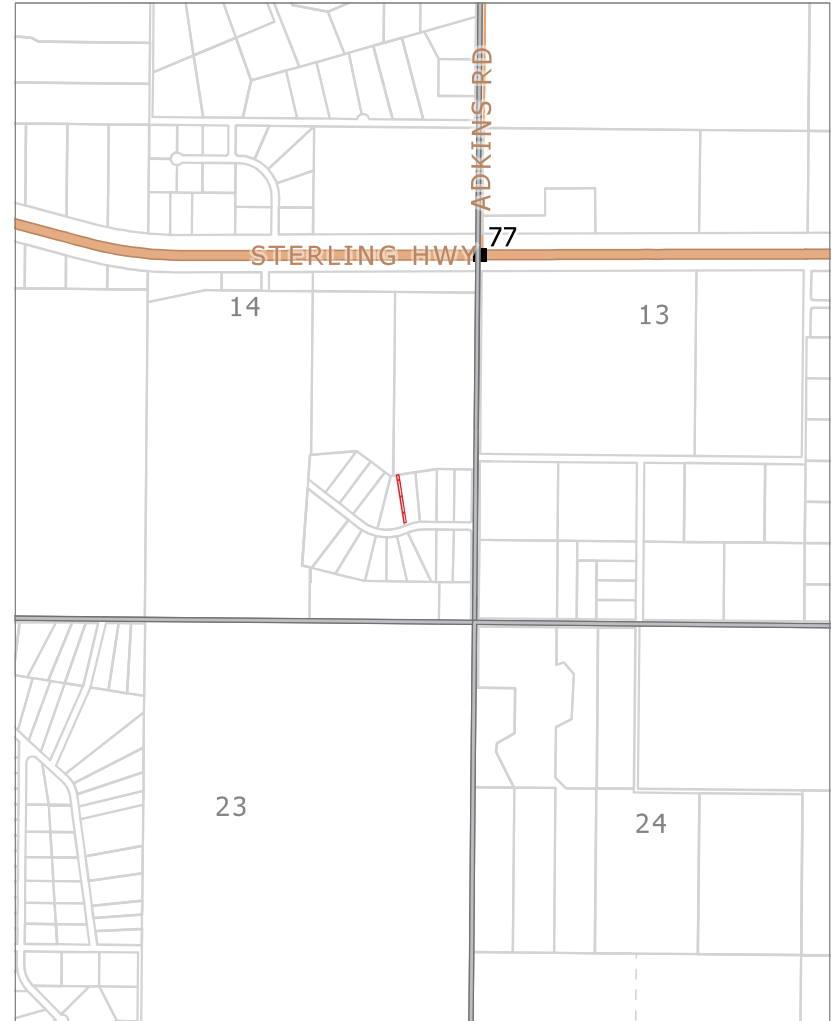
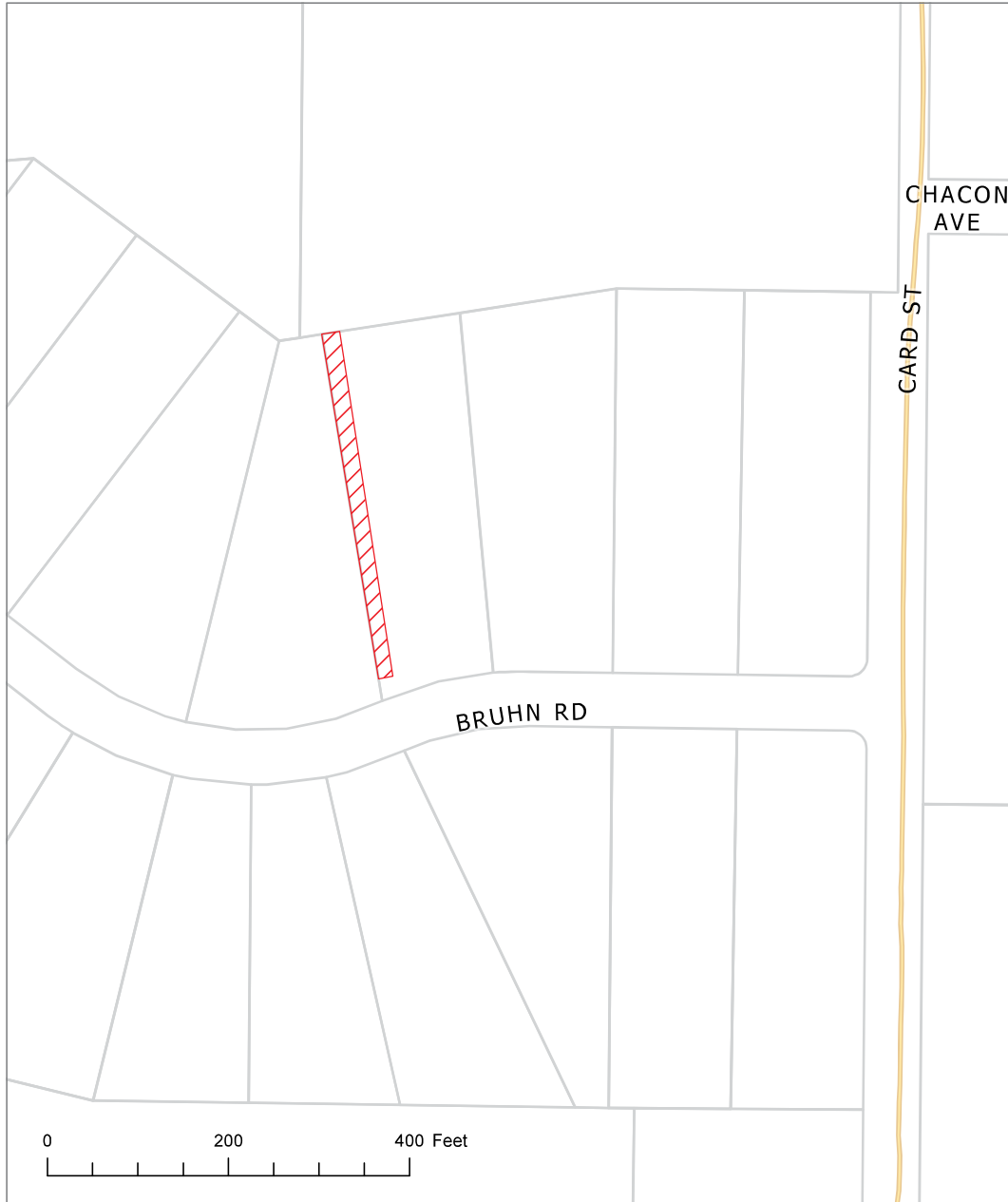


## **E. NEW BUSINESS**

### **1. Utility Easement Vacation; KPB File 2022-070V**

**Request: Vacate a portion of a 10' utility easement along the west boundary of Lot 4, Block 2, Bruhn Subdivision, Plat KN 86-143**

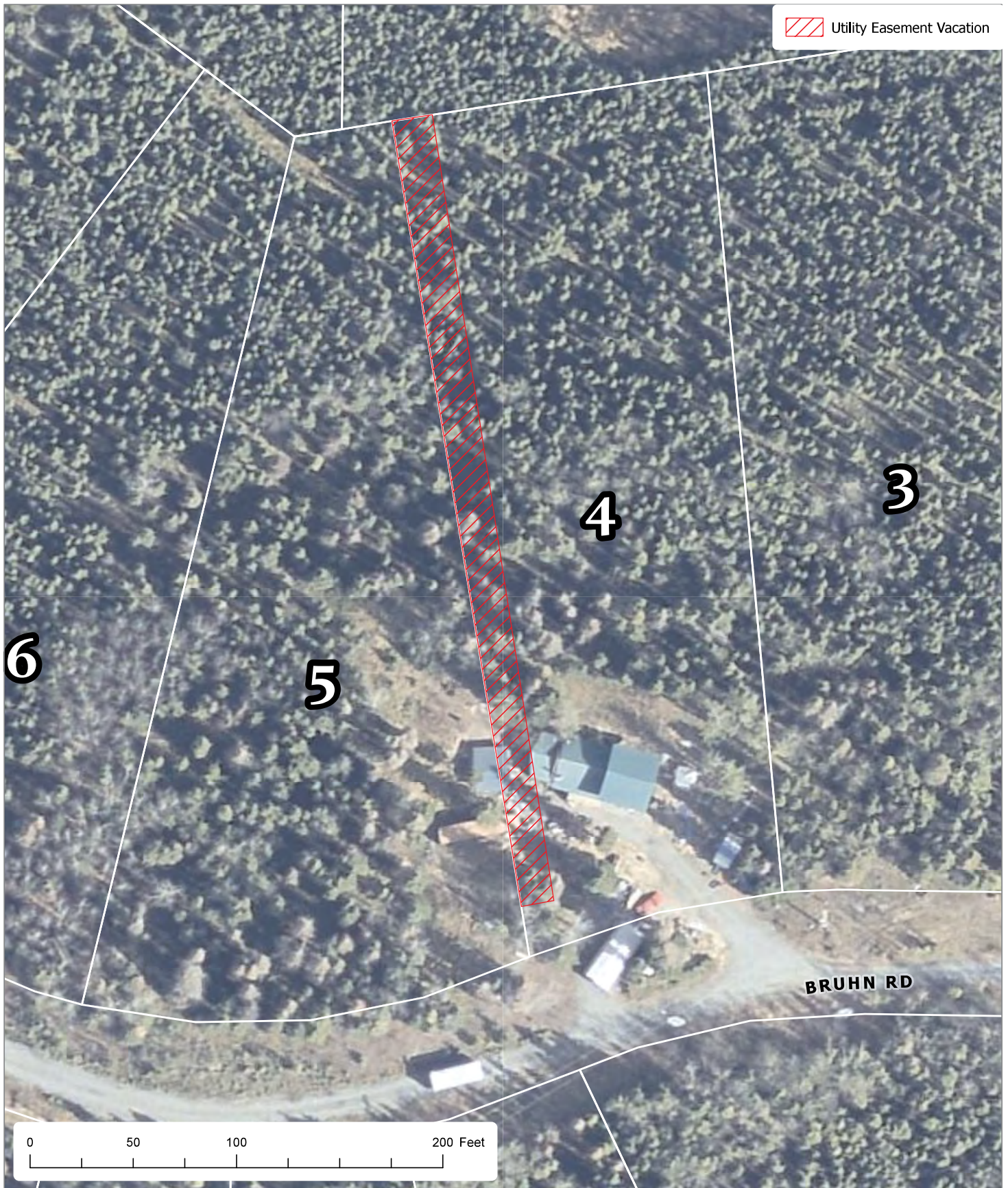


KPB File # 2022-070V  
 S14 T05N R08W  
 Sterling

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



Aerial View



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.





ITEM 1 – UTILITY EASEMENT ALTERATION  
BRUHN SUBDIVISION LOT 4 BLOCK 2

<b>KPB File No.</b>	2022-070V
<b>Planning Commission Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Tanley Martinez of Sterling, AK
<b>General Location:</b>	Bruhn Road, Sterling

STAFF REPORT

**Specific Request / Purpose as stated in the petition:** Owner requests alteration on utility easement due to home being built within the setback. HEA has signed off on vacating the west boundary. ENSTAR has no gas out there, therefor no objection.

**Notification:** Notice of vacation mailings were sent by regular mail to fourteen owners of property within 600 feet. Notice of the proposed vacation was emailed to six agencies and interested parties.

The public notice was posted on the Planning Department’s bulletin board at the KPB Administration Building.

**Staff Analysis:** This is a utility easement alteration for Lot 4 Block 3 of Bruhn Subdivision, Plat KN 86-143. There were no prior subdivisions for the property within Bruhn Subdivision. The plat created a 20 foot wide utility easement that was centered along the shared lot line of Lots 4 and 5 of Block 2. 10 foot utility easements were also granted adjacent to the dedicated right-of-way, Bruhn Road, as well as the creation of a 20 foot building setback.

The as-built that was submitted with the requests indicates a house within the western utility easement. A shed is also present within the setback, utility easement, and right-of-way dedication of Bruhn Road. The comment submitted with the application and comments from the utility providers indicate that the petition is to resolve the encroachment within the western utility easement.

This platting action will be to remove the entire 10 foot wide utility easement along the western boundary of Lot 4 Block 2 of Bruhn Subdivision with the exception of the front 20 feet along Bruhn Road. A 10 foot utility easement will remain along Bruhn Road that will increase to 20 feet within 10 feet of the side lot line. The 10 foot utility easement is still in place along the eastern lot line of Lot 5 Block 2.

The as-built indicates that there are structures associated with this lot within the neighboring lot. The depiction of the neighboring utility easement is not present but it appears that the shop and connex may be within the utility easement. The owner of Lot 5 Block 2 should contact the owners of Lot 4 Block 2 to resolve any encroachment issues if there is not an agreement in place.

KPB Code Compliance has gone to the site to review the encroachments along Bruhn Road and verified the KPB Code violations. A cease and desist notice is being prepared to be sent by certified mail.

A new drawing that is prepared by a licensed land surveyor will need to be prepared that visually shows the areas approved for vacation. That drawing will be recorded with the resolution to finalize the alteration.

The petition is for the western utility easement only. As this action is to alter an easement for utility providers use for the benefit of land owners there are several options available to the Planning Commission in there review of this item.

1. Approve the alteration and adopt PC Resolution 2022-026.
2. Approve the alteration by granting a one year approval and a resolution to be presented in the future for adoption. The approval would be subject to:
  - a. KPB Code violations being resolved and the following are demonstrated;

- b. KPB Road Department acknowledges in writing to the planning department all encroachment issues are resolved,
  - c. KPB Code Compliance acknowledges in writing that the violations have been resolved and the owners are no longer in violation of KPB Code,
  - d. A new as-built be provided that demonstrates code violations have been resolved to the satisfaction of the terms agreed upon.
3. Open public hearing and table the item. Direction on when or what will warrant the item to be brought back should be provided to staff.
  4. Deny the petition to alter the utility easement if found to be in the public's best interest to not grant approval.

**Utility provider review:**

HEA	HEA does not object to the vacation of the 10 foot wide utility easement adjoining the west boundary of Lot 4 Block 2, excluding the 20 feet segment adjoining Bruhn Road. HEA objects to the vacation of any portion of the 10 foot utility easement adjoining Bruhn Road. HEA notes that the as-built drawing depicts a shed located within the easement. HEA reserves the right to have the landowner remove the shed from the easement at the expense of the homeowner.
ENSTAR	No comments or recommendations
ACS	No objection to the vacation or encroachment of the utility easement on the west side of Lot 4 with the exception of the front 10 feet along the ROW.
GCI	Approved as shown

**KPB department / agency review:**

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 29108 BRUHN RD</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: BRUHN RD</p> <p>Existing Street Name Corrections Needed: ATKINS RD on vicinity map should be ADKINS RD. 3 JOHNS RD on vicinity map should be THREE JOHNS ST.</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: 29108 BRUHN RD will remain on lot 4.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: It appears that there are structures in the ROW and 20ft Set back both issues are code violations. Additionally structures on the neighboring property</p>
Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>

Assessing	Reviewer: Wilcox, Adeena Comments: Parcel appears to have improvements encroaching on adjoining parcel 06516405.
KPB Roads Department	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: The as-built indicates that there is an active unauthorized encroachment of the Bruhn Road ROW and the utility easement. I recommend that all platting action is tabled until the encroachments are fixed.

**Findings:**

1. The petition does not state that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation but a portion shall remain along Bruhn Road.
3. Bruhn Subdivision, Plat KN 86-143, granted a 20 foot wide utility easement centered along the shared lot line of Lots 4 and 5.
4. Bruhn Subdivision, Plat KN 86-143, created a 20 foot building setback along Bruhn Road.
5. Bruhn Subdivision, Plat KN 86-143, created a 10' utility easement along Bruhn Road.
6. A 10 foot wide utility easement will remain along the common lot line and will be within Lot 5.
7. Several violations to KPB Code exist due to the shed shown within Bruhn Road, the building setback, and the utility easement.
8. Encroachments appear to exist within Lot 5.

**RECOMMENDATION:**

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends if the utility easement alteration as petitioned is approved that it be subject to:

1. Grant utility easements requested by the utility providers.
2. Finalizing the approval of the easement alteration by either;
  - a. The recording of a subdivision plat within 12 months or,
  - b. The recording of a utility easement alteration resolution within 90 days of the adoption of the resolution by the Planning Commission, with the following requirements:
    - i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.
    - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
    - iii. The Planning Department is responsible for filing the Planning Commission resolution.

**20.65.070 Alteration of platted utility easements**

**E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement 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. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.**

**F. An appeal of the planning commission decision under this section 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.*

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**END OF STAFF REPORT**



**KENAI PENINSULA BOROUGH PLANNING COMMISSION  
RESOLUTION 2022-026  
KENAI RECORDING DISTRICT**

Vacate a portion of a 10' utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143, granted by Bruhn Subdivision KN 86-143 (KN0860143); within S14, T05N, R08W, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2022-070V

WHEREAS, a request has been received from Tanley Jo Martinez of Sterling, AK to vacate a portion of a 10' utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143 granted by Bruhn Subdivision KN 86-143 (KN0860143); and

WHEREAS, affected utility companies have provided written non-objection to the proposed vacation; and

WHEREAS, the Kenai Peninsula Borough Roads Department provided written comments to table the item until other encroachment issues are resolved; and

WHEREAS, the easement is not in use by the utility companies; and

WHEREAS, no surrounding properties will be denied utilities; and

WHEREAS, on June 27, 2022, the Kenai Peninsula Borough Planning Commission addressed all concerns about the proposed vacation; and

WHEREAS, the Planning Commission has found that vacating the utility easement will not be detrimental to the public interest; and

WHEREAS, 20.70.140 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

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

Section 1. That the above described 10 foot utility easement along the west boundary of Lot 4 Block 2 Bruhn Subdivision, Plat KN 86-143, excluding the front 20 feet along Bruhn Road, is hereby vacated.

Section 2. That an as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the locations of the portions of the utility easements being vacated be attached to, and made a part of this resolution, becoming page 2 of 2.

Section 3. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

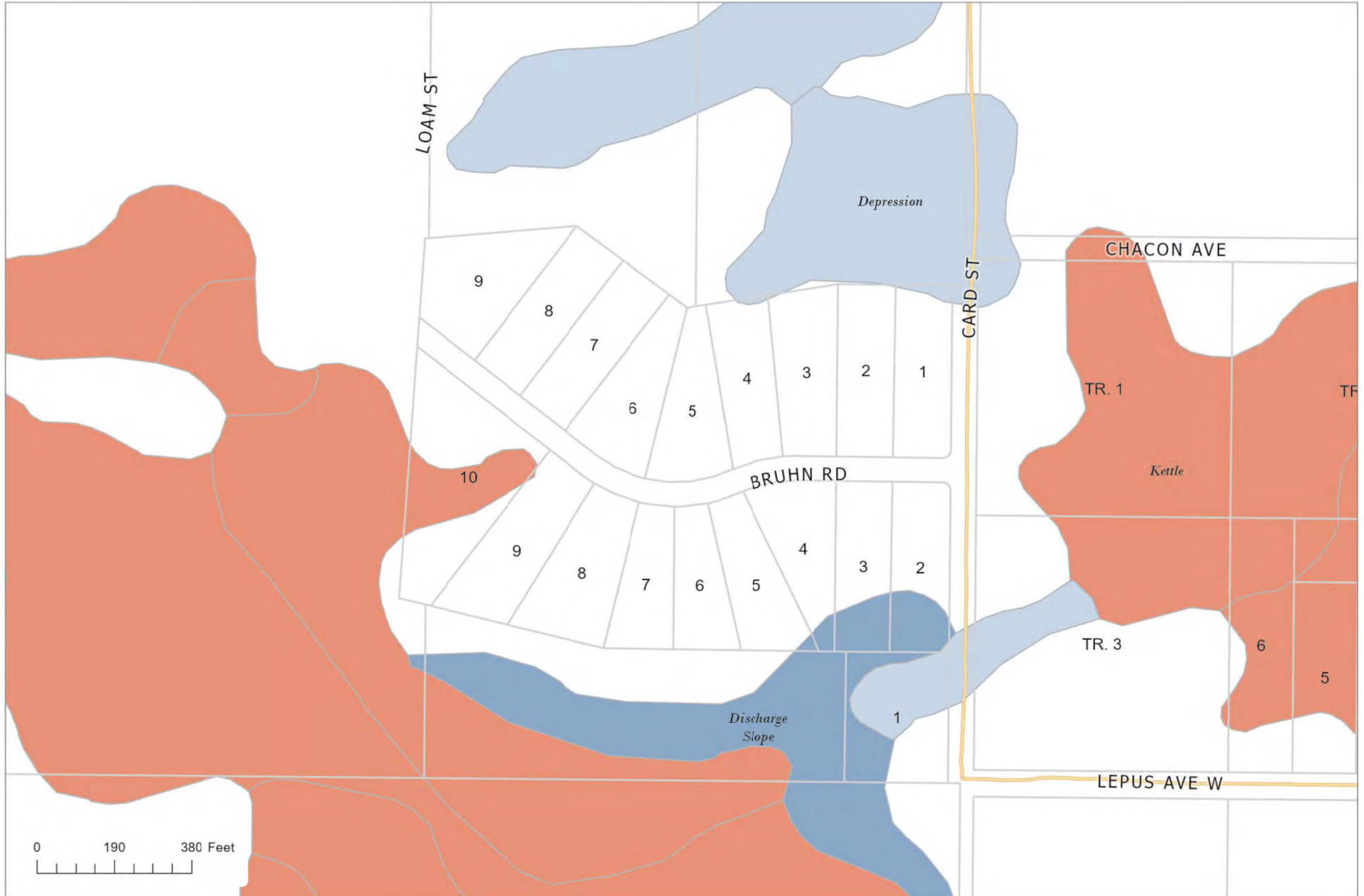
Section 4. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Blair J. Martin, Chairperson  
Planning Commission

ATTEST: \_\_\_\_\_  
Ann Shimberg,  
Administrative Assistant

Return to:  
Kenai Peninsula Borough Planning Department  
144 N. Binkley Street  
Soldotna, Alaska 99669



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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On May 17, 2022, at 3:10 PM, Tanley Martinez <[tanleymartinez@rocketmail.com](mailto:tanleymartinez@rocketmail.com)> wrote:

Thank you so much. No I don't think I need them anymore. Thanks again.

Tanley Martinez

Sent from my iPhone

On May 16, 2022, at 4:00 PM, Huff, Scott <[shuff@homerelectric.com](mailto:shuff@homerelectric.com)> wrote:

Ms. Martinez,

Please find attached the utility review to vacate the 10 foot wide utility easement that adjoins the west boundary of Lot 4 Block 2. HEA does agree to the vacation of the utility easement on the west boundary common with Lot 5, but does not agree to the vacation of the utility easement on the south boundary common with Bruhn Road right of way. The asbuilt drawing depicts a shed within the 10 foot utility easement on the south boundary. HEA reserves the right to have the homeowner remove the shed from the utility easement at the homeowner's expense.

Please let me know if you would like for me to send you the paper copies back to you, or you can stop by and pick them up, or if the paper copies are not needed any more.

Thank you,

**SCOTT HUFF** | Land Management Officer – Land Surveyor

**Homer Electric Association, Inc.**

280 Airport Way | Kenai, Alaska 99611

office 907.335.6209 | toll free 800.478.8551 | [www.homerelectric.com](http://www.homerelectric.com)

**Your Member-Owned Electric Cooperative**

**CONFIDENTIALITY NOTICE:** The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure.

<Bruhn Subd Lot 4 Block 2.pdf>

3	2	1
	Rear Rd	T5N R8W SM
10	11	12
	Atkins Rd	Johns Rd
STERLING		HIGHWAY
15	14	13
Lot Location	Card St	

VICINITY 1" = 1 mile MAP

# Bruhn Subd.

## Lot 4 Block 2 As-Built Survey

Located in the SE1/4 Section 14, T5N R8W, SM, Alaska.  
Kenai Peninsula Borough Kenai Recording District plat 86-143

Prepared for  
Kim Gomez Tiffany Clyde  
Century 21 Freedom Realty  
170 N Birch Ste 102  
Soldotna, AK 99669

Prepared by  
Johnson Surveying  
P.O. Box 27  
Clam Gulch, Ak 99568

SCALE 1" = 40' 13 May, 2022

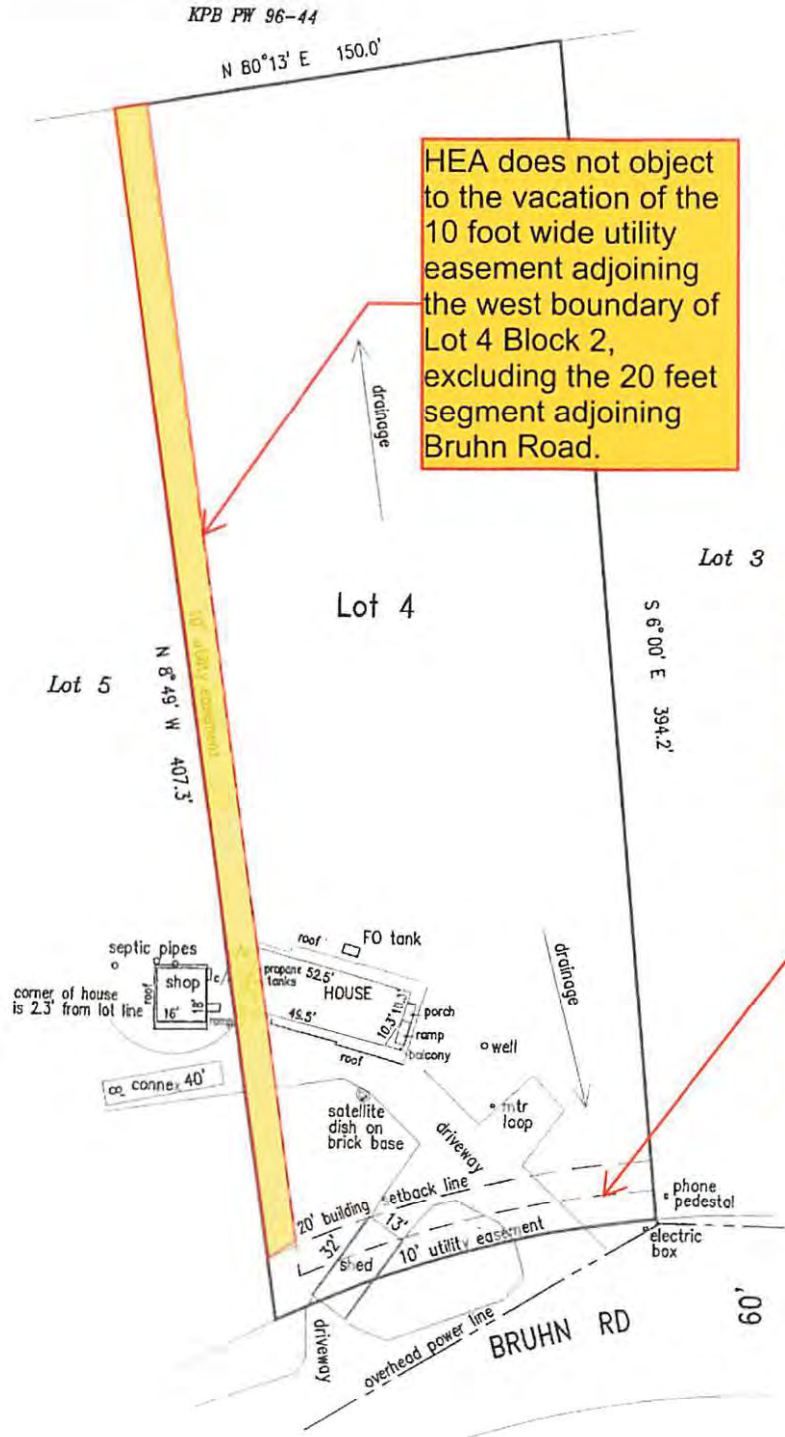


Digitally signed by Huff, Scott  
DN: cn=Huff, Scott  
e=shuff@HomerElectric.com  
Reason: I am the author of  
this document  
Location:  
Date: 2022-05-16  
15:52-08:00

*Scott Huff*

HEA does not object to the vacation of the 10 foot wide utility easement adjoining the west boundary of Lot 4 Block 2, excluding the 20 feet segment adjoining Bruhn Road.

HEA objects to the vacation of any portion of the 10 foot utility easement adjoining Bruhn Road. HEA notes that the asbuilt drawing depicts a shed located within the easement. HEA reserves the right to have the landowner remove the shed from the easement at the expense of the homeowner.



Owner requests alteration on utility easement due to home being built within the setback. HEA has signed off on vacating west boundary(see attached email from Scott Huff along with as-built alterations). Enstar has no gas out there therefore no objection.