


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

**TO:** Wayne Ogle, Assembly President  
Kenai Peninsula Borough Assembly Members

**FROM:** Max Best, Planning Director 

**DATE:** November 14, 2018

**RE:** Vacate the Marianberry Lane right-of-way as dedicated on Hostetter Subdivision No. 2 Amended, Plat HM 2002-7 in the Ninilchik area and the associated 10-foot wide utility easements adjoining the Marianberry Lane right-of-way as granted by Hostetter Subdivision No. 2 Amended, Plat HM 2002-7. Location: within the S1/2 SE1/4 of Section 26, Township 1 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-128V.

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 November 13, 2018, the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way and utility easement vacations by unanimous consent based on the following findings of fact. This petition is being sent to you for your consideration and action.

#### *Findings:*

3. Marianberry Lane serves Tract C, Tract D, and the unsubdivided remainder of Hostetter Subdivision No. 2.
4. Per the preliminary plat that will finalize the vacations, if approved, Tract C, Tract D, and the unsubdivided remainder will be combined into a 9-acre and 118-acre tract.
7. Marianberry Lane does not serve adjoining or adjacent acreage parcels.
8. If the vacations are approved, finalization will be accomplished by recording Hostetter 2018 Replat.
9. Hostetter 2018 Replat provides a 30-foot dedication for German Avenue across its entire northern boundary.
10. All adjoining parcels front existing rights-of-way and/or section line easements.
11. No adjoining or adjacent acreage parcels will be denied access.
12. KPB Roads Department submitted a statement of no comments.
13. Per the submittal, the right-of-way proposed for vacation has not been constructed.
14. Per the submittal, the right-of-way proposed for vacation is not being used for access.

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

cc: petitioners' w/minutes only

## AGENDA ITEM F. PUBLIC HEARINGS

1. Vacate the Marianberry Lane right-of-way as dedicated on Hostetter Subdivision No. 2 Amended, Plat HM 2002-7. Vacate the associated 10-foot wide utility easements adjoining the Marianberry Lane right-of-way as granted by Hostetter Subdivision No. 2 Amended, Plat HM 2002-7; Location: within the S1/2 SE1/4 of Section 26, Township 1 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-128V.

Staff Report given by Scott Huff

PC Meeting: 11/13/18

Purpose as stated in petition: The existing right-of-way to be vacated only serves as access to Tracts C and D Hostetter Subdivision No. 2. The lot lines of this property are going to be removed and the owners don't want an unnecessary right-of-way extending across the property.

Petitioners: Rhoda M. Dolifka and Dale L. Dolifka of Soldotna, AK.

Notification: Public notice appeared in the November 1 issue of the Homer News as a separate ad and the November 8 issue as part of the Commission's tentative agenda.

Public notices were sent by certified mail to 5 owners within 300 feet of the proposed vacations. All receipts have been returned.

Public notices were sent by regular mail to 3 owners within 600 feet of the proposed vacations.

Public notices were emailed to 16 agencies and interested parties.

Public notices were made available to 10 KPB staff by email or via a shared database.

Public notices were mailed to the Ninilchik Community Library and Ninilchik Post Office with a request to post in public places.

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

### Comments Received:

ACS: No objections.

ENSTAR: No comments, recommendations, or objections.

KPB Addressing: Existing street names are correct. No Marianberry Lane addresses have been issued.

KPB Planner: No material site or local option zone issues.

KPB Roads Department: No comments.

River Center: Not within a flood hazard area. It is partially within the Habitat Protection District.

State Parks: No comments.

### Staff Discussion:

Finalization of the vacations, if approved, will be by recording Hostetter 2018 Replat. Two different preliminary plats were submitted. In response to an inquiry from staff, the surveyor stated the only right-of-way proposed to be vacated is Marianberry Lane. German Avenue is not proposed to be vacated. Unfortunately, this clarification came too late to be included in the newspaper ad and the public hearing

notices that were mailed and emailed.

Hostetter 2018 Replat is scheduled to be reviewed by the Plat Committee on November 26. The Plat Committee will need to consider exceptions to KPB 20.30.030 (extension and dedication of right-of-way) and 20.30.170 (block length) for the preliminary plat. Extra right-of-way and/or slope easements may be required to accommodate steep terrain within the right-of-way being dedicated for German Avenue. The deed parcel adjoining the subject property contains 1.25 acres so it is too small to be further subdivided. Right-of-way dedication for German Avenue adjoining the deed parcel may need to be expanded in accordance with KPB 20.30.110.

**Findings:**

1. Per KPB GIS mapping, the unnamed creek crossing Tract C and Tract D, which parallels Marianberry Lane, is anadromous.
2. Per the River Center review, the unnamed stream is part of the Habitat Protection District and is protected by KPB 21.18.
3. Marianberry Lane serves Tract C, Tract D, and the unsubdivided remainder of Hostetter Subdivision No. 2.
4. Per the preliminary plat that will finalize the vacations, if approved, Tract C, Tract D, and the unsubdivided remainder will be combined into a 9-acre and 118-acre tract.
5. The lakebed affecting the subdivision has been shown and labeled.
6. Slopes greater than 20 percent have been shown and labeled.
7. Marianberry Lane does not serve adjoining or adjacent acreage parcels.
8. If the vacations are approved, finalization will be accomplished by recording Hostetter 2018 Replat.
9. Hostetter 2018 Replat provides a 30-foot dedication for German Avenue across its entire northern boundary.
10. All adjoining parcels front existing rights-of-way and/or section line easements.
11. No adjoining or adjacent acreage parcels will be denied access.
12. KPB Roads Department submitted a statement of no comments.
13. Per the submittal, the right-of-way proposed for vacation has not been constructed.
14. Per the submittal, the right-of-way proposed for vacation is not being used for access.

**STAFF RECOMMENDATION:** Based on Findings 3, 4, and 7-14 staff recommends approval of the vacations as petitioned, subject to:

1. Consent of the KPB Assembly.
2. Grant utility easements requested by the utility providers.
3. Submittal of a final plat in accordance with Chapter 20 of the KPB Code within a timeframe such that the plat can be recorded within one year of vacation consent.

**KPB 20.70.110:**

**A vacation of a street right-of-way, public area, or public easement within the borough outside of the limits of cities may not be made without the consent of the borough assembly. The assembly shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the borough shall be considered to have given consent to the vacation.**

**KPB 20.70.120:**

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

**KPB 20.70.130:**

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

**20.70.110.**

**END OF STAFF REPORT**

Chair Pro Tem Carluccio opened the meeting for public comment. Seeing and hearing no one wishing to speak, Chair Pro Tem Carluccio closed public hearing and opened discussion among the Commission.

**MOTION:** Commissioner Bentz moved, seconded by Commissioner Whitney to approve the vacation as petitioned subject to consent of the KPB Assembly, grant utility easements requested by the utility providers, and submittal of a final plat in accordance with Chapter 20 of the KPB Code.

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

**MOTION:** Commissioner Bentz moved, seconded by Commissioner Whitney to cite staff report findings 3, 4, and 7 through 14.

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

UNAPPROVED



# Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce  
Borough Mayor

November 15, 2018

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

### **MEETING OF NOVEMBER 13, 2018**

RE: Vacate the Marianberry Lane right-of-way as dedicated on Hostetter Subdivision No. 2 Amended, Plat HM 2002-7 in the Ninilchik area and the associated 10-foot wide utility easements adjoining the Marianberry Lane right-of-way as granted by Hostetter Subdivision No. 2 Amended, Plat HM 2002-7; Location: within the S1/2 SE1/4 of Section 26, Township 1 South, Range 14 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough; KPB File 2018-128V.

By unanimous consent, the Kenai Peninsula Borough Planning Commission granted approval of the proposed right-of-way and utility easement vacations during their regularly scheduled meeting of November 13, 2018 based on the following findings of fact.

#### *Findings:*

3. Marianberry Lane serves Tract C, Tract D, and the unsubdivided remainder of Hostetter Subdivision No. 2.
4. Per the preliminary plat that will finalize the vacations, if approved, Tract C, Tract D, and the unsubdivided remainder will be combined into a 9-acre and 118-acre tract.
7. Marianberry Lane does not serve adjoining or adjacent acreage parcels.
8. If the vacations are approved, finalization will be accomplished by recording Hostetter 2018 Replat.
9. Hostetter 2018 Replat provides a 30-foot dedication for German Avenue across its entire northern boundary.
10. All adjoining parcels front existing rights-of-way and/or section line easements.
11. No adjoining or adjacent acreage parcels will be denied access.
12. KPB Roads Department submitted a statement of no comments.
13. Per the submittal, the right-of-way proposed for vacation has not been constructed.
14. Per the submittal, the right-of-way proposed for vacation is not being used for access.

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 (November 13, 2018) 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 November 15, 2018 to:

Peninsula Surveying, LLC  
10535 Katrina Boulevard  
Ninilchik, AK 99639

Dale L. and Rhoda M. Dolifka  
PO Box 498  
Soldotna, AK 99669-0498

Ron and Ruth D. Sterling  
2811 Monarch Cir.  
Anchorage, AK 99516-2067

## **F. PUBLIC HEARINGS**

- 1. Right-of-way vacation of Marianberry Lane and south 30 feet of German Avenue with associated 10-foot utility easements in the Ninilchik area as dedicated by Hostetter Subdivision No. 2 Amended (Plat HM 2002-7) within S1/2 SE1/4 of Section 26, Township 1 South, Range 14 West, Seward Meridian, Alaska, and Kenai Peninsula Borough. Petitioners: Rhoda M. Dolifka and Dale L. Dolifka of Soldotna, Alaska. KPB File: 2018-128V**

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**KPB 20.70.130:**

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**END OF STAFF REPORT**



200' 100' 0' 200'  
1" = 200'

#### LEGEND

- FOUND 5/8" REBAR
- FOUND 1" IRON PIPE
- FOUND 1.5" ALUMINUM MONUMENT, 5152-S, 2000
- FOUND 2.5" BRASS MONUMENT AS DESCRIBED
- FOUND 2.5" ALUMINUM MONUMENT AS DESCRIBED
- SET 5/8" X 30" REBAR WITH 2.5" ALUMINUM CAP, 14400-S, 2016
- ( ) RECORD DATA PER PLAT 2002-7, HRD
- ( ) MEASURED AND RECORD DATA PER PLAT 2002-7, HRD

LINE TABLE	
L1	N00°02'18"E 30.07'
(L1)	NORTH 30.00'
L2	N00°01'06"E 254.63'
(L2)	NORTH 255.12'
L3	N89°54'36"W 294.68'
(L3)	N89°58'10"W 295.16'
L4	S00°03'45"W 295.33'
(L4)	SOUTH 295.16'

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD	CHORD BEARING
C1	11610.00'	290.86'	01°55'44"	390.86'	N10°47'47"E
(C1)	11610.00'	291.17'	01°55'50"	391.15'	N10°47'45"E

#### CERTIFICATE OF OWNERSHIP AND 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 SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND GRANT ALL EASEMENTS TO THE USE SHOWN.

DALE L. DOLYKA  
PO BOX 488 SOLDOTNA, AK 99583

RHODA M. DOLYKA  
PO BOX 488 SOLDOTNA, AK 99583

RON STERLING  
2011 MONARCH CIR ANCHORAGE, AK 99516

RUTH D. STERLING  
2011 MONARCH CIR ANCHORAGE, AK 99516

#### NOTARY ACKNOWLEDGMENT

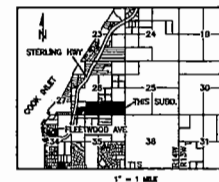
FOR DALE L. DOLYKA AND RHODA M. DOLYKA  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_, 2018

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES: \_\_\_\_

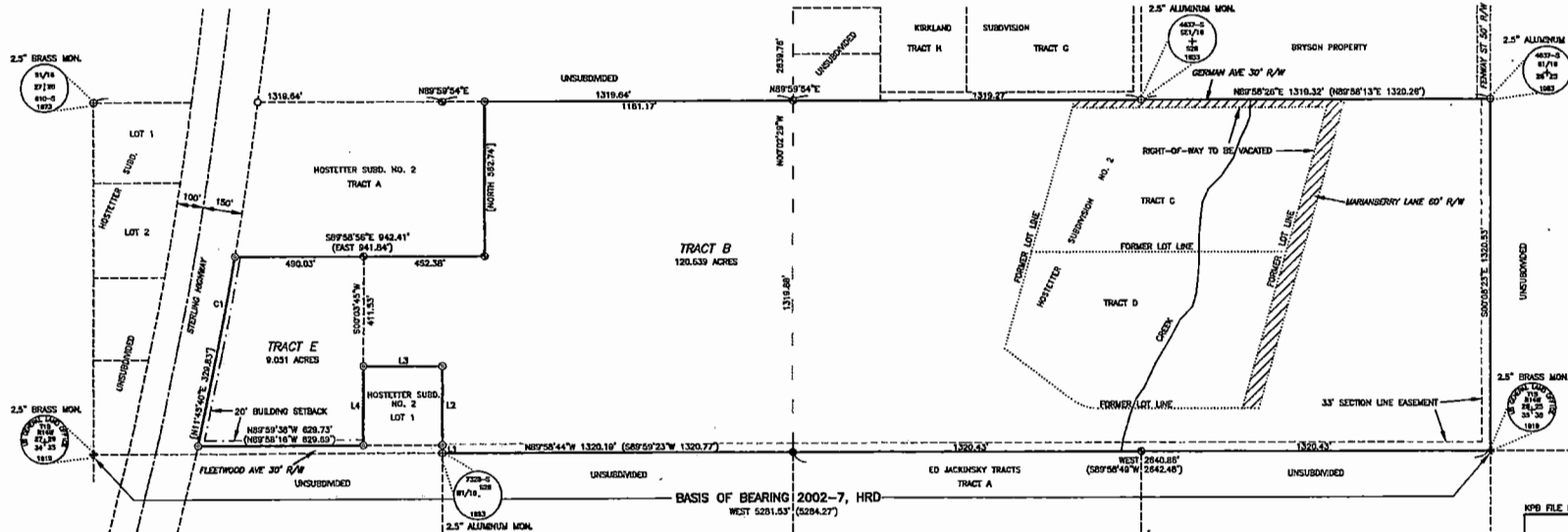
#### NOTARY ACKNOWLEDGMENT

FOR RON STERLING AND RUTH D. STERLING  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_, 2018

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES: \_\_\_\_



1" = 1 MILE



#### NOTES

1. A BUILDING SETBACK OF 20' IS REQUIRED FROM ALL STREET RIGHT-OF-WAYS UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION. THE FRONT 10' OF THE BUILDING SETBACK IS ALSO A UTILITY EASEMENT.
2. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.

#### WASTEWATER DISPOSAL

LOTS WHICH ARE AT LEAST 200,000 SQUARE FEET OR NOMINAL FIVE ACRES IN SIZE MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

#### PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF KENAI PENINSULA BOROUGH

BY: \_\_\_\_\_  
AUTHORIZED OFFICIAL

KPB 2018-128V

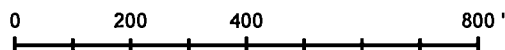




KPB FILE NUMBER:	
PENINSULA SURVEYING, LLC 10533 KATHA ROAD SOLDOTNA, AK 99583	
PLAT OF <b>HOSTETTER 2018 REPLAT</b>	
A SUBDIVISION OF TRACT C AND TRACT D HOSTETTER SUBD NO. 2, 2002-7, HRD AND THE S1/2 S1/2 E OF THE STERLING HWY, EXCLUDING HOSTETTER SUBD NO. 2	
LOCATED WITHIN S1/2 S1/2 SEC. 26, T.15, R.14W., S.M. NOMEN RECORDING DISTRICT, KENAI PENINSULA BOROUGH CHODOWN ISLAND ACRES	
OWNERS: DALE L. DOLYKA AND RHODA M. DOLYKA PO BOX 488 SOLDOTNA, AK 99583 RON STERLING AND RUTH D. STERLING 2011 MONARCH CIR ANCHORAGE, AK 99516	
SCALE: 1" = 200'	DATE: 09/10/2018
DRAWN: JLS	SHEET: 1 OF 1



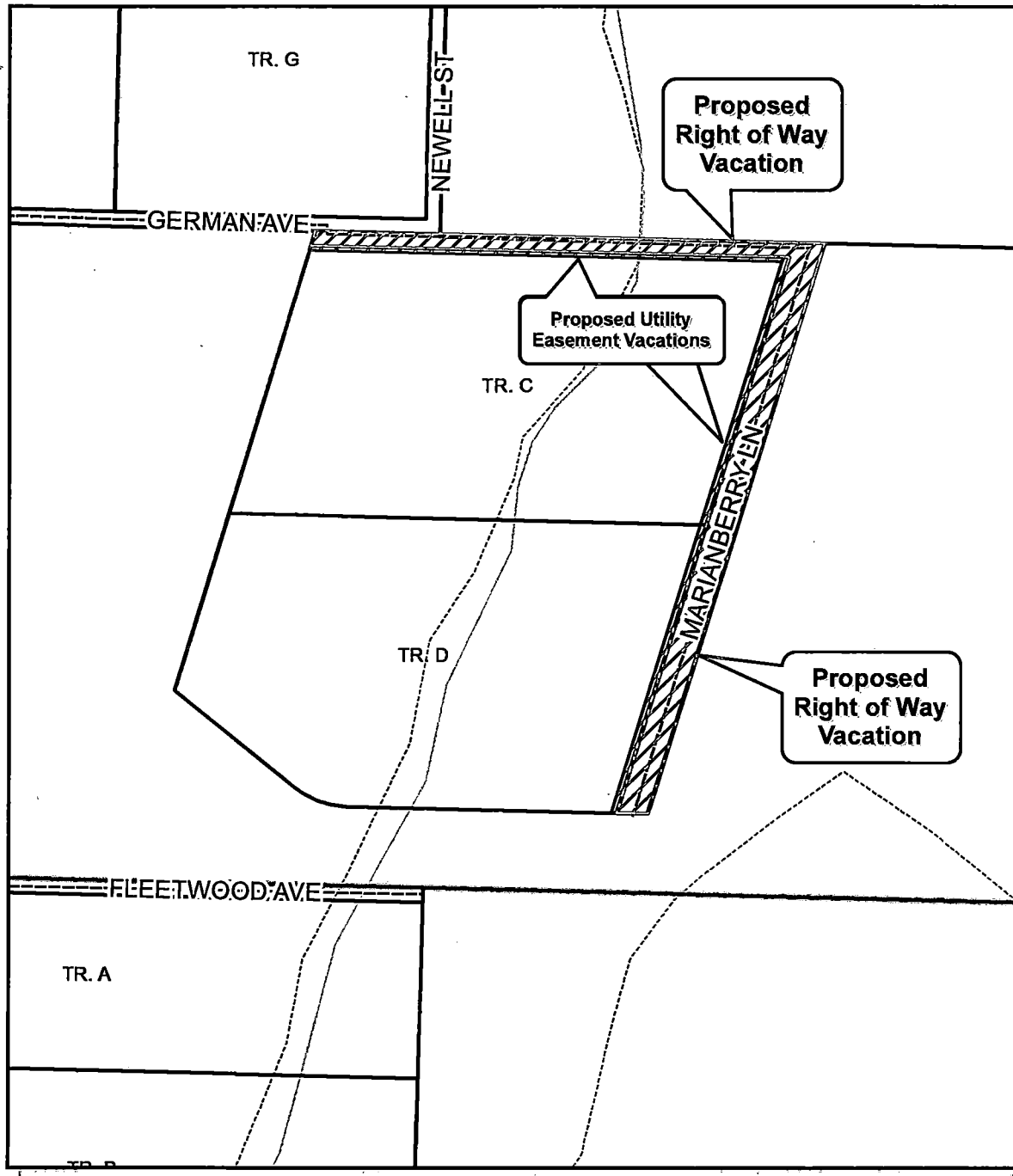
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

### Aerial View

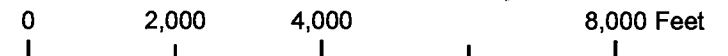
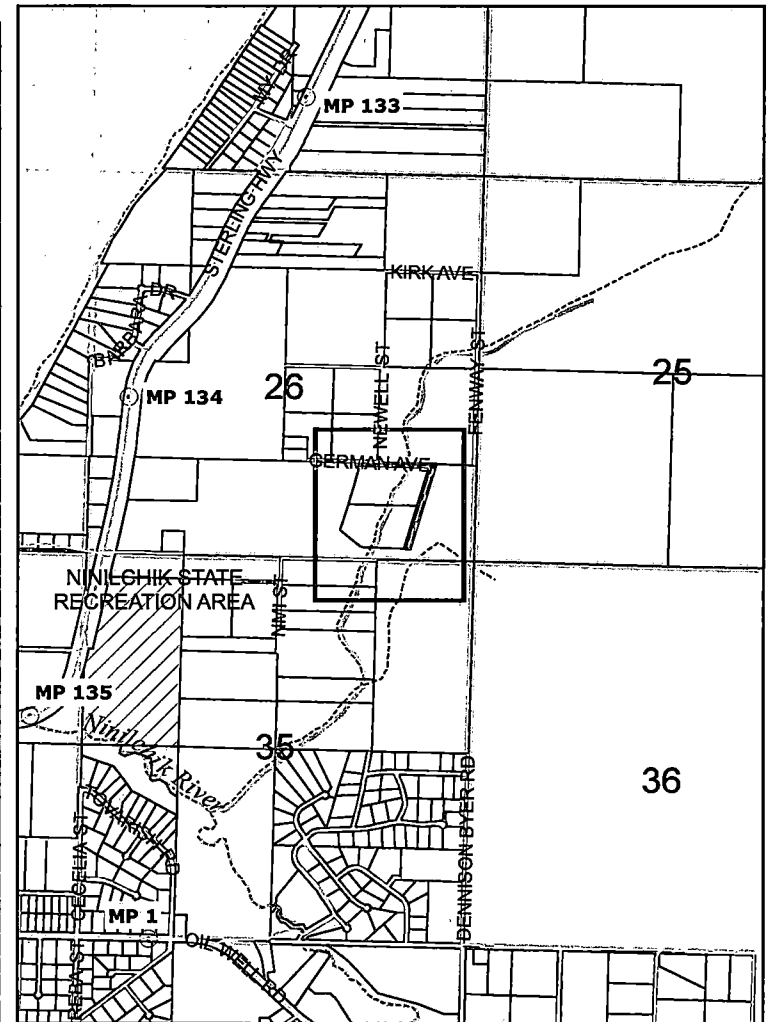
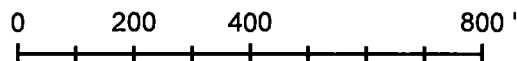


-  Right of Way Vacation
-  Utility Easement Vacation

JReif, KPB  
Date: 10/5/2018



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KPB 2018-128V  
T01S R14W S26  
NINILCHIK



JReif, KPB  
Date: 10/5/2018