



# **KENAI PENINSULA BOROUGH**

## **PLANNING DEPARTMENT**

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2200 • **FAX:** (907) 714-2378

**Toll-free within the Borough:** 1-800-478-4441, Ext. 2200

[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**MIKE NAVARRE**  
**BOROUGH MAYOR**

## **M E M O R A N D U M**

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

**FROM:** Max Best, Planning Director

**DATE:** September 13, 2017

**SUBJECT:** Vacation of a public access easement within Section 3, T2S, R14W, S.M. as granted on by Serial #2002-004111-0, Homer Recording District; Location: off Lucason Avenue, Happy Valley within the SW1/4 SE1/4 of Section 3, T2S, R14W, S.M., AK, within the KPB; File 2015-127V.

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 11, 2017, the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation by unanimous consent based on the following findings of fact. This petition is being sent to you for your consideration and action.

### *Findings*

1. Simonds Ridge preliminary plat provides a 60-foot right-of-way dedication for Happy O Avenue from Lucason Avenue to the existing dedication of Happy O Avenue to the north, which was dedicated by HM 80-32.
2. Lucason Avenue overlies a 66-foot section line easement.
3. The right-of-way dedication for Happy O Avenue provided by the Simonds Ridge subdivision plat provides alternate public access in lieu of the public access easement proposed to be vacated.
4. Happy O Avenue being dedicated by Simonds Ridge subdivision plat overlies a constructed travel way.
5. The Plat Committee granted conditional approval to Simonds Ridge preliminary plat on October 26, 2015.
6. The final review letter for the paper final plat of Simonds Ridge was issued on November 25, 2015.
7. Preliminary plat approval for Simonds Ridge expires October 26, 2017.
8. Per KPB 20.25.110, a time extension may be requested for the preliminary plat, if needed.
9. Lots within Leisure Time Estates (HM 80-32) to the north depend on the constructed access off Lucason Avenue to reach their properties.
10. Public hearing notices were distributed to all owners fronting Happy O Avenue within HM 80-32 to the north.
11. ACS and ENSTAR submitted statements of no comments/no objections to Simonds Ridge preliminary plat.
12. Homer Electric Association requested the 100-foot transmission line be shown and labeled on the plat. The final plat complied with HEA's recommendation.
13. Sufficient rights-of-way exist to serve surrounding properties.
14. No surrounding properties will be denied access.

The Assembly has 30 days from September 11, 2017 in which to veto the decision of the Planning Commission. If the Commission receives no veto within the 30-day period, the decision of the Commission will stand.

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

cc: petitioners' w/minutes only

BENTZ YES	CARLUCCIO ABSENT	ECKLUND YES	ERNST YES	FIKES ABSENT	FOSTER ABSENT	ISHAM ABSENT
LOCKWOOD YES	MARTIN YES	MORGAN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY YES	8 YES 5 ABSENT

## AGENDA ITEM F. PUBLIC HEARINGS

2. Vacation of a public access easement within Section 3, T2S, R14W, S.M. as granted on by Serial #2002-004111-0, Homer Recording District; Location: off Lucason Avenue, Happy Valley within the SW1/4 SE1/4 of Section 3, T2S, R14W, S.M., AK, within the KPB; File 2015-127V.

Staff Report given by Max Best

PC Meeting: 9/11/17

Purpose as stated in petition: The roadway was improved and moved to a new location that is being proposed for a public right-of-way. Approval of this vacation will be conditioned upon approval and formal dedication of the new right-of-way.

Petitioner: Canterwood Cabins, LLC of Ninilchik, Alaska

Notification: Public notice was published in the August 31, 2017 issue of the Homer News as a separate ad. The public notice was published on September 7 as part of the Planning Commission's tentative agenda.

Five certified mailings were sent to owners of property within 300 feet of the proposed vacation. Two receipts have been returned.

Seven public hearing notices were sent by regular mail to 7 owners within 600 feet of the proposed vacation.

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

The public hearing notice was distributed to 11 KPB Departments by email or shared database.

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

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

### Comments Received:

ACS: No objection

ENSTAR: No objection

Staff Discussion: The Plat Committee approved Simonds Ridge preliminary plat on October 26, 2015. The proposed plat creates 5 lots, 1 tract, provides a 33-foot dedication for Lucason Avenue, and a 60-foot dedication for Happy O Avenue. The dedication for Happy O Avenue overlies an existing travel way. The subject public access easement, which generally follows the dedication for Happy O Avenue, was shown and labeled per KPB Code. The final review letter for the paper final plat was issued on November 25, 2015. Preliminary plat approval expires October 26, 2017.

On August 7, 2017, the owner submitted a petition to vacate the public access easement per HM 2002-004111-0.

### **Findings:**

1. Simonds Ridge preliminary plat provides a 60-foot right-of-way dedication for Happy O Avenue from Lucason Avenue to the existing dedication of Happy O Avenue to the north, which was dedicated by

- HM 80-32.
2. Lucason Avenue overlies a 66-foot section line easement.
  3. The right-of-way dedication for Happy O Avenue provided by the Simonds Ridge subdivision plat provides alternate public access in lieu of the public access easement proposed to be vacated.
  4. Happy O Avenue being dedicated by Simonds Ridge subdivision plat overlies a constructed travel way.
  5. The Plat Committee granted conditional approval to Simonds Ridge preliminary plat on October 26, 2015.
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  8. Per KPB 20.25.110, a time extension may be requested for the preliminary plat, if needed.
  9. Lots within Leisure Time Estates (HM 80-32) to the north depend on the constructed access off Lucason Avenue to reach their properties.
  10. Public hearing notices were distributed to all owners fronting Happy O Avenue within HM 80-32 to the north.
  11. ACS and ENSTAR submitted statements of no comments/no objections to Simonds Ridge preliminary plat.
  12. Homer Electric Association requested the 100-foot transmission line be shown and labeled on the plat. The final plat complied with HEA's recommendation.
  13. Sufficient rights-of-way exist to serve surrounding properties.
  14. No surrounding properties will be denied access.

**STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the vacation as petitioned, subject to:

1. Finalize the vacation of the public access easement per HM 2002-004111-0 by recording the plat Simonds Ridge, KPB File No. 2015-127.
2. Submittal of the mylar for Simonds Ridge within a timeframe such that it can be recorded prior to October 26, 2017, or a time extension request per KPB 20.25.110 be submitted prior to expiration of preliminary plat approval.

**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 city or 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**

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to speak Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Lockwood moved, seconded by Commissioner Ecklund to grant approval of the  
KENAI PENINSULA BOROUGH PLANNING COMMISSION SEPTEMBER 11, 2017 MEETING MINUTES PAGE 9

public access easement vacation located in the Homer Recording District based on staff recommendations, findings and conditions.

**Findings:**

1. Simonds Ridge preliminary plat provides a 60-foot right-of-way dedication for Happy O Avenue from Lucason Avenue to the existing dedication of Happy O Avenue to the north, which was dedicated by HM 80-32.
2. Lucason Avenue overlies a 66-foot section line easement.
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12. Homer Electric Association requested the 100-foot transmission line be shown and labeled on the plat. The final plat complied with HEA's recommendation.
13. Sufficient rights-of-way exist to serve surrounding properties.
14. No surrounding properties will be denied access.

**Conditions**

1. Finalize the vacation of the public access easement per HM 2002-004111-0 by recording the plat Simonds Ridge, KPB File No. 2015-127.
2. Submittal of the mylar for Simonds Ridge within a timeframe such that it can be recorded prior to October 26, 2017, or a time extension request per KPB 20.25.110 be submitted prior to expiration of preliminary plat approval.

**VOTE:** The motion passed by unanimous consent.

BENTZ YES	CARLUCCIO ABSENT	ECKLUND YES	ERNST YES	FIKES YES	FOSTER ABSENT	ISHAM ABSENT
LOCKWOOD YES	MARTIN YES	MORGAN YES	RUFFNER ABSENT	VENUTI YES	WHITNEY YES	9 YES 4 ABSENT

**AGENDA ITEM G.** ANADROMOUS WATERS HABITAT PROTECTION (KPB 21.18) - None

**AGENDA ITEM H.** VACATIONS NOT REQUIRING A PUBLIC HEARING – None

**AGENDA ITEM I.** SPECIAL CONSIDERATIONS - None

**AGENDA ITEM J.** SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Ecklund reported that the Plat Committee reviewed and conditionally approved 7 preliminary plats.

**AGENDA ITEM K.** OTHER/NEW BUSINESS

**AGENDA ITEM L.** ASSEMBLY COMMENTS – None

**AGENDA ITEM M.** LEGAL REPRESENTATIVE COMMENTS - None



# **KENAI PENINSULA BOROUGH**

## **PLANNING DEPARTMENT**

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

September 13, 2017

## **KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF DECISION**

### **MEETING OF SEPTEMBER 11, 2017**

**RE:** Vacation of a public access easement within Section 3, T2S, R14W, S.M. as granted on by Serial #2002-004111-0, Homer Recording District; Location: off Lucason Avenue, Happy Valley within the SW1/4 SE1/4 of Section 3, T2S, R14W, S.M., AK, within the KPB; File 2015-127V.

By unanimous consent, the Kenai Peninsula Borough Planning Commission granted approval of the proposed public access easement vacation during their regularly scheduled meeting of September 11, 2017 based on the following findings of fact and conditions.

#### Findings

1. Simonds Ridge preliminary plat provides a 60-foot right-of-way dedication for Happy O Avenue from Lucason Avenue to the existing dedication of Happy O Avenue to the north, which was dedicated by HM 80-32.
2. Lucason Avenue overlies a 66-foot section line easement.
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13. Sufficient rights-of-way exist to serve surrounding properties.
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#### Conditions

1. Finalize the vacation of the public access easement per HM 2002-004111-0 by recording the plat Simonds Ridge, KPB File No. 2015-127.
2. Submittal of the mylar for Simonds Ridge within a timeframe such that it can be recorded prior to October 26, 2017, or a time extension request per KPB 20.25.110 be submitted prior to expiration of preliminary plat approval.

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. The proposed vacation will be forwarded to the Borough Assembly. The Assembly shall have 30 calendar days from the date of approval (September 11, 2017) in which to veto the Planning Commission decision. If the Planning Director receives no veto within the specified period, the Assembly shall be considered to have given consent to the vacation.

Please contact the Borough Clerk's office (907-714-2160 or 1-800-478-4441 toll-free within the borough) for additional information.

This notice and unapproved minutes of the subject portion of the meeting were sent September 13, 2017 to:

Johnson Surveying  
Box 27  
Clam Gulch, AK 99568

Bear Hollow Outfitters, LLC  
Troy Hines  
PO Box 39664  
Ninilchik, AK 99639

Canterwood Cabins, LLC  
Suzan Simonds  
PO Box 39527  
Ninilchik, AK 99639-0527

Canterwood Cabins, LLC  
600 W. 78<sup>th</sup> Ave #409  
Anchorage, AK 99518

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**STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the vacation as petitioned, subject to:

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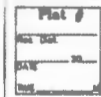
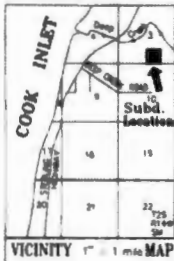
**KPB 20.70.120:**

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**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**



# SIMONDS RIDGE

Located in the SW1/4 SE1/4 Section 3 T2S R14W S4, Alaska

Home Recording District Keno Peninsula Borough File 2015-127

**Prepared For**  
Susan Simonds  
P.O. Box 38527  
Kenai, AK 99558

**Prepared by**  
Johnson Surveying  
Box 77  
Clam Gulch, AK 99568



SCALE 1" = 100' AREA = 39.992 acres 31 August, 2015

## LEGEND

- ① - 2" iron pipe monument, 1978, found
- ② - 2" iron pipe monument, 7326-S, 1984, found
- ③ - 1" iron pipe monument, 1302-S, 1978, found
- - 1/2" rebar set corner as shown on plat HRD 80 32, found
- - 1/2" x 4 rebar with plastic top, set

## NOTES

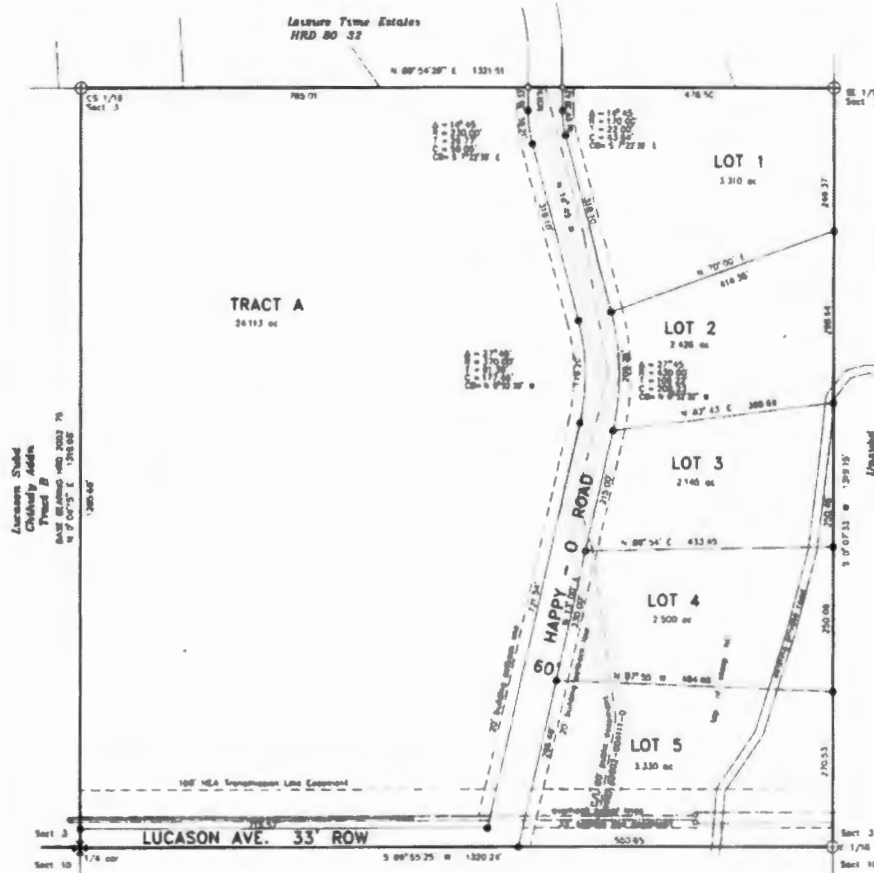
1. A building setback of 20' from all street ROW's is required unless a lesser standard is approved by a resolution of the appropriate planning commission. Front 15' of building setback is also a utility easement, as is the entire setback within 5' of side of lots.
2. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
3. Exceptions to extending Lucason Ave. any further East and for block length for this subdivision were granted by the Kenai Peninsula Commission at the meeting of 26 October, 2015.

## PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of 26 October, 2015.

KENAI PENINSULA BOROUGH

By \_\_\_\_\_  
Authorized Official Date \_\_\_\_\_



## OWNERSHIP CERTIFICATE & DEDICATION

I hereby certify that I am the owner of the real property shown and describe herein, and that I hereby accept the plan of subdivision, and by my free consent dedicate all right-of-ways and grant or easements to the use shown.

Susan M. Simonds, authorized member, Cornerwest Cabins, LLC  
P.O. Box 38527, Kenai, AK 99558

## NOTARY'S JURAT

I, Susan M. Simonds  
Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

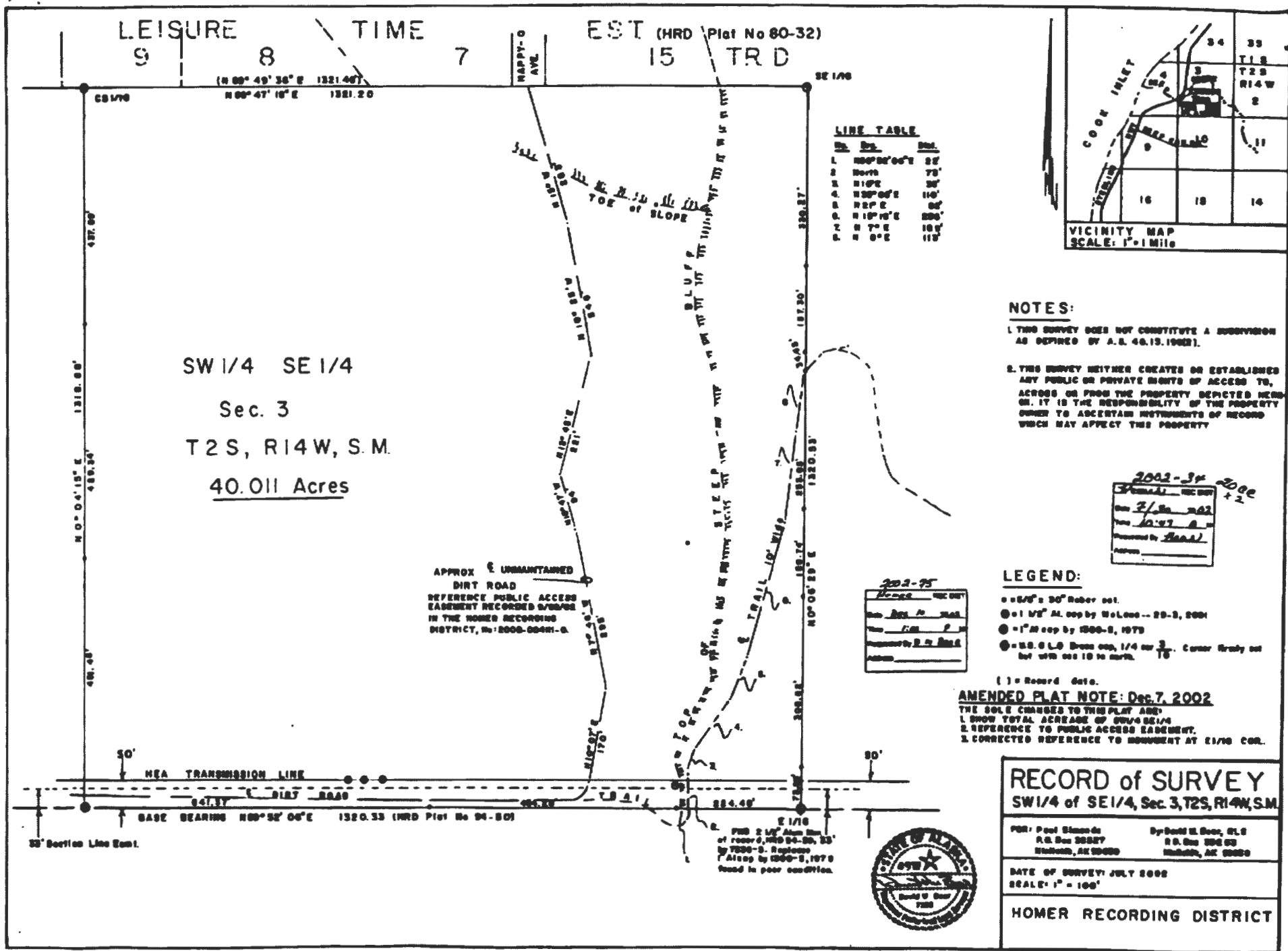
Notary Public for Alaska  
My commission expires \_\_\_\_\_

## WASTEWATER DISPOSAL

TRACT A  
24.113 ac  
This lot is at least 200,000 square feet or more and is zoned for residential use. The owner of this lot is required to provide wastewater treatment and disposal system serving single-family or duplex residences and meeting the regulatory requirements of the Alaska Dept. of Environmental Conservation.

CONC 1.3  
30.40.042  
See conditions, water table levels, and soil types in this subdivision. The owner of this lot is required to provide wastewater treatment and disposal system serving single-family or duplex residences and meeting the regulatory requirements of the Alaska Peninsula Borough. Any other type of waste 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.

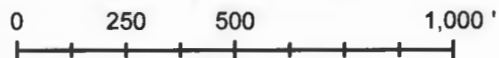
Engineer \_\_\_\_\_  
License # \_\_\_\_\_  
Date \_\_\_\_\_





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

### Aerial View



Public Access Easement Vacation

JReif, KPB  
Date: 8/14/2017

2002-004111-0

Recording Dist: 309 - Homer

9/9/2002 9:41 AM Pages: 1 of 1

A  
L  
A  
S  
K  
A**PUBLIC ACCESS EASEMENT**

CC

GRANTORS, Robert B. Horton and ~~Marion Horton~~ Family Trust, owners of the SW ¼ of SE ¼, Section 3, T 2 S, R 14 W, S.M., Alaska, HEREBY GRANT a 60 ft. wide public access easement traversing the above described property from south to north and being more particularly located by the following centerline description: From a point on the north line of a 33 ft. wide section-line easement which adjoins the south line of the above described section 3, located approximately 910 ft. N 89° 52' 06" E of the southwest corner(which is also the ¼ corner between sections 3 and 10) of the above described property, the centerline of a 60 ft. wide public access easement extends N 10° E, 180 ft., Thence; N 8° W, 295 ft., Thence; N 16° W, 94 ft., Thence; N 14° E, 221 ft., Thence; N 10° W, 246 ft., Thence; N 15° W, 263 ft. to the south boundary of Leisure Time Estates S/D, HRD Plat No. 80-32, to connect with the centerline of the dedicated right-of-way of Happy-O-Avenue within the Leisure Time Estates S/D. **NOTE:** Bearings and distances are approximate and are intended only to indicate general direction and distance as the existing road is unimproved and not maintained and tends to meander depending on ground conditions.

This easement is subject to regulations of the Kenai Peninsula Borough and may be used for any purpose authorized under said regulations.

**THIS DOCUMENT SUPERCEDES AND REPLACES** that certain document(#94-3192) recorded in Book 236, Page 0334, Homer Recording District Alaska on August 26, 1994.

In witness whereof, the current owners of said property have duly executed this GRANT OF PUBLIC ACCESS EASEMENT.

Robert B Horton  
TRUSTEE

\_\_\_\_\_  
TRUSTEE

STATE OF MICHIGAN )  
 ) ss.  
36<sup>TH</sup> JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 19<sup>th</sup> day of August, 2002 before me, the undersigned Notary Public in and for the State of Michigan, duly commissioned and sworn as such, personally appeared Robert B. Horton and Marion Horton, known to me and to me known to be the individuals named in and who executed the foregoing instrument, and they acknowledged to me that they signed the same freely and voluntarily for the purposes therein set forth.

WITNESS my hand and official seal

James D. Betty  
Notary Public in and for Van Buren County, MI  
My Commission Expires: OCT. 5, 2005



--- RETURN TO:  
PAUL SIMONDS  
P.O. BOX 39527  
NINILCHIK, AK 99639  
HOMER RECORDING DISTRICT



Kenai Peninsula Borough Planning Department  
 144 North Blakely  
 Soldotna, Alaska 99686-7300  
 Toll free within the Borough 1-800-476-4441, extension 2200  
 (907) 714-2200

RECEIVED

Aug - 7 2017

KENAI PENINSULA BOROUGH  
 PLANNING DEPARTMENT

**Petition to Vacate Public Right-of-Way/Easement/Platted Public Area  
 Public Hearing Required**

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☐ Name of public right-of-way proposed to be vacated is dedicated by the plat of \_\_\_\_\_ Subdivision, filed as Plat No. \_\_\_\_\_ in \_\_\_\_\_ Recording District.
- ☐ Are there associated utility easements to be vacated? ☐ Yes ☐ No
- ☐ Are easements in use by any utility company? If so, which company \_\_\_\_\_
- ☒ Easement for public road or right-of-way as set out in (specify type of document) \_\_\_\_\_  
 Date 0803-081111-0 as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_  
 \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition.)
- ☒ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No  
 Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No  
 Is alternative right-of-way being provided? ☒ Yes ☐ No

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

Rightway was improved and moved to a new location that is being proposed for Public ROW

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

Submitted By:

Name: SUZAN SIMMONS Signature as: ☒ Petitioner ☐ Representative  
 Address: PO BOX 39527  
N. N. ICHNIK AK 99639  
 Phone: 907-331-8140

Petitioners:

Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
Owner of _____	Owner of _____
Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
Owner of _____	Owner of _____

Kenai Peninsula Borough Planning Department  
 Revised 2/21/14