

Kenai Peninsula Borough Planning Department

MEMORANDUM

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

FROM: Max Best, Planning Director 

DATE: February 27, 2020

RE: Vacate the entire 66 foot wide Culhane Avenue right of way between Hostetter Street and Issermoyer Street running east to west, including all associated utility easements adjoining the right of way as granted per Right of Way Map recorded as plat no. 84-115 in the Homer Recording District. The right-of-way being vacated is unconstructed and located within the SW 1/4 NW1/4 & NW 1/4 SW1/4 of Section 20, Township 2 South, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-014V. Petitioner: Rick Bailey and Jerri Chivers of Soldotna, AK

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

During their regularly scheduled meeting of February 24, 2020, the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way vacation by unanimous consent based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

AGENDA ITEM G. PUBLIC HEARINGS

4. Vacate the entire 66 foot wide Culhane Avenue right of way between Hostetter Street and Issermoyer Street running east to west, including all associated utility easements adjoining the right of way as granted per Right of Way Map recorded as plat no. 84-115 in the Homer Recording District. The right-of-way being vacated is unconstructed and located within the SW 1/4 NW1/4 & NW 1/4 SW1/4 of Section 20, Township 2 South, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-014V.

Staff Report given by Scott Huff

PC Meeting: 2/24/2020

Purpose as stated in petition: The petitioner owns the property on each side of Culhane Avenue. There is access per platted right-of-way on the north, south, east, and west. Cooper Avenue along the north side of the property and Hostetter Street along the west side have been partially constructed. It is unlikely that this section of Culhane Avenue will ever be constructed.

Petitioners: Rick Bailey and Jerri Chivers of Soldotna, AK

Notification: Public notice appeared in the February 13, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the February 20, 2020 issue of the Homer News as part of the Commission's tentative agenda.

3 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 1 receipt had been returned at the time the staff report was prepared.

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Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

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

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

Comments Received:

ACS: No objections.

ENSTAR: No Comments.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: No Comments.

KPB Planning: There are no local option zone or material site issues.

KPB River Center: Not within a flood hazard area and not within the habitat protection district.

KPB Roads Department: It appears that there is alternate access to properties beyond the proposed vacate. I do not see any issues.

State Parks: No comments.

Staff Discussion:

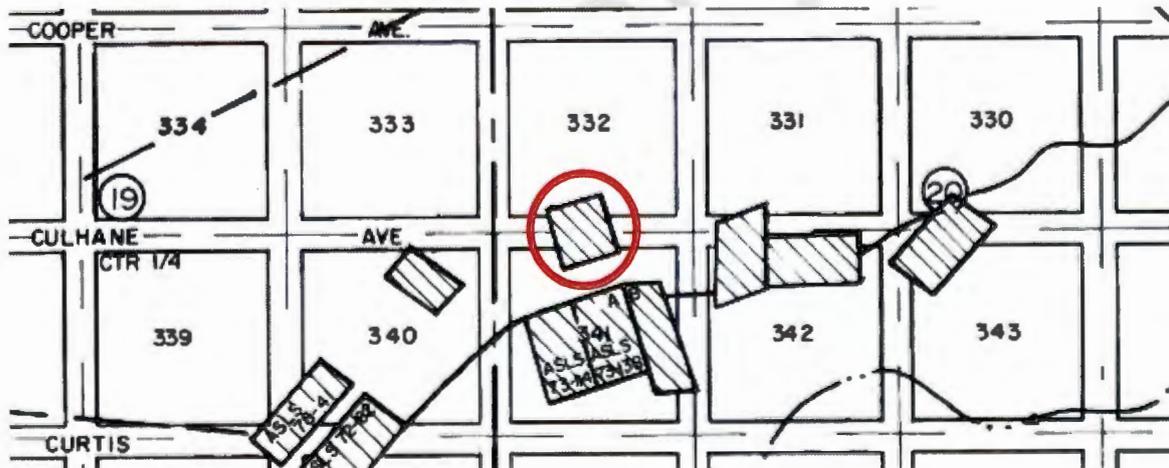
If approved, Bailey Meadow (KPB File No. 2020-014) will finalize the proposed right of way vacation. The Plat Committee is tentatively scheduled to review KPB File No. 2020-014 on March 23, 2020. Staff notes the subject platting action will require an exception to KPB 20.30.170 Block Length. However, this vacation will not increase the block length within the subdivision and a closed block will still exist.

The Ninilchik Right of Way Map, HM 84-115, dedicated 66' wide rights-of-way centered on all 1/16th and 1/4 aliquot lines and section lines, a 100' wide right-of-way on Oil Well Road, and 66' wide rights-of-way along seismograph lines in the area known as Caribou Hills. While the plat claims to not be a subdivision plat, the plat changed legal property lines and assigned tract numbers to the parcels created by the plat.

Culhane Avenue is located on the east/west 1/4 line of Sections 19 and 20, Township 2 South, Range 12 West. This proposed vacation is located between Tracts 332 and 341, HM 84-115, within the west half of Section 20.

Note 6, HM 84-115, states "This plat dedicates a 66' ROW centered on all 1/16th & 1/4 aliquot lines and section lines, **except those portions of the 1/16 & 1/4 lines that cross lands which are marked 'Not part of this plat.'**"

One such area on HM 84-115 that was not part of the plat is located on Culhane Avenue's 1/4 line and Tracts 332 and 341. Culhane Avenue was not dedicated at this location.



Per ASLS 73-114, HM 77-88, the highlighted area is ADL 52829. The information on this ADL has been archived by the State and is not available online. Regardless, per the certificate to plat submitted for File No. 2020-014, the ADL no longer affects the property. However, the existence of the ADL when HM 84-115 was recorded prevented the dedication of a connection of Culhane Avenue between Tracts 332 and 341.

KPB 20.70 – Vacation Requirements.

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

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days

in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: The petitioner owns the property on each side of Culhane Avenue. There is access per platted right-of-way on the north, south, east, and west. Cooper Avenue along the north side of the property and Hostetter Street along the west side have been partially constructed. It is unlikely that this section of Culhane Avenue will ever be constructed.

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

Platting Staff Comments: The vacation will be finalized by Bailey Meadows (KPB File No. 2020-014), which is tentatively scheduled to be heard at the March 23, 2020 Plat Committee meeting.

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

Platting Staff Comments: Per the petition, these portions of Culhane Avenue are not used by vehicles. Per the petition and aerial imagery, these portions of Culhane Avenue are not constructed. Hostetter Street and Cooper Avenue have been improved.

Per KPB four foot contours, these portions of Culhane Avenue are relatively flat. Per Kenai Watershed Forum Wetland mapping, these portions of Culhane Avenue are not affected by low wet areas.

These portions of Culhane Avenue do not provide access to any parcels other than the interiors of Tract 332 and 341, which KPB File No. 2020-014 proposes to combine into one parcel. The parcels are surrounded by a complete block of dedicated rights-of-way (Hostetter Street, Cooper Avenue, and Issermoyer Street) which provides access to the adjacent parcels. Constructed, KPB maintained Oil Well Road is located approximately 400' south of Culhane Avenue. Oil Well Road provides superior alternate east/west vehicular access between Hostetter Street and Issermoyer Street. In addition, partially constructed Cooper Avenue provides east/west access along the north boundary of Tract 332. Partially Constructed Hostetter Street provides north/south access along the west boundaries of Tract 332 and 341 from Cooper Avenue to Oil Well Road.

Staff recommendation: *Concur that alternate equal or superior vehicular access exists on Hostetter Street, Cooper Avenue, and Oil Well Road.*

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

Platting Staff Comments: Per the petition, these portions of Culhane Avenue are not used for pedestrian or other uses.

As noted, above, these portions of Culhane Avenue are generally flat and are not affected by low wet areas, indicating that they are suitable for general road use.

Regardless, as noted above, these portions of Culhane Avenue do not provide access to any parcels other than the interiors of Tracts 332 and 341. Alternate or superior access is provided by Cooper Avenue, Hostetter Street, and Oil Well Road.

Staff recommendation: Concur that alternate equal or superior access for other uses exists on Hostetter Street, Cooper Avenue, Issermoyer Street, and Oil Well Road.

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

Platting Staff Comments: Per the petition, the rights-of-way are not in use by any utility company.

HM 84-115 granted 10' utility easements adjoining each right-of-way. The surrounding rights-of-way that make up the complete block noted above are all adjoined by 10' utility easements, excluding the area affected by ADL 52829.

A utility easement is not required to provide utility access to the middle of Tracts 332 and 341 as there are utility easements on the existing right of ways. In addition, KPB File No. 2020-14 proposed to combine the two tracts into one parcel. A utility easement is not required to provide service to the middle of a single parcel. These portions of Culhane Avenue and associated utility easements would not logically be required by a public utility.

Staff recommendation: Concur that these portions of Culhane Avenue and associated utility easements would not logically be required by a public utility and that equal or superior access is provided by Hostetter Street, Cooper Avenue, Issermoyer Street, Oil Well Road, and their associated 10' utility easements.

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

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant any utility easements requested by 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 20.70.110:

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

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

KPB 20.70.120:

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

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. The owner was present and Chair Martin said they would call her up if they had questions. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Ernst moved, seconded by Commissioner Morgan, to approve the vacations as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

MOTION PASSED: Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

G. PUBLIC HEARINGS

- 3. Vacation of Culhane Avenue and associated utility easements in the Ninilchik area. KPB File 2020-014V. Petitioner(s): Jerri Chivers and Rick Bailey of Soldotna, AK.**

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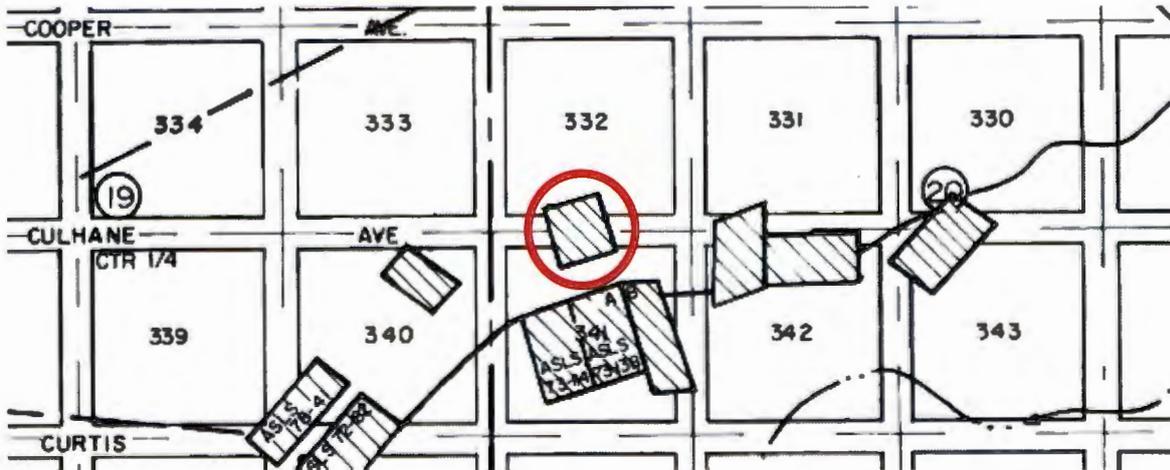
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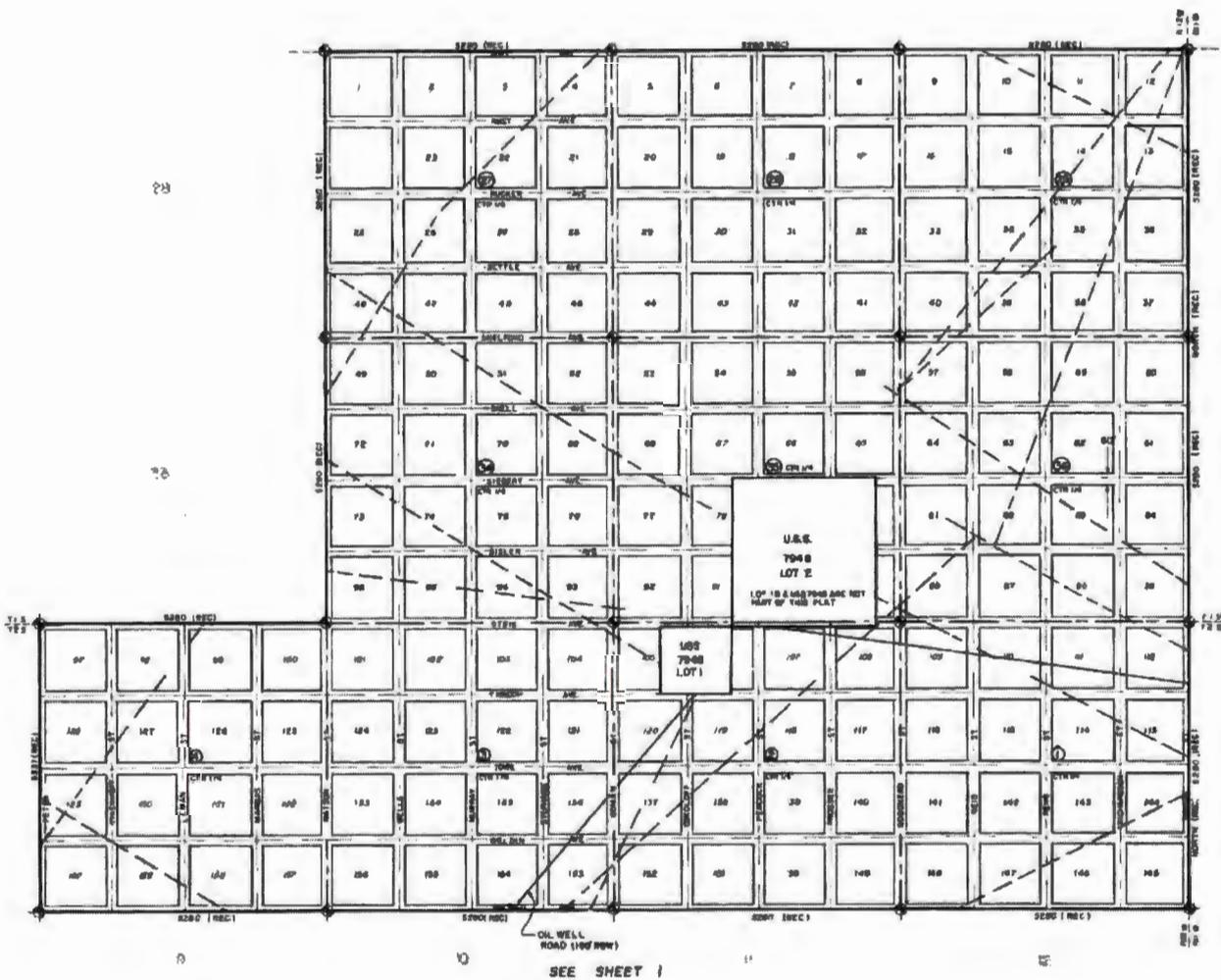
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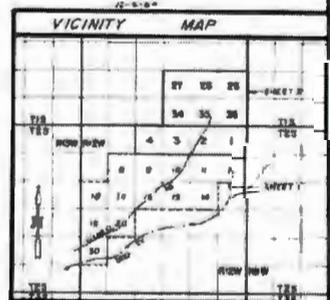
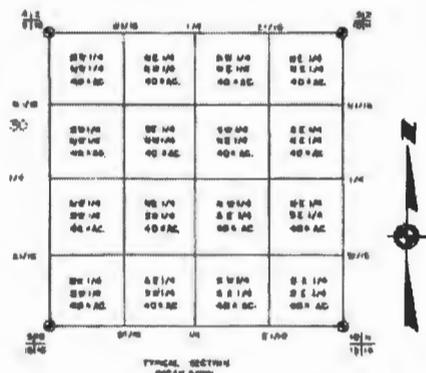
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KPB 20.70.130:



SEE SHEET 1



RIGHT OF WAY MAP
OF LAND CONTAINED
HEREIN
SEC. 20-22-25-27, T1S, R10W, S1W
SEC. 1-4, 8-10, 14-16, 18, 20, 22 T2S, R10W, S1W

TED FORSLI & ASSOCIATES, INC.
SURVEYING - ENGINEERING - ARCHITECTURE
100 N. 10th St., Suite 100, Fargo, ND 58102
701.785.1111

Scale: 1" = 1000'

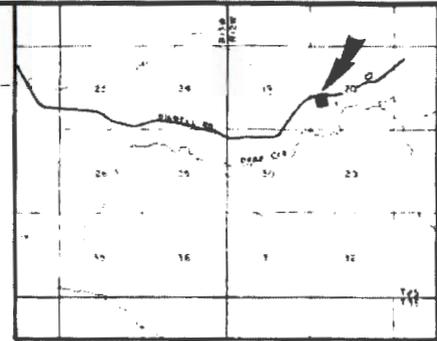
Drawn: G.S.O. Date: 8/15/15

84-115
NO. 8152
12.7.15
S. JAMES
Subdivision

RA 84-115

NINILCHAK E.G.M. P.M.P.

Protracted Section 20, Township 2 South, Range 12 West, Seward Meridian, Alaska



VICINITY MAP
SCALE
1" = 1 MILE

SURVEYOR'S CERTIFICATE
I, HEREBY CERTIFY THAT I AM REGISTERED TO PRACTICE LAND SURVEYING IN ALASKA AND THAT THIS PLAN REPRESENTS A SURVEY MADE UNDER MY DIRECT SUPERVISION, AND THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS LOCATED, AND THAT ALL DIMENSIONAL AND OTHER DETAILS ARE CORRECT.

Ken Branch 1201-S
P. O. Box 1201
Fairbanks, Alaska

CERTIFICATE OF OWNERSHIP
I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM THE DIRECTOR, ALASKA DIVISION OF LANDS, AND THAT THE STATE OF ALASKA IS THE OWNER OF ASLS NO. 73-114 AS SHOWN HEREON. I HEREBY APPROVE THIS SURVEY AND PLAN FOR THE STATE OF ALASKA.

Director, Alaska Division of Lands
Date: 11/2/77

NOTARY'S ACKNOWLEDGEMENT
SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd day of November 1977, at Fairbanks, Alaska.

Nancy L. Branch
Notary for Alaska

CERTIFICATE OF LESSEE'S
WE HEREBY CERTIFY THAT WE ARE THE LEGAL CLAIMANTS OF THE PROPERTY SHOWN HEREON AND THAT WE HEREBY APPROVE THIS PLAN OF SURVEY.

Ken Branch
513 East 18th Ave
Anchorage, Alaska

NOTARY'S ACKNOWLEDGEMENT
SUBSCRIBED AND SWORN TO BEFORE ME THIS 28th day of November 1977, at Fairbanks, Alaska.

Nancy L. Branch
Notary for Alaska

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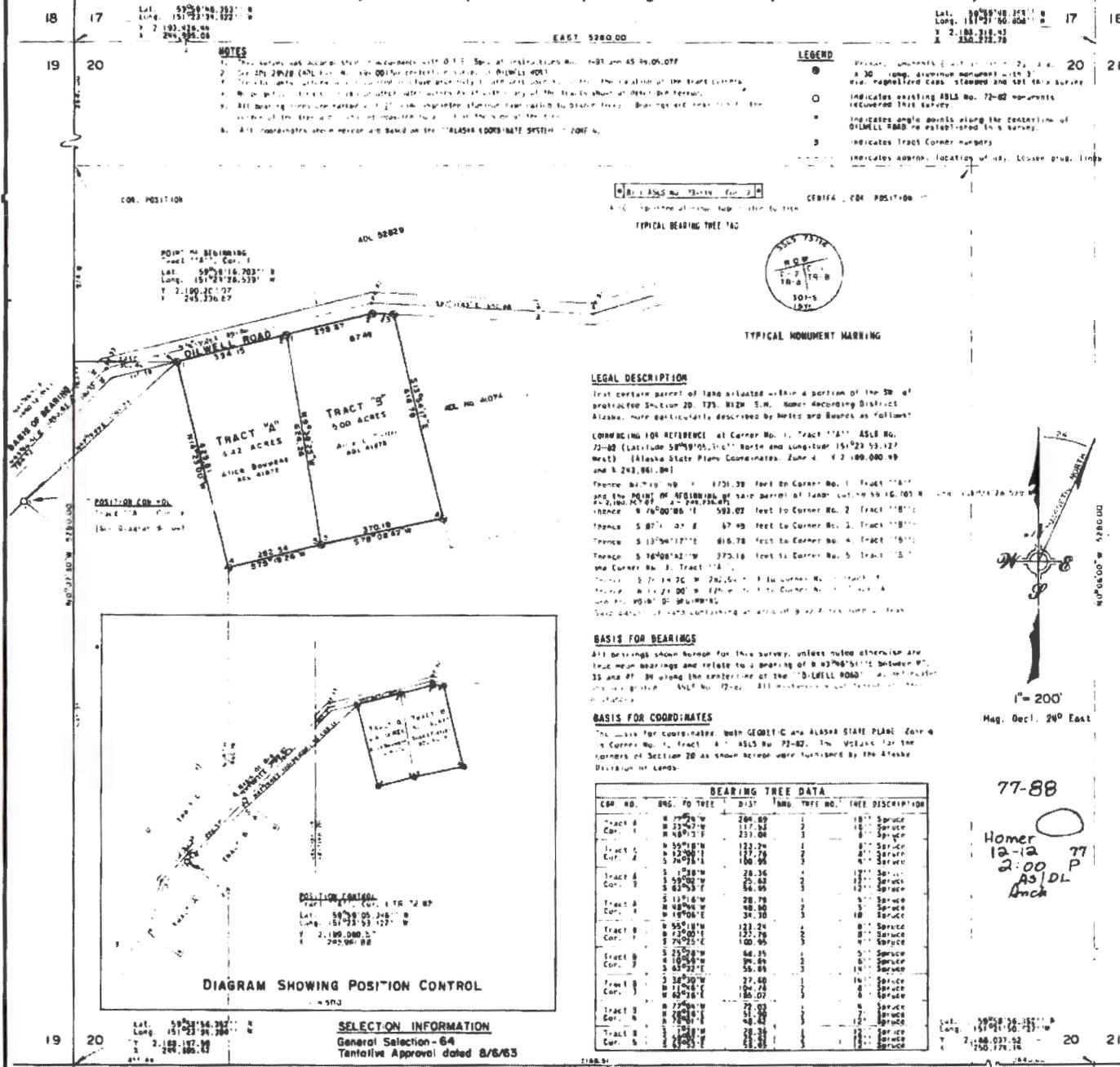
Nancy L. Branch
Notary for Alaska

DATE OF SURVEY: October, 1974
DRAWN BY: Ken Branch 1201-S

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
ANCHORAGE, ALASKA

ALASKA STATE LAND SURVEY No. 73-114
Within Protracted Section 20, T2S, R12W, S.14

APPROVAL RECOMMENDED BY: Ken Branch
APPROVED BY: Nancy L. Branch
CHECKED BY: Nancy L. Branch
FILE NO. 73-114





2016 AERIAL IMAGERY



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

Date: 2/11/2020



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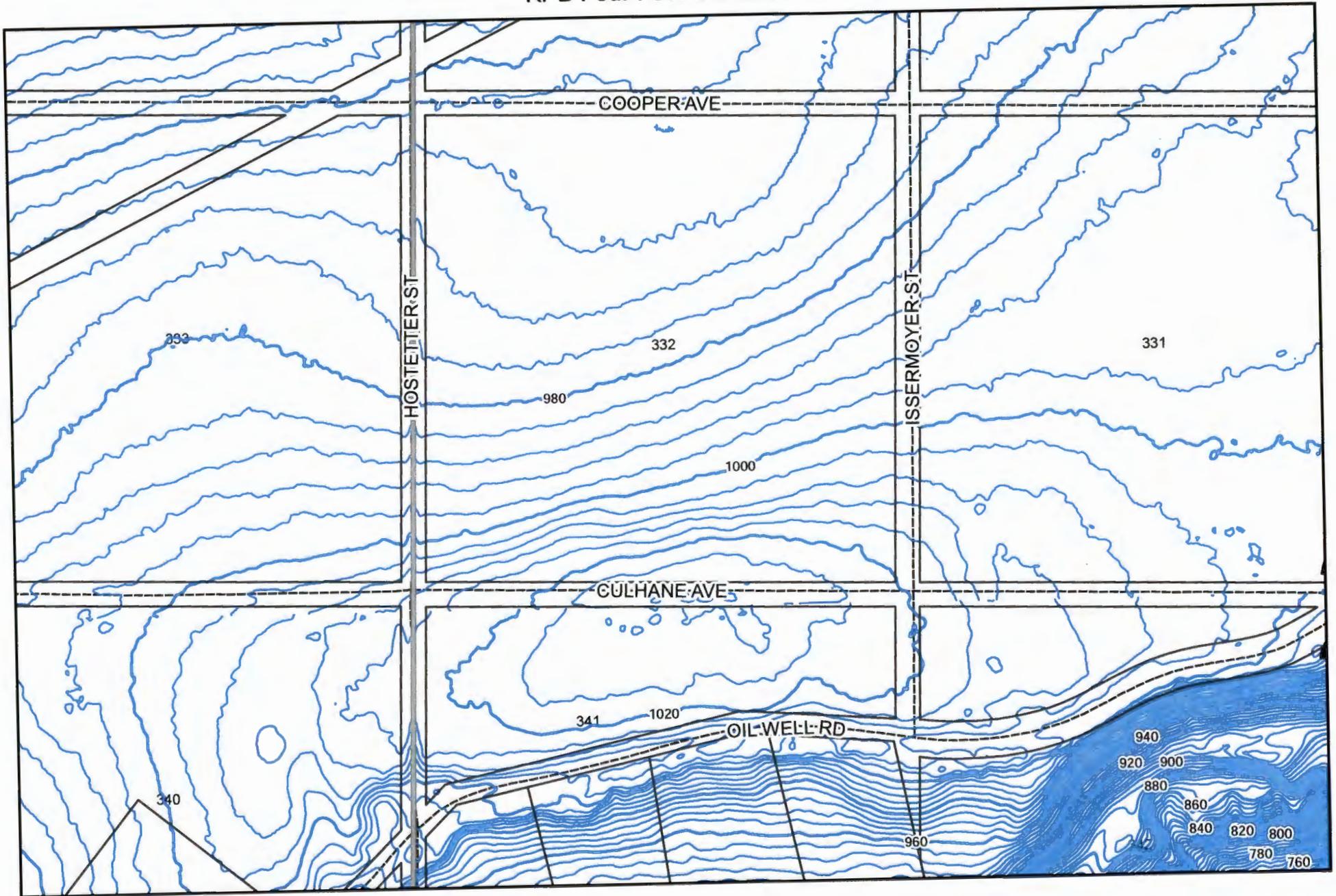
Aerial View



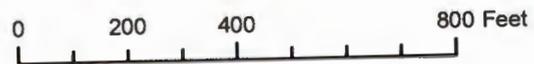
66' Right of Way Vacation

PClements, KPB
Date: 2/3/2020
Imagery: 2012-2013 FixedWing

KPB Four Foot Contours



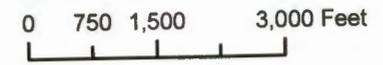
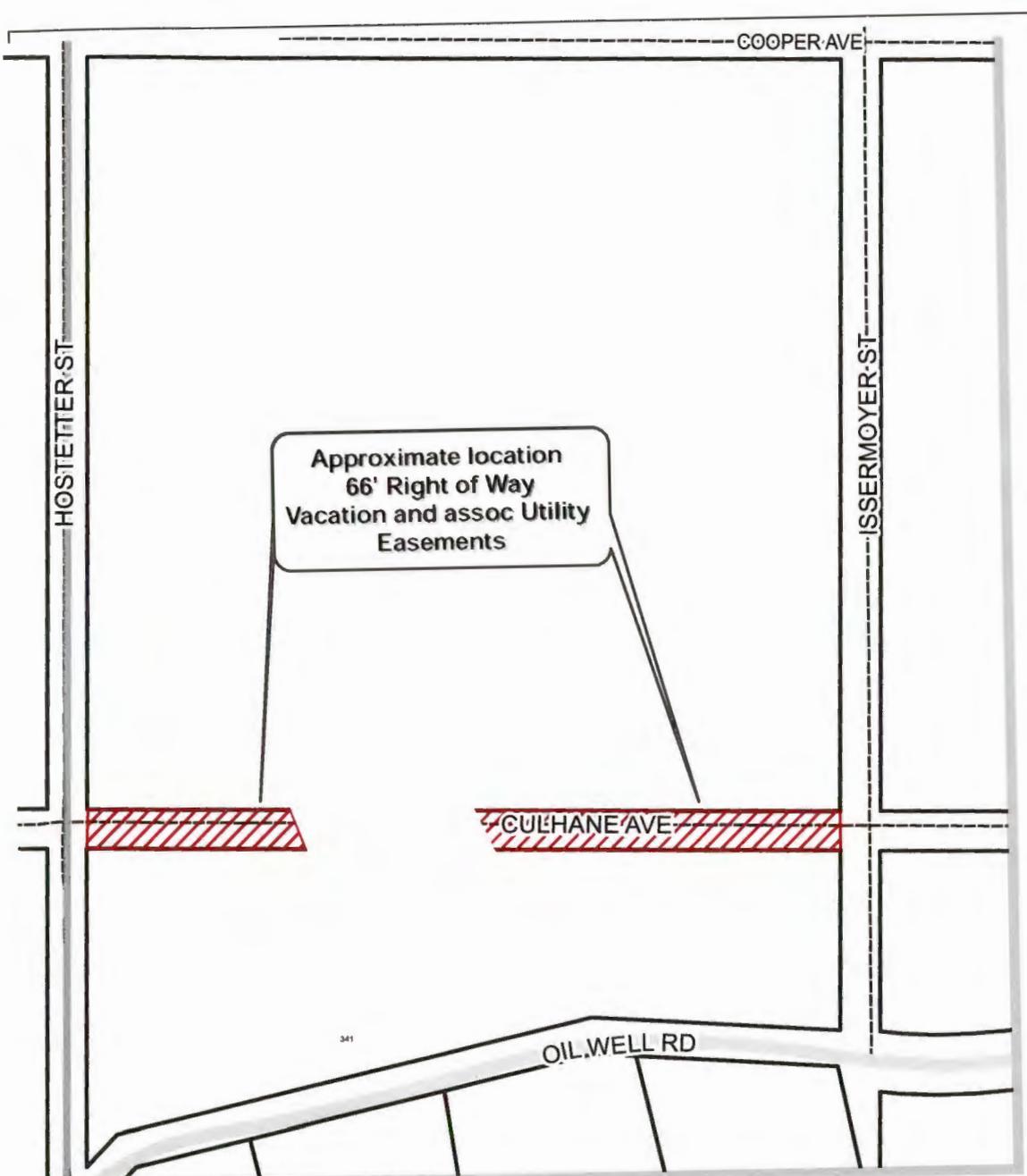
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



JReif



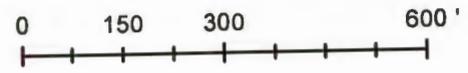
Date: 1/31/2020



KPB 2020-014V
T02S R12W S20
Ninilchik



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PClements, KPB
Date: 2/3/2020



Kenai Peninsula Borough Planning Department
 144 North Binkley
 Soldotna, Alaska 99669-7599
 Toll free within the Borough 1-800-478-4441, extension 2200
 (907) 714-2200

RECEIVED
 JAN 15 2020
 KPB PLANNING DEPT.

RECEIVED
 DEC 27 2019
 KPB PLANNING DEPT.

Petition to Vacate Public Right-of-Way/Easement/Platted Public Area
 Public Hearing Required

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- \$500 non-refundable fee to help defray costs of advertising public hearing.
 - City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
 - Name of public right-of-way proposed to be vacated is dedicated by the plat of RIGHT OF WAY MAP _____ Subdivision, filed as Plat No. 84-115 in HOMER Recording District.
 - Are there associated utility easements to be vacated? Yes No
 - Are easements in use by any utility company? If so, which company _____
 - Easement for public road or right-of-way as set out in (specify type of document) _____ as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition.)
 - Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? Yes No
 Is right-of-way used by vehicles / pedestrians / other? Yes No
 Is alternative right-of-way being provided? Yes No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:
 The petitioner owns the property on each side of Cushman Avenue. There is access per platted right-of-way on the north, south, east, and west
 Cooper Avenue along the north side of the property and Hoateler Street along the west side have been partially constructed. It is unlikely that
 this section of Cushman Avenue will ever be constructed.

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By: Name: Jason Schellenberg Signature as: Petitioner Representative
 Address: 10535 Kalina Blvd
Ninitchik, AK 99639
Jason Schellenberg
 Phone: (907)306-7085

Petitioners:
 Signature: [Signature] Signature: _____
 Name: Rick Bailey Name: _____
 Address: 48032 Whimsy Avenue Address: _____
Soldotna AK 99669

Owner of: _____ Owner of: _____
 Signature: [Signature] Signature: _____
 Name: John Chivers Name: _____
 Address: 48032 Whimsy Ave Address: _____
Soldotna, AK 99669