

# **Kenai Peninsula Borough**

*144 North Binkley Street  
Soldotna, AK 99669*



## **Meeting Agenda**

**Tuesday, February 16, 2021**

**3:00 PM**

**Betty J. Glick Assembly Chambers**

### **Lands Committee**

*Richard Derkevorkian, Chair*

*Brent Johnson, Vice Chair*

*Bill Elam, Member*

**PUBLIC HEARINGS ON ORDINANCES**

4. [2021-03](#) An Ordinance Amending KPB 21.06.040, Administration, and KPB 21.06.070, “Development” Definition, for Floodplain Management Purposes (Mayor)
- Attachments:* [Ordinance 2021-03](#)  
[Memo](#)
5. [2021-05](#) An Ordinance Authorizing the Negotiated Lease of Office Space at the Western Emergency Service Area Fire Department, Ninilchik Station (Mayor)
- Attachments:* [Ordinance 2021-05](#)  
[Memo](#)  
[Lease](#)  
[Appendix A](#)  
[Space Lease Exhibit](#)

**NEW BUSINESS**

## 2. Ordinances for Introduction

- \*f. [2021-08](#) An Ordinance Authorizing Leases of Space at the Kenai River Center Building with the State of Alaska Department of Fish and Game and Department of Natural Resources and Repealing Ordinance 2020-30 (Mayor) (Hearing on 03/02/21)
- Attachments:* [Ordinance 2021-08](#)  
[Memo](#)  
[Lease DNR](#)  
[Lease ADFG](#)  
[Reference Copy - Ordinance 2020-30](#)
- \*g. [2021-09](#) An Ordinance Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor) (Hearing on 03/02/21)
- Attachments:* [Ordinance 2021-09](#)  
[Memo](#)  
[Trail Management Agreement](#)  
[Trail Management Plan](#)  
[Map](#)

## 3. Other

- a. [KPB-2979](#) Petition to Vacate a Segment of a 100' Right-of-Way Adjoining the East Boundary of Lot 1 Block 6 and the West Boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37)

[Clerk's Note: The Planning Commission approved the referenced petition at its January 25, 2021 meeting, by majority vote.]

Attachments:

[Petition to Vacate](#)

[Public Comments](#)

Introduced by: Mayor  
Date: 01/19/21  
Hearing: 02/16/21  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-03**

**AN ORDINANCE AMENDING KPB 21.06.040, ADMINISTRATION, AND KPB  
21.06.070, “DEVELOPMENT” DEFINITION, FOR FLOODPLAIN MANAGEMENT  
PURPOSES**

**WHEREAS**, floodplain management within the borough is a critical service that the borough provides dating back to 1988; and

**WHEREAS**, the borough is a participating community in the National Flood Insurance Program (NFIP), a program that provides numerous federal benefits to property owners; and

**WHEREAS**, the borough’s eligibility in the NFIP is contingent upon the borough continuing to meet the minimum regulatory requirements as set forth by the Federal Emergency Management Agency (FEMA); and

**WHEREAS**, pursuant to the applicable federal regulations all development within the floodway requires the permit applicant to demonstrate through hydrologic and hydraulic analyses performed by a registered professional engineer that there will be no increase in flood levels during the occurrence of the base flood discharge; and

**WHEREAS**, FEMA has identified minor or small projects that do not involve filling, grading, or excavating as projects that will not increase the flood stages; and

**WHEREAS**, FEMA has determined that some projects are too small to warrant a hydrologic and hydraulic analysis, and as such these projects may be identified by the Floodplain Administrator using logic and common sense; and

**WHEREAS**, this code change will refine the definition of development to align with FEMA requirements while also recognizing that minor projects that either do not increase the natural grade, do not obstruct floodwaters, or do not increase flood stages are not considered development for purposes of floodplain management regulations; and

**WHEREAS**, requiring a hydrologic and hydraulic analysis, also known as a No-Rise Study, for minor projects would substantially increase the cost of the project to the point where the cost of the study may be greater than the cost of the project; and



**WHEREAS**, the Kenai Peninsula Borough Planning Commission, at its regular meeting of January 25, 2021, recommended \_\_\_\_\_;

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

**SECTION 1.** That KPB 21.06.040(A) is hereby amended as follows:

21.06.040. Administration.

A. *Development Permit Required.* A development permit shall be obtained before construction or development begins within flood hazard areas established in KPB 21.06.030(B). **Whether or not a project or activity meets the definition for “development” under KPB 21.06.070 is subject to a final written determination made by the planning department after consultation with the applicant.** The permit shall be for all structures and for all other development including fill and other activities. Application for a development permit shall be made on forms furnished by the borough and shall include but not be limited to the following: plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question; logging, placement of storage tanks (fuel or other), existing or proposed structures, substantial improvements of existing structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in KPB 21.06.050(B)(2);
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

...

**SECTION 2.** That KPB 21.06.070 is hereby amend as follows:

21.06.070. Definitions.

For the purposes of this chapter, the following words and phrases shall be defined as follows:

"100-year or 1-percent annual exceedance probability flood" (also called "regulatory flood," "base flood" or "special flood hazard area") means a flood with a 1 percent chance of being equaled or exceeded in any year. Statistical analysis of available streamflow or storm records, or analysis of rainfall and runoff characteristics of the watershed, or topography and storm characteristics are used to determine the extent and depth of the 100-year or 1-percent annual exceedance probability flood.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building.

"Clearing" means the act of removing trees or vegetation on a cumulative 20 percent or more of a given parcel of land.

"Coastal high hazard area" means the area subject to high velocity waters due to wind, tidal action, storm, tsunami or any similar force, acting singly or in any combination resulting in a wave or series of waves of sufficient magnitude, velocity or frequency to endanger property and lives.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard. **Development does not include minor projects, routine maintenance, or practices or projects that do not involve filling, grading, or excavating.**

"Exception" means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

...

**SECTION 3.** That this ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY  
OF \*, 2021.**

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Brent Hibbert, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough Planning Department – River Center

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## MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *CP*  
Melanie Aeschliman, Planning Director *MA*

**FROM:** Samantha Lopez, Acting River Center Manager *SL*

**DATE:** January 7, 2021

**RE:** Ordinance 2021-03, Amending KPB 21.06.040, Administration, and KPB 21.06.070, "Development" Definition, for Floodplain Management Purposes (Mayor)

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Floodplain management within the borough is a critical service that the borough provides dating back to 1988. Per guidance issued by the Federal Emergency Management Agency (FEMA), small or minor projects that do not involve filling, grading, or excavating may not be considered "development" for purposes of floodplain management regulations. Such projects do not increase the natural grade, do not obstruct floodwaters, and do not increase flood stages. FEMA has thus determined that minor projects may not meet the definition of "development", and are too small to warrant a full hydrologic and hydraulic (H&H) analysis, commonly referred to as a No-Rise Certification.

By amending the definition of "development", the code will align with FEMA's requirements, while also allowing the floodplain administrator to more objectively determine which projects do not meet the definition of development because it is a minor project. Should this code change fail, then moving forward all developments, even minor projects, in the floodway will require H&H analysis.

This ordinance will also amend borough code to clarify that the borough's planning department, as delegated to the borough's floodplain administrator, is responsible for issuing a final written determination as to whether or not a proposed project falls within the definition of development and therefore requires a permit for purposes of KPB 21.06 Floodplain Management.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor  
Date: 02/02/21  
Hearing: 02/16/21  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-05**

**AN ORDINANCE AUTHORIZING THE NEGOTIATED LEASE OF OFFICE SPACE  
AT THE WESTERN EMERGENCY SERVICE AREA FIRE DEPARTMENT,  
NINILCHIK STATION**

- WHEREAS,** at the October 6, 2020 regular borough election, affected voters approved the expansion of the Anchor Point Fire and Emergency Medical Service Area (APFEMS) to include the Ninilchik area pursuant to ordinance 2020-31; and
- WHEREAS,** the expansion was contingent not only on voter approval but also upon free and clear transfer by Ninilchik Emergency Services (NES) of title, ownership, and possession of all real and personal property located in or obtained for use at or by the Ninilchik Fire Department; and
- WHEREAS,** among the items to be transferred is the Ninilchik Fire Department building which has housed a 192 square foot (12' x 16') office in which NES conducts business and processes the billing for the Ninilchik Fire Department; and
- WHEREAS,** billing for services rendered by the Ninilchik Fire Department prior to the transfer will normally take up to a year to be completed; and
- WHEREAS,** NES has requested to retain use of the office space for a limited period of time in order to wrap up its business activities and reestablish itself; and
- WHEREAS,** the efforts of NES have been instrumental not only in maintaining and operating the Ninilchik Fire Department, but also in raising necessary funds for equipment and other needs of the department and the community; and
- WHEREAS,** the borough administration has determined there is no immediate need for the space;
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 8, 2021 recommended \_\_\_\_\_;
- WHEREAS,** the Western Emergency Service Area Board at its regularly scheduled meeting of February 10, 2021 recommended \_\_\_\_\_;

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

**SECTION 1.** That the assembly finds that leasing office space to Ninilchik Emergency Services pursuant to KPB 17.10.100(I) is in the best interest of 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 of office space.

**SECTION 3.** Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to lease a 12' x 16' office inside the Ninilchik Fire Department (soon to be called the Western Emergency Service Area Ninilchik Station), being 192 sq. ft., Room 103, for the term of 18 months at the lease rate of \$10 for the entire term. The authorization is for lease solely to Ninilchik Emergency Services, which may not assign any rights to the space to any other person or entity.

**SECTION 4.** The mayor is authorized to execute a lease substantially similar in form to the lease form approved by the assembly.

**SECTION 5.** Ninilchik Emergency Services shall have 90 days from the time of enactment of this ordinance to execute the lease document.

**SECTION 6.** That rent shall be paid upon execution of the lease and shall be deposited in the WESA account number 209.36315.

**SECTION 7.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 2021.**

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Brent Hibbert, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

**MEMORANDUM**

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

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** Marcus Mueller, Land Management Officer *mm*  
Patty Burley, Deputy Borough Attorney *PB*

**DATE:** January 21, 2021

**RE:** Ordinance 2021-05, Authorizing the Negotiated Lease of Office Space at the Western Emergency Service Area Fire Department, Ninilchik Station (Mayor)

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As a part of the transition to the Western Emergency Service Area, the Borough will take over the Ninilchik Fire Department, to be rebranded the Western Emergency Service Area Fire Department, Ninilchik Station. This will occur upon completion of the Purchase Agreement pursuant to Ordinance 2020-31.

Within the building is a 192 square foot office which has traditionally been utilized by Ninilchik Emergency Services (NES) for their operational and ambulance billing needs. Billing generated prior to the Borough's assumption of services typically takes up to a year to conclude.

NES has operated the fire station for a number of years and was responsible for securing funding to have the building erected, for obtaining much of the equipment in the building, and for much of the improvements to the fire department throughout the years. Having a home base while they wrap up the billing and reorganization of NES will be very important. The Borough has no immediate use for the space.

A short term lease has been negotiated which would extend through August 31, 2022. Because the space is de-minimus and in recognition of the contributions by NES to the Ninilchik community, the proposed lease rate is equal to the purchase price for the assets purchased from NES.

Borough code does not specifically address the leasing of building space. Several of the requirements of KPB 17.10 for the leasing of land are not applicable to the leasing of building space. While KPB 17.10.100(l) authorizes this negotiated lease, the ordinance provides that other provisions of KPB 17.10 including land classification, notice of disposition, lease types, lease terms and conditions, and general conditions are not required.



Page -2-  
January 21, 2021  
To: Assembly  
RE: 02021- 05

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The attached ordinance would authorize the mayor to lease the office space at the Western Emergency Service Area Ninilchik Fire Station for a limited period of time not subject to extension.

Your consideration is appreciated.

# LEASE

This lease agreement (hereinafter the "Lease"), is made and entered into February \_\_\_\_\_, 2021, by and between the Kenai Peninsula Borough, 144 N Binkley St, Soldotna, AK 99669 (hereinafter referred to as "Lessor") and Ninilchik Emergency Services, PO Box 39446, Ninilchik, Alaska 99639 (hereinafter referred to as "Lessee" or "NES").

1. **Premises.** Lessor, for and in consideration of the rents, covenants, and conditions of this Lease does hereby lease to Lessee the following property hereinafter referred to as the "Premises":

One 12' x 16' Office space, totaling 192 square feet, more or less, more particularly described as Room Number 103 at the Western Emergency Services Fire Department, Ninilchik, Alaska (the "Facility").

Lessee shall also have use of restrooms and parking spaces in the facility on the terms and conditions described below in this agreement

2. **Contract Documents.** As authorized by KPB Ordinance 2021-\_\_\_\_, this Lease is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Lease as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Exhibit 1: Building Layout identifying rooms and designated space

**If in conflict, the Lease shall control.**

**If in conflict the order of precedence shall be: The Lease, Appendix A, Exhibit 1.**

3. **Rent.** In consideration of the Lease of the Premises by Lessor, Lessee covenants to pay to the Lessor as Rent the sum of ten dollars (\$10) for the duration of the lease term. Rent is due and payable in advance upon execution of the Lease Agreement.
4. **Term, Month-to-Month Extended Terms.** The Lease Term is approximately eighteen months commencing on February 17, 2021 and ending on August 31, 2022 and may not be extended without Assembly approval.

5. **Utilities, Maintenance, and Repairs.**

(a) Lessor Responsibilities. So long as the Lessee is in compliance with all Lease terms, including timely payment of Rent due, the Lessor shall be responsible for the following for the duration of the Lease:

- i. Utilities. Gas, electric, water, septic.
- ii. Grounds Maintenance. Grounds maintenance.
- iii. Major Repairs. Any major structural repairs of a permanent nature shall be performed by the Lessor.

(b) Lessee Responsibilities.

- i. Phone/ Network. Phone and Network service is the responsibility of the Lessee. Phone accounts, network servers, and internet connections shall be established and paid for by Lessee at the option of the Lessee. The Lessee is required to coordinate installation with the Lessor. The Lessor reserves the right to request that the Lessee must properly secure any wireless network provisions.
- ii. Janitorial Service and Refuse. Lessee is responsible for its own janitorial or custodial services and required supplies directly related to the space rented and used. Lessee is responsible for the timely removal of its refuse from the premises.
- iii. Security. Lessee will be responsible for securing building upon entry and exit. Only persons designated in writing by the Western Emergency Services Area Fire Chief may be permitted to have a key to the facility and only a maximum of four (4) keys may be released to Lessee. Should Lessee lose any keys to the Facility itself, Lessee shall be fully responsible to Lessor for the cost of re-keying all of the locks to the Facility.
- iv. Minor maintenance and repairs. Lessee shall be responsible for minor and routine maintenance of the premises and maintain the premises in a good, neat and clean condition. Minor maintenance and repairs are those that do not cause alterations to building systems or structural components. For example, replacing accessible light bulbs

with like kind, using household cleaners (except on wood floors), rearranging furniture, and hanging items with non-structural fasteners would be considered minor maintenance and repairs.

- v. Snow Removal. Lessor shall be responsible for snow removal.
- vi. Furnishings, equipment, and supplies. Lessee is responsible for its own furnishing, equipment, and supplies. Furnishings supplied by Lessor are on an "as available basis".

6. **Covenants of Lessee.** Lessee hereby covenants and agrees:

- A. To pay rent. Lessee will pay the rent specified at the times and in the manner set out in paragraph 3 above.
- B. Not to assign. Lessee shall not assign, sublet or part with the possession of all or any part of the leased premises without the prior written consent of the Lessor.
- C. To permit Lessor to enter. Lessor is granted free access to premises at all times for inspection, maintenance, or repair.
- D. To yield up premises. At the expiration or cancellation of this Lease, Lessee will peaceably yield up to Lessor the premises, in good repair in all respects, reasonable use and wear excepted.
- E. Alterations. Lessee may not alter the premises without first obtaining prior written approval of Lessor. Any approved fixtures installed by Lessee shall become property of the Lessor unless otherwise agreed to in advance.
- F. Acceptance of Premises. Lessee has examined and knows the condition of the premises and accepts the same "as is," subject to Lessor's obligations under this Lease.
- G. Use of Premises. Lessee hereby covenants that the use of the Premises shall be for NES use only and for no other purpose except by written mutual agreement by Lessor.

7. **Lessor's Warranties.** The Lessor covenants, guarantees and provides the following express warranties:

- A. No existing restrictions interfere with the Lessee's permitted and intended use of the premises;
  - B. There is availability of adequate ingress and egress to the premises;
  - C. Lessor has sufficient interest in the property to grant Lessee this leasehold;
  - D. Lessor shall be responsible for maintaining the premises in good repair.
8. **Default by Either Party.** Should either Lessor or Lessee default in the performance of the obligations of any covenants of this Lease and fail to fully remedy such default within thirty days after written notice by the non-defaulting party, then the Lease may be terminated by written notice to the defaulting party. Upon termination of this Lease, no refund of any unearned advance rent paid by Lessee shall occur.

9. **Indemnification and Liability Insurance.**

A. **Indemnification and Insurance**

The Lessee shall indemnify and hold harmless the Lessor from any and all claims, liabilities, losses, damages, and charges, related to the use of the facilities subject of this Lease. Lessee shall provide proof of Commercial General Liability with minimum policy limits of \$1,000,000 per incident; Automobile Liability policy with minimum policy limits of \$1,000,000 per accident for bodily injury; and Worker's Compensation / Employer's Liability limits as required by law. The KPB is self-insured and will maintain insurance on the land and facility and maintain insurance covering its employees as required by law.

The policies described above shall remain in force for the life of the Lease Agreement and must state that the coverage is primary and exclusive of any insurance carried by the KPB. The coverage required by this agreement shall list the KPB as additional insured. All policies and certificates of insurance shall provide that a written notice of any cancellation or modification will be delivered to Lessor at least 30 days prior to the effective date of such cancellation or modification.

B. **Proof of Insurance.** At the time of executing this Lease, and at the time of each renewal of insurance, Lessee shall deliver to the Lessor certificates of

insurance meeting the above criteria. At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request.

10. **Damage due to Causes beyond Control.** Lessee and Lessor agree that if a cause beyond control prevents occupation of the premises, no rent paid will be prorated for the days Lessee is unable to occupy the premises. If the "cause beyond control" lasts for more than 30 days, Lessee or Lessor shall have the right to terminate this Lease upon 14 days' written notice given in the manner set out in Section 17 of this Lease. The phrase "cause or causes beyond control," as used in this section, means any one or more of the following causes which are not attributable to the fault or negligence of the Lessee or Lessor and which prevent performance of this Lease: fire, explosions, floods, earthquakes, other acts of God, war, orders or law of duly constituted public authorities, and other major uncontrollable and unavoidable events, all of the foregoing which must actually prevent Lessee or Lessor from performing the terms of this Lease. Events which are particular to either party, including but not limited to financial difficulties, are not causes beyond the control of either the Lessee or Lessor.
11. **Compliance with Laws.** Lessee agrees to comply with all applicable federal, state, borough and local laws and regulations.
12. **No Waiver.** No assent, expressed or implied, by either party to any breach of either party's covenants shall be deemed to be a waiver of any succeeding breach of the same covenants, nor shall any forbearance by a party to seek a remedy for any breach be deemed a waiver by that party of its rights or remedies with respect to such breach.
13. **Integration.** This document contains the entire lease agreement of the parties hereto. All negotiations, statements, representations, guarantees, warranties, and assurances, whether oral or written, which are in any way related to the subject matter of this Lease and the performance of either party hereto, are merged and integrated into the terms of this document.
14. **Interpretation and Enforcement.** This Lease has been drafted following negotiations between the parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Lease shall be governed by the laws of the State of Alaska. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

- 15. **Counterparts; Electronic Signature.** This Lease may be executed in counterpart and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, each of which when executed shall be considered an original and all of which together shall constitute one agreement.
- 16. **Severability.** If any section or clause of this Lease is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this Lease shall remain in full force and effect.
- 17. **Notice.** Whenever notice is required hereunder, it shall be addressed as follows until written notice of change of address is given to the other party:

LESSOR:  
 Kenai Peninsula Borough  
 Attn: Legal Department  
 144 N. Binkley St.  
 Soldotna, Alaska 99669

LESSEE:  
 Ninilchik Emergency Services  
 Attn: President  
 PO Box 39446  
 Ninilchik, AK 99639

KENAI PENINSULA BOROUGH

NINILCHIK EMERGENCY SERVICES

\_\_\_\_\_  
 Charlie Pierce  
 KPB Mayor  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Katherine Covey  
 President  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Catherine Laky  
 Secretary  
 Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
 John Blankenship, Borough Clerk

\_\_\_\_\_  
 Patty Burley, Deputy Borough Attorney

**LESSEE NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February 2021 by Katherine Covey, President of Ninilchik Emergency Services, for and on behalf of the Nonprofit Corporation.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires:\_\_\_\_\_

**NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February 2021 by Catherine Laky, Secretary of Ninilchik Emergency Services, for and on behalf of the Nonprofit Corporation.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_  
My commission expires:\_\_\_\_\_



**LESSOR NOTARY ACKNOWLEDGMENT**

STATE OF ALASKA            )  
  ) ss.  
THIRD JUDICIAL DISTRICT    )

The foregoing instrument was acknowledged before me this \_\_\_ day of February 2021 by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska Municipal Corporation, for and on behalf of the Corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires:\_\_\_\_\_

DRAFT

**APPENDIX A**  
**LEASE PROVISIONS REQUIRED BY KPB 17.10**

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lease may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 10 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) **Rental for Improvements or Chattels not Removed.** Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) **Re-rent.** In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) **Responsibility for Location.** It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) **Rights of Mortgage or Lienholder.** In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) **Sanitation.** The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) **Shore Land Public Access Easement.** As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50-foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.



Introduced by: Mayor  
Date: 02/16/21  
Hearing: 03/02/21  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-08**

**AN ORDINANCE AUTHORIZING LEASES OF SPACE AT THE KENAI RIVER  
CENTER BUILDING WITH THE STATE OF ALASKA DEPARTMENT OF FISH AND  
GAME AND DEPARTMENT OF NATURAL RESOURCES AND REPEALING  
ORDINANCE 2020-30**

- WHEREAS,** federal appropriations were provided for the construction and operation of the borough’s Donald E. Gilman Kenai River Center (“Kenai River Center”); and
- WHEREAS,** the Kenai River Center is designed to increase coordination and communication between permitting agencies in order to streamline the permitting process for landowners, improve protection of the Kenai Peninsula’s natural resources, and serve as a source of information and education for landowners and others concerned with resource management; and
- WHEREAS,** staff within the borough’s planning department, the State of Alaska Department of Fish & Game, and the State of Alaska Department of Natural Resources currently occupy the facility; and
- WHEREAS,** the Kenai Peninsula Borough and the State of Alaska desire to continue to utilize the Kenai River Center for its designed purpose; and
- WHEREAS,** entering into new lease agreements with the State of Alaska would provide for the continued use of space by each agency and would protect the interests of each party; and
- WHEREAS,** this ordinance will also repeal ordinance 2020-30, which approved cooperative leases at the river center, provided that rent shall be \$1.00 per annum, and stated that the cooperative leases shall be subject to a shared services agreement; and
- WHEREAS,** a repeal of ordinance 2020-30 is necessary because following negotiations with state officials there will no longer be a shared services agreement and rent will be greater than \$1.00, and instead the state will pay a monthly rent attributable to the square footage space occupied by the lessee under shared space terms set by the lease; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021, recommended \_\_\_\_\_;

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

**SECTION 1.** That Ordinance 2020-30, an ordinance authorizing cooperative leases of space at the Kenai River Center building with the state of Alaska Department of Fish and Game and Department of Natural Resources, is hereby repealed.

**SECTION 2.** That the mayor is hereby authorized, pursuant to KPB 17.10.100(D), to enter into leases, in substantially the form as the ones attached for approval, to the State of Alaska Department of Fish and Game and to the Department of Natural Resources, within the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, described as follows:

Tract 1A, Soldotna Airport Property Funny River Road  
Realignment Addn. Part One, Plat No. 2011-22, located at 514  
Funny River Road, Soldotna, Alaska

**SECTION 3.** That the cooperative leases are authorized pursuant to KPB 17.10.100(D) as leases in cooperation with a government entity, and the provisions of KPB 17.10.140 do not apply to these leases.

**SECTION 4.** The mayor is authorized to negotiate and sign any documents necessary to effectuate this ordinance.

**SECTION 5.** That this ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 2021.**

---

Brent Hibbert, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *JCB*  
Melanie Aeschliman, Planning Director *MA*  
Marcus Mueller, Land Management Officer *MM*

**FROM:** Julie Denison, Land Management Technician *JD*

**DATE:** February 4, 2021

**RE:** Ordinance 2021-09, Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

---

Snomads, Inc., a non-profit organization, ("Snomads") develops, maintains and manages snow machine trails on borough land near Homer. Snomads has applied for a Community Trail Management Agreement ("CTMA") to continue its trail management activities into the future.

A CTMA has been prepared that provides a framework and set of management tools that can be used to implement a Trail Management Plan (TMP) in balance with other interests of the Kenai Peninsula Borough.

The trail facilities proposed are year-round, motorized and non-motorized, and human-powered uses which would be groomed in the winter and maintained in the summer. The TMP would allow for administrative amendments where modifications are consistent with the general scope authorized by the assembly. Major amendments that introduce significant changes in location, use, fees, or regulations, would go before the assembly for additional approval.

This proposal considers authorizing the trail manager to implement a trail regulation restricting public use in the form of prohibiting motorized wheeled vehicles on groomed trails during the winter season.

Your consideration is appreciated.



**KENAI PENINSULA BOROUGH LEASE  
WITH THE ALASKA DEPARTMENT OF ADMINISTRATION**

WHEREAS, the Kenai Peninsula Borough (hereinafter called "KPB") and the State of Alaska, Department of Administration, on behalf of the Department of Natural Resources (hereinafter called "Lessee") are working in partnership to restore and protect the rivers of the Kenai Peninsula by providing multi-agency permitting, information and education at a single location known as the "Kenai River Center Building"; and

WHEREAS, KPB and Lessee have shared space and services in the Kenai River Center Building since it was constructed in 2000 and have operated under a cooperative lease arrangement since 2005; and

WHEREAS, KPB and Lessee desire to continue sharing space at the Kenai River Center Building in a multi-agency environment for the purpose of providing joint permitting, information and educational services to the Kenai Peninsula; and

WHEREAS, KPB owns the Kenai River Center Building and the underlying real property; and

NOW, THEREFORE, KPB and Lessee enter into the following agreement:

**TERMS AND CONDITIONS**

**1. Consideration/Parties/Premises.**

For good and valuable consideration including the covenants and agreements contained herein, and pursuant to Ordinance 2020-\_\_\_, enacted March \_\_\_, 2021, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, State of Alaska, Department of Administration, whose address is 550 West 7<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska 99501, on behalf of the Alaska Department of Natural Resources, use of professional office space at the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

Room 106 within the Kenai River Center Building, located at 514  
Funny River Road, Soldotna, Alaska.

This lease additionally provides full use and enjoyment of proportionately allocated shared use areas upon and within the described premises, along with available staff and visitor parking, with all respective appurtenances unto the Lessee for the duration of the lease.

**2. Lease Term.** This lease is for an initial term of five (5) years and may be renewed for two (2) additional terms in five (5) year increments for a total renewal options of ten (10) years, commencing July 1, 2020 and terminating June 30, 2035. This lease shall automatically renew unless the Lessee notifies KPB in writing of

Lessee's intention not to renew this lease at least 90 days prior to the expiration of the existing term.

3. **Lease Rental.** The lease rental is One Thousand One Hundred Dollars & 00/100 (\$1,100.00) per month for the initial 5-year term of this lease. The lease rental shall be adjusted at each renewal to the then-prevailing market rate.

4. **Definitions.**

a. For the purpose of this lease the term "Kenai River Center Building" shall mean the entire premises subject to this lease, including the physical structure, the leased office space, shared use areas, storage facilities, parking areas, grounds, and other associated amenities.

b. For the purpose of this lease the term "Kenai River Center" (KRC) shall mean the collection of agencies and personnel who cooperate to provide permitting, information, and/or education for the protection of the rivers of the Kenai Peninsula, its watersheds, and its fish and wildlife resources.

c. For the purpose of this lease "shared use areas" include all common areas and facilities such as storage and locker areas, shared parking, conference rooms, and meeting rooms. Shared use areas may also include primary areas for administrative support, education and outreach, temporary, part time part time staff, or volunteers. Lessee and KPBA agree that establishment of a primary use of a shared use area shall be reasonably allowed, provided that such primary use of a shared use area is to the benefit of the Kenai River Center's mission and also provided that such primary use does not prevent the reasonable use by another due to conflict with design. Primary work areas and other primary uses within shared use areas may be moved, rearranged, extinguished or otherwise modified to provide maximum efficiency of design, over time, of a shared use area.

5. **Management, Operation and Maintenance.**

a. Both parties shall use and occupy said premises in a careful and proper manner so that they remain in as good condition as when constructed, except for reasonable wear and tear and/or loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty during the continuance of this agreement.

b. Neither party shall use or occupy the premises for any unlawful purpose. Neither party shall use the premises, or allow the same to be used or occupied, for any purpose or business that would present a danger to the premises or its occupants. Both parties shall keep the premises free of structural or mechanical hazards. Both parties shall comply with all Borough ordinances, State and federal statutes and regulations, and case law applicable to their occupation or use of the premises.

c. KPBA and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and

individual property interests. Lessee and KPB are individually responsible for carrying liability insurance (through self-insurance or otherwise) covering liability for personal injury and any other loss.

- d. The proposed use of the premises is for a joint Lessee and KPB public permitting center and for related services. Since compatibility between uses must be maintained Lessee shall not change the general framework of occupying agency personnel or the use of said premises, nor any part thereof, without the written consent of the other parties, provided however such consent shall not be unreasonably withheld.
- e. Lessee may, at its sole cost, make minor renovations or modifications which it deems beneficial upon written approval of KPB.
- f. KPB shall have the obligation and responsibility to maintain and repair the premises as described in the paragraphs above, but may subcontract for all or part of the services. The areas of the building used by either party shall be maintained at an equal level. Lessee shall pay to KPB Lessee's share of all reasonable costs incurred by KPB as described above.
- g. KPB shall, in any contracts or agreements with contractors or subcontractors performing maintenance work at the premises after construction, require that all indemnities and waivers of subrogation it obtains and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the Lessee and to add the Lessee as an additional named indemnitee and as additional insured.
- h. Fixtures installed in the premises by Lessee remain the property of Lessee and may be removed by Lessee provided it repairs at Lessee's expense any injury to the premises.
- i. Lessee shall permit KPB staff to enter the premises at all reasonable times to examine the conditions of the same. KPB shall make every effort to not disrupt services and shall provide as much notice as possible prior to entry.

## 6. **Dispute resolution.**

- a. Procedures for building management and maintenance decisions and dispute resolution will be jointly developed by the parties and amended as appropriate by agreement of the parties. The parties will jointly develop schedules for periodic maintenance. Charges for these services shall be allocated to each party as in paragraph (e) or (f) of section 5 above.
- b. If disputes cannot be resolved by mutual agreement of the parties, the parties shall undergo mediation with a mediator chosen by mutual agreement of the parties. If disputes are not resolved through mediation, then the parties may submit to binding arbitration.

7. **Assignment.** Lessee may not assign the lease except with written approval by KPB upon a finding by KPB that such assignment is consistent with the KRC's mission and a finding that such assignment is in the best interest of KPB. The assignee should be bound by the terms and conditions of this lease, except, at KPB's benefit and sole option, this agreement may be subject to modification upon assignment provided such assignment is on a form that that establishes such modification.
8. **Amendment.** The parties hereto may amend any term of this agreement, by written agreement signed by both parties. If an amendment to this agreement would cause a material effect to any other party of the shared service agreement, a letter of non-objection from that party must be obtained to effectuate such amendment.
9. **Liens and Mortgages.** Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease.
10. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
11. **Breach and Remedies**
- a. **By Lessor.** If KPB breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from Lessee, Lessee may terminate this lease.
  - b. **By Lessee.** If Lessee breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from KPB, KPB may terminate this lease.
12. **Termination**
- a. Either of the parties hereto may for the following reasons terminate this agreement by giving the other ninety (90) days' prior notice in writing. Grounds for such termination are:
    - 1. A breach of any of the terms and conditions herein contained when such breach is not cured as herein provided; or
    - 2. When and if the Lessee, because of conditions beyond its control, is unable to adequately staff the leased facilities
  - b. Unless the State Legislature provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the State Legislature fails to appropriate funds sufficient to make lease payments for the following fiscal year.

c. At any time that this lease is in good standing it may be canceled in whole or in part upon mutual written agreement by Lessee and the KPB Mayor. This lease is subject to cancellation in whole or in part if improperly issued through error in procedure or if a mutual mistake is made with respect to material facts.

**13. Entry or Re-entry.** In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised buildings or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said buildings or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the lease.

**14. Notice.** Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on this Lease. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addresser.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough  
Planning Director  
144 N. Binkley Street  
Soldotna, AK 99669-7299

LESSEE

State of Alaska  
Department of Administration, 11  
550 West 7<sup>th</sup>, Suite 200  
Anchorage, AK 99501

**15. Waiver.** The waiver by a party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

**16. Jurisdiction.** Any suits filed in connection with the terms and conditions of this lease, and of the rights and duties of the parties, shall be filed and litigated in the trial courts of the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law.

**17. Severability Clause.** Should any provision of this lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this lease or constitute any cause of action in favor of either party as against the other.

- 18. **Binding Effect.** It is agreed that all covenants, terms and conditions of this lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
- 19. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limit the content of the articles.
- 20. **Full and Final Agreement.** This lease agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this lease have been made with the intention of inducing execution of this agreement.

STATE OF ALASKA  
 DEPARTMENT OF ADMINISTRATION  
 on behalf of the Department of  
 Natural Resources

KENAI PENINSULA BOROUGH

\_\_\_\_\_  
 Rashaad Esters, Contracting Officer III

\_\_\_\_\_  
 Charlie Pierce, Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
 Johni Blankenship,  
 Borough Clerk

\_\_\_\_\_  
 Sean Kelley,  
 Deputy Borough Attorney

DRAFT

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_ \_\_ day of \_\_\_\_\_, 20\_\_ by Ashaad Esters, the Contracting Officer III for the State of Alaska Department of Administration, for and on behalf of the State of Alaska, Department of Natural Resources.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: With Office

**DRAFT**

**KENAI PENINSULA BOROUGH LEASE  
WITH THE ALASKA DEPARTMENT OF ADMINISTRATION**

WHEREAS, the Kenai Peninsula Borough (hereinafter called “KPB”) and the State of Alaska, Department of Administration, on behalf of the Department of Fish and Game (hereinafter called “Lessee”) are working in partnership to restore and protect the rivers of the Kenai Peninsula by providing multi-agency permitting, information and education at a single location known as the “Kenai River Center Building”; and

WHEREAS, KPB and Lessee have shared space and services in the Kenai River Center Building since it was constructed in 2000 and have operated under a cooperative lease arrangement since 2005; and

WHEREAS, KPB and Lessee desire to continue sharing space at the Kenai River Center Building in a multi-agency environment for the purpose of providing joint permitting, information and educational services to the Kenai Peninsula; and

WHEREAS, KPB owns the Kenai River Center Building and the underlying real property; and

NOW, THEREFORE, KPB and Lessee enter into the following agreement:

**TERMS AND CONDITIONS**

**1. Consideration/Parties/Premises.**

For good and valuable consideration, including the covenants and agreements contained herein, and pursuant to Ordinance 2020-\_\_\_, enacted March \_\_\_, 2021, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, State of Alaska, Department of Administration, whose address is 550 West 7<sup>th</sup> Avenue, Suite 200, Anchorage, Alaska 99501, on behalf of the Alaska Department of Fish & Game, use of professional office space at the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

Room 105 and Room 108 within the Kenai River Center Building,  
located at 514 Funny River Road, Soldotna, Alaska.

This lease additionally provides full use and enjoyment of proportionately allocated shared use areas upon and within the described premises, along with available staff and visitor parking, with all respective appurtenances unto the Lessee for the duration of the lease.

**2. Lease Term.** This lease is for an initial term of two (2) years and may be renewed for eight (8) additional terms in one (1) year increments for a total renewal options of eight (8) years, commencing July 1, 2020 and terminating June 30, 2030. This lease shall automatically renew unless the Lessee notifies KPB in writing of



Lessee's intention not to renew this lease at least 90 days prior to the expiration of the existing term.

**3. Lease Rental.** The lease rental is Two Thousand Two Hundred Dollars & 00/100 (\$2,200.00) per month for the initial 5-years of this lease. The lease rental shall be adjusted at each renewal to the then-prevailing market rate.

**4. Definitions.**

a. For the purpose of this lease the term "Kenai River Center Building" shall mean the entire premises subject to this lease, including the physical structure, the leased office space, shared use areas, storage facilities, parking areas, grounds, and other associated amenities.

b. For the purpose of this lease the term "Kenai River Center" (KRC) shall mean the collection of agencies and personnel who cooperate to provide permitting, information, and/or education for the protection of the rivers of the Kenai Peninsula, its watersheds, and its fish and wildlife resources.

c. For the purpose of this lease "shared use areas" include all common areas and facilities such as storage and locker areas, shared parking, conference rooms, and meeting rooms. Shared use areas may also include primary areas for administrative support, education and outreach, temporary, part time part time staff, or volunteers. Lessee and KPBA agree that establishment of a primary use of a shared use area shall be reasonably allowed, provided that such primary use of a shared use area is to the benefit of the Kenai River Center's mission and also provided that such primary use does not prevent the reasonable use by another due to conflict with design. Primary work areas and other primary uses within shared use areas may be moved, rearranged, extinguished or otherwise modified to provide maximum efficiency of design, over time, of a shared use area.

**5. Management, Operation and Maintenance.**

a. Both parties shall use and occupy said premises in a careful and proper manner so that they remain in as good condition as when constructed, except for reasonable wear and tear and/or loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty during the continuance of this agreement.

b. Neither party shall use or occupy the premises for any unlawful purpose. Neither party shall use the premises, or allow the same to be used or occupied, for any purpose or business that would predict a danger to the premises or its occupants. Both parties shall keep the premises free of structural or mechanical hazards. Both parties shall comply with all Borough ordinances, State and federal statutes and regulations, and case law applicable to their occupation or use of the premises.

c. KPBA and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and

individual property interests. Lessee and KPB are individually responsible for carrying liability insurance (through self-insurance or otherwise) covering liability for personal injury and any other loss.

- d. The proposed use of the premises is for a joint Lessee and KPB public permitting center and for related services. Since compatibility between uses must be maintained Lessee shall not change the general framework of occupying agency personnel or the use of said premises, nor any part thereof, without the written consent of the other parties, provided however such consent shall not be unreasonably withheld.
- e. Lessee may, at its sole cost, make minor renovations or modifications which it deems beneficial upon written approval of KPB.
- f. KPB shall have the obligation and responsibility to maintain and repair the premises as described in the paragraphs above, but may subcontract for all or part of the services. The areas of the building used by either party shall be maintained at an equal level. Lessee shall pay to KPB Lessee's share of all reasonable costs incurred by KPB as described above.
- g. KPB shall, in any contracts or agreements with contractors or subcontractors performing maintenance work at the premises after construction, require that all indemnities and waivers of subrogation it obtains and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the Lessee and to add the Lessee as an additional named indemnitee and as additional insured.
- h. Fixtures installed in the premises by Lessee remain the property of Lessee and may be removed by Lessee provided it repairs at Lessee's expense any injury to the premises.
- i. Lessee shall permit KPB staff to enter the premises at all reasonable times to examine the condition of the same. KPB shall make every effort to not disrupt services and shall provide as much notice as possible prior to entry.

## **6. Dispute resolution.**

- a. Procedures for building management and maintenance decisions and dispute resolution will be jointly developed by the parties and amended as appropriate by agreement of the parties. The parties will jointly develop schedules for periodic maintenance. Charges for these services shall be allocated to each party as in paragraph (e) or (f) of section 5 above.
- b. If disputes cannot be resolved by mutual agreement of the parties, the parties shall undergo mediation with a mediator chosen by mutual agreement of the parties. If disputes are not resolved through mediation, then the parties may submit to binding arbitration.

7. **Assignment.** Lessee may not assign the lease except with written approval by KPB upon a finding by KPB that such assignment is consistent with the KRC's mission and a finding that such assignment is in the best interest of KPB. The assignee should be bound by the terms and conditions of this lease, except, at KPB's benefit and sole option, this agreement may be subject to modification upon assignment provided such assignment is on a form that that establishes such modification.
8. **Amendment.** The parties hereto may amend any term of this agreement, by written agreement signed by both parties. If an amendment to this agreement would cause a material effect to any other party of the shared service agreement, a letter of non-objection from that party must be obtained to effectuate such amendment.
9. **Liens and Mortgages.** Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease.
10. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
11. **Breach and Remedies**
- a. **By Lessor.** If KPB breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from Lessee, Lessee may terminate this lease.
  - b. **By Lessee.** If Lessee breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from KPB, KPB may terminate this lease.
12. **Termination**
- a. Either of the parties hereto may for the following reasons terminate this agreement by giving the other ninety (90) days' prior notice in writing. Grounds for such termination are:
    - 1. A breach of any of the terms and conditions herein contained when such breach is not cured as herein provided; or
    - 2. When and if the Lessee, because of conditions beyond its control, is unable to adequately staff the leased facilities
  - b. Unless the State Legislature provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the State Legislature fails to appropriate funds sufficient to make lease payments for the following fiscal year.

- c. At any time that this lease is in good standing it may be canceled in whole or in part upon mutual written agreement by Lessee and the KPB Mayor. This lease is subject to cancellation in whole or in part if improperly issued through error in procedure or if a mutual mistake is made with respect to material facts.

- 13. **Entry or Re-entry.** In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised buildings or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said buildings or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the lease.
- 14. **Notice.** Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on this Lease. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressee.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough  
Planning Director  
144 N. Binkley Street  
Soldotna, AK 99669-7309

LESSEE

State of Alaska  
Department of Administration, 10  
550 West 7<sup>th</sup>, Suite 200  
Anchorage, AK 99501

- 15. **Waiver.** The waiver by a party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
- 16. **Jurisdiction.** Any suits filed in connection with the terms and conditions of this lease, and of the rights and duties of the parties, shall be filed and litigated in the trial courts of the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law.
- 17. **Severability Clause.** Should any provision of this lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this lease or constitute any cause of action in favor of either party as against the other.

- 18. **Binding Effect.** It is agreed that all covenants, terms and conditions of this lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
- 19. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limit the content of the articles.
- 20. **Full and Final Agreement.** This lease agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this lease have been made with the intention of inducing execution of this agreement.

STATE OF ALASKA  
 DEPARTMENT OF ADMINISTRATION  
 on behalf of the Department of  
 Fish & Game

KENAI PENINSULA BOROUGH

\_\_\_\_\_  
 Rashaad Esters, Contracting Officer III

\_\_\_\_\_  
 Charle Pierce, Mayor

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
 AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
 Johni Blankenship,  
 Borough Clerk

\_\_\_\_\_  
 Sean Kelley,  
 Deputy Borough Attorney

DRAFT

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Rashad Esters, the Contracting Officer III for the State of Alaska Department of Administration for and on behalf of the State of Alaska, Department of Fish & Game.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: With Office

**DRAFT**

Introduced by: Hibbert, Bjorkman  
Date: 04/21/20  
Action: Adopted as Amended  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2020-030**

**A RESOLUTION RECOGNIZING THE SUCCESSFUL EFFORTS OF THE STATE LEADERSHIP AND ALASKAN RESIDENTS TO SLOW THE SPREAD OF COVID-19 AND ENCOURAGING THE GOVERNOR TO PROCURE SUFFICIENT COVID-19 TESTING SO HE CAN RESCIND OR MODIFY COVID-19 HEALTH MANDATES 003: STATE WIDE CLOSURE RESTAURANTS, BARS, ENTERTAINMENT, 009: PERSONAL CARE SERVICES AND GATHERINGS AND 012: INTRASTATE TRAVEL, AS SOON AS REASONABLY PRACTICAL**

**WHEREAS,** the COVID-19 virus originated in Hubei province in China, with the first confirmed case occurring on November 17, 2019; and,

**WHEREAS,** on January 21, 2020, the United States of America had its first confirmed case of COVID-19; and,

**WHEREAS,** on January 30, 2020 the World Health Organization declared a public health emergency of international concern due the COVID-19 virus; and,

**WHEREAS,** on March 13, 2020, with 2,700 confirmed cases of COVID-19 in the United States, President Donald Trump declared a U.S. national emergency and,

**WHEREAS,** as of April 7, 2020, the United States had 400,335 confirmed cases of COVID-19; and,

**WHEREAS,** on March 2, 2020, the State of Alaska had its first confirmed case of COVID -19; and,

**WHEREAS,** in response to the confirmed presence of COVID-19 in the State of Alaska and to prevent or slow the spread of the Disease Governor Mike Dunleavy issued his first public health mandate on March 13, 2020; and,

**WHEREAS,** between March 16, 2020 and March 27, 2020, Governor Dunleavy issued 11 additional health mandates, all in an effort to "flatten the curve" and reduce the number of confirmed COVID-19 cases to a level that would not overwhelm the health care infrastructure of the State; and

**WHEREAS,** because of the early and aggressive action by the Governor and the cooperation of Alaskan residents, the number of confirmed COVID-19 cases in the state has remained low with 321 cases confirmed as of April 20, 2020; and

**WHEREAS,** the health mandates issued by the Governor are some of the most aggressive measures limiting virus exposure amongst the states: and

**WHEREAS,** the continued closure of businesses is impacting all Alaskans, resulting in a significant loss of jobs, business failures, and the loss of important sales tax revenues to municipalities jeopardizing essential services; and,

**WHEREAS,** reducing intrastate travel limitations and mandatory closure of certain businesses as soon as reasonably practical will allow many businesses to reopen, employees to return to work and residents to receive services; and,

**WHEREAS,** reduction of these limitations can be paired with continued implementation of other health mandates as necessary to continue protecting public health and safety;

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


**SECTION 1.** That the Kenai Peninsula Borough Assembly respectfully encourages the Governor to procure sufficient COVID-19 testing so he can rescind or modify COVID-19 health mandates 003: State wide closure restaurants, bars, entertainment, 009: personal care services and gatherings and 012: intrastate travel, as soon as reasonably practical to allow Alaskan businesses to resume operations, employees to return to work and residents to receive services in a safe manner observing social distancing requirements.

**SECTION 2.** That a copy of this resolution shall be sent to Governor Dunleavy and all Kenai Peninsula Borough legislators.

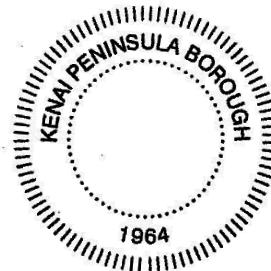
**SECTION 3.** That this resolution shall become effective immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF APRIL, 2020.**

ATTEST:

  
John Blankenship, MMC, Borough Clerk

  
Kelly Cooper, Assembly President





Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper  
No: None  
Absent: None

Introduced by: Mayor  
Date: 02/16/21  
Hearing: 03/02/21  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-09**

**AN ORDINANCE AUTHORIZING A COMMUNITY TRAIL MANAGEMENT  
AGREEMENT WITH SNOMADS, INC.**

- WHEREAS,** KPB 17.10.185 provides for the mayor to enter into trail management agreements with appropriate non-profit and community organizations to allow for the management of public trails, trail corridors, and related facilities on borough land under the terms and conditions of the trail management agreement authorized by the assembly upon recommendation of the planning commission; and
- WHEREAS,** Snomads, Inc. (“Snomads”) is a non-profit organization dedicated to promoting individual and family activities through trails; and
- WHEREAS,** Snomads and its predecessor organization has developed snowmachine trails since the 1980’s on borough land which have been formally permitted since 2007 that it maintains through community and grant support to provide for a variety of community uses, events, and related economic benefits; and
- WHEREAS,** Snomads has applied for a Community Trail Management Agreement (“CTMA”) to develop, maintain, and manage a multi-use trail system in the Homer area; and
- WHEREAS,** a CTMA is designed to establish a base agreement with a trail manager that is scoped by a Trail Management Plan which delineates trail improvements and management actions authorized, and additionally provides for amending the Trail Management Plan over time to move, grow, and change through administrative and assembly approval process; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021 recommended \_\_\_\_\_;

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

- SECTION 1.** That the mayor is authorized to enter into a CTMA with Snomads, as trail manager, that provides for the development, maintenance, and management of public trails, trail corridors, and related facilities on borough lands.

**SECTION 2.** That the mayor is authorized to approve a Trail Management Plan with the general scope being for trail facilities located in the south Caribou Hills and Homer area, for year-round management, for motorized and non-motorized uses.

**SECTION 3.** That the mayor is authorized, through the CTMA, to provide for the regulation of public uses on the trail facilities to prohibit motorized wheeled vehicles on groomed trails during the winter season.

**SECTION 4.** That the mayor is authorized to enter into a CTMA, substantially in the form of the attached CMTA.

**SECTION 5.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 2021.**

---

Brent Hibbert, Assembly President

ATTEST:

---

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor *JCB*  
Melanie Aeschliman, Planning Director *MA*  
Marcus Mueller, Land Management Officer *MM*

**FROM:** Julie Denison, Land Management Technician *JD*

**DATE:** February 4, 2021

**RE:** Ordinance 2021-09, Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

---

Snomads, Inc., a non-profit organization, ("Snomads") develops, maintains and manages snow machine trails on borough land near Homer. Snomads has applied for a Community Trail Management Agreement ("CTMA") to continue its trail management activities into the future.

A CTMA has been prepared that provides a framework and set of management tools that can be used to implement a Trail Management Plan (TMP) in balance with other interests of the Kenai Peninsula Borough.

The trail facilities proposed are year-round, motorized and non-motorized, and human-powered uses which would be groomed in the winter and maintained in the summer. The TMP would allow for administrative amendments where modifications are consistent with the general scope authorized by the assembly. Major amendments that introduce significant changes in location, use, fees, or regulations, would go before the assembly for additional approval.

This proposal considers authorizing the trail manager to implement a trail regulation restricting public use in the form of prohibiting motorized wheeled vehicles on groomed trails during the winter season.

Your consideration is appreciated.

# COMMUNITY TRAIL MANAGEMENT AGREEMENT

CTMA No. 2021-01

## I. PARTIES TO THE AGREEMENT

Landowner: Kenai Peninsula Borough (KPB)  
Trail Manager: Snomads, Inc. (Snomads)

## II. PURPOSE OF THE AGREEMENT

The purpose of this Community Trail Management Agreement (CTMA) is to authorize the Trail Manager to perform management of certain public trail facilities on Kenai Peninsula Borough land.

## III. COMMUNITY TRAIL MANAGEMENT AGREEMENT AUTHORITY

Pursuant to KPB 17.10.185 and Ordinance 2021-XX, enacted \_\_\_\_\_, KPB hereby enters into this CTMA with the Trail Manager for the management of public trails, trail corridors, and related facilities (hereinafter collectively called "Trail Facilities") as described in this agreement through a Trail Management Plan, subject to the terms and conditions of this CTMA.

## IV. LOCATION & CORRIDOR INTENT

This CTMA is applicable only on lands owned by the Kenai Peninsula Borough in the locations shown in the Trail Management Plan. Each trail is considered to have an accompanying management corridor, generally 25-feet on each side of the trail, available for management in ancillary support of the physical trail and trail uses. Purposes of management corridors include vegetation management, views, resting areas, sign locations, and buffering. Management corridors may vary in width in consideration of the nature of trail facilities, adjoining uses, terrain, vegetation types, and property interests. A reasonable effort will be made through the Trail Management Plan to communicate intended corridor areas where different from the general standard for width.

## V. TRAIL MANAGEMENT PLAN

The purpose of the Trail Management Plan is to establish the scope of physical trail facilities and their respective locations, along with the means and methods by which the Trail Manager shall develop, manage, and maintain those trail facilities under this CTMA.

- A. The Trail Management Plan shall include the following, as applicable:
1. Written Descriptions of the means, methods and timetables to communicate the active scope of the development, use, and management of trail facilities under this CTMA.
  2. Drawings of the Trail Facilities through maps, typical profile diagrams, conceptual site plans, structural drawings, and details as necessary to illustrate the position and relation of existing and proposed Trail Facilities to

land boundaries, terrain features, other land uses, and to communicate the spatial and structural scope of the Trail Facilities under this CTMA.

3. Published Rules & Regulations including major signs to be used to administer the orderly use of Trail Facilities and general the location of such postings.
  4. Fees & Reservation System, including any use fees or service fees, the basis of rates, the method of collection and entry, and the current contact for system administration. If fees are collected, then reporting of fees collected is required in the annual report along with the maintenance and service costs upon which the fees are based.
- B. Amendment or Modification of the Trail Management Plan is by mutual written agreement. The Trail Manager may submit proposed amendments or modifications to the Planning Department for consideration under this CTMA. The Planning Department shall have a minimum of 60 days to review the submittal. The borough may approve, deny, or condition the submittal. Amendments will be considered administratively when the addition is consistent in nature with the standing agreement. Major amendments will require approval by the borough Assembly. Amendments or modifications shall become effective upon written agreement by the parties and shall be incorporated into the Trail Management Plan.

## **VI. OPEN TO THE GENERAL PUBLIC**

Trail Facilities under this CTMA shall be open to the general public.

When applicable, Trail Manager is authorized to coordinate and schedule events among user groups and to schedule Trail Facilities work and maintenance, during which times the Trail Manager may post notice and restrict uses to those events, Trail Facilities work or maintenance.

## **VII. RULES, REGULATIONS, AND SAFETY**

- A. Trail Manager shall promulgate trail use rules and regulations necessary to promote safe and orderly use of Trail Facilities by the general public, subject to review and approval by the KPB under the Trail Management Plan.
- B. Trail Manager shall periodically assess trail conditions and is authorized to restrict or close use if conditions are determined to be unsafe or that use during such conditions would potentially cause damage to Trail Facilities, whether or not explicitly stated in the Trail Management Plan.
- C. Trail Manager shall post signs or signals necessary to guide safe use of the Trail Facilities by the general public.
- D. Pursuant to Ordinance 2021-XX, Trail Facilities under this CTMA are authorized to be regulated by the Trail Manager to prohibit wheeled vehicles on groomed trails

in the winter season, except allowance for authorized maintenance vehicles, emergency vehicles, and motorized vehicle crossings.

- E. Trail manager shall remove trash, litter, and debris on a regular basis, and keep the Trail Facilities in a neat, clean, sanitary, and in a safe condition.

### **VIII. ANNUAL REPORTING REQUIRED**

In performance of this CTMA, the Trail Manager will provide an annual report to KPB summarizing 1) trail facilities development, 2) trail facilities use or availability for use, 3) maintenance activities, 4) management activities, and 5) accounting of fees, if any. The Trail Management Plan shall guide standard reporting metrics. Fees, if any, will include the total amount collected in US dollars, and the number of fee units. *For example: Reporting Period Jan 1 – Dec 31. Total Number of Public Use Cabins: 1, Total Cabin Use Fees Collected- \$3,500, Public Use Cabin Rental Days 100, Daily Fee \$35/Day, Cabin Availability 345 Days available for reservations, Cabin Maintenance 20 Days -volunteers stained exterior, restocked wood pile 10 times (10 cords), cleaned wood stove, and conducted routine maintenance. Maintenance and supply costs \$3,200, Cabin Maintenance Reserve Account Balance \$300.*

Annual reports are due by April 15<sup>th</sup> of each year.

### **IX. TERM**

This CTMA is for an initial term of twenty years commencing April 15, 2021 and may be extended at any time proceeding expiration by mutual written agreement.

### **X. IN SUPPORT OF GRANT OPPORTUNITIES, DURABLE FOR SITE CONTROL**

For the purposes of grant applications made by Trail Manager regarding improvement or maintenance of Trail Facilities under this CTMA and the Trail Management Plan, this agreement is intended to be considered durable site control to the granting agency for the duration of the grant maintenance period. In the event that a grant maintenance period extends beyond the written term of the CTMA, written acknowledgement by KPB in support of the grant application can be considered intent to extend the CTMA through the grant maintenance period as the CTMA pertains to such grant.

### **XI. RESERVATIONS & OTHER PROPERTY INTERESTS RETAINED**

- A. Nothing contained in this CTMA creates or implies any property interests, including easements or rights-of-way beyond the terms and conditions of this CTMA.
- B. KPB reserves the right to withdraw portions of the Trail Facilities from this CTMA as necessary to serve other land uses or resolve conflicts.
- C. KPB reserves the right to require Trail Facilities to be closed, removed, or relocated by and at the expense of the Trail Manager if such trails pose a potential conflict with other land uses.
- D. KPB reserves the right to authorize other land uses on the land.

- E. KPB reserves the right to review, approve, or deny any management actions that affect trail use, land use, or development on the land.
- F. Use of the land shall be subject to all valid existing rights, including leases, permits, easements, rights-of-ways, covenants and restrictions or other interests in the real property. The KPB reserves and retains the right to grant additional easements or rights-of-ways across the property as it deems reasonable and convenient or necessary.
- G. Should circumstances warrant, this CTMA may be modified or suspended in writing by KPB to protect resources, health, safety, or the environment.

## **XII. LIMITATIONS**

- A. This CTMA conveys no interest in the land to the Trail Manager. This CTMA does not convey any exclusive rights, nor any preferential rights to the Trail Manager for the use of the Trail Facilities or the land, different from the Trail Manager's right to secure its authorized property and administer the Trail Facilities provided in the CTMA.
- B. The Trail Manager shall not develop, manage, or maintain beyond what is specified in the Trail Management Plan, unless otherwise approved in writing by the KPB.
- C. This CTMA is not intended to, and does not, give special standing to Trail Facilities or to the Trail Manager beyond the purposes and terms of the agreement.
- D. KPB assumes no obligation to commit funds or other resources for improvements or maintenance associated with the Trail Facilities or their continuation.

## **XIII. ASSUMPTION OF RISKS**

- A. Defense and Indemnification: The Trail Manager shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from the Trail Manager's performance or failure to perform in accord with the terms and conditions of this CTMA in any way whatsoever. The Trail Manager shall be responsible under this clause for any and all claims of any character resulting from the Trail Manager or the Trail Manager's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this CTMA in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the Trail Manager shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.
- B. Liability Insurance: The Trail Manager shall purchase at its own expense and maintain in force at all times during the term of this CTMA the following insurance policy:



Commercial General Liability: Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the Trail Manager in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by the KPB. The policy purchased shall name the Kenai Peninsula Borough as an additional insured with respect to the Trail Manager's activities conducted on the property.

- C. Proof of Insurance: The Trail Manager shall deliver to the KPB a certificate of insurance. This insurance shall be primary and exclusive of any other insurance held by the KPB. Failure to provide the certificate of insurance as required by this section, or a lapse in coverage, is a material breach of this CTMA entitling the KPB to revoke the agreement.

#### **XIV. GENERAL CONDITIONS**

- A. Reference to KPB. 17.10.240. The general conditions contained in KPB 17.10.240 are incorporated by reference.
- B. Responsibility of Location. It shall be the responsibility of the Trail Manager to properly locate its self and its improvements on the land authorized.
- C. Compliance With Laws. The Trail Manager agrees to comply with all applicable federal, state, borough, and local laws and regulations.
- D. Inspections. Agents or representatives of the KPB shall have access to the Trail Facilities at all times.
- H. Waste. The Trail Manager shall not commit waste or injury upon the land.

#### **XV. ENFORCEMENT OF AGREEMENT & TERMINATION**

- A. Termination. Violation of the CTMA subjects the agreement to termination 60-days after delivering notice of violation, when correction is not made to resolve the violation.
- B. Performance of Duties. The Trail Management Plan shall be considered a duty under the CTMA. Failure to materially perform according to the Trail Management Plan may be considered a violation and subject the CTMA to termination in whole or in part.
- C. Unauthorized Uses. Uses of the land other than those authorized under the CTMA may be considered a violation and subject the CTMA to termination in whole or in part.
- D. Breach of Conditions. A breach of any of the conditions of this CTMA will be considered a violation of the agreement.
- E. Suspension. Violation of the CTMA subjects the agreement to immediate suspension by Notice of Suspension for violations that create a significant risk to human safety or that are counter to the public purposes for which this CTMA is intended to serve.

- F. Notice of Violation and Suspension. Notice of violation and notice of suspension shall be in writing and shall serve to identify the violation and the standards under which a correction will be considered to resolve the violation.
- G. Cancellation. At any time that this CTMA is in good standing it may be canceled in whole or in part upon mutual written agreement by the parties.
- H. Jurisdiction. Any suits filed in connection with the terms and conditions of this CTMA, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
- I. Savings Clause. Should any provision of this CTMA fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this agreement or constitute any cause of action in favor of either party as against the other.
- J. Binding Effect. It is agreed that all covenants, terms, and conditions of this CTMA shall be binding upon the successors, heirs and assigns of the original parties hereto.
- K. Full and Final Agreement. This CTMA constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This CTMA may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. The Trail Manager avers and warrants that no representations not contained within this CTMA have been made with the intention of inducing execution of this CTMA.
- L. Warranty of Authority. The Trail Manager warrants that the person executing this CTMA is authorized to do so on behalf of the Trail Manager.

**XVI. CONDITION OF PROPERTY VACATED**

- A. Removal and Cleanliness. On or before the expiration date of this CTMA, or within 60-days of early termination, the Trail Manager shall leave the land in a neat, clean and sanitary condition, and shall remove all trash, waste, materials, equipment, and other personal property that the Trail Manager has placed on the land.
- B. Final Report. Any previously unstated matters between the parties must be reported in writing to the other party within 60-days of expiration or termination to be considered valid interests under this CTMA or all claims or right to claims shall cease for the purpose of this agreement.

**XVII. NOTICES**

All notices shall be sent to both parties as follows:

KENAI PENINSULA BOROUGH  
 Planning Director  
 144 N. Binkley Street  
 Soldotna, AK 99669-7599

SNOMADS, INC.  
 P.O. Box 3646  
 Homer, Alaska 99603-3646

Trail Manager shall maintain on file with KPB the name, title, address, email address and telephone number of an individual whom shall be the point of contact for day-to-day and emergency contact, information, and correspondence relative to this CTMA.

KENAI PENINSULA BOROUGH

\_\_\_\_\_  
Charlie Pierce, Mayor

Dated: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship,  
Borough Clerk

\_\_\_\_\_  
Sean Kelley  
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

SNOMADS, INC.

\_\_\_\_\_

\_\_\_\_\_



17.10.240. - General conditions.

A.

Applicability. Each of the following terms and conditions shall, unless inapplicable by its own terms, apply to every sale or lease of land or interest in land by the borough, unless otherwise specifically provided by ordinance of the assembly. The terms and conditions, as well as any others established by the assembly or the land management officer, shall be included in every agreement of sale, lease or other document disposing of land or an interest in borough land in substantially the manner set out in this section.

B.

Assignments. Any purchaser, lessee, or permittee may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected. The assignee shall be subject to and governed by the provisions and regulations applicable thereto.

C.

Breach of Agreement. In the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty days after written notice of the default, the borough may cancel the agreement, lease, or permit or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

D.

Cancellation. A purchase agreement, lease or permit in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by the purchaser, lessee, or permittee and the mayor or land management officer when applicable. A purchase agreement, lease, or permit is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

E.

Conditional Contract. The borough may conditionally lease or issue permits for land it selects under the various state land grants and lands it reasonably believes it will own or will acquire title to prior to the actual receipt of title. An agreement, lease, or permit issued on this conditional basis shall be canceled in whole or in part in the event the borough is denied title to said lands. Payment made by the lessee or permittee on the land to which title is denied the borough shall be refunded in whole or in part to the agreement holder of record and any properly recorded lienholder, if any, jointly. However, the borough shall in no way be liable for any damage that may be done to the land by the lessee or permittee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under agreement, the conditional agreement shall then have the same standing, force and effect as non-conditional agreements issued under any regulations of this chapter.

F.

Entry or Re-entry. In the event that the purchase agreement or lease is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the purchaser during the agreement term, the borough or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by the borough shall not be deemed an acceptance of surrender of the contract.

G.

Fire Protection. The purchaser, lessee, or permittee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.

H.

Hazardous Waste. The storage, handling and disposal of hazardous waste shall not be allowed on lands under lease or permit from the borough.

I.

Modification. A purchase, lease or permit agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

J.

Notice. Any notice or demand, which under the terms of an agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor, and in like manner a notice from the borough to a vendee shall be deemed received by the vendee when such notice arrives at the general or branch post office from which final delivery to the said purchaser, lessee or permittee would normally be accomplished.

K.

Notice of Default. Notice of the default will be in writing as provided in subsection I. of this section. A copy of the notice will be forwarded to all lienholders or others who have properly recorded their interest in the purchase, lease or permit agreement with the borough.

L.

Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.

1.

Improvements owned by a purchaser, lessee, or permittee on borough lands shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The retiring purchaser, lessee, or permittee may, with the consent of the mayor or land management officer when applicable, dispose of his improvements to the succeeding purchaser, lessee or permittee.

2.

If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the purchaser, lessee, or permittee under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB [Chapter 5](#). The proceeds of the sale shall inure to the former purchaser, lessee, or permittee who placed such improvements and/or chattels on the lands, or

his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

3.

If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the purchaser, lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to the borough.

M.

Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the purchaser, lessee, or permittee or placed on the land during his tenure with or without his permission and remaining upon the premises after the termination of the contract shall entitle the borough to charge a reasonable rent therefor.

N.

Resale. In the event that a purchase or lease agreement should be terminated, canceled, forfeited or abandoned, the borough may offer said lands for sale, lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations. If said land is not immediately disposed of then said land shall return to the Land Bank.

O.

Responsibility of Location. It shall be the responsibility of the purchaser, lessee, or permittee to properly locate himself and his improvements on the purchased, leased, or permitted lands.

P.

Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a lease or sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease or sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument. Any party acquiring an agricultural purchase or lease agreement must meet the same requirements as the original purchaser or lessee.

Q.

Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor or land management officer when applicable from specifically reserving such additional easements and rights-of-way across borough lands as deemed reasonable and necessary prior to the sale thereof.

R.

Sale Documents. All sales of borough lands shall be on approved borough forms suitable for recording and may consist of a warranty deed, deed of trust, agreement to purchase, promissory note and any other required documents.

S.

Sanitation. The purchaser, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

T.

Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

U.

Subleasing. No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

V.

Violation. Violation of any provision of this chapter or of the terms of the agreement of sale, lease or permit may expose the purchaser, lessee, or permittee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of his interest in accordance with state law.

W.

Written Waiver. The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

(Ord. No. 92-57, § 1(part), 1993)

# TRAIL MANAGEMENT PLAN FOR PUBLIC TRAILS ON BOROUGH LAND

CTMA No. 2021-01

## Trail Management for the Caribou Hills South (CHS) Trail System

### TRAIL MANAGER:

SNOMADS, Inc.

PO Box 3646

Homer AK 99603

[snomads@gmail.com](mailto:snomads@gmail.com)

[www.snomadsonline.org](http://www.snomadsonline.org)

### SUMMARY OF PROPOSED ACTIVITIES (Check All That Apply)

#### SEASONS OF TRAIL MANAGEMENT

Winter  Summer  Year Round

#### TRAIL WIDTH (Typical)

Under 5 Feet

5-10 Feet

10-20 Feet

#### TRAIL MAINTENANCE ACTIVITIES

Periodic Brushing/Clearing

Grading

Snow Grooming

Erosion Controls

#### TRAIL IMPROVEMENTS

Trailheads

Parking Area

Loading/Unloading Area

Signs

Sanitation (Trash/Outhouse)

Picnic Area

Shelters

Culverts

Bridges

Stairs

Gates & Bollards

Hardening

New Trails

#### TRAIL ADMINISTRATION

Competitions/Sponsored Events

Grants

Signage

Equipment Storage Facilities

#### TRAIL ACTIVITIES

##### **Motorized:**

ATV

Snow Machines

##### **Non-Motorized:**

Dog Sleds

Skiing

Snowshoeing

Skijoring

Sledding

Hiking

Biking

Walking/Running

Biathlon

Horses

Pet Friendly

Other:

##### **Water Access**

Landing Area

**Narrative description of the activities, operations, and scope:**

Snomads Inc. works to guarantee Backcountry Access and protect existing Alaska recreational trails within the Kenai Peninsula Borough (KPB) Caribou Hills South (CHS) Trail System Area by establishing and maintaining legal public access for all, and for generations to come. Further, to responsibly develop and maintain and groom these trails to a sustainable level so that they can be used year round by the public. The Snomads Vision is to protect our CHS Trail System recreational trails with legally established easements and with permits/agreements acquired from all landowners. CHS Trail System groomed trails shall be uniformly marked, under one coordinated management authority, and, where appropriate, maintained by local clubs or organizations. See attachment B for a map of the CHS Trail System and where trails transit KPB lands. Snomads currently has LMD 08-02 and 07-03 Trail Management Agreements with the KPB.

**History of the organization, membership size, accomplishments:**

The origin of Snomads Inc. started in the mid 1980's when the organization was founded as the Homer Snow Roamers, as a group of dedicated Winter Snowmachine enthusiasts. The Club was incorporated in March 1992, and the name was changed to Snomads 23 Feb 2002 as a Non-Profit 501c4. Snomads has grown over the years and now has 450 Members, with 335 voting Members comprised of individuals and businesses. Snomads has been active over the years to establish, rehabilitate and maintain CHS Trails, including the building of roads to access trail heads, and has been granted trail easements (Boardwalk Trail). We typically organize, host and support seasonal activities like: The Snomads Fun Run, Group Trail Rides, an area Search & Rescue, Children's Snowmachine Safety Events, as well as supporting events like the Tustemena 200 Dog Sled Race and the Homer Epic (bike, ski, run) Race. Snomads Inc. is a primarily an advocate organization for Public Access to the Alaskan Backcountry, for all user groups, including Hunters and Fishermen.

**Summary of proposed activities:**

Snomads intends to continue its operations with the KPB CHS Trail System by rehabilitating, maintaining, marking and grooming our trails and trailheads and parking lots for year round use. We have an aggressive trails management agenda in the coming years, raising funds with grants and private funding sources to secure trail permits and easements, construct trail reroutes around native lands, and harden our trails from to a USDA Forest Service Tier 1 to a Tier 3 trail level. We accomplish our activities with a balance of both contracted services and volunteer work. Typical Sources of funding for our operations come from Snomads Gaming, KPB CAP Grants, ORTAB Grants, SnowTRAC Grooming Grants, Pittman-Robertson Grants, Membership Dues, and Event Fundraising.

**Means and methods for maintenance, erosion control, and trash pick-up:**

All trail clearing and trail maintenance work that the Snomads undertake are performed to written standard. Work is supervised by a Snomads assigned Committee Chairman, and task completion reports are captured in monthly Board of Director or Membership Meeting Minutes.



Weather conditions largely dictate when trail maintenance tasks can be performed throughout the year. Trail clearing with heavy construction equipment will be employed only when the ground is firm enough to support the weight of the equipment used. This is typically in the Fall or Spring, when the ground is frozen, but also in the summer when there are dry periods that will support the weight of the equipment without significantly degrading subsurface soils and vegetation. Winter Snow Grooming operations will be undertaken when snow conditions permit.

**Measures of performance, timeframes, ownership of improvements & reclamation:**

Trail Markers, Trail Kiosks, Signage, bridges and any “moveable” objects or structures placed on KPB lands by Snomads Inc are the sole property of Snomads. Parking Lots, access drives and other “immoveable” improvements would remain upon termination of the Agreement for any reason. Reclamation of “moveable” objects or structures would be undertaken by Snomads if this agreement were to be terminated. Although none are present to date, Snomads reserves the right to place Public Outhouses on KPB Lands at Trailheads or along Trail Corridors.

**Estimated value of proposed structures and facilities:**

**Not applicable**

**Any short-term and long-range goals:**

Snomads intends to execute the construction of a reroute of the Watermelon Trail around CIRI lands within 1 to 2 years (as funding permits). The Watermelon Reroute traverses ADNR Parcels that are known to be ‘KPB Select’ parcels (16523008, 16523009). See attachment B.

Long range goals:

- a. Expanding the Watermelon Trailhead Parking Lot to accommodate additional traffic, once the trail is fully cleared, and the reroute constructed.
- b. Harden the trail surface on the Dry Hole Trail near the Anchor River crossing.

**Conceptual Site Plan:** See attachment B for KPB CHS Trail System Traversing KPB Lands

**Location of trail improvements and buffers:** None as of the initial agreement

**Property lines, right-of-ways, easement, access:** No known conflicts, See attachments A & B

**Location of wetlands, water bodies, anadromous stream crossing and major topography:**

See attachment A

**Detailed Plans:**

Snomads is including a detailed survey for the construction of the Watermelon Trail ‘CIRI Reroute’ as attachment A. Trail Construction standards as detailed below will adhered to, and a completion report will be forwarded to KPB when accomplished.

**Plans for specific improvement including architectural or engineering designs, when**

**Applicable:**

Snomads will contact KPBLands Management for any improvements that are planned, and where applicable, will obtain requisite approval in the planning stages.

**Grant proposals, when applicable:**

Snomads intends to execute an existing \$40K Pittman-Robertson Grant, managed by ADF&G to Homer Soil & Water (HS&W) for the construction of the Watermelon Trail 'CIRI Reroute', within 2021 and 2022. This will be under a separate agreement between Snomads and HS&W.

**Trail Usage Restrictions:**

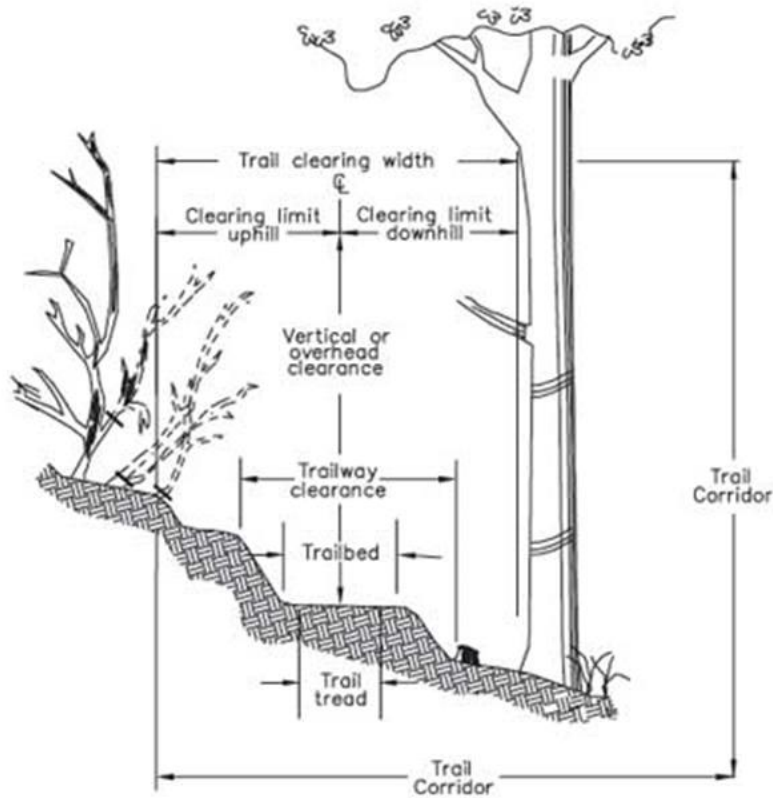
Wheeled ATV/UTV or any motorized Off Road Recreational Vehicle (ORRV) are not authorized on groomed Snomads Managed CHS trails during the Winter Months. Fat Tire bikes are permitted on CHS groomed Trails.

**List of KPBL CHS Trail System Trails that traverse KPBL Parcels: See Attachment B**

***Note: Designation of 'Winter Groomed' may not denote that the entire trail is groomed***

- a. **Watermelon Trailhead and Parking Lot:** KBP Parcel ID: 17113141
- b. **Watermelon Trail/Ohlson Mtn Trail (Winter Groomed):** KBP Parcel ID's: 17113141, 17113106, 17113133, 17113102, 17110117, 17112015, 17109028, (Borough Select 16523008 & 16523009)
- c. **North Fork Hills Trail and deviations\*\*(Winter Groomed):** KBP Parcel ID's: \*\*16521013, \*\*16521006, \*\*16512005, \*\*16513003, 16513005, 16513007, 16505006, 16505007, 18515017, 18515046
- d. **Garcia Hill Trail:** KBP Parcel ID: 16513007
- e. **McNeil Power Line Trail (Winter Groomed):** KBP Parcel ID's: 17231166 (added to LMD 08-02), 17205213, 18515046, 18515017
- f. **Dry Hole Trail (Winter Groomed):** KBP Parcel ID's: 18515046, 16515006
- g. **Blue Trail (Winter Groomed):** KBP Parcel ID's: 18515046, 18515017, 18515018
- h. **McNeil Canyon Trail (Winter Groomed):** 17201726, 18521055, 18521056
- i. **Matthews Hill Trail (Winter Groomed):** KBP Parcel ID's: 18521053, 18515046, 18515018
- j. **Hidden Hills Trail:** KBP Parcel ID's: 17104022, 17104018, 17137114, 1652002, 16513003, 16513007
- k. **Eagle Lake Trail (Winter Groomed):** KBP Parcel ID's: 18521050, 18521053
- l. **Moosehorn Lake Trail:** KBP Parcel ID: 18515018
- m. **Dimond Ridge Connector Trail:** KBP Parcel ID's: 17110201 17106038, 17110117 (added to LMD 08-02)

**Trail Construction, Rehabilitation, Maintenance Standards:**



**Trail Corridor Width:** 60 ft

**Trail Clearing Width:** 24 ft (restricted to 12" above soil surface in Critical Habitat Areas)

**Trail Clearing Limit (generally flat terrain):** 20 ft vertical

**Trail Clearing Limit Uphill/Downhill:** 35 ft vertical

**Trail Tread:** 5 ft (hardened Trail Surface)







**Trail Bed:** 8 ft generally (except where 3/1 ratio of taper required for proper drainage)

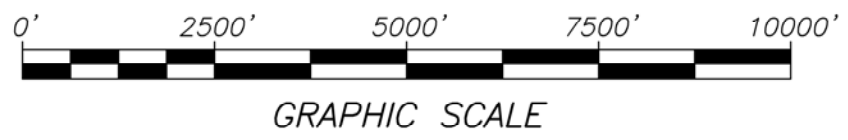
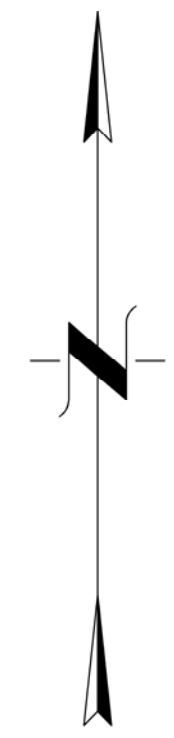
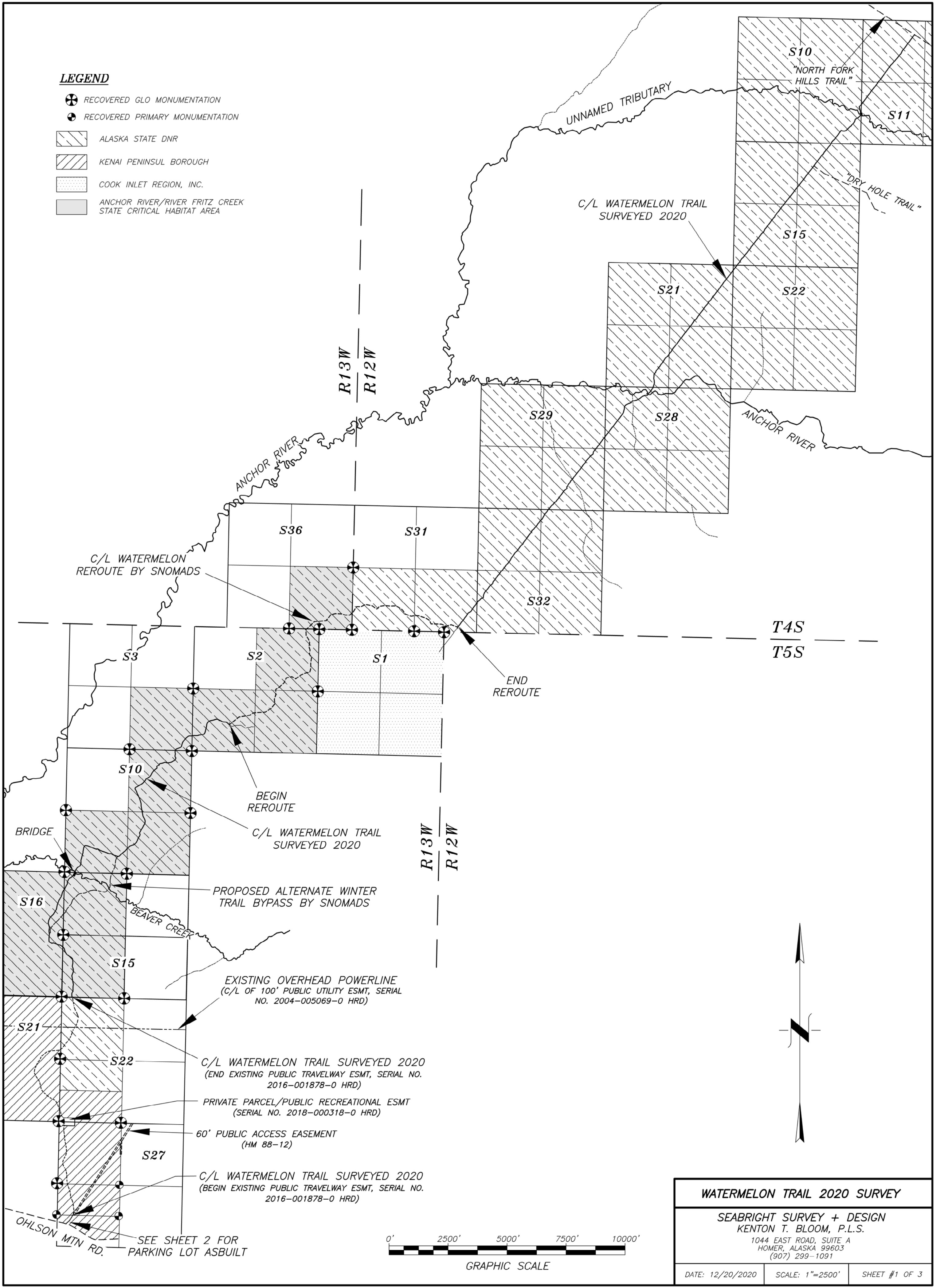
**Trailway Clearance & Trail Grooming Width (Winter):** 18 ft maximum to soil surface

Ground disturbances and erosion control measures have been, or may be required. Trails can be groomed with as little as six inches of snow depth. Major trails (those within SnowTRAC Grooming Pool) are groomed to a width of 18 ft. Minor Trails may be groomed to 18 ft in width or less, if terrain and funding permits.

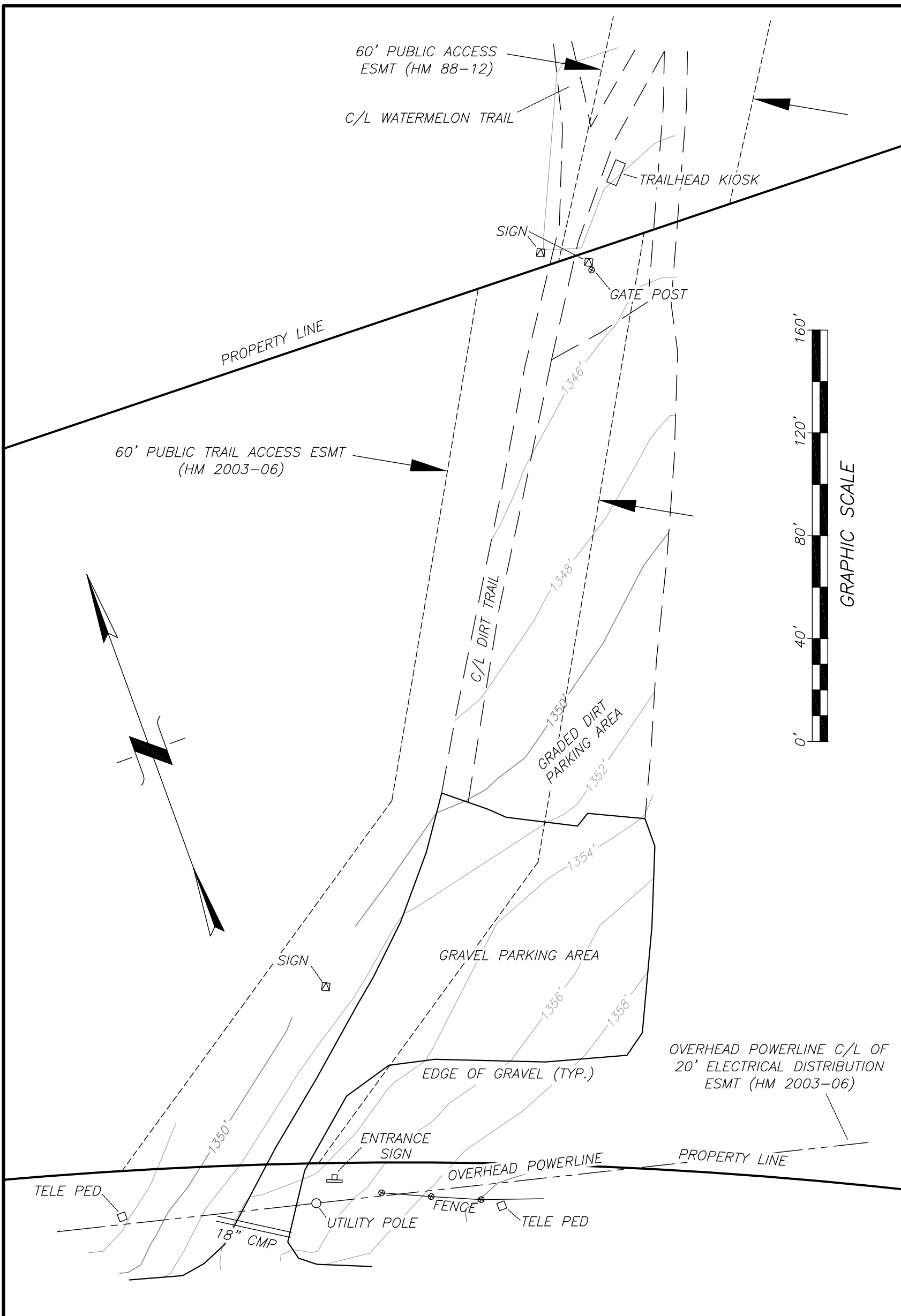


**LEGEND**

-  RECOVERED GLO MONUMENTATION
-  RECOVERED PRIMARY MONUMENTATION
-  ALASKA STATE DNR
-  KENAI PENINSUL BOROUGH
-  COOK INLET REGION, INC.
-  ANCHOR RIVER/RIVER FRITZ CREEK STATE CRITICAL HABITAT AREA



<b>WATERMELON TRAIL 2020 SURVEY</b>		
SEABRIGHT SURVEY + DESIGN KENTON T. BLOOM, P.L.S. 1044 EAST ROAD, SUITE A HOMER, ALASKA 99603 (907) 299-1091		
DATE: 12/20/2020	SCALE: 1"=2500'	SHEET #1 OF 3



**WATERMELON TRAIL 2020 SURVEY**  
 TRAILHEAD ASBUILT

**SEABRIGHT SURVEY + DESIGN**  
 KENTON T. BLOOM, P.L.S.



1044 EAST ROAD, SUITE A  
 HOMER, ALASKA 99603  
 (907) 299-1091

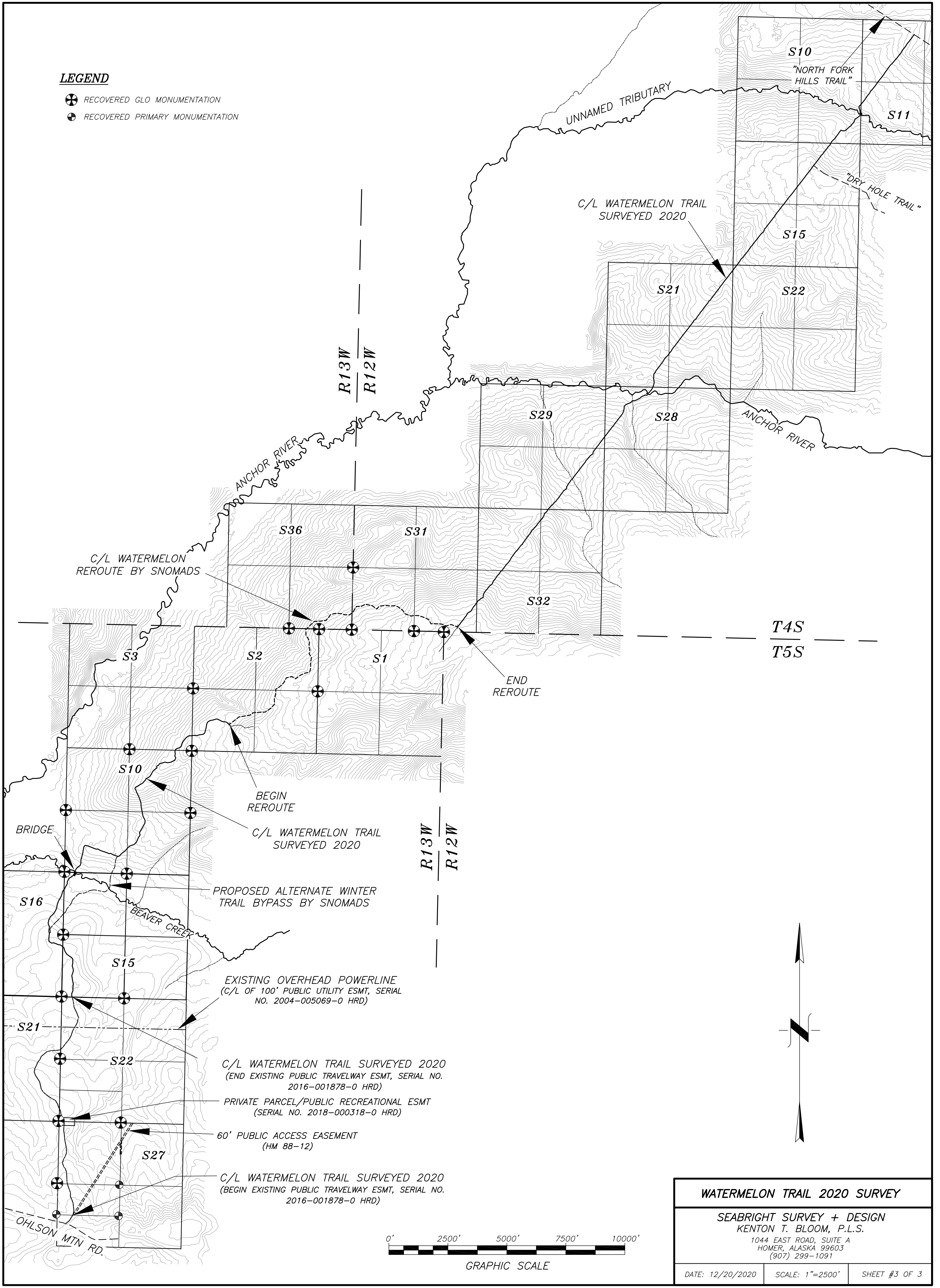
DATE: 12/20/2020

SCALE: 1"=40'

SHEET #2 OF 3

**LEGEND**

-  RECOVERED GLO MONUMENTATION
-  RECOVERED PRIMARY MONUMENTATION



**WATERMELON TRAIL 2020 SURVEY**

SEABRIGHT SURVEY + DESIGN  
KENTON T. BLOOM, P.L.S.

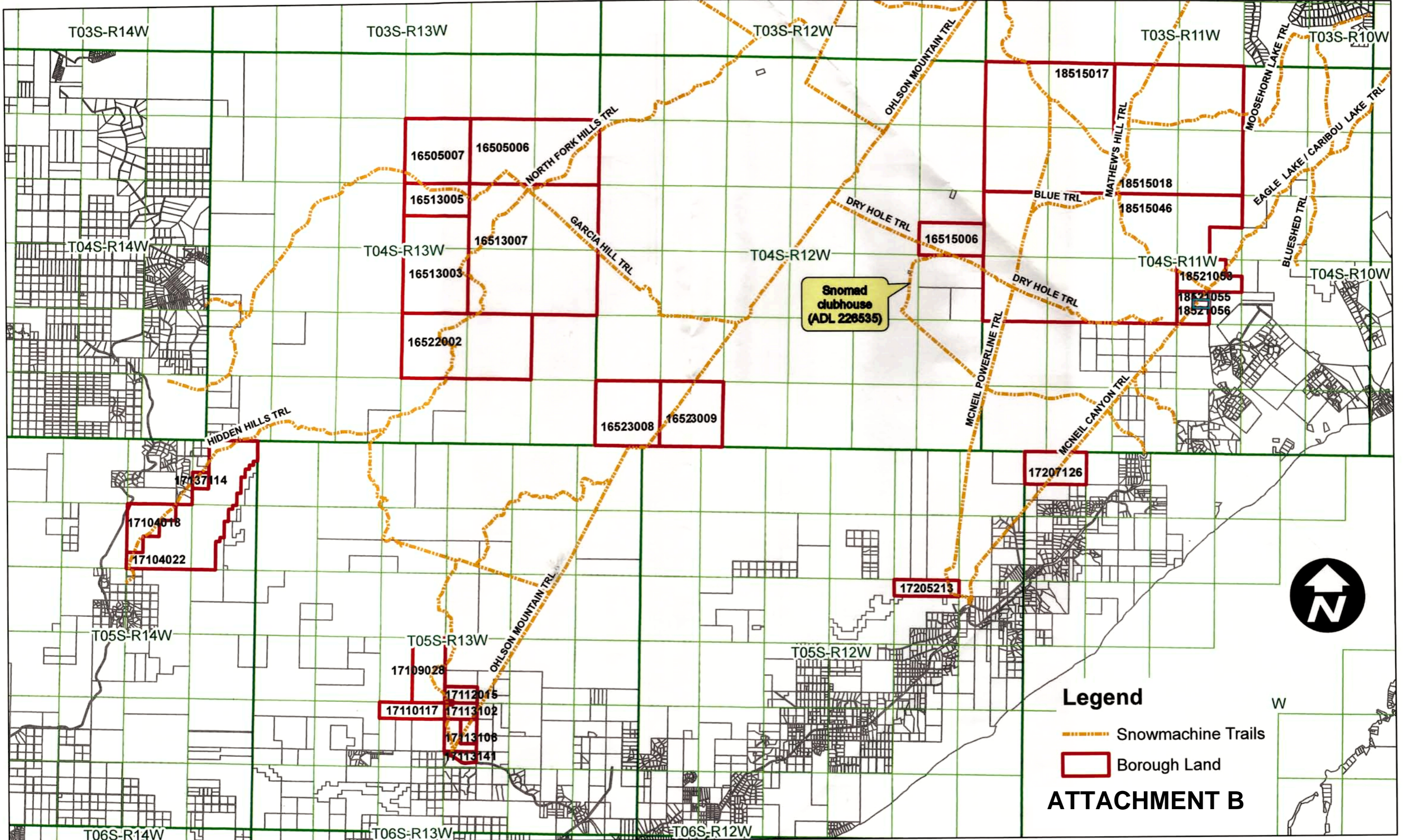
1044 EAST ROAD, SUITE A  
HOMER, ALASKA 99603  
(907) 299-1091

DATE: 12/20/2020

SCALE: 1"=2500'



SHEET #3 OF 3





Snomed clubhouse  
(ADL 228535)

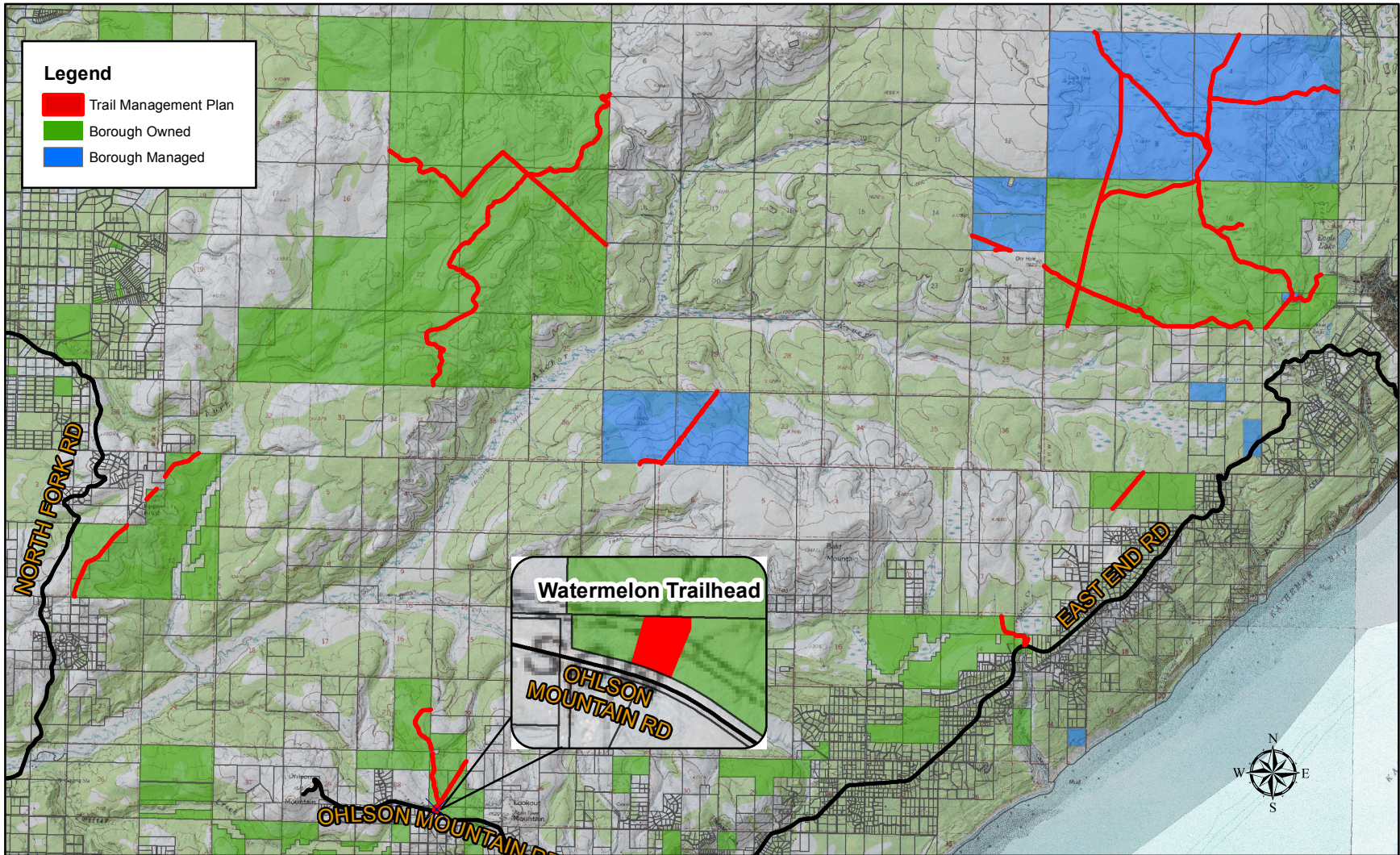
**Legend**

-  Snowmachine Trails
-  Borough Land

**ATTACHMENT B**







LMD 21-01; Community Trail Management Agreement

Applicant: Snomads, Inc.


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Melanie Aeschliman, Planning Director 

**DATE:** January 29, 2021

**RE:** Vacate a segment of a 100' right of way adjoining the east boundary of Lot 1 Block 6 and the west boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37)

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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 January 25, 2021 the Kenai Peninsula Borough Planning Commission granted approval the vacation of a segment of a 100' right of way adjoining the east boundary of Lot 1 Block 6 and the west boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37).

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

January 25, 2021 Planning Commission Draft Meeting Minutes  
January 25, 2021 Agenda Item E2 Meeting Packet Materials



**STAFF RECOMMENDS:**

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO ABOVE RECOMMENDATIONS, AND**
- **COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND**
- **COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.**

**NOTE: 20.25.120. - REVIEW AND APPEAL.**

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

**A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

END OF STAFF REPORT

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Venuti to grant preliminary approval to Moose Range Ridge Estates Oehler Replat based on staff recommendations and compliance to borough code.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

**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 E. NEW BUSINESS**

2. Vacate a segment of a 100' right of way adjoining the east boundary of Lot 1 Block 6 and the west boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37)

Staff report given by Scott Huff.

Purpose as stated in petition:

Our reason for requesting to vacate a portion of the 100' wide access right of way is to reclaim back and repair the damaged eroding lake bank of that portion (50' or more) of our property that is mistakenly used as the "assumed location" of the 100' right of way by past and present property owners.

We would like to vacate the remaining area and offer an alternate 30' right of way on the east boundary of our Lot 7 Block 3 Caribou Island, plat SW-37. There are no 60' right of ways that have been platted or dedicated so we would like to match the 2 other 30' right of ways to the east. Mostly though, we hope to leave enough square footage to build a cabin for family and friends. If a 60' right way is dedicated, then add 2-20' building setbacks as per code 20.30.240(A), then add a 50' anadromous habitat protection as per code 20.30.290, this would not leave much left. We however, will have to do the same when we have the final plat, but would have more footage by just dedicating a 30'.



And the final reason we want to dedicate only a 30' width rather than a 60' width, is that no vehicles other than four-wheelers will ever be used on the right of ways and on our south side of the island, there are 2-30' right of ways and 2-100' right of ways, the latter being an air strip reservation that amongst the property owners, will never be constructed as the popular travel method is by airplane (float plane), boat, (or snow machine in the winter). The right of ways on the south half of the island have 5 access points than the north side of the island which there is only 1 access point.

The foot traffic, boats, barge parking and the loading/unloading of materials has deteriorated the bank and forest floor of our property, mostly on the south boundary of Lot 1 Block 6, which we would like to repair and regrow as part of our combining the lots with the final plat. Current "real" widths throughout the rights of way vary from a hiking trail to a four-wheeler size width. Amongst most of the property owners on the island agree, there is no real need to develop the right of ways any wider, everyone enjoys hiking and on occasion 4-wheel.

We have owned property here since 2004 and have acquired adjoining lots throughout the years, we plan to retire and have the property for our family to enjoy for generations. As of today, we have a total of 5 lots with 3 lots adjoining the 100' and 30' right of ways.

We have a good personal relationship with many of the property owners within the entire island and with our nearby neighbors. We have spoken to a few of them about our vacation idea. We have prepared (and traversed it easily by four-wheeler) the area for the new 30' right of way for land owners to use instead if approved.

Petitioners: Michael R. and Peggy Clements, Sterling AK

Notification: Public notice appeared in the January 13, 2021 issue of the Seward Journal as a separate ad. The public hearing notice was published in the January 21, 2021 issue of the Seward Journal as part of the Commission's tentative agenda.

7 certified mailings were sent to owners of property within 300 feet of the proposed vacation. Two receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 19 owners within 600 feet of the proposed vacation.

15 public hearing notice were mailed to agencies and interested parties as show below:

State of Alaska Department of Fish & Game  
State of Alaska Department of Transportation  
Alaska Communication Systems (ACS)  
General Communications Inc. (GCI)

State of Alaska Department of Natural Resources  
Kenai Peninsula Borough Office – Seward  
ENSTAR Natural Gas  
Homer Electric Association (HEA)

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Sterling and Cooper Landing Post Offices and Seward Community Library with a request to be posted in public locations.

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

Comments Received:

ACS: Comments not received when the staff report was prepared.

ENSTAR: No comments, recommendations, or objections.

Homer Electric Association: No comments.

KPB Addressing: Comments not received when the staff report was prepared.

KPB Planning: Comments not received when the staff report was prepared.

KPB River Center: Not within a flood hazard area. It is totally or partially within the Anadromous Waters Habitat Protection District.

KPB Roads Department: Within jurisdiction, no comments

State Parks: No comments.

Staff Discussion:

A petition to vacate was received to vacate a portion of Essick REM NW. The right of way is considered remote. It is located on Caribou Island that is located in Skilak Lake. The island is along the southern portion of Skilak Lake and is between the Skilak Lake Lower and Upper boat launches. The right of way was dedicated on the Caribou Island Amended Plat, SW 37. The plat was recorded in 1965 and the right of ways were unnamed. Resolution SN 2007-01 named the dedicated right of ways on the island.

The island was subdivided into 223 lots within twelve blocks. A 200 foot air strip with 100 foot dedications on each end was reserved. This reservation and public access runs the width of the island. A 100 foot wide right of way was dedicated that runs north - south, the entire length of the island. 30 foot wide right of way dedications were granted that provide a continuous loop around the island with several internal 30 foot right of ways to provide access to each lot.

As mentioned by the applicants' letter there are several access points from the lake around the island. The northern portion of the island has a 100 foot right of way for lake access. The east and west sides of the island have 100 foot lake access right of ways located at the end of the 200 foot airstrip. The southern side of the island has the 100 foot lake access right of way proposed to be vacated as well as two additional 30 foot lake access right of ways.

The applicant is proposing to vacate approximately 248 feet of the 100 foot wide Essick REM NW. They currently own Lots 1 through 3 of Block 6, Lot 7 Block 3, and Lot 12 Block 4. The applicant claims that their property is being used for lake access as the location of the 100 foot road reservation is not easily located. This is resulting in erosion and deterioration of the bank within their property. If approved the applicant intends on placing proper signage that alerts to private property as well as directing people to the new 30 foot dedicated lake access.

If the proposed vacation is approved, 50 feet will go to Lot 1 Block 6 and 50 feet to Lot 7 Block 3. The owners wish to replat Lots 1 through 3 of Block 6 and Lot 7 Block 3 into one parcel. They will also dedicate a 30 foot right of way along the east boundary of Lot 7 Block 3. They feel that a 30 foot right of way will still provide access in line with the other dedications on that side of the island and will allow for them to limit the access on their property that will slow erosion. Per conversations with the applicant, they have walked their property to find the most logical and usable lake access location.

Use of the right of ways is by foot traffic and ATV traffic. Although allowed, vehicular access does not occur due to the remote nature of the subdivision.

Lot 3 Block 6 does contain some low wet areas. The terrain in the area is gently rolling with no steep slopes. A contour map is provided in the packet.

If approved, the vacation will need to be finalized by plat. A plat has not been submitted at this time. Staff notes the subject platting action will require an exception to right-of-way width (KPB 20.30.120).

**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:

- 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 is included in the packet.*

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:*

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

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

*Platting Staff Comments: If approved the right of way area will be attached to the lots fronting the vacation. The applicant owns lots on both sides of the requested vacation.*

**Staff recommendation:** *Comply with 20.70.150.*

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

*Platting Staff Comments: The existing right of way is 100 feet in width and wider than KPB requirements. The right of way within the subdivision has not been used for vehicular purposes and currently is used as a pedestrian access or ATV access.*

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: The area proposed to be vacated is remote. The current use of the right of ways is pedestrian or ATV access.*

**Staff recommendation:** *Concur that the vacation of Essick REM right of way will not inhibit vehicular access as no vehicles use the right of ways on the island.*

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: The current use of the right of ways is pedestrian or ATV access. The applicant will dedicate a 30 foot right of way that will provide equal or superior access for pedestrian use or ATV use. The proposed right of way dedication is not affected by low wet areas. The proposed right of way dedication, although sloping, does not contain steep slopes that would prevent ATV or pedestrian access.*

**Staff recommendation:** *Concur that other lawful uses, such as pedestrian access and ATV access, that are allowed within the vacated portion of Essick REM right of way will be feasible in the proposed 30 foot lake access dedication on the east side of Lot 7. This will provide legal access from the lake to Gene Smart REM NW, to Essick REM NW.*



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: ENSTAR and HEA provided a review of no comments / no concerns. There are no utilities installed on Caribou Island. Land owners must supply their own utilities.*

**Staff recommendation:** Work to the utility providers to grant any necessary utility easements that may be requested.

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: The applicant has stated that the current location of the access is causing erosion issues along with trespass and damage issues with their property. They are willing to provide another access location that will protect their property and mitigation efforts. They feel the other location will provide adequate access.*

**Staff recommendation:** Concur that the proposed 30 foot lake access will provide equal or better access compared to Essick REM NW.

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

1. Providing a 30 foot wide right of way dedication on the east side of Lot 7 to provide a lake access to Gene Smart right of way and continuing to Essick right of way.
2. Consent by KPB Assembly.
3. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
4. Grant utility easements requested by the utility providers.
5. 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 noted a comment had been received on 1/25/21 from Nancy DiNapoli informing the commission she believed that the 100' right-of-way being vacated is the only wind-sheltered public beach on the south shore of Caribou Island.



## END OF STAFF REPORT

Chair Martin open the item for public comment.

Michael & Peggy Clements, Petitioners; 38260 Panoramic Dr., Sterling, AK 99672: Ms. Clements informed the commission that she and Michael were available to answer any questions.

Ernie Alvarez; P.O. Box 467, Sterling, AK 99672: Mr. Alvarez stated that he has been a resident of the island since 2003. He had just recently received notice on the proposed vacation and did not have much time to review the request or talk about it with other landowners on the island. The only concern he really has is when the winds come up from the southeast this right-of-way is the only wind-sheltered access on the southeast side of the island. Mr. Alvarez owns Lot 10, Block 2 and has an easement, Coppock REM NW, next to his lot, which is east of the Essick REM NW. When the southeast winds are up he cannot use Coppock to access his property, he has to go around and use Essick to land. He is concern new the proposed new easement is not sheltered from the easterly winds like the Essick easement. If he were not able to use the Essick during windy conditions, he would have to go around to the west end of the island in order to access his property. Mr. Alvarez agrees the damage to the bank area needs to be addressed and he is willing to work with the Clements to fix the issue. He believes vacating the Essick access will make it more difficult for island landowners to access their properties when the winds are blowing. Commissioner Ruffner stated he understands Mr. Alvarez's concerns with the winds. He noted it appears the proposed right-of-way has the same orientation as Essick and would have the same wind aspects. The new right-of-way is being moved to the east and he wonders if the move will really make a difference to the landing zone. Mr. Alvarez replied when the winds above 20 miles per hour it is difficult to use many of the east or southeast easements to access the island. There are only a few easements that can be used during windy conditions and Essick is one of them. Mr. Alvarez then stated he did not received any official notification regarding this vacation, he just heard about this from one of the other island landowners. He wondered if other island landowners would have the same concerns that he does. He also stated understands the Clements' concerns about the bank. He agrees the Essick access needs to be properly marked so that folks know what is or is not private property.

Daniel Moose, 37030 Cannery Rd., Kenai, AK 99611: Mr. Moose stated he owns Lot 2, Block 3. He has owned this property for six years. He agrees with much of what Mr. Alvarez has said. When he purchased his property, he felt like he purchased two things. One being the narrow shoreline on the property and the other, the existing right-of-ways. The 100' right-of-way had been crucial to him allowing for landing his boat and staging of building supplies as he built his cabin. It has been crucial for safety, allowing him to land his boat as well as mooring off shore. This area is very important as it is used as a staging area for folks on that side of the island. He agrees that the easement needs to be marked so that folks know exactly where the 100' easement is. He would ask the commission to keep the 100' easement so that he can continue to utilize his property, in the way he intended, when it was purchased. Commissioner Gillham asked Mr. Moose if it would be possible to safely land a boat in a reduced area of the right-of-way instead of the whole 100'. Mr. Moose replied it might be possible but he also noted the area is used for staging and it is beneficial to have the whole 100' area. He stated it is important for folks to respect the Clements' property and it would be very helpful if the 100' easement were marked.

Michael & Peggy Clements, Petitioners; 38260 Panoramic Dr., Sterling, AK 99672: Mr. Clements stated he and his wife will continue to respect their neighbors and are willing to assist them in getting materials to their cabins. It is also their desire that their neighbors to continue to be able to safely access their properties. He noted there is a misconception as to where the 100' easement is located. Most folks think that where they are landing is on the easement but actually, the easement is located to the east of where everyone is landing. What they are proposing is the easement be moved 70 feet east from where it is now. Currently folks are pulling up, offloading, and staging their materials on their property. Ms. Clements stated that for years they did not know exactly where the easement was located. It was when they had their property surveyed that they realized that the trail was not located within the easement. They had their property surveyed twice, once by Jerry Johnson and then again by Roy Whitford. They now know where their pins are located. Where the 100' easement is located is covered with brush and is not developed so it is not being used as an access. She stated the 30-foot easement they are proposing is similar in size to many of the other easements on the island and can accommodate ATVs and foot traffic. The land in that location is dry and suitable for development for an access point. It has a pebble beach and is flat and is somewhat constructed, they personally have taken their 4-wheeler on it. If any of their neighbors require a safe haven



to land, they would not deny them. Mr. Clements stated in the past they have not really been bothered too much by folks using the existing landing. He is concerned as interest in land on the island grows, and more folks start coming out, the increase of traffic will increase the damage to their property. The bank is becoming more damaged and needs to be repaired. Commissioner Martin asked if the proposed easement is superior to the 100' easement. Ms. Clements stated what they are proposing in exchange would actually provide better access than the 100' easement which is undeveloped.

Commissioner Ecklund asked the Clements which lots they currently own. Ms. Clements replied that they own Lots, 1, 2 & 3 in Block Six, Lot 7 in Block Three and Lot 12 in Block Four.

Commissioner Morgan referred to map on page 94 of the meeting packet showing the area being vacated using red hatch marks and the proposed new easement using blue hatch marks. She then referred to the photo from Nancy DiNapoli in the desk packet where she drew arrows showing where she believed the 100' easement was located. She asked the Clements if she was correct in her understanding that what Ms. DiNapoli believes is the 100' access easement is actually Lot 1 of their property. Mr. Clements replied she was correct. Commissioner Morgan then stated the existing right-of-way and the one the Clements are proposing are on the same beach on the south side of the island. She noted people are currently going to the east of the 100' easement to use the existing access point.

Commissioner Venuti asked the Clements if their property lines were marked. Ms. Clements replied yes they are marked. The recently had a record of survey done by Mr. Whitford and the lines were marked. Commissioner Venuti then asked if their property was marked why was there so much confusion regarding the location of the existing easement? Ms. Clements replied that when they first purchased their property, they believed the existing access point was within the easement. When they had their property surveyed, it came to their attention that the existing access was not within the 100' easement.

Commissioner Carluccio asked the Clements was it Lot 1 or Lot 7 that folks were using as a landing. Ms. Clements replied that it was the southeast portion of Lot 1. Commissioner Carluccio then referred to the contour map in the packet and noted that the area the Clements are proposing for the new right-of-way is steeper than the 100-foot easement. She noted the proposed new right-of-way is about a 20-24 foot drop while the existing right-of-way has a much gentler slope. She then asked how the proposed right-of-way would be better than the existing right-of-way. Ms. Clements replied the proposed new right-of-way is somewhat developed. They have taken their four-wheeler across the area. The 100' easement is not developed. She also stated while the proposed right-of-way is steeper it is not wet, while much of 100' easement is wet. She also stated it is their plan to improve the new right-of-way so that it will access Gene Smart Rd.

Commissioner Martin referred to page 94 of the packet and noted it appears that there is a well-established trail on the east side of Lot 1 adjacent to the 100-foot easement. Are folks using this trail thinking it is within the 100-foot easement? Mr. Clements replied yes.

Commissioner Ecklund noted that on page 94 of the packet within the red hatched area of the area to be vacated it appears there is something in the easement and asked the Clements was some kind of structure built in the easement. Ms. Clements replied at one time, their neighbors stored their airboat there and it had been covered in a blue tarp but it has been removed.

Commissioner Chesser referred to the photo on page 94 of the packet. He asked the Clements if the area where the barge is located is where folks are landing and then taking the trail up through their property instead of using the existing easement. Mr. Clements stated yes that is the area being used by the public for access.

Commissioner Brantley asked the Clements if would be will to expand their proposed right-of-way to 60' if it became a sticking point. He noted that what they were proposing was to exchange a 100' easement for a 30' easement. Ms. Clements stated they were flexible but she also noted that most of the right-of-ways on the island were 30' and were used mostly by ATVs and people walking. Initially they thought about dedicating a full 60' right-of-way but there are not any 60' right-of-way on the island and so they chose to dedicate 30' to match the other existing right-of-ways.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment



and opened discussion among the Commission.

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

Commissioner Morgan stated using the map from page 94 of the packet; it appears to her that the existing 100' easement is not what is being used for access. That the beach and the trail that has been used is actually on Lot 1 and not the easement. She noted the proposed new area seems to be a good location to have a 30' right-of-way. She understands that people do not want to lose the access that they have been using, but that access is on private property and not within the 100' easement. She feels that what is being proposed is a good alternative.

Commissioner Carluccio noted the petitioners indicated they would enhance the trail that has already been started on the proposed new easement. Her question for staff is can the commission make this a condition if they grant the vacation. Mr. Huff replied he does not believe that it can be made a condition for approval. He has never seen it done in the past and it would be difficult for staff to determine that the condition has been met.

Commissioner Ecklund noted the map on page 94 does not show any improvements within the 100' easement, all the improvements are on Lot 1, which is private property. She does not know how the commission can ask the petitioners to improve the new access, as a condition of approval, when there are no improvements on the existing 100' easement. The Clements have offered to improve the proposed new access, which is very neighborly of them. She believes that the Clements have been very good neighbors for a long time, allowing folks to use the existing access on their property. She understands why the Clements want to stop the damage to their shoreline, which has occurred over the years of use.

Commissioner Brantley stated the only sticking point for him is the loss of the staging area that the 100' easement offers. He is not sure how he feels about exchanging a 100' easement for a 30' easement. While 30' is good enough to ride your ATVs on, it might not be wide enough to stage supplies on when building a cabin.

Commissioner Ruffner asked staff if they had heard from the owner of Lot 6 on Block Three. Mr. Huff replied the owner of Lot 6 is James Jones and they had not received any comments from him. Commissioner Ruffner noted what is being discussed is right next door to a developed lot and would directly affect this landowner. For instance if this person is living full time on the island it might be difficult for him to receive mail in a timely fashion. He is sure staff followed the guidelines for public notice but given the remote nature of this area, it might be difficult to get a hold of people. Mr. Huff replied standard procedures were followed, within 600' feet by regular mail and 300' by certified mail.

Commissioner Ecklund noted if this section of the 100' easement were vacated, there are still three other 100' easements that go to the shore that could be used as staging areas.

Commissioner Carluccio noted according to staff a certified letter should have gone to the landowner of Lot 6. She asked if staff could verify the notice had been received. Mr. Huff replied staff had sent out seven certified letters and had received five return receipts back. They had not received a return receipt from Mr. Jones and could not verify the letter had been received.

Commissioner Martin asked the petitioners who owns Lot 2, Block Six. Ms. Clements replied they owned that lot. Commissioner Martin then stated he understood why the neighbors desired a landing area with a wind protection. He asked the petitioners if they had given any thought to providing an easement between Lots 1 & 2 instead. Mr. Clements replied no, they have a sauna house with a shower in that location and for privacy reasons they do not want a trail to go through there. Commissioner Martin then asked if the petitioner understood why he asked the question; that an easement between lot 1 and 2 might be more desirable instead of putting a road right by your neighbor on Lot 6. Mr. Clements replied they have a good relationship with the owner of Lot 6, Jim Jones. They have spoken to him about their plans on numerous occasions and he told them he had no problem with their plans. Mr. Clements wished Mr. Jones had attended tonight to speak to his support of this vacation. He then stated Mr. Jones had told him he likes the idea of having the right-of-way there because it would mean that no one could build on it. It would give



him a buffer and give him access to bring supplies right up to his property. Commissioner Martin stated it look like it could be a win-win situation for the neighbor, with the Clements providing the whole 30' feet of the right-of-way and Mr. Jones getting better access to his property. Ms. Clements stated they did consider using Lot 3 for the new easement but it is very swampy and would make it difficult to build and use. The area they are proposing for the new easement is on higher and dry ground.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY MAJORITY VOTE:**

Yes	8	No	3	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Martin, Morgan				
No	Gillham, Ruffner, Venuti				

**AGENDA ITEM E. NEW BUSINESS**

- 3. Ordinance 2021-03: Amending KPB 21.06.040, Administration and KPB 21.06.070, "Development" Definition, for Floodplain Management Purposes

Staff report given by Samantha Lopez.

Floodplain management within the borough is a critical service that the borough provides dating back to 1988. Per guidance issued by the Federal Emergency Management Agency (FEMA), small or minor projects that do not involve filling, grading, or excavating may not be considered "development" for purposes of floodplain management regulations. Such projects do not increase the natural grade, do not obstruct floodwaters, and do not increase flood stages. FEMA has thus determined that minor projects may not meet the definition of "development", and are too small to warrant a full hydrologic and hydraulic (H&H) analysis, commonly referred to as a No-Rise Certification.

By amending the definition of "development", the code will align with FEMA's requirements, while also allowing the floodplain administrator to more objectively determine which projects do not meet the definition of development because it is a minor project. Should this code change fail, then moving forward all developments, even minor projects, in the floodway will require H&H analysis.

This ordinance will also amend borough code to clarify that the borough's planning department, as delegated to the borough's floodplain administrator, is responsible for issuing a final written determination as to whether or not a proposed project falls within the definition of development and therefore requires a permit for purposes of KPB 21.06 Floodplain Management.

**END OF STAFF REPORT**

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Ecklund to forward to the Assembly a recommendation to adopt Ordinance 2021-03, Amending KPB 21.06.040, Administration, and KPB 21.06.070, "Development" definition, for floodplain management purposes.

Commissioner Carluccio stated that she heard the proposed definition of development and asked staff for an example of a small development. Ms. Lopez replied it would be projects like a simple garden box or removal of six inches of overburden to be replaced with topsoil for a garden, project like these would not require a permit. The current definition defines any manmade changes as development and requires a permit. The new definition would make it easier for constituents to do small low impact projects within the floodplain without having to get a permit

Commissioner Bentz

Commissioner Ruffner



# **Planning Commission**

## **Meeting Packet**

**January 25, 2021  
7:30 p.m.**

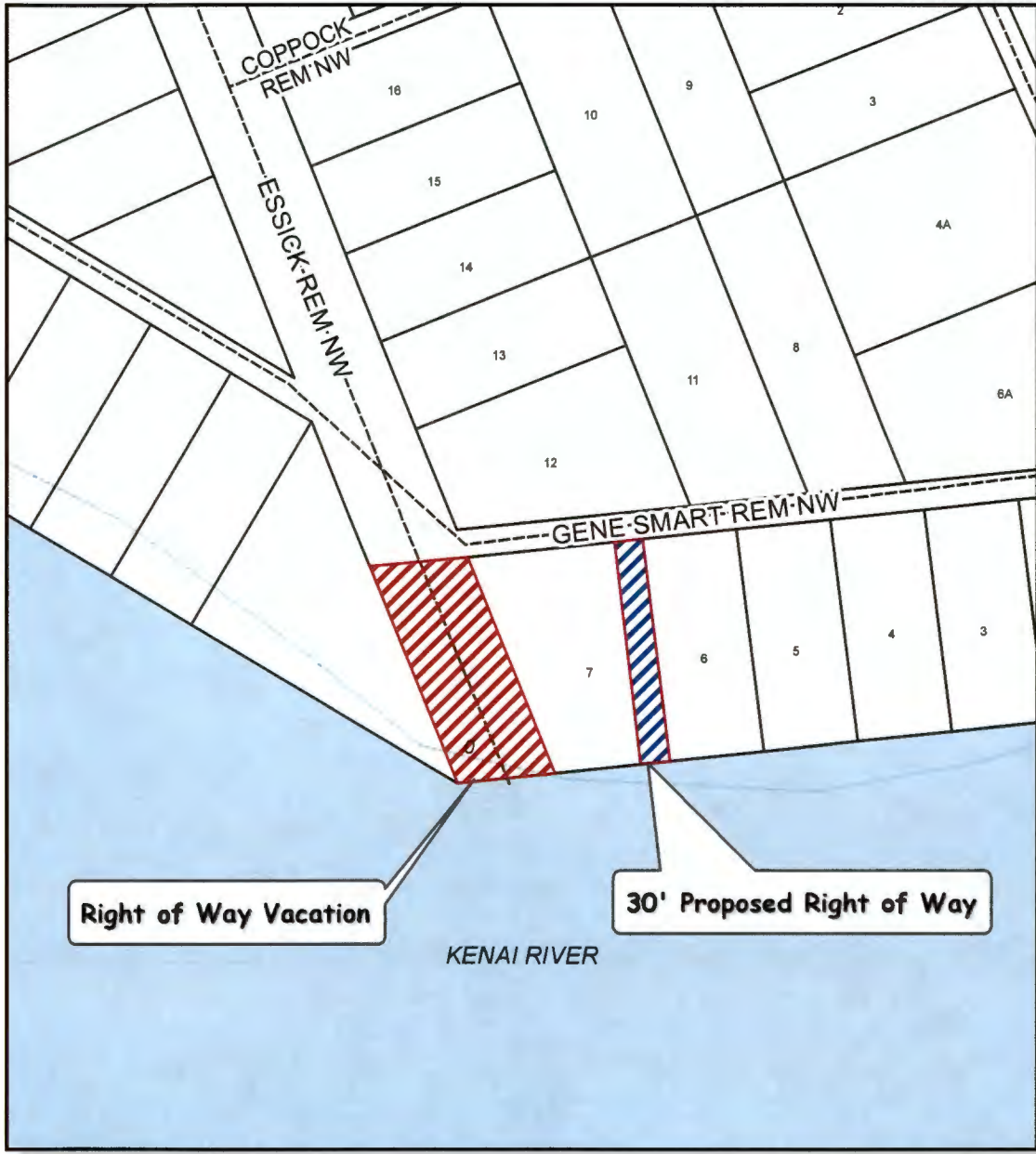
**KENAI PENINSULA BOROUGH  
ASSEMBLY CHAMBERS  
144 NORTH BINKLEY ST.  
SOLDOTNA, ALASKA 99669**

## **E. NEW BUSINESS**

### **2. Right-Of-Way Vacation – Essick Remote NW**

**Location and request: Vacate Essick Remote NW right of way south of intersection with Gene Smart Remote NW as dedicated on Caribou Island Amended, Plat SW-37. The right-of-way being vacated is 100 feet in width, unconstructed, and located within the North 1/2 of Section 25, Township 4 North, Range 7 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2020-154V; Petitioners: Michael & Peggy Clements**





Right of Way Vacation

30' Proposed Right of Way

KENAI RIVER

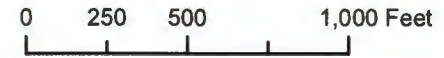


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KENAI RIVER

25



Caribou  
S25 T04N R07W  
SEWARD

Date: 12/16/2020  
Caribou Island





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**



 Right of Way Vacation

Date: 12/18/2020  
Imagery FixedWing 2012-2013



# SKILAK LAKE



- RESTRICTIONS & COMMENTS**
1. Lots will be restricted to residential use.
  2. No further subdivision of lots without a majority agreement of the property owners.
  3. All garbage will be disposed of by burial.
  4. Buildings will be of a permanent nature and of rustic appearance to blend with the surrounding area.
  5. Buildings will be maintained in a good state of repair and appearance.
  6. Outhouses will be so located as to prevent them from becoming a public nuisance.
  7. The installation and maintenance of the air strip and other facilities shall be the obligation of the property owners.

- SURVEY NOTES**
1. The broken line shown around the subdivision is a meander line only. The true property line is the lake shore or high water mark as conveyed in the original patent.
  2. Plat for X in rock (G.L.O. Survey)
  3. Plat for X in rock (G.L.O. Survey)
  4. 10' 5" N 54° 30' E G.L.O. Survey
  5. 10' 5" N 54° 30' W This Survey

**CERTIFICATE OF SURVEY**  
 I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT A SURVEY HAS BEEN COMPLETED AND THAT MARKERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT THE DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

16 Nov 1960  
 DATE  
 F. M. Lindsey  
 SURVEYOR



**CERTIFICATE OF OWNERSHIP**  
 WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED TO SIGN THIS PLAT AS OFFICERS OF THE CARIBOU ISLAND, INC., AND THAT UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS ANNECED PLAT.

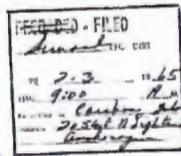
DATE \_\_\_\_\_  
 Carl Hufst  
 Pernat A. Strand

**KPB 2020-154V**

100' ROW

30' ROW Dedication

SEWARD  
 Grant No. 65-86



ANNEXED PLAT OF	
CARIBOU	ISLAND
SUBDIVISION	
LOCATED IN SKILAK LAKE, ALASKA	
U.S. G.L.O. SURVEY NUMBER 2043	
SURVEYED FOR	
CARIBOU ISLAND CORPORATION	
129 E. 8TH AVENUE ANCHORAGE, ALASKA	
ACRES 159.24	SURVEYED BY
DATE 1 AUG. 1960	F. M. LINDSEY
SCALE 1" = 100'	REGISTERED PROFESSIONAL
	NO. 4303
	DOB 9-10-08
SHEET 1 OF 1	SPEARHEAD 44-5-4
	PH. FA 214-44

37-2-60



AGENDA ITEM E. NEW BUSINESS

2. Vacate a segment of a 100' right of way adjoining the east boundary of Lot 1 Block 6 and the west boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37)

STAFF REPORT

PC Meeting: January 25, 2021

Purpose as stated in petition:

Our reason for requesting to vacate a portion of the 100' wide access right of way is to reclaim back and repair the damaged eroding lake bank of that portion (50' or more) of our property that is mistakenly used as the "assumed location" of the 100' right of way by past and present property owners.

We would like to vacate the remaining area and offer an alternate 30' right of way on the east boundary of our Lot 7 Block 3 Caribou Island, plat SW-37. There are no 60' right of ways that have been platted or dedicated so we would like to match the 2 other 30' right of ways to the east. Mostly though, we hope to leave enough square footage to build a cabin for family and friends. If a 60' right of way is dedicated, then add 2-20' building setbacks as per code 20.30.240(A), then add a 50' anadromous habitat protection as per code 20.30.290, this would not leave much left. We however, will have to do the same when we have the final plat, but would have more footage by just dedicating a 30'.

And the final reason we want to dedicate only a 30' width rather than a 60' width, is that no vehicles other than four-wheelers will ever be used on the right of ways and on our south side of the island, there are 2-30' right of ways and 2-100' right of ways, the latter being an air strip reservation that amongst the property owners, will never be constructed as the popular travel method is by airplane (float plane), boat, (or snow machine in the winter). The right of ways on the south half of the island have 5 access points than the north side of the island which there is only 1 access point.

The foot traffic, boats, barge parking and the loading/unloading of materials has deteriorated the bank and forest floor of our property, mostly on the south boundary of Lot 1 Block 6, which we would like to repair and regrow as part of our combining the lots with the final plat. Current "real" widths throughout the rights of way vary from a hiking trail to a four-wheeler size width. Amongst most of the property owners on the island agree, there is no real need to develop the right of ways any wider, everyone enjoys hiking and on occasion 4-wheel.

We have owned property here since 2004 and have acquired adjoining lots throughout the years, we plan to retire and have the property for our family to enjoy for generations. As of today, we have a total of 5 lots with 3 lots adjoining the 100' and 30' right of ways.

We have a good personal relationship with many of the property owners within the entire island and with our nearby neighbors. We have spoken to a few of them about our vacation idea. We have prepared (and traversed it easily by four-wheeler) the area for the new 30' right of way for land owners to use instead if approved.

Petitioners: Michael R. and Peggy Clements, Sterling AK

Notification: Public notice appeared in the January 13, 2021 issue of the Seward Journal as a separate ad. The public hearing notice was published in the January 21, 2021 issue of the Seward Journal as part of the Commission's tentative agenda.

7 certified mailings were sent to owners of property within 300 feet of the proposed vacation. Two receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 19 owners within 600 feet of the proposed vacation.

15 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game	Alaska Communication Systems (ACS)
State of Alaska DNR	ENSTAR Natural Gas
State of Alaska DOT	General Communications Inc, (GCI)
Kenai Peninsula Borough Office - Seward	Homer Electric Association (HEA)

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Sterling and Cooper Landing Post Offices and Seward Community Library with a request to be posted in public locations.

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

Comments Received:

ACS: Comments not received when the staff report was prepared.

ENSTAR: No comments, recommendations, or objections.

Homer Electric Association: No comments.

KPB Addressing: Comments not received when the staff report was prepared.

KPB Planning: Comments not received when the staff report was prepared.

KPB River Center: Not within a flood hazard area. It is totally or partially within the Anadromous Waters Habitat Protection District.

KPB Roads Department: Within jurisdiction, no comments

State Parks: No comments.

Staff Discussion:

A petition to vacate was received to vacate a portion of Essick REM NW. The right of way is considered remote. It is located on Caribou Island that is located in Skilak Lake. The island is along the southern portion of Skilak Lake and is between the Skilak Lake Lower and Upper boat launches. The right of way was dedicated on the Caribou Island Amended Plat, SW 37. The plat was recorded in 1965 and the right of ways were unnamed. Resolution SN 2007-01 named the dedicated right of ways on the island.

The island was subdivided into 223 lots within twelve blocks. A 200 foot air strip with 100 foot dedications on each end was reserved. This reservation and public access runs the width of the island. A 100 foot wide right of way was dedicated that runs north - south, the entire length of the island. 30 foot wide right of way dedications were granted that provide a continuous loop around the island with several internal 30 foot right of ways to provide access to each lot.

As mentioned by the applicants' letter there are several access points from the lake around the island. The northern portion of the island has a 100 foot right of way for lake access. The east and west sides of the island have 100 foot lake access right of ways located at the end of the 200 foot airstrip. The southern side of the island has the 100 foot lake access right of way proposed to be vacated as well as two additional 30 foot lake access right of ways.

The applicant is proposing to vacate approximately 248 feet of the 100 foot wide Essick REM NW. They currently own Lots 1 through 3 of Block 6, Lot 7 Block 3, and Lot 12 Block 4. The applicant claims that their property is being used for lake access as the location of the 100 feet road reservation is not easily located. This is resulting in erosion and deterioration of the bank within their property. If approved the applicant intends on placing proper signage that alerts to private property as well as directing people to the new 30 foot dedicated lake access.

If the proposed vacation is approved, 50 feet will go to Lot 1 Block 6 and 50 feet to Lot 7 Block 3. The owners wish to replat Lots 1 through 3 of Block 6 and Lot 7 Block 3 into one parcel. They will also dedicate a 30 foot right of way along the east boundary of Lot 7 Block 3. They feel that a 30 foot right of way will still provide access in line with the other dedications on that side of the island and will allow for them to limit the access on their property that will slow erosion. Per conversations with the applicant, they have walked their property to find the most logical and usable lake access location.

Use of the right of ways is by foot traffic and ATV traffic. Although allowed, vehicular access does not occur due to the remote nature of the subdivision.

Lot 3 Block 6 does contain some low wet areas. The terrain in the area is gently rolling with no steep slopes. A contour map is provided in the packet.

If approved, the vacation will need to be finalized by plat. A plat has not been submitted at this time. Staff notes the subject platting action will require an exception to right-of-way width (KPB 20.30.120).

**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:

- 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 is included in the packet.

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:*

**Staff recommendation:** Comply with 20.70.130.

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

*Platting Staff Comments:* If approved the right of way area will be attached to the lots fronting the vacation. The applicant owns lots on both sides of the requested vacation.

**Staff recommendation:** Comply with 20.70.150.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

*Platting Staff Comments: The existing right of way is 100 feet in width and wider than KPB requirements. The right of way within the subdivision has not been used for vehicular purposes and currently is used as a pedestrian access or ATV access.*

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: The area proposed to be vacated is remote. The current use of the right of ways is pedestrian or ATV access.*

**Staff recommendation:** *Concur that the vacation of Essick REM right of way will not inhibit vehicular access as no vehicles use the right of ways on the island.*

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: The current use of the right of ways is pedestrian or ATV access. The applicant will dedicate a 30 foot right of way that will provide equal or superior access for pedestrian use or ATV use. The proposed right of way dedication is not affected by low wet areas. The proposed right of way dedication, although sloping, does not contain steep slopes that would prevent ATV or pedestrian access.*

**Staff recommendation:** *Concur that other lawful uses, such as pedestrian access and ATV access, that are allowed within the vacated portion of Essick REM right of way will be feasible in the proposed 30 foot lake access dedication on the east side of Lot 7. This will provide legal access from the lake to Gene Smart REM NW, to Essick REM NW.*

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: ENSTAR and HEA provided a review of no comments / no concerns. There are no utilities installed on Caribou Island. Land owners must supply their own utilities.*

**Staff recommendation:** *Work to the utility providers to grant any necessary utility easements that may be requested.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: The applicant has stated that the current location of the access is causing erosion issues along with trespass and damage issues with their property. They are willing to provide another access location that will protect their property and mitigation efforts. They feel the other location will provide adequate access.*

**Staff recommendation:** *Concur that the proposed 30 foot lake access will provide equal or better access compared to Essick REM NW.*

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

1. Providing a 30 foot wide right of way dedication on the east side of Lot 7 to provide a lake access to Gene Smart right of way and continuing to Essick right of way.
2. Consent by KPB Assembly.
3. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
4. Grant utility easements requested by the utility providers.
5. 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:**

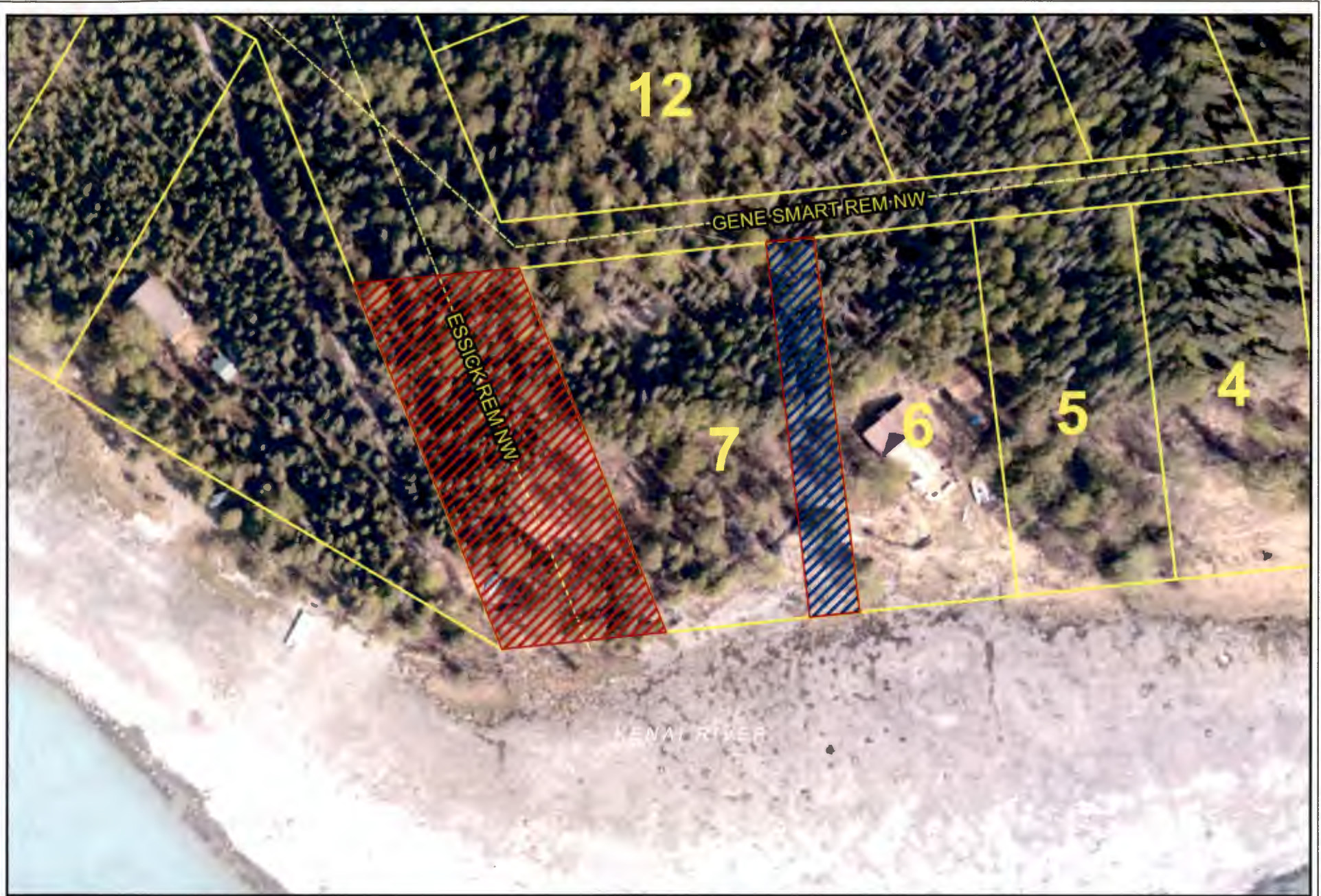
- A. **Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. **Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final 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.**

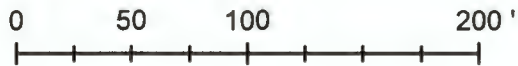
END OF STAFF REPORT





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**



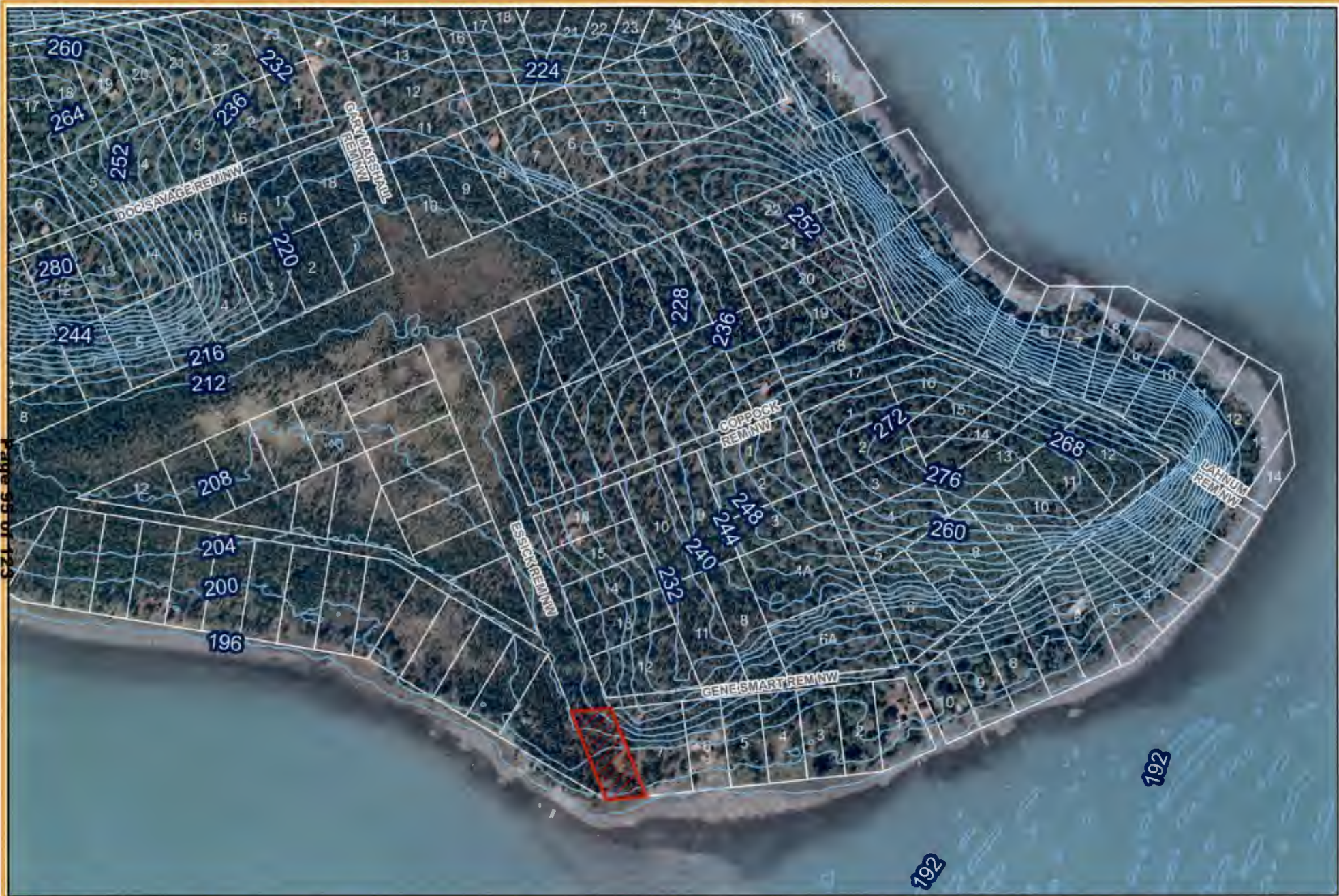
Proposed Rerouted Right of Way

Right of Way Vacation

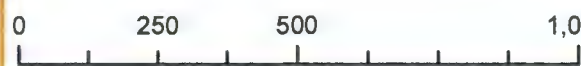
Caribou Island  
Date: 12/16/2020  
Imagery Anadromous 2014



Page 95 of 123



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

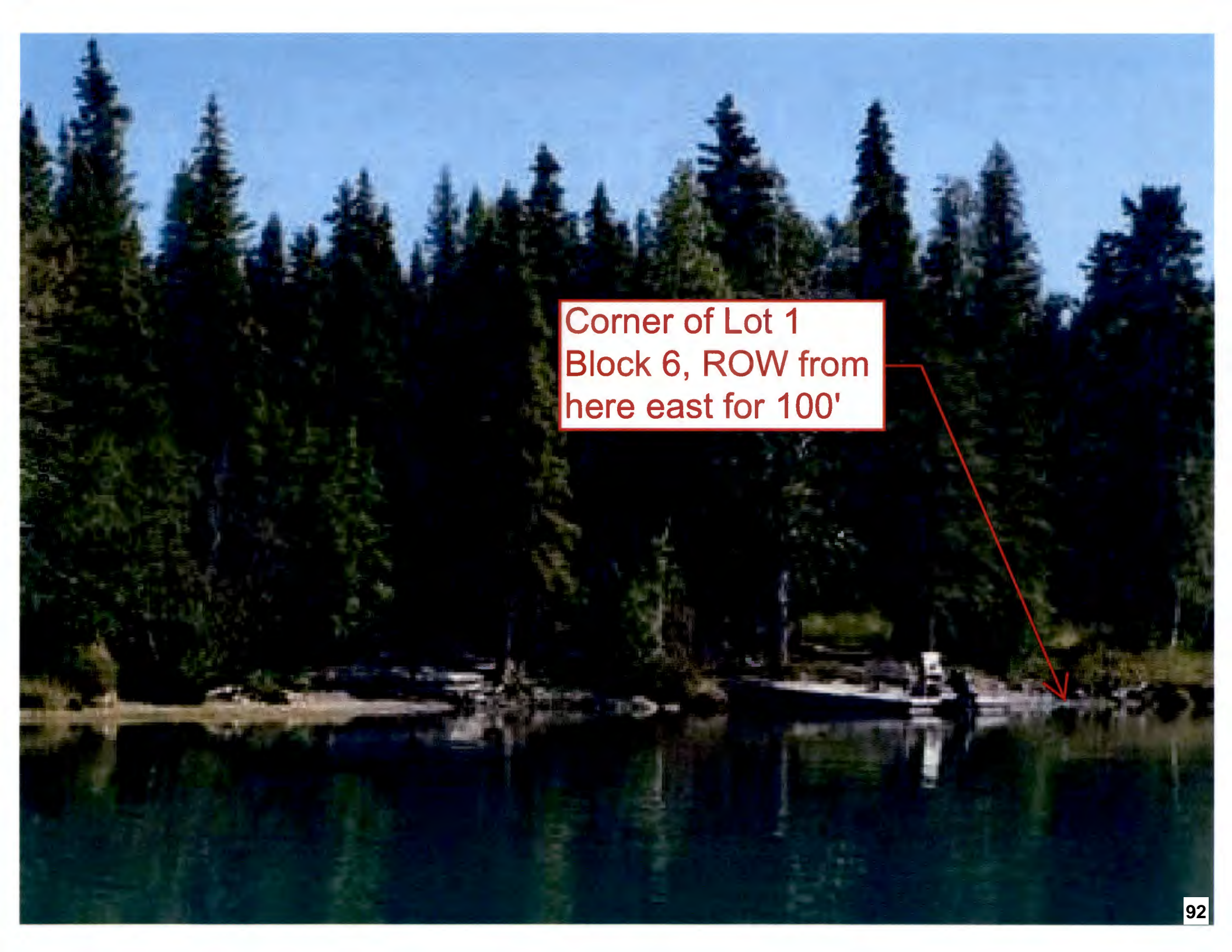


AERIAL IMAGERY - 2012  
4 FOOT CONTOUR INTERVAL



Date: 1/11/2021  
S. Huff, KPB





Corner of Lot 1  
Block 6, ROW from  
here east for 100'





Lot 1 Block 6 used as ROW



# SKILAK LAKE

# LAKE

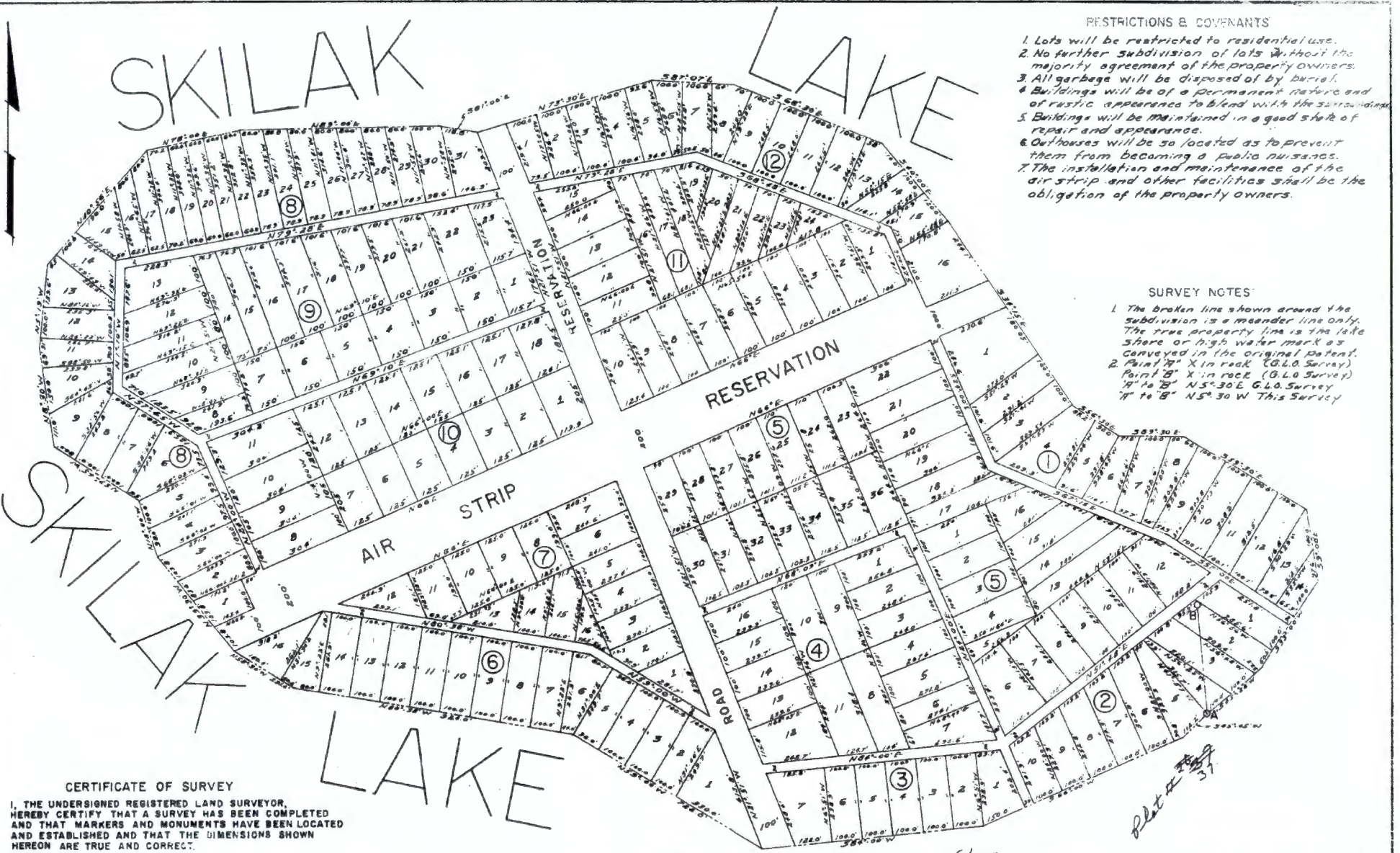
# SKILAK LAKE

**RESTRICTIONS & COVENANTS**

1. Lots will be restricted to residential use.
2. No further subdivision of lots without the majority agreement of the property owners.
3. All garbage will be disposed of by burial.
4. Buildings will be of a permanent nature and of rustic appearance to blend with the surroundings.
5. Buildings will be maintained in a good state of repair and appearance.
6. Outhouses will be so located as to prevent them from becoming a public nuisance.
7. The installation and maintenance of the air strip and other facilities shall be the obligation of the property owners.

**SURVEY NOTES**

1. The broken line shown around the subdivision is a meander line only. The true property line is the lake shore or high water mark as conveyed in the original patent.
2. Point "X" in rock (G.L.O. Survey) Point "B" X in rock (G.L.O. Survey) "A" to "B" N5°30'E G.L.O. Survey "A" to "B" N5°30'W This Survey



**CERTIFICATE OF SURVEY**

I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT A SURVEY HAS BEEN COMPLETED AND THAT MARKERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT THE DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

14 Nov 1960  
DATE

*F. M. Lindsey*  
SURVEYOR



**CERTIFICATE OF OWNERSHIP**

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED TO SIGN THIS PLAT AS OFFICERS OF THE CARIBOU ISLAND, INC., AND THAT UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS AMENDED PLAT.

\_\_\_\_\_  
DATE

*Earl Haupt*  
*Ernest A. Strand*

SEWARD  
Serial No. 65-84

RECORDED - FILED  
2-3-1965  
9:00 P.M.  
F. M. Lindsey  
2554 E. 7th Ave.  
Anchorage

AMENDED PLAT OF	
<b>CARIBOU ISLAND</b>	
SUBDIVISION LOCATED IN SKILAK LAKE, ALASKA U.S. G.L.O. SURVEY NUMBER 2095	
SURVEYED FOR	
<b>CARIBOU ISLAND CORPORATION</b>	
120 E. 5TH AVENUE ANCHORAGE, ALASKA	
ACRES 159.24	SURVEYED BY
DATE 1 AUG. 1960	F. M. LINDSEY
SCALE 1" = 100'	REGISTERED SURV. NO. 6504
SHEET 1 OF 1	BOX 4-081
	SEWARD, ALASKA
	PH. FA 21544

# **Kenai Peninsula Borough**

## **PLANNING COMMISSION DESK PACKET**

**January 25, 2021**

**7:30 p.m.**

**From:** [Hindman, Julie](#)  
**To:** [Shimberg, Ann](#)  
**Cc:** [Huff, Scott](#)  
**Subject:** FW: <EXTERNAL-SENDER>Public comment on ROW vacation proposal 2020-154V  
**Date:** Monday, January 25, 2021 8:24:36 AM  
**Attachments:** [image001.png](#)

---

Desk Packet item.

*Julie Hindman*

Platting Specialist  
Ph: (907) 714-2210  
Fx: (907) 714-2378

KENAI PENINSULA BOROUGH  
144 North Binkley Street  
Soldotna, Alaska 99669



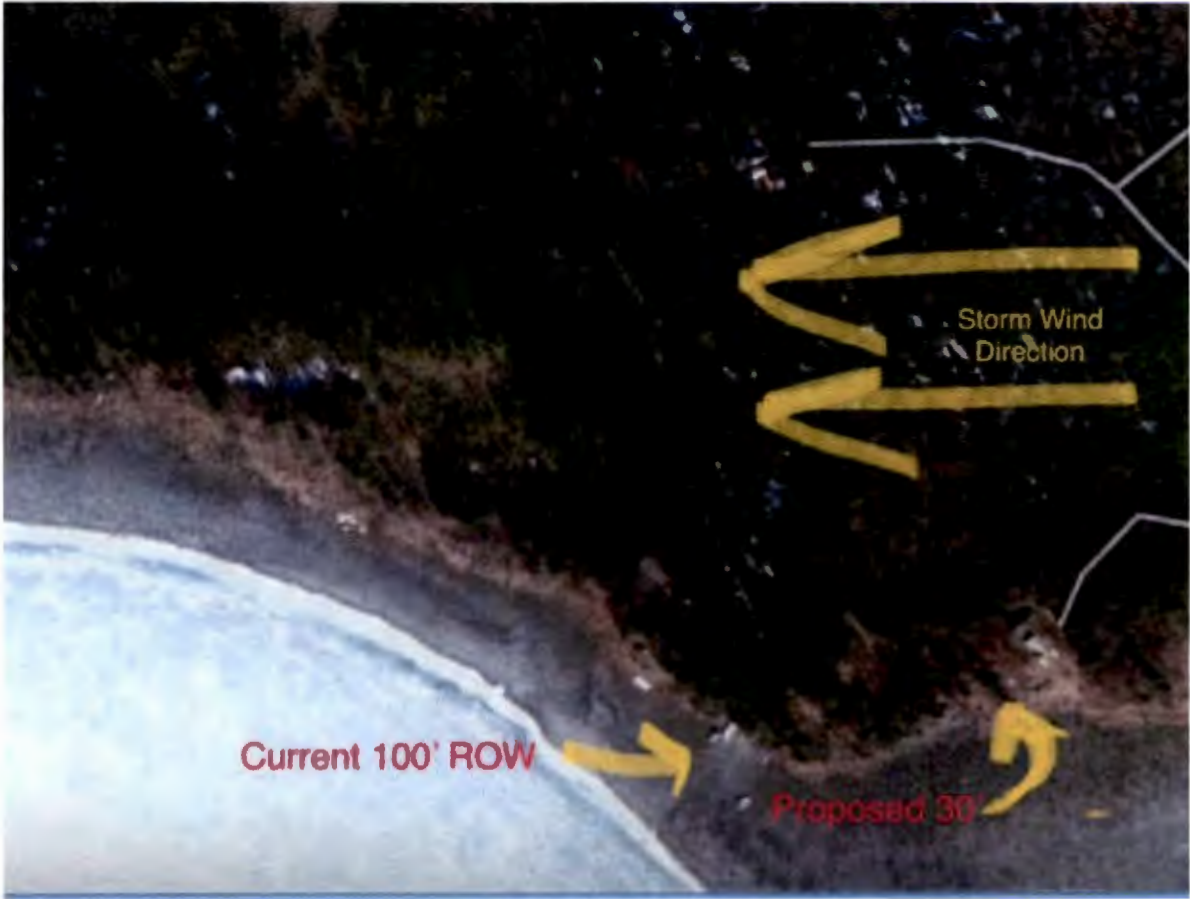
**From:** Nancy DiNapoli [mailto:[nan3d@yahoo.com](mailto:nan3d@yahoo.com)]  
**Sent:** Sunday, January 24, 2021 11:20 AM  
**To:** Hindman, Julie <[jhindman@kpb.us](mailto:jhindman@kpb.us)>  
**Subject:** <EXTERNAL-SENDER>Public comment on ROW vacation proposal 2020-154V

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.

Regarding the exchange of platted 100' ROW for new 30' ROW. Please consider the following aerial photo, the platted ROW is the only wind-sheltered public beach on the south shore of Caribou Island. I have beached my boat there overnight to safely walk back to my Caribou Island cabin.

Thank you,  
Nancy DiNapoli





\*\*\*

## **Broyles, Randi**

---

**From:** Blankenship, Johni  
**Sent:** Tuesday, February 2, 2021 9:28 AM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>KPB Planning Commission Decision to Vacate Essick Remote ROW  
**Attachments:** Caribou Island ROW 2.1.2921.odt; 2021 Notice of Public Hearing.pdf; Kenai Borough Planning Commission Notice of Decision !2521.pdf

**From:** Ernie Alvarez <easkilak@gmail.com>  
**Sent:** Monday, February 1, 2021 3:26 PM  
**To:** Hibbert, Brent <bhibbert@kpb.us>; Derkevorkian, Richard <rderkevorkian@kpb.us>; Bjorkman, Jesse <JBjorkman@kpb.us>; ysoncox@kpb.us; Elam, Bill <belam@kpb.us>; Carpenter, Kenn <KCarpenter@kpb.us>; Johnson, Brent <bjohnson@kpb.us>; ichesley@kpb.us; Dunne, Willy <WDunne@kpb.us>; Blankenship, Johni <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>KPB Planning Commission Decision to Vacate Essick Remote ROW

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.

TO KPB Assembly Members,  
Attached is my letter opposing the KPB Planning Commissions decision to vacate Essick Remote 100 ft ROW on Caribou Island in Skilak Lake. Also find the KPB Notice of Public Hearing of 1/25/2021 and the KPB Notice of Decision regarding that hearing.  
Thank You  
Ernie Alvarez

As a property owner on the South East side of Caribou Island, I respectfully request that Assembly Members reject KPB Planning Commission's decision to vacate the Essick Remote NW 100 ft. Right of Way (ROW).

This Right of Way (ROW) has been used by Caribou Island property owners for over 60 years. The two most used and accessible ROW's on Caribou Island is the Essick South East 100 ROW and the opposite 100 ft. ROW on the NW side of Caribou. Other ROW's referred to in the Petition are seldom, if ever used and inaccessible due to terrain (marshland, rocks , boulders) and cannot be approached by boats in moderate to high winds. Additional reasons I oppose this decision to vacate Essick 100 ft. ROW are as follows:

1. I believe the Petitioner's request can be addressed **without** requiring the 100 ft ROW be vacated. Erosion of the lake shoreline is due to wave action that all lake shore owners experience. A small portion of Petitioner's particular problem on Lot 1 Block 6 is due to an interior property owner parking their barge (10' x 20' ) on and off for the past ten years on the east end of the Petitioner's lot. This could have been terminated at the petitioners request. In addition I believe the barge owner would gladly assist as would I and other property owners to repair any damage that may have occurred due to the barge or any other reason. Lot 1 Block 6 is a **uniquely** pie shaped lot with the east side adjacent to the present 100 ft. easement and is where the barge has been parked , impacting a small area of the Petitioner's lot . Vacating an established 60+ year 100 ft of ROW in exchange for an **undeveloped** 30 ft. ROW(resulting in a loss of 70 ft. of lake shore access) on the **Petitioner's** furthest east side of their other Lot 7 Block 3 is an excessively unreasonable remedy and **inequitable** to other property owners.
2. The proposed 30 ft. ROW on Lot 7 Block 3 is undeveloped, difficult to access due to its shallowness, rocks, boulders, and moderate to high winds make it impossible to beach a boat in that area. In addition, this proposed ROW goes up a steep hill making it difficult to drive an ATV with building materials or supplies on a trailer.
3. The decision to vacate the 100 ft. ROW in exchange for a 30 ft. ROW effects ALL Caribou Island property owners directly or indirectly . Only 5 to 6 property owners were notified of the Public Hearing held on January 25, 2021. I believe all Caribou Island property owners should have been notified and given a chance to give their approval or disapproval before resorting to such a drastic decision that affects present and future access to island properties. This decision to vacate the current ROW may have an impact on future building sites and ownership due to the difficulty of access and may affect land values.

I respectfully request that this decision to vacate Essick Remote NW ROW be denied by KPB Assembly Members. I also request to be notified of any other opportunities to address this matter with ASSEMBLY MEMBERS in the future. I may be contacted at 907-830-8507 or email: [easkilak@gmail.com](mailto:easkilak@gmail.com)

Ernie Alvarez





## Planning Department

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

Charlie Pierce  
Borough Mayor

### SEWARD JOURNAL

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that a petition was received on 12/18/2020 to vacate a public right-of-way in the Seward Recording District, Remote area. Area under consideration is described as follows:

- A. Location and request: Vacate Essick Remote NW right of way south of intersection with Gene Smart Remote NW as dedicated on Caribou Island Amended, Plat SW-37. The right-of-way being vacated is 100 feet in width, unconstructed, and located within the North 1/2 of Section 25, Township 4 North, Range 7 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-154V.
- B. Purpose as stated in petition: Our reason for requesting to vacate a portion of the 100' wide access right of way is to reclaim back and repair the damaged eroding lake bank of that portion (50' or more) of our property that is mistakenly used as the "assumed location" of the 100' right of way by past and present property owners. We would like to vacate the remaining area and offer an alternate 30' right of way on the east boundary of our lot 7 block 3 Caribou Island, plat SW-37. There are no 60' right of ways that have been platted or dedicated so we would like to match the 2 other 30' right of ways to the east. Mostly though, we hope to leave enough square footage to build a cabin for family and friends. (if a 60' right way is dedicated, then add 2-20' building setbacks as per code 20.30.240(A), then add a 50' anadromous habitat protection as per code 20.30.290, this would not leave much left. We however, will have to do the same when we have the final plat, but would have more footage by just dedicating a 30'. And the final reason we want to dedicate only a 30' width rather than a 60' width, is that no vehicles other than four-wheelers will ever be used on the right of ways and on our south side of the island, there are 2-30' right of ways and 2-100' right of ways, the latter being an air strip reservation that amongst the property owners, will never be constructed as the popular travel method is by airplane and boat. The right of ways on the south half of the island have 5 access points than the north side of the island which there is only 1 access point. The foot traffic, boats, barge parking and the loading/unloading of materials has deteriorated the bank and forest floor of our property, mostly on the south boundary of lot 1 block 6, which we would like to repair and regrow as part of our combining the lots with the final plat. Current "real" widths throughout the rights of way vary from a hiking trail to a four-wheeler size width. Amongst most of the property owners on the island agree, there is no real need to develop the right of ways any wider, everyone enjoys hiking and on occasion 4-wheel. We have owned property here since 2004 and have acquired adjoining lots throughout the years, we plan to retire and have the property for our family to enjoy for generations. As of today, we have a total of 5 lots with 3 lots adjoining the 100' and 30' right of ways. We have a good personal relationship with many of the property owners within the entire island and with our nearby neighbors. We have spoken to a few of them about our vacation idea.





## Planning Department

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Charlie Pierce  
Borough Mayor

### SEWARD JOURNAL

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- B. Purpose as stated in petition: Our reason for requesting to vacate a portion of the 100' wide access right of way is to reclaim back and repair the damaged eroding lake bank of that portion (50' or more) of our property that is mistakenly used as the "assumed location" of the 100' right of way by past and present property owners. We would like to vacate the remaining area and offer an alternate 30' right of way on the east boundary of our lot 7 block 3 Caribou Island, plat SW-37. There are no 60' right of ways that have been platted or dedicated so we would like to match the 2 other 30' right of ways to the east. Mostly though, we hope to leave enough square footage to build a cabin for family and friends. (If a 60' right way is dedicated, then add 2-20' building setbacks as per code 20.30.240(A), then add a 50' anadromous habitat protection as per code 20.30.290, this would not leave much left. We however, will have to do the same when we have the final plat, but would have more footage by just dedicating a 30'. ) And the final reason we want to dedicate only a 30' width rather than a 60' width, is that no vehicles other than four-wheelers will ever be used on the right of ways and on our south side of the island, there are 2-30' right of ways and 2-100' right of ways, the latter being an air strip reservation that amongst the property owners, will never be constructed as the popular travel method is by airplane and boat. The right of ways on the south half of the island have 5 access points than the north side of the island which there is only 1 access point. The foot traffic, boats, barge parking and the loading/unloading of materials has deteriorated the bank and forest floor of our property, mostly on the south boundary of lot 1 block 6, which we would like to repair and regrow as part of our combining the lots with the final plat. Current "real" widths throughout the rights of way vary from a hiking trail to a four-wheeler size width. Amongst most of the property owners on the island agree, there is no real need to develop the right of ways any wider, everyone enjoys hiking and on occasion 4-wheel. We have owned property here since 2004 and have acquired adjoining lots throughout the years, we plan to retire and have the property for our family to enjoy for generations. As of today, we have a total of 5 lots with 3 lots adjoining the 100' and 30' right of ways. We have a good personal relationship with many of the property owners within the entire island and with our nearby neighbors. We have spoken to a few of them about our vacation idea.





## Planning Department

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

Charlie Pierce  
Borough Mayor

We have prepared (and traversed it easily by four-wheeler)  
the area for the new 30' right of way for land owners to use instead if approved.

C. Petitioner(s): Michael R. Clements and Peggy Clements of Sterling, AK.

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, January 25, 2021**, commencing at **7:30 p.m.**, or as soon thereafter as business permits.

Please be aware that due to the recent COVID-19 pandemic and based on CDC guidelines, the meeting will not be physically open to the public. Instructions are as follows:

The meeting will remain open to the public. The Planning Commissioners, along with staff members, will be attending via teleconferencing. The public will be able to listen or participate with the same methods. The meeting will be held through Zoom. To join the meeting from a computer visit <https://zoom.us/j/2084259541>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID of 208 425 9541. If you connect by computer and do not have speakers or a microphone, if wishing to comment, connect online and then select phone for audio. A box will come up with toll free numbers, requesting the Meeting ID, and your participant number. Detailed instructions will be posted on the Planning Commission's webpage prior to the meeting: <https://www.kpb.us/planning-dept/planning-commission>.

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Anyone wishing to testify, but cannot attend the zoom meeting, may come to the above meeting to give testimony or may submit a written statement to the attention of Julie Hindman, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. The Planning Department recommends that written comments be received by **1:00 PM, Friday, January 22, 2021**. [Written comments may also be sent by email to the addresses below or by Fax to 907-714-2378].

If the Planning Commission approves the vacation, the Borough Assembly has thirty days from that decision in which they may veto the Planning Commission approval. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.

For additional information contact Julie Hindman ([jhindman@kpb.us](mailto:jhindman@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough) or email [planning@kpb.us](mailto:planning@kpb.us).



# SKILAK

# LAKE

# SKILAK LAKE

1. Lots will be restricted to residential use  
 2. No further subdivision of lots is allowed without majority agreement of the property owners  
 3. All garbage will be removed by the owner  
 4. Structures will be of a permanent nature and shall be built in accordance with the rules and regulations of the reservation  
 5. Buildings will be maintained in a good state of repair and appearance  
 6. Distances will be shown for all boundaries  
 7. The installation and maintenance of all or any of the above conditions shall be the obligation of the property owners

**SURVEY NOTES**

1. The location and extent of the reservation is as shown on the map. The road boundaries are as shown on the map or right of way map. The survey was made on the original map of the reservation and is in accordance with the rules and regulations of the reservation.



### CERTIFICATE OF SURVEY

I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT A SURVEY HAS BEEN COMPLETED AND THAT MARKERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT THE DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

DATE: \_\_\_\_\_ SURVEYOR: \_\_\_\_\_



### CERTIFICATE OF OWNERSHIP

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED TO SIGN THIS PLAT AS OFFICERS OF THE CARIBOU ISLAND, INC., AND THAT UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS AMENDED PLAT.

DATE: \_\_\_\_\_ OFFICERS: \_\_\_\_\_

**KPB 2020-154V**

100' ROWW

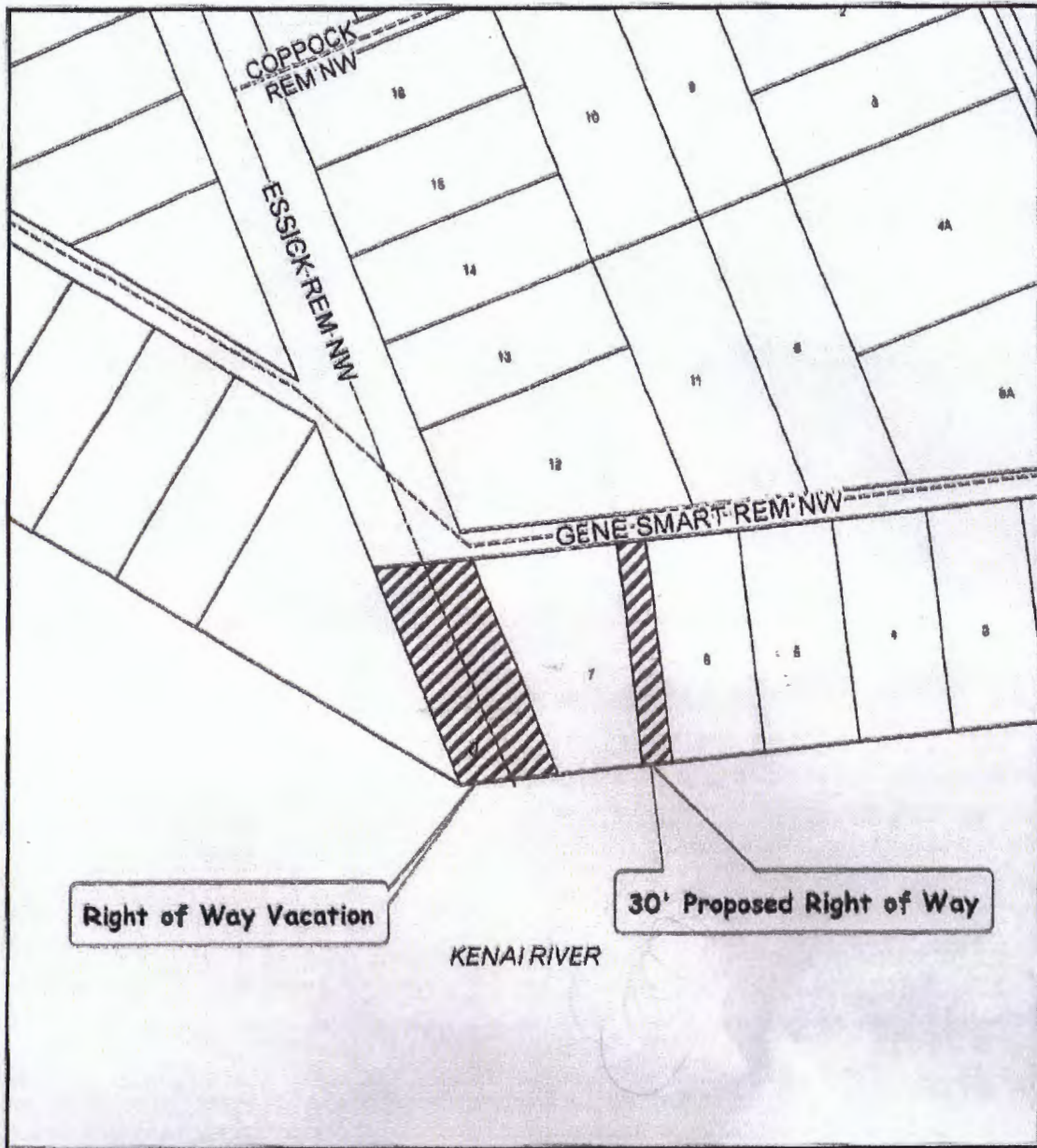
30' ROWW Deducting

SEWARD

RECORDED & FILED  
 AUG 11 1990  
 ALASKA DEPARTMENT OF REVENUE  
 DIVISION OF LAND SURVEYING

AMENDED PLAT OF	
<b>CARIBOU ISLAND</b>	SUBDIVISION
LOCATED IN SKILAK LAKE, ALASKA	
U.S. G.L.O. SURVEY NUMBER 2020	
SURVEYED FOR	
<b>CARIBOU ISLAND GOIN COASTEN</b>	
120 E. 5TH AVENUE ANCHORAGE, ALASKA	
ACRES 159.24	SURVEYED BY
DATE 1 AUG. 1990	<b>F.M. LINLEY</b>
SCALE 1" = 100'	REGISTERED
SHEET 1 OF 1	NO. 500'S
	FOR THIS
	SPRING 1990
	PH. FA 1124

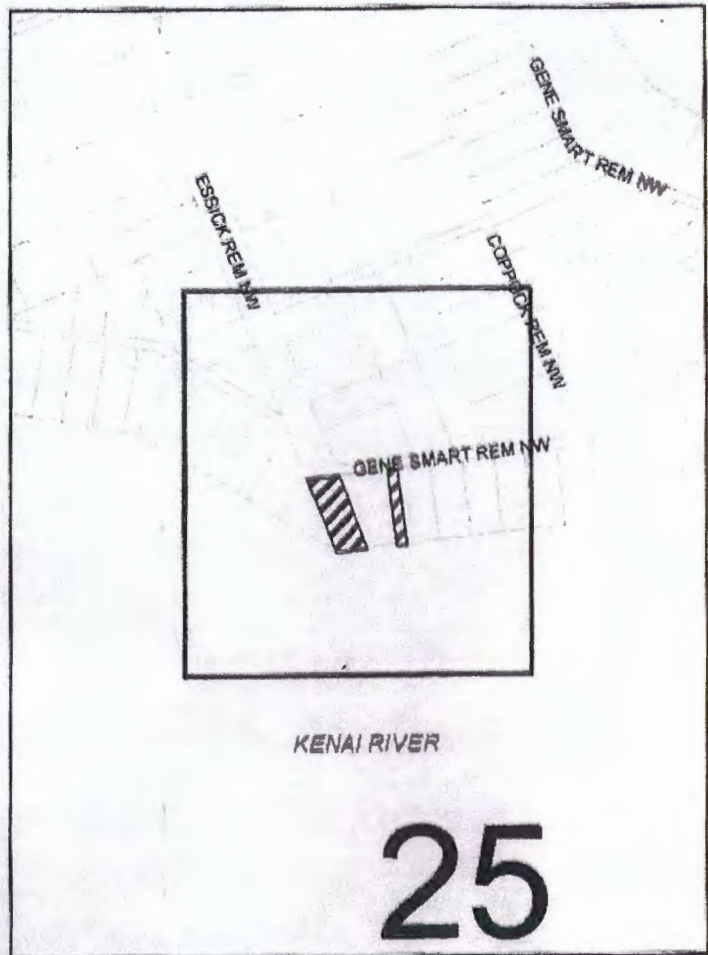




Right of Way Vacation

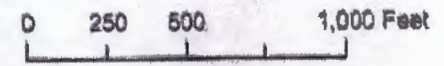
30' Proposed Right of Way

KENAI RIVER

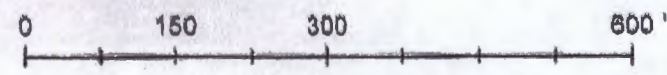


KENAI RIVER

25



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



Caribou  
S25 T04N R07W  
SEWARD

Date: 12/16/2020  
Caribou Island





## Planning Department

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

Charlie Pierce  
Borough Mayor

January 26, 2021

### **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION**

#### **MEETING OF JANUARY 25, 2021**

**RE:** Vacate Essick Remote NW right of way south of intersection with Gene Smart Remote NW as dedicated on Caribou Island Amended, Plat SW-37. The right-of-way being vacated is 100 feet in width, unconstructed, and located within the North 1/2 of Section 25, Township 4 North, Range 7 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-154V. Petitioner: Michael R. Clements and Peggy Clements of Sterling, AK.

During their regularly scheduled meeting of January 25, 2021, the Kenai Peninsula Borough Planning Commission granted approval of the referenced right of way vacation based on the means of evaluating public necessity established by KPB 20.70.

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. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval January 25, 2021 in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

The approval is subject to:

1. Providing a 30 foot wide right of way dedication on the east side of Lot 7 to provide a lake access to Gene Smart right of way and continuing to Essick right of way.
2. Consent by KPB Assembly.
3. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
4. Grant utility easements requested by the utility providers.
5. 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).

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

Please contact the Kenai Peninsula Borough's Planning Department at (907) 714-2200 if you have any questions.



## Broyles, Randi

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**From:** Blankenship, Johni  
**Sent:** Monday, February 1, 2021 8:34 AM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>KPB 20-70-130, Planning Board - Caribou Island Subd  
**Attachments:** image001.png; image0.jpeg

Is this vacation on tomorrow's agenda?

Johni

Sent from my iPhone

Begin forwarded message:

**From:** "Hindman, Julie" <jhindman@kpb.us>  
**Date:** February 1, 2021 at 8:32:29 AM AKST  
**To:** "Blankenship, Johni" <JBlankenship@kpb.us>  
**Subject:** FW: <EXTERNAL-SENDER>KPB 20-70-130, Planning Board - Caribou Island Subd

I received this today along with Assembly members.

*Julie Hindman*

Platting Specialist  
Ph: (907) 714-2210  
Fx: (907) 714-2378



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**From:** Nancy DiNapoli [mailto:nan3d@yahoo.com]  
**Sent:** Monday, February 1, 2021 8:30 AM  
**To:** Hindman, Julie <jhindman@kpb.us>  
**Cc:** Derkevorkian, Richard <rderkevorkian@kpb.us>; Bjorkman, Jesse <JBjorkman@kpb.us>; ysoncox@kpb.us; Elam, Bill <belam@kpb.us>; Carpenter, Kenn <KCarpenter@kpb.us>; Johnson, Brent <bjohnson@kpb.us>; Chesley, Lane <lchesley@kpb.us>; Dunne, Willy <WDunne@kpb.us>  
**Subject:** <EXTERNAL-SENDER>KPB 20-70-130, Planning Board - Caribou Island Subd

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.

To the Kenai Peninsula Borough Assembly and the Kenai Borough Mayor,

Regarding KPB Planning Board recommendation on Caribou Island - Skilak Lake, the exchange of platted 100'

ROW for new 30' ROW.

Skilak lake is subject to strong storm winds. The original Caribou Island plat reserved only two wind-sheltered boat landings for use by all the island's owners. This existing 100' ROW is the only wind sheltered public beach on the south shore. Additionally, the existing 100' ROW is improved in that an eight foot wide tractor trail with a packed gravel surface has been in place for about ten years.

On Google Maps the existing protected beach is clearly shown with boats up on the gravel and scuffed gravel from human use. Also visible is the tractor trail. My graphic illustrates the proposed 30' wind exposed beach with a long shallow approach. I have needed to haul my boat up on the existing ROW and walk back to my cabin.

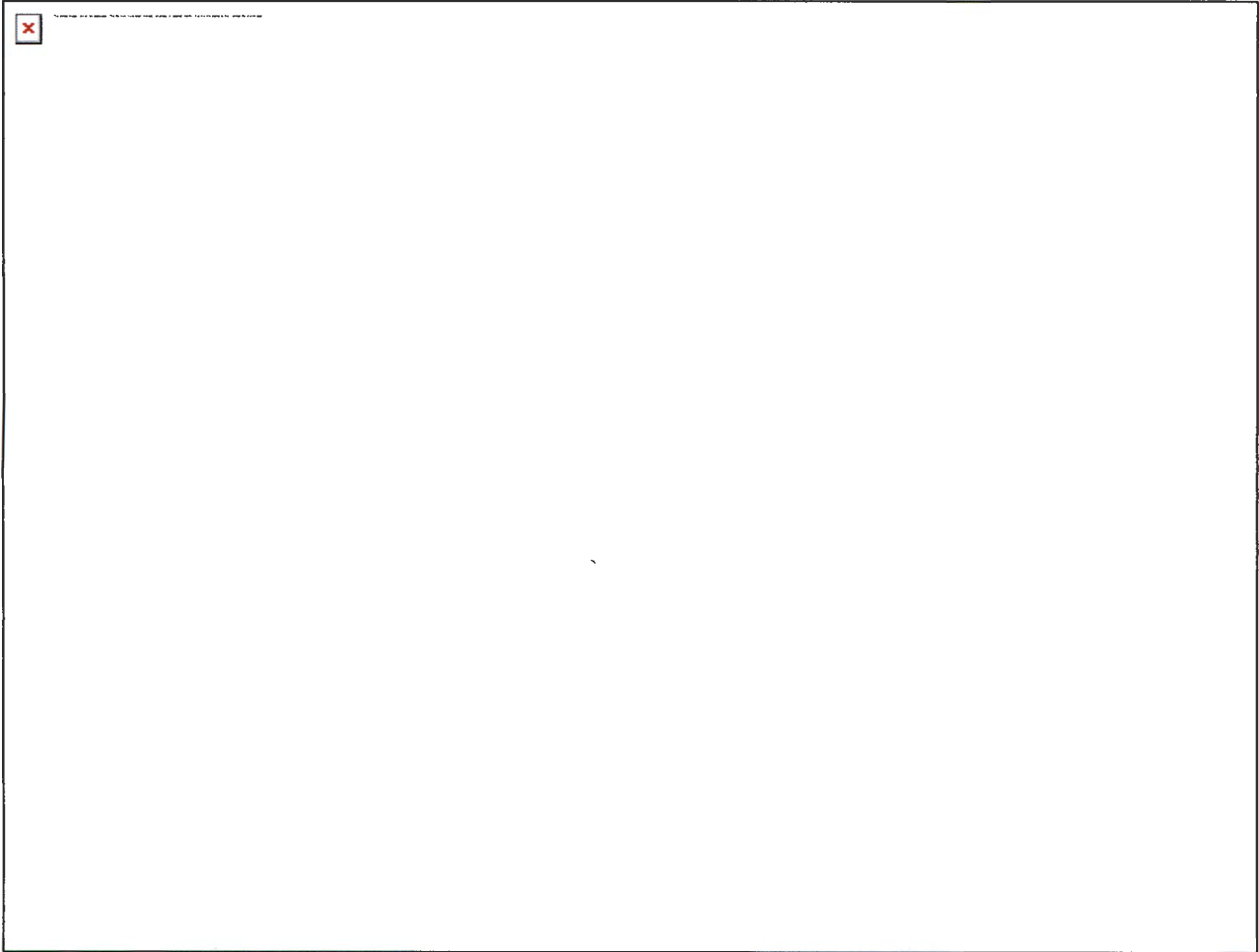
If the petitioners need more land, the other property owners could agree to give up a portion of the existing ROW, but the wind sheltered beach landing should be preserved for public use. It's a matter of public safety.

I thank you for this belated consideration,

Nancy DiNapoli

Owner, Caribou Island Subdivision

Bk 2, L1 and Bk 1, L12,13,14



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## **Broyles, Randi**

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**From:** Blankenship, Johni  
**Sent:** Friday, February 5, 2021 10:35 AM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>Vacation for Essick REM Caribou Island

**From:** Dean Denlinger <dnrdenlinger2@gmail.com>  
**Sent:** Thursday, February 4, 2021 7:20 PM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Vacation for Essick REM Caribou Island

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.

To whom it may concern,

This email is in regards to the proposed right-of-way vacation for Essick REM Caribou Island. I believe it will be of great benefit for the integrity of the island. The current 100 foot easement goes across an environmentally sensitive area. With that wide of an easement for anyone to use, it could cause damage and riparian concerns. On the other hand, a 30 foot easement with a well marked out trail would greatly help to reduce those issues.

As the island becomes more popular and more people will need access to their properties, I believe the 30 foot right of way will be crucial.

Thank you for considering my thoughts,

Dean Denlinger  
Property owner on the island



Greetings Assembly Members

My name is Daniel Moose. My family is (and has been) building a cabin on Section 3 Lot 2 on Caribou Island, 500' from the existing ROW. I was one of the few cabin owners notified (there are 18 active cabin owners on the island) regarding the Planning Commission's hearing to consider vacating the 100' foot right-of way. This ROW I use and rely on for the ongoing construction of my cabin and as a safe harbor for myself and family when the Skilak Lake winds pick up (Winds, as the assembly knows, that without safe harbor can have tragic consequences).

I am requesting that the Assembly step in and reject the Planning Commission's vote to approve vacating a crucial 100' publicly owned Right-of-Way and re-locating it to a useless and reduced (now 30') ROW and giving the newly created premium lot and 70' of shoreline to the petitioners, one of whom is a Planning Commission employee.

I attended the meeting and was given one brief opportunity to express my opposition to the proposal. My comments echoed those of the 2 other neighbors (who were not contacted by the Planning Commission) but were fortunate to have found out about the meeting and were able to comment. All were in unanimity in opposition to the proposal and none were in support and all made these same factual points:

1. Safety: The existing location provides safe harbor for landing when the wind comes up off the glacier. Which it can do rapidly. The 100' right-of-way allows for several boats to land and maneuver at all seasonal lake levels. The proposed 30' offers no cover from the winds, nor space to land or anchor more than a single boat, nor adequate depth of water for any loaded boat. It is a gravel bed leading to a steep incline.
2. Logistics: The existing location provides a safe landing for dropping off necessary supplies while offering an adequate staging area for multiple uses including transferring needed construction materials. The combination of: protection from the wind, adequate water depth, wide and flat area for staging, mitigates the chance of capsizing while loading and unloading. The proposed 30' area does not provide any of these advantages. For us on the southeast shore of the island, the 30' provides what we already have: a shallow, rocky wind-swept shoreline leading to a hill.
3. The existing location offers a perfect gradual slope for transferring loads to either Gene Smart or Essick Rights-of-way. The proposed 30' right-of-way is nothing more than a steep rocky trail leading down to a gravel bar and a spit. The Planning Commissions flat plot does not reveal these things.

A review of any topological map with the necessary resolution would clearly demonstrate that the gravel bed off lot 7 makes the 30' ROW useless for landing...the fact of the existence of the gravel bed is a contributing factor that helps make the existing ROW the safe landing and loading area that it is.

A review of the topography would also point out the gradual slope from waterline to the Essick and Gene Smart ROWs intersection. This contrasts greatly to the proposed 30'ROW which is steep and impractical. Yes, a 4-wheeler can transverse it but not a LOADED one, or one trying to tow materials.

A review of the topography would also show that the island is divided by terrain. Marsh land to the west, ridge and valley to the east. The Southern shoreline paralleling the Gene Smart ROW is low and exposed. Materials coming into the Southeast shoreline have only the 100' ROW that can be used

safely and reliably. No other alternative works. There is a 30' ROW 100' from my property that is useless...used by no-one...exposed to the winds and dangerously shoal for landing.

The Assembly need also consider other aspects of any Planning Commissions vote:

#### Fairness and Precedence

The Planning Commission has voted to take away from every taxpayer on the island, every person in the Borough, an access that has always provided a safe alternate landing spot and a useful and much needed utility area and have voted to give it to a single petitioner for their private use... this over the unanimous objection of all who were fortunate enough to speak. The Commission voted to take mutually owned, prime waterfront property, equal in area to 70% of the average lot size owned on the island, and has given it away for free to a petitioner. This clearly is wrong. When I purchased my lot, I also purchased my right to use this ROW.

The ROW I am using to build my cabin is in the process of being given away to a single petitioner right in the middle of my construction. This is wrong. Mine and all others' property rights have been abridged not for the public good but for the sole benefit of one family.

The ROW that I and my family, and all other's use for safe harbor and landing when the Skilak Lake wind rises is being given to a single petitioner. That is wrong. Mine and all others' safety is compromised, not for the public good but for the sole benefit of one family.

Not notifying everyone on the Island was wrong...it may have been within the Planning Commissions' guidelines but that does not make it in anyway right, it is an ISLAND after all...the whole community deserved notification, not just 6 lot holders.

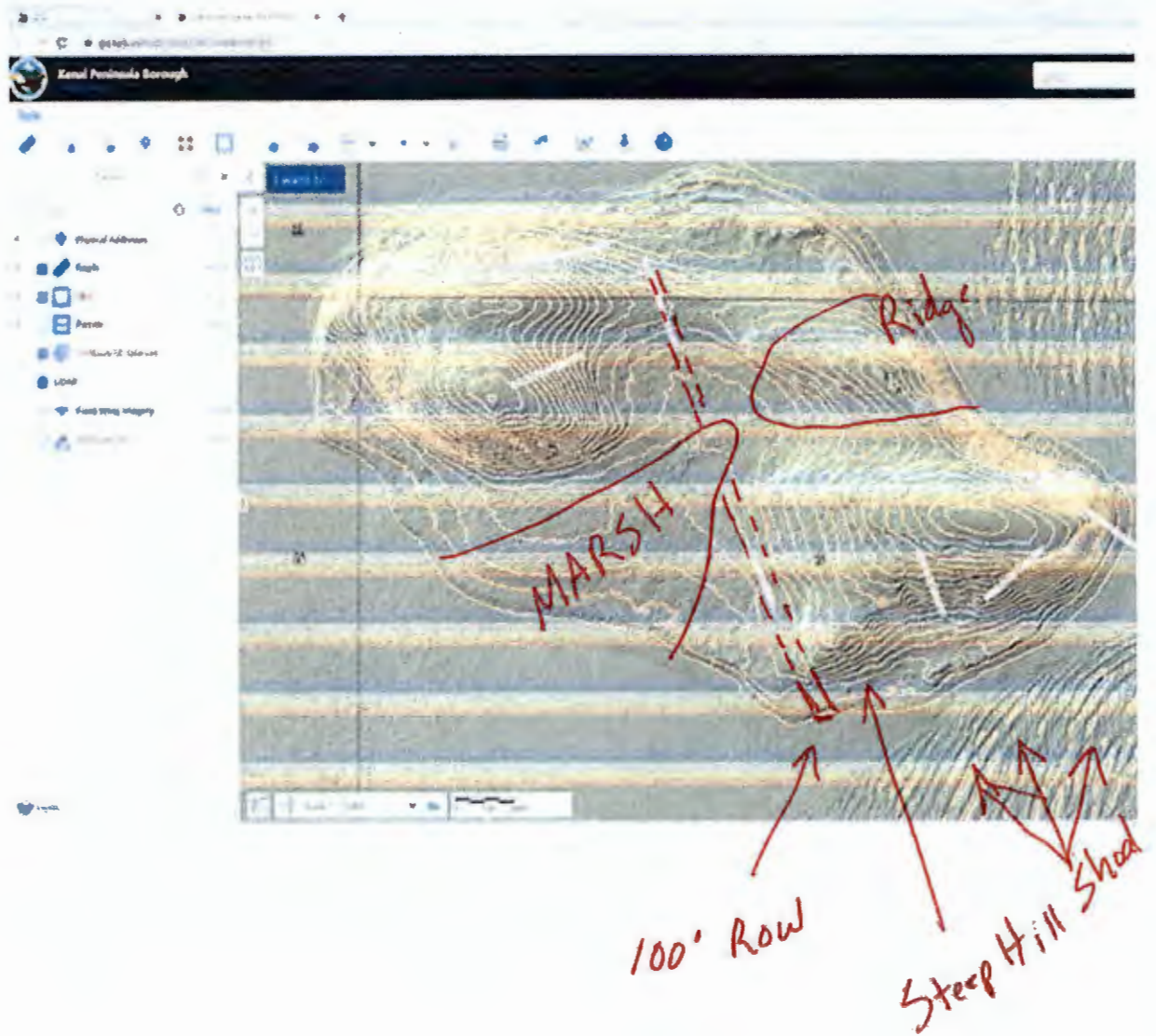
It was also wrong after testifying, that I was not sent the Letter of Decision as at least one other attendee did. The Letter of Decision was important since it included appeal information. Strange not to have received one.

During the Planning Commission hearing in which I was permitted to listen but make no further comment, several of the Commission members seemed to be fishing for a justification to approve. Trespassing seemed to be the foundation for their common cause to vote approval. Transcripts of the hearing will make that clear.

Instead of recommending the petitioner's put up a sign and properly demark their boundary, the Commission decided to deprive all Property Owners on the island access to property they already mutually owned...it was hard to listen to how even the people who built the road and landing of the ROW did not know where the ROW is...insulting...as an excuse to take it away from them. The Planning Commission seemed to take the view that we on the island were to ignorant to find a 100' ROW we've been using for years...but are smart enough to find a new 30' one. Strange logic.

When I bought my property I, like all others on the island, purchased not only my lot but also the right to access and use this and all ROWs on the island. I now ask the assembly to restore my own and every Borough citizens' right of access to the existing 100' ROW. Please do not lock up the Southeast shore of the island. Thanks.





\* Note that the island is divided in half by terrain.



## Planning Department

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

*Only 6 Islanders  
were notified!*  
Charlie Pierce  
Borough Mayor

SEWARD JOURNAL

### KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that a petition was received on 12/18/2020 to vacate a public right-of-way in the Seward Recording District, Remote area. Area under consideration is described as follows:

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Charlie Pierce  
Borough Mayor

We have prepared (and traversed it easily by four-wheeler)  
the area for the new 30' right of way for land owners to use instead if approved.

C. Petitioner(s): Michael R. Clements and Peggy Clements of Sterling , AK.

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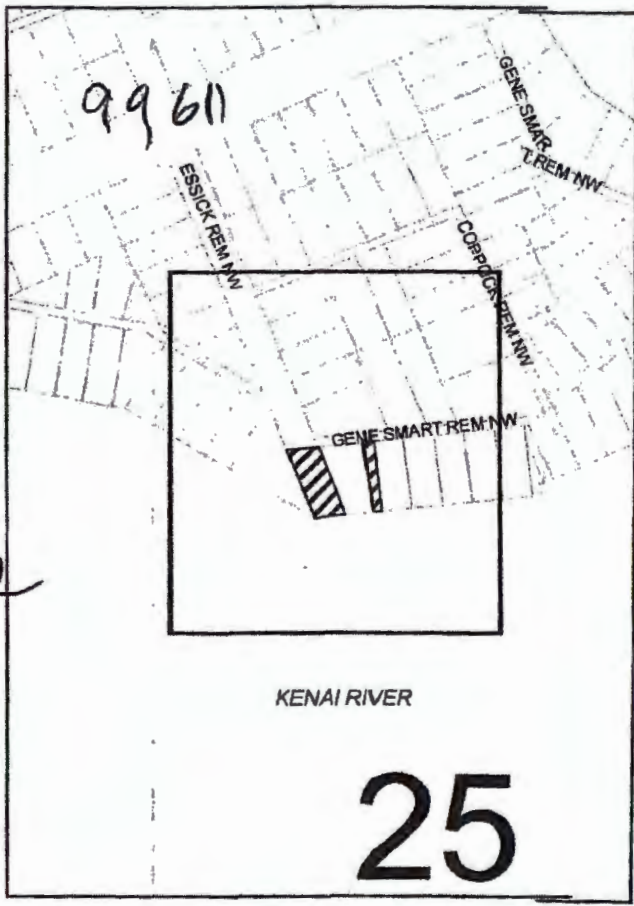
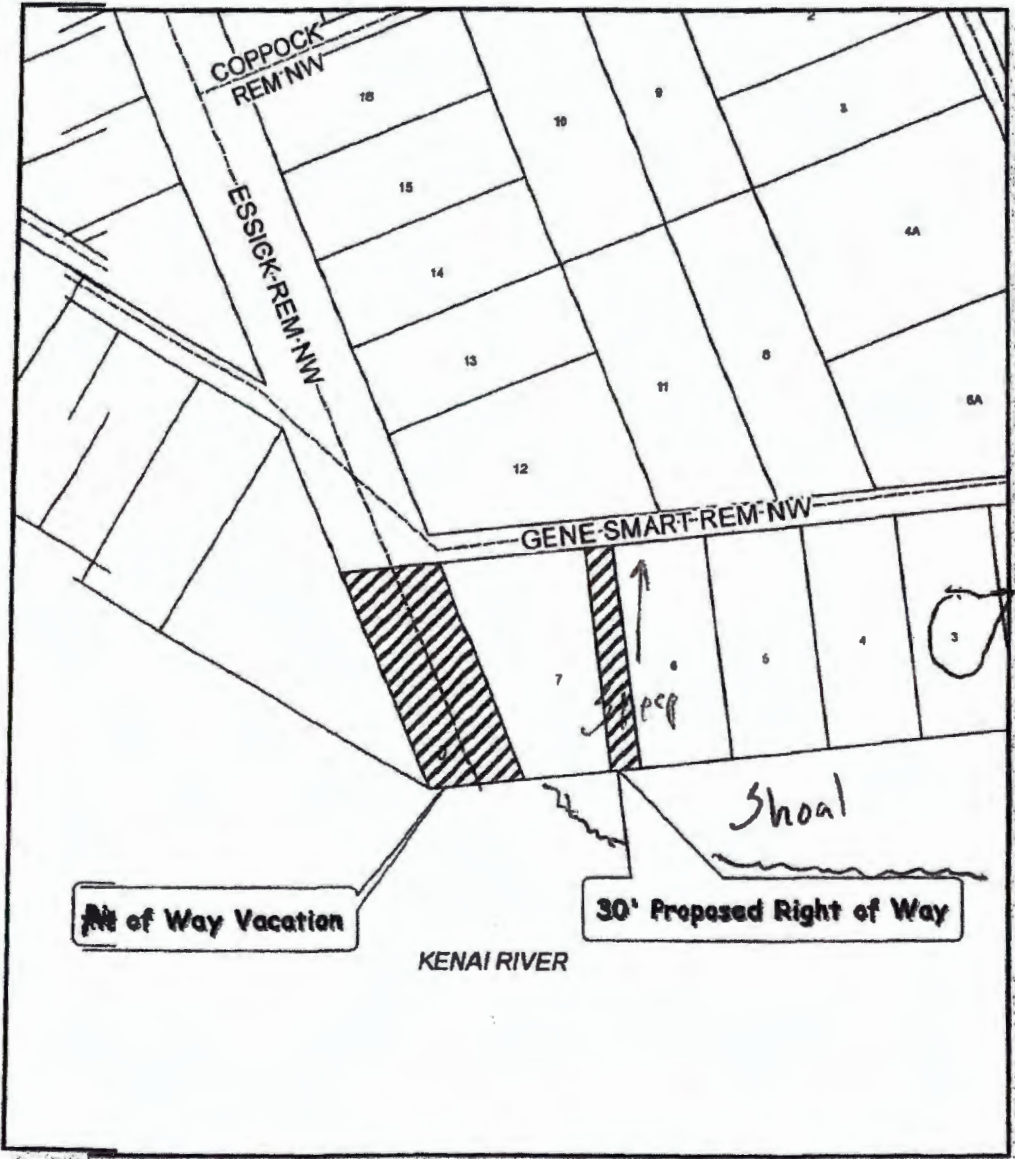
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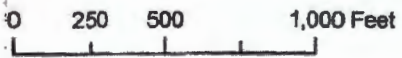
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For additional information contact Julie Hindman ([jhindman@kpb.us](mailto:jhindman@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough) or email [planning@kpb.us](mailto:planning@kpb.us).



25



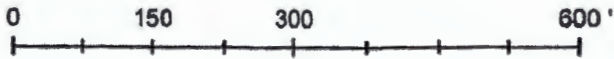
Right of Way Vacation

30' Proposed Right of Way

KENAI RIVER



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.



Caribou  
S25 T04N R07W  
SEWARD

Date: 12/16/2020  
Caribou Island





**RESTRICTIONS & COVENANTS**

1. Lots will be restricted to residential use.
2. No further subdivision of lots without majority agreement of the property owners.
3. All garbage will be disposed of by owner.
4. Buildings will be of a permanent nature and of rustic appearance to blend with the surrounding area.
5. Buildings will be maintained in a good state of repair and appearance.
6. Outfalls will be so located as to prevent stream from becoming a public nuisance.
7. The installation and maintenance of a road, air strip and other facilities shall be the obligation of the property owners.

**SURVEY NOTES**

1. The broken line shows around the subdivision a meander line only. The true property line is the shore or high water mark as conveyed in the original patent.
2. Parcel 10' x 100' (G.L.O. Survey) Parcel 10' x 100' (G.L.O. Survey) Parcel 10' x 100' (G.L.O. Survey) Parcel 10' x 100' (G.L.O. Survey)

**CERTIFICATE OF SURVEY**  
 I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT A SURVEY HAS BEEN COMPLETED AND THAT MARKERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT THE DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

DATE: 10/11/1960  
 SURVEYOR: [Signature]



**CERTIFICATE OF OWNERSHIP**  
 WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED TO SIGN THIS PLAT AS OFFICERS OF THE CARIBOU ISLAND, INC., AND THAT UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS AMENDED PLAT.

DATE: \_\_\_\_\_  
 [Signature]  
 [Signature]

**KPB 2020-154V**

100' ROWV  
 30' ROWV

SEWARD  
 and No. 15-61

RECORDED - FILED  
 1960 OCT 15  
 1960

AMENDED PLAT OF	
<b>CARIBOU ISLAND</b>	SUBDIVISION
LOCATED IN SKILAK LAKE, ALASKA	
U.S. G.L.O. SURVEY NUMBER 2275	
SURVEYED FOR	
CARIBOU ISLAND CORPORATION	
129 E. 5TH AVENUE ANCHORAGE, ALASKA	
ACRES 159.24	SURVEYED BY:
DATE 1 AUG. 1960	F. M. LINDSEY
SCALE 1" = 100'	REGISTERED PROFESSIONAL LAND SURVEYOR
SHEET 1 OF 1	SPENARD PH. PA. 212-22





## Planning Department

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

Charlie Pierce  
Borough Mayor

January 26, 2021

### **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION**

#### **MEETING OF JANUARY 25, 2021**

**RE:** Vacate Essick Remote NW right of way south of intersection with Gene Smart Remote NW as dedicated on Caribou Island Amended, Plat SW-37. The right-of-way being vacated is 100 feet in width, unconstructed, and located within the North 1/2 of Section 25, Township 4 North, Range 7 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-154V. Petitioner: Michael R. Clements and Peggy Clements of Sterling, AK.

During their regularly scheduled meeting of January 25, 2021, the Kenai Peninsula Borough Planning Commission granted approval of the referenced right of way vacation based on the means of evaluating public necessity established by KPB 20.70.

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. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval January 25, 2021 in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

The approval is subject to:

1. Providing a 30 foot wide right of way dedication on the east side of Lot 7 to provide a lake access to Gene Smart right of way and continuing to Essick right of way.
2. Consent by KPB Assembly.
3. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
4. Grant utility easements requested by the utility providers.
5. 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).

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

Please contact the Kenai Peninsula Borough's Planning Department at (907) 714-2200 if you have any questions.



## **Broyles, Randi**

---

**From:** Blankenship, Johni  
**Sent:** Thursday, February 4, 2021 7:02 AM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>Caribou Island Easement Vacation request by Michael R. Clements and Peggy Clements

Sent from my iPhone

Begin forwarded message:

**From:** kmsb@gci.net  
**Date:** February 3, 2021 at 11:30:46 PM AKST  
**To:** "Blankenship, Johni" <JBlankenship@kpb.us>  
**Cc:** "Bjorkman, Jesse" <JBjorkman@kpb.us>, "Cox, Tyson" <tysoncox@kpb.us>, "Elam, Bill" <belam@kpb.us>, "Carpenter, Kenn" <KCarpenter@kpb.us>, "Hibbert, Brent" <bhibbert@kpb.us>, "Derkevorkian, Richard" <rderkevorkian@kpb.us>, "Johnson, Brent" <bjohnson@kpb.us>, "Chesley, Lane" <lchesley@kpb.us>, "Dunne, Willy" <WDunne@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Caribou Island Easement Vacation request by Michael R. Clements and Peggy Clements

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.

Please enter the following into Public Comments

To: Kenai Peninsula Borough Assembly Members

This letter is written to voice my objection to the Caribou Island Easement Vacation approved by the Planning Commission on January 25, 2021. This decision appears to have been made by the Planning Commission with very limited notification and input from the majority of landowners who will be impacted. Many of us learned about this action only by word of mouth after the commission approved it; if all Caribou Island landowners had been notified, there would have certainly been more response and objections voiced. The Assembly should reverse this decision.

The 100' easement on either side of Caribou Island is the main approach to interior lots. There are special considerations that require larger easements and this is one. Easement access is imperative for everyday access and personal use, including boat mooring, transporting materials, food & water--all necessities for living must travel through these easements. If you review the plat and look at the number of interior lots, a 100' easement on both sides of the island along with the additional 30' easements is both realistic and reasonable. Boats require significant space to moor— easements represent the only space for interior lot owners to moor. This easement vacation benefits only the petitioners; it will make reaching interior lots difficult for many. Can you

imagine moving beams and other building materials over a rocky, steep and undeveloped access, then being required to make two 90 degree turns before reconnecting to the 100 foot easement up the hill? Property owners hiking in and carrying their belongings would also find this change difficult. It should be noted that the petitioners have only asked for the access point to be vacated, not the entire easement; again, this appears to be a way to add to and connect their personal property rather than a benefit to islanders as a whole. If encroachment onto their property at the access point is an issue, simply marking their corners and asking people to use the actual easement is an easy solution. Islanders are respectful of one another's property.

I have owned property on Caribou Island since 1978--to my knowledge the plat has not changed during this time. We all knew when we purchased our lots where our property lines were and where the easements were--the lines have been there for decades. My family has also purchased additional lots over the years and ours will be passed to future generations. We built an addition to our cabin, but we planned and kept it within our lot lines respecting the required setbacks. High water, waves and erosion have taken land from all of us on the waterfront; this does not mean we should be able to claim easements as our own. We do not have the right to make decisions this important and impactful for present and future interior lot owners. All of us use easements on the island at some point. This approval sets a dangerous precedence and must be reversed.

Caribou Island is a unique property and decisions regarding easements cannot be treated as they would be in the city or even most rural areas. Easements are vital access and connection points. The desires of the petitioners should not outweigh the needs of many present and future property owners. As Assembly Members, you can and should correct this action by not allowing the Planning Commission's decision to stand.

Sincerely,  
Sandra K. Bowen

## **Broyles, Randi**

---

**From:** Blankenship, Johni  
**Sent:** Sunday, February 7, 2021 3:07 PM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>Caribou Island easement change

Sent from my iPhone

Begin forwarded message:

**From:** Nile Ersland <nileersland@gmail.com>  
**Date:** February 7, 2021 at 12:13:49 PM AKST  
**To:** "Blankenship, Johni" <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>**Caribou Island easement change**

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.

Dear assembly members.

My name is Nile Erslsand. My wife Chris and I have been property owners on Caribou Island for 40 years.

We are both very opposed to any easement change on the island.

This particular change would be very harmful to any land owner of the interior lots.

The proposed easement would make boat landing and moorage dangerous for both boats and especially people. Anyone who has actually seen this location will know that it is very shallow and rocky. Access from there to the interior of the island would be up a very steep grade. Likely unusable by 4 wheelers. Transporting material inland would be extremely difficult, and again dangerous.

It is definitely in the best interest and safety of island property owners to dismiss this easement change.

Regards, Nile Erslsand

--

Nile Erslsand, DDS

----- Forwarded message -----

From: **Curt Smith** <[arncas@gmail.com](mailto:arncas@gmail.com)>

Date: Tue, Feb 2, 2021 at 1:54 PM

Subject: Vacated Easement on Caribou Island, Skilak Lake

To: <[assembly@kpb.us](mailto:assembly@kpb.us)>

I am forwarding this to the above address so it can be a part of the public record..

Curt Smith

Distinguished Planning Board members;

I hesitate to stick my nose into this affair given that the Clements are great folks and have been kind to me but unfortunately I do not agree with the proposed change as it will adversely affect many landowners on Caribou Island.

At first glance the proposal to relocate the existing 100' easement and reduce it to 30' wide seems somewhat reasonable other than trading 30' of beach front for 100' of beach front. I understand the owners desire to unite their two lots and add 70' of contiguous shoreline in exchange for 30' of shoreline to their property BUT the proposal is missing a key piece of information not apparent from the idealized platt map submitted.

Over 1/2 of the shoreline on Caribou Island Skilak Lake is too rocky for boats or float planes to safely come and go. The proposed new location besides being very narrow is in a place where a boat or float plane cannot safely land. Given that it is not allowed by the Kenai River authority to dredge the lake bottom or remove any rocks there is no way to make the proposed site suitable even if it were 100' wide like the current easement.





A shallow boulder strewn shelf extends over 100' out from the mean high water line (see photo and map). It is unsafe to land a boat or float plane along this shore which is why the current easement was placed where it is now located.

The shoreline cabin owners in this area seldom land a boat in front of their lots...they cannot. Only at very high water is it possible. Even then there are many large boulders under the water and many unsuspecting boaters have their lower units to these boulders.

At best high water is from July 15 to September 1st. Some years less. Most of the season the beachfront owners also use the easement not to mention all of the interior lot owners who have no other way to access their cabins except through the 100' easement. Moving the easement from its current location to the proposed unusable location and reducing its width will cut off access to their property for a great number of people and benefit only the owners requesting the change.

I wish I could offer an alternative suggestion. I know the shoreline quite well. I walk it daily when the water is low. There just is not a better place for it than where it is already located.

With respect,

Curt Smith  
Caribou Island LLC  
22974 Andy Anderson Way  
Caribou Island, Skilak Lake

## **Broyles, Randi**

---

**From:** Blankenship, Johni  
**Sent:** Saturday, February 6, 2021 6:19 PM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>FW: Protest to vacation of 100 foot easement on Caribou Island, Skilak Lake

Sent from my iPhone

Begin forwarded message:

**From:** Russell Nogg <rnogg@gci.net>  
**Date:** February 6, 2021 at 12:33:49 PM AKST  
**To:** "Blankenship, Johni" <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>FW: Protest to vacation of 100 foot easement on Caribou Island, Skilak Lake

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.

**From:** Russell Nogg [mailto:rnogg@gci.net]  
**Sent:** Monday, February 1, 2021 7:55 PM  
**To:** 'tysoncox@kpb.us'  
**Subject:** FW: Protest to vacation of 100 foot easement on Caribou Island, Skilak Lake

**From:** Russell Nogg [<mailto:rnogg@gci.net>]  
**Sent:** Monday, February 1, 2021 5:49 PM  
**To:** 'bhibbert@kpb.us'; 'rderkevorkian@kpb.us'; 'jbjorkman@kpb.us'; 'ysoncox@kpb.us'; 'belam@kpb.us'; 'kcarpenter@kpb.us'; 'bjohnson@kpb.us'; 'lchesley@kpb.us'; 'wdunne@kpb.us'  
**Subject:** Protest to vacation of 100 foot easement on Caribou Island, Skilak Lake

Dear Assembly:

My wife, Jean Nogg, and I are over 41 year owners of land and cabins on Caribou Island, Skilak Lake.

We are respectfully requesting you veto the Borough Planning Commission's 1/25/21 decision granting the vacation of a portion of a 100 foot easement abutting the Lake's shore and replacing it with a 30' easement at the far east side of a lot situated east of the current right of way.

The current right of way historically has been used by Islanders like me and my wife as 1 of the 2 -100' easements in order to safely land a boat in rough weather, to tie up a boat in order to visit neighbors, to start a recreational hike or walk, or to use an ATV and/ or trailer for hauling items.

The proposed 30' easement is 70' narrower than the current 100' easement and provides space for only 3 boats at most, with a beach that can't be safely accessed unlike the current easement.

The proposed 30' easement is steep and dangerous to ATV riding, unlike the current easement. In the event of the need to evacuate someone from that part of the Island, it would in my opinion, put the evacuee and responders in greater peril.

A number of we Islanders are senior citizens and rely on safe access and egress.

I would like to suggest that this matter could be revisited after many of us are able to travel to the Island this period of Covid (and which is currently not possible because the Lake is not passable). We are unable to take pictures for the Planning Commission of the current easement and proposed easement until spring or when access by snow machine is safely possible. In any event it is unjust and inequitable to replace a 100' easement with a 30' easement that has inferior landing area and safe access.

The value of various lots because of marginal accessibility could adversely affect land values and Borough tax revenue and set a dangerous precedence.

A number of us just found out about the petition and hearing and therefore were not able to meaningfully participate to voice our concerns and objections.

Again we are respectfully requesting your veto of the Planning Commission's decision of 1/25/21.

Russell A. Nogg



## Broyles, Randi

---

**From:** Blankenship, Johni  
**Sent:** Saturday, February 6, 2021 6:18 PM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>Caribou Island Vacate of ROW

Sent from my iPhone

Begin forwarded message:

**From:** Robert Klotz <taterskilak@gmail.com>  
**Date:** February 6, 2021 at 12:13:57 PM AKST  
**To:** "Blankenship, Johni" <JBlankenship@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Caribou Island Vacate of ROW

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.

Dear Assembly Members,

I am a property owner on Caribou Island. I strongly object to the Planning Commission's decision to vacate a 100' easement and replace it with a 30' easement in a much less desirable place. My first reason is the new 30' easement is not large enough to accommodate the amount of boat parking. 3 boats maximum could be parked at one time. The easement provides access to dozens of lots. Secondly the quality of the beach is horrible for parking a boat unless the Kenai River is at almost flood stage. Thirdly the 30' easement goes up a very steep hill impossible for an ATV to navigate. Finally trading 100' of easement for 30' at face value seems unfair to the other property owners. How about giving us the original 100'?

Robert "Tater" Klotz Jr.

I own Lot 1, Block 12.

Additional information about this vacation. A new trail will have to be built on the new easement. I am not sure you can build a trail there. I know the lot well I sold Lot 7 Blk 3 to the current owners. The current trail was built by myself and one other person. We have put hundreds of man hours in developing this easement to assure there is plenty of room for people to park their 4-wheelers and have a turn around trail so that hauling supplies is easier.

## **Broyles, Randi**

---

**From:** Blankenship, Johni  
**Sent:** Monday, February 8, 2021 7:31 AM  
**To:** Broyles, Randi  
**Subject:** Fwd: <EXTERNAL-SENDER>Proposed Easement Changes Caribou Island-Skilak Lake

Sent from my iPhone

Begin forwarded message:

**From:** jimbo@alaska.net  
**Date:** February 8, 2021 at 6:31:14 AM AKST  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Proposed Easement Changes Caribou Island-Skilak Lake

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.

Good Morning,

We, James and Lorraine Jones, own property immediately adjacent to easement changes proposed on Caribou Island by property owners Mike and Peggy Clements. We purchased our property five years ago and spent the majority of the 2019 and 2020 summer seasons on the island using boat moorings established by the previous owner along with moorings we personally installed. In that timeframe, we have not witnessed other property owners using said moorings nor observed freight and gear hauling activities along the existing easement. The scenic view frequently brings individuals walking the existing trails and shoreline (beach) during periods of low water. This area is situated on the windward side of the island affording no protection from heavy winds therefore, we do not feel easement location changes will bring increased traffic to the immediate area. We feel we would experience no negative impact should the KPB approve easement changes. Thank you.

James and Lorraine Jones

Dear Borough Assembly,

We have been residents of Caribou Island since 2004.

We are asking that you veto the Planning Commission decision made on January 25 regarding the below petition from Michael R. Clements and Peggy Clements:

**RE: Vacate Essick Remote NW right of way south of intersection with Gertie Smart Remote NW as dedicated on Caribou Island Amended, Plat SW-37. The right-of-way being vacated is 100 feet in width, unconstructed, and located within the North 1/2 of Section 25, Township 4 North, Range 7 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-154V. Petitioner: Michael R. Clements and Peggy Clements of Sterling, AK.**

The Planning commission made the following decision:

*During their regularly scheduled meeting of January 25, 2021, the Kenai Peninsula Borough Planning Commission granted approval of the referenced right of way vacation based on the means of evaluating public necessity established by KPB 20.70.*

Our reasons for asking you to veto are the following:

1. The Clements state in their petition they want to move the right-of-way because residents of the island 'mistakenly use' part of their property when they use the right-of-way. This is something that happens all over the island, and other property owners have simply erected barriers that keep it from happening, rather than asking for property lines to change.
2. The Clements own several lots on the island. It appears they want to move the right-of-way so all their lots are together; this isn't a legitimate reason to do something that will affect everyone who accesses that right-of-way.
3. If the right-of-way is moved, who is going to be responsible to cut down trees and lessen the steep grade of the new trail to make it accessible?
4. The area of the beach of the proposed right-of-way is very shallow and rocky, making it impossible to anchor boats.
5. The Clements claim they have talked to other people on the island regarding their petition, but no one I've talked to had heard anything about this petition. We were not sent any notice of this before the Planning Commission met on 1/25.
6. The Clements want to vacate a 100-foot right-of-way between two of their lots, and move it to the other side of one of their lots, but only make it a 30-foot right-of-way, which means they gain 70 feet of lake front property and pay nothing for it. They even say in their petition that they want to leave enough room to build another cabin for family and friends.
7. The Clements claim there are five right-of-ways on the south side of the island. There are actually only 3 on the south side, and the one they want to move is the only right-of-way with established trails. There are a total of six right-of-ways on the island, but only two with

established trails, one on the north and the one in question on the south. Without established trails, island residents cannot move their gear from their boats to their cabins by four-wheeler.

8. The lots we own are in the middle of the island and we access our lots from the right-of-way on the north side, so this doesn't really affect us, but if the Planning Commission's decision stands, they have now set a precedent that says island residents can petition to change right-of-ways to benefit only themselves, and more residents will start petitioning to do so.

Again, we would ask you to veto the Planning Commission's decision to grant the Clements' petition.

I think it's also important that you know that the residents of the island are aware that Peggy Clement actually works FOR the Planning Department as Platting Technician, which seems to us a drastic conflict of interest. I called the Planning Commission office and was transferred TO Peggy. I'm not going to talk to her about her own petition. That's very bad public relations on the part of the Planning Department.

If you would like to further discuss this, you can reach us at 805-801-8055.

Respectfully submitted,

Gary and Jill Leiter



Mike Clements  
38260 Panoramic Drive  
Sterling, AK 99672

Owner/Petitioner Essick REM Right of Way Vacation  
Lots 1,2,3 Block 6, Lot 7 Block 3 and Lot 12 Block 4, Caribou Island Sub Amended  
SW-37.

Dear Assembly;

I'd like to start by thanking the assembly for listening to my concerns and proposals for the vacation.

I have attached our record of survey, please look at the record of survey that we have provided for you. Notice on our west line between lots one and two we have lost 92.25 feet, due to natural and man-made erosion.

On the East End of our property we have lost 89.65 feet of length do mainly to the misconception of where the easement actually is, plus if you add the 50 foot habitat protection zone that starts at the open high water (OHW) that even decreases the allowable area for building to almost a point where we can't.

If you look at the picture that we supplied, you'll see that the easement which it's hard to see the orange surveyors tape that I have placed on the easement boundaries, and that the shoreline is inaccessible due to a vertical step up of 2 feet. So that makes the people using the easement want to come around to the area that has been destroyed on my property and utilize that due to convenience.

I've had many instances where people are trespassing on the entire length of my property and two instances stand out Mr. Moose who has recently purchased lake front property to the east of us and is five parcels down the lake from me. Dan Moose had instructed some of his guests to moor their boat on my moorings and trespass through my property on multiple occasions without my notification or permission.

My neighbor next to me confronted them and told them that they were on private property and private moorings.

They said they were instructed to do so by Mr. Moose. I contacted Mr. Moose and told him, I didn't appreciate people that I don't know parking their boat and moving through my property.

His response too that was, "he considered them trustworthy".

So the next thing I asked Mr. Moose was, what if I come in on my boat and they're on my moorings preventing me from a safe landing?

His response to me was, "well just walk on down to my property get someone and we'll move our boat".

That was not the answer I was looking for, I think what he should've said was, I'm sorry and it won't happen again.

Another instance that happened a realtor came and installed a for sale sign in the center of our lot three on the west end, that sign was screwed to one of our manicured trees and they could clearly see that the area has been cleaned up, grass mowed and visible to be private property.

The Donald E. Gillman River Center prohibits the use of permanent private property signage in the habitat protection zone to establish where our property corners are. When you look at that picture of the barge, you'll see that it's pulled up to our back property line and our property boundaries encompass the entire barge which I do not own.

The barge sits there all year long and sometimes cannot be moved until late in July when the water is high enough for it to float again, people have a misconception of where the easement is.

I'd also like to add that I am an Alaska State Certified Erosion and Sediment Control Lead for nine years and I see what kind of damage can happen when we have erosion and sediment discharges into United States Waters.

It is my duty to try and install the best management practices to stop this from happening, this is why we payed particular attention to where our proposed area would be and the best solution for access, so not to cause additional erosion and sediment discharges.

I discussed it extensively with our neighbor, Jim and Lori Jones, were the proposed 30 foot easement was going to be located adjacent to their property and they both agreed that was the best possible solution.

There is no step up in the embankment, it has a smooth gravel transition into the vegetative area and a trail is already established there.

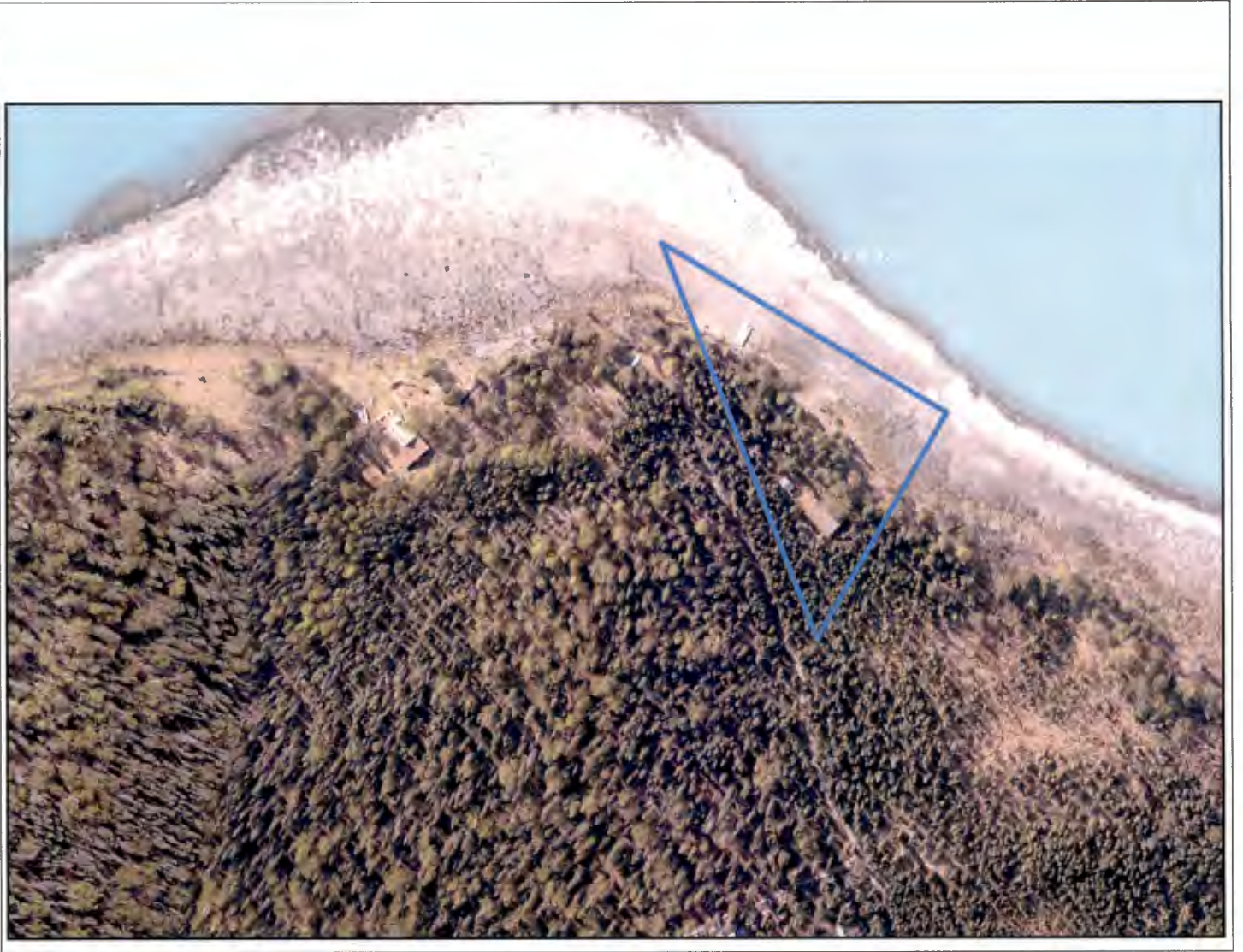
In conclusion I would like to say that I wish the people of the island if they were concerned about what was going on, they should've contacted me, and I would've been happy to produce my record of survey and show them exactly where those property lines are so it becomes clear that everybody is trespassing.

And causing extensive damage to my property that will surely cost a lot in labor to rebuild.

Respectfully submitted,

Mike Clements







OHW AS DETERMINED THIS SURVEY (VEGETATION LINE)



This is a survey of Lot 1, Block 6 - Caribou Island Subdivision. This does not constitute a subdivision as defined by A.S. 40.15.190(2).

# RECORD OF SURVEY

LOT 1, BLOCK 6 - CARIBOU ISLAND SUBDIVISION. ( SW 0000037 )

SECTION 25, T4N, R7W, SM, AK

- FD 1/2" REBAR/CAP
- FD 1/2" REBAR
- ⊙ FD 5/8" REBAR/CAP



Scale: 1" = 100'

Date: 11/14/2014

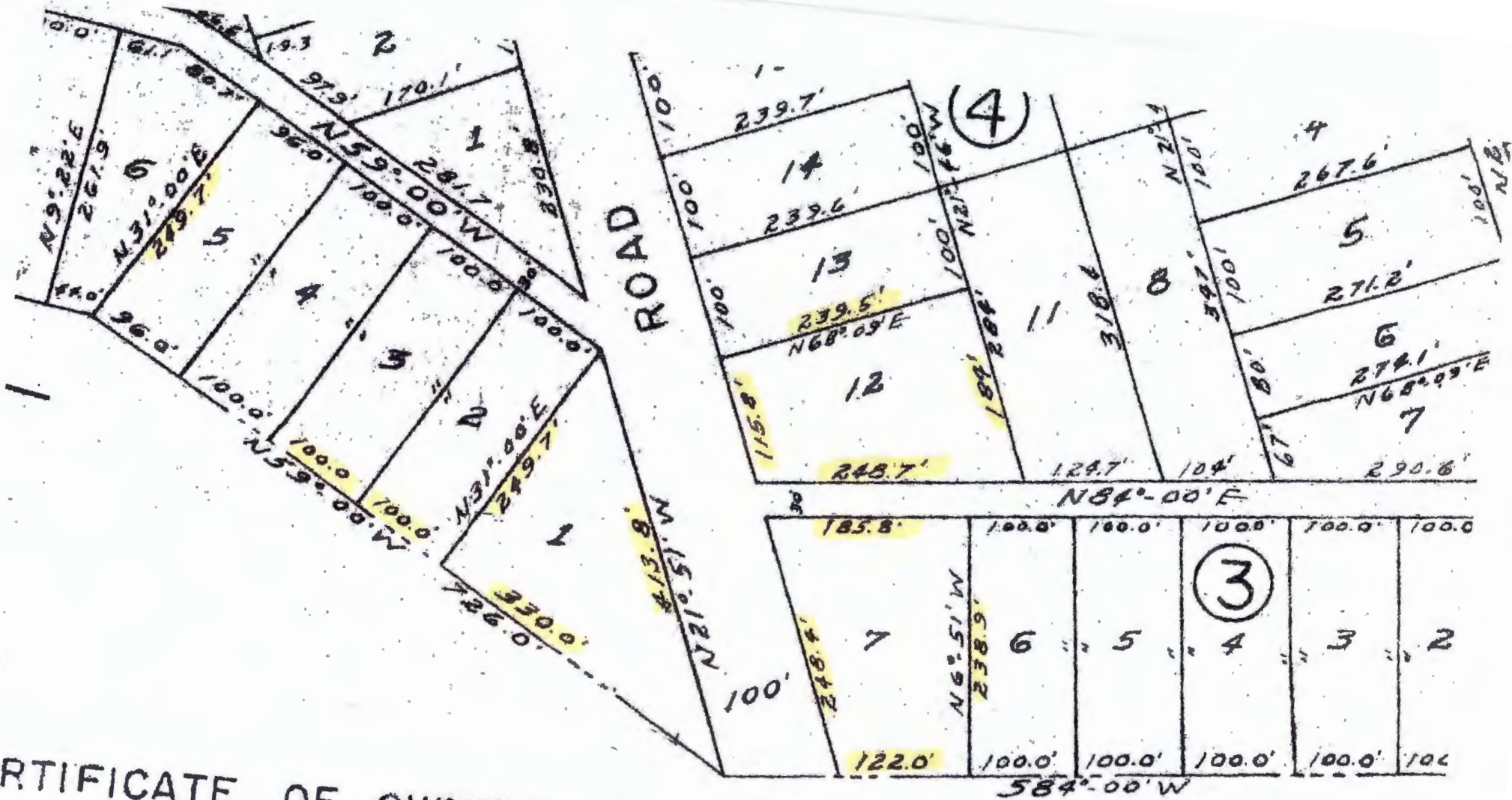
Job No.: 16Caribo

Revised:

WHITFORD SURVEYING

PO Box 4032  
Soldotna, AK 99669  
(907) 268 6705





**CERTIFICATE OF OWNERSHIP**

SIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED  
 AS OFFICERS OF THE CARIBOU ISLAND, INC.,  
 UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS

**SEWARD**

Serial No. 65-8











# SKILAK LAKE



- RESTRICTIONS & COVENANTS**
1. Lots will be restricted to residential use.
  2. No further subdivision of lots without the majority agreement of the property owners.
  3. All garbage will be disposed of by burial.
  4. Buildings will be of a permanent nature and of rustic appearance to blend with the surroundings.
  5. Buildings will be maintained in a good state of repair and appearance.
  6. Outhouses will be so located as to prevent them from becoming a public nuisance.
  7. The installation and maintenance of the air strip and other facilities shall be the obligation of the property owners.

- SURVEY NOTES**
1. The broken line shown around the subdivision is a meander line only. The true property line is the 1/2" shore or high water mark as conveyed in the original plat.
  2. Point 7' is in rock (C.L.S. Survey).
  3. Point 8' is in rock (C.L.S. Survey).
  4. Point 9' is in rock (C.L.S. Survey).
  5. Point 10' is in rock (C.L.S. Survey).
  6. Point 11' is in rock (C.L.S. Survey).
  7. Point 12' is in rock (C.L.S. Survey).
  8. Point 13' is in rock (C.L.S. Survey).
  9. Point 14' is in rock (C.L.S. Survey).
  10. Point 15' is in rock (C.L.S. Survey).
  11. Point 16' is in rock (C.L.S. Survey).
  12. Point 17' is in rock (C.L.S. Survey).
  13. Point 18' is in rock (C.L.S. Survey).
  14. Point 19' is in rock (C.L.S. Survey).
  15. Point 20' is in rock (C.L.S. Survey).
  16. Point 21' is in rock (C.L.S. Survey).
  17. Point 22' is in rock (C.L.S. Survey).
  18. Point 23' is in rock (C.L.S. Survey).
  19. Point 24' is in rock (C.L.S. Survey).
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  94. Point 99' is in rock (C.L.S. Survey).
  95. Point 100' is in rock (C.L.S. Survey).

**CERTIFICATE OF SURVEY**  
 I, THE UNDERSIGNED REGISTERED LAND SURVEYOR, HEREBY CERTIFY THAT A SURVEY HAS BEEN COMPLETED AND THAT MARKERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT THE DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

16 Nov 1960 DATE  
 [Signature] SURVEYOR



**CERTIFICATE OF OWNERSHIP**  
 WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE AUTHORIZED TO SIGN THIS PLAT AS OFFICERS OF THE CARIBOU ISLAND, INC., AND THAT UNDER THIS AUTHORITY, WE ACCEPT AND APPROVE THIS AMENDED PLAT.

DATE \_\_\_\_\_  
 [Signature] President  
 [Signature] Secretary

SEWARD  
 16 Nov 65-86

RECORDED - FILED  
 [Signature]  
 11 2-3 1165  
 11 9-10 1165  
 [Signature]

AMENDED PLAT OF	
CARIBOU ISLAND	
SUBDIVISION	
LOCATED IN SKILAK LAKE, ALASKA	
U.S. G.L.O. SURVEY NUMBER 2093	
SURVEYED FOR	
CARIBOU ISLAND CORPORATION	
129 E. 9TH AVENUE ANCHORAGE, ALASKA	
ACRES 150.24	SURVEYED BY
DATE 1 AUG. 1960	F. M. LINDOZE
SCALE 1" = 100'	REGISTERED SURVEYOR
SHEET 1 OF 1	NO. 601-5
	BOX 4-08
	SPEARHEAD, ALASKA
	PL. 24 212-44



Peggy Clements  
38260 Panoramic Drive  
Sterling, AK 99672

Owner/Petitioner Essick REM Right of Way Vacation  
Lots 1,2,3 Block 6, Lot 7 Block 3 and Lot 12 Block 4, Caribou Island Sub Amended  
SW-37.

Dear Assembly;

Thank you for your time and opportunity to comment in regards to our vacation request.

We had received approval from the Planning Commission on their January 25, 2021 meeting, 8 yaks and 3 nays.

The commission asked questions of us as well as the two land owners that were present (both owners of lakefront lots and next to a 30' right of way). I feel the commissioners were very thorough in the 45 minutes the meeting lasted.

Our comment to you for approving the Planning Commissions decision as follows;

Before we decided to petition for this right of way vacation, we discussed it for months as well as walking our property for the best location for a better dedicated right of way area for public to use.

We contacted our nearest neighbors and discussed with them what we have planned. We are not wanting to disrupt their normal ways of accessing their lots (and it was understood that this will prevent future interior property owners from trampling our private property shoreline and creating further erosion). We requested The Donald E. Gilman River Center to prepare a letter (attached hereto) so we know of the restoration process and if anyone wants to develop the newly dedicated 30' right of way any further, that we could inform them of this information so not to destroy the habitat protection area, as well for our own knowledge as we do want to develop the right of way more at the north boundary (not within the habitat protection area, but more to widen the sloping area there.

We did not contact the entire island as we felt the majority lot owners have access to their lakefront lots as well as 3 100' right of ways and 2 30' right of ways and would not be concerned with our reroute plans.

We determined our lot 7 block 3 was perfect. We cleaned up the area and see that the whole 30' we want to dedicate is cleared and easily accessible for others wanting to use it. We have rode our ATV all the way to connect with Gene Smart REM NW. We plan on this spring (if not veto'd) to develop the right of way more at the north boundary of our lot 7 so that if hauling a trailer, a turn onto Gene Smart REM NW would be an easy maneuver.

We have been made aware from other lot owners that they have been called and asked to go against our plans as we only want to obtain the remaining vacated right away so we can build on this and sell it for financial gain.

This was surprising to us, why would lakefront lot owners that have access to their lots and that have never used the Essick REM NW right away have negative comments? They never called us to ask for our thoughts before making a rash decision assuming we are greedy individuals.

To point out to the assembly, we have not heard from anyone making negative comments that live in the interior of the island.

We have owned here since 2004 and to hear untrue comments from lakefront owners is truly disheartening and ask, how would the vacation affect them?

We feel they have no concern of the habitat protection area or our private property being destroyed and the need to restore and prevent further erosion and misuse.

We love our property and never plan to sell it, in fact we enjoy seeing the moose swim over to the island every May to birth calves, watch the rock nesting birds as well as waterfowl, we have seen seals in the lake chasing the salmon that come up the Kenai River to spawn here. We want these properties to stay with our family for generations to inherit and enjoy.

To answer the question for safe haven, we will never deny anyone safe haven but with that said, Skilak Lake and the glacier there creates its own weather pattern and storms can kick up at any moment and the winds can blow from any direction. We have had to seek safe haven and moved our boat to the west side of the island for safety from the shallow area creating waves in front of our property when the wind blows.

Respectfully submitted,

Peggy Clements





# Donald E. Gilman River Center

514 Funny River Road, Soldotna, Alaska 99669 • (907) 714-2460 • (907) 260-5992 Fax

*A Division of the Planning Department*

Charlie Pierce  
Borough Mayor

February 4, 2021

Michael and Peggy Clements  
PO Box 4133  
Soldotna, AK 99669

## **RE: Lots 1 & 2 Block 6, and Lot 7 Block 3 Caribou Island Subdivision Amended**

Dear Mr. and Mrs. Clements:

The River Center was asked to provide comment regarding permitting requirements for proposed bank restoration projects on the above-referenced parcels, located on Caribou Island. Caribou Island is located in Skilak Lake, which lies within the flowing waters of the Kenai River. These waters are managed and permitted through several agencies at the River Center: Kenai Peninsula Borough (KPB), Alaska Division of Natural Resources (DNR), and the Alaska Department of Fish and Game (ADFG).

KPB Chapter 21.18 regulates certain activities on all lands within 50 feet of Ordinary High Water (OHW), which is determined by measuring landward from the existing vegetation line. This area is referred to as the Habitat Protection District (HPD), and this letter outlines requirements within the HPD.

### **General Requirements:**

KPB 21.18.065(A): Natural vegetation on land abutting lakes and streams protects scenic beauty, controls erosion, provides fish and wildlife habitat, moderates temperature, stabilizes the banks, and reduces the flow of effluents and nutrients from the shoreland into the water. Vegetation removal and land disturbing activities within the HPD are prohibited.

- Activities within the HPD not requiring a permit include: routine maintenance of prior existing ornamental landscape features, pruning, weeding, planting of native vegetation, removal of **downed** trees, pruning up to 25% of the living grown of trees and woody shrub.
- A Minor Vegetation Permit (MVP) is required for the removal of any tree within the HPD. Property owners are required to plant two (2) native trees/shrubs within the HPD for every one (1) tree removed.
- A Multi-Agency Permit (MAP) is required for the placement of any material (gravel) and or structures (platforms) within the HPD.

**Proposed Development Requirements:**

**Lot 1 Block 6 - KPB Parcel #135-042-14**

- No permit would be required to restore a prior-existing access pathway that has eroded along the shoreline.

**Lot 7, Block 3 – KPB Parcel #135-055-01**

- A MAP would be required to widen the existing access path or install a new access path along the proposed easement, and an MVP would be required for the removal of any trees.

**Existing 100-foot platted easement (Essick Rem.)**

- A MAP would be required to create an access path through the existing easement between Lots 1 and 7, and an MVP would be required for the removal of any trees.

Please contact the River Center if you have any questions regarding these requirements. I can be reached at (907) 714-2468 or [slopez@kpb.us](mailto:slopez@kpb.us).

Sincerely,



Samantha Lopez, CFM  
Acting River Center Manager  
Donald E. Gilman River Center  
Kenai Peninsula Borough  
907-714-2468



## Broyles, Randi

---

**From:** Blankenship, Johni  
**Sent:** Monday, February 8, 2021 1:22 PM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>2-8-21 KPB Public Record and Assembly Members"Vacated Easement on Caribou Island, Skilak Lake 2521" - VETO

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

**From:** bigwavedave@alaska.net <bigwavedave@alaska.net>  
**Sent:** Monday, February 8, 2021 1:01 PM  
**To:** Blankenship, Johni <JBlankenship@kpb.us>; G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Cc:** David Merrigan <bigwavedave@alaska.net>  
**Subject:** <EXTERNAL-SENDER>2-8-21 KPB Public Record and Assembly Members"Vacated Easement on Caribou Island, Skilak Lake 2521" - VETO

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.

To be submitted to the KPB Public Record and each and all KPB Assembly Members.

Please read the two updated documents below as they both contain separate and important details and information pertaining to KPB Planning Commission's Decision to "Vacated Easement on Caribou Island, Skilak Lake 2521 "

1st note !

Dear Assembly Member

VETO "Vacated Easement on Caribou Island, Skilak Lake 2521"

>

> I am a 20 year plus property owner on Caribou Island on Skilak Lake.

> I am very disappointed to here of the Planning Commission's decision to vacate a The Traditional 100' easement and replace it with a 30' easement in a questionable location.

> I also question the fairness of having 100 ft of easement land taken away from all land owners and only 30 ft replaced as fair compensation for the interests of one land owner.

> I am very familiar with the areas in question.

> The new Proposed 30 ft site, simply put, is not safely approachable by boat. It is shallow and has many large rocks making access near impossible. The proposed new 30 ft easement will traverse thru a muddy low lying area terminating at the base of a steep embankment leading abruptly up 10-15 ft in elevation to the required easement currently carved precariously into the hillside above. The hillside then continues sharply up and into private property above the project's easements intersection. This may make for an extremely difficult transition to transport goods and materials, especially to those with lower physical capabilities and the elderly.

> While the proposed 30 ft site may seem in close proximity to the existing Traditional 100 ft Easement on Caribou Island, given the potential severity of weather and varying lake bottom terrain, even a mere 20 ft of distance on the waterfront can make a drastic difference in the ability and safety of land owners to navigate a boat to the shoreline on much of Caribou Island.

- > All Caribou Island land owners share in the ownership of all the island easements, this is extremely important when you consider that these easements are vital to all landowners and their FUTURE GENERATIONS capability to safely access the island and easily transport goods, materials, families and friends to their properties safely.
- > The existing Traditional 100 ft Easement assures us as landowners that we and our future generations will have these same capabilities.
- > As all easements are communal properties of all Caribou Island property owners we all own an interest this easement property, putting all island property owners inside the boroughs required contact boundary regions for this action, however I am aware of only six attempts to contact all of the easement property owners.
- > This may explain why islands property owners I have been contacted by have expressed the feeling of being blindsided.
- > The reality of our situation is that back in the day (1960) this undeveloped island was plated out with paper and pencil on some remote desktop without the benefit of being onsite or the knowledge of the true lay of the land.
- > Of all their platted easements leading to the lake for intended boat access, only both ends of this Traditional 100 ft Easement in question would in reality prove to provide the safe access for all land owners and emergency services which may be required to safely access the island with a boat.
- > Unfortunately the lay of the land and lake bottom prohibit the other dedicated lake access easements from from functioning as intended.

I am sure this was not their intention, but it is the result we must live with on Caribou Island.

- >
- This proposal has come to our attention only after the planning committee had already approved it and with less than the 30 day time limit remaining, for the possibility of a veto.
- > Given the severe restrictions that Covid has put on all of us (especially the elderly owners) along with the the fact that the Skilak Lake is not passable this time of year, prohibits prudent on site inspection of the situation.
- > For the health and safety of the land owners of Caribou Islands young, old and future generations, I am forced to ask you to VETO this action.
- >
- > We should revisit this situation in the early summer with Mike and Peggy Clements of Sterling AK, giving them an opportunity to voice their concerns, when we can truly see the ground in question in advance of any action taken, an opportunity which was not afforded the countless families which will be impacted by this action if not vetoed by you in a timely fashion.

Please contact me if I can help you in any way.

- >
- > I truly believe there is a better solution, VETO this action and give
- > all impacted the chance to walk our ground to review this situation.
- >
- > Thank you
- > David Merrigan
- > 907 382 0007
- > bigwavedave@alaska.net

2nd note, new information !

Dear Assemble Member

- > VETO - Vacated Easement on Caribou Island, Skilak Lake 2521
- >
- > I took it upon myself to initiate contact with Mike and Peggy Clements.
- > I felt compelled to try and end the unhealthy lack of communication surrounding this proposal process.
- >
- > I reached out to Mike and he did phone me back.
- > I ask him to explain what the proposal to vacate the 100 ft easement was all about.

> I listened to him carefully for over 40 minutes and I ask many questions.

> In the end I felt we had a friendly conversation which is exactly what I expected from the Mike Clements I have come to know and like over the years.

Mike told me that the 100 ft easement was on his property and that he has lost land.

I could not grasp were Mike was trying to explain this 100 ft easement encroachment on his property has taken place.

> Mike spoke of a high water marker he has installed and about vegetation growing up through the lake in front of his properties. Mike also made referenced to some spot on the back of one of the lots.

He said he was unhappy about a new open moose hunting season bringing boats and hunters to the far shore of the lake across from his properties and the increased lake traffic in general.

Mike also told me of an indecent in which a crew, working on a cabin east of him tied up to his boat mooring in the lake in front of his cabin, a lot or two west of the 100 ft easement with out his consent then used his property to access to the island.

Mike also told me he has already given verbal consent to (Mike Kerr) the the owner of an 8 ft. Wide barge, presently parked partially in front of the 100 ft easement, and partially in front of Lot 1 Block 6 owned by Mike and Peggy Clements, permission to remain parked in perpetuity, after Mike and Peggy acquire the 100 ft easement.

Mike told me he is prepared to put this agreement in a written document for Mr. Kerr after their Vacate Proposal passes approval and they acquire the area.

Mike also told me that he has offered a similar proposal of continued usage to (Jim Jones) the owner of the property (Lot 6 Block 3) adjoining the east side of the proposed new 30 ft easement.

I must admit that I came away from our conversation with no true understanding of where the easement could actually be on his property or just how it has caused land loss.

>

> I had knowledge of a land survey which was done by the previous owner and Mike and Peggy Clements when the Clements purchased the parcel of land (Lot 7 Block 3) containing the proposed 30 ft section and I believe the survey included the Traditional 100 ft Easement at the location in question.

> I phoned the previous land owner. He said he was on site at the time the actual survey took place and the easement was fine.

> I phoned him after talking to Mike and made sure my reckoning was correct.

>

> I know the area very well having used the 100 ft easement at this location many times (hundreds and more through out the years before and during my 20 years of ownership) to visit the previous owner at his cabin on one of his three waterfront lots, one abutting the east boundary of the 100 ft easement and two continuing east along the waterfront (all 3 lots are low, wet and muddy through out the year).

> Many times I walked gingerly through the exact lot containing the proposed 30 ft area to access his cabin, because boat access to the beaches in front of this area east of the 100 ft easement was not a viable option.

> With all this experience in mind I racked my brain into a restless sleep in an attempt to decipher what may have been happening to Mike and Peggy's land.

>

>The next day after more contemplation, it hit me like a ton of bricks.

I believe Mike was referring to some land (now under water) shown on the original plat map (1 Aug 1960) of Caribou Island in front of his properties and in front of the 100 ft easement, which the Lake and Mother Nature have reclaimed over these many years. Leaving only rocks and sparse vegetation remaining, partially under water along the shoreline of the lake.

The date on the original plat map is difficult to read and a lot of time has pasted since then.-1 Aug 1960 -.

>

I also own shoreline on the lake which varies from that shown on the original plat map, as does every other waterfront landowner on the Island that I have ever talked to.

If this is the issue with Mike and Peggy, all Caribou Island waterfront owners share their frustration of this naturally accruing situation.



> While it may not be a positive part of waterfront ownership, it should be accepted with grace and humility, as it is the potential price we all must pay for living on Alaska's Amazing Wild Waters.

>

> Traditionally this location on the 100 ft easement has provided Island owners with abilities to safely bring their families, goods and the building materials necessary to sustain life and safety to their island.

> It is certainly is not fair to expect All Landowners to sacrifice their interests in this Traditional 100 ft Easement, in exchange for a much narrower 30 ft of unproven ground and shoreline, for the expressed interests of only one land owner, because they may be unable to accept what Mother Nature has been doing, and will continue to do, since the beginning of time.

>

> This is not the first time I have witnessed this frustration lead to unreasonable expectations.

> Usually when given time and understanding, acceptance of this reality is achieved.

>

> Please VETO Vacated Easement on Caribou Island, Skilak Lake 2521

>

> Thank you

> David Merrigan

> [bigwavedave@alaska.net](mailto:bigwavedave@alaska.net)

> 907 382 0007

> Please feel free to contact me if I can provide any further clarity or information.