


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Marcus Mueller, Acting Planning Director 

**DATE:** September 15, 2020

**RE:** Vacate the 66 foot wide public right of way easement within Lot 2B and Lot 3B Questa Woods Estates #6, plat SW 2003-14. The public right-of-way easement was labeled and granted as a 66 foot wide section line easement per Questa Woods Estates #6, Plat SW 2003-14. The right of way being vacated is unconstructed and located within the SE 1/4 of Section 14, Township 1 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-094V.

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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 September 14, 2020 the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation 66-foot wide public right-of-way easement within Lot 2B & Lot 3B Questa Woods Estates #6, plat SW 2003-14, by unanimous 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.

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

September 14, 2020 Planning Commission Draft Meeting Minutes  
September 14, 2020 Agenda Item E1 Meeting Packet

- \*7. Minutes
  - a. August 24, 2020 Planning Commission Meeting

**\*Approved with the adoption of the consent agenda.**

Chair Martin asked if anyone present want to speak or had concerns about any of the items on the consent or regular agendas. Seeing and hearing no one wishing to comment, Chair Martin returned the discussion to the Commission. He then asked Ms. Shirnberg to read into the record the items on the consent agenda.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Ecklund to approve the consent agenda and the regular agenda.

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

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Martin, Ruffner, Venuti				
No	None				
Absent	Gillham, Morgan				

**AGENDA ITEM D. OLD BUSINESS – NONE**

**AGENDA ITEM E. NEW BUSINESS**

**AGENDA ITEM E. NEW BUSINESS**

PC Meeting: September 14, 2020

Staff report given by Scott Huff.

1. Vacate the 66 foot wide public right of way easement within Lot 2B and Lot 3B Questa Woods Estates #6, plat SW 2003-14. The public right-of-way easement was labeled and granted as a 66 foot wide section line easement per Questa Woods Estates #6, Plat SW 2003-14. The right of way being vacated is unconstructed and located within the SE 1/4 of Section 14, Township 1 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-094V.

**Purpose as stated in petition:** Easement was to be removed on the plat when surveyed. Deemed there is no section line easement.

**Petitioners:** David J. Smith, Melanie K. Smith, Melissa Hughes, and Jess Sweatt of Seward, AK.

**Notification:** Public notice appeared in the September 2, 2020 issue of the Seward Journal as a separate ad. The public hearing notice was published in the September 9, 2020 issue of the Seward Journal as part of the Commission’s tentative agenda.

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

Public hearing notices were sent by regular mail to 30 owners within 600 feet of the proposed vacation.

Notification including the submittal sketch was emailed to the following agencies and interested parties;

State of Alaska DNR  
 State of Alaska DOT & PF  
 State of Alaska Dept. of Fish and Game  
 Alaska Communications Systems

GCI  
 ENSTAR Natural Gas Company  
 Seward – KPB office  
 Seward EMS

Seward utilities

Bear Creek EMS Dept.

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

Notices were mailed to the Seward Post Office and Seward 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: ACS has no objection (not our serving area)

ENSTAR: No comments, recommendations, or objections.

KPB Addressing: No address changes with right of way vacation.

KPB Planning: KPB Planer is unavailable. Platting department review found no issues with local option zoning or material sites.

KPB River Center: This ROW vacation is located within a flood hazard area, Seward Bear Creek Flood Service Area., Map Panel 020012-4542D. It is not located within the floodway. All portions of waterways found within the Seward-Bear Creek Flood Service Area are exempt from KPB 21.18, Anadromous Waters Habitat Protection.

KPB Roads Department: Within KPB jurisdiction, no comments.

State Parks: No comments.

Staff Discussion: Questa Woods Estates Number 6, plat SW 2003-14 depicted and labeled a 33' section line easement on each side of the section line between Section 14 and Section 13, T1N, R1W, S.M. The section line transects Lots 2B and 3B.

KPB Staff research shows that the date of homestead entry was July, 31, 1916. If the date of entry predates April 6, 1923 (date of enabling legislation for section line easemetns) there is no section line easement. KPB staff verified and confirmed with State of Alaska DNR (Joe Poydack) that there is no section line easement in this area.

Because the subdivision plat depicted section line easements, it therefore granted easements with the same qualities as a section line easement. This would allow for public access, installation of roads, and installation of utilities.

The public access easement that transects Lots 2B and 3B limits the available area for home construction and placement of septic systems. Public Right of Ways exist to provide legal access to all neighboring parcels. No parcels will be denied access or utility easements. KPB Roads Department maintains the nearby constructed roadways.

If approved, the final right of way vacation plat will finalize the proposed right of way vacations. Due to the section line easement only being in existence because of placement on a plat the State of Alaska will not require a Section Line Easement Vacation Plat. If the Planning Commission approves this vacation it will be finalized by the submittal of a right of way vacation plat to be reviewed only by KPB Staff. Per KPB 20.10.080, the right of way vacation plat will be submitted to the Planning Department as a final plat. Since no property lines are changing and the plat is only removing the access easement it will not be required to be reviewed by the Plat Committee unless staff deems it necessary or the Planning Commission makes it

a condition for approval. The Final Plat must meet the requirements of KPB 20.40.020, 20.70.130, and applicable portions of 20.60.

#### **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:

20.70.130. 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 the Planning Commission approves the vacation it will be forwarded to the Kenai Peninsula Borough Assembly to be heard within 30 days.

**Staff recommendation:** Comply with 20.70.130.

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

*Platting Staff Comments:* This action is to remove an access easement mistakenly labeled as a section line easement. The vacation of this easement will not change any existing property lines as the easement sits atop the current property.

**Staff recommendation:** Comply with 20.70.150.

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:* The existing access easement runs through the owner's property and is very close to a structure. It is not constructed for vehicular access. The easement extends north through privately owned property, Tract A1B, Questa Woods Estates #8, Plat SW 2004-13 and to Kwechack Creek. The owner of Tract A1B was notified by certified mail. Tract A1B has additional access by way of Southgate Court and Bruno Road.

**Staff recommendation:** Complies with 20.70.170.

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:* The access easement is not currently in use by other lawful activities.

**Staff recommendation:** Complies with 20.70.180.

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: The public access easement (labeled as a section line easement) is not currently being used by utility providers. A 10 foot wide utility easement adjoins the right of way dedications within the subdivision and provides a location for the placement of utility lines.*

**Staff recommendation:** *Comply with 20.70.190 and if necessary grant utility easements requested by utility providers, or work out an agreement between all parties.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: The public access easement provides access to Kwechack Creek. Bruno Road fronts Kwechack Creek for more than 1,000 ft. and it located 365 feet away from the section line easement. Bruno Road provides equal and superior access to Kwechack Creek*

**Staff recommendation:**

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

*Platting Staff Comments: This public access easement is not needed for other uses such as utility or drainage.*

**Staff recommendation:**

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: The State of Alaska has reviewed this request and discussed with the owners. Due to how this easement came into existence State of Alaska DNR will not require submittal, review, and approval of the petition and will not have to finalize the vacation.*

**Staff recommendation:**

**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 vacations as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

**KPB 20.70.110:**

**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

Chair Martin opened the meeting for public comment.

Jess Sweatt, P.O. Box 1103, Seward AK: Mr. Sweatt, one of the petitioners for the proposed vacation, made himself available to the commission for any questions.

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

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

Commissioner Carluccio noted that since this public access easement appeared to go down to the water, was the petitioner required to provide another equal or better access to the water for public use. Mr. Huff replied that to the north of the proposed vacation is a privately owned parcel, Tract B1, so the area proposed for vacation did not go to Kwechack Creek. Mr. Huff also noted that there is a public right-of-way, Bruno Road, which provides access to the creek area.

Chair Martin hearing no further discussion on the motion brought it back to the commission for a vote.

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

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Ecklund, Fikes, Martin, Ruffner, Venuti				
No	None				
Absent	Gillham, Morgan				

AGENDA ITEM E. NEW BUSINESS

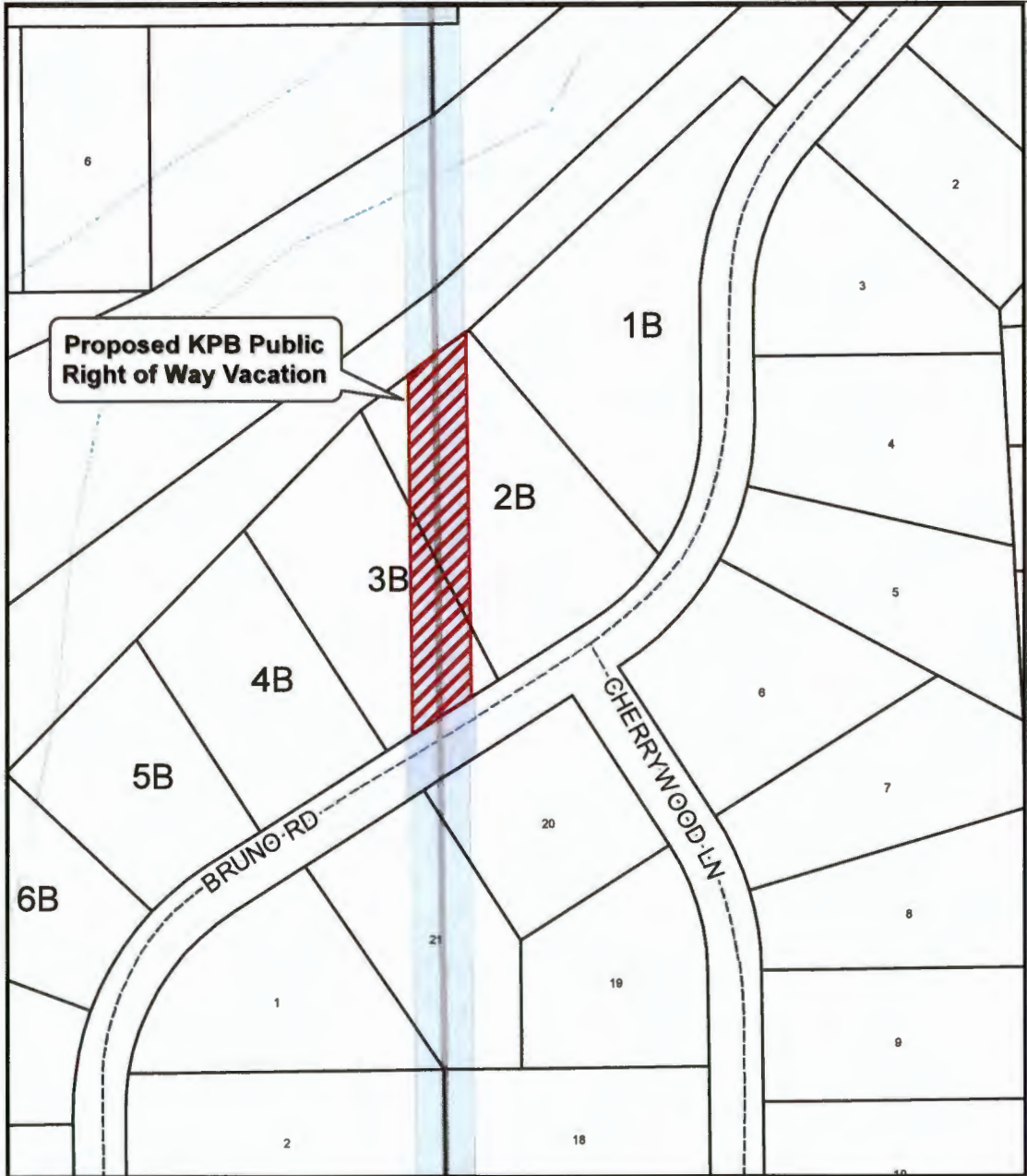
PC Meeting: September 14, 2020

- 2. Vacate a 100' Section Line Easement within Tract B, Quartz Creek Subdivision (Plat SW 94-11). The Section Line Easement, running east to west, is unconstructed and located within the SW1/4 Section 25 and the NW1/4 Section 36, Township 5 North, Range 3 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-098V

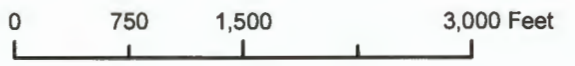
Staff report given by Scott Huff.

## **AGENDA ITEM E. NEW BUSINESS**

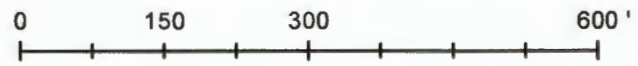
- 1. Vacate the 66 foot wide public right of way easement within Lot 2B and Lot 3B Questa Woods Estates #6, plat SW 2003-14. The public right-of-way easement was labeled and granted as a 66 foot wide section line easement per Questa Woods Estates #6, Plat SW 2003-14. The right of way being vacated is unconstructed and located within the SE 1/4 of Section 14, Township 1 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-094V.**



**Proposed KPB Public Right of Way Vacation**



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.



**KPB 2020-094V  
S14 T01N R01W  
BEAR CREEK**

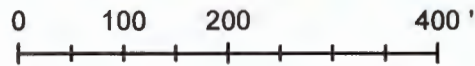
PClements, KPB  
Date: 8/6/2020





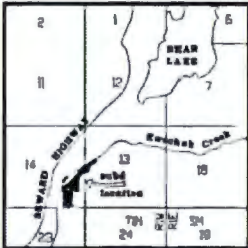
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Aerial View



KPB Public Right of Way Vacation

PClements, KPB  
Date: 8/6/2020  
Imagery: SBCFSA



VICINITY 1/4 mile MAP

2003-14  
**RECORDED-FILED**  
 Seward, Alaska REC. DIS.  
 DATE 12-19 2003  
 TIME 12:54 P. M.  
 Requested by  
 Johnson Surveying  
 Box 27  
 Seward, Alaska 99568

# QUESTA WOODS ESTATES #6

A subdivision of Tract B Questa Woods Estates #5 (SVD 2001-15) and a 20 acre adjacent tract.  
 Located in the SE1/4 Section 14 & the NW1/4 & SW1/4 Section 13, T1N R1V S1N Alaska  
 Seward Recording District KP8 File 2003-044

**Prepared for**  
 JB Woods  
 PO Box 1733  
 Seward, AK 99564

**Prepared by**  
 Johnson Surveying  
 Box 27  
 Seward, AK 99568



**SCALE 1" = 200' AREA = 43.276 acres**  
**25 February, 2003**

## LEGEND

- - 2 1/2" USGLD brass cap monument, 1911 Found
- ⊙ - 2 1/2" alcap monument 7328-S, 1998 Found
- ⊕ - 1/2" rebar lot corner, Found
- - 1" plastic cap on rebar, 7328-S, 1998 Found
- △ - 1" plastic cap on rebar, 7328-S, 2000 Found
- ⊙ - 2 1/2" alcap, 7328-S 2000, Found
- Flood Hazard Area Boundaries FIRM 1981
- 1 - 1" plastic cap on 1/2" x 4" rebar, set
- 11 - record information source cited

## NOTES

1. A building setback of 20' from all street RDW's is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement, as is the entire setback within 5' of side lot lines.
2. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
3. Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program.
4. Lots within this subdivision may be located within a designated flood hazards area; if such is the case, development must comply with Title 21 Chapter 06 of the Kenai Peninsula Borough Code of Ordinances. A survey to determine the elevation of the property may be required prior to construction.

## WASTEWATER DISPOSAL

TRACTS B1, C, & D:  
 These lots are at least 200,000 square feet or a nominal 5 acres in size and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment and disposal system must meet the regulatory requirements of the Alaska Dept. of Environmental Conservation.

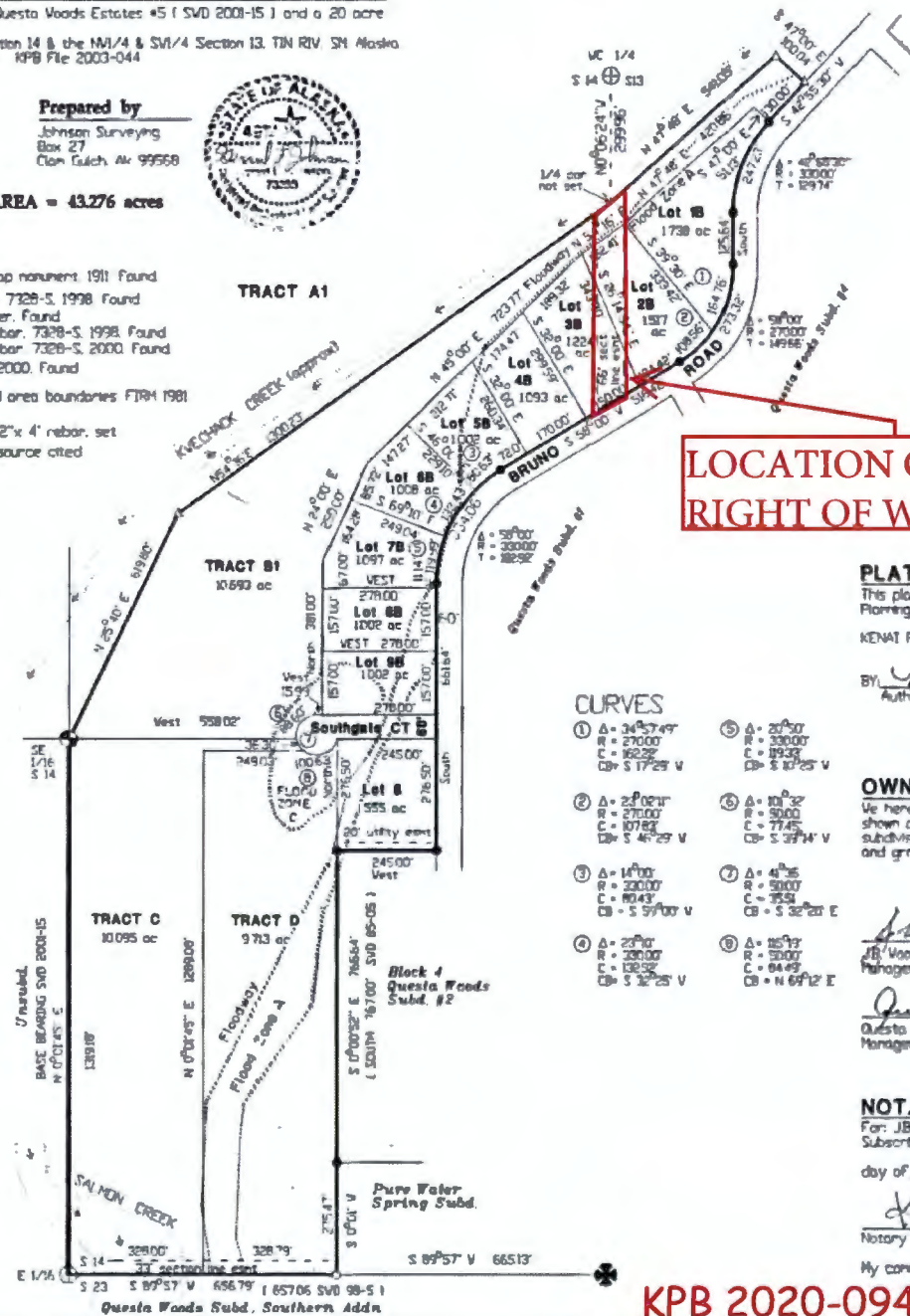
## LOTS 10 thru 9B:

Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Dept. of Environmental Conservation.

## LOT 8 BLOCK 4:

Soil conditions in this subdivision have been found unsuitable for conventional onsite wastewater treatment and disposal systems. Plans for an alternate wastewater disposal system for use on lots in this subdivision are included in the Engineers Subdivision and Sols Report and are available from the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Dept. of Environmental Conservation.

Signature: Don E. Gulch License # 3865-E Date 12/19/03



LOCATION OF PUBLIC RIGHT OF WAY

## CURVES

- |                 |                 |
|-----------------|-----------------|
| ① Δ = 24°57'47" | ⑤ Δ = 27°50'    |
| R = 2700'       | R = 3300'       |
| C = 662.29'     | C = 119.33'     |
| CB = S 17°29' V | CB = S 10°25' V |
| ② Δ = 22°02'11" | ⑥ Δ = 10°32'    |
| R = 2700'       | R = 5000'       |
| C = 1071.83'    | C = 774.5'      |
| CB = S 46°29' V | CB = S 39°14' V |
| ③ Δ = 14°10'    | ⑦ Δ = 4°35'     |
| R = 2300'       | R = 5000'       |
| C = 404.43'     | C = 35.51'      |
| CB = S 57°00' V | CB = S 32°20' E |
| ④ Δ = 27°10'    | ⑧ Δ = 15°13'    |
| R = 2300'       | R = 5000'       |
| C = 138.92'     | C = 84.69'      |
| CB = S 32°25' V | CB = N 69°12' E |

## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 24 March 2003

KENAI PENINSULA BOROUGH

By: Maureen Hill 12/19/2003  
 Authorized Official Date

## OWNERSHIP CERTIFICATE & DEDICATION

We hereby certify that we are the owners of the real property shown and described herein and that we hereby adopt this plan of subdivision and by our free consent dedicate all RDW's to public use and grant all easements to the use shown.

Signature: J.B. Woods  
 JB Woods PO Box 1733 Seward, AK 99564  
 Manager, Shepherd Group LLC

Signature: Questa B Woods  
 Questa B Woods PO Box 1733 Seward, AK 99564  
 Manager, Shepherd Group LLC

## NOTARY'S ACKNOWLEDGEMENT

For JB & Questa B Woods  
 Subscribed and sworn to before me this 1

day of August 2003

Signature: Karen A. Larson  
 Notary Public For Alaska



My commission expires \_\_\_\_\_

KP8 2020-094V

AGENDA ITEM E. PUBLIC HEARINGS

1. Vacate the 66 foot wide public right of way easement within Lot 2B and Lot 3B Questa Woods Estates #6, plat SW 2003-14. The public right-of-way easement was labeled and granted as a 66 foot wide section line easement per Questa Woods Estates #6, Plat SW 2003-14. The right of way being vacated is unconstructed and located within the SE 1/4 of Section 14, Township 1 North, Range 1 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-094V.

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If approved, the final right of way vacation plat will finalize the proposed right of way vacations. Due to the section line easement only being in existence because of placement on a plat the State of Alaska will not require a Section Line Easement Vacation Plat. If the Planning Commission approves this vacation it will be finalized by the submittal of a right of way vacation plat to be reviewed only by KPB Staff. Per KPB 20.10.080, the right of way vacation plat will be submitted to the Planning Department as a final plat. Since no property lines are changing and the plat is only removing the access easement it will not be required to be reviewed by the Plat Committee unless staff deems it necessary or the Planning Commission makes it a condition for approval. The Final Plat must meet the requirements of KPB 20.40.020, 20.70.130, and applicable portions of 20.60.

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20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted

addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

*Platting Staff Comments: This action is to remove an access easement mistakenly labeled as a section line easement. The vacation of this easement will not change any existing property lines as the easement sits atop the current property.*

**Staff recommendation:** Comply with 20.70.150.

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: The existing access easement runs through the owner's property and is very close to a structure. It is not constructed for vehicular access. The easement extends north through privately owned property, Tract A1B, Questa Woods Estates #8, Plat SW 2004-13 and to Kwechack Creek. The owner of Tract A1B was notified by certified mail. Tract A1B has additional access by way of Southgate Court and Bruno Road.*

**Staff recommendation:** Complies with 20.70.170.

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: The access easement is not currently in use by other lawful activities.*

**Staff recommendation:** Complies with 20.70.180.

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: The public access easement (labeled as a section line easement) is not currently being used by utility providers. A 10 foot wide utility easement adjoins the right of way dedications within the subdivision and provides a location for the placement of utility lines.*

**Staff recommendation:** Comply with 20.70.190 and if necessary grant utility easements requested by utility providers, or work out an agreement between all parties.

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: The public access easement provides access to Kwechack Creek. Bruno Road fronts Kwechack Creek for more than 1,000 ft. and it located 365 feet away from the section line easement. Bruno Road provides equal and superior access to Kwechack Creek*

**Staff recommendation:**

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not

approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

*Platting Staff Comments: This public access easement is not needed for other uses such as utility or drainage.*

**Staff recommendation:**

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: The State of Alaska has reviewed this request and discussed with the owners. Due to how this easement came into existence State of Alaska DNR will not require submittal, review, and approval of the petition and will not have to finalize the vacation.*

**Staff recommendation:**

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 vacations as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

**KPB 20.70.110:**

**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.**

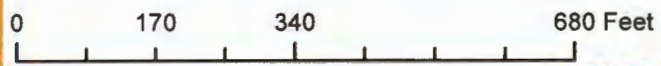
**KPB 20.70.130:**

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

END OF STAFF REPORT



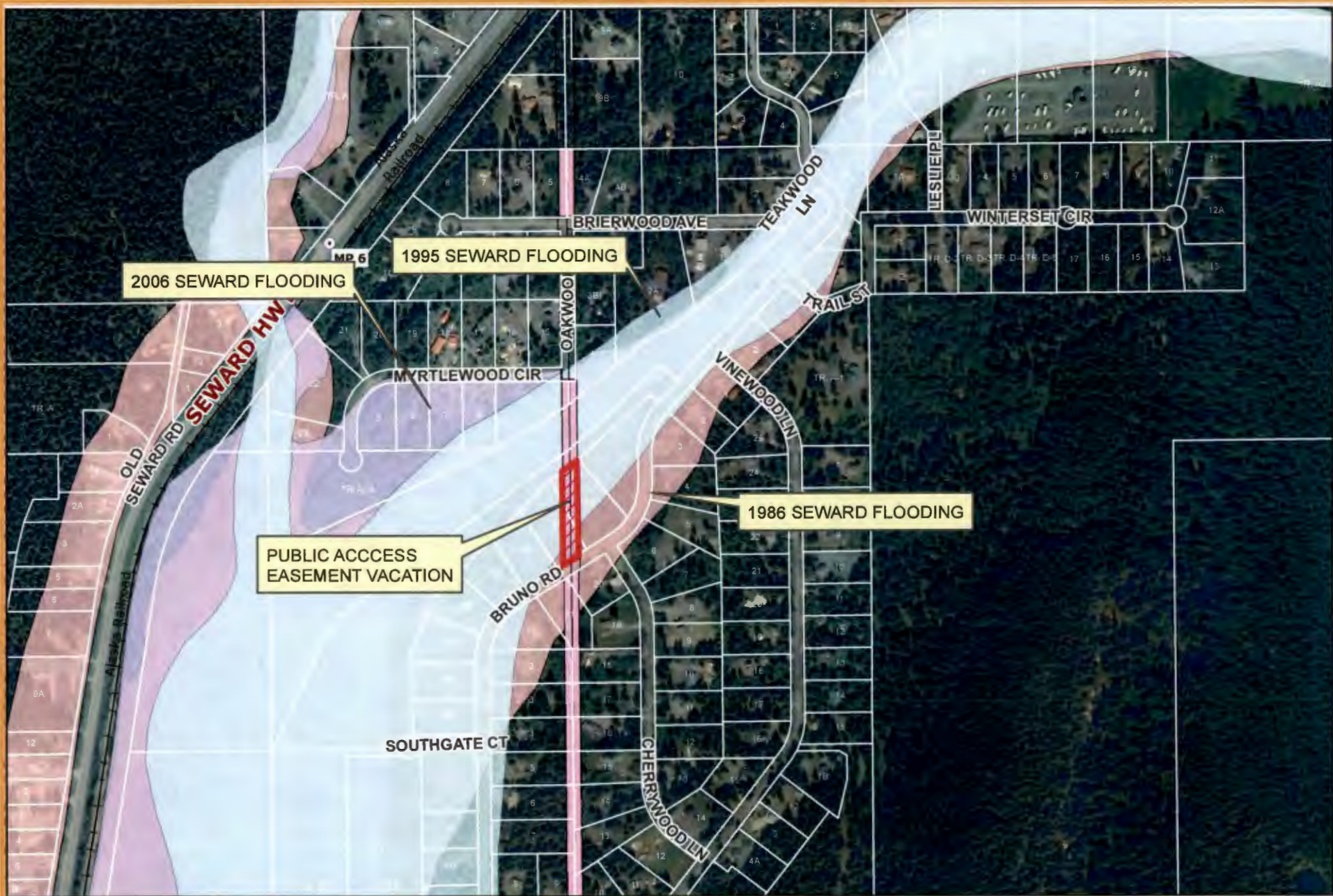
The information depicted hereon is for a graphical representation only of best available sources. The Kernal Peninsula Borough assumes no responsibility for any errors on this map.



AERIAL IMAGERY - 2012  
4 FOOT CONTOUR INTERVAL



Date: 9/2/2020  
S. Huff, KPB



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

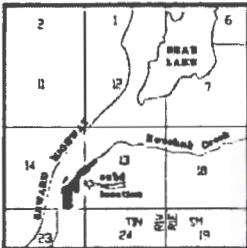
0 415 830 1,660 Feet

**AERIAL IMAGERY - 2012  
SEWARD MAPPED FLOOD  
DISTRICT AREA**



Date: 9/2/2020  
S. Huff, KPB





VICINITY 1/4 mile MAP

2003-14  
**RECORDED-FILED**  
 Seward Rec. Dist.  
 DATE 12-15-2003  
 TIME 12:44 P.M.  
 Requested by  
 Johnson Surveying  
 Box 27  
 Dan Gulch, AK 99568

# QUESTA WOODS ESTATES #6

A subdivision of Tract B Questa Woods Estates #5 (SVD 2001-15), and a 20 acre adjacent tract. Located in the SE1/4 Section 14 & the NW1/4 & SW1/4 Section 13 T1N R1W S1M Alaska, Seward Recording District. KPB File 2003-044

Prepared for

JB Woods  
 PO Box 1733  
 Seward AK 99664

Prepared by

Johnson Surveying  
 Box 27  
 Dan Gulch AK 99568



SCALE 1" = 200' AREA = 43,276 acres

25 February, 2003

## LEGEND

- ⊙ - 2 1/2" USGLD brass cap monument 1911, Found
- ⊕ - 2 1/2" alcap monument 7328-S 1998, Found
- ⊖ - 1/2" rebar lot corner Found
- - 1" plastic cap on rebar, 7328-S 1998, Found
- △ - 1" plastic cap on rebar, 7328-S 2000, Found
- ⊙ - 2 1/2" alcap 7328-S 2000, Found

Flood Zone - Flood hazard area boundaries FIRP 1991

- 1 - 1" plastic cap on 1/2" x 4" rebar set
- (1) - record information source cited

## NOTES

1. A building setback of 20' from all street R.O.V.'s is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 10' of building setback is also a utility easement as is the entire setback with E-W side lot lines.
2. No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
3. Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program.
4. Lots within this subdivision may be located within a designated flood hazard area if such is the case, development must comply with Title 21 Chapter 06 of the Kenai Peninsula Borough Code of Ordinances. A survey to determine the elevation of the property may be required prior to construction.

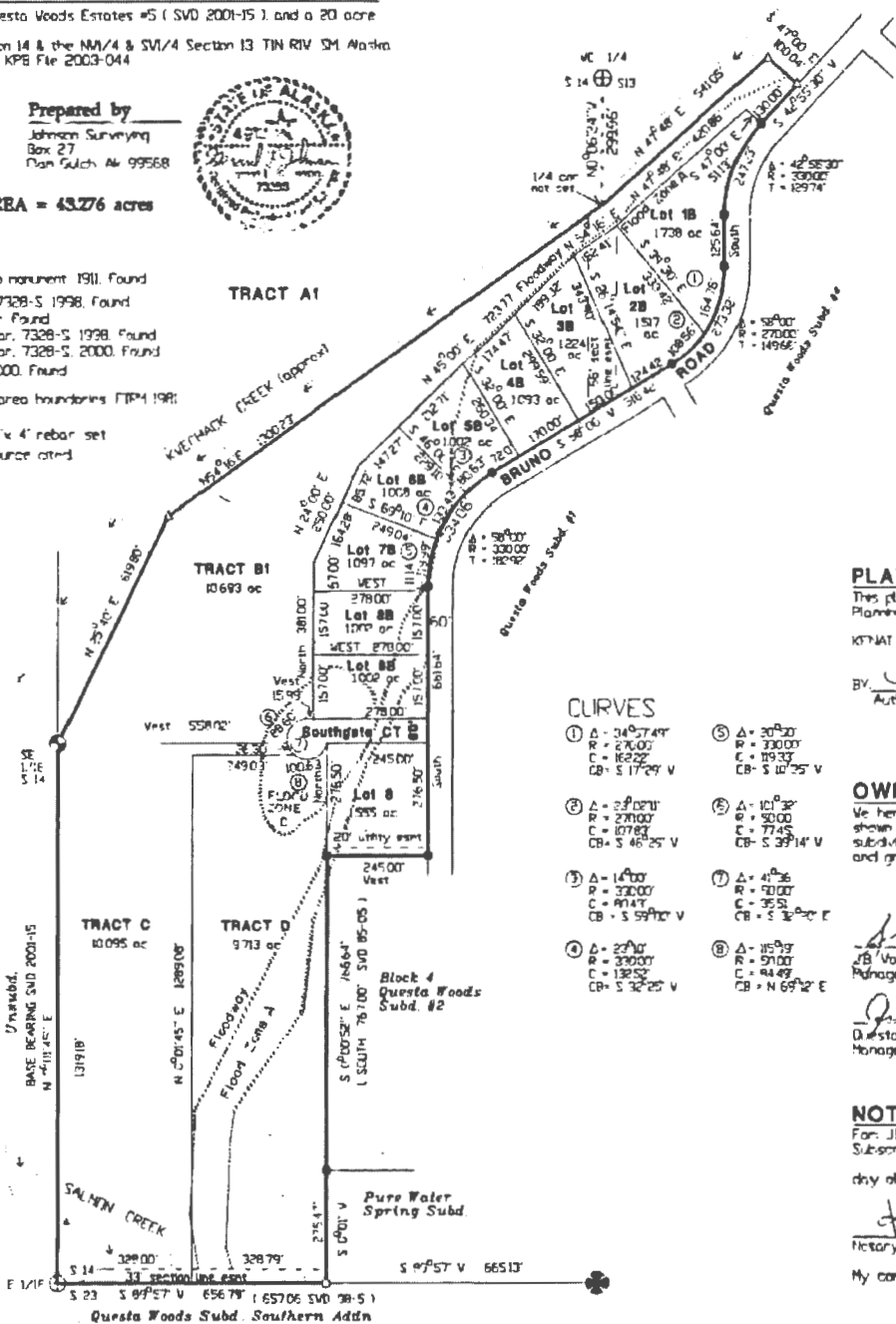
## WASTEWATER DISPOSAL

TRACTS B1, C, & D:  
 These lots are at least 200,000 square feet or a normal 5 acres in size and conditions may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment and disposal system must meet the regulatory requirements of the Alaska Dept. of Environmental Conservation.

LOTS 1B thru 9B:  
 Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single family or duplex residences and meeting the regulatory requirements of the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer registered to practice in Alaska, and the design must be approved by the Alaska Dept. of Environmental Conservation.

LOT B BLOCK 4:  
 Soil conditions in this subdivision have been found unsuitable for conventional onsite wastewater treatment and disposal systems. Plans for an alternate wastewater disposal system for use on lots in this subdivision are included in the Engineers Subdivision and Soils Report and are available from the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a professional engineer, registered to practice in Alaska, and the design must be approved by the Alaska Dept. of Environmental Conservation.

Signature: Scott J. Junci License #: 3305-E Date: 12/15/03



## CURVES

- |                 |                 |
|-----------------|-----------------|
| ① Δ = 34°27'47" | ⑤ Δ = 30°20'    |
| R = 276.00'     | R = 330.00'     |
| C = 162.22'     | C = 119.33'     |
| CB = S 17°29' V | CB = S 10°25' V |
| ② Δ = 29°02'11" | ⑥ Δ = 101°32'   |
| R = 270.00'     | R = 50.00'      |
| C = 177.45'     | C = 77.45'      |
| CB = S 46°25' V | CB = S 39°14' V |
| ③ Δ = 14°00'    | ⑦ Δ = 47°26'    |
| R = 330.00'     | R = 50.00'      |
| C = 114.17'     | C = 35.51'      |
| CB = S 59°10' V | CB = S 32°00' E |
| ④ Δ = 22°10'    | ⑧ Δ = 115°37'   |
| R = 330.00'     | R = 50.00'      |
| C = 130.52'     | C = 84.49'      |
| CB = S 32°25' V | CB = N 69°32' E |

## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 24th March 2003 27 May

KENAI PENINSULA BOROUGH

By: Maureen J. ... 12/17/2003  
 Authorized Official

## OWNERSHIP CERTIFICATE & DEDICATION

We hereby certify that we are the owners of the real property shown and described herein, and that we hereby adopt this plan of subdivision and by our free consent dedicate all R.O.V.'s to public use and grant all easements to the use shown.

Signature: J.B. Woods  
 JB Woods PO Box 1733 Seward AK 99664  
 Manager: Shepherd Group LLC

Signature: Scott J. Junci  
 Scott J. Junci P.U. Box 1733 Seward AK 99664  
 Manager: Shepherd Group LLC

## NOTARY'S ACKNOWLEDGEMENT

For: JB & Questa B Woods

Subscribed and sworn to before me this 1

day of August 2003

Signature: Kristina A. Larson  
 Notary Public for Alaska

My commission expires \_\_\_\_\_

