

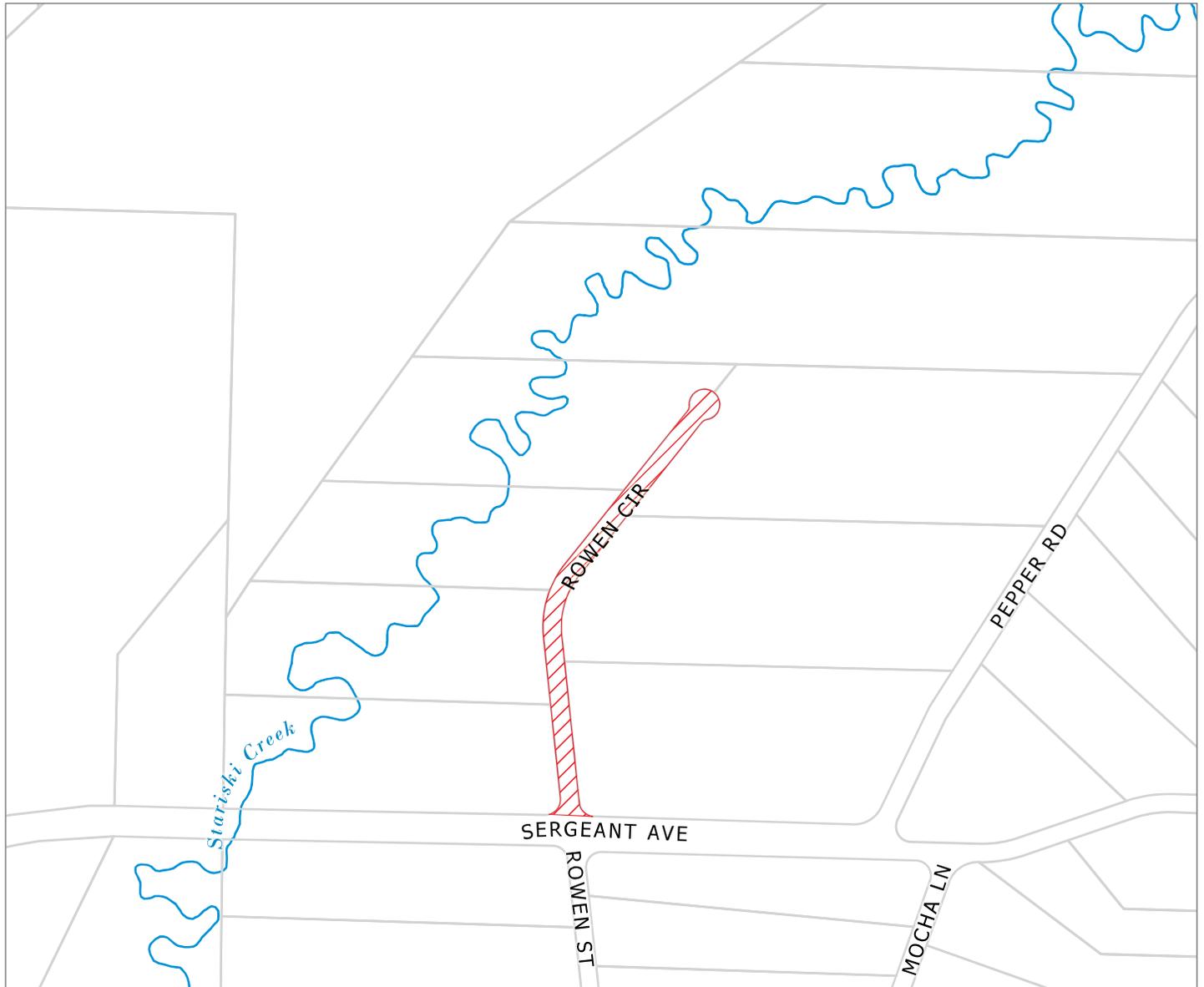
E. NEW BUSINESS

3. Right of Way Vacation; KPB File 2024-075V

No Surveyor / Kachemak Heritage Land Trust

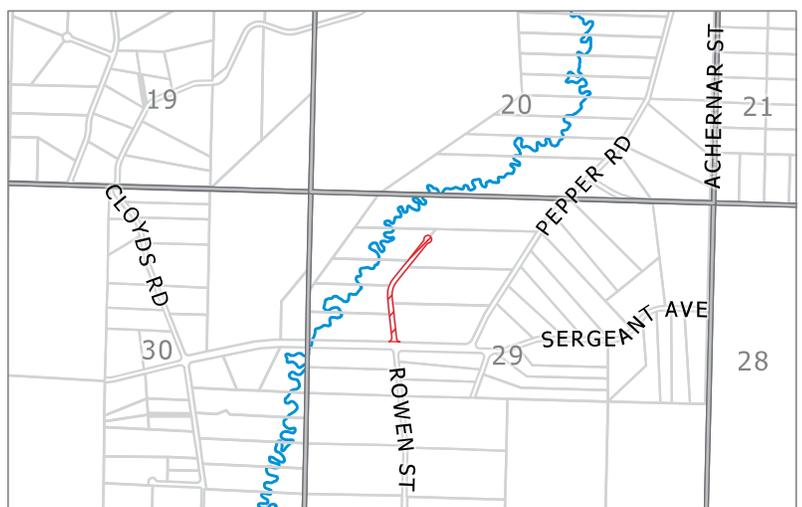
**Request: Vacates the entire 60' Rowen Circle ROW
adjacent to Lots 13-16 & 45-47, dedicated by Stariski
Meadow, Plat HM 97-62**

Happy Valley Area / Kachemak Bay APC



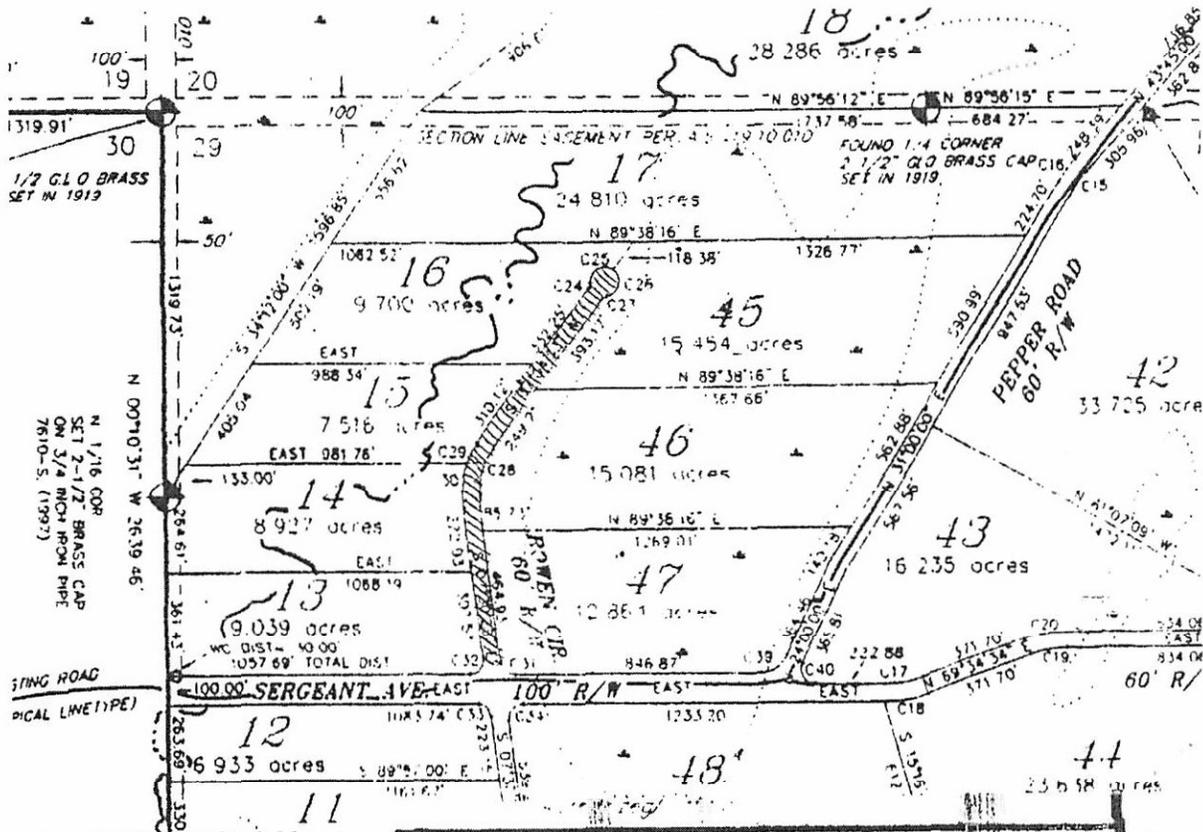
KPB File 2024-075V
T 03S R 14W SEC 29
Happy Valley

7/15/2024





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



LEGEND:

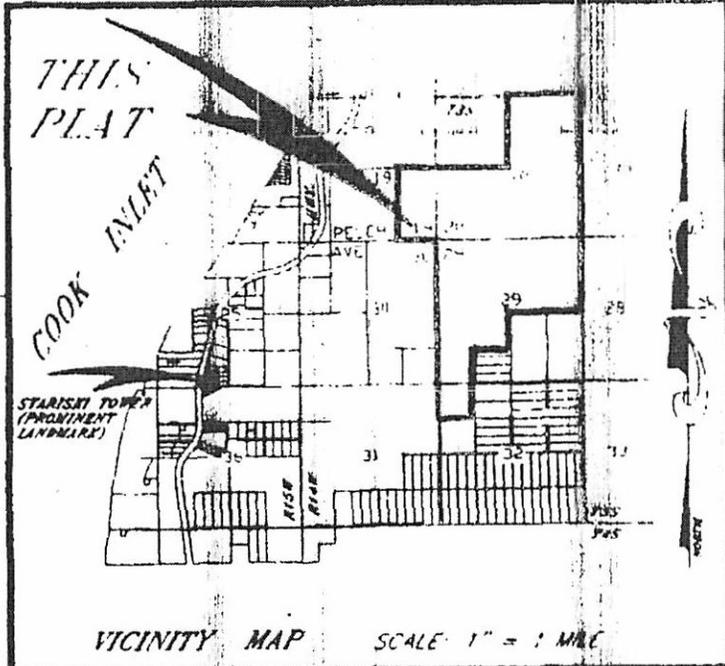
RIGHT OF WAY TO BE VACATED

AFFECTED (ABUTTING) PARCELS:

13, 14, 15, 16, 45, 46, 47

MAP ACCOMPANYING PETITION TO VACATE PUBLIC RIGHT OF WAY KENAI PENINSULA BOROUGH PLANNING DEPT.

SUBMITTED BY ANODEB INVESTMENTS



STARISKI MEADOWS

A SUBDIVISION OF THE E 1/2 SEC 14 SEC 19, NE 1/4 & SW 1/2 SEC 20, NW 1/2 & NW 1/2 SW 1/4 & SW 1/4 SW 1/4 SEC 29 NW 1/4 NW 1/4 SEC 32, ALL WITHIN Twp 35, Rge 14W, S.M., HOMER RECORDING DISTRICT, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA CONTAINING 1039.220 ACRES

SURVEY'S

97-62

RECORDED

HOMER REC DIST

DATE 10-31 19 97

TWP 35:14 A.W.

REQUESTED BY Ability

ADDRESS

Statement Supporting Vacation of Right of Way, Exhibit G

**Statement of Reasons Supporting Petition to Vacate Right of Way
pursuant to Kenai Peninsula Borough Code Ch. 20.65
submitted by Modeb Investments on behalf of Kachemak Heritage Land Trust
June 2024**

This Statement of Reasons is submitted pursuant to Kenai Peninsula Borough (“KPB”) Code § 20.65.040 regarding a petition to vacate right of way within the Stariski Meadows Subdivision for the street named “Rowan Circle¹.” This Statement accompanies a completed “Petition to Vacate Platted Right of Way/Platted Public Easement/Platted Public Area” on a KPB Planning Department form.

Modeb Investments submits the petition on behalf of the Kachemak Heritage Land Trust (“KHLT”) as owner of the subdivision parcels abutting on the platted street whose right of way is proposed for vacation. KHLT has signed the petition as “Land Owner” for five of the affected parcels and has authorized Modeb to submit the petition on its behalf through resolution attached hereto.

Background

In October 1997, Modeb Investments recorded a plat for the Stariski Meadows Subdivision in the Homer Recording District as Plat No. 97-62. The subdivision had been previously approved by the KPB platting authority. Modeb Investments was an Alaska general partnership whose members were Cloyd Moser, Wynn Moser and Kiana Investments, Inc., an Alaska corporation whose principal was Ray Debenham.

The Stariski Meadows Subdivision comprises some 1,037 acres of land that created several lots, blocks and streets. This is a rural residential subdivision in the “Happy Valley” area of unincorporated Borough land with rudimentary improvements. The subdivision straddles more than two linear miles of Stariski Creek and several lots are riparian, i.e. adjoin the stream.

In 2001, the United States brought a Clean Water Act (CWA) enforcement action against Modeb and others in the U.S. District Court for the District of Alaska. The lawsuit alleged that defendants had engaged in unauthorized dredge and fill of jurisdictional “waters of the United States,” including wetlands in violation of § 301 of the CWA, 33 U.S.C. § 1311. The Complaint sought declaratory and injunctive relief along with damages against defendants.

¹ The name of the right-of-way is inconsistent in various documents. It is called “Rowen Circle” on Plat No. 97-62 and the KPB Parcel Viewer, but “Rowan Circle” in the 7/21/2005 recorded Consent Decree excerpted in Exhibit A and in Exhibit B. Both spellings are used in Exhibit F. It is called “Rowen Court” in Exhibits D and E.

In July 2005, defendants Modeb and Cloyd Moser individually entered into a Consent Decree whereby they settled the government's claims by agreeing to perform several actions: first, all unsold lots in the subdivision titled in Modeb were conveyed to KHLT to be held in perpetuity for conservation purposes and subject to deed restrictions consistent thereto; second, the settling defendants agreed to a site restoration plan that called for improved culverting, regrading of streets, drainage revisions and restoration of certain locations to approximate natural conditions in a wetlands environment pursuant to a "Supplemental Environmental Project;" third, certain streets in the subdivision were to be vacated to preserve the wetlands characteristics thereof where not needed for access and where property owner approval was realized; and money damages was paid to the United States.² This description of the Consent Decree is partial only for purposes of this petition.

In 2005 and thereafter in 2007, Modeb undertook site restoration work to fulfil its obligations under the terms of the Consent Decree, the Restoration Plan and Supplemental Environmental Project incorporated therein. In pertinent part, Modeb performed restoration work on the northern portion of Rowan Circle, a cul-de sac extending in a northerly direction from Sergeant Avenue within the subdivision. The Restoration Plan only required restoration from the northern boundary of Lot 14 adjoining Rowan Circle to the west to its northern terminus, a distance of approximately 1,000 feet. Illustrative photos of the 2005 restoration work are attached as Exhibit B.

The partial rather than full restoration of Rowan Circle was due to Lots 13 and 14 abutting on the cul-de-sac to the west being in private ownership in 2005 and access at least to Lot 14 through the cul-de-sac would be necessary. A 2005 drawing depicting the lots adjoining Rowan Circle within the subdivision and the northern portion of the right of way proposed for vacation is attached as Exhibit C. Modeb therefore submitted a petition in 2005 to the KPB proposing to vacate only the northern portion of Rowan Circle subject of its restoration work.

The KPB docketed Modeb's 2005 petition as File 2005-255 and prepared a staff report for presentation to the Borough Planning Commission, copy attached as Exhibit D. Public notice was given, a public hearing scheduled and persons were allowed to comment on the petition. The only comment received was from Central Emergency Services, a fire service agency within the KPB government. See Exh. D. According to a Borough Fire Marshall, the proposed partial vacation would leave more than 150 feet (the southern part of the street) as valid right-of-way and the International Fire Code would require a turning radius of 96 feet for fire apparatus serving this portion of the street.

² See *United States v. Clarence Abeldgaard, et al*, No. A-01—378 Civ., Consent Decree with Defendants Cloyd Moser and Modeb Investments (D. Alaska, filed July 6, 2005). An excerpted copy of the Consent Decree is attached as Exh. A with this Statement.

The KPB staff report accompanying the 2005 petition recommended approval of the partial vacation of Rowan Circle subject to a condition “providing a minimum 50 foot radius cul-de-sac dedication in compliance with KPB 20.20.090 and the International Fire Code, in a location acceptable to the EPA and the COE.” See Exh. D. If realized, this condition would defeat the purposes served by the Restoration Plan accompanying the Consent Decree because new disturbance of jurisdictional wetlands would have resulted. Modeb thereafter withdrew its 2005 petition and attempted to deal with the Fire Code issue.

Several years later, the Justice Department negotiated a consent decree with other defendants to the CWA enforcement action. In pertinent part, this settlement resulted in Lot 14 (abutting on Rowan Circle to the west and previously in private ownership) being acquired by the KHLT. Thus the concern about fire apparatus access to Rowan Circle and a turning radius for the equipment to serve Lot 14 was now removed.

Commencing in the summer of 2016, Modeb again inquired with State and Borough fire protection personnel about the need for equipment to access the vacated portion of Rowan Circle once Lot 14 was no longer going to be developed and was in preservation status with the KHLT. Through a series of communications both the Borough Central Emergency Services and the Anchor Point Fire & EMS replied that they expressed no objection to the partial vacation of Rowan Circle right-of-way.³

Current Petition to Vacate Rowan Circle

The current petition proposes to vacate the entirety of Rowan Circle as a platted right-of-way within the Stariski Meadows Subdivision. A new drawing accompanies this petition, attached as Exh. F. which shows the area of the cul-de-sac to be vacated from the northern boundary of the adjacent Sergeant Avenue.

The current petition proposes vacation of the southern portion of Rowan Circle not subject to the 2005 petition because none of the adjoining lots (13, 14, 46 and 47) require access, including fire protection. Lots 14, 46 and 47 are titled in KHLT and thus are in preservation status with no development or motor vehicle usage allowed. Lot 13 is privately owned and has a home constructed on it, however that property is a large corner lot with access available from Sergeant Avenue. See Exh. G, which reproduces a map from KPB imagery and shows the parcel in question.

A table of property ownership for all lots adjoining Rowan Circle is attached as Exh. H. The affected parcels are Lots 13-16 and 45 through 47. Lots 14, 15, 16, 46 and 47 are

³ See letters from Central Emergency Services (undated attached to email reply of August 15, 2016) and Anchor Point Fire & EMS dated February 13, 2017, both addressed to Lawrence V. Albert and attached as part of Exh. E.

owned in fee title by KHLT. Lot 45 adjoins Rowan Circle at its northern terminus and to the east. This is a 15 acre parcel with frontage also on Pepper Road to the east. Only a small portion of the eastern part of the parcel is developable and not subject to CWA jurisdiction; that portion of Lot 45 has access to Pepper Road. The western portion of the parcel is restricted from development, including the area adjoining Rowan Circle, and KHLT holds a perpetual conservation easement on the parcel.

The KPB Code requires “[t]he owners of a majority of the land abutting the area being vacated” to consent to a petition to vacate right of way. According to Exh. G table of property ownership, KHLT owns fee title to five of the seven adjoining parcels and its consent to the petition satisfies this requirement. Moreover, KHLT holds a conservation easement over a sixth parcel--Lot 45—for that portion abutting on Rowan Circle.

The KPB Code sets forth several criteria by which the planning commission shall consider a vacation petition. See KPB Code 20.65.050(D). Modeb submits these criteria are satisfied as follows:

1. Rowan Circle right-of-way is not presently being used; therefore vacation results in no adverse effect presently on adjoining property owners.

2. While an improved road may be constructed to manifest the platted right of way for Rowan Circle, this would defeat the purposes of the Consent Decree and preservation of jurisdictional wetlands. Only two parcels with allowed developmental use (Lots 13 and 45) have alternative access as explained above.

3. The area surrounding Rowan Circle is not fully developed for the reasons explained above. For the two parcels in private ownership, “all planned or needed rights-of-way and utilities are constructed” for purposes of serving Lots 13 and 45.

4. The jurisdictional wetlands within the Stariski Meadows Subdivision along with Stariski Creek itself are of “public interest or value,” however access to these features in areas adjoining Rowan Circle will not be impeded by vacation of the right of way. Persons may access such features from the intersection of Sergeant Avenue and Rowan Circle along with other locations internal to the subdivision.

5. The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels whether developed or undeveloped because the area surrounding Rowan Circle, for all intents and purposes, will remain in conservation status pursuant to deed restrictions on property ownership

6. Other public access to the area adjoining Rowan Circle exists or may be feasible according to item 4 above.

7. No utilities serve the parcels adjoining Rowan Circle through easements superimposed on that platted right-of-way. Again, the area is entirely undeveloped with the exception of a home on Lot 13 and utility service to that parcel is served through Sergeant Avenue.

8. Factors relevant to the vacation application or the area proposed to be vacated are twofold: implementation of the Restoration Plan contained in the Consent Decree with Modeb the objective of which is preservation of jurisdictional wetlands within the Stariski Meadows Subdivision and accommodating fire protection service to developed properties in private ownership. The latter concern is accommodated according to correspondence set forth in Exh. E

KHLT has authored a resolution endorsing this petition for vacation of Rowan Circle and acknowledging its consent through ownership of adjacent Lots 14, 15, 16, 46 and 47, and its authority to enforce a conservation easement over Lot 45. KHLT's resolution also authorizes Modeb to submit the petition on its behalf subject to conditions that Modeb assume the costs of application and processing the petition, including preparation and approval of a vacation plat required by KPB Code 20.10.080. See Exh. I.

**Schedule of Exhibits Accompanying Statement of Reasons—
Petition to Vacate Rowan Circle within Stariski Meadows Subdivision**

A. United States v. Clarence Abeldgaard, et al, No. A-01-378 Civ., Consent Decree with Defendants Cloyd Moser and Modeb Investments (D. Alaska, filed July 6, 2005) (excerpt with Restoration Plan).

B. Photos of 2005 site restoration work on Rowan Circle.

C. Excerpt from Stariski Meadows Subdivision Plat showing Rowan Circle and adjoining lots subject of 2005 Petition to vacate right of way.

D. Kenai Peninsula Borough Planning Department, Staff Report to Borough Planning Commission meeting of October 10, 2005 to address petition to vacate portion of Rowan Circle in Stariski Meadows Subdivision

E. Letter from Central Emergency Services (Central Kenai Peninsula Fire & EMS Providers) to Kenai Peninsula Borough Planning Commission, September 13, 2005.

F. Correspondence regarding Kenai Peninsula Fire Department and State Fire Marshall regarding fire service to proposed vacation of Rowan Circle right-of-way.

G. Excerpt from Stariski Meadows Subdivision Plat showing Rowan Circle and adjoining lots subject of 2024 Petition to vacate right of way.

H. Kenai Peninsula Borough Parcel Viewer—Air Photo Map of Rowan Circle (downloaded 2017).

I. Table of property ownership for lots abutting on Rowan Circle, Stariski Meadows Subdivision.

J. Resolution of Kachemak Heritage Land Trust consenting to petition to vacate Rowan Circle, Stariski Meadows Subdivision, and authorizing Modeb Investments to submit petition on its behalf.

**Statement of Reasons Supporting Petition to Vacate Right of Way
pursuant to Kenai Peninsula Borough Code Ch. 20.65
submitted by Modeb Investments on behalf of Kachemak Heritage Land Trust
(date) 2024**

This Statement of Reasons is submitted pursuant to Kenai Peninsula Borough (“KPB”) Code § 20.65.040 regarding a petition to vacate right of way within the Stariski Meadows Subdivision for the street named “Rowan Circle.” This Statement accompanies a completed “Petition to Vacate Platted Right of Way/Platted Public Easement/Platted Public Area” on a KPB Planning Department form.

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condition would defeat the purposes served by the Restoration Plan accompanying the Consent Decree because new disturbance of jurisdictional wetlands would have resulted. Modeb thereafter withdrew its 2005 petition and attempted to deal with the Fire Code issue.

Several years later, the Justice Department negotiated a consent decree with other defendants to the CWA enforcement action. In pertinent part, this settlement resulted in Lot 14 (abutting on Rowan Circle to the west and previously in private ownership) being acquired by the KHLT. Thus the concern about fire apparatus access to Rowan Circle and a turning radius for the equipment to serve Lot 14 was now removed.

Commencing in the summer of 2016, Modeb again inquired with State and Borough fire protection personnel about the need for equipment to access the vacated portion of Rowan Circle once Lot 14 was no longer going to be developed and was in preservation status with the KHLT. Through a series of communications both the Borough Central Emergency Services and the Anchor Point Fire & EMS replied that they expressed no objection to the partial vacation of Rowan Circle right-of-way.²

Current Petition to Vacate Rowan Circle

The current petition proposes to vacate the entirety of Rowan Circle as a platted right-of-way within the Stariski Meadows Subdivision. A new drawing accompanies this petition, attached as Exh. F. which shows the area of the cul-de-sac to be vacated from the northern boundary of the adjacent Sergeant Avenue.

The current petition proposes vacation of the southern portion of Rowan Circle not subject to the 2005 petition because none of the adjoining lots (13, 14, 46 and 47) require access, including fire protection. Lots 14, 46 and 47 are titled in KHLT and thus are in preservation status with no development allowed. Lot 13 is privately owned and has a home constructed on it, however that property is a large corner lot with access available from Sergeant Avenue. See Exh. G, which reproduces a map from KPB imagery and shows the parcel in question.

A table of property ownership for all lots adjoining Rowan Circle is attached as Exh. H. The affected parcels are Lots 13-16 and 45 through 47. Lots 14, 15, 16, 46 and 47 are owned in fee title by KHLT. Lot 45 adjoins Rowan Circle at its northern terminus and to the east. This is a 15 acre parcel with frontage also on Pepper Road to the east. Only a small portion of the eastern part of the parcel is developable and not subject to CWA jurisdiction; that portion of Lot 45 has access to Pepper Road. The western portion of the

² See letters from Central Emergency Services (undated attached to email reply of August 15, 2016) and Anchor Point Fire & EMS dated February 13, 2017, both addressed to Lawrence V. Albert and attached as part of Exh. E.

parcel is restricted from development, including the area adjoining Rowan Circle, and the owner has given a conservation easement to KHLT.

The KPB Code requires “[t]he owners of a majority of the land abutting the area being vacated” to consent to a petition to vacate right of way. According to Exh. G table of property ownership, KHLT owns fee title to four of the seven adjoining parcels and its consent to the petition satisfies this requirement. Moreover, KHLT holds a conservation easement over a fifth parcel--Lot 45—for that portion abutting on Rowan Circle.

The KPB Code sets forth several criteria by which the planning commission shall consider a vacation petition. See KPB Code 20.65.050(D). Modeb submits these criteria are satisfied as follows:

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3. The area surrounding Rowan Circle is not fully developed for the reasons explained above. For the two parcels in private ownership, “all planned or needed rights-of-way and utilities are constructed” for purposes of serving Lots 13 and 45.

4. The jurisdictional wetlands within the Stariski Meadows Subdivision along with Stariski Creek itself are of “public interest or value,” however access to these features in areas adjoining Rowan Circle will not be impeded by vacation of the right of way. Persons may access such features from the intersection of Sergeant Avenue and Rowan Circle along with other locations internal to the subdivision.

5. The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels whether developed or undeveloped because the area surrounding Rowan Circle, for all intents and purposes, will remain in conservation status pursuant to deed restrictions on property ownership. Lot 13 is a corner lot and any connectivity it seeks may be realized with parcels to the west.

6. Other public access to the area adjoining Rowan Circle exists or may be feasible according to item 4 above.

7. No utilities serve the parcels adjoining Rowan Circle through easements superimposed on that platted right-of-way. Again, the area is entirely undeveloped with

the exception of a home on Lot 13 and utility service to that parcel is served through Sergeant Avenue.

8. Factors relevant to the vacation application or the area proposed to be vacated are twofold: implementation of the Restoration Plan contained in the Consent Decree with Modeb the objective of which is preservation of jurisdictional wetlands within the Stariski Meadows Subdivision and accommodating fire protection service to developed properties in private ownership. The latter concern is accommodated according to correspondence set forth in Exh. E

KHLT has authored a resolution endorsing this petition for vacation of Rowan Circle and acknowledging its consent through ownership of adjacent Lots 14, 15, 16, 45 (conservation easement), 46 and 47. KLHT's resolution also authorizes Modeb to submit the petition on its behalf subject to conditions that Modeb assume the costs of application and processing the petition, including preparation and approval of a vacation plat required by KPB Code 20.10.080. See Exh. I.



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 Environment and Natural Resources Division
 Washington, D.C.
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 Telephone: (907) 271-5071

L.S. M...
 MAY 10 2005

FILED

JUL 06 2005

UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA

FEB
 Certified to be a true and correct copy
 of original filed in my office
 Dated *7/6/05*
IDA BOMBACK, Clerk
Deputy

Attorneys for Plaintiff United States of America

**UNITED STATES DISTRICT COURT
 DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. A-01-378 Civil (RRB)
v.)	
)	
CLARENCE ABELDGAARD,)	CONSENT DECREE WITH
OCEANVIEW ENTERPRISES, INC.,)	DEFENDANTS CLOYD MOSER AND
CLOYD MOSER and MODEB)	MODEB INVESTMENTS
INVESTMENTS,)	
)	
Defendants.)	

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the First Amended Complaint in this matter on July 30, 2002, adding Defendants Cloyd Moser and Modeb Investments (collectively, "Defendants," and each of the Defendants may be referred to individually as "Defendant");

Statement in Support of Petition to Vacate Right of Way, Exhibit A



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with current electronic funds transfer procedures, referencing U.S.A.O. file number 2001V00226, EPA Region X and the DOJ case number 90-5-1-1-16195. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Alaska. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of the civil penalty required by this Consent Decree, Defendants shall provide written notice to the United States, at the addresses specified in paragraph 56 of this Consent Decree, that such payment was made in accordance with paragraph 17 above.

19. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

V. INJUNCTIVE RELIEF - RESTORATION

20. Defendants shall perform the restoration under the terms and conditions stated in Appendix A appended hereto and incorporated herein by reference.

21. Upon completion of the terms and conditions of Appendix A, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any location identified in Appendix A, except as approved by EPA.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT - ESTABLISHMENT OF PERMANENT WETLAND CONSERVATION AREA

22. Defendants shall complete the following supplemental environmental project



("SEP"), which the parties agree is intended to secure significant environmental protection and improvements. The cost to Defendants of implementing this SEP shall exceed \$205,000, including: (a) the assessed value of transferred land; (b) any costs paid by Defendants associated with effectuating the transfer and permanent conservation easements discussed below; and (c) any costs paid by Defendants associated with creating an endowment for purposes of managing the land within the permanent wetland conservation area discussed below.

23. Not more than ninety (90) days after entry of this Consent Decree, Defendants shall transfer the fee simple interest in Stariski Meadows subdivision lots 15, 16, 19 through 33, 37, 46 and 47 to the Kachemak Heritage Land Trust ("KHLT"), and shall ensure that permanent deed restrictions preventing the impairment of or interference with the conservation and water quality values of those lots become effective upon the transfer of the lots to KHLT. The transfer and permanent deed restrictions shall be acceptable to the United States. In addition, Defendants shall ensure that, not more than ninety (90) days after entry of this Consent Decree, KHLT's Board of Directors passes a resolution providing that, if KHLT ceases to retain ownership of any of the lots, KHLT will ensure that, upon transfer of the lots to a new owner, KHLT or a similar conservation organization shall receive permanent conservation easements on the transferred lots. The KHLT Board of Directors' resolution shall be acceptable to the United States.

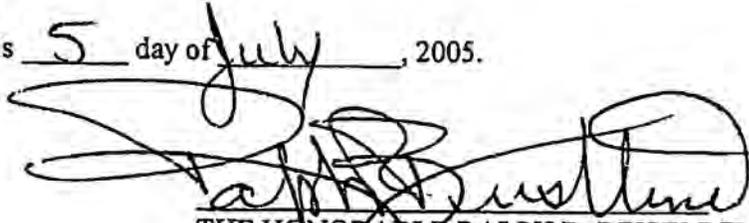
24. Not more than ninety (90) days after entry of this Consent Decree, Defendants shall ensure that permanent conservation easements to KHLT become effective on the wetland portions of Stariski Meadows subdivision lots 17, 18 and 45, as depicted on the map attached hereto as Appendix B. The permanent conservation easements shall be acceptable to the United States.



resolution of the dispute by the parties or the Court.

IT IS SO ORDERED.

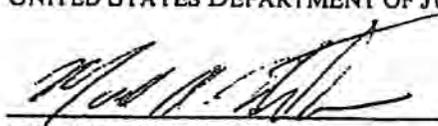
Dated and entered this 5 day of July, 2005.



THE HONORABLE RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

ON BEHALF OF THE UNITED STATES:

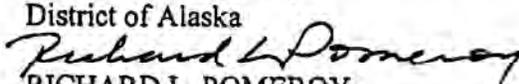
KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
UNITED STATES DEPARTMENT OF JUSTICE



MARK A. NITCZYNSKI
Environmental Defense Section
UNITED STATES DEPARTMENT OF JUSTICE
999 18th Street, Ste. 945
Denver, CO 80202
PHONE: (303) 312-7300
FAX: (303) 312-7331

Date: 5/6/05

TIMOTHY M. BURGESS
United States Attorney
District of Alaska



RICHARD L. POMEROY
Assistant U.S. Attorney

A01-0378--CV (RRB)

7-6-05

PER

- ✓ L. ALBERT
- ✓ R. POMEROY (ADSA)
- ✓ C. ABELDGAARD

Statement in Support of Petition to Vacate Right of Way, Exhibit A



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2005-003280-0

APPENDIX A - RESTORATION PLAN

This document sets forth the restoration required by Defendants Cloyd Moser and Modeb Investments (collectively, "Defendants") under this Consent Decree With Cloyd Moser and Modeb Investments ("Consent Decree"). The terms of this Appendix, including the attached photos (Photos 1-10) and all drawings referred to herein, are incorporated into and set forth binding provisions of the Consent Decree. This restoration shall be carried out in accordance with all of the terms of the Consent Decree, including the terms set forth below in this document. The restoration work required under this Restoration Plan and the Consent Decree shall not be considered to be completed unless and until all of the Success Criteria are met for each location.

I. PEPPER ROAD-- VIOLATION SITE 7L

A. *Location:* This location is identified as Violation Site 7L in Supplement 1, "Documentation of Violation in the Stariski Meadows, Happy Valley, and Piper's Haven Subdivisions, Stariski Creek Watershed, Kenai Peninsula Borough, State of Alaska" (hereafter "Supplement 1") to the January 15, 2003, report completed by L.C. Lee & Associates, Inc., entitled "Analysis of the Geographic Extent and Impacts to Waters of the United States, Including Wetlands in the Stariski Meadows, Happy Valley, and Piper's Haven Subdivisions, Stariski Creek Watershed, Kenai Peninsula Borough, Alaska" (hereafter "Geographic Extent Report").^{1/} This site is addressed in detail on pages 14-15 of Supplement 1.

The GPS coordinates for the northern boundary of the wetlands where work is to be performed are: 0572119E; 6641837N.^{2/} See Photo 1 attached hereto. The coordinates for the north end of Pepper Road are: 0572122E; 6640315N. The GPS coordinates for the northernmost of two unnamed tributaries that Pepper Road crosses, where a box culvert is to be replaced, are: 0572021E; 6641416N. The GPS coordinates for the southern boundary of the wetlands where work is to be performed are: 0571799E; 6640649N. See Photos 2-3 attached hereto (showing L.C. Lee & Associates' survey marker with pink wetlands delineation survey tape and view north of Pepper Road from southern boundary where work is to take place). The length of Pepper Road where work is to be performed is approximately 4,300 feet.

B. *Concerns/Problems to be addressed:* The hydrologic conditions of the slope wetland in this location have been altered and should be restored to the extent possible given that the road will remain in place. The improper road and ditch construction, including the absence of adequate culverting, has led to excessive sedimentation and erosion. The "box" culvert where Pepper Road crosses the northernmost unnamed tributary is undersized, will not sufficiently transmit seasonal high flows, causes excessive sedimentation and erosion in the stream and impedes adult and juvenile fish movement.

^{1/} The Geographic Extent Report, including Supplement 1, was produced to the Defendants by the United States in this litigation.

^{2/} The datum for the GPS unit used in establishing the coordinates included in these specifications is WGS 84, which will allow for reference to the Kenai Peninsula Borough's GPS data. The zone is ~~State~~ Statement in Support of Petition to Vacate Right of Way, Exhibit A



revegetation shall be repeated until the criteria are met one year from completion of the most recent reseeded and/or revegetation.

4. By August 15, 2005, the "box" culvert at the northernmost unnamed tributary on Pepper Road must be properly replaced in accordance with the specifications set forth in I.D.4 above.

5. By August 15, 2005, bank stabilization work (if any) that a U.S. rep. determines in the field to be necessary must be completed properly in accordance with specifications determined in the field.

II. SERGEANT AVENUE EXTENSION-VIOLATION SITE 6L

A. *Location:* This site is identified as Violation Site 6L in Supplement 1, pages 12-13. Photos 4-6 attached hereto generally show the area of Sergeant Avenue Extension to be removed. Photos 3-5 were taken at the same location near the western limit of wetlands at this restoration location.

No existing L.C. Lee & Associates' wetland delineation markers were found for the area during the parties' joint site visit on May 13, 2004. During that site visit, new stakes were placed on the north and south shoulders of the road marking the "limit of work area" for the restoration work at this location. See Photos 4-6. These stakes approximate the western boundary of the wetlands at this location but are not necessarily precise wetland boundaries. At the location of Photos 4-6, the wetland begins just east of the spruce stand abutting Sergeant Avenue Extension on the south side of the road. The eastern terminus of the fill is approximated by the pile of fill material shown in Photo 5. The GPS coordinates for the east end of Sergeant Avenue Extension are: 571540E 6639872N. The road fill to be removed is approximately 550 feet in length.

B. *Concerns/Problems to be addressed:* The road has been built in wetlands at this location and has eliminated all wetland functions where fill has been placed.

C. *Goals of the restoration:* Remove the road fill and restore the area to its prior wetland state, including vegetation, and restore all prior wetland functions.

D. *Description of work to be performed:*

1. *Road Fill Removal Work:* The existing road fill shall be removed and disposed off site. Ponding of water shall be minimized. Defendants shall leave in place a small quantity of mineral soil fill and mix this fill with underlying peat. (This shall be done in order to minimize ponding and to avoid leaving a ground depression, which will result if the fill is completely removed without correction.) Construction equipment shall be deployed and operated so as to minimize disturbance of underlying peat material and adjacent wetlands. Also, mixing and lofting of remaining materials with underlying peat shall provide a smooth transition to surrounding undisturbed areas.

2. *Description of Seeding and Revegetation Work:* The area where road fill is

Statement in Support of Petition to Vacate Right of Way, Exhibit A



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being removed shall be revegetated through reseeding. A seed mix with a higher proportion of bluejoint (*Calamagrostis canadensis*) than the one set forth in the Geographic Extent Report, Appendix L, Drawing D-2 "Seed Mix," shall be used for this area. In addition, live willow staking (spacing shall be two feet on center) shall be used for revegetation at this location. The specification on live staking is shown in the Geographic Extent Report, Appendix L, Drawing D-4 "Cutting or Live Stake Planting Detail." Defendants shall ensure that their contractor is provided with a copy of that drawing. Additional directions for the live willow staking are set forth in the document entitled "Willow and Dogwood Stem Cutting Collection Detail," which is attached as Exhibit 1 to this Restoration Plan. Defendants shall ensure that their contractor is provided with a copy of that Exhibit.

3. *Description of Barrier Work:* Upon completion of road removal and seeding and revegetation work, a barrier shall be constructed just west of the western "limit of work area" on Sergeant Avenue Extension. The barrier shall block vehicle passage, including four wheel off road vehicles. A "tank trap," "kelly humps" or other form of mounded feature that prevents vehicle access to the restoration site shall be constructed. In addition, crisscrossed (jackstrawed) spruce logs (at least 25 feet long and 12 inches in diameter at the base) or some equivalent barrier straddling or just west of the mounded feature shall be constructed and left in place as a barrier.

Notice: During the parties' joint site visit on May 13, 2004, the entrance to Sergeant Avenue Extension was blocked by an Allis Chalmers bulldozer. Defendants shall be responsible for making arrangements to access this restoration location, including, if necessary, arranging for removal of this equipment.

E. *Success Criteria:* Restoration at this location will be considered successful if the following criteria are met:

1. By August 15, 2005, the road fill removal work must be properly completed in accordance with the specifications set forth in II.D.1 above.

2. By August 15, 2005 the area where road fill is being removed must be properly revegetated through reseeding in accordance with the specifications set forth in II.D.2 above. In addition, by August 15, 2008: (a) 75 percent of the staked willows must be alive and established; and (b) that area must have 75 percent areal (canopy) coverage by plant species native to the Stariski Creek area (including the staked willows). If these percent criteria are not met by August 15, 2008, then the reseeding, revegetation and/or willow staking shall be repeated until the criteria are met three years from completion of the most recent reseeding, revegetation and/or willow staking.

3. By August 15, 2005, a barrier that blocks vehicle passage must be properly constructed just west of the western "limit of work area" in accordance with the specifications set forth in II.D.3 above.

III. ROWAN CIRCLE-VIOLATION SITE 1L(b)

A. *Location:* This site is identified as Violation Site 1L(b) in Supplement 1, pages 2-3. Photos 7-10 attached hereto show the location of Rowan Circle that is the subject of this restoration work. The northern terminus of the road (a cul-de-sac) is not visible in these pictures. The restoration work shall commence at the northern boundary of Lot 14 (which lies to the west of Rowan Circle) and continues to the northern terminus of the road. A stake marking the northern boundary of Lot 14 abutting on Rowan Circle is visible in Photo 7. Hence, the limit of work area can be readily determined from the lot markers abutting on Rowan Circle.

B. *Concerns/Problems to be addressed:* The road has been built in wetlands at this location and has eliminated all wetland functions where the fill has been placed.

C. *Goals of the restoration:* Remove the road fill and restore the area to its prior wetland state, including vegetation, and restore all prior wetland functions.

D. *Description of work to be performed:* The fill removal, seeding and revegetation, and barrier construction at this location shall be performed according to the specifications and guidance provided above for Sergeant Avenue Extension (site 6L).

In addition, the existing ditch on the east shoulder of Rowan Circle shall be filled and removed according to the specifications and guidance provided above for removal/filling of the second ditch near Pepper Road in LD.3 above. The ditch shall be restored to its original elevation and slope. The fill shall come from the material sidecast from the original excavation and located adjacent to the ditch. (That sidecast material is now covered with grasses in some places). The ditch area to be filled also shall be revegetated through reseeding according to the specifications and guidance provided above for Sergeant Avenue Extension (site 6L).

The ditch south of the restoration area shall be plugged, using a plug or check dam constructed of earth, rock or a combination of the two, at the southern terminus of the work area at this location (which is the northern boundary of Lot 14). Approximate design specifications for a rock check dam are shown in the Geographic Extent Report, Appendix L, Drawing D-1. Defendants shall ensure that their contractor is provided with a copy of that drawing. Defendants' contractor shall work in the field with a U.S. rep to determine the optimal construction method for the plug or check dam.

E. *Success Criteria:* Restoration at this location will be considered successful if the following criteria are met:

1. By August 15, 2005, the road fill removal work must be properly completed in accordance with the specifications set forth in III.D and II.D.1 above.

2. By August 15, 2005 the area where road fill is being removed must be properly revegetated through reseeding in accordance with the specifications set forth in III.D and II.D.2 above. In addition, by August 15, 2008: (a) 75 percent of the staked willows must be alive and established; and (b) that area must have 75 percent areal (canopy) coverage by plant species

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native to the Stariski Creek area (including the staked willows). If these percent criteria are not met by August 15, 2008, then the reseeding, revegetation and/or willow staking shall be repeated until the criteria are met three years from completion of the most recent reseeding, revegetation and/or willow staking.

3. By August 15, 2005, a barrier that blocks vehicle passage must be properly constructed just north of the northern boundary of Lot 14 in accordance with the specifications set forth in III.D and II.D.3 above.

4. By August 15, 2005, the existing ditch on the east shoulder of Rowan Circle must be properly removed or filled in accordance with the specifications set forth in III.D and I.D.3 above, and must be properly revegetated through reseeding in accordance with the specifications set forth in III.D and II.D.2 above. In addition, by August 15, 2008: (a) 75 percent of the willows staked must be alive and established; and (b) that area must have 75 percent areal (canopy) coverage by plant species native to the Stariski Creek area (including the staked willows). If these percent criteria are not met by August 15, 2008, then the reseeding, revegetation and/or willow staking shall be repeated until the criteria are met three years from completion of the most recent reseeding, revegetation and/or willow staking.

5. By August 15, 2005, the ditch south of the restoration must be properly plugged at the southern terminus of the work area at this location in accordance with the specifications set forth in III.D above.

IV. ISSUES APPLICABLE GENERALLY

A. *Road Right of Way and Access Considerations:* Right of way widths for the roads subject of proposed restoration work shall be verified by Defendants prior to commencement of the work. Site restoration work shall be performed within existing rights of way and/or on properties for which permission to perform the work has been obtained. Permission to access adjoining subdivision lot(s) shall not be assumed, and Defendants shall be responsible for obtaining all such permission. Title to much of the land adjoining the proposed restoration work, however, currently resides with Defendants.

B. *Vacation of Right of Way at Road Removal Locations:* The Stariski Meadows Subdivision plat included road dedications. The restoration work for Sergeant Avenue Extension and Rowan Circle entails removal of the existing roads and restoration to natural conditions. In addition, the parties have agreed that the rights of way for Sergeant Avenue Extension and Rowan Circle should be vacated. Approval from the Kenai Peninsula Borough, however, will be required to vacate the road rights of way on these dedicated roads. By October 1, 2005, Defendants shall obtain all of the necessary approvals for vacation of the Rowan Circle right of way and file the required materials with the Borough to secure approval for the vacation of the right of way. With respect to Sergeant Avenue Extension, Defendants have made efforts to obtain approval to vacate the right of way from a majority of the abutting property owners as set forth in Kenai Peninsula Borough Ordinance 20.28.050 - .060. No later than July 15, 2005, Defendants shall make additional good faith efforts to obtain approval from a majority of the abutting property owners, including sending follow-up correspondence to the owners who have



not yet responded to requests for their approval. If Defendants obtain this majority approval by August 15, 2005, Defendants shall, by October 1, 2005, file the required materials with the Borough to secure approval for the vacation of the Sergeant Avenue Extension right of way.

C. *Off-Site Disposal Areas:* Fill material removed from the site shall be disposed at a designated off-site disposal area. Defendants shall identify in advance the off-site disposal area(s) and verify that disposal of fill material at the off-site location is legal, *i.e.*, that the location does not constitute jurisdictional waters of the United States and/or that a fill permit for such location has been obtained. Defendants shall obtain advance approval from the United States for all off-site disposal.

Under certain circumstances, Defendants may dispose of fill removed from one site by placing it at another site where work is being performed. For example, fill removed from Rowan Circle or the Sergeant Avenue Extension sites may be used, if the fill consists of appropriate material, for covering culverts installed on Pepper Road. Defendants shall obtain advance approval from the United States for all such disposal.

D. *Permitting:* Defendants shall be responsible for obtaining all permits and/or authorizations applicable to the work described herein. The following permits and/or authorizations have been identified as potentially applicable to the restoration work to be performed:

- a) Kenai Peninsula Borough--construction work performed in a road right of way;
- b) Kenai Peninsula Borough--vacation of right of way associated with restoration work on Rowan Circle and Sergeant Avenue Extension;
- c) Alaska Dept. of Natural Resources/Dept. of Fish & Game-- construction work in waterways (most importantly, catalogued anadromous streams) affecting fish habitat values;
- d) Alaska Dept. of Natural Resources/Dept. of Fish & Game-- Stariski Creek bridge work;
- e) Kenai Peninsula Borough -- Stariski Creek bridge work;
- f) U.S. EPA Clean Water Act § 402 stormwater construction general permit for disturbance in excess of one acre;
- g) U.S. Army Corps of Engineers authorization and/or permits under Clean Water Act § 404.

The above list may not be complete. Exclusion or omission of any permits and/or any authorizations from the above list does not remove or diminish the responsibility of Defendants to obtain such permits and/or authorizations.

It is anticipated that both the Defendants and their contractor(s) will need to submit notices of intent to be covered by the Clean Water Act § 402 storm water Construction General Permit ("CGP"). Defendants acknowledge that compliance with the conditions of the Clean Water Act § 402 storm water CGP, including completing and following a storm water pollution prevention plan (often referred to as a SWPPP), is required for coverage under the CGP.





United States v. Abelgaard, et al
Photo No. 3 August 2005
Rowan Circle restoration; view
north, west shoulder



United States v. Abelgaard, et al
Photo No. 4 August 2005
Rowan Circle restoration; view
north, east shoulder

Statement Supporting Petition to Vacate Right of Way, Exhibit B



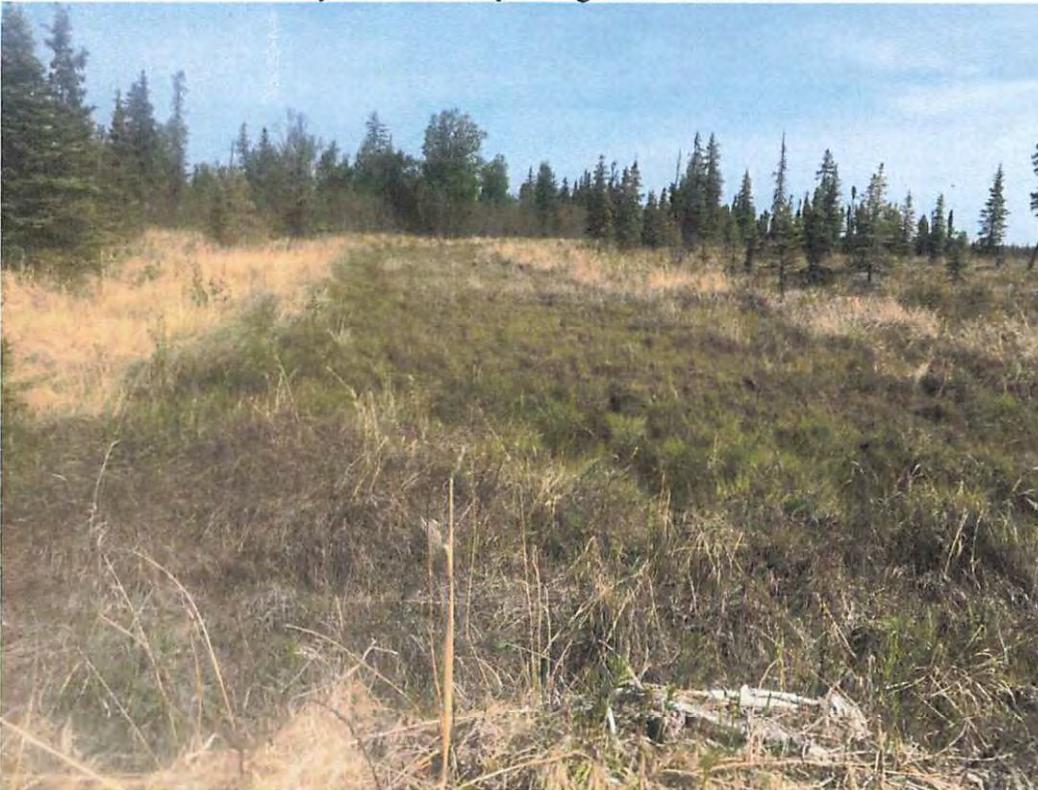
United States v. Abeldgaard, et al
Photo No. 26 Aug. 29, 2005
SWPPP Inspection--Rowan Circle
revegetation; view north



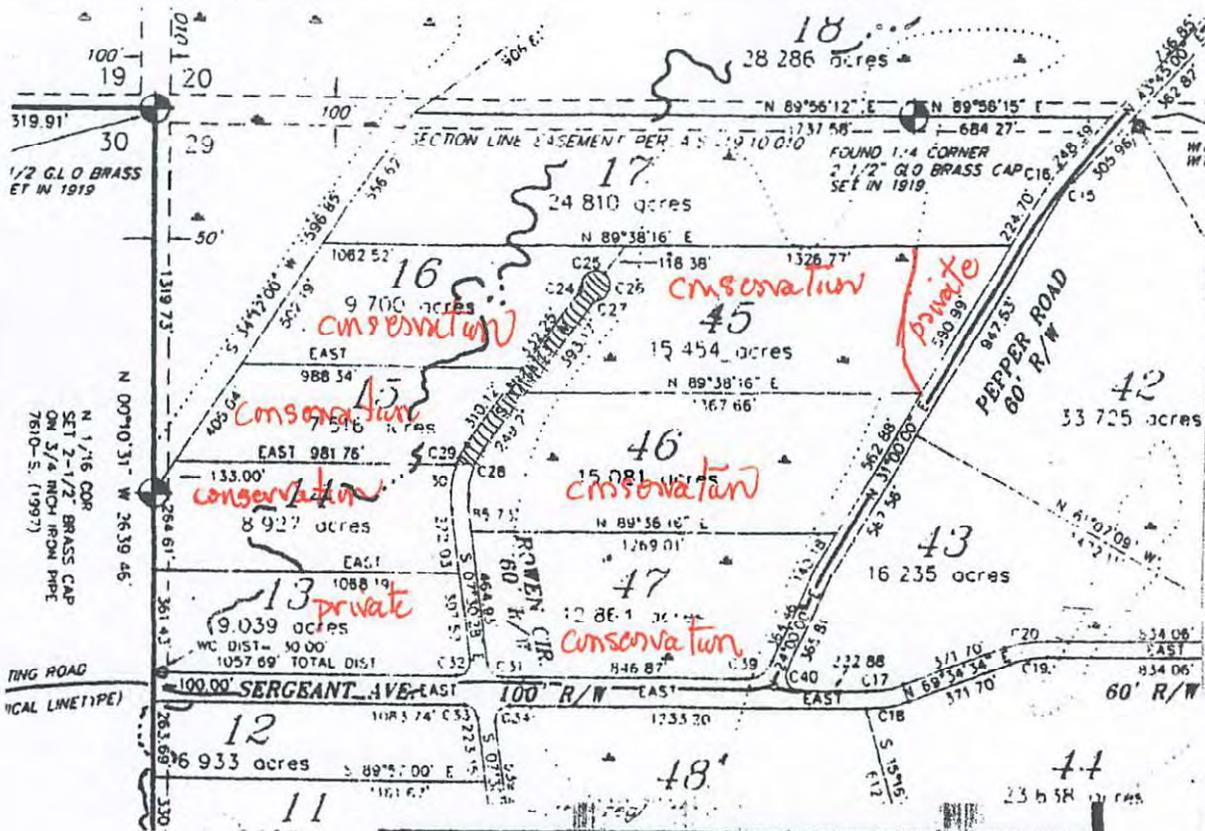
United States v. Abeldgaard, et al
Photo No. 27 Aug. 29, 2005
SWPPP Inspection--Rowan Circle
revegetation; view north



United States v. Abelgaard, et al
Photo No. 1 June 11, 2008
Rowan Circle restoration; natural vegetation growing
Very few willows sprouting due to water level.



United States v. Abelgaard, et al
Photo No. 2 May 25, 2016
Rowan Circle restoration; Grasses and other natural vegetation have
filled in nicely.



LEGEND:

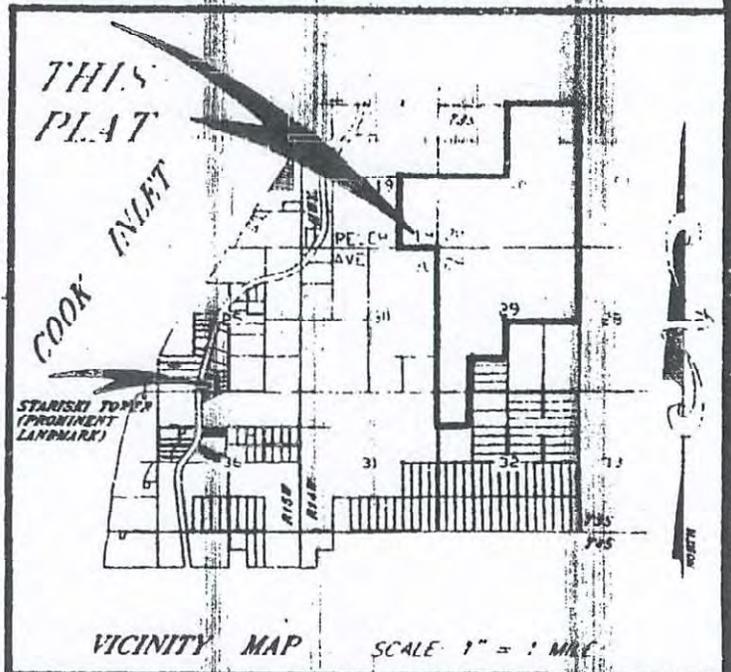
- RIGHT OF WAY TO BE VACATED
- AFFECTED (ABUTTING) PARCELS:
- LOTS 15, 16, 45, 46

MAP ACCOMPANYING PETITION TO VACATE PUBLIC RIGHT OF WAY KENAI PENINSULA BOROUGH PLANNING DEPT.

SUBMITTED BY MODEB INVESTMENTS AUGUST 17, 2005

97-62

RECORDED	HOMER	REC DIST
DATE	10-31	19 97
TIME	9:14	A.M.
REQUESTED BY	Ability	
ADDRESS		



VICINITY MAP SCALE 1" = 1 MILE

STARISKI MEADOWS

A SUBDIVISION OF THE E1/2 SE1/4 SEC 19, NE1/4 & SE1/2 SEC 20, N1/2 & N1/2 SW1/4 & SW1/4 SW1/4 SEC 29, NW1/4 NW1/4 SEC 32, ALL WITHIN TWP. 35, Rge. 14W, S.M., HOMER RECORDING DISTRICT, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA CONTAINING 1039.720 ACRES

ABILITY SURVEYS

GARY NELSON, 415 (907) 235-8440 184 CITYVIEW HOMER ALASKA 99602

AGENDA ITEM F. PUBLIC HEARINGS

5. Vacate a portion of Rowen Court, dedicated by Stariski Meadows Subdivision (Plat HM 97-62); within Section 29, Township 3 South, Range 14 West, Seward Meridian, Alaska; and within the Kenai Peninsula Borough. KPB File 2005-255; Petitioner: Cloyd Moser for Modeb Investments of Anchorage, Alaska; Location: Happy Valley Area

STAFF REPORT

PC Meeting: 10/10/05

Purpose as stated in petition: Court judgment satisfying Clean Water Act action.

Petitioner: Cloyd Moser for Modeb Investments of Anchorage, Alaska.

Public notice appeared in the September 22 and September 29, 2005 issues of the Homer News.

Seven (7) certified mailings were sent to owners of property within 300 feet of the parcels; three (3) of the receipts have been returned.

Fifteen (15) regular mailings were sent to agencies and interested parties; six (6) notices were sent to KPB Departments. Notices were mailed to the Anchor Point Community Library and Anchor Point Post Office to post on a public bulletin board. The notice and maps were posted on the Borough web site and bulletin board in the Borough Administration Building.

Staff discussion

The proposed vacation was submitted by the petitioner's attorney as a result of a court action that settled a Clean Water Act enforcement action. A condition of the court action is to perform restoration work for disturbed wetlands at designated locations.

Lots 15, 16, 46, and 45 adjoin that portion of Rowen Court proposed to be vacated. Lots 15, 16, and 46, which are owned by the petitioner, will be conveyed to the Kachemak Heritage Land Trust. Lot 45, which is owned by Janet Forbes, will be burdened with a conservation easement on all but that portion of the lot abutting Pepper Road, a constructed right-of-way. As a result of the conveyances and conservation easement, the portion of Rowen Court proposed for vacation is no longer necessary.

Fire Marshal Gary Hale, Central Emergency Services, submitted written comments. If the vacation is approved, the remaining portion of Rowen Court exceeds 150 feet and requires an area for turning fire apparatus per the International Fire Code. A minimum turning radius of 96 feet for a cul-de-sac or 120 feet for a 'T' or hammerhead configuration is required. KPB 20.20.090 requires that a permanently ended dedication must provide a minimum 50-foot radius cul-de-sac. This would satisfy the fire code.

A preliminary plat that would finalize the proposed vacation has not yet been submitted.

Findings:

1. Per the petition, the right-of-way proposed for vacation is fully or partially constructed.
2. Per the petition, the right-of-way proposed for vacation is not used by vehicles/pedestrians.
3. The proposed vacation is a result of an adjudicated court action.

Statement Supporting Petition to Vacate Right of Way, Exhibit D

4. The court action requires restoration work for disturbed wetlands at designated locations.
5. Lots 15, 16, 45, and 46 of Stariski Meadows Subdivision adjoin that portion of Rowen Court proposed to be vacated
6. Lots 15, 16, and 46 Stariski Meadows Subdivision will be conveyed to Kachemak Heritage Land Trust.
7. Lot 45 Stariski Meadows Subdivision adjoining the portion of Rowen Court proposed to be vacated will be encumbered with a conservation easement abutting Rowen Court.
8. Constructed access for Lot 45 is available by Pepper Road.
9. The remaining portion of Rowen Court will provide access to Lots 13, 14, and 47 Stariski Meadows Subdivision.
10. Sufficient rights-of-way exist to serve the surrounding properties.
11. No surrounding properties will be denied access.
12. All subdivision plats finalizing vacations are sent to utility companies for review and easement requirements.
13. The portion of the right-of-way proposed for vacation extends into a low wet area.

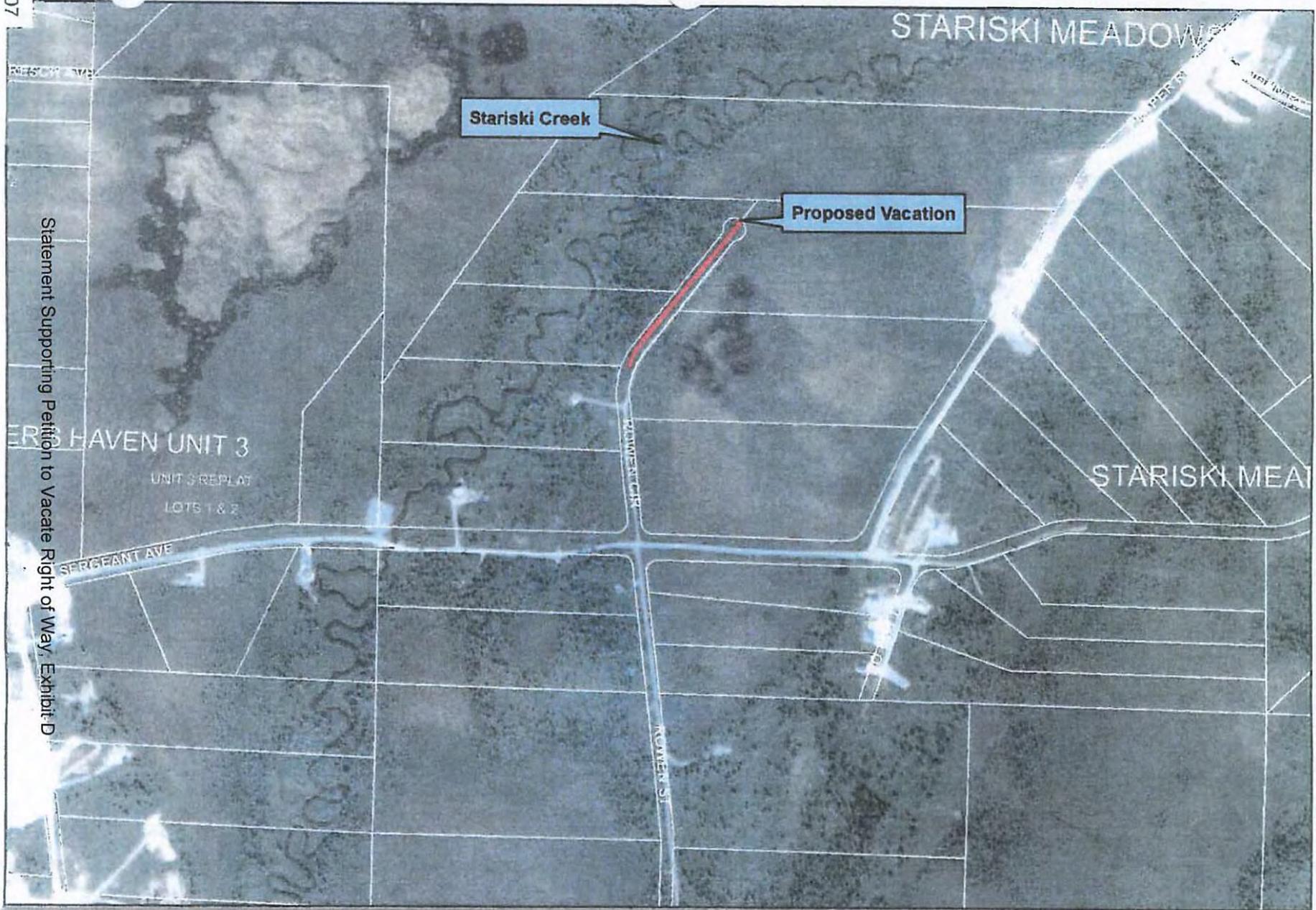
STAFF RECOMMENDATION: Based on Findings 2-13, staff recommends approval of the vacation as petitioned, subject to:

1. Submittal of a preliminary plat in accordance with Chapter 20 of the KPB Code (submittal of a final plat within one of vacation approval).
2. Providing a minimum 50-foot radius cul-de-sac dedication in compliance with KPB 20.20.090 and the International Fire Code, in a location acceptable to the EPA and the COE.

If the vacation is approved, the Kenai Peninsula Borough Assembly has thirty days in which they may veto Planning Commission approval of the vacation.

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

END OF STAFF REPORT



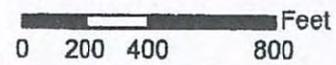
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

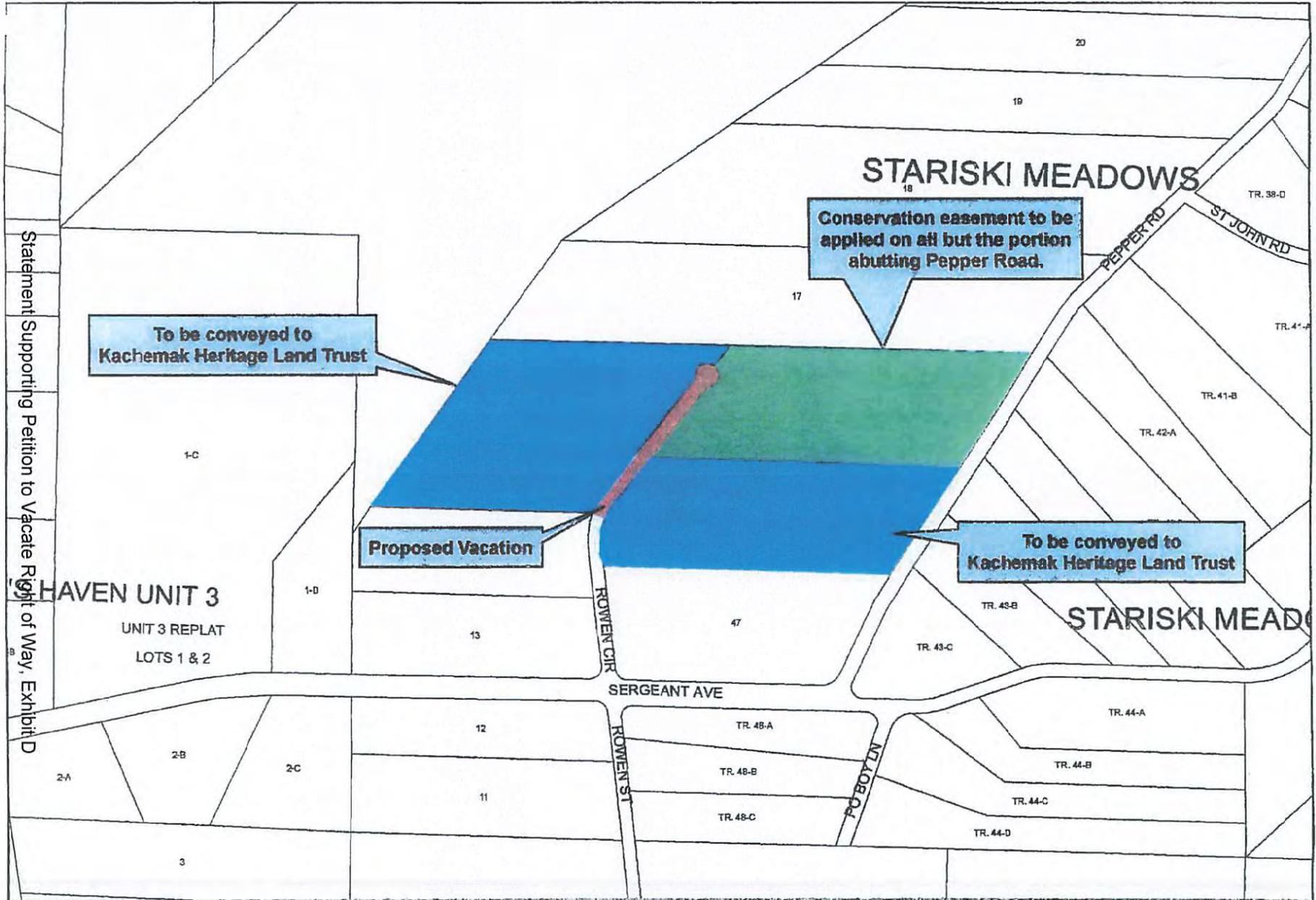


Kenai Peninsula Borough Planning Department

9/12/05

Vicinity Map





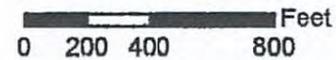
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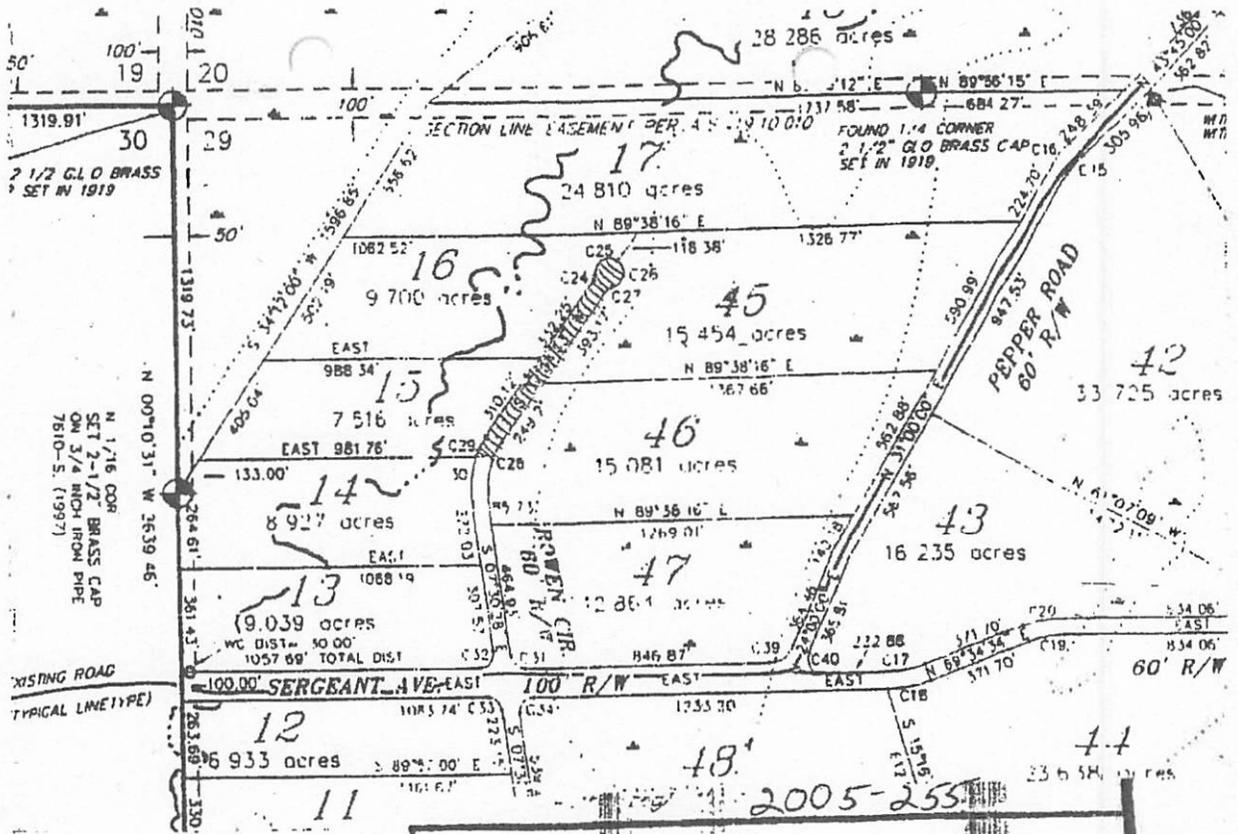


Kenai Peninsula Borough Planning Department

Vicinity Map

9/23/05





LEGEND:

RIGHT OF WAY TO BE VACATED

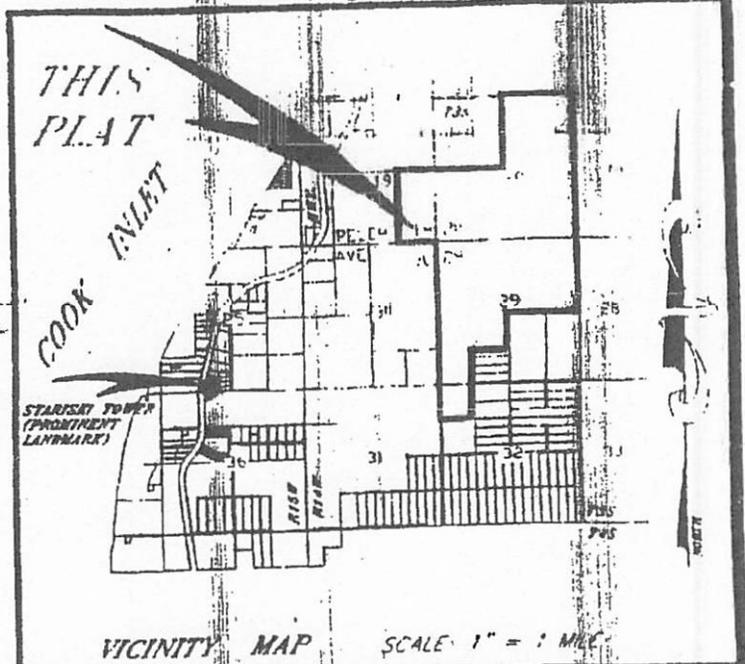
AFFECTED (ABUTTING) PARCELS:
LOTS 15, 16, 45, 46

MAP ACCOMPANYING PETITION TO VACATE PUBLIC RIGHT OF WAY KENAI PENINSULA BOROUGH PLANNING DEPT.

SUBMITTED BY
MODEB INVESTMENTS
AUGUST 17, 2005

97-62

RECORDED	HOMER	REC DIST
DATE	10-31	19 97
TIME	9:14	A.M.
REQUESTED BY	Ability	
ADDRESS		



STARISKI MEADOWS

A SUBDIVISION OF THE E1/2 SE1/4 SEC 19, NE1/4 & S1/2 SEC 20, N1/2 & N1/2 SW1/4 & SW1/4 SEC 29, NW1/4 NW1/4 SEC 32, ALL WITHIN TWP. 35, R. 14W, S. 4N, HOMER RECORDING DISTRICT, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA
CONTAINING 1039.720 ACRES

ABILITY SURVEYS

184 CITYVIEW, HOMER, ALASKA 99602

Statement Supporting Petition to Vacate Right of Way Exhibit D

97-144

LAWRENCE V. ALBERT

ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476



KPB

August 16, 2005

AUG 18 2005
PLANNING DEPT.

Ms. Mary Toll
Platting Officer
Kenai Peninsula Borough
Borough Administration Bldg.
144 N. Binkley Street
Soldatna, Alaska 99669

Re: Petition to Vacate Public Right of Way in Kenai Peninsula Borough
Stariski Meadows Subdivision, Plat No. 97-62--Rowan Circle
Petitioner: Modeb Investments, Inc.

Dear Ms. Toll:

Enclosed please find an executed Petition to Vacate Public Right of Way/Section Line Easement on a Kenai Peninsula Borough Planning Department form. I have signed the Petition as representative for the petitioner Modeb Investments. Accompanying the petition is a map, the \$300.00 filing fee, an excerpt from a court document and this letter justifying the vacation request.

The proposed vacation of right of way pertains to a platted street within the Stariski Meadows Subdivision, Plat No. 97-62. Only that portion of the street, which is a cul-de-sac, north of Lot 14 on the west side is proposed for vacation. Three copies of a map of the proposed vacation area are enclosed. This map is excerpted from the official plat map and designates the vacation area.

Lots 15, 16, 45, and 46 of the Stariski Meadows Subdivision abut the proposed vacation area. Modeb Investments, the original owner of the property at the time of plat approval, still owns Lots 15, 16 and 46. Lot 45 is owned by Janet Forbes of Juneau Alaska. Modeb Investments has consented to the petition, through its general partner Mr. Cloyd Moser. Since Modeb owns three of four parcels abutting the proposed right of way vacation, then the Borough requirement of 51% consenting landowners is met. See Kenai Peninsula Borough Ordinance 20.28.050.

Ms. Forbes is not joined in this petition request. Her parcel (Lot 45) has frontage on Pepper Road to the east and Modeb understands that is her preferred access. Pepper Road will remain a platted street within the subdivision and Pepper Road has improved access.

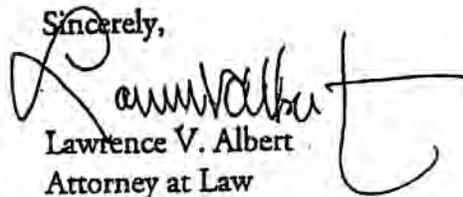
The vacation is requested pursuant to a Consent Decree entered in *United States v. Clarence Abeldgaard, et al*, No. A01-00378 (RRB) (D.Alaska, filed July 6, 2005). This Consent Decree settles a Clean Water Act enforcement action brought against Cloyd Moser individually and Modeb Investments, a general partnership ("Modeb"), among other defendants. In pertinent part, the Consent Decree requires Modeb to perform restoration work for disturbed wetlands at designated locations.

Included among the restoration sites is that portion of Rowan Circle north of the Lots 14/15 side lot line. This site has been selected for restoration because the surrounding area will be deeded to the Kachemak Heritage Land Trust ("KHLT"), a qualified conservation organization, as part of a Supplemental Environmental Project required in the Consent Decree. Specifically, lots 15, 16 and 46 will be conveyed to KHLT in fee as part of a conservation conveyance. Lot 45 will be burdened with a conservation easement on all but the easterly portion of that parcel abutting on Pepper Road.

Since Lots 15, 16, 45, and 46 will be conveyed either in fee or via conservation easement to the KHLT, there is no need for the affected portion of the Rowan Circle platted right of way. Accordingly, the Appendix A Restoration Plan, Part IV.B accompanying the Consent Decree, states that the right of way for Rowan Circle in the affected area should be vacated.

Please place this petition request on the next available agenda for the Kenai Peninsula Borough Planning Commission. Please feel free to call me if the Planning Department has any questions regarding this vacation request. Neither myself nor Mr. Moser intends to attend the public hearing on the petition request. However, I will gladly make myself available telephonically to testify or answer any questions the Planning Commission may have at the hearing. If the Planning Department issues a staff recommendation on application of this type, please copy me on any such filing.

Sincerely,


Lawrence V. Albert
Attorney at Law

encls .

cc: Cloyd Moser, Modeb Investments
Mark Nitzynski, Esq., U.S. Dept. Justice
Lawrence Hartig, Esq.
(w/o encls) .
Janet Forbes (w/encls)

KENAI PENINSULA BOROUGH PLANNING DEPARTMENT
PETITION TO VACATE
PUBLIC RIGHT-OF-WAY/SECTION LINE EASEMENT
PUBLIC HEARING REQUIRED

A receipt of complete application with fees and all required attachments; a public hearing before the Planning Commission must be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- Fees - \$300 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to vacation fees.
- City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report. / (in part only)
- Name of public right-of-way proposed to be vacated / is Rowan Circle; dedicated by plat of Stariski Meadows Subdivision, filed as Plat No. 97-62 in Kenai Recording District.
- Are there associated utility easements to be vacated? Yes No
Are easements in use by any utility company; if so which? _____
- Easement for public road or right-of-way as set out in (specify type of document _____) as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition)
- Section Line Easement. Width of easement must be shown on sketch.
- Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11 inches in size. In the case of public right-of-way the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.



- Has right-of-way been fully or partially constructed? Yes No
- Is right-of-way used by vehicles/pedestrians/other? Yes No (for area proposed for vacation)
- Has section line easement been constructed? Yes No
- Is section line easement being used? Yes No
- Alternative right-of-way being provided? Yes No

petitioner must provide reasonable justification for the vacation.
Reason for vacating Area proposed for vacation comprises jurisdictional wetlands of the United States according to Consent Decree entered in Clarence Abaldgaard, et al, No. A01-00378 CV (RRB) (D.Alaska). The Consent Decree requires portion of Rowan Circle to be restored to native condition, including vacation of right of way. See attached letter for details.

The petition must be signed (written signature) by owners of majority of the front feet of land fronting part of right-of-way or section line easement proposed to be vacated. Each must include mailing address and legal description of his/her property.

Submitted by: Signature
Name Lawrence W. Albert representative petitioner
Address Attorney at Law, P. O. Box 200934
Anchorage, Alaska 99520
Phone (907) 243-2172

Petitioners:

<u>Signature</u>	<u>Signature</u> _____
<u>Name</u> <u>Cloyd Moser, Partner for</u>	<u>Name</u> <u>Janet Forbes</u>
<u>Address</u> <u>Modeb Investments</u>	<u>Address</u> <u>4448 Columbia Blvd.</u>
<u>Address</u> <u>425 "G" Street Ste. 900</u>	<u>Address</u> <u>Juneau, Alaska 99801</u>
<u>Address</u> <u>Anchorage, Alaska 99501</u>	<u>Address</u> _____
<u>Owner of</u> <u>lots 15, 16, 46</u>	<u>Owner of</u> <u>lot 45</u>
<u>Signature</u> _____	<u>Signature</u> _____
<u>Name</u> _____	<u>Name</u> _____
<u>Address</u> _____	<u>Address</u> _____
<u>Owner of</u> _____	<u>Owner of</u> _____

Vacation of Right of Way, 06/02, 01/00, 9/99



Central Emergency Services

Central Kenai Peninsula Fire & EMS Providers

Chris Mokracek
Fire Chief

RECEIVED

SEP 13 2005

September 13, 2005

Kenai Peninsula Borough Planning Commission
Attention: Mary Toll
144 N. Binkley Street
Soldotna, Alaska 99669

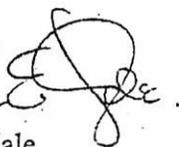
KENAI PENINSULA BOROUGH
PLANNING DEPARTMENT

Re: Notice of Public Hearing, Vacate a portion of Rowen Court, dedicated by Stariski Meadows, Subdivision (Plat HM 97-62); within Section 29, Township 3 South, Range 14 West, Seward Meridian, Alaska.

After reviewing the request for vacating a section of Rowen Court, it has come to our attention that the remaining portion of the dead-end road would exceed 150 feet, requiring the installation of turn-around for fire apparatus under the International Fire Code, 2003 Edition, Section 503.2.5 stating: Dead-end fire apparatus access roads in excess of 150 feet shall be provided with an approved area for turning fire apparatus. Fire apparatus turning radius shall comply with Appendix D, table D103.1., requiring the installation of a minimum turning radius of 96' for a cul-de-sac or 120 for a "T" or hammerhead configuration.

If you have any questions, please contact my office.

Sincerely,


Gary E. Hale
Fire Marshal

Statement Supporting Petition to Vacate Right of Way, Exhibit E

Fire Administration • 231 South Binkley St. • Soldotna, Alaska 99669
(907) 262-4792 • Fax (907) 262-5770 • www.cesfire.org

Lawrence V. Albert Attorney ay Law

From: Browning, Roy <RBrowning@kpb.us>
Sent: Monday, August 15, 2016 11:31 AM
To: 'Lawrence V. Albert Attorney at Law'
Subject: RE: Stariski Meadows Subdivision--Inquiry on Vacation of right of way & Intl Fire Code access
Attachments: AttorneyAlbertRowanCir16.pdf

Mr. Albert,

Central Emergency Services and it's Fire Marshal will not be objecting to or otherwise taking a position on the proposed new petition for vacation of Rowan Cir. Please accept the attached document for your records.

Regards,

Roy Browning
Fire Chief
Central Emergency Services
Soldotna, Alaska
Kenai Peninsula Borough
907-262-4792



From: Lawrence V. Albert Attorney at Law [mailto:albertl@alaska.net]
Sent: Thursday, August 11, 2016 9:41 AM
To: Browning, Roy <RBrowning@kpb.us>
Cc: 'brent' <brent@debenhamproperties.com>; wynnmoser@gmail.com
Subject: Stariski Meadows Subdivision--Inquiry on Vacation of right of way & Intl Fire Code access

To Roy Browning, Fire Chief, Kenai Peninsula Borough:

We spoke a few times in mid July 2016 in regard to the above matter. I sent you an email with enclosures inquiring about a possible request to vacate right of way on a cul-de-sac known as Rowan Circle, a dedicated right of way, in the Stariski Meadows Subdivision. In a follow up telephone call, you questioned whether the Borough had jurisdiction to deal with this issue although that was not the Borough's position in 2005 according to correspondence I received from Central Emergency Services on the matter. You indicated that my inquiry was being forwarded to the Borough attorney's office. I have not received a reply from either your office or the Borough attorney's office. Please advise regarding the status of my inquiry.

Lawrence V. Albert Attorney at Law
P. O. Box 200934

Statement Supporting Petition to Vacate Right of Way, Exhibit F

(08/15/14)



Central Emergency Services

Roy Browning
Fire Chief

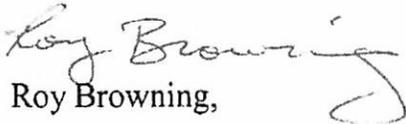
To: Mr. Lawrence V. Albert, Attorney at Law

Subj: Review of 2005 petition to vacate portion of Rowan Circle, Plat 97-62--
Uniform Fire Code issue

Based on the information you have provided, the CES fire marshal will not be objecting to or otherwise taking a position on the proposed new petition for vacation of Rowan Circle. However, I recommend you contact the State Fire Marshal regarding the petition for vacation of Rowan Circle, as the State Fire Marshal has original jurisdiction over this matter.

If you require any other assistance or clarification on this matter please contact me at 907-262-4792.

Regards,



Roy Browning,

Fire Chief

Central Emergency Services

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476
EMAIL: ALBERTL@ALASKA.NET

January 24, 2017

Alaska Department of Public Safety
Division of Fire & Life Safety
Plan Review Bureau
5700 E. Tudor Road
Anchorage, Alaska 99507

Re: Stariski Meadows Subdivision, Plat No. 97-52, Kenai Peninsula Borough
Request to Vacate Right of Way for Rowen Circle
Kenai Peninsula Borough Ordinances Title 20, Article 70

Dear Sir or Madam:

This letter inquires as to the position of the State Fire Marshall in regard to an anticipated request to vacate a platted street in a rural residential subdivision in the Kenai Peninsula Borough. This letter seeks verification that no fire apparatus would be needed to access the vacated right of way pursuant to provisions of the International Fire Code (IFC). This letter is written to your office because the property lies outside of an approved fire service area of the Kenai Peninsula Borough according to the Fire Chief for its Central Emergency Services agency.

The development in question is known as the Stariski Meadows Subdivision and was approved as Plat No. 97-52 by the Kenai Peninsula Borough (KPB) Platting Board (copy enclosed). The right of way proposed to be vacated is "Rowen Circle" which is a cul-de-sac shown on the subdivision plat. This right of way is no longer needed as none of the lots which it accesses have been developed, with the exception of one corner lot, and the properties have been subsequently conveyed to qualified conservation organizations for preservation in perpetuity as undeveloped land.

One of the subdivision developers, Modeb Investments, previously petitioned the Borough in 2005 for vacation of the right of way on Rowen Circle. A copy of that application and the staff report submitted to the KPB Platting Board is enclosed for your

ALASKA DEPT. OF PUBLIC SAFETY

Re: Inquiry on Vacation of Right of Way in Stariski Meadows S/D

application and the staff report submitted to the KPB Platting Board is enclosed for your reference. At the time of Modeb's petition to the KPB, the proposed boundary line for the vacation of right of way paralleled the side lot line between Lots 14 and 15 abutting on Rowen Circle to the west (see drawing accompanying petition to vacate right of way). This was because Lot 14 had been sold and the owner would have needed access to the platted street for use and development of its parcel.

Through letter dated September 13, 2005, copy enclosed, the Borough Fire Marshall objected that the proposed vacation would leave at least 150 feet of the street remaining which would require a turning radius for fire apparatus pursuant to Section 503.2.5 of the IFC (2003 ed). When Modeb became aware of the Borough Fire Marshall's objection, it requested a continuance of the proposed agenda item on the Platting Board's scheduled meeting for October 10, 2005. Thereafter, Modeb's petition to vacate the Rowen Circle right of way was withdrawn and the Borough took no action on the matter.

In other circumstances, Modeb would have accommodated the Fire Marshall's concern and agreed to construct a new "bulb" in the remaining portion of the street not subject to vacation. However, this new road construction and replatting of the street would frustrate the objectives of the proposed vacation which was to implement site restoration provisions in a Consent Decree entered in a Clean Water Act (CWA) enforcement action.¹ Pursuant to that agreement, Modeb removed fill from the northern portion of Rowen Circle, restored the site to native wetlands and conveyed the surrounding unsold parcels to private conservation organizations for non-developmental use.

In the ensuing years, the Justice Department negotiated with another defendant in its CWA enforcement action to acquire Lot 14 abutting on Rowan Circle and convey that to a qualified conservation organization. The government's objective was to obviate the need for any access to the interior lots in Rowen Circle for any purposes, including developmental use, fire service or otherwise, so that the right of way could be vacated without compliance

¹ See *United States v. Clarence Abeldgaard, et al*, Consent Decree & App. A Restoration Plan, No. A01-378 Civ. (D.Alaska, filed July 6, 2005). The lawsuit alleged unauthorized fill of jurisdictional wetlands which is a CWA violation subject to penalties. An excerpted copy of the Consent Decree and Restoration Plan are enclosed.

ALASKA DEPT. OF PUBLIC SAFETY
Re: Inquiry on Vacation of Right of Way in Stariski Meadows S/D

issues under the IFC.

Since Lot 14 is now no longer in private ownership, there is no need for fire apparatus access to Rowen Circle. The other interior lots abutting on Rowen Circle (Lots 15,16, 46, and 47) are either titled in qualified conservation organizations with covenants precluding developmental use, or in the instance of Lot 45 the property remains in private ownership with the western portion (i.e. that portion abutting on Rowen Circle) subject to a conservation easement. See the "Table of Property Ownership for Abutting Parcels" which will accompany the anticipated petition.

Lot 13 on the corner of Pepper Road and Rowen Circle is in private ownership and in theory the owner of that parcel could use access from Rowen Circle. However, that parcel is rectilinear, shows several hundred feet of frontage on Pepper Road, and consequently, any fire apparatus access to that property can be achieved from Pepper Road. Additionally, KP B aerial photography (copy enclosed) shows that the owner has constructed access from Pepper Road to residential structures therein whereas no improved access from Rowen Circle is discernible.

Consequently, Modeb is again proposing (now as representative of the affected property owners) to vacate Rowen Circle from the side boundary between Lots 14 and 15 on the west, to the terminus of the cul-de-sac at the northern end of abutting Lots 16 and 45. A sketch drawing accompanying a proposed petition to the Borough is attached for your consideration. The currently proposed vacation is the same as proposed in 2005. The remaining portion of Rowen Circle would still be platted as a right-of-way and its length approximates 700 feet.

In July 2016, Modeb inquired with the Borough Fire Chief on renewing its petition for vacation of right of way with the altered circumstances described above. Through telephone conversation, the Fire Chief indicated that KP B lacked jurisdiction over any vacation request because the Borough does not provide fire service to lands within the Stariski Meadows Subdivision. His position was set forth in a reply email dated August 15, 2015 with an attached letter (undated, copy enclosed).

With the above explanation, Modeb inquires with your Plan Review Bureau as to whether the State Fire Marshall would pose any objection to a new vacation of the right-of-

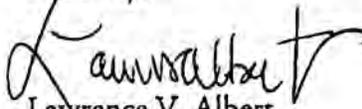
ALASKA DEPT. OF PUBLIC SAFETY

Re: Inquiry on Vacation of Right of Way in Stariski Meadows S/D

way for Rowen Circle. This inquiry is made in advance of submission of the petition as a \$500.00 filing fee is required and Modeb would prefer to identify the concerns of any public agencies in advance.

The circumstances and documentation accompanying this inquiry may appear complex. Please feel free to contact me if your office has any questions about the enclosures and issues associated with the proposed vacation of right-of-way.

Sincerely,



Lawrence V. Albert

Attorney at Law

encls:

- 1) Stariski Meadows Subdivision Plat
- 2) Modeb Investments 2005 petition to vacate right of way
- 3) KPB staff report to Platting Board on 2005 petition
- 4) KPB Central Emergency Services letter of Sept. 13, 2005
- 5) IFC 2009 edition, excerpts
- 6) Consent Decree & App. A Restoration Plan (excerpts)
- 7) 2017 petition to vacate Rowen Circle (draft), including table of property ownership
- 8) KPB aerial photograph map of Rowen Circle
- 9) KPB Central Emergency Services email & letter, August 15, 2016

cc: Brent Williams, Debenham Properties

Wynn Moser, Modeb Investments

Mark Nitzczynski, Esq., U.S. Dept. of Justice

(w/o encls)



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Public Safety

DIVISION OF FIRE AND LIFE SAFETY
Office of the Director

5700 East Tudor Road
Anchorage, Alaska 99507-1225
Main: 907.269.5491
Fax: 907.338.4375

[January 25, 2017

Lawrence V. Albert
PO Box 200934
Anchorage, AK 99520

Mr. Albert:

Your inquiry for the State Fire Marshal position on Star Meadows Subdivision, Plat No. 97-52, Kenai Peninsula Borough is deferred to the Anchor Point Fire & Emergency Medical Service Area. (Reference 13 Alaska Administrative Code 50.025 Fire Code (20 and 21)

Here's the Anchor Point Fire & Emergency Medical Service Area contact information.

Alford Terry
Fire Chief
PO Box 350
Anchor Point, AK 99556
907-235-6700

If I can be any further assistance please contact me at (907) 269-5491 or email me at lloyd.nakano@alaska.gov.

Sincerely,

A handwritten signature in black ink that reads "Lloyd Nakano".

Lloyd Nakano
Assistant State Fire Marshal

LAWRENCE V. ALBERT
ATTORNEY AT LAW
P. O. BOX 200934
ANCHORAGE, ALASKA 99520
TELEPHONE (907) 243-2172
FAX (907) 243-5476
EMAIL: ALBERTL@ALASKA.NET

January 30, 2017

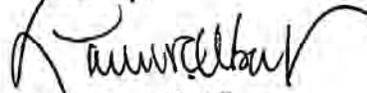
Mr. Alfred Terry
Fire Chief
Anchor Point Fire & Emergency Medical Service
P. O. Box 350
Anchor Point, Alaska 99556

Re: Stariski Meadows Subdivision, Plat No. 97-62, Kenai Peninsula Borough
Request to Vacate Right of Way for Rowen Circle
Kenai Peninsula Borough Ordinance Title 20, Article 70

Dear Mr. Terry:

I am forwarding to your Anchor Point Fire & Emergency Medical Service Area the enclosed letter with attachments addressed to the State Fire Marshall, Plan Review Bureau, in the Alaska Dept. of Public Safety, Division of Fire Life Safety. According to a letter following a telephone conversation with Mr. Lloyd Namano of that agency, the State Fire Marshall defers to the jurisdiction of your agency. Mr. Namano returned my letter with enclosures and recommended I forward same to your office.

Sincerely,



Lawrence V. Albert
Attorney at Law

encl

cc: Brent Williams, Debenham Properties
Wynn Moser, Modeb Investments
Mark Nitczynski, Esq., U. S. Dept. of Justice
(w/o encls)



ANCHOR POINT FIRE & EMS

P.O. Box 350
72440 Milo Fritz Ave
Anchor Point, AK 99556
(907) 235-6700
aterry@kpb.us

Chief Al Terry

February 13, 2017

Mr. Lawrence V. Albert
P.O. Box 200934
Anchorage, Alaska 99520

Re: Stariski Meadows Subdivision, Plat No. 97-62 Kenai Peninsula Borough
Request to Vacate Right of Way for Rowen Circle

Mr. Albert,

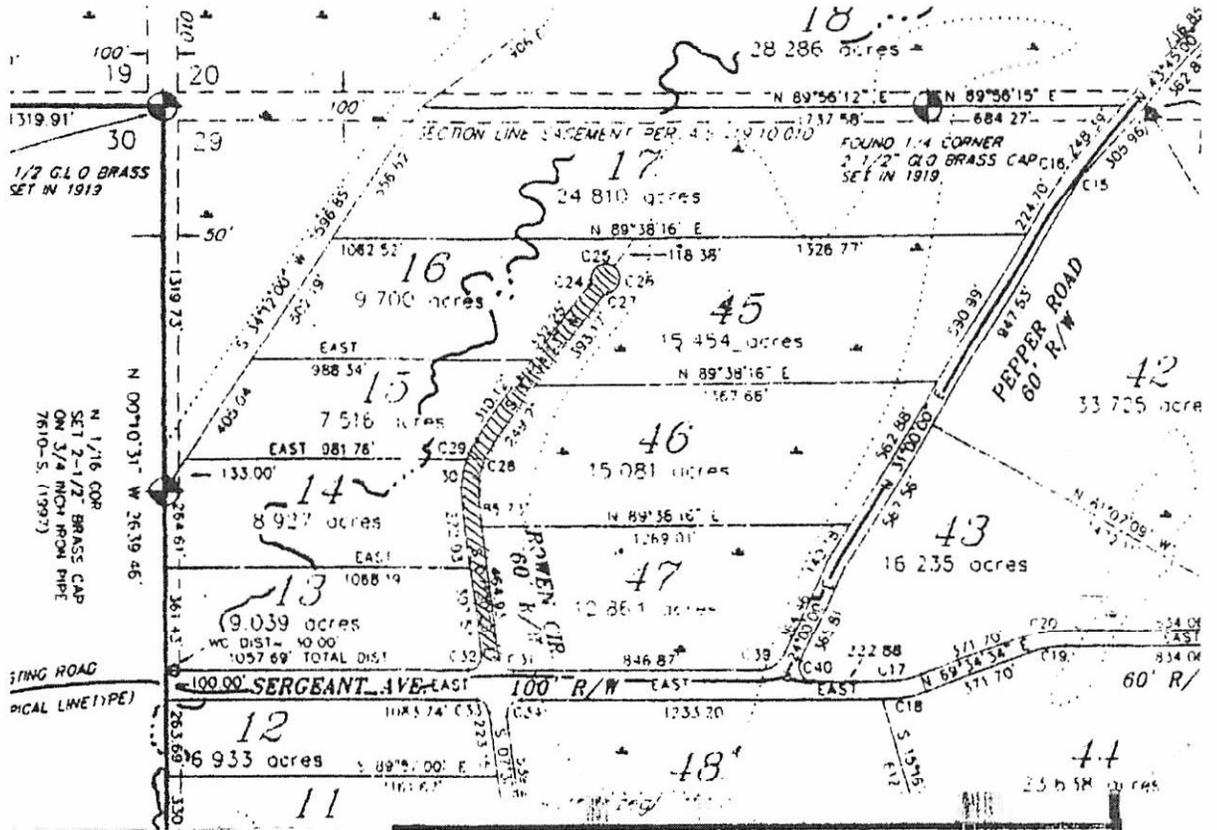
I received the packet of information and documentation concerning the request to vacate the right of way for Rowen Circle. I have since forwarded the complete package to the Kenai Peninsula Borough Legal Department for their review.

However, the Anchor Point Fire and Emergency Medical Service Area has no objections to your request to vacate the right of way for Rowan Circle.

Sincerely,

A handwritten signature in black ink that reads "Al Terry".

Al Terry
Fire Chief



LEGEND:

RIGHT OF WAY TO BE VACATED

AFFECTED (ABUTTING) PARCELS:

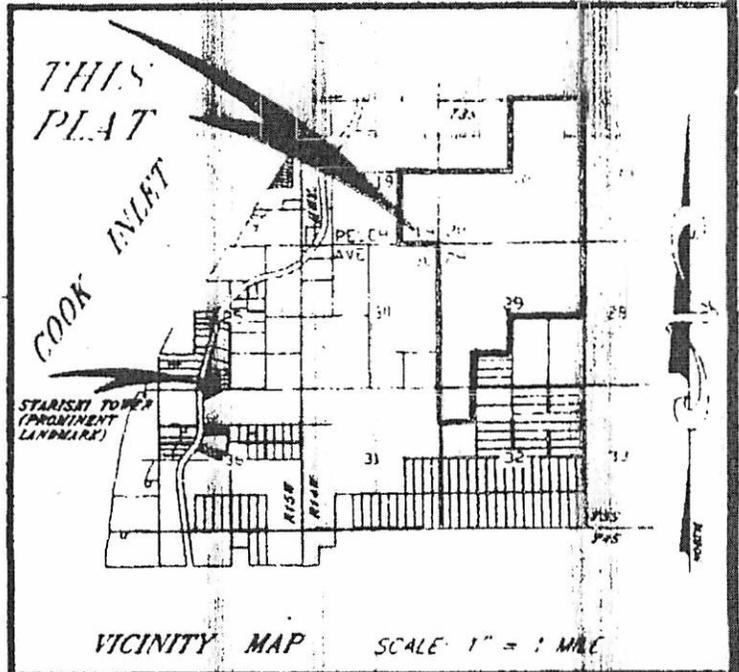
13, 14, 15, 16, 45, 46, 47

MAP ACCOMPANYING PETITION TO VACATE PUBLIC RIGHT OF WAY KENAI PENINSULA BOROUGH PLANNING DEPT.

SUBMITTED BY ANDEB INVESTMENTS

97-62

RECORDED	
HOMER	REC DIST
DATE 10-31	19 97
TIME 9:14	A.M.
REQUESTED BY Ability	
ADDRESS	



VICINITY MAP SCALE 1" = 1 MILE

STARISKI MEADOWS

A SUBDIVISION OF THE E1/2 SE1/4 SEC 19, NE1/4 & S1/2 SEC 20, N1/2 & N1/2 SW1/4 & SW1/4 SW1/4 SEC 29 NW1/4 NW1/4 SEC 32, ALL WITHIN Two 35, Rge 14W, S.M, HOMER RECORDING DISTRICT, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, STATE OF ALASKA CONTAINING 1039.720 ACRES

SURVEYS

Statement Supporting Vacation of Right of Way, Exhibit G

W. 45
B442
ALASKA 9960



Legend
 Tax Parcels

Statement Supporting Petition to Vacate Right of Way, Exhibit H

1:3,352

0.1 0 0.05 0.1 Miles

Coordinate System: NAD_1983_StatePlane_Alaska_4_FIPS_5004_Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes
Enter Map Description

PETITION TO VACATE PLATTED RIGHT-OF-WAY TO KENAI BOROUGH PLATTING BOARD
 "ROWEN CIRCLE" WITHIN STARISKI MEADOWS SUBDIVISION, PLAT NO. 97-52

TABLE OF PROPERTY OWNERSHIP FOR PARCELS ABUTTING ON ROWEN CIRCLE

Lot Number	Property Owner	Owner's Address	Vesting Deed (Homer Recording District) & Date	KPB Parcel I.D. No.
13*	Walter Dean Larson	68748 Sergeant Avenue, Anchor Point Alaska 99556	No. 2023-008824-0, July 17, 2023	15920097
14*	Kachemak Heritage Land Trust	315 Klondike Ave., Homer, Alaska 99603	No. 2020-000405, February 10, 2020	15920088
15	Kachemak Heritage Land Trust	315 Klondike Ave., Homer, Alaska 99603	No. 2005-005169-0, Oct. 26, 2005	15920089
16	Kachemak Heritage Land Trust	315 Klondike Ave., Homer, Alaska 99603	No. 2005-005169-0, Oct. 26, 2005	15920090
45	Pete and Joy Lohmer (owner)	342 County Road 1630 Clifton, Texas 76634	No. 2015-002095-0, July 14, 2015	15920092
45	Kachemak Heritage Land Trust (easement)	315 Klondike Ave., Homer, Alaska 99603	No. 2005-005174-0, Oct. 26, 2005	15920092
46	Kachemak Heritage Land Trust	315 Klondike Ave., Homer, Alaska 99603	No. 2005-005174-0, Oct. 26, 2005	15920093
47*	Kachemak Heritage Land Trust	315 Klondike Ave., Homer, Alaska 99603	No. 2005-005174-0, Oct. 26, 2005	15920094

* Lots 13, 14 and 47 do not abut on that portion of Rowen Circle to be vacated. The vacation request commences at the side boundary between Lots 14 and 15 abutting on Rowen Circle to the west. Lots 13, 14 and 47 abut on that portion of Rowen Circle which shall remain after the vacation is approved. The property ownership for these parcels is included for information purposes.

Compiled January 17, 2017
 revised March 26, 2024

May 15, 2024

Kachemak Heritage Land Trust Board Resolution 2024-06

Approval to Vacate Rowen Circle ROW on the Stariski Meadows Preserve

Whereas, the Third Amendment to the First Amended Bylaws of Kachemak Heritage Land Trust, Inc. ("KHLT") dated December 17, 2020, gives the Board of Directors the responsibility to manage the affairs of KHLT, and

Whereas, **Whereas**, Modeb Investments, an Alaskan general partnership, whose address is 425 "G" Street, Ste. 404, Anchorage, Alaska 99501, in compliance with a consent decree (Recorded Document # 2005-003280-0, Recording District: 309 Homer on 7/21/2005 at 3:29 PM) with the United States on behalf of the Environmental Protection Agency, granted, conveyed and warranted, to Kachemak Heritage Land Trust (KHLT), whose address is 315 Klondike Avenue, Homer, Alaska 99603, the real property situated in the Homer Recording District, Third Judicial District, State of Alaska, more fully described as follows:

Lots 15, 16, 19-33, 37, 46 and 47, Stariski Meadows Subdivision, according to Plat No. 97-62 filed in the Homer Recording District, Third Judicial District, State of Alaska, on October 31, 1997 (the "Property"), and

Whereas, KHLT's Board of Directors approved unanimously the acceptance of Lots 15, 16, 19-33, 37, 46 and 47, Stariski Meadows Subdivision, according to Plat No. 97-62 filed in the Homer Recording District, Third Judicial District, State of Alaska, on October 31, 1997 (the "Property"), in a resolution dated May 20, 2005 and resolved that (1) KHLT approves acceptance, based on the conditions stated in this Resolution, of the Property as described herein; and (2) if KHLT ceases to retain ownership of any of the lots, KHLT will ensure that, upon transfer to a new owner, KHLT or a similar conservation organization shall receive permanent conservation easements on the transferred lots, ensuring that the property remains in its natural condition in perpetuity and that no uses of the land will impair or interfere with the conservation of the land or the land's water quality values, consistent with, at a minimum, the restrictions contained in the deed for the property, and

Whereas, **Whereas**, Modeb Investments, an Alaskan general partnership, whose address is 425 "G" Street, Suite 404, Anchorage, Alaska 99501, in compliance with a consent decree with the United States on behalf of the Environmental Protection Agency, granted to Kachemak Heritage Land Trust, whose address is 315 Klondike Avenue, Homer, Alaska 99603, restrictive conservation easements encumbering real property situated in the Homer Recording District, Third Judicial District, State of Alaska, more fully described as follows:

Lots 17, 18 and 45, Stariski Meadows subdivision, according to Plat No. 97-62 filed in the Homer Recording District, Third Judicial District, State of Alaska, on October 31, 1997 ("the Property"), and

Whereas, KHLT's Board of Directors unanimously approved acceptance of three conservation easements for Lots 17, 18 and 45 of Stariski Meadows Subdivision, according to Plat No. 97-62 filed in the Homer Recording District, Third Judicial District, State of Alaska, on October 31, 1997 (the "Property"), in a resolution dated May 20, 2005, ensuring that no uses of the land will impair or interfere with the conservation of the land or the land's water quality values, and

Whereas, KHLT's Board of Directors accepted a deed dated February 7, 2020 recorded in the Homer Recording District on February 10, 2020 transferring title to KHLT by The Conservation Fund ("TCF"), consisting of three parcels totaling 69.60 acres, more or less, and legally described as:

**ITEM #3 - RIGHT OF WAY VACATION
STARISKI MEADOWS**

KPB File No.	2024-075V
Planning Commission Meeting:	August 12, 2024
Applicant / Owner:	Kachemak Heritage Land Trust / Walter Dean Larson, Kachemak Heritage Land Trust Inc., Kachemak Heritage Land Trust, Joy and Pete Lohmer
Surveyor:	None
General Location:	Sergeant Ave., Pepper Rd., Rowen Cir., Happy Valley / Anchor Point APC
Legal Description:	<u>Lots 13-16 and 45-47, Stariski Meadows, HM 97-02, Section 29, Township 3 South, Range 14 West, S.M.</u>

STAFF REPORT

Specific Request / Purpose as stated in the petition: to Vacate Rowen Circle ROW on the Stariski Meadows adjacent to Lot 13-16 and 45-47.

Notification: The public hearing notice was published in the August 7th issue of the Peninsula Clarion and the August 8th issue of the Homer News as part of the Commission’s tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Anchor Point

Post Office of Anchor Point

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

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

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

State of Alaska Department of Fish and Game
 State of Alaska DNR
 State of Alaska DOT
 Anchor Point Advisory Planning Commission
 Emergency Services of Anchor Point
 Kenai Peninsula Borough Office

Kenai Peninsula Borough Land Management
 Ninilchik Traditional Council
 Alaska Communication Systems (ACS)
 ENSTAR Natural Gas
 General Communications Inc, (GCI)
 Homer Electric Association (HEA)

Legal Access (existing and proposed):

Legal access to the site is Rowen Circle, which is being petitioned for vacation. On the east side of the lots is Pepper Rd, a 60’ dedicated road, developed but privately maintained. On the south side of the lots is Sergeant Ave intersecting the south end of Rowen Cir and intersecting with Pepper Rd. Sergeant Ave is a 100’ dedication also privately maintained continues west to Cloyds Rd, a 60’ dedication privately maintained and running north and south, connecting to Resch Ave to the north another 60’ dedication privately maintained. Resch Ave is runs out to the Sterling Highway near mile 147.2.

There is no new dedication or easement being proposed with this vacation, continued access will be from Sergeant Ave and Pepper Rd.

Block length along Sergeant Avenue will remain non-compliant after the vacation of the right-of-way. With this vacation a new dedication will not be relevant.

KPB Roads Dept. Comments	Out of Jurisdiction: No Roads Director: Griebel, Scott Comments: No RSA comments or objections.
SOA DOT & PF Comments	No comments
DNR, DML&W Survey Section	No comments

Site Investigation:

Stariski Creek is located West of the proposed vacation. Rowen Circle is within wetland areas, classified by the Kenai Watershed Forum as a drainageway and lakebed. The right-of-way is level along its entire length, with a slight incline at the northern end.

The River Center reviewers have identified the right-of-way and area as being located within the FEMA mapped flood hazard area and habitat protection district. RC review recommends the final plat include required notes be added for the plat information.

KPB River Center Review	<p>A. Floodplain Reviewer: Hindman, Julie Floodplain Status: IS in flood hazard area Comments: The proposed vacation is entirely within mapped Flood Zone D, a non-regulatory zone with an undetermined flood risk. KPB Floodplain Management has no objection to the vacation of the right-of-way and plat required notes will be needed on the plat finalizing the vacation. Flood Zone: D Map Panel: 02122C-1840E In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: Portions of this plat lie within the regulatory zoning of KPB 21.18 and River Center staff should be consulted prior to any development in these areas.</p>
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Staff Analysis:

The parcels and right-of-way were established by plat Stariski Meadows, HM 97-62. Rowen Circle was dedicated as a 60-foot wide right-of-way.

In 2001, the United States brought a Clean Water Act enforcement action against the owners of record. In 2005, the owners entered into a consent decree. The resulting action began the restoration of certain locations to approximate natural conditions in a wetlands environment, certain streets in the subdivision were to be vacated to preserve the wetlands characteristics.

Rowen Circle is being requested for vacation with this petition in response to the consent decree.

Lot 17, Stariski Meadows, HM 97-62, lies north of Rowen Circle. Access to this property is by Pepper Road. Located to the west of the proposed right-of-way vacation are lots 13 through 16, Stariski Meadows, HM 97-62. Lying east of Rowen Circle are lots 45 through 47, Stariski Meadows, HM 97-62.

Lot 13 is privately owned with a residential structure and has access from Sergeant Avenue. Lots 14, 15, 16, 46, and 47 are owned by KHLT and contained in preservation status. Lot 45 is privately owned and has only a small

portion to the east of the parcel that is developable, with access from Pepper Road. The western portion of the parcel is restricted from development by a conservation easement, including the area adjacent to Rowen Circle.

Stariski Creek and the surrounding wetlands create impracticable development plans for future roads. The conservation easement affecting the involved parcels prevents future development. No future develop is planned for Lots 13-16 and 45-47 other than a vacation plat being completed to vacate and divide Rowen Cir ROW if approved and continue the conservation of the area at issue.

20.65.050 – Action on vacation application

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right-of-way is involved in a consent decree to be vacated.
Petitioner comment: Rowan Circle right-of-way is not presently being used; therefore, vacation results in no adverse effect presently on adjoining property owners.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: A road is unreasonable to construct due to conservation easements, topography and alternative access is available.
Petitioner comment: While an improved road may be constructed to manifest the platted right of way for Rowan Circle, this would defeat the purposes of the Consent Decree and preservation of jurisdictional wetlands. Only two parcels with allowed developmental use (Lots 13 and 45) have alternative access.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: No utilities requiring further development at this time.
Petitioner comment: The area surrounding Rowan Circle is not fully developed. For the two parcels in private ownership, "all planned or needed rights-of-way and utilities are constructed" for purposes serving Lots 13 and 45.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments:
Petitioner comment: The jurisdictional wetlands within the Stariski Meadows Subdivision along with Stariski Creek itself are of "public interest or value," however access to these features in areas adjoining Rowan Circle will not be impeded by vacation of the right of way. Persons may access such features from the intersection of Sergeant Avenue and Rowan Circle along with other locations internal to the subdivision.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments:
Petitioner comment: The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels whether developed or undeveloped because the area surrounding Rowan Circle, for all intents and purposes, will remain in conservation status pursuant to deed restrictions on property ownership.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments:
Petitioner comment: Other public access to the area adjoining Rowan Circle exists or may be feasible according to item 4 above.

7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a 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 utility easement be granted in place of the right-of-way.

Staff comments: No utility comments provided.

Petitioner comment: No utilities serve the parcels adjoining Rowan Circle through easements superimposed on that platted right-of-way. Again, the area is entirely undeveloped with the exception of a home on Lot 13 and utility service to that parcel is served through Sergeant Avenue.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments:

Petitioner comment: Factors relevant to the vacation application or the area proposed to be vacated are twofold: implementation of the Restoration Plan contained in the Consent Decree with Modeb the objective of which is preservation of jurisdictional wetlands within the Stariski Meadows Subdivision and accommodating fire protection service to developed properties in private ownership.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled September 3, 2024 meeting.

If approved, "Stariski Meadows ROWV" (*to be named*) plat will finalize the proposed right of way vacations. Currently there is no vacation plat submitted for review.

KPB department / agency review:

Addressing	Reviewer: Leavitt, Rhealyn Affected Addresses: 68748 SERGEANT AVE Existing Street Names are Correct: Yes List of Correct Street Names: ROWEN CIR, SERGEANT AVE Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No other comments
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.

	Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Wilcox, Adeena Comments: Assessing has no objection to this road vacation.
Advisory Planning Commission	No comments submitted

Anchor Point Advisory Planning Commission minutes for the August 8, 2024 meeting were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available but not necessarily addressed in the staff report.

There was a comment from an owner that was notified during the public notification process and they had no objection.

Utility provider review:

HEA	No comments
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code including a submittal to and approval by the Plat Committee.
3. Grant utility easements requested by the Plat Committee and utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.65.050(I)).
5. Final plat shall combine all lots (Lots 14–16, 46 & 47) owned by Kachemak Heritage Land Trust Inc., Kachemak Heritage Land Trust, and adjacent vacated Rowen Cir into one continuous lot.

KPB 20.65.050 – Action on vacation application

- H. **A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. **Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, 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.**
- J. **A planning commission decision denying a vacation application is final. 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.

K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

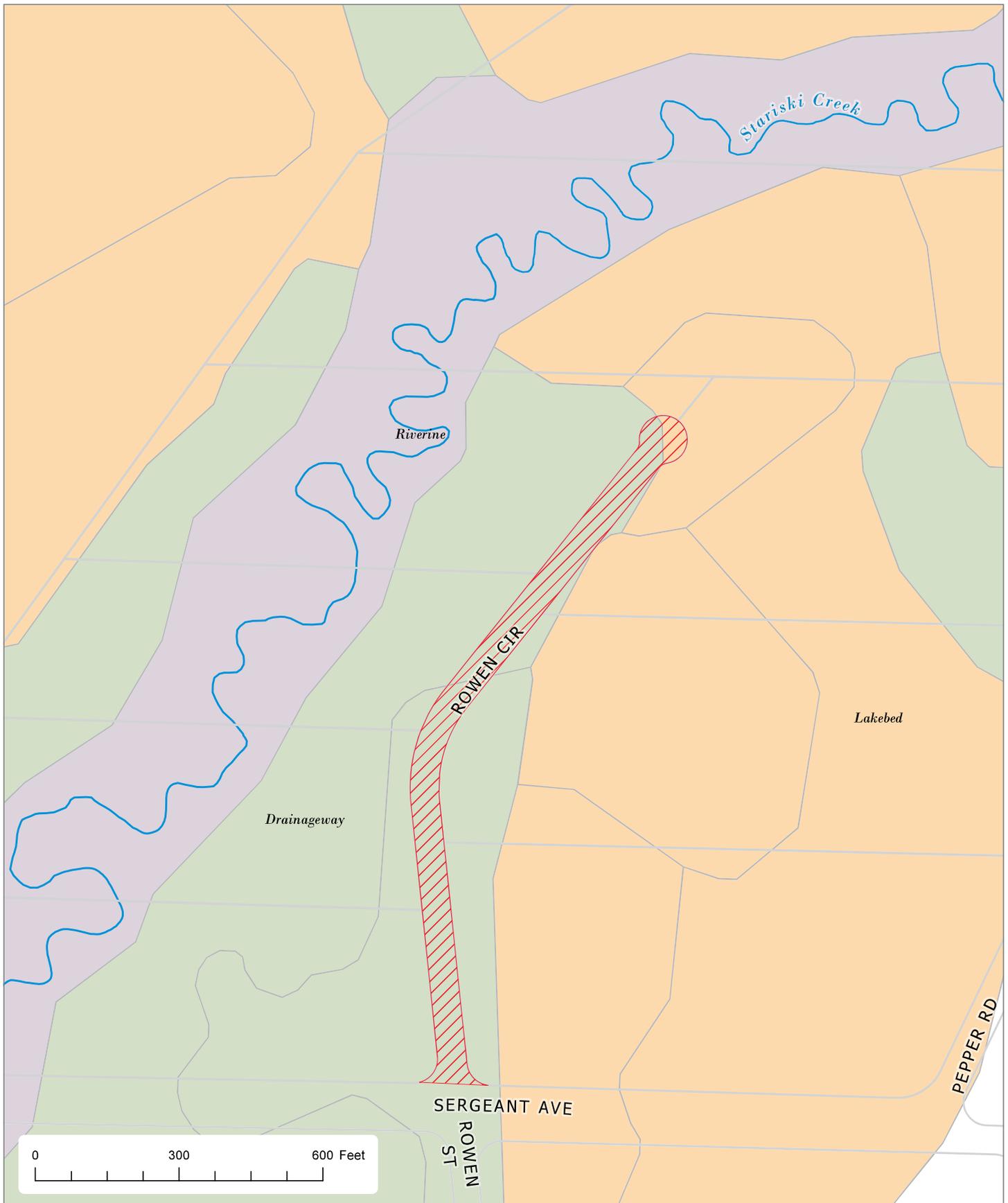
Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

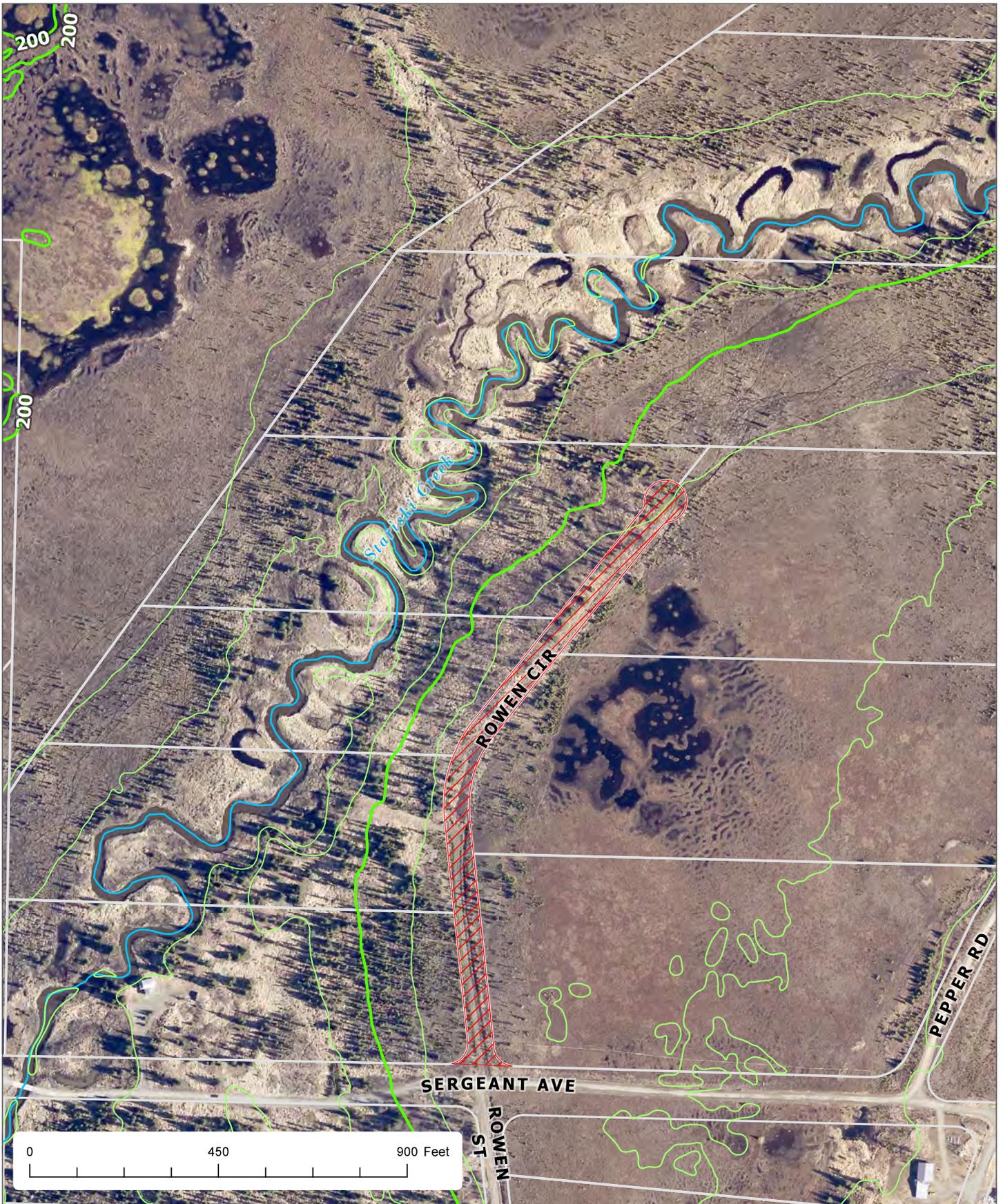
END OF STAFF REPORT



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HM 97-62

