior to the hearing. If the noncompliance which lead to the request for revocation is satisfactorily resolved the administrative official may dismiss the revocation proceeding.
2. Pursuant to the Alaska rules of appellate procedure an appeal from the hearing officer's decision on revocation may be taken to the superior court in Kenai within 30 days of the date of distribution.

D. For any violation of this title, the borough may issue a stop-work order against the violator.

[D]E. No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

SECTION 3. That KPB 21.50.055(A) is hereby amended as follows:

21.50.055. - Fines.

A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

Code Chapter & Section	Violation Description	Daily Fine
KPB 20.10.030(A)	Offering land for sale without final plat approval	\$300.00
KPB 20.10.030(B)	Filing/recording unapproved subdivision/plat	\$300.00
KPB 20.10.030(C)	Violation of subdivision code or condition	\$300.00
KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.030(D)	Structure or activity prohibited by KPB 21.06	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00

KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Violation of SMFDA permit conditions/Floodplain Management	\$300.00
KPB 21.06.050	Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.18.071	Failure to obtain staff permit/Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits Also applies to KPB 21.26 material site permits	\$300.00
KPB 21.44.100	Violation of Pre-existing structures/Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Standards and Conditions/Local Option Zoning	\$300.00
KPB 21.44.130(F)	Disallowed Home Occupation/Local Option Zoning	\$300.00
KPB 21.44.135	Failure to file development notice	\$300.00
KPB 21.44.160(A)(B)	Prohibited use	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/Single Family Zoning/Local Option Zoning	\$300.00

KPB 21.44.165(A)(B)	Prohibited use	\$300.00
KPB 21.44.165(C)	Violation of Development Standards/Small Lot Residential Zoning/Local Option Zoning	\$300.00
KPB 21.44.170(A)(B)	Prohibited use	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)(C)	Prohibited Use	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/Residential Waterfront	\$300.00
KPB 21.44.180(A)(B)	Prohibited Use	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/Multi-Family Residential District/Local Option Zoning	\$300.00
KPB 21.44.190(A)(B)	Prohibited Use	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/Industrial District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.030(A)	Violations	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice	\$1,000.00
KPB 21.50.130(I)	Violation of an enforcement order	\$1,000.00

SECTION 4. That KPB 21.50.090(B) is hereby amended as follows:

21.50.090. - Stipulated agreement.

- B. A stipulated agreement between the borough and a property owner or occupant shall constitute an admission and acknowledgement by the property owner or occupant of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. [THE STIPULATED FINE SHALL BE ONE-HALF THE FINE FOR A ONE DAY VIOLATION. WHERE THERE IS MORE THAN ONE VIOLATION ASSOCIATED WITH THE STIPULATION THE STIPULATED FINE SHALL BE ONE-HALF OF THE HIGHEST ONE DAY FINE.] The stipulated fine amount will be set by the borough planning director or designee. Notwithstanding, if a violation or violations span more than one calendar week, the stipulated fine amount must be at least 25% of the total fine amount accrued during the period the property owner or occupant was in violation of borough code. The borough planning director, with concurrence of the borough mayor, may agree to a

fine below this 25% threshold upon a finding in writing that the stipulated fine serves a public purpose.

SECTION 2. That this ordinance is effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

E. NEW BUSINESS

- 6. Ordinance 2022-XX: Amending KPB Chapters 7.20 & 21.44 Relating to Marijuana Establishments & Processing Application for Marijuana Establishments.**

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor

FROM: Robert Ruffner, Planning Director

DATE: June 23, 2022

RE: Ordinance 2022-____, Amending KPB Chapters 7.20 and 21.44 Relating to Marijuana Establishments and Processing Applications for Marijuana Establishments (Mayor)

After six years, it has become apparent that Planning Commission review and comment is an unnecessary additional regulatory step. This ordinance amends KPB 7.20.010 by removing the Planning Commission from the application process for marijuana establishment license applications. It will result in the consistent treatment of the public review process for both marijuana and alcohol establishments because KPB 7.10.010 does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals.

Under 7.20.010 and AS 17.38, the Assembly is the regulatory authority for regulation of local marijuana establishments outside of the cities. It is duplicative to have the Planning Commission hold public hearings on applications for marijuana establishment license applications and also have the Assembly hold a public hearing on the same application when, ultimately, the Assembly is the body that provides a nonbinding recommendation to the Marijuana Control Board. This ordinance still requires a Planning Department report to ensure the application complies with all local ordinances and the Planning Department to present its report to the Assembly during a public hearing.

Additionally, KPB 7.20.010(C) and KPB 21.44.130(F) cite AS 17.38 for a definition for "commercial marijuana facilities", and KPB 21.44.190(D) cites AS 17.38 for a definition for "commercial marijuana establishments". But, AS 17.38 does not provide a definition for either "commercial marijuana facilities" or "commercial marijuana establishments". Instead, the appropriate term actually defined in AS 17.38 is "marijuana establishment", which encompasses marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, and retail marijuana stores. As such, this ordinance will align Borough code with state law.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 07/05/22
Hearing: 08/09/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTERS 7.20, 7.30 AND 21.44 RELATING TO
MARIJUANA ESTABLISHMENTS AND PROCESSING APPLICATIONS FOR
MARIJUANA ESTABLISHMENTS.**

WHEREAS, under KPB 7.20.010 and Alaska Statute (“AS”) 17.38, the Kenai Peninsula Borough Assembly (Assembly) is the regulatory authority for regulation of local marijuana establishments outside of the cities; and

WHEREAS, the Assembly is empowered to comment to the State of Alaska Marijuana Control Board on marijuana establishment applications within the Kenai Peninsula Borough (Borough) consistent with standards set forth in state law and regulation, and Borough code; and

WHEREAS, the Borough code does not require the Planning Commission to make recommendations to the Assembly regarding liquor license applications and renewals; and

WHEREAS, AS 17.38 does not define “commercial marijuana facilities” nor “commercial marijuana establishments”, but does define “marijuana establishments”;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. KPB 7.20.010 is hereby amended, as follows:

7.20.010. - Local Regulatory Authority.

- A. The Kenai Peninsula Borough Assembly is the local regulatory authority for regulation of local marijuana establishments in the area of the borough outside of the cities under AS 17.38 and any implementing regulations.
- B. The assembly is authorized to comment to the State of Alaska Marijuana Control Board on marijuana establishment license applications within the Kenai Peninsula Borough consistent with the standards set forth in AS 17.38, 3 AAC 306, and KPB 7.30. A public hearing shall be held by the assembly prior to submitting the borough's comments on a license application or relocation to the

State of Alaska. License renewals and transfers shall be processed pursuant to KPB 7.30.010(D).

- C. The planning [COMMISSION] department [, CONSISTENT WITH AS 29.40 AND KPB 21.01.010, SHALL] will make recommendations to the [BOROUGH] assembly regarding land use regulation of [COMMERCIAL MARIJUANA FACILITIES] marijuana establishments as defined by AS 17.38 and administer and implement any land use regulations adopted by the borough assembly.

SECTION 2. That KPB 7.30.010 is hereby amended, as follows:

7.30.010. - Applications—Renewals—Hearings—Action.

- A. The assembly shall review and make recommendations to the state on applications submitted to the State Marijuana Control Board for marijuana establishment licenses within the borough in the following situations:
 - 1. Applications for a new license; or
 - 2. Applications requesting approval of a relocation of the licensed premises.
- B. Prior to the assembly making a recommendation to the Marijuana Control Board the [PLANNING COMMISSION SHALL] assembly must hold a public hearing [AND MAKE A RECOMMENDATION TO THE ASSEMBLY] on the license application applying the standards set forth in KPB 7.30.020. The planning department [SHALL] will prepare a staff report for the [PLANNING COMMISSION] assembly addressing items set forth in KPB 7.30.020. [NOTICE OF THE PUBLIC HEARING SHALL BE GIVEN IN ACCORD WITH THE PROVISIONS OF KPB 21.11.]
- C. After assembly public hearing, review and action as provided in KPB 7.30.010(A) and 7.30.020, the borough clerk [SHALL] will provide a letter to the State of Alaska Marijuana Control Board informing it of the assembly's non-objection, protest, or recommended conditional approval as appropriate.
- D. Applications requesting renewal of a license or transfer of ownership shall be reviewed by the finance department and planning department for continued compliance. If the facility, licensee and licensee's affiliates are in compliance with KPB 17.30.020 the borough clerk shall provide a letter of non-objection to the State of Alaska Marijuana Control Board. If the facility, licensee or affiliate is non-compliant with KPB 7.30.020, the process in KPB 7.30.010(B) and (C) shall be followed.

SECTION 3. That KPB 21.44.130 is hereby amended, as follows:

21.44.130. Home occupations.

- A. *Purpose.* It is the purpose of this section to promote peace, quiet, and domestic tranquility within residential LOZDs, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.
- B. *Application.* A single home occupation may be operated on a lot in R-1, R-2, R-R, R-W, and R-M zones subject to the provisions of this section without a permit:
- C. *Standards.*
 - 1. The outside appearance of a building or parcel shall not change so that it detracts from the dwelling's and parcel's principal use as a residence.
 - 2. The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. There may be no more than twenty vehicle trips per day of combined residential and home occupation traffic.
 - 3. The home occupation shall not create a hazard to person or property, or become a nuisance.
 - 4. One permanent sign no greater than 16 square feet may be used to advertise a home occupation. Signs may not be illuminated.
 - 5. Retail sales of goods which generate traffic of customers, deliveries, or suppliers to the parcel are not allowed on the parcel, except where the sale of goods is incidental to the service provided by the home occupation.
 - 6. The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, and shall be clearly incidental and subordinate to the main use of the dwelling as a residence. In-home adult or child care, or preschools may use outdoor space on the lot as long as the area used for the home occupation is fenced for the safety of persons on the premises as a result of the home occupation.
 - 7. The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not allowed on the premises, except for fuel storage of 55 gallons.
 - 8. There shall not be outside storage or display of any kind that is visible from the street or neighboring property other than personal or seasonal decorations.
 - 9. No commercial outdoor storage or outdoor loading of vehicles related to the home occupation shall be allowed, except that one operational work trailer, and one operational and registered work vehicle may park on the

property. Licensed fishing guide operations are limited to two boats for the business per lot, each not exceeding 28 feet in length.

10. No on street parking shall be allowed or necessary to conduct the home occupation.
 11. The home occupation shall be conducted by the inhabitants of the principal permitted dwelling, and no more than one nonresident employee shall be permitted to work on site.
 12. All operators of home occupations are required to meet applicable registration requirements to collect borough sales tax as set for in KPB chapter 5.18.
- D. *Conditions.* All standards set forth in KPB 21.44.130 must be met on a continuing basis and are mandatory to operate a home occupation.
- E. Home occupations allowed in the R-1, R-R, R-W, and R-M districts may include but are not limited to: accountant/bookkeeping services; beauty parlor or salon/barber shop; computer programming, software instruction, web page development, and related computer services; consulting services; dressmaking, sewing, and tailoring; event planning services; in-home adult or child care, or preschool; home cooking and preserving; home crafts, such as model making, needlework, and rug weaving; photography studio; painting, sculpting, writing or other fine arts related crafts; telephone answering, telecommuting, secretarial and administrative services; tutoring and musical instruction.
- F. *Home occupations not allowed in the R-1, R-2, R-R, R-W, and R-M districts.* The following occupations are prohibited as home occupations: service, repair or painting of any vehicle; kennels; sexually oriented businesses; commercial composting; sale, repackaging or use of hazardous materials; retail sales unless clearly incidental and necessary to the service being provided by the home occupation; [COMMERCIAL] marijuana [FACILITIES] establishments as defined in AS 17.38, restaurants, alcoholic beverage premises licensed under title 4 of the Alaska statutes and other similar uses which are inconsistent with the purpose statement of KPB 21.44.010.
- G. Violation of the home occupation provisions of this section shall be processed in accord with the provisions of KPB 21.50. Each day a violation continues is a separate violation.

SECTION 4. That KPB 21.44.190 is hereby amended, as follows:

21.44.190. - Mixed use district (C-3).

- A. *Allowed Principal Uses:* Commercial, business, residential, institutional and public uses are allowed in this district. Industrial uses are prohibited in a C-3 LOZD.

- B. *Allowed Compatible Uses:* Compatible uses allowed in the C-3 zone are uses allowed in R-1 and R-M districts.
- C. *Development Standards.* Development standards apply to principal and accessory structures.
 - 1. *Setbacks.* Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore and where applicable subject to the provisions of KPB 21.18.
 - 2. *Lot size.* Minimum lot size shall be 40,000 square feet. Maximum lot size is 5 acres.
 - 3. *Drainage ways.* Existing natural drainage ways shall be retained.
 - 4. *Coverage.* Maximum coverage by structures is 20 percent of the lot.
- D. *Prohibited Uses.* The following uses are prohibited in C-3 LOZDs: [COMMERCIAL] marijuana establishments licensed under AS 17.38 and applicable regulations, alcoholic beverage premises licensed under Title 4 of the Alaska statutes, and sexually oriented business establishments.

SECTION 5. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2022.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

E. NEW BUSINESS

- 7. Ordinance 2022-XX: Amending KPB Chapter 20.65 Relating to Federal Patent Easements.**

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor

FROM: Robert Ruffner, Planning Director
A. Walker Steinhage, Deputy Borough Attorney

DATE: June 23, 2022

RE: Ordinance 2022-____, Amending KPB Chapter 20.65 Relating to Federal Patent Easements (Mayor)

The federal "Small Tract Act"¹ approved June 1, 1938 (52 Stat. 609), authorized the sale of public lands classified as "valuable for residence, recreation, business or community site purposes."² In 1945, the Small Tract Act was made applicable to Alaska. The reservation of easements was by the Government Land Office, the predecessor agency to the U.S. Department of Interior, Bureau of Land Management, and the Bureau of Land Management which became the administering agency for the sale of the federal lands under the small tract patenting procedure. According to the BLM, small tract rights-of-way were common law dedications to the public to provide ingress and egress to the lessees or patentees and to provide access for utility services in order to avoid burdening local governments with having to acquire an easement when the time came to install utilities and roadways.

Though the Small Tract Act eventually was repealed by the Federal Land Policy and Management Act of 1976, under Alaska law, the repeal of the Small Tract Act did not by itself end a small tract classification.³ Presently, there are lands throughout the Kenai Peninsula Borough still classified for small tract use and numerous others subject to federal patent easements since the easements survive conveyance from the federal government to private landowners. Under Alaska law, these rights-of-way serve as express offers of common law dedication to the public, but such dedications are not complete until the offer has been accepted. Legally, there are several ways to accept an offer of dedication, including: 1) formal action; 2) public use consistent with the offer of dedication;

¹ Formally entitled "An Act to provide for the purchase of public lands for home and other sites".

² *McCarrey v. Kaylor*, 301 P.3d 559, 565 (Alaska 2013) (quoting *Mountain States Tel. & tel. Co. v. Kennedy*, 711 P.2d 653, 655 (Ariz.App.1985)).

³ *Id.* at 566.

and 3) substantial reliance on the offer of dedication that would create an estoppel.

Currently, there is no way under Borough code to effectively address federal patent easements, though this is something about which the Planning Department regularly receives requests from surveyors throughout the Borough. The purpose of this ordinance is to establish a policy recognizing and a mechanism to recognize public rights-of-way reserved by United States Government Patents under the Federal Small Tract Act.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 7/5/22
Hearing: 8/9/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

**AN ORDINANCE AMENDING KPB CHAPTER 20.65 RELATING TO FEDERAL
PATENT EASEMENTS AND PUBLIC RIGHTS-OF-WAY**

WHEREAS, the 1938 federal “Small Tract Act” authorized the sale of public lands classified as valuable for residence, recreation, business or community site purposes; and

WHEREAS, in 1945 the Small Tract Act was made applicable to Alaska; and

WHEREAS, small tract rights-of-way were common law dedications to the public to provide ingress and egress to the lessees or patentees and to provide access for utility services in order to avoid burdening local governments with having to acquire an easement when the time came to install utilities and roadways; and

WHEREAS, there are lands throughout the Kenai Peninsula Borough (Borough) still classified for small tract use and numerous others subject to federal patent easements; and

WHEREAS, these rights-of-way serve as express offers of common law dedication to the public; and

WHEREAS, common law dedications are not complete until the offer has been accepted; and

WHEREAS, currently there is no way under Borough code to effectively address federal patent easements; and

WHEREAS, the Planning Department regularly receives requests from surveyors throughout the Borough to provide an avenue to address federal patent easements; and

WHEREAS, at its meeting held on June 27, 2022, the Planning Commission recommended _____ of this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 20.65 is hereby amended as follows:

20.65.025. - Federal patent easements and public rights-of-way.

- A. The borough recognizes all reservations for road and utility easements contained in U.S. Patents to be public rights-of-way. As public rights-of-way, the borough may establish borough roadways within the easements as provided for in borough code and state statute, vacate and abandon the easements as public rights-of-way under borough code and state statute, and license, regulate and administer as public rights-of-way pursuant to borough code and state statute and its authority as a political subdivision of the State of Alaska.
- B. Before the borough vacates, abandons, or alters federal patent easements, the Planning Department will request comment from the pertinent federal and state agencies. Federal patent easements may not be vacated or abandoned if a federal or state agency objects to the vacation or abandonment within forty-five days of the Planning Department’s request for comment. The process to vacate, abandon, or alter federal patent easements otherwise will conform to KPB 20.65.030, 20.65.040 and 20.65.050.

SECTION 2. This ordinance is effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ____ DAY OF _____ 2021.

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

E. NEW BUSINESS

- 8. Ordinance 2022-XX: Amending KPB 21.25 to Add Definition of “Aggrieved Party” and Amending KPB 21.29 to Remove the Term “Impartial”, to Clarify the Well-Monitoring Timeline, to Define “Quarterly”, and to Add a “Definitions” Section.**

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Robert Ruffner, Planning Director

FROM: Samantha Lopez, Senior Manager

DATE: June 23, 2022

RE: Ordinance 2022-XX: Amending KPB 21.25 to Add Definition of "Aggrieved Party" and Amending KPB 21.29 to Remove the Term "Impartial", to Clarify the Well-Monitoring Timeline, to Define "Quarterly", and to Add a "Definitions" Section (Mayor)

The Material Site Assembly Subcommittee has been considering code revisions to KPB 21.25 Conditional Land Use Permits and KPB 21.29 Material Site Permits. The schedule has been slightly delayed, so staff are proposing some smaller code revisions which would provide clarification, and greatly assist staff in implementing said code:

- Amending KPB 21.25 Conditional Land Use Permits:
 - Define "Aggrieved Party". This would reduce the number of people who could file an appeal per KPB 21.25.100. Right now, chapter 21.25 lacks a definition for an "Aggrieved Party". Presently, this means individuals who are not adversely affected, but disagree, to appeal the decision of the hearing officer. By defining the term, it will reduce litigation to those people who can show they are directly and negatively impacted. Further, it clarifies that the KPB is not considered an aggrieved party unless it has a fee property interest that is affected by the decision, though it may still be a party of record and enter an appearance in an appeal to defend any claims of procedural error or claims that the decision violates KPB code or state law.
- Amending KPB 21.29 Material Site Permits:
 - Remove the term "impartial" from KPB 21.29.050(A)(4). This term proved contentious at the Planning Commission level during a recent Conditional Land Use Permit hearing. The term is not used elsewhere in code, and is not defined. Removing the term would eliminate any misperceptions.
 - Defining "quarterly" will provide much-needed clarification to the well-monitoring timeline found in KPB 21.29.050(A)(5)(C). Current code intends for quarterly water samples to be taken, but it is not

explicitly said. By using and defining the term, it will provide clear guidelines to both applicants and staff.

- o Add a "definitions" section to KPB 21.29.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 7/5/22
Hearing: 8/9/22
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-**

AN ORDINANCE AMENDING KPB 21.25 TO ADD DEFINITION OF “AGGRIEVED PARTY” AND AMENDING KPB 21.29 TO REMOVE THE TERM “IMPARTIAL”, TO CLARIFY THE WELL-MONITORING TIMELINE, TO DEFINE “QUARTERLY”, AND TO ADD A “DEFINITIONS” SECTION

WHEREAS, code related to material sites, found in KPB 21.25 and KPB 21.29, has not been substantially amended in over ten years; and

WHEREAS, Kenai Peninsula Borough Assembly President Johnson formed a subcommittee of the Assembly to review and discuss proposed amendments to KPB 21.29, KPB 21.25 and KPB 21.50.055 regarding Material Site Permits, Applications, Conditions, and Procedures; and

WHEREAS, the Material Site Assembly Subcommittee met on April 5 and April 19, 2022 but, due to scheduling conflicts, has postponed further meetings until September 6, 2022; and

WHEREAS, through recent public hearings held at Kenai Peninsula Borough Planning Commission meetings, staff have identified specific areas of code within KPB 21.25 and KPB 21.29 that would benefit from clarification, allowing for improved implementation of these chapters; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of June 27, 2022, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 21.25.030 is hereby amended as follows:

21.25.030. Definitions.

A. Unless the context requires otherwise, the following definitions apply to CLUPs:

1. *Abandon* means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or

otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.

2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation. For the purposes of this section, the Kenai Peninsula Borough will not be considered an aggrieved party unless it has a fee property interest that is affected by the decision. Notwithstanding, the Kenai Peninsula Borough will be considered a party of record and may enter an appearance in an appeal to defend claims of procedural error or claims that the decision violates borough code or state law.
3. *Animal feeding operation* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period.
 - a. The same animals need not remain on the lot for 45 days or more; rather, some animals are fed or maintained on the lot 45 days out of any 12-month period, and
 - b. Animals are "maintained" for purposes of this ordinance when they are confined in an area where waste is generated and/or concentrated or are watered, cleaned, groomed, or medicated in a confined area, even if the confinement is temporary.
 - c. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other.
 - d. Slaughterhouses are animal feeding operations.
4. *Animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighting [weighing] over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
5. *Animal waste* means animal excrement, animal carcasses, feed wasted, process wastewaters or any other waste associated with the confinement of animals from an animal feeding operation.
6. *Animal waste management system* means a combination of structures and nonstructural practices serving an animal feeding operation that provides for the collection, treatment, disposal, distribution, storage and land application of animal waste.
7. *Aquifer* means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
8. *Aquifer-confining layer* means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
9. *Child care facility* means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed

pursuant to AS 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

10. *Commercial* means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
11. *Concentrated animal feeding operation (CAFO)* means an animal feeding operation confining at least: (1) 1,000 swine weighing at least approximately 55 pounds; (2) 1,000 slaughter and feeder cattle; (3) 700 mature dairy cattle; (4) 500 horses; (5) 10,000 sheep or lambs; (6) 55,000 turkeys; (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering); (8) 30,000 laying hens or broilers (if the facility has a liquid manure system); (9) 5,000 ducks; (10) 1,000 animal units; or (11) a combination of the above resulting in at least 1,000 animal units. Each individual parcel upon which a CAFO is located is a separate CAFO unless they adjoin each other.
12. *Conditioning or processing material* means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
13. *Correctional community residential center (CCRC)* means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.
14. *Correctional institution* means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.
15. *Exhausted* means that all material of a commercial quality in a sand, gravel, or material site has been removed.
16. *Federal prisoners* means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons. *Groundwater* means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
17. *Liquid manure* or *liquid animal waste system* means any animal waste management system which uses water as the primary carrier of such waste into a primary retention structure.
18. *Multi-purpose senior center* is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance,

recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010—47.60.090, as currently written or hereafter amended.

19. *Person* shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

20. *Prisoner* means:

- a. a person held under authority of state law in official detention as defined in AS 11.81.900;
- b. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

21. *Private school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.45.030 or 14.45.100—14.45.130, as currently written or hereafter amended.

22. *Public school* is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

23. *Quarter or Quarterly* means January through March, April through June, July through September, or October through December;

24. *Sand, gravel or material site* means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.

25. *Seasonal high groundwater table* means the highest level to which the groundwater rises on an annual basis.

26. *Senior housing project* means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

27. *Stable condition* means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

28. *Surface water* means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.

29. *Topsoil* means material suitable for vegetative growth.

30. *Waterbody* means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.

31. *Water source* means a well, spring or other similar source that provides water for human consumptive use.

SECTION 2. That KPB 21.29.050 is hereby amended as follows:

21.29.050. Permit conditions.

- A. The following mandatory conditions apply to counter permits and CLUPs issued for sand, gravel or material sites:

...

4. *Water source separation.*
 - a. All permits shall be issued with a condition which prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance.
 - b. All counter permits shall be issued with a condition which requires that a four-foot vertical separation from the seasonal high water table be maintained.
 - c. All CLUPS shall be issued with a condition which requires that a two-foot vertical separation from the seasonal high water table be maintained.
 - d. There shall be no dewatering either by pumping, ditching or some other form of draining unless an exemption is granted by the planning commission. The exemption for dewatering may be granted if the operator provides a statement under seal and supporting data from a duly licensed and qualified [IMPARTIAL] independent civil engineer, that the dewatering will not lower any of the surrounding property's water systems and the contractor posts a bond for liability for potential accrued damages.
5. *Excavation in the water table.* Excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission based on the following:
 - a. Certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.
 - b. The installation of a minimum of three water monitoring tubes or well casings as recommended by a qualified independent civil engineer or professional hydrogeologist adequate to determine flow direction, flow rate, and water elevation.
 - c. Groundwater elevation, flow direction, and flow rate for the subject parcel, measured in [THREE-MONTH] quarterly intervals by a duly licensed and qualified independent civil engineer or professional hydrogeologist, for at least [ONE YEAR] four quarters prior to application. Monitoring tubes or wells must be kept in place, and measurements taken, for the duration of any excavation in the water table.
 - d. Operations shall not breach an aquifer-confining layer.

SECTION 3. That KPB 21.29 is hereby amended as follows:

21.29.130. Definitions.

A. Unless the context requires otherwise, the following definitions apply to material site permits and activities:

1. Abandon means to cease or discontinue a use without intent to resume, but excluding short-term interruptions to use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility or during normal periods of vacation or seasonal closure. An "intent to resume" can be shown through continuous operation of a portion of the facility, maintenance of utilities, or outside proof of continuance, e.g., bills of lading or delivery records. Abandonment also means the cessation of use, regardless of voluntariness, for a specified period of time.
2. Aggrieved Party means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
3. Aquifer means a subsurface formation that contains sufficient water-saturated permeable material to yield economical quantities of water to wells and springs.
4. Aquifer-confining layer means that layer of relatively impermeable soil below an aquifer, typically clay, which confines water.
5. Commercial means any provision of services, sale of goods, or use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services.
6. Conditioning or processing material means a value-added process including batch plants, asphalt plants, screening, washing, and crushing by use of machinery.
7. Exhausted means that all material of a commercial quality in a sand, gravel, or material site has been removed.
8. Groundwater means, in the broadest sense, all subsurface water, more commonly that part of the subsurface water in the saturated zone.
9. Person shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.
10. Quarter or Quarterly means January through March, April through June, July through September, or October through December;
11. Sand, gravel or material site means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g., gold, silver, and other metals), nor energy minerals including but not limited to coal, oil, and gas.
12. Seasonal high groundwater table means the highest level to which the groundwater rises on an annual basis.
13. Stable condition means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

14. Surface water means water on the earth's surface exposed to the atmosphere such as rivers, lakes, and creeks.
15. Topsoil means material suitable for vegetative growth.
16. Waterbody means any lake, pond, stream, riparian wetland, or groundwater into which stormwater runoff is directed.
17. Water source means a well, spring or other similar source that provides water for human consumptive use.

SECTION 4. That this ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS ____
DAY OF _____, 2022.**

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk