

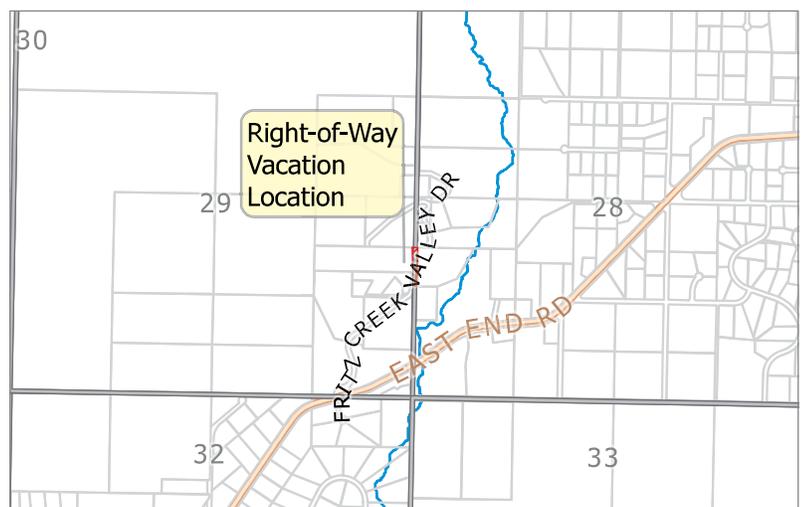
E. NEW BUSINESS

- 2. Right-Of-Way Vacation; KPB File 2024-036V
Seabright Surveying / Huyck, Dixon
Request: vacates the northern 18,261' & southern 3121' portions
of Fritz Creek Valley Drive and re-dedicates the
right-of-way along the existing road.
Fritz Creek Area / Kachemak APC**



KPB File 2024-036V
T 05S R 12W SEC 28 & 29
Fritz Creek

4/4/2024





Aerial View



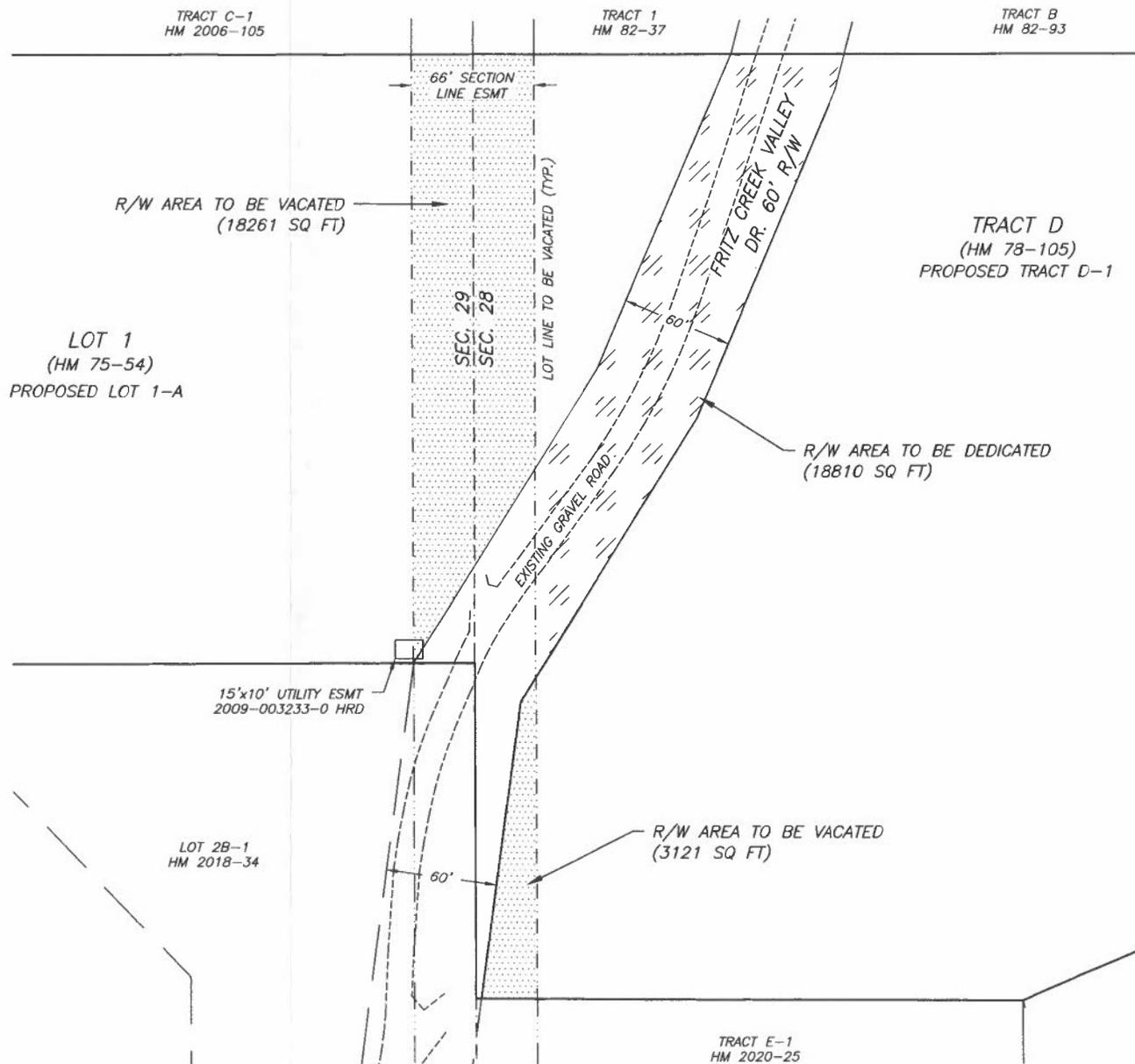
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**CLARK SUBD. & FRITZ CREEK ACRES
HUYCK 2024 REPLAT
RIGHT-OF-WAY VACATION DIAGRAM**

A REPLAT OF FRITZ CREEK VALLEY DR. R/W, LOT 1 CLARK SUBD. (HM 75-54) & TRACT D FRITZ CREEK ACRES ADDN. TRACTS D & E (HM 78-105), LOCATED IN THE SW1/4 SEC. 28 & THE SE1/4 SEC. 29, T. 5 S., R. 12 W., SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA

**SEABRIGHT SURVEY + DESIGN
KATHERINE A. KIRSIS, P.L.S.**

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1580



KPB 2024-036V

AGENDA ITEM E. NEW BUSINESS

**Item #2 - RIGHT OF WAY VACATION
Clark Subdivision & Fritz Creek Acres Huyck 2024 Replat**

KPB File No.	2024-036V
Planning Commission Meeting:	May 13, 2024
Applicant / Owner:	Andrea L. Huyck of Homer, AK and Adrian J. Dixon of Anchorage, AK
Surveyor:	Katherine A. Kirsis - Seabright Survey + Design
General Location:	East End Road, Fritz Creek Valley Drive
Legal Description:	A replat of Fritz Creek Valley Drive Right-of-Way, Lot 1 Clark Sub. & Tract D Fritz Creek Acres Addn. Tracts D & E, Located in the SW1/4 Sec. 28 & the SE1/4 Sec. 29, T5S, R12W, SM, KPB 3 rd Judicial District, Alaska

STAFF REPORT

Specific Request / Purpose as stated in the petition: The proposed R/W vacation and re-dedication will serve to alleviate the existing encroachments located within the current R/W and align the R/W limits with the constructed roadway. This action is consistent with the efforts of adjacent landowners to vacate Fritz Creek Valley Drive and re-dedicate the R/W along the existing road (Clark Three HM 2018-34 & Coyote Hill 2006 Addn. HM 2006-105). The existing driveway within the right-of-way to be vacated serves the exclusive purpose of providing access to Lot 1 Clark Subdivision. Fritz Creek Valley Drive is a constructed roadway and constitutes "equal or better access" by any reasonable standards.

Notification: The public hearing notice was published in the May 8th issue of the Peninsula Clarion and the May 9th 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 Homer, Alaska

Post Office of Homer, Alaska

23 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 0 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 6 owners within 600 feet of the proposed vacation.

10 public hearing notices were emailed to agencies and interested parties as shown below:

State of Alaska DNR
 State of Alaska DOT
 Kenai Peninsula Borough Homer Office
 Kachemak Bay Advisory Planning Commission
 Emergency Services of Kachemak

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

Legal Access (existing and proposed):

Fritz Creek Valley Drive is accessed at approximately mile 7.75 of East End Road in Homer, Alaska and crosses near several properties to get to the subject area.

With this vacation request, the applicants are proposing a new dedication to be finalized with the subdivision Clark Subdivision & Fritz Creek Acres Huyck 2024 Replat. The dedication will follow the existing road crossing the properties.

The properties are affected by 33' section line easements on both sides of the section line that coincide with the right-of-way vacation. The section line easements are not part of the vacation request. And do not need approval.

The block length along Fritz Creek Valley Drive is not compliant, **staff recommends:** an exception to KPB 20.30.170 Block – Length requirements should be requested with submittal of the preliminary plat.

KPB Roads Dept. comments	Roads Director: Griebel, Scott Comments: The ROW correction is supported by the RSA.
SOA DNR comments	Section line easements are jointly managed by DNR & DOT and cannot be vacated without DNR & DOT commissioner approval. The depicted section line easement underlying the vacated ROW will continue to exist until vacated by the proper authority. If the underlying 66' section line easement is to remain, this should be clearly described on the plat.

Site Investigation:

The area is steep being along a hillside running from the southeast to the northwest. The road has been laid out along a contour to be relatively level along the proposed dedication with a rise at the north end where it straightens out. The steep parts should be identified on the preliminary plat when submitted.

There are no wetlands on the property as the slope is even and no ravines cross the property.

KPB River Center review	A. Floodplain Reviewer: Hindman, Julie Floodplain Status: Not within flood hazard area Comments: No comments B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
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Staff Analysis: The portion of land to the west of the proposed vacation was an aliquot part of Section 29 Township 5 South, Range 12 West, Seward Meridian, Homer, Alaska. Clark Subdivision, KN 75-54, subdivided the S ½ NE ¼ SE ¼, Sec 29, T5S, R12W, SM, AK into two 10-acre parcels.

The portion of land to the east of the proposed vacation, to include the proposed re-dedication, was an aliquot part of Section 28, Township 5 South, Range 12 West, SM, Alaska. Fritz Creek Acres, KN 78-105, established Tracts D & E within the W ½ SW ¼, Sec 28, T5S, R 12 W, SM, AK.

Lands to the north, east, and south have been subdivided into mostly large tracts of generally residential designation. To the west is an unsubdivided 40-acre parcel. Most parcels adjacent to Fritz Creek Valley Drive have established residences.

Utility providers have yet to comment, however, SOA DNR has indicated that the proposed section line easement vacation will continue to exist until vacated by the proper authority with DNR & DOT commissioner approval. There is no comment on the re-dedication of Fritz Creek Valley Drive.

The applicants proposed to finalize the vacation with a subdivision that dedicates Fritz Creek Valley Drive as a 60' right-of-way along the existing gravel travel way. The proposed subdivision will combine a portion of Tract D, HM 78-105, west of the proposed dedication with the vacated land and the 10 acres of Lot 1, HM 75-54, into one lot designated as proposed Lot 1-A. The proposed vacation and the remaining portion of Tract D of HM78-105 lying east of the new dedication will become proposed Tract D-1.

The dedication will be a superior access for parcels along Fritz Creek Valley Drive in contrast to utilizing the area being vacated as a roadway.

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: not as a road, but as a private drive to one of the applicants residence.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: the actual road in use is located where the proposed dedication is.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: needed ROW along Fritz Creek Valley Drive will not be impacted as they follow the existing road path. No utilities have responded at this time.
 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: Fritz Creek Valley Drive does not access a public area.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: Impacted parcels have direct access to Fritz Creek Valley Drive and will continue to.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Vacation will not impact traffic flow of Fritz Creek Valley Drive.
 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: Utilities along Fritz Creek Valley Drive remain unimpacted.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: no other factors relevant. Adjacent properties will continue to have road access.

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 May 21, 2024 meeting.

If approved, *Clark Subdivision & Fritz Creek Acres Huyck 2024 Replat* will finalize the proposed right of way vacations. The Plat Committee is scheduled to review *Clark Subdivision & Fritz Creek Acres Huyck 2024 Replat* on May 28th 2024 and their regularly scheduled meeting.

KPB department / agency review:

Addressing	Reviewer: Leavitt, Rhealyn Affected Addresses: 38645 FRITZ CREEK VALLEY DR, 38646 FRITZ CREEK VALLEY DR Existing Street Names are Correct: Yes
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
LOZD and Material Site Comments	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: Windsor, Heather Comments: No comment
Advisory Planning Commission	

Alaska DNR - DMLW review:

Section line easement are jointly managed by the DNR & DOT and cannot be vacated without DNR & DOT commissioner approval. The depicted section line easement underlying the vacated ROW will continue to exist until vacated by the proper authority. If the underlying 66' section line easement is to remain, this should be clearly described on the plat. Please contact Victoria Braun of DNR, DMML&W Survey Section at (907) 375-7733 to pursue a section line easement vacation, if necessary.

Utility provider review:

HEA	
ENSTAR	
ACS	
GCI	

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 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. Address DNR – DMLW comments on final as to labeling and distinguishing the section line easement from the vacation of ROW.

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.*

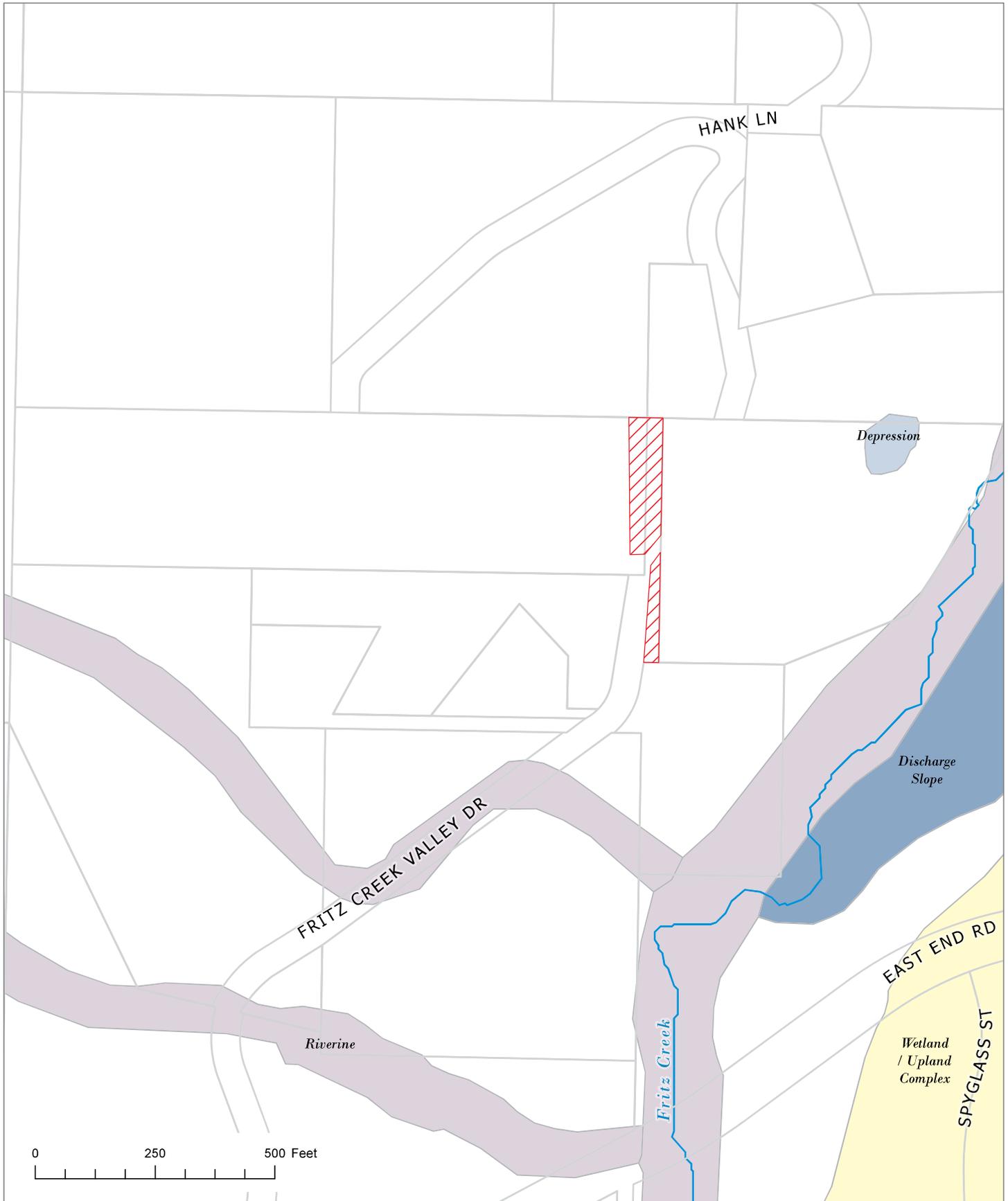
Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *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.*

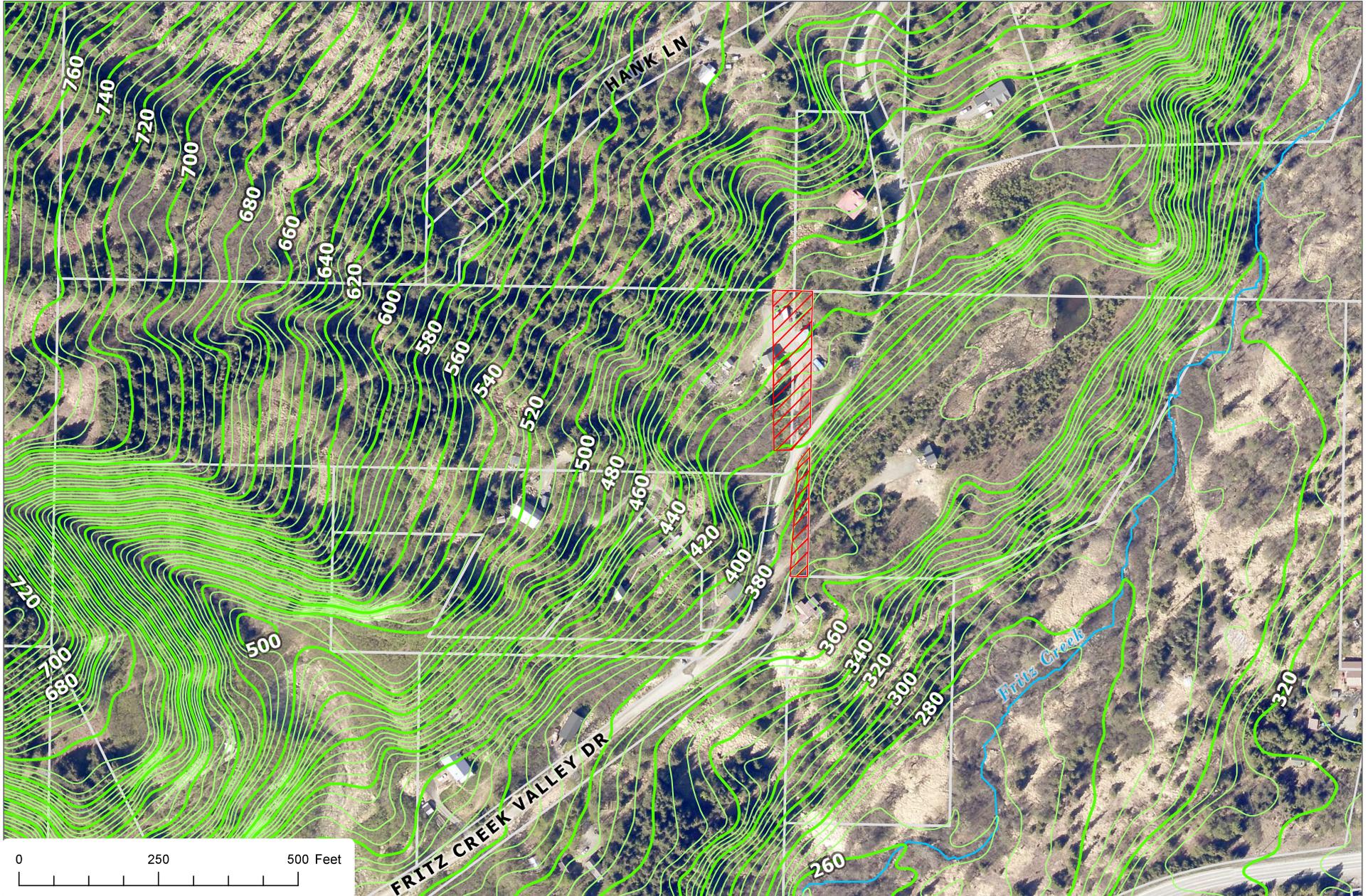
END OF STAFF REPORT



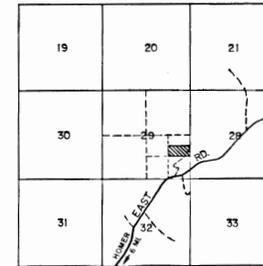
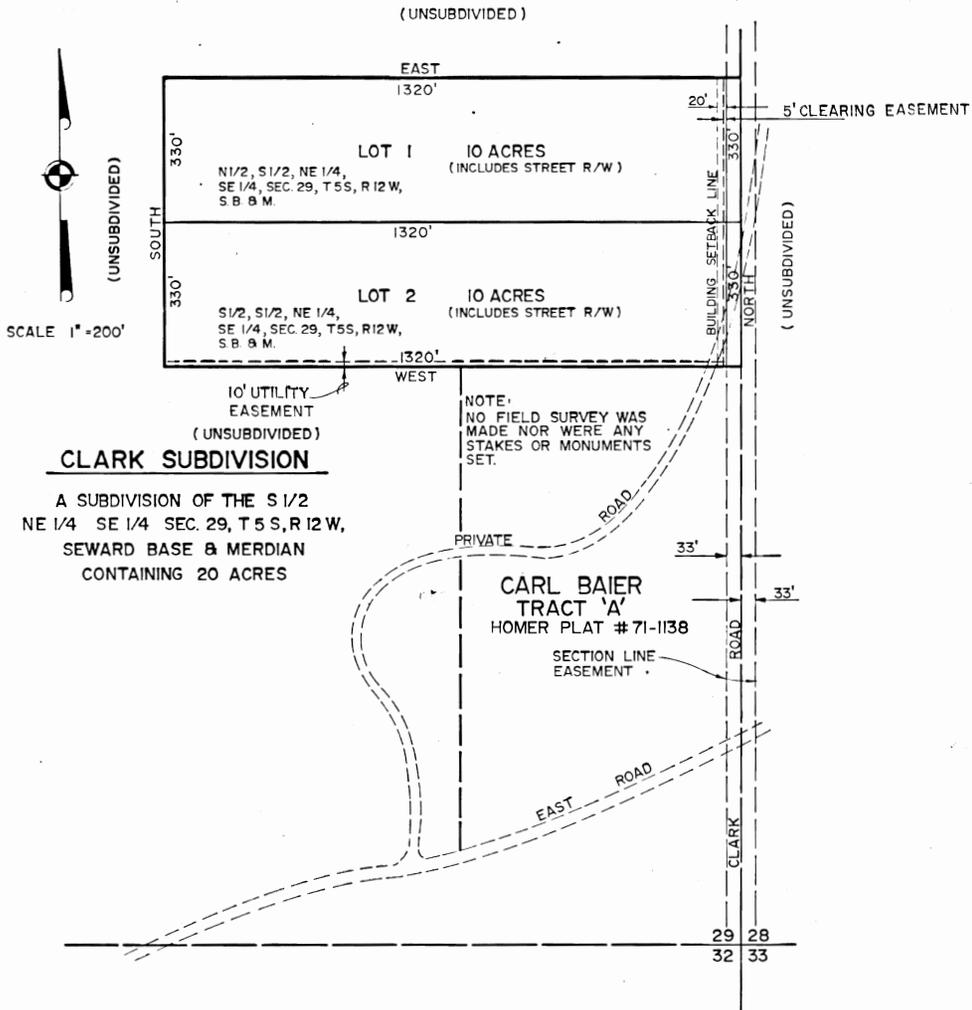
Wetlands



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VICINITY MAP

CERTIFICATE OF OWNERSHIP AND DEDICATION

We hereby certify that we are the owners of the property shown and described hereon and that we hereby adopt this plan of subdivision, and dedicate all streets, alleys, walks, parks, utility easements and other open spaces to public use.

Date Nov 5, 1975.

Ronald Clark
Owner
Barbara Clark
Owner

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

On this 5th day of November, 1975, before me, the undersigned, a Notary Public for the State of Alaska, personally appeared Ronald & Barbara Clark to me known to be the person described in and who executed the foregoing certificate of ownership and dedication, and acknowledged to me that he executed the same as his free and voluntary act.

Witness my hand and official seal the day, month and year hereinabove written.

Erlyne Crini
Notary Public for Alaska
My commission expires 12-14-76

PLAT APPROVAL

Plat approved by the commission this 2nd day of June, 1975.

Donald E. Silman
Notary



75-54

RECORDED FILED 324
Homer REC. DIST.

DATE 11-13-75
TIME 1:17 P M
Recorded by KPB
Address Seldovia

 ANCHORAGE • JUNEAU	DES. E B W	CLARK SUBDIVISION A SUBDIVISION OF THE S 1/2 NE 1/4 SE 1/4 SEC 29, T 5 S, R 12 W, S. M. CONTAINING 20 ACRES HOMER RECORDING DISTRICT	SHEET 1 OF 1
	DR O B M		PROJ. NO. K 9396.0
	CHK D W R		DATE JUN, 1975
	APPD. E B W		DWG. NO.