

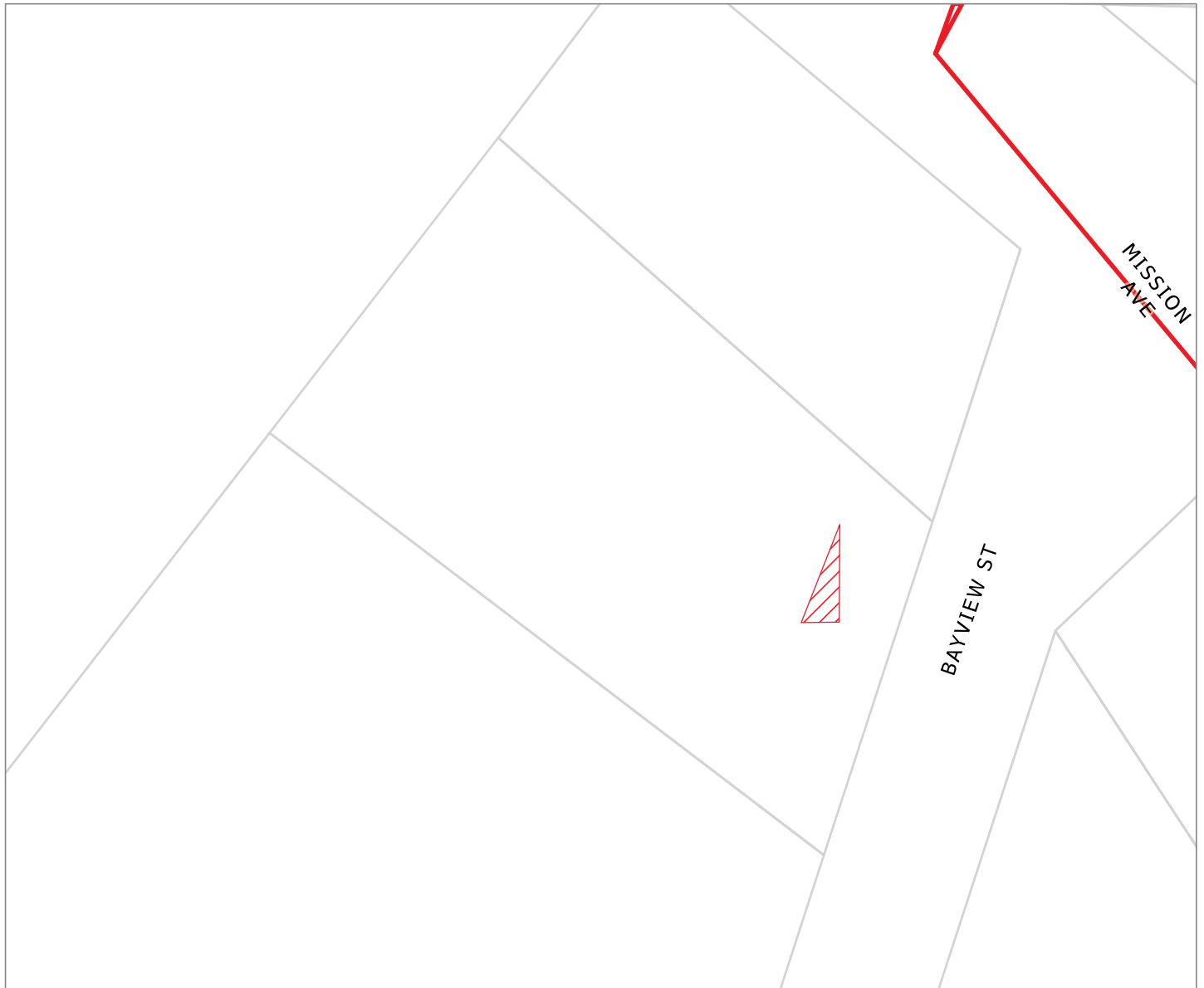
E. NEW BUSINESS

- 1. Building Setback Encroachment Permit; KPB File 2023-025
Peninsula Surveying / Vanek
Request: Permits a portion of a house to remain 6.5' and a
portion of a deck to remain 8.3' in the building setback of
Lot 2A, Block 5, granted on Ninilchik Townsite Jackinsky
Vanek Replat, Plat HM 97-79
Ninilchik Area**



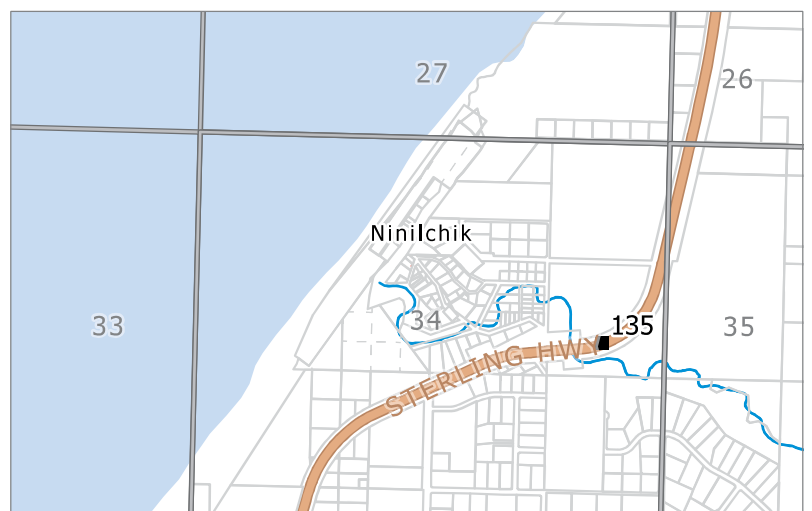
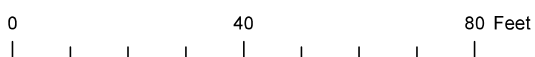
Kenai Peninsula Borough Planning Department

Vicinity Map



KPB File 2023-025
T 04S R 11W SEC 34
Fritz Creek

3/1/2023





AGENDA ITEM E. NEW BUSINESS

**ITEM 1. – BUILDING SETBACK ENCROACHMENT PERMIT –
NINILCHIK TOWNSITE JAKINSKY VANEK REPLAT LOT 2A, HM 97-79**

KPB File No.	2023-025
Planning Commission Meeting:	April 10, 2023
Applicant / Owner:	Rion and Betsy Vanek of Ninilchik, Alaska
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Bayview Street, Ninilchik

Parent Parcel No.:	157-071-05
Legal Description:	Lot 2A Block 5, Ninilchik Townsite Jackinsky-Vanek Replat, HM 97-79
Assessing Use:	Residential
Zoning:	Rural Unrestricted

STAFF REPORT

Specific Request / Purpose as stated in the petition: We started construction of our house in 1996 before the 1997 replat. There wasn't a setback requirement before that. We finished the house without realizing we encroached on the new setback. There will be no new encroachments on the 20 foot setback for either of the 2 new lots. After the new replat, there will only be one lot beyond the lot our house is on and the road is not a through road, as it ends at the river. Also, the corner of the house is still 13.5 feet from the property line.

Site Investigation: Lot 2A, Block 5, Ninilchik Townsite Jackinsky-Vanke Replat, HM 97-79, is located between the Ninilchik River and the Bayview Street dedication within the Ninilchik Townsite. There is currently a home within the lot that crosses over the existing lot lines and is within the 20 foot building setback. Ninilchik Townsite Vanek 2023 Replat, KPB File 2022-182 was heard and received conditional approval at the January 23, 2023 Kenai Peninsula Borough Plat Committee meeting. The plat will be reconfiguring lots and will correct the building's encroachments onto neighboring properties. The approval was subject to determining if any structures were found within rights-of-way, setbacks, or utility easements.

The distances of the structure to the north has not yet been disclosed but the lot is not currently subject to a setback. If the building will be within the newly granted setback by the new plat, it will be required to be depicted with a note that it predates the setback.

An additional structure appears on KPB GIS imagery and may possibly be within the right-of-way. It is unknown currently if that is a permeant structure. The status of that building will be required to be provided prior to final plat. If the building encroaches into the right-of-way, the owners will need to work with the KPB Roads department on possible permitting or the building will need to be moved. If the structure is moved, even if not permeant in status, staff would recommend it be moved back behind the utility easement and setback.

Bayview Street is a 31 foot wide dedication that provides access to the Ninilchik River from state maintained Mission Avenue. Bayview Street is currently being used as access to the improvements on the four lots. It does appear that a clearing exists to the Ninilchik River. The road is not maintained by the borough or the state. This is a narrow dedication with several lots using it for access. Due to the location of the Ninilchik River to the south, the right-of-way will not be a through right-of-way. It will be difficult to widen the right-of-way dedication due to the location of improvements.

The house is constructed at an angle to the front property line. The southeast corner of the house is 6.5 feet within the setback with a 13.5 foot setback remaining. Attached to the house is a deck that is also within the setback. The southeast corner of the deck extends into the setback by 8.5 feet and leaves a 11.7 setback.

Street view photos were not available for this area to determine if there are any line of sight issues. Looking at the KPB GIS imagery, the building located to the southeast of the house in question appears to be more of a line of sight issue than the house based on the existing drivable surface.

Staff Analysis: The lot that the house is on was originally part of U.S. Survey No. 3036, HM 65-55. The plat created the Ninilchik Townsite with narrow rights-of-way, small lots, and no standard setbacks. The lot, Lot 2 Block 5, was replatted by Ninilchik Townsite Jackinsky-Vanek Replat, HM 97-79. That plat finalized a partial vacation of Bayview Street and placed a 20 foot building setback and 10 foot utility easement along the new lot line adjacent to the new Bayview Street right-of-way edge. Per the statement from the owners, they started the construction prior to the existence of the setback but did not finish construction until the setback was in place. Due to the timing and the question of timing for any additional improvements such as decks, the application for a building setback encroachment permit is being processed.

There does not appear to be any low wet areas within the dedication but the entire area is designated as wetlands. The lot and right-of-way are within a minimal flood risk area. The terrain is relatively flat.

Findings:

1. The property was first subdivided by U.S. Survey No. 3036, HM 65-55.
2. U.S. Survey No. 3036 did not create building setbacks or utility easements in this location.
3. Ninilchik Townsite Jackinsky-Vanek Replat, HM 97-79, vacated a portion of Bayview Street.
4. Ninilchik Townsite Jackinsky-Vanek Replat created a 20 foot setback and 10 foot utility easement along the new lot line adjacent to Bayview Street.
5. The new setback was created with Ninilchik Townsite Jackinsky-Vanek Replat when it recorded on December 19, 1997.
6. Per the owners' statement, the construction began in 1996 prior to the creation of the setback.
7. The 2-story house located on Lot 2A, Block 5, Ninilchik Townsite Jackinsky-Vanek Replat has a portion that extends into the 20 foot building setback by 6.5 feet.
8. A deck attached to the house extends into the 20 foot building setback by 8.3 feet.
9. A 13.5 foot portion of the setback remains next to the house.
10. A 11.7 foot portion of the setback remains next to the deck.
11. Bayview Street is not a through street due to location of the Ninilchik River.
12. Bayview Street is used for access to several improvements in the area and to the Ninilchik River.
13. Bayview Street is not maintained by the State of Alaska or the Kenai Peninsula Borough.
14. The lot is subject to setbacks along the west due to the location of the Ninilchik River.
15. Ninilchik Townsite Vanek 2023 Replat, KPB File 2022-182, has been approved and will adjust lot lines to correct other encroachment issues.

20.10.110. – Building setback encroachment permits.

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

Findings 3, and 9-13 appear to support this standard.

2. The building setback encroachment may not interfere with sight lines or distances.

Findings 9-13 appear to support this standard.

3. The building setback encroachment may not create a safety hazard.

Findings 9-13 appear to support this standard.

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the

structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

- G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

KPB department / agency review:

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Griebel, Scott Comments: No comments
SOA DOT comments	No comment
KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: AE, 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\maldridge C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	
Addressing	Reviewer: Robinson, Celina Affected Addresses: 15251 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: Comments: NO ADDRESSING COMMENTS
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
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.
Assessing	Reviewer: Windsor, Heather Comments: No comment
Advisory Planning Commission	

Utility provider review:

Homer Electric Association	
ENSTAR	
ACS	
GCI	

RECOMMENDATION:

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2023-6, subject to compliance with KPB 20.10.110 sections F and G.

NOTE:

20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2023-6
HOMER RECORDING DISTRICT**

GRANT A BUILDING SETBACK ENCROACHMENT PERMIT TO A PORTION OF THE TWENTY FOOT BUILDING SETBACK FOR LOT 2A BLOCK 5, NINILCHIK TOWNSITE JACKINSKY-VANEK REPLAT ((HM 97-79); IN NE 1/4 S34, T01S, R14W; SEWARD MERIDIAN, ALASKA, WITHIN THE KENAI PENINSULA BOROUGH; KPB FILE NO. 2023-025

WHEREAS, per KPB 20.30.240 – Building Setbacks, a minimum twenty-foot building setback shall be required for fee simple non-arterial rights-of-way in subdivisions located outside incorporated cities; and

WHEREAS, Rion and Betsy Vanek of Ninilchik, AK requested a building setback encroachment permit to the twenty-foot building setback granted by Ninilchik Townsite Jackinsky-Vanek Replat (HM 97-79); and

WHEREAS, per the petition, a portion of the house is within the setback at a maximum distance of 6.5 feet and the attached deck is within the setback at a maximum distance of 8.3 feet; and

WHEREAS, the encroaching structure will not obstruct line of sight for traffic; and

WHEREAS, on Monday, April 10, 2023, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed exception; and

WHEREAS, the Planning Commission found that granting the building setback encroachment permit will not be detrimental to the public interest; and

WHEREAS, 20.10.110 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish building setback encroachment permits by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

Section 1. That the twenty-foot building setback limit on (HM 97-79) Lot 2A Block 5, Ninilchik Townsite Jackinsky-Vanek Replat is hereby excepted to accommodate only the encroaching portion of the house and deck within the setback along Bayview Street.

Section 2. That any new, replacement, and/or additional construction will be subject to the twenty-foot building setback limit.

Section 3. That the twenty-foot building setback limit shall apply to the remainder of said lot.

Section 4. That a current as-built survey or sketch prepared, signed, and sealed by a licensed land surveyor showing the location of the encroachment within the building setback be attached to, and made a part of this resolution, becoming page 2 of 2.

Section 5. That this resolution is void if not recorded in the appropriate Recording District within 90 days of adoption.

Section 6. That this resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fees.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS _____ DAY OF _____, 2023.

Jeremy Brantley, Chairperson
Planning Commission

ATTEST:

Ann Shirnberg,
Administrative Assistant

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



NINILCHIK TOWNSITE, JACKINSKY-VANEK REPLAT

Replat of lots 2, 3, & 4 block 5 of Ninilchik Townsite. (USS 3036B HR 65-55):
vacating a portion of Bayview Street.
Located in the NW 1/4 Section 34, T1S R14W, SM, Ninilchik, Alaska.
Homer Recording District KPB File 97-088

Prepared for

Gary Jackinsky
P.O. Box 127
Ninilchik, Ak 99639

Prepared by

Johnson Surveying
Box 27
Clan Gulch, Ak 99568

Steve VaneK
P.O. Box 103
Ninilchik, Ak 99639



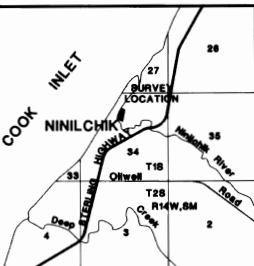
SCALE 1" = 50'

AREA = 1.096 acres

24 Aug, 1997

LEGEND

- ✱ - 1950 USBLM brass cap monument found.
- ⊕ - 1/2" rebar lot corner found.
- - 1/2" x 2" or 4" rebar with 1" plastic cap, set.
- () - Record information HR 55-55.
- ▨ - indicates ROW being vacated by this plat.

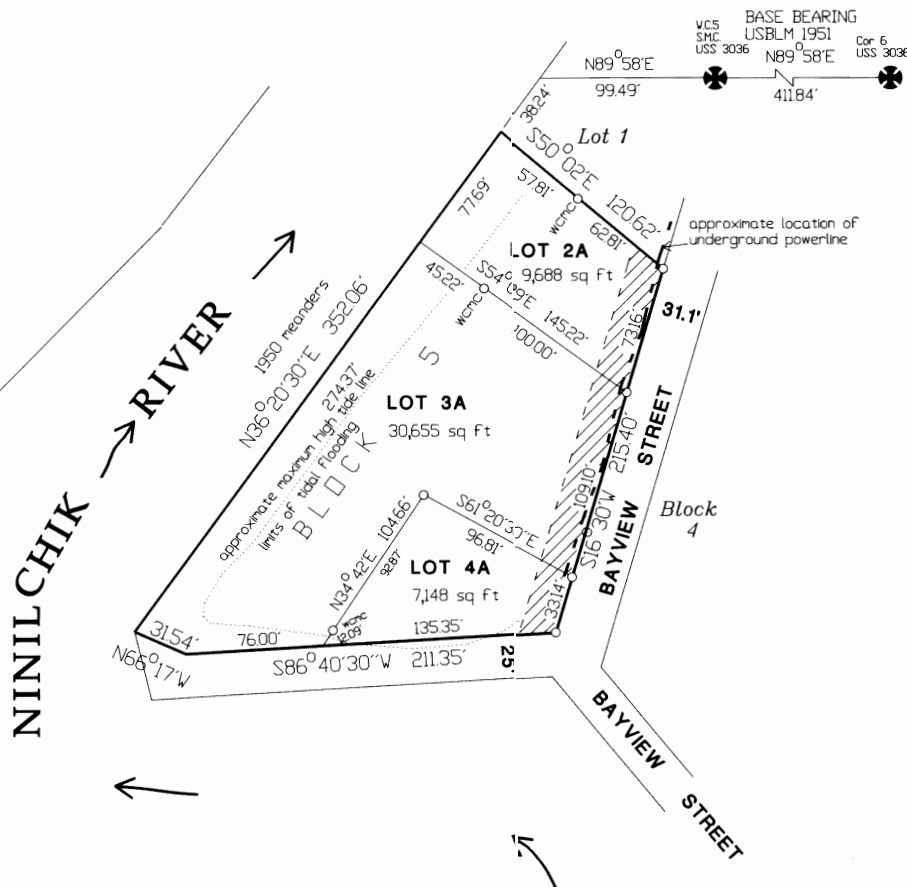


VICINITY 1" = 1 mile MAP

97-79
RECORDED FILED
HOMER RECORDING DIST.
DATE 12/11/97
TIME 4:50 A.M.
Requested by:
Johnson Surveying
Box 27
Clan Gulch, Ak 99568

NOTES

- A building setback of 20' from all street ROW'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.
- No permanent structure shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- Bayview Street vacation approved by the Kenai Peninsula Borough Planning Commission on 12 May 1997.
- This vacation does not constitute a subdivision as defined by 20.08.150 Borough Code of Ordinances.
- All wastewater disposal systems shall comply with existing law at time of construction.
- Lots within this subdivision may be within a designated tidal 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 to determine the elevation of the property may be required prior to construction.
- Underground powerline shown is the centerline of a 15' wide electrical distribution line easement.



PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 13 October, 1997.

KENAI PENINSULA BOROUGH

BY: Max J. Gunt Dec. 18, 1997
Authorized Official Date

OWNERSHIP CERTIFICATE & DEDICATION

We hereby certify that we are the owners of the real property shown and described hereon; and that we hereby adopt this plan of replat, and by our Free consent dedicate and grant all easements to the use shown.

Gary W. Jackinsky 12-10-97
Gary W. Jackinsky P.O. Box 127 Ninilchik, Ak 99639

Stephen VaneK, JR. 6-12-97
Stephen VaneK, JR. P.O. Box 103 Ninilchik, Ak 99639

Monica J. VaneK 12-10-97
Monica J. VaneK P.O. Box 103 Ninilchik, Ak 99639

We further certify that Deeds of Trust affecting this property do not contain restrictions which would prohibit this replat, or require signature and approval of beneficiaries.

Ron T. VaneK 12-10-97
Ron T. VaneK P.O. Box 251 Ninilchik, Ak 99639

Betsy A. VaneK 12/10/97
Betsy A. VaneK P.O. Box 251 Ninilchik, Ak 99639

NOTARY'S ACKNOWLEDGEMENT

For: Stephen VaneK, JR.
Subscribed and sworn to before me this 11th

day of December, 1997.

Katherine L. Bowden
NOTARY PUBLIC STATE OF MISSOURI
SHANNON COUNTY
My Commission Expires MAR. 14, 2000

My commission expires 3-14-2000

NOTARY'S ACKNOWLEDGEMENT

For: Ron T. & Betsy A. VaneK, & Monica J. VaneK
Subscribed and sworn to before me this 10th

day of Dec, 1997.

Sharon A. Subertthal
Notary Public for Alaska
My commission expires 11/25/2001

NOTARY'S ACKNOWLEDGEMENT

For: Gary W. Jackinsky
Subscribed and sworn to before me this 10th

day of Dec, 1997.

Sharon A. Subertthal
Notary Public for Alaska
My commission expires 11/25/2001

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. 367, Tract B: 0.216 "

TRACT C: 0.310 "

Total: 48.174 ACRES

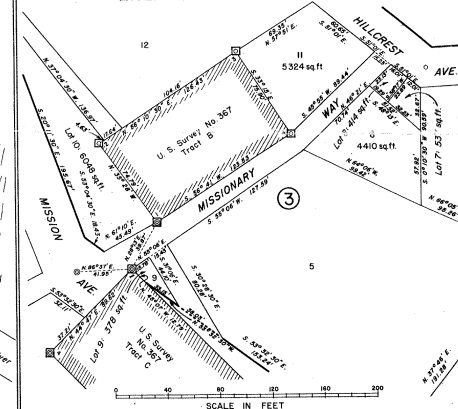
AREA TRACT B: 3.039 ACRES
LATITUDE 60°02'52"N, LONGITUDE 151°30'43"W,
AT CORNER No. 1, TRACT A

SCALE IN FEET
0 80 160 240 320 400 480 560 640

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

RECORDED - FILED
Homer FILED. DIST.
DATE 1-26-1965
TIME 1:40 P.
Requested by B. J. M.
Address Anch.

ENLARGED DIAGRAM No. 2



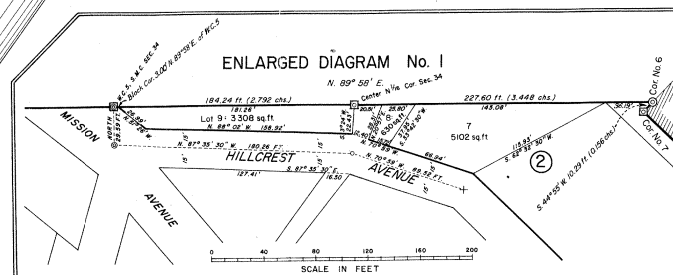
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C., Aug. 7, 1951

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.

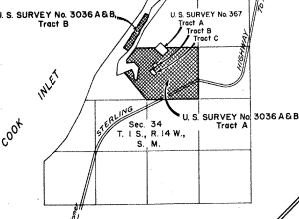
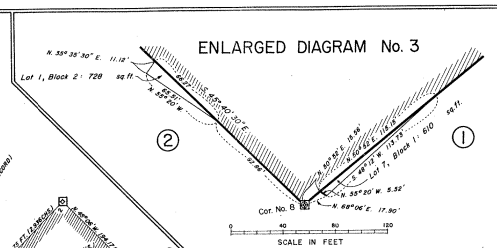
For the Director:

William F. Richards
Chief, Branch of Surveys

ENLARGED DIAGRAM No. 1



ENLARGED DIAGRAM No. 3



LEGEND

- Brass cap 0 to 12 inches below surface of ground in 8 inch concrete column 26 inches long.
 - 2 1/2 inch iron post 28 inches long in concrete base and collar 10 inches diameter and 6 inches thick with brass cap 0 to 12 inches below surface of ground.
 - ✕ Copper pin set in column of concrete below surface of ground.
 - ◇ A stone 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 Dependent Survey of portion of Section 34, T. 1 S., R. 14 W., S. M.
 - Monument described in field notes of U.S. Survey No. 3036A & 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.

