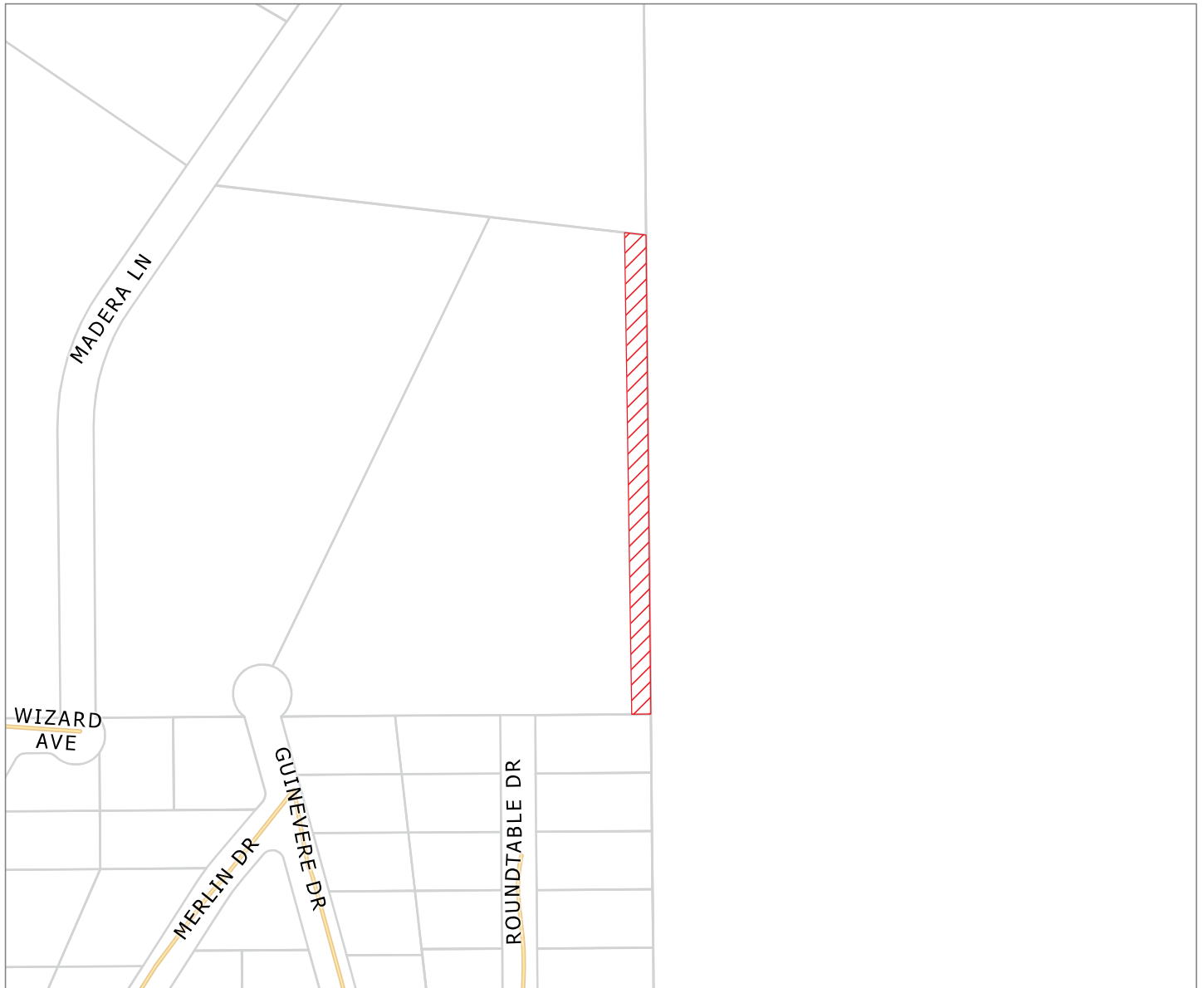


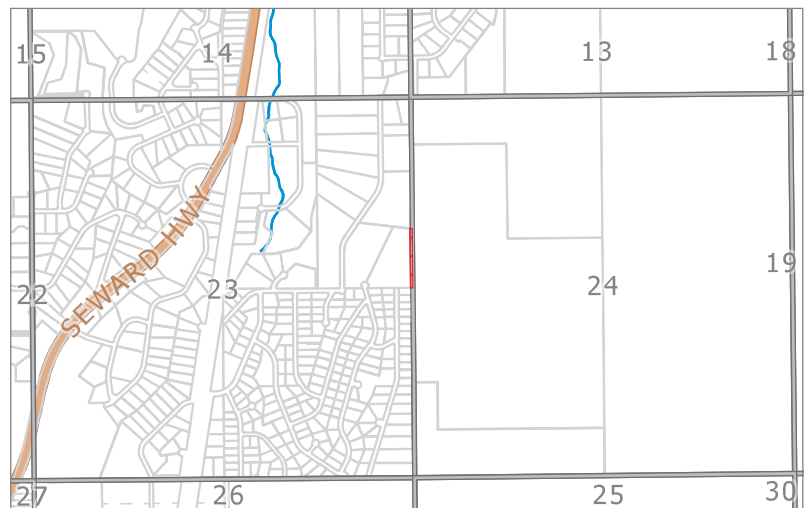
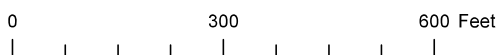
## **E. NEW BUSINESS**

- 1. Public Access Easement Vacation; KPB File 2022-159V  
Request: Vacates a 33' x 820' public access  
easement adjacent to Tract H of Questa  
Woods Subdivision Southern Addition,  
Plat SW 98-01**

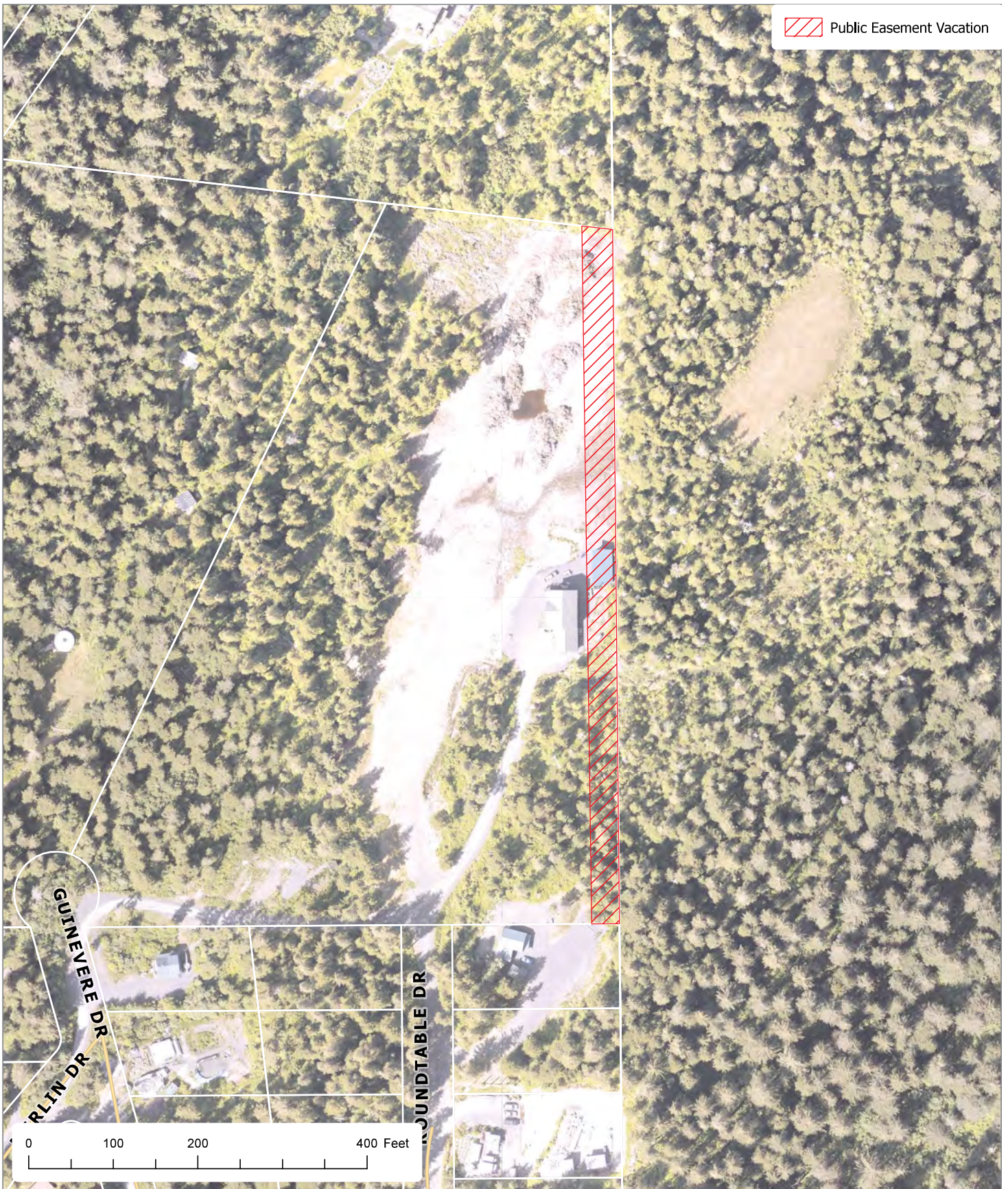


KPB File 2022-159V  
T 01N R 01W SEC 23  
Bear Creek

10/24/2022









SW 98-01



# QUESTA WOODS SUBDIVISION, SOUTHERN ADDITION

A subdivision of Parcel 1, KPB Plat Waiver 96-7.  
Located in the NE 1/4 Section 23, T1N R1W, 3M, Alaska.  
Seward Recording District KPB File 96-235

## Prepared for

J.B. & Questa Woods  
P.O. Box 1733  
Seward, AK 99664

## Prepared by

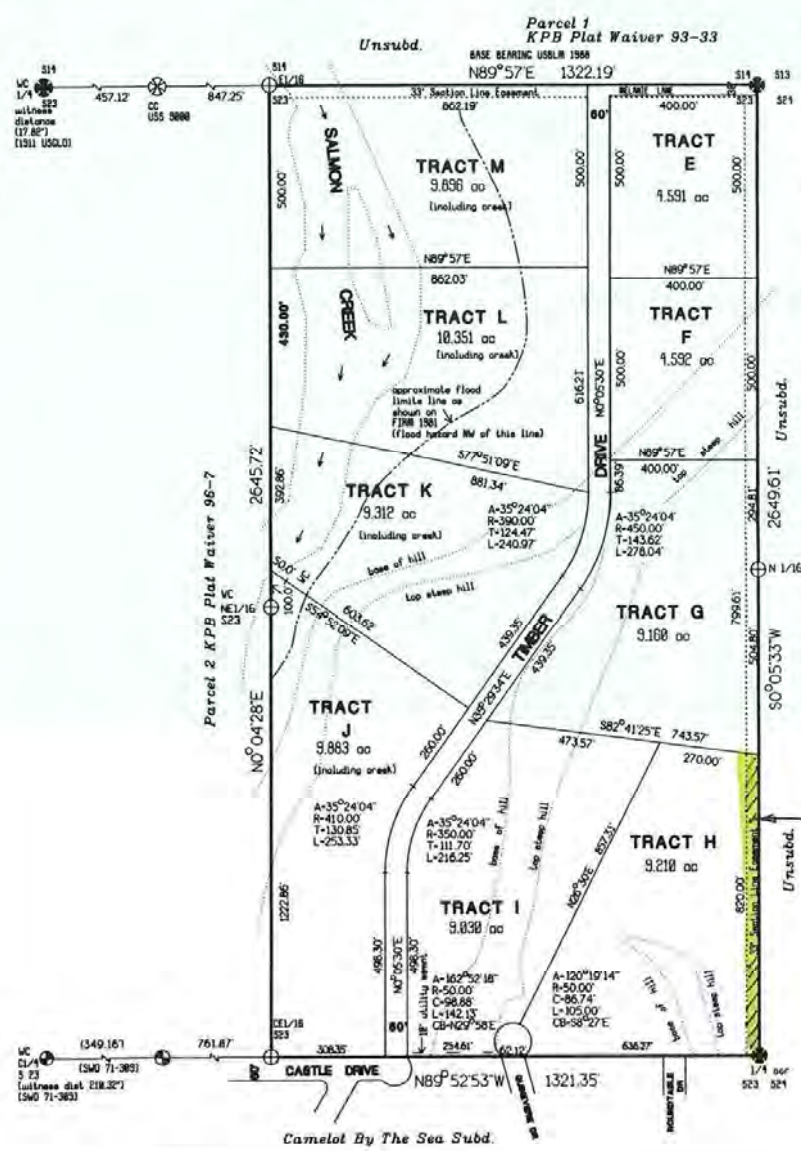
Johnson Surveying  
Box 27  
Clam Gulch, AK 99568

SCALE 1" = 200' AREA = 80.340 acres 20 Oct, 1996

## LEGEND

- 1911 USGLD brass cap monument, found.
- 1985 USBLM brass cap monument, found.
- 1/2" x 24" rebar with 1" plastic cap, set.
- ( ) - Record information from source indicated.
- 1971 2.5" brass cap monument, 1817-E, found.
- 1971 brass cap monument, 1817-E, record SWD 71-389.
- 2.5" x 38" aluminum monument, set.

98-01  
RECORDED - FILED  
SEWARD RECORDING DISTRICT  
DATE 11/15/96  
TIME 10:30 A.M.  
Requested by  
Johnson Surveying  
Box 27  
Clam Gulch, AK 99568



## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 16 December, 1996.

## KENAI PENINSULA BOROUGH

BY: *Maya Best* 1/10/98  
Authorized Official Date

## NOTES

- A building setback of 20' from all street R.O.W.s is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 18' of building setback is also a utility easement as is the entire easement within 5' of side lot lines.
- No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- 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 05 of the Kenai Peninsula Borough Code of Ordinances. A survey may be to determine the elevation of the property may be required prior to construction.
- No access to State maintained R.O.W.s permitted unless approved by State of Alaska Dept. of Transportation.

## WASTEWATER DISPOSAL

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

## OWNERSHIP CERTIFICATE

I hereby certify that I am the owner of the real property shown and described herein; and that I hereby adopt this plan of subdivision, and by my free consent dedicate all rights-of-way and grant all easements to the use shown.

*J.B. Woods*  
J.B. Woods P.O. Box 1733 Seward, AK 99664  
President, Ameri-Con Construction, Ltd.  
R/Nevado Corporation.

## EASEMENT TO PDE VACATED

## NOTARY'S ACKNOWLEDGEMENT

For: J.B. Woods  
Subscribed and sworn to before me this 19 day of May, 1997.  
*Forrest Thomas*  
Notary Public for Alaska  
My commission expires \_\_\_\_\_

Lang & Associates, Inc.  
11500 Daryl Avenue  
Anchorage, Alaska 99515

KPB 2022-159V

AGENDA ITEM E. NEW BUSINESS

**ITEM 1 - RIGHT OF WAY VACATION  
PUBLIC ACCESS EASEMENT CREATED BY  
QUESTA WOOD SUBDIVISION SOUTHERN ADDITION PLAT SW 98-01**

<b>KPB File No.</b>	2022-159V
<b>Planning Commission Meeting:</b>	November 14, 2022
<b>Applicant / Owner:</b>	James and Leann Unrein of Seward, Alaska
<b>Surveyor:</b>	Ken Lang / Lang & Associates, Inc.
<b>General Location:</b>	Roundtable Drive, Salmon Creek Road, Bear Creek
<b>Legal Description:</b>	Public Access Easement shown as a section line easement along Tract H, Questa Woods Subdivision Southern Addition, Plat SW 98-01

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** The following is our justification for the vacation of the 33' section line easement on this tract:

1. The easement does not appear in the 1923 patent for the original parcel and seems to have been created and dedicated on Plat 98-01, Questa Woods Subdivision, Southern Addition.
2. The easement has never been used. There is no road, trail or utilities within it.
3. The easement does not appear on the plat of Camelot by the Sea Subdivision to the south of this tract.
4. There is alternate North-South access available over Timber Drive to the west of Tract H.
5. The undeveloped parcel to the east is owned by Alaska Mental Health Trust Authority and has access from Melanie Lane and the north end of that parcel.

**Notification:** Public notice appeared in the November 2, 2022 issue of the Seward Journal as a separate ad. The public hearing notice was published in the November 9, 2022 issue of the Seward Journal as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Seward

Post Office of Seward

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

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

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

State of Alaska Dept. of Fish and Game  
State of Alaska DNR  
State of Alaska DOT  
State of Alaska DNR Forestry  
Bear Creek Emergency Services  
Kenai Peninsula Borough Office  
Alaska Mental Health Trust Authority  
Seward Bear Creek Fire Service Area

Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc, (GCI)  
Homer Electric Association (HEA)  
Chugach Electric  
Seward Utilities  
TelAlaska

**Legal Access (existing and proposed):** A section line easement was indicated on the parent plat along the eastern boundary. Reviewing the information it appears that a section line easement was not in place but by showing it on the plat a public access easement was created. This was not dedicated as right-of-way so all lots in the area front along other dedicated rights-of-way.

Tract H, the lot requesting the vacation, has dedicated access from a cul-de-sac bulb at the north end of Guinevere Drive and from Roundtable Drive. All subdivided lots in the area have dedicated access.

The 195 acre parcel to the east is owned by Alaska Mental Health Trust Authority. The lot does not front on any dedicated rights-of-way. While the access easement could provide access there is no current connection to the easement in this location to allow the large acreage tract to be accessed and all access would need to come from the north. To the north of the parcel is an 80 acre parcel in private ownership. To the north of that parcel is Melanie Lane and Knotwood Street. In addition to the 33 foot public access easement created by plat, there is a 33 foot section line easement within the 80 acre parcel that connects to the 195 acre parcel. The 195 acre parcel appears to be subject to a 50 foot section line easement. The section line easements from the north provide the access needed for the Alaska Mental Health Trust Authority lands.

The block is not compliant due to large acreage tracts in the area and many cul-de-sac or dead end rights-of-way. The removal of the public access easement will not improve or worsen the block compliance as a section line easement will remain to the east.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No Response

**Site Investigation:** Tract H does contain some improvements on the property that appear to be accessed from Guinevere Drive. Per an as built provided for the plat, the house is not within the easement but a fuel tank is within the 33 foot easement.

There are no low wet areas within the tract or vacation area. There are no low wet areas that affect other access areas that would result in needing this easement for access.

There are some areas of steep slopes within Tract H. Within the area proposed to be vacated there does not appear to contain steep slopes but there are some located to the south of the easement and in some areas to the north.

KPB River Center review	Floodplain: Located in a Non-Regulatory X - Zone, minimal flood risk Habitat Protection: Is NOT within HPD. No comments State Parks: No Comments
Alaska Fish and Game	No objections

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**Staff Analysis:** Questa Woods Subdivision Southern Addition, Plat SW 98-01, subdivided a parcel that was created by a plat waiver. When the plat was done a 33 foot section line easement was shown within Section 23 along the eastern section line. This depiction is along all the tracts created by that plat and the owners now wish to vacate the easement along Tract H.

KPB Staff research shows that the date of entry by the original owner was filed on August 1, 1922 and federal patent was issued to him on May 9, 1929. The patent does not contain any patent easements. In determining section line easements within Alaska there are several ways to determine if a section line easement exists and what the width would be. One is if the date of entry predated survey plat approval then there is no easement. It appears the

first Master Title Plat for this area was filed in 1963. Additionally, April 6, 1923 is the date legislation for section line easements was enabled and if the date of entry is prior to that date there is no easement.

While a section line easement does not exist in the area being discussed, the depiction on the plat created a public access easement with the same qualities as a section line easement. This would allow for public access, installation of roads and utilities. This would not be a state easement but we have notified various state officials for their comment. If there is any question about a section line easement, the owner/surveyor should contact Alaska State DNR for a determination. If it is determined one is present the owners may work with the state on a section line easement vacation otherwise a subdivision plat or planning commission resolution may vacate the easement.

As other lots have access from dedicated rights-of-way or other section line easements it does not appear the public access easement is required. It is not constructed and to the south it does not connect to any other easements or dedications. To the south is the Camelot by the Sea Subdivision which is not subject to a section line easement and one was not shown. The lots to the south are small in size and getting a dedication to connect to this easement will not be possible.

If it is found that the easement is in use by utility providers, staff would recommend the owners work with the utility companies to grant easements over existing services.

#### **20.65.050 – Action on vacation application**

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;  
**Staff comments:** It is not in use
2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** Lots have additional access and the existing easement cannot continue south of the proposed vacation area.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** Large acreage lots to the east will need to be developed but are large enough to provide their own access and easements.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;  
**Staff comments:** Does not provide access to public lands.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** All subdivided lands have dedicated access in the area. Large acreage tracts have additional access.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:**
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests,



and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

**Staff comments:** Any needed utility easements should be granted

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

**Staff comments:** This easement was incorrectly shown and labeled and thus created the public access easement by plat.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled December 13, 2022 meeting.

If approved, Questa Woods Subdivision Unrein Addition, KPB File 2022-159 can finalize the proposed right of way vacations. The Plat Committee is scheduled to review the preliminary plat on November 14, 2022. A Planning Commission Resolution may also be adopted if the owners do not feel they will finalize the plat within one year of consent.

**KPB department / agency review:**

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 12512 ROUNDTABLE DR  Existing Street Names are Correct: No  List of Correct Street Names: ROUNDTABLE DR GUINEVERE DR MELANIE LN  Existing Street Name Corrections Needed: TIMBER DR should be MADERA LN CASTLE DR should be WIZARD AVE  All New Street Names are Approved: No  List of Approved Street Names:  List of Street Names Denied:  Comments: 12512 ROUNDTABLE DR will remain on tract H.
Assessing	Reviewer: Windsor, Heather Comments: No comment

**Utility provider review:**



HEA	Not within HEA service area. No other comments.
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown
SEWARD ELECTRIC	
CHUGACH ELECTRIC	No comment. Not within our service area.
TELALASKA	

### **RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
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) or request a resolution to be recorded within one year of vacation consent.

#### **KPB 20.65.050 – Action on vacation application**

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

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

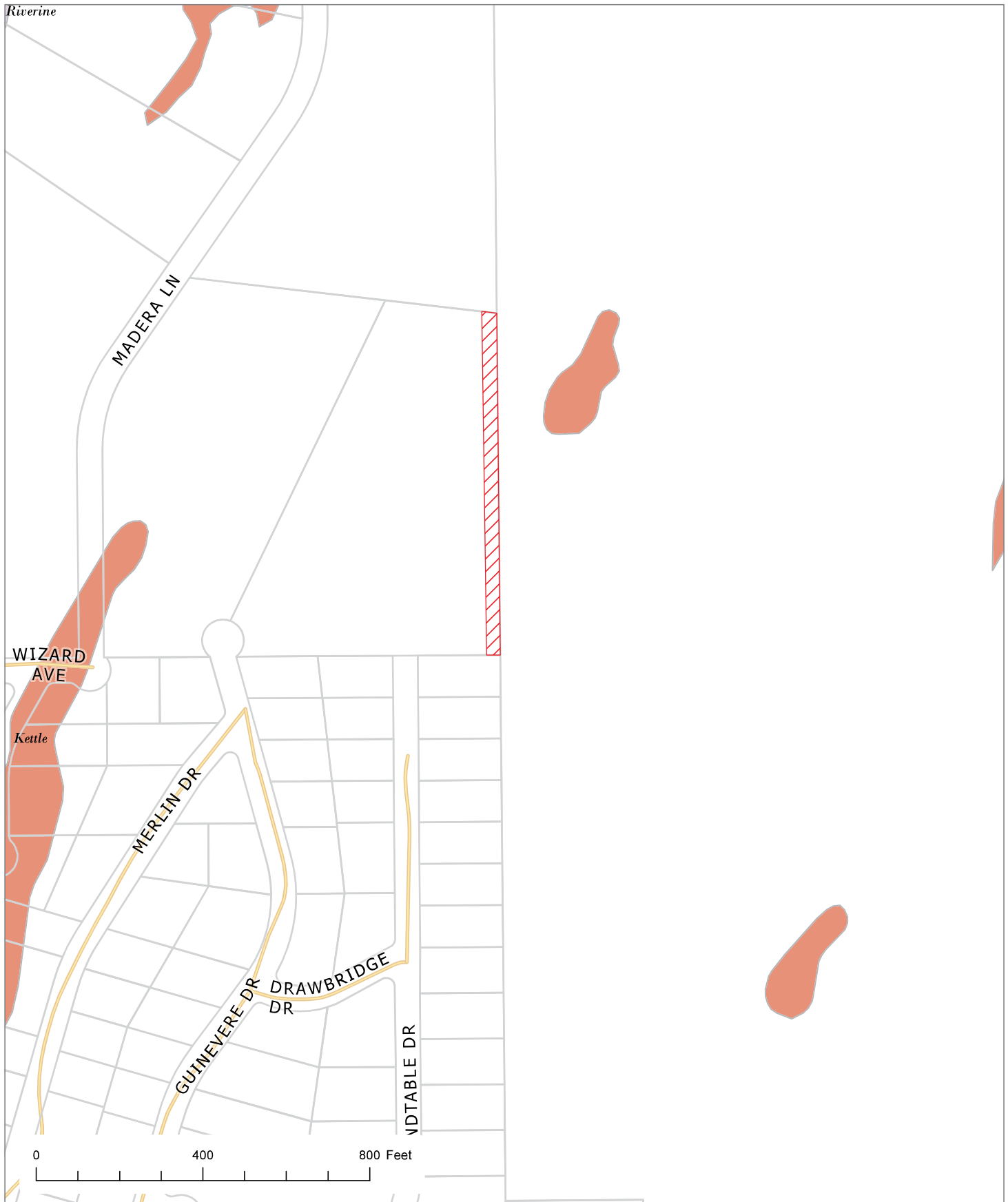
- *Focus Area: Energy and Utilities*
  - o *Objective A - Encourage coordination of residential, commercial, and industrial development with extension of utilities and other infrastructure.*
    - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
    - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
    - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
  - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
    - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

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

- *Focus Area: Transportation*
  - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
    - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
    - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

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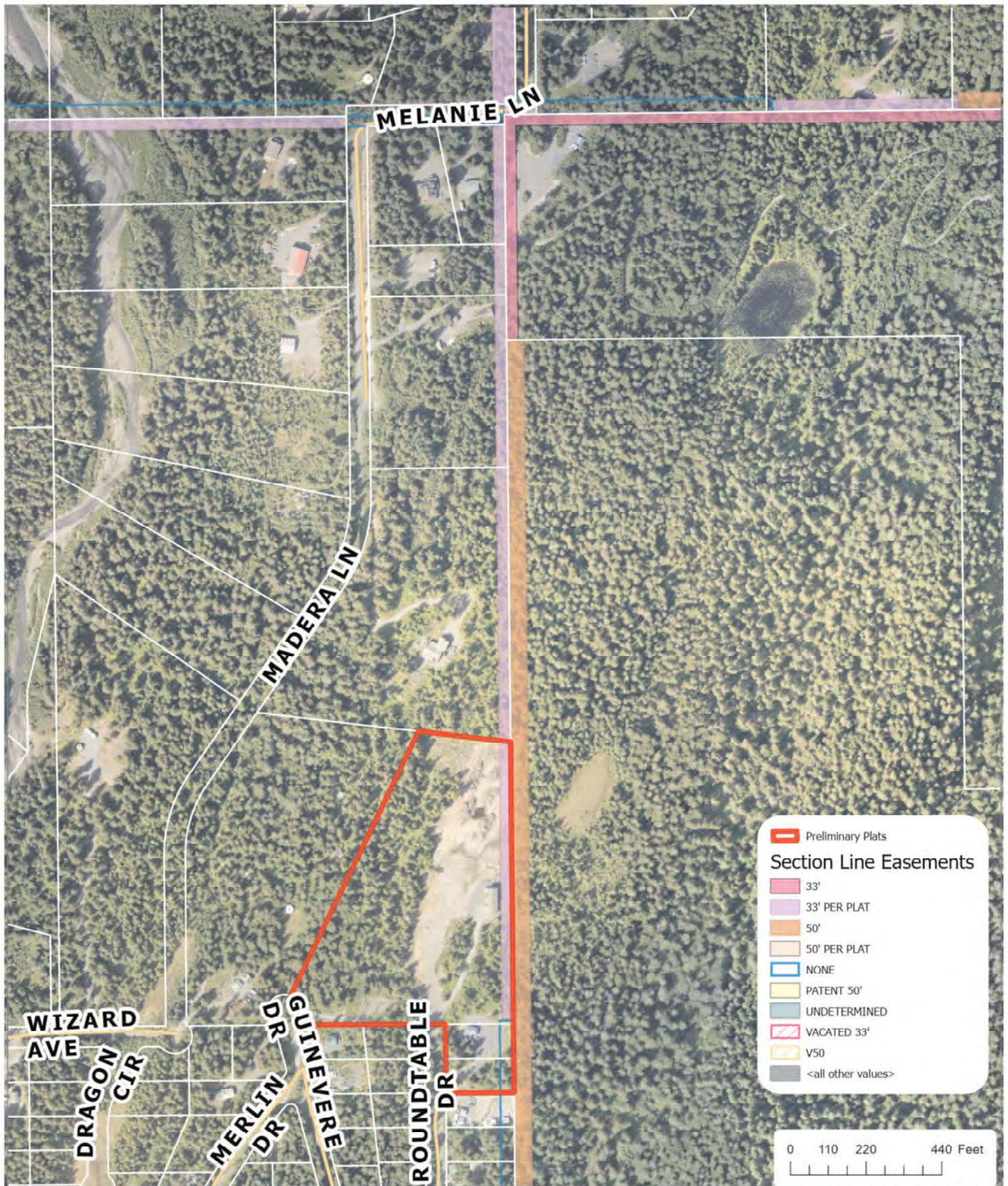
**END OF STAFF REPORT**





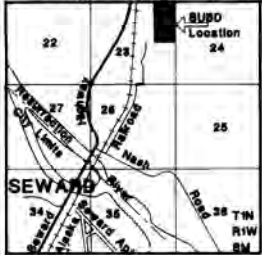








SW 98-01



# QUESTA WOODS SUBDIVISION, SOUTHERN ADDITION

A subdivision of Parcel 1, KPB Plat Waiver 96-7.  
Located in the NE 1/4 Section 23, T1N R1W, S.W. Alaska.  
Seward Recording District KPB File 98-235

## Prepared for

J.B. & Questa Woods  
P.O. Box 1733  
Seward, AK 99664

## Prepared by

Johnson Surveying  
Box 27  
Clam Gulch, AK 99568

*David B. Johnson*

VICINITY 1" = 1 mile MAP

SCALE 1" = 200' AREA = 80.340 acres 20 Oct, 1996

## LEGEND

- ⊕ - 1911 USGLD brass cap monument, found.
- ⊗ - 1965 USBLM brass cap monument, found.
- ⊥ - 1/2" x 24" rebar with 1" plastic cap, set.
- ( ) - Record information from source indicated.
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DATE 1/15/96  
TIME 10:30 A.M.  
Requested by  
Johnson Surveying  
Box 27  
Clam Gulch, AK 99568

## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 16 December, 1996.

## KENAI PENINSULA BOROUGH

BY: *Max J. Best* 1/18/96  
Authorized Official Date

## NOTES

1. A building setback of 20' from all street R.O.W.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 easement 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. 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 85 of the Kenai Peninsula Borough Code of Ordinances. A survey may be to determine the elevation of the property may be required prior to construction.
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## WASTEWATER DISPOSAL

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

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I hereby certify that I am the owner of the real property shown and described herein; and that I hereby adopt this plan of subdivision, and by my free consent, dedicate all right-of-way and grant all easements to the use shown.

*J.B. Woods*  
J.B. Woods P.O. Box 1733 Seward, AK 99664  
President, Ameri-Con Construction, Ltd.  
A Nevada Corporation

## NOTARY'S ACKNOWLEDGEMENT

For: J.B. Woods  
Subscribed and sworn to before me this 17 day of May, 1997.  
*Notary Public for Alaska*  
My commission expires

