

E. NEW BUSINESS

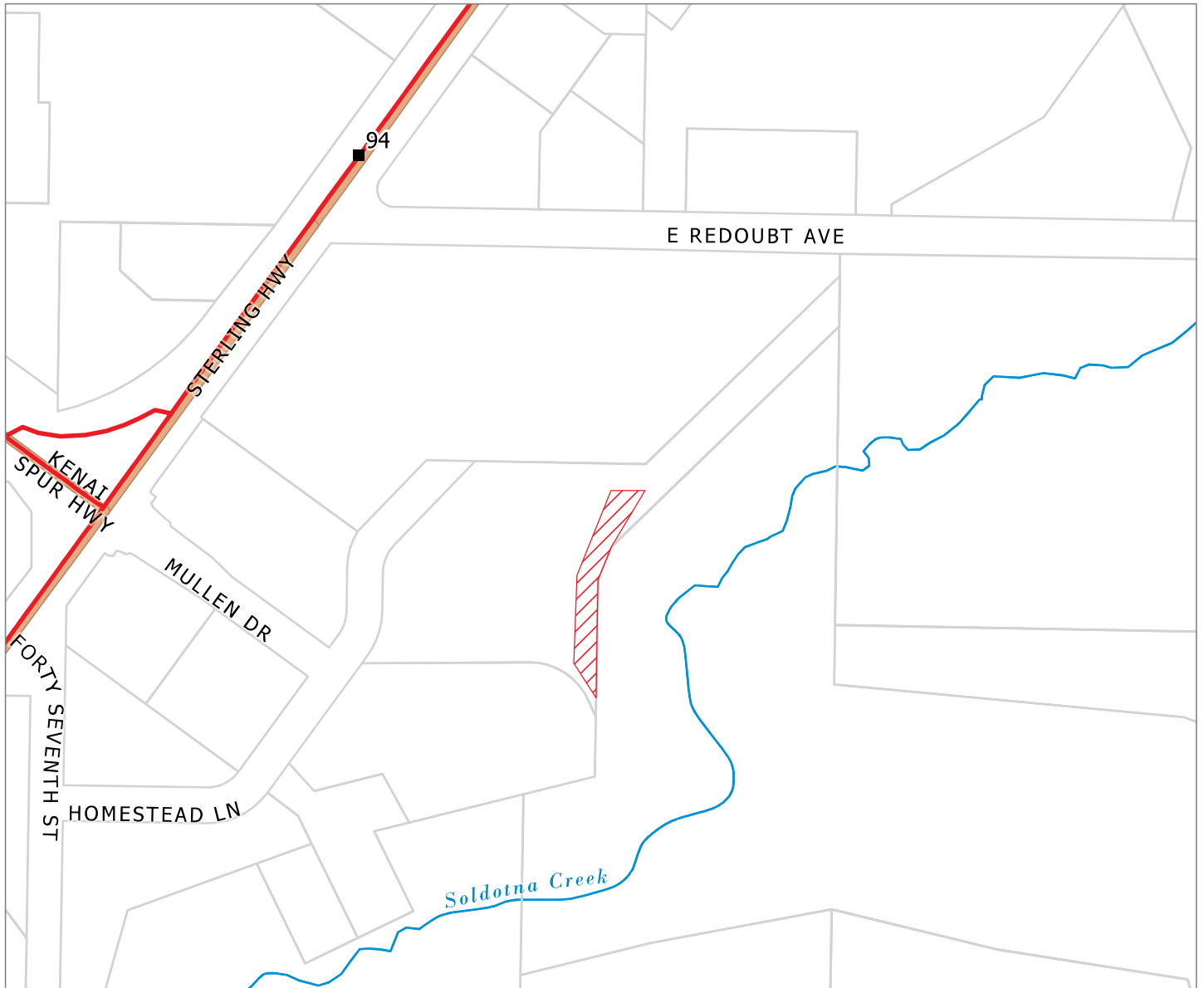
1. Utility Easement Vacation; KPB File 2023-007V

Request: Vacates a portion of a 40' utility easement granted on Mullen Homestead Subdivision Addition No. 5, Plat KN 2007-12



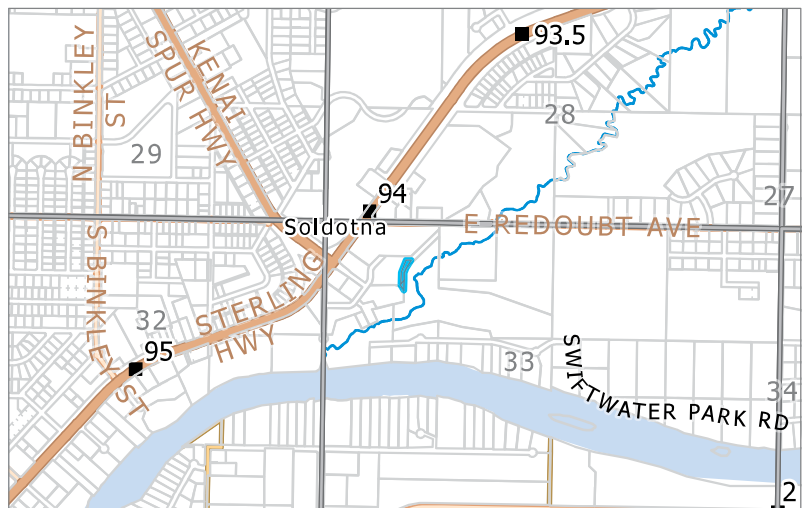
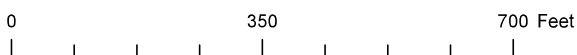
Kenai Peninsula Borough Planning Department

Vicinity Map

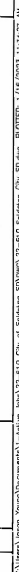


KPB File 2023-007V
T 05N R 10W SEC 33
Soldotna

1/18/2023







AGENDA ITEM E. NEW BUSINESS

ITEM 1 - UTILITY EASEMENT ALTERATION
VACATE A PORTION OF A 40 FOOT WIDE UTILITY EASEMENT ASSOCIATED WITH TRACT B-2C OF
MULLEN HOMESTEAD SUBDIVISION SOLDOTNA CREEK ADDITION, PLAT KN 2015-47

KPB File No.	2023-007V
Planning Commission Meeting:	February 13, 2023
Applicant / Owner:	City of Soldotna
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey and Designs, LLC
General Location:	Near the Mullen Drive and Kenai Spur Highway intersection, City of Soldotna

STAFF REPORT

Specific Request / Purpose as stated in the petition: No purpose was stated. The City of Soldotna purchased the property containing the easement in order to provide a through dedication. The minutes from the City of Soldotna states it was unused and unsure of the purpose.

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

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

Staff Analysis: The utility easement proposed for vacation is along the eastern boundary and within the flag portion of Tract B-2C, Mullen Homestead Subdivision Soldotna Creek Addition, Plat KN 2015-47. The lots in this area have been replatted multiple times. When Mullen Homestead Subdivision Addition No. 5, Plat KN 2007-12, was recorded it finalized a vacation of a 40 foot utility easement that was centered on former lot lines. Per the findings stated within the Kenai Peninsula Borough Planning Commission minutes from the February 27, 2006 meeting, the Soldotna Planning and Zoning Commission made other vacations subject to the granting of a 40 foot utility easement.

The City of Soldotna recently purchased Tract B-2C to provide a continuation of Homestead Lane and provide a connection to East Redoubt Avenue. New Homestead Subdivision, KPB File 2023-007, has been submitted for review by the Kenai Peninsula Borough Plat Committee at the February 13, 2023 meeting. That plat is proposing the new dedications and utility easements along the dedications within the boundary of the subdivision plat. The plat is proposed to finalize the vacation of the 40 foot utility easement if approved.

The City of Soldotna Planning and Zoning Commission heard the New Homestead Subdivision preliminary plat at their January 4, 2023 meeting. They approved the plat that included the vacation of the easement. Minimal discussion was had in regards to the easement other than stating it would be vacated as it was deemed unnecessary and unsure of its purpose.

Utility provider review:

HEA	HEA has reviewed the vacation of the 40 foot wide utility easement, as shown, and has no objection at this time.
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

Findings:

1. The petition states that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Mullen Homestead Subdivision Addition No. 5, Plat KN 2007-12, granted a 40 foot wide utility easement along the eastern boundary of Tract B that continued into the flag portion of Tract B.
4. The 40 foot easement was carried over on subsequent subdivision plats.
5. The last replat, Mullen Homestead Subdivision Soldotna Creek Addition Plat KN 2015-47, carried over the easement within Tract B-2C.
6. The City of Soldotna Planning and Zoning Commission reviewed the vacation as part of the new plat, New Homestead Subdivision, and approved the vacation as part of the plat.
7. A new right-of-way dedication is proposed that will have 10 foot utility easements running adjacent on those portions within the new subdivision boundary.
8. Rights-of-way, with proper permitting may be used by utility providers.
9. The northern portion of the easement is not requested for vacation as it will be within the new right-of-way dedication.
10. No surrounding properties will be denied utilities.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends **APPROVAL** of the utility easement alteration as petitioned, subject to:

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

20.65.070 Alteration of platted utility easements

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.**
- F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

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

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

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*

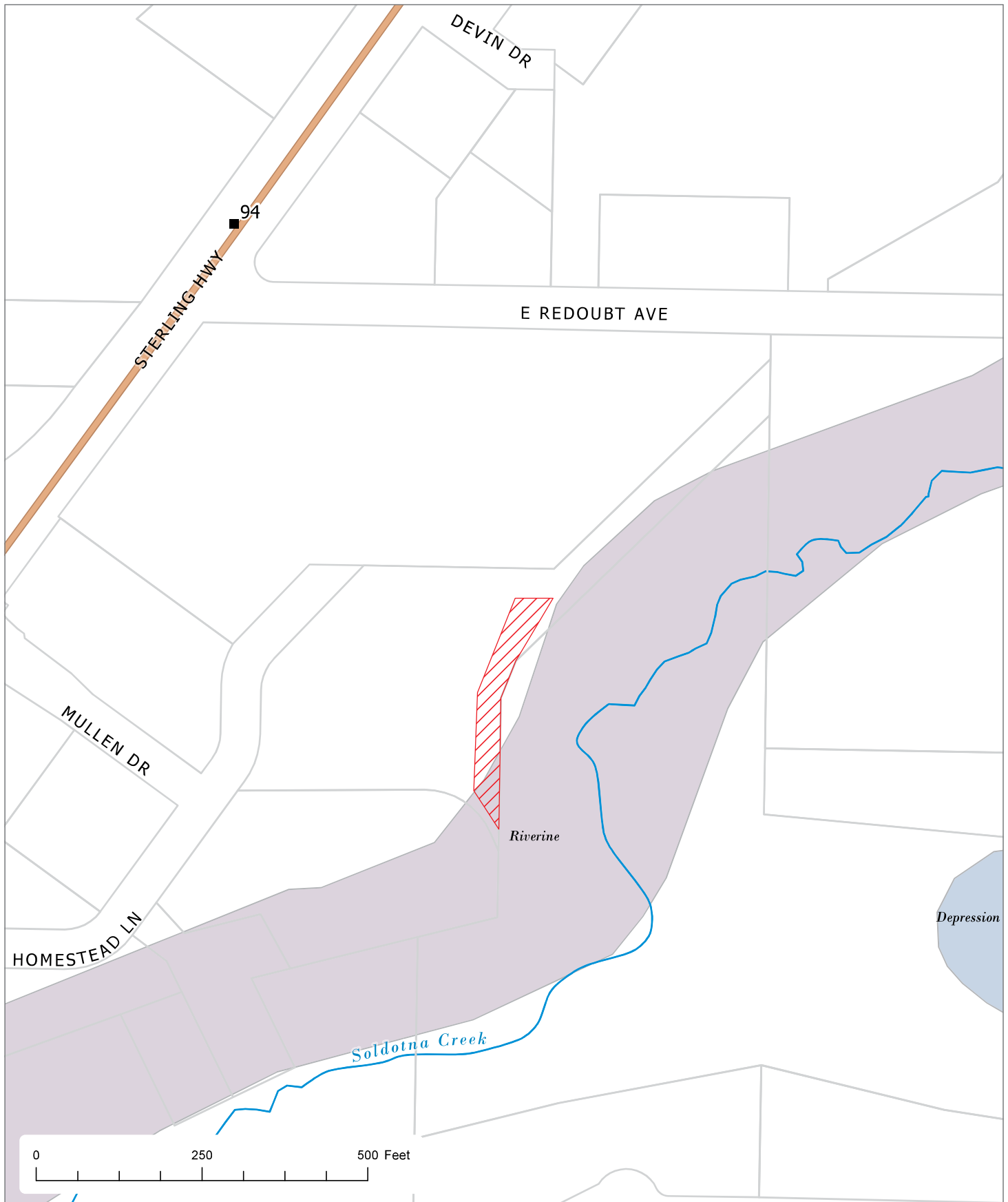
- *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and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

END OF STAFF REPORT



Aerial View

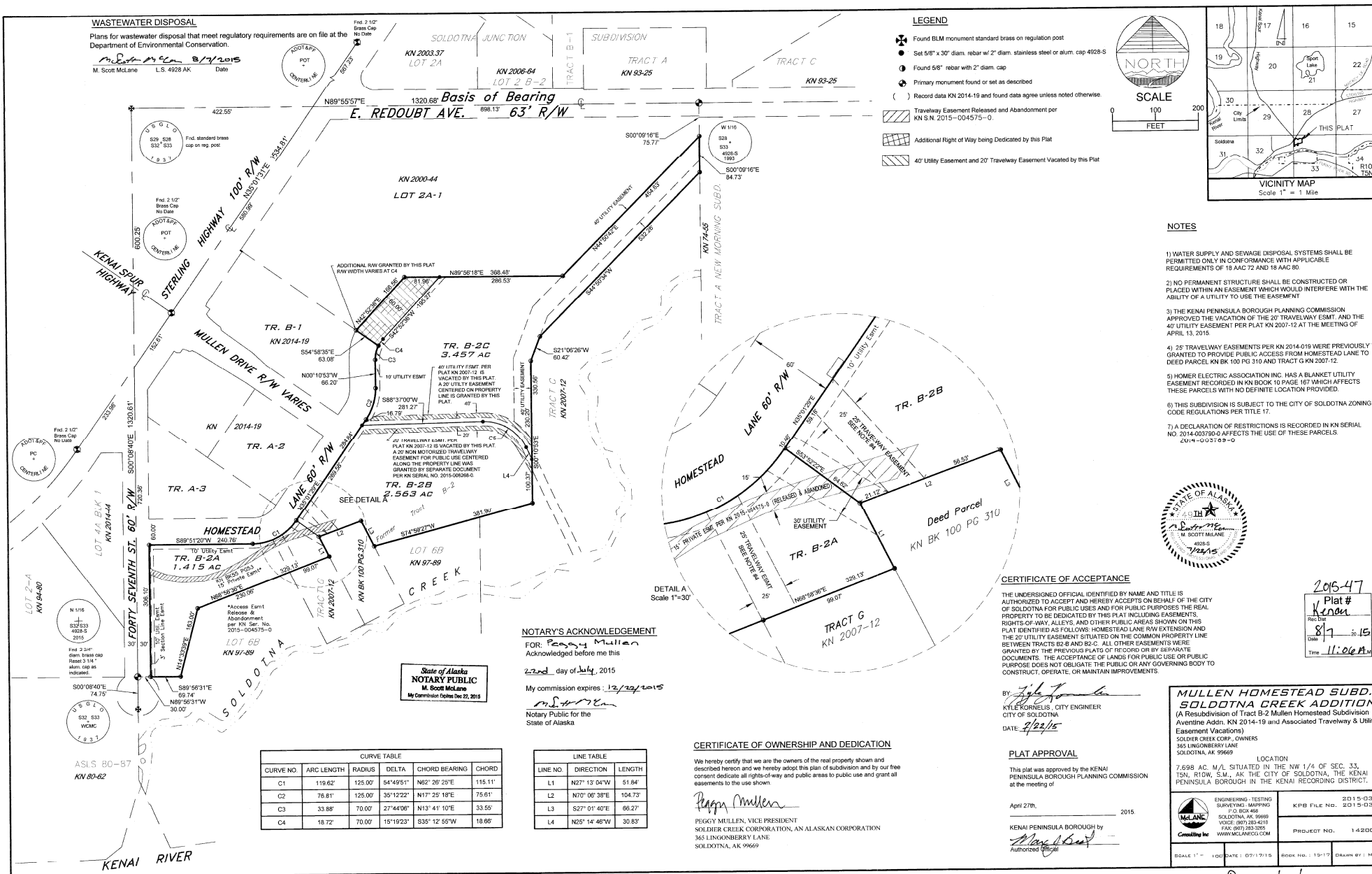






Plans for wastewater disposal that meet regulatory requirements are on file at the Department of Environmental Conservation.

M. Scott McLane 8/7/2015
M. Scott McLane L.S. 4928 AK Date

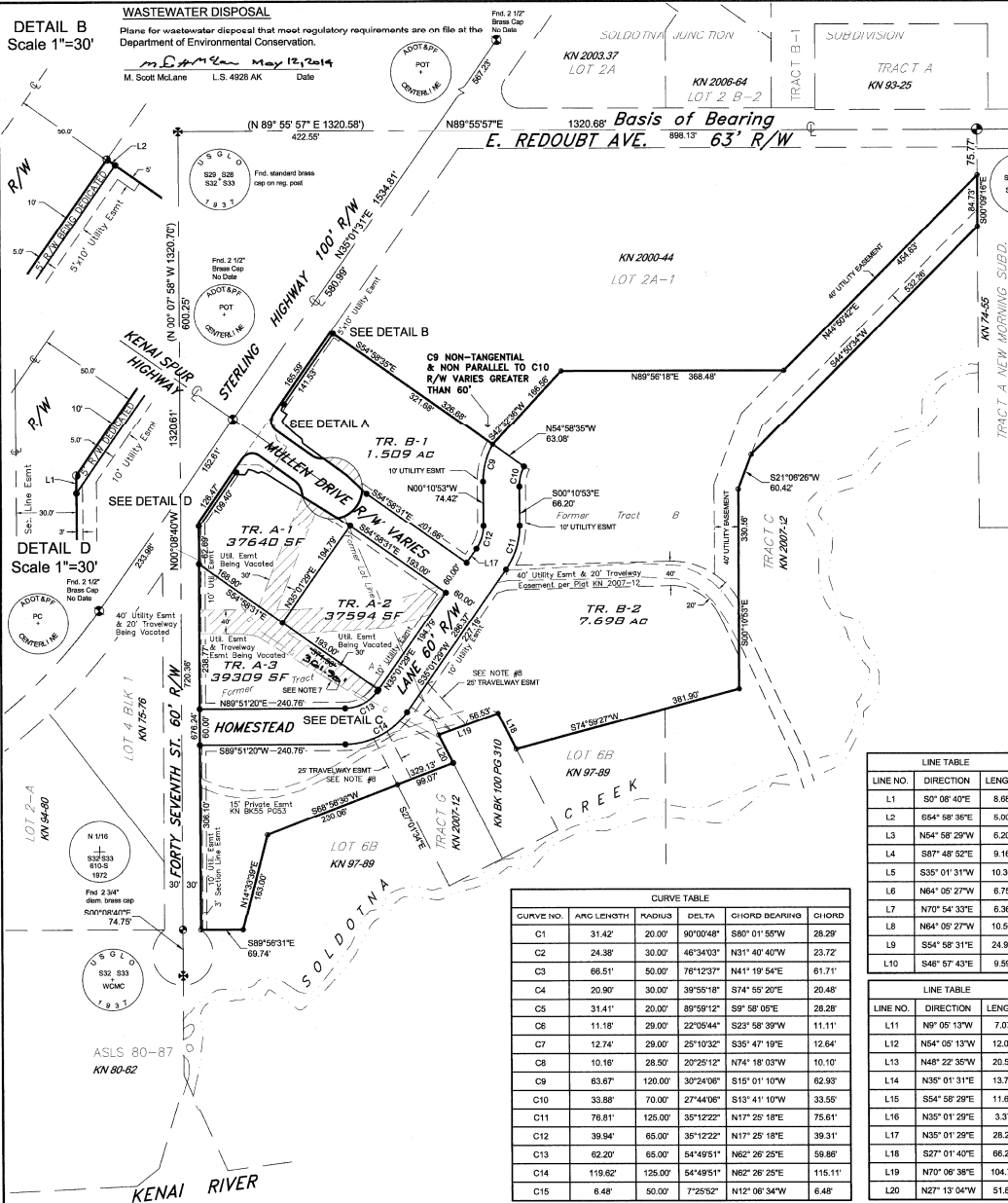


DETAIL B Scale 1"=30'

WASTEWATER DISPOSAL

Plans for wastewater disposal that meet regulatory requirements are on file at the Department of Environmental Conservation.

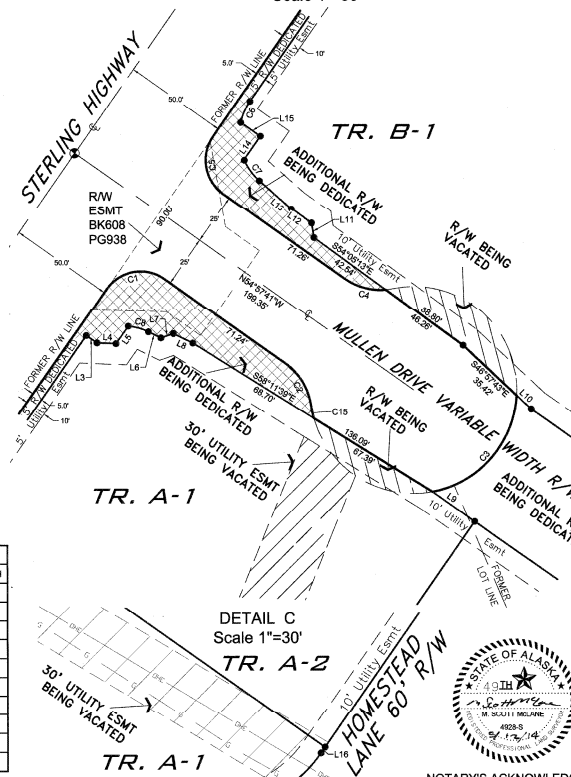
M. Scott McLane May 12, 2014
M. Scott McLane L.S. 4928 AK Date



LEGEND

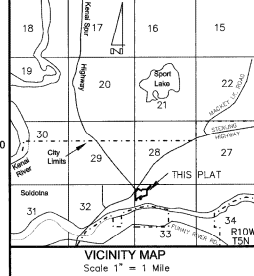
- Found BLM monument standard brass on regulation post
- Set 5/8" x 30" diam. rebar w/ 2" diam. alum. cap. 4928-S
- Found 5/8" rebar with 2" diam. cap
- Primary monument found or set as described
- Record data KN 2007-12
- Utility and or Travelway Easement Vacated by this plat
- Right of Way Vacated by this plat
- Additional Right of Way being Dedicated by this Plat

DETAIL A Scale 1"=30'



SCALE

0 100 200
FEET



NOTES

- 1) WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS SHALL BE PERMITTED ONLY IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF 18 AAC 72 AND 18 AAC 80.
- 2) NO DIRECT ACCESS TO STATE MAINTAINED ROWS PERMITTED UNLESS APPROVED BY STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES.
- 3) NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
- 4) THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVED THE VACATION OF A PORTION OF MULLEN DRIVE (FORMERLY MULLEN COURT 50' R/W) AND THE ASSOCIATED UTILITY EASEMENT AT THE MEETING OF FEBRUARY 24, 2014.
- 5) THE KENAI PENINSULA BOROUGH PLANNING COMMISSION APPROVED THE EXCEPTION TO KPB 20.03.030 EXTENDING DEDICATED RIGHT-OF-WAY TO TRACT G KN 2007-12 AND DEED PARCEL KN BOOK 100 PAGE 310 AT THE MEETING OF FEBRUARY 24, 2014 AND THE EXCEPTIONS TO KPB 20.03.120 STREETS CURVE REQUIREMENTS AND KPB 20.03.130 REVERSE CURVES AT THE MEETING MAY 12, 2014.
- 6) THE ADOT&PF RIGHT OF WAY FOR THE STERLING HIGHWAY WAS DETERMINED FROM THE DATA PER THE SOLDOTNA URBAN RIGHT OF WAY MAP ALASKA PROJECT F-2011/151-F-2012/240 FILED AS PLAT KN 94-1 AND THE MONUMENTS RECOVERED FROM RECORD OF SURVEY FILED AS PLAT KN 2012-02 SHEET 8.
- 7) APPROXIMATE LOCATION OF BURIED NATURAL GAS LINE, CENTER OF 20' GAS LINE EASEMENT PER KN 97-88, BEING VACATED THIS PLAT.
- 8) 25' TRAVELWAY EASEMENTS ARE BEING GRANTED TO PROVIDE PUBLIC ACCESS FROM HOMESTEAD LANE TO DEED PARCEL KN BK 100 PG 310 AND TRACT G KN 2007-12.
- 9) ALL INTERIOR LOT CORNERS WILL BE SET POST 2014 CONSTRUCTION ACTIVITIES.
- 10) AN INSTALLATION AGREEMENT BETWEEN THE CITY OF SOLDOTNA AND THE SUBDIVISION OWNERS DETAILING THE TERMS OF THE CONSTRUCTION FOR IMPROVEMENTS WITHIN RIGHTS-OF-WAY HAS BEEN SIGNED BY BOTH PARTIES.
- 11) PORTIONS OF TRACT B-2 OF THIS SUBDIVISION ARE WITHIN THE KENAI PENINSULA BOROUGH 50-FOOT ANADROMOUS STREAM HABITAT PROTECTION DISTRICT. SEE CHAPTER 21-18 BOROUGH CODE OF ORDINANCES FOR RESTRICTIONS THAT AFFECT DEVELOPMENT OF THIS SUBDIVISION.
- 12) THIS SUBDIVISION IS SUBJECT TO THE CITY OF SOLDOTNA ZONING CODE REGULATIONS PER TITLE 17.

PLAT APPROVAL

This plat was approved by the KENAI PENINSULA BOROUGH PLANNING COMMISSION at the meeting of MAY 12, 2014.

KENAI PENINSULA BOROUGH by
M. Scott McLane
Authorized Official

2014-19
Plat #
Kenai
5/15/14
Date
Time 12:34 P.M.



NOTARY'S ACKNOWLEDGEMENT

FOR: Kyle Lints
Subscribed and sworn before me this 15th day of May, 2014.
My commission expires 9/15/2015
Notary Public for the State of Alaska

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the real property shown and described herein and we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way and public areas to public use and grant all easements to the use shown.

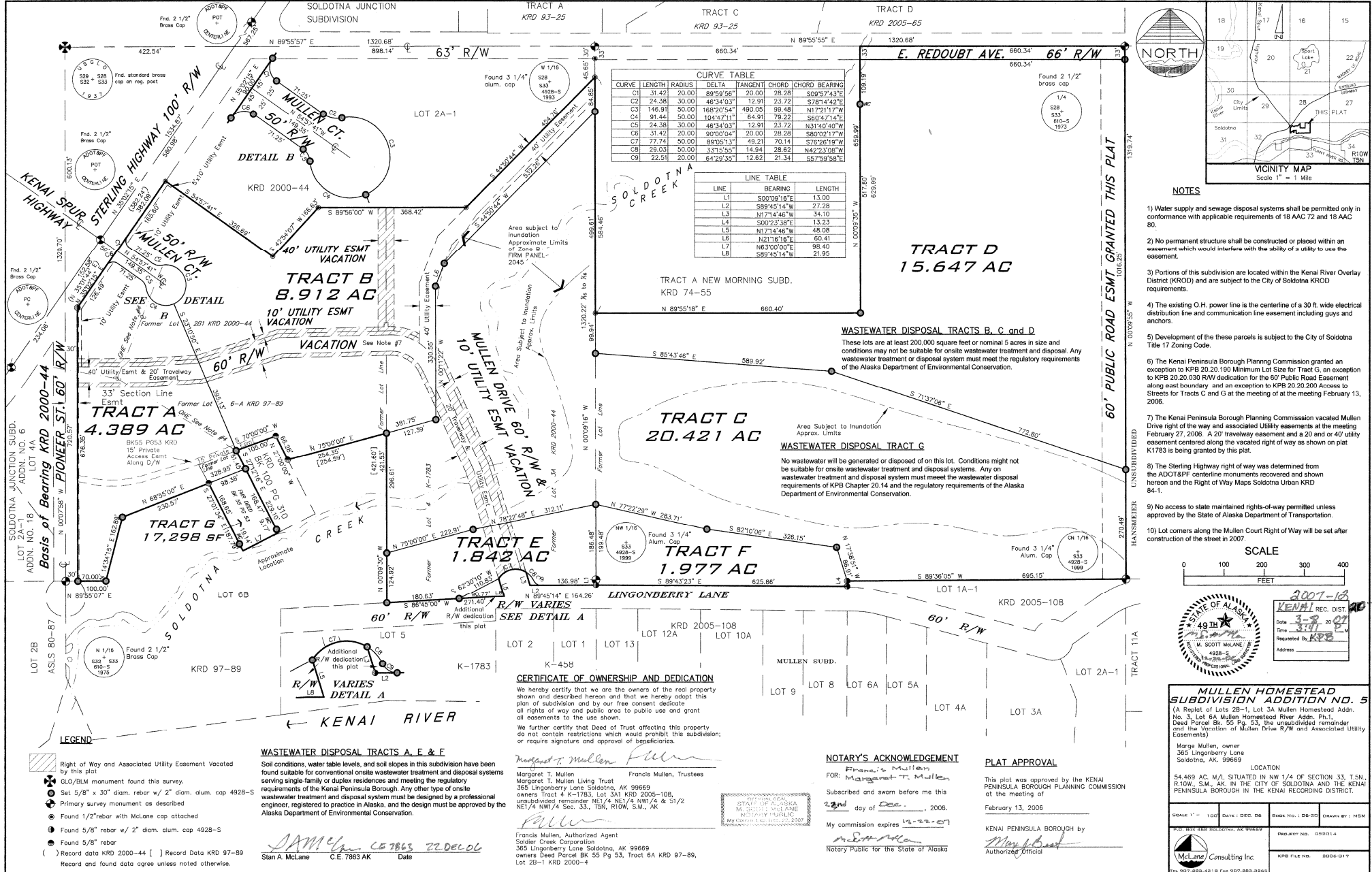
KYLE LINTS, VICE PRESIDENT
SOLDIER CREEK CORPORATION, AN ALASKAN CORPORATION
365 LINGONBERRY LANE
SOLDOTNA, AK 99669

State of Alaska
NOTARY PUBLIC
S. A. McLane
My Commission Expires May 5, 2017

CURVE NO.	ARC LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	31.42	20.00	90°00'48"	S80°01'55"W	28.29
C2	24.38	30.00	46°34'03"	N31°40'40"W	23.72
C3	66.51	50.00	75°12'37"	N41°19'54"E	61.71
C4	20.90	30.00	39°55'18"	S74°55'20"E	20.48
C5	31.41	20.00	89°58'12"	S9°58'05"E	28.28
C6	11.18	29.00	22°05'44"	S23°58'39"W	11.11
C7	12.74	29.00	25°10'32"	S35°47'19"E	12.64
C8	10.18	28.50	29°25'12"	N74°18'03"W	10.10
C9	63.67	120.00	30°24'06"	S15°01'10"W	62.93
C10	33.88	70.00	27°44'06"	S13°41'10"W	33.55
C11	76.81	125.00	35°12'22"	N17°25'18"E	75.61
C12	39.94	65.00	35°12'22"	N17°25'18"E	39.31
C13	62.20	65.00	54°45'51"	N62°26'25"E	59.86
C14	119.62	125.00	54°45'51"	N62°26'25"E	115.11
C15	6.48	50.00	7°25'52"	N12°06'34"W	6.48

LINE NO.	DIRECTION	LENGTH
L1	S0°08'40"E	8.68
L2	S64°58'36"E	5.00
L3	N54°58'29"W	6.20
L4	S87°48'52"E	9.16
L5	S35°01'31"W	10.30
L6	N64°05'27"W	8.75
L7	N70°54'33"E	6.36
L8	N64°05'27"W	10.50
L9	S54°58'31"E	24.94
L10	S46°57'43"E	9.99

LINE NO.	DIRECTION	LENGTH
L11	N9°05'13"W	7.07
L12	N64°05'13"W	12.00
L13	N48°22'35"W	20.52
L14	N35°01'31"E	13.75
L15	S54°56'29"E	11.60
L16	N35°01'29"E	3.37
L17	N35°01'29"E	28.21
L18	S27°01'40"E	66.27
L19	N70°08'38"E	104.73
L20	N27°13'04"W	51.84



MOTION: Commissioner Johnson moved, seconded by Commissioner Isham to postpone the material site ordinance until brought back by staff.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL ABSENT	HUTCHINSON YES
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION ABSENT	PETERSEN YES	TAURIAINEN ABSENT	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate Mullen Drive, a 60-foot right of way dedicated by Mullen Homestead (Plat KN 1783) and associated utility easements granted by Mullen Homestead Subdivision Addition No 3 (Plat KN 2000-44); within section 33, Township 5 North, Range 10 West, Seward Meridian, Alaska; in the City of Soldotna and the Kenai Peninsula Borough. KPB File 2001-040. Note: A public access easement will remain along the travel way of Mullen Drive until alternative public right-of-way is dedicated; Petitioners: Margaret T Mullen and Soldier Creek Corp. of Soldotna, Alaska; Location: City of Soldotna

Staff Report reviewed by Max Best

PC Meeting: 2/27/06

Purpose as stated in petition: Mullen Drive is being vacated to eliminate the need for the bridge crossing Soldotna Creek which is in an unsafe condition and to reduce traffic thru the parking lot of the Rivercity Book Store from Mullen Drive via Pioneer Street to the Kenai Spur Highway intersection. Alternate access has been constructed within the Lingonberry Lane R/W to the Swiftwater Camp Road thus providing an alternative access route. Associated utility easements granted by plat KRD 2000-44, which are parallel and adjacent to the northerly right of line, are also being vacated.

Petitioners: Margaret T. Mullen and Soldier Creek Corporation of Soldotna, Alaska.

Public notice appeared in the February 9 and February 16, 2006 issues of the Peninsula Clarion.

Eleven (11) certified mailings were sent to owners of property within 300 feet of the parcels. All of the receipts have been returned.

Twelve (12) regular mailings were sent to agencies and interested parties. Seven (7) notices were sent to KPB Departments. Notices were mailed to the Soldotna Post Office, Sterling Post Office, and Soldotna Community Library to post on public bulletin boards. The notice and maps were posted on the Borough web site.

Statement(s) of non-objection

Homer Electric Association

Staff discussion

A similar vacation petition was submitted for Planning Commission review in April 2001. The petition proposed to vacate Mullen Drive, vacate most of Pioneer Street, dedicate a 50-foot by 50-foot right-of-way adjoining the Sterling Highway, and dedicate a portion of Lingonberry Lane. The associated preliminary plat created five lots.

The intent of the proposed vacation was to direct traffic away from an aging bridge to allow for safer and more expedient ingress/egress for property owners and emergency service providers. Action on the petition was postponed so the owners could work with the City of Soldotna to resolve items of concern.

The vacation petition was carried forward to the May 29 and June 25, 2001 meetings per the applicant's request. Issues of concern still had not been resolved by June 25 so the Planning Commission postponed action until brought back by staff.

On December 7, 2005, the Soldotna Planning Commission reviewed a revised vacation petition and modified

preliminary plat. The new petition proposes to vacate Mullen Drive and associated utility easements and dedicate a 50-foot cul-de-sac off the Sterling Highway. The preliminary plat that would accomplish the vacation will also create seven tracts.

The Soldotna Commission recommended approval of the proposed vacation and preliminary plat subject to granting a 40-foot wide utility easement along the travel way of Mullen Drive.

The Borough Plat Committee reviewed the preliminary plat on February 13, 2006 and granted preliminary approval.

The owner and City of Soldotna have resolved the items of concern. Borough staff is recommending approval of the preliminary plat subject to conditions of the vacation.

Findings:

1. Per the submittal, the right-of-way proposed for vacation is in use for access.
2. Per the submittal, the right-of-way proposed for vacation has been constructed.
3. The right-of-way proposed for vacation is within the City of Soldotna.
4. The City of Soldotna is responsible for road maintenance.
5. The Soldotna Planning and Zoning Commission reviewed the proposed vacation on December 7, 2005 and recommended approval subject to providing 40-foot wide utility easement along the travel way of Mullen Drive.
6. Per the submittal, alternate access has been constructed within the Lingonberry Lane right-of-way to the Swiftwater Camp Road.
7. Per the submittal, a public access easement will remain along the travel way of Mullen Drive until alternative public right-of-way is dedicated.
8. Sufficient rights-of-way exist to serve surrounding properties.
9. No surrounding properties will be denied access.
10. The proposed vacation will direct traffic away from an aging bridge that is in unsafe condition.
11. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
12. To date, one utility company has provided a letter of non-objection.

STAFF RECOMMENDATION: Based on Findings 3-12, staff recommends approval of the vacations as petitioned, subject to:

1. Submittal of a final plat within one year of vacation approval.

If the vacation is approved, the Soldotna City Council has thirty days in which they may veto Planning Commission approval of the vacation.

DENIAL OF A VACATION PETITION IS A FINAL ACT FOR WHICH NO FURTHER CONSIDERATION SHALL BE GIVEN BY THE KENAI PENINSULA BOROUGH. APPEALS TO PLANNING COMMISSION DENIAL OF A VACATION MUST BE TAKEN WITHIN THIRTY (30) DAYS TO SUPERIOR COURT AT KENAI, ALASKA PURSUANT TO PART VI OF THE ALASKA RULES OF APPELLATE PROCEDURES. [20.28.110 AS AMENDED BY KENAI PENINSULA BOROUGH ORDINANCE 99-43].

END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Scott McLane, McLane Consulting, 38240 Kenai Spur Highway
Mr. McLane is the surveyor representing the Mullen's on this particular petition. He was available for questions.

Chairman Bryson asked if there were questions for Mr. McLane.

Commissioner Heimbuch understood she was not suppose to talk on this matter but asked if the access along Swiftwater Campground Road was dedicated or if it was a private road. Mr. McLane replied that the road is still under private ownership however the City maintains it year round. He stated that the City told him that they are actively engaged in trying to acquire the road.

Chairman Bryson clarified for the record that Commissioner Heimbuch could speak or make motions on this matter until information directing otherwise was received from the Borough legal staff.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment and opened the discussion among the Commission.

MOTION: Commissioner Martin moved, seconded by Commissioner Johnson to grant the vacation per staff recommendations citing Findings 1-12.

Findings:

1. Per the submittal, the right-of-way proposed for vacation is in use for access.
2. Per the submittal, the right-of-way proposed for vacation has been constructed.
3. The right-of-way proposed for vacation is within the City of Soldotna.
4. The City of Soldotna is responsible for road maintenance.
5. The Soldotna Planning and Zoning Commission reviewed the proposed vacation on December 7, 2005 and recommended approval subject to providing 40-foot wide utility easement along the travel way of Mullen Drive.
6. Per the submittal, alternate access has been constructed within the Lingonberry Lane right-of-way to the Swiftwater Camp Road.
7. Per the submittal, a public access easement will remain along the travel way of Mullen Drive until alternative public right-of-way is dedicated.
8. Sufficient rights-of-way exist to serve surrounding properties.
9. No surrounding properties will be denied access.
10. The proposed vacation will direct traffic away from an aging bridge that is in unsafe condition.
11. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
12. To date, one utility company has provided a letter of non-objection.

Commissioner Clark asked if the findings were included in the motion. Commissioner Martin replied yes.

VOTE: The motion passed by unanimous consent.

BRYSON YES	CLARK YES	FOSTER YES	GROSS YES	HEIMBUCH YES	HOHL ABSENT	HUTCHINSON YES
ISHAM YES	JOHNSON YES	MARTIN YES	MASSION ABSENT	PETERSEN YES	TAURIAINEN ABSENT	10 YES 3 ABSENT

AGENDA ITEM F. PUBLIC HEARINGS

2. Vacate Happy Street, Happy Lane and the Un-named Right of Way along the West border of Tracts 11 through 14 and associated utility and clearing easements, and the 10' utility easement along west boundary, extending through subdivision to south boundary as a 20' utility easement, and the 10' utility easement along south boundary granted by Hoffman Acres Subdivision (Plat HM 74-2195); within Section 4, Township 3 South, Range 14 West, Seward Meridian, Alaska; within the Kenai Peninsula Borough. KPB File 2006-016

Staff Report reviewed by Max Best

PC Meeting: 2/27/06

Purpose as stated in petition: This entire subdivision is being replatted with alternate right-of-way, easements, and all interior property lines are being vacated, and new lots being platted. All new lots, right-of-way, and easements will meet KPB subdivision codes.

Petitioners: Quality Services of Anchor Point and Thomas A. Haeg of Homer, Alaska.

Public notice appeared in the February 9 and February 16, 2006 issues of the Homer News.

Seven (7) certified mailings were sent to owners of property within 300 feet of the parcels. All of the receipts have been returned.

Thirteen (13) regular mailings were sent to agencies and interested parties. Nine (9) notices were sent to KPB Departments. Notices were mailed to the Anchor Point Community Library and Anchor Point Post Office to post on