

Agenda Item:	<u>N.1</u>
Committee:	<u>Lands</u>
Page Number:	<u>138</u>

This Information was submitted by,  
and distributed to the Assembly at the request of  
Assembly Member Kelly Wolf

(Compiled by Dan Sterchi.)

Problems with 2014-32 ORDINANCE

Keahane DON'T want land See E-mail-1

No engineering or planning has ever done See-2  
Memorandum

No more water to enter Dog Fish Ave See DOT email-3

Mayor's ditch down Buoy Ave done by emergency order;  
water in Buoy Ave ditch – Drain Field Against specs of  
Original Permit

Property along K-Beach in danger.

300 ft was wash out @ Mile 11 -4

Draining 9 square  
miles  
of wet lands  
into Buoy St. ditch

Dale Bagley

The mayor action has huge impact on property values - already ReMax has lost a sale. Dale himself lost a sale across K-Beach @ Mile 12.1

Kelly Cooper

Mayor ditch puts @ risk 16 seawalls. Homer knows all about seawalls & lawsuits.

Blaine Gilman

Mayor built graded ditch 9,000 Ln. Ft. down Buoy St. terminated it @ Mile 12.1 with NO out flow to inlet; there are 19 parcels & 16 seawalls directly affected. Each one a potential law suit against the borough.

What precedent are you setting giving this property to Keohane? There are many people hurt worst, give to 1 give to all.

Mako Haggerty

Mayor's 9,000 ft. ditch down Buoy effects 19 properties on bluff. There are 16 existing seawalls with excess ground water in back of them; big lawsuit waiting to happen.

Brent Johnson

Mayor says 60 ft. is more than enough for drainage; but they did not have the common courtesy to ask Rodger Schmidt set netter & property owner to south of lot for his input; as they have used big boulders in front of mile 12.1 to anchor their inside nets, every other site has to use sandbags @ huge expense every year.

The reason you didn't hear from the Schmidt is that Rodger passed away right in the middle of all this.

Sue McClure

She should know that 60 ft. is not enough easement. The last washout @ Mile 11 was 300 ft. along K-Beach & 35 ft. deep. Seward deals with wash out almost every year.

Wayne Ogle

Mayor ditch to divert ground water is putting excess pressure in back of 16 seawalls.

Science said a big quake will happen, they just don't know when.

Stan Wells

Pat Malone – the Buoy St. ditch has grade all the way to mile 12.1 where it backs up 6 inches, but when it over comes the 6 inches there is room at top a culvert to go all the way to Dog Fish; which it did last fall.

Smith, Cheryl

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**From:** Aranguiz, Michele  
**Sent:** Friday, January 23, 2015 8:17 AM  
**To:** Navarre, Mike  
**Subject:** FW: Keohane Drainage Easement

-----Original Message-----

**From:** T & P Keohane [<mailto:cohocoal@frontier.com>]  
**Sent:** Friday, January 23, 2015 6:12 AM  
**To:** Aranguiz, Michele  
**Cc:** Mueller, Marcus  
**Subject:** Keohane Drainage Easement

Michele,

**As a result of the recent controversy instigated by Stan Wells we wish to reconsider our offer to help the Borough solve their drainage problem at Karluk ave.** We stated originally in October 2013, we are not happy that the Borough trespassed on our land and used it for stormwater runoff and storage. We do understand that 100's of homes were saved from further flooding by your actions and our verbal agreement to not block the ditch you dug into our property. We are further harmed by the Borough's distribution of the numerous false statements contained in Stan Wells' public document, which is demonizing us when we are trying to help.

**Our goal is not to acquire more land,** rather we seek compensation for the Borough's use of our land and cessation of the continuing trespass. We have no desire to cause conflict with our neighbors. The land/drainage easement exchange negotiations with you were conducted in good faith. Compensation for the trespass is due commencing with the initial date of trespass which is well documented. Please email me to arrange a date to discuss compensation.  
Tim and Paula Keohane

Sent from my iPad



## **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

PHONE: (907) 714-2200 • FAX: (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**MIKE NAVARRE  
BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Dale Bagley, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Mike Navarre, Borough Mayor *MN*

**FROM:** Max Best, Planning Director *MB*

**DATE:** November 12, 2014

**SUBJECT:** Ordinance 2014-32; Authorizing an Exchange with Paula and Timothy Keohane of a 4.3 Acre Drainage Easement At Kariuk Avenue for a 1.84 Acre Parcel at Mile 12.1 K-Beach Road which Shall be Subject to the Reservation of a 0.9 acre Drainage Outlet Easement

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance 2014-32 during their regularly scheduled November 10, 2014 meeting. A motion passed by unanimous consent to recommend adoption of the ordinance.

In the Ordinance, please make the following amendment to the last WHEREAS statement:

*WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of November 10, 2014 recommended adoption by unanimous consent.*

Attached are the unapproved minutes of the subject portion of the meeting.





AGENDA ITEM F. PUBLIC HEARINGS

4. Ordinance 2014-32; Authorizing an Exchange with Paula and Timothy Keohane of a 4.3 Acre Drainage Easement At Karluk Avenue for a 1.84 Acre Parcel at Mile 12.1 K-Beach Road which Shall be Subject to the Reservation of a 0.9 acre Drainage Outlet Easement

Memorandum & Staff Report given by Marcus Mueller

PC Meeting: 11/10/14

During the fall flooding in 2013 it became evident that the Karluk Avenue ditch system had no outlet except a neighboring property immediately adjacent to the lowest extent of the ditch. The administration communicated with the owners, Paula and Timothy Keohane, who permitted use of the property for drainage purposes. The location became known as the "Karluk Basin." A pipe was installed under K-Beach Road making it possible to mechanically pump water to the Cook Inlet once the Karluk Basin on the Keohane property reached its estimated 3 million gallon capacity to store water. That became a very important asset in an area without an outlet.

Since that time, longer term solutions have been discussed with the Keohanes. Those discussions led to the proposal outlined in the letter dated August 1, 2014. This proposal would exchange a 1.84 acre borough-owned parcel for the drainage easement that would make the Karluk Basin a permanent drainage asset for the Karluk Avenue ditch system. The 1.84 acre parcel also has its own drainage functions present, which was the basis for it being classified as "Government" by Resolution 94-055. This proposal would preserve the management intent of the Government classification by reserving a drainage outlet easement that would encumber approximately half of the parcel. In the context of the parcel being used in part as consideration for the 4.3 acre Karluk Avenue drainage easement, the management intent of the borough-owned parcel is expanded to accomplish the larger goals of drainage for the area.

The assessed values of the properties involved are different, though no cash balance is proposed. Currently, the borough assessing department is working to provide estimates of market values associated with each element of the proposal. The non-monetary consideration received by the borough in obtaining two drainage easements is of paramount public value, regardless of the disparity in the values of the parcels involved.

Consideration of this ordinance is appreciated.

END OF MEMORANDUM AND STAFF REPORT

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

**MOTION:** Commissioner Martin moved, seconded by Commissioner Isham to recommend adoption of Ordinance 2014-32.

Commissioner Foster asked if there were plans to harden the drainage easement or just digging it down. Mr. Mueller believed the design of a drainage improvement would require hardening. The soils there are sandy and probably bringing additional water through a drainage feature would cause scouring if not hardened. He stated that any designs could include anything from carrying it by pipe to having it concrete lined. Commissioner Foster asked if the folks were ok with that. Mr. Mueller believed that was the engineering that would happen there.

Chairman Bryson asked if the State was involved in the actual construction of the design. Mr. Mueller replied that there was no actual design. He stated that it was likely that the State would be the one who would build a drainage improvement there.

Commissioner Isham stated that there are quite a few people who are affected by the high water in the area. He asked if the Borough or State hired a hydrologist to assess the area. Mr. Mueller replied that was a complex question. Generally the K-Beach area has a lot of hydrology over a broad flat area that lacks surface outlet with the drainage being primarily underground. He stated that more water management is the key when development occurs so that there are outlets to bring the water to the saltwater. These two locations would provide opportunities to manage water to the salt.

Commissioner Isham asked again if a hydrologist or professional was hired to assess the whole area. Mr. Mueller replied that there has been a broad group that has been working on that including the State Hydrologist as well as the Borough Hydrologist who is stationed in Seward.

There being no further questions or comments, the Commission proceeded to vote.

**VOTE:** The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	HOLSTEN YES	ISHAM YES
LOCKWOOD YES	MARTIN YES	RUFFNER YES	VENUTI YES	WHITNEY YES		12 YES

**AGENDA ITEM F. PUBLIC HEARING**

5. Ordinance 2014-35; approving Diamond Willow - Fairfield Single-Family Residential (R-1) Local Option Zoning District, and amending KPB 21.46.040

Staff Report given by Bruce Wall

PC MEETING: November 10, 2014

**Location:** Parcels along Belmont Court and Lexington Court, certain parcels along the Pine Cone Way right-of-way, certain parcels along Virginia Drive, parcels along Gary Avenue, and certain parcels along Ciechanski Road.

**BACKGROUND INFORMATION:** A petition has been submitted by property owners of 55 parcels for the formation of an R-1, Single-Family Residential local option zoning district (LOZ), which is more than three-fourths of the 72 parcels within the proposed district. The petition requirements have been met to get the zoning request before the planning commission.

KPB 21.44.050 states that the planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed local option zoning district.

Tract A2A and lot A2, on the south end of the proposed district, are not included on this petition because they were included on another LOZ petition that has been submitted. That petition will be on the Planning Commission's December agenda. Lot 1A is not a part of either of these two petitions.

On the north end of the proposed district Tract B1, Tract B2-1, Lot B2-6, and Lot 22 are included on another LOZ petition that is still being circulated.

On the west side of the proposed district is Lot 1, J&P Subdivision and Lot 1 thru 7 of the Aurora Addition to the J&P Subdivision. The Borough currently owns the lots in the Aurora Addition. Only 2 of these lots are included in the petition. Marcus Mueller has stated that the Land Management Division takes a neutral position with respect to a local option zoning proposal that involves tax foreclosed properties.

On the south end of the map; Tract A2A, Lot C, D, & E were the subject of a Conditional Land Use Permit Application that was denied by the Planning Commission. That denial has been appealed and will be heard by the Board of Adjustment on January 21, 2015. If the permit had been approved, the applicant would have been required to submit a plat that would have combined these 4 parcels into one. The owner of that property has recently submitted that plat to the planning department. The Plat Committee should see that request in December.

Contents of the commission packet:

Memo to the Assembly

Proposed Ordinance 2014-35

Map showing the acreage of each lot in the proposed LOZ

Map showing the land use in the vicinity of the proposed LOZ

Aerial photo of the proposed LOZ

Map showing the land ownership in the vicinity of the proposed LOZ

Map showing lots with and without the owner's signature on the petition





State of Alaska

Department of Transportation and Public Facilities

**TEMPORARY CONSTRUCTION PERMIT**

File No. 24961

THE GRANTOR, The State of Alaska Department of Transportation and Public Facilities, P.O. Box 196900, Anchorage, AK 99519-6900, gives to the GRANTEE, Kenai Peninsula Borough, 47140 E. Poppy Lane, Soldotna, AK 99669, its agents or contractors, permission to enter upon all that portion of the following described tract of land:

That portion of Kalifornsky Beach Road right of way adjacent to Hilcorp Property, Tax Parcels 05514002 and 05514004 as identified on the attached 2 sheets of Construction Plans Labeled "Plan View" and Typical Section".

For the purpose of: Improving the existing drainage on the east side of Kalifornsky Beach Road, running southerly for 1625' +/- from its intersection with Buoy Avenue. Removing two existing 24' culverts and replacing with a 36" Corrugated Metal Pipe with flared end section treatments installed.

This temporary construction permit expires on: October 30, 2014

Grantee agrees to the following:

- 1) The Grantee shall indemnify, defend, and hold the Grantor, its agents, and employees harmless from and against any and all liability, loss, suit, claim, judgment, fine, demand, damage, penalty, property damage, or personal injury of whatever kind, including sums paid in settlements of claims, attorney fees, consultant fees, expert fees, or costs incurred arising from or connected with this permit, the Grantee's use or occupation of the permitted area, or any act or omission by the Grantee, its agents, contractors, employees, customers, associates, invitees, licensees, or concessionaires. The Grantee shall give the Grantor reasonable notice of any such claims or actions. The Grantee shall also use counsel reasonably acceptable to the State and the Alaska Department of Law in carrying out its obligations.
- 2) Should the Grantee cause damage to occur to any improvements within the state owned right of way, the Grantee will be responsible to return them to their previous condition. The Department's Maintenance and Operations section will inspect and approve the restored improvements. Improvements may include: pavement structures, pathways, driveways, signs, traffic markings, delineators, highway lighting systems, drainage structures and mailboxes. Kenai Peninsula Borough is required to repair damage to Kalifornsky Beach Road that results from the pipe installation or pumping water through it.
- 3) Without limiting the foregoing, this indemnification obligation includes payment of all costs of any investigation of site conditions, or any cleanup, abatement, remediation, removal, or restorative work required by this permit, or by any Federal, State, or local governmental agency with appropriate jurisdiction because of hazardous substance present in the soil or groundwater on or under the permitted area or other affected properties.
- 4) The Grantee waives any claim, or the right of action that the Grantee may have against the Grantor for damage to property, or the injury to or death of any person, in the permitted area, that arises because of the design, construction, management, maintenance or placement of above-mentioned activity.
- 5) Before any filling activities take place within the right of way, or on the property adjacent to the right of way affected by this permit, please contact the U.S. Army Corps of Engineers (USACE) to see if any further authorization is necessary. Placement of fill material in waters of the U.S., including wetlands and streams, requires prior authorization in most cases. The website is <http://www.poa.usace.army.mil/reg>

- 6) Insurance: At no expense to the Grantor, the Grantee shall secure and keep in force during the term of this permit adequate commercial general liability insurance in the amount of \$1 million to protect both the Grantor and the Grantee against comprehensive public liability and property damage. Where specific limits are set, it is understood that they shall be the minimum acceptable limits. If the Grantee's policy contains higher limits the Grantor shall be entitled to coverage to the extent of the higher limits.
- (a) It is expressly understood by the Grantee that while this permit requires the insurance coverage described, the Grantor is under no obligation whatsoever to ensure that such insurance is in effect at any time during the life of this permit, and that the consequences of failing to provide such insurance will be born solely by the Grantee.
  - (b) If the Grantee fails to keep and maintain the required insurance in place, the Grantor may, upon written notice to the Grantee, immediately terminate this permit.
  - (c) The Grantee agrees that the terms of these insurance requirements may be revised on written notice by the Grantor and must be based on the risks relative to the Grantee's operations.
  - (d) The requirement of insurance coverage does not relieve the Grantee of any obligations under this permit.
  - (e) All insurance provided by the Grantee under this provision shall be endorsed to name the State of Alaska as an additional insured, to waive subrogation against the Grantor, and to provide that such insurance shall not be cancelled without at least thirty (30) day written notice to the Grantor. Before occupation of the permit area, the Grantee shall provide to the Grantor a certificate of insurance showing the coverage provided. The Grantee agrees to provide a copy of any insurance policy to the Grantor upon request.

#### Other Provisions:

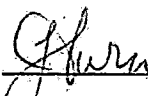
- 1) Grantee shall develop area drainage within the next 12 months to direct water flow from the State's Right of Way to Grantee's lands.
- 2) Grantee agrees all work conducted shall be 16 or more feet from the east edge of the fog line (white line) of Kalifornsky Beach Road. Appropriate CW21-5 "Shoulder Work Ahead" signs shall be placed at no less than 500 foot intervals along the work area.
- 3) Grantee agrees to respond to Grantor requests for monitoring and regularly monitor the ditch to ensure water is not on the road embankment for an extended period of time, water surface is not nearing the road surface and no significant erosion occurs.
- 4) Grantee agrees to regularly notify Carl High, Kenai Peninsula Maintenance & Operations Superintendent, (907) 262-1182, of current and anticipated conditions.
- 5) Grantee agrees no waters in addition to what occurs naturally should be allowed to flow into the Grantors right of way under any condition.
- 6) Grantee shall grade and re-seed ditch line. Areas where existing vegetation is disturbed must be stabilized similar to the existing condition.
- 7) Grantee agrees the foreslope of Kalifornsky Beach Road or any other roads within DOT&PF right of way must not be made steeper without DOT&PF approval.
- 8) Grantee shall provide emergency vehicle access at all times.
- 9) Grantee shall sweep all State road(s) and pathways affected by this permit as needed to remove dirt, gravel, and debris.

- 10) Grantee shall sweep all State road(s) and pathways affected by this permit as needed to remove dirt, gravel, and debris.
- 11) Grantee shall leave said premises in a clean and presentable condition upon completion of the action permitted by this Temporary Construction Permit.


GRANTEE:  
KENAI PENINSULA BOROUGH  
ROAD SERVICE AREA

GRANTOR:  
STATE OF ALASKA  
DEPARTMENT OF  
AND PUBLIC FACILITIES

By:  8/29/14  
Date

By:  9/2/2014  
Date

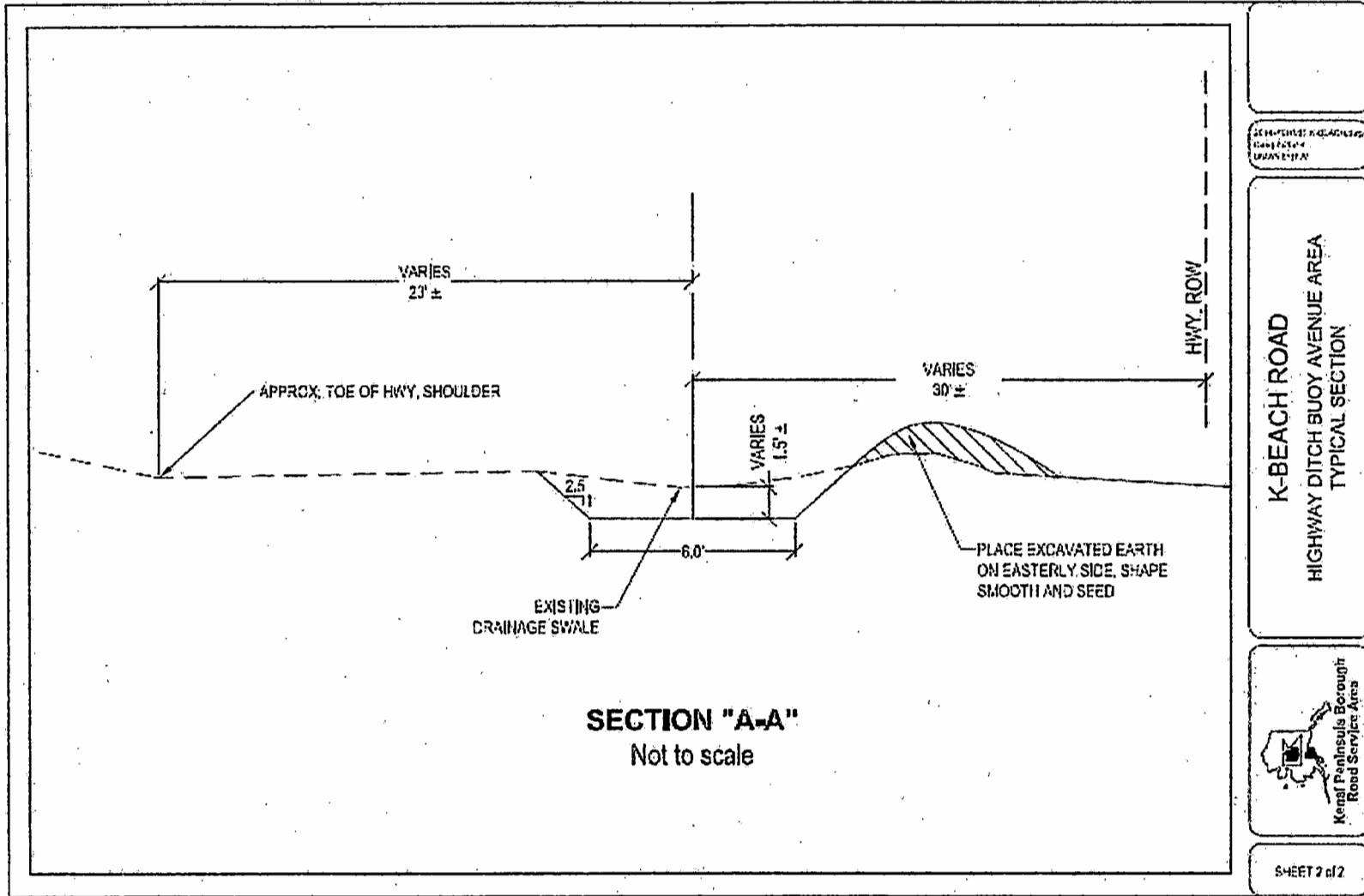
Patrick Malone

  
Alan R. Hartig

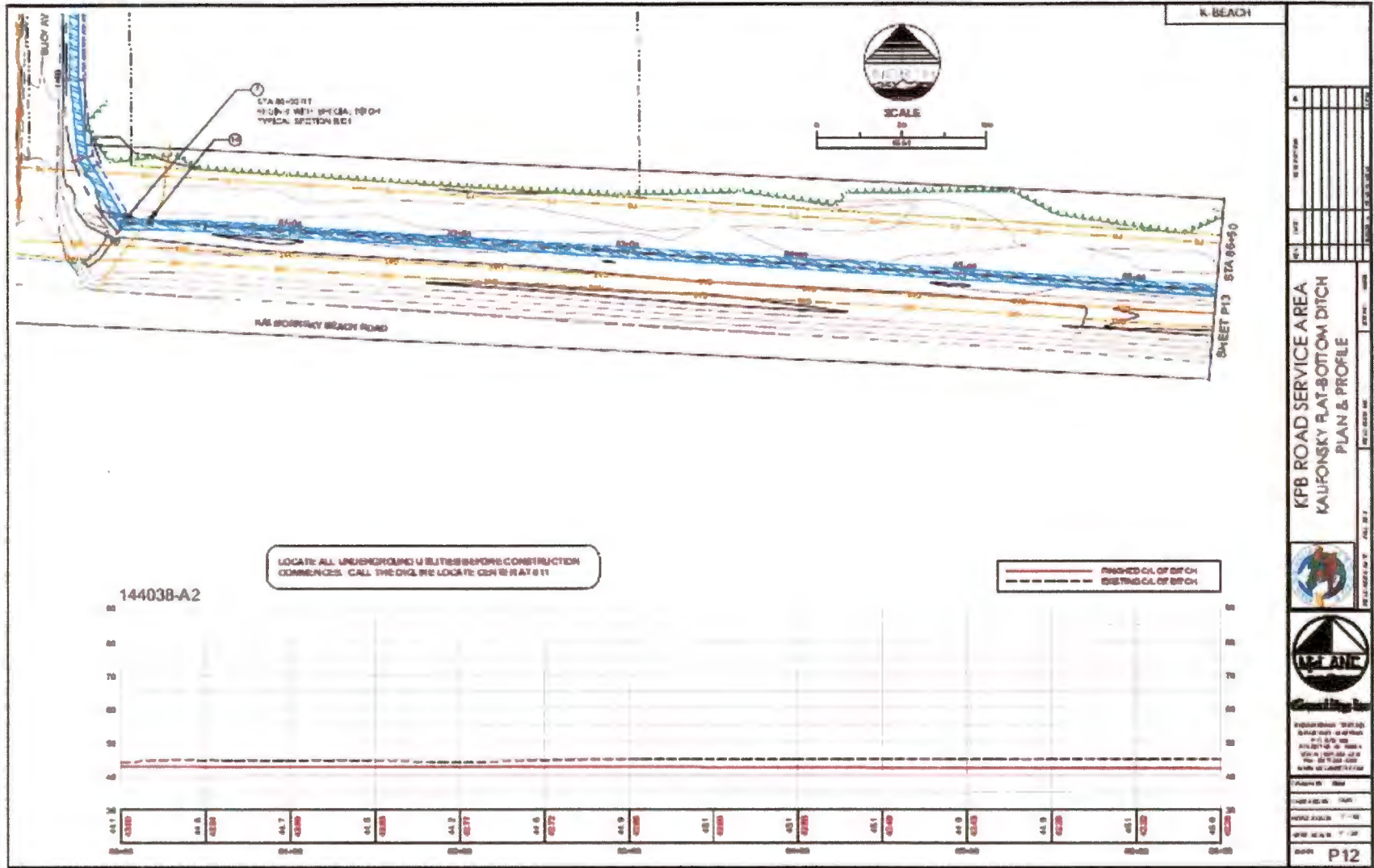
Its: Director

Its: Property Management Supervisor

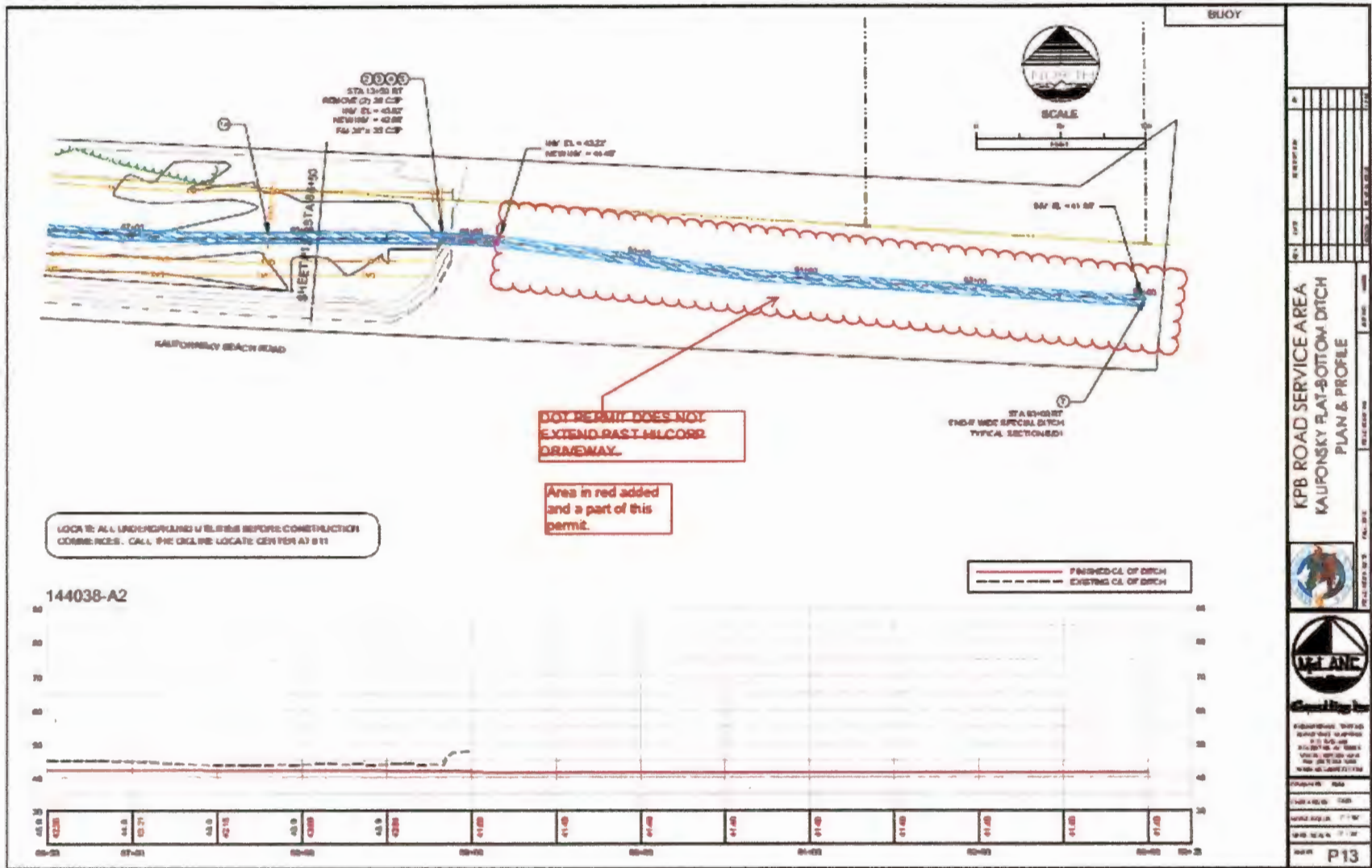












CUT-A-WAY VIEW, WASH-OUT MILE 11

WASH-OUT HOLE 300' ALONG K-BEACH RD.

34' DEEP - 30,000+ YD. TO REBUILD

COST OF \$890,000.00

THIS IS RE-BUILD # 2.

