

Kenai Peninsula Borough

144 North Binkley Street

Soldotna, AK 99669



Meeting Agenda

Tuesday, February 25, 2020

6:00 PM

Betty J. Glick Assembly Chambers

Assembly

Kelly Cooper, President

Hal Smalley, Vice President

Norm Blakeley

Jesse Bjorkman

Kenn Carpenter

Tyson Cox

Willy Dunne

Brent Hibbert

Brent Johnson



Assembly Meeting Schedule

TUESDAY, FEBRUARY 25, 2020

- 1:45 PM** **Finance Committee**
Presentation – Bethany Jessen, RBC Public Funds Service, Review of the Borough's Investment Portfolio (30 Minutes)
- 2:15 PM** **Lands Committee**
- 2:45 PM** **Policies and Procedures Committee**
- 3:00 PM** **Legislative Committee**
- 4:00 PM** **Assembly Tour of the Office of Emergency Management (OEM)**
- 6:00 PM** **Regular Assembly Meeting**

Above listed meetings will be held in:

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula Borough Administration Building
144 North Binkley Street, Soldotna, Alaska



Finance Committee

February 25, 2020

1:45 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Hibbert, Chair

Tyson Cox, Vice Chair

Brent Johnson

AGENDA

ITEMS NOT APPEARING ON THE REGULAR MEETING AGENDA

1. Presentation – Bethany Jessen, RBC Public Funds Service, Review of the Borough’s Investment Portfolio (30 Minutes)

PUBLIC HEARINGS ON ORDINANCES

1. Ordinance 2019-19-27: Appropriating Matching Funds for the Japanese Creek Levee Flood Risk Mitigation Feasibility Study (Mayor) 9
2. Ordinance 2020-03: Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley) 14

NEW BUSINESS

2. Ordinances for Introduction
 - *a. Ordinance 2019-19-28: Appropriating Funds from Nikiski Fire Service Area and Approving the Purchase of Safety-Rated Belts for Self-Contained Breathing Apparatus Equipment for Central Emergency Service Area and Nikiski Fire Service Area (Mayor) (Hearing on 03/17/20) 146
 - *b. Ordinance 2019-19-29: Appropriating Funds for Three New Borough E911 Dispatcher Positions to Replace Three Vacant State E911 Dispatcher Positions (Mayor) (Hearing on 03/17/20) 149
 - *c. Ordinance 2020-07: Approving and Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management to Reimburse Repairs at the Hope School and the Nikiski Junior/Senior High School Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor) (Hearing on 03/17/20) 154

*Consent Agenda Items



Lands Committee

February 25, 2020

2:15 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Brent Johnson, Chair

Kenn Carpenter, Vice Chair

Norm Blakeley

AGENDA

PUBLIC HEARINGS ON ORDINANCES

- 3. Ordinance 2020-06: Authorizing a Community Trail Management Agreement on Borough Land within the City of Soldotna with Shimai Toshi Garden Trails, Inc. (Mayor) 47
- 4. Ordinance 2019-24 (Mayor) Substitute: Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor) 92

NEW BUSINESS

- 1. Ordinances for Introduction
 - *d. Ordinance 2020-08: Authorizing the Sale of Certain Parcels of Borough Land by Sealed Bid Followed by an Over-the-Counter Sale (Mayor) (Hearing on 03/17/20) 162
- 3. Other
 - *a. Petition to Vacate the Westerly Approximately 791 feet of Bonita Avenue, a 30-foot right-of-way, Including the Associated 15-foot Utility Easement, as Dedicated on Bremond Farm Estates Norris Addition KN 2005-27. The right-of-way being Vacated in Unconstructed and Located within the NW1/4 SW1/4 of Section 25, Township 5 North, Range 11 West, Seward Meridian, Alaska, Within the Kenai Peninsula Borough. KPB File 2019-132V. 191

[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its January 27, 2020 meeting by unanimous consent.]

*Consent Agenda Items



Policies and Procedures Committee

February 25, 2020

2:45 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Willy Dunne, Chair

Hal Smalley, Vice Chair

Kenn Carpenter

AGENDA

UNFINISHED BUSINESS

1. Postponed Items
 - a. Ordinance 2020-01: Amending KPB 4.3.010 and KPB 4.30.050 Regarding Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson, Cox) 119

MAYOR'S REPORT..... 197

1. Assembly Requests/Responses – None.
2. Agreements and Contracts
 - a. Authorization to Award a Contract for RFP20-006 Insurance Broker of Record to Marsh & McLennan Agency, LLC., Anchorage, Alaska. 198
 - b. Authorization to Award a Contract for RFP19-008 EHS Management Software to Intalex Technologies, Inc., Toronto, ON Canada. 199
 - c. NC Machinery Sole Source Waiver for Repairs on the CPL Cat D8T 200
 - d. Sole Source Waiver for a 27-foot Enclosed Cargo Trailer to White Spruce Trailer Sales, Anchorage, Alaska. 201
 - e. Authorization to Award a Contract for RFP20-009 KPB Community Wildfire Protection Plan Update to SWCA Environmental Consultants, Broomfield, Colorado. 203

f.	Purchasing Request for CES Fire Apparatus through Hughes Fire Equipment, Peirce Manufacturing.....	207
g.	NPRSA Digital Control Retrofit to Siemens Industry, Under the Government General Services Administration (GSA) Contract.	209
3.	Other	
a.	Capital Project Reports – December 30, 2019	210
b.	Revenue – Expenditure Report – January 2020	225
c.	Budget Revisions – January 2020.....	228
d.	Planning Department - Awarded 2019 Public Engagement Award	232

*Consent Agenda Items



Legislative Committee

February 25, 2020

3:00 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Hal Smalley, Chair

Jesse Bjorkman, Vice Chair

Willy Dunne

AGENDA

NEW BUSINESS

1. Resolutions

- *a. Resolution 2020-015: Supporting the Current Laws and Regulations of the State of Alaska Regarding Oil Spill Prevention and Response (Dunne, Cooper) 127
- *b. Resolution 2020-016: Supporting Alaska House Bill 198, an Act Relating to Aggravating Factors Considered at Sentencing (Cooper, Smalley) 131
- *c. Resolution 2020-017: Requesting the State of Alaska to Provide Necessary Funding to the Alaska Wing Civil Patrol at a Minimum of \$184,300 to Provide Support for Utility Costs, Insurance Premiums and Emergency Roof Repair (Cooper, Smalley) 141

*Consent Agenda Items



Committee of the Whole

February 25, 2020

4:00 PM

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

All Assembly Members

AGENDA

ITEMS NOT APPEARING ON THE REGULAR AGENDA

1. Tour of Office of Emergency Management

*Consent Agenda Items



Assembly Agenda

February 25, 2020 - 6:00 PM

Regular Meeting

Betty J. Glick Assembly Chambers
George A. Navarre Kenai Peninsula
Borough Administration Building

Kelly Cooper
Assembly President
Seat 8 – Homer
Term Expires 2020

Harold "Hal" Smalley
Assembly Vice
President
Seat 2 - Kenai
Term Expires 2020

Jesse Bjorkman
Assembly Member
Seat 3 - Nikiski
Term Expires 2022

Norm Blakeley
Assembly Member
Seat 5-Sterling/Funny
River
Term Expires 2020

Kenn Carpenter
Assembly Member
Seat 6 – East Peninsula
Term Expires 2021

Tyson Cox
Assembly Member
Seat 4 - Soldotna
Term Expires 2022

Willy Dunne
Assembly Member
Seat 9 - South
Peninsula
Term Expires 2021

Brent Johnson
Assembly Member
Seat 7 – Central
Term Expires 2022

Brent Hibbert
Assembly Member
Seat 1 – Kalifornsky
Term Expires 2021

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.

[Clerk's Note: The invocation will be offered by Greg Andersen.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(Action items listed with an asterisk (*) are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)

ACTION ITEMS CURRENTLY ON CONSENT AGENDA

- Resolution 2020-015
- Resolution 2020-016
- Resolution 2020-017
- Ordinance 2019-19-28
- Ordinance 2019-19-29
- Ordinance 2020-07
- Ordinance 2020-08
- Petition to Vacate – Bonita Avenue

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA

- Ordinance 2019-19-27
- Ordinance 2020-06

APPROVAL OF MINUTES

- *1. February 4, 2020 Regular Assembly Meeting Minutes..... 1

COMMENDING RESOLUTIONS AND PROCLAMATIONS

PRESENTATIONS WITH PRIOR NOTICE (20 Minutes total)

- 1. Kenai Peninsula Economic Development District, Tim Dillon (10 minutes)

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 Minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES (Testimony limited to 3 minutes per speaker)

- 1. Ordinance 2019-19-27: Appropriating Matching Funds for the Japanese Creek Levee Flood Risk Mitigation Feasibility Study (Mayor) (Referred to Finance Committee) 9
- 2. Ordinance 2020-03: Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley) (Referred to Finance Committee) 14
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UNFINISHED BUSINESS

- 1. Postponed Items
 - a. Ordinance 2020-01: Amending KPB 4.3.010 and KPB 4.30.050 Regarding Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson, Cox) (Referred to Policies and Procedures Committee) 119

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	<i>[Clerk's Note: The Planning Commission approved the above referenced petition to vacate at its January 27, 2020 meeting by unanimous consent.]</i>	

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PUBLIC COMMENTS AND PUBLIC PRESENTATIONS (3 minutes per speaker)

ASSEMBLY COMMENTS

PENDING LEGISLATION (This item lists legislation which will be addressed at a later date as noted.)

1. Ordinance 2019-34: Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor) (Referred to Lands Committee) *[Tabled on 01/07/20]*

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

- | | | |
|----|---------------------------|--|
| 1. | March 17, 2020
6:00 PM | Regular Assembly Meeting
Betty J. Glick Assembly Chambers
Soldotna, Alaska |
|----|---------------------------|--|

ADJOURNMENT

This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).

Copies of agenda items are available at the Borough Clerk's Office and in the Meeting Room just prior to the meeting. For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting summaries, ordinances and resolutions.



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes

Assembly

Kelly Cooper, President
Hal Smalley, Vice President
Norm Blakeley
Jesse Bjorkman
Kenn Carpenter
Tyson Cox
Willy Dunne
Brent Hibbert
Brent Johnson

Tuesday, February 4, 2020

6:00 PM

Betty J. Glick Assembly Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: The invocation was given by Roy J. Wilson.]

ROLL CALL

Present: 8 - Jesse Bjorkman, Norm Blakeley, Kenn Carpenter, Tyson Cox, Brent Hibbert, Brent Johnson, Hal Smalley, and Kelly Cooper
Excused: 1 - Willy Dunne

Also present were:

Charlie Pierce, Borough Mayor
James Baisden, Chief of Staff
Colette Thompson, Borough Attorney
Johni Blankenship, Borough Clerk
Michele Turner, Deputy Borough Clerk

COMMITTEE REPORTS

Assembly Member Hibbert stated the Finance Committee met and discussed its agenda items.

Assembly Member Johnson stated the Lands Committee met and discussed its agenda items.

Assembly Member Smalley stated the Policies and Procedures Committee met and discussed its agenda items.

MOTION: Hibbert moved to authorize Assembly Member Hal Smalley to attend the National Association of Counties Legislative Conference in Washington DC, February 28 through March 4.

The total expense was estimated to be approximately \$3,390, \$1,750 of which will be reimbursed by the Alaska Municipal League (AML) as Mr. Smalley is AML's NACo Representative. The total anticipated expense to the borough was estimated to be no more than \$1,640.

Yes: 8 - Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, and Cooper

Excused: 1 - Dunne

APPROVAL OF AGENDA AND CONSENT AGENDA

Smalley moved to approve the agenda and consent agenda.

Copies have been made available to the public, Borough Clerk Johni Blankenship noted by title only the resolutions and ordinances on the consent agenda.

[KPB-2458](#) January 21, 2020 Regular Assembly Meeting Minutes
approved.

[2020-04](#) An Ordinance Authorizing the Mayor to Select a Parcel of Land in the City of Kenai Through the Kenai Peninsula Borough's Municipal Entitlement Land Grant and Authorizing the Conveyance of the Parcel to the City of Kenai for a Municipal Park (Mayor)

[Clerk's Note: The final Whereas clause of Ordinance 2020-04 was amended to read, "the Kenai Peninsula Borough Planning Commission held a public hearing on January 27, 2020 and recommended approval by unanimous consent."]

This Ordinance was enacted as amended.

[2020-05](#) An Ordinance Amending the Kenai Peninsula Borough Hazard Mitigation Plan by Deleting Existing Annex A, 2015 City of Homer All Hazard Mitigation Plan Update, and Adopting the City of Homer All Hazard Mitigation Plan 2018 Update as the New Annex A (Mayor)

This Ordinance was enacted.

[2020-010](#) A Resolution Designating the Newspaper and Authorizing Award of a Contract for the Publication of the 2020 Foreclosure List, and the Delinquent Leasehold, Mobile Homes, Personal and Other Tax Lists for the Tax Year 2019 (Mayor)

This Resolution was adopted.

[2020-011](#) A Resolution Authorizing the Acquisition by Donation of 20 Acres of Land Located in the Seward Area on Behalf of the Seward Bear Creek Flood Service Area (Mayor)

[Clerk's Note: The final Whereas clause of Resolution 2020-011 was amended to read, "the Kenai Peninsula Borough Planning Commission, at its regularly scheduled meeting of January 27, 2020 recommended approval by unanimous consent."]

This Resolution was adopted as amended.

[2020-012](#) A Resolution Asking the Alaska Board of Fisheries for Due Diligence in Supporting Biological Management of Salmon Stocks in Upper Cook Inlet (Johnson, Bjorkman)

This Resolution was adopted.

[2020-013](#) A Resolution Supporting House Bill 208 Changing the Name of College Road in Soldotna to Alan Boraas Road (Cooper, Smalley)

This Resolution was adopted.

[2020-014](#) LAYDOWN A Resolution Supporting The Status Quo Level of Total Constant Exploitation Yield in International Pacific Halibut Commission Area 3A Charter Sector for the 2020 Season (Cooper)

This Resolution was adopted.

[2019-19-27](#) An Ordinance Appropriating Matching Funds for the Japanese Creek Levee Flood Risk Mitigation Feasibility Study (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-06](#) An Ordinance Authorizing a Community Trail Management Agreement on Borough Land within the City of Soldotna with Shimai Toshi Garden Trails, Inc. (Mayor)

This Ordinance was introduced and set for public hearing.

[KPB-2461](#) LAYDOWN Confirming the appointment to the Eastern Peninsula Highway Emergency Service Area Board (Mayor)

Edward Kahles, Seat E, Term Expires October, 2020
approved.

Approval of the Consent Agenda

President Cooper called for public comment.

Paul Shadera, Soldotna spoke in favor of Resolution 2020-012.

Debbie Cary, Ninilchik spoke in favor of Resolution 2020-014.

There being no one else who wished to speak, the public comment period was closed.

The motion to approve the agenda and consent agenda as amended carried by the following vote:

Yes: 8 - Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, and Cooper

Excused: 1 - Dunne

COMMENDING RESOLUTIONS AND PROCLAMATIONS

[KPB-2456](#) Mayor's Proclamation Declaring February 14, 2020 as "League of Women Voters Day, Women's Voting Rights Day"

PRESENTATIONS WITH PRIOR NOTICE

[KPB-2457](#) Brad Keithley, Alaskans for Sustainable Budgets (10 Minutes)
[Clerk's Note: Brad Keithley, Managing Director for Alaskans for Sustainable Budgets, gave a presentation to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Cooper called for public comment.

Bradley Savely, Soldotna addressed the assembly regarding the Rustic Avenue Road Improvement Assesment District.

Carrie Henson, Kalifornsky addressed the assembly regarding volunteering in the community.

There being no one else who wished to speak, the public comment period was closed.

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES

[2020-01](#) An Ordinance Amending KPB 4.30.010 and KPB 4.30.050 Regarding

Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson, Cox)

Smalley moved to enact Ordinance 2020-01.

President Cooper called for public comment with none being offered.

Johnson moved to amend Ordinance 2020-01 as follows:

Section 1 "[E. A CANDIDATE FOR ANY OF THE ABOVE OFFICES SHALL DECLARE IN WRITING ALL ABSENCES FROM THE STATE OF ALASKA OF OVER 45 DAYS DURING THE MONTHS PRIOR TO FILING FOR OFFICE ALONG WITH THE REASON FOR THE ABSENCE.]"

The motion to amend Ordinance 2020-01 carried by the following vote:

Yes: 8 - Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, and Cooper

Excused: 1 - Dunne

Johnson moved to postpone Ordinance 2020-01 to the February 25, 2020 assembly meeting.

The motion to postpone Ordinance 2020-01 to the February 25, 2020 meeting carried by the following vote:

Yes: 8 - Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, and Cooper

Excused: 1 - Dunne

[2020-02](#)

An Ordinance Amending KP.B 2.54.060 Regarding Response to Requests for Access to Public Records Requests to Increase Time Limits for Response (Cooper at the Request of the Borough Clerk)

Smalley moved to enact Ordinance 2020-02.

President Cooper called for public comment with none being offered.

The motion to enact Ordinance 2020-02 carried by the following vote:

Yes: 8 - Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, and Cooper

Excused: 1 - Dunne

UNFINISHED BUSINESS

NEW BUSINESS

MAYOR'S REPORT

[KP.B-2450](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses
2. Agreements and Contracts

- a. [KPB-2451](#) Authorization to Award a Contract for ITB20-013 Calcium Chloride Purchase Summer 2020 to NorthStar Supply, LLC., Palmer, Alaska.
3. Other
 - a. [KPB-2452](#) Budget Revisions - December 2019
 - b. [KPB-2453](#) Revenue - Expenditure Report - December 2019
 - c. [KPB-2454](#) FY20-2Q Senior Grant Reports
 - d. [KPB-2455](#) FY20-2Q Economic Development Grant Reports

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Cooper called for public comment.

Carrie Henson, Soldotna thanked the Mayor for the proclamation to the Alaska League of Women Voters. She also mentioned Darwin's Day in February.

There being no one else who wished to speak, the public comment period was closed.

ASSEMBLY COMMENTS

Assembly Member Johnson thanked Mr. Bjorkman for co-sponsoring Resolution 2020-012. He also thanked the public for their input on the fisheries issues. He spoke on the history of the Kenai Peninsula fisheries and the importance of specific information within Resolution 2020-012. Mr. Johnson congratulated Tustumena Elementary for being one of two schools in the State of Alaska to win the National Elementary and Secondary Education Act Award.

Assembly Member Blakeley thanked everyone for attending and encouraged everyone to get home safely.

Assembly Member Bjorkman thanked everyone for attending and Mr. Wilson for his invocation. He congratulated the Nikiski High School girls and boys basketball teams for their first place finishes in Kotzebue. He congratulated and thanked the Nikiski Fire Department as well as Mike Vandergrif for their response and excellent service to an emergency at the Marathon plant. He stated that he looked forward to working with his fellow assembly members on borough issues.

Assembly Member Cox stated he attended the Solarize the Kenai event at the Soldotna Library. He stated there was a tax credit available for individuals who

wished to utilize solar power. Mr. Cox attended "Coffee and Conversation" with KPBSD Superintendent O'Brien. He mentioned there was more opportunities to speak with Mr. O'Brien over the next few weeks and encouraged the public to attend.

Assembly Member Hibbert thanked everyone for coming. He stated that he participated in Project Homeless Connect. He thanked the Borough employees for their hard work and maintaining the borough properties and wished Mr. Uhlin well on his new journey.

Assembly Member Carpenter congratulated the Seward High School boys and girls basketball teams on their successful tournament finishes. He thanked everyone for coming and to have safe evening.

Assembly Member Smalley congratulated Ross Rademann on being named KPB employee of the month. He wished Mr. Uhlin well on his move to Florida. He congratulated the League of Women Voters on their one hundred year anniversary. Mr. Smalley stated he volunteered at the Homeless Connect event and congratulated them on a successful event.

President Cooper stated the importance of Homeless Connect and appreciated that they added Homer and Seward to the event. She stated it was well attended and a huge success. She stated the Homer Winter Carnival started February 8, 2020 in Homer and encouraged everyone to attend. She wished everyone a good evening.

PENDING LEGISLATION

1. [2019-34](#) An Ordinance Amending KPB 21.46.040 to Create the Kalifornsky Center Single Family Residential R-1 Local Option Zoning District on an Approximately 55-Acre Borough-Owned Parcel (Mayor) [Tabled on 01/07/20]
2. [2019-24](#) An Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)
3. [2020-03](#) An Ordinance Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 Uniform Remote Seller Sales Tax Code (Cooper, Smalley)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

February 25, 2020 Regular Assembly Meeting
6:00 PM Betty J. Glick Assembly Chambers, Soldotna, Alaska

ADJOURNMENT

With no further business to come before the assembly, President Cooper adjourned the meeting at 8:05 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of February 4, 2020.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Introduced by: Mayor
Date: 02/04/20
Hearing: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-27**

**AN ORDINANCE APPROPRIATING MATCHING FUNDS FOR THE JAPANESE
CREEK LEVEE FLOOD RISK MITIGATION FEASIBILITY STUDY**

- WHEREAS,** the Japanese Creek levee protects a large amount of infrastructure including three Kenai Peninsula Borough (“borough”) schools, City of Seward owned facilities, and the borough solid waste facility; and
- WHEREAS,** Japanese Creek has a history of stream damming and surge-related floods that carry debris, with 11 such floods reported in the last 50 years; and
- WHEREAS,** the U.S. Army Corps of Engineers (“Corps of Engineers”) has indicated that a flood event that breaches the levee could result in a sudden surge release that could cause severe and possibly catastrophic damages along the alluvial fan; and
- WHEREAS,** the Corps of Engineers has developed a project to conduct a feasibility study to begin work on a comprehensive flood risk management project for this area at an estimated cost of \$900,000; and
- WHEREAS,** the study requires a \$450,000 local match with the Seward-Bear Creek Flood Service Area (“SBCFSA”) committing \$180,000, the borough Solid Waste Department committing \$135,000, and the City of Seward committing \$135,000; and
- WHEREAS,** the borough’s local match is contingent upon receipt of the City of Seward \$135,000 local match and a Memorandum of Agreement executed between the borough and the City of Seward describing responsibilities to be completed by each party during the Japanese Creek CAP Section 205 Feasibility Study project performance period; and
- WHEREAS,** the borough assumed site operations of the Seward Landfill in 1974 and constructed a transfer site in the early 1990s requiring the borough to obtain a conditional use permit from the City of Seward, which included a condition that required the borough to maintain Dimond Boulevard, which is now known as Dieckgraeff Road; and
- WHEREAS,** due to the solid waste facilities located in this area it is in the best interests of the borough to contribute to the local match to establish a comprehensive management program for this area; and

WHEREAS, the SBCFSA board, at its regularly scheduled meeting of February 10, 2020, recommended _____;

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

SECTION 1. That \$135,000 is appropriated from the General Fund, fund balance to be transferred to solid waste account 290.32150.20SFS.49999.

SECTION 2. That \$130,000 is appropriated from Seward-Bear Creek Flood Service Area fund balance to account 259.21212.20SFS.49999.

SECTION 3. That \$50,000 is appropriated through the FY2020 budgetary process to account 259.21212.43011 is transferred to account 259.21212.20SFS.49999.

SECTION 4. That \$135,000 match from the City of Seward is appropriated to account 271.94910.20SFS.49999.

SECTION 5. That the match funds appropriated are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 6. That this ordinance shall take effect immediately upon execution of the Memorandum of Agreement between the borough and the City of Seward to complete the U.S. Army Corps of Engineer Japanese Creek CAP Section 205 Feasibility Study.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough
Seward-Bear Creek Flood Service Area
Solid Waste Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Kenn Carpenter, Assembly Member *KC*

FROM: Stephanie Presley, SBCFSA Program Lead *SP*
Jack Maryott, Solid Waste Director *JM*
Brenda Ahlberg, Community and Fiscal Project Manager *BA*
Dan Nelson, Emergency Management Senior Manager *DN*
Brandi Harbaugh, Finance Director *BH*

DATE: January 23, 2020

RE: Ordinance 2019-19—27, Appropriating Matching Funds for the Japanese Creek Levee Flood Risk Mitigation Feasibility Study (Mayor)

The Japanese Creek levee protects a large amount of infrastructure including three borough schools, City of Seward owned facilities, and the borough solid waste facility. Japanese Creek has a history of stream damming and surge-related floods that carry debris, with 11 such floods reported in the last 50 years. The U.S. Army Corps of Engineers ("Corps of Engineers") has indicated that a flood event that breaches the levee could result in a sudden surge release that could cause severe and possibly catastrophic damages along the alluvial fan.

The Corps of Engineers has developed a project to conduct a feasibility study to begin work on a comprehensive flood risk management project for this area at an estimated cost of \$900,000. The study requires a \$450,000 local match with the Seward-Bear Creek Flood Service Area ("SBCFSA") committing \$180,000, the borough Solid Waste Department committing \$135,000, and the City of Seward committing \$135,000.

The Kenai Peninsula Borough assumed site operations at the Seward Landfill in 1974. A transfer station was constructed in the early 1990s. The construction of the transfer station required the borough to obtain a conditional use permit from the

Page -2-
January 23, 2020
RE: O19-19-27

City of Seward. A condition of that permit required the borough to maintain Diamond Boulevard, now known as Dieckgraeff Road.

Due to the borough's solid waste facilities located in this area, it is in the best interests of the borough to contribute to the local match to establish a comprehensive management program for this area.

The funds appropriated by this ordinance will be combined with funds from the Corp of Engineers and the City of Seward to pay for this feasibility study.

This ordinance would appropriate \$400,000 of the \$450,000 required match funds; \$135,000 from the General Fund to be transferred to the Solid Waste Operating Fund, \$130,000 from the SBCFSA to be combined with \$50,000 already appropriated for this feasibility study through the FY2020 budget process, and \$135,000 from the City of Seward.

This ordinance is scheduled to come before the SBCFSA board at its regularly scheduled meeting on February 10, 2020. The recommendations of the board will be provided to the assembly prior to the hearing on this ordinance.

Thank you for your consideration.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.:	259.27910 (FB)
Amount: \$	130,000.00
Acct. No.:	100.27910 (FB)
Amount: \$	135,000.00
By: <u>BH</u>	Date: 1/24/2020

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Johni Blankenship, Borough Clerk (JB)

DATE: February 25, 2020

RE: Ordinance 2019-19-27: Appropriating Matching Funds for the Japanese Creek Levee Flood Risk Mitigation Feasibility Study (Mayor)

the service area board addressed the above referenced ordinance. Please amend the final whereas clause to read as follows:

“WHEREAS, the SBCFSA board, at its regularly scheduled meeting of February 10, 2020, recommended approval by unanimous consent;”

Thank you.

Introduced by: Cooper, Smalley
Date: 01/21/20
Hearing: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-03**

**AN ORDINANCE AMENDING KPB 5.18 SALES TAX CODE AND ENACTING KPB
5.19 UNIFORM REMOTE SELLER SALES TAX CODE**

WHEREAS, the inability to effectively collect sales tax on sales of personal property, products or services transferred or delivered into Alaska by sellers who do not have a physical presence in the borough (“remote seller”) is eroding the sales tax base of Alaska communities and resulting in revenue losses that are causing imminent harm to residents through the loss of critical funding for local education; and

WHEREAS, the harm from the loss of revenue is especially problematic in Alaska because the state has no broad-based sales tax, and sales tax revenues are essential in funding the provision of services by local governments; and

WHEREAS, the failure to collect tax on remote sales creates artificial market distortions and competitive advantages for remote sellers by perpetuating tax shelters for businesses that limit their physical presence in the state or its municipalities but still sell goods and services to local consumers without collecting sales tax, something that becomes easier and more prevalent as technology continues to advance; and

WHEREAS, the structural advantages for remote sellers, including the absence of point-of-sale tax collection, combined with the general growth of online retail sales, means that the erosion of the sales tax base is a growing problem that will only worsen in the near future if the borough is not able to legally collect remote seller sales tax within the framework of current United States Supreme Court case law; and

WHEREAS, the failure to effectively collect sales tax on remote or internet-based sales results in the creation of incentives for businesses to avoid a physical presence in the borough, resulting in less jobs and increasing the share of taxes paid by those consumers who buy from competitors with a physical presence in the borough; and

WHEREAS, remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure; and

WHEREAS, the recent decision by the United States Supreme Court in *South Dakota v. Wayfair* (“*Wayfair*”) allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough; and

WHEREAS, the *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska; and

WHEREAS, in order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska worked together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the “Commission”); and

WHEREAS, currently 23 municipalities in Alaska are members of the Commission; and

WHEREAS, the function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the “Agreement”), a cooperative agreement between Commission members; and

WHEREAS, as part of the process to implement a remote seller sales tax code and pursuant to Resolution 2019-056, the borough signed the Agreement and is currently a full member of the Commission; and

WHEREAS, five of the incorporated cities within the borough are members of the Commission; and

WHEREAS, representatives from the borough, the City of Soldotna, and the City of Kenai also currently hold three of the seven Board of Director seats on the Commission; and

WHEREAS, under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the Uniform Remote Seller Sales Tax Code (“Uniform Code”) as adopted by the Commission’s Board of Directors;

WHEREAS, the Board of Directors adopted the Uniform Code at its meeting on January 6, 2020; and

WHEREAS, the Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales; and

WHEREAS, the purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application; and

WHEREAS, the Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers; and

WHEREAS, this ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer the remote sales tax collection and remittance for the borough; and

WHEREAS, this is the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission; and

WHEREAS, in light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales;

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

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. - Tax jurisdiction Point of Taxation.

A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods and merchandise is the location of the [RETAIL OUTLET] physical presence at which or from which delivery was made. This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the borough, then the location of the seller's in-borough presence will determine the place of sale. [IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.

2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

SECTION 2. That KPB 5.18.680 is hereby enacted as follows:

5.18.680 Uniform Remote Seller Sales Tax Code

Sellers with no physical presence in the borough that have remote or internet-based sales in the borough and sellers with a physical presence in the borough that have remote or internet-based sales within other taxing jurisdictions in Alaska are subject to KPB 5.19 instead of KPB 5.18.

SECTION 3. That KPB 5.19 is enacted as follows:

KPB 5.19. Uniform Remote Seller Sales Tax Code

5.19.010. Interpretation.

- A. In order to prevent evasion of the sales taxes and to aid in its administration, it is presumed that all sales and services by a person or entity engaging in business are subject to the sales tax.
- B. The application of the tax levied under this Code shall be broadly construed and shall favor inclusion rather than exclusion.
- C. Exemptions from the tax levied under this Code or from the taxing jurisdiction shall be narrowly construed against the claimant and allowed only when such exemption clearly falls within an exemption defined in this Code or the taxing jurisdiction's Code.
- D. The scope of this Code shall apply to remote sellers or marketplace facilitators, delivering products or services to Member municipalities adopting this Code, within the state of Alaska.

5.19.020. Title to Collected Sales Tax.

Upon collection by the remote seller or marketplace facilitator, title to collected sales tax vests in the Commission for remittance to the taxing jurisdiction. The remote seller or marketplace facilitator remits collected sales tax to the Commission on behalf of the taxing jurisdiction, from whom that power is delegated, in trust for the taxing jurisdiction and is accountable to the Commission and taxing jurisdiction.

5.19.030. Imposition – Rate.

- A. To the fullest extent permitted by law, a sales tax is levied and assessed on all remote sales where delivery is made within the local taxing jurisdiction(s) that is a Member, within the state of Alaska.

- B. The applicable tax shall be added to the sales price.
- C. The tax rate added to the sale price shall be the tax rate for the taxing jurisdiction(s) where the property or product is sold, or service that was rendered is received, and based on the date the property or product was sold or the date the service rendered was received.
- D. An Address and Tax Rate Database will be made available to remote sellers and marketplace facilitators, indicating the appropriate tax rate to be applied.
- E. The tax assessed shall be consistent with relevant jurisdictional tax caps, single unit sales, and exemptions.
- F. When a sale is made on an installment basis, the applicable sales tax shall be collected at each payment, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered, based on the local jurisdictions' Code(s).
- G. When a sales transaction involves placement of a single order with multiple deliveries made at different points in time that are separately invoiced, the applicable sales tax shall be collected on each separately invoiced delivery, calculated at the sales tax rate in effect, and with the cap applied, at the time of the original sale or the date the service is rendered.

5.19.040. Obligation to Collect Tax - Threshold Criteria.

- A. Any remote seller or marketplace facilitator must collect and remit sales tax in compliance with all applicable procedures and requirements of law, provided the remote seller or marketplace facilitator has met one of the following Threshold Criteria ("Threshold Criteria") in the previous calendar year:
 - 1. The remote seller's statewide gross sales, including the seller's marketplace facilitator's statewide gross sales, from the sale(s) of property, products or services delivered into the state meets or exceeds one hundred thousand dollars (\$100,000); or
 - 2. The remote seller, including the seller's marketplace facilitator, sold property, products, or services delivered into the state in two hundred (200) or more separate transactions.
- B. For purposes of determining whether the Threshold Criteria are met, remote sellers or marketplace facilitators shall include all gross sales, from all sales of goods, property, products, or services rendered within the state of Alaska.

5.19.050. No Retroactive Application.

The obligations to collect and remit sales tax required by this chapter are applicable at the effective date of the ordinance adopting the Alaska Remote Seller Sales Tax Code.

5.19.060. Payment and Collection.

Pursuant to this Code, taxes imposed shall be due and paid by the buyer to the remote seller or marketplace facilitator at the time of the sale of property or product or date service is rendered, or with respect to credit transactions, at the time of collection. It shall be the duty of each remote seller or marketplace facilitator to collect the taxes from the buyer and to hold those taxes in trust for the taxing authority of the taxing jurisdiction. Failure by the remote seller or marketplace facilitator to collect the tax shall not affect the remote seller's, or marketplace facilitator's, responsibility for payment to the Commission.

5.19.070. Remote Seller and Marketplace Facilitator Registration Requirement.

- A. If a remote seller's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the remote seller shall register with the Commission. If a marketplace facilitator's gross statewide sales within the last calendar year meets or exceeds the Threshold Criteria, the marketplace facilitator shall register with the Commission.
- B. A remote seller or marketplace facilitator meeting the Threshold Criteria shall apply for a certificate of sales tax registration within thirty (30) calendar days of the effective date of this Code or within thirty (30) calendar days of meeting the Threshold Criteria whichever occurs second. Registration shall be to the Commission on forms prescribed by the Commission.
- C. An extension may be applied for and granted based on criteria established by the Commission, based on evidence produced to describe time necessary to update software or other technical needs, not to exceed ninety (90) days.
- D. Upon receipt of a properly executed application, the Commission shall confirm registration, stating the legal name of the remote seller or marketplace facilitator, the primary address, and the primary sales tax contact name and corresponding title. The failure of the Commission to confirm registration does not relieve the remote seller or marketplace facilitator of its duty to collect and remit sales tax.
- E. Each business entity shall have a sales tax registration under the advertised name.
- F. The sales tax certificate is non-assignable and non-transferable.

5.19.080. Tax Filing Schedule.

- A. All remote sellers or marketplace facilitators subject to this Code shall file a return on a form or in a format prescribed by the Commission and shall pay the tax due.
- B. Filing of sales tax returns are due monthly; quarterly filing is optional upon application and approval by the Commission, consistent with the code of the local jurisdiction.
- C. A remote seller or marketplace facilitator who has filed a sales tax return will be presumed to be making sales in successive periods unless the remote seller or marketplace facilitator

files a return showing a termination or sale of the business in accordance with this Code.

- D. The completed and executed return, together with the remittance in full for the tax due, shall be transmitted to and must be received by the Commission on or before midnight Alaska Standard Time on the due date. Monthly returns are due the last day of the immediate subsequent month. Quarterly returns are due as follows:

<u>Quarter 1 (January – March)</u>	<u>April 30</u>
<u>Quarter 2 (April – June)</u>	<u>July 31</u>
<u>Quarter 3 (July – September)</u>	<u>October 31</u>
<u>Quarter 4 (October – December)</u>	<u>January 31</u>

- E. If the last day of the month following the end of the filing period falls on a Saturday, Sunday, federal holiday or Alaska state holiday, the due date will be extended until the next business day immediately following.

- F. Any remote seller or marketplace facilitator holding a remote seller registration shall file a sales tax return even though no tax may be due. This return shall show why no tax is due. If the remote seller or marketplace facilitator intends to continue doing business a return shall be filed reflecting no sales and a confirmation of the intent to continue doing business and shall continue to do so each filing period until the entity ceases doing business or sells the business. If the remote seller or marketplace facilitator intends to cease doing business, a final return shall be filed along with a statement of business closure.

- G. The remote seller or marketplace facilitator shall prepare the return and remit sales tax to the Commission on the same basis, cash or accrual, which the remote seller or marketplace facilitator uses in preparing its federal income tax return. The remote seller or marketplace facilitator shall sign the return, and transmit the return, with the amount of sales tax and any applicable penalty, interest or fees that it shows to be due, to the Commission.

- H. Remote sellers and marketplace facilitators failing to comply with the provisions of this Code shall, if required by the Commission and if quarterly filing has been chosen, file and transmit collected sales taxes more frequently until such time as they have demonstrated to the Commission that they are or will be able to comply with the provisions of this Code. Six (6) consecutive on-time sales tax filings, with full remittance of the sales taxes collected, shall establish the presumption of compliance and return to quarterly filing.

- I. The preparer of the sales tax return shall keep and maintain all documentation supporting any and all claims of exempted sales and purchases. Documentation for exempted sales should include the number of the exemption authorization card presented by the buyer at the time of the purchase; the date of the purchase; the name of the person making the purchase; the organization making the purchase; the total amount of the purchase; and the amount of sales tax exempted. This documentation shall be made available to the Commission upon request. Failure to provide such documentation may invalidate that

portion of the claim of exemption for which no documentation is provided.

5.19.090 Estimated Tax

- A. In the event the Commission is unable to ascertain the tax due from a remote seller or marketplace facilitator by reason of the failure of the remote seller or marketplace facilitator to keep accurate books, allow inspection, or file a return, or by reason of the remote seller or marketplace facilitator filing a false or inaccurate return, the Commission may make an estimate of the tax due based on any evidence in their possession.
- B. Sales taxes may also be estimated, based on any information available, whenever the Commission has reasonable cause to believe that any information on a sales tax return is not accurate.
- C. A remote seller's or marketplace facilitator's tax liability under this Code may be determined and assessed for a period of six (6) years after the date the return was filed or due to be filed with the Commission. No civil action for the collection of such tax may be commenced after the expiration of the six (6) year period except an action for taxes, penalties and interest due from those filing periods that are the subject of a written demand or assessment made within the six (6) year period, unless the remote seller or marketplace facilitator waives the protection of this section.
- D. The Commission shall notify the remote seller or marketplace facilitator, in writing, that the Commission has estimated the amount of sales tax that is due from the remote seller or marketplace facilitator. The Commission shall serve the notice on the remote seller or marketplace facilitator by delivering the notice to the remote seller's or marketplace facilitator's place of business, or by mailing the notice by certified mail, return receipt requested, to the remote seller's or marketplace facilitator's last known mailing address. A remote seller or marketplace facilitator who refuses the certified mail will be considered to have accepted the certified mail for purposes of service.
- E. The Commission's estimate of the amount of sales tax that is due from a remote seller or marketplace facilitator shall become a final determination of the amount that is due unless the remote seller or marketplace facilitator, within thirty (30) calendar days after service of notice of the estimated tax:
 - 1. Files a complete and accurate sales tax return for the delinquent periods supported by satisfactory records and accompanied by a full remittance of all taxes, interest, penalties, costs and other charges due; or
 - 2. Files a written notice with the Commission appealing the estimated tax amount in accordance with the appeal procedures.
 - 3. Arguments or reasons for failure to timely file a return and remit taxes collected shall not be considered a valid basis or grounds for granting an appeal. The basis and grounds for granting an appeal of an assessment are:

- a. The identity of the remote seller or marketplace facilitator is in error;
 - b. The amount of the debt is erroneous due to a clerical error (and the nature and extent of the error is specified in the request for appeal); or
 - c. The remote seller or marketplace facilitator disputes the denial of exemption(s) for certain sales.
- F. The amount of sales tax finally determined to be due under this section shall bear interest and penalty from the date that the sales tax originally was due, plus an additional civil penalty of fifty dollars (\$50) for each calendar month or partial month for which the amount of sales tax that is due has been determined.

5.19.100. Returns – Filing Contents.

- A. Every remote seller or marketplace facilitator required by this chapter to collect sales tax shall file with the Commission upon forms furnished by the Commission a return setting forth the following information with totals rounded to the nearest dollar:
- 1. Gross sales;
 - 2. The nontaxable portions separately stating the amount of sales revenue attributable to each class of exemption;
 - 3. Computation of taxes to be remitted;
 - 4. Calculated discount (if applicable) based on taxing jurisdiction’s code; and
 - 5. Such other information as may be required by the Commission.
- B. Each tax return remitted by a remote seller or marketplace facilitator shall be signed (digital or otherwise) by a responsible individual who shall attest to the completeness and accuracy of the information on the tax return.
- C. The Commission reserves the right to reject a filed return for failure to comply with the requirements of this Code for up to three (3) months from the date of filing. The Commission shall give written notice to a remote seller or marketplace facilitator that a return has been rejected, including the reason for the rejection.

5.19.110. Refunds.

- A. Upon request from a buyer or remote seller or marketplace facilitator the Commission shall provide a determination of correct tax rate and amount applicable to the transaction. In the case of an overpayment of taxes, the remote seller or marketplace facilitator shall process the refund and amend any returns accordingly.

- B. If the claimant is a remote seller or marketplace facilitator, and the tax refund is owed to any buyer, the remote seller or marketplace facilitator submits, and the Commission approves, a refund plan to all affected buyers.
- C. The Taxing Jurisdictions may allow a buyer to request a refund directly from the Taxing Jurisdiction.

5.19.120. Amended Returns.

- A. A remote seller or marketplace facilitator may file an amended sales tax return, with supporting documentation, and the Commission may accept the amended return, but only in the following circumstances:
 - i. The amended return is filed within one (1) year of the original due date for the return; and
 - ii. The remote seller or marketplace facilitator provides a written justification for requesting approval of the amended return; and
 - iii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.
- B. The Commission shall notify the remote seller or marketplace facilitator in writing (by email or otherwise) whether the Commission accepts or rejects an amended return, including the reasons for any rejection.
- C. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation, the Commission determines the figure included in the original returns are incorrect; and the Commission adjusts the return within two (2) years of the original due date for the return.
- D. A remote seller or marketplace facilitator may file a supplemental sales tax return, with supporting documentation, and the Commission may accept the supplemental return, but only in the following circumstances:
 - i. The remote seller or marketplace facilitator provides a written justification for requesting approval of the supplemental return; and
 - ii. The remote seller or marketplace facilitator agrees to submit to an audit upon request of the Commission.

5.19.130. Extension of Time to File Tax Return.

Upon written application of a remote seller or marketplace facilitator, stating the reasons therefor, the Commission may extend the time to file a sales tax return but only if the Commission finds each of the following:

1. For reasons beyond the remote seller's or marketplace facilitator's control, the remote seller or marketplace facilitator has been unable to maintain in a current condition the books and records that contain the information required to complete the return;
2. Such extension is a dire necessity for bookkeeping reasons and would avert undue hardship upon the remote seller or marketplace facilitator;
3. The remote seller or marketplace facilitator has a plan to cure the problem that caused the remote seller or marketplace facilitator to apply for an extension and the remote seller or marketplace facilitator agrees to proceed with diligence to cure the problem;
4. At the time of the application, the remote seller or marketplace facilitator is not delinquent in filing any other sales tax return, in remitting sales tax to the Commission or otherwise in violation of this chapter;
5. No such extension shall be made retroactively to cover existing delinquencies.

5.19.140. Audits.

- A. Any remote seller or marketplace facilitator who has registered with the Commission, who is required to collect and remit sales tax, or who is required to submit a sales tax return is subject to a discretionary sales tax audit at any time. The purpose of such an audit is to examine the business records of the remote seller or marketplace facilitator in order to determine whether appropriate amounts of sales tax revenue have been collected by the remote seller or marketplace facilitator and remitted to the Commission.
- B. The Commission is not bound to accept a sales tax return as correct. The Commission may make an independent investigation of all retail sales or transactions conducted within the State or taxing jurisdiction.
- C. The records that a remote seller or marketplace facilitator is required to maintain under this chapter shall be subject to inspection and copying by authorized employees or agents of the Commission for the purpose of auditing any return filed under this chapter, or to determine the remote seller's or marketplace facilitator's liability for sales tax where no return has been filed.
- D. In addition to the information required on returns, the Commission may request, and the remote seller or marketplace facilitator must furnish, any reasonable information deemed necessary for a correct computation of the tax.

- E. The Commission may adjust a return for a remote seller or marketplace facilitator if, after investigation or audit, the Commission determines that the figures included in the original return are incorrect, and that additional sales taxes are due; and the Commission adjusts the return within two (2) years of the original due date for the return.
- F. For the purpose of ascertaining the correctness of a return or the amount of taxes owed when a return has not been filed, the Commission may conduct investigations, hearings and audits and may examine any relevant books, papers, statements, memoranda, records, accounts or other writings of any remote seller or marketplace facilitator at any reasonable hour on the premises of the remote seller or marketplace facilitator and may require the attendance of any officer or employee of the remote seller or marketplace facilitator. Upon written demand by the Commission, the remote seller or marketplace facilitator shall present for examination, in the office of the Commission, such books, papers, statements, memoranda, records, accounts and other written material as may be set out in the demand unless the Commission and the person upon whom the demand is made agree to presentation of such materials at a different place.
- G. The Commission may issue subpoenas to compel attendance or to require production of relevant books, papers, records or memoranda. If any remote seller or marketplace facilitator refuses to obey any such subpoena, the Commissioner may refer the matter to the Commission's attorney for an application to the superior court for an order requiring the remote seller or marketplace facilitator to comply therewith.
- H. Any remote seller, marketplace facilitator, or person engaged in business who is unable or unwilling to submit their records to the Commission shall be required to pay the Commission for all necessary expenses incurred for the examination and inspection of their records maintained outside the Commission.
- I. After the completion of a sales tax audit, the results of the audit will be sent to the business owner's address of record.
- J. In the event the Commission, upon completion of an audit, discovers more than five hundred dollars (\$500) in additional sales tax due from a remote seller or marketplace facilitator resulting from a remote seller's or marketplace facilitator's failure to accurately report sales and taxes due thereupon, the remote seller or marketplace facilitator shall bear responsibility for the full cost of the audit. The audit fee assessment will be in addition to interest and penalties applicable to amounts deemed to be delinquent by the Commission at the time of the conclusion of the audit.

5.19.150. Audit protest.

- A. If the remote seller or marketplace facilitator wishes to dispute the amount of the estimate, or the results of an examination or audit, the remote seller or marketplace facilitator must file a written protest with the Commission, within thirty (30) calendar days of the date of the notice of estimated tax or results of an audit or examination. The protest must set forth:

1. The remote seller's or marketplace facilitator's justification for reducing or increasing the estimated tax amount, including any missing sales tax returns for the periods estimated; or
 2. The remote seller's or marketplace facilitator's reasons for challenging the examination or audit results.
- B. In processing the protest, the Commission may hold an informal meeting or hearing with the remote seller or marketplace facilitator, either on its own or upon request of the remote seller or marketplace facilitator, and may also require that the remote seller or marketplace facilitator submit to an audit, if one was not previously conducted or a more formal audit, if an estimation audit was previously performed.
- C. The Commission shall make a final written determination on the remote seller's or marketplace facilitator's protest and mail a copy of the determination to the remote seller or marketplace facilitator.
- D. If a written protest is not filed within thirty (30) days of the date of the notice of estimated tax or the result of a review, audit or examination, then the estimated tax, review, audit or examination result shall be final, due and payable to the Commission.

5.19.160. Penalties and Interest for Late Filing.

- A. A late filing fee of twenty-five dollars (\$25) per month (or quarter) shall be added to all late-filed sales tax reports in addition to interest and penalties.
- B. Delinquent sales tax bear interest at the rate of fifteen percent (15%) per annum until paid.
- C. In addition, delinquent sales tax shall be subject to an additional penalty of 5% per month, or fraction thereof, until a total of 20% of delinquent tax has been reached. The penalty does not bear interest.
- D. Penalties and interest shall be assessed and collected in the same manner as the tax is assessed and collected, and applied first to penalties and interest, second to past due sales tax.
- E. The filing of an incomplete return, or the failure to remit all tax, shall be treated as the filing of no return.
- F. A penalty assessed under this section for the delinquent remittance of sales tax or failure to file a sales tax return may be waived by the Commission, upon written application of the remote seller or marketplace facilitator accompanied by a payment of all delinquent sales tax, interest and penalty otherwise owed by the remote seller or marketplace facilitator, within forty-five (45) calendar days after the date of delinquency. A remote seller or marketplace facilitator may not be granted more than one (1) waiver of penalty

under this subsection in any one calendar year. The Commission shall report such waivers of penalty to the taxing jurisdiction, in writing.

5.19.170. Repayment Plans.

- A. The Commission may agree to enter into a repayment plan with a delinquent remote seller or marketplace facilitator. No repayment plan shall be valid unless agreed to by both parties in writing.
- B. A remote seller or marketplace facilitator shall not be eligible to enter into a repayment plan with the Commission if the remote seller or marketplace facilitator has defaulted on a repayment plan in the previous two (2) calendar years.
- C. The repayment plan shall include a secured promissory note that substantially complies with the following terms:
 - i. The remote seller or marketplace facilitator agrees to pay a minimum of ten percent (10%) down payment on the tax, interest and penalty amount due. The down payment shall be applied first to penalty, then to accumulated interest, and then to the tax owed.
 - ii. The remote seller or marketplace facilitator agrees to pay the balance of the tax, penalty and interest owed in monthly installments over a period not to exceed two (2) years.
 - iii. Interest at a rate of fifteen percent (15%) per annum shall accrue on the principal sum due. Interest shall not apply to penalties owed or to interest accrued at the time the repayment plan is executed or accruing during the term of the repayment plan.
 - iv. If the remote seller or marketplace facilitator is a corporation or a limited liability entity the remote seller or marketplace facilitator agrees to provide a personal guarantee of the obligations under the repayment plan.
 - v. The remote seller or marketplace facilitator agrees to pay all future tax bills in accordance with the provisions of this chapter.
 - vi. The remote seller or marketplace facilitator agrees to provide a security interest in the form of a sales tax lien for the entire unpaid balance of the promissory note to be recorded by the Commission at the time the repayment plan is signed. The remote seller or marketplace facilitator shall be responsible for the cost of recording the tax lien.
- D. If a remote seller or marketplace facilitator fails to pay two (2) or more payments as required by the repayment plan agreement, the remote seller or marketplace facilitator shall be in default and the entire amount owed at the time of default shall become

immediately due. The Commission will send the remote seller or marketplace facilitator a notice of default. The Commission may immediately foreclose on the sales tax lien or take any other remedy available under the law.

5.19.180. Remote Seller or Marketplace Facilitator Record Retention.

Remote sellers or marketplace facilitators shall keep and preserve suitable records of all sales made and such other books or accounts as may be necessary to determine the amount of tax which the remote seller or marketplace facilitator is obliged to collect. Remote sellers or marketplace facilitators shall preserve suitable records of sales for a period of six (6) years from the date of the return reporting such sales, and shall preserve for a period of six (6) years all invoices of goods and merchandise purchased for resale, and all such other books, invoices and records as may be necessary to accurately determine the amount of taxes which the remote seller or marketplace facilitator was obliged to collect under this chapter.

5.19.190. Cessation or Transfer of Business.

- A. A remote seller or marketplace facilitator who sells, leases, conveys, forfeits, transfers or assigns the majority of their business interest, including a creditor or secured party, shall make a final sales tax return within thirty (30) days after the date of such conveyance.
- B. At least ten (10) business days before any such sale is completed, the remote seller or marketplace facilitator shall send to the Commission, by approved communication (email confirmation, certified first-class mail, postage prepaid) a notice that the remote seller's or marketplace facilitator's interest is to be conveyed and shall include the name, address and telephone number of the person or entity to whom the interest is to be conveyed.
- C. Upon notice of sale and disclosure of buyer, the Commission shall be authorized to disclose the status of the remote seller's or marketplace facilitator's sales tax account to the named buyer or assignee.
- D. Upon receipt of notice of a sale or transfer, the Commission shall send the transferee a copy of this Code with this section highlighted.
- E. Neither the Commission's failure to give the notice nor the transferee's failure to receive the notice shall relieve the transferee of any obligations under this section.
- F. Following receipt of the notice, the Commission shall have sixty (60) days in which to perform a final sales tax audit and assess sales tax liability against the seller of the business. If the notice is not mailed at least ten (10) business days before the sale is completed, the Commission shall have twelve (12) months from the date of the completion of the sale or the Commission's knowledge of the completion of the sale within which to begin a final sales tax audit and assess sales tax liability against the seller of the business. The Commission may also initiate an estimated assessment if the requirements for such an assessment exist.

- G. A person acquiring any interest of a remote seller or marketplace facilitator in a business required to collect the tax under this chapter assumes the liability of the remote seller or marketplace facilitator for all taxes due the Commission, whether current or delinquent, whether known to the Commission or discovered later, and for all interest, penalties, costs and charges on such taxes.
- H. Before the effective date of the transfer, the transferee of a business shall obtain from the Commission an estimate of the delinquent sales tax, penalty and interest, if any, owed by the remote seller or marketplace facilitator as of the date of the transfer, and shall withhold that amount from the consideration payable for the transfer, until the remote seller or marketplace facilitator has produced a receipt from the Commission showing that all tax obligations imposed by this chapter have been paid. A transferee that fails to withhold the amount required under this subsection shall be liable to the Commission and taxing jurisdiction for the lesser of the amount of delinquent sales tax, penalty and interest due from the remote seller or marketplace facilitator as of the date of transfer, and the amount that the transferee was required to withhold.
- I. In this section, the term “transfer” includes the following:
1. A change in voting control, or in more than fifty percent (50%) of the ownership interest in a remote seller or marketplace facilitator that is a corporation, limited liability company or partnership; or
 2. A sale of all or substantially all the assets used in the business of the remote seller or marketplace facilitator; or
 3. The initiation of a lease, management agreement or other arrangement under which another person becomes entitled to the remote seller’s or marketplace facilitator’s gross receipts from sales, rentals or services.
- J. Subsection H of this section shall not apply to any person who acquires their ownership interest in the ongoing business as a result of the foreclosure of a lien that has priority over the Commission’s sales tax lien.
- K. Upon termination, dissolution or abandonment of a corporate business, any officer having control or supervision of sales tax funds collected, or who is charged with responsibility for the filing of returns or the payment of sales tax funds collected, shall be personally liable for any unpaid taxes, interest, administrative costs and penalties on those taxes if such officer willfully fails to pay or cause to be paid any taxes due from the corporation. In addition, regardless of willfulness, each director of the corporation shall be jointly and severally liable for unpaid amounts. The officer shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility or duty to act for the corporation. This section does not relieve the corporation of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

L. A remote seller or marketplace facilitator who terminates the business without the benefit of a purchaser, successor or assign shall make a final tax return and settlement of tax obligations within thirty (30) days after such termination. If a final return and settlement are not received within thirty (30) days of the termination, the remote seller or marketplace facilitator shall pay a penalty of one hundred dollars (\$100), plus an additional penalty of twenty-five dollars (\$25) for each additional thirty- (30-) day period, or part of such a period, during which the final return and settlement have not been made, for a maximum of six (6) additional periods.

5.19.200. Use of Information on Tax Returns.

A. Except as otherwise provided in this chapter, all returns, reports and information required to be filed with the Commission under this Code, and all information contained therein, shall be kept confidential and shall be subject to inspection only by:

1. Employees and agents of the Commission and taxing jurisdiction whose job responsibilities are directly related to such returns, reports and information;
2. The person supplying such returns, reports and information; and
3. Persons authorized in writing by the person supplying such returns, reports and information.

B. The Commission will release information described in subsection A of this section pursuant to subpoena, order of a court or administrative agency of competent jurisdiction, and where otherwise required by law to do so.

C. Notwithstanding subsection A of this section, the following information is available for public inspection:

1. The name and address of sellers;
2. Whether a business is registered to collect taxes under this chapter;
3. The name and address of businesses that are sixty (60) days or more delinquent in filing returns or in remitting sales tax, or both filing returns and remitting sales tax; and, if so delinquent, the amount of estimated sales tax due, and the number of returns not filed.

D. The Commission may provide the public statistical information related to sales tax collections, provided that no information identifiable to a particular remote seller or marketplace facilitator is disclosed.

E. Nothing contained in this section shall be construed to prohibit the delivery to a person, or their duly authorized representative, of a copy of any return or report filed by them, nor to prohibit the publication of statistics so classified as to prevent the identification of

particular buyers, remote sellers, or marketplace facilitators, nor to prohibit the furnishing of information on a reciprocal basis to other agencies or political subdivisions of the state or the United States concerned with the enforcement of tax laws.

- F. Nothing contained in this section shall be construed to prohibit the disclosure through enforcement action proceedings or by public inspection or publication of the name, estimated balance due, and current status of payments, and filings of any remote seller or marketplace facilitator or agent of any remote seller or marketplace facilitator required to collect sales taxes or file returns under this chapter, who fails to file any return and/or remit in full all sales taxes due within thirty (30) days after the required date for that business. Entry into any agreement whether pursuant to the provisions of this chapter or otherwise shall not act as any prohibition to disclosure of the records of that remote seller or marketplace facilitator as otherwise provided in this chapter.
- G. A prospective lessee or purchaser of any business or business interest may inquire as to the obligation or tax status of any business upon presenting to the Commission a release of tax information request signed by the authorized agent of the business.
- H. All returns referred to in this chapter, and all data taken therefrom, shall be kept secure from public inspection, and from all private inspection.

5.19.210. Violations.

- A. A remote seller or marketplace facilitator that fails to file a sales tax return or remit sales tax when due, in addition to any other liability imposed by this Code, shall pay to the Commission all costs incurred by the Commission to determine the amount of the remote seller's or marketplace facilitator's liability or to collect the sales tax, including, without limitation, reviewing and auditing the remote seller's or marketplace facilitator's business records, collection agency fees, and actual reasonable attorney's fees.
- B. A person who causes or permits a corporation of which the person is an officer or director, a limited liability company of which the person is a member or manager, or a partnership of which the person is a partner, to fail to collect sales tax or to remit sales tax to the Commission as required by this Code shall be liable to the Commission for the amount that should have been collected or remitted, plus any applicable interest and penalty.
- C. Notwithstanding any other provision of law, and whether or not the Commission initiates an audit or other tax collection procedure, the Commission may bring a declaratory judgment action against a remote seller or marketplace facilitator believed to meet the criteria to establish that the obligation to remit sales tax is applicable and valid under local, state and federal law. The action shall be brought in the judicial district of the taxing jurisdiction.
- D. The Commission may cause a sales tax lien to be filed and recorded against all real and personal property of a remote seller or marketplace facilitator where the remote seller or marketplace facilitator has:

1. Failed to file sales tax returns for two (2) consecutive filing periods as required by the Code; or
 2. Failed within sixty (60) days of the end of the filing period from which taxes were due to either (a) remit all amounts due or (b) to enter into a secured payment agreement as provided in this Code.
 3. Prior to filing a sales tax lien, the Commission shall cause a written notice of intent to file to be mailed to the last known address of the delinquent remote seller or marketplace facilitator.
- E. In addition to other remedies discussed in this Code, the Commission may bring a civil action to:
1. Enjoin a violation of this Code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 2. Collect delinquent sales tax, penalty, interest and costs of collection, either before or after estimating the amount of sales tax due.
 3. Foreclose a recorded sales tax lien as provided by law.
- F. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

5.19.220. Penalties for Violations.

- A. A buyer, remote seller, or marketplace facilitator who knowingly or negligently submits false information in a document filed with the Commission pursuant to this Code is subject to a penalty of five hundred dollars (\$500).
- B. A remote seller or marketplace facilitator who knowingly or negligently falsifies or conceals information related to its business activities with the Commission or taxing jurisdiction is subject to a penalty of five hundred dollars (\$500).
- C. A person who knowingly or negligently provides false information when applying for a certificate of exemption is subject to a penalty of five hundred dollars (\$500).
- D. Any remote seller or marketplace facilitator who fails to file a return required under this chapter by the due date, regardless of whether any taxes were due for the reporting period for which the return was required, shall be subject to a penalty of twenty-five dollars (\$25) for the first sales tax return not timely filed. The filing of an incomplete return shall be treated as the filing of no return.

- E. A remote seller or marketplace facilitator who fails or refuses to produce requested records or to allow inspection of their books and records shall pay to the Commission a penalty equal to three (3) times any deficiency found or estimated by the Commission with a minimum penalty of five hundred dollars (\$500).
- F. A remote seller or marketplace facilitator who falsifies or misrepresents any record filed with the Commission is guilty of an infraction and subject to a penalty of five hundred dollars (\$500) per record.
- G. Misuse of an exemption card is a violation and subject to a penalty of fifty dollars (\$50) per incident of misuse;
- H. Nothing in this chapter shall be construed as preventing the Commission from filing and maintaining an action at law to recover any taxes, penalties, interest and/or fees due from a remote seller or marketplace facilitator. The Commission may also recover attorney's fees in any action against a delinquent remote seller or marketplace facilitator.

5.19.230. Remote Sellers with a physical presence in the taxing jurisdiction.

- A. Sellers with a physical presence in a Taxing Jurisdiction and no remote or internet-based sales shall report, remit, and comply with standards, including audit authority, of the Taxing Jurisdiction.
- B. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in a different Taxing Jurisdictions shall (i) report and remit the remote or internet sales to the Commission; and (ii) report and remit the in-store sales to the Taxing Jurisdiction.
- C. Sellers with a physical presence in a Taxing Jurisdiction that also have remote or internet-based sales where the Point of Delivery is in the same Taxing Jurisdictions shall report and remit those remote sales to the Taxing Jurisdiction.
- D. Remote Sellers and marketplace facilitators that do not have a physical presence in a Taxing Jurisdiction must report and remit all remote sales to the Commission.
- E. For all purchases the tax rate added to the sale price shall be as provided in the Taxing Jurisdiction's sales tax code, based on point of delivery.
- F. A marketplace facilitator is considered the remote seller for each sale facilitated through its marketplace and shall collect, report, and remit sales tax to the Commission. A marketplace facilitator is not considered to be the remote seller for each sale or rental of lodging facilitated through its marketplace, wherein the seller is considered to have a physical presence in the Taxing Jurisdiction.

5.19.240. Remittance of Tax; Remote Seller Held Harmless.

- A. Any remote seller or marketplace facilitator that collects and remits sales tax to the Commission as provided by law may use an electronic database of state addresses that is certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed.
- B. Any remote seller or marketplace facilitator that uses the data contained in an electronic database certified by the Commission pursuant to subsection (C) of this section to determine the jurisdictions to which tax is owed shall be held harmless for any tax, charge, or fee liability to any taxing jurisdiction that otherwise would be due solely as a result of an error or omission in the database.
- C. Any electronic database provider may apply to the Commission to be certified for use by remote sellers or marketplace facilitators pursuant to this section. Such certification shall be valid for three years. In order to be certified, an electronic database provider shall have a database that satisfies the following criteria:
 - 1. The database shall designate each address in the state, including, to the extent practicable, any multiple postal address applicable to one location and the taxing jurisdictions that have the authority to impose a tax on purchases made by purchasers at each address in the state.
 - 2. The information contained in the electronic database shall be updated as necessary and maintained in an accurate condition. In order to keep the database accurate, the database provider shall provide a convenient method for taxing jurisdictions that may be affected by the use of the database to inform the provider of apparent errors in the database. The provider shall have a process in place to promptly correct any errors brought to the provider's attention.

5.19.250. Definitions.

For purposes of this chapter, the following definitions shall apply:

“Buyer or purchaser” means a person to whom a sale of property or product is made or to whom a service is furnished.

“Commission” means the Alaska Intergovernmental Remote Sales Tax Commission established by Agreement between local government taxing jurisdictions within Alaska, and delegated tax collection authority.

“Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product. An exemption that is available to all individuals shall not be considered an entity-based exemption.

“Goods for resale” means:

- A. the sale of goods by a manufacturer, wholesaler or distributor to a retail vendor; sales to a wholesale or retail dealer who deals in the property sold, for the purpose of resale by the dealer.
- B. Sales of personal property as raw material to a person engaged in manufacturing components for sale, where the property sold is consumed in the manufacturing process of, or becomes an ingredient or component part of, a product manufactured for sale by the manufacturer.
- C. Sale of personal property as construction material to a licensed building contractor where the property sold becomes part of the permanent structure.

“Marketplace facilitator” means a person that contracts with remote sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the remote seller’s property or services through a physical or electronic marketplace operated by the person, and engages:

- A. Directly or indirectly, through one or more affiliated persons in any of the following:
 - (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and remote seller;
 - (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and remote sellers together;
 - (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the remote seller; or
 - (iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and
- B. In any of the following activities with respect to the seller’s products:
 - (i) Payment processing services;
 - (ii) Fulfillment or storage services;
 - (iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

“Member” means a taxing jurisdiction that is a signatory of the Alaska Remote Sales Tax Intergovernmental Agreement, thereby members of the Commission, and who have adopted the Remote Seller Sales Tax Code.

“Monthly” means occurring once per calendar month.

“Nonprofit organization” means a business that has been granted tax-exempt status by the Internal Revenue Service (IRS); means an association, corporation, or other organization where no part of the net earnings of the organization inures to the benefit of any member, shareholder, or other individual, as certified by registration with the IRS.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Physical presence” means a seller who establishes any one or more of the following within a local taxing jurisdiction:

1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;
2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the local taxing jurisdiction or engages in activities in this state that are significantly associated with the seller’s ability to establish or maintain a market for its products in this state;
3. Provides services or holds inventory within the boundaries of the local taxing jurisdiction;
4. Rents or Leases property located within the boundaries of the local taxing jurisdiction.

A seller that establishes a physical presence within the local taxing jurisdiction in any calendar year will be deemed to have a physical presence within the local taxing jurisdiction for the following calendar year.

“Point of delivery” means the location at which property or a product is delivered or service rendered.

- A. When the product is not received or paid for by the purchaser at a business location of a remote seller in a Taxing Jurisdiction, the sale is considered delivered to the location where receipt by the purchaser (or the purchaser's recipient, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery as supplied by the purchaser (or recipient) and as known to the seller.
- B. When the product is received or paid for by a purchaser who is physically present at a business location of a Remote Seller in a Taxing Jurisdiction the sale is considered to have been made in the Taxing Jurisdiction where the purchaser is present even if delivery of the product takes place in another Taxing Jurisdiction. Such sales are reported and tax remitted directly to the Taxing Jurisdiction not to the Commission.
- C. For products transferred electronically, or other sales where the remote seller or marketplace facilitator lacks a delivery address for the purchaser, the remote seller or marketplace facilitator shall consider the point of delivery the sale to the billing address of the buyer.

“Product-based exemptions” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Property” and “product” means both tangible property, an item that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses; and intangible property, anything that is not physical in nature (i.e.; intellectual property, brand recognition, goodwill, trade, copyright and patents).

“Quarter” means trimonthly periods of a calendar year; January-March, April-June, July-September, and October-December.

“Receive or receipt” means

- A. Taking possession of property;
- B. Making first use of services; or
- C. Taking possession or making first use of digital goods, whichever comes first.

The terms “receive” and “receipt” do not include temporary possession by a shipping company on behalf of the purchaser.

“Remote sales” means sales of goods or services by a remote seller or marketplace facilitator.

“Remote seller” means a seller or marketplace facilitator making sales of goods or services delivered within the State of Alaska, without having a physical presence in a taxing jurisdiction, or conducting business between taxing jurisdictions, when sales are made by internet, mail order,

phone or other remote means. A marketplace facilitator shall be considered the remote seller for each sale facilitated through its marketplace.

“Resale of services” means sales of intermediate services to a business the charge for which will be passed directly by that business to a specific buyer.

“Sale” or “retail sale” means any transfer of property for consideration for any purpose other than for resale.

“Sales or purchase price” means the total amount of consideration, including cash, credit, property, products, and services, for which property, products, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- A. The seller’s cost of the property or product sold;
- B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

“Seller” means a person making sales of property, products, or services, or a marketplace facilitator facilitating sales on behalf of a seller.

“Services” means all services of every manner and description, which are performed or furnished for compensation, and delivered electronically or otherwise outside the taxing jurisdiction (but excluding any that are rendered physically within the taxing jurisdiction, including but not limited to:

- A. Professional services;
- B. Services in which a sale of property or product may be involved, including property or products made to order;
- C. Utilities and utility services not constituting a sale of property or products, including but not limited to sewer, water, solid waste collection or disposal, electrical, telephone services and repair, natural gas, cable or satellite television, and Internet services;
- D. The sale of transportation services;

E. Services rendered for compensation by any person who furnishes any such services in the course of his trade, business, or occupation, including all services rendered for commission;

F. Advertising, maintenance, recreation, amusement, and craftsman services.

“Tax cap” means a maximum taxable transaction.

“Taxing jurisdiction” means a local government in Alaska that has a sales tax and is a member of the Alaska Remote Sellers Sales Tax Commission.

“Transferred electronically” means obtained by the purchaser by means other than tangible storage media.

5.19.260 Supplemental Definitions.

The Commission shall promulgate Supplemental Definitions that are incorporated into this Remote Seller Sales Tax Code. Supplemental Definitions are available at www.arsstc.org. Provisions of the Supplemental Definitions that are amended, deleted, or added prior to or after the effective date of the latest amendment to this chapter shall be applicable for purposes of this chapter on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

SECTION 4. That the Alaska Intergovernmental Remote Sales Tax Commission is hereby authorized to implement, administer, and enforce the provisions of KPB 5.19 Uniform Remote Seller Sales Tax Code. This authority remains in full force and effect until the assembly revokes this authorization or otherwise withdraws from the Alaska Remote Seller Sales Tax Commission.

SECTION 5. This ordinance is effective March 1, 2020.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Finance Department

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Kelly Cooper, Assembly President ^{KC}
Hal Smalley, Assembly Vice-President ^{(1/3) for H. S.}

FROM: Brandi Harbaugh, Finance Director ^{BH}
Sean Kelley, Deputy Borough Attorney ^{SK}

DATE: January 9, 2020

RE: Ordinance 2020-03, Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley)

In order to implement a single-level statewide sales tax administration, numerous local taxing jurisdictions within Alaska banded together to establish an intergovernmental entity known as the Alaska Remote Seller Sales Tax Commission (the "Commission"). This ordinance represents the culmination of a process that began in June of 2019 and is the last step before municipal tax collected by remote sellers can be remitted to the borough through the Commission.

The recent decision by the United States Supreme Court in *South Dakota v. Wayfair* ("Wayfair") allows for the amendment of the sales tax code to account for remote sellers who do not have a physical presence in the borough, but do have a taxable connection with the borough. Remote sellers who make a substantial number of deliveries into or have large gross revenues from Alaska benefit extensively from the Alaska market, affecting the economy generally, as well as local infrastructure. The *Wayfair* decision provides guidance that includes the defensibility of a single-level statewide administration of remote sales tax collection and remittance so long as the law is not retroactive in its application and provides a safe harbor to sellers who have limited sales or transactions in Alaska.

There are currently 23 municipalities in Alaska that are members of the Commission. The function and powers of the Commission are set forth in the Alaska Intergovernmental Remote Seller Sales Tax Agreement (the "Agreement"), a cooperative agreement between Commission members.

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January 9, 2020
RE: Ordinance 2020-03

On November 5, 2019, the assembly unanimously passed Resolution 2019-056 authorizing the borough to become a member of the Commission and authorizing the mayor to sign the Agreement on behalf of the borough. Five of the incorporated cities within the borough are members of the Commission. In addition, representatives from the borough, the City of Soldotna, and the City of Kenai also comprise three of the seven Board of Director seats on the Commission.

Under the terms of the Agreement, in order to maintain membership in the Commission, local governments must enact the uniform Remote Seller Sales Tax Code ("Uniform Code") as adopted by the Commission's Board of Directors. The Board of Directors adopted the Uniform Code at its meeting on January 6, 2020. The Uniform Code will govern the collection and remittance of municipal sales tax applicable to remote or internet-based sales. The purpose of the Uniform Code is to comply with guidance in *Wayfair* by providing a statewide threshold criteria, streamlined single-level tax administration for remote sellers, and no retroactive application. The Uniform Code will provide for streamlined remote sales tax collection and remittance process which is necessary to avoid claims that local municipal tax unduly burdens interstate sellers.

This ordinance will adopt the Uniform Code, amend current borough sales tax code for consistency, and authorize the Commission to administer remote sales tax collection and remittance. In light of the *Wayfair* decision, failure to adopt a uniform, streamlined, remote seller sales tax code will jeopardize the ability of the borough and its cities to collect tax on remote sales.

Your consideration of this ordinance is appreciated.

Kenai Peninsula Borough Finance Department

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Kelly Cooper, Assembly President ^{KC}
Hal Smalley, Assembly Vice-President ^{(B) for H.S.}

FROM: Brandi Harbaugh, Finance Director ^{BH}
Sean Kelley, Deputy Borough Attorney ^{SK}

DATE: February 13, 2020

RE: Amending Ordinance 2020-03, Amending KPB 5.18 Sales Tax Code and Enacting KPB 5.19 – Uniform Remote Seller Sales Tax Code (Cooper, Smalley)

To avoid potential confusion for local sellers and to avoid potential conflict between KPB 5.18 Sales Tax Code and KPB 5.19 Uniform Remote Seller Sales Tax Code, two amendments to Ordinance 2020-03 are offered.

The following show the amendments with the changes shown. *(Please note the changes are in bold with additions underlined and deletions crossed out.)*

- Amend Section 1 to read as follows:

SECTION 1. That KPB 5.18.450(A) is hereby amended as follows:

5.18.450. - Tax jurisdiction—Point of Taxation.

- A. The rate of tax to be added to the sale price is based on the place of sale. The place of sale of goods, services, and merchandise is the location of the seller's [RETAIL OUTLET] physical presence at which or from which delivery was made, including installation charges and in-store pickups. ~~[This provision applies to goods delivered to buyers within the borough and to goods delivered to buyers outside the borough but within the state of Alaska. If the invoice includes a charge for installation, then the place of the sale for the goods and service is the retail outlet at which or from which delivery was made. When goods are delivered into the borough from a point outside of the borough and the seller maintains an ongoing physical presence in the borough, then the location of the seller's in-borough presence will determine the place of sale.]~~ [IF A SELLER HAS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH BUT HAS ESTABLISHED NEXUS WITH THE BOROUGH, THE POINT OF DELIVERY WILL DETERMINE THE PLACE OF SALE. IF THE SELLER HAS NO ONGOING PHYSICAL

Page -2-
January 23, 2020
RE: Amending Ordinance 2020-03

PRESENCE IN, OR NEXUS WITH, THE BOROUGH THE SALE IS NOT SUBJECT TO THE BOROUGH SALES TAX. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS ARE DEFINED AS SHOWN BELOW:

1. "NEXUS" MEANS THE SELLER HAS ESTABLISHED A TAXABLE CONNECTION WITHIN THE BOROUGH BY USE OF MARKETING TECHNIQUES, SUCH AS DIRECTED ADVERTISING IN THE BOROUGH VIA TELEPHONE OR INTERNET, OR DOOR-TO-DOOR SALES WITHIN THE BOROUGH, OR BY USE OF CONTRACT WORKERS OR CONTRACT OR COMMISSION AGENTS OR BUSINESSES, WHICH ARE ASSOCIATED WITH THE SELLER'S EFFORTS TO ESTABLISH OR MAINTAIN A MARKET FOR ITS GOODS OR SERVICES, DELIVER THOSE GOODS OR SERVICES, OR PROVIDE WARRANTY OR OTHER REPAIR OR RETURN SERVICES IN THE BOROUGH.
2. THE "POINT OF DELIVERY" WHERE THERE IS NO ONGOING PHYSICAL PRESENCE IN THE BOROUGH IS THE PLACE WHERE PHYSICAL POSSESSION OF THE GOODS IS TRANSFERRED TO THE CUSTOMER.]

...

➤ Insert a new Section 3 to read as follows:

SECTION 3. That KP.B 5.18.900 is hereby amended to include a definition of "Physical presence" as follows:

...

"Physical presence" means a seller who establishes any one or more of the following within the borough:

- 1. Has any office, distribution or sales house, warehouse, storefront, or any other place of business within the boundaries of the local taxing jurisdiction;**
- 2. Solicits business or receiving orders through any employee, agent, salesman, or other representative within the boundaries of the borough or engages in activities in the borough that are significantly associated with the seller's ability to establish or maintain a market for its products in the borough;**
- 3. Provides services or holds inventory within the borough;**
- 4. Rents or Leases property located within the boundaries of the borough.**

A seller that establishes a physical presence within the borough in any calendar year will be deemed to have a physical presence within the borough for the following calendar year.

....

➤ Renumber the remaining Sections

CITY OF SOLDOTNA
RESOLUTION 2020-009

A RESOLUTION DELEGATING AUTHORITY TO IMPLEMENT, ADMINISTER, AND ENFORCE THE PROVISION OF THE UNIFORM CODE TO THE ALASKA INTERGOVERNMENTAL REMOTE SALES TAX COMMISSION, AND SUPPORTING ADOPTION OF KENAI PENINSULA BOROUGH ORDINANCE 2020-03

WHEREAS, the City of Soldotna became a member of the Alaska Remote Seller Sales Tax Commission (“the Commission”) with the passage of Resolution 2019-057 (adopted November 13, 2019); and

WHEREAS, the purpose of the Commission is to implement a single-level statewide sales tax administration, for the collection and remittance of sales tax for goods and services sold by remote sellers (i.e. internet orders); and

WHEREAS, per the Alaska Intergovernmental Remote Seller Sales Tax Agreement, each member municipality must adopt the Alaska Uniform Remote Seller Sales Tax Code as adopted by the Commission’s Board of Directors (“Uniform Code”); and

WHEREAS, the Commission adopted the Uniform Code on January 6, 2020; and

WHEREAS, the Kenai Peninsula Borough has proposed adopting the Uniform Code by Kenai Peninsula Borough Ordinance 2020-03, which will amend Title 5 of the Kenai Peninsula Borough Code of Ordinances; and

WHEREAS, Section 3.08.020 of the Soldotna Municipal Code incorporates Title 5 of the Kenai Peninsula Borough Code of Ordinances as if fully set forth in the Soldotna Municipal Code; and

WHEREAS, Section 4 of Ordinance Kenai Peninsula Borough Ordinance 2020-03 authorizes the Commission to implement, administer and enforce the provisions of the Uniform Code on behalf of the Borough;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

Section 1. That the City of Soldotna concurs in the Kenai Peninsula Borough’s authorization and delegation of authority to the Alaska Intergovernmental Remote Sales Tax Commission to implement, administer and enforce the provisions of the Uniform Code on behalf of the City of Soldotna.

Section 2. That the City of Soldotna supports adoption of Kenai Peninsula Borough Ordinance 2020-03.

Section 3. A copy of this resolution shall be forwarded to the Kenai Peninsula Borough and the Alaska Remote Seller Sales Tax Commission.

Section 4. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL THIS 12TH DAY OF FEBRUARY, 2020.


Pete Sprague, Mayor

ATTEST:


Michelle M. Sauer, MMC, City Clerk



Yes: Whitney, Ruffridge, P. Parker, Carey, Chilson
No: None
Absent: L. Parker

Introduced by: Mayor
Date: 02/04/20
Hearing: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-06**

**AN ORDINANCE AUTHORIZING A COMMUNITY TRAIL MANAGEMENT
AGREEMENT ON BOROUGH LAND WITHIN THE CITY OF SOLDOTNA WITH
SHIMAI TOSHI GARDEN TRAILS, INC.**

- WHEREAS**, KPB 17.10.185 provides for the mayor to enter into 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**, Shimai Toshi Garden Trails, Inc. (“STGT”) is a non-profit organization dedicated to promoting mental health and educational opportunities through community activities, gardens and trails; and
- WHEREAS**, STGT has been awarded a \$20,000 grant that it intends to utilize to create a community space that includes gardens and trails; and
- WHEREAS**, STGT has applied for a Community Trail Management Agreement (“CTMA”) to develop, maintain, and manage a community garden with trails on borough owned land within the city of Soldotna; and
- WHEREAS**, the borough owned land a portion of which is subject to the CTMA is 38.79 acres and is identified as parcel #059-301-01, which is legally described as the NW1/4SE1/4, Section 30, T. 5N., R. 10W., S.M., Kenai Recording District, Third Judicial District, State of Alaska; and
- WHEREAS**, the 20-acre campus of Soldotna High School is located within the eastern half of parcel #059-301-01; and
- WHEREAS**, the use authorized within the CTMA is compatible with existing use of the parcel; and
- WHEREAS**, the use authorized within the CTMA is located within the northwest corner of parcel #059-301-01, approximately 250 feet northwest of the high school at its nearest point, and contains an area of approximately seven acres; and

WHEREAS, authorizing the CTMA furthers the Kenai Peninsula Borough Comprehensive Plan Goal 1, Focus Area: Tourism and Recreation, Objectives A, B, and D; and

WHEREAS, the CTMA is consistent with the borough’s 2014 Recreation & Trails Master Plan for the City of Soldotna; and

WHEREAS, the CTMA area is subject to land use zoning by the City of Soldotna; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of January 27, 2020 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 Community Trail Management Agreement with Shimai Toshi Garden Trails, In., substantially in the form of the “Exhibit A” document accompanying this ordinance, that provides for the development, maintenance, and management of public trails, gardens, 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 and garden facilities to be located in the CTMA area on KPB parcel #059-301-01 for year-round management of non-motorized trail uses.

SECTION 3. That the mayor is authorized, through the CTMA, to provide for the regulation of public uses on the trail facilities to allow only non-motorized uses, except for authorized maintenance vehicles, and to disallow pets, except service animals, within the CTMA area.

SECTION 4. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough
Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Max Best, Planning Director *MB*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: January 23, 2019

RE: Ordinance 2020-*06*, Authorizing a Community Trail Management Agreement on Borough Land within the City of Soldotna with Shimai Toshi Garden Trails, Inc. (Mayor)

Shimai Toshi Garden Trails, Inc. has applied to develop a Japanese garden and trail system on an approximately 7-acre area of borough property within the northwest corner of the parcel containing the campus for Soldotna High School.

A Community Trail Management Agreement (CTMA) has been prepared that provides a management plan for the garden and trail system that will be used to balance this use of the land with other interests of the Kenai Peninsula Borough. The CTMA and management plan only authorize phase one of the development. Subsequent phases will require additional authorization from the Assembly.

Phase one facilities include:

- Approximately 2,700 linear feet of gravel trails 5 to 8 feet in width
- Outdoor garden areas containing species native to Alaska
- Installation of a rotunda, approximately 30 feet in diameter, containing a 6-foot tall sculpture and plaque that reads as follows:

Shimai Toshi "Sister City" Garden Trails are to honor the KPB's sister city Akita-shi, Akita, Japan. This garden is a symbol of peace, hope, and survivorship in remembrance of WWII. We hope this garden becomes a healing space for all veterans, and a place to foster harmony, peace, well-being, and education for all who visit.

100% of your donation supports future developments and maintenance of this space.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor 

FROM: Max J. Best, Planning Director 

DATE: January 29, 2020

RE: Ordinance 2020-06; An Ordinance Authorizing a Community Trail Management Agreement on Borough Land within the City of Soldotna with Shimai Toshi Garden Trails, Inc.

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled January 27, 2020 meeting.

A motion passed by unanimous consent to recommend approval of Ordinance 2020-06.

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

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of January 27, 2020 recommended approval by unanimous consent.

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

AGENDA ITEM F. PUBLIC HEARING

1. Ordinance 2020-06; An Ordinance Authorizing a Community Trail Management Agreement on Borough Land within the City of Soldotna with Shimai Toshi Garden Trails, Inc.

Staff Report given by Marcus Mueller

PC MEETING: January 27, 2020

Shimai Toshi Garden Trails, Inc. has applied for a Community Trail Management Agreement to develop a Japanese garden and trail system on approximately 7-acres of borough property adjacent to Soldotna High School. This is the same form of agreement that the Tsalteshi Trails and the Kachemak Nordic Ski Club are under. This proposal is for a trail and garden system. It includes about 2,700 linear feet of gravel trails that are 5 to 8 feet in width, outdoor garden areas, and a rotunda with a bronze peace crane sculpture. A statement is proposed to be on a plaque that recognizes the Borough's sister city. It is proposed to read "Shimai Toshi 'Sister City' Garden Trails are to honor the KPB's sister city Akita-shi, Akita, Japan. This garden is a symbol of peace, hope and survivorship in remembrance of WWII. We hope this garden become a healing space for all veterans, and a place to foster harmony, peace, well-being, and education for all who visit." The ordinance would authorize a trail management agreement. The agreement authorizes the management plan and delegates some of the Borough's management authority to a third party group to implement the management. The Community Trail Management Agreement sets up the rules and regulations and requires an annual report. The annual report will be due on April 15 of each year and will indicate how much progress has been made on the implementation of the management plan, how much usage the facility is receiving, and what maintenance activities have been done. It will also state how many grants have been applied for or implemented. There is a map in the packet that shows the general location of the trail. The trail management plan lays out what is being proposed in three phases. Phase 1 is the only phase being authorized under this Community Trail Management Agreement. The second and third phases show the overall project goals. The agreement does allow the trail manager to regulate uses as approved by the Assembly. The use restrictions being proposed are non-motorized uses and no pets. There are no fees being proposed so all trails are open to the public. There is an illustration in the packet that shows the proposed plan under this agreement. Another illustration shows a more elaborate design that includes Phase 2 and Phase 3. Due to the nature of the improvements shown in Phase 2 and Phase 3 this will likely go to the Assembly with a lease proposal if the project moves to those stages. The application is in the packet and shows the details and the thought process behind the trails. There are some illustrations of some of the features being proposed including the bronze sculpture, gate structure, and seating elements.

END OF STAFF REPORT

Chair Martin asked if anyone from the public wished to comment on this item.

1. Sarah Pyhala, President of Shimai Toshi Garden Trails, Inc.
Ms. Pyhala was available for questions.

Commissioner Carluccio noted that it would be for non-motorized use. She wanted to know what contingencies were being made for handicapped access. Ms. Pyhala said that all the trails would be handicapped accessible. Commissioner Carluccio wanted to know if a person in a motorized chair would be able to use the trails. Ms. Pyhala said the trails will be wide enough and on level ground so that wheelchairs or scooters could be used. The restriction is to limit use of four wheelers and similar items.

2. Matthew Pyhala, Secretary of Shimai Toshi Garden Trails, Inc.

Mr. Pyhala noted that the packet give some origin to the project. He and Ms. Pyhala went to a Rotary International Peace Conference in Vancouver, Canada a few years ago. They received Gingko and Hackberry seeds from survivor trees from the Hiroshima bombing. They brought the seeds back and germinated them and they plan on those plants being a centerpiece of the garden. They were sent from that Peace Conference with a challenge to come up with grass roots ideas to promote peace and to prevent nuclear war from happening again. The garden would be a way to promote peace and healing for all in the community.

Commissioner Ernst asked if there would be any water features. Mr. Pyhala said that in Phase 1 there are no water features. In Phase 2, there are plans for a large pond with a waterfall feature. Phase 1 does allow the construction of the dry bed from where the waterfall will be to where the pond will be.

Seeing and hearing no one else wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Morgan, to forward to the Assembly a recommendation to approve Ordinance 2020-06 to enter into a Trail Management Agreement with Shimai Toshi Garden Trails, Inc.

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



KENAI PENINSULA BOROUGH
Planning Department • Land Management Division
 144 North Binkley Street • Soldotna, Alaska 99669-7520
 PHONE: (907) 714-2205 • FAX: (907) 714-2378
www.kpb.us/land

CTMA 2020-01
TRAIL MANAGEMENT PLAN
FOR PUBLIC TRAILS ON BOROUGH LAND
 KPB 17.10.185

TRAIL MANAGER:

Shimai Toshi Garden Trails, Inc.
 PO Box 771
 Soldotna, AK 99669

Trail Management Plan for
“Shimai Toshi Garden Trails” on Marydale Avenue

SUMMARY OF TRAIL MANAGEMENT

SEASONS OF TRAIL MANAGEMENT

Year Round

TRAIL WIDTH (Typical)

5 to 8 feet

TRAIL MAINTENANCE ACTIVITIES

Periodic Brushing/Clearing

Snow Removal

TRAIL IMPROVEMENTS

Gravel Trails

Signs

Interpretive/Heritage Sites

GARDEN AND VEGETATION

Screening Vegetation

Trailside Vegetation

Entrance Garden (approx. 8,000sf)

TRAIL ADMINISTRATION

Scheduled Events

Grants

Entrance Gate and Signage

TRAIL ACTIVITIES AUTHORIZED

Hiking

Walking/Running

OTHER FACILITIES

Rotunda Interpretive Area

Sculpture

Landscaping Boulders

USE REGULATIONS

Non-motorized (except authorized
 maintenance vehicles)

No Pets

GARDEN TRAILS CONCEPT AND INTERPRETATION

The primary objectives of the garden are to provide a peaceful and contemplative community space, to honor Akita, Japan, the Kenai Peninsula Borough's "sister city," and to provide an indoor space for community educational events. Interpretive signs will encourage visitors to understand the garden trails as a symbol of peace, hope, and survival in remembrance of World War II. The site name, which will be displayed at the entrance, will be "Shimai Toshi Garden Trails."

GARDEN TRAILS CONSTRUCTION METHODS & TIMING

STGT proposes development of the garden trails in three phases. This trail management plan includes authorization only for phase one elements of the proposed garden as provided in detail below and represented on the attached site plan (Attachment A).

Phase One Development

Phase one elements of Shimai Toshi Garden Trails include an entrance gate with unlocked doors and signage, approximately 2,700 linear feet of gravel trail system, installation of a rotunda that includes a 6-foot sculpture with an interpretive plaque, installation of an outdoor garden plot and trailside plantings, and installation of a landscaped rock hill and dry creek bed as shown on Attachment A. The landscaped rock feature will be approximately 20 feet in diameter and have water pipes installed to be utilized during phase two.

Trail construction will involve removing existing vegetation only within the trail width corridor and proposed garden plots as shown on Attachment A. Vegetation removal, stripping and grading will be accomplished using hand tools, excavator, skid steer, and/or mulcher as necessary. The trail alignment will be field-fit based on terrain and soils to achieve a durable surface, with positive drainage, resistant to erosion. All disturbed areas will be replanted with native vegetation where needed to protect soil surface. The trail will have a typical width of 5 feet and a maximum width of 8 feet. Vegetation debris will be stockpiled and removed for firewood or burned during low fire danger conditions or incorporated into low side casting rows with incorporated topsoil.

The rotunda will be approximately 30 feet in diameter and have benches and pergola benches installed on the perimeter. The rotunda will be self-supporting and not involve subgrade foundation materials.

Phase Two Development

Phase two elements of the proposed project would include the addition of a paved parking lot and access drives providing ingress and egress from Marydale Avenue and River Watch Drive. An approximately 4,500 square-foot shallow pond situated near the parking lot adjacent to the area where a walled garden is to be constructed in phase three. A decked walkway would be installed along the northern border of the pond. The pond would have two streams running into it, each fed by water pumped from the pond. The streams would originate at the landscaped rock hill constructed in phase one. A bridge and two culverts would be installed for stream crossings where the trails intersect the streams. A small tea house would sit along the trail near the pond.

Phase Three Development

Phase three elements of the proposed project would include an approximately 0.46-acre (20,200 square-foot) gated access area with surrounding walls. Inside the walled area would be a courtyard containing sand/rock gardens, a storage area, a multipurpose building, and restrooms. The multipurpose building would be approximately 3,200 square-feet and would function as an educational space and could be utilized for community activities. In addition to landscaping and garden areas throughout the site, several covered seating areas and sculptures would be installed.

No authorization is provided here for phase two or phase three elements of the project. Phase two elements will require additional authorization through the KPB Assembly.

Timing of Construction: Construction of phase one elements, including trails, planting of garden areas, and installation of rotunda and entrance gate will occur within the first 2-years of the agreement.

PUBLISHED RULES & REGULATIONS

The following rules and regulations will be posted by sign at trail access points:

General Trail Rules and Etiquette

- Trails are closed to motorized vehicles
- No littering
- No pets on trails
- Signs requesting donations and a collection box
- Please respect private property

FEES

There are no fees proposed at this time. Donation boxes will be placed on site.

ANNUAL REPORT

The following measurements will guide annual reports submitted by April 15th each year, summarizing trail management from the period of April 1 to March 31st.

TRAIL FACILITIES- DEVELOPMENT INVENTORY:

- Linear feet of trail constructed
- Square footage of garden plots developed
- List of species of plants included within garden areas
- Scaled drawing showing property lines and improvements

CTMA 2020-01 January 2020

STGT _____ KPB _____

Page 3 of 4

USE:

- Number of School Events
- Number of Community Events
- Summer Estimated Users per Day
- Winter Estimated Users per Day
- Estimated Total Users per Year

MAINTENANCE ACTIVITIES:

- Number of Trail Maintenance Events or Hours
- Vegetation Treatment or Other Work Days
- Trash Removals

MANAGEMENT ACTIVITIES:

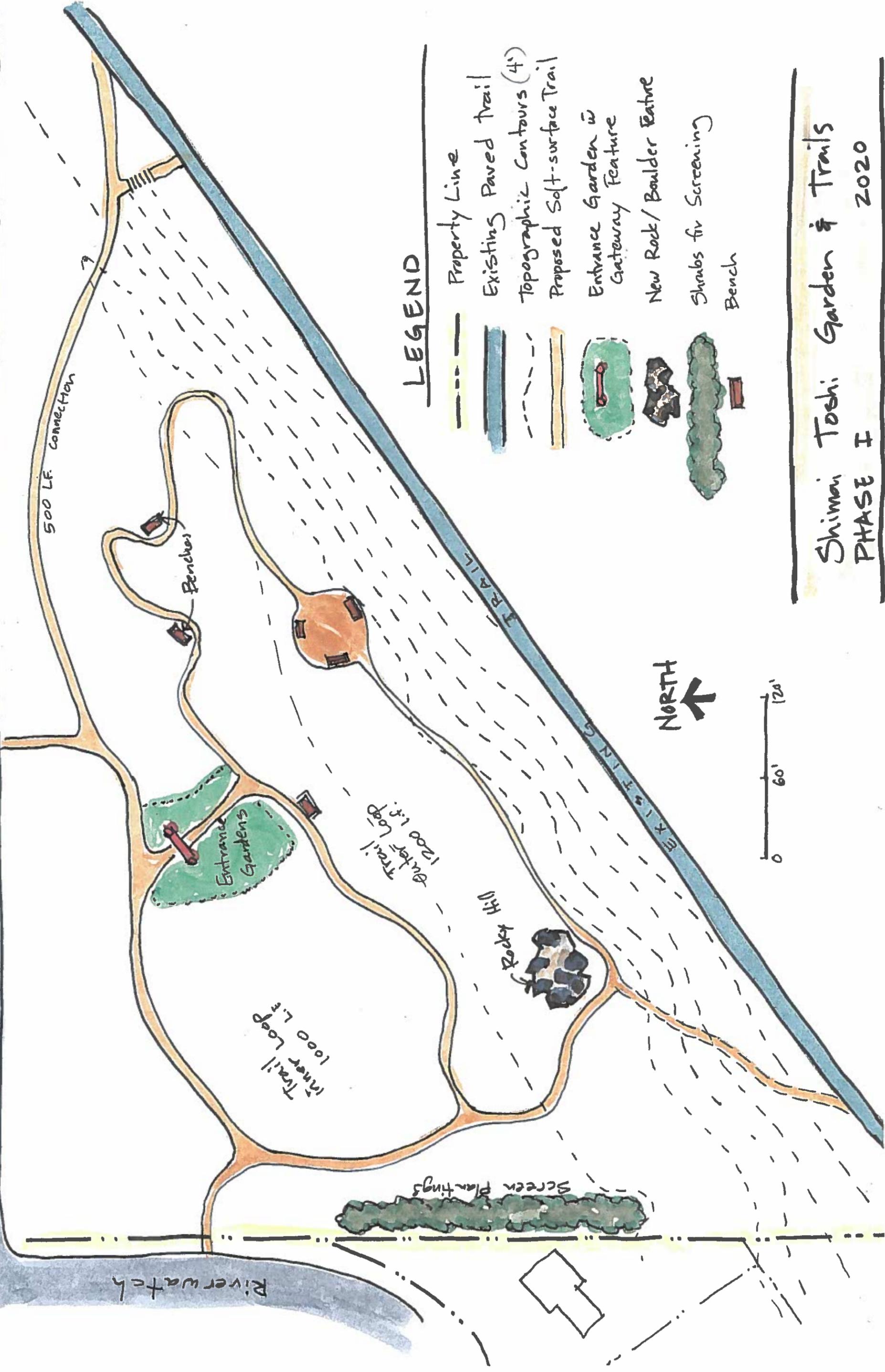
- Grant Funds Used
- Grant Funds Applied For
- Number of Signs

CURRENT CONTACTS:

- Trail Management Plan Administrator

APPROVAL AND EFFECTIVE DATE: Original TMP Approved and Effective on Date of CTMA.

Marydale Avenue



LEGEND

-  Property Line
-  Existing Paved Trail
-  Topographic Contours (4')
-  Proposed Soft-surface Trail
-  Entrance Garden w/ Gateway Feature
-  New Rock/Boulder Feature
-  Shrubs for Screening
-  Bench

Shimai Toshi Garden & Trails
PHASE I
2020

Community Trail Management Agreement

KPB 17.10.185

I. PARTIES TO THE AGREEMENT

Landowner: Kenai Peninsula Borough ("KPB")

Trail Manager: Shimai Toshi Garden Trails, Inc. ("STGT")

II. PURPOSE OF THE AGREEMENT

The purpose of this Community Trail Management Agreement ("CTMA") is to authorize the STGT to construct and perform management of certain public trail facilities on KPB land.

III. COMMUNITY TRAIL MANAGEMENT AGREEMENT AUTHORITY

Pursuant to KPB 17.10.185 and Ordinance 2020-___, enacted February 25, 2020, KPB hereby enters into this CTMA with STGT 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

This CTMA is applicable only on the lands described below and owned by the KPB.

An area within the NW1/4 SE1/4, Section 30, Township 5 North, Range 10 West, Seward Meridian, Kenai Recording District, Alaska, being more particularly described as follows:

A triangular area bounded to the southeast by the trail easement granted to the City of Soldotna (BK 587 PG 154, Kenai Recording District), to the north by the 40-foot road easement granted to the

City of Soldotna (BK 161 PG 413, Kenai Recording District), and to the west by the Mooring By The River Subdivision (KN 1984-160).

Containing 6.88 acres (299,693 sf), more or less, as shown on Exhibit "A", attached to and made a part hereof.

V. TRAIL MANAGEMENT PLAN

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

Trail Management Plan

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 generally 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 shall only be by mutual written agreement. The STGT 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 KPB 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 KPB 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

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

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

VII. RULES, REGULATIONS, AND SAFETY

- A. STGT 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. STGT 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. STGT shall post signs or signals necessary to guide safe use of the Trail Facilities by the general public.
- D. Pursuant to Ordinance 2020-_____ Trail Facilities under this CTMA are authorized for non-motorized use only, except allowance for authorized maintenance vehicles.

- E. STGT 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 STGT 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, purposes: 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 15th of each year.

IX. TERM

This CTMA is for an initial term of 20 years commencing April 1, 2020 and may be extended at any time preceding expiration by mutual written agreement.

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

For the purposes of grant applications made by STGT 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 STGT 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 the KPB to protect resources, health, safety, or the environment.

XII. LIMITATIONS

- A. This CTMA conveys no interest in the land to the STGT. This CTMA does not convey any exclusive rights, nor any preferential rights to the STGT for the use of the Trail Facilities or the land, different from the STGT's right to secure its authorized property and administer the Trail Facilities provided in the CTMA.
- B. The STGT 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 STGT 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 STGT 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 attorney's fees resulting from the STGT's performance or failure to perform in accord with the terms and conditions of this CTMA in any way whatsoever. The STGT shall be responsible under this clause for any and all claims of any character resulting from the STGT or the STGT'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 STGT 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 STGT shall purchase at its own expense and maintain in force at all times during the term of this CTMA the following insurance policy:
1. Commercial General Liability: Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the STGT 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 KPB as an additional insured with respect to the STGT's activities conducted on the property.
- C. Proof of Insurance: The STGT 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 STGT to properly locate its self and its improvements on the land authorized.
- C. Compliance with Laws. The STGT 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.
- E. Waste. The STGT 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 for where correction is not made to resolve the violation to KPB's reasonable satisfaction.
- 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 STGT 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 STGT warrants that the person executing this CTMA is authorized to do so on behalf of the STGT.

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 STGT 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 STGT 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
44 N. Binkley
Soldotna, AK 99669-7599

Shimai Toshi Garden Trails, Inc.
P.O. Box 771
Soldotna, Alaska 99669

STGT shall maintain on file with KPB the name, title, address, email address and telephone number of an individual with who 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

SHIMAI TOSHI GARDEN TRAILS, INC.

Sarah Pyhala, President

Matthew Pyhala, Secretary

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 _____, 2020, by Charlie Pierce, Mayor, Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Sarah Pyhala, President, Shimai Toshi Garden Trails, Inc., an Alaska nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)
ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____day of _____, 2020, by Matthew Pyhala, Secretary, Shimai Toshi Garden Trails, Inc., an Alaska nonprofit corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

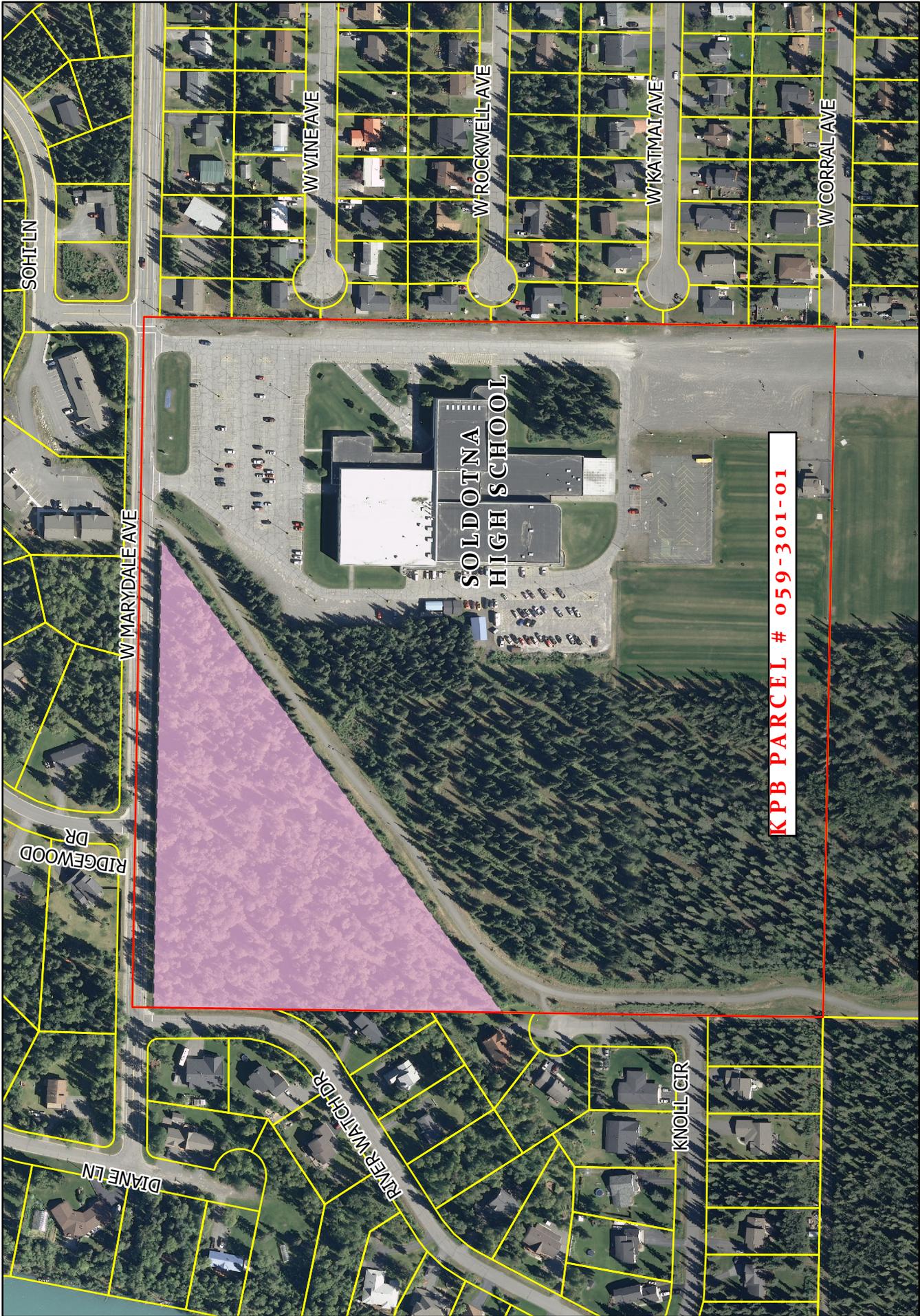


EXHIBIT A

- PARCELS
- SUBJECT KPB PARCEL
- CTMA AREA



Scope of Application

This proposal is pertaining only to the 5.2-acre triangular piece of property, lot 05930101, across the Unity Trail from Soldotna High School on the corner of Marydale Avenue and River Watch Drive, in Soldotna, AK.

History of Shimai Toshi Garden Trails

In February of 2018, Sarah and Matthew Pyhala received seeds from atomic bombed trees in Hiroshima, Japan. Four of these seeds germinated and have resulted in one Ginkgo (whose parent tree is located approximately 1200 meters from the hypocenter of the atomic bombing of the city), and three Japanese Hackberry seedlings (whose parent tree is 530 meters from the hypocenter). These seedlings spurred the idea for a peace garden and trail system located in Soldotna with the purpose of honoring the Kenai Peninsula Borough's Sister City of Akita, Japan, and providing educational opportunities.

In order to achieve this, the Shimai Toshi Task Force was formed for garden and trail development. The following vision for this parcel is based on the ability to create the illusion of space with elemental depth. It includes a fenced perimeter with outlying green space, gated arches that lead to handicap accessible trails, a rotunda with a peace crane sculpture, and garden trail system. Along the garden trails there will be a mountain waterfall than leads to a stream, and infinity pond. A bridge will be located over the stream, a tea house will be along the inner trail loop, and skirting the pond will be an education action space. Trails will have at least a 5' green barrier between them and the water features, and benches will be located throughout the trail system for reflection and meditation.

Japanese gardens have been scientifically proven to have positive physical and psychological effects on visitors. Shimai Toshi Garden Trails, once developed, will provide an integrated, asymmetrical, space where all parts are reliant upon each other, and beauty is the essential realization and insight. It will be a place where community members can balance themselves in a stress-free environment and be transformed via quieting of their minds in a serenely uplifting space that creates internal calmness. This will be a restorative, health-giving environment^{3, 4, 5}. It will provide an emotionally safe place of solitude that is non-demanding and aesthetically pleasing. The simplicity of Shimai Toshi will allow for a heightening of intuitive awareness by experiencing nature through contemplative relaxation that will help to create an internal sense of harmony, respect, purity, and tranquility, or chado.

At this time, no public money has been involved in the forming of or planning for this garden and trail system. Grants, private donations, and memberships will be looked at as the primary means of funding for developing Shimai Toshi Garden Trails. Entrance fees will not be charged, but rather, a donation system will be set up for users to give as they are able. In addition, maintenance of these gardens and trails will be performed in a manner that will not burden the tax rolls.

Shimai Toshi is the Japanese phrase for sister city. The primary objectives of the garden are not only to honor Akita, Japan, but also to provide an education space for a variety of topics, such as the history of WWII. The trails that meander through the gardens are meant to facilitate meditation, respect of space, and a pensive atmosphere. Overall, these gravel trails will be established to create a peaceful area within the Borough for community members to experience.

The Master Gardeners will be able to participate in some aspects of fostering environmental harmony to meet required service hours necessary for obtaining their official certification. Collaboration between humans, nature, and time, following the creative ingenuity of our board of directors and task force members, will allow for the creation of a new tradition of, and within, this community. These garden trails have the potential to redefine how our Borough is perceived outside its boundaries. Please refer to management plan attached following references.

Educational workshop events will be occurring whenever specialized educators visit the Borough with registration being open to the public on a first-come-first-served basis. Field trips for Borough schools can also be arranged during regular hours of operation. In addition, an interactive program such as Haiku Alive¹, developed by the Portland Japanese Garden, as a photographic exploration, and creative writing experience for children in Title 1 schools would fit into the Shimai Toshi vision. There is also the opportunity for a Path to Wellness² program, similar to what is being done at the Friendship Japanese Garden of San Diego, to occur with local military servicemen, both active and retired.

Type of Organization

Shimai Toshi Garden Trails, Inc. is a non-profit association. We obtained 501(c)3 status in November of 2019.
EIN: 83-2378146

Founding Board of Directors include:

Sarah Pyhala, President and Treasurer

Kumi Shields, Vice President

Matthew Pyhala, Secretary

Marion Nelson, Board at Large

Heather Daniels, Board at Large

Current Board of Directors include:

Sarah Pyhala, President and Treasurer

Kumi Shields, Vice President

Matthew Pyhala, Secretary

Sara Dixon, Board at Large

Heather Daniels, Board at Large

Trail Management Plan

Shimai Toshi Garden Trails task force was formed to properly address and manage the needs of the garden and enclosed trails. It is composed of five prominent community members, as well as one sculptor who is based out of Anchorage. Members of this task force include: John Morton, Ph.D., a plant, fish, and wildlife biologist; Casey Matney, Ph.D., an aquaculturist, horticulturist, and agriculturist; Nancy Casey, a landscape planner and designer; The current President, or other representative, of the Rotary Club of Soldotna; Christina DeMetro, artist and sculptor; and Sarah Pyhala, primary project organizer. These members are available as consultants to the garden on an as needed basis.

The Shimai Toshi Garden will have a tiered membership plan, that will contribute to other funds raised that will be used for annual maintenance and will pay for a contractor to provide for ongoing maintenance and upkeep on the grounds

and garden. The entrance will be open to the public, with a spot for public donation. Monies for this trail-heavy garden's improvements will be sought via memberships, fundraising events, and grants.

Trash pick-up and safety patrols will be performed on an as-needed basis by an independent contractor.

The land will be designed with native Alaskan vegetation leaving minimal exposed ground, save packed gravel pathways, thus minimizing the potential for erosion. With a pond, stream, and waterfall on-site, flooding will be prevented via a water control system. Any necessary on-site repairs will be sent out to bid and professionally performed.

Measures of performance will be based on random sampling of visitors throughout primary hours of operations, and monies donated. These samples would be collected on regular intervals across varying times to obtain hard data on trail and garden usage. Monies collected via membership and volunteer donations will be recorded, and records reports will be provided on a quarterly basis.

As this will be a garden with gravel trail access, reclamation of the property would be able to occur in a minimal timeframe for risk mitigation. If reclamation should occur, several structures would need be disassembled, and removed from the site within an agreed upon timeframe. Structures include the traditional-style tea house (that will double as an education-action space), fencing, the bridge, water features, and gates, all of which could be removed with minimal damage to the parcel.

Pumps for the waterfall, and rock placement will be installed and set up by a licensed and bonded construction company that will also perform excavation necessary for pond development (\$100,000.00). A separate local licensed and bonded construction company will be hired for designing the education action space (\$1,000,000.00) and courtyard, a bridge (\$15,000.00), tea house (\$50,000.00), gates (\$20,000.00), trails with stairs (\$45,000.00), and fencing (\$30,000.00). Essential landscaping rocks have been located and are available in the Kenai Peninsula Borough landfill as overburden via mutual agreement. Additional materials will be obtained from communities across Alaska, and carefully logged as to location and date of receipt. At this time, Blazy Construction, and Foster Construction companies have agreed to work with Shimai Toshi Garden and Trails to perform the above-stated work.

A safety plan, see below, has been developed, and includes a means of contacting EMS, addressing insurance that indemnifies KPBC, cameras on-site to deter vandalism, fencing, and lighting.

Short-term goals include establishing a garden with parking lot, trails, water features, rock and sand garden, and plantings laid out in the traditional Japanese style and form.

Long-term goals would be the building of the education action space/ tea room for specialized educational events. These events will include guest educators performing workshops. The space could also be rented out for specialized conference meetings and events.

Another long-term goal would be to build a toilet facility, and to change out any fencing that requires upgrades or maintenance.

Safety Plan

The Shimai Toshi Garden and Trail system is designed to be a relaxing, meditative, and educational space. The space is designed to be self-sufficient, and not require ongoing staffing. However, this requires special care to ensure that the environment remains safe for visitors.

The perimeter will include fencing around the maintained site. In addition, the garden areas will include well-delineated trails using vegetation and other natural methods to encourage visitors to remain in the proper areas, which will reduce the risk of injury.

It is expected that lighting will be installed in several areas of the garden such as along paths and in the parking area, although a detailed lighting plan has not yet developed. This plan will likely be developed in parallel with a security plan,

to include the use of security cameras to deter vandalism and promote a safe environment. The lighting and security plan will likely be modeled after the memorial park and campground plans operated by the City of Soldotna.

Planning for fencing, trails, and access will take place with the need for emergency access in mind. Upon consultation with Central Emergency Services, fencing and access will be provided to ensure that in the event of illness or injury, emergency services can access the area with ease.

The garden will possess the appropriate insurance and will be following the advice of the insurance carrier to reduce risk and the potential for injury. Based on requirements of future agreements, the insurance will name the KPB as an additional insured.

-
1. Portland Japanese Garden Haiku Alive, <https://japanesegarden.org/school-programs/haiku-alive/>
 2. Japanese Friendship Garden of San Diego Path to Wellness program (booklet to available upon request)
 3. Goto S, Gianfagia TJ, Munafo JP, Fujii E, Shen X, Sun M, Shi BE, Liu C, Hamano H, Herrup K. *The Power of Traditional Design Techniques: The Effects of Viewing a Japanese Garden on Individuals with Cognitive Impairment*. HERD 2017 Jul; 10(4):74-86. Epub 2016 Dec 18.
 4. Goto S, Kamal N, Puzio H, Kobylarz F, Herrup K. *Differential responses of individuals with late-stage dementia to two novel environments: a multimedia room and an interior garden*. J.Alzheimers Dis. 2014; 42(3):985-98.
 5. Goto S1, Park BJ, Tsunetsugu Y, Herrup K, Miyazaki Y. *The effect of garden designs on mood and heart output in older adults residing in an assisted living facility*. HERD. 2013 Winter;6(2):27-42.

**APPLICATION FOR A COMMUNITY TRAIL MANAGEMENT AGREEMENT FOR
PUBLIC TRAILS ON BOROUGH LAND
LAND MANAGEMENT DIVISION
KPB.17.10.185**

144 N. Binkley Street
Soldotna, AK 99669-7599
lmweb@kpb.us

Phone: 907-714-2205
Fax: 907-714-2378

NAME OF APPLICANT

Organization Name:

Mailing Address:

Phone Number: Fax Number:

Email Address:

Website Address:

AGENT/REPRESENTATIVE

Name:

Title:

Mailing Address:

Phone Number: Fax Number:

Email Address:

TYPE OF ORGANIZATION

Non-Profit Association Community Organization Government Entity

Note: Please submit, as appropriate, the following items with this application:

- Designation of signatory authority to act for the organization or individual
- If non-profit, has IRS tax exempt status been obtained? Yes No.
If yes, attached letter of determination. If no, please attach certificate, articles in incorporation, by-laws, or other appropriate documentation.

TRAIL LOCATION *(add additional pages as needed)*

Trail(s): Existing New

Trail name(s) if existing:

Parcel Identification Number(s):

05930101

Describe any existing uses of the trails identified above:

None, as site is undeveloped.

Terms of management agreement:

Start Date:

April, 2019

End Date:

April, 2069

Adjoining Land Uses: Identify any existing uses of improvement that may affect this proposal (i.e.: schools, other 3rd party uses)

Soldotna High School is currently using the portion of this parcel that is on the opposite side of the Unity Trail.

Does the applicant anticipate applying for grant funding? Yes No If yes, briefly describe the nature of the grant:

We have been awarded a \$20,000.00 Rotary Matching Grant through the Rotary Club of Soldotna. Other Grants include a \$10,000.00 AK Humanities Grant, a Rasmussen Foundation \$25,000.00 grant, a JFLALC \$5,000.00 grant, and an AK DNR \$250,000.00 grant.

Please describe how this trail management proposal serves the public's best interest:

This public garden will be a pensive, quiet, meditative space that has many healing properties, including those for Veterans suffering from PTSD, and community members with dementia. It will be an educational space with opportunities for guest artists, craftsmen, and speakers to be showcased. In addition it will honor the KPB sister city of Akita, Japan.

Briefly describe the qualification of the applicant to perform the activities outlined in the proposed trail management plan:

Members of the Board of Directors, and Shimai Toshi Task force have the necessary educational backgrounds, and skills to ensure that this space lives up to its potential.

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
 Interpretive/Heritage Sites
 Other _____

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
 Dock
 Mooring

Comments:

Organizations entering into a Community Trail Management Agreement (CTMA) may manage and regulate the type of use, time of use, or restrict specific types of use: however, all trails shall be considered open to the public.

- a. Please describe any proposed regulations that may affect the type of usage and times of usage of the trails:

The garden will have a vegetation barrier between it and pathways. Fencing (at least 6-feet in height) will be placed to ensure neighbors are not disturbed visually, or imposed upon by garden trail visitors. Three access gates, one primary for visitors, and two for maintenance/emergency purposes, will be set within the perimeter. The main entrance will be open during regular park hours for the City of Soldotna Monday through Sunday. Months of operation expected to be year-round.

- b. Please describe proposed management methods to support the any proposed regulations and restrictions:

Shimai Toshi Garden Trails will be managed primarily via a staff of volunteers, and paid employees as donations and fundraising allows.

Attach a draft Trail Management Plan to include the following:

- a. A narrative description of the activities, operations, and scope of the proposal. Please include information on:
- Brief history of the organization, membership size, accomplishments, etc.
 - Summary of proposed activities: briefly describe the trail management elements that make up you management plan, including potential sources of funding.
 - Means and methods for maintenance, erosion control, and trash pick-up, etc.
 - Measures of performance, timeframes, ownership of improvements & reclamation
 - Estimated value of proposed structures and facilities, when applicable
 - Any short-term and long-range goals
- b. Conceptual Site Plan (if available include aerial photos, contour map, etc.). Please include the following information:
- Location of trail improvements and buffers
 - Property lines, right-of-ways, easement, access, etc.
 - Location of wetlands, water bodies, anadromous stream crossing and major topography
- c. Detailed Plans
- Plans for specific improvement including architectural or engineering designs, when applicable
 - Grant proposals, when applicable.

Shimai Toshi Garden Trails

Scope of Application

This proposal is pertaining only to the 5.2-acre triangular piece of property, lot 05930101, across the Unity Trail from Soldotna High School on Marydale Avenue, in Soldotna, AK.

History of Shimai Toshi Garden Trails

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Japanese gardens have been scientifically proven to have positive physical and psychological effects on visitors. Shimai Toshi Garden Trails, once developed, will provide an integrated, asymmetrical, space where all parts are reliant upon each other, and beauty is the essential realization and insight. It will be a place where community members can balance themselves in a stress-free environment and be transformed via quieting of their minds in a serenely uplifting space that creates internal calmness. This will be a restorative, health-giving environment^{3,4,5}. It will provide an emotionally safe place of solitude that is non-demanding and aesthetically pleasing. The simplicity of Shimai Toshi will allow for a heightening of intuitive awareness by experiencing nature through contemplative relaxation that will help to create an internal sense of harmony, respect, purity, and tranquility, or chado.

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Type of Organization

Non-Profit Association – currently in the process of obtaining 501©3 status for Shimai Toshi Garden Trails, Inc., EIN: 83-2378146

Founding Board of Directors include:

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Kumi Shields, Vice President

Matthew Pyhala, Secretary

Marion Nelson, Board at Large

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Planning for fencing, trails, and access will take place with the need for emergency access in mind. Upon consultation with Central Emergency Services, fencing and access will be provided to ensure that in the event of illness or injury, emergency services can access the area with ease.

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 3. Goto S, Gianfagia TJ, Munafo JP, Fujii E, Shen X, Sun M, Shi BE, Liu C, Hamano H, Herrup K. *The Power of Traditional Design Techniques: The Effects of Viewing a Japanese Garden on Individuals with Cognitive Impairment*. HERD 2017 Jul; 10(4):74-86. Epub 2016 Dec 18.
 4. Goto S, Kamal N, Puzio H, Kobylarz F, Herrup K. *Differential responses of individuals with late-stage dementia to two novel environments: a multimedia room and an interior garden*. J.Alzheimers Dis. 2014; 42(3):985-98.
 5. Goto S1, Park BJ, Tsunetsugu Y, Herrup K, Miyazaki Y. *The effect of garden designs on mood and heart output in older adults residing in an assisted living facility*. HERD. 2013 Winter;6(2):27-42.

Complete the following applicant qualification statement for each individual applicant/agent or organization. Attach additional statements if needed.

APPLICANT QUALIFICATION STATEMENT

Name of Applicant: Sarah Pyhala

Mailing Address: P.O. Box 771, Soldotna, AK 99669

- I hereby affirm to the best of my knowledge:
- That I am eighteen years of age or older; and
- That I am a citizen of the United States or a permanent resident who has filed a declaration of intention to become a citizen or a representative of a group, association or corporation which is authorized to conduct business under the laws of Alaska; and
- That the above named applicant is not delinquent on any deposit or payment of any obligation to KPB; and
- That the above named applicant is not currently in breach or default on any contract or lease involving land in which KPB has an interest; and
- The above named applicant has not failed to perform under a contract or lease involving KPB land in the previous five years and KPB has not acted to terminate the contract or lease or to initiate legal action.

I hereby certify that the information contained herein is true to the best of my knowledge and belief.



Signature of Applicant or Agent

11.1.2019

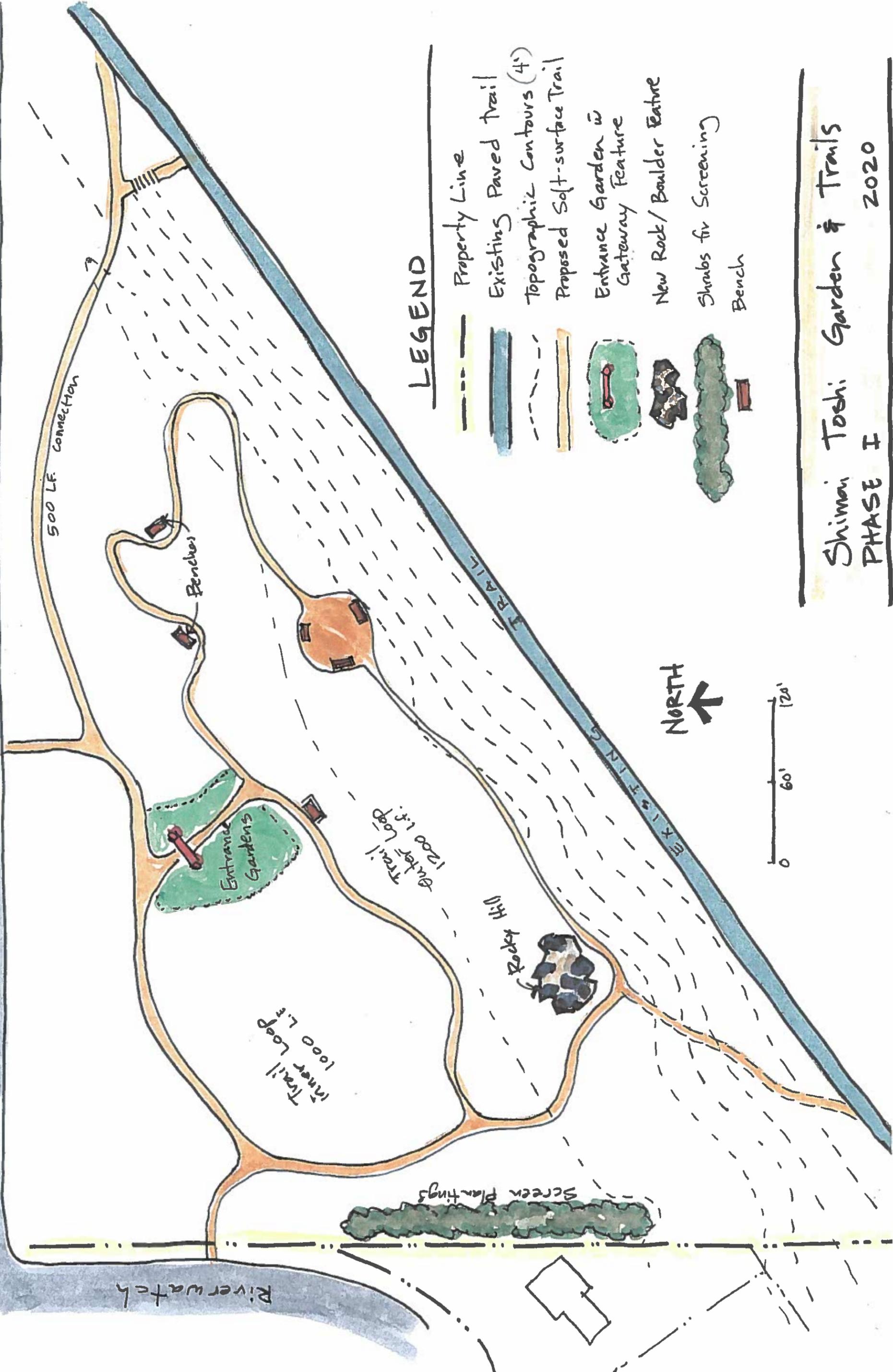
Date

Sarah Pyhala

Print Name



Marydale Avenue



LEGEND

-  Property Line
-  Existing Paved Trail
-  Topographic Contours (4')
-  Proposed Soft-surface Trail
-  Entrance Garden w/ Gateway Feature
-  New Rock/Boulder Feature
-  Shrubs for Screening
-  Bench

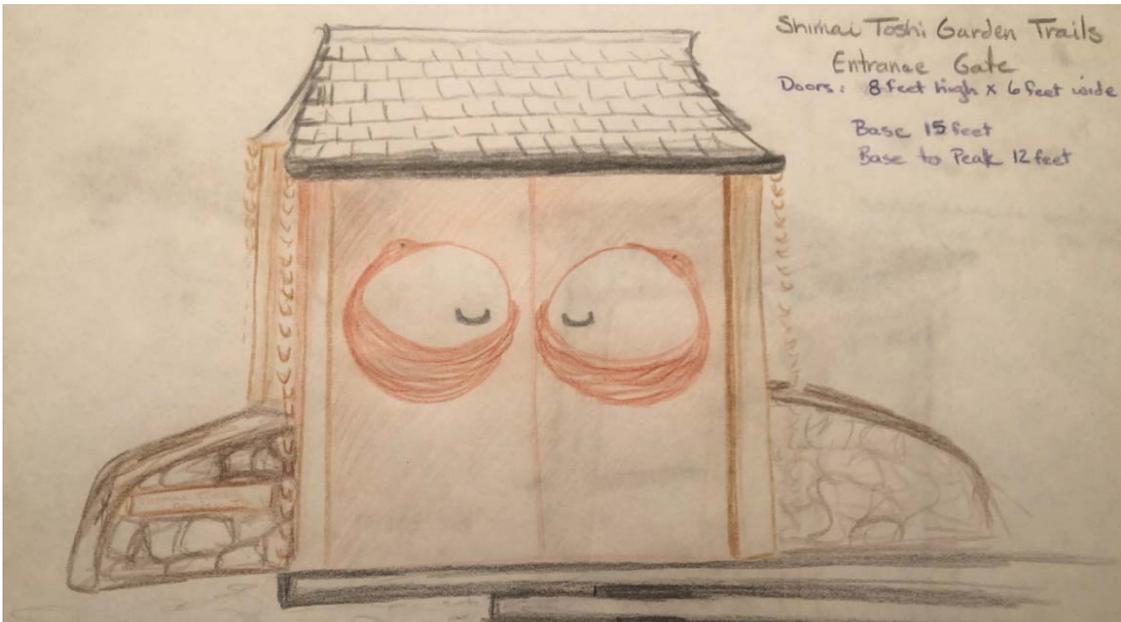
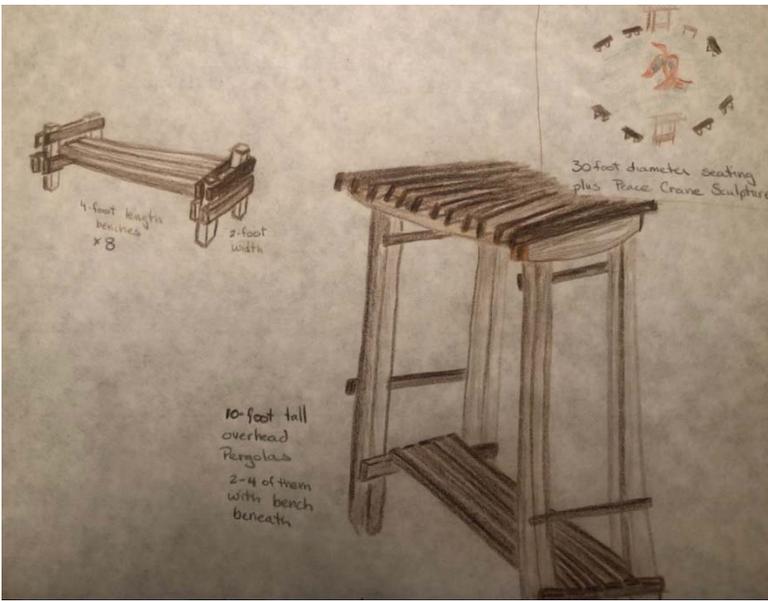
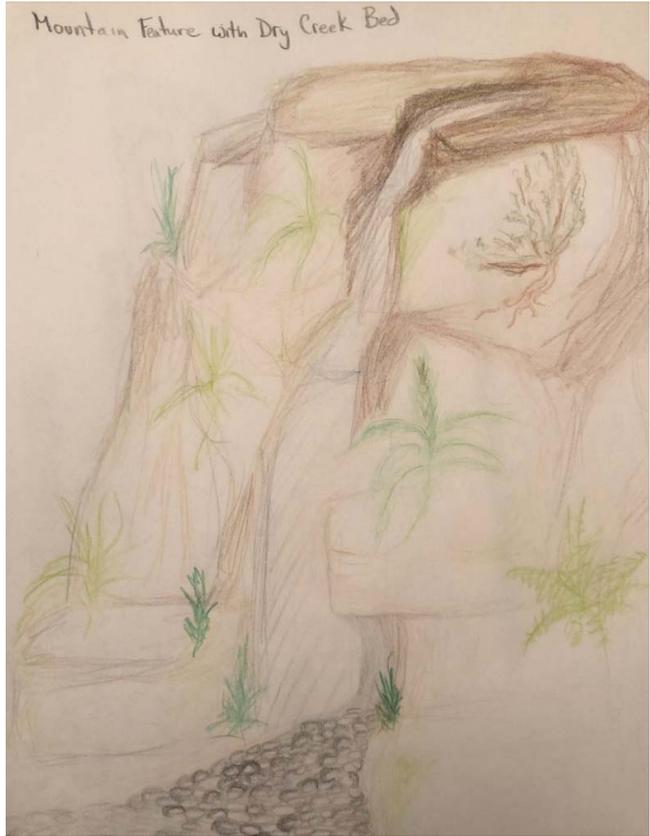
Shimai Toshi Garden & Trails
PHASE I
2020

Peace Crane Sculpture by Christina Demetro. Xylophone in the underside of wings, and donation slot in the heart center of the chest. Donation box located at the base of the Sandhill Crane.



Plaque beneath Peace Crane Sculpture to read:

Shimai Toshi "Sister City" Garden Trails are to honor the KPB's sister city Akita-shi, Akita, Japan. This garden is a symbol of peace hope, and survivorship in remembrance of WWII. In that we hope this garden becomes a healing space for all veterans, and a place to foster harmony, peace, well-being, and education for all who visit. 100% of your donation supports future developments and maintenance of this space.





Peninsula Community
Health Services of Alaska
MEDICAL • DENTAL • BEHAVIORAL HEALTH

230 East Marydale Avenue • Soldotna, Alaska • 99669 • www.pchsak.org
We are a 501(c)(3) nonprofit. Please consider a donation.

ADMINISTRATION Soldotna tel 907.260.7300 • fax 907.260.7301
MEDICAL Soldotna tel 907.262.3119 • fax 907.262.9290
BEHAVIORAL HEALTH Soldotna tel 907.260.3691 • fax 907.262.9290
BEHAVIORAL HEALTH Kenai tel 907.283.3600 • fax 907.262.9290
MEDICAL Kenai tel 907.283.3600 • fax 907.262.9290
DENTAL Kenai tel 907.283.7759 • fax 907.283.4883

1/9/2019

Sarah Pyhala
Re: Shimai Toshi Garden Trails, Inc.
PO Box 771
Soldotna, AK 99669

To Whom It May Concern:

On behalf of Peninsula Community Health Services of Alaska, we are in support of the proposed Japanese garden, known as Shimai Toshi Garden Trails. The health benefits to those with stress-related disorders have been well documented. We envision this trail and garden space incorporated with retreats for those who suffer from Post Traumatic Stress Disorder, and being of great benefit to all community members with a need for a calming, healing, atmosphere.

Sincerely,

JC Rathje
Interim Executive Officer

Central Peninsula Garden Club
PO Box 767
Kenai, AK 99611

To: Sarah Pyhala
P.O. Box 771
Soldotna, AK 99669

Re: Shimai Toshi Garden Trails, Inc

1/15/2019

To Whom It May Concern:

The Central Peninsula Garden Club is in support of the concept of a Japanese Garden within the Kenai Peninsula Borough, i.e. Shimai Toshi Garden Trails, Inc. We may be able to assist this garden with labeling plant species within, and as the majority of plants will be native to Alaska, a showcase of how environmental harmony can be achieved using non-invasive plants. This peaceful garden space will be a positive addition to our community.

Thank you,



Phyllis A Boskofsky

President

Central Peninsula Garden Club



250 Hospital Place, Soldotna, Alaska 99669 • ph: 907.714.4626, fax: 907.714.4926 • www.givingheals.org

December 28, 2018

Sarah Pyhala

RE: Shimai Toshi Garden Trails project

To Whom It May Concern:

We at Central Peninsula Health Foundation are in support of the concept of serenity gardens and understand the benefits to the community members. As such, we have our own Peace Garden on the campus of Central Peninsula Hospital which serves the similar purpose of an area for reflection and meditation and have found it to be beneficial.

Good luck in your endeavors.

Sincerely,

A handwritten signature in black ink that reads "Kathy Gensel". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kathy Gensel
Foundation Director
Central Peninsula Health Foundation
250 Hospital Place
Soldotna, Alaska 99669

JOSEPH L. KASHI

Attorney at Law
205 East Beluga Avenue
Soldotna, Alaska 99669

Telephone (907) 260-7732
Fax (907) 260-7739
Email: kashi@alaska.net

January 15, 2020

Mr. Max Best
Kenai Peninsula Borough Planning Department
144 North Binkley Street
Soldotna, Alaska 99669

Re: Proposed garden park and trail near Soldotna High School

Dear Mr. Best:

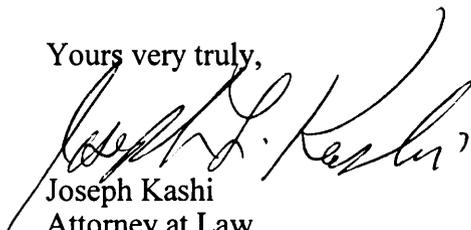
I write to express my strong support for the proposed Japanese Peace Garden on Borough property adjacent to Soldotna High School. This project promises many direct and also intangible benefits for the area. These would, I believe, include, enhancing currently unused Borough property in a manner which would not conflict with any potential future needs of Kenai Peninsula Borough, providing needed park space for the neighborhood and the Soldotna area generally, closer contact with our sister municipalities in Japan, and providing a trail system that is both peaceful and a safe facility to aid fitness.

The Tsalteshi trail system works very successfully, I understand, upon a similar volunteer model. As with Tsalteshi, I believe that the proposed trail system would become similarly well-known and improve the "amenities" of the Soldotna area in a manner that benefits property values and long-term economic development of a nature that fits with 21st Century economy trends.

This proposed system has already received a number of initial grants, demonstrating that others have seen the merit in the proposal. I strongly urge Kenai Peninsula Borough to allow these volunteers to put this currently unused land to a very positive and beneficial use. That, after all, is what Alaska is about, volunteers working to improve their communities.

I request that you bring this letter to the attention of the KPB Planning Commission when this project is considered as well as to the attention of Mayor Pierce and the Borough Assembly.

Yours very truly,



Joseph Kashi
Attorney at Law,
AK Bar #7811107

Introduced by: Mayor
Substitute 12/03/19
Introduced:
O2019-24 (Mayor) See Original Ordinance for Prior History
Hearing: 12/03/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-24
(MAYOR) SUBSTITUTE**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE STREETS
AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 2, Focus Area: Land Use and Changing Environment, Objective A of the 2019 Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on November 19, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote;

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

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. In accordance with the requirements of this chapter, a subdivision with private streets and gated access may be created either at the time of subdivision by the owner of the parcel being subdivided or by the owners of the parcels along public street(s).

20.80.020. Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. Provisions of KPB Title 20, excluding 20.30.210 and 20.50, apply and must be met.
- B. All private streets shall comply with street naming and street addressing per KPB 14.10 and 14.20.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. An unrestricted turn around, located within the private street, shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. If borough maintenance of a turnaround is requested, then the turnaround must: (1) remain a public right-of-way; (2) be constructed with a minimum radius of 30 feet with a grade of 4 percent or less per KPB 14.06.160(D); and (3) be accepted into the borough's road maintenance program. The owner(s) of an approved gated subdivision shall be responsible for providing maintenance to all private streets and unmaintained turnarounds.
- D. Private streets shall be contained within a separate lot which meets the right of way requirements of Chapter 20. The entrances to all private streets will be marked with a sign stating that it is a private street in compliance with KPB 14.06.200.
- E. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- F. The following notes are required on the subdivision final plat
 - 1. Borough maintenance shall not be provided on any private streets.
 - 2. Private streets are not public and are subject to private construction and maintenance.

3. To convert private streets back to a public right of way, the requirements of KPB 14.06 – Road Standards, must be met.

G. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

1. Emergency services shall be provided access within the private subdivision. Approval by the fire and emergency services provider, with jurisdiction in the area of the gated subdivision, is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision.

2. When located within a city, a final plat of a subdivision with a private street must comply with KPB 20.60.080 – Improvements – Installation agreement required.

20.80.030. Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate must conform to the following requirements:

A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider should consider access for emergency vehicles into, and within, the private streets and gated subdivision.

B. The approach and departure areas for the gate(s) must be designed by a licensed professional civil engineer.

C. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

D. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The owner(s) of the private street parcel must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation.

E. No part of the gate system may be placed in a public right-of-way.

20.80.040. Converting to gated subdivision.

A. A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property

is located or by the owner(s) of the majority of land fronting or abutting the right of way to be vacated. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

B. Converting public street to private street – standards.

1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system for adjoining lands.
3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner within the proposed gated subdivision that fronts on the public right-of-way that is to be vacated.
4. Prior to recording, the private tract owner(s) shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the private ownership, maintenance and control of the converted street.
5. The private tract owner(s) shall execute a defense and indemnification agreement in favor of the borough in the following form: Except to the extent limited by law, the private tract owner(s) shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any claim of, or liability for, the independent negligent acts, errors, and omissions or willful misconduct, including costs, expenses, and attorneys’ fees, in connection with or relating to the private tract owner(s) construction, improvement, maintenance, regulation, or use of any gates or private streets. The private tract owner(s) shall be responsible under this clause for any and all legal actions or claims of any character arising from the private tract owner(s) acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

C. A public street constructed or improved with borough funds, either through a Capital Improvement Project (CIP) or Road Improvement Assessment District (RIAD), cannot be converted to a private street within ten (10) years of the CIP or RIAD completion date for that street.

20.80.050. – Converting private streets to public right-of-way in gated subdivision.

- A. The owner(s) of a private street may petition to dedicate the private street through the platting process. The plat must comply with KPB Chapter 20.
- B. The private street to be dedicated to a public right of way must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- C. At the expense of the private street tract owner(s), a civil engineer will determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- D. The borough may also require, at the private street tract owner’s expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.50,

SECTION 2. That KPB Chapter 20.90, entitled “Definitions is amended as follows:

20.90.010. Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply:

...

“Gated subdivision” means a residential subdivision consisting of multiple parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is not limited to gates, security personnel, fences or walls.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by the private tract owner(s). The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective 180 days after its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2019.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP
Max Best, Planning Director MB

FROM: Scott Huff, Platting Manager SA

DATE: November 21, 2019

RE: Substitute Ordinance 2019-24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Ordinance 2019-24 was introduced to the borough assembly on September 3, 2019. On October 8, 2019, the assembly moved to postpone action on the ordinance until the December 3, 2019 assembly meeting.

With the additional time, staff met with representatives of the cities of Homer, Seward, Kenai and Soldotna to discuss this ordinance. During the discussions with the cities, and staff work sessions, further edits and changes were made to the ordinance. As a result, a substitute ordinance has been prepared. The following summarizes the changes that the substitute ordinance incorporates:

SECTION 1

KPB 20.80.010. – Purpose.

- Re-worded for clarity regarding how a subdivision with private streets and gated access may be created.

KPB 20.80.020. – Requirements.

- The provisions were changed to follow KPB Chapter 20 - Subdivisions, excluding KPB 20.30.210 fronting on a dedicated right of way and KPB 20.50 - Exceptions.
- Reference to the construction of roadways within a private street tract was removed. The borough will not inspect, or regulate, the construction of roads within a private tract.
- Private streets must follow KPB street naming and street addressing standards.

Page 2

November 21, 2019

Re: Substitute Ordinance 2019-24

- o Language was added regarding minimum requirements for turnarounds where borough maintenance is requested.
- o All reference to home owners associations (HOA) has been removed from the ordinance.
- o Plat notes were identified that must be added to the subdivision plat.
- o Reference was added that any final plat located within a city must comply with KPB 20.60.080 – Installation Agreement.

KPB 20.80.030. – Gates.

- o All reference to the HOA owning the private tract was removed.
- o Language was clarified that the fire and emergency service provider that serves the proposed gated subdivision must approve the access plan prior to installation.
- o The fire and emergency service provider will also approve the emergency access systems after installation.

KPB 20.80.040. – Converting to gated subdivision.

- o Language was added to follow KPB 20.70.040(A) – Application for vacating the public right of way. This complies with Alaska Statute 29.40.120.
- o At the request of utility providers, a line was removed which read, 'Utilities proposed for vacation must not provide service to customers outside the proposed gates subdivision boundary.' Staff was agreeable to this as all plats are sent to utility providers for review and comments.
- o All reference to the HOA owning the private tract was removed.
- o The requirement for all land owners to submit fully executed deeds conveying their interest in the vacated street to the HOA was eliminated.
- o Language was added that a public road cannot be converted if a RIAD or CIP has been performed on the road within the last 10 years.

KPB 20.80.050. – Converting private streets to public right of way in gates subdivision.

- o A section was added to clarify that the private street to be dedicated to a right-of-way must comply with borough design criteria.
- o All reference to the HOA owning the private tract was removed.

KPB 20.80.060. – Enforcement.

- o The KPB code reference has been corrected.

SECTION 2

KPB 20.90.010. – Definitions.

- The definition of "gated subdivision" has been edited by
 - Removing the number of lots required (5) so that any number of lots will comply.
 - Revising the language to not limit gates, security personnel, fences or walls.
 - Remove the portion that addressed gates or other barriers on private parcels.
- The definition of "private street" has been edited by removing reference to the homeowner's association.

SECTION 3

- Revised the effective date to be 180 days after the ordinance is enacted. This will allow cities additional time to review their code and make changes to address private streets within cities. This extra time will also allow staff to prepare application forms for reviewing the projects and completing staff reports.

At its meeting on November 12, 2019, the planning commissioned recommended approval of this substitute ordinance by majority vote.

At its meeting on November 19, 2019, the road service area board recommended approval of this substitute ordinance.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Willy Dunne, Assembly Member (W.D.) for W.D.

DATE: November 21, 2019

RE: Amendments to Ordinance 2019-24 Mayor Substitute, Adopting KPB 20.80, Subdivision Private Streets and Gated Communities (Mayor)

In the event the assembly amends ordinance 2019-24 by substitution, following are some proposed amendments to the substitute ordinance 2019-24 for your consideration. The first amendment would prohibit conversion of a public street to a private street if there exists any form of public access easement accessible by any public street being vacated and converted to private property.

The second amendment would impose fees on the property owners prior to conversion of a public street to private property. These are based on discussions with local road contractors and the borough road service area director.

The third amendment would require that as a part of converting private streets to public streets in a gated subdivision, all rights of way that were public when the gated subdivision was formed shall also be dedicated to the public.

[Please note the underlined bold language is new and the bold strikeout language in brackets is to be deleted.]

- In Section 1 amend KPB 20.80.020 by inserting a new subparagraph G.3 as follows:

20.80.020 – Requirements

Private streets in subdivisions shall meet the following requirements:

...

G. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

...

- 3. A public street may not be converted to a private street under this chapter if it provides public access to any form of a public access easement.**

- In Section 1 amend KPB 20.80.040 by inserting a new subparagraph D as follows:

20.80.040. – Converting to gated subdivision.

...

D. Prior to approval of a gated subdivision in which any public streets are vacated and converted to private property, the subdivision property owners must pay to the borough a fee of:

- a. **\$200 per linear foot for unpaved roads; or**
- b. **\$250 per linear foot for paved roads; and**
- c. **Fair market value of acreage for any undeveloped rights-of-way.**

- In Section 1 amend KPB 20.80.050 by inserting a new subparagraph B as follows and re-lettering the remaining subparagraphs:

20.80.050. – Converting private streets to public streets in gated subdivision.

...

B. To convert a private street back to a public street under this section, all rights of way in the subdivision that were public rights of way immediately before the gated subdivision was formed, whether developed or undeveloped, must also be dedicated to the public.

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor *CP*
Max J. Best, Planning Director *MB*

FROM: Scott Huff *SH*

DATE: November 20, 2019

RE: Ordinance 2019-24; An Ordinance Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivisions.

The Kenai Peninsula Borough Planning Commission reviewed the subject Ordinance during their regularly scheduled November 12, 2019 meeting.

A motion passed by majority vote (6 Yes, 4 No, 2 Absent) to recommend approval of Substitute Ordinance 2019-24.

In addition, the Kenai Peninsula Borough Planning Commission passed a motion by unanimous consent to recommend that Section 3 of Substitute Ordinance 2019-24 be changed to "That this ordinance shall become effective 180 days after its enactment.

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

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote.

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

AGENDA ITEM E. UNFINISHED BUSINESS

1. Ordinance 2019-24; An Ordinance Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivisions. (*Postponed from the August 26, 2019 Planning Commission meeting. Motion on floor.*)

Staff Report given by Scott Huff

PC Meeting: November 12, 2019

Mr. Huff let everyone know that the laydown packet had an updated version of the Ordinance. At the August 26, 2019 Planning Commission meeting the motion was made to approve Ordinance 2019-24, an Ordinance for Private Streets and Gated Subdivisions. At the September 23, 2019 Planning Commission meeting the Planning Commission moved and approved the motion to postpone until brought back by staff. The Assembly will be reviewing and voting on this on December 3, 2019.

Since the September 23, 2019 Planning Commission meeting staff has worked with the various cities. Staff met with Kenai, Soldotna, and Homer. Staff also reached out to Seward and Seldovia to discuss with them the ordinance. More staff work sessions have been held which has led to some edits and revisions. A substitute ordinance has been prepared.

Mr. Huff highlighted some of the proposed changes. KPB 20.80.020 the provisions were changed to have the new gated subdivision follow all of KPB Chapter 20, excluding only 20.30.210, which is fronting on a dedicated right-of-way, and 20.50, which is exceptions. Any plat under 20.80 will not have to front a dedicated road but cannot have any exceptions to borough code requirements. All references to Home Owner Associations were removed from the ordinance. Staff felt it was not the borough's place to determine if a HOA was valid or who controlled the HOA. All the adjoining lot owners or the HOA could own the private tract but the borough will not be the deciding body of who has that ownership. A reference was added that any final plat located within a city must comply with borough code 20.60.080, which is installation agreements. That gives the city a final say on a private subdivision within the city. If they have something in their code that requires roads to be built or that water and sewer must be supplied then the subdivider must get the installation agreement from the city before the plat can be recorded. 20.80.040 is for converting to a gated subdivision from a regular subdivision. The references to the Home Owner Association were removed. Language was added that a public road could not be converted if a road improvement assessment district or central improvement project had been performed on the road within the last 10 years. This is to address any funds the borough may have put into major road improvements. Under 20.80.050, a section was added to clarify that any private streets that are to be dedicated to public right-of-way must comply with borough road design criteria. Any private street can become or revert to a public right-of-way if it complies with borough standards. Under Section 3, the effective date was changed to be 90 days after the Ordinance is enacted. That change gives the cities some time to review and make any changes to their code to address private streets and gated subdivisions.

END OF STAFF REPORT

Chairman Martin asked if anyone from the public wished to comment on this item.

1. Frank Turpin, PO Box 1113, Sterling, AK 99672-1113

Mr. Turpin lives in Kenai River Keys Subdivision. He is on the board of the Kenai River Keys Property Owners Association. They have a gate serving two subdivisions, Kenai River Keys and Stephenkie Subdivision No. 2. There are 130 residential lots behind the gate and the association maintains 2 miles of road. They also have neighboring property owners that use the gate and private road for their access. They have an issue that should be considered before the propose ordinance creates confusion for a new private subdivision. In written comments to the Planning Commission, he cited the challenge of having roads dedicated to public use behind their subdivision gate. Kenai River Keys Subdivision was established in 1972 after the developer requested and received approval for an exception to the subdivision ordinance. The plat depicted roads with private road easements. Lots adjacent to platted roads have side lot line extended to the road

centerlines. The plat designated road easements for use of subdivision lot owners only. The Association manages private road easements by enforcing covenants, which address utilities, encroachments, and allowed uses. Enforcement actions or permissions are directed to the owner of the land and all lot owners are required to be members of the Association. One year after the final subdivision plat was approved the developer had sold all lots available for sale. The developer then proposed resubdividing a tract that created additional lots within an area of the subdivision that remained undeveloped. For access to these new lots, the resubdivision included an extension of a stub street that had been platted as a private road easement. The extension was not encumbered with private easements. The developer requested approval of the resubdivision with dedications of roadways to the public, which the Planning Commission approved and the Mayor signed. This created a dilemma. The plat did not depict private ownerships within the road right-of-way and the Association's ability to enforce covenants was meaningless without a lot owner. Rather than address the issue the borough has maintained that the street extension was a private road easement even though notes and developer's intent show that it is a public right-of-way. The Property Owners Association has no authority to enforce covenants on land dedicated to the public. The Association is still searching for authority to regulate use of dedicated streets that are behind their gate. It is not hard to imagine the same problem in a new private subdivision.

Commissioner Ruffner asked if Mr. Turpin had anything specific in the Substitute Ordinance for them to review. Mr. Turpin noted that the subdivision was more successful than the developer anticipated. After the sale of all the lots, the developer wanted to subdivide a tract to create new lots. A mistake was made. A lot was sold that is adjacent to the extended stub street. It was dedicated as public so signatures by adjacent lot owners were not needed. This could happen again. He does not have specific words for the Ordinance. Commissioner Ruffner said he understood what they went through but wanted to make sure it was not something to address specifically in the Substitute Ordinance. Mr. Turpin said that they support the ordinance but hate to see it pass if it may breed confusion on the future authority to regulate the use of roadways within a private subdivision. He does not propose a correction but looks to the Planning Commission. He thinks there is a problem with the "to and through". In his letter, he talked about the subdivision and how the Association lets the property owners outside their subdivision use the gate and roads. Three property owners have property adjacent to the subdivision and are allowed to use the gate and private roads. He is not sure there is language that would work for a "to and through" subdivision because there are too many variations. He thought there should be some rule that a road cannot be dedicated in a private subdivision, and that would help. Commissioner Ruffner said that would lead to a point that lots cannot be subdivided anymore once a private subdivision is created. Mr. Turpin said nothing in the ordinance states that.

Commissioner Venuti was still trying to understand the concept of gated subdivisions. He wondered why Mr. Turpin chose to live in one and what some advantages are to living within a gated subdivision. Mr. Turpin said that there are two main advantages. One is that when the subdivision first started there were no year round residents. They were people from Anchorage or other places that would come down on weekends to enjoy the Kenai River. A gated subdivision was an ideal way to protect their property. Now about fifteen property owners live there year round. The subdivision works. Security is a big issue, they feel better with a gate, and it helps. The other advantage is that it gives a sense of community. Everybody takes care of their own streets, problems, and neighbors. It is a slightly different mentality. There is no intent to bar anyone with legitimate business reasons to be in the subdivision but they do not want to provide access to people to use private property for fishing. It protects the river habitat that they have as well as provide security and sense of community. He can see reasons that other subdivisions would want to be gated. An airport subdivision may want it for safety purposes. A subdivision around a lake to keep people from wandering through their yards. There are many examples that work for a private subdivision. Theirs has worked for 47 years but they just do not have authority to control uses on dedicated roads.

Mr. Best asked Mr. Turpin if emergency responders and utility company access have been a problem or issue. Mr. Turpin said that there has not been an issue. The emergency responders

come out every couple of years and check things. They have a Knox box on the gate and they check it to make sure all the keys still work. There are two gates, an electric gate and padlocked gate. The padlock or chain can be cut if needed. Usually emergency responders will call before they come out. The subdivision has gotten to know the people they need to know. Each utility is approached separately and the subdivision has to find out what each utility company needs. They have all worked with the Association. Mr. Nelson with the borough has a clicker, and Mr. Uhlin has a clicker or a key. The River Center usually calls before they come out. They had an assessor out a few weeks ago and he walked in. Mr. Turpin has been trying to find out who it was so they can call him next time to be let in. Borough employees come into the subdivision frequently. ENSTAR and Homer Electric drive the neighborhood to read the meters. They all know the rules and it works well. The tricky part is those that live next to the subdivision that have no other way to get access. There are three private properties that have no other access but through the Kenai River Keys subdivision. One of the properties is actually across the river; there is a portion of the fish camp on the subdivision's side of the canal. That owner has a key and can come in anytime he wants. The State of Alaska also comes in often. Usually DNR or Fish and Game to do fish work or look at trap lines. If they want a clicker, they contact the Association and they provide them one. It is very casual and they get to know those people very quickly. He will say that for a new subdivision it will take years to develop those kind of relationships with the utilities, borough and emergency responders. It is an ongoing effort. There are also contractors and realtors. It is something developed over time.

Seeing and hearing no one else wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission. Chairman Martin noted that a motion is on the floor.

Motion from August 26, 2019 meeting: move to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

AMENDMENT A MOTION: Commissioner Ruffner moved, seconded by Commissioner Whitney, to amend the motion on the floor, which is a recommendation for Ordinance 2019-___, by substituting the language found in the desk packet.

Commissioner Ruffner asked if staff had any additional notes on the changes. Mr. Huff said the main changes were discussed during the staff report. He asked if anyone had any specific changes to discuss Commissioner Ruffner said this was a substantial piece of code to address. When it is presented in a laydown it can be hard to review. Mr. Huff said the only thing that changed from the original packet was there were some comments from the roads department. Commissioner Ruffner said that only one person from the public came to speak. He is putting a lot of trust into staff because no one will not know the issues until it is implemented. He wanted to know if staff had enough time to work through it. Last time it was postponed was because the cities were concerned about it. What he understood from Soldotna was that they wanted to make sure they had more say in whether it goes through. He wanted to know if first class cities have the ability to say no or does the borough retain the platting authority to authorize or not. Mr. Huff said the borough is the platting authority. The cities could request to be but they would have to comply with borough code in terms of notification and appeal process. None of the cities currently has that in their code. They could implement that to have the platting authority within their city. The first submittal received will have to be worked through because there are so many scenarios. Mr. Best added that this ordinance has some high standards since no exceptions can be requested other than fronting on a dedicated right-of-way. The postponement gave staff time to go back and review past subdivision plats. From the ones they reviewed only two or three could work under this code and a few that could if minor adjustments were made. There will only be a few situations that this code will work. Commissioner Ruffner said that he is supportive of sending it through to the Assembly but it is at the discretion of staff. He does feel that it has been rushed but if staff feels comfortable having a recommendation go to the Assembly he supports that.

Commissioner Whitney said that the Soldotna City Council had it before them at a recent meeting. There was not much support from the Council. There were many questions and a lot of concern about how it would work inside the city limits. If this passes there will need to be changes to City Ordinances on how to accomplish a change if someone proposed a gated community. They did not see an issue with a new

subdivision going in and creating a gated community because many factors can be built in during the creation. It is an issue to take an existing neighborhood and change it to a gated subdivision and how it would be done.

Commissioner Venuti said he did not understand how a public road would be transferred to a gated subdivision and how the cost of that road would be reimbursed to the borough. Mr. Best said that was a major discussion with the Road Service Area Board. If there was a recent capital improvement project or local improvement district it was figured that after 10 years the borough's half of the road is used. After talking with Mr. Uhlin and the Road Service Area Board, 10 years was determined to be about the period to get half of the use out of the road. After 10 years, they do not care if the road is taken over. This does not apply to the cities and they will need to come up with a way to handle and determine what they will allow. Commissioner Venuti could see in an area like Homer, which has high valued land that is valued at the square foot, it could add up to be expensive property. He understands the recovering the cost of the road but the land also has value. He does not see it being to the advantage of the public to give it away. Mr. Best said that most of the roads are by expressed dedication on a plat. That is fee simple property that is given to the borough. There was no compensation. The borough did not go out and purchase the property it was given to them. Statutes says the land would be given back so there is no value being exchanged. There are situations where rights-of-way are purchased and that the money would then be asked back for the value of the property. Commissioner Whitney said the City of Soldotna had that concern also. There are quite a few paved roads with concrete sidewalks and there are would be more value to those roads than a gravel road that is not well maintained. The special assessment districts usually have a 10-year payback with the city financing about 75% and adjoining property owners financing the remaining 25%.

Commissioner Morgan wanted to know how a gated community would affect public easement access such as a section line easement. Mr. Huff said that if a right-of-way went to a section line easement, as long as there is public access at each end of the easement, there could be a private street. The public cannot be limited to getting through the section line easement. Commissioner Whitney said if a section line easement ran through the street people could still walk across it and the homeowners that have created the gated community could not stop them. Mr. Best wanted to clarify if he meant a dedication on top of the section line easement or a section line easement crossing through a dedication. Commissioner Whitney said it would be when there is a section line easement and a private gated road goes across it. If someone is walking on that section line easement they can still cross the road and not have any interference from the homeowners telling him that he is not allowed. Mr. Huff said that is correct. The section line easement's public access still exists across the private tract.

Mr. Huff noticed that under definitions on the substitute ordinance Home Owner's Association is still in there and he would like to change that. Under private street definition, instead of "by a homeowners' association" and change it to "by the private tract owner". That would be a minor change to the substitute ordinance. Chairman Martin asked if the maker of the motion and second agreed to that change. Commissioners Ruffner and Whitney agreed to that change.

Commissioner Bentz asked if the 90-day effective date was consistent with the city zoning departments to give them time to react to the changes and make necessary changes to their codes. Mr. Best said they have given the cities advanced notice. To have something drafted, a reading and have a hearing, 90 days should be sufficient.

Commissioner Whitney wanted to know if a gated community is authorized who gets ownership of the road if there is no homeowner association. Mr. Huff said if within an existing subdivision and a right-of-way is made private all lots bordering the road would be joint owners of the private tract. They can all share in the cost as common owners of the tract or form an HOA. Commissioner Whitney asked if they would pay property tax on their portion of the tract. Mr. Best said yes, it would be absorbed into each lot. There would be a \$100 value put on the parcel that is the right-of-way. This is similar to how condominiums and areas with common ownership are handled. The value is allocated to all of the property owners. If there is a paved road with sidewalks and lights, the assessment values will reflect that. Mr. Whitney asked if it would be valued at fair market value. Mr. Best said the value for the assets in the right-of-way would be allocated

to each lot. Commissioner Whitney asked if he meant the property the road is on. Mr. Best said yes. Chairman Martin stated that a parcel with a road on it could be foreclosed upon if the taxes are not paid. Mr. Best that is why they would allocate a \$100 value on the parcel itself.

Commissioner Bentz was considering the public testimony heard about the issues with public rights-of-way within in gated subdivisions. Looking at 20.80.050 is there anything to think about adding to prevent those issues from arising in the future. Mr. Huff said that any future subdivision within a private subdivision could only have private streets dedicated. No public streets will be dedicated. It is a good point that if a subdivision has a three acre lot on a private street that lot could be subdivided in half. Depending on who owned the tract there could be some access issues.

Commissioner Whitney thought the original version said that a hundred percent of the surrounding property owners had to agree to go to a gated community. The new ordinance says a majority. Mr. Huff said a right-of-way vacation can be started with a majority but a hundred percent of the landowners have to sign the final plat to agree to it. The code for vacations requires a majority of owners fronting on a right-of-way to start a petition. Commissioner Whitney gave an example of 50 lots along a street and 49 want to do it and one says no then they cannot do it. Mr. Huff said that was correct.

Commissioner Ruffner wanted to discuss a case as described in the Kenai River Keys. There is a gated subdivision and then someone is going to subdivide within the subdivision. He wanted to know how they ensure that everyone has access if the other landowners or the HOA controls it. Mr. Best said any future subdivision within the subdivision would require access. If they could not do flag lots or have enough frontage then it would require an extension of the private tract. In the Keys situation, there is dedicated access to those other subdivisions but they are not constructed because they go through wetlands. Commissioner Ruffner said that the platting authority would be retained even within a private subdivision. It would be required that lots have frontage or place a new private easement across the property for access. Mr. Huff said that under any new plat, even in a private subdivision, they would have to comply with all of Chapter 20. Under 20.30.050 is legal access. "The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary." That may be a private tract inside the subdivision. "In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system", etc. They have to show that there is public access to a private lot so it could not be further subdivided because exceptions cannot be granted.

Commissioner Bentz felt that she understood more, especially the part about converting private streets to public right-of-way after already being privatized. She felt that what Commissioner Ruffner said about public dedication that was not built, such as a riparian area, it would not meet the criteria of 20.80.050(B) so that would help address the issues about future dedications and make sure they do not cause problems in the future.

Commissioner Venuti saw that this would be a great idea if a developer bought a piece of land and turned it into a gated subdivision. It would be less complicated than converting existing roads. He is concerned that the concept, while attractive to some people, promotes divisiveness and he thinks there is enough of that in the world. It is hard for him to support this.

Commissioner Fikes shares some of the same concerns as Commissioner Venuti. The testifier talked about access as far as the basics such as emergency responders. There are many additional people that may need access that are not thought about. What if a relative wishes to stay there, there is a sublet or rental, how would they get the correct access and how would others in the subdivision know they are allowed to have access? She also wanted to know where the burden of responsibility falls if there is disaster. Many other agencies may need access. The gate can be cut right away but it is still someone's property that people have to try to get access to in an emergency.

Commissioner Bentz said she did not notice in the packet if there was anything from the conversations had with the first class cities about their concerns. The City of Homer had a discussion at a work session and some issues were brought up there. A sentiment was how the city could make its own choices about this. She asked how the cities regain platting authority if they want it and how does a city say no. She does not

think it is easy to get code revisions done within 90 days. She would think about a longer time to enactment to give the cities more time to understand how it affects their ordinance.

Commissioner Morgan said that very little public testimony has been heard. She is curious on the history of this ordinance and how it started. Mr. Best said that over the past twenty years he has been asked several times if there was a provision for gated subdivisions. Some people are only here seasonally that live on cul-de-sacs and wanted to have a gate. They cannot gate a public right-of-way. Administration also advised that they wanted to it come through and based on everyone's past experiences they drafted something to move forward.

Commissioner Whitney agreed with Commissioner Venuti that if it is a large parcel that someone wants to create a gated community he understands. It is trying to do it after the fact and there are too many problems and concerns from everyone involved.

Commissioner Ruffner asked staff if a bunch of neighbors get together and create a gated subdivision there would be somebody on the boundary or edge of the subdivision. That lot could be subdivided or replatted and give new access into the private subdivision that others in the subdivision do not agree with. He wanted to make sure there are protections for those within the subdivision. Mr. Huff said that if there was a three-acre lot abutted to a five-acre lot that fronted on a right of way they could be combined and someone could break out of the subdivision because it meets right-of-way frontage. It would still have to go through code. It could be broken out and no longer be part of the private subdivision. Chairman Martin wanted to know if Commissioner Ruffner wanted to know about breaking out or breaking into a gated subdivision. Commissioner Ruffner wanted to look at both sides. He said Mr. Huff's example would be breaking out but they could add more lots into the subdivision. Mr. Best said that it would be up to the HOA if one is formed and civil court. He would encourage a subdivision to form a HOA to collect dues to operate and maintain their right-of-way as they do in Kenai River Keys and to help regulate it. Commissioner Ruffner asked if staff looked at other municipality's codes with gated subdivisions and wanted to know if there are protections built in that we are lacking. Mr. Best said that most jurisdictions build the roads before subdivision and also build walls and confine access through the gated areas.

Commissioner Fikes asked if one of these gated communities had a land owner that wants to put in some type of mixed use and the HOA is upset, where would that leave the borough. Mr. Best said hopefully on the sideline.

Commissioner Venuti wanted to know if a gated community could have mixed residential and commercial usage. Mr. Huff said there is no regulations in the borough on mixed use or commercial being in the same private subdivision as residential unless within a local option zoning district.

Commissioner Ruffner felt they were done discussing if staff felt it was ready to send to the Assembly. The Assembly has the final word on it. He does not feel good about this but also is fine sending it to the Assembly to discuss.

AMENDMENT B MOTION: Commissioner Bentz moved, seconded by Commissioner Ruffner, to amend Section 3 that this ordinance shall become effective 180 days after its enactment.

Commissioner Bentz said she was thinking of the seasonality or capacity for the cities to respond to this. She thought there might be more public comment at the city levels than at the borough level. More time would be welcomed by the City of Homer to process and discuss the issues that are being raised about converting existing subdivisions to private subdivisions.

AMENDMENT B MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Chairman Martin noted that they were back to the motion to amend the motion to staff recommendations found in the desk packet.

Commissioner Whitney asked if they were just substituting with this motion and then they would vote on the recommendation to approve. Chairman Martin said that was correct, this motion is just to substitute the ordinance.

AMENDMENT A MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

Chairman Martin stated they were now discussing the main motion as amended.

Commissioner Ruffner said that it would be to recommend to the Assembly to take up the substitute.

Commissioner Morgan said she felt that she was not ready to support passing this onto the Assembly. She did not feel comfortable giving the Assembly something that does not feel ready or complete.

MOTION PASSED BY MAJORITY VOTE: 6 Yes, 4 No, 2 Absent

Yes: Bentz, Brantley, Ernst, Foster, Martin, Ruffner

No: Fikes, Morgan, Venuti, Whitney

Absent: Carluccio, Ecklund

Introduced By: City Manager
Date: January 22, 2020
Action: Adopted
Vote: 6 Yes, 0 No

CITY OF SOLDOTNA
RESOLUTION 2020-004

A RESOLUTION RECOMMENDING THE KENAI PENINSULA BOROUGH ASSEMBLY NOT ENACT SUBSTITUTE ORDINANCE 2019-024, SUBDIVISION PRIVATE STREETS AND GATED SUBDIVISIONS

WHEREAS, the Kenai Peninsula Borough Assembly is considering Substitute Ordinance 2019-024, which would allow for the creation of private streets and gated subdivisions when a subdivision is first created, would allow for the conversion of an existing public street into a private tract, and would allow for the conversion of a private street to a public street; and

WHEREAS, if enacted, the standards of Substitute Ordinance 2019-024 would apply both in the unincorporated areas of the Borough and within incorporated cities; and

WHEREAS, the orderly development of lands and the upkeep of transportation infrastructure is an important function of city government; and

WHEREAS, maintaining and improving vehicular and pedestrian connectivity throughout the community is a priority goal in Soldotna's guiding policy documents including the Comprehensive Plan and the Recreation and Trails Master Plan; and

WHEREAS, the City of Soldotna has substantial investments in the existing transportation network and in public rights-of-ways, to include roads, sidewalks, lighting, and water, sewer and storm infrastructure; and

WHEREAS, the Soldotna Planning Commission, at a meeting on October 8, 2019, identified concerns with Substitute Ordinance 2019-024 to include: the potential negative impact on community connectivity; substandard maintenance on private streets that may become a burden on the City should they become public; and the concern with transferring publically-financed infrastructure to a private organization or small group of property owners; and

WHEREAS, the Kenai Peninsula Borough Code allows for the partial delegation of platting authority to first class and home rule cities within the borough, enabling them to adopt by ordinance subdivision standards which are different from those set forth by the Borough; and

WHEREAS, Borough staff have indicated, however, that the City of Soldotna has not been granted such authority and therefore any subdivision-related standards adopted by ordinance into the Soldotna Municipal Code will be considered advisory only by the Borough Planning Commission; and

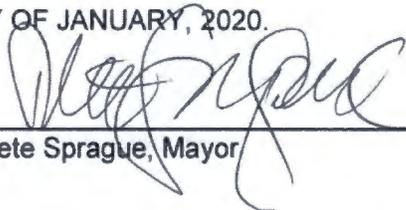
WHEREAS, the City has not seen demand in Soldotna for new developments which could not be accommodated under the existing Borough Platting Code, and the type of neighborhood development allowed for under the proposed ordinance may be inconsistent with City of Soldotna policies and planning goals; and

WHEREAS, private roads in the borough have been approved in the past, by utilizing the existing exception process in KPB 20.50;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

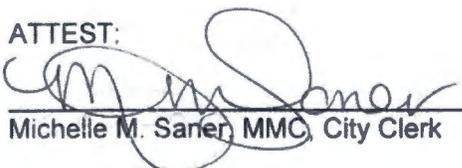
- Section 1. The Soldotna City Council respectfully requests that the Kenai Peninsula Borough Assembly not enact Kenai Peninsula Borough Substitute Ordinance 2019-024, as it does not provide the City with sufficient oversight and control over transportation and infrastructure decisions inside city limits.
- Section 2. A copy of this resolution shall be forwarded to Borough Mayor Charlie Pierce, and the Members of the Kenai Peninsula Borough Assembly.
- Section 3. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL THIS 22ND DAY OF JANUARY, 2020.



Pete Sprague, Mayor

ATTEST:



Michelle M. Sauer MMC, City Clerk

Yes: L. Parker, Whitney, Ruffridge, P. Parker, Carey, Chilson
No: None

KACHEMAK CITY, ALASKA

P.O. BOX 958, (VIA) HOMER, ALASKA 99603
PH. (907) 235-8897 FAX (907)235-8854

Kenai Peninsula Borough
144 North Binkley Street
Soldotna, AK 99669

1/21/2020

Dear Mayor Pierce and Kenai Peninsula Borough Assembly Members:

The Kachemak City Council would like to comment on Ordinance 2019-24 Subdivision Private Streets and Gated Subdivisions. They would like to see language stating that if a subdivision Homeowners Association seeks to vacate a public access, they must provide alternate public access around the gated community.

Sincerely,



Erica Fitzpatrick
Kachemak City Clerk



Sponsored by: Administration

CITY OF KENAI

RESOLUTION NO. 2020-01

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, RECOMMENDING THAT THE KENAI PENINSULA BOROUGH ASSEMBLY NOT ENACT ORDINANCE 2019-24 SUBSTITUTE.

WHEREAS, Kenai Peninsula Borough Ordinance 2019-24, Adopting KP.B 20.80, Subdivision Private Streets and Gated Subdivisions, was introduced by the Kenai Peninsula Borough Assembly on September 3, 2019; and,

WHEREAS, at its meeting of December 3, 2019, the Assembly amended Ordinance 2019-24 by Substitute; and,

WHEREAS, Ordinance 2019-24 (Substitute) establishes standards and requirements for the establishment of private streets in subdivisions in the Borough, both inside and outside of cities, either at the time of subdivision or by the owners of parcels along existing public street(s); and,

WHEREAS, Ordinance 2019-24 (Substitute) does not provide sufficient process for a home rule municipality to control the establishment of private streets for new subdivisions within their boundaries; and,

WHEREAS, within the City of Kenai, the City is responsible for road maintenance and other services to its residents, which Ordinance 2019-24 (Substitute) has the potential to affect; and,

WHEREAS, Ordinance 2019-24 (Substitute) is not necessary as private streets within the City and in other parts of the Borough have been approved in the past utilizing the exception process provided in Kenai Peninsula Borough Code 20.50 and landowners wishing to establish private streets in the future can utilize the same exception process that already exists; and,

WHEREAS, due to the lack of control that home rule municipalities would have over the establishment of private streets within their boundaries if Kenai Peninsula Borough Ordinance 2019-24 (Substitute) were enacted, and given the fact that landowners already have the ability to create private streets when developing a new subdivision through the exception process, the City of Kenai cannot support the passage of Ordinance 2019-24 (Substitute);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA:

Section 1. That the City Council respectfully requests that the Kenai Peninsula Borough Assembly not enact Kenai Peninsula Borough Ordinance 2019-24 (Substitute).

Section 2. That copies of this resolution shall be sent to Kenai Peninsula Borough Mayor Charlie Pierce, Assembly President Kelly Cooper, and Assembly Members.

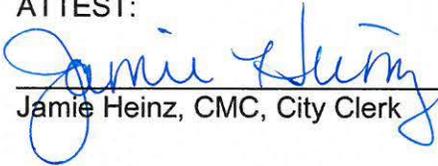
Section 3. That this Resolution takes effect immediately upon passage.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 15th day of January, 2020.



BRIAN GABRIEL SR., MAYOR

ATTEST:



Jamie Heinz, CMC, City Clerk



CITY OF HOMER
HOMER, ALASKA

Lord

RESOLUTION 20-014

A RESOLUTION OF THE CITY COUNCIL OF HOMER, ALASKA,
REQUESTING THE KENAI PENINSULA BOROUGH ASSEMBLY NOT
TO ENACT ORDINANCE 2019-24(S) ADOPTING KPB CHAPTER
20.80, SUBDIVISION PRIVATE STREETS AND GATED
SUBDIVISIONS.

WHEREAS, Kenai Peninsula Borough Ordinance 2019-24 adopting KPB Chapter 20.80,
Subdivision Private Streets and Gated Subdivisions was introduced by the Kenai Peninsula
Borough Assembly (Assembly) on September 3, 2019; and

WHEREAS, At its meeting on December 3, 2019, the Assembly amended Ordinance 2019-
24 by substitute; and

WHEREAS, Ordinance 2019-24(S) establishes standards and requirements for the
establishment of private streets in subdivisions in the Kenai Peninsula Borough, both inside
and outside of cities, either at the time of subdivision or by the owners of parcels along existing
public streets; and

WHEREAS, The Homer Planning Commission reviewed the regulations outlined in the
proposed Ordinance 2019-24 at their regular meeting on October 2, 2019 and the substitute
Ordinance 2019-24(S) at their regular meeting on January 2, 2020; and

WHEREAS, The City Council of Homer, Alaska, approved the Memorandum from the
Homer Planning Commission which outlines concerns and the extensive questions that remain
along with work that would be required by the City if the Assembly were to approve Ordinance
2019-24(S).

NOW, THEREFORE, BE IT RESOLVED that the City of Homer, Alaska, respectfully
requests the Kenai Peninsula Borough Assembly not to enact Ordinance 2019-24(S), Adopting
KPB Chapter 20.80, Subdivision Private Streets and Gated Subdivisions.

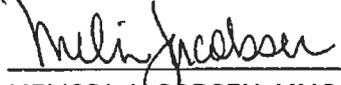
PASSED AND ADOPTED by the Homer City Council this 27th day of January, 2020.



CITY OF HOMER


KEN CASTNER, MAYOR

44 ATTEST:

45 
46 _____

47 MELISSA JACOBSEN, MMC, CITY CLERK

48

49 Fiscal note: N/A



City of Homer

www.cityofhomer-ak.gov

Homer City Council

491 East Pioneer Avenue
Homer, Alaska 99603

(p) 907-235-3130

(f) 907-235-3143

Memorandum

TO: Mayor Pierce and Kenai Peninsula Borough Assembly Members

THROUGH: Homer Planning Commission

FROM: Mayor Castner and Homer City Council

DATE: October 28, 2019

SUBJECT: Kenai Peninsula Borough Ordinance 2019-24 to Amend KPB Code 20.80, Subdivision Private Streets and Gated Subdivisions

After a presentation from the borough Planning Director and Platting Manager, the Homer Planning Commission forwarded the attached memo to the borough and made a list of concerns they had about the subject. The City Planner along the Commission concluded that if the borough were to adopt a policy regarding gated subdivision, the City of Homer, regardless of support or opposition, will have to respond to local concerns with an ordinance.

Since this concept was never envisioned in any city policy or document, it will take a robust process to give proper attention to the subject. Any process to formulate a regulatory response to the proposal will have to begin after the ordinance is in final draft and adopted. Due to schedule and process restraints, it would be best to extend the effective date of the ordinance to allow the formulation and adoption of Homer's response.

In order to have time to create a well-reasoned policy regarding the possible provision or prohibition of the policy, the effective date for the City of Homer should be delayed for a 120 days from adoption. The delay in the effective date will allow time for the city to address concerns with concept. Without a delay of the effective date, a proposal could be submitted and the city may not have enough time to respond to the application in the statutory timeframe of 49 days.

The Homer City Council respectfully requests a delay in the effective date applicable to the City of Homer for 120 days after adoption and encourages the Kenai Peninsula Borough Assembly to review the materials attached to this memo for additional information.

Attachments

1. Homer PC memo to KPB
2. Staff report PL19-81
3. PC minutes 10.2.19
4. Kenai Peninsula Borough Planning Commission Desk Packet Excerpt 9/23/2019
5. KPB PC Regular meeting packet excerpt 9/23/2019
6. KPB PC Memorandum from 8/26/19 meeting

Introduced by:	Johnson, Cox
Date:	01/07/20
Hearing:	02/04/20
Action:	Postponed as Amended to 02/25/20
Vote:	8 Yes, 0 No, 1 Absent
Date:	02/25/20
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-01**

**AN ORDINANCE AMENDING KPB 4.30.010 AND KPB 4.30.050 REGARDING
CANDIDATE QUALIFICATION AND REVIEW OF CANDIDATE QUALIFICATIONS
FOR BOROUGH ELECTIONS**

- WHEREAS,** state statutes provide that the local governing body establish the procedures governing local elections and qualifications of candidates; and
- WHEREAS,** in most state and municipal elections, candidates for public office must meet a durational residency requirement as part of the qualifications to run for office; and
- WHEREAS,** the requirements are necessary to permit exposure of the candidate to his or her prospective constituents; and
- WHEREAS,** the requirements are also needed to ensure that candidates are familiar with the issues and diverse character of the area the candidate desires to serve; and
- WHEREAS,** one-year residency requirements afford greater voter knowledge of candidates and greater candidate knowledge of the needs of the consistency while also protecting constitutional rights of both the voter and the candidate; and
- WHEREAS,** a one-year residency requirement will also serve to prevent individuals from another area moving to a locale for personal gain immediately prior to filing for public office; and
- WHEREAS,** current Alaska case law indicates a one-year durational residency requirement is permissible; and
- WHEREAS,** it is generally appropriate for a durational residency requirement for a candidate to be longer than residency requirements for voters; and
- WHEREAS,** borough code is currently silent on defining residency and should also be updated to clarify the procedure followed by the borough clerk in the event of a pre-election challenge to a candidate’s qualifications;

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

SECTION 1. That KPB 4.30.010 is hereby amended as follows:

4.30.010. Candidate qualifications.

- A. A candidate for borough mayor must be a qualified voter of the State of Alaska and a resident of the Kenai Peninsula Borough for [180 DAYS] one year immediately preceding filing for office. A person who has served as mayor for two consecutive full terms may not be reelected to that office until 180 days has intervened.
- B. A candidate for borough assembly must be a qualified voter of the State of Alaska and a resident of the district from which the candidate seeks election for [AT LEAST 180 DAYS] one year immediately preceding filing for office. As provided in KPB 22.30.030(A), a person who has served on the assembly for two consecutive full terms may not be reelected to that office until 180 days have intervened. A full term of office means the regular term of office for assembly and, except as provided in KPB 22.30.030(B), does not include portions of a term served by appointment or election to the remainder of an unexpired term vacated by another person or to a less than 3-year term resulting from assembly redistricting.
- C. A candidate for school board must be a qualified voter of the State of Alaska and a resident of the district from which the candidate seeks election for [180 DAYS] one year immediately preceding filing for office.
- D. A candidate for a service area board must be a qualified voter of the State of Alaska and a resident of the service area for [AT LEAST 180 DAYS] one year immediately preceding filing for office.

SECTION 2. That KPB 4.30.050 is hereby amended as follows:

4.30.050. Review of candidate qualifications.

[THE CLERK SHALL DETERMINE WHETHER EACH CANDIDATE FOR BOROUGH OFFICE IS QUALIFIED AS PROVIDED BY LAW. AT ANY TIME BEFORE THE ELECTION THE CLERK MAY DISQUALIFY ANY CANDIDATE WHOM THE CLERK FINDS IS NOT QUALIFIED AND IMMEDIATELY NOTIFY THAT CANDIDATE BY CERTIFIED MAIL. A CANDIDATE WHO IS DISQUALIFIED MAY REQUEST A HEARING

BEFORE THE CLERK WITHIN FIVE DAYS OF RECEIVING THE NOTICE. THE HEARING SHALL BE HELD NO LATER THAN FIVE DAYS AFTER THE REQUEST UNLESS THE CANDIDATE AGREES IN WRITING TO A LATER DATE.]

- A. In determining residence within the borough, district, or service area for the purposes of this chapter, the clerk shall apply the following rules:
1. A person establishes residence within the borough, district or service area by:
 - (A) actual physical presence at a specific location within the district or service area; and
 - (B) maintaining a habitation at the specific location;
 2. A person may maintain a place of residence at a specific location within the borough, district or service area while away from the location for purposes of employment, education, military service, medical treatment or vacation if the person does not establish residency at another location; and
 3. A qualified voter loses residence by voting in another district or service area or in another state's election.
- B. The clerk shall determine whether each candidate is qualified as provided by law. At any time before the election the clerk may disqualify any candidate whom the clerk finds is not qualified. A candidate who is disqualified may request a hearing before the clerk. The hearing shall be held no later than 5 business days after the request unless the candidate agrees in writing to a later date.
- C. Any person may question the eligibility of a candidate who has filed a declaration of candidacy by filing a complaint with the clerk. A complaint regarding the eligibility of a candidate must be received by the clerk not later than the close of business on the 10th calendar day after the filing deadline for the office for which the candidate seeks election.
- D. The complaint must be in writing and include the name, mailing address, contact phone number, and signature of the person making the complaint, and a statement in 200 words or less specifying the grounds for the complaint, described in particular, on which the candidate's eligibility is being questioned.
- E. The clerk will review only those issues cited in the complaint related to candidate qualifications established by this chapter.

F. Upon receipt of a complaint, the clerk will review any evidence relevant to the issues identified in the complaint which is in the custody of the municipal clerk's office including evidence provided with the complaint, the candidate's registration record, declaration of candidacy, and, in the discretion of the clerk, any other public record. Following review of all relevant evidence in the case, and within 20 days of receiving the complaint, the clerk will determine whether a preponderance of evidence supports or does not support the eligibility of the candidate. The process for issuing a final determination will be as follows:

1. The clerk will send notification in writing to the candidate whose eligibility is being questioned that a complaint has been received. The notification will include a copy of the complaint, supporting relevant evidence, a statement as to whether a preponderance of evidence reviewed as of that notice supports or does not support the eligibility of the candidate, and a request that the candidate provide a sworn response statement along with any relevant supporting evidence.
2. The clerk must also notify the challenger that all relevant evidence must be submitted within 7 calendar days of the date of the clerk's notice to the candidate that a complaint has been filed. If the clerk receives additional evidence during this 7-day period, such evidence must be provided to the candidate with an opportunity to respond. Absent extraordinary circumstances, the clerk shall not consider evidence received after the challenger's deadline to submit evidence.
3. The candidate's response statement and any supporting evidence must be received within 10 calendar days of the date of the clerk's notice to the candidate that a complaint has been filed. Absent extraordinary circumstances, the clerk shall not consider evidence received after the candidate's deadline to submit evidence.
4. For purposes of this section, "extraordinary circumstances" must be specified in writing, documenting a serious circumstance or event beyond the control of the individual providing the late evidence.
5. Following review of all relevant evidence in the case, and within 20 days of receiving the complaint, the clerk will issue a final determination based on a preponderance of evidence standard for review
6. A final determination must be issued in writing within 20 days of the clerk receiving the complaint.

- G. The clerk must send the final written decision to the person making the complaint and to the candidate. The clerk’s decision shall be sent by certified mail and by electronic mail (email), if an email address is known. The determination of the borough clerk constitutes a final administrative decision. An appeal of the clerk’s decision shall be filed with the State of Alaska Superior Court at Kenai, Alaska in conformance with the Rules of Appellate Procedure of the State of Alaska, Part VI.

SECTION 3. That KPB 22.30.030(A) is hereby amended as follows:

22.30.030. Terms of office.

- A. The full term of office for assembly members is 3 years. Consistent with KPB 4.30.010(B), no person who has completed two full terms on the assembly in a continuous period of service may serve another term or portion of a term until a period of 180 days has passed since the end of his second full term of office. A full term of office means the regular term of office for assembly and, except as provided in paragraph B of this section, does not include portions of a term served by appointment or election to the remainder of an unexpired term vacated by another person or to a less than 3-year term resulting from assembly redistricting.

SECTION 4. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

02/04/20 Vote on motion to postpone to 02/25/20:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson, Smalley, Cooper

No: None

Absent: Dunne

Yes:

No:

Absent:

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly Member (B) for B. J.
Tyson Cox, Assembly Member (B) for T. C.

DATE: February 4, 2020

RE: Amendment to Ordinance 2020-01, Amending KPB 4.30.010 And
KPB 4.30.050 Regarding Candidate Qualification and Review of
Candidate Qualifications for Borough Elections (Johnson, Cox)

Upon further review and recommendation, we would like to amend Ordinance 2020-01 to delete the following proposed language from Section 1:

[E. A CANDIDATE FOR ANY OF THE ABOVE OFFICES SHALL DECLARE IN WRITING ALL ABSENCES FROM THE STATE OF ALASKA OF OVER 45 DAYS DURING THE 12 MONTHS PRIOR TO FILING FOR OFFICE ALONG WITH THE REASON FOR THE ABSENCE.]

The reporting requirement may be construed as overly intrusive and there is nothing in ordinance prohibiting absences of over 45 days.

Further, we are requesting postponement of this ordinance until February 25, 2020 to allow the School Board and Service Area Boards an opportunity to make recommendations.

Thank you for your consideration.

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Brent Johnson, Assembly Member BJ

DATE: December 26, 2019

RE: Ordinance 2020-01, Amending KPB 4.30.010 and KPB 4.30.050 regarding Candidate Qualification and Review of Candidate Qualifications for Borough Elections (Johnson)

The recent election brought to my attention deficiencies in Kenai Peninsula Borough Code regarding candidate qualifications in our local elections.

First, this borough has a candidate durational residency requirement of only 180 days compared to one year requirements in the boroughs of Matanuska-Susitna, Fairbanks North Star, Haines, Petersburg, Kodiak Island and Ketchikan Gateway, and the City of Homer, just to name a few other somewhat comparable Alaska municipalities. A longer durational residency requirement serves important local interests. Durational residency requirements permit exposure of the candidate to his or her prospective constituents and ensure that candidates are familiar with the issues and diverse character of the area the candidate desires to serve. One-year residency requirements afford greater voter knowledge of candidates and greater candidate knowledge of the needs of the constituency while also protecting constitutional rights of both the voter and the candidate.

In addition, borough code does not provide guidance on what "resident of" means for local borough and school district elected positions. This proposed amendment to KPB 4.30.050 mirrors state law and provides a clearer process for the clerk to follow in reaching a decision when a candidate's qualifications are challenged. This ordinance defines residence as actual physical presence and habitation at a specific location in the borough. It also provides a more defined procedure for the public to challenge a candidate's qualifications to run for local office and for the clerk to follow in reaching a decision on the matter.

Candidates for local office should be familiar with the issues and challenges facing their constituents and should not be able to move to an area right before an election for personal gain.

Your consideration is appreciated.

Introduced by: Dunne, Cooper
Date: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-015**

**A RESOLUTION SUPPORTING THE CURRENT LAWS AND REGULATIONS
OF THE STATE OF ALASKA REGARDING OIL SPILL
PREVENTION AND RESPONSE**

WHEREAS, the 1989 Exxon Valdez oil spill devastated Alaska’s coastal communities, economies, wildlife, cultural and natural resources, and caused damage that reverberates to this day; and

WHEREAS, after the Exxon Valdez oil spill, Alaska citizens and the Alaska Legislature worked together to enact the strongest oil spill protection laws in the nation to keep our waters, beaches, fish and wildlife oil free which have proven successful for more than 30 years; and

WHEREAS, the regulations have been revised on nine occasions for clarification and streamlining, to make contingency planning and review less onerous, as well as more predictable and expeditious; and

WHEREAS, industry has complied with these laws and regulations successfully for 30 profitable years; and

WHEREAS, as a result of post-Exxon Valdez oil spill laws and regulations, Alaska has world-class oil spill prevention and response requirements to protect its people and its environment, as well as commercial and sport fishing, aquaculture, recreation, tourism, subsistence, and cultural interests; and

WHEREAS, after the 1989 Exxon Valdez oil spill, the U.S. Congress cited complacency on the part of industry and regulators as a key contributing factor to the spill; and

WHEREAS, one way to combat this complacency and rebuild trust is to involve the public, those with the most to lose in the event of a large spill, in decisions that affect the safe transportation of oil; and

WHEREAS, oil spill contingency plans required by current laws and regulations are the industry’s commitment to Alaskans that they are prepared to effectively respond in the event of a significant future catastrophic spill or situation; and

WHEREAS, oil spill contingency plans are a critical component of ensuring the safe transportation, production and exploration of oil and represent rigorous but achievable standards; and

WHEREAS, on October 15, 2019, Jason Brune, Commissioner of the Alaska Department of Environmental Conservation (“ADEC”) issued a public scoping notice seeking input on existing regulations and statutes (laws) and that his department has identified regulations that can be eliminated or significantly reformed; and

WHEREAS, rolling back or eliminating proven oil spill prevention and response requirements to reduce a perceived burden to industry transfers the risk and burden of another oil spill onto the backs of our communities, citizens, and environment; and

WHEREAS, ADEC Commissioner Brune committed to the Prince William Sound and Cook Inlet Regional Citizens Advisory Councils’ Board of Directors a fully transparent public review and consultation process; and

WHEREAS, Commissioner Brune further informed the board that ADEC has no desire to roll back the environmental protections in place, and that preparedness and protection are vital;

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

SECTION 1 That the Kenai Peninsula Borough Assembly firmly supports Alaska’s existing Oil Spill Response Planning Standards and rigorous regulatory oversight.

SECTION 2. That the Kenai Peninsula Borough Assembly believes that Alaska’s laws and regulations regarding oil spill prevention and response warrant the state’s continued, unqualified support and enactment.

SECTION 3. That Kenai Peninsula Borough Assembly strongly recommends that Alaskans interested in maintaining safety standards designed to protect the state’s environment, people, and economy from catastrophic oil spills contact the ADEC to urge continued support of Alaska’s current laws and regulations regarding oil spill prevention and response.

SECTION 4. Copies of this resolution shall be sent to the Kenai Peninsula Borough state legislative delegation, ADEC Commissioner Brune, Governor Dunleavy, Director of the Prince William Sound Regional Citizens’ Advisory Council, and Director of the Cook Inlet Regional Citizens Advisory Council.

SECTION 5. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF FEBRUARY, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Willy Dunne, Assembly Member
Kelly Cooper, Assembly President

DATE: February 13, 2020

RE: Resolution 2020-015, Supporting the Current Laws and Regulations of the State of Alaska Regarding Oil Spill Prevention and Response (Dunne, Cooper)

The Kenai Peninsula Borough Assembly has participated in both the Cook Inlet and Prince William Sound Regional Citizens Advisory Councils since their inception with borough appointed members to each organizations' board of directors. We are currently represented by Grace Merkes on the CIRCAC board and Mako Haggerty on the PWS RCAC board.

Both CIRCAC and PWS RCAC continue to be the eyes and ears of the public when it comes to oversight and recommendations for safe transport of oil in the waters of and adjacent to the Kenai Peninsula Borough.

The Alaska Department of Environmental Conservation is soliciting input regarding the regulations that protect our citizens and economic activities which could be harmed by oil spills. The existing regulations have been developed over several decades with participation from industry and the public. This resolution supports CIRCAC and PWS RCAC in their role as public watchdogs and asks the State of Alaska to retain the existing rigorous rules for oil spill contingency plans and other protections that benefit the citizens of the borough.

Your support is appreciated.

Introduced by: Cooper, Smalley
Date: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-016**

**A RESOLUTION SUPPORTING ALASKA HOUSE BILL 198, AN ACT RELATING TO
AGGRAVATING FACTORS CONSIDERED AT SENTENCING**

WHEREAS, the Kenai Peninsula Borough is a diverse community, with residents who fall along the full range of sexual orientation and gender identity spectrums; and

WHEREAS, a series of escalating incidents of harassment and assault in the Kenai Peninsula Borough, which were apparently targeted against an individual based on sexual orientation, led to a town hall meeting on January 4, 2020, on the issue of public safety; and

WHEREAS, law enforcement officials, elected officials, and over 100 Kenai Peninsula Borough residents attended the public town hall meeting, who discussed hate crime generally and in the Kenai Peninsula Borough; and

WHEREAS, a hate crime may be defined as a criminal offense against a person or property motivated in whole or in part by an offender’s bias against the victim’s race, religion, disability, sexual orientation, ethnicity, gender, or gender identity; and

WHEREAS, at present, Alaska Statute 12.55.155(c)(22) provides as an aggravating factor for sentencing for a serious crime that "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin," but does not currently include sexual orientation or gender identity as an aggravating factor for sentencing of a person convicted of the crime; and

WHEREAS, the fundamental civil and human rights of all individuals should be upheld regardless of a person’s race, sex, color, creed, disability, ancestry, national origin, sexual orientation, or gender identity; and

WHEREAS, criminal offenses motivated in whole or in part by an offender’s bias against the victim’s sexual orientation or gender identity have no place in our community; and

WHEREAS, after the town hall meeting, Rep. Andy Josephson introduced HB 198; and

WHEREAS, Alaska House Bill 198 would amend AS 12.55.155(c)(22) to expand hate crime protections to include “sexual orientation or gender identity”;

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

Section 1. That the Kenai Peninsula Borough Assembly supports the expansion of hate crime protection under AS 12.55.155(c)(22) to include “sexual orientation or gender identity” as an aggravating factor for sentencing of a person convicted of a crime through Alaska House Bill 198 if the substance of HB 198 as enacted is substantially the same as pre-filed HB 198.

Section 2. That copies of this resolution shall be forwarded to Alaska Representative Gary Knopp, Alaska Representative Ben Carpenter, Alaska Representative Sara Vance, and Alaska Senator Peter Micciche.

Section 3. That this resolution takes effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF FEBRUARY, 2019.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Kelly Cooper, Assembly President (B) for K.C.
Hall Smalley, Assembly Vice-President (B) for H.S.

DATE: February 13, 2020

RE: Resolution 2020-016, Supporting Alaska House Bill 198, an Act Relating to Aggravating Factors Considered at Sentencing (Cooper, Smalley)

This resolution expresses the Kenai Peninsula Borough Assembly's support of House Bill 198, *An Act Relating to Aggravating Factors Considered at Sentencing*, pre-filed by Rep. Andy Josephson of Anchorage for the Alaska State Legislature's session in 2020.

A series of escalating incidents of harassment and assault in the Central Kenai Peninsula in 2019, targeted against an individual based on sexual orientation, led to a town hall meeting on January 4, 2020 on the issue of public safety. This town hall meeting, open to the public, was attended by over 100 Kenai Peninsula Borough residents, including many law enforcement officials and elected officials. Many individuals spoke about incidents of harassment and violence that they had experienced based on their sexual orientation or gender identity.

At the town hall meeting, protection against hate crime was discussed. A hate crime may be defined as a criminal offense against a person or property motivated in whole or in part by an offender's bias against the victim's race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. At present, Alaska Statute 12.55.155(c)(22) provides as an aggravating factor for sentencing for a serious crime that "the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin," but does not include sexual orientation or gender identity as an aggravating factor for sentencing of a person convicted of the crime.

Hate crimes are an extreme form of prejudice intended to target the victims and to intimidate an entire group. One term used is "Message Crime", perpetrated to create fear and anxiety among "vulnerable" groups and real people in our community. Do it to one and "they" will be looking over their shoulders. It doesn't happen often, law enforcement tells us. Targeted members tell us these crimes

are rarely reported because reporting these crimes results in increased violence. Including this in the hate crimes section will not make the "rest of us" less safe or raise others to a more important level. Our children are also targets and deserve protection and deserve examples of how we honor all people and that this behavior will not be accepted.

After the town hall meeting, Rep. Andy Josephson of Anchorage pre-filed HB 198, and cited incidents in 2019 and this town hall meeting as some of the reasons for this bill. HB 198 would amend AS 12.55.155(c)(22) to expand hate crime protections to include "sexual orientation or gender identity" as aggravating factors for sentencing of a person convicted of a crime. A finding of an aggravating factor allows the sentencing court to increase a presumptive sentence for a crime up to the maximum sentence for that crime.

The Kenai Peninsula Borough is a diverse community, with residents who fall along the full range of sexual orientation and gender identity spectrums. As a matter of public safety, criminal offenses motivated in whole or in part by an offender's bias against the victim's sexual orientation or gender identity have no place in our community.

Your support of this resolution is appreciated.

HOUSE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES JOSEPHSON, Hopkins, Knopp, Kreiss-Tomkins, Spohnholz, Tuck, Fields

Introduced: 1/21/20

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to aggravating factors considered at sentencing."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 12.55.155(c) is amended to read:

4 (c) The following factors shall be considered by the sentencing court if proven
5 in accordance with this section, and may allow imposition of a sentence above the
6 presumptive range set out in AS 12.55.125:

7 (1) a person, other than an accomplice, sustained physical injury as a
8 direct result of the defendant's conduct;

9 (2) the defendant's conduct during the commission of the offense
10 manifested deliberate cruelty to another person;

11 (3) the defendant was the leader of a group of three or more persons
12 who participated in the offense;

13 (4) the defendant employed a dangerous instrument in furtherance of
14 the offense;

15 (5) the defendant knew or reasonably should have known that the

1 victim of the offense was particularly vulnerable or incapable of resistance due to
2 advanced age, disability, ill health, homelessness, consumption of alcohol or drugs, or
3 extreme youth or was for any other reason substantially incapable of exercising
4 normal physical or mental powers of resistance;

5 (6) the defendant's conduct created a risk of imminent physical injury
6 to three or more persons, other than accomplices;

7 (7) a prior felony conviction considered for the purpose of invoking a
8 presumptive range under this chapter was of a more serious class of offense than the
9 present offense;

10 (8) the defendant's prior criminal history includes conduct involving
11 aggravated assaultive behavior, repeated instances of assaultive behavior, repeated
12 instances of cruelty to animals proscribed under AS 11.61.140(a)(1) and (3) - (5), or a
13 combination of assaultive behavior and cruelty to animals proscribed under
14 AS 11.61.140(a)(1) and (3) - (5); in this paragraph, "aggravated assaultive behavior"
15 means assault that is a felony under AS 11.41, or a similar provision in another
16 jurisdiction;

17 (9) the defendant knew that the offense involved more than one victim;

18 (10) the conduct constituting the offense was among the most serious
19 conduct included in the definition of the offense;

20 (11) the defendant committed the offense under an agreement that the
21 defendant either pay or be paid for the commission of the offense, and the pecuniary
22 incentive was beyond that inherent in the offense itself;

23 (12) the defendant was on release under AS 12.30 for another felony
24 charge or conviction or for a misdemeanor charge or conviction having assault as a
25 necessary element;

26 (13) the defendant knowingly directed the conduct constituting the
27 offense at an active officer of the court or at an active or former judicial officer,
28 prosecuting attorney, law enforcement officer, correctional employee, firefighter,
29 emergency medical technician, paramedic, ambulance attendant, or other emergency
30 responder during or because of the exercise of official duties;

31 (14) the defendant was a member of an organized group of five or

1 more persons, and the offense was committed to further the criminal objectives of the
2 group;

3 (15) the defendant has three or more prior felony convictions;

4 (16) the defendant's criminal conduct was designed to obtain
5 substantial pecuniary gain and the risk of prosecution and punishment for the conduct
6 is slight;

7 (17) the offense was one of a continuing series of criminal offenses
8 committed in furtherance of illegal business activities from which the defendant
9 derives a major portion of the defendant's income;

10 (18) the offense was a felony

11 (A) specified in AS 11.41 and was committed against a spouse,
12 a former spouse, or a member of the social unit made up of those living
13 together in the same dwelling as the defendant;

14 (B) specified in AS 11.41.410 - 11.41.458 and the defendant
15 has engaged in the same or other conduct prohibited by a provision of
16 AS 11.41.410 - 11.41.460 involving the same or another victim;

17 (C) specified in AS 11.41 that is a crime involving domestic
18 violence and was committed in the physical presence or hearing of a child
19 under 16 years of age who was, at the time of the offense, living within the
20 residence of the victim, the residence of the perpetrator, or the residence where
21 the crime involving domestic violence occurred;

22 (D) specified in AS 11.41 and was committed against a person
23 with whom the defendant has a dating relationship or with whom the defendant
24 has engaged in a sexual relationship; or

25 (E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and
26 the defendant was 10 or more years older than the victim;

27 (19) the defendant's prior criminal history includes an adjudication as a
28 delinquent for conduct that would have been a felony if committed by an adult;

29 (20) the defendant was on furlough under AS 33.30 or on parole or
30 probation for another felony charge or conviction that would be considered a prior
31 felony conviction under AS 12.55.145(a)(1)(B);

1 (21) the defendant has a criminal history of repeated instances of
2 conduct violative of criminal laws, whether punishable as felonies or misdemeanors,
3 similar in nature to the offense for which the defendant is being sentenced under this
4 section;

5 (22) the defendant knowingly directed the conduct constituting the
6 offense at a victim because of that person's race, sex, sexual orientation or gender
7 identity, color, creed, physical or mental disability, ancestry, or national origin;

8 (23) the defendant is convicted of an offense specified in AS 11.71 and

9 (A) the offense involved the delivery of a controlled substance
10 under circumstances manifesting an intent to distribute the substance as part of
11 a commercial enterprise; or

12 (B) at the time of the conduct resulting in the conviction, the
13 defendant was caring for or assisting in the care of a child under 10 years of
14 age;

15 (24) the defendant is convicted of an offense specified in AS 11.71 and
16 the offense involved the transportation of controlled substances into the state;

17 (25) the defendant is convicted of an offense specified in AS 11.71 and
18 the offense involved large quantities of a controlled substance;

19 (26) the defendant is convicted of an offense specified in AS 11.71 and
20 the offense involved the distribution of a controlled substance that had been
21 adulterated with a toxic substance;

22 (27) the defendant, being 18 years of age or older,

23 (A) is legally accountable under AS 11.16.110(2) for the
24 conduct of a person who, at the time the offense was committed, was under 18
25 years of age and at least three years younger than the defendant; or

26 (B) is aided or abetted in planning or committing the offense by
27 a person who, at the time the offense was committed, was under 18 years of
28 age and at least three years younger than the defendant;

29 (28) the victim of the offense is a person who provided testimony or
30 evidence related to a prior offense committed by the defendant;

31 (29) the defendant committed the offense for the benefit of, at the

1 direction of, or in association with a criminal street gang;

2 (30) the defendant is convicted of an offense specified in AS 11.41.410
3 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to
4 the victim in furtherance of the offense with the intent to make the victim
5 incapacitated; in this paragraph, "incapacitated" has the meaning given in
6 AS 11.41.470;

7 (31) the defendant's prior criminal history includes convictions for five
8 or more crimes in this or another jurisdiction that are class A misdemeanors under the
9 law of this state, or having elements similar to a class A misdemeanor; two or more
10 convictions arising out of a single continuous episode are considered a single
11 conviction; however, an offense is not a part of a continuous episode if committed
12 while attempting to escape or resist arrest or if it is an assault on a uniformed or
13 otherwise clearly identified peace officer or correctional employee; notice and denial
14 of convictions are governed by AS 12.55.145(b) - (d);

15 (32) the offense is a violation of AS 11.41 or AS 11.46.400 and the
16 offense occurred on school grounds, on a school bus, at a school-sponsored event, or
17 in the administrative offices of a school district if students are educated at that office;
18 in this paragraph,

19 (A) "school bus" has the meaning given in AS 11.71.900;

20 (B) "school district" has the meaning given in AS 47.07.063;

21 (C) "school grounds" has the meaning given in AS 11.71.900;

22 (33) the offense was a felony specified in AS 11.41.410 - 11.41.455,
23 the defendant had been previously diagnosed as having or having tested positive for
24 HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the
25 victim to a risk or a fear that the offense could result in the transmission of HIV or
26 AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in
27 AS 18.15.310;

28 (34) the defendant committed the offense on, or to affect persons or
29 property on, the premises of a recognized shelter or facility providing services to
30 victims of domestic violence or sexual assault;

31 (35) the defendant knowingly directed the conduct constituting the

1 offense at a victim because that person was 65 years of age or older;

2 (36) the defendant committed the offense at a health care facility and
3 knowingly directed the conduct constituting the offense at a medical professional
4 during or because of the medical professional's exercise of professional duties; in this
5 paragraph,

6 (A) "health care facility" has the meaning given in
7 AS 18.07.111;

8 (B) "medical professional" has the meaning given in
9 AS 12.55.135(k);

10 (37) the defendant knowingly caused the victim to become
11 unconscious by means of a dangerous instrument; in this paragraph, "dangerous
12 instrument" has the meaning given in AS 11.81.900(b)(15)(B).

Introduced by: Cooper, Smalley
Date: 02/25/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-017**

**A RESOLUTION REQUESTING THE STATE OF ALASKA TO PROVIDE
NECESSARY FUNDING TO THE ALASKA CIVIL AIR PATROL AT A MINIMUM OF
\$184,300 TO PROVIDE SUPPORT FOR UTILITY COSTS, INSURANCE PREMIUMS
AND EMERGENCY ROOF REPAIRS**

- WHEREAS,** the Civil Air Patrol is the official civilian volunteer auxiliary of the United States Air Force with over 750 members statewide, including approximately 140 aircrew personnel, 255 cadets, 464 emergency responders and 18 single engine aircraft; and
- WHEREAS,** the Alaska Wing Civil Air Patrol performs over 50 percent of the search and rescue missions in the state from 20 locations and also provides aerospace education for Alaska's youth; and
- WHEREAS,** the Alaska Wing of the Civil Air Patrol has performed search and rescue missions in Alaska and on the Kenai Peninsula for over 70 years, and has had a presence at the Kenai Airport since the 1950's; and
- WHEREAS,** the Alaska Wing Civil Air Patrol provided approximately \$2.6 million of value in volunteer hours in 2018; and
- WHEREAS,** the Alaska Wing of the Civil Air Patrol funding was reduced to \$304,440 in 2018; and
- WHEREAS,** for the first time in recent history the State of Alaska provided no funding in 2019 to the Alaska Wing Civil Air Patrol; and
- WHEREAS,** the attached February 2020 Civil Air Patrol background paper of funding shortfall identifies the minimum funding required to maintain current alert posture; and
- WHEREAS,** the state is responsible for search and rescue within the state pursuant to state law and conducting and managing search and rescue operations are one of the eight core missions of the Alaska State Troopers; and
- WHEREAS,** Alaska Statute 18.60.146 provides that the Department of Public Safety shall make the necessary administrative arrangements for maintaining liaison between the state and Civil Air Patrol and the expenditure of money appropriated to the department for state contribution toward support of authorized activities of the Alaska Wing Civil Air patrol, under its charter; and

WHEREAS, without financial assistance the Alaska Wing of the Civil Air Patrol will likely place outlying facilities in “cold storage” and shift utility and maintenance costs to local Alaska Wing units, negatively impacting response time and mission effectiveness; and

WHEREAS, without the assistance of the Alaska Wing of the Civil Air Patrol and its trained volunteers, conducting search and rescue missions in Alaska will be seriously compromised; and

WHEREAS, it is in the best interest of the Kenai Peninsula Borough and state for the state to continue providing funding to the Alaska Wing of the Civil Air Patrol;

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

SECTION 1. That the Kenai Peninsula Borough Assembly requests that Governor Dunleavy and the Alaska State Legislature provide funding of \$184,300 to the Alaska Wing of the Civil Air Patrol in 2020 to ensure the continued level of search and rescue provided to the state and its resident and visitors.

SECTION 2. That copies of this resolution shall be forwarded to Governor Michael J. Dunleavy, Senator Peter Micciche, Senator Gary Stevens, Senate Finance Co-Chairs Bert Stedman and Natasha Von Imhof, Representative Gary Knopp, Representative Ben Carpenter, Representative Louise Stutes, Representative Sarah Vance, House Finance Co-Chairs Neal Foster and Jennifer Johnston, and the legislators of the 31st Legislative Session.

SECTION 3. That this resolution takes effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 25TH DAY OF FEBRUARY, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Kelly Cooper, Assembly President (B) for K.C.
Hall Smalley, Assembly Vice-President (B) for H.S.

DATE: February 13, 2020

RE: Resolution 2020-017, Requesting the State of Alaska to Provide Necessary Funding to the Alaska Wing Civil Patrol at a Minimum of \$184,300 to Provide Support for Utility Costs, Insurance Premiums and Emergency Roof Repair (Cooper, Smalley)

The Alaska Wing of the Civil Air Patrol (CAP) provides critical services to our state including over 50% of all search and rescue missions and education and training to youth. This volunteer organization with over 750 members statewide, including approximately 140 aircrew personnel, 255 cadets and 464 emergency responders provided approximately \$2.6 million of value in volunteer hours in 2018 (latest available figures).

For the first time in recent history, the State of Alaska did not provide funding to the CAP in FY 2020. The CAP has a long cooperative relationship with the state based in part on the state's obligation to provide search and rescue services. The minimum funding request from the CAP of \$184,300 would cover insurance premiums, utility costs and emergency roof repair for the organization, allowing it to continue operations without compromising its response time and mission effectiveness.

With over seventy years of presence on the Kenai Peninsula, and a home at the Kenai airport since the 1950's, the CAP is an important partner in our borough. Your support of this resolution is appreciated.

BULLET BACKGROUND PAPER
ON
ALASKA WING (CIVIL AIR PATROL) FUNDING SHORTFALL

PURPOSE

Provide an overview of the funding the Alaska Wing (AKWG) of the Civil Air Patrol (CAP) receives from the USAF, corporate headquarters and its membership in understanding the impact of the loss of state funding on AKWG's assigned missions.

DISCUSSION

- The AKWG receives resources (aircraft, vehicles and communications equipment) and funding from the USAF via National Headquarters, Civil Air Patrol to conduct the three missions of CAP: emergency services (Search & Rescue), aerospace education and cadet programs
 - Based on historical data, we anticipate flying 130 hours supporting USAF-funded actual SAR missions valued at \$15.7K, and \$76.3K of SAR mission training in FY20. 140 volunteer aircrew and 464 first responders accomplish these missions in some of the most challenging conditions, at significant personal risk across volunteer hours valued at \$2.6 million (as recorded in FY18)
 - AKWG expects to fly approximately \$30K-worth of USAF-funded pilot proficiency flying, with an estimated \$20K remainder of flying training paid for "out of pocket" by our volunteers
- AKWG receives additional funding from partners, corporations and members
 - USCG-funded inspection transport missions estimated at \$22K expected in FY20
 - Annual advertising revenue from AKWG magazine "Wingtips" approximately \$10K
 - Membership dues, donations & interest collected annually-estimated \$22.5K for FY20
- The Alaska Wing of the Civil Air Patrol was removed by the Governor's office from the FY20 state budget. Consequently, all 16 AKWG units have been directed to pay for their own utilities and facility maintenance (where AKWG previously subsidized these expenses with grant funds).
 - Based on historical data, utilities to support units in the field are expected to be \$110K
 - Insurance premiums required to operate AKWG facilities in FY20 is estimated to be \$14.3K
 - AKWG's Seward & Homer facilities have been placed into "cold storage" for lack of funding
 - Required roof repair of Kodiak facility on hold due to lack of funding-estimated \$60K
- Without obtaining additional funding, the ability to execute timely airborne and ground SAR missions from outlying locations will be significantly degraded: 5 hours for western missions (with twice the crews required to conduct the missions, if even executable for weather) and 2 hours (assuming clear roads) in the interior area of operations

SUMMARY

The Alaska Wing of the Civil Air Patrol seeks additional funding in order to maintain its current alert posture and provide direct support to the USAF, federal agencies and the citizens of Alaska. In FY19, AKWG flew 131 hours of actual SAR resulting in 35 "finds" and 2 "saves." Without the additional \$184.3K in FY20, AKWG will likely place additional outlying facilities into "cold storage" status, directly and negatively impacting our response time and mission effectiveness.

Col McClure/AKWG/CC/105982@akwg.cap.gov/907.301.8122/bhp/3 FEB 20

Introduced by: Mayor
Date: 02/25/20
Hearing: 03/17/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-28**

**AN ORDINANCE APPROPRIATING FUNDS FROM NIKISKI FIRE SERVICE AREA
AND APPROVING THE PURCHASE OF SAFETY-RATED BELTS FOR SELF-
CONTAINED BREATHING APPARATUS EQUIPMENT FOR CENTRAL
EMERGENCY SERVICE AREA AND NIKISKI FIRE SERVICE AREA**

- WHEREAS,** in ordinance 2019-19-13 the assembly authorized the borough to receive self-contained breathing apparatus (SCBA) on behalf of Central Emergency Service Area and Nikiski Fire Service Area funded largely by a U.S. Department of Homeland Security, Federal Emergency Management Agency, Assistance to Firefighters Grant obtained by the City of Kenai; and
- WHEREAS,** the City of Kenai solicited competitive proposals for this purchase and awarded the contract to Municipal Emergency Services (MES); and
- WHEREAS,** as the SCBA grant did not fund upgraded safety belt waist harnesses, the belts included in the award can only be used for the SCBA's and other limited purposes; and
- WHEREAS,** the EZ-Scape Pro is a self-rescue belt that meets NIOSH and NFPA safety standards for life safety rope, fall, decent and anchor devices; and
- WHEREAS,** this rated waist harness is necessary for use as a ladder belt, as well as a life safety attachment for rescue, and will increase safety during high risk firefighting and rescue hazards; and
- WHEREAS,** by purchasing the safety belt waist harness during the manufacturing process CES and NFSA jointly will see an overall savings of \$67,050.00 for 150 SCBA safety belt waist harnesses; and
- WHEREAS,** including a purchase of the upgraded safety-rated belts in the assembly of the new system as a sole source purchase eliminates purchasing the standard belts and provides the best value for the borough; and
- WHEREAS,** at its meeting of February 19, 2020, the NFSA Board recommended _____;
and

WHEREAS, at its meeting of February 20, 2020, the CES Board recommended _____;

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

SECTION 1. That the assembly approves the sole source purchase of the upgraded EZ-Scape Pro self-rescue belt with the SCBA equipment instead of the standard belts as it provides the best value for the borough.

SECTION 2. That the sum of \$13,312.00 is hereby appropriated from NFSA account 441.51110.SCBA2.49999 for the purchase of 32 EZ-Scape Pro belts.

SECTION 3. The appropriations made in this ordinance are of a project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 4. That this ordinance shall become effective immediately upon its enactment.

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

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Central Emergency Services

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
John Hedges, Purchasing and Contracting Director *JH*

FROM: Roy Browning, CES Chief *RB*
Bryan Crisp, Nikiski Chief *JBC*

DATE: February 13, 2020

RE: Ordinance 2019-19-28, Appropriating Funds from Nikiski Fire Service Area and Approving the Purchase of Safety-Rated Belts for Self-Contained Breathing Apparatus Equipment for Central Emergency Service Area and Nikiski Fire Service Area (Mayor)

In ordinance 2019-19-13 the assembly authorized the borough to receive Self-Contained Breathing Apparatus (SCBA) on behalf of Central Emergency Services (CES) and Nikiski Fire Service Area (NFSA) funded largely by a FEMA, Assistance to Firefighters Grant obtained by the City of Kenai. The City of Kenai awarded the contract to Municipal Emergency Services.

The SCBA grant did not fund the upgraded safety belt waist harness. This waist harness, EZ-Scape Pro is a self-rescue belt, which meets NIOSH and NFPA safety standards for life safety rope, fall, decent and anchor device. This rated waist harness is necessary for use as a ladder belt, as well as a life safety attachment for rescue which will increase safety during high risk firefighting and rescue hazards.

By purchasing the safety belt waist harness during the manufacturing process CES and NFSA jointly will see an overall savings of \$67,050.00 for 150 SCBA safety belt waist harnesses. The vendor, MES is the only company that would sell these as a part of the assembly, providing value for the borough. Both CES and NFSA would like to take advantage of this overall costs savings during this order which this ordinance would also approve.

CES and NFSA are requesting purchase of the EZ-Scape Pro belt from Municipal Emergency Services (MES). NFSA is also requesting an appropriation of \$13,312.00.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>CES 443.51610.19461.49999</u>
Amount:	<u>\$ 49,088.00</u>
Acct. No.	<u>NFSA 441.27910</u>
Amount:	<u>\$ 13,312.00</u>
By: <u>BH</u>	Date: <u>2/12/2020</u>

Introduced by: Mayor
Date: 02/25/20
Hearing: 03/17/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-19-29**

**AN ORDINANCE APPROPRIATING FUNDS FOR THREE NEW BOROUGH E911
DISPATCHER POSITIONS TO REPLACE THREE VACANT STATE E911
DISPATCHER POSITIONS**

WHEREAS, the Alaska Department of Public Safety (DPS) and the Kenai Peninsula Borough (Borough) entered into the current agreement for the operation of the Soldotna Public Safety Communications Center (“Communications Center”) on December 13, 2013; and

WHEREAS, among other things the agreement requires DPS to provide nine personnel, including seven dispatchers, one shift supervisor, and one office assistant to work with thirteen Borough personnel to manage and operate the Communications Center; and

WHEREAS, the thirteen Borough employees include seven dispatchers, three shift supervisors, one 911 IT specialist, one 911 Quality Specialist/Admin Assistant and one dispatch center manager; and

WHEREAS, the Agreement also provides that both parties are responsible for timely filling their respective personnel vacancies, and that any failure to fill a vacant position within 90 days shall require the party in arrears to pay all overtime and related costs incurred by the other party due to the personnel deficiency; and

WHEREAS, in addition to leaving one position vacant from July 30, 2019 through September 5, 2019, three more of the state’s eight dispatcher positions have been vacant since September 2019 equaling 2,080 vacant hours through December 31, 2019, the equivalent of one full-time employee for one year; and

WHEREAS, these vacancies include one position that the state recently relocated to the Municipality of Anchorage emergency communications center without providing the borough any advance notice; and

WHEREAS, the State of Alaska has issued a number of announcements stating its intention to centralize E911 call-taking for Alaska State Troopers and has alerted the Borough of its intention to ultimately remove all state positions from the Borough’s emergency Communications Center in Soldotna; and

WHEREAS, representatives from both the DPS and the Borough have discussed this matter numerous times and met personally at least three times in the last six months to discuss the state’s plans to reimburse the Borough for its costs related to the unfilled state positions and to address other changes to the Communications Center that will be necessitated by their decision to remove all state positions from the Communications Center when it opens a centralized emergency dispatch center in Anchorage; and

WHEREAS, as the Borough has not yet seen any forward progress in recovering costs or reaching a transition agreement with the state despite repeated attempts by the Borough, and the Borough is incurring additional costs for overtime to cover for the state’s vacant positions, the Borough’s best interests would be served by approving via resolution three new Borough dispatch positions to replace those positions and appropriating funds for these positions to avoid incurring more overtime; and

WHEREAS, the cost of funding three new borough dispatch positions will cost the borough approximately \$345,000 on an annual basis;

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

SECTION 1. That \$152,251 is appropriated from the general fund fund balance to be transferred to the following accounts in the 911 Communications Special Revenue Fund for costs associated to fund three new Borough emergency center dispatch positions and to replenish the overtime budget for the remaining portion of FY20:

264.11255.40110 Regular Wages	\$60,771
264.11255.40130 Overtime	\$31,081
264.11255.40210 FICA	\$7,642
264.11255.40221 PERS	\$20,742
264.11255.40321 Healthcare	\$26,250
264.11255.40322 Life insurance	\$154
264.11255.40410 Leave	\$5,596
264.11255.40511 Other	\$15

SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*
Lisa Kosto, 911 Senior Manager *LK*

DATE: February 13, 2020

RE: Ordinance 2019-19-29, Appropriating Funds for Three New Borough E911 Dispatcher Positions to Replace Three Vacant State E911 Dispatcher Positions

For many years the Kenai Peninsula Borough (borough) and the Alaska Department of Public Safety (DPS) have worked together to provide 911 services for the community. Numerous changes have occurred over the years and in December 2013 we entered into the current agreement for the operation of the Soldotna Public Safety Communications Center ("Communications Center").

Among other things that agreement requires each party to fill certain positions at the Communications Center to ensure adequate personnel are available with equitable costs borne by both parties. However, three of DPS's eight dispatcher positions have been vacant since September 2019 equaling 1,868 hours that the borough had to cover using overtime. A fourth state position remained vacant from July 1, 2019 until September 5, 2019. The missing state personnel time totals about 2080 hours, which is equal to one full-time position for a year. The state has publicly announced its intention to centralize E911 call-taking for Alaska State Troopers and has alerted the borough of its intention to ultimately remove all state positions from the Communications Center in Soldotna. It has met with the borough administration three times to discuss revising the agreement to address this transition but no agreement has been reached.

Funds are needed to reimburse the borough's E911 division for the overtime costs it has incurred and to fund three new positions to fill the vacancies left unfilled by the state. This ordinance would appropriate the funds needed to do that for this fiscal year. The borough intends to continue its efforts to negotiate with the state and to recover costs it is owed by the state under the current agreement.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.:	<u>100.27910</u>
Amount: \$	<u>152,251.00</u>
By: <i>PP</i>	Date: <u>2/12/2020</u>

Introduced by: Mayor
Date: 02/25/20
Hearing: 03/17/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-07**

**AN ORDINANCE APPROVING AND ACCEPTING GRANT FUNDS FROM THE
STATE OF ALASKA DIVISION OF HOMELAND SECURITY & EMERGENCY
MANAGEMENT TO REIMBURSE REPAIRS AT THE HOPE SCHOOL AND THE
NIKISKI JUNIOR/SENIOR HIGH SCHOOL RESULTING FROM THE NOVEMBER
30, 2018 COOK INLET 7.0 EARTHQUAKE**

WHEREAS, on November 30, 2018 at 8:29 am a 7.0 earthquake shook from an epicenter five miles north of Anchorage which was felt across Southcentral Alaska and tsunami warnings were issued for coastal communities, including Seward and the Kachemak Bay communities of Homer, Seldovia, Nanwalek and Port Graham; and

WHEREAS, the borough appropriated \$450,000 from the general fund for disaster response and recovery by way of ordinance 2018-19-26; and

WHEREAS, the Federal Disaster Declaration DR-4413 approved eligible expenses associated with response, recovery and mitigation to be reimbursed by the Federal Emergency Management Agency and the State of Alaska through the Public Assistance Program (FEMA PA); and

WHEREAS, the borough has submitted eight project applications through the FEMA PA program for damages sustained to borough facilities; and

WHEREAS, repair costs for the Hope School in the amount of \$15,643.43 will be reimbursed to the borough as a 75 percent federal pass-through and a 25 percent state-matching grant awarded by the State of Alaska Division of Homeland Security & Emergency Management; and

WHEREAS, repair costs for the Nikiski Junior/Senior High School in the amount of \$3,974.29 will be reimbursed to the borough as a 75 percent federal pass-through and a 25 percent state-matching grant awarded by the State of Alaska Division of Homeland Security & Emergency Management;

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

SECTION 1. That the mayor is authorized to accept grant funds totaling \$19,617.72 from the State of Alaska Division of Homeland Security & Emergency Management for the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413.

SECTION 2. That the \$450,000 appropriation from the general fund for disaster response and recovery by way of ordinance 2018-19-26 are project length in nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That the mayor is authorized to negotiate, administer and execute on behalf of the borough the applicant agreement package for disaster presently identified as the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413, and to negotiate, execute, and administer any other documents, agreements, and contracts required under or related to the grant agreements including without limitation the Assurances and Agreements, the Summary of Grant Conditions for All Applicants, and the Indemnity and Hold Harmless Agreement required as a condition of the grant agreements and any subsequent grant amendments.

SECTION 4. The Kenai Peninsula Borough agrees that upon award assistance through the Alaska Division of Homeland Security & Emergency Management as described in this ordinance it shall waive its sovereign immunity to the extent required by paragraph 27 of the DHS&EM Form 30-57f State Assurance and Agreements and be subject to suit for actions arising out of the project activities for the November 30, 2018 Cook Inlet 7.0 Earthquake disaster in the same manner, and to the same extent as any person and shall not be immune or exempt from any administrative or judicial process, sanction or judgement.

SECTION 5. That this ordinance shall be effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Dan Nelson, Emergency Manager *DN*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: February 13, 2020

SUBJECT: Ordinance 2020-01, Approving and Accepting Grant Funds from the State of Alaska Division of Homeland Security & Emergency Management to Reimburse Repairs at the Hope School and the Nikiski Junior/Senior High School Resulting from the November 30, 2018 Cook Inlet 7.0 Earthquake (Mayor)

This ordinance accepts money from the State of Alaska Division of Homeland Security & Emergency Management (AKDHSEM) for costs incurred or to be incurred in responding to the November 30, 2018 Cook Inlet 7.0 Earthquake, Federal Disaster Declaration DR4413. The funds were previously appropriated by way of ordinance 2018-19-26.

The project applications and approved grant awards are managed through the Federal Emergency Management Agency online system named Grants Portal, and the award agreements created through the AKDHSEM as project worksheets.

The approved expenses associated with response, recovery and mitigation that are eligible for reimbursement by the Federal Emergency Management Agency (75% share) and the State of Alaska (25%) through the FEMA Public Assistance Program as follows:

Grant Agreement #	Project Location	Award Amount
Project Worksheet 175	Hope School	\$15,643.43
Project Worksheet 191	Nikiski Jr/Sr High School	\$3,974.29

Attachment: award letters

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct No. <u>260.71040.19EQ1.49999</u>	
Acct. No. <u>260.71082.19EQ1.49999</u>	
By: <u>PP</u>	Date: <u>2/13/2020</u>



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Military and
Veterans Affairs**

Division of Homeland Security and
Emergency Management

P.O. Box 5750
JBER, AK 99505-0800
Main: 907.428.7000
Fax: 907.428.7009
ready.alaska.gov

January 29, 2020

Dan Nelson, Emergency Manager
Kenai Peninsula Borough
253 Wilson Lane
Soldotna, AK 99669

RE: Obligating Award Document
Disaster: DR-4413-AK, 2018 Cook Inlet Earthquake
Subrecipient: Kenai Peninsula Borough
PA ID: 122-00276-00
Project Worksheet(s): 0191

Certified Mail: 9171 9690 0935 0239 5639 08

Mr. Nelson:

Enclosed is your initial Grant Award Package for Project Worksheet (PW) 0191 under DR-4413-AK, 2018 Cook Inlet Earthquake.

Two pre-signed Obligating Award Documents (OAD), Grant Requirements Form and the Assurances and Agreements Forms are enclosed; one is for your records, the other is for ours. Please return one set of the original signed forms to our office by February 11, 2020.

Please note the following signature guide:

- Obligating Award Document: Three subrecipient signatures on the front page plus one subrecipient signature on the back page.
- Grant Requirements Form: Three subrecipient signatures on the back page.
- Assurances and Agreements Form: Initial all 37 numbered paragraphs and provide one subrecipient signature, on page five.

No payments will be processed until we receive our copy of the signed forms.

Mr. Nelson
Page 2 of 2
January 29, 2020

If you have any questions, please contact Brian Fisher, your assigned Division Representative, at 907-428-7014 or by email at brian.fisher@alaska.gov.

Sincerely,



William A. Dennis
Alternate Governor's Authorized Representative

Enclosure(s): (2 Originals) Obligating Award Documents
(2 Originals) Grant Requirements Forms
(2 Originals) Assurances and Agreements Forms
Project Worksheet 0191



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Military and
Veterans Affairs**

Division of Homeland Security and
Emergency Management

P.O. Box 5750
JBER, AK 99505-0800
Main: 907.428.7000
Fax: 907.428.7009
ready.alaska.gov

January 29, 2020

Dan Nelson, Emergency Manager
Kenai Peninsula Borough
253 Wilson Lane
Soldotna, AK 99669

RE: Obligating Award Document
Disaster: DR-4413-AK, 2018 Cook Inlet Earthquake
Subrecipient: Kenai Peninsula Borough
PA ID: 122-00276-00
Project Worksheet(s): 0175

Certified Mail: 9171 9690 0935 0239 539 77

Mr. Nelson:

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No payments will be processed until we receive our copy of the signed forms.

Mr. Nelson
Page 2 of 2
January 24, 2020

If you have any questions, please contact Brian Fisher, your assigned Division Representative, at 907-428-7014 or by email at brian.fisher@alaska.gov.

Sincerely,



William A. Dennis
Alternate Governor's Authorized Representative

Enclosure(s): (2 Originals) Obligating Award Documents
(2 Originals) Grant Requirements Forms
(2 Originals) Assurances and Agreements Forms
Project Worksheet 0175

Introduced by: Mayor
Date: 02/25/20
Hearing: 03/17/20
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-08**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN
PARCELS OF BOROUGH LAND BY SEALED BID FOLLOWED
BY AN OVER-THE-COUNTER SALE**

WHEREAS, the borough has clear title to the land listed in Section 1 of this ordinance; and

WHEREAS, the land has been appropriately classified pursuant to KPB 17.10.080; and

WHEREAS, authorization of a sealed bid sale provides a competitive market process, followed by an over-the-counter sale to keep the properties on the market over a longer term; and

WHEREAS, appropriate market exposure is key to a successful land sale and an economical means for the borough to achieve such exposure is to offer a 1.5 percent finder's fee, with a \$300 minimum, to qualified finders; and

WHEREAS, because Tract A, Huske-Scout Lake Subdivision, as shown on Plat No. 2020-TBD, Kenai Recording District appears to contain trash and records of use have not been located, a prospective buyer of the property should be allowed extended provisions for conducting due diligence; and

WHEREAS, because N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, T1S, R14W, Seward Meridian, Alaska was originally gifted by Edward and Wade Jackinsky to the Peninsula General Hospital, and later deeded to the Kenai Peninsula Borough Central Hospital Service Area, the proceeds from the sale of this property should be directed to the Central Peninsula Hospital Service Area; and

WHEREAS, properties contained in this ordinance that were acquired through tax foreclosure are handled according to state statute, and tax foreclosed property being offered, but held for less than 10 years from the date of tax deed, are conditioned on the borough's ability to secure title insurance; and

WHEREAS, the Planning Commission at its regularly scheduled meeting of February 24, 2020, recommended _____;

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

SECTION 1. The parcels listed below are authorized for sale at a minimum of the fair market value as determined in consultation with the KPB Assessing Department provided all proposed plats containing lots to be sold shall be finalized and recorded before any of the lots are sold or offered for sale.

Parcel ID	General Location	Legal Description	Acres+/-	Minimum Bid
01302012 & 01302118	Nikiski	Government Lots 2 and 3, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska And NE¼SW¼, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska	99.77	\$100,000
01302119	Nikiski	SE¼NW¼, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska	40	\$25,000
01302120	Nikiski	S½NE¼NW¼ & NW¼NE¼NW¼ and W½NE¼NE ¼NW¼, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska	35	\$40,000
01404001 & 01404002	Nikiski	Lots 4 and 5, Bernice Lake Alaska Industrial Subdivision, as shown on Plat No. K-1560, Kenai Recording District	1.93	\$32,500
01713014	North Kenai	SE¼SW¼SE¼, Section 23, T6N, R12W, Seward Meridian, Alaska, lying east of the North Kenai Road right-of-way	6.20	\$120,000
01715028	North Kenai	Government Lot 67, Section 14, T6N, R12W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska Subject to right-of-ways per Book 253, Page 621, Kenai Recording District	2	\$6,000
03503064	Hope	Lot 1, Discovery Park Subdivision, as shown on Plat No. 2010-11, Kenai Recording District	1.94	\$60,000
03503072	Hope	Lot 9, Discovery Park Subdivision, as shown on Plat No. 2010-11, Kenai Recording District	1.98	\$60,000
03503073	Hope	Lot 10, Discovery Park Subdivision, as shown on Plat No. 2010-11, Kenai Recording District	2.09	\$60,000
05503514	Ciechanski	Lot 1, Block 3, Widgeon Woods Phase Two, as shown on Plat No. 2012-32, Kenai Recording District	1.2	\$32,500
05503515	Ciechanski	Lot 2, Block 3, Widgeon Woods Phase Two, as shown on Plat No. 2012-32, Kenai Recording District	1.2	\$33,000
05503159	Kalifornsky	Lot 2, Phillips Station Subdivision, as shown on Plat No. 2010-41, Kenai Recording District	0.94	\$40,000

TBD	Kalifornsky	Tract A, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	54.91	\$350,000
TBD	Kalifornsky	Lot 1, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 2, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 3, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 4, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 5, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 6, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 7, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 8, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
TBD	Kalifornsky	Lot 9, Kalifornsky Center Subdivision, as shown on Plat No. 2020-TBD Kenai Recording District.	0.92	\$25,000
063141TBD	Sterling	Tract A, Huske-Scout Lake Subdivision, as shown on Plat No. 2020-TBD, Kenai Recording District	17.03	\$60,000
065440TBD	Sterling	Lot 43A, Block 14, Gregory Subdivision, 2019 Replat, as shown on Plat No. 2020-TBD, Kenai Recording District	0.93	\$18,000
13106033	Kalifornsky	Lot 9, Two The Bluff Subdivision 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District	2.59	\$110,000
13106034	Kalifornsky	Lot 10, Two The Bluff Subdivision 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District	2.59	\$110,000
13106036	Kalifornsky	Lot 12, Two The Bluff Subdivision 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District	2.60	\$110,000
15706215	Ninilchik	N½N½NE¼NW¼, Section 35, T1S, R14W, Seward Meridian, Alaska	10	\$7,500
16913228	Anchor Point	SW¼SE¼SE¼ and W¼SE¼SE¼SE¼, Section 13, T5S, R15W, Seward Meridian, Alaska	13.6	\$25,000
16913229	Anchor Point	That portion of the E¼SE¼SE¼SE¼ Section 13, T5S, R15W, Seward Meridian, Alaska, lying southwest of Sterling Highway	1.4	\$10,00

SECTION 2. The method of disposal shall be by sealed bid pursuant to KPB 17.10.100(F) followed by an over-the-counter sale pursuant to KPB 17.10.100(H). The date of the sealed bid sale shall be May 15, 2020. Bids shall be accepted at the Kenai Peninsula Borough, Planning Department located at 144 N. Binkley Street, Soldotna, Alaska 99669, by no later than 2:00 pm, May 15, 2020. The over-the-counter sale shall begin October 1, 2020 and end January 31, 2021.

SECTION 3. All parcels will be conveyed by quitclaim deed. Either title insurance or another similar report must be obtained for all borough-financed sales, at the buyer's expense, showing the condition of title and that there are no unsatisfied judgments or liens against the buyer at the time of closing, the latter of which shall also be verified by the buyer. In the event a title report showing a reasonably acceptable condition of title cannot be obtained, then either the buyer or the borough may elect to terminate the purchase agreement, in which case all monies on deposit will be refunded to the buyer. For borough-financed sales Buyers must execute a release authorizing the borough to obtain a credit report on the Buyers.

SECTION 4. That parcels listed below are tax foreclosed properties retained for public purpose under KPB Ordinance 2017-20 as substandard lots (less than 40,000sf.). That in accordance with provisions of A.S. 29.45.460, the assembly finds that a public need no longer exists provided that the lots are combined to create a standard sized lot. KPB shall purchase title insurance as a condition of the sale of these properties.

Parcel ID	General Location	Legal Description	Last Owner of Record
06544043 06544044 06544045	Sterling	Lot 43, 44, 45, Block 14, Gregory Subdivision, Addition No. 6, as shown on Plat No. 74-54, Kenai Recording District <i>Note: These parcels are currently being surveyed and platted into one lot as Lot 43A, Block 14, Gregory Subdivision, 2019 Replat, as shown on Plat No. 2020-___, Kenai Recording District (KPB Plat File # 2019-134)</i>	Anderson, Skeg

SECTION 5. That parcel listed below is a tax foreclosed property retained for public purpose under KPB Ordinance 2004-15 as it was adjacent to borough land. That in accordance with provisions of A.S. 29.45.460, this property has been held by the municipality for more than 10-years following the redemption period and the assembly finds that a public need no longer exists.

Parcel ID	General Location	Legal Description	Last Owner of Record
16913229	Anchor Point	That portion of the E½SE¼SE¼SE¼ Section 13, T5S, R15W, Seward Meridian, Alaska, lying southwest of Sterling Highway	Brian D. Lowe

SECTION 6. Upon entering into an agreement to acquire the land, a down payment of 10 percent of the sale price, or \$1,500.00, whichever is greater, shall be made and the applicable terms and provisions of KPB 17.10.120 and KPB 17.10.130 shall apply, except that the borough shall retain the down payment, up to \$1,000, if the prospective buyer breaches a term of the sale.

SECTION 7. A 1.5 percent finder's fee will be paid by the borough to qualified finders with a \$300 minimum. At a minimum a qualified finder shall be a duly licensed real estate

sales person authorized to perform such services under Alaska Law. Successful bids less than \$20,000 will qualify for the \$300 minimum fee. This fee will be based on the bid amount of the successful bidder. Applications for finders will be received through the bid process. The borough will not contract directly with individual finders. The finder's fee is applicable to sealed bid and over-the-counter sales authorized by this ordinance.

SECTION 8. The terms of the sale for Tract A, Huske-Scout Lake Subdivision, as shown on Plat No. 2020-TBD, Kenai Recording District shall provide up to 180 days from the signing of the purchase agreement to closing for the purpose of buyer's due diligence inspection. The buyer may withdraw his or her offer without penalty during that period.

SECTION 9. That all proceeds from the sale of N½N½NE¼NW¼, Section 35, T1S, R14W, Seward Meridian, Alaska shall be deposited in the Central Peninsula Hospital Service Area Fund account 600.37110.

SECTION 10. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 11. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Blankenship, Borough Clerk

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Max Best, Planning Director 

FROM: Marcus A Mueller, Land Management Officer 

DATE: February 13, 2020

RE: Ordinance 2020-08, Authorizing the Sale of Certain Parcels of Borough Land by Sealed Bid Followed by an Over-the-Counter Sale (Mayor)

The Kenai Peninsula Borough (KPB) Land Management Division has identified certain parcels of land that are surplus to the KPB's need for land holdings and which could be placed in a competitive market value land sale by sealed bid followed by an over-the-counter sale. Attached is a vicinity map and parcel site maps showing the location of each parcel. Minimum bids are set at the estimated fair market value as determined in consultation with the KPB Assessing Department.

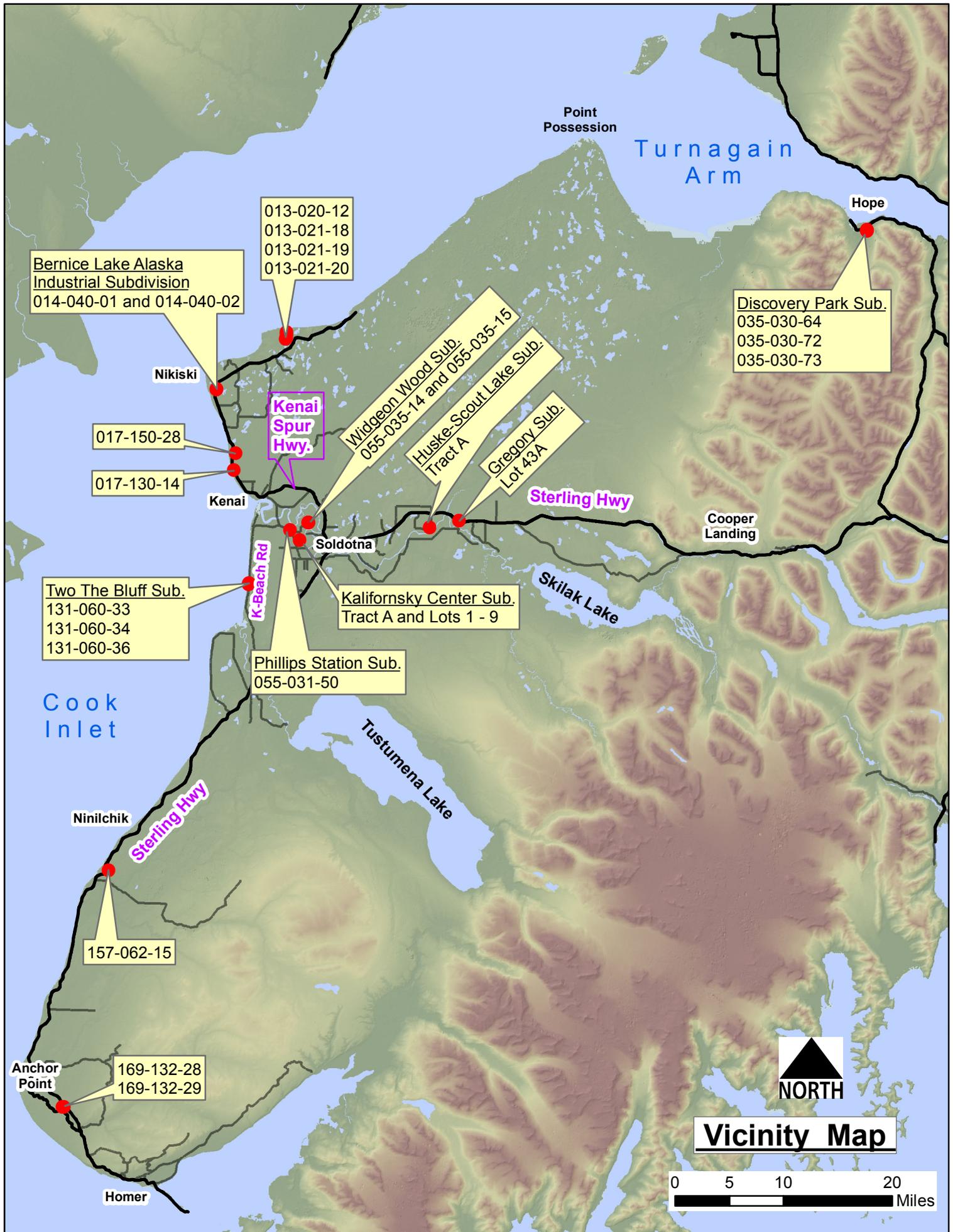
The sealed bid due date is proposed for May 15, 2020. A sale brochure will identify the parcels and explain the sealed bid procedures. Notice of the land sale will be published in accordance with KPB 17.10.110 and the brochure will be made available on the KPB Land Management Division's website.

The KPB's Land Management Division would like to continue with a finder's fee feature by offering a 1.5 percent finder's fee, with a \$300 minimum, to qualified finders. Bidders may benefit from receiving consultation from third party real estate professionals while the borough can benefit from increased market exposure.

This attached ordinance would authorize a sealed bid land sale of certain parcels of borough land followed by an over-the-counter sale of the parcels not sold.

This ordinance is scheduled to come before the KPB Planning Commission at its February 24, 2020 meeting. The Planning Commission will forward its recommendations to the assembly prior to the scheduled hearing on this ordinance.

Your consideration of this ordinance is appreciated.



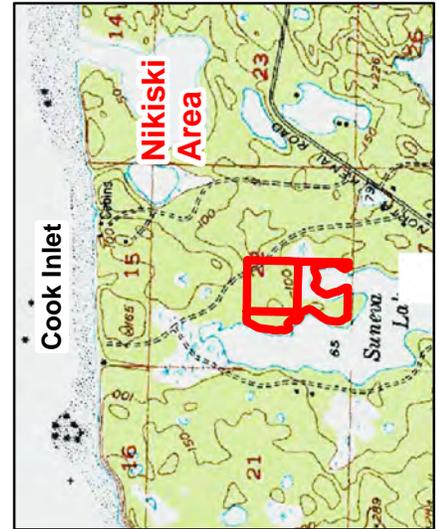
Parcel No. 013-020-12 & 013-021-18

**Minimum Bid
\$100,000**

Acres: 99.77±



169



Location	Parcel No. 013-020-12 and 013-021-18 Nikiski along the east shoreline of Suneva Lake. Government Lots 2 and 3, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska
Legal Description	and NE1/4SW1/4, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska
Special Features	This parcel fronts approximately 5,000 feet of shoreline on Suneva Lake. Reservation of a 20 foot wide public access easement centered on an existing trail running in a northwesterly direction from Wanda Drive.
Encumbrance	Subject to a 50 foot wide lineal perpetual public easement along the line of the ordinary high water mark of Suneva Lake reserved by the State of Alaska pursuant to AS 38.05 in Patent No. 6225.
Access	Access can be gained from a 50 foot wide public access easement recorded as Document No. 2020-000962-0 Kenai Recording District.
Utilities	None
Water & Sewer	None
Fire Service Area	Nikiski

Cook Inlet



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

K RD W
CHINO OK RDE

KISHKA ST

50ft. wide Public Access Easement

TAGZ CT

JORGENSEN RD
KENAI SPUR HLY

MP 32

DIDDY ST

NEW ORLEANS AVE

Suneva Lake

HUNDORF TRL

Subject
Parcels

Minimum Bid
\$25,000

Acres: 40±

No photo available

Cook Inlet

Location	Nikiski
Legal Description	SE¼NW¼, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska
Topography	Rolling terrain and wooded with mix of spruce, birch, alder and cottonwood.
Encumbrance	Reservation of a 20 foot wide public access easement centered on an existing trail running in a northwesterly direction from Wanda Drive.
Access	Access can be gained from a 50 foot wide public access easement recorded as Document No. 2020-000962-0 Kenai Recording District.
Utilities	None
Water & Sewer	None
Fire Service Area	Nikiski

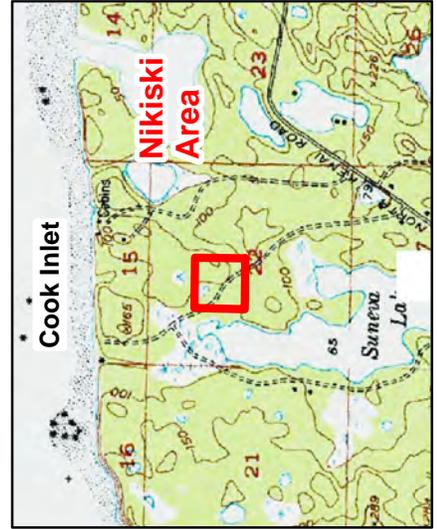
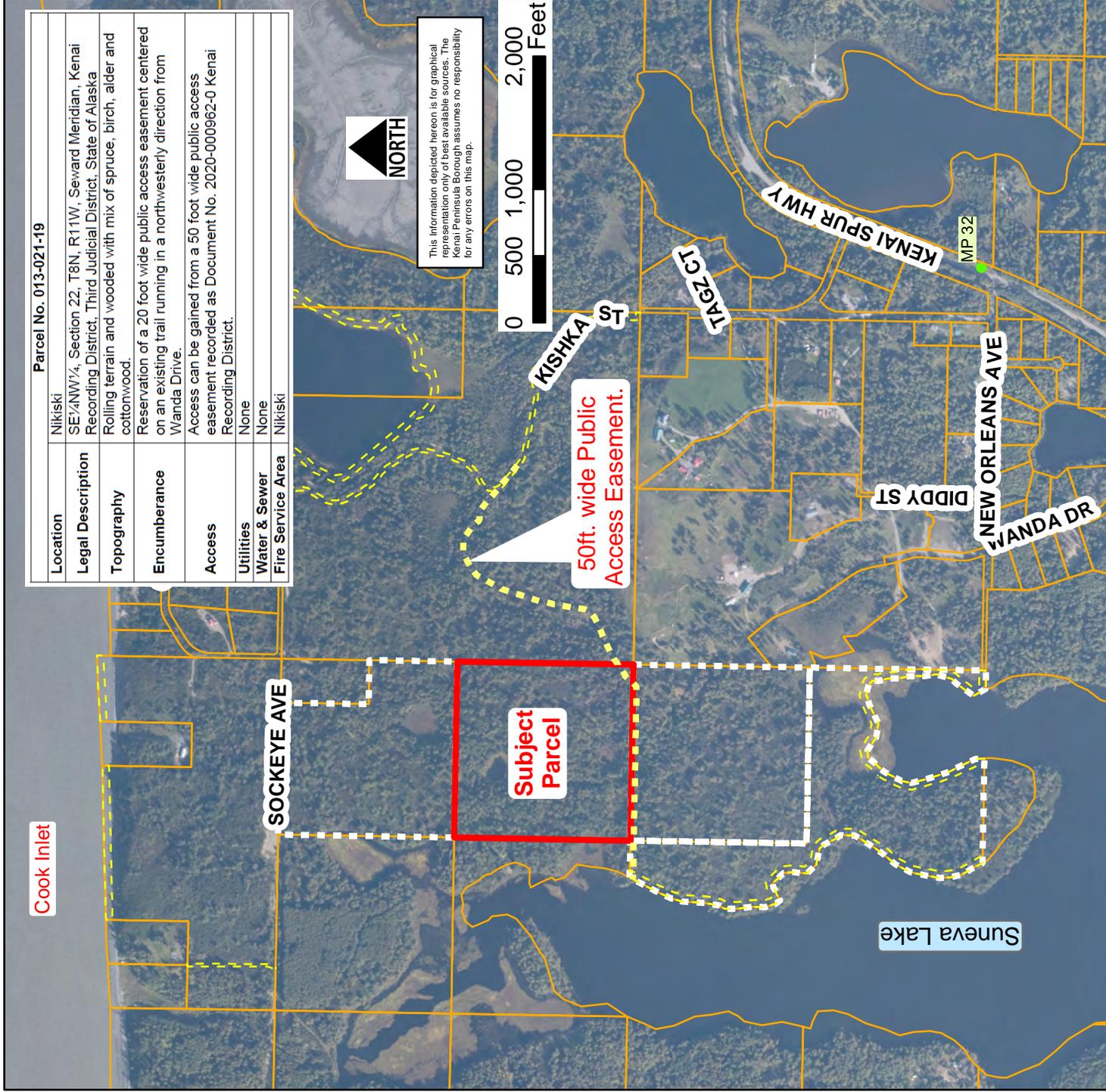
SOCKEYE AVE

Subject Parcel

50ft. wide Public Access Easement.



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Parcel No. 013-021-20

**Minimum Bid
\$40,000**

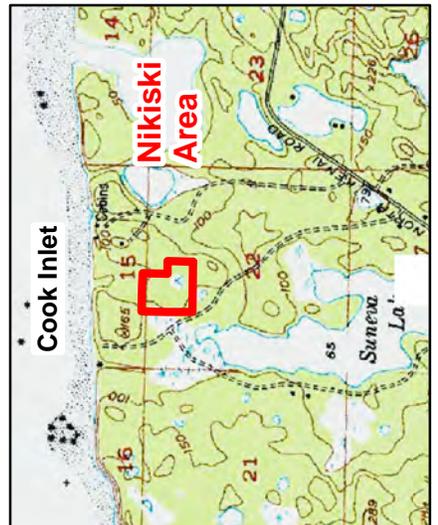
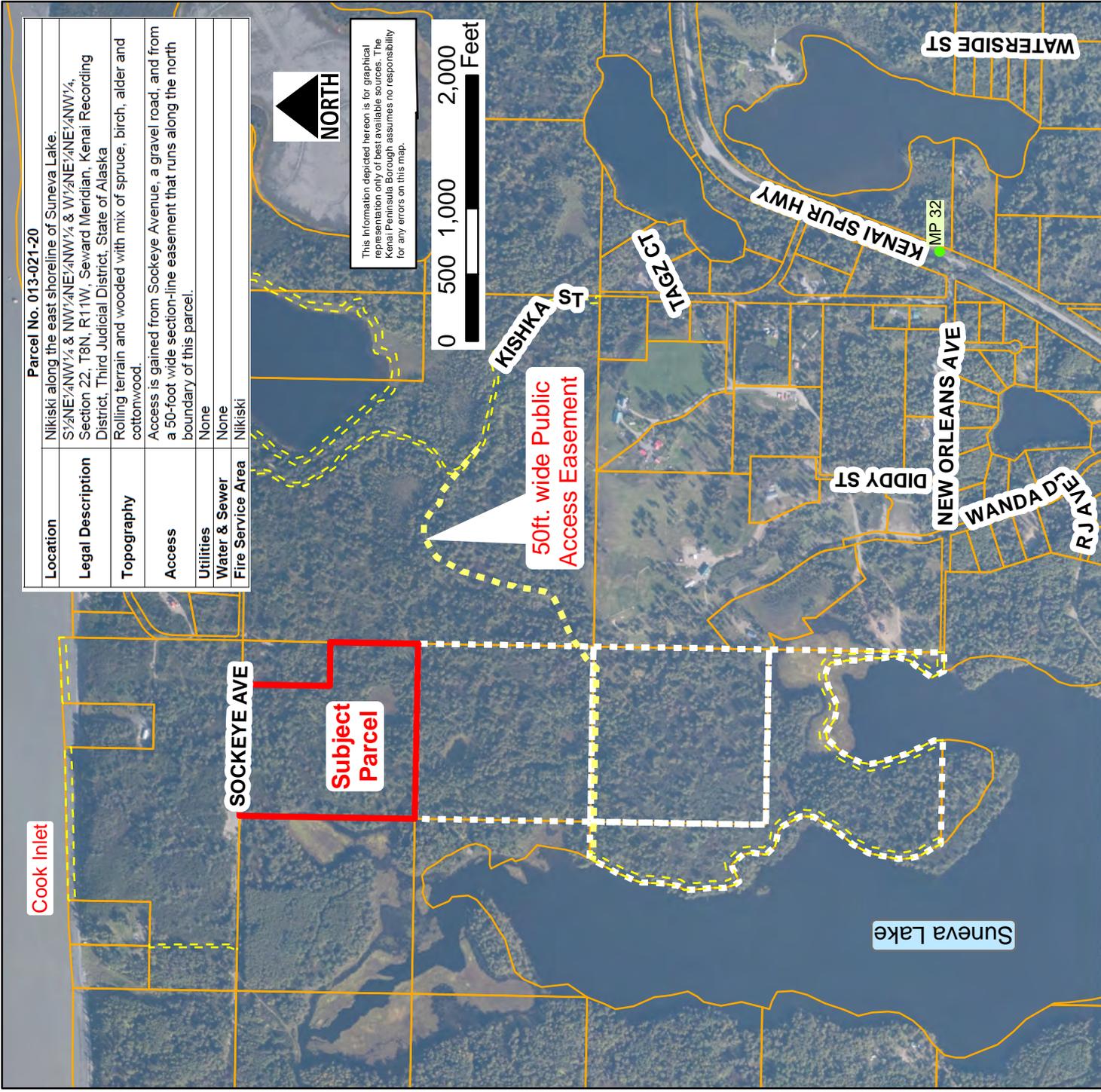
Acres: 35±

No photo available

Parcel No. 013-021-20	
Location	Nikiski along the east shoreline of Suneva Lake. S½NE¼NW¼ & NW¼NE¼NW¼ & W½NE¼NE¼NW¼, Section 22, T8N, R11W, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska
Legal Description	Rolling terrain and wooded with mix of spruce, birch, alder and cottonwood.
Topography	Access is gained from Sockeye Avenue, a gravel road, and from a 50-foot wide section-line easement that runs along the north boundary of this parcel.
Access	None
Utilities	None
Water & Sewer	None
Fire Service Area	Nikiski



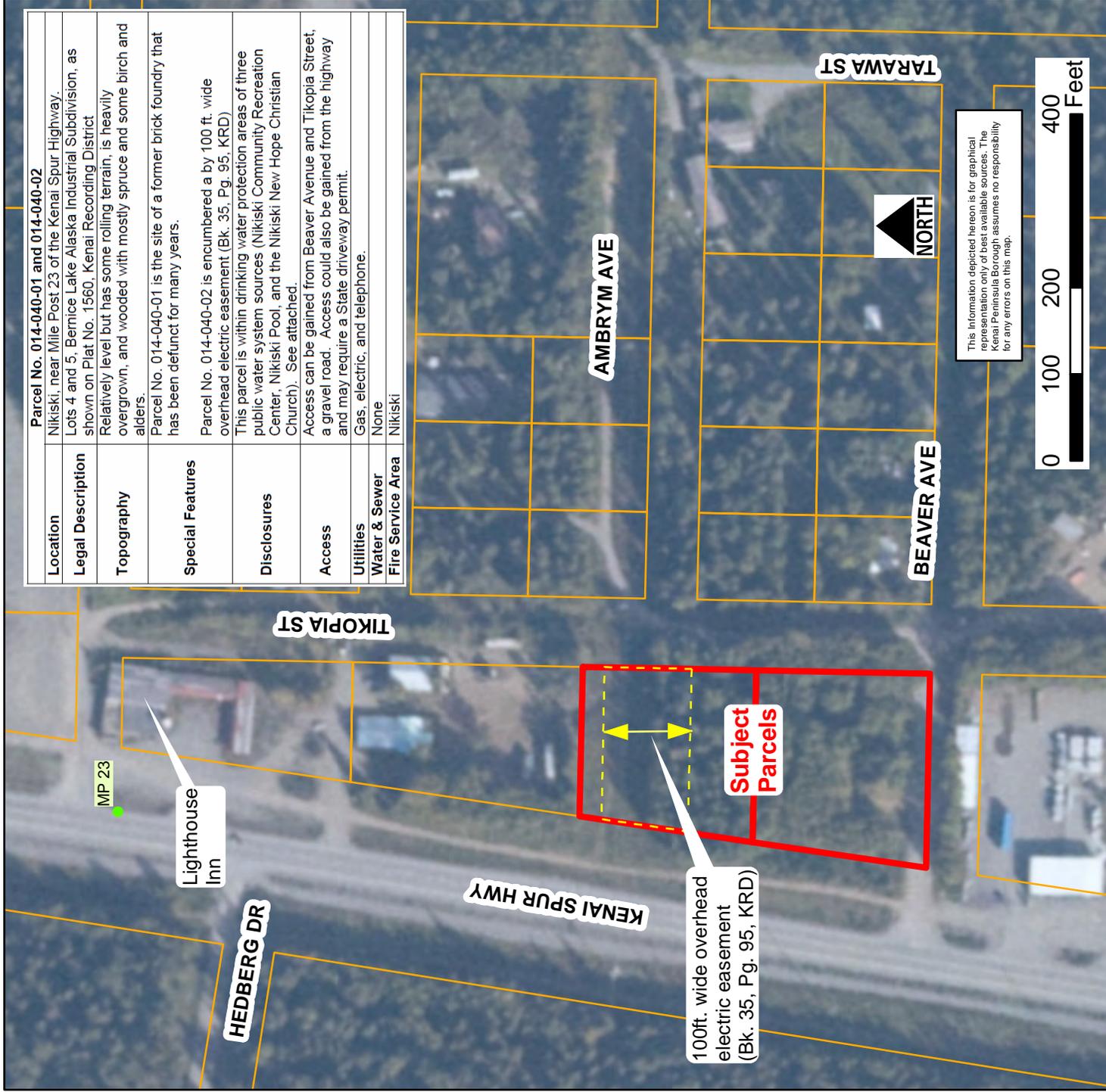
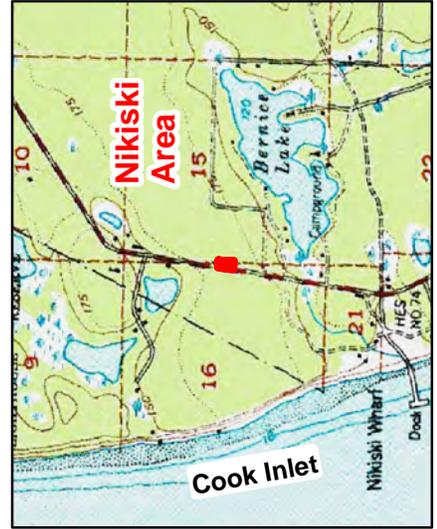
This information depicted hereon is for graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



Parcel No. 014-040-01 & 014-040-02

Minimum Bid
\$32,500

Acres: 1.93±

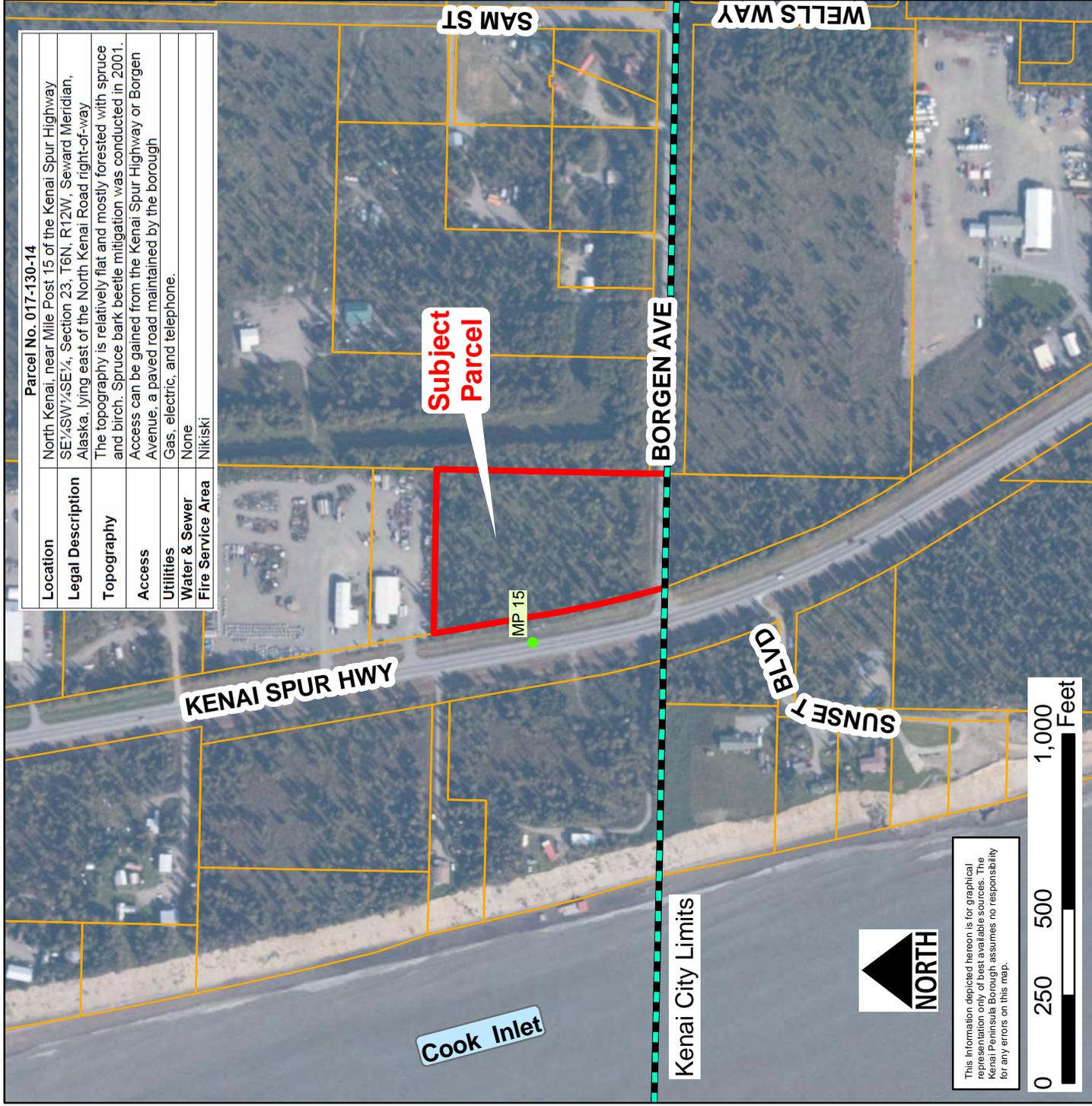
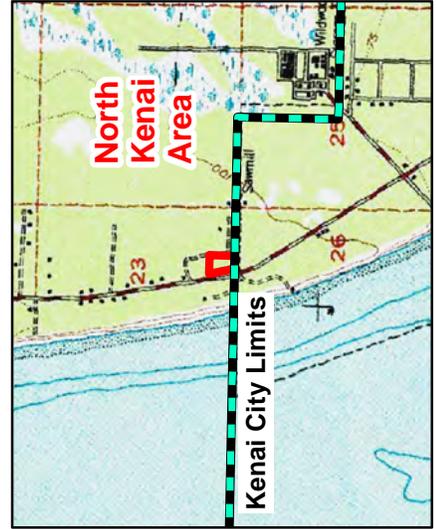


Parcel No. 014-040-01 and 014-040-02	
Location	Nikiski, near Mile Post 23 of the Kenai Spur Highway.
Legal Description	Lots 4 and 5, Bernier Lake Alaska Industrial Subdivision, as shown on Plat No. 1560, Kenai Recording District
Topography	Relatively level but has some rolling terrain, is heavily overgrown, and wooded with mostly spruce and some birch and alders.
Special Features	Parcel No. 014-040-01 is the site of a former brick foundry that has been defunct for many years.
Disclosures	Parcel No. 014-040-02 is encumbered a by 100 ft. wide overhead electric easement (Bk. 35, Pg. 95, KR D)
Access	This parcel is within drinking water protection areas of three public water system sources (Nikiski Community Recreation Center, Nikiski Pool, and the Nikiski New Hope Christian Church). See attached.
Utilities	Access can be gained from Beaver Avenue and Tikopia Street, a gravel road. Access could also be gained from the highway and may require a State driveway permit.
Water & Sewer	Gas, electric, and telephone.
Fire Service Area	None
	Nikiski

Parcel No. 017-130-14

**Minimum Bid
\$120,000**

Acres: 6.20±



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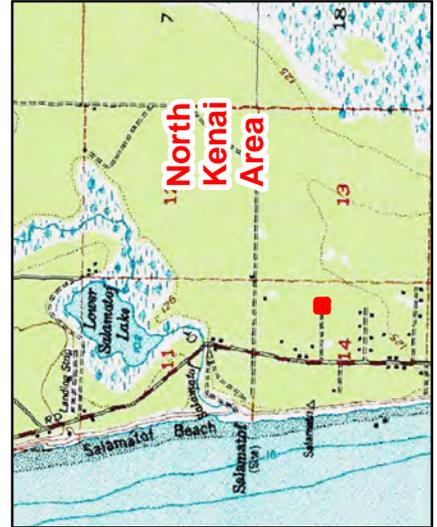
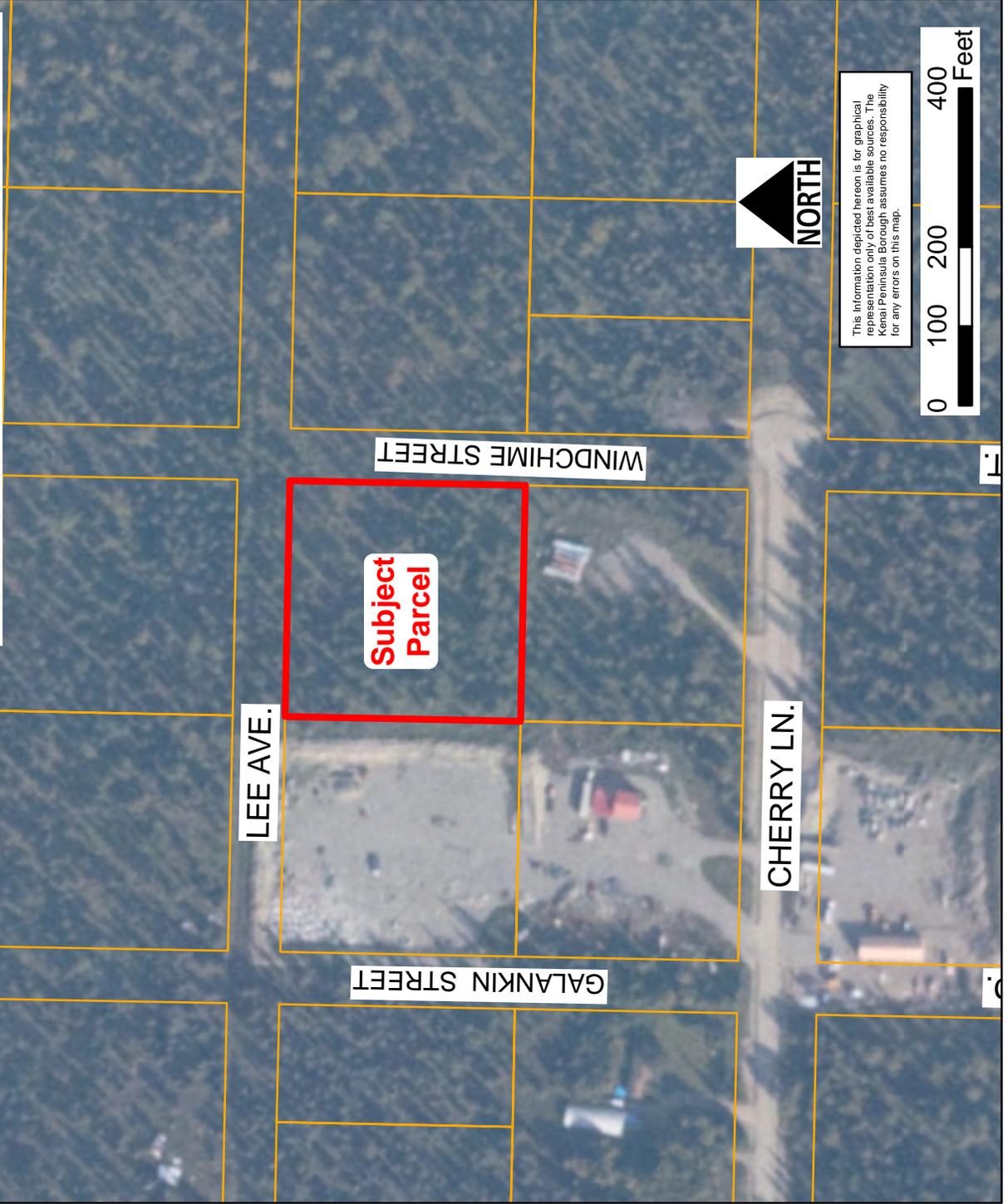
Parcel No. 017-150-28

Minimum Bid
\$6,000

Acres: 2±

No photo available

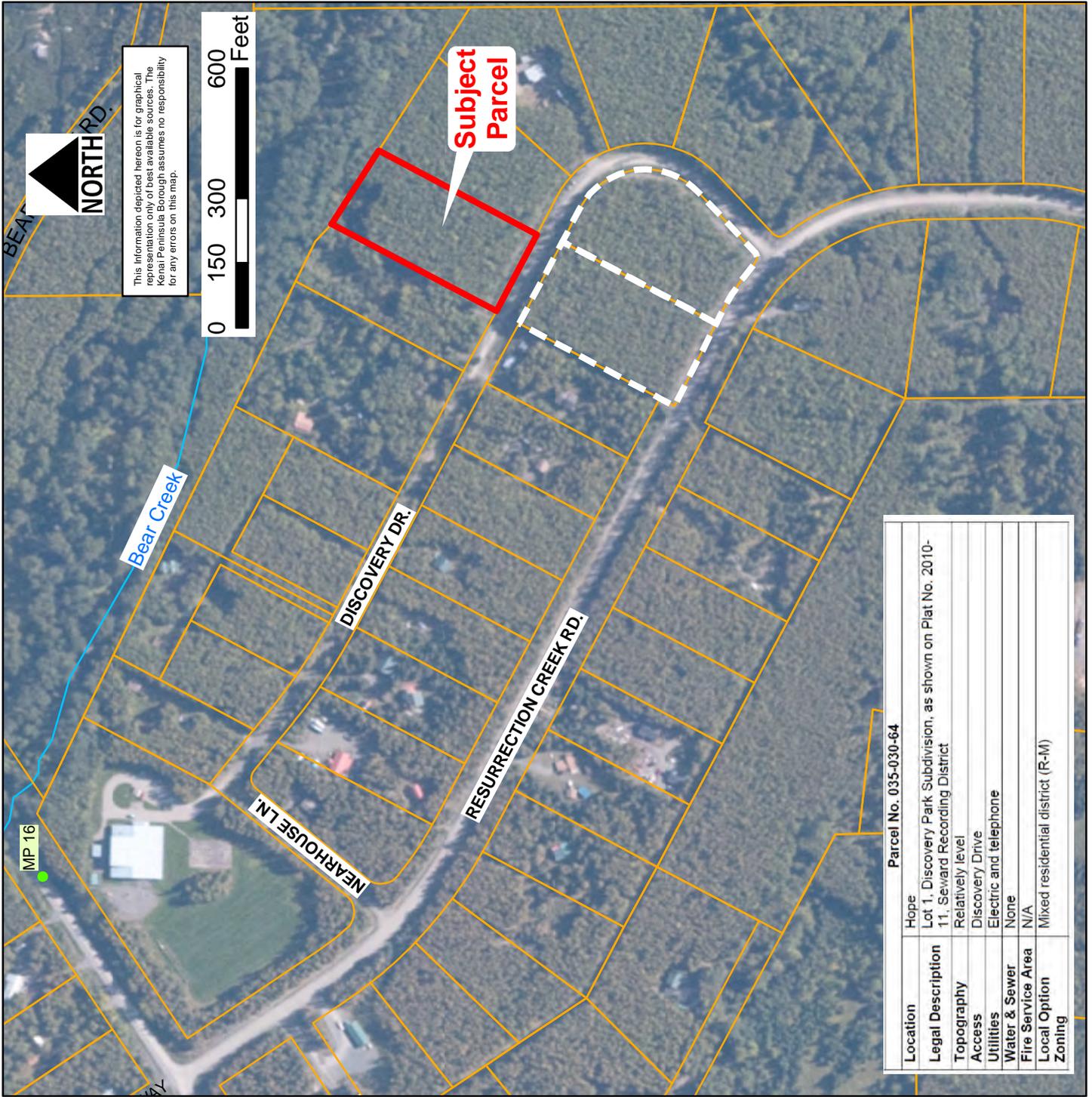
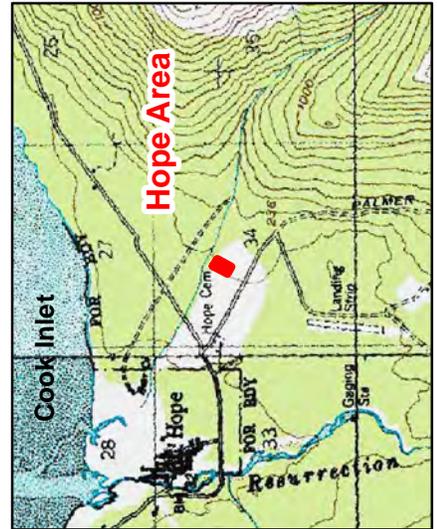
Parcel No. 017-150-28	
Location	North Kenai at the intersection of Lee Avenue and Windchime Street
Legal Description	Government Lot 67, Section 14, T6N, R12W, Seward Meridian. Subject to right-of-ways per Book 253, Page 621, Kenai Recording District, Third Judicial District, State of Alaska.
Topography	Relatively flat, predominately treed with spruce and some beetle killed trees
Access	Access to this parcel is provided by road easements (Lee Avenue and Windchime Street).
Utilities	Electric service is within 700 feet.
Water & Sewer	None
Fire Service Area	Nikiski



Parcel No. 035-030-64

**Minimum Bid
\$60,000**

Acres: 1.94±



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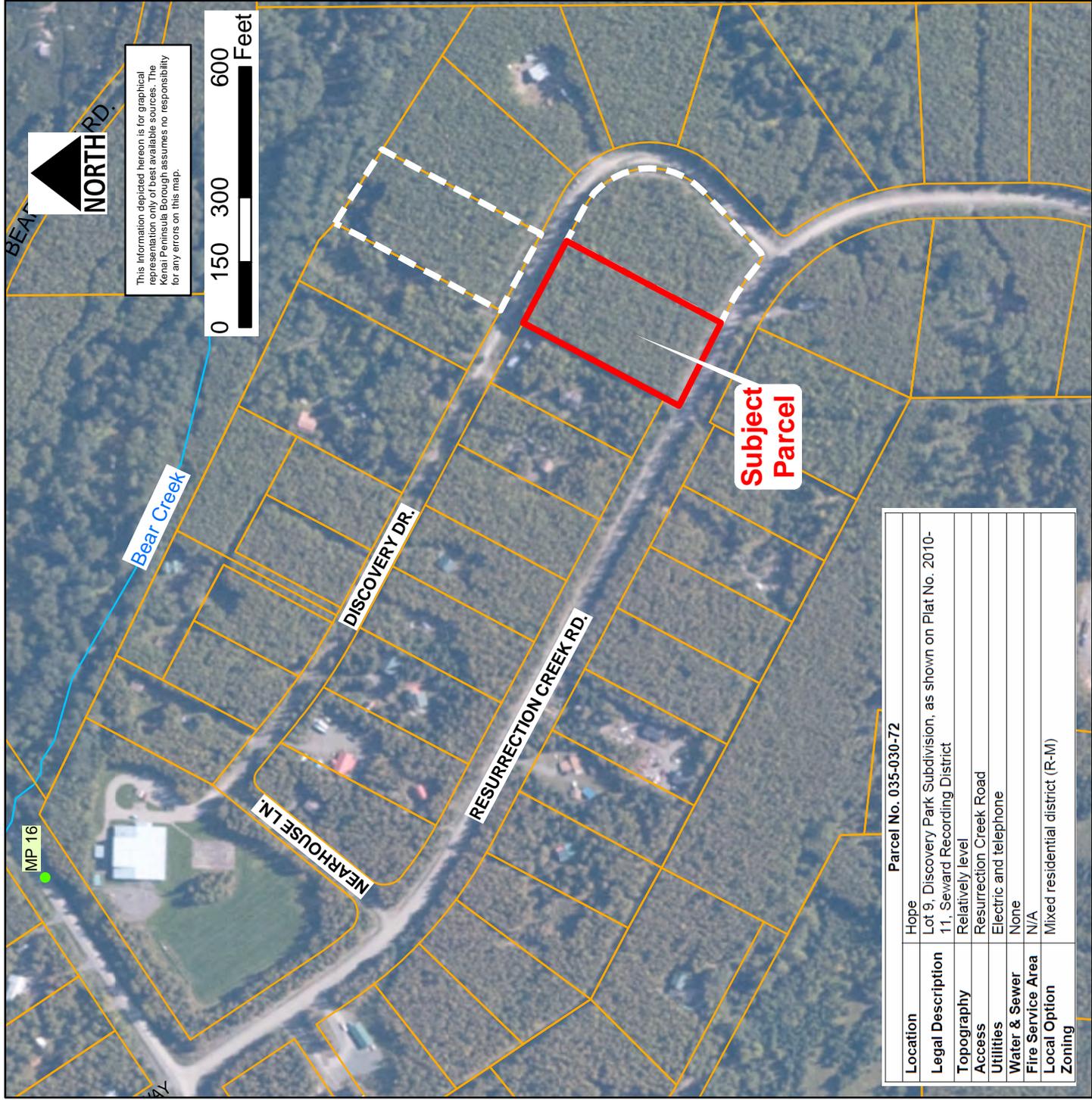
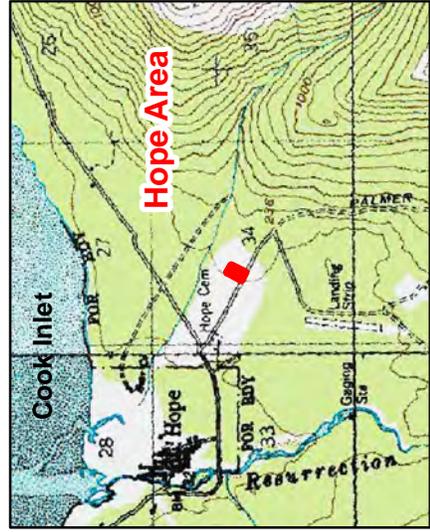
Location	Hope
Legal Description	Lot 1, Discovery Park Subdivision, as shown on Plat No. 2010-11, Seward Recording District
Topography	Relatively level
Access	Discovery Drive
Utilities	Electric and telephone
Water & Sewer	None
Fire Service Area	N/A
Local Option	Mixed residential district (R-M)
Zoning	

Parcel No. 035-030-64

Parcel No. 035-030-72

**Minimum Bid
\$60,000**

Acres: 1.98±



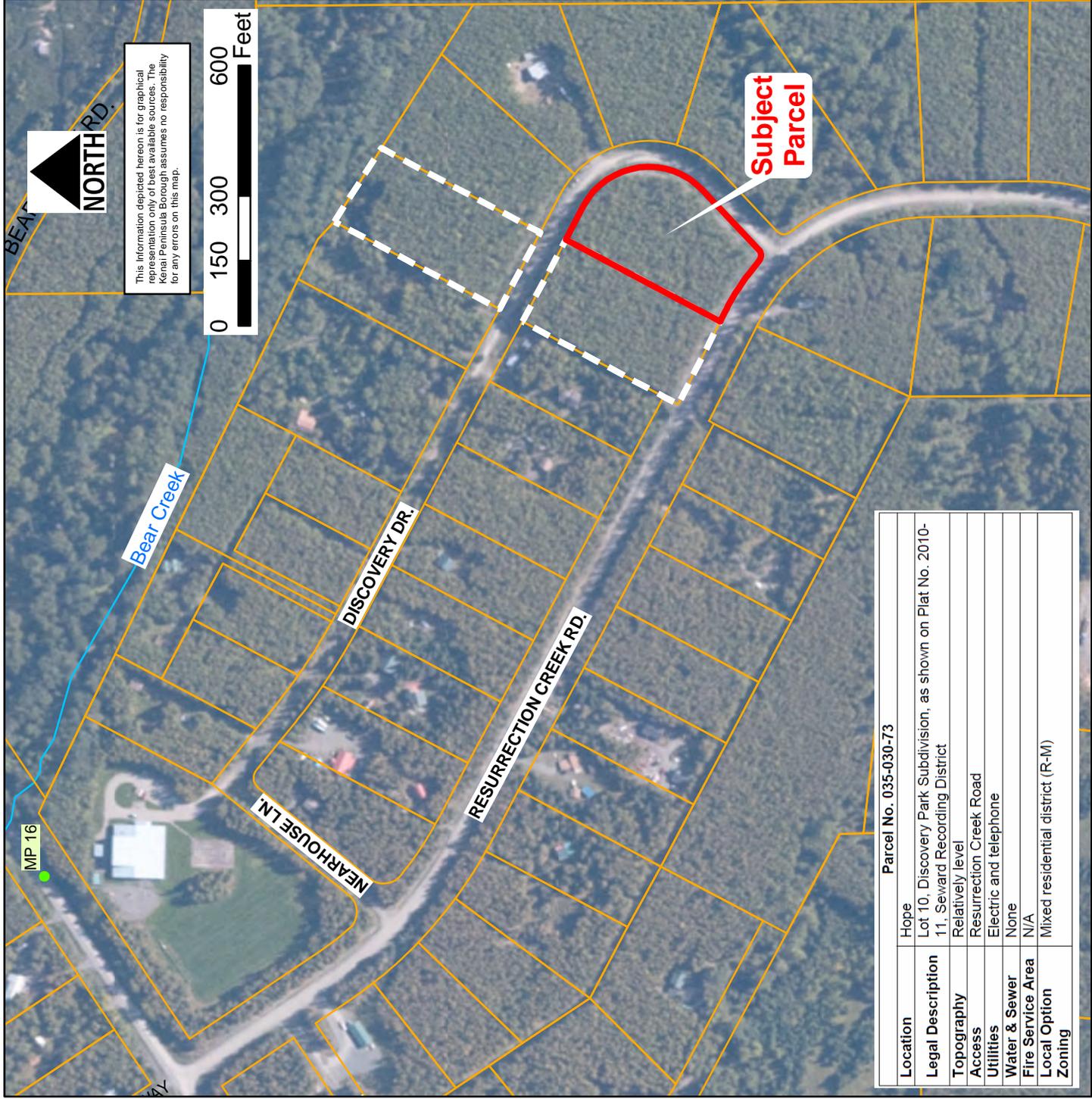
Subject Parcel

Parcel No. 035-030-72	
Location	Hope
Legal Description	Lot 9, Discovery Park Subdivision, as shown on Plat No. 2010-11, Seward Recording District
Topography	Relatively level
Access	Resurrection Creek Road
Utilities	Electric and telephone
Water & Sewer	None
Fire Service Area	N/A
Local Option Zoning	Mixed residential district (R-M)

Parcel No. 035-030-73

**Minimum Bid
\$60,000**

Acres: 2.09±

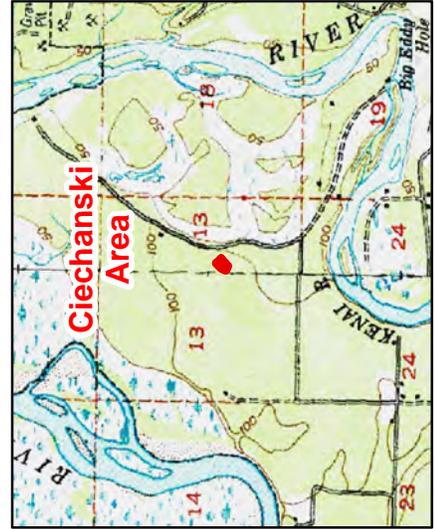


Location	Hope	Parcel No. 035-030-73
Legal Description	Lot 10, Discovery Park Subdivision, as shown on Plat No. 2010-11, Seward Recording District	
Topography	Relatively level	
Access	Resurrection Creek Road	
Utilities	Electric and telephone	
Water & Sewer	None	
Fire Service Area	N/A	
Local Option	Mixed residential district (R-M)	
Zoning		

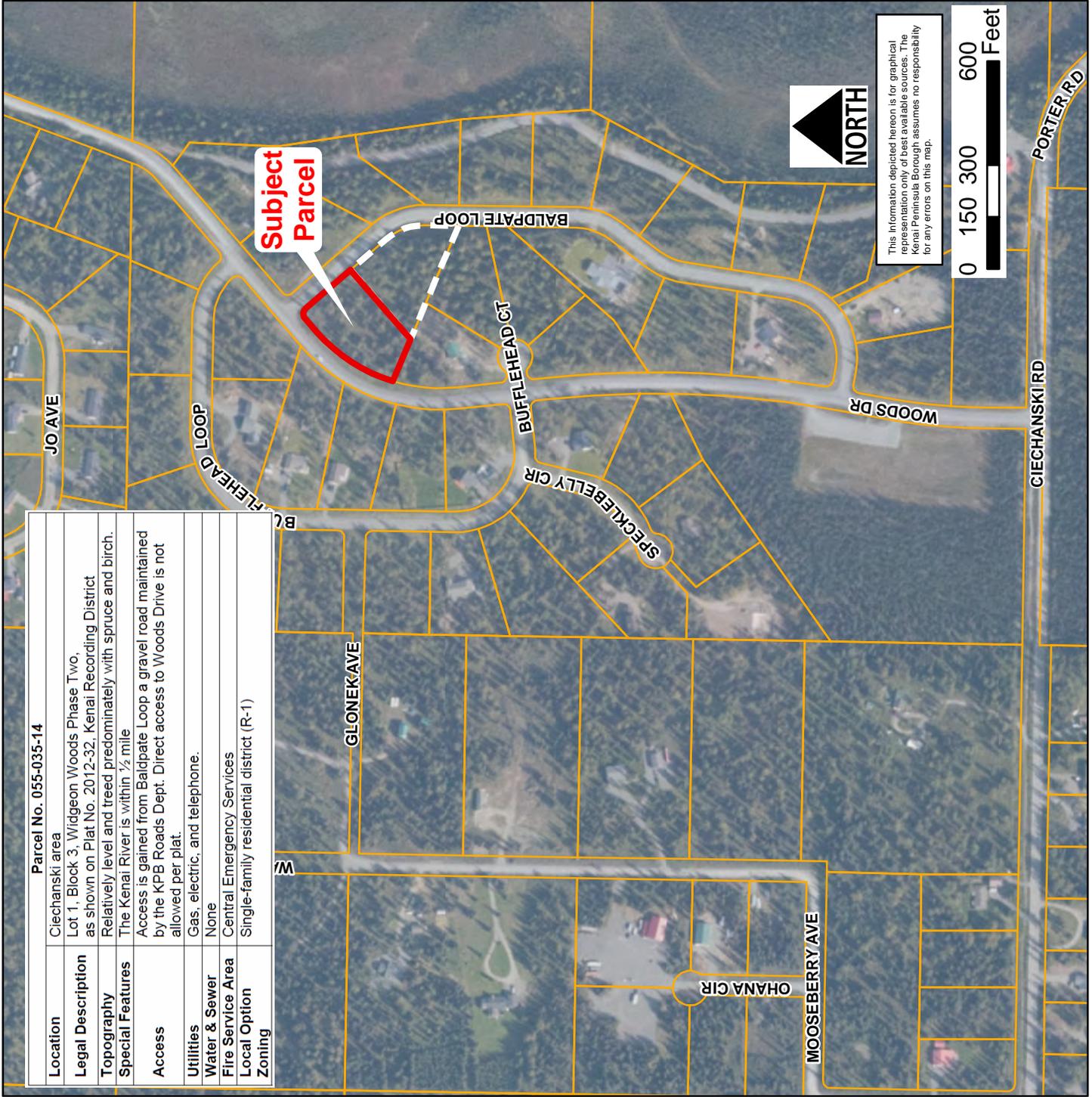
Parcel No. 055-035-14

Minimum Bid
\$32,500

Acres: 1.2±



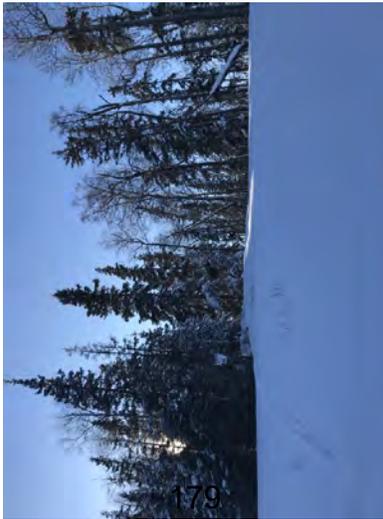
Parcel No. 055-035-14	
Location	Ciechanski area
Legal Description	Lot 1, Block 3, Widgeon Woods Phase Two, as shown on Plat No. 2012-32, Kenai Recording District
Topography	Relatively level and treed predominately with spruce and birch.
Special Features	The Kenai River is within 1/2 mile
Access	Access is gained from Baldpate Loop a gravel road maintained by the KPB Roads Dept. Direct access to Woods Drive is not allowed per plat.
Utilities	Gas, electric, and telephone.
Water & Sewer	None
Fire Service Area	Central Emergency Services
Local Option	Single-family residential district (R-1)
Zoning	



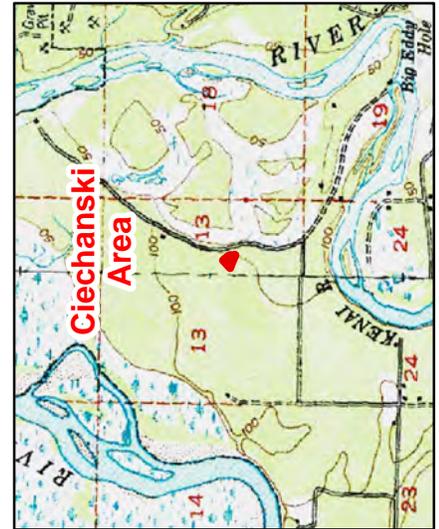
Parcel No. 055-035-15

Minimum Bid
\$33,000

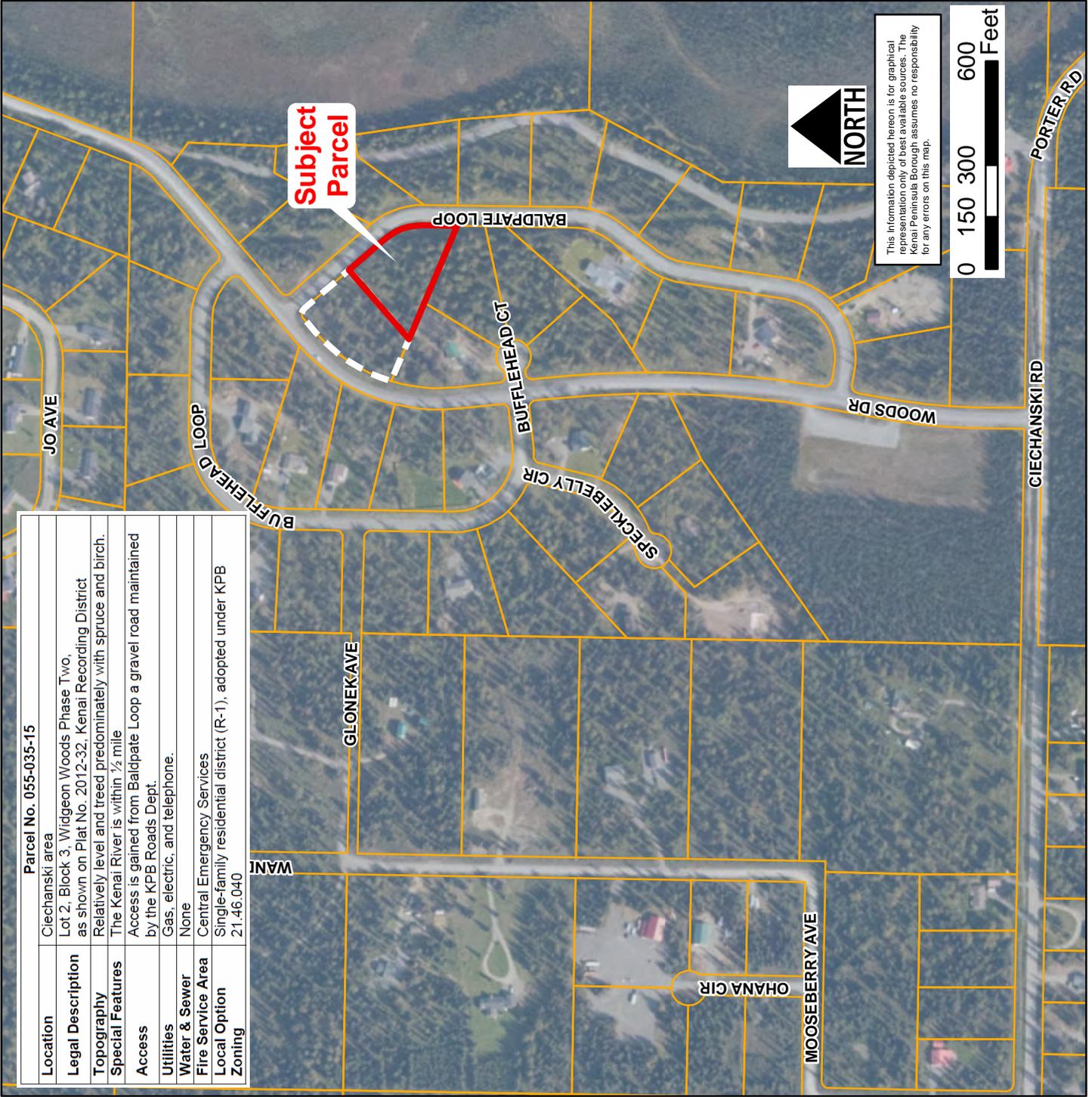
Acres: 1.2±



179



Parcel No. 055-035-15	
Location	Ciechanski area
Legal Description	Lot 2, Block 3, Widgeon Woods Phase Two, as shown on Plat No. 2012-32, Kenai Recording District
Topography	Relatively level and treed predominately with spruce and birch.
Special Features	The Kenai River is within 1/2 mile
Access	Access is gained from Baldpate Loop a gravel road maintained by the KPB Roads Dept.
Utilities	Gas, electric, and telephone.
Water & Sewer	None
Fire Service Area	Central Emergency Services
Local Option	Single-family residential district (R-1), adopted under KPB 21.46.040
Zoning	



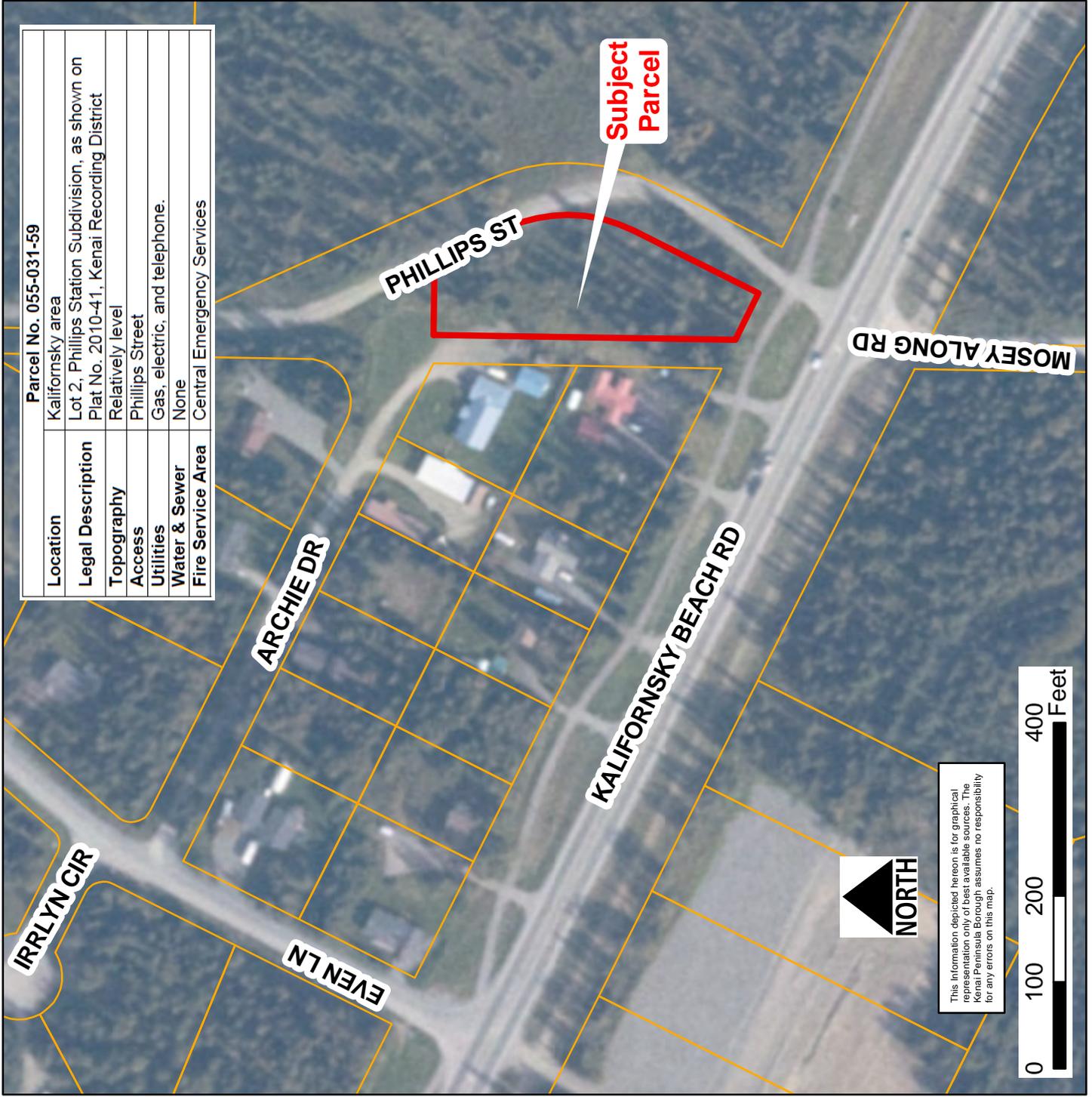
Parcel No. 055-031-59

**Minimum Bid
\$40,000**

Acres: 0.94±

No photo
available

180



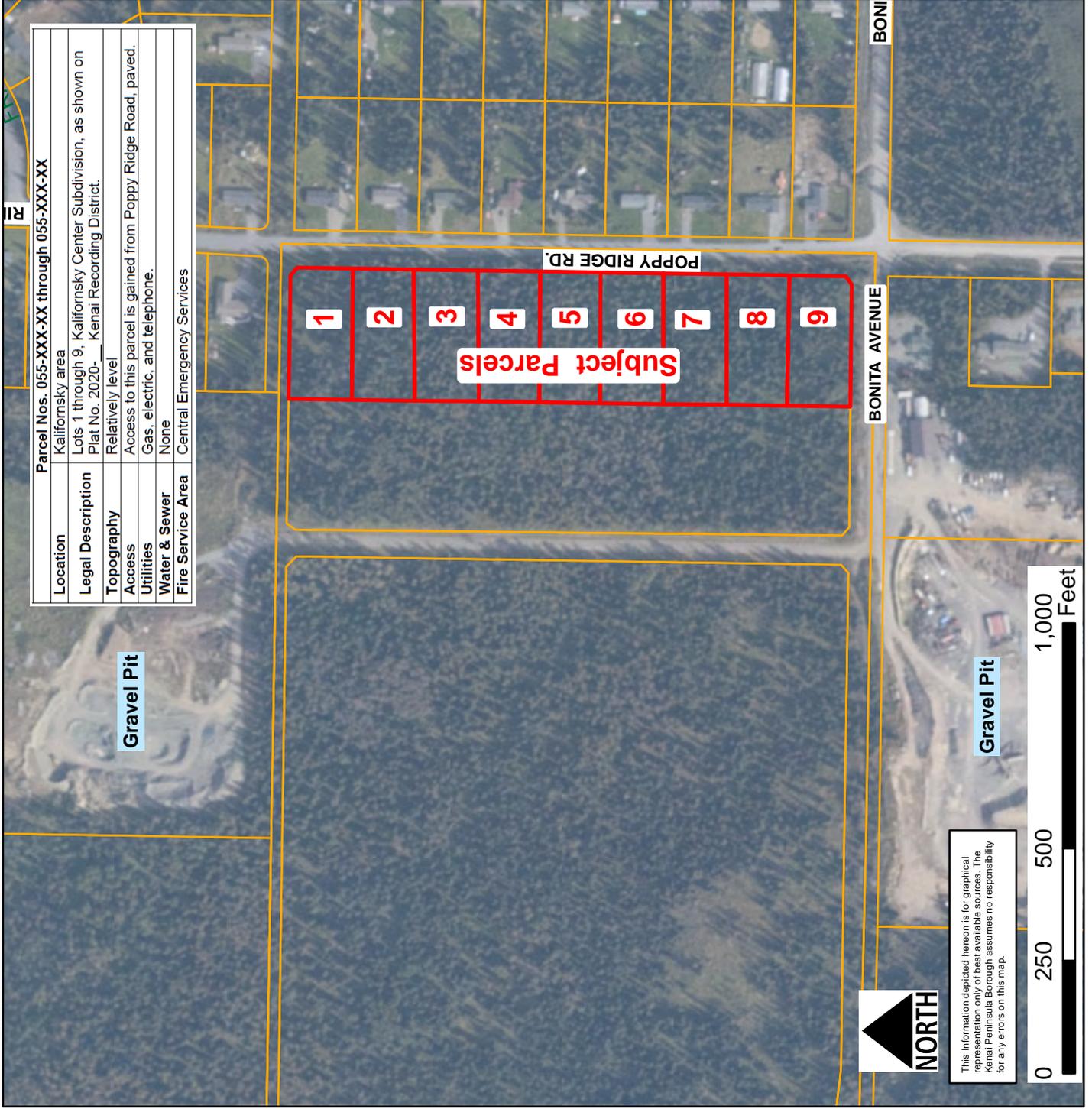
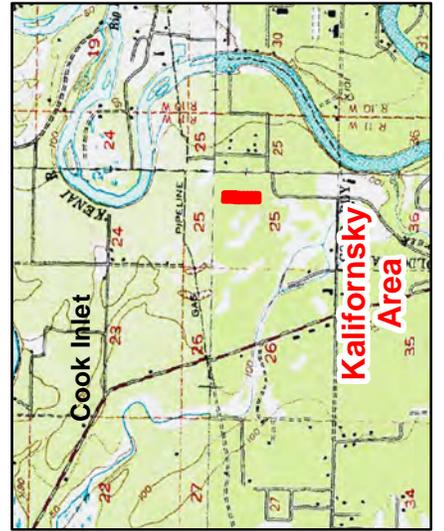
Parcel No. 055-xxx-xxx (Lots 1 through 9. Kalifornsky Center Sub)

**Minimum Bid
\$25,000 per lot**

**Acres: 0.92±
per lot**

No photo
available

182



Location	Kalifornsky area
Legal Description	Lots 1 through 9, Kalifornsky Center Subdivision, as shown on Plat No. 2020-____ Kenai Recording District.
Topography	Relatively level
Access	Access to this parcel is gained from Poppy Ridge Road, paved.
Utilities	Gas, electric, and telephone.
Water & Sewer	None
Fire Service Area	Central Emergency Services

Gravel Pit

Subject Parcels

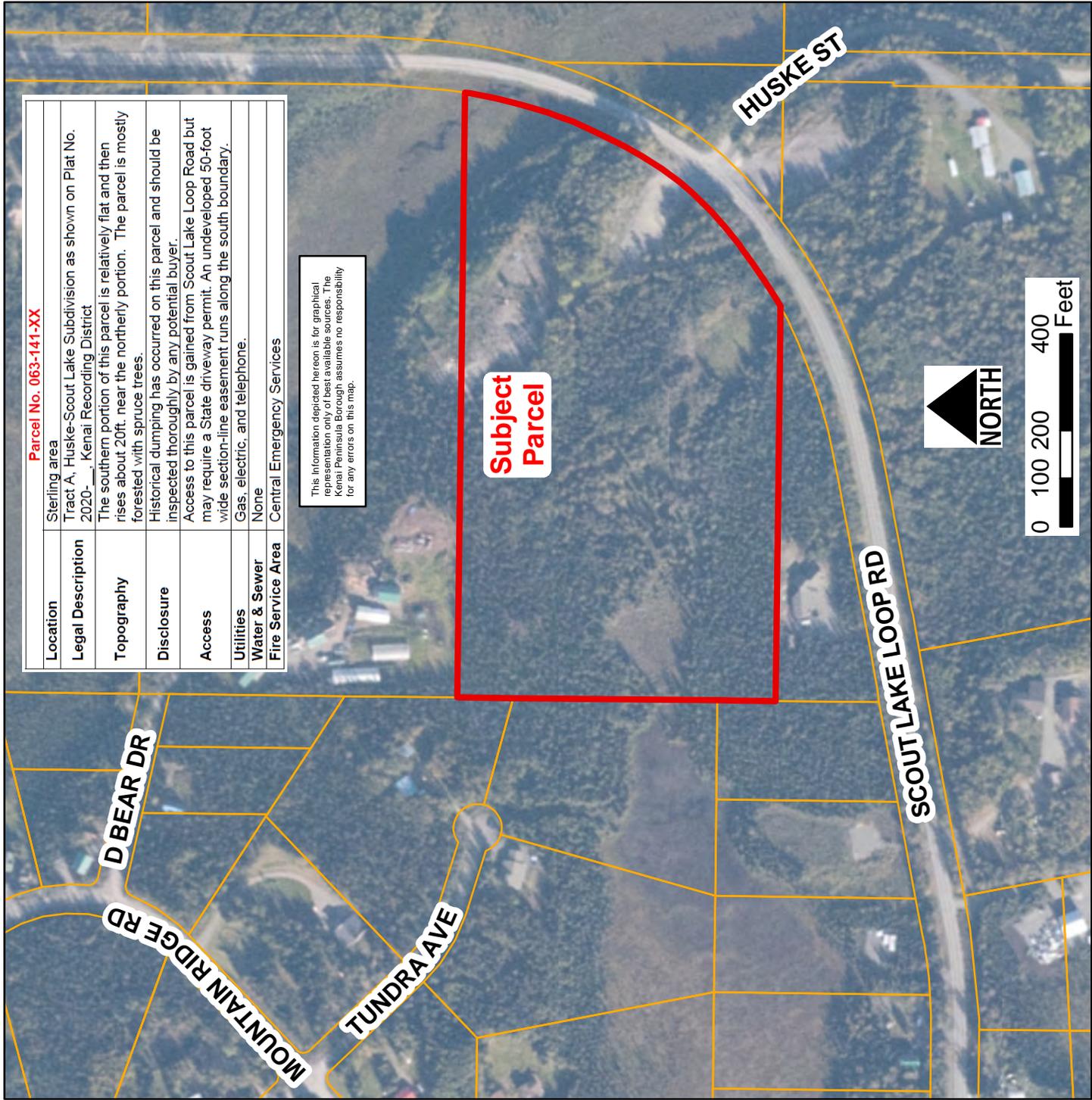
Gravel Pit

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



**Minimum Bid
\$60,000**

Acres: 17.03±



Parcel No. 063-141-XX

Location	Sterling area
Legal Description	Tract A, Huske-Scout Lake Subdivision as shown on Plat No. 2020-___, Kenai Recording District
Topography	The southern portion of this parcel is relatively flat and then rises about 20ft. near the northerly portion. The parcel is mostly forested with spruce trees.
Disclosure	Historical dumping has occurred on this parcel and should be inspected thoroughly by any potential buyer.
Access	Access to this parcel is gained from Scout Lake Loop Road but may require a State driveway permit. An undeveloped 50-foot wide section-line easement runs along the south boundary.
Utilities	Gas, electric, and telephone.
Water & Sewer	None
Fire Service Area	Central Emergency Services

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

Subject Parcel

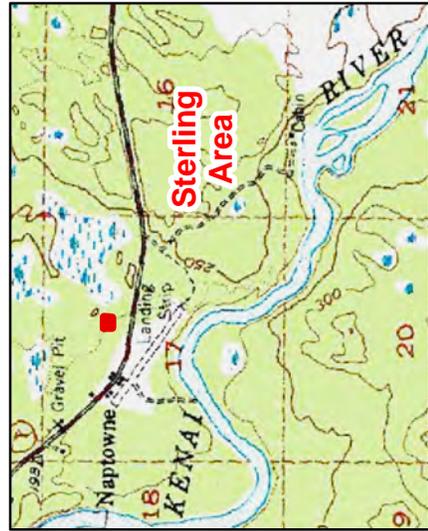


0 100 200 400 Feet

Parcel No. 065-440-__

Minimum Bid
\$18,000

Acres: 0.93±



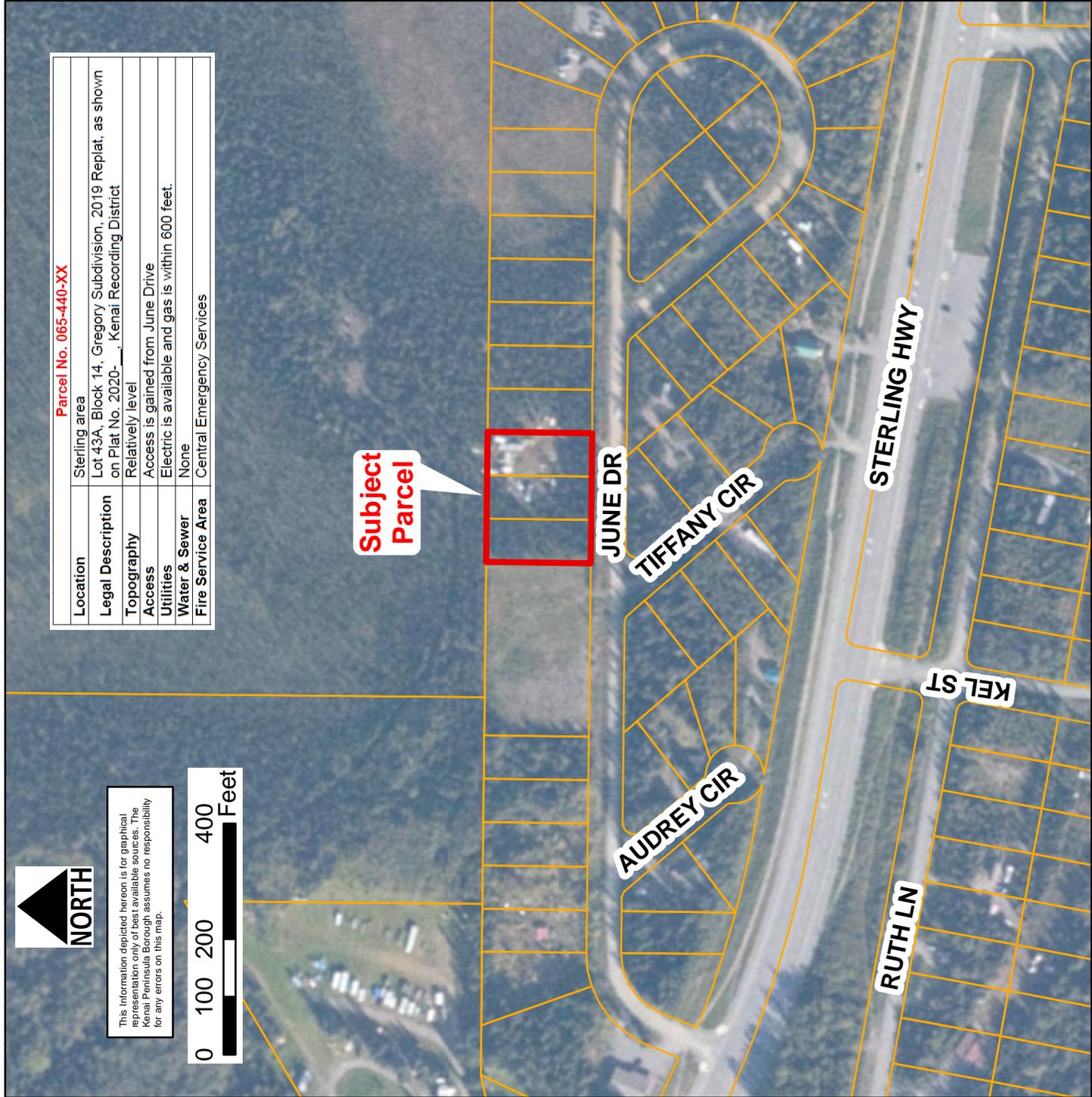
This information depicted hereon is for graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



Location	Sterling area
Legal Description	Lot 43A, Block 14, Gregory Subdivision, 2019 Replat, as shown on Plat No. 2020-___, Kenai Recording District
Topography	Relatively level
Access	Access is gained from June Drive
Utilities	Electric is available and gas is within 600 feet.
Water & Sewer	None
Fire Service Area	Central Emergency Services

Parcel No. 065-440-XX

Subject Parcel



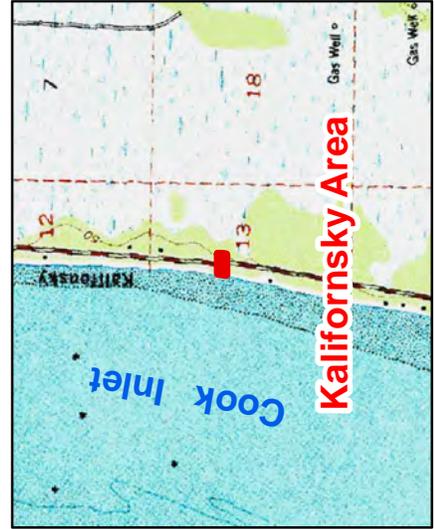
Parcel No. 131-060-33

Minimum Bid
\$110,000

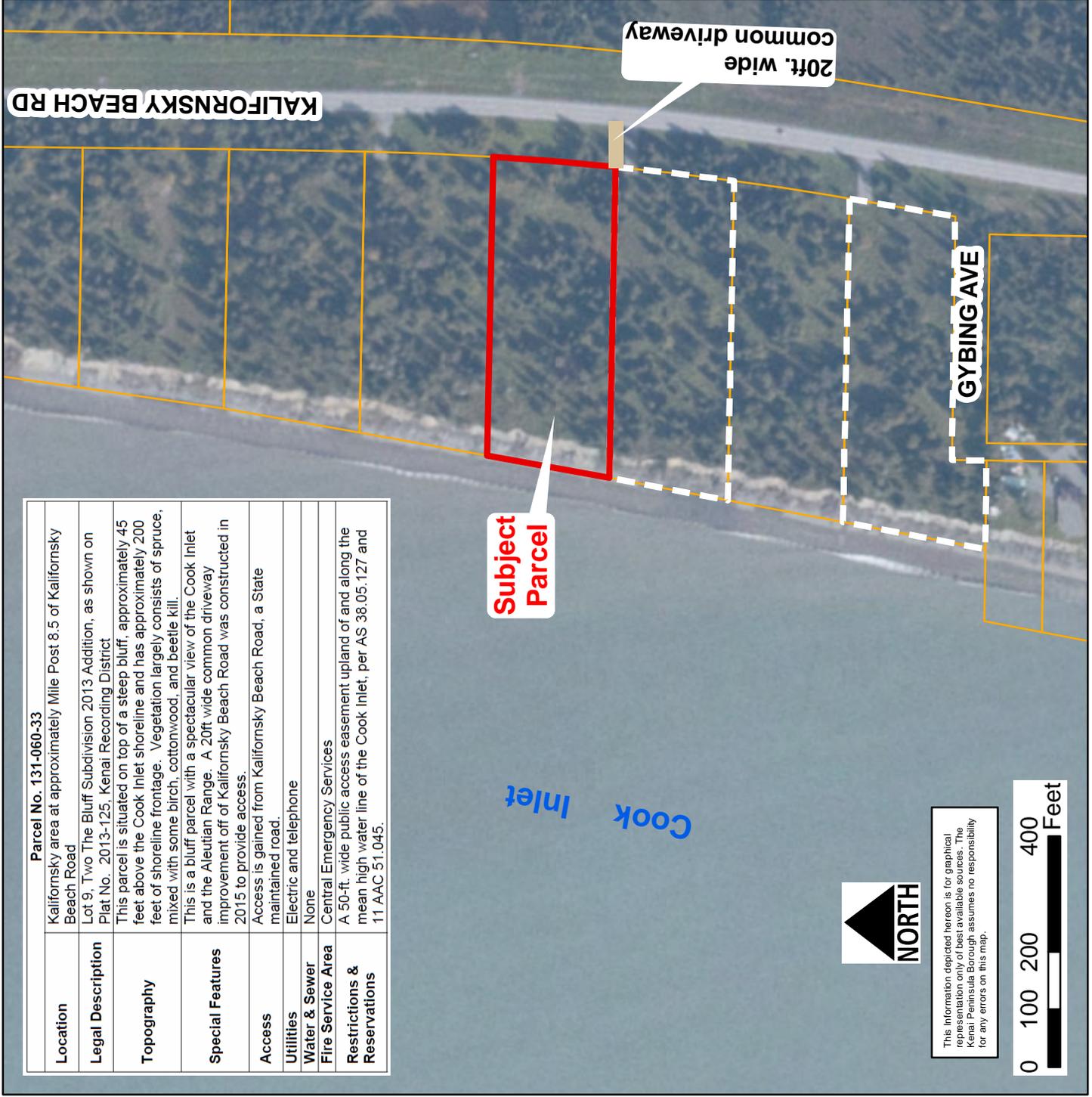
Acres: 2.59±



Representative photo taken from top of bluff looking out at the Cook Inlet.



Location	Parcel No. 131-060-33 Kalifornsky area at approximately Mile Post 8.5 of Kalifornsky Beach Road
Legal Description	Lot 9, Two The Bluff Subdivision 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District
Topography	This parcel is situated on top of a steep bluff, approximately 45 feet above the Cook Inlet shoreline and has approximately 200 feet of shoreline frontage. Vegetation largely consists of spruce, mixed with some birch, cottonwood, and beetle kill.
Special Features	This is a bluff parcel with a spectacular view of the Cook Inlet and the Aleutian Range. A 20ft wide common driveway improvement off of Kalifornsky Beach Road was constructed in 2015 to provide access.
Access	Access is gained from Kalifornsky Beach Road, a State maintained road.
Utilities	Electric and telephone
Water & Sewer	None
Fire Service Area	Central Emergency Services
Restrictions & Reservations	A 50-ft. wide public access easement upland of and along the mean high water line of the Cook Inlet, per AS 38.05.127 and 11 AAC 51.045.



Subject Parcel

20ft. wide common driveway

GYBING AVE

KALIFORNISKY BEACH RD



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

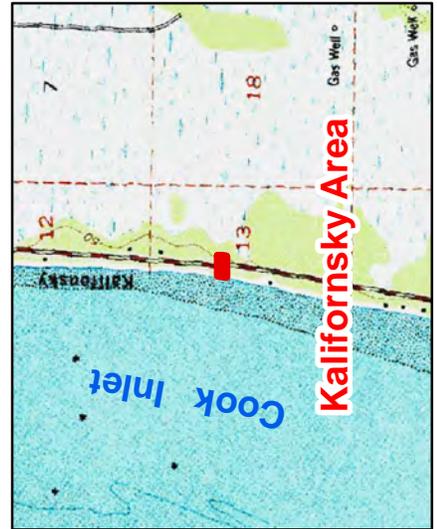


**Minimum Bid
\$110,000**

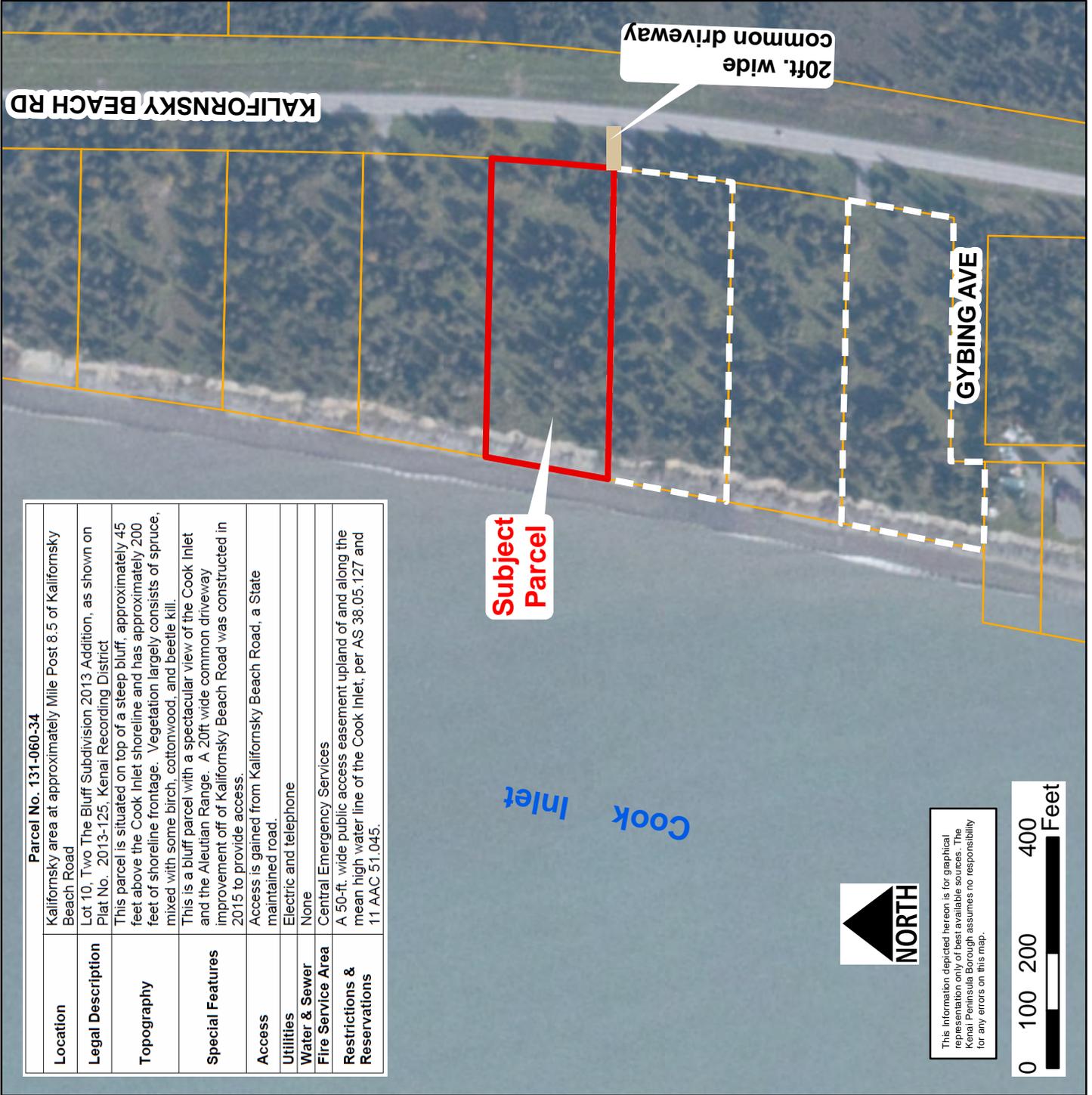
Acres: 2.59±



Representative photo taken from top of bluff looking out at the Cook Inlet.



Parcel No. 131-060-34	
Location	Kalifornsky area at approximately Mile Post 8.5 of Kalifornsky Beach Road
Legal Description	Lot 10, Two The Bluff Subdivision 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District
Topography	This parcel is situated on top of a steep bluff, approximately 45 feet above the Cook Inlet shoreline and has approximately 200 feet of shoreline frontage. Vegetation largely consists of spruce, mixed with some birch, cottonwood, and beetle kill.
Special Features	This is a bluff parcel with a spectacular view of the Cook Inlet and the Aleutian Range. A 20ft wide common driveway improvement off of Kalifornsky Beach Road was constructed in 2015 to provide access.
Access	Access is gained from Kalifornsky Beach Road, a State maintained road.
Utilities	Electric and telephone
Water & Sewer	None
Fire Service Area	Central Emergency Services
Restrictions & Reservations	A 50-ft. wide public access easement upland of and along the mean high water line of the Cook Inlet, per AS 38.05.127 and 11 AAC 51.045.



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

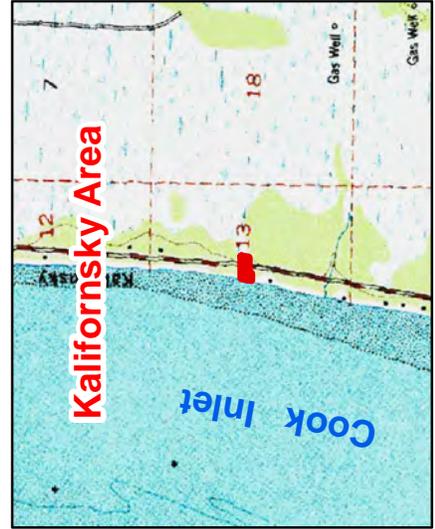


**Minimum Bid
\$110,000**

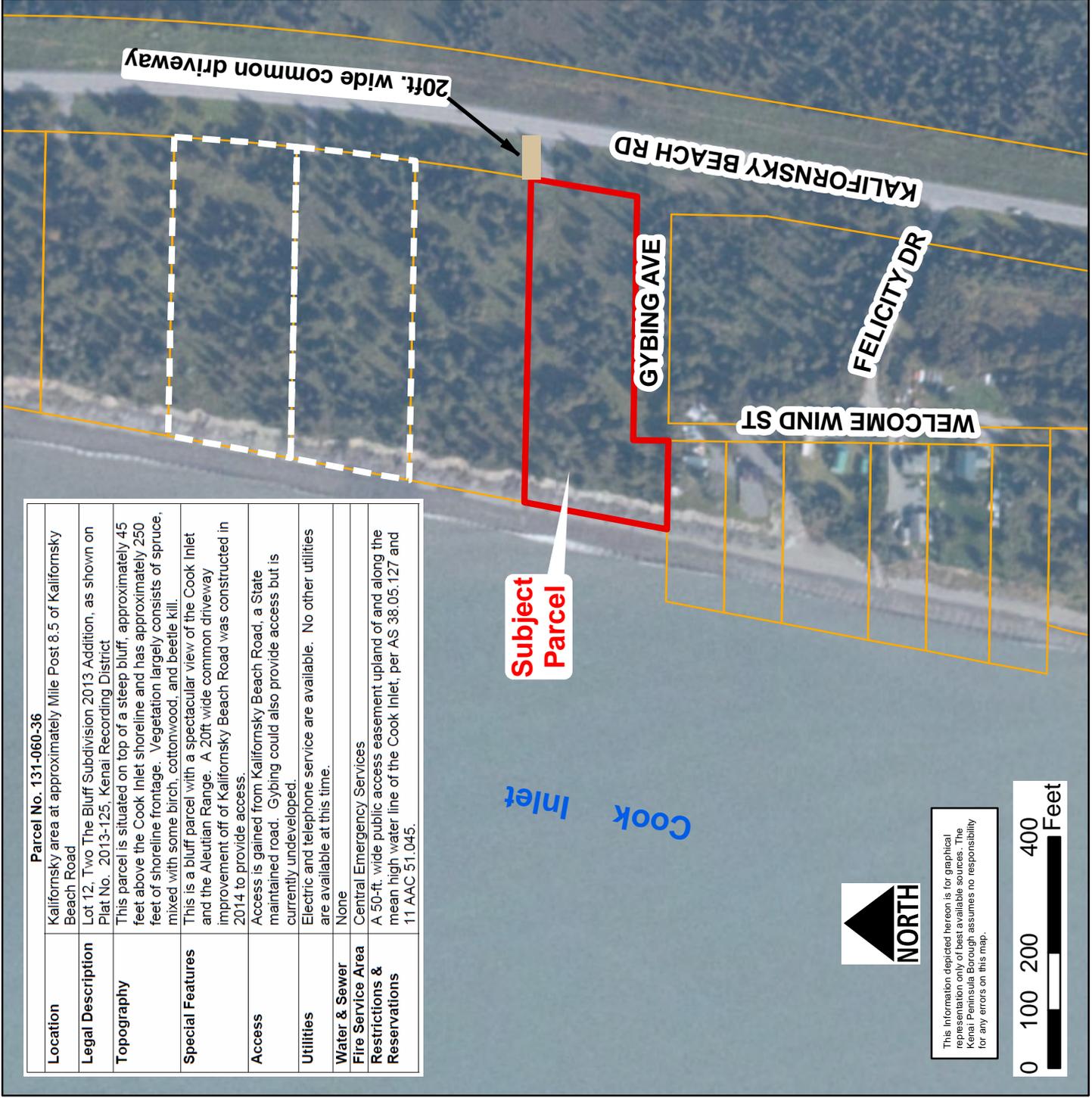
Acres: 2.60±



Photo taken from top of bluff looking out at the Cook Inlet.



Parcel No. 131-060-36	
Location	Kalifornsky area at approximately Mile Post 8.5 of Kalifornsky Beach Road
Legal Description	Lot 12, Two The Bluff Subdivision, 2013 Addition, as shown on Plat No. 2013-125, Kenai Recording District
Topography	This parcel is situated on top of a steep bluff, approximately 45 feet above the Cook Inlet shoreline and has approximately 250 feet of shoreline frontage. Vegetation largely consists of spruce, mixed with some birch, cottonwood, and beetle kill.
Special Features	This is a bluff parcel with a spectacular view of the Cook Inlet and the Aleutian Range. A 20ft wide common driveway improvement off of Kalifornsky Beach Road was constructed in 2014 to provide access.
Access	Access is gained from Kalifornsky Beach Road, a State maintained road. Gybing could also provide access but is currently undeveloped.
Utilities	Electric and telephone service are available. No other utilities are available at this time.
Water & Sewer	None
Fire Service Area	Central Emergency Services
Restrictions & Reservations	A 50-ft. wide public access easement upland of and along the mean high water line of the Cook Inlet, per AS 38.05.127 and 11 AAC 51.045.



Parcel No. 157-062-15

Minimum Bid
\$7,500

Acres: 10±

No photo available

Parcel No. 157-062-15	
Location	Ninilchik area, near Mile Post 134.5 of the Sterling Highway.
Legal Description	N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, T1S, R14W, Seward Meridian, Alaska
Topography	Subject parcel is generally level and forested with mostly spruce. Approximately 3 acres are upland situated at the westerly end of the parcel.
Access	Access is gained from the easterly extension of Fleetwood Avenue, a gravel road, and an undeveloped 50-foot wide section-line easement running along the north boundary. The easterly boundary of this parcel abuts Nmi Street, an undeveloped road.
Utilities	Gas, electric, and telephone utilities are approximately 1,000 feet away along the Sterling Highway.
Water & Sewer	None
Fire Service Area	N/A



GERMAN AVE

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Subject Parcel

LEMAN LN

FLEETWOOD AVE

STERLING HWY

NMI ST

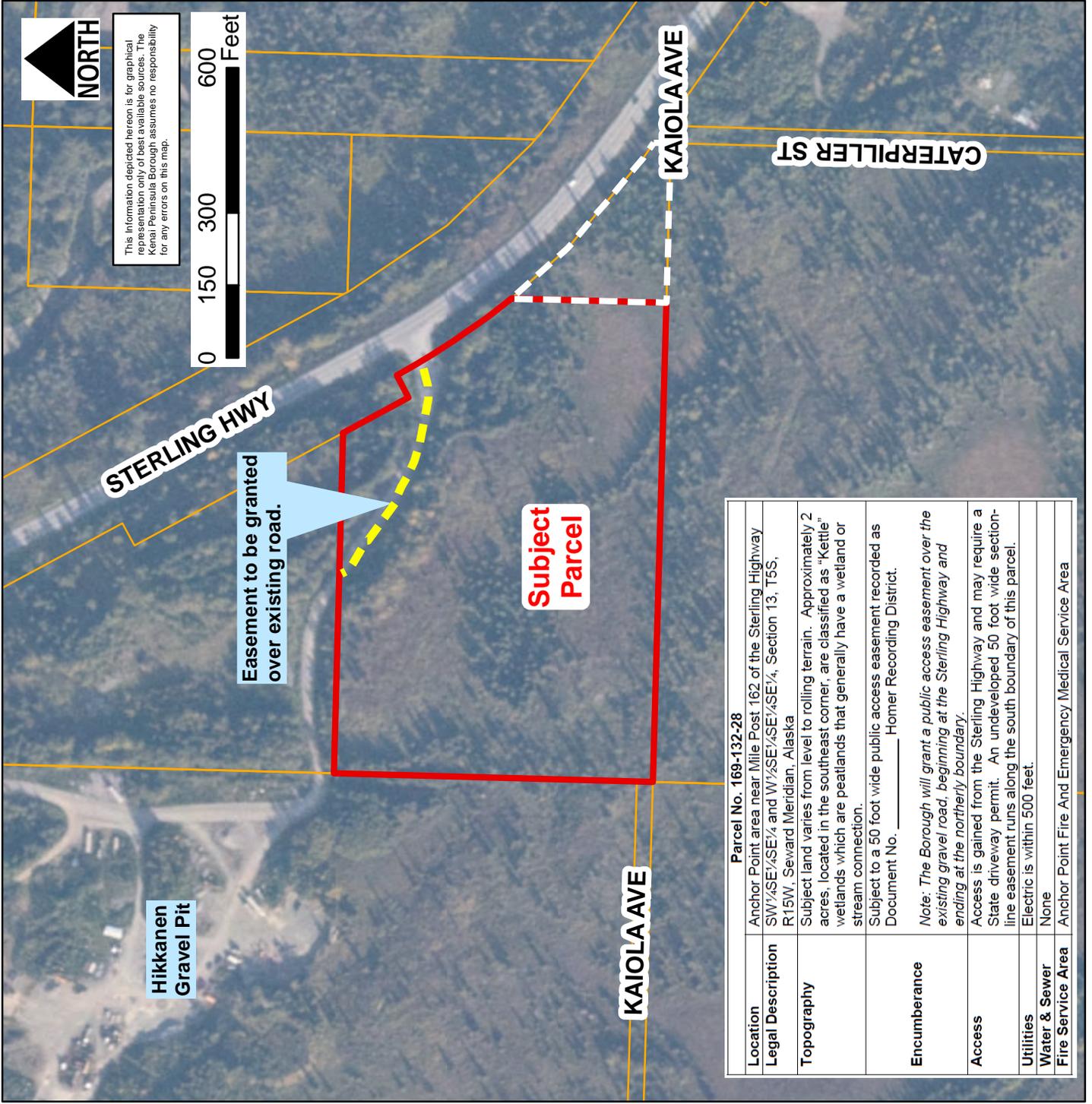
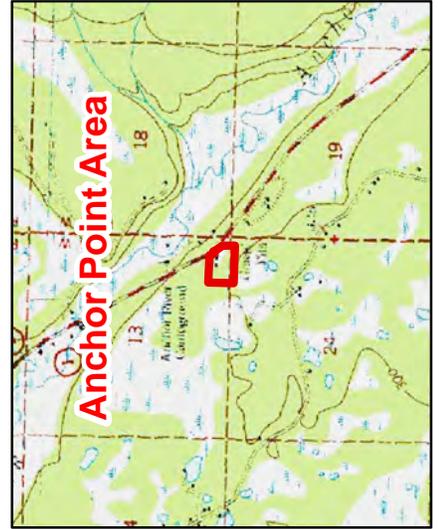
Ninilchik State Recreation Area



Minimum Bid
\$25,000

Acres: 13.6±

No photo available



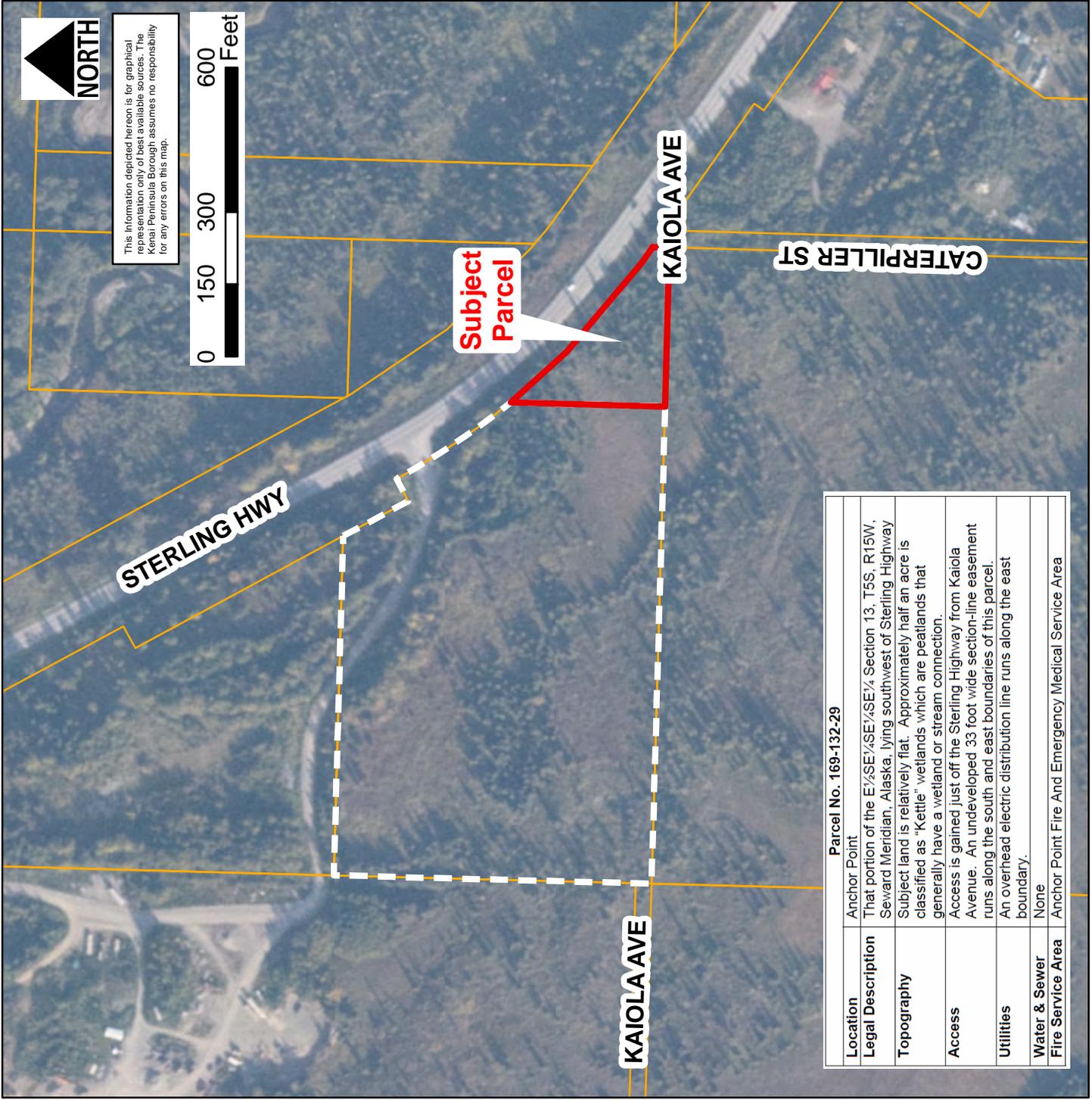
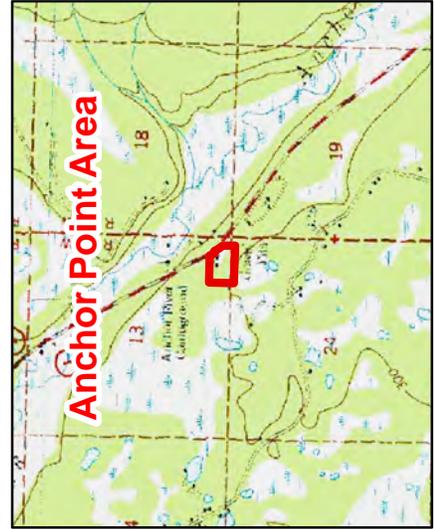
Parcel No. 169-132-28	
Location	Anchor Point area near Mile Post 162 of the Sterling Highway
Legal Description	SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 13, T5S, R15W, Seward Meridian, Alaska
Topography	Subject land varies from level to rolling terrain. Approximately 2 acres, located in the southeast corner, are classified as "Kettle" wetlands which are peatlands that generally have a wetland or stream connection.
Encumbrance	Subject to a 50 foot wide public access easement recorded as Document No. _____ Homer Recording District.
Access	Note: The Borough will grant a public access easement over the existing gravel road, beginning at the Sterling Highway and ending at the northerly boundary.
Utilities	Access is gained from the Sterling Highway and may require a State driveway permit. An undeveloped 50 foot wide section-line easement runs along the south boundary of this parcel.
Water & Sewer	Electric is within 500 feet.
Fire Service Area	None
	Anchor Point Fire And Emergency Medical Service Area

Parcel No. 169-132-29

**Minimum Bid
\$10,000**

Acres: 1.4±

No photo
available



STERLING HWY

KAIOLA AVE

KAIOLA AVE

CATERPILLER ST



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Parcel No. 169-132-29	
Location	Anchor Point
Legal Description	That portion of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13, T5S, R15W, Seward Meridian, Alaska, lying southwest of Sterling Highway
Topography	Subject land is relatively flat. Approximately half an acre is classified as "Kettle" wetlands which are peatlands that generally have a wetland or stream connection.
Access	Access is gained just off the Sterling Highway from Kaiola Avenue. An undeveloped 33 foot wide section-line easement runs along the south and east boundaries of this parcel.
Utilities	An overhead electric distribution line runs along the east boundary.
Water & Sewer	None
Fire Service Area	Anchor Point Fire And Emergency/Medical Service Area

Kenai Peninsula Borough Planning Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Max Best, Planning Director 

DATE: January 28, 2020

RE: Vacate the westerly approximately 791 feet of Bonita Avenue, a 30 foot right-of-way, including the associated 15 foot utility easement, as dedicated on Bremond Farm Estates Norris Addition KN 2005-27. The right-of-way being vacated is unconstructed and located within the NW1/4 SW1/4 of Section 25, Township 5 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-132V.

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 27, 2020, the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way vacation by unanimous consent based on the means of evaluating public necessity established in KPB 20.70. This petition is being sent to you for your consideration and action.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the westerly approximately 791 feet of Bonita Avenue, a 30 foot right-of-way, including the associated 15 foot utility easement, as dedicated on Bremond Farm Estates Norris Addition KN 2005-27. The right-of-way being vacated is unconstructed and located within the NW1/4 SW1/4 of Section 25, Township 5 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-132V.

Staff Report given by Scott Huff

PC Meeting: 1/27/2020

Purpose as stated in petition: Bonita Avenue is being re-routed to create a right-angle intersection with Kalifornsky Beach Road with a continuous route to a right-angle intersection with Poppy Ridge Road as a major collector. This re-route is being dedicated on the Kalifornsky Center Subdivision KPB File No 2019-132 and this plat will finalize the right-of-way vacation.

Petitioners: Douglas A. Norris Sr. and Kenai Peninsula Borough of Soldotna, AK.

Notification: Public notice appeared in the January 16, 2020 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 23, 2020 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

2 certified mailings were sent January 9, 2020 to owners of property within 300 feet of the proposed vacation. 2 receipts had been returned when the staff report was prepared.

17 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

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

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

Comments Received:

ACS: No Objections

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

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: Existing street names are correct.

KPB Planner:

- There are not any Local Option Zoning District issues with this proposed plat.
- Conditional Land Use Permit CLUP Resolution Number: 2016-11
- CLUP Approval Date: 4/25/2016
- Material Site Comments: The right-of-way vacation, if approved, will not increase the permitted extraction area. If the owner wishes to extract within the vacated right-of-way, an application is needed to modify the Conditional Land Use Permit.

KPB River Center: Not located within a flood hazard area or a Habitat Protection District.

KPB Roads Department: Within KPB jurisdiction, no comments.

Kalifornsky Advisory Planning Commission: Minutes were not available at the time the staff report was prepared.

State Parks: No comments.

Staff Discussion: KPB Land Management is proposing to subdivide approximately 240 acres of Borough owned land north of Bonita Avenue. Part of that proposed subdivision (Kalifornsky Center Subdivision KPB 2019-132) is a proposed realignment of Bonita Avenue. The proposed realignment would create an uncompliant block per KPB 20.30.170 and an uncompliant acute angle intersection per KPB 20.30.150. This vacation would resolve that uncompliant block and acute angle intersection.

If the vacation of right of way is approved, **Staff recommends a revised submittal of Kalifornsky Center Subdivision KPB 2019-132 be submitted that will finalize the proposed right of way vacations and simultaneously dedicate the realigned right of way.** On November 25, 2019, the Plat Committee postponed action on the preliminary plat per the request of KPB Land Management. A revised preliminary plat has not been submitted at this time. Staff notes the subject platting action will require exceptions to KPB 20.30.030 Proposed Street Layout and KPB 20.30.170 Block Length. While resolving the aforementioned uncompliant block and intersection, this vacation will also will bring the block south of Bonita Avenue further out of compliance with KPB 20.30.170 Block Length requirements.

KPB 20.70 – Vacation Requirements.

Platting Staff Findings: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: Bonita Avenue is being re-routed to create a right-angle intersection with Kalifornsky Beach Road with a continuous route to a right-angle intersection with Poppy Ridge Road as a major collector. This re-route is being dedicated on the Kalifornsky Center Subdivision KPB File No 2019-132 and this plat will finalize the right-of-way vacation.

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: A revised submittal for Kalifornsky Center Subdivision KPB 2019-132 has not been submitted at this time.

Staff recommendation: Comply with KPB 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: KN 2005-27 dedicated the Bonita Avenue right-of-way proposed to be vacated. Title to the vacated portion of the right-of-way must attach to Tract A-1, KN 2005-27.

Staff recommendation: Comply with KPB 20.70.150.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the submittal and aerial imagery, the portion of Bonita Avenue proposed to be vacated is unconstructed. Per the submittal, the right-of-way is not used for vehicular access.

The portion of Bonita Avenue proposed to be vacated is a 30' wide half right-of-way. Per Kenai Watershed Forum Wetland mapping, the right-of-way is not affected by low wet areas. Per KPB Four Foot Contours, the right-of-way is relatively flat. The existing right-of-way intersects with a 30' wide portion of Ravenwood Street South.

The submittal proposes to dedicate an alternate right-of-way. The proposed alternate right-of-way is an 80' wide right-of-way. Per Kenai Watershed Forum Wetland mapping, the proposed alternate right-of-way is not affected by low wet areas. Per KPB Four Foot Contours, the proposed alternate right-of-way is relatively flat. The proposed alternate right-of-way curves north from east to west in a curve that meets KPB 20.30.140 curve requirements. The curve results in an alignment approximately 280' north of the current alignment of Bonita Avenue. The submittal proposes to dedicate a 100' wide extension of Ravenwood Street South to intersect with the new alignment of Bonita Avenue.

Staff Finding: *The proposed right-of-way dedications will provide equal or superior right-of-way for vehicular access in exchange for the proposed vacation.*

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the submittal, no other lawful uses exist within the right-of-way proposed to be vacated. Other uses could exist within the right-of-way. However, as discussed above, the right-of-way is flat, not affected by low wet areas, and suited for general road use. Regardless, as discussed above, the petitioner proposes to dedicate alternate rights-of-way that are relatively flat, not affected by low wet area, and which are wider than the existing right-of-way.

Staff Finding: *The proposed right-of-way dedications will provide equal or superior access for other uses.*

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: The submittal did not specify whether the right-of-way proposed to be vacated is utilized by a public utility.

The right-of-way proposed to be vacated could logically be required by a public utility. The right-of-way could be used to provide an extension of utilities from Poppy Ridge Road in a straight line to the west or to provide an extension of utilities from Kalifornsky Beach Road in a straight line to the east. KPB HEA transmission line information indicates a transmission line currently extends east from Kalifornsky Beach Road aligned with the proposed right-of-way vacation that could be extended further east through the right-of-way in the future.

As discussed above, the petition proposes to dedicate alternate rights-of-way. The petition also proposes to grant 10' wide utility easements adjoining those rights-of-way. While the wider proposed right-of-way width may help to mitigate the curve of the right-of-way, a straight right-of-way is logically preferable for utility use than a curved right-of-way. In addition, the proposed alternate right-of-way is not aligned with existing rights-of-way to the east, nor an existing HEA transmission line to the west.

Staff Finding: *The realignment of Bonita Avenue will provide a utility easement adjoining the right of way dedications. No comments were received by the utility providers that requested an easement to remain.*

Staff recommendation: *If utility easements are requested by a utility provider, work with the utility providers to grant utility easements that meet their specifications.*

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

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by utility providers.
4. Grant a 20' utility easement centered on the north boundary of the proposed right-of-way vacation.
5. Submittal of a final plat that simultaneously dedicates the realigned Bonita Avenue right of way 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

Mr. Huff noted that in the laydown packet there was a revised drawing of the preliminary plat. The plat depicts the proposed vacation of Bonita Avenue.

Chair Martin asked if anyone from the public wished to comment on this item. Seeing and hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

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

Commissioner Bentz was looking at the plat provided in the laydown and noted that the road was labeled as Traveler Avenue. Mr. Huff said that the petitioners want to rename Bonita Avenue to Traveler Avenue. That will need to be done through a different process.

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

MAYOR'S REPORT TO THE ASSEMBLY

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: February 25, 2020

Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for RFP20-006 Insurance Broker of Record to Marsh & McLennan Agency, LLC., Anchorage, Alaska.
- b. Authorization to Award a Contract for RFP19-008 EHS Management Software to Intelix Technologies, Inc., Toronto, ON Canada.
- c. NC Machinery Sole Source Waiver for repairs on the CPL Cat D8T.
- d. Sole Source Waiver for a 27-foot enclosed cargo trailer to White Spruce Trailer Sales, Anchorage, AK.
- e. Authorization to Award a Contract for RFP20-009 KPB Community Wildfire Protection Plan Update to SWCA Environmental Consultants, Broomfield, CO.
- f. Purchasing Request for CES Fire Apparatus through Hughes Fire Equipment, Pierce Manufacturing.
- g. NPRSA Digital Control Retrofit to Siemens Industry, Under the Government General Services Administration (GSA) Contract.

Other

- a. Capital Project Reports – December 30 -2019
- b. Revenue-Expenditure Report – January 2020
- c. Budget Revisions – January 2020
- d. Planning Department was awarded 2019 Public Engagement Award

Kenai Peninsula Borough
Purchasing & Contracting

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: John D. Hedges, Purchasing & Contracting Director 
FROM: Sovala Kisenia, Claims Manager *SK*
DATE: January 30, 2020
RE: Authorization to Award a Contract for RFP20-006 Insurance Broker of Record

On October 23, 2019 the Kenai Peninsula Borough Risk Management Office formally solicited proposals for RFP20-006 Insurance Broker of Record. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on October 23, 2019.

The project consists of providing insurance broker of record services.

On the due date of November 15, 2019, one (1) proposal was received from Marsh & McLennan Agency, LLC, Anchorage, Alaska.

Funding of this contract will be charged to account number 700.11234.43011 for FY20 and 700.00000.00000.15125 for FY21.



Charlie Pierce, Mayor

02/03/2020

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	700.11234.00000.43011 \$35,000 FY20 700.00000.00000.15125 \$35,000 FY21 *
Amount	\$68500
By: <i>pk</i> 	Date: 1/31/20

* Pending Assembly Approval of FY21 Budget.

Kenai Peninsula Borough
Purchasing & Contracting

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: John D. Hedges, Purchasing & Contracting Director *JH*
FROM: Sovala Kisenia, Claims Manager *SK*
DATE: January 30, 2020
RE: Authorization to Award a Contract for RFP19-008 EHS Management Software

On June 25, 2019 the Kenai Peninsula Borough Risk Management Office formally solicited proposals for RFP20-008 EHS Management Software. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on June 25, 2019.

The project consists of providing a comprehensive management solution with integrated and automated workflows for health, safety, environmental and risk management.

On the due date of July 16 2019, three (3) proposals were received and reviewed by a review committee as follows:

<u>FIRMS</u>	<u>TOTAL SCORE</u>
Intelex Technologies, Inc., Toronto, ON Canada	318
Industry Safe, Inc., Philadelphia, PA	286
Velocity EHS Canada, Inc, Oakville, ON Canada	277

Funding of this contract will be charged to account number 700.11234.00000.48525 for FY20.

CP

Charlie Pierce, Mayor

02/03/2020

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>700.11234.00000.48525</u>	<u>\$60,000</u> FY20
Amount <u>\$60,000</u>	
By: <i>pp</i>	Date: <u>1/31/20</u>

Kenai Peninsula Borough
Solid Waste Department

MEMORANDUM

TO: Charlie Pierce, KPB Mayor *CP*
THRU: John Hedges, Purchasing and Contracting Director *JH*
THRU: Jack Maryoff, SWD Director *JM*
FROM: Brian Smith, CPL Manager *BS*
DATE: February 5, 2020
RE: NC Machinery Sole Source Waiver

The Kenai Peninsula Borough Solid Waste Department needs extensive undercarriage repairs on the CPL Cat D8T. NC Machinery is the designated service shop for this piece of equipment. This equipment is under warranty which requires both service and parts be provided by the dealer.

The repair is time sensitive because this piece of equipment is vital for landfill functions.

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.:	<u>290.32122.00000.42360 & 43750</u>
Amount:	<u>\$20,050.34 (42360) & \$6,992.00 (43750)</u>
By:	<u><i>BS</i></u> Date: <u><i>2/5/20</i></u>

BS

Kenai Peninsula Borough
Central Emergency Services

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: John Hedges, Purchasing and Contracting Director 
FROM: Roy Browning, CES Chief 
DATE: January 30, 2020
RE: Sole Source Waiver

Central Emergency Services (CES) needs to purchase a 27-foot enclosed cargo trailer to transport off-road, all-terrain vehicles and snow machines for search and rescue operations within the service area.

CES contacted five businesses inquiring price quotes for an enclosed cargo trailer, Frontier Trailers, ATEC Trailer, TrailerCraft, White Spruce Trailer Sales and Verbas. Of the five vendors, three did not express interest in quoting, one was unable to supply a trailer to meet our needs. White Spruce Trailer Sales was the only vendor that responded with a price quote.

Due to three vendors being unresponsive and the fourth unable to supply the type of trailer, CES is requesting approval for a sole source purchase to White Spruce Trailer Sales, in the amount of \$28,625.00.

Approval: 
Charlie Pierce, Mayor

2/7/2020
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No. <u>443.51810.19463.48514</u>	
Amount \$ <u>28,625.00</u>	
By: 	Date: <u>1/31/2020</u>



Quote Only
White Spruce Trailer Sales
 1580 E. 72nd Ave.
 Anchorage, AK 99507
 (907) 562-6905 Fax: (907) 562-6916

Ref #: 16229
Date: 01/07/2020
 Salesperson: Charles Price
 Email: charlie@whitespruce.com

Customer: T Bookey	
Address:	Phone: (h)
	(c)
E-Mail: tbookey@kpb.us	(w)
PO#	(f)

Trade Information
Trade:
VIN:
Allowance: \$0.00
Payoff: \$0.00

Finance Information
Finance Company:
Address:
APR: 0.00%
Term: -1 months
Approx. Monthly Payment: \$0.00

Dealership Signature _____ Date _____

Buyer Signature _____ Date _____

Buyer Signature _____ Date _____

Selling Price Summary	
UNIT PRICE	\$30,995.00
Discount	\$2,500.00
Trade Allowance(s)	\$0.00
Optional Equipment & Accessories	\$0.00
SELLING PRICE	\$28,495.00
Title Certificate	\$15.00
Lien Recording	\$0.00
Personal Reg	\$30.00
Permanent Reg	\$0.00
M.V.R.T.	\$20.00
Commercial Reg	\$0.00
Document Fee	\$50.00
Handling Fee	\$15.00
Trade Payoff(s)	\$0.00
NET SELLING PRICE	\$28,625.00
2% Card Fee	\$0.00
Transport Fee	\$0.00
TOTAL AMOUNT DUE	\$28,625.00
Less Down Payment	\$0.00
BALANCE OR AMOUNT FINANCED	\$28,625.00

Warranty Information

THIS SHEET ACTS AS AN OFFICIAL PURCHASE AGREEMENT AND MSRP.

All trailer sales are final.
 All deposits are non-refundable.
 A minimum deposit of \$500 is required to hold a trailer for up to 2 weeks

Kenai Peninsula Borough
Purchasing & Contracting

MEMORANDUM

TO: Charlie Pierce, Mayor
THRU: John D. Hedges, Purchasing & Contracting Director 
FROM: Brenda Ahlberg, Community and Fiscal Projects Manager 
DATE: January 30, 2020
RE: Authorization to Award a Contract for RFP20-009 KPB Community Wildfire Protection Plan Update

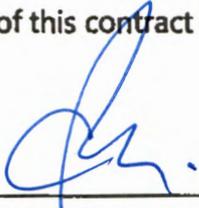
On December 10, 2019, the Kenai Peninsula Borough Mayor's Office formally solicited proposals for RFP20-009 Kenai Peninsula Borough Community Wildfire Protection Plan Update. The request for proposals was advertised in the Peninsula Clarion and the Anchorage Daily News on December 10, 2019.

The project consists of producing a comprehensive, community wildfire protection plan update that encompasses the borough's geographical boundaries into four project areas. The plan will be developed according to the scope of work detailed in this Request for Proposal. This project is funded in part through the Alaska Division of Forestry, Department of Natural Resources pursuant to USDA Forest Service Award No. 2018-DG11100106-810, "Western Wildland Urban Interface Competitive Grants," a federal pass-thru program, the full and complete terms and provisions of which shall be incorporated by this reference in the RFP and in the covered transaction. Federal funds for this project are identified by the Catalog of Federal Domestic Assistance CFDA No. 10.664. The federal program regulations 2 CFR 200, as applicable to the contractor, may be found online at <http://ecfr.gpoaccess.gov>.

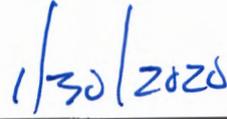
On the due date of January 6, 2020, three (3) proposals were received and reviewed by a review committee as follows:

<u>FIRMS</u>	<u>TOTAL SCORE</u>
SWCA Environmental Consultants, Broomfield, CO	406
Northwest Management, Inc., Moscow, ID	377
Alaska Map Company, Kenai, AK	272

Funding of this contract will be charged to account number 262.21320.19WUI43011.



Charlie Pierce, Mayor



Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>262.21320.19WUI43011</u>
Amount	<u>\$136,194.00</u>
By: <u>PP</u>	Date: <u>1/29/20</u>

PP

KENAI PENINSULA BOROUGH
RFP20-009 Kenai Peninsula Borough
Community Wildfire Protection Plan Update

QUOTE FORM

In submitting this quote, I certify that I have examined Specification/Scope of Work documents. If awarded a contract under this quote, I hereby agree to the terms set forth in the specification.

ADDENDA ACKNOWLEDGEMENT:

In submitting this quote, I certify that I have examined the Quote and Specification documents, have received Addenda Nos. , and have included their provisions in my quote.

Lump Sum Quote (per specifications/scope of work): \$136,194 includes applicable taxes

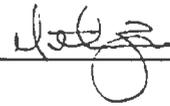
Firm Name SWCA Environmental Consultants

Address 295 Interlocken Blvd #300 City/State Broomfield, CO Zip 80021

Telephone (303) 487-1183 Fax (503) 224-1851

Email Address matthew.zoss@swca.com

Representative Matthew Zoss Title Vice President, Rocky Mountain Plains

Signature  Date 1/17/2020

Alaska Business License # <u>80076F</u>
Contractor's License (if required) # _____
Specialty License # (if required)

TASK NAME	LABOR HOURS	LABOR DOLLARS	EXPENSE DOLLARS (TRAVEL, MEETING MATERIALS)	SUB DOLLARS	TOTAL BUDGET \$	TOTAL TAX \$*	TOTAL BUDGET \$ WITH TAXES
Project Management / QA-QC	24.00	\$ 2,107.50	\$	\$	\$ 2,107.50	\$	\$ 2,107.50
Task 1. Convene Decision Makers	34.00	\$ 3,232.50	\$ 172.50	\$	\$ 3,405.00	\$	\$ 3,405.00
Task 2. Involve Federal Agencies (6 Core Team Meetings)	190.00	\$ 18,543.75	\$ 12,161.50	\$ 9,450.00	\$ 40,145.25	\$ 920.88	\$ 41,066.11
Task 3. Engage Interested Parties (at least 6 Public Meetings)	100.00	\$ 9,750.00	\$ 1,035.00	\$ 21,000.00	\$ 31,785.00	\$ 323.55	\$ 32,108.55
Task 4. Establish a Community Base Map (Includes data gathering)	114.00	\$ 9,747.00	\$	\$	\$ 9,747.00	\$	\$ 9,747.00
Task 5. Develop Community Risk Assessment	38.00	\$ 3,630.00	\$	\$	\$ 3,630.00	\$	\$ 3,630.00
Task 6. Establish Community Priorities and Recommendations	46.00	\$ 4,530.00	\$	\$	\$ 4,530.00	\$	\$ 4,530.00
Task 7. Develop Action Plan (Includes Draft CWPP)	160.00	\$ 14,594.00	\$	\$	\$ 14,594.00	\$	\$ 14,594.00
Task 7.a. Story Map	154.00	\$ 14,868.00	\$	\$	\$ 14,868.00	\$	\$ 14,868.00
Task 8. Finalize CWPP	100.00	\$ 9,666.00	\$ 471.50	\$	\$ 10,137.50	\$	\$ 10,137.50
	960.00	\$ 90,668.75	\$ 13,830.50	\$ 30,450.00	\$ 134,949.25	\$ 1,244.41	\$ 136,193.66

*Tax applied to SWCA work and expenses carried out in the Kenai Peninsula Borough. Sub-Consultants fees are inclusive of tax.

**Kenai Peninsula Borough
Central Emergency Services**

MEMORANDUM

TO: Charlie Pierce, Borough Mayor
THRU: John Hedges, Purchasing and Contracting *JH*
FROM: Roy Browning, CES Chief *RB*
DATE: January 29, 2020
RE: Purchasing Request for CES Fire Apparatus

CES is requesting the purchase of a fire engine, to replace one that was damaged in an accident and was a total loss. As you are aware, a portion of the funds will be covered through an insurance claim with the AML-JIA, as referenced in KPB Ordinance 2019-19-25.

The purchase of the fire engine will be in accordance with Kenai Peninsula Ordinance 2016-17 Standardization Policy for Fire Service Areas, through Hughes Fire Equipment, Pierce Manufacturing.

The purchasing will be through the Houston-Galveston Area Council (HGAC Buy) purchasing co-op contract # FS12-19. The price quoted is for \$742,400.00

Please consider and approve the above request to purchase the fire apparatus, for the total purchase amount of \$742,400.00

Funding for this purchase is available in account 443.51610.20FTK

Approved: *CP* Date: 1/30/2020

Charlie Pierce,
Borough Mayor

FINANCE DEPARTMENT FUNDS VERIFIED	
Accl. No. 443.51610.00000.20FTK	
Amount <u>\$742,400.00</u>	
By: <u><i>RB</i></u>	Date: <u>1/29/20</u>



December 23, 2019

Central Emergency Services, AK
One (1) Enforcer 2000 Gallon Pumper Tender AK900
Build Location: Appleton, WI

Proposal Price F.O.B Anchorage AK	773,195 00
Less chassis progress payment discount <i>The chassis progress payment in the amount of \$383,111 00 will be due three (3) months prior to the ready for pick up from the factory date.</i>	(11,493.00)
Less payment upon completion @ factory discount	(7,700.00)
* Deduct for 100% pre-payment with contract <i>If this option is elected, the discount is in addition to the chassis progress payment discount and the payment upon completion at the factory discount.</i>	(11,602.00)
Subtotal including all pre-pay discounts	742,400 00

Terms:

Based on the current delivery schedule the unit would be ready for delivery from factory within 8 to 12 months after contract execution. Delivery is subject to change pending Pierce's delivery schedule at order placement.

The above pricing is valid until January 31, 2020. If order is not submitted prior to that date, a 3% price increase will be required.

The above quote is subject to change.

An invoice will be provided 30 days prior to the chassis payment due date if elected.

An invoice will be provided upon order processing for the 100% prepayment if elected. Final payment, including any changes made during manufacturing, is due upon completion of the apparatus at the factory and prior to delivery from the factory.

If payment discount options are not elected standard payment terms will apply: Final payment will be due 30 days after the unit leaves the factory for delivery. If payment is not made at that time a late fee will be applicable.

Purchasing documents will be between Hughes Fire Equipment and the customer.

The proposal price is based on the unit being purchased through HGAC. This pricing is only valid for an HGAC purchase on contract FS12-19.

A performance bond is included in the above price and will be provided after order placement. If customer elects to remove the performance bond \$2,082.00 may be deducted from the purchase price.

Transportation of the unit to be driven from the factory and then transported to Anchorage, AK is included in the pricing. However, if we are unable to obtain necessary permits, due to the weight of the unit, and the unit must be transported on a flat bed, additional transportation charges will be the responsibility of the purchaser. We will provide pricing at that time if necessary. If customer elects transport unit from the factory to Anchorage, AK \$12,868.00 (\$4,500.00 land transportation & \$8,368.00 Tote transportation) may be deducted from the purchase price. If this option is elected, payment in full and proof of insurance must be provided prior to leaving the factory and the customer is responsible for compliance with all state, local and federal DOT requirements including the driver possessing a valid CDL license.

Two (2) factory inspection trip for three (3) fire department customer representatives is included in the above pricing. The inspection trip will be scheduled at a time mutually agreed upon between the manufacture's representative and the customer. Airfare, lodging and meals while at the factory are included. If the Department elects to forgo an inspection trip \$2,250.00 per traveler (per trip) will be deducted from the final invoice.

Kenai Peninsula Borough
Purchasing and Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor *CP*
THRU: John Hedges, Purchasing & Contracting Director *JH*
FROM: Rachel Parra, NPRSA Director. *RP*
DATE: 2/13/2020
RE: NPRSA Digital Control Retrofit to Siemens, Under the Government General Services Administration (GSA) Contract

There exists a strong need to replace the existing pneumatic controls at the North Peninsula Recreation Service Area (NPRSA) facility. Much of the existing system is obsolete and no longer maintainable. The lack of control causes large temperature variations together with inefficiencies in heating. A conversion from pneumatic to digital control and monitoring allows communication with existing PC based remote monitoring already in place in other areas of NPRSA.

It is our preference to align the proposed system with the other systems in the NPRSA facility. Roughly 40% of the existing facility is controlled by Siemens building controls. It would be in the best interest of the Borough to standardize the building automation system at this facility. This would greatly streamline the demand on maintained parts inventory, service technician training and server maintenance costs. Purchasing and Contracting has received a proposal from Siemens Industries that includes group purchasing organization (GPO) involvement, specifically GSA. The Siemens Industries proposal matches our system compatibility and building automation needs.

Utilizing the established GSA pricing structure, Siemens Industries has provided a quotation for the sum of \$190,617.01, to provide parts and services for the conversion of the NPRSA system. For reasons stated above, Purchasing & Contracting would like to award Siemens Industries with the contract to convert the remaining NPRSA pneumatic systems to digital control. The main qualifiers restated: Increased system control and performance, local system alignment, parts, training and system requirement savings as well as the satisfaction of procurement code through GPO/GSA involvement.

Your approval is hereby requested. Funding for this project is in account number 459.61110.20455.43011.

For *Charlie Pierce*
Charlie Pierce, Mayor

2-13-2020
Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct: 459.61110.20455.43011 - \$190,617.01	
By: <i>FP</i>	Date: <u>2/13/20</u>

Kenai Peninsula Borough
Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor 

THRU: Brandi Harbaugh, Finance Director 

FROM: Sarah Hostetter, Payroll Accountant 

DATE: February 5, 2020

RE: Capital Project Reports – December 31, 2019

Attached are the quarterly project reports for the Borough's capital project funds:

Fund 400 - Borough and Grant Funded School Capital Projects Fund
Fund 401 - Bond Funded Capital Projects Fund
Fund 407 - General Government Capital Projects Fund
Fund 411 - Solid Waste Capital Projects Fund
Fund 434 - Road Service Area Capital Projects Fund
Fund 441 - Nikiski Fire Service Area Capital Projects Fund
Fund 442 - Bear Creek Service Area Capital Projects Fund
Fund 443 - CES Service Area Capital Projects Fund
Fund 444 - Anchor Point Service Area Capital Projects Fund
Fund 446 - Kachemak Emergency Service Area Capital Projects Fund
Fund 455 - Communication Center 911 Capital Projects Fund
Fund 459 - North Peninsula Recreation Service Area Capital Projects Fund
Fund 490 - Central Peninsula Hospital Capital Projects Fund
Fund 491 - South Peninsula Hospital Capital Projects Fund

School Revenue Projects - Fund 400

Balances through December 31, 2019

	Project	Year Appropriated	Site Number	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Sch	13DSG	2013	78050	A/W Design Improvements	\$ 200,000	\$ 147,565	\$ -	\$ 52,435	\$ 147,565
Sch	13FLR	2013	19010	Admin Building Flooring	35,000	5,109	-	29,891	5,109
	14000	2014	78050	A/W Auditorium Lighting Upgrades	75,000	15,938	510	59,571	15,429
Sch	14SEC	2014	78050	A/W Security/Safety Improvements	1,370,000	955	955	1,370,000	0
	16782	2016	78050	A/W ADA Upgrades	150,000	226	226	150,000	-
	16855	2016	78050	A/W Locker Replacement	125,000	99,390	-	25,610	99,390
	17714	2017	78050	A/W Window/Siding Replacement	275,000	34,399	-	240,601	34,399
	17727	2017	78050	A/W Bleacher Replacement	100,000	22,675	-	77,325	22,675
	17780	2017	78050	A/W Playground Upgrades	75,000	16,716	-	58,284	16,716
	17782	2017	78050	A/W ADA Upgrades	75,000	22,576	-	52,424	22,576
	17802	2017	78050	A/W Asphalt/Sidewalk Repair	75,000	734	-	74,266	734
	17860	2017	78050	A/W Generator/Hardware	100,000	5,546	-	94,454	5,546
	18728	2018	78050	A/W Doors/Entries	100,000	11,982	11,255	99,273	727
	18759	2018	78050	A/W Water Quality Improvements	125,000	80,743	35,792	80,050	44,950
	18802	2018	78050	A/W Asphalt/Sidewalk Repair	150,000	97,876	-	52,124	97,876
	18851	2018	78010	A/W Portables/Outbuildings	75,000	18,347	10,235	66,888	8,112
	18860	2018	78050	A/W Generator/Hardware	75,000	17,574	-	57,426	17,574
	19714	2019	78050	A/W Window/Siding Replacement	150,000	150,000	-	-	150,000
	19758	2019	78050	A/W Electrical/Lighting	150,000	22,216	10,917	138,701	11,299
	19782	2019	78050	A/W ADA Upgrades	75,000	56,900	25,459	43,559	31,441
	19801	2019	78050	A/W HVAC/DDC Upgrades	75,000	65,772	25,706	34,934	40,066
	19802	2019	78050	A/W Asphalt/Sidewalk Repair	150,000	150,000	-	-	150,000
	19803	2019	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
	19851	2019	78010	A/W Portables/Outbuildings	75,000	75,000	70,832	70,832	4,168
	19856	2019	78050	A/W Security/Safety	300,000	158,241	71,767	213,526	86,474
	19860	2019	78050	A/W Generator/Hardware	50,000	50,000	-	-	50,000
	19BOI	2019	72010	Homer High Boiler Replacement	425,000	411,299	8,913	22,614	402,386
	KSELO	2019	71065	KSELO New School Construction	10,010,000	10,010,000	-	-	10,010,000
	SPREP	2019	76030	Relocate Portables From SPREP	300,000	300,000	299,512	299,512	488
	20728	2020	78050	A/W Doors/Entries	100,000	100,000	9,825	9,825	90,175
	20755	2020	78050	A/W Flooring Upgrades	125,000	125,000	-	-	125,000
	20756	2020	78050	A/W Asbestos Removal/Repair	75,000	75,000	-	-	75,000
	20758	2020	78050	A/W Electrical/Lighting	125,000	125,000	11,530	11,530	113,470
	20759	2020	78050	A/W Water Quality Improvements	100,000	100,000	-	-	100,000
	20780	2020	78050	A/W Playground Upgrades	75,000	75,000	-	-	75,000
	20782	2020	78050	A/W ADA Upgrades	75,000	75,000	-	-	75,000
	20801	2020	78050	A/W HVAC/DDC/Boiler Upgrades	1,225,000	1,225,000	-	-	1,225,000
	20803	2020	78050	A/W Elevator Upgrades	50,000	50,000	-	-	50,000
	20851	2020	78010	A/W Portables/Outbuildings	75,000	75,000	24,459	24,459	50,541
	20855	2020	78050	A/W Locker Replacement	75,000	75,000	-	-	75,000
	20856	2020	78050	A/W Security/Safety	100,000	100,000	-	-	100,000
	20860	2020	78050	A/W Generator/Hardware	50,000	50,000	-	-	50,000
	20PRP	2020	73030/2C	Kenai Intensive Needs Remodel	410,000	410,000	97,651	97,651	312,349

Project Totals

\$ 17,650,000 \$ 14,757,779 \$ 715,543 \$ 3,607,765 \$14,042,235

Beginning Fund Balance 7/1/19

\$ 1,934,965

Funds Provided:

	FY20 Transfer from General Fund	\$ 2,660,000	
13DSG	FY13 Local Contribution - KPBSD Design	147,565	
13FLR	FY13 Local Contribution - KPBSD Admin Bldg Floor	5,109	
14SEC	FY14 Local Contribution - KPBSD Security-Safety	955	
KESLO	AK Dept of Education & Early Development	10,010,000	
	Miscellaneous Revenue	1,885	
	Total Funds Provided		12,825,514
	Funds applied - current year expenditures		(715,543)
	Funds obligated to existing projects		(14,042,235)
	Projects completed, cancelled or other funding source identified		-
	Funds available for appropriation and for future capital expansion plans		<u>\$ 2,701</u>

Bond Projects - Fund 401

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
11SCH	2011	KPBSD Roof Replacements	\$ 16,894,646	\$ 25,523	\$ -	\$ 16,869,123	\$ 25,523
20SCH	2020	FY20 School Roof Replacements	2,377,363	2,377,363	668	668	2,376,695
Project Totals			<u>\$ 19,272,009</u>	<u>\$ 2,402,886</u>	<u>\$ 668</u>	<u>\$ 16,869,792</u>	<u>\$ 2,402,218</u>
Beginning Fund Balance 7/1/19							\$ 2,664,020
Funds Provided:							
FY20 School Bond (FY14 issued) Interest						<u>\$ 24,219</u>	
Total Funds Provided							24,219
Funds applied - current year expenditures							(668)
Funds obligated to existing projects							(2,402,218)
Projects completed or cancelled							<u>-</u>
Funds available for appropriation and for future capital expansion plans							<u>\$ 285,353</u>
Fund Balance:							
School Bond interest prior to FY2011							44,831
School Bond FY11							217
School Bond FY14							240,305
Ending Fund Balance							<u>\$ 285,353</u>

TRUE

General Government Projects - Fund 407

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
14MAN	2014	Manatron Software Upgrade	\$ 75,000	\$ 73,800	\$ -	\$ 1,200	\$ 73,800
15SOF	2015	Software Upgrade	75,000	64,364	-	10,636	64,364
16KRC	2016	River Center Bldg Repairs	49,000	12,395	-	36,605	12,395
16REC	2016	Records Mgmt Software	100,000	100,000	100,000	100,000	-
18ITR	2018	IT Dept Remodel	100,000	7,484	-	92,516	7,484
19407	2019	Card Entry Security System	150,000	99,158	60,687	111,528	38,472
Project Totals			<u>\$ 549,000</u>	<u>\$ 357,201</u>	<u>\$ 160,687</u>	<u>\$ 352,486</u>	<u>\$ 196,514</u>
Beginning Fund Balance 7/1/19							\$ 660,706
Funds Provided:							
FY20 Transfer from General Fund						<u>\$ 250,000</u>	
Total Funds Provided							250,000
Funds applied - current year expenditures							(160,687)
Funds obligated to existing projects							(196,514)
Projects completed or cancelled							-
Funds available for appropriation and for future capital expansion plans							<u>\$ 553,506</u>

Solid Waste Projects - Fund 411

Balances through December 31, 2019

	Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Bond	17SWB	2017	SW CPL Equip/Plan/Design/Construction	\$ 5,999,365	\$ 1,092,524	\$ 559,326	\$ 5,466,168	\$ 533,197
	18CDE	2018	FY18 C&D Cell Expansion	350,000	173,659	78,397	254,738	95,262
	18GAS	2018	Landfill Gas to Energy Project	100,000	29,400	-	70,600	29,400
	19CDE	2019	FY19 C&D Cell Expansion	50,000	50,000	-	-	50,000
	19HLC	2019	FY19 SW-Homer Landfill Closure - Phase 2	2,322,000	2,247,948	5,451	79,503	2,242,497
	20FUN	2020	Funny River Transfer Site Expansion	670,525	670,525	22,018	22,018	648,507
Project Totals				\$ 9,491,890	\$ 4,264,056	\$ 665,192	\$ 5,893,027	\$ 3,598,863

	Capt Proj Fund	Closure/Post	17SWB Bond	Total
Beginning Fund Balance 7/1/19	\$ 1,056,090	\$ 8,729,484	\$ 1,192,121	\$ 10,977,695
Funds Provided:				
FY20 Transfer from Operating Fund	250,000			
FY20 Interest Earnings	92,551			
FY20 Transfer for Closure/Post		1,083,280		
FY20 Interest Earnings on 17SWB Bond Proceeds			8,802	1,434,632
Funds applied - current year expenditures	(100,415)	(46,860)	(559,326)	(706,601)
Funds obligated to existing projects	(823,169)	(2,242,497)	(533,197)	(3,598,863)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital expansion plans	\$ 475,057			475,057
Closure/post closure liability		\$ 7,523,407		\$7,523,407
Funds restricted for SWD bond			\$ 108,399	\$108,399
Ending fund balance				\$ 8,106,863

Road Service Area Projects - Fund 434

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
2014 DCCED for Borough Wide Road Grant (\$100,000)							
14JAC	2014	Jacobs Ladder Repair	\$ 100,000	\$ 94,347	\$ 61,734	\$ 67,387	\$ 32,613
2016-17 North Road Extension							
16NRD	2016	North Road Extension	7,123,591	3,678,424	746,475	4,191,642	2,931,949
2015 DCCED Borough Wide Road Grant (\$4,000,000)							
15089	2015	Borough Wide Road Grant	-	-	-	-	-
S8WYO	2017	Wyoh Way	1,123,638	60,350	6,565	1,069,853	53,785
N5HEI	2018	Heights Ln/Hillside Dr	362,326	85,311	32,855	309,870	52,456
W4MYR	2018	Myra/David/Peggy/Sharon	351,862	36,458	36,458	351,862	0
S5BDR	2019	Flintlock Ln/Bidarki Dr/Bridger Rd	30,550	1,895	1,895	30,550	-
S7GLE	2019	Glenn Rd/Kipling Cir	72,067	42,439	42,439	72,067	-
20GRV	2020	FY20 Borough Gravel Projects	12,724	12,724	9,180	9,180	3,544
Projects Completed in Prior Years: 2015-2019			2,046,833	-	-	2,046,833	-
			4,000,000				
2019 Road CIP Projects (\$2,428,000)							
19CIP	2019	Borough Wide FY19 Local Funds	542,806	542,806	-	-	542,806
C2DIA	2017	Diane St/Glacier Ave	10,000	10,000	-	-	10,000
S7TRA	2017	Tracy Ave	10,000	10,000	-	-	10,000
W7IGL	2017	Divine Estates/Igloo-Dana Bayes	10,000	10,000	-	-	10,000
S5BDR	2019	Flintlock Ln/Bidarki Dr/Bridger Rd	383,450	383,267	3,461	3,644	379,806
S7GLE	2019	Glenn Rd/Kipling Cir	482,933	482,750	433,148	433,331	49,602
S7HLR	2019	Hulter Road	606,486	606,486	-	-	606,486
W4TIM	2019	Tim Ave/Muir St/Creek View Rd	302,940	302,940	201,674	201,674	101,265
W6TER	2019	Tern Cir/Jacnjil Cir/Jitney Cir	79,385	79,385	-	-	79,385
			2,428,000				
2020 Road CIP Projects (\$2,519,000)							
20CIP	2020	Borough Wide FY20 Local Funds	-	-	-	-	-
20GRV	2020	FY20 Borough Gravel Projects	200,000	200,000	-	-	200,000
20WRT	2020	Warranty Funds	20,000	20,000	-	-	20,000
S7WAL	2020	Walters St/Wilderness Ln	1,006,500	1,006,500	-	-	1,006,500
S8BSG	2020	Basargin Rd	1,155,000	1,155,000	-	-	1,155,000
W6ROC	2020	Roosevelt Cir	137,500	137,500	-	-	137,500
			2,519,000				
20431	2020	Inspector Vehicle	39,175	39,175	-	-	39,175
Project Totals			\$ 16,209,766	\$ 8,997,757	\$ 1,575,885	\$ 8,787,894	\$ 7,421,872
Beginning Fund Balance 7/1/19							\$ 7,876,198
Funds Provided:							
FY20 Transfer from Operating Fund						\$ 2,000,000	
14JAC	DCCED Boro Wide Improvement					94,347	
15089	DCCED Boro Wide Improvement					239,177	
16NRD	US Dept. of Transportation					3,678,424	
FY20 16NRD Interest Earnings						480	
FY20 Interest Earnings						82,776	
Total Funds Provided							6,095,204
Funds applied - current year expenditures							(1,575,885)
Funds obligated to existing projects							(7,421,872)
Projects completed or cancelled by Service Area Board Action							-
Funds available for appropriation and for future capital expansion plans							\$ 4,973,645

Nikiski Fire Projects - Fund 441

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
15416	2015	Vehicle Computer Aided Dispatch	\$ 250,000	\$ 201,802	\$ 24,928	\$ 73,127	\$ 176,873
16412	2016	Roadway Emergency Signs	75,000	6,588	1,020	69,432	5,568
18411	2018	ST 1 Repairs/Maintenance	150,000	98,396	4,295	55,898	94,102
18412	2018	ST 1 Exhaust Removal System	100,000	97,910	-	2,090	97,910
19411	2019	NFSA Fire ST 3 New Construction	4,719,000	4,615,500	6,436	109,935	4,609,065
19412	2019	Parking Lot Repairs ST 1 & 2	100,000	74,957	62,107	87,150	12,850
19413	2019	Fire Station Alerting Systems	100,000	61,836	59,126	97,291	2,709
19GEN	2019	Emergency Generator/Parts	92,000	91,680	50,849	51,169	40,832
20411	2020	CPR Devices/Defibrillators	125,000	125,000	71,694	71,694	53,306
20412	2020	Emergency Response Vehicle	75,000	75,000	67,157	67,157	7,843
20413	2020	Enclosed Conex Carport	150,000	150,000	857	857	149,143
SCBA2	2020	NFSA SCBA Equipment	19,642	19,642	-	-	19,642
Project Totals			\$ 5,955,642	\$ 5,618,311	\$ 348,468	\$ 685,799	\$ 5,269,843

Beginning Fund Balance 7/1/19	\$ 4,398,151
Funds Provided:	
FY20 Transfer from Operating Fund	\$ 1,400,000
FY20 Interest Earnings	46,410
Total Funds Provided	<u>1,446,410</u>
Funds applied - current year expenditures	(348,468)
Funds obligated to existing projects	(5,269,843)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 226,250</u>

Bear Creek Fire Service Area Projects - Fund 442

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
13566	2013	Multi-Use Facility Construction	\$ 5,488,263	\$ 278	\$ -	\$ 5,487,984	\$ 278
14421	2014	Dispatch/Communication Equip	25,000	2,547	-	22,453	2,547
19421	2019	Turnout Gear	21,267	284	-	20,983	284
19422	2019	SCBA Bottle Replacement	20,786	20,786	-	-	20,786
20421	2020	Turnout Gear	10,820	10,820	-	-	10,820
Project Totals			\$ 5,566,136	\$ 34,715	\$ -	\$ 5,531,421	\$ 34,715
Beginning Fund Balance 7/1/19							\$ 370,362
Funds Provided:							
FY20 Transfer from Operating Fund						\$ 100,000	
FY20 Interest Earnings						4,192	
Total Funds Provided							104,192
Funds applied - current year expenditures							-
Funds obligated to existing projects							(34,715)
Projects completed or cancelled by Service Area Board Action							-
Funds available for appropriation and for future capital expansion plans							<u>\$ 439,838</u>

Central Emergency Services Projects - Fund 443

Balances through December 31, 2019

	Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
	12469	2012	Training Facility Relocation	\$ 350,000	\$ 68,671	\$ 4,730	\$ 286,059	\$ 63,941
Bond	16CES	2016	Emergency Response Vehicles	2,785,629	25,733	(9,508)	2,750,388	35,241
	17463	2017	CES Lighting Improvements	110,000	23,796	-	86,204	23,796
	18461	2018	Fire Station Alerting System	400,000	229,965	14,294	184,329	215,671
	19461	2019	SCBA Compressor	450,000	450,000	91,969	91,969	358,031
	19462	2019	Rescue Boat	125,000	125,000	123,596	123,596	1,404
	19463	2019	Enclosed Cargo Trailer	35,000	35,000	-	-	35,000
	19465	2019	Mobile Data Terminals	35,000	33,231	6,563	8,332	26,668
	19469	2019	Training Site Phase 2 Expansion	150,000	150,000	-	-	150,000
Grant	19TKR	2019	CES Pumper/Tanker	656,500	656,500	630,271	630,271	26,229
	20461	2020	CES Station 1 Land Acquisition	900,000	900,000	-	-	900,000
	20462	2020	CES Ambulance	257,931	257,931	37,705	37,705	220,226
Bond	20CES	2020	Emergency Response Vehicles	1,611,196	1,611,196	20,513	20,513	1,590,682
Project Totals				\$ 7,866,256	\$ 4,567,022	\$ 920,132	\$ 4,219,366	\$ 3,646,890

	Capt Proj Fund	16CES Bond	20CES Bond	Total
Beginning Fund Balance 7/1/19	\$ 1,833,895	\$ 35,122	\$ -	\$ 1,869,016
Funds Provided:				
FY20 Transfer from Operating Fund	1,250,000			
FY20 Interest Earnings	19,225			
State of AK Dept CCED - 19TKR	487,500			
FY20 Interest Earnings on 16CES Bond Proceeds		3,114		
16CES Bond Proceeds		(9,508)		
20CES Bond Proceeds			1,611,196	3,361,527
Funds applied - current year expenditures	(909,126.99)	9,508	(20,513)	(920,132)
Funds obligated to existing projects	(2,020,966)	(35,241)	(1,590,682)	(3,646,890)
Projects completed or cancelled by Service Area Board Action	-	-	-	-
Funds avail. for approp. and for future capital expansion plans	<u>\$ 660,527</u>			660,527
Funds restricted for 16CES bond		<u>\$ 2,995</u>		2,995
Funds restricted for 20CES bond			<u>\$ -</u>	-
Ending fund balance				<u>\$ 663,521</u>

Anchor Point Fire Service Area Projects - Fund 444

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
11TNK	2011	Water Storage Tank Installation	\$ 50,000	\$ 16,438	\$ -	\$ 33,562	\$ 16,438
18441	2018	Emergency Water Fill Site FY18	100,000	9,665	-	90,335	9,665
19441	2019	Emergency Water Fill Site FY19	100,000	75,797	1,626	25,828	74,172
19443	2019	ST 1 Boiler Replacement	95,203	93,239	6,795	8,760	86,444
20441	2020	Command Vehicle	60,000	60,000	-	-	60,000
Project Totals			<u>\$ 405,203</u>	<u>\$ 255,139</u>	<u>\$ 8,421</u>	<u>\$ 158,485</u>	<u>\$ 246,718</u>

Beginning Fund Balance 7/1/19	\$ 178,719
Funds Provided:	
FY20 Transfer from Operating Fund	\$ 200,000
FY20 Interest Earnings	2,385
Total Funds Provided	<u>202,385</u>
Funds applied - current year expenditures	(8,421)
Funds obligated to existing projects	(246,718)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 125,966</u>

Kachemak Service Area Projects - Fund 446

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
17482	2017	ST 2 Water Tank/Generator	\$ 25,000	\$ 6,962	\$ -	\$ 18,038	\$ 6,962
19PMP	2019	KESA Pumper/Tanker	501,000	501,000	500,756	500,756	244
20481	2020	ATV Rescue/Brush Unit	20,000	20,000	19,944	19,944	56
Project Totals			<u>\$ 546,000</u>	<u>\$ 527,962</u>	<u>\$ 520,701</u>	<u>\$ 538,739</u>	<u>\$ 7,261</u>

Beginning Fund Balance 7/1/19	\$ 540,889
Funds Provided:	
FY20 Transfer from Operating Fund	\$ 100,000
FY20 Interest Earnings	4,525
Total Funds Provided	<u>104,525</u>
Funds applied - current year expenditures	(520,701)
Funds obligated to existing projects	(7,261)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 117,453</u>

Communication Center 911 Projects - Fund 455

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
17CCR	2017	SPSCC Renovation Project	\$ 316,000	\$ 112,276	\$ 96,218	\$ 299,942	\$ 16,058
		Transfer to General Fund	175,000	175,000	175,000	175,000	-
Totals			\$ 491,000	\$ 287,276	\$ 271,218	\$ 474,942	\$ 16,058

Beginning Fund Balance 7/1/19	\$ 287,276
Funds applied - current year expenditures	(271,218)
Funds obligated to existing projects	(16,058)
Projects completed or cancelled	-
Funds available for appropriation and for future capital expansion plans	<u>\$ -</u>

North Peninsula Recreation Projects - Fund 459

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
18451	2018	Fire Alarm System Replacement	\$ 165,000	\$ 73,808	\$ -	\$ 91,192	\$ 73,808
19451	2019	Community Center Remodel	355,000	354,255	5,183	5,927	349,073
19SEP	2019	Pool Septic System Repairs	90,000	18,561	-	71,439	18,561
20451	2020	Gymnasium Lighting	62,000	62,000	4,679	4,679	57,321
20452	2020	Fitness Equipment	75,000	75,000	-	-	75,000
20453	2020	Furniture/Furnishings	60,000	60,000	-	-	60,000
20454	2020	Tractor/Mower	35,000	35,000	24,175	24,175	10,825
20455	2020	Pool Boiler/HVAC Replacements	725,000	725,000	2,769	2,769	722,231
Project Totals			\$ 1,567,000	\$ 1,403,624	\$ 36,806	\$ 200,182	\$ 1,366,818

Beginning Fund Balance 7/1/19	\$ 745,393
Funds Provided:	
FY20 Transfer from Operating Fund	\$ 850,000
FY20 Interest Earnings	990
Total Funds Provided	<u>850,990</u>
Funds applied - current year expenditures	(36,806)
Funds obligated to existing projects	(1,366,818)
Projects completed or cancelled by Service Area Board Action	<u>-</u>
Funds available for appropriation and for future capital expansion plans	<u>\$ 192,760</u>

Central Peninsula Hospital Projects - Fund 490

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance
Provided by Bond Proceeds							
14CPH	2014	CPH Specialty Clinic Bld	\$ 41,249,563	\$ 143,067	\$ -	\$ 41,106,496	\$ 143,067
18CPH	2018	CPH OB/Cath Lab	29,140,645	6,691,924	5,002,516	27,451,237	1,689,408
Funds Provided by Hospital Plant Replacement Fund							
15IMG	2015	CPH Imaging Dept Project	8,153,785	75,622	-	8,078,163	75,622
17OBL	2017	CPH OB/Cardiac Cath Lab	10,000,000	4,755,966	109,750	5,353,784	4,646,216
19DAV	2019	Surgical Robotic System	2,261,250	92,616	-	2,168,634	92,616
19ELV	2019	Elevator Repair	126,505	17,871	-	108,634	17,871
19EQU	2019	OB/Cath Lab Equipment	1,244,308	1,244,308	-	-	1,244,308
Total Funds Provided by Hospital Plant Replacement Fund			21,785,848	6,186,382	109,750	15,709,215	6,076,633
Project Totals			\$ 92,176,056	\$ 13,021,374	\$ 5,112,265	\$ 84,266,948	\$ 7,909,108

	Capt Proj Fund	KHCTR	CPH Bonds	Total
Beginning Fund Balance 7/1/19	\$ 724,748	\$ 707,474	\$ 7,591,872	\$ 9,024,094
Funds Provided:				
15IMG CPH Local Contribution - CPH Imaging Center	75,622			
17OBL CPH OB / Card Cath Lab	4,755,966			
19DAV CPH Local Contribution - Surgical Robotics	92,616			
19ELV CPH Local Contribution - Elevator Repair	17,871			
19EQU CPH Local Contribution - OB/Cath Lab Equip	1,244,308			
FY20 Interest Earnings	24,035			
State Contributions KHCTR		12,712		
Local Contributions KHCTR		7,791		
FY20 Interest Earnings KHCTR		5,256		
FY20 Interest Earnings on CPH Bond Proceeds			59,281	6,295,457
Funds applied - current year expenditures	(109,750)	-	(5,002,516)	(5,112,265)
Funds obligated to existing projects	(6,076,633)	-	(1,832,476)	(7,909,108)
Projects completed or cancelled	-	-	-	-
Funds available for approp. and future capital projects	\$ 748,783			748,783
Funds restricted For Kenai Health Center Maintenance		\$ 733,233		733,233
Funds restricted for CPH bonds			\$ 816,161	816,161
Ending fund balance				\$ 2,298,177

South Peninsula Hospital Projects - Fund 491

Balances through December 31, 2019

Project	Year Appropriated	Project Description	Authorized Amount	FY20 Budget	Expend FY20	Total LTD Expenditures	Unexpended Balance	
Funds Provided by Local Funds								
	17SHB	2017	Operating Room Heat/Humidity	\$ 300,000	\$ 69,607	\$ -	\$ 230,393	\$ 69,607
	17SHV	2017	GYN Equipment	30,000	30,000	-	-	30,000
Bond	17SPH	2017	HVAC System	1,778,996	2,126	-	1,776,871	2,126
Bond	17SPM	2017	Homer Medical Center	3,018,898	63,238	13,582	2,969,242	49,656
	18SHF	2018	Patient Monitoring System Upgrades	122,800	122,800	-	-	122,800
	18SHG	2018	HVAC Zone Digital Controls	110,945	110,945	-	-	110,945
	18SHJ	2018	Elevator Upgrade	83,000	83,000	-	-	83,000
	19SHB	2019	Nurse Call System Upgrade FY19	251,095	235,542	232,817	248,370	2,725
	19SHE	2019	Access Control/Security Cameras	95,000	66,290	4,786	33,496	61,504
	19SHZ	2019	Ultrasound Machines	375,000	306,980	154,250	222,270	152,730
	20SHB	2020	Shelled Space Remodel	1,412,500	1,412,500	-	-	1,412,500 *
	20SHC	2020	CT Scanner	931,314	931,314	1,851	1,851	929,463
	20SHD	2020	HIS Server Replacement	114,894	114,894	113,053	113,053	1,841
	20SHE	2020	Steris 1E	111,737	111,737	49,693	49,693	62,044
	20SHF	2020	Fire Alarm Upgrade	105,000	105,000	-	-	105,000
	20SHG	2020	Micro Analyzer	86,670	86,670	70,000	70,000	16,670
	20SHH	2020	Re-Key Hospital Doors	48,225	48,225	-	-	48,225
	20SHJ	2020	Stryker Drill Platform	42,376	42,376	42,376	42,376	-
	20SHK	2020	Van	36,500	36,500	-	-	36,500
	20SHL	2020	Virtual Server Replacement	25,200	25,200	24,616	24,616	584
	20SHM	2020	Blast Chiller for Nutrition Services	20,000	20,000	20,000	20,000	-
	20SHN	2020	Glidescope	19,433	19,433	15,095	15,095	4,338
	20SHP	2020	Bladderscan	15,375	15,375	-	-	15,375
	20SHQ	2020	Advanta2 Bed System	15,278	15,278	-	-	15,278
	20SHR	2020	EFl Total Gym Power Tower	5,977	5,977	-	-	5,977 *
	20SHS	2020	Blookbank Centrifuge	7,320	7,320	7,320	7,320	-
	20SHU	2020	Blood Plasma Thawer	4,915	4,915	4,816	4,816	99
	20DTK	2020	Deaerator Tank	180,000	180,000	715	715	179,285
	20STB	2020	Steris Orthovision Table	25,800	25,800	21,799	21,799	4,001
Funds Provided by Hospital Plant Replacement Fund								
	19MON	2019	Patient Monitors	756,000	755,100	666,909	667,809	88,191
Project Totals				<u>\$ 10,130,248</u>	<u>\$ 5,054,141</u>	<u>\$ 1,443,678</u>	<u>\$ 6,519,785</u>	<u>\$ 3,610,463</u>
					Capt Proj Fund	17SPH/M Bond	Total	
Beginning Fund Balance 7/1/19					\$ 3,151,728	\$ 86,148	\$ 3,237,876	
Funds Provided:								
FY20 Transfer from Operating Fund					1,700,000			
FY20 Interest Earnings					37,174			
19MON	SPH Local Contribution - Patient Monitors				755,100			
FY20 Interest Earnings on 17SPH/M Bond Proceeds						700	2,492,974	
Funds applied - current year expenditures					(1,430,096)	(13,582)	(1,443,678)	
Funds obligated to existing projects					(3,558,682)	(51,781)	(3,610,463)	
Projects completed or cancelled					1,418,477	-	1,418,477 *	
Funds available for approp. and future capital expansion plans					<u>\$ 2,073,701</u>		2,073,701	
Funds restricted for 17SPH Bond						<u>\$ 21,485</u>	21,485	
Ending fund balance							<u>\$ 2,095,186</u>	

Kenai Peninsula Borough
Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CPB*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: February 13, 2020

RE: Revenue-Expenditure Report – January 2020

Attached is the Revenue-Expenditure Report of the General Fund for the month of January 2020. Please note that 58.33% of the year has elapsed, 72.80% of budgeted revenues have been collected, and 57.89% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH
Revenue Report
For the Period
January 1 through January 31, 2020

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 30,759,296	\$ 29,801,560	\$ 242,767	\$ (957,736)	96.89%
31200	Personal Property Tax	1,988,657	2,141,757	24,709	153,100	107.70%
31300	Oil Tax	7,347,971	7,343,975	-	(3,996)	99.95%
31400	Motor Vehicle Tax	712,000	215,477	38,960	(496,523)	30.26%
31510	Property Tax Penalty & Interest	499,969	407,282	60,067	(92,687)	81.46%
31610	Sales Tax	32,272,462	16,765,545	1,990,543	(15,506,917)	51.95%
33110	In Lieu Property Tax	3,600,000	78,795	-	(3,521,205)	2.19%
33117	Other Federal Revenue	185,000	30,078	-	(154,922)	16.26%
34110	School Debt Reimbursement	1,324,359	1,088,768	-	(235,591)	82.21%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	750,000	(107,989)	-	(857,989)	-14.40%
34210	Revenue Sharing	843,079	843,613	-	534.0	100.06%
37350	Interest on Investments	936,944	749,213	70,515	(187,731)	79.96%
38000	Trans From Other Funds	175,000	175,000	-	-	100.00%
39000	Other Local Revenue	300,000	281,256	33,298	(18,744)	93.75%
290	Solid Waste	800,000	356,375	22,219	(443,625)	44.55%
Total Revenues		\$ 82,649,737	\$ 60,170,705	\$ 2,483,078	\$ (22,479,032)	72.80%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
January 1 through January 31, 2020

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 494,065	\$ 339,126	\$ 21,935	\$ 13,119	\$ 141,821	68.64%
Clerk	555,004	278,252	40,702	17,215	259,537	50.14%
Elections	113,910	90,590	207	19,153	4,167	79.53%
Records Management	269,852	129,037	19,261	16,249	124,566	47.82%
Mayor Administration	818,559	405,393	53,012	5,533	407,633	49.53%
Purch/Contracting/Cap Proj	625,305	288,417	55,111	5,572	331,316	46.12%
Human Resources:						
Administration	676,140	357,464	48,672	5,922	312,754	52.87%
Print/Mail	194,101	66,281	9,658	24,723	103,097	34.15%
Custodial Maintenance	119,209	59,293	8,556	170	59,747	49.74%
Information Technology	2,015,513	941,698	92,340	24,935	1,048,880	46.72%
Emergency Management	825,019	367,997	70,212	63,512	393,510	44.60%
Legal Administration	1,144,040	509,075	64,391	172,745	462,221	44.50%
Finance:						
Administration	501,884	292,919	50,920	1,146	207,818	58.36%
Services	1,012,211	499,821	64,080	800	511,590	49.38%
Property Tax	1,141,518	524,409	48,475	52,526	564,584	45.94%
Sales Tax	700,683	328,727	39,537	40,236	331,720	46.92%
Assessing:						
Administration	1,416,722	721,661	88,829	37,689	657,371	50.94%
Appraisal	1,983,326	931,979	134,417	6,240	1,045,106	46.99%
Resource Planning:						
Administration	1,264,985	575,038	76,816	29,634	660,313	45.46%
GIS	596,596	299,838	28,569	3,446	293,311	50.26%
River Center	769,721	261,085	35,487	8,830	499,806	33.92%
Senior Citizens Grant Program	608,969	420,048	134,612	188,921	-	68.98%
School District Operations	58,965,977	37,009,033	4,950,424	-	21,956,944	62.76%
Solid Waste Operations	8,858,901	3,407,924	572,573	1,522,590	3,928,387	38.47%
Economic Development	425,000	58,641	33,641	87,229	279,130	13.80%
Non-Departmental	2,376,065	2,056,700	19,654	-	319,365	86.56%
Total Expenditures	<u>\$ 88,473,275</u>	<u>\$ 51,220,447</u>	<u>\$ 6,762,090</u>	<u>\$ 2,348,135</u>	<u>\$ 34,904,693</u>	<u>57.89%</u>

Kenai Peninsula Borough
Finance Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*

THRU: Brandi Harbaugh, Finance Director *BH*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: February 13, 2020

RE: Budget Revisions – January 2020

Attached is a budget revision listing for January 2020. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

ASSESSING/APPRaisal DEPARTMENTS

To cover costs for BAB ice machine replacement and additional funds needed to complete scheduled computer replacements after having to unexpectedly replace failed equipment.

100-11520-00000-48740 (Minor Machines/Equipment)	\$104.35	
100-11510-00000-48710 (Minor Office Equipment)	\$1,000.00	
100-11510-00000-48740 (Minor Machines/Equipment)	\$55.50	
100-11520-00000-43011 (Contract Services)		\$1,159.85

BEAR CREEK FIRE SERVICE AREA

To replace a lost Vacuusplint that was used on a patient who was transported to Anchorage. Attempts to find the Vacuusplint have been unsuccessful.

207-51210-00000-48750 (Minor Medical Equipment)	\$1,025.00	
207-51210-00000-42220 (Medical Supplies)		\$1,025.00

CENTRAL EMERGENCY SERVICES

To purchase a Fire Investigation Module for image trend program management.

211-51610-00000-42120 (Computer Software)	\$1,350.00	
211-51610-00000-43019 (Software Licensing)		\$1,350.00

CLERK'S OFFICE

To cover costs for BAB ice machine replacement.

100-11110-00000-48740 (Minor Machinery/Equipment)	\$210.00	
100-11110-00000-42210 (Operating Supplies)		\$210.00
100-11120-00000-48740 (Minor Machinery/Equipment)	\$30.00	
100-11120-00000-42210 (Operating Supplies)		\$30.00

EASTERN PEN HWY EMERGENCY SERVICE AREA

To cover costs for VHF Paging Channel Programming, per Board approval.

235-51710-00000-43011 (Contract Services)	\$970.00	
235-51710-00000-48120 (Office Machines)		\$970.00

FINANCE DEPARTMENT - ADMINISTRATION

To cover costs for BAB ice machine replacement.

100-11410-00000-48740 (Minor Machines/Equipment)	\$22.29	
100-11410-00000-42210 (Operating Supplies)		\$22.29

HUMAN RESOURCES DEPARTMENT

To cover costs for BAB ice machine replacement.

100-11233-00000-48740 (Minor Machines/Equipment)	\$23.95	
100-11233-00000-42210 (Operating Supplies)		\$23.95
241-11235-00000-48740 (Minor Machines/Equipment)	\$23.77	
241-11235-00000-42210 (Operating Supplies)		\$23.77
100-11235-00000-48740 (Minor Machines/Equipment)	\$23.77	
100-11235-00000-42210 (Operating Supplies)		\$23.77
100-11230-00000-48740 (Minor Machines/Equipment)	\$76.03	
100-11230-00000-43310 (Advertising)		\$76.03

LEGAL DEPARTMENT

To cover costs for BAB ice machine replacement.

100-11310-00000-48740 (Minor Machines/Equipment)	\$35.09	
100-11310-00000-42410 (Small Tools/Minor Equipment)		\$35.09

MAYOR'S OFFICE

To replace two worn out visitor chairs in the Chief of Staff's office.

100-11210-00000-48720 (Minor Office Furniture)	\$375.00	
100-11210-00000-43999 (Contingency)		\$375.00

JANUARY 2020 CONTINUED

INCREASE DECREASE

MAYOR'S OFFICE

To cover costs for BAB ice machine replacement.

100-11210-00000-48740 (Minor Machines/Equipment)	\$29.79	
100-11210-00000-43999 (Contingency)		\$29.79

MAYOR'S OFFICE

To purchase ergonomic office chair.

100-11210-00000-48720 (Minor Office Furniture)	\$275.00	
100-11210-00000-43011 (Contract Services)		\$275.00

ROAD SERVICE AREA

To cover costs of increasing Admin Assistant position to 3/4 time.

236-33950-00000-40110 (Regular Wages)	\$25,000.00	
236-33950-00000-43952 (Road Maintenance)		\$25,000.00

SEWARD BEAR CREEK FLOOD AREA

To pay for taxes, recording fees, and other land acquisition fees for a parcel of land that was donated for conservation and mitigation purposes.

259-21212-00000-48610 (Land Purchase)	\$600.00	
259-21212-00000-42210 (Operating Supplies)		\$600.00

SOLID WASTE DEPARTMENT

To purchase anti-scaling agent for the leachate evaporator.

290-32122-00000-42210 (Operating Supplies)	\$5,000.00	
290-32122-00000-43600 (Project Management)		\$5,000.00

2019 BEST PUBLIC ENGAGEMENT

This award recognizes the public engagement aspects of planning & its effectiveness in supporting good planning; including creative outreach & involvement methods.

2019 KENAI PENINSULA BOROUGH COMPREHENSIVE PLAN

Presented to the Kenai Peninsula Borough, Planning
Department & Agnew::Beck

The Kenai Peninsula Borough is 24,754 square miles in area with a population of 58,000 with approximately 35% of its population living its six incorporated cities and the remaining 65% living in its additional 30 Census Designated Places. Because of this, the public engagement process was more intensive than is typical for many community plans.

The values, vision, goals, objectives and strategies in the plan was developed through an extensive public engagement process, including input and ideas from residents, businesses, tribes, non-profit and community organizations, associations, and government agencies including cities within the Kenai Peninsula Borough. The project team traveled to communities across the borough to invite people to participate, gather thoughts and ideas about what the plan should include, and share how and why the plan is relevant to the entire community.

Despite the large geographical and cultural diversity across the borough, the plan was able to address the needs of the borough and was adopted with a great deal of public support. Over 2,000 residents shared their ideas with the project team; more than 50 interviews and small group discussions with local organizations; over 600 telephone survey responses; and attended 20 public events; including Kenai River Festival, Moose Pass Solstice Celebration, Funny River Festival, Kenai Peninsula Fair, and Industry Appreciation Day.

Bruce Wall, AICP, Kenai Peninsula Borough Team Project Manager



Kenai Peninsula Borough Assembly Committees 2019 – 2020

ASSEMBLY COMMITTEES

- **Finance Committee**
Brent Hibbert, Chair
Tyson Cox, Vice Chair
Brent Johnson
- **Lands Committee**
Brent Johnson, Chair
Kenn Carpenter, Vice Chair
Norm Blakeley
- **Policies & Procedures Committee**
Willy Dunne, Chair
Hal Smalley, Vice Chair
Kenn Carpenter
- **Legislative Committee**
Hal Smalley, Chair
Jesse Bjorkman, Vice Chair
Willy Dunne
- **President Pro Tem**
Brent Hibbert
- **OTHER BOROUGH COMMITTEES**
- **School Board**
Tyson Cox
Brent Johnson, Alternate

SERVICE AREA BOARD LIAISONS

- **Anchor Point Fire & EMS** – Willy Dunne
- **Bear Creek Fire** – Kenn Carpenter
- **CES/CPEMS** – Norm Blakeley
- **Kachemak Emergency Service Area** – Willy Dunne
- **KPB Roads** – Kelly Cooper
- **Nikiski Seniors** – Jesse Bjorkman
- **Nikiski Fire** – Jesse Bjorkman
- **North Peninsula Recreation** – Jesse Bjorkman
- **Seldovia Recreational** – Willy Dunne
- **Seward/Bear Creek Flood** – Kenn Carpenter
- **South Kenai Peninsula Hospital** - Kelly Cooper, Willy Dunne
- **NON-BOROUGH COMMITTEES**
- **Cook Inlet Aquaculture**
Dale Bagley
- **Cook Inlet R.C.A.C.**
Grace Merkes, term expires April 2020
- **Kenai Peninsula Economic Development District**
Hal Smalley, term expires with office
- **Kenai Peninsula College Council**
VACANT, term expires with office
- **Kenai River Special Management Area Advisory Board**
Brent Hibbert, term expires with office
- **Prince William Sound R.C.A.C.**
Mako Haggerty, term expires May 2019
- **Kachemak Bay Research Reserve Community Council**
Willy Dunne, term expires with office