

Kenai Peninsula Borough  
Planning Department

---

**MEMORANDUM**

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

**FROM:** Melanie Aeschliman, Planning Director *MA*

**DATE:** December 1, 2020

**RE:** Vacate portions of Universe Avenue, Komsomol Street and Markoka Avenue right of ways and vacate all of Planet Place right of way, including all associated clearing and underground utility easements and anchor easements as dedicated on Terrace View, Plat HM 74-2194. The rights-of-way being vacated are mostly unconstructed and located within Section 22, Township 4 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-150VR1.

---

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 November 30, 2020 the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way vacation by unanimous vote (11 Yes, 0 No) 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.

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

November 30, 2020 Planning Commission Draft Meeting Minutes  
November 30, 2020 E8 Meeting Packet & Desk Packet Materials

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

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner Venuti				
No	None				

**AGENDA ITEM F. PUBLIC HEARINGS**

8. Vacate portions of Universe Avenue, Komsomol Street and Markoka Avenue right of ways and vacate all of Planet Place right of way, including all associated clearing and underground utility easements and anchor easements as dedicated on Terrace View, Plat HM 74-2194. The rights-of-way being vacated are mostly unconstructed and located within Section 22, Township 4 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-150VR1.

Staff report given by Scott Huff.

Purpose as stated in petition: We have been living off Markoka since 2006. We are the common owner for all the property that surrounds all right of ways to be vacated. There are no utilities anywhere near our property. The road stops at our property and is not up to borough standards. It is also not completely on the right of way. We would like to vacate all right of ways to include Markoka Ave, Planet Pl., Universe Ave. and Komsomol St. We have had issues since 2006 with people trying to steal personal property. We have been the only people living at the end of the road and maintaining this road since moving here in 2006. We have been acquiring other property that connect to our original property to expand our farm. The vacation would not hinder any other landowner from accessing their land because there are other easements every ¼ mile from our lands. The vacation would not only give peace of mind to one of the owners because they are a veteran that suffers from PTSD. Also, it makes it easier for fencing to be put up for livestock and to protect crops and property. We believe this vacation would not only benefit ourselves, but it would also benefit the community by allowing us to expand our farming operation to provide locally grown produce more easily.

Petitioners: Bobby Hickman and Kelli Hickman of Anchor Point, AK.

Notification: Public notice appeared in the November 19, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the November 26, 2020 issue of the Homer News as part of the Commission’s tentative agenda.

7 certified mailings were sent to owners of property within 600 feet of the proposed vacation. 0 receipts had been returned when the staff report was prepared.

Public hearing notices were made available to 5 KPB staff/Departments via a shared database.

Notices were mailed to the Anchor Point Post Office and Anchor Point Public Library with a request to be posted in public locations.

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

Comments Received:

ACS: Not available at the time the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: Reviewed, no comment.

KPB Addressing: Addressing Officer was not available for review. Platting staff reviewed and notes that all street names listed are correct. An existing address of 66542 Markoka Avenue and 31385 Universe



Avenue will need to be reviewed at a later time for any potential changes.

KPB Planning: KPB Planner review was not available. Platting staff reviewed and there are no local option zoning district or material site issues with the proposed vacation.

KPB River Center: Not available at the time the staff report was prepared.

KPB Roads Department: Not available at the time the staff report was prepared.

Anchor Point Advisory Planning Commission: Not available at the time the staff report was prepared.

State Parks: Not available at the time the staff report was prepared.

**Staff Discussion:** The parent plat, Terrace View, HM 74-2194, subdivided the entirety of Section 22, T4S, R14W into sixty-four 10 acre tracts. Terrace View was a paper plat with no field survey performed. While the plat did provide approximate locations of a creak and a lake, it did not otherwise take into account the topography of the area, including the extensive wetlands and steep slopes that affect the area. The result is a 640 acre area with platted rights-of-way, the majority of which have not been improved, that must traverse wetlands and steep slopes.

A petition to vacate Markoka Avenue was heard and denied by the Kenai Peninsula Borough Planning Commission at their January 6, 2020 meeting. The Commission found that the proposal failed to provide equal or better access and would limit the options to landowners to the west.

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. Since the date of the denial the applicant has acquired all lots to the west. With the acquisition of all the neighboring property, there is no concern regarding the limited access for neighboring land owners. The request is to vacate all internal right of ways within the applicant's property. The applicant will also be combining all parcels into one 230 acre parcel. The owner may keep the parcel with his residence as a separate parcel.

Per KPB GIS data the right of ways proposed to be vacated are not constructed. A portion of Markoka Avenue is constructed which leads to the applicants' home. It is stated in their petition that the portion constructed may not all be within the right of way.

If approved, a plat is required to finalize the proposed right-of-way vacation. A preliminary plat has not been submitted at this time. It is the owners' intent to combine the property into one or multiple large acreage tracts. The plat will require dedication of turnarounds, hammer or T-type, for Komsomol Street, Universe Avenue, and Markoka Avenue. A hammer or T-type turnaround can be extended in the future if the property is further subdivided. The plat will require exceptions to KPB 20.30.170 Block Length.

#### **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:* We have been living off Markoka since 2006. We are the common owner for all the property that surround all right of ways to be vacated. There are no utilities anywhere near our property. The road stops at our property and is not up to borough standards. It is also not completely on the right of



way. We would like to vacate all right of ways to include Markoka Ave, Planet Pl., Universe Ave. and Komsomol St. We have had issues since 2006 with people trying to steal personal property. We have been the only people living at the end of the road and maintaining this road since moving here in 2006. We have been acquiring other property that connect to our original property to expand our farm. The vacation would not hinder any other landowner from accessing their land because there are other easements every ¼ mile from our lands. The vacation would not only give peace of mind to one of the owners because they are a veteran that suffers from PTSD. Also, it makes it easier for fencing to be put up for livestock and to protect crops and property. We believe this vacation would not only benefit ourselves, but it would also benefit the community by allowing us to expand our farming operation to provide locally grown produce more easily.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

*Platting Staff Comments: A contour map was not provided by the petitioners. The petitioners did not raise excessive topographic features as a justification for the vacation. However, per KPB four foot contours, steep slopes affect portions of the right of ways proposed to be vacated. Steep slopes affect Markoka Avenue. Other right of ways are not affected by steep slopes.*

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: No preliminary plat has been submitted at this time.*

**Staff recommendation:** *Comply with KPB 20.70.130.*

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 submittal, the right-of-ways are not used by vehicles, pedestrians, or for other uses. However, the petitioner also states that the petitioners use the Markoka Avenue right-of-way to access their property and that the right-of-ways are used by others as well, albeit for nefarious purposes.*

*Aerial imagery indicates that Markoka Avenue is constructed from its intersection with KPB maintained Sary Su Street, west to the petitioners' property. The travel way then continues west as a smaller, apparently unmaintained trail adjoining the parcel to the west before branching off into the adjacent parcels as even smaller trails. The other right of ways do not appear to be constructed.*

*Kenai Watershed Forum Wetland mapping indicates that portions of Markoka Avenue are affected by discharge slope and the remainder is affected by lakebed wetlands. Planet Place is mostly lakebed wetlands. Universe Avenue and Komsomol Street are affected by lakebed, drainage way, and discharge slopes wetlands. National Wetlands Inventory mapping and aerial imagery indicate that Tract 37, 46, 47, and 52 as well as portions of Tracts 38 and 53 form a peninsula of dry land that extends west into freshwater forested/shrub wetlands. KPB four foot contours indicate that those drier tracts are affected by slopes exceeding 10% grade and portions of Markoka Avenue within the proposed vacation slopes down to the wetlands to the west.*

*Wetland mapping and aerial imagery also indicate that the alternate rights-of-way within the block (Universe Avenue, Tomski Avenue, and Nordvik Avenue) are affected by low wet areas. Per KPB four foot contours, the alternate rights-of-way are also affected by slopes exceeding 10% grade. Aside from a faint, approximately 650' trail within Universe Avenue, none of the alternate rights-of-way appear to be constructed at this time.*

*A 50 foot section line easement is on either side of the section line creating 100 foot wide access. This is along the western portion of the proposal and the dedication of Komsomol Street coincides with that section line easement. A vacation for the section line easement has not been requested and will remain in place.*



A large 320 acre parcel is located to the west that will have access from the section line easement, Tomski Avenue, and Nordvik Avenue. That parcel also has access from section line easements along the north and right of way dedications to the west.

**Staff recommendation:** Concur that the existing right of way dedications are not feasible for vehicular access and with the combining of these lots additional vehicular access is not needed. Numerous routes are available but due to terrain and low wet areas this subdivision cannot provide any right of way that will improve the access for neighboring lots in the area.

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 submittal, the right-of-way is not used by pedestrians or for other uses. However, the petitioner has stated in the past that the right-of-way is an old logging road. It is possibly used for unlawful purposes. Aerial imagery indicates that a trail does extend west from the end of the constructed portion of Markoka Avenue.

While wetlands do affect the right-of-ways, other uses, such as snowmobile access in the winter, could exist within the right-of-way within the unconstructed portions.

**Staff recommendation:** Concur that other rights of way and section line easements are available to provide other lawful access.

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:* Plat HM 74-2194 granted a 5' clearing and utility easement adjoining the north boundary of Markoka Avenue, the western boundary of Planet Place, and the northern boundary of Universe Avenue. The petition also requests vacation of the utility easement. It appears that no utility provider is using any of the platted utility easements. The section line easement on the west boundary can be used for the placement of a utility line. No parcels will be limited to utilities.

**Staff recommendation:** Grant utility easements requested by the utility providers during the platting process.

**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 application to vacate portions of Universe Avenue, Komsomol Street and Markoka Avenue right of ways and vacate all of Planet Place right of way, including all associated clearing and underground utility easements and anchor easements as dedicated on Terrace View, Plat HM 74-2194

If the Planning Commission approves the proposed vacation, staff recommends the approval of the vacation as petitioned, be 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.**

Mr. Huff informed the commission today at 5:45 PM a comment was received from a neighboring property to the west in opposition to the proposed vacation. He informed commission the comment could be found in the laydown information sent to the commission.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Bobby Hickman, Petitioner; P.O. Box 387, Anchor Point, AK 99556: Mr. Hickman stated currently has a farm, with FSA numbers. When he last tried to vacate these rights-of-way, he was denied because he did not own all the land adjacent to them. He has since purchased the additional land and now owns all land adjacent to them. He then noted the neighbor to the west opposing the vacation owns a large parcel of unsubdivided land with no easements on it. He does not believe anyone will be negatively affected by these vacations. The rights-of-ways being requested to vacate are wetlands and are not suitable for development. He has lived in the area for 15 years and in all that time, no one has tried to develop them.

Commissioner Venuti asked that since the petitioner plans to use the property for agricultural purposes, he wanted to know the specific type of agriculture. Mr. Hickman replied he currently has eight high tunnels and 2-3 acres of outside crops. They are looking at bringing in cattle to create a local source to sell starter calves and beef. They are also looking to develop some orchards on the land. The vacation of the rights-of-way would make it much easier to fence things off keeping the cattle in and the moose out of their crops. Commissioner Venuti then asked Mr. Hickman if he has a farming background. Mr. Hickman replied that both he and his wife come from a farming background. He has experience in raising corn and soybeans in Michigan as well as raising cattle there. His wife's family had orchards on the coast of Lake Michigan. Commissioner Venuti then stated that he admires the Hickman's plans for the property.

Hearing no one else wishing to comment Chair Martin closed public comment and discussion was opened among the commission.

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

Commissioner Ruffner stated his only concern regarding this petition is the last minute comment from the neighboring property. He asked staff to identify the specific parcel in question. Mr. Huff replied that if the commission would look at the map on page 123 of the packet, it shows Mr. Hickman's property outlined in green and the rights-of-way being vacated with red hatched marks. The property in question is just west of Mr. Hickman's property. The neighboring property to the west is over 400 acres in size. Staff researched and Turku Ave. has a 100-foot wide section line easement that extends west on to this property. Komsomol St. has a 100-foot section line easement that runs north to south along this property. Nordvik Ave has a 100-foot section line easement that runs extends west on to this property. Tomski Ave. is a 60-foot right-of-way that provides access to this property as well. The only access points the neighbor could have concerns with are Universe Ave. and Markoka Ave. both of these rights-of-way go through low wet areas. The neighboring parcel has 100-foot section line easements that run all the way around the property.



Commissioner Ecklund stated the late comment says that his property is due east and the property you are pointing out on the maps is due west. Are you sure the property in question is due west? Mr. Huff stated they verified the owner's name in the letter to this parcel and the owner mistakenly stated that he was to the east.

Commissioner Bentz stated she used the public parcel viewer to look up name and the exact location of the property related to the late comment. She agrees with Mr. Huff's assessment that the neighbor mistakenly stated that he was to the east. She believed this landowner has equal to/or better access to his property using roads to the west of his property. The rights-of-way being petitioned to be vacated are in peat wetlands and are not ideal for development. These wetlands have high value in the area for uses such as water and nutrients for wildlife and salmon streams. She would be in favor of this vacation request.

Commissioner Ruffner concurred with Commissioner Bentz's assessment. He remembers when this this parcel was subdivided years ago and he has spent time on the ground there. He stated there are many wetlands in the area. This is a sensitive area and other roads coming of Chakok would be much better access other than trying to develop these other right-of-ways. He is in favor of support this vacation as petitioned.

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

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner Venuti				
No	None				

**AGENDA ITEM F. NEW BUSINESS**

- 9. Echo Hills Subdivision 2020 Replat  
KPB File No. 2020-099; McLane Consulting Inc / Kuemerle

Staff report given by Scott Huff.

Location: On Oxford Avenue off Echo Lake Road, Kalifornsky; Kalifornsky APC  
 Proposed Use: Residential  
 Water/Sewer: On Site  
 Zoning: Unrestricted  
 Assessing Use: Residential  
 Parent Parcel Number(s): 131-670-23

**Summary**

The item was heard at the October 12, 2020 Kenai Peninsula Borough Plat Committee. At that meeting the Plat Committee reviewed and granted conditional approval of the subject preliminary plat. An exception to KPB 20.30.190(A) – Lot Dimension 3:1 depth to width ratio for Lot 2 and Lot 4 was granted by unanimous consent.

A request for review of a Kenai Peninsula Plat Committee decision was received on October 21, 2020. Kenneth and Jenny Gates filed the request in accordance with KPB 2.40.080. Their request is located in the packet. Within their request they state under item 3 that "The committee granted exceptions to several KPB ordinances based on findings of only borough staff that lacked real justification for granting exceptions and assurance that standards set forth in KPB 20.50.010 shall not be violated. Specific exceptions granted include exceptions to KPB 20.30.190(A), KPB 20.30.200(B) and (C)(1), and KPB 20.30.090." The only exception requested and granted was to KPB 20.30.190(A). The proposed subdivision was found to be in compliance with the other codes listed and exceptions were not required.

Item four of the request for review states "The Plat Committee's decision should be reversed and KPB ordinances should be followed. Their decision to grant exceptions were baseless and only promote poor development and planning."

This subdivision is being heard de novo by the Kenai Peninsula Borough Planning Commission acting as



## Planning Department

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

# Planning Commission

## Meeting Packet

**November 30, 2020**

**7:30 p.m.**

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

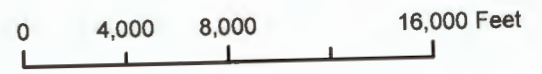
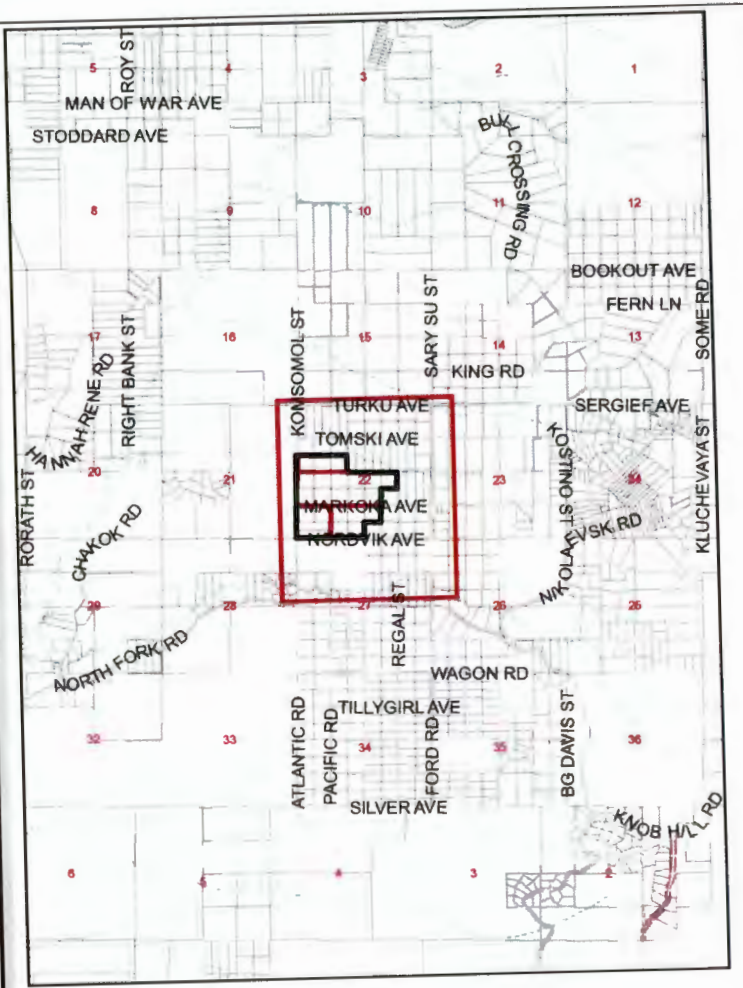
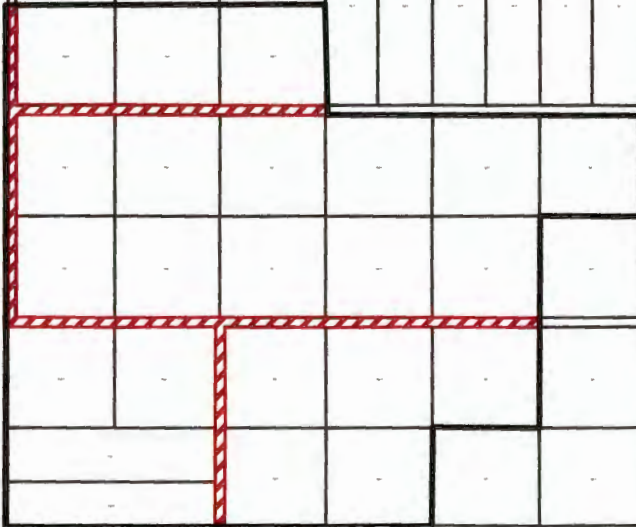


## **E. NEW BUSINESS**

- 8. Right-Of-Way Vacation  
Terrace View Subdivision  
KPB File: 2019-150V1  
Vacation Portions of: Universe Ave., Komsomol St.,  
Markoka Ave. & Planet Pl.  
Nikolaevsk Area**



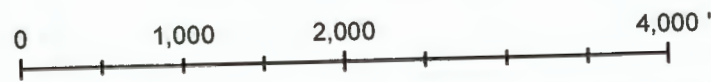
Approximate Location  
Right of Way Vacations



**KPB 2019-150VR1**  
**S22 T04S R14W**  
**NIKOLAEVSK**



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.



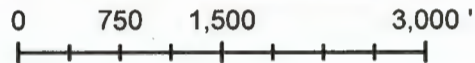
Date: 11/9/2020  
PClements, KPB 2019-150VR1







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.

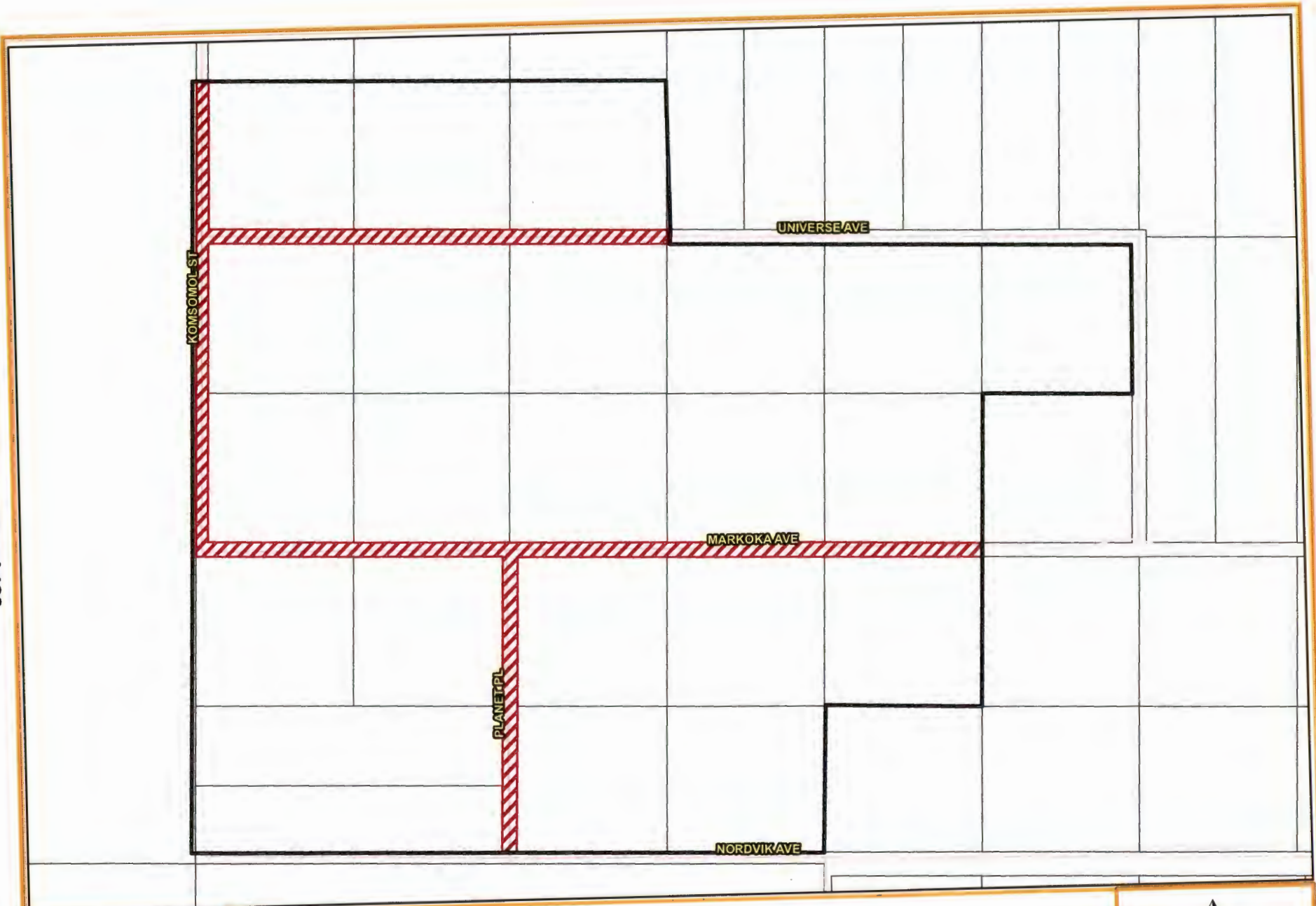
**Aerial View**



	Ownership Boundary
	Right of Way Vacation

PClements, KPB 2019-150VR1  
Date: 11/9/2020  
Imagery2016





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.

KPB 2019-150VR1



Date: 11/9/2020

AGENDA ITEM F. PUBLIC HEARINGS

8. Vacate portions of Universe Avenue, Komsomol Street and Markoka Avenue right of ways and vacate all of Planet Place right of way, including all associated clearing and underground utility easements and anchor easements as dedicated on Terrace View, Plat HM 74-2194. The rights-of-way being vacated are mostly unconstructed and located within Section 22, Township 4 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-150VR1.

STAFF REPORT

PC Meeting: November 30, 2020

Purpose as stated in petition: We have been living off Markoka since 2006. We are the common owner for all the property that surrounds all right of ways to be vacated. There are no utilities anywhere near our property. The road stops at our property and is not up to borough standards. It is also not completely on the right of way. We would like to vacate all right of ways to include Markoka Ave, Planet Pl., Universe Ave. and Komsomol St. We have had issues since 2006 with people trying to steal personal property. We have been the only people living at the end of the road and maintaining this road since moving here in 2006. We have been acquiring other property that connect to our original property to expand our farm. The vacation would not hinder any other landowner from accessing their land because there are other easements every ¼ mile from our lands. The vacation would not only give peace of mind to one of the owners because they are a veteran that suffers from PTSD. Also, it makes it easier for fencing to be put up for livestock and to protect crops and property. We believe this vacation would not only benefit ourselves, but it would also benefit the community by allowing us to expand our farming operation to provide locally grown produce more easily.

Petitioners: Bobby Hickman and Kelli Hickman of Anchor Point, AK.

Notification: Public notice appeared in the November 19, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the November 26, 2020 issue of the Homer News as part of the Commission's tentative agenda.

7 certified mailings were sent to owners of property within 600 feet of the proposed vacation. 0 receipts had been returned when the staff report was prepared.

Public hearing notices were made available to 5 KPB staff/Departments via a shared database.

Notices were mailed to the Anchor Point Post Office and Anchor Point Public Library with a request to be posted in public locations.

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

Comments Received:

ACS: Not available at the time the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: Reviewed, no comment.

KPB Addressing: Addressing Officer was not available for review. Platting staff reviewed and notes that all street names listed are correct. An existing address of 66542 Markoka Avenue and 31385 Universe Avenue will need to be reviewed at a later time for any potential changes.



KPB Planning: KPB Planner review was not available. Platting staff reviewed and there are no local option zoning district or material site issues with the proposed vacation.

KPB River Center: Not available at the time the staff report was prepared.

KPB Roads Department: Not available at the time the staff report was prepared.

Anchor Point Advisory Planning Commission: Not available at the time the staff report was prepared.

State Parks: Not available at the time the staff report was prepared.

Staff Discussion: The parent plat, Terrace View, HM 74-2194, subdivided the entirety of Section 22, T4S, R14W into sixty-four 10 acre tracts. Terrace View was a paper plat with no field survey performed. While the plat did provide approximate locations of a creek and a lake, it did not otherwise take into account the topography of the area, including the extensive wetlands and steep slopes that affect the area. The result is a 640 acre area with platted rights-of-way, the majority of which have not been improved, that must traverse wetlands and steep slopes.

A petition to vacate Markoka Avenue was heard and denied by the Kenai Peninsula Borough Planning Commission at their January 6, 2020 meeting. The Commission found that the proposal failed to provide equal or better access and would limit the options to landowners to the west.

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. Since the date of the denial the applicant has acquired all lots to the west. With the acquisition of all the neighboring property, there is no concern regarding the limited access for neighboring land owners. The request is to vacate all internal right of ways within the applicant's property. The applicant will also be combining all parcels into one 230 acre parcel. The owner may keep the parcel with his residence as a separate parcel.

Per KPB GIS data the right of ways proposed to be vacated are not constructed. A portion of Markoka Avenue is constructed which leads to the applicants' home. It is stated in their petition that the portion constructed may not all be within the right of way.

If approved, a plat is required to finalize the proposed right-of-way vacation. A preliminary plat has not been submitted at this time. It is the owners' intent to combine the property into one or multiple large acreage tracts. The plat will require dedication of turnarounds, hammer or T-type, for Komsomol Street, Universe Avenue, and Markoka Avenue. A hammer or T-type turnaround can be extended in the future if the property is further subdivided. The plat will require exceptions to KPB 20.30.170 Block Length.

#### **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: We have been living off Markoka since 2006. We are the common owner for all the property that surround all right of ways to be vacated. There are no utilities anywhere near our property. The road stops at our property and is not up to borough standards. It is also not completely on the right of way. We would like to vacate all right of ways to include Markoka Ave, Planet Pl., Universe Ave. and Komsomol St. We have had issues since 2006 with people trying to steal personal property. We have been the only people living at the end of the road and maintaining this road since moving here in 2006. We have been acquiring other property that connect to our original property to expand our farm. The vacation would not hinder any other landowner from accessing their land because there are other easements every ¼ mile from our lands. The vacation would not only give peace of mind to one of the owners because they are a veteran that suffers from PTSD. Also, it makes it easier for fencing to be put up for livestock and to protect crops and property. We believe this vacation would not only benefit ourselves, but it would also benefit the community by allowing us to expand our farming operation to provide locally grown produce more easily.*

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

*Platting Staff Comments: A contour map was not provided by the petitioners. The petitioners did not raise excessive topographic features as a justification for the vacation. However, per KPB four foot contours, steep slopes affect portions of the right of ways proposed to be vacated. Steep slopes affect Markoka Avenue. Other right of ways are not affected by steep slopes.*

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: No preliminary plat has been submitted at this time.*

**Staff recommendation:** Comply with KPB 20.70.130.

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 submittal, the right-of-ways are not used by vehicles, pedestrians, or for other uses. However, the petitioner also states that the petitioners use the Markoka Avenue right-of-way to access their property and that the right-of-ways are used by others as well, albeit for nefarious purposes.*

*Aerial imagery indicates that Markoka Avenue is constructed from its intersection with KPB maintained Sary Su Street, west to the petitioners' property. The travel way then continues west as a smaller, apparently unmaintained trail adjoining the parcel to the west before branching off into the adjacent parcels as even smaller trails. The other right of ways do not appear to be constructed.*

*Kenai Watershed Forum Wetland mapping indicates that portions of Markoka Avenue are affected by discharge slope and the remainder is affected by lakebed wetlands. Planet Place is mostly lakebed wetlands. Universe Avenue and Komsomol Street are affected by lakebed, drainage way, and discharge slopes wetlands. National Wetlands Inventory mapping and aerial imagery indicate that Tract 37, 46, 47, and 52 as well as portions of Tracts 38 and 53 form a peninsula of dry land that extends west into freshwater forested/shrub wetlands. KPB four foot contours indicate that those drier tracts are affected by slopes exceeding 10% grade and portions of Markoka Avenue within the proposed vacation slopes down to the wetlands to the west.*

*Wetland mapping and aerial imagery also indicate that the alternate rights-of-way within the block (Universe Avenue, Tomski Avenue, and Nordvik Avenue) are affected by low wet areas. Per KPB four foot contours,*



the alternate rights-of-way are also affected by slopes exceeding 10% grade. Aside from a faint, approximately 650' trail within Universe Avenue, none of the alternate rights-of-way appear to be constructed at this time.

A 50 foot section line easement is on either side of the section line creating 100 foot wide access. This is along the western portion of the proposal and the dedication of Komsomol Street coincides with that section line easement. A vacation for the section line easement has not been requested and will remain in place. A large 320 acre parcel is located to the west that will have access from the section line easement, Tomski Avenue, and Nordvik Avenue. That parcel also has access from section line easements along the north and right of way dedications to the west.

**Staff recommendation:** Concur that the existing right of way dedications are not feasible for vehicular access and with the combining of these lots additional vehicular access is not needed. Numerous routes are available but due to terrain and low wet areas this subdivision cannot provide any right of way that will improve the access for neighboring lots in the area.

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 submittal, the right-of-way is not used by pedestrians or for other uses. However, the petitioner has stated in the past that the right-of-way is an old logging road. It is possibly used for unlawful purposes. Aerial imagery indicates that a trail does extend west from the end of the constructed portion of Markoka Avenue.

While wetlands do affect the right-of-ways, other uses, such as snowmobile access in the winter, could exist within the right-of-way within the unconstructed portions.

**Staff recommendation:** Concur that other rights of way and section line easements are available to provide other lawful access.

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:* Plat HM 74-2194 granted a 5' clearing and utility easement adjoining the north boundary of Markoka Avenue, the western boundary of Planet Place, and the northern boundary of Universe Avenue. The petition also requests vacation of the utility easement. It appears that no utility provider is using any of the platted utility easements. The section line easement on the west boundary can be used for the placement of a utility line. No parcels will be limited to utilities.

**Staff recommendation:** Grant utility easements requested by the utility providers during the platting process.

**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 application to vacate portions of Universe Avenue, Komsomol Street and Markoka Avenue right of ways and vacate all of Planet Place right of way, including all associated clearing and underground utility easements and anchor easements as dedicated on Terrace View, Plat HM 74-2194

If the Planning Commission approves the proposed vacation, staff recommends the approval of the vacation as petitioned, be 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

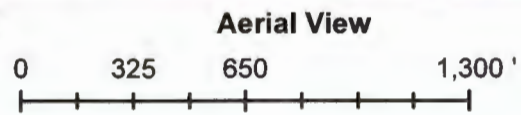




Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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



	Ownership Boundary
	Right of Way Vacation

PClements, KPB 2019-150VR1  
Date: 11/9/2020  
ImageryWorld







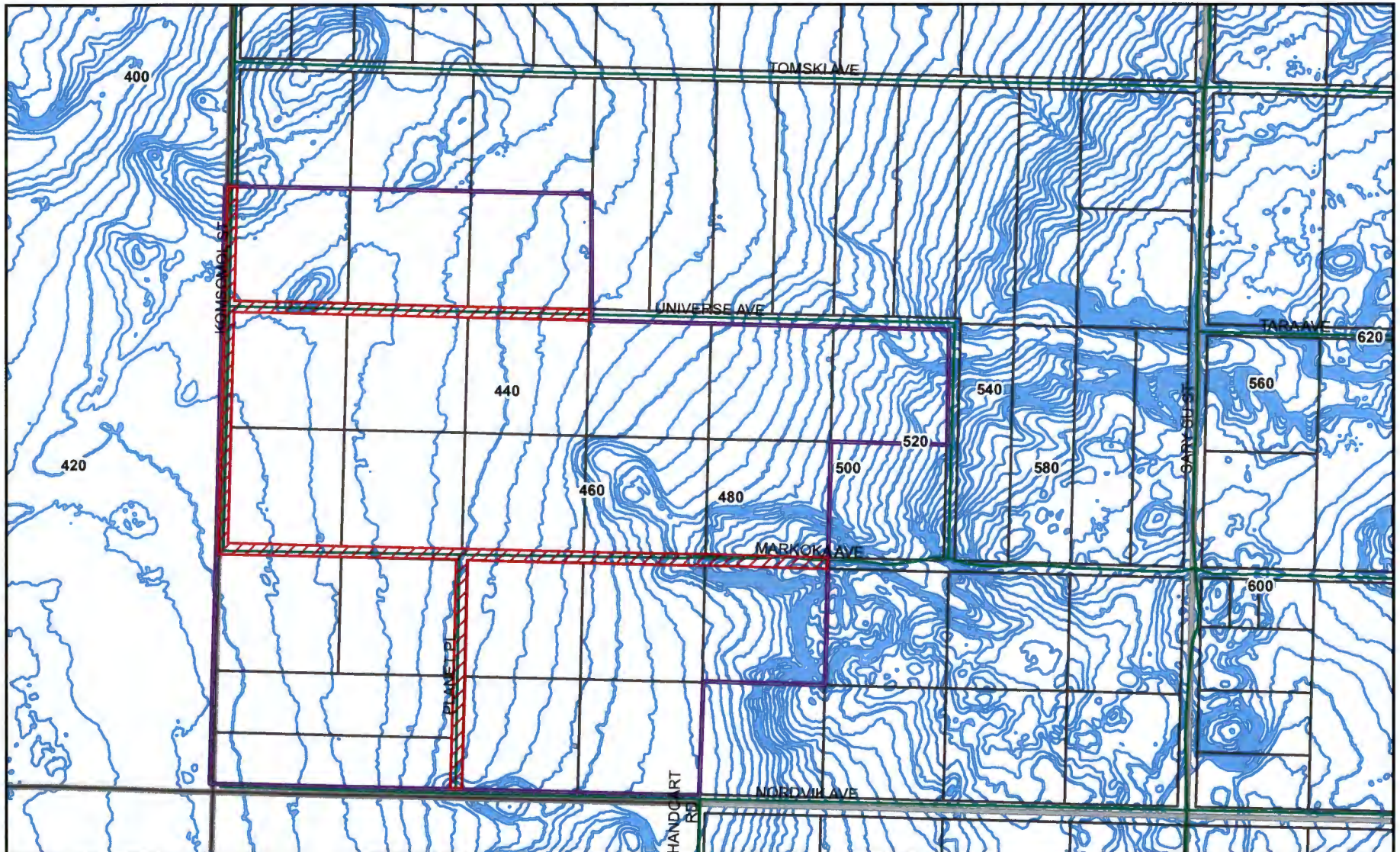
# Kenai Peninsula Borough Planning Department

## 4 Foot Contours



Terrace View Right of Way Vacations  
KPB File 2019-150VR1

-  Applicant's property boundary
-  Proposed Vacations



Page 131 of 183







# Kenai Peninsula Borough Planning Department

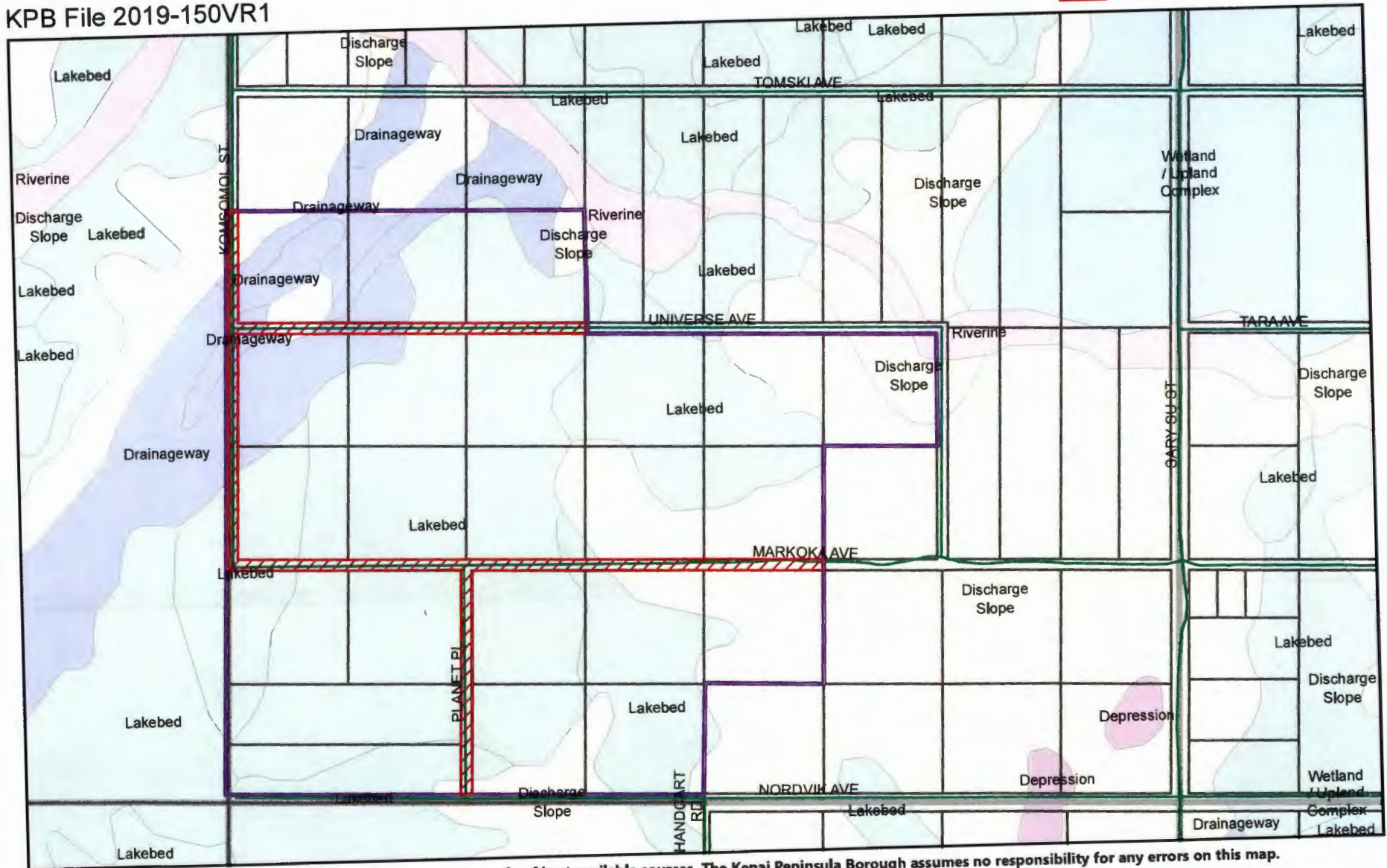
## Kenai Watershed Forum Wetlands Assessment

Date: 11/10/2020



### Terrace View Right of Way Vacations KPB File 2019-150VR1

-  Applicant's property boundary
-  Proposed Vacations



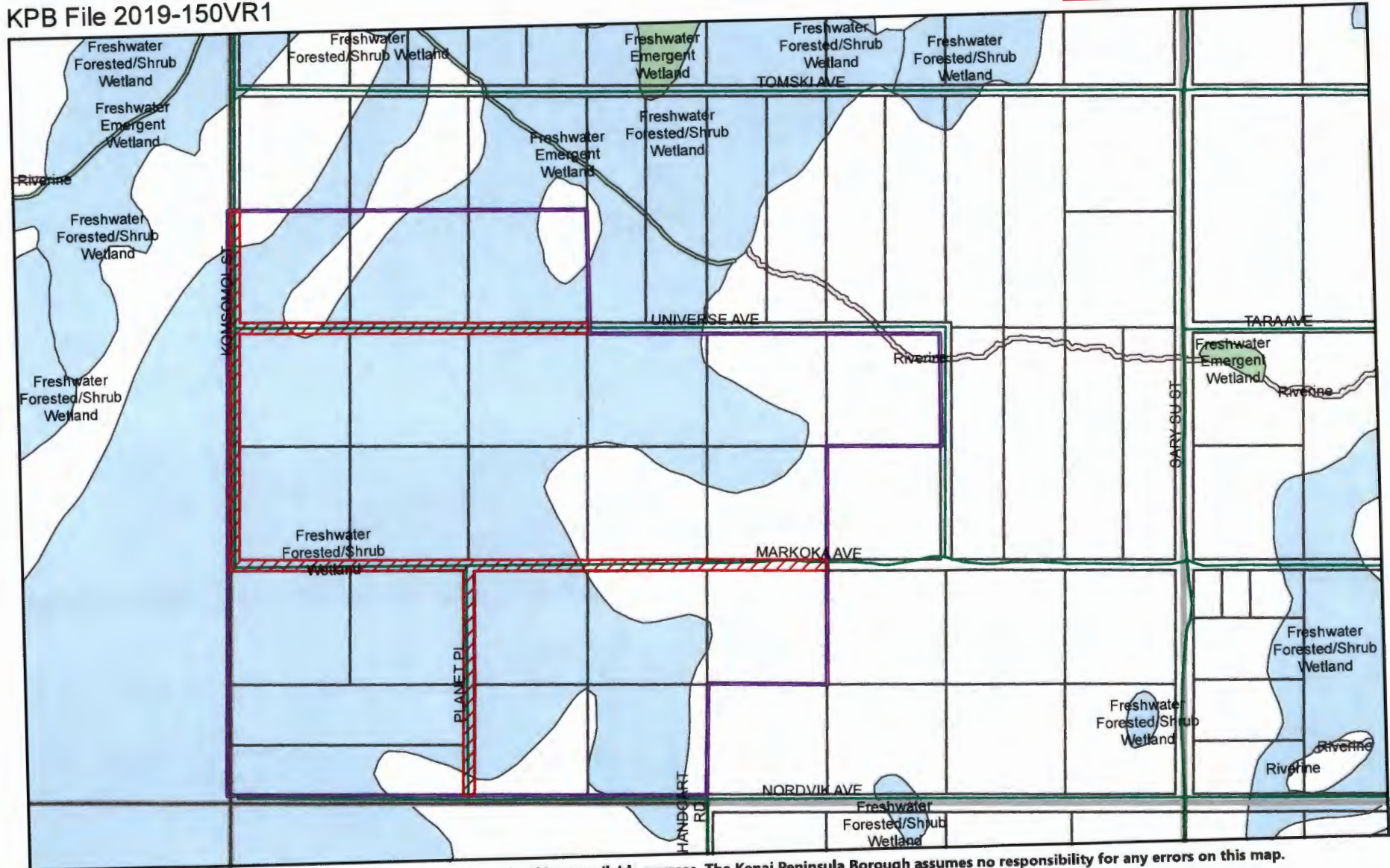
Page 132 of 183

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.



### Terrace View Right of Way Vacations KPB File 2019-150VR1

- Applicant's property boundary
- Proposed Vacations





**TERRACE VIEW**

ALASKA SURVEYING TECHNICIANS  
 750 28 WEST 14TH AVENUE  
 DENVER, COLORADO 80202  
 PHONE 333-1111

74-3194  
 11-24-74  
 11-24-74  
 11-24-74  
 11-24-74  
 11-24-74

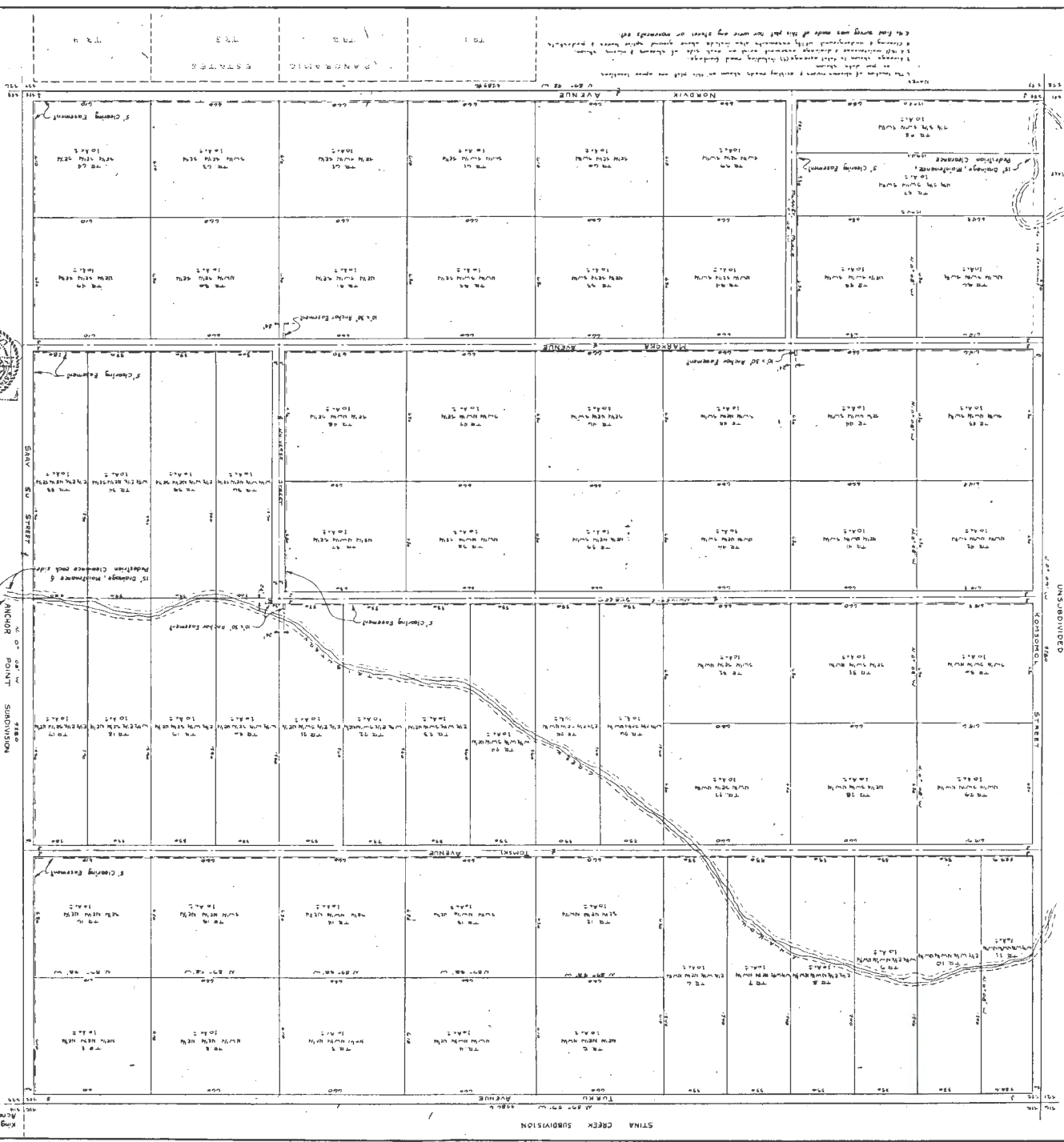
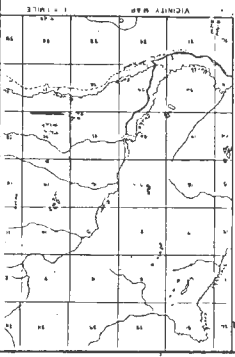
APPROVED BY THE ENGINEER  
 [Signature]  
 1974



**SURVEYOR'S CERTIFICATE**  
 The information shown on this plat is based upon the most recent reliable survey data of the property and was prepared by the Surveyor in accordance with the provisions of the Alaska Statutes, Chapter 38, and the rules and regulations of the Board of Surveyors of the State of Alaska.

THIRD JUDICIAL DISTRICT  
 STATE OF ALASKA  
 [Signature]  
 1974

CERTIFICATE OF ADOPTION & DECLARATION  
 I, the undersigned, being duly qualified and sworn as a Surveyor in the State of Alaska, do hereby certify that the survey shown on this plat was made in accordance with the provisions of the Alaska Statutes, Chapter 38, and the rules and regulations of the Board of Surveyors of the State of Alaska.



The boundaries of these lots are being made known on this plat for general information.  
 It is further stated that the survey was made in accordance with the provisions of the Alaska Statutes, Chapter 38, and the rules and regulations of the Board of Surveyors of the State of Alaska.

**Kenai Peninsula Borough**

**PLANNING COMMISSION  
DESK PACKET**

**November 30, 2020**

**7:30 p.m.**



**From:** [Horton, George C \(DNR\)](#)  
**To:** [Clements, Peggy](#)  
**Cc:** [Brown, Stanley C \(DNR\)](#); [Poydack, Joseph L \(DNR\)](#); [Bow, Kevin J \(DNR\)](#)  
**Subject:** <EXTERNAL-SENDER>FW: ROW VACATION REVIEW FOR NOVEMBER 30, 2020 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI ,KPB Homer, EMS Anchor Point, Ninilchik Council  
**Date:** Tuesday, November 24, 2020 12:22:08 PM  
**Attachments:** [image001.png](#)  
[Sketch for Notice KPB 2019-150VR1 Reduced.pdf](#)  
[GIS Vicinity with inset.pdf](#)

---

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

Hi Peggy.

If any of these proposed ROW vacations overlap an existing Section-Line Easement (*vicinity map indicates the south and west boundaries may be impacted*) please let the petitioners know that the public interest (if any) in these SLE's will not be vacated by this action.

If SLEs exist and the petitioner wishes to pursue the vacation they should contact me at 907-269-8610 or at [george.horton@alaska.gov](mailto:george.horton@alaska.gov).

The DNR, DML&W, Survey Section has no other comments. Thank you for the opportunity to comment.

Regards,

*George Horton, PLS, CFedS*

Land Surveyor I

DNR, DML&W, Survey Section

550 W. 7<sup>th</sup> AVE; Suite 650

Anchorage, Alaska 99501

(907) 269-8610

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

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

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

**Sent:** Thursday, November 12, 2020 4:01 PM

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

Jackson <byron.jackson@acsalaska.com>; Bradley Beck <bbeck@gci.com>; ENSTAR ROW <row@enstarnaturalgas.com>; Dubour, Adam J (DFG) <adam.dubour@alaska.gov>; Baxter, Tammaron <tbaxter@kpb.us>; Marsh, Jon <JMarsh@kpb.us>; 'ivan@niniichiktribe-nsn.gov' <ivan@niniichiktribe-nsn.gov>

**Subject:** ROW VACATION REVIEW FOR NOVEMBER 30, 2020 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI ,KPB Homer, EMS Anchor Point, Niniichik Council

Hello,

Attached sketch to be reviewed for the **November 30, 2020** meeting. Please provide comments by **November 17, 2020** to ensure the comments will be included in a right-of-way vacation staff report. Right-of-way vacation comments will be accepted until the Planning Commission's review has concluded.

- Terrace View Subdivision, Universe Avenue, Komsomol Street, Markoka Avenue and Planet Place Rights of Way Vacations KPB 2019-150VR1

Kind regards

*Peggy Clements*

Platting Technician  
Planning Department  
907-714-2207

**KENAI PENINSULA BOROUGH**  
144 North Binkley Street  
Soldotna, Alaska 99669



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



**From:** [Francis Schneider](#)  
**To:** [Planning Dept.](#)  
**Subject:** Proposed vacation of Universe Ave, Komsomol St., Markoka Ave. and Planet Place  
**Date:** Monday, November 30, 2020 3:32:40 PM

---

Dear Kenai Peninsula Planning Commissioners and other concerned parties,

My name is Francis Schneider. I am the owner of 400 acres adjacent to and due east of the proposed easement vacation that is being considered on Monday, November 30, 2020 commencing at 7:30 p.m. I am against this proposal and strongly urge the commission members to vote against it. Although I have no intention to develop my said property at this time, I may decide to do so in the future. Vacating these easements may adversely effect any future developments on this property by me or by any other future owner. Having access to my own property along these easements is a right that I do not concede. I understand the concerns and desires of the petitioners, but I believe that if they wanted a parcel for agricultural purposes that was not broken up by legal easements, they could have looked for such a piece in the first place. Trying to create a parcel such as this after the fact by putting neighboring properties in danger of future development is not fair and is not right. Again, I strongly urge you to vote against this proposal.

Thank you for your time and for considering my point of view on this matter.

Sincerely,

Francis Schneider