

Introduced by: Mayor
Date: 08/03/21
Hearing: 08/17/21
Action: Enacted
Vote: 8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-31**

AN ORDINANCE AUTHORIZING AN AMENDMENT TO A MASTER LAND LEASE DEVELOPMENT AGREEMENT WITH ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN SUPPORT OF THE STERLING HIGHWAY MP 45-60 CONSTRUCTION PROJECT NEAR COOPER LANDING TO INCLUDE A STAGING AREA AT TRACT C QUARTZ CREEK SUBDIVISION AND APPRAISAL PROVISIONS

WHEREAS, the State of Alaska Department of Transportation and Public Facilities (“DOT&PF”) is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing; and

WHEREAS, Ordinance 2021-14 authorized the lease of multiple staging and disposal sites on borough lands to DOT&PF under a Master Land Lease Development Agreement (“Master Lease”); and

WHEREAS, Ordinance 2021-13 authorized the lease of Tract C Quartz Creek Subdivision to one of DOT&PF’s contractors, Kiewit Infrastructure West Company, for staging in support of the state project; and

WHEREAS, DOT&PF has requested that the lease of Tract C be issued directly to DOT&PF and that state procurement methods for valuation be included as an overall provision of the Master Lease; and

WHEREAS, the Master Lease can be amended to include Tract C and to provide for methods of valuation consistent with state procurement standards; and

WHEREAS, state procurement standards for land valuation would protect the borough’s interests in fair compensation for the use of borough land; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended approval by majority consent;

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

SECTION 1. That the assembly finds that leasing to DOT&PF the parcel of land described as Tract C Quartz Creek Subdivision pursuant to KPB 17.10.100(I) is in the best interest of the borough to support the highway project which will significantly improve road access to and from the western half of the borough and provide revenue to the borough..

SECTION 2. That the provisions of KPB 17.10.080-.090 and KPB 17.10.110-.240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this lease to DOT&PF in cooperation with the Sterling Highway MP 45-60 project.

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to amend the Master Lease to include Tract C Quartz Creek Subdivision for project staging and to amend the lease rental provisions to include appraisal methods for establishing or adjusting rent for all sites included in the Master Lease, substantially in the form of the amendment document accompanying this ordinance. The authorization is only for a lease of the property to the DOT&PF, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

SECTION 4. The mayor is authorized to execute a lease amendment substantially similar in form to the Master Lease Amendment No. 1 form approved by the assembly.

SECTION 5. DOT&PF shall have 120 days from the time of enactment of this ordinance to execute the lease document.

SECTION 6. That revenue from the subject lease shall be deposited in the Land Trust Fund.

SECTION 7. That the authorization to lease Tract C provided by Ordinance 2021-13 is superseded by this ordinance.

SECTION 8. That this ordinance shall take effect immediately upon its enactment.

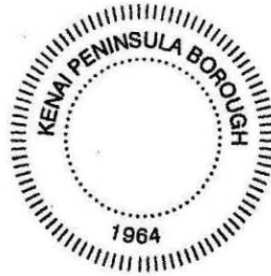
ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF AUGUST, 2021.



Brent Hibbert, Assembly President

ATTEST:



Jonni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Carpenter, Chesley, Cox, Dunne, Elam, Johnson, Hibbert

No: None

Absent: Derkevorkian

**Master Land Lease Development Agreement
AMENDMENT NO 1
KPBL# 21-0501-01**

WHEREAS, KPBL and DOT&PF have entered in a certain Master Land Lease Development Agreement (the "Agreement") serialized KPBL# 21-0501-01 for multiple staging and disposal sites associated with the Sterling Highway MP 45-60 project; and

WHEREAS, KPBL and DOT&PF desire to amend the Master Land Lease Development Agreement to include an additional site known as Tract C Quartz Creek Subdivision and to include appraisal provisions for the establishment of adjustment of rents on all sites included in the Agreement;

NOW THEREFORE,

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter "KPBL" or "Lessor"), and the State of Alaska, Department of Transportation and Public Facilities, whose address is 4111 Aviation Avenue, Anchorage, AK 99519 (hereinafter "DOT&PF" or "Lessee") enter into this Master Land Lease Development Agreement Amendment No 1 (Amendment No 1) and agree herein to amend the Agreement as follows (**bold underline** indicates amended language):

Amend Section I (2) to update contact information as follows:

2. **Authorized Contact.** All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party's own risk. KPBL staff do not have authority to bind the KPBL. Any material amendments or changes to the Agreement must be approved in writing signed by the KPBL Mayor.

KPBL

DOT&PF

Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

DOT&PF Central Region Construction
Attn: **Jonathan Tymick**
4111 Aviation Avenue
Anchorage, AK 99519-6900

Amend Section II (5) as follows:

II. Leased Property Description; Term; Rent

5. **The Property.** The KPBL leases to DOT&PF and DOT&PF leases from the KPBL, the following

described Property in an “as-is” condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

West #1 Staging and Disposal Site; 14.0 acres +/-, located within the N1/2 Section 27, T5N, R4W, S.M. AK

West #2 Staging and Disposal Site; 4.6 acres +/-, located within the N1/2 Section 26, T5N, R4W, S.M. AK

East #2 Staging and Disposal Site; 4.7 acres +/-, located within Tract A USS 5105 situated within Section 30, T5N, R3W, S.M. AK

Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District; 15.81 acres +/-

Each Site more particularly described and depicted in Attachment 3- Site Survey Drawings.

Amend Section II (7) as follows:

7. Term.

7.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026. **The initial term as applied to Tract C Quartz Creek Subdivision commences August 15, 2021.**

Amend Section II (8) as follows:

8. Rent.

8.1. Surface Use Rent (“Rent”). The Rent for the use of the surface area of the Property is shown on the table below, for the first year of the Agreement, payable on the commencement date of the lease and each anniversary thereof. This Rent shall increase annually at 3% per annum.

SITE DESCRIPTION	AREA	INITIAL RENT
West #1 Staging and Disposal Site	14.0 acres +/-	\$8,400/YR
West #2 Staging and Disposal Site	4.6 acres +/-	\$5,520/YR
East #2 Staging and Disposal Site	4.7 acres +/-	\$5,640/YR
<u>Tract C Quartz Creek Subdivision</u>	<u>15.81 acres +/-</u>	<u>\$35,640/YR</u>
 TOTAL		 <u>\$55,200/YR</u>

8.2. Material Extraction and Disposal. The consideration, fees or royalties associated with

material extraction, disposal, and reclamation under the Agreement shall be set forth in Attachment 1 – Materials Extraction and Disposal Terms & Conditions.

- 8.3. **Rent for Tract C Quartz Creek Subdivision is prorated for the initial partial year through April 30, 2022 as $(258 \text{ days divided by } 365) \times (\$35640) = \$25,192.10$.**
- 8.4. **Rent for each site may, at any time, be adjusted to the appraised fair market rental value. DOT&PF may have the sites appraised according to DOT&PF appraisal standards as to the fair market value or fair market rental value. In the case of a fair market value appraisal, 8% of the appraised fair market value will be used as the lease rate. Upon acceptance of the appraisal by each party the appraised fair market rent will be adopted and any rental adjustment payment, or reimbursement due either party will be made within 60 days for the annual period in which the appraisal is conducted. The adjusted rent shall then increase annually at 3% per annum.**

Amend Section III (9) as follows:

9. **Authorized Uses.** The Agreement is entered into for the use of the Property for the following authorized uses:
 - 9.1. Subject to Section 11 below, Rights Reserved by KPB, DOT&PF shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Master Lease. Surface uses include, but are not limited to, staging of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Staging/Disposal Operations Plan.
 - 9.2. Subject to the terms set forth in Attachment 1, Materials Extraction and Disposal Agreement, DOT&PF may use the Property to dispose, develop, process, explore, excavate, crush, stockpile, remove, gravel, soil, and other natural resource materials on the Property. The reclamation obligations set forth in Attachment 1 survive termination of the Agreement.
 - 9.3. **Terms specific to Tract C Quartz Creek Subdivision**
 - a. **Subject to reclamation obligations, DOT&PF shall have the right to develop Tract C sufficient for its authorized uses included importing clean, construction grade gravel fill material, installation of utilities, installation of DEC approved septic system or holding tanks, drilling of on-site water wells, and installation of road approaches, pads, and durable surfaces. DOT&PF shall conserve topsoil on site and maintain such material available for site reclamation at the end of the Agreement.**
 - b. **Vegetated Buffers/ Clearing Plan. Uses of Tract C under this agreement are subject to preserving certain vegetated buffers along the perimeter of the**

property. Prior to commencement of the Agreement, a clearing plan had been agreed upon and implemented through which certain areas of vegetation were preserved. The cleared area shall be available for DOT&PF's development and use under this agreement. No further clearing or expansion of use into vegetated areas will take place unless first approved by KPB in writing. Vegetated areas may be incorporated into DOT&PF's storm water management practices. Individual trees within the vegetated buffer that are a substantial hazard risk may be removed by DOT&PF as necessary without changing the buffer status.

c. Site Closure.

9.3.c.1. Notwithstanding KPB 17.10.240, prior to termination of this Agreement the KPB reserves the right, at KPB's sole option, to require Lessee to restore the site to a natural condition, free of contamination, to leave the site in a condition suitable for use by another, or any combination thereof. KPB declares an intent for the site to be useful for a commercial business subdivision at the end of the Agreement.

9.3.c.2. Pre-closure Inspection. KPB and Lessee will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of Agreement. KPB and Lessee shall agree in writing the condition that site will be left in prior to termination of Agreement. KPB, at its sole discretion, may require Lessee to take any or all of the actions listed in paragraphs A and B of this section.

A. Removal of Improvements. The KPB may require Lessee to remove any and all improvements including septic systems, utilities, imported materials, and closure of wells.

B. Reclamation. Site shall be reclaimed by adding organic topsoil material to bring site to a consistent topographic level as adjacent features and then planted with local plant species.

9.3.c.3. Post-closure Inspection. KPB and Lessee will jointly inspect site to confirm site is left in a condition acceptable to KPB and KPB will issue a document to Lessee affirming its findings.

Except as expressly set forth and amended herein, all remaining covenants, terms, and conditions of the Agreement, as amended, shall remain in full force and effect.

LESSOR: Kenai Peninsula Borough

LESSEE: State of Alaska, Department of Transportation and Public Facilities

By: Charlie Pierce
Its: Mayor
Date: _____

By: _____
Its: _____
Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

KPB NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Charlie Pierce, known to me to be the Mayor, Kenai Peninsula Borough, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of Kenai Peninsula Borough, for the uses and purposes therein set forth and who is authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
Commission expires: _____

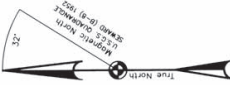
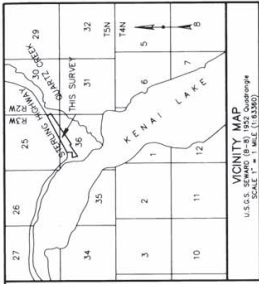
DOT&PF NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me to be the _____, Department of Transportation and Public Facilities, State of Alaska, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and who is authorized by said State of Alaska to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska
My Commission Expires:



- LEGEND**
- PRIMARY MONUMENT RECOVERED THIS SURVEY
 - SECONDARY MONUMENT RECOVERED THIS SURVEY
 - ⊙ AK DOT & P.F. 6" 6" CONC. R/W MONUMENT RECOVERED THIS SURVEY
 - ⊙ PRIMARY MONUMENT SET THIS SURVEY
 - ⊙ SECONDARY MONUMENT SET THIS SURVEY
 - 1/2" REBAR WITH PLASTIC CAP

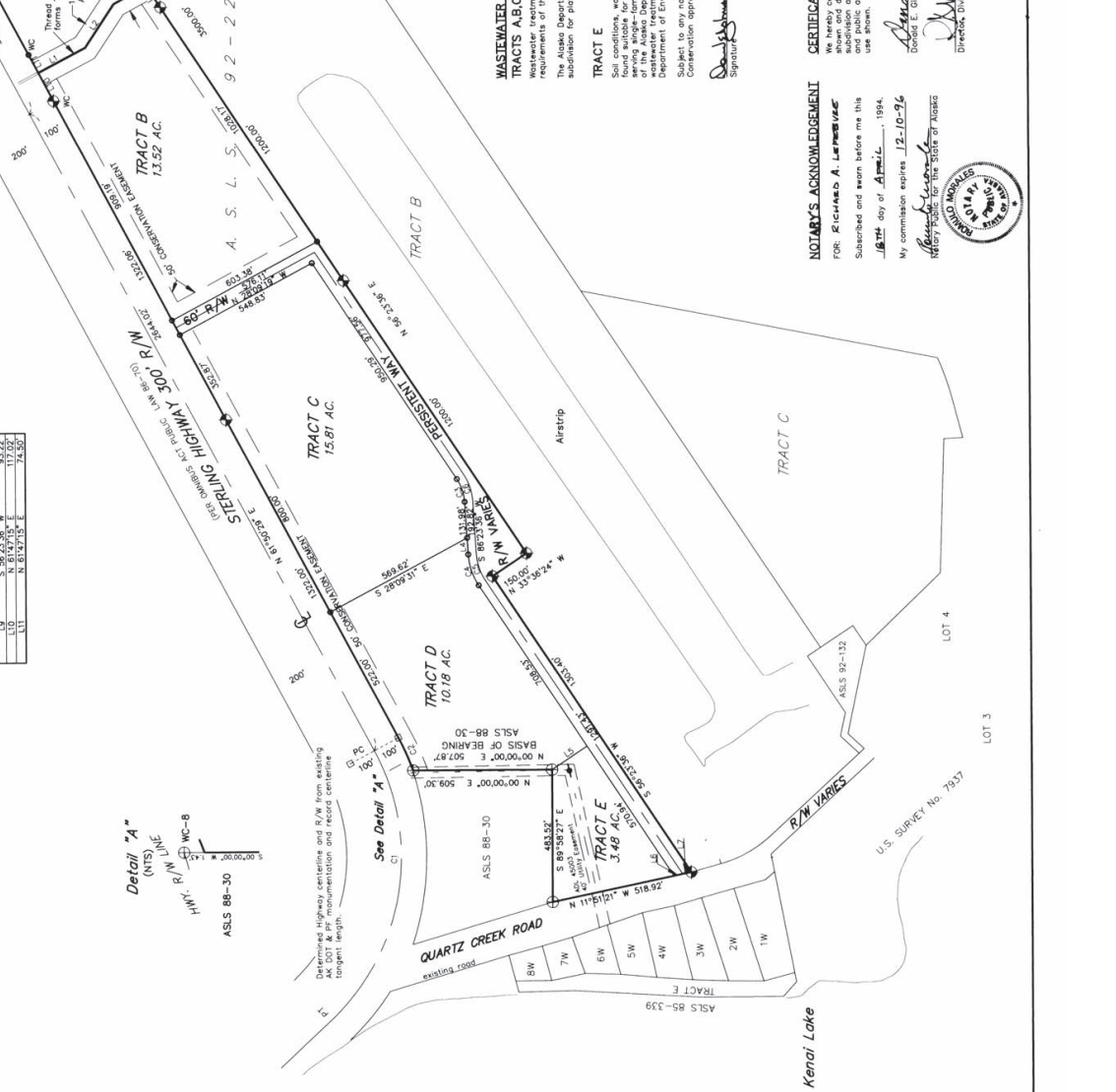
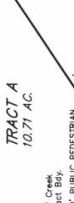
- NOTES**
- 1) Water supply and sewage disposal systems shall be permitted only in conformance with applicable requirements of 18 AAC 70, 18 AAC 72, and 18 AAC 80. Established ROWS permitted unless otherwise noted.
 - 2) No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a water supply or sewerage system to function.
 - 3) BILLING SET BACK - A building set back of 20 ft. is required from all street rights-of-way unless a lesser standard is approved by resolution of the appropriate Planning Commission.

CURVE TABLE

CURVE	CHORD	LENTH	TANGENT	CHORD BEARING	DATA
C1 Highway	617.60	1070.80	617.60	S 85°42'09" E	74.5804
R/W Highway	131.40	214.16	131.40	N 85°25'31" E	0.871500
C2	68.84	125.00	68.84	N 85°25'31" E	0.871500
C3	200.00	363.82	200.00	N 85°25'31" E	3.000000
C4	200.00	363.82	200.00	N 85°25'31" E	3.000000
C5	200.00	363.82	200.00	N 85°25'31" E	3.000000
C6	200.00	363.82	200.00	N 85°25'31" E	3.000000
C7	200.00	363.82	200.00	N 85°25'31" E	3.000000
C8	200.00	363.82	200.00	N 85°25'31" E	3.000000

LINE TABLE

LINE	DIRECTION	DISTANCE
L1	N 85°25'31" E	100.00
L2	N 85°25'31" E	100.00
L3	S 85°25'31" E	100.00
L4	S 85°25'31" E	100.00
L5	N 85°25'31" E	100.00
L6	N 85°25'31" E	100.00
L7	N 85°25'31" E	100.00
L8	N 85°25'31" E	100.00
L9	N 85°25'31" E	100.00
L10	N 85°25'31" E	100.00
L11	N 85°25'31" E	100.00



WASTEWATER DISPOSAL
TRACTS A, B, C, & D
 Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation. The Alaska Department of Environmental Conservation approves this subdivision for platting.

TRACT E
 This tract is not suitable for residential use and is not subject to the regulatory requirements of the Alaska Department of Environmental Conservation. The Alaska Department of Environmental Conservation approves this subdivision for platting.

PLAT APPROVAL
 This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of December 13, 1993.
 KENAI PENINSULA BOROUGH
 Authorizes Official

NOTARY'S ACKNOWLEDGEMENT
 We hereby certify that we are the owners of the real property above and described hereon and we are executing this plat for the purpose and public use and grant of easements to the use shown.
 Subscribed and sworn before me this 22nd day of March, 1994.
 My commission expires 3/24/92
 Notary Public for the State of Alaska

NOTARY'S ACKNOWLEDGEMENT
 We hereby certify that we are the owners of the real property above and described hereon and we are executing this plat for the purpose and public use and grant of easements to the use shown.
 Subscribed and sworn before me this 12th day of April, 1994.
 My commission expires 12-10-96
 Notary Public for the State of Alaska

NOTARY'S ACKNOWLEDGEMENT
 We hereby certify that we are the owners of the real property above and described hereon and we are executing this plat for the purpose and public use and grant of easements to the use shown.
 Subscribed and sworn before me this 12th day of April, 1994.
 My commission expires 12-10-96
 Notary Public for the State of Alaska



RECORDED
 SEWARD REC. DIST.
 BOOK 515
 PAGE 3134
 REGISTERED PLAT # ASOS
 DISTRICT # 10
 SECTION # 10
 TOWNSHIP # 10N
 RANGE # 10N



QUARTZ CREEK SUBDIVISION
 (A Resubdivision of Tract A ASLS 92-22)
 KENAI PENINSULA BOROUGH, OWNER
 58814 AC. 1/4 WITH UNDIVIDED SEC. 30, T. 5, N.;
 R. 2, W. AND UNDIVIDED SEC. 2, 3, 4, 5, 6, T. 5, N.;
 SEWARD RECORDING DISTRICT
 Surveyed by: MAJANE & ASSOCIATES
 P.O. BOX 468
 Seward, AK 99689
 Date of Plat: 12-13-93
 Plat No.: 92-08
 MFB File No.: 93-185
 Checked by: NSM



LOT 3

LOT 4

ASLS 85-339

ASLS 92-132

U.S. SURVEY No. 7337

Kenai Lake

R/W VARIES

Airstrip

Creek

100' PUBLIC PEDESTRIAN ACCESS EASEMENT

100' CONC. R/W

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Legend

- Clearing Limits
- TRACT C
- Parcels

LEGAL DESCRIPTION:

T 5N R 3W SEC 36 SEWARD
MERIDIAN SW 0940011
QUARTZ CREEK SUB TRACT C

**Attachment 3
Clearing Plan**

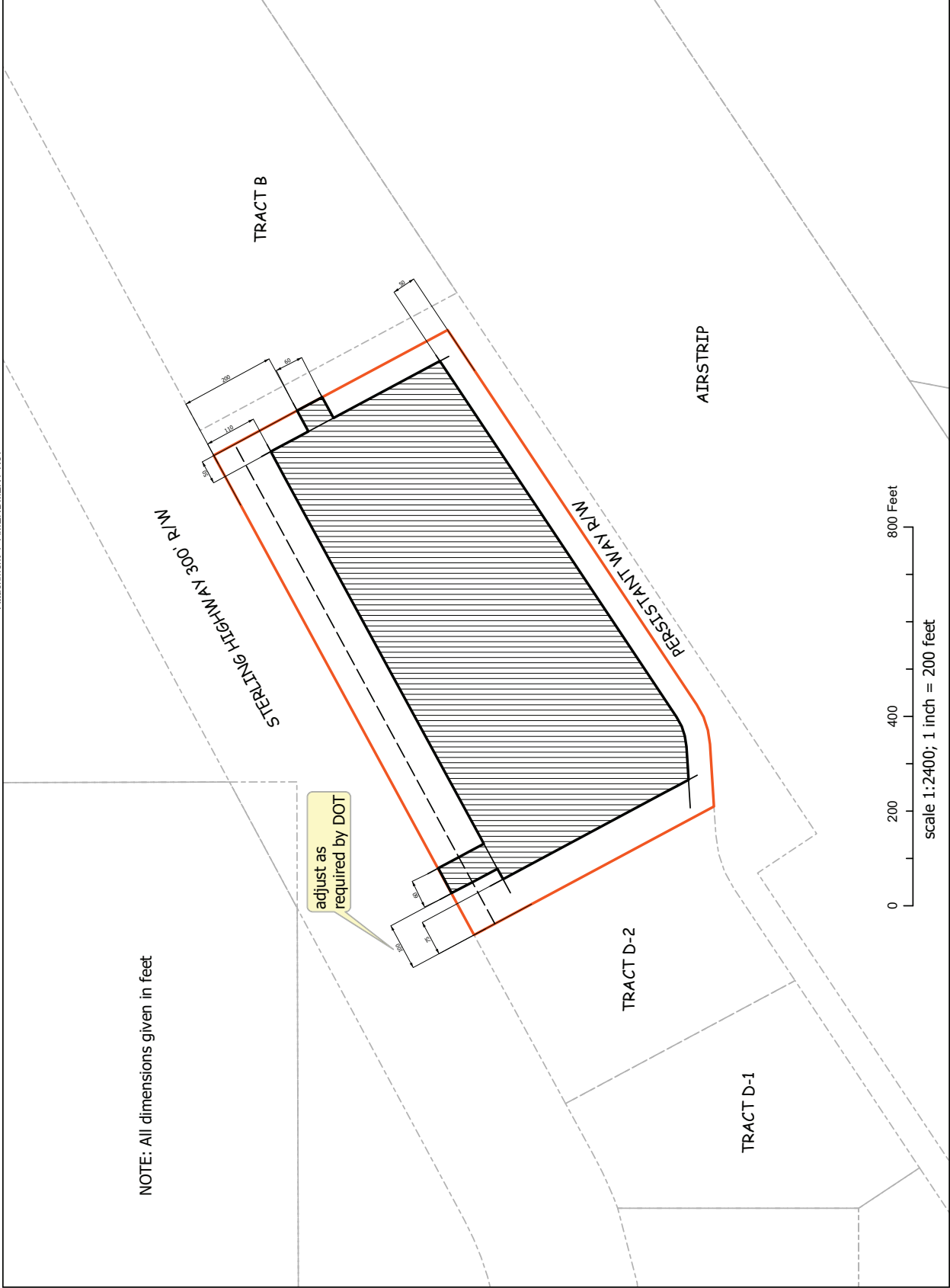
Proposed Clearing Limits
for LMD 20-17.

Permittee: Kiewit
Infrastructure

-KPB Land Management
9/23/2020

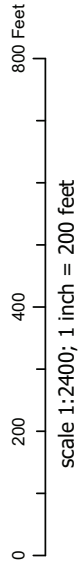


Attachment 4 - AMENDMENT No1



NOTE: All dimensions given in feet

adjust as
required by DOT



Project Number:
OA33028/CFHWY00684
Date: 1/20/2021

Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC

Tract C Lease Application

ATTACHMENT 4 to Lease Agreement

Prepared For:

Kenai Peninsula Borough Land Management
Division

Section

Page

Prepared By:

Kiewit Infrastructure West Co.

2000 W. International Airport Rd. C-6

Anchorage, AK 99502

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Plan for Future Use	4
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Acronyms and Abbreviations

ADOT&PF	Alaska Department of Transportation & Public Facilities
KIWC	Kiewit Infrastructure West Co.
KPB	Kenai Peninsula Borough
SWPPP	Storm Water Pollution Prevention Plan
APDES	Alaska Pollutant Discharge Elimination System
SPCC	Spill Prevention Control and Countermeasure
HMA	Hot Mix Asphalt

Introduction

KIWC proposes a negotiated lease of Tract C.

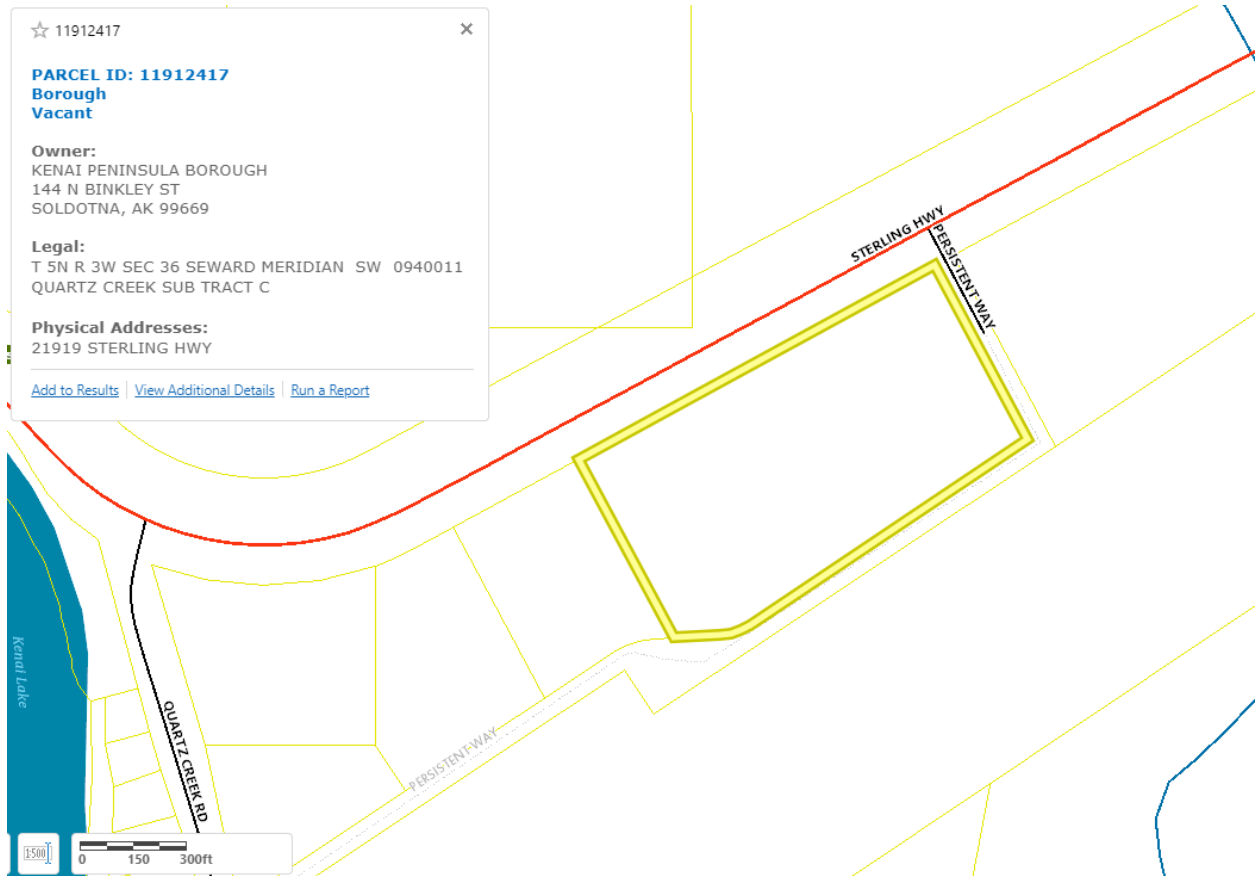
The parcel known as Tract C is described as the following:

Legal Description: T 5N R 3W SEC 36 SEWARD MERIDIAN SW 0940011 QUARTZ CREEK SUB TRACT C

Physical Address: 21919 Sterling Hwy

Tax Parcel ID: 11912417

Acreage: 15.81 Acres



The proposed primary use for this parcel under the negotiated lease is to develop a temporary project field office; and temporary materials and equipment laydown area to facilitate construction activities for the Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Project for AKDOT&PF.

The proposed term for the negotiated lease is April 2021 until the highway project completion. The project is anticipated to be completed by the end of year 2025.

Existing Improvements

Under existing KPB Land Use Permit LMD 20-17, KIWC has completed 10.8 Acres of timber clearing and salvage; and soil sampling at Tract C during the week of November 16th, 2020. The current condition of the parcel is shown in the photo below.



Figure 1 - Site Photo 11/20/2020

A copy of Land Use Permit LMD 20-17 is attached.

Prior to the work performed in 2020 under the land use permit, the parcel existed as a wooded lot with a paved driveway apron access at the intersection of Persistence Way and Sterling Hwy leading to a single lane gravel road.

Proposed Permanent Improvements and Temporary Structures

During the lease, KIWC proposes to develop Tract C to be a working field office. Site work including utility installation and earthwork will be required to facilitate access and installation of the temporary office structures. A portion of this work may be considered permanent improvement for integration into the future development plan.

Proposed permanent improvements include the following:

- Utility Installation
 - Electric Service (Chugach Electric Association Inc.)
 - Phone Service (TelAlaska)
 - Leach Field Sewage System
 - Potable Drinking Water Well System
- Site Earthwork
 - Grubbing
 - Drainage
 - Grading and placing gravel for a driveable working surface

The preliminary plan for the site is shown below in Figure 2. This plan includes several temporary structures that are planned to be removed by the end of the lease term.

Proposed temporary structures include the following examples:

- Job office - consisting of mobile trailer units
- Area Lighting
- Fencing and Entrance Gates
- Hot Mix Asphalt (HMA) Plant
- Concrete Batch Plant
- Bathroom facilities
- Parking area
- Secondary Access to Sterling Hwy
- Materials testing lab
- Maintenance facility
- Fuel Storage

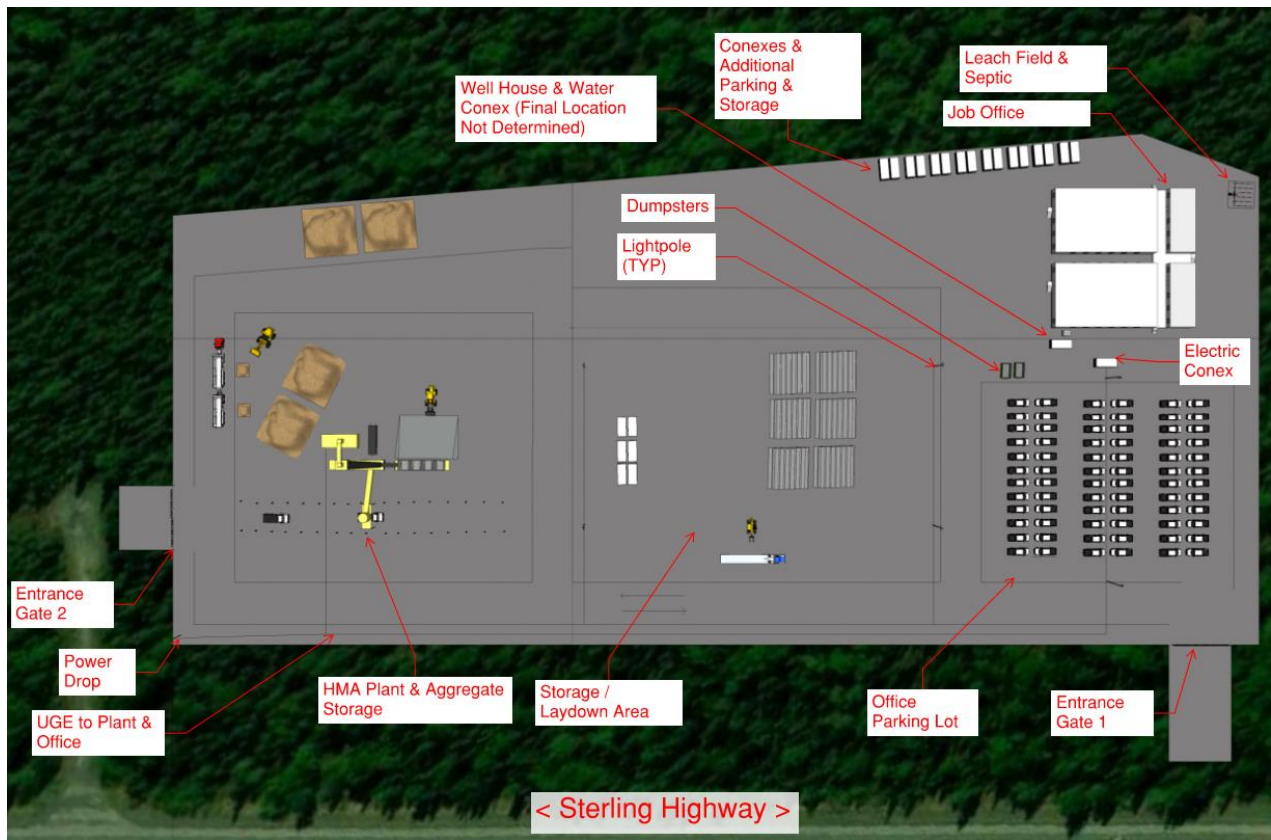


Figure 2 - Preliminary Site Layout

Plan for Future Use

KIWC intends to cooperate with KPB's future development plan for Tract C. Engineering resources will be available.

SWPPP and SPCC

The site work at Tract C including ground disturbing work, will be performed and maintained in adherence with the APDES Construction General Permit (CGP) and the project SWPPP and SPCC Plan programs for the duration of the lease. Documentation for this program will be located at the project office. Reporting of spills or discharges will follow the protocols listed in the program.