


Kenai Peninsula Borough
Planning Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Robert Ruffner, Planning Director 

DATE: February 14, 2023

RE: Right-Of-Way Vacation: Vacating a Portion of McNamara Court Cul-de-sac Bulb

In accordance with AS 29.40.140, no vacation of a Borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of February 13, 2023 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (8-Yes, 4-Vacant). This petition is being sent to you for your consideration and action.

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

February 13, 2023 Draft PC Minutes
February 13, 2023 Meeting Packet Materials
Petition Form

**ITEM E2 - RIGHT OF WAY VACATION
VACATE A PORTION OF MCNAMARA COURT CUL-DE-SAC BULB**

KPB File No.	2023-009V
Planning Commission Meeting:	February 13, 2023
Applicant / Owner:	George and Laurel Lastinger of Soldotna, Alaska
Surveyor:	Jason Schollenberg
General Location:	Royce Street, McNamara Court, Funny River, Funny River APC
Legal Description:	McNamara Court, McNamara Acres Subdivision, Plat KN 81-151

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Staggs moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, based on staff recommendations and compliance to borough code.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Fikes, Gillham, Hooper, Martin, Morgan, Staggs, Venuti
Absent - 4	Horton, Slaughter, Stutzer, Tautfest

**ITEM E3 – CONDITIONAL USE PERMIT
PC RESOLUTION 2023-04**

KPB File No.	2023-04
Planning Commission Meeting:	February 13, 2023
Applicant	Alaska Department of Transportation and Public Facilities
Mailing Address	4111 Aviation Avenue, Anchorage, AK 99516-6900
Legal Description	ADOT Right-of-Way (ROW) Easement, Cooper Landing, AK
Physical Address	T 05N, R 05W, Section 35, Seward Meridian
KPB Parcel Number	025-180-03

Staff report given by Borough Planner Morgan Aldridge.

Chair Brantley opened the item for public comment.

Irene Turllets, Project Manager HDR; 582 East 36th Avenue, Suite 500, Anchorage AK, 99503;

Johnathan Tymick, Engineer, AK DOT&PF; P.O. Box 196922, Anchorage, AK 99515:

Lynnda Khan, Kenai National Wildlife Refuge; 33398 Ski Hill Road, Soldotna, AK 99669

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission

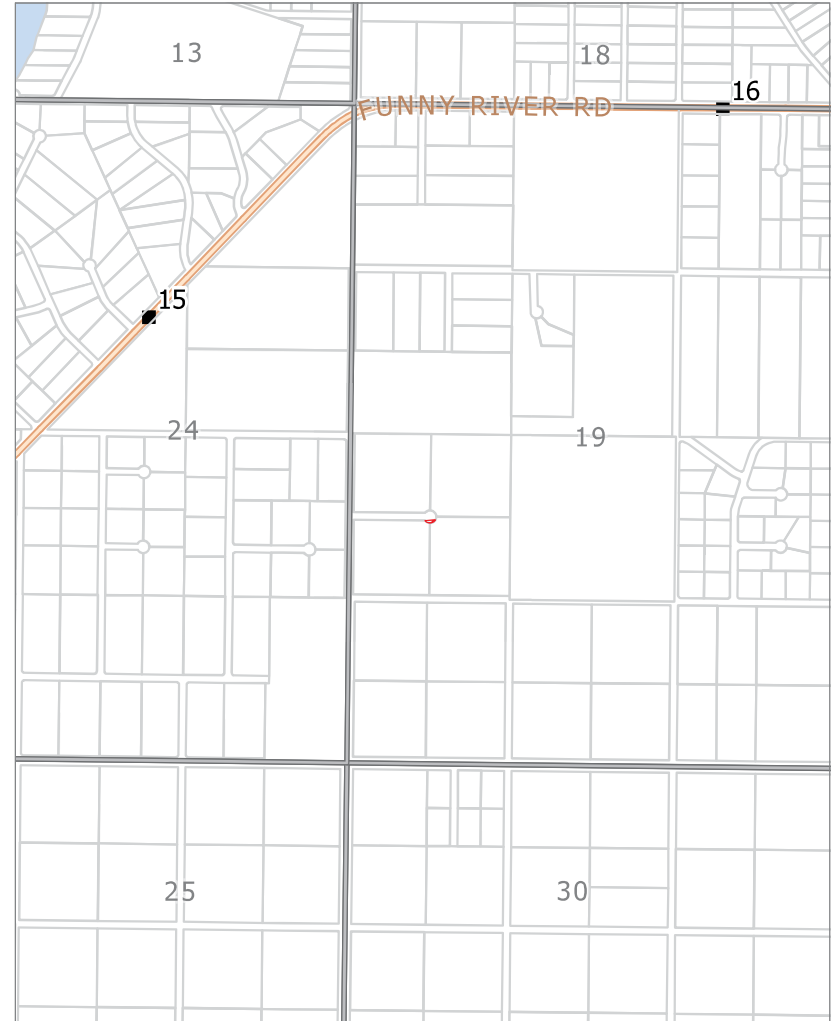
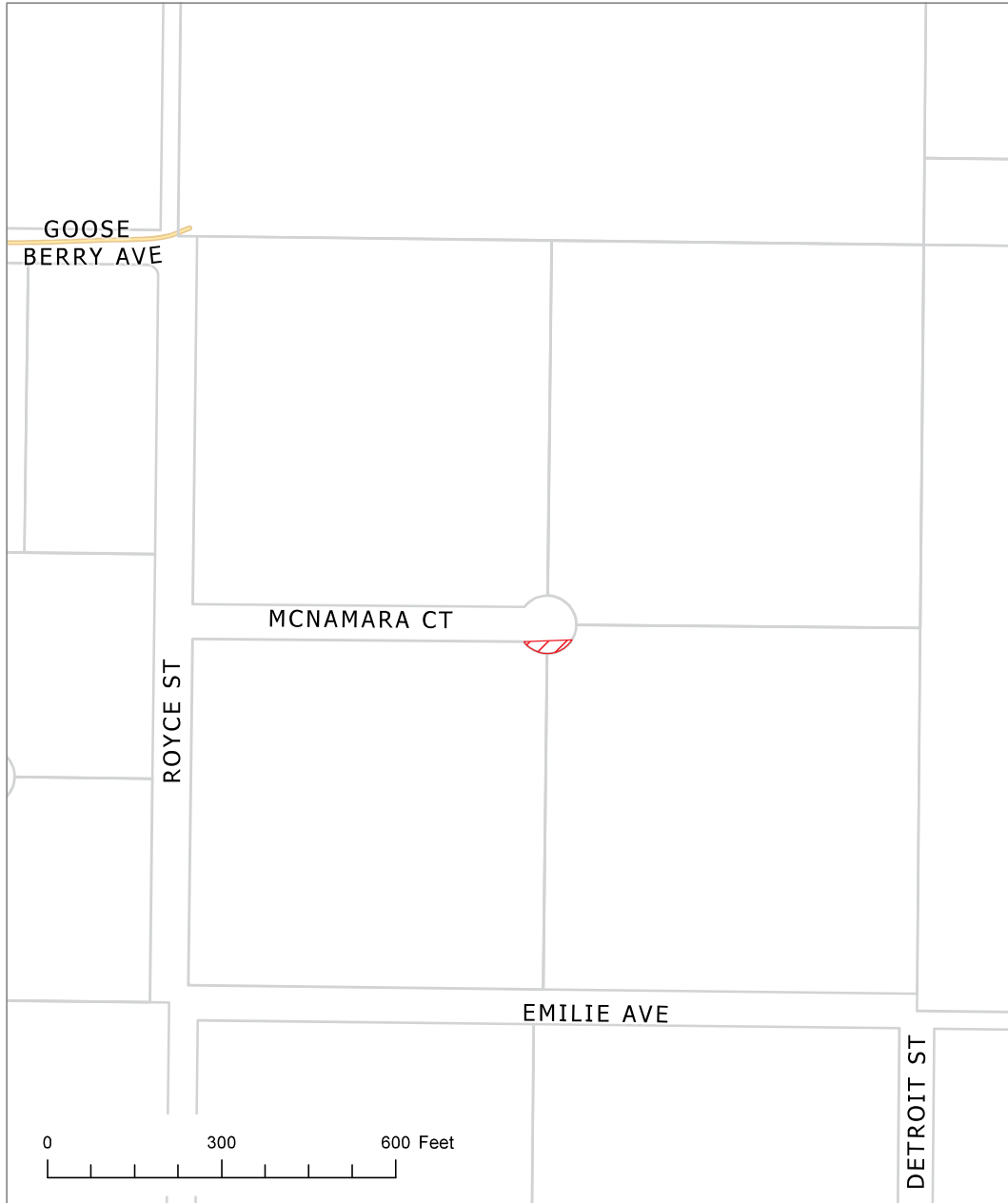
MOTION: Commissioner Staggs moved, seconded by Commissioner Gillham to adopt PC Resolution 2023-04, granting a conditional use permit pursuant to KPB 21.18 for the construction of highway improvements within the 50-foot Habitat Protection District of the Kenai River.

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

E. NEW BUSINESS

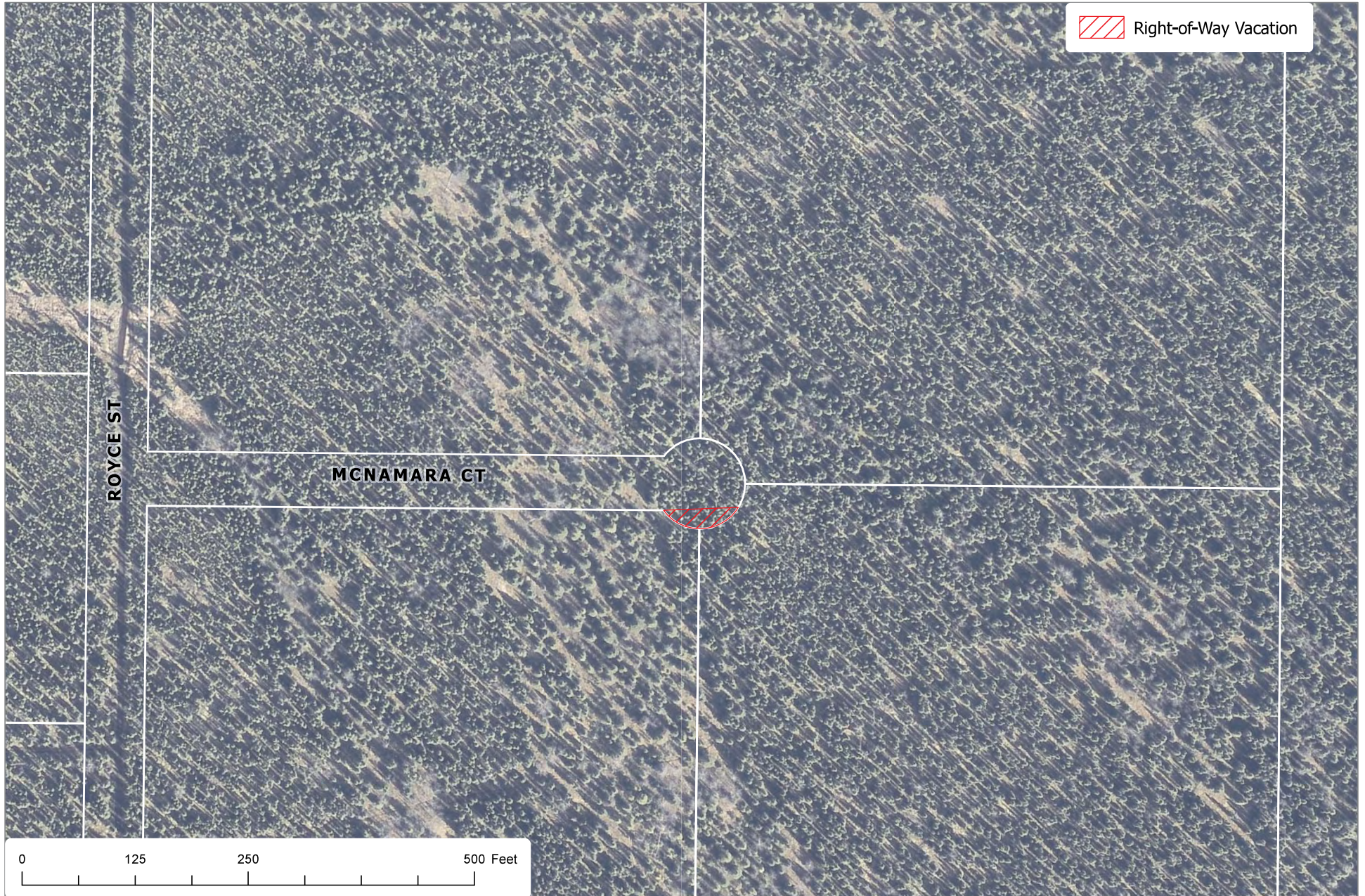
2. Right-of-Way Vacation; KPB File 2023-009V

Request: Vacates a portion of a cul-de-sac bulb dedicated by McNamara Acres Subdivision, Plat KN 81-151 to extend the road dedication

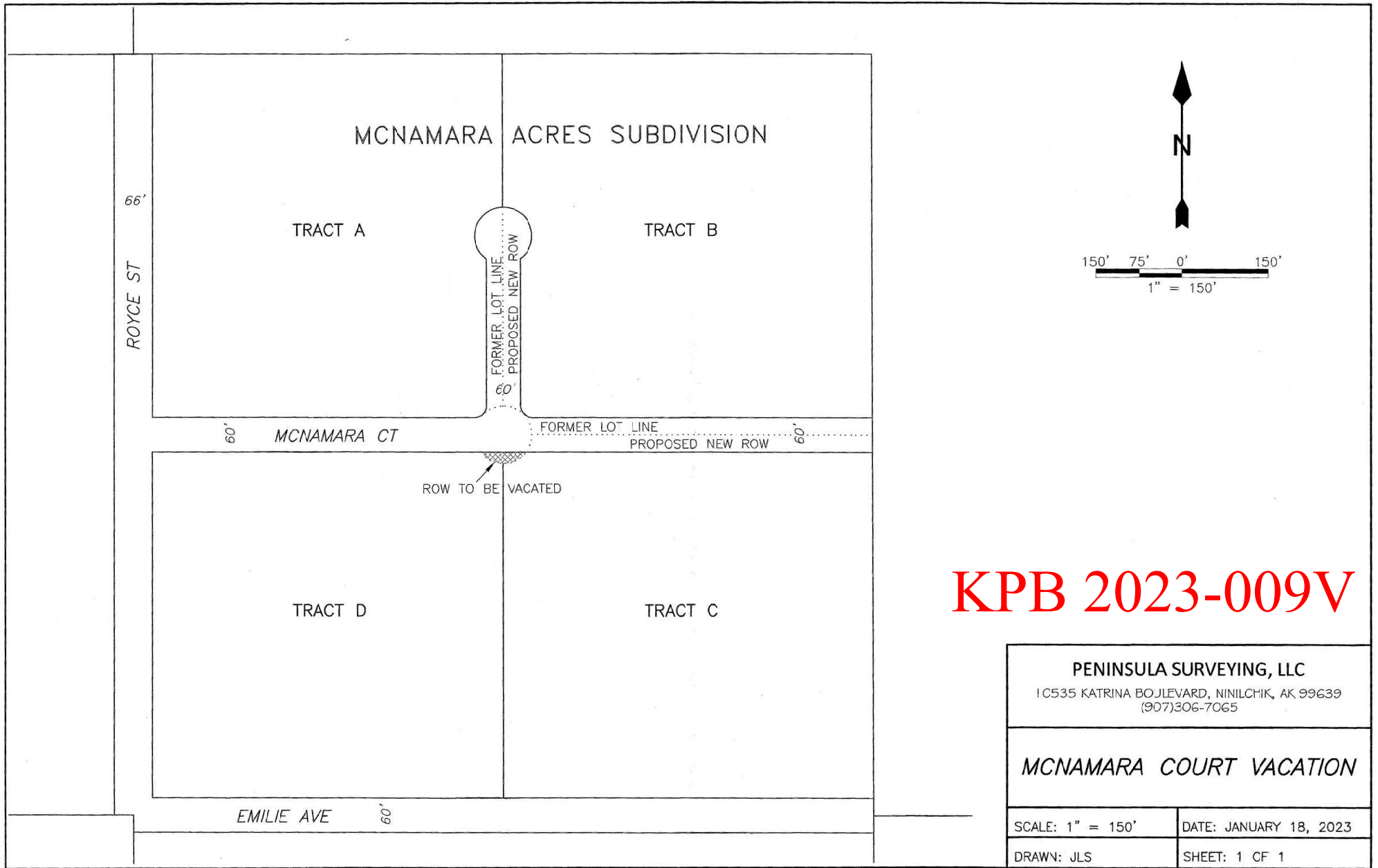


KPB File # 2023-009V
 S19 T05N R8W
 Funny River

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



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KPB 2023-009V

PENINSULA SURVEYING, LLC 1 C535 KATRINA BOJLEVAR, NINILCHIK, AK 99639 (907)306-7065	
MCNAMARA COURT VACATION	
SCALE: 1" = 150'	DATE: JANUARY 18, 2023
DRAWN: JLS	SHEET: 1 OF 1

**ITEM 2 - RIGHT OF WAY VACATION
VACATE A PORTION OF MCNAMARA COURT CUL-DE-SAC BULB**

KPB File No.	2023-009V
Planning Commission Meeting:	February 13, 2023
Applicant / Owner:	George and Laurel Lastinger of Soldotna, Alaska
Surveyor:	Jason Schollenberg
General Location:	Royce Street, McNamara Court, Funny River, Funny River APC
Legal Description:	McNamara Court, McNamara Acres Subdivision, Plat KN 81-151

STAFF REPORT

Specific Request / Purpose as stated in the petition: We would like to vacate the southern portion of the cul-de-sac on McNamara Court. The property owner is in the process of subdividing the property and there will be a new right-of-way dedication that extends McNamara Court to the east. There will also be a new dedication going north from the existing cul-de-sac.

Notification: The public hearing notice was published in the February 8, 2023 issue of the Peninsula Clarion 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 Soldotna

Post Office of Soldotna

Eighteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Sixteen receipts had been returned when the staff report was prepared.

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

- | | |
|------------------------------------------|------------------------------------|
| State of Alaska Dept. of Fish and Game | Alaska Communication Systems (ACS) |
| State of Alaska DNR | ENSTAR Natural Gas |
| State of Alaska DOT | General Communications Inc, (GCI) |
| State of Alaska DNR Forestry | Homer Electric Association (HEA) |
| Funny River Advisory Planning Commission | |
| Central Emergency Services | |

Legal Access (existing and proposed): The proposed vacation is for a portion of a right-of-way bulb located at the end of McNamara Court. To access McNamara Court there are several platted options but many of the routes are unconstructed. Near mile 14.75 of state maintained Funny River Road is Goose Berry Avenue. Goose Berry Avenue is a borough maintained 60 foot wide right-of-way. The dedication of Goose Berry Avenue is approximately 2,500 feet with the entire length constructed and maintained. At the end of Goose Berry Avenue it intersects with Royce Street. Royce Street is a varying width right-of-way that appears to have some clearing but is not borough maintained. The width of Royce Street in the subject area is 66 feet wide with underlying section line easements. McNamara Court is located about 630 feet from the Goose Berry Avenue and Royce Street intersection. McNamara is dedicated as a 60 foot wide right-of-way that is approximately 650 feet long and ends with a 50 foot radius cul-de-sac. It appears to be unconstructed at this time.

McNamara Court provides access to four lots. Three of the lots have access from other dedicated rights-of-way. All lots are listed in the KPB Assessing records as being vacant and all owned by the same owner.

The proposal is to vacate a small portion of the southern portion of the existing cul-de-sac bulb. The owner wishes to extend the right-of-way to the east and provide a new dedication to the north that will end with a cul-de-sac. The remaining portion of the cul-de-sac bulb will remain and will be used with the extension of the new rights-of-way to still be used as dedicated right-of-way.

The block is incomplete in the area but the existing dedications are compliant. The cul-de-sac bulb does not improve the block. The new dedication will reduce the block length and will still be compliant. The plat has not been submitted that will finalize the vacation. If a new dedication along the east is not granted, exceptions to block length and for street layout requirements will need to be requested and reviewed by the Plat Committee.

KPB Roads Dept. comments	
SOA DOT comments	

Site Investigation: Some areas designated as wetlands are present within the western portion of McNamara Court. Construction may require permitting from the U.S. Army Corps of Engineers. The portion proposed to be vacated and the proposed dedication do not appear to contain any low wet areas.

The area is relatively flat. There are some slopes throughout the adjoining lots but the existing dedication along with the proposed dedication do not contain any steep slopes to hinder construction or use as a right-of-way.

KPB River Center review	
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Staff Analysis: McNamara Court was dedicated as a 60 foot wide right-of-way on McNamara Acres Subdivision, Plat KN 81-151. The plat divided an aliquot 40 acres into four lots and dedicated McNamara Court and matching dedications for Royce Street and Emilie Avenue, which is located to the south.

Per KPB Code 20.30.100, cul-de-sacs are to be streets with the intent to be permanently closed. The opening of an end of a cul-de-sac has been done in the past and the requirement that all owners along the cul-de-sac dedication must provide non-objections. In this case all lots along the cul-de-sac are owned by one owner, the applicant. The existing road dedication provides limitations on road continuations and may limit further subdivision of the existing 10 acre parcels. The new proposal will provide more options for the owner but will also provide an additional access route to the large 40 acre parcel to the east.

The plat to finalize the vacation has not yet been submitted. There appears there should be some additional dedications required to provide for continuations or projections of rights-of-way as well as try to improve the block requirements. It will be up to the surveyor/owners to request such exceptions to KPB Code if they do not intend to provide the dedications.

Per the parent plat there is an 80 foot airstrip easement within the northern lots of McNamara Acres Subdivision. That will need to be addressed on the plat and should not impact the vacation.

The vacation is within the Funny River Advisory Planning Commission boundary. Comments were not received when the staff report was prepared. If any minutes are comments are available they will be presented in the desk packet.

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 currently unconstructed.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: U.S. Corps of Engineers may have requirements that need to be met but it does appear to be able to be constructed as similar roads in the area have the same designations and are constructed. The proposal will be to extend the right-of-way.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: There are still a lot of large acreage parcels in the area and many undeveloped lots. The continuation of the right-of-way may benefit the large acreage parcel to the east.
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: Does not provide access to public lands or areas with public interest.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed continuation will improve the ability to connect with other parcels.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: If the right-of-way continues to the east the small portion proposed for vacation will not be required.
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: The area is undeveloped and the use by utility providers is minimal. New utility easements will be granted along the new right-of-way edge.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: The vacation and allowance to continue the road will provide more options for future development.

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 or City Council will hear the vacation at their scheduled February 21, 2023 meeting.

If approved, a plat will be required to be submitted to finalize the proposed right of way vacations. The preliminary plat has not yet been submitted. If an application for the plat that complies with KPB 20.25 is received it will be scheduled for review by the Plat Committee in accordance with KPB Code.

KPB department / agency review:

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.
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	Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Affected Addresses: Existing Street Names are Correct: Yes List of Correct Street Names: McNamara Court Royce Street Emilie Avenue Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: Julie Hindman - Addresses will be reviewed upon recording and this action may result in required address changes. An approved street name will be required for the new proposed dedication. Upon recording the street name will be reviewed to determine if the suffix of Court will still apply as defined within KPB Code. A street name change may be required.
Assessing	Reviewer: Windsor, Heather Comments: No comment

Utility provider review:

HEA	No comments
ENSTAR	No comments or objections
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 the KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the 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 20.70.130).

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.

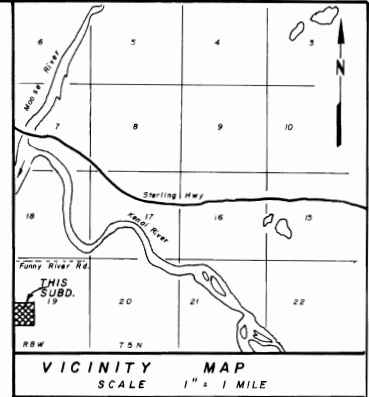
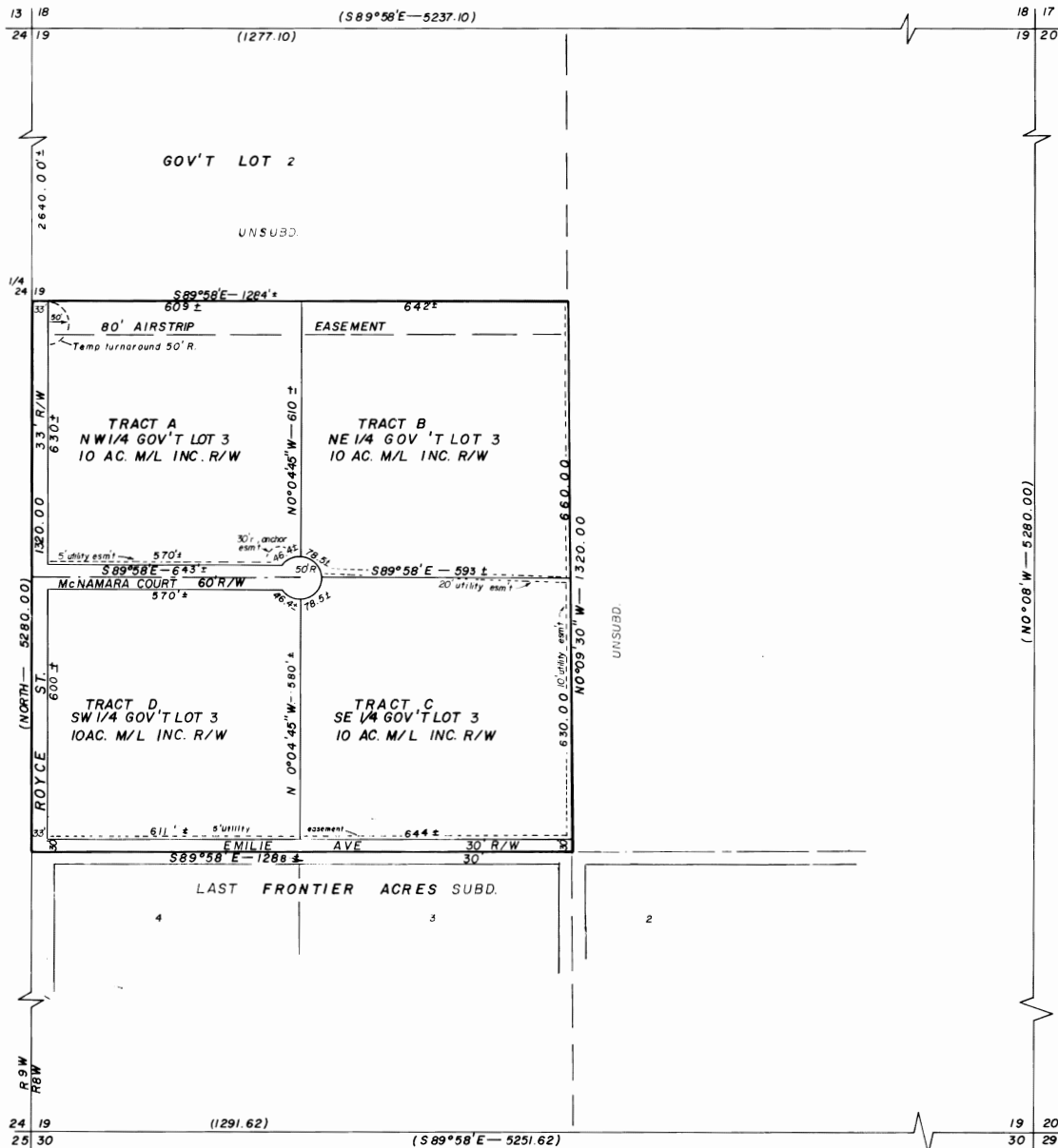
Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *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



NOTES

This is a paper plat subdivision of Gov't lot 3 Section 19, T 5 N, R 8 W, S.M. AK.

All bearing and distances refer to the G.L.O. datum as shown on the official township plat.

Datum of record is shown in ().

No field survey was accomplished nor were any monuments or stakes set this date.

All tracts are subject to a minimum building setback of 20' along all dedicated R.O.W.s

All wastewater disposal systems shall comply with existing law at time of construction.

PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of March 14, 1979, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law appertaining thereto.

KENAI PENINSULA BOROUGH
By: [Signature]
ADMINISTRATIVE OFFICE

81-151

RECORDED - FILED 10⁰⁰

11-16 1981

TIME 2:19 P

RECORDED BY KRB

McNAMARA ACRES SUBDIVISION

Douglas A. Dicken - William R. Stevens owners
3310 Jerde Circle
Anchorage, AK. 99504

LOCATION
NW 1/4 SW 1/4 SECTION 19, T5N, R8W S.M. ALASKA
CONTAINING 39 AC. M/L IN THE KENAI PENINSULA BOROUGH. (K.R.D. BK 78 Pg 64, NW 1/4 SW 1/4 SEC. 19.)

Prepared by: McLane and Associates
Seldovia Alaska

DATE Aug. 16, 1978	SCALE 1" = 200'
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CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of said property and request the approval of this plat showing such easements for public utilities, roadways, and or streets dedicated by us for public use.

Douglas A. Dicken
Douglas A. Dicken, owner, 3310 Jerde Circle Anchorage, Ak. 99504

William R. Stevens
William R. Stevens, owner,
Ann M. Stevens
Ann M. Stevens, owner

NOTARY'S ACKNOWLEDGEMENT
for Douglas A. Dicken
Subscribed and sworn before me this
8th day of September, 1981
My commission expires 4/1/84

Barbara Young
notary public for Alaska

NOTARY'S ACKNOWLEDGEMENT
for William R. Stevens and Ann M. Stevens
Subscribed and sworn before me this
17th day of September, 1981
My commission expires 4/15/83

Susan Mitchell
notary public for Alaska



Planning Department

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

RECEIVED
JAN 20 2023
KPB PLANNING DEPT.

PETITION TO VACATE PLATTED RIGHT OF WAY / PLATTED PUBLIC EASEMENT / PLATTED PUBLIC AREA

PUBLIC HEARING REQUIRED

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will 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.

Initially, a sketch may be included with the vacation petition for review by the Planning Commission. After the Planning Commission takes action on the vacation, a Subdivision Plat must be prepared by a licensed land surveyor. The plat will be processed in accordance with KPB 20.10.080. Platting authority is vested in the Planning Director.

SUBMITTAL REQUIREMENTS

A platted right of way vacation (ROWV) application will be scheduled for the next available planning commission meeting after a complete application has been received.

- \$500 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to the vacation fees.
- City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- McNamara Court _____ platted public right of way proposed to be vacated was dedicated by the plat of McNamara Acres _____ Subdivision, filed as Plat No. 81-151 in the Kenai _____ Recording District.
- 3 copies of the plat or map showing the platted right of way to be vacated. Must not exceed 11 x 17 inches in size. Area to be vacated must be clearly depicted. Proposed alternative public access to be shown and labeled on the sketch.
- **REASON FOR VACATING** The petitioner must attach a statement with reasonable justification for the vacation of the platted right of way / platted easement / platted public area.

Has the platted right of way been fully or partially constructed?		Yes	<input checked="" type="checkbox"/>	No
Is the platted right of way used by vehicles / pedestrians / other?		Yes	<input checked="" type="checkbox"/>	No
Is alternative right-of-way being provided?	<input checked="" type="checkbox"/>	Yes		No
Are there utility easements associated with the right of way to be vacated?	<input checked="" type="checkbox"/>	Yes		No
Is the platted right of way and or associated utility easement in use by any utility company?		Yes	<input checked="" type="checkbox"/>	No
If so, which utility provider?				

LEGAL DESCRIPTION ADJOINING LAND:

Lot, Block, Subd. or street address Tracts A, B, C, D, McNamara Acres Subdivision	
Section, township, range SEC 19, T5N, R8W	
City (if applicable)	General area Funny River

The petition must be signed by owners of a majority of the land affected by the platted right of way proposed to be vacated. Each petitioner must include address and legal description of his/her property. Attach additional signature sheets if needed.

Submitted by:

Land Owner

Name (printed): George L Lastinger	Signature: <i>George L Lastinger</i>
e-mail: gllsr@yahoo.com	Address: P.O. Box 2834 Soldotna AK 99669
Owner of:	

Land Owner:

Name (printed): Laurel Lastinger	Signature: <i>Laurel Lastinger</i>
e-mail: lorilastinger@yahoo.com	Address: P.O. Box 2834 Soldotna, AK 99669
Owner of: gooseberry - McNamara Estate	

FOR OFFICE USE ONLY

RECEIVED BY _____ DATE SUBMITTED _____ KPB FILE # _____