


Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Max Best, Planning Director 

DATE: April 16, 2020

RE: Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed. Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V. Petitioners: Voznesenka Community Council Inc., and Nazary and Anastasia Basargin of Homer, Alaska.

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 April 13, 2020, the Kenai Peninsula Borough Planning Commission granted approval to the proposed right-of-way vacation by majority vote based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

Draft, unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

AGENDA ITEM E. PUBLIC HEARINGS

3. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V.

Staff Report given by Scott Huff

PC Meeting: April 13, 2020

Purpose as stated in petition: (summarized) Vacating the Right-of-Way and unnecessary easements created by the subdivision plat Voznesenka (HM 85-31) and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

Petitioners: Voznesenka Community Council, Inc., Nazary Basargin, and Anastasia Basargin, of Homer AK.

Notification: Public notice appeared in the February 13, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the February 20, 2020 issue of the Homer News as part of the Commission's tentative agenda.

13 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 3 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 4 owners within 600 feet of the proposed vacation.

19 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Homer Post Office and Homer Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No Objections

ENSTAR: No comments.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: 44991 East End Rd - will be retained on Lot 1-A-1.

KPB Planning: No local option zone or material site issues.

KPB River Center: Not within a flood hazard area or the habitat protection district.

KPB Roads Department: **Objects** to the vacation of right of way. This could be an issue if we ever need to relocate the road due to erosion. The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. They can apply for an encroachment permit for the fence and graves.

State Parks: No comments.

State of Alaska Department of Transportation: Right of Way Management **objects** to this action as proposed. This right of way has not been determined to be in excess of the needs of the Department. We have no comment of the vacation of the 10 foot utility easements.

Staff Discussion: This portion of East End Road is KPB maintained. This is the easternmost dedicated portion of East End Road and the only access to Kachemak Bay shoreline and the community of Kachemak Selo. The dedication ends at the top of a steep hillside down to Kachemak Bay. The road continues beyond the dedication as a narrower road with switchbacks down the hillside to the beach. This portion of the road is located on State DNR lands and is not dedicated.

This portion of East End Road was granted in 1984 by easement to the State of Alaska as recorded in Book 177, Page 771, HRD. The easement granted a 100' wide public access easement centered on the constructed roadway. The easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated. The East End Road right-of-way was then dedicated by Voznesenka, HM 85-31, as a 100' wide right-of-way.

It is unclear if the dedicated right-of-way perfectly overlies the prior public access easement. However, location of the current constructed East End Road suggests that the easement and dedication do not perfectly overlie one another. The current roadway is not centered within the dedicated right-of-way. The proposed vacation will vacate 40 feet of the dedicated right-of-way and any portion of the easement within those 40 feet.

If approved, a subdivision plat named Voznesenka 2020 (KPB File No. 2020-016) will finalize the proposed vacations. The Plat Committee is tentatively scheduled to review KPB File No. 2020-016 on March 23, 2020.

If approved, the vacation of the public access easement will need to be finalized through the State's vacation process.

The petition also proposes to vacate the following utility easements:

- The 20' utility easement adjoining the East End Road right-of-way within Lot 3-D Voznesenka Too (HM2000-23) and Lots 1-A and 1-B Voznesenka 2006 (HM2008-94),
- The 10' utility easements on the south and west lot lines of Lots 3-D, 1-A, and 1-B,
- The 20' utility easement centered on the shared lot line of Lots 3-D and 1-A, and
- The 10' utility easement on the southeast lot line of Lot 1-B.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: (summarized) Vacating the Right-of-Way and unnecessary easements created by HM 85-31 and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: Contours were not submitted and excessive topographic features are not used as a justification for the vacation. However, the submittal did include areas with slopes greater than 20% grade. In addition, per KPB four foot contours, slopes exceeding 10% grade appear to affect portions of the proposed vacation.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If approved, Voznesenka 2020 (KPB File No. 2020-016) will finalize the vacations.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: The petition proposes a partial vacation that will reduce the 100' wide East End Road Right of way to 60' wide. Per the submittal, the constructed East End Road is not located within the 40' proposed to be vacated. The proposed vacation will reduce the dedicated right-of-way to the 60' minimum right-of-way width per KPB 20.30.120. The remaining public access easement that does not perfectly underlie the right-of-way to the east would result in additional width for public access and road construction.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the petition, East End Road is constructed and in use by vehicles.

No equal or superior right-of-way for vehicular access exists. A 100' wide right-of-way is not equal to a 60' wide right-of-way. East End Road, and the smaller road that extends from it down the hillside, provides the only access by land to the community of Kachemak-Selo below Voznesenka on Kachemak Bay. Per KPB four foot contours, this portion of East End Road is located on a ridge with extremely steep drops to the

west, east, and south. Per KPB four foot contours and the submittal, the steep slopes extend to the edge of the right-of-way on the east side for much of the proposed vacation. Any future realignment or improvements of the constructed roadway must occur to the west, 40' of which this petition proposes to vacate. Per KPB Roads, "The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. This vacation could be an issue if we ever need to relocate the road due to erosion."

However, a fenced cemetery is currently located within the proposed vacation area extending across the lot line from Lot 1-B, HM 2008-94. Vacation of this portion of the right-of-way would result in an equal right-of-way remaining because these fenced 40' are currently not usable as a right-of-way.

No alternate equal or superior right-of-way for vehicular access is proposed in exchange. The Kenai Peninsula Borough owns the large acreage tract to the east of the southernmost portion of the proposed vacation. The KPB Land Management Department may be amenable to granting a public access easement to match the 40' reduction in right-of-way width. However, per the submittal and KPB four foot contours, nearly all of that area will be affected by slopes exceeding 20% grade. Any easement granted to the east within the borough parcel would not provide equal or superior vehicular access.

Staff recommendation: Concur that equal right-of-way for vehicular access exists only for the proposed vacation that contains the fenced cemetery and that no equal or superior right-of-way is proposed for the remaining proposed vacation.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the petition, East End Road is used for other uses. However, East End Road is constructed and suited for general road use. Therefore, equal or superior access for other uses is not required. A 60' right-of-way meeting the minimum right-of-way width of KPB 20.30.120 is sufficient to provide adequate width to support other uses. In addition, the fenced cemetery located within the proposed vacation area limits the current usable portion of the right-of-way to 60'. The vacation of this area will result in an equal right-of-way for other uses.

Staff recommendation: Concur that the proposed vacation will result in adequate right-of-way width for other uses and equal right-of-way width adjoining area affected by the fenced cemetery.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the petition, the right-of-way and additional utility easements proposed to be vacated are not in use by a utility provider.

Per KPB 20.30.060(D), Proposed Voznesenka 2020 (KPB File No. 2020-016) must grant at least a 10' utility easement adjoining East End Road. Per the submittal, an existing waterline is located within the portion of the right-of-way that will remain after the vacation.

No parcels will be denied utility access if the additional utility easements on the rear and side lot lines are vacated. Tract B, HM 85-31, fronts utility easements that extend to the East End Road right-of-way per HM 2000-23. In addition, Tract B is owned by the borough and, per HM 85-31, "shall not be used for development."

As noted above, the existing cemetery is located within the right-of-way and also the utility easements within Lot 1-B. This portion of the right-of-way and utility easements proposed to be vacated are currently unusable and vacation will result in equal public utility access remaining

The utility easement adjoining the right-of-way and the 60' remaining right-of-way can provide adequate access for utility providers to each adjoining lot.

Staff recommendation: *Concur that the proposed vacation will result in adequate right-of-way width and utility easements for public utility access and equal right-of-way width adjoining area affected by the fenced cemetery.*

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: Although this does not include a section line easement vacation, the vacation of the public access easement is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation of the public access easement.

Staff recommendation: *Comply with KPB 20.30.220.*

Vacate a 40 foot width of the 100 foot wide east end road right-of-way, including associated 20 foot utility easement

STAFF RECOMMENDATION: The petition to vacate a portion of the public access easement must be reviewed and either approved or denied by the planning commission, but final authority for approval of the public access easement vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **does not recommend approval** of the right of way vacations as petitioned,

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **recommends approval** of the utility easement vacations as petitioned, subject to:

3. Showing the utility easement vacation on a subdivision plat.
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).

OR

1. Provide a sketch, clearly indicating the portion of the utility easement being vacated, to be recorded with KPB Planning Commission Resolution 2020-04, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

AGENDA ITEM E. PUBLIC HEARINGS

3. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V.

Staff Report Addendum given by Scott Huff

PC Meeting: 04/13/2020

The previous comment from State of Alaska DOT stated, 'DOT & PF Right of Way and Platting Committee has no objection to the proposed vacation with the following recommendation:

- Community of Voznesenka to dedicated equivalent square footage in kind as right of way along the current East End Road Corridor;
- The right of way being dedicated is intending to create a secondary access or routing with direct access onto East End Road
- This right of way will be recorded by plat and dedicated to the managing authority where dedicated (KPB or State)

After the staff report was prepared, the following comments were received.

KPB Roads Department

- KPB Roads stated no objection to a 60 foot right of way

KPB Lands Management.

- KPB Lands Department does not object to dedicating additional right of way for East End Road

along Tract A.

State of Alaska DOT

- The four easements recorded in Book 148, pages 771-774, were to the State of Alaska. There doesn't appear to have been any acceptance of the State of Alaska for these easements. Therefore, DOT doesn't have any comments about the vacation of these ROW's. In this area, East End Road is not maintained by the State DOT/PF. If SOA DOT were to maintain this road, the ROW would have to be 100' in width.

Staff Discussion:

As mentioned in the staff report there is a 100 foot wide easement and right of way, centered on the existing roadway, granted by document to the State of Alaska in 1984. The location was undefined in 1984. A subdivision plat in 1985 dedicated a 100 foot wide right of way. It appears that the 1985 dedication does not coincide exactly with the existing roadway.

The recommendation of the planning commission will be forwarded to the State of Alaska DOT for their review of the vacation application.

Staff reminds the commissioners that this right of way is the only access from the uplands to Kachemak Bay shoreline and the communities of Kachemak Selo and Fox River. This access is affected by very steep terrain and the location of any roadway is very limited. The use of this road will only increase in the future. Any right of way that is vacated will not be available for future road improvements projects, including roadway realignment, drainage improvements, public parking areas, or road way widening.

The area to the east of the existing road is very steep and not equal to the area proposed to be vacated.

If the planning commission does approve the vacation, **staff recommends**, the approval be subject to the State of Alaska DOT recommendations.

STAFF RECOMMENDATION: Comply with staff recommendations and conditions per the February 24, 2020 staff report, and adherence to KPB Code.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.

B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT ADDENDUM

Mr. Huff referenced pages 230 and 231 of the packet to see the contour information.

Chair Martin opened the meeting for public comment.

1. Gary Nelson, 152 Dehel Avenue, Homer, AK

Mr. Nelson is the surveyor on the project. He noted that the State no longer has an objection nor does the KPB Road's Department. Marcus Mueller with the KPB Lands Department has agreed to dedicate additional right-of-way if that is one of the conditions. He wanted to comment on the cemetery. There are some gravesites in the right-of-way at this time as well as a fence. He wanted to know if there could be an exception to the 10-foot utility easement adjoining right-of-way for the cemetery lot. Utilities would still be able to be on the other side of the road or stop at that lot. He did not think anyone wanted graves in the utility easement.

Commissioner Ruffner noted that it sounds like progress has been made but they were not seeing all the parts on paper in front of them. He asked if more time was given if Mr. Nelson could get more people to agree. Mr. Nelson said that Marcus Mueller has said that he would recommend granting what is needed on the east side of the right-of-way. The roadbed is darkened on page 219 of the packet. The plat shows the existing roadway as the darkened area. It shows that the road is outside of the platted right-of-way. This action will bring the center of the road closer to the center of the right-of-way. When the plat was first designed, the State and Borough did not agree to it. They are agreeing to it now and are saying that they can make it work. He will need to work with Mr. Mueller. He would like a recommendation for approval, subject to working out specifics with Land Management for a grant of additional right-of-way on the east side of the road. The borough improved this road 10 years ago. There was a foot or more of gravel added on it and surveying and engineering was done for that project.

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

MOTION: Commissioner Ecklund moved, seconded by Commissioner Whitney, to approve the vacation of the 40 foot width of the 100 foot wide East End Road right-of-way, including the associated 20 foot utility easement adjacent to Lot 3D Voznesenka Too, Lots 1-A and 1-B Voznesenka 2006 and vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too, the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka, and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006.

Commissioner Ruffner wanted to know if the exchange that has occurred changed staff's recommendations. Mr. Huff stated that staff was recommending denial of the right-of-way vacation. Staff is reviewing this as there being only one road down from the highlands to the shoreline. It is steep on both sides and once it is vacated, it is gone. DOT and Borough departments are now fine with the petition. The surveyor did prepare a preliminary plat and it will be seen by the Plat Committee to finalize the vacation and dedication on the east side of the road. Commissioner Ruffner said he was not sure he was ready to support this but does hear that there is now cooperation. When dealing with roads and steep terrain all of the right-of-way that is available plus more is often needed. Sitting on the road's board it is they often have trouble finding the right width to accommodate transportation needs. Reading through the packet and hearing the discussions he has a hard time thinking this is right for approval.

Commissioner Ecklund saw the letter from Mr. Mueller in the laydown packet about dedicating the additional right-of-way. She asked staff to point out on page 219 of the packet what additional right-of-way was being considered. Mr. Huff replied that the borough owns the property to the east of the right-of-way, Tract A. The surveyor, the applicant, and Land Management are agreeable to vacate 40 feet on the west side of East End Road and then dedicate 40 feet on the east side of the road. It will still be a 100-foot wide right-of-way. The new 40-foot dedication by the Borough is steep terrain. Commissioner Ecklund noted that they do see steep terrain being moved along Alaskan roads. It is more expensive but it is doable in some areas. She noted that Mr. Nelson had mentioned vacating the utility easements because of the cemeteries. She was not sure to which utility easement he was referring. Mr. Huff said that the new right-of-way would have a 15-foot utility easement adjoining the right of way within lots 1B-1, which is the cemetery. The surveyor is asking that a utility easement not adjoin East End Road on that parcel. That can be requested during

the platting process. Utilities can be put in the right-of-way if needed so that the utilities are not put in the cemetery and staff would be agreeable to that. Mr. Huff then referenced pages 230 and 231 of the packet. The maps show the contours for the area.

Chair Martin allowed Mr. Nelson the opportunity to speak again. Mr. Nelson said he did not see the letter from Mr. Mueller in the packet but it does show a change of mind. The letter states the Mr. Mueller sees plenty of room to move the road over to the west if it needs to happen. When looking at the plat on page 219, it shows the road over on the far edge of the right-of-way. There is room to move it closer even after the vacation action.

Chair Martin asked if it would be best to split the motion and vote on them separately. Mr. Huff suggested that a vote be done for the right-of-way vacation and one for the utility easements.

Chair Martin asked for a roll call vote on the utility easement vacations. Ms. Hindman asked if the maker of the motion and the second agreed to split the motion. Commissioners Ecklund and Whitney agreed.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Whitney, to vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too, the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka, and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 as granted by Voznesenka.

MOTION PASSED BY UNANIMOUS VOTE: 10 Yes, 0 No, 2 Absent

Yes: Bentz, Carluccio, Ecklund, Ernst, Fikes, Martin, Morgan, Ruffner, Venuti, Whitney

No: --

Absent: Brantley, Foster

Commissioner Ecklund noted that the surveyor mentioned a conversation with Mr. Mueller adding more property to the west of the right-of-way. She said that the letter in the laydown packet suggests additional right-of-way for East End Road along Tract A, which is on the east side. She asked for clarification. Mr. Nelson said it was a misunderstanding and the additional dedication will come out of Tract A. Currently the road is outside of the right-of-way. Dedicating more lands will make the road be contained within the right-of-way. He also wanted to mention that if the Commission is having a hard time with this road right-of-way vacation, perhaps it would help to only vacate the area in front of Lot 1A-1 and 1B-1 for the church and cemetery.

Commissioner Bentz thanked Mr. Nelson for that offer and that was the direction she was leaning.

AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Whitney, to change the motion to vacate a 40-foot width of the 100-foot wide East End Road right-of-way, including the associated 20 foot utility easement, adjacent to Lots 1-A and 1-B Voznesenka 2006 as dedicated and granted by Voznesenka.

Commissioner Carluccio wanted to verify if they had already approved the utility easement vacation. Commissioner Ecklund stated that the 10-foot utility easement adjoining the south and west boundaries of Lot 3-D and adjoining lots 1-A and 1-B. It was the second paragraph on the agenda item. Mr. Huff said that the first motion that was voted on was for the utility easements on the back lot lines of 1-A, 1-B and 3-D.

Commissioner Ruffner said she still had a hard time with the petition. The borough owns the land to the east and can accommodate and create more right-of-way on that side. He wanted to know if expanding the right-of-way to the east would be feasible and could accommodate the needs of the road. Mr. Huff stated the road is being depicted as being on the edge of the steep slope. Any right-of-way to the east will be on the steep slope. It is better than not having anything, so staff will be agreeable but if the road was to be moved anywhere it would be to the west to get away from the steep slopes.

Commissioner Bentz wanted to clarify that proposed Lot 1-B1 is the parcel with the existing cemetery and gravesites. Lots 1-A1 does not have any graves but they want to build a church in the right-of-way. Mr. Nelson said that was correct. Mr. Huff confirmed. Commissioner Bentz was reviewing the necessity of vacating and it seems like Lot 1-B1 is a necessity but Lot 1-A1 is for building the church and seems less critical.

Commissioner Ecklund wanted to know if Commissioner Bentz was stating it as an amendment to the motion. Commissioner Bentz said that she was not but was trying to work through this and determine the necessary actions.

Commissioner Ecklund agrees that the main concern is the Lot 1-B1 and wanted to know if the proposed church could be turned to face a different direction. Mr. Nelson stated that having it face a different direction is against the religion. It must be facing east. Commissioner Ernst wanted to know what religion requires it. Mr. Nelson stated it was Russian Orthodox. Commissioner Ecklund wanted to know who owned Lot 3-D1. Mr. Nelson said that Nazary Basargin owns it and Lot 1-A1. He is already signed a letter stating that he is conveying Lot 1-A1 to the Voznesenka Community Council. Mr. Basargin's parents lived in the house that is shown on Lot 1-A1. They have both passed recently and they wished for the church to be built there. Mr. Basargin has stated that due to the crowding at the school that the church needs moved to this location. Following their religion and traditions, they want the church next to the cemetery. When looking at the Russian communities that is the way they are laid out with the church and cemetery are together.

Commissioner Fikes wanted to know that since there are some objections based on religion if the size of the church could be reduced so that it does not encroach. Mr. Nelson said he could not speak for them but this is what is planned. He is not sure they could accommodate it properly and would probably say no. He stressed that the plat shows that the road is already outside of the right-of-way to the east and that the borough spent a large sum of money upgrading the road about 10 years ago. He thought that if the borough wanted the road moved it would have been done at that time.

AMENDED MOTION PASSED BY MAJORITY VOTE: 9 Yes, 1 No, 2 Absent

Yes: Bentz, Carluccio, Ecklund, Ernst, Fikes, Martin, Morgan, Venuti, Whitney

No: Ruffner

Absent: Brantley, Foster

F. PUBLIC HEARINGS

- 3. Vacation of a portion of East End Road
and associated utility easements
KPB File 2020-016V
Petitioners: Voznesenka Community
Council Inc. and Nazary and Anastasia
Basargin of Homer, AK**

AGENDA ITEM F. PUBLIC HEARINGS

3. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V.

STAFF REPORT ADDENDUM

PC Meeting: 04/13/2020

The vacation of a right of way and utility easements was scheduled for the February 24, 2020 Planning Commission meeting. KPB staff prepared a staff report for the requested vacations, which was included in the February 24 meeting packet.

Before the February 24 meeting, the surveyor requested postponement to March 23 to allow additional time to attempt negotiation with AK DOT for their approval to vacate the right of way and public access easement.

No new additional information has been provided at the time the staff report addendum was prepared.

STAFF RECOMMENDATION: Comply with staff recommendations and conditions per the February 24, 2020 staff report, and adherence to KPB Code.

NOTE: A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 10 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

PARTIES OF RECORD: UNLESS SPECIFIED OTHERWISE MEANS THOSE PERSONS WHO HAVE COMMENTED IN A WRITTEN AND SIGNED DOCUMENT OR IN PERSON ON AN AGENDA ITEM BEFORE THE PLANNING COMMISSION OR PLAT COMMITTEE WHO OWN PROPERTY WITHIN THE NOTIFICATION RADII ESTABLISHED IN THIS CHAPTER.

END OF STAFF REPORT ADDENDUM

AGENDA ITEM G. PUBLIC HEARINGS

5. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V.

Staff report given by Scott Huff

PC Meeting: 2/24/2020

Purpose as stated in petition: (summarized) Vacating the Right-of-Way and unnecessary easements created by the subdivision plat Voznesenka (HM 85-31) and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

Petitioners: Voznesenka Community Council, Inc., Nazary Basargin, and Anastasia Basargin, of Homer AK.

Notification: Public notice appeared in the February 13, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the February 20, 2020 issue of the Homer News as part of the Commission's tentative agenda.

13 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 3 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 4 owners within 600 feet of the proposed vacation.

19 public hearing notices were emailed to agencies and interested parties.

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Homer Post Office and Homer Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No Objections

ENSTAR: No comments.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: 44991 East End Rd - will be retained on Lot 1-A-1.

KPB Planning: No local option zone or material site issues.

KPB River Center: Not within a flood hazard area or the habitat protection district.

KPB Roads Department: **Objects** to the vacation of right of way. This could be an issue if we ever need to relocate the road due to erosion. The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. They can apply for an encroachment permit for the fence and graves.

State Parks: No comments.

State of Alaska Department of Transportation: Right of Way Management **objects** to this action as proposed. This right of way has not been determined to be in excess of the needs of the Department. We have no comment of the vacation of the 10 foot utility easements.

Staff Discussion: This portion of East End Road is KPB maintained. This is the easternmost dedicated portion of East End Road and the only access to Kachemak Bay shoreline and the community of Kachemak Selo. The dedication ends at the top of a steep hillside down to Kachemak Bay. The road continues beyond the dedication as a narrower road with switchbacks down the hillside to the beach. This portion of the road is located on State DNR lands and is not dedicated.

This portion of East End Road was granted in 1984 by easement to the State of Alaska as recorded in Book 177, Page 771, HRD. The easement granted a 100' wide public access easement centered on the constructed roadway. The easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated. The East End Road right-of-way was then dedicated by Voznesenka, HM 85-31, as a 100' wide right-of-way.

It is unclear if the dedicated right-of-way perfectly overlies the prior public access easement. However, location of the current constructed East End Road suggests that the easement and dedication do not perfectly overlie one another. The current roadway is not centered within the dedicated right-of-way. The proposed vacation will vacate 40 feet of the dedicated right-of-way and any portion of the easement within those 40 feet.

If approved, a subdivision plat named Voznesenka 2020 (KPB File No. 2020-016) will finalize the proposed vacations. The Plat Committee is tentatively scheduled to review KPB File No. 2020-016 on March 23, 2020.

If approved, the vacation of the public access easement will need to be finalized through the State's vacation process.

The petition also proposes to vacate the following utility easements:

- The 20' utility easement adjoining the East End Road right-of-way within Lot 3-D Voznesenka Too (HM2000-23) and Lots 1-A and 1-B Voznesenka 2006 (HM2008-94),
- The 10' utility easements on the south and west lot lines of Lots 3-D, 1-A, and 1-B,
- The 20' utility easement centered on the shared lot line of Lots 3-D and 1-A, and
- The 10' utility easement on the southeast lot line of Lot 1-B.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes

of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: (summarized) Vacating the Right-of-Way and unnecessary easements created by HM 85-31 and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: Contours were not submitted and excessive topographic features are not used as a justification for the vacation. However, the submittal did include areas with slopes greater than 20% grade. In addition, per KPB four foot contours, slopes exceeding 10% grade appear to affect portions of the proposed vacation.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If approved, Voznesenka 2020 (KPB File No. 2020-016) will finalize the vacations.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: The petition proposes a partial vacation that will reduce the 100' wide East End Road Right of way to 60' wide. Per the submittal, the constructed East End Road is not located within the 40' proposed to be vacated. The proposed vacation will reduce the dedicated right-of-way to the 60' minimum right-of-way width per KPB 20.30.120. The remaining public access easement that does not perfectly underlie the right-of-way to the east would result in additional width for public access and road construction.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the petition, East End Road is constructed and in use by vehicles.

No equal or superior right-of-way for vehicular access exists. A 100' wide right-of-way is not equal to a 60' wide right-of-way. East End Road, and the smaller road that extends from it down the hillside, provides the only access by land to the community of Kachemak-Selo below Voznesenka on Kachemak Bay. Per KPB four foot contours, this portion of East End Road is located on a ridge with extremely steep drops to the west, east, and south. Per KPB four foot contours and the submittal, the steep slopes extend to the edge

of the right-of-way on the east side for much of the proposed vacation. Any future realignment or improvements of the constructed roadway must occur to the west, 40' of which this petition proposes to vacate. Per KPB Roads, "The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. This vacation could be an issue if we ever need to relocate the road due to erosion."

However, a fenced cemetery is currently located within the proposed vacation area extending across the lot line from Lot 1-B, HM 2008-94. Vacation of this portion of the right-of-way would result in an equal right-of-way remaining because these fenced 40' are currently not usable as a right-of-way.

No alternate equal or superior right-of-way for vehicular access is proposed in exchange. The Kenai Peninsula Borough owns the large acreage tract to the east of the southernmost portion of the proposed vacation. The KPB Land Management Department may be amenable to granting a public access easement to match the 40' reduction in right-of-way width. However, per the submittal and KPB four foot contours, nearly all of that area will be affected by slopes exceeding 20% grade. Any easement granted to the east within the borough parcel would not provide equal or superior vehicular access.

Staff recommendation: Concur that equal right-of-way for vehicular access exists only for the proposed vacation that contains the fenced cemetery and that no equal or superior right-of-way is proposed for the remaining proposed vacation.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the petition, East End Road is used for other uses. However, East End Road is constructed and suited for general road use. Therefore, equal or superior access for other uses is not required. A 60' right-of-way meeting the minimum right-of-way width of KPB 20.30.120 is sufficient to provide adequate width to support other uses. In addition, the fenced cemetery located within the proposed vacation area limits the current usable portion of the right-of-way to 60'. The vacation of this area will result in an equal right-of-way for other uses.

Staff recommendation: Concur that the proposed vacation will result in adequate right-of-way width for other uses and equal right-of-way width adjoining area affected by the fenced cemetery.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the petition, the right-of-way and additional utility easements proposed to be vacated are not in use by a utility provider.

Per KPB 20.30.060(D), Proposed Voznesenka 2020 (KPB File No. 2020-016) must grant at least a 10' utility easement adjoining East End Road. Per the submittal, an existing waterline is located within the portion of the right-of-way that will remain after the vacation.

No parcels will be denied utility access if the additional utility easements on the rear and side lot lines are vacated. Tract B, HM 85-31, fronts utility easements that extend to the East End Road right-of-way per HM 2000-23. In addition, Tract B is owned by the borough and, per HM 85-31, "shall not be used for development."

As noted above, the existing cemetery is located within the right-of-way and also the utility easements within Lot 1-B. This portion of the right-of-way and utility easements proposed to be vacated are currently unusable and vacation will result in equal public utility access remaining

The utility easement adjoining the right-of-way and the 60' remaining right-of-way can provide adequate access for utility providers to each adjoining lot.

Staff recommendation: *Concur that the proposed vacation will result in adequate right-of-way width and utility easements for public utility access and equal right-of-way width adjoining area affected by the fenced cemetery.*

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: Although this does not include a section line easement vacation, the vacation of the public access easement is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation of the public access easement.

Staff recommendation: *Comply with KPB 20.30.220.*

Vacate a 40 foot width of the 100 foot wide east end road right-of-way, including associated 20 foot utility easement

STAFF RECOMMENDATION: The petition to vacate a portion of the public access easement must be reviewed and either approved or denied by the planning commission, but final authority for approval of the public access easement vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **does not recommend approval** of the right of way vacations as petitioned,

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **recommends approval** of the utility easement vacations as petitioned, subject to:

1. Showing the utility easement vacation on a subdivision plat.
2. 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).

OR

1. Provide a sketch, clearly indicating the portion of the utility easement being vacated, to be recorded with KPB Planning Commission Resolution 2020-04, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the

borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Mr. Huff added that DOT submitted another comment that they would not object if other conditions were met. The surveyor submitted a request to postpone to the March 23, 2020 meeting to allow more time to work with DOT.

Chair Martin opened the meeting for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Whitney moved, seconded by Commissioner Foster, to postpone action to the March 23, 2020 Planning Commission meeting for the proposed vacations in KPB File 2020-016V.

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

AGENDA ITEM G. PUBLIC HEARINGS

4. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough.
KPB File 2020-016V.

STAFF REPORT

PC Meeting: 2/24/2020

Purpose as stated in petition: (summarized) Vacating the Right-of-Way and unnecessary easements created by the subdivision plat Voznesenka (HM 85-31) and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

Petitioners: Voznesenka Community Council, Inc., Nazary Basargin, and Anastasia Basargin, of Homer AK.

Notification: Public notice appeared in the February 13, 2020 issue of the Homer News as a separate ad. The public hearing notice was published in the February 20, 2020 issue of the Homer News as part of the Commission's tentative agenda.

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The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: No Objections

ENSTAR: No comments.

Homer Electric Association: Not available at the time the staff report was prepared.

KPB Addressing: 44991 East End Rd - will be retained on Lot 1-A-1.

KPB Planning: No local option zone or material site issues.

KPB River Center: Not within a flood hazard area or the habitat protection district.

KPB Roads Department: **Objects** to the vacation of right of way. This could be an issue if we ever need to relocate the road due to erosion. The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. They can apply for an encroachment permit for the fence and graves.

State Parks: No comments.

State of Alaska Department of Transportation: Right of Way Management **objects** to this action as proposed. This right of way has not been determined to be in excess of the needs of the Department. We have no comment of the vacation of the 10 foot utility easements.

Staff Discussion: This portion of East End Road is KPB maintained. This is the easternmost dedicated portion of East End Road and the only access to Kachemak Bay shoreline and the community of Kachemak Selo. The dedication ends at the top of a steep hillside down to Kachemak Bay. The road continues beyond the dedication as a narrower road with switchbacks down the hillside to the beach. This portion of the road is located on State DNR lands and is not dedicated.

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It is unclear if the dedicated right-of-way perfectly overlies the prior public access easement. However, location of the current constructed East End Road suggests that the easement and dedication do not perfectly overlie one another. The current roadway is not centered within the dedicated right-of-way. The proposed vacation will vacate 40 feet of the dedicated right-of-way and any portion of the easement within those 40 feet.

If approved, a subdivision plat named Voznesenka 2020 (KPB File No. 2020-016) will finalize the proposed vacations. The Plat Committee is tentatively scheduled to review KPB File No. 2020-016 on March 23, 2020.

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- The 20' utility easement adjoining the East End Road right-of-way within Lot 3-D Voznesenka Too (HM2000-23) and Lots 1-A and 1-B Voznesenka 2006 (HM2008-94),
- The 10' utility easements on the south and west lot lines of Lots 3-D, 1-A, and 1-B,
- The 20' utility easement centered on the shared lot line of Lots 3-D and 1-A, and
- The 10' utility easement on the southeast lot line of Lot 1-B.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

Petitioner Comments: (summarized) Vacating the Right-of-Way and unnecessary easements created by HM 85-31 and subsequent plats for 3 lots at the Cemetery. Voznesenka Community Council Inc. would like to vacate right of way for the existing encroaching cemetery, some of which may have been in existence prior to grant of right of way. We would like to vacate a 40 foot wide portion of the 100 feet wide right of way, leaving the standard 60 feet wide borough required right of way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the (proposed) church, parking, and community area.

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: Contours were not submitted and excessive topographic features are not used as a justification for the vacation. However, the submittal did include areas with slopes greater than 20% grade. In addition, per KPB four foot contours, slopes exceeding 10% grade appear to affect portions of the proposed vacation.

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If approved, Voznesenka 2020 (KPB File No. 2020-016) will finalize the vacations.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: The petition proposes a partial vacation that will reduce the 100' wide East End Road Right of way to 60' wide. Per the submittal, the constructed East End Road is not located within the 40' proposed to be vacated. The proposed vacation will reduce the dedicated right-of-way to the 60' minimum right-of-way width per KPB 20.30.120. The remaining public access easement that does not perfectly underlie the right-of-way to the east would result in additional width for public access and road construction.

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: Per the petition, East End Road is constructed and in use by vehicles.

No equal or superior right-of-way for vehicular access exists. A 100' wide right-of-way is not equal to a 60' wide right-of-way. East End Road, and the smaller road that extends from it down the hillside, provides the only access by land to the community of Kachemak-Selo below Voznesenka on Kachemak Bay. Per KPB

four foot contours, this portion of East End Road is located on a ridge with extremely steep drops to the west, east, and south. Per KPB four foot contours and the submittal, the steep slopes extend to the edge of the right-of-way on the east side for much of the proposed vacation. Any future realignment or improvements of the constructed roadway must occur to the west, 40' of which this petition proposes to vacate. Per KPB Roads, "The road is currently on the edge of the 20%+ slope on the east side of the right of way. At this time the encroachments are not impeding road maintenance. This vacation could be an issue if we ever need to relocate the road due to erosion."

However, a fenced cemetery is currently located within the proposed vacation area extending across the lot line from Lot 1-B, HM 2008-94. Vacation of this portion of the right-of-way would result in an equal right-of-way remaining because these fenced 40' are currently not usable as a right-of-way.

No alternate equal or superior right-of-way for vehicular access is proposed in exchange. The Kenai Peninsula Borough owns the large acreage tract to the east of the southernmost portion of the proposed vacation. The KPB Land Management Department may be amenable to granting a public access easement to match the 40' reduction in right-of-way width. However, per the submittal and KPB four foot contours, nearly all of that area will be affected by slopes exceeding 20% grade. Any easement granted to the east within the borough parcel would not provide equal or superior vehicular access.

Staff recommendation: Concur that equal right-of-way for vehicular access exists only for the proposed vacation that contains the fenced cemetery and that no equal or superior right-of-way is proposed for the remaining proposed vacation.

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

Platting Staff Comments: Per the petition, East End Road is used for other uses. However, East End Road is constructed and suited for general road use. Therefore, equal or superior access for other uses is not required. A 60' right-of-way meeting the minimum right-of-way width of KPB 20.30.120 is sufficient to provide adequate width to support other uses. In addition, the fenced cemetery located within the proposed vacation area limits the current usable portion of the right-of-way to 60'. The vacation of this area will result in an equal right-of-way for other uses.

Staff recommendation: Concur that the proposed vacation will result in adequate right-of-way width for other uses and equal right-of-way width adjoining area affected by the fenced cemetery.

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: Per the petition, the right-of-way and additional utility easements proposed to be vacated are not in use by a utility provider.

Per KPB 20.30.060(D), Proposed Voznesenka 2020 (KPB File No. 2020-016) must grant at least a 10' utility easement adjoining East End Road. Per the submittal, an existing waterline is located within the portion of the right-of-way that will remain after the vacation.

No parcels will be denied utility access if the additional utility easements on the rear and side lot lines are vacated. Tract B, HM 85-31, fronts utility easements that extend to the East End Road right-of-way per HM 2000-23. In addition, Tract B is owned by the borough and, per HM 85-31, "shall not be used for development."

As noted above, the existing cemetery is located within the right-of-way and also the utility easements within Lot 1-B. This portion of the right-of-way and utility easements proposed to be vacated are currently unusable and vacation will result in equal public utility access remaining

The utility easement adjoining the right-of-way and the 60' remaining right-of-way can provide adequate access for utility providers to each adjoining lot.

Staff recommendation: *Concur that the proposed vacation will result in adequate right-of-way width and utility easements for public utility access and equal right-of-way width adjoining area affected by the fenced cemetery.*

20.30.220. Section line easement vacations. Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

Platting Staff Comments: Although this does not include a section line easement vacation, the vacation of the public access easement is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation of the public access easement.

Staff recommendation: *Comply with KPB 20.30.220.*

Vacate a 40 foot width of the 100 foot wide east end road right-of-way, including associated 20 foot utility easement

STAFF RECOMMENDATION: The petition to vacate a portion of the public access easement must be reviewed and either approved or denied by the planning commission, but final authority for approval of the public access easement vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **does not recommend approval** of the right of way vacations as petitioned,

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff **recommends approval** of the utility easement vacations as petitioned, subject to:

1. Showing the utility easement vacation on a subdivision plat.
2. 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).

OR

1. Provide a sketch, clearly indicating the portion of the utility easement being vacated, to be recorded with KPB Planning Commission Resolution 2020-04, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2020-06
KENAI RECORDING DISTRICT**

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31)

WHEREAS, Voznesenka Community Council, Inc., Nazary Basargin, and Anastasia Basargin, of Homer, AK requested the vacation of 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31); and

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

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

WHEREAS, the proposed vacation will not deny utility easement(s) to surrounding properties; and

WHEREAS, on February 24, 2020, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed vacation; and

WHEREAS, the Planning Commission 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 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31); is hereby vacated.

Section 2. That an as-built survey or sketch, both of which a licensed land surveyor must prepare, sign, and seal, showing the location of the portion of the utility easement to be 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.

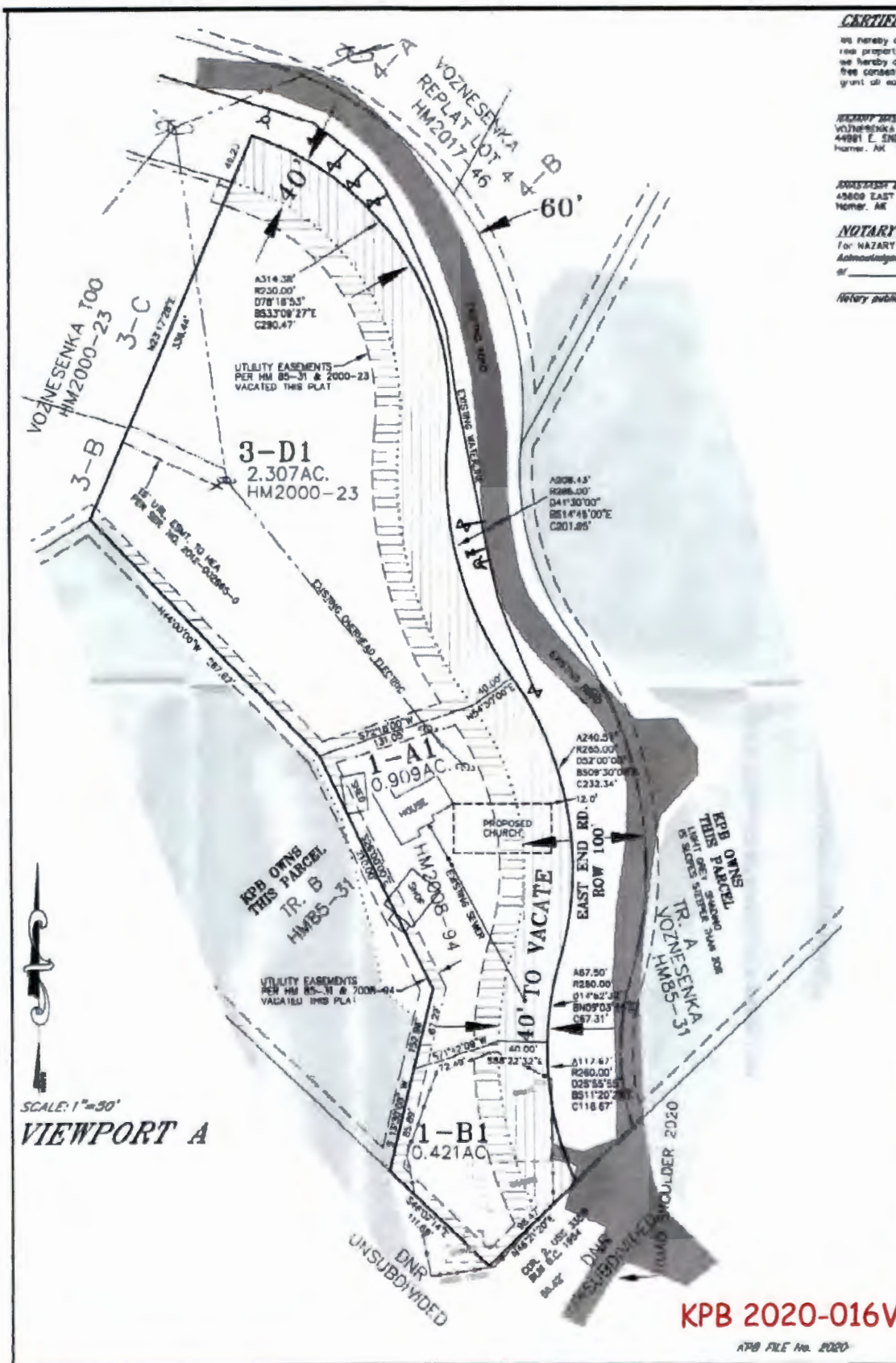
ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 24TH DAY OF FEBRUARY, 2020.

Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Julie Hindman
Administrative Assistant

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



CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the
 this property shown and described herein, and that
 we hereby adopt this plan of subdivision, and by our
 free consent dedicate all public rights-of-way and
 grant all easements to the use shown.

NAZARY I BASARON (FOR LOT 1) BASARON, FOR SELF AND AS PRESIDENT
 VOZNESENKA COMMUNITY COUNCIL INC.
 44991 E. END RD #2
 Homer, AK 99603

ANASTASIA BASARON (FOR LOT 3-D)
 45808 EAST END ROAD
 Homer, AK 99603

NOTARY'S ACKNOWLEDGMENT

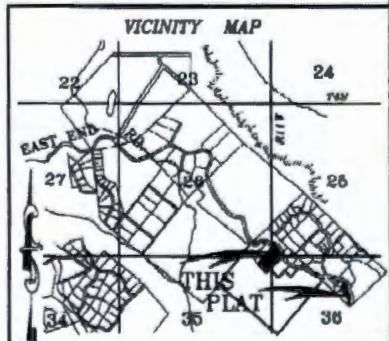
I, **NAZARY I BASARON** AND **ANASTASIA BASARON**
 Acknowledged before me this _____ day
 of _____ 2020

Notary Public for Alaska By Commission Expires _____

PLAT APPROVAL

This plat was approved by the Nome Peninsula Borough
 Planning Commission at the meeting of _____ 2020
 KENAI PENINSULA BOROUGH

By _____
 Authorized Official



SCALE	1" = 1/2 MILE
DATE	1/11/2020
SCALE	AS SHOWN
DRAWING	51834
JOB No.	5183



VOZNESENKA 2020

VACATING A PORTION OF EAST END ROAD
 RIGHT-OF-WAY OVERLYING THE EASEMENT AND
 RIGHT-OF-WAY GRANTED TO THE STATE OF ALASKA IN
 BOOK 148 PAGES 771-774, AND VACATING ASSOCIATED
 UTILITY EASEMENTS ON AND ADJACENT TO LOT 1-D
 "VOZNESENKA 200" (HM2000-23), LOTS 1-A & 1-B
 "VOZNESENKA 200" (HM2000-23), TOGETHER WITH A
 REPLAT OF LOT 1 "VOZNESENKA FIVE" (HM97-81), AND
 TRACT B, "VOZNESENKA BASARON ADDN" (HM2010-85),
 WITHIN THE SW1/4 OF PROTRACTED SECTION 25, THE
 SE1/4 OF PROTRACTED SECTION 26, THE NE1/4 OF
 PROTRACTED SECTION 35 AND THE NW1/4 AND THE
 NE1/4 OF PROTRACTED SECTION 36, 14S, R11W, S.M.,
 KENAI PENINSULA BOROUGH,
 HOMER RECORDING DISTRICT, ALASKA
 CONTAINING 13.775± ACRES

OWNERS:
 VOZNESENKA COMMUNITY COUNCIL NAZARY I BASARON
 ANASTASIA BASARON
 44991 EAST END ROAD 45808 EAST END ROAD
 HOMER, AK 99603 HOMER, AK 99603

ABILITY SURVEYS

GARY D. NELSON, P.L.S.
 (907)235-8440
 152 DEHEL AVE., HOMER, ALASKA

KPB 2020-016V

KPB FILE No. 2020

SCALE: 1"=90'
VIEWPORT A

WARRANTY OF QUIET ENJOYMENT AND DEFENSE
 I hereby certify that we are the owners of the following described parcel, and that we hereby convey the parcel to the person named herein, and that we hereby consent to the person named herein, and by our free consent dedicate all public rights, easements and grant all easements to the use herein.

LOT 1 (1985-31)
 HAZARD BASARON (OWNER OF LOT 1, 1985-31)
 PO BOX 2484
 HOMER, AK 99603

ANASTASIA BASARON (OWNER OF LOT 1, 1985-31)
 PO BOX 3284
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR HAZARD AND ANASTASIA BASARON
 Subscribed and sworn to before me this 21 day of December, 2007.

Notary Public for Alaska
 My Commission Expires



LOT 10-2 (1985-14)
 ZAHAR ZACK RELIYOV (OWNER OF LOT 10, 1985-14)
 P.O. BOX 360
 HOMER, AK 99603

FOR: KESIMA BASARON
 Subscribed and sworn to before me this 27th day of December, 2007.

Notary Public for Alaska
 My Commission Expires

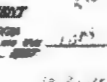
NOTARY'S ACKNOWLEDGMENT
 FOR: ZAHARA L. BERTON
 Subscribed and sworn to before me this 21 day of December, 2007.

Notary Public for Alaska
 My Commission Expires

LOT 1 (1985-31)
 D.B.
 DORIS Y. BASARON (OWNER OF LOT 1, 1985-31)
 PO BOX 3284
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: HANI P. & DARIA Y. BASARON
 Subscribed and sworn to before me this 21 day of December, 2007.

Notary Public for Alaska
 My Commission Expires

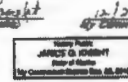


- LEGEND**
- ⊕ ROAD 5/8" x 1/4" GRADE CAP (81) RECORD DATA FOR 1985-31
 - ⊕ 10 FT x 1/4" x 1/4" GRADE (82) RECORD DATA FOR 1985-31
 - ⊕ 10 FT x 1/4" x 1/4" GRADE (83) RECORD DATA FOR 1985-31
 - ⊕ 10 FT x 1/4" x 1/4" GRADE (84) RECORD DATA FOR 1985-31
 - ⊕ 10 FT x 1/4" x 1/4" GRADE (85) RECORD DATA FOR 1985-31
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 - ⊕ 10 FT x 1/4" x 1/4" GRADE (99) RECORD DATA FOR 1985-31
 - ⊕ 10 FT x 1/4" x 1/4" GRADE (100) RECORD DATA FOR 1985-31

LOT 10 (1985-31)
 PETER KLUZON (OWNER OF LOT 10, 1985-31)
 PO BOX 3803
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: PETER KLUZON
 Subscribed and sworn to before me this 21 day of December, 2007.

Notary Public for Alaska
 My Commission Expires



LOT 10 (1985-31)
 LYDIA KULAROV (OWNER OF LOT 10, 1985-31)
 P.O. BOX 310
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: LYDIA KULAROV
 Subscribed and sworn to before me this 17th day of December, 2007.

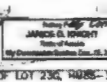
Notary Public for Alaska
 My Commission Expires



LOT 23C (1985-31)
 BILL W. AFONIN (OWNER OF LOT 23C, 1985-31)
 PO BOX 3492
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: BILL W. AFONIN
 Subscribed and sworn to before me this 31 day of December, 2007.

Notary Public for Alaska
 My Commission Expires



LOT 23C (1985-31)
 VERA AFONINA (OWNER OF LOT 23C, 1985-31)
 PO BOX 1472
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: VERA AFONINA
 Subscribed and sworn to before me this 21 day of December, 2007.

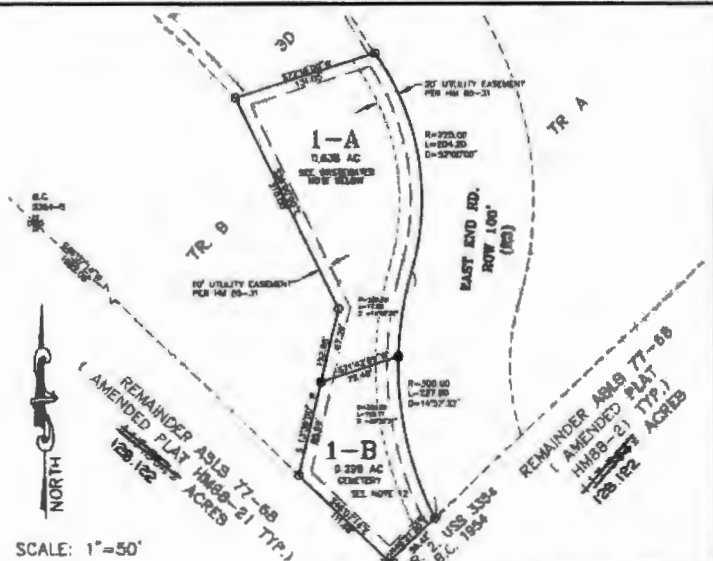
Notary Public for Alaska
 My Commission Expires



LOT 23A (1985-31)
 BARY BARTOSHEV (OWNER OF LOT 23A, 1985-31)
 PO BOX 800
 HOMER, AK 99603

NOTARY'S ACKNOWLEDGMENT
 FOR: BARY BARTOSHEV
 Subscribed and sworn to before me this 28th day of December, 2007.

Notary Public for Alaska
 My Commission Expires



SCALE: 1"=50'

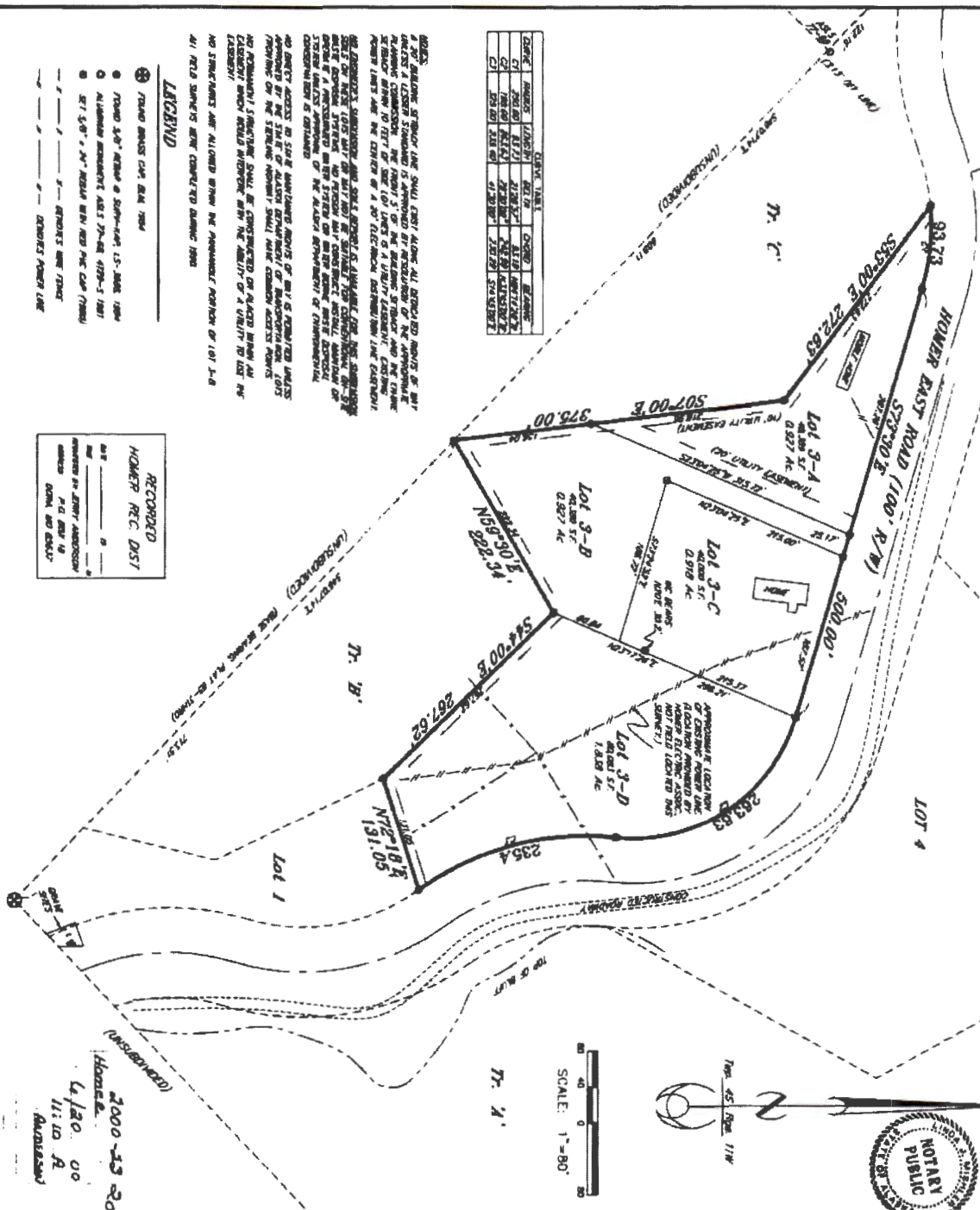
WASTEWATER NOTES

FOR TRACTS 2, 3, AND LOTS 10A-1, 10A-2, 10A-3, 20A-1, 20A-2, 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, 7-A, 8-A, 9-A, 10-A, 11-A, 12-A, 13-A, 14-A, 15-A, 16-A, 17-A, 18-A, 19-A, 20-A, 21-A, 22-A, 23-A, 24-A, 25-A, 26-A, 27-A, 28-A, 29-A, 30-A, 31-A, 32-A, 33-A, 34-A, 35-A, 36-A, 37-A, 38-A, 39-A, 40-A, 41-A, 42-A, 43-A, 44-A, 45-A, 46-A, 47-A, 48-A, 49-A, 50-A, 51-A, 52-A, 53-A, 54-A, 55-A, 56-A, 57-A, 58-A, 59-A, 60-A, 61-A, 62-A, 63-A, 64-A, 65-A, 66-A, 67-A, 68-A, 69-A, 70-A, 71-A, 72-A, 73-A, 74-A, 75-A, 76-A, 77-A, 78-A, 79-A, 80-A, 81-A, 82-A, 83-A, 84-A, 85-A, 86-A, 87-A, 88-A, 89-A, 90-A, 91-A, 92-A, 93-A, 94-A, 95-A, 96-A, 97-A, 98-A, 99-A, 100-A, 101-A, 102-A, 103-A, 104-A, 105-A, 106-A, 107-A, 108-A, 109-A, 110-A, 111-A, 112-A, 113-A, 114-A, 115-A, 116-A, 117-A, 118-A, 119-A, 120-A, 121-A, 122-A, 123-A, 124-A, 125-A, 126-A, 127-A, 128-A, 129-A, 130-A, 131-A, 132-A, 133-A, 134-A, 135-A, 136-A, 137-A, 138-A, 139-A, 140-A, 141-A, 142-A, 143-A, 144-A, 145-A, 146-A, 147-A, 148-A, 149-A, 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LOT 9
VOZNESENKA ROAD

LOT 8

LOT 4



DATE	REASON	BY	FOR
12/17/89	RECORD
12/17/89	RECORD
12/17/89	RECORD

NOTES:
1. ALL DIMENSIONS SHOWN ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR ALONG THE CENTERLINE OF THE LOT.
2. ALL DIMENSIONS SHOWN ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR ALONG THE CENTERLINE OF THE LOT.
3. ALL DIMENSIONS SHOWN ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR ALONG THE CENTERLINE OF THE LOT.
4. ALL DIMENSIONS SHOWN ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR ALONG THE CENTERLINE OF THE LOT.
5. ALL DIMENSIONS SHOWN ARE MEASURED ALONG THE CENTERLINE OF THE ROAD OR ALONG THE CENTERLINE OF THE LOT.

- 1. ROAD BOUNDS CAN BE FOUND
- 2. ROAD 30' WIDE & 15' HIGH
- 3. ALASKA REGISTERED SURVEYOR 15-1000-1000
- 4. ALASKA REGISTERED SURVEYOR 15-1000-1000
- 5. 15' WIDE & 15' HIGH
- 6. 15' WIDE & 15' HIGH
- 7. 15' WIDE & 15' HIGH
- 8. 15' WIDE & 15' HIGH
- 9. 15' WIDE & 15' HIGH
- 10. 15' WIDE & 15' HIGH

RECORDED
HOMER REC. DIST
DATE: 12/17/89
BY: JERRY ANDERSON
P.L. 801 18
BOOK: 0001 AND 0002



CERTIFICATE OF OWNERSHIP
I hereby certify that I am the owner of the real property shown and described herein, and that I hereby accept the plan of subdivision, and by my free consent declare of record that I will make every effort to make the same conform to the law of the State of Alaska.

Jerry Anderson
JERRY ANDERSON
HOMER, ALASKA 99603

NOTARY'S ACKNOWLEDGEMENT
I, the undersigned Notary Public, do hereby certify that the foregoing instrument was duly executed and acknowledged before me on this 17th day of December, 1989.

Jerry Anderson
JERRY ANDERSON
HOMER, ALASKA 99603

SUBROTOR'S CERTIFICATE
I hereby certify that the survey was performed by me or under my direct supervision, I declare that the information shown hereon is true and correct to the best of my knowledge and belief.

Jerry Anderson
JERRY ANDERSON
HOMER, ALASKA 99603

DATE APPROVAL
This plan was approved by the Homer Planning Commission on this 17th day of December, 1989.

Jerry Anderson
JERRY ANDERSON
HOMER, ALASKA 99603

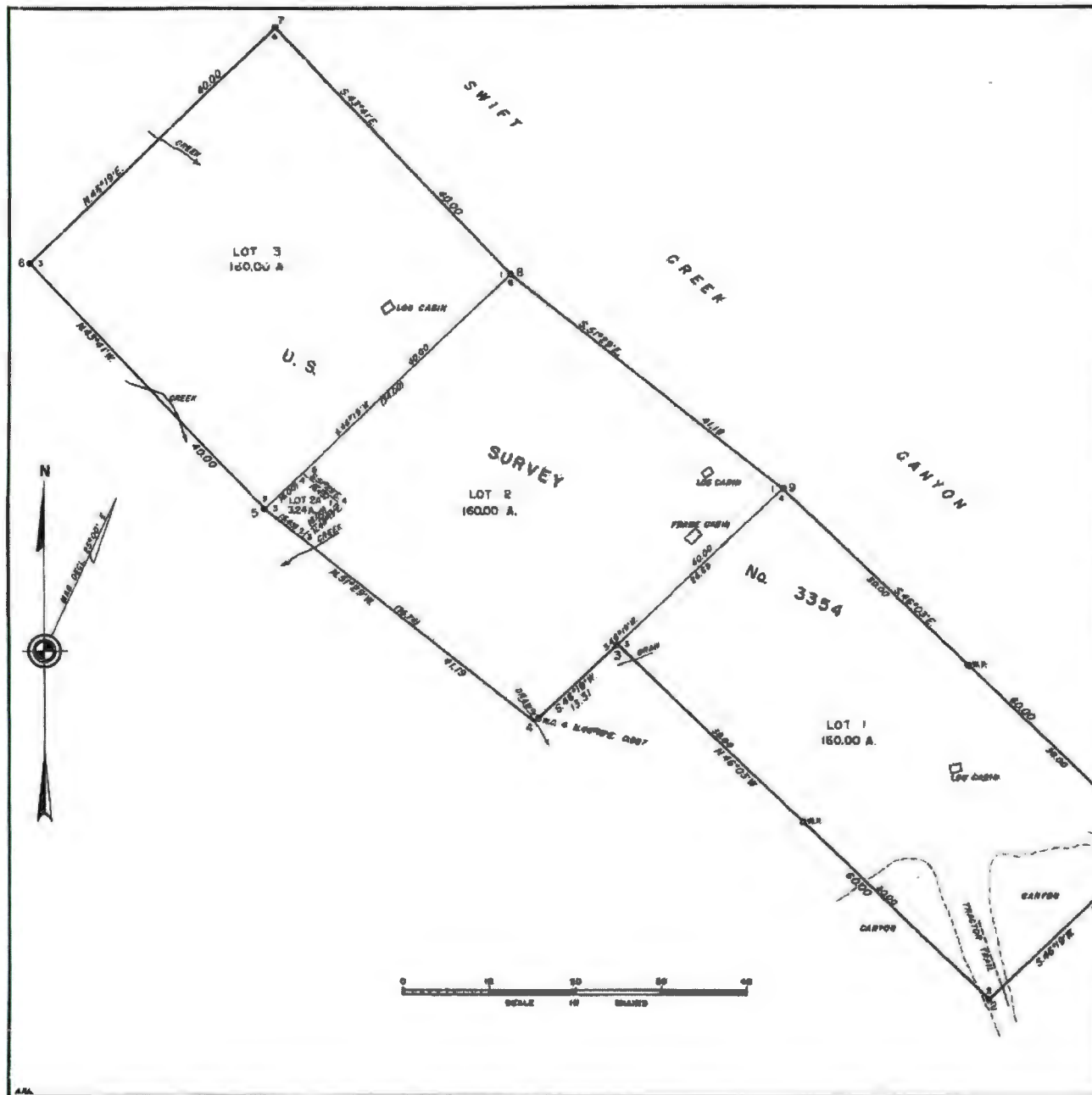


DATE: 12/17/89
SCALE: 1" = 80'
GRID No. 40-21
FILE BK. No. 195294
NPS FILE No. 90-084
JOB No. 0665

"VOZNESENKA 700"
A REPEAT OF LOT 1, PLAT 82-31, WITHIN USS-1004 AND WITHIN THE NW-1/4 OF PROTRACTED SEC. 36, T16N, 45E R16E, 111.10 A. ALASKA CONTAINING 4.611 ACRES

JERRY ANDERSON
SURVEYOR-PLANNERS-ENGINEERS
1-800-861-4231
P.O. BOX 18
HOMER, ALASKA 99603

ORIGINAL



**U.S. SURVEY
No. 3354 ALASKA**

EMBRACING LOTS 1, 2, 2A, & 3

Situated

On the north side of Etaham Bay west of Deft Creek

Area: 489.24 Acres

Latitude 58°47'28" N., Longitude 151°08'11" W.,

At Corner No. 1

Surveyed by

Harold Redcliffe, Cartographer, (Contract)

September 2 to 14, 1954

Under Special Instructions Dated

July 4, 1954 and Approved

July 18, 1954

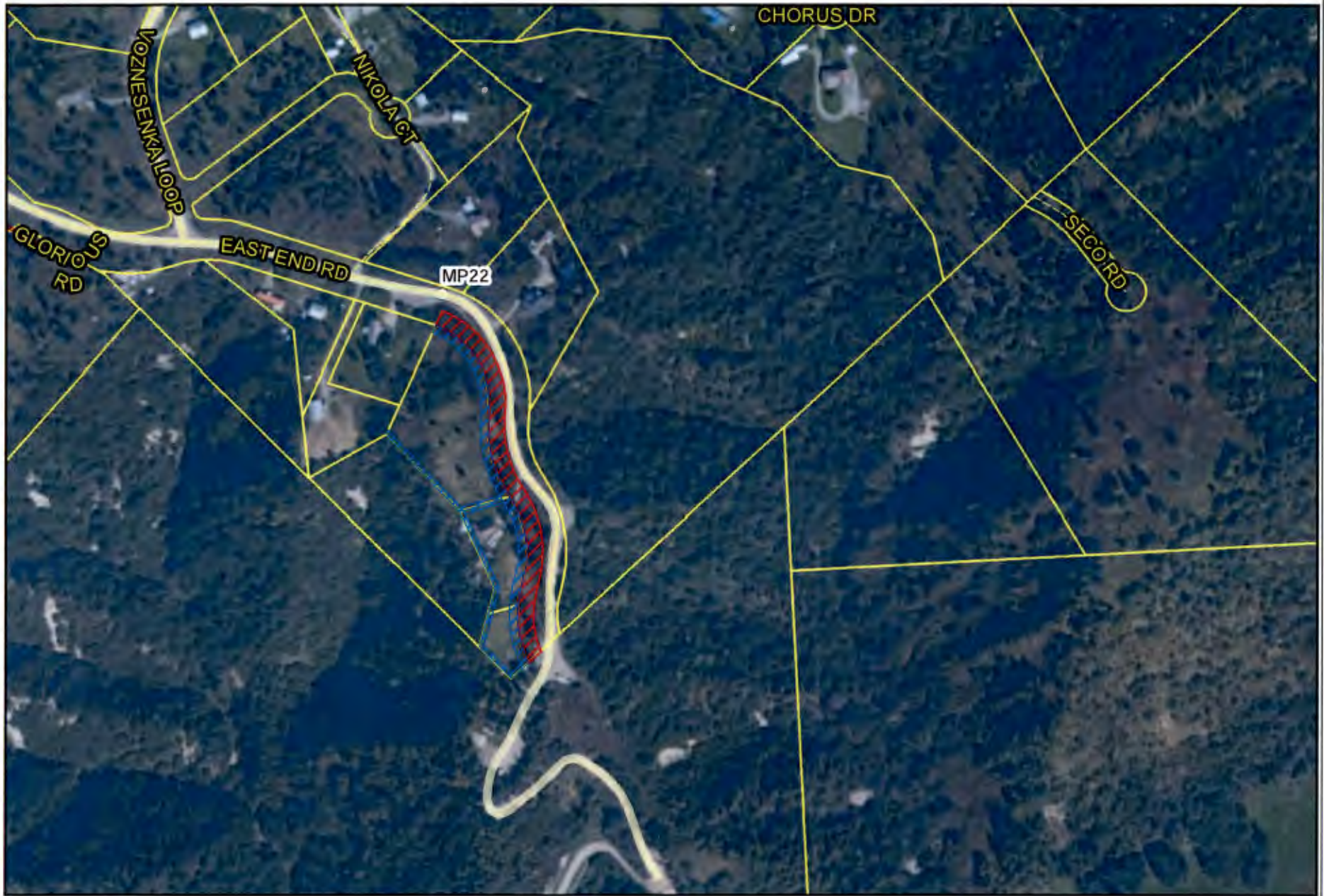
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. August 19, 1955

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

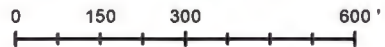
Carl G. Harrington
Contractual Engineering Survey Officer



D.S. 583
A.S. 116



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.

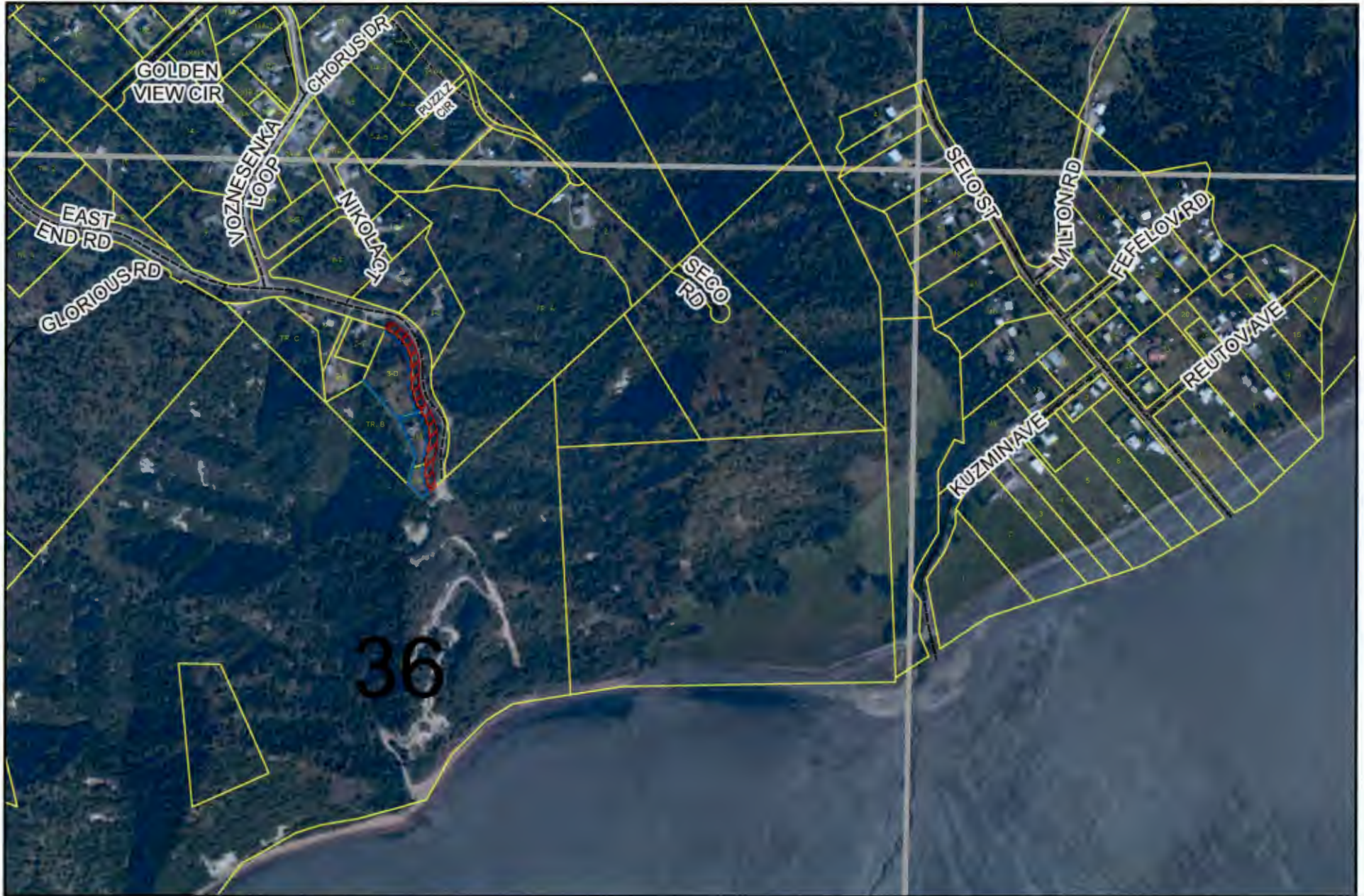
Aerial View



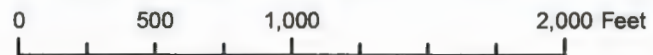
-  Utility Easement Vacation
-  40 Right of Way Vacation

PClements, KPB
Date: 2/3/2020
Imagery: 2016

2016 Imagery



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.



JReif

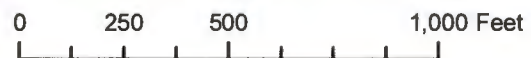


Date: 2/4/2020

2016 Imagery



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.



JReif

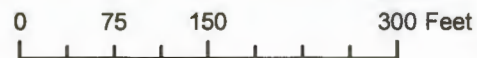


Date: 2/4/2020

2012 Imagery



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

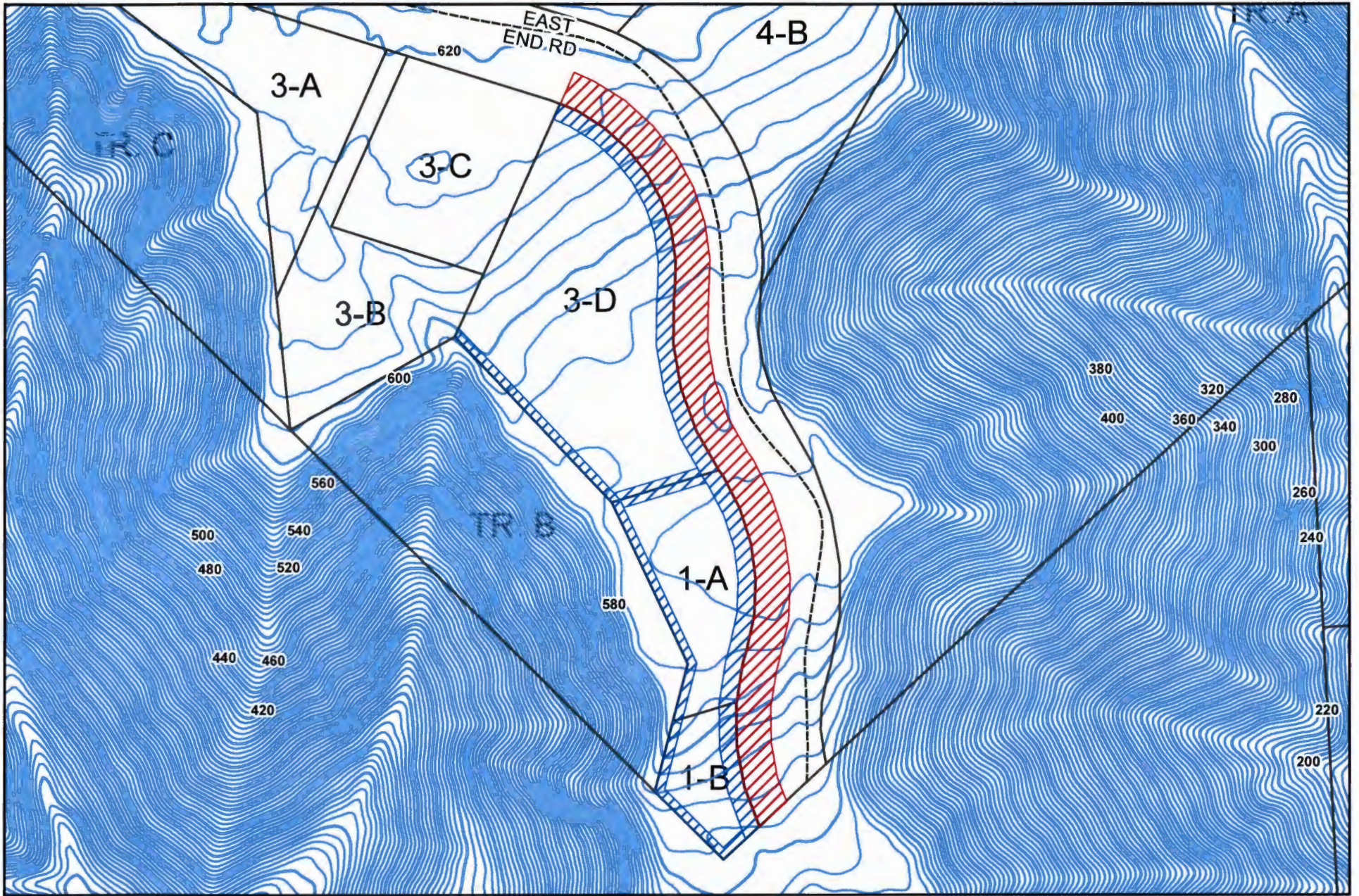


JReif

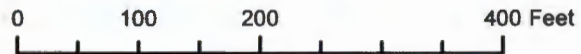


Date: 2/4/2020

Four Foot Contours



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.

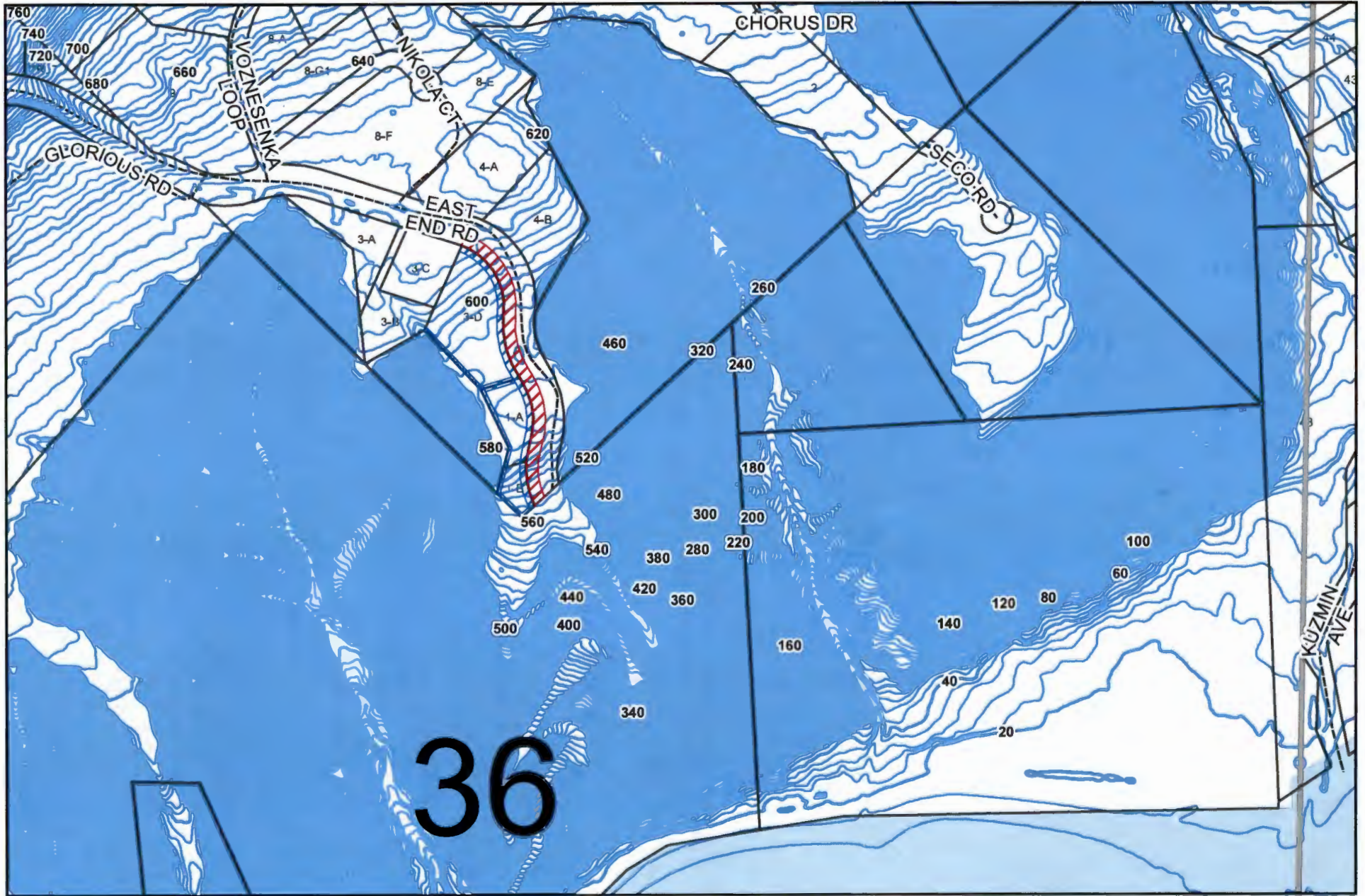


JReif

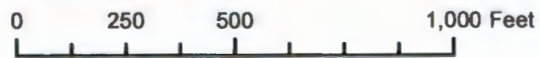


Date: 2/4/2020

Four Foot Contours



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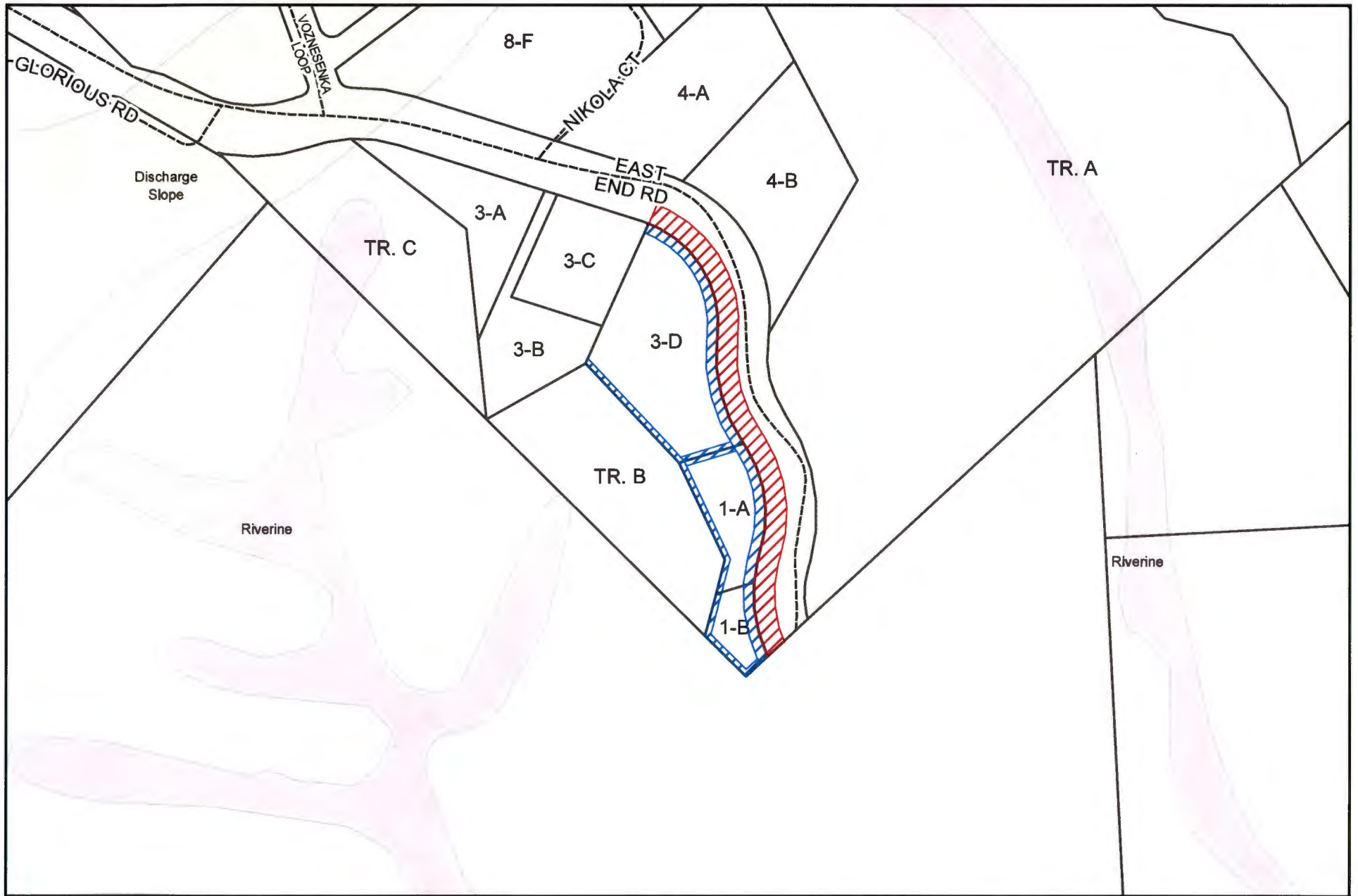


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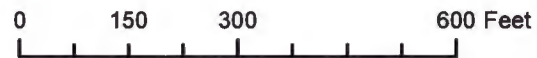


Date: 2/4/2020

Kenai Watershed Forum Wetlands



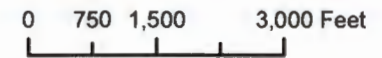
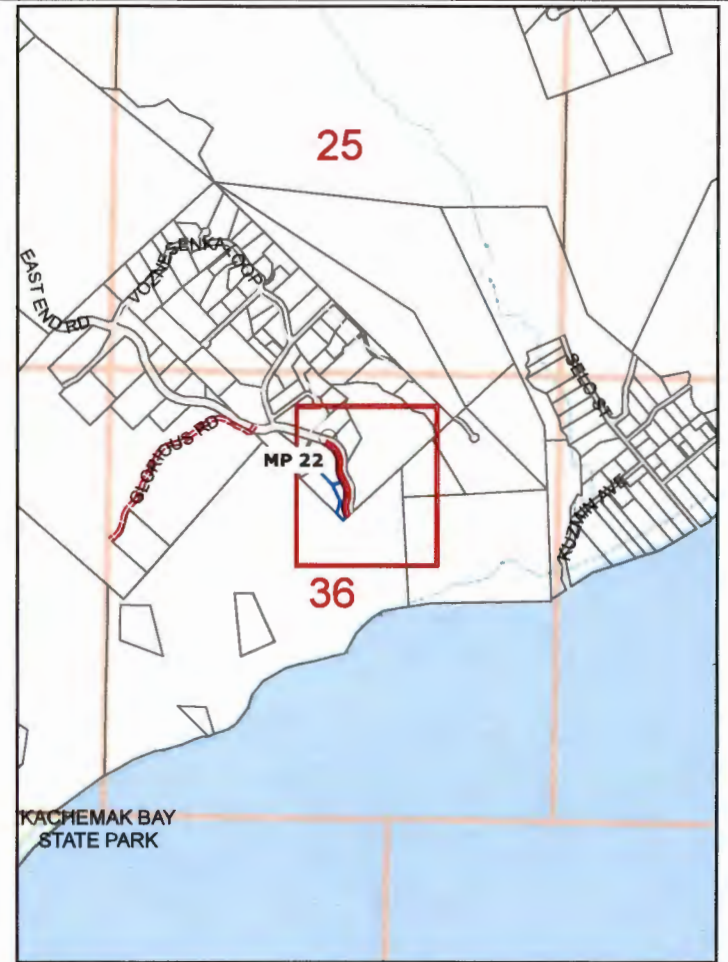
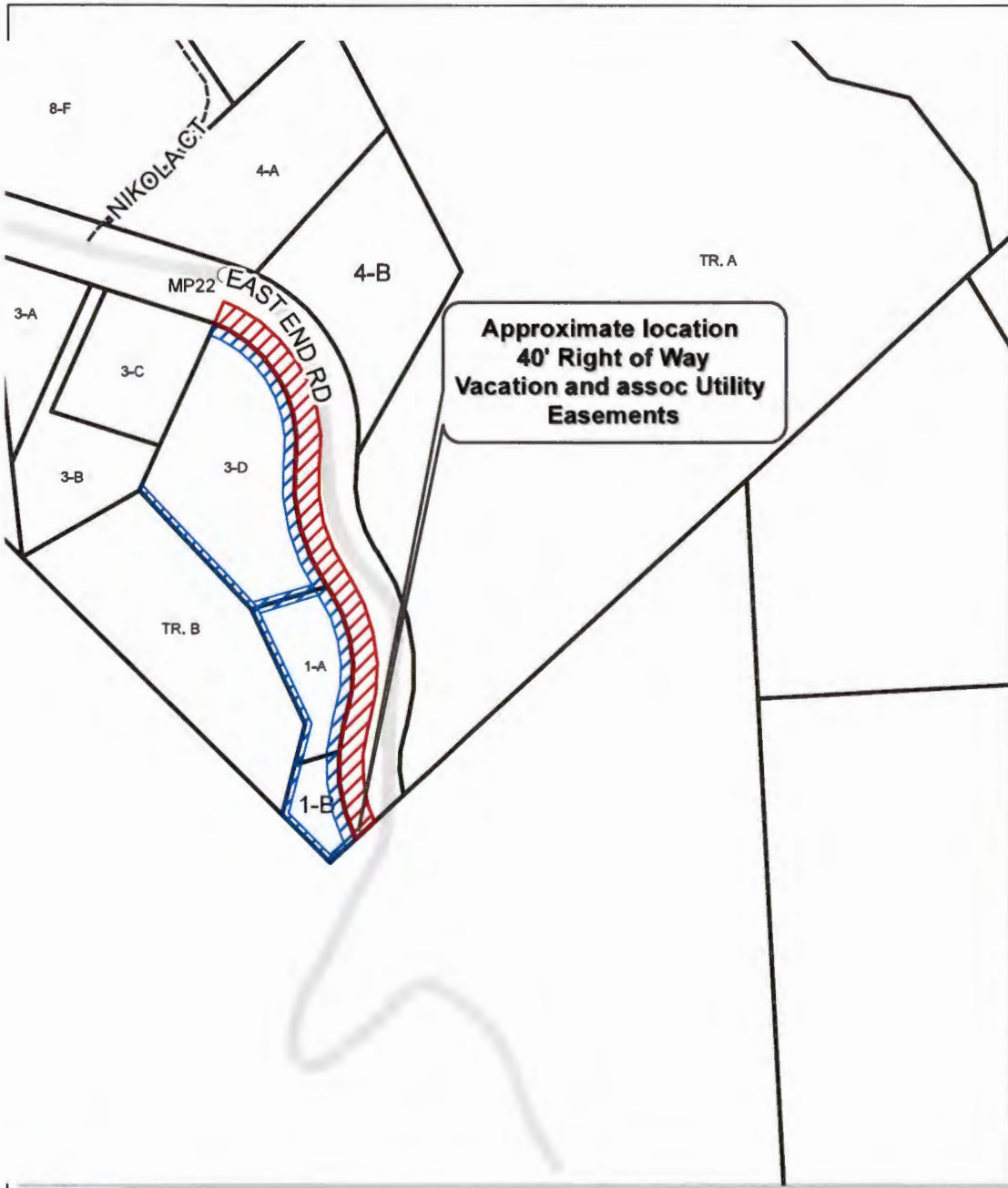
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JReif



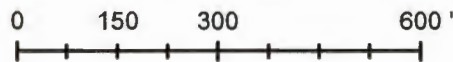
Date: 2/4/2020



KPB 2020-016V
T04S R11W S36
Fox 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.



PClements, KPB
 Date: 2/3/2020

Voznesenka Community Council Inc.

Voznesenka Community Council Inc. would like to vacate Right-of-Way for the existing encroaching Cemetery, some of which may have been in existence prior to grant of Right-of-way or at least prior to any monumentation (posted definition) of the Right-of-Way. We feel we have a bona fide right due to our use prior to any on-site posting of boundaries or physical notice. Please note the roadway is not centered in the Right-of-Way as required by borough code.

For our religious worship we desire to build a church on the lot adjacent to the Cemetery for proximity to the cemetery. We would like to vacate a 40 feet wide portion of the 100 feet wide right-of-way, leaving the standard 60 feet wide borough required right-of-way. We feel we need this extra area for remedy the cemetery encroachment and to provide adequate room for the church, parking, and community area. We wish to vacate the 40 feet adjacent to the Nazary Basargin owned Lot 1-A and Village Council owned Lot 1-B (HM2000-23).

The existing roadway is borough maintained and was substantially upgraded with public monies circa 2010. It is currently very off-center to the right-of-way, being mostly in the far half of the right-of-way corridor. A forty-foot vacation would leave the existing roadbed more centered (and still more towards the far side of the remaining right-of-way) in the remaining 60 feet wide right-of-way.

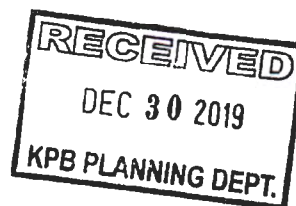
And Lot 1-A will be Donated to VCCI for the purpose of Building a new Church. The location of the Church on present site is over crowding the School Facilities, and the Construction site for the New Church is Customary to be located next to the Cemetery. The House and all Buildings on the site presently will be Demolished to Facilitate of Building the New Church.

12-27-2019

Voznesenka Community Council Inc.



Nazary Basargin VCCI President





Kenai Peninsula Borough Planning Department
 144 North Binkley
 Soldotna, Alaska 99689-7599
 Toll free within the Borough 1-800-478-4441, extension 2200
 (907) 714-2200

Petition to Vacate Utility Easement

No Public Hearing Required

Submit completed form to the Kenai Peninsula Borough Planning Department, 144 North Binkley St., Soldotna, AK 99689

Upon receipt of complete application with all required attachments the vacation will be scheduled for Planning Commission action. The petitioner must secure and submit written comments from utility companies. If the easement is within city limits; secure and submit city's written comments. The completed petition, with all required attachments, accompanied by a \$75.00 non-refundable fee, must be submitted to the Planning Department a minimum of thirty (30) days prior to the meeting at which the Planning Commission will take action.

Fees - \$75.00 non-refundable fee attached.

To accomplish an approved vacation; a Planning Commission Resolution must be filed with the State Recorder to enter the vacation into the public records unless the vacation is accomplished by plat. Petitioner must pay filing fees (usually \$22-\$27).

Utility easement requested to be vacated was granted by plat of Subdivision, filed as Plat No. 85-31 in Homer Recording District.

Utility easement proposed to be vacated was granted by (specify type of document) as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition)

Comments from _____ Electric Association attached.

Comments from _____ Gas Company attached.

Comments from _____ Telephone Company attached.

Comment from _____ Cable Company attached.

Please note comments or no comments on the sketch or plat that is to be submitted with the petition.

Comments from the KPBRoads Department attached if applicable.

Comments from City of _____ attached.

One copy of plat or map (sketch) showing area proposed to be vacated. If easement was granted by document, one copy of recorded document must be submitted.

If an existing structure is encroaching into easement; As-Built showing encroachment must be attached.

Is easement being used by utility company? Yes No
 If yes, which utility _____

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

Vacating ROW and unnecessary easements created by HM85-31 and subsequent plats for 3 lots at Cemetery

The petition must be signed (written signature) by owners of the land subject to the easement proposed to be vacated. Each must include mail address and legal description of his / her property.

Submitted by: Signature Gary Nelson As Petitioner Representative
 Name: Gary Nelson
 Address: 152 Dehel Ave
Homer, AK 99603
 Phone: 907-235-8440

Petitioners:
 Signature Nazary Basargin
 Name Nazary Basargin
 Address 45609 E. End Rd.
Homer, AK 99603

Signature Nazary Basargin
 Name Nazary Basargin as President
 Address Voznesenka Village Council
44991 E. End Rd.
Homer, AK 99603

Owner of Lot 1-A Voznesenka 2006

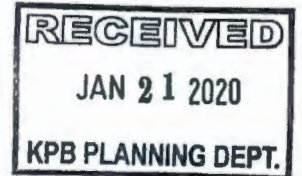
Owner of Lot 1-B Voznesenka 2006

Signature Nazary Basargin
 Name Nazary Basargin
 Address 45609 E. End Rd.
Homer, AK 99603

Signature Anastasia Basargin
 Name Anastasia Basargin
 Address 45609 E. End Rd.
Homer, AK 99603

Owner of Lot 3-D Voznesenka Too

Owner of Lot 3-D Voznesenka Too





Kenai Peninsula Borough Planning Department
 144 North Binkley
 Soldotna, Alaska 99669-7599
 Toll free within the Borough 1-800-478-4441, extension 2200
 (907) 714-2200

Petition to Vacate Public Right-of-Way/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.

- \$500 non-refundable fee to help defray costs of advertising public hearing.
 - City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
 - Name of public right-of-way proposed to be vacated is dedicated by the plat of Voznesenka & BK 148 pgs 771-774 Subdivision, filed as Plat No. 86-31 in Homer Recording District.
 - Are there associated utility easements to be vacated? Yes No
 - Are easements in use by any utility company? If so, which company I don't think so.
 - Easement for public road or right-of-way as set out in (specify type of document) Public Road RIGHT-OF-WAY Easement as recorded in Book 148 Page 771-774 of the Homer Recording District. (Copy of recorded document must be submitted with petition.)
 - Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 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
 Is alternative right-of-way being provided? Yes No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:
 existing road lies in far side of 100 feet wide ROW. Necessary for new graves and proposed church need unused ROW area for VOZNESENKA COMMUNITY
 Existing roadway has been improved and maintained by State and Borough road departments in it's existing location for many years.

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By: Name: Gary Nelson Signature as: Petitioner Representative
 Address: 152 Dehel Ave
Homer, AK 99603
 Phone: 907-235-8440

Petitioners:
 Signature: [Signature]
 Name: Nazary Basargin as President Voznesenka Community Council
 Address: 44991 E. End Rd.
Homer, AK 99603

Signature: [Signature]
 Name: Nazary I Basargin
 Address: 45809 E. End Rd.
Homer, AK 99603

Owner of Lot 1-B Voznesenka 2008
 Signature: [Signature]
 Name: Anastasia Basargin
 Address: 45809 E. End Rd.
Homer, AK 99603

Owner of Lot 1-A Voznesenka 2008
 Signature: [Signature]
 Name: Nazary Basargin
 Address: 45809 E. End Rd.
Homer, AK 99603

Owner of Lot 1-D Voznesenka Too

Owner of Lot 1-D Voznesenka Too

Clements, Peggy

From: Simpson, Danika L (DOT) <danika.simpson@alaska.gov>
Sent: Monday, February 24, 2020 9:04 AM
To: Clements, Peggy; Eaton, Belinda L (DOT); Biloon, Joselyn (DOT); Horton, George C (DNR); Rinke, Hans J (DNR); Vanderwood, Randy D (DOT); Hooyer, Patricia (DOT); Wilson, Mistee R (DOT); 'Neuendorf, Cody'; 'Byron Jackson'; 'Bradley Beck'; 'ENSTAR ROW'; Dubour, Adam J (DFG); Baxter, Tammaron; 'ivan@niniichiktribe-nsn.gov'; 'tag@acsalaska.net'; Ciccarella, Bob; nibasargin@gmail.com; gary@abilitysurveys.com
Subject: RE: ROW VACATION REVIEW FOR FEBRUARY 24, 2020 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, KPB Homer, Niniichik traditional Council, EMS Niniichik, EMS Kachemak • Voznesenka 2020 vacate portion of East End Road and associated Utility Easements
Attachments: Notice Public.pdf

Peggy,

These comments are to supersede those transmitted 2/10/2020.

Please circulate as necessary in advance of the 2/24/2020 Vacation Review meeting.

DOT&PF Right of Way and Platting Committee has no objection to the proposed vacation with the following recommendation:

- Community of Voznesenka to dedicated equivalent square footage in kind as right of way along the current East End Road corridor;
- The right of way being dedicated is intending to create a secondary access or routing with direct access onto East End Road;
- This right of way will be recorded by plat and dedicated to the managing authority where dedicated (KPB or State).

Danika

Danika Simpson
Right of Way Agent
Property Management Supervisor
907.269.0687

State of Alaska DOT&PF | Design & Engineering - Right of Way

From: Clements, Peggy <PClements@kpb.us>
Sent: Wednesday, February 5, 2020 9:08 AM
To: Eaton, Belinda L (DOT) <belinda.eaton@alaska.gov>; Biloon, Joselyn (DOT) <joselyn.biloon@alaska.gov>; Simpson, Danika L (DOT) <danika.simpson@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Rinke, Hans J (DNR) <hans.rinke@alaska.gov>; Kastner, Lorraine S (DOT) <lorraine.kastner@alaska.gov>; Hooyer, Patricia (DOT) <louise.hooyer@alaska.gov>; 'mark.fink@alaska.gov' <mark.fink@alaska.gov>; Wilson, Mistee R (DOT) <mistee.wilson@alaska.gov>; 'Neuendorf, Cody' <CNeuendorf@HomerElectric.com>; 'Byron Jackson' <byron.jackson@acsalaska.com>; 'Bradley Beck' <bbeck@gci.com>; 'ENSTAR ROW' <row@enstarnaturalgas.com>; Dubour, Adam J (DFG) <adam.dubour@alaska.gov>; Baxter, Tammaron <tbaxter@kpb.us>; 'ivan@niniichiktribe-nsn.gov' <ivan@niniichiktribe-nsn.gov>; 'tag@acsalaska.net' <tag@acsalaska.net>; Ciccarella, Bob <bCiccarella@kpb.us>
Subject: ROW VACATION REVIEW FOR FEBRUARY 24, 2020 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, KPB Homer, Niniichik traditional Council, EMS Niniichik, EMS Kachemak

From: gary@abilitysurveys.com
To: [Huff, Scott](#)
Subject: Voznesenka 2020 ROW Vacation of East End Road.
Date: Monday, February 24, 2020 10:02:33 AM

Dear Mr. Huff;

Please forward this request for the Planning Commission to defer voting action to the next meeting in order for us to attempt negotiation with the state DOT for their approval to vacate the requested portion of the underlying ROW Easement. We have begun discussions with them and believe we may be able to meet their requests for land in like for what would be lost. We hope to present more information for our request at that time.

We are unable to attend the scheduled meeting and need time for the negotiations.

Thank You,

Gary Nelson, PLS

AGENDA ITEM F. PUBLIC HEARINGS

3. Vacate a 40 foot width of the 100 foot wide East End Road right-of-way, including associated 20 foot utility easement, adjacent to Lot 3-D Voznesenka Too (HM 2000-23), Lots 1-A and 1-B Voznesenka 2006 (HM 2008-94) as dedicated and granted by Voznesenka (HM 85-31). The right-of-way being vacated is developed.

Vacate the 10 foot utility easement adjoining the south and west boundaries of Lot 3-D Voznesenka Too (HM 2000-23), the 10 foot utility easement adjoining the north and west boundaries of Lot 1-A Voznesenka (HM 85-31), and the 10 foot utility easement adjoining the northwest, southwest and southeast boundaries of Lot 1-B Voznesenka 2006 (HM 2008-94) as granted by Voznesenka (HM 85-31).

Right of way vacation and utility easement vacations are located within the N 1/2 of Section 36, Township 4 South, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-016V.

STAFF REPORT ADDENDUM

PC Meeting: 04/13/2020

The previous comment from State of Alaska DOT stated, 'DOT & PF Right of Way and Platting Committee has no objection to the proposed vacation with the following recommendation:

- Community of Voznesenka to dedicated equivalent square footage in kind as right of way along the current East End Road Corridor;
- The right of way being dedicated is intending to create a secondary access or routing with direct access onto East End Road
- This right of way will be recorded by plat and dedicated to the managing authority where dedicated (KPB or State)

After the staff report was prepared, the following comments were received.

KPB Roads Department

- KPB Roads stated no objection to a 60 foot right of way

KPB Lands Management.

- KPB Lands Department does not object to dedicating additional right of way for East End Road along Tract A.

State of Alaska DOT

- The four easements recorded in Book 148, pages 771-774, were to the State of Alaska. There doesn't appear to have been any acceptance of the State of Alaska for these easements. Therefore, DOT doesn't have any comments about the vacation of these ROW's. In this area, East End Road is not maintained by the State DOT/PF. If SOA DOT were to maintain this road, the ROW would have to be 100' in width.

Staff Discussion:

As mentioned in the staff report there is a 100 foot wide easement and right of way, centered on the existing roadway, granted by document to the State of Alaska in 1984. The location was undefined in 1984. A subdivision plat in 1985 dedicated a 100 foot wide right of way. It appears that the 1985 dedication does not coincide exactly with the existing roadway.

The recommendation of the planning commission will be forwarded to the State of Alaska DOT for their review of the vacation application.

Staff reminds the commissioners that this right of way is the only access from the uplands to Kachemak Bay shoreline and the communities of Kachemak Selo and Fox River. This access is affected by very steep

terrain and the location of any roadway is very limited. The use of this road will only increase in the future. Any right of way that is vacated will not be available for future road improvements projects, including roadway realignment, drainage improvements, public parking areas, or road way widening.

The area to the east of the existing road is very steep and not equal to the area proposed to be vacated.

If the planning commission does approve the vacation, **staff recommends**, the approval be subject to the State of Alaska DOT recommendations.

STAFF RECOMMENDATION: Comply with staff recommendations and conditions per the February 24, 2020 staff report, and adherence to KPB Code.

KPB 20.70.110:

A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly.

The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT ADDENDUM

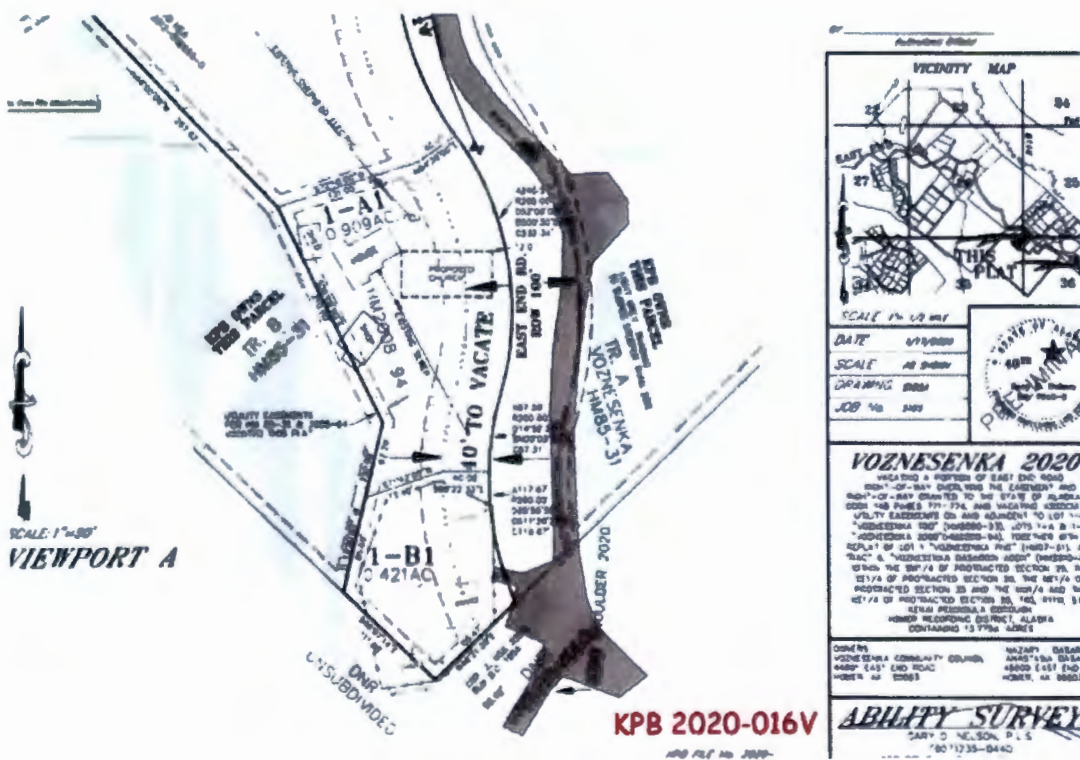
Huff, Scott

From: Uhlin, Dil
Sent: Friday, April 10, 2020 12:19 PM
To: 'gary@abilitysurveys.com'
Cc: Huff, Scott
Subject: Voznesesenska
Attachments: Plat Prelim KPB 2020-016V.pdf

Gary,

After discussing the project with you and evaluating the preliminary plat. The RSA has a change of opinion. The current preliminary plant, and the 60' ROW depicted in this plat, will allow the RSA to repair or rebuild the existing road on suitable grounds if the need should arise. The RSA has no objection to the proposed 60' ROW depicted in the preliminary plat shown below.

The RSA has no comment for the allocation of additional ROW. It is outside of our scope of responsibility.



Dil Uhlin
Roads Director
Road Service Area
Office (907)262-4427 Fax (907)262-6090
Toll-free within the Borough (800) 478-4427

Huff, Scott

From: Mueller, Marcus
Sent: Friday, April 10, 2020 3:53 PM
To: gary@abilitysurveys.com
Cc: Uhlin, Dil; Huff, Scott; Nazary Basargin
Subject: Re: Proposed ROW VACATION of East End Road at south tip of VOZNESENKA

Follow Up Flag: Follow up
Flag Status: Flagged

Gary,

KPB Land Management representing KPB as the owner of Tract A on the east side of East End Road does not object to dedicating additional right of way for East End Road along Tract A as part of the proposed platting action.

If there is an updated plat since this Jan 16th version, please send that to me.

Thank you
Marcus Mueller
KPB Land Management Officer

Sent from my iPad

On Jan 16, 2020, at 2:02 PM, "gary@abilitysurveys.com" <gary@abilitysurveys.com> wrote:

Gentlemen;

Per our previous discussions, Voznesenka Community Council and Mr. & Mrs. Basargin would like to proceed with the attached Subdivision Plat and Vacation of ROW and Utility Easements as shown on the attached pdf of VOZNESENKA 2020, a preliminary plat (see Viewport A on plat). We have eliminated ROW vacation request north of the Cemetery where the existing maintained East End Road is not in the far side of the 100 feet wide ROW, and feel this should remove KPB expressed objections to ROW vacation.

We will ask for an exception to the 20 foot building setback for the proposed church (shown on Lot 1-A1, VIEWPORT A) which will be 11 feet from the edge of ROW after vacation. Our reasoning for this is the building will still be 60 feet from the nearest road shoulder which is nearly twice the normal of 37 feet on a standard 60 feet wide ROW with 26 feet wide road.

We are hoping to submit the Preliminary Plat application and vacation petitions for the Monday Cut Off date, which means I should put it in the mail on Friday (tomorrow). Please let us know if there are any negative concerns for this request. Existing buildings on Lot 1-A1 will be removed prior to Church construction that is hoped to begin in June 2020.

DNR said that if a sale of land could be determined to be feasible to Voznesenka Community Council for the 2 or 3 grave sites and fence that encroach onto DNR land, that process would take 2 to 3 years to accomplish. For that reason Max Best said he would request the Plat Committee or Planning

Commission not make the Cemetery Encroachments on DNR lands a prohibitive issue that would stall Church construction for several years.

We request your review and comments, and hope we can come to terms for this application. We also request comments for Viewport B, subdivision for Mr. Basargin. I request Mr. Huff to telephone me regarding Viewport B subdivision.

Sincerely,

Gary Nelson, PLS
Agent for applicants; Voznesenka Community Council, Mr. & Mrs. Basargin
<5165prelim_1_16_20.pdf>

Huff, Scott

From: Mueller, Marcus
Sent: Friday, April 10, 2020 3:53 PM
To: gary@abilitysurveys.com
Cc: Uhlin, Dil; Huff, Scott; Nazary Basargin
Subject: Re: Proposed ROW VACATION of East End Road at south tip of VOZNESENKA

Follow Up Flag: Follow up
Flag Status: Flagged

Gary,

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If there is an updated plat since this Jan 16th version, please send that to me.

Thank you
Marcus Mueller
KPB Land Management Officer

Sent from my iPad

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Sincerely,

Gary Nelson, PLS

Agent for applicants; Voznesenka Community Council, Mr. & Mrs. Basargin

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