

E. NEW BUSINESS

2. Right-Of-Way Vacation; KPB File 2022-172V
Johnson Surveying / Ancient Basements, LLC
Request: Vacate a 2' X 222.78' portion of an alley located
between Mission Ave. & Bayview Street as dedicated on USS
3036 HM 65-55
Location: Ninilchik Area



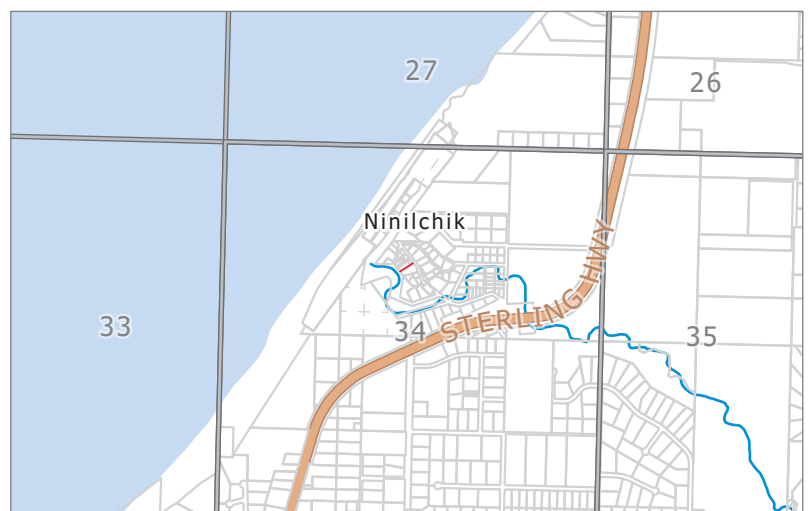
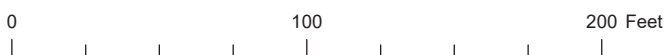
Kenai Peninsula Borough Planning Department

Vicinity Map

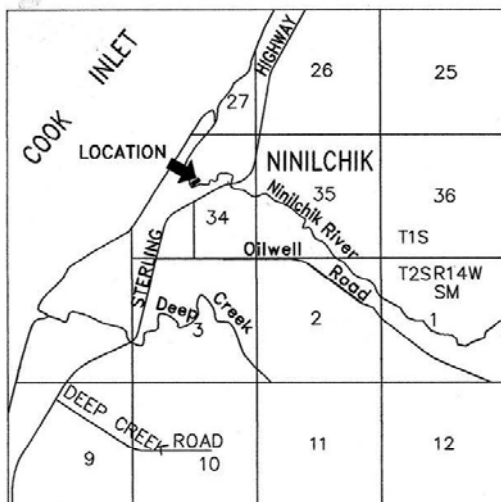


KPB File 2022-172V
T 01S R 14W SEC 34
Ninilchik

11/21/2022







Ninilchik Townsite Preliminary Ancient Basements Replat Plat

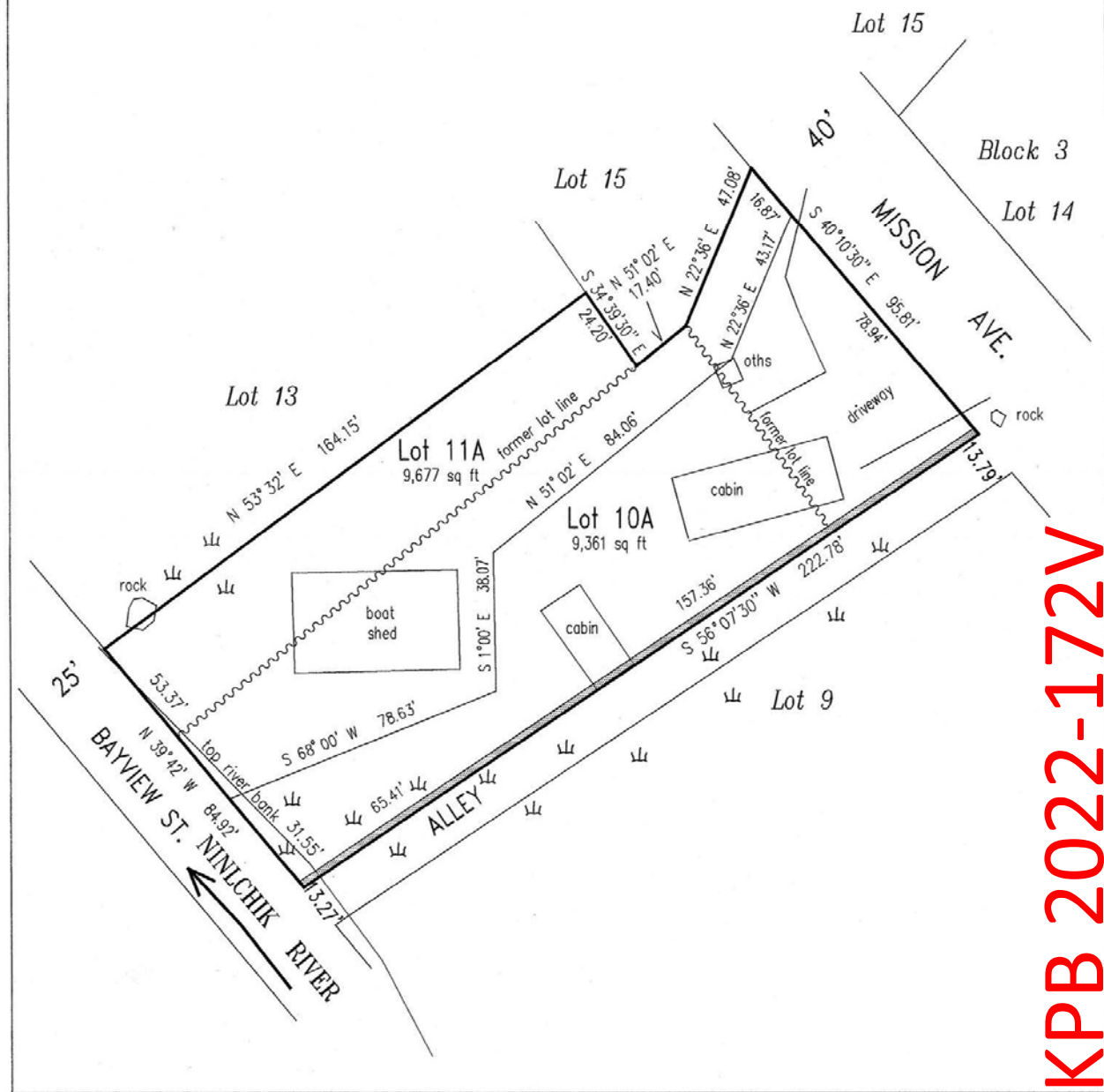
A replat of Lots 10, 11, & 12 Block 4 Ninilchik TWS, USS 3036, HRD 65-55, including a partial vacation of an alley. Located in the NW1/4 Section 34, T1S R14W, SM, Alaska. Homer Recording District Kenai Peninsula Borough

Prepared for
Ancient Basements, LLC
P.O. Box 1025
Kasilof, AK 99610

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

SCALE 1" = 30' AREA = 19,038 sq ft
15 November, 2022

- indicates 2' wide ROW area proposed for vacation.
 - indicates swamp



AGENDA ITEM E. NEW BUSINESS

**ITEM 2 - RIGHT OF WAY VACATION
VACATE A 2 FOOT WIDTH OF A 15 FOOT WIDE ALLEY**

| | |
|-------------------------------------|--|
| KPB File No. | 2022-172V |
| Planning Commission Meeting: | December 12, 2022 |
| Applicant / Owner: | Ancient Basements, LLC of Kasilof, Alaska |
| Surveyor: | Jerry Johnson / Johnson Surveying |
| General Location: | Mission Avenue, Bayview Street, Ninilchik |
| Legal Description: | Alley adjacent to Lots 10 and 11, Block 4, Ninilchik Townsite, USS 3036, Plat HM 65-55 |

STAFF REPORT

Specific Request / Purpose as stated in the petition: Currently there are 3 buildings located on these lots. The existing lot line run through 2 of these buildings. We would like to replat the lots so that the lot lines do not bisect the buildings.

Two of these buildings were homes of original settlers of Ninilchik Village. They were built in the mid-to-late 1800's and more than a century later were moved to their present location in order to preserve them. Ninilchik Village records show that Leontii Ostrogin (aka Peg-Leg John) moved to Ninilchik in 1851. He was known as the village carpenter and helped build many homes including the smaller of the two houses. Unfortunately the roof line of his cabin extends into the southeast alley by about 18 inches. This cabin will not withstand another move, and is currently sitting on a concrete pad with new foundational logs to stabilize it and keep it off the ground.

We are asking the Borough to grant a 24 inch vacation of the alleyway so this historical building can be preserved.

Thank you for your consideration of this vacation.

Notification: The public hearing notice was published in the December 7, 2022 issue of the Homer News as part of the Commission's tentative agenda.

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

Library of Ninilchik

Post Office of Ninilchik

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

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

Eighteen 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
Ninilchik Emergency Services

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

Legal Access (existing and proposed): Currently there is an approximate 15 foot wide alley that connects Mission Avenue to Bayview Street. Mission Avenue was dedicated as a 40 foot wide right-of-way and is constructed and maintained by the State of Alaska. Bayview Street was dedicated as 25 feet wide and abuts the Ninilchik River. There is no constructed portion of Bayview Street. The new lot configuration proposed will allow for the new lots to have access from Mission Avenue. The proposal is to only vacate the area needed to allow for the historic building and an approximate 13 foot wide alley will remain for access to the adjacent lots.

The alley was dedicated by United States Survey No 3036, Plat HM 65-55. That plat laid out the design for the Ninilchik Townsite. The alley width is shown as 15.88 feet at Mission Avenue that narrows to 15.36 feet at Bayview Street. The proposal will vacate 2 feet of the alley and leave a portion that is 13.79 feet that narrows to 13.27 feet.

The alley provides access to Bayview Street from Mission Avenue. Bayview Street is a dedication that abuts/contains the Ninilchik River. Additional access to Bayview Street/Ninilchik River is located further north, also named Bayview Street and having a 50-foot access. Further south Lunker Avenue is dedicated as 50 foot wide and provides additional access to Bayview Street/Ninilchik River.

The Bayview Street to the north, Mission Avenue, the alley, and Bayview Street on the West define the block. KPB Code states that blocks shall not be less than 330 feet. The block does not comply and the partial vacation does not improve the block.

| | |
|--------------------------|---|
| KPB Roads Dept. comments | Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: Does not affect road maintenance |
| SOA DOT comments | |

Site Investigation: The alley as well as the adjacent rights-of-way are all considered wetlands with a designation of Riverine. The Ninilchik River, an anadromous stream, abuts and runs along a portion of the property and the ally ends at the river.

The terrain within the alley is relatively flat with slight slopes towards the Ninilchik River. The property is within a floodplain and proper notes will be required on the plat that finalizes the vacation.

| | |
|----------------------------|---|
| KPB River Center review | A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: AE,Floodway,X (shaded) Map Panel: 02122C-1620E In Floodway: False Floodway Panel: B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w\kpb\maldrige C. State Parks Reviewer: Russell, Pam Comments: No Comments |
| Alaska State Fish and Game | Public access to public lands and waters will not be affected by the proposed ROW vacation. |

Staff Analysis: U.S. Survey 3036 subdivided the Ninilchik Townsite. The area was surveyed in 1950, signed by U.S. Department of the Interior in 1951, and recorded in 1965. The Townsite was created with small lots and narrow dedications.

The owners of the property are wishing to reconfigure three lots into two lots. Based on the proposed design some exceptions will be required but the design does improve the lots square footage and access to constructed rights-of-way.

The justification states the intent is preserve historical structures that may not be able to endure another relocation due to their state. The justification also states the request is to accommodate a roof line that extends into the right-of-way. Per KPB Code, 14.40.390, encroachments is a structure or object placed in, on, under, or over a right-of-way. The owners wish to vacate two feet to accommodate the roof line and allow an approximate 13 foot wide alley to remain for access to the Ninilchik River.

The Kenai Peninsula Borough Comprehensive Plan 2019 contains as Goal 3, "Preserve and improve quality of life in the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services." One of the focus areas under that goal is Historic Preservation with objectives that include efforts to protect cultural history and resources in borough communities and also to maintain the character of historic towns and districts. Reviewing the proposal with the goals and objections within the Comprehensive Plan this petition fits with preserving the structures but also not impacting the historic character of the Ninilchik Townsite.

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: The alley is not constructed but using KPB GIS Imagery a foot trail may be present.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is not compliant in width for borough maintenance, the road provides access to the Ninilchik River and other access points exist within the Townsite. A portion will remain to continue providing access to the river.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area is heavily developed with lots smaller than current code allows and some limited access in areas.
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: The alley does provide access to the Ninilchik River. The alley will still provide such access but at a reduced width. Additional access is found approximately 300 feet to the northwest and approximately 600 feet to the southeast.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed redesign will improve access as one of the lots has dedicated access but the location of the Ninilchik River only provides water access.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;

Staff comments: The alley can continue to provide access to the lots abutting as well as public access to Ninilchik River but due to size even prior to partial vacation would not be able to be part of the borough road maintenance program.

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: With proper permitting the remaining portion of the alley may be used for utility purposes. Any requested easements should be granted or an agreement made with the utility providers.

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

Staff comments: This is a narrow alley that will continue to provide access. The vacation is to accommodate the roof line of a historic building that the owners are trying to limit major impacts in order to keep the structure intact.

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 January 3, 2023 meeting.

If approved, Ninilchik Townsite Ancient Basements Replat will finalize the proposed right of way vacations. The application for the plat has not been received and will be scheduled for review in accordance with KPB Code once a complete application is received.

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: a portion of one structure is in the proposed ROW to be vacated. |
| Addressing | Reviewer: Haws, Derek Affected Addresses: 15332 BAYVIEW ST Existing Street Names are Correct: Yes List of Correct Street Names: BAYVIEW ST MISSION AVE Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: |

| | |
|-----------|--|
| | List of Street Names Denied: Comments: 15332 BAYVIEW ST will be deleted and replaced with a MISSION AVE address. |
| Assessing | Reviewer: Windsor, Heather Comments: No comment |

Utility provider review:

| | |
|--------|--------------------------------|
| HEA | No comments |
| ENSTAR | No comments or recommendations |
| ACS | No objections |
| GCI | Approved as shown |

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).

KPB 20.65.050 – Action on vacation application

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

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

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

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

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

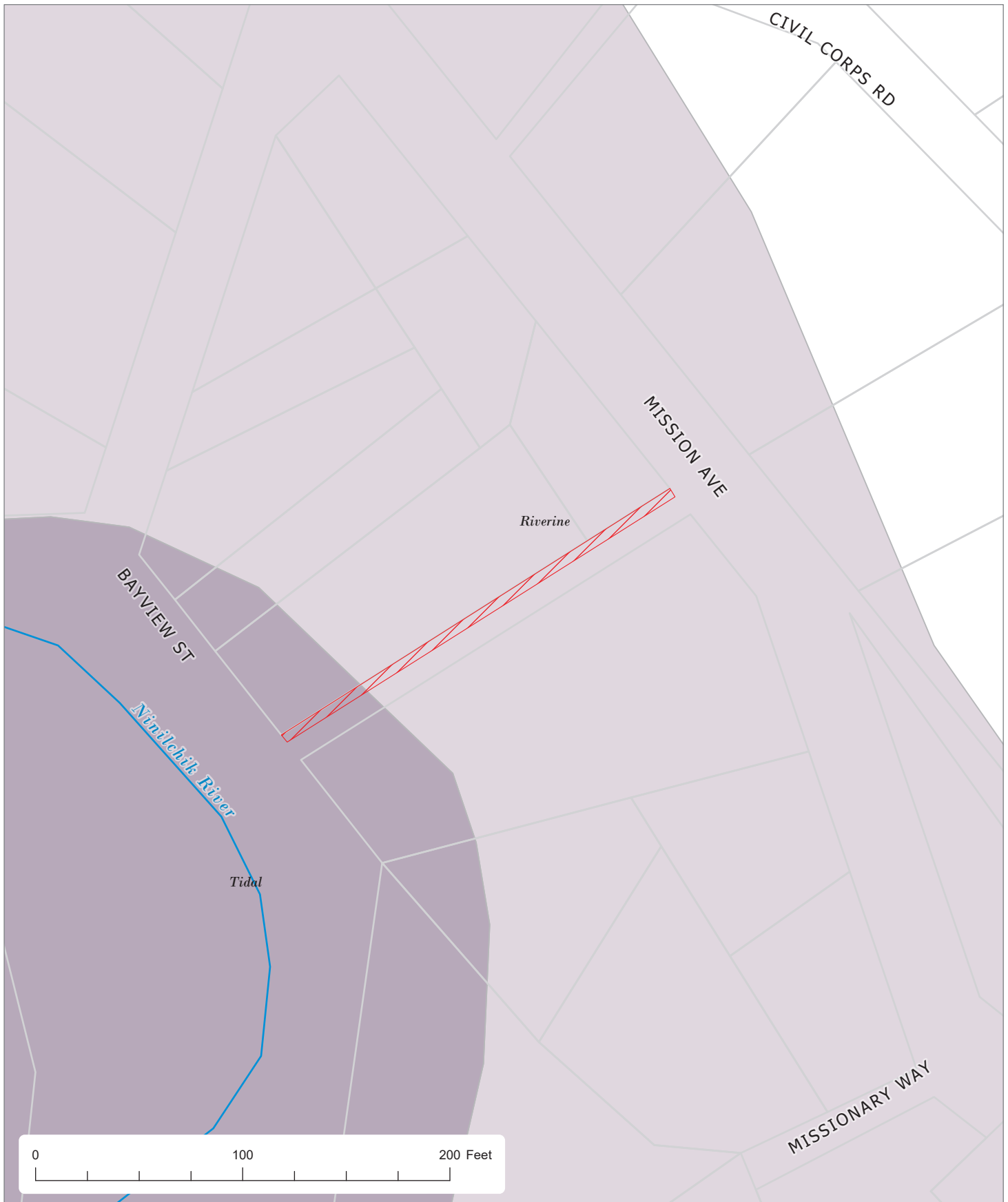
- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*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

END OF STAFF REPORT





Wetlands



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 with 5-foot Contours



HOMER

Serial No. 65-55

U. S. SURVEY No. 3036A (BOUNDARIES) AND 3036 B (SUBDIVISION)

TRACT A and TRACT B
TOWNSITE OF NINILCHIK, ALASKA

NET AREA TRACT A: 47.648 ACRES

AREA U. S. SURVEY No. 307, Tract B: 0.216 ACRES

TRACT C: 0.310 ACRES

TRACT D: 48.174 ACRES

AREA TRACT B: 3.039 ACRES

LATITUDE 60°02'52"N, LONGITUDE 151°30'43"W,
AT CORNER No. 1, TRACT A

SCALE IN FEET
SURVEYED BY ELLIOTT PEARSON, AUGUST 26 TO SEPTEMBER 14, 1950

RECORDED - FILED

Homer REC. DIST.

DATE 1-26-1965

TIME 1:40 P.M.

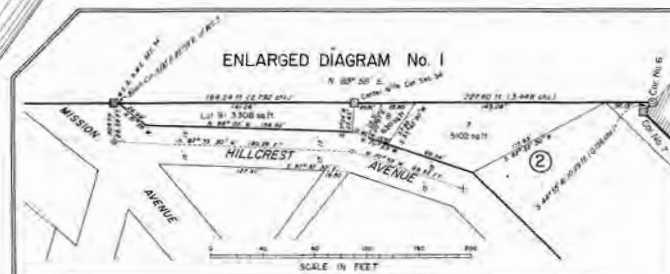
Reported by B. J. M.

Address

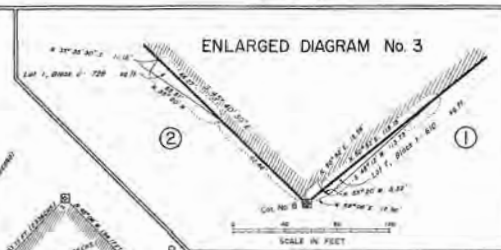
ENLARGED DIAGRAM No. 2



ENLARGED DIAGRAM No. 1



ENLARGED DIAGRAM No. 3



LEGEND

- Brass cap 10 to 12 inches below surface of ground (18 inch concrete column 26 inches long)
- 2 1/2 inch iron post 28 inches long in concrete base and within 10 inches diameter and 6 inches thick with brass cap 10 to 12 inches below surface of ground
- ✕ Copper pin set in column of concrete below surface of ground
- ◇ A hole 2 inches above ground marked as described in official record
- ◆ Brass cap flush with ground surface in 10 x 12 inch mass of concrete on granite boulder
- Monument described in field notes of Departmental survey of portion of Section 34, T. 1 S., R. 14 W., S. M.
- Monument described in field notes of U. S. Survey No. 3036 A & B, Boundaries & Subdivision, Townsite of Ninilchik, Alaska

Note: All other block and lot corners were marked with 2 x 4 x 18 inch wooden stakes

* All monuments within streets, except Cor. No. 8, were set 4 to 12 inches below the surface

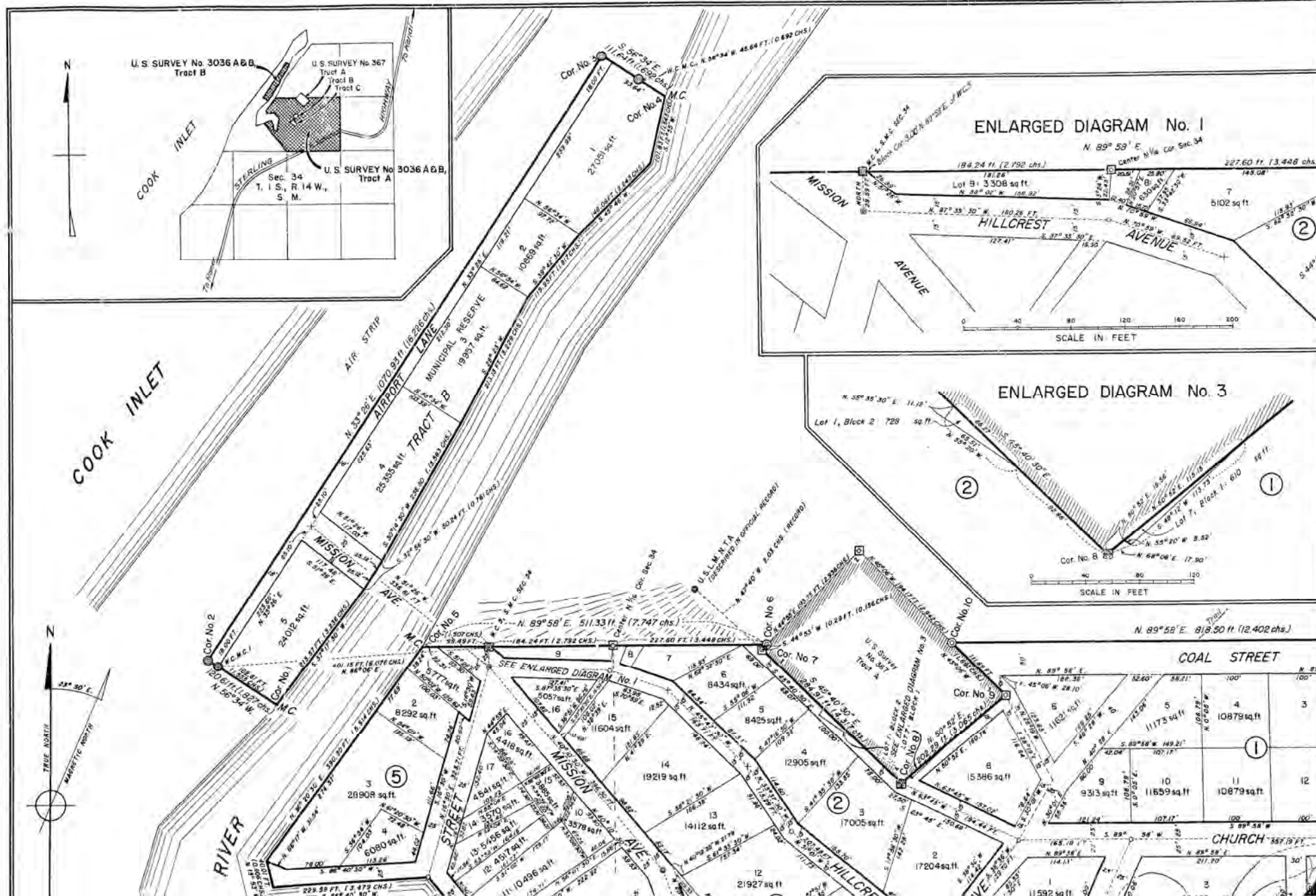
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C., Aug. 7, 1951

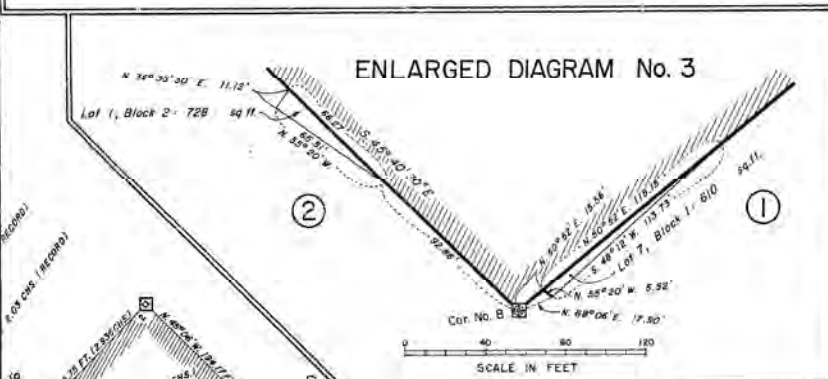
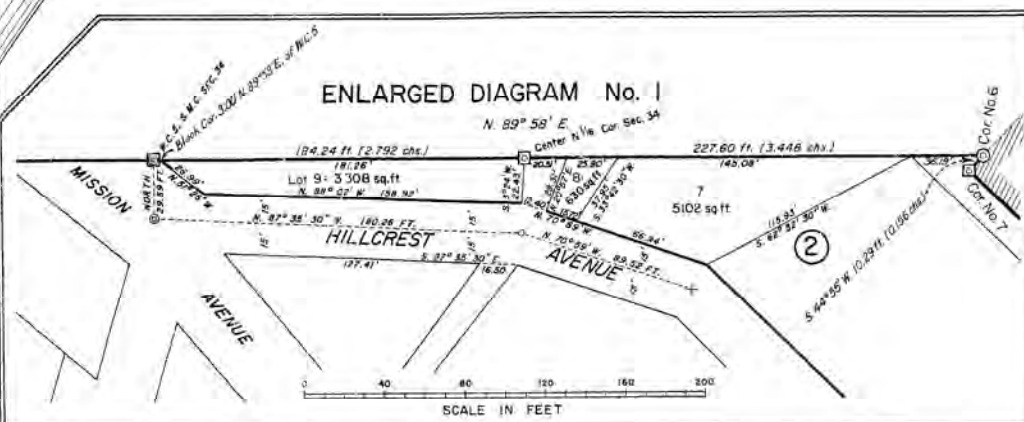
This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and regulations of this bureau, is hereby accepted.

For the Director:

William H. Richards

Chief Branch of Surveys



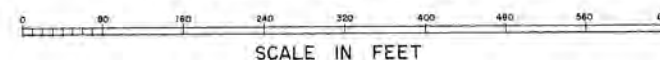


U. S. SURVEY No. 3036A (BOUNDARIES)
AND
3036 B (SUBDIVISION)

TRACT A and TRACT B
TOWNSITE OF NINILCHIK, ALASKA

NET AREA TRACT A:-----47.648 ACRES
AREA U.S. SURVEY No. 367, Tract B:---0.216 "
" " " Tract C:---0.310 "
Total---48.174 "
AREA TRACT B -----3.039 ACRES

LATITUDE 60°02'52"N., LONGITUDE 151°30'43"W.,
AT CORNER No. 1, TRACT A

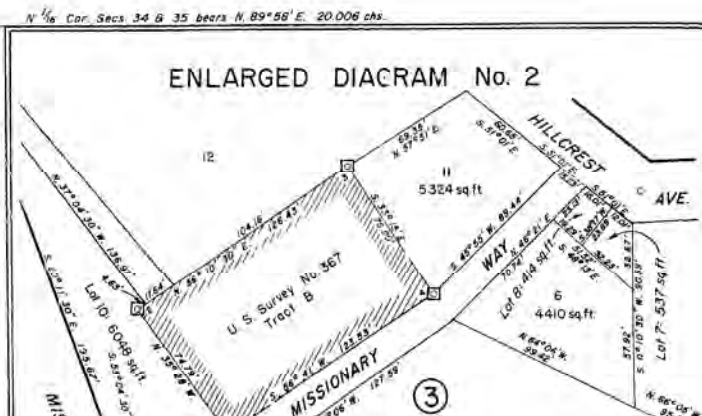


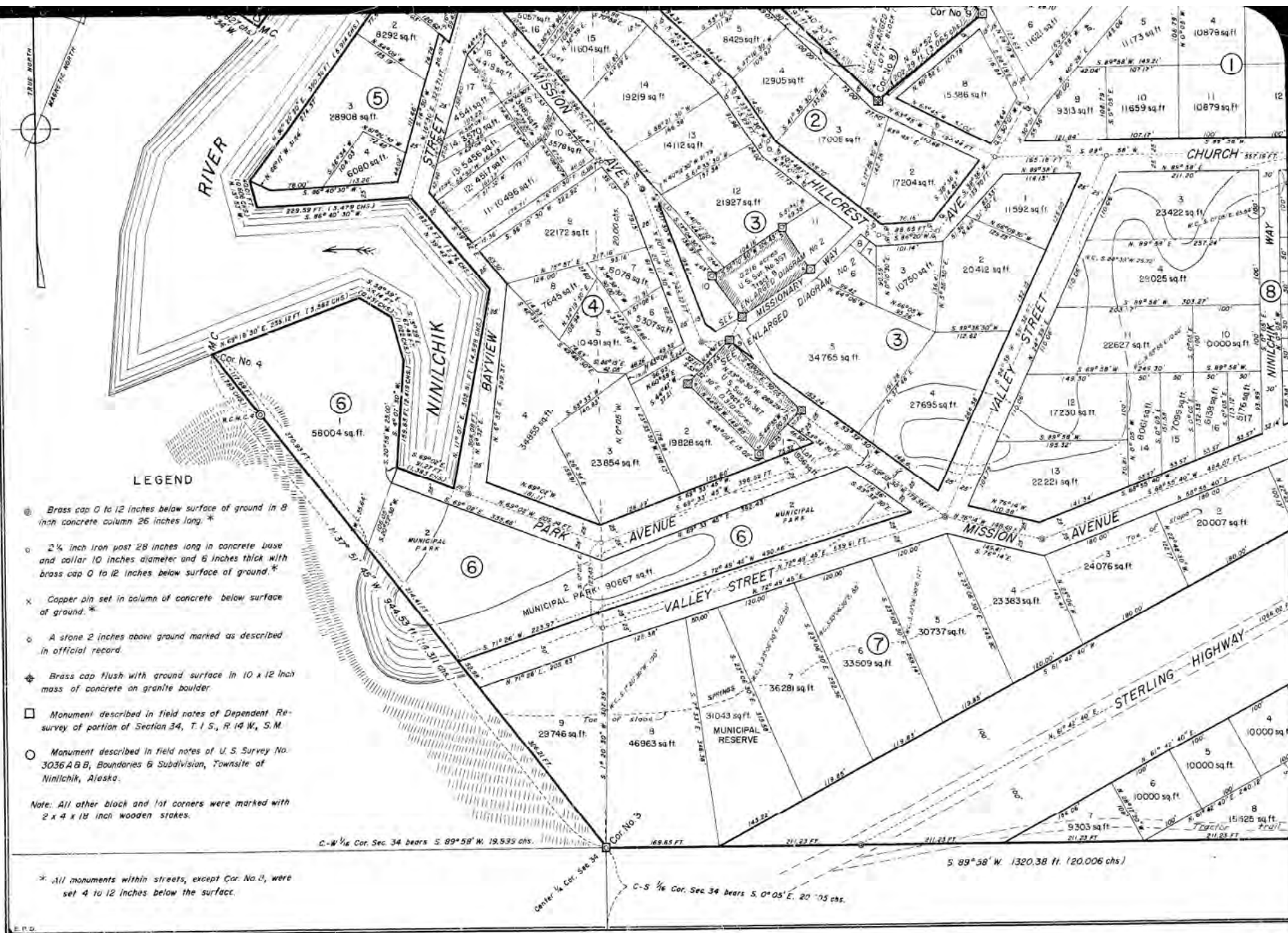
SURVEYED BY ELLIOTT PEARSON, AUGUST 26 TO SEPTEMBER 14, 1950

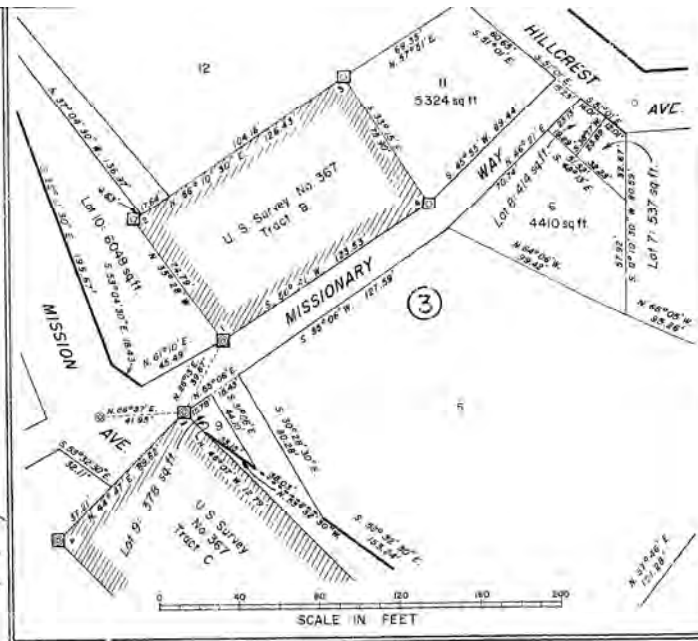
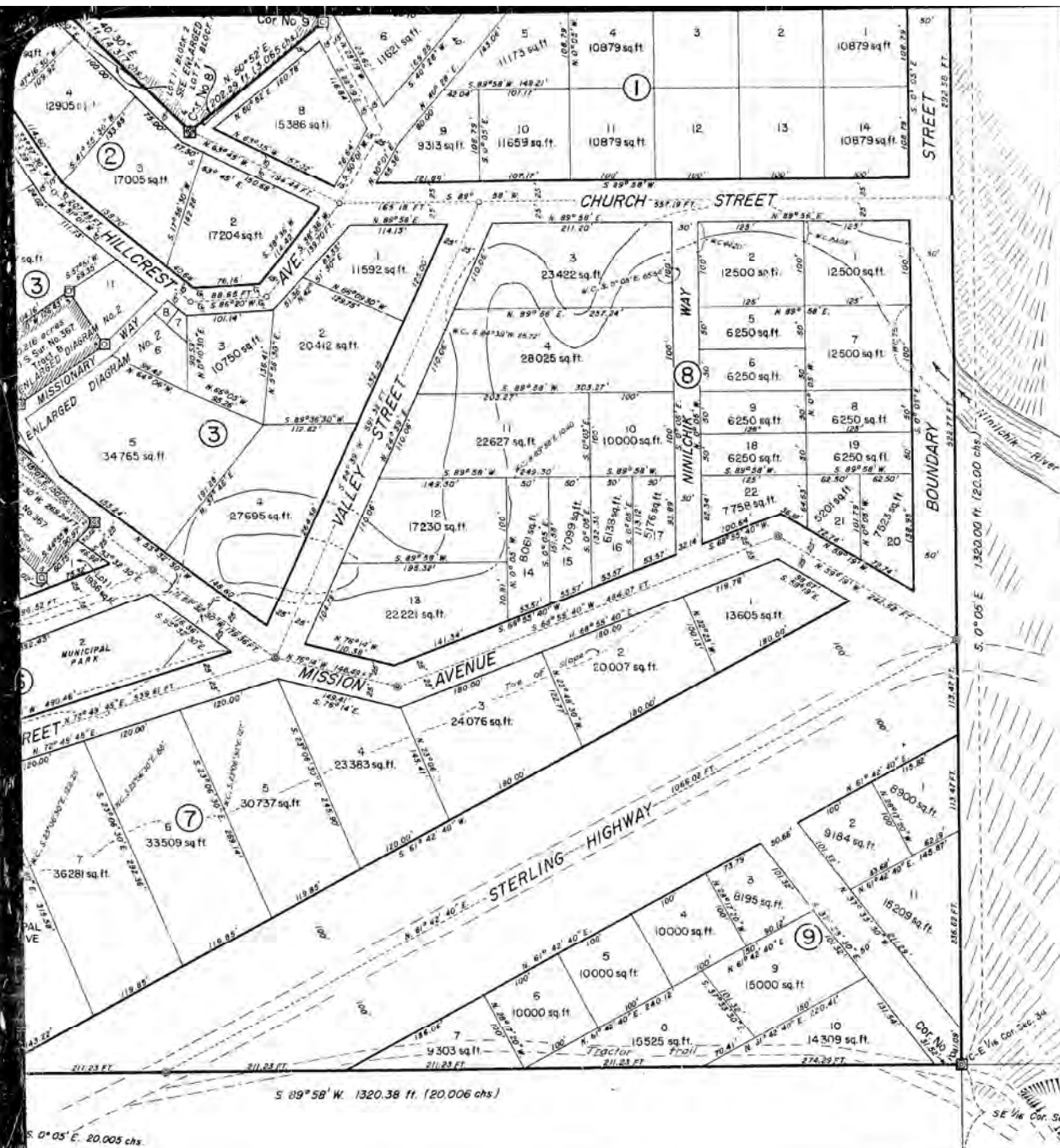


T. / S., R. 14 W., S. M.

Lol 1, Sec 34

NE $\frac{1}{4}$, NE $\frac{1}{4}$, Sec. 34





UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C., Aug. 7, 1951

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 regulations of this bureau, is hereby accepted.

For the Director:

William F. Richards

Chief, Branch of Surveys

1/4 Cor. Secs. 34 & 35 bears N. 89° 58' E. 20.006 chs.

SE 1/4 Cor. Sec. 34 bears S. 0° 05' E. 20.00 chs.

DATE JULY 5, 2013

THE RETRACEMENT AND DEPENDENT RESURVEY
OF CERTAIN BOUNDARIES, RIGHT-OF-WAY LIMITS,
AND LOTS, WITHIN TRACT A OF

**U.S. SURVEY NO.
3036 A & B, ALASKA**

(THE BOUNDARIES AND SUBDIVISION,
RESPECTIVELY, OF THE TOWNSITE
OF NINILCHIK)

INCLUDING CONTIGUOUS PORTIONS OF THE
SUBDIVISION OF SECTION LINES IN SECTION 34,
TOWNSHIP 1 SOUTH, RANGE 14 WEST,
SEWARD MERIDIAN

SITUATED
SOUTHERLY OF THE STERLING HIGHWAY
AT THE COMMUNITY OF NINILCHIK

WITHIN
TOWNSHIP 1 SOUTH, RANGE 14 WEST
SEWARD MERIDIAN, ALASKA

THE
GEOGRAPHIC POSITION OF
CORNER NO. 2, TRACT A, U.S. SURVEY NO. 3036 A & B
(THE BOUNDARIES AND SUBDIVISION, RESPECTIVELY, OF
THE TOWNSITE OF NINILCHIK), IDENTICAL WITH THE
CENTER-EAST 1/16 SECTION CORNER OF SECTION 34
TOWNSHIP 1 SOUTH, RANGE 14 WEST, SEWARD MERIDIAN
IS:

LATITUDE: 60°02'48.860" NORTH
LONGITUDE: 151°39'35.417" WEST
NAD 83

SURVEYED BY
CHRISTOPHER D. WILTA, CADASTRAL SURVEYOR
JUNE 24 THROUGH JUNE 30, 2012
UNDER SUPPLEMENTAL SPECIAL INSTRUCTIONS
DATED MAY 8, 2012
APPROVED MAY 10, 2012

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

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
Michael J. Allen JUNE 7, 2013
Date
Chief Cadastrol Surveyor for Alaska

U.S. SURVEY NO.
3036 A & B
(THE BOUNDARIES AND
SUBDIVISION, RESPECTIVELY,
OF THE TOWNSITE
OF NINILCHIK)
TRACT A

LEGEND

- Original corner or accepted corner established by previous dependent resurvey
- Original corner or accepted corner established by previous dependent resurvey (remonumented this survey)
- Accepted local corner
- Proportioned or calculated position (not monumented this survey)
- Proportioned or calculated position (monumented this survey)
- Corner description designator
- Townsite block number

