


# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

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

**FROM:** Max Best, Planning Director 

**DATE:** January 8, 2020

**RE:** Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V. Petitioner: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK.

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 January 6, 2020, the Kenai Peninsula Borough Planning Commission granted approval of the proposed pedestrian and maintenance easement vacation by unanimous consent based on the means of evaluating public necessity established by KPB 20.70. This petition is being sent to you for your consideration and action.

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

**Kenai Peninsula Borough**

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



- ☒ \$500 non-refundable fee
- ☐ City Advisory Planning Commission
- ☒ Name of public right-of-way proposed to be vacated is dedicated by the plat of Kenai River Keys Subdivision, Lot 1A, Block 6 and Stephenkie Subdivision No. 2 Lot 9A1, Block 2 filed as Plat No. 84-77 and 84-126 in Kenai Recording District.
- ☐ Are there associated utility easements to be vacated? ☐ Yes ☒ No
- ☐ Are easements in use by any utility company? If so, which company Not in use
- ☐ Easement for public road or right-of-way as set out in (specify type of document) only on plats as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition.) Copy of plats provided.
- ☒ Submit three copies of plat or map showing area proposed to be vacated. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to.
  - 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:

1. A 50 ft pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat 79-83 KRD, prepared by the Alaska Division of Lands as State Land Survey No. 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat 84-77 KRD) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat 84-126 KRD), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 ft of the former Section Line Easement and Humpy Road was attached to Lot 1 which then became Lot 1A. The 50' pedestrian and maintenance easement then extended that 23 ft into Lot 1A. Vacation of this portion of the 50' pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats.
2. The 50 ft pedestrian and maintenance easement through Lots 9-A, 10-B and 10-A, Block 2, Stephenkie Subdivision No. 2 (Plat 81-96 KRD), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.
3. The portion of the section line easement and Humpy Road that was not vacated is 20 ft wide and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.


Petition to Vacate Public Right-of-Way/Easement/Platted Public Area  
Submitted by Frank G. Turpin III  
November 19, 2019

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.

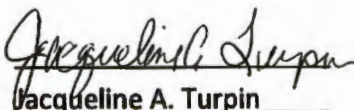
Submitted By:

Name Frank G. Turpin III  
Address PO Box 1113  
Sterling, AK 99672  
Phone 907-953-9775

Petitioners:

Signature   
Name Frank G. Turpin III  
Address PO Box 1113  
34505 Chinook Run Drive  
Sterling, AK 99672

Owner of T 5N R 8W SEC 35 Seward Meridian KN 0840126 KENAI RIVER KEYS SUB  
VACATION & R EPLAT LOT 1A BLK 6

Signature   
Name Jacqueline A. Turpin  
Address PO Box 1113  
34505 Chinook Run Drive  
Sterling, AK 99672

Owner of T 5N R 8W SEC 35 Seward Meridian KN 0840126 KENAI RIVER KEYS SUB  
VACATION & R EPLAT LOT 1A BLK 6



AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V.

Staff Report given by Scott Huff

PC Meeting: 1/6/20

Purpose as stated in petition: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A. The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30. The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.

Petitioners: Frank G. Turpin III and Jacqueline A. Turpin of Sterling, AK.

Notification: Public notice appeared in the December 26, 2019 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the January 2, 2020 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

13 certified mailings were sent to owners of property within 300 feet of the proposed vacation. 12 receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 19 owners within 600 feet of the proposed vacation.

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

Public hearing notices were made available to 6 KPB staff/Departments via a shared database.

Notices were mailed to the Sterling Post Office and Soldotna Public 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 objections.

ENSTAR: No comments, recommendations or objections.

Homer Electric Association: Comments not available when the staff report was prepared.

KPB Addressing: no changes.

KPB Planning: This property is not affected by local option zoning or material site issues.

KPB River Center: This property is within the floodway and within the habitat protection district. No other comments.

KPB Roads Department: no comment.

State Parks: No comment.

Staff Discussion: Lot 1A adjoins the west side and Lot 9A adjoins the east side of Humpy Road where it meets the Kenai River.

Plat KN 79-83 granted a 50-foot pedestrian easement along the ordinary high way line of any water frontage lots. This easement affected the lots up river of Lot 1A.

Plat KN 81-96 carried forward the 50-foot pedestrian and maintenance easement along the high water mark of the Kenai River within Lot 9A1.

Plat KN 84-77 vacated 23 feet of the section line easement within Lot 1A and 40 feet of the section line easement within Lot 9A1. The plat noted the existing pedestrian and maintenance easement within Lot 9A, KN 81-96. From the letter dated march 1, 1984, the depiction of the 50-foot pedestrian access and maintenance easement was at the request of the State of Alaska Department of Natural Resources. The 50-foot pedestrian access and maintenance easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated.

Plat KN 84-126 vacated 23 feet of the Humpy Road right-of-way within Lot 1A and a portion of the Humpy Road right-of-way within Lot 9A1. Plat KN 84-126 carried forward the 50 foot pedestrian and maintenance easement of record.

The owners of Lot 1A signed both Plat KN 84-77 and KN 84-126.

The 50-foot pedestrian and maintenance easement within the lots 9A, 10A and 10B, Block 2 Stephenkie Subdivision No. 2 show as being vacated by KPB Planning Commission Resolution 89-30, leaving only the portion of easement underlying Humpy Road and within Lot 1A. The vacation of the easement, as shown in Planning Commission Resolution 89-30 may not be valid as the easement did not go through the State DNR vacation process.

The remaining 50-foot pedestrian and maintenance easement extends 23' into Lot 1A and underlies the section line easement and Humpy Road right-of-way between Lots 1A and 9A.

If approved, the vacation will need to be finalized through the State's vacation process.

#### **KPB 20.70 – Vacation Requirements.**

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days



in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

*Petitioner Comments: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A.*

*The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.*

*The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.*

**20.70.170. Vehicular Access.** The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

*Platting Staff Comments: Per the petition, the easement is unconstructed and not used for vehicular access. Per aerial imagery, the portion of Lot 1A the easement affects is a lawn fronting the Kenai River. The easement is a pedestrian easement that does not permit vehicular uses.*

*The only access the easement provides is to the 23' of riverfront west of Humpy Road. The easement within Lot 1A adjoins the 20' wide Humpy Road right-of-way and a 20' wide section line easement. Per aerial imagery, the portion of Humpy Road adjoining Lot 1A is partially constructed north of the subject easement and extends north to a fully constructed portion of Humpy Road that provides access to Lot 1A. The adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.*

**Staff recommendation:** Concur that equal or superior right-of-way for vehicular access exists within the 20' width Humpy Road right-of-way and section line easement.

**20.70.180. Other access.** Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

*Platting Staff Comments: Per the submittal, no other uses exist within the easement.*

*Per KPB four foot contours, the easement is generally flat. However, the easement within Lot 1A is not suited for general road use. This portion of Lot 1A is located within Flood Hazard Zone A3, the floodway, and the Anadromous Habitat Protection District.*

*The only other uses permitted within the easement are pedestrian and maintenance uses. While the easement is not in use for other uses, the easement could feasibly be used by pedestrians. However, the*

*easement only provides pedestrian access to the 23' of waterfront west of the Humpy Road right-of-way. As noted, above the adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.*

**Staff recommendation:** *Concur that equal or superior access for other uses exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public 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 public utility easement be granted in place of the right-of-way.

*Platting Staff Comments: Per the petition, the easement is not utilized by a public utility. The pedestrian and maintenance easement on its face does not permit use by a public utility.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: Vacation of this pedestrian and maintenance easement would not limit public access to the Kenai River. As noted above, public access to the Kenai River is provided by the adjoining Humpy Road right-of-way and section line easement.*

**Staff recommendation:** *Concur that adjoining access to the public waters of the Kenai River via the Humpy Road right-of-way and section line easement will be retained even if this vacation is approved.*

**20.30.220. Section line easement vacations.**

Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

*Platting Staff Comments: Although this is not a section line easement vacation it is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation.*

**Staff recommendation:** *Comply with KPB 20.30.220.*

**STAFF RECOMMENDATION:** The petition must be reviewed and either approved or denied by the planning commission but final authority for approval of the vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the vacations as petitioned, subject to:

1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

**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**

Mr. Huff added that the owner has submitted some comments and is going to attempt to obtain a letter of non-objection from the State of Alaska. If the State of Alaska releases their jurisdiction and an easement vacation plat is not required than the vacation, if approved by the Planning Commission, can be completed by recording a resolution. If that happens staff will bring the resolution before the Planning Commission for review and approval.

Chairman Martin asked if the applicant or a representative for the applicant wished to comment on this item.

1. Frank Turpin, PO Box 1113, Sterling

Mr. Turpin is the petitioner and lives at the property being discussed. The pedestrian and maintenance easement was created in 1984 as part of a section line vacation process. When the section line easement was vacated this easement remained and he is trying to clear it up. He agrees with staff's recommendations. He does realize he needs to work with DNR to get a letter. He will attempt to get a letter that states they do not have the jurisdiction over this easement. Once they get the letter he will come back to get the resolution approved. If DNR says they do have jurisdiction he will have to get their approval to vacate the easement.

Chairman Martin asked if anyone else wished to comment. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and opened discussion among the Commission.

Mr. Huff wanted to clarify that the approval should be for four years.

**MOTION:** Commissioner Ruffner moved, seconded by Commissioner Foster, to vacate a 50-foot wide pedestrian and maintenance easement in the Sterling area as petitioned by Frank Turpin III.

Commissioner Ruffner asked if Fish and Game commented on this request. Mr. Huff said that they did not comment on this current application only in the past.

Commissioner Ecklund asked if Mr. Huff could clarify a statement made in the staff report. The Planning Commission has vacated similar easements in the area but the follow through process with DNR did not occur. Mr. Huff referred to page 193 of the packet, which is a subdivision plat. Lots 9A, 10B and 10A petitioned the borough to have the maintenance easement vacated. The borough approved it and recorded the resolution but it did not go through the state review process. It may be invalid. The state requested the easement be put in place so they should review if it should be vacated.

Commissioner Ecklund said since the state required the easement she was surprised it was coming to the Planning Commission first. She wanted to know since it is within the borough if the Planning Commission



is making a recommendation to DNR. Mr. Huff said that was correct. The petitioner believes the plat mistakenly carried over the easement onto his lot when the section line and right-of-way was vacated. In doing some research, staff discovered a letter in records that said the State of Alaska requested the easement to be placed on there. It was not a mistake it was purposely added. With that information, the applicant needs to go to the state and get their approval.

Commissioner Ruffner wanted to know if the state requested or required the easement. Mr. Huff said that when the previous plats were trying to vacate the section line easement the state denied the vacations until this easement was put in place. Commissioner Ruffner said it was a tradeoff, section line easement for pedestrian easement. Mr. Huff said that was correct. Commissioner Ruffner asked if Humpy Road and the pedestrian easement are still part of the section line easement. Mr. Huff said that the right-of-way and section line easement were vacated but they retained the pedestrian and maintenance easement where the section line easement use to be.

Commissioner Ruffner was looking at the map on page 200 of the packet in review of the equal or better access. Humpy Road will still provide public access to the river. Mr. Huff said that was correct.

Commissioner Ecklund stated that the state vacated the section line easement as long as the pedestrian and maintenance easement was approved. She wanted to know if the pedestrian and maintenance easement was no longer needed because Humpy Road still provides access. Mr. Huff said that would be a question for the state since they asked for that easement when the section line easement was vacated. Staff supports the request and recommends approval but the state may have a different opinion.

Commissioner Ecklund wanted to know any comments or objections were received by those that received notice. Mr. Huff said no comments were received.

Chairman Martin allowed Mr. Turpin to return to add to the discussion. Mr. Turpin said the letter from the state in 1984 said that the easement would be within the Humpy Road vacation. It did not say it had to extend all the way across. Prior to 1984, it did not extend all the way across. It just extended to the center to the section line. The letter was interpreted to extend it all the way across. He is going to the state to clarify what they meant in their comment in 1984. The state did not require it but the wording in the letter led it to be implied to be as a new easement on his property. It was not there before 1984. That is why he thought it was an error on the plat.

Commissioner Ruffner noted that part of the correspondence talks about erosion control and money spent on riprap. He asked if Mr. Turpin could add some information regarding that. Mr. Turpin said they had a portion of the section line easement vacated to be able to install root wads along the riverbank. It was eroding badly. The state vacated 23 feet on his side of the section line and 40 feet on the other side. He and the property owner on the other side paid to have root wads across whole thing. Commissioner Ruffner said they paid for what was then on public property. Mr. Turpin said yes and the River Center allowed it. Mr. Best asked what year the root wads were put in. Mr. Turpin said maybe 2006.

Commissioner Ruffner said he was going to go with staff's recommendation. There is equal access but he is surprised that Fish and Game did not comment. Knowing the process as going forward this will be run through the state.

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

## **F. PUBLIC HEARINGS**

- 4. Vacate a 50-foot pedestrian and maintenance easement in the Sterling area.**

**KPB File 2019-148V**

**Petitioners: Frank G. Turpin III and  
Jacqueline A. Turpin**



## AGENDA ITEM F. PUBLIC HEARINGS

4. Vacate the 50-foot-wide pedestrian and maintenance easement adjoining the high-water mark of the Kenai River within the south-easterly portion of Lot 1A, Block 6, Kenai River Keys Subdivision (Plat KN 84-126) for approximately 23 feet in width as granted on Kenai River Keys Subdivision, Lot 1A, Block 6, Stephenkie Subdivision No 2, Lot 9A1, Block 2 (Plat KN 84-126). The pedestrian and maintenance easement being vacated is unconstructed and located within the NE 1/4 of Section 35, Township 5 North, Range 8 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-148V.

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### Comments Received:

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KPB Roads Department: no comment.

State Parks: No comment.

Staff Discussion: Lot 1A adjoins the west side and Lot 9A adjoins the east side of Humpy Road where it meets the Kenai River.

Plat KN 79-83 granted a 50-foot pedestrian easement along the ordinary high way line of any water frontage lots. This easement affected the lots up river of Lot 1A.

Plat KN 81-96 carried forward the 50-foot pedestrian and maintenance easement along the high water mark of the Kenai River within Lot 9A1.

Plat KN 84-77 vacated 23 feet of the section line easement within Lot 1A and 40 feet of the section line easement within Lot 9A1. The plat noted the existing pedestrian and maintenance easement within Lot 9A, KN 81-96. From the letter dated march 1, 1984, the depiction of the 50-foot pedestrian access and maintenance easement was at the request of the State of Alaska Department of Natural Resources. The 50-foot pedestrian access and maintenance easement is under State of Alaska DNR jurisdiction and will require State approval to be vacated.

Plat KN 84-126 vacated 23 feet of the Humpy Road right-of-way within Lot 1A and a portion of the Humpy Road right-of-way within Lot 9A1. Plat KN 84-126 carried forward the 50 foot pedestrian and maintenance easement of record.

The owners of Lot 1A signed both Plat KN 84-77 and KN 84-126.

The 50-foot pedestrian and maintenance easement within the lots 9A, 10A and 10B, Block 2 Stephenkie Subdivision No. 2 show as being vacated by KPB Planning Commission Resolution 89-30, leaving only the portion of easement underlying Humpy Road and within Lot 1A. The vacation of the easement, as shown in Planning Commission Resolution 89-30 may not be valid as the easement did not go through the State DNR vacation process.

The remaining 50-foot pedestrian and maintenance easement extends 23' into Lot 1A and underlies the section line easement and Humpy Road right-of-way between Lots 1A and 9A.

If approved, the vacation will need to be finalized through the State's vacation process.

#### **KPB 20.70 – Vacation Requirements.**

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

20.70.050. Petition—Information required.

- B. Persons listed on the borough assessor's tax roll shall be deemed the legal owners for purposes of the vacation petition. **The petition shall include a statement containing the reasons in**



**support of the vacation** and be accompanied by a minimum of three copies of a sketch clearly indicating the proposed vacation, submitted to the planning department at least 30 calendar days in advance of the meeting at which it will be considered. In cases where encroachments on public rights-of-way are in question, an as-built survey, sealed by a surveyor, is required showing the improvements, existing travelways, amount of encroachment, and any other submittal as requested by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

*Petitioner Comments: A 50-foot-wide pedestrian and maintenance easement along the high water mark of the Kenai River was established for Stephenkie Alaska Subdivision on Plat KN 79-83, prepared by the Alaska Division of Lands as State Land Survey No 73-146. This plat showed the easement extending to the section line common to sections 35 and 36, but not west of that section line within Kenai River Keys Subdivision. In 1984, as part of the Section Line Easement Vacation Plat (Plat KN 84-77) and the Vacation Plat for a portion of the right-of-way for Humpy Road (Plat KN 84-126), this easement was mistakenly depicted as extending beyond the section line and into Kenai River Keys Subdivision. Upon approval of the vacation by the State of Alaska and the Kenai Peninsula Borough Planning Commission, 23 feet of the former Section Line Easement and Humpy Road was attached to Lot 1, which then became Lot 1A.*

*The 50-foot-wide pedestrian and maintenance easement then extended that 23 feet into Lot 1A. Vacation of this portion of the 50-foot-wide pedestrian and maintenance easement corrects the mistake made by the surveyor on the vacation plats. The 50-foot-wide pedestrian and maintenance easement through lots 9-A, 10-B and 10-A, Block 2 Stephenkie Subdivision No 2 (Plat KN 81-96), immediately east of the section line easement, was vacated by Kenai Peninsula Borough Planning Commission Resolution 89-30.*

*The portion of the section line easement and Humpy Road that was not vacated is a 20-foot-wide corridor and extends from Humpy Road to the Kenai River between Lots 1A and 9-A. This portion remains available for public access.*

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

*Platting Staff Comments: Per the petition, the easement is unconstructed and not used for vehicular access. Per aerial imagery, the portion of Lot 1A the easement affects is a lawn fronting the Kenai River. The easement is a pedestrian easement that does not permit vehicular uses.*

*The only access the easement provides is to the 23' of riverfront west of Humpy Road. The easement within Lot 1A adjoins the 20' wide Humpy Road right-of-way and a 20' wide section line easement. Per aerial imagery, the portion of Humpy Road adjoining Lot 1A is partially constructed north of the subject easement and extends north to a fully constructed portion of Humpy Road that provides access to Lot 1A. The adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.*

**Staff recommendation:** *Concur that equal or superior right-of-way for vehicular access exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.180. Other access. Other lawful uses that exist or are feasible for the right-of-way shall be considered when evaluating a vacation request. When such uses exist or could exist within rights-of-way which are not suited for general road use, the commission shall not approve the vacation request, unless it can be demonstrated that equal or superior access is or will be available. The planning commission shall consider whether alternate uses present public safety issues which support approval of the vacation.

*Platting Staff Comments: Per the submittal, no other uses exist within the easement.*

*Per KPB four foot contours, the easement is generally flat. However, the easement within Lot 1A is not suited for general road use. This portion of Lot 1A is located within Flood Hazard Zone A3, the floodway, and the Anadromous Habitat Protection District.*

*The only other uses permitted within the easement are pedestrian and maintenance uses. While the easement is not in use for other uses, the easement could feasibly be used by pedestrians. However, the easement only provides pedestrian access to the 23' of waterfront west of the Humpy Road right-of-way. As noted, above the adjoining Humpy Road right-of-way and section line easement provide equal or superior access from the constructed portion of Humpy Road to the Kenai River.*

**Staff recommendation:** *Concur that equal or superior access for other uses exists within the 20' width Humpy Road right-of-way and section line easement.*

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public 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 public utility easement be granted in place of the right-of-way.

*Platting Staff Comments: Per the petition, the easement is not utilized by a public utility. The pedestrian and maintenance easement on its face does not permit use by a public utility.*

20.70.200. Waterfront access provisions. A right-of-way which serves to provide access to public waters shall not be vacated unless such a right-of-way is wholly impractical to all modes of transport including pedestrian or the use of such right-of-way causes damage to the right-of-way, adjacent properties, the waterbody or the watercourse, or threatens public safety which cannot otherwise be corrected and where such continued damage or threat would be contrary to the public interest.

*Platting Staff Comments: Vacation of this pedestrian and maintenance easement would not limit public access to the Kenai River. As noted above, public access to the Kenai River is provided by the adjoining Humpy Road right-of-way and section line easement.*

**Staff recommendation:** *Concur that adjoining access to the public waters of the Kenai River via the Humpy Road right-of-way and section line easement will be retained even if this vacation is approved.*

#### 20.30.220. Section line easement vacations.

Section line easement vacation petitions must comply with the requirements of KPB 20.70.040, 20.70.050 and 20.70.060. A fee is required in compliance with KPB 20.70.060. Public hearing and notice must comply with the requirements of KPB 20.70.070, 20.70.080, 20.70.100, 20.70.110 and 20.70.120. The mail notice required in KPB 20.70.090 may be by regular mail. Publication on the planning commission agenda, advertised once in local papers, posted in public areas and on the borough website prior to the meeting will satisfy the publishing requirements. The petitioner is responsible for all submittals required by the State of Alaska Department of Natural Resources (DNR) in compliance with their procedures. The petition must be reviewed and approved by the planning commission but final authority for approval and platting of the vacation rests with DNR. The petitioner is responsible for coordination with DNR and submittals to DNR.

*Platting Staff Comments: Although this is not a section line easement vacation it is still an easement vacation where jurisdiction is with the State of Alaska DNR. The petitioner is responsible for coordination with DNR and submittal to DNR to obtain approval of the vacation.*

**Staff recommendation:** *Comply with KPB 20.30.220.*

**STAFF RECOMMENDATION:** The petition must be reviewed and either approved or denied by the planning commission but final authority for approval of the vacation rests with the State of Alaska DNR. Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends approval of the vacations as petitioned, subject to:



1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

**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:**

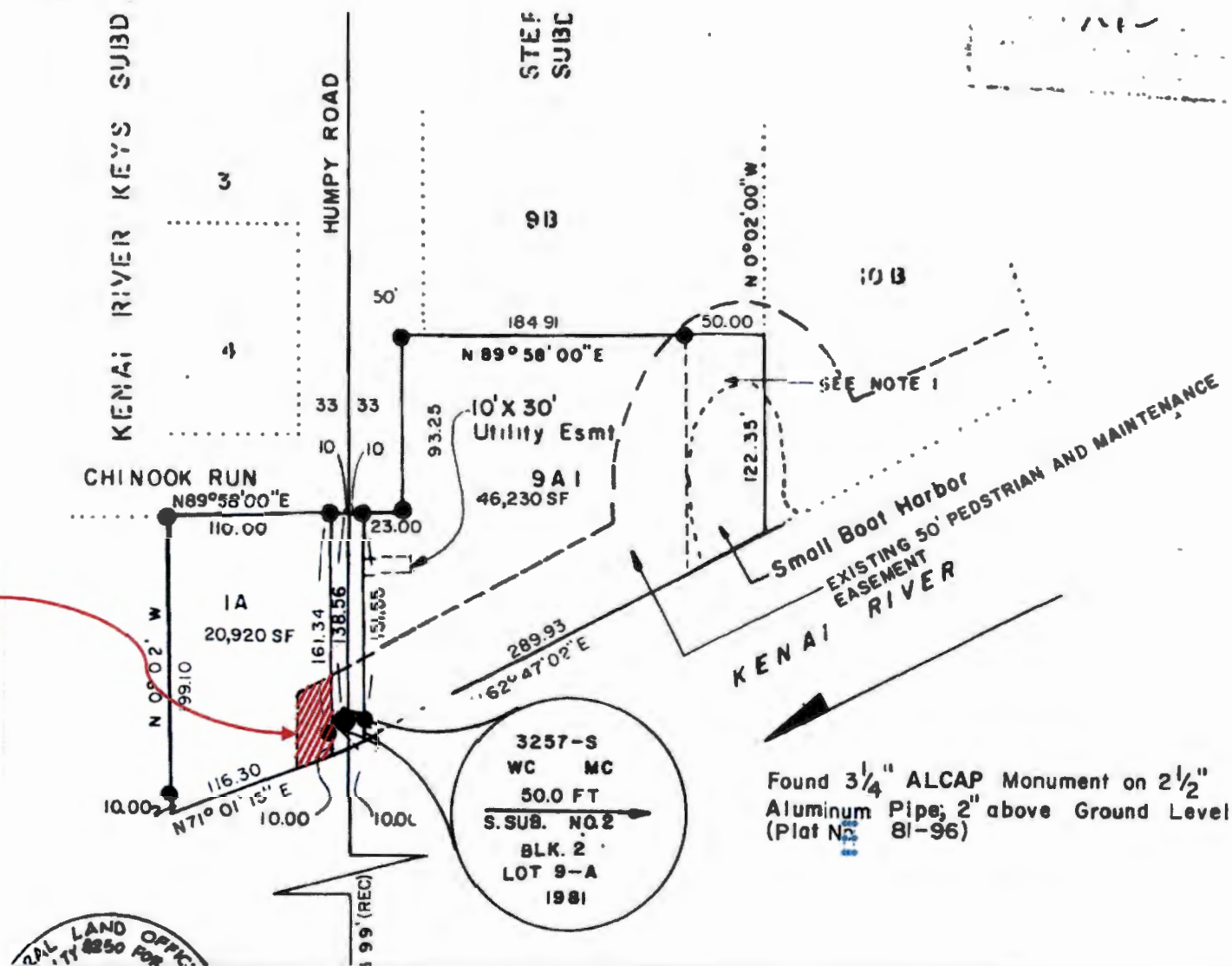
- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial 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.**

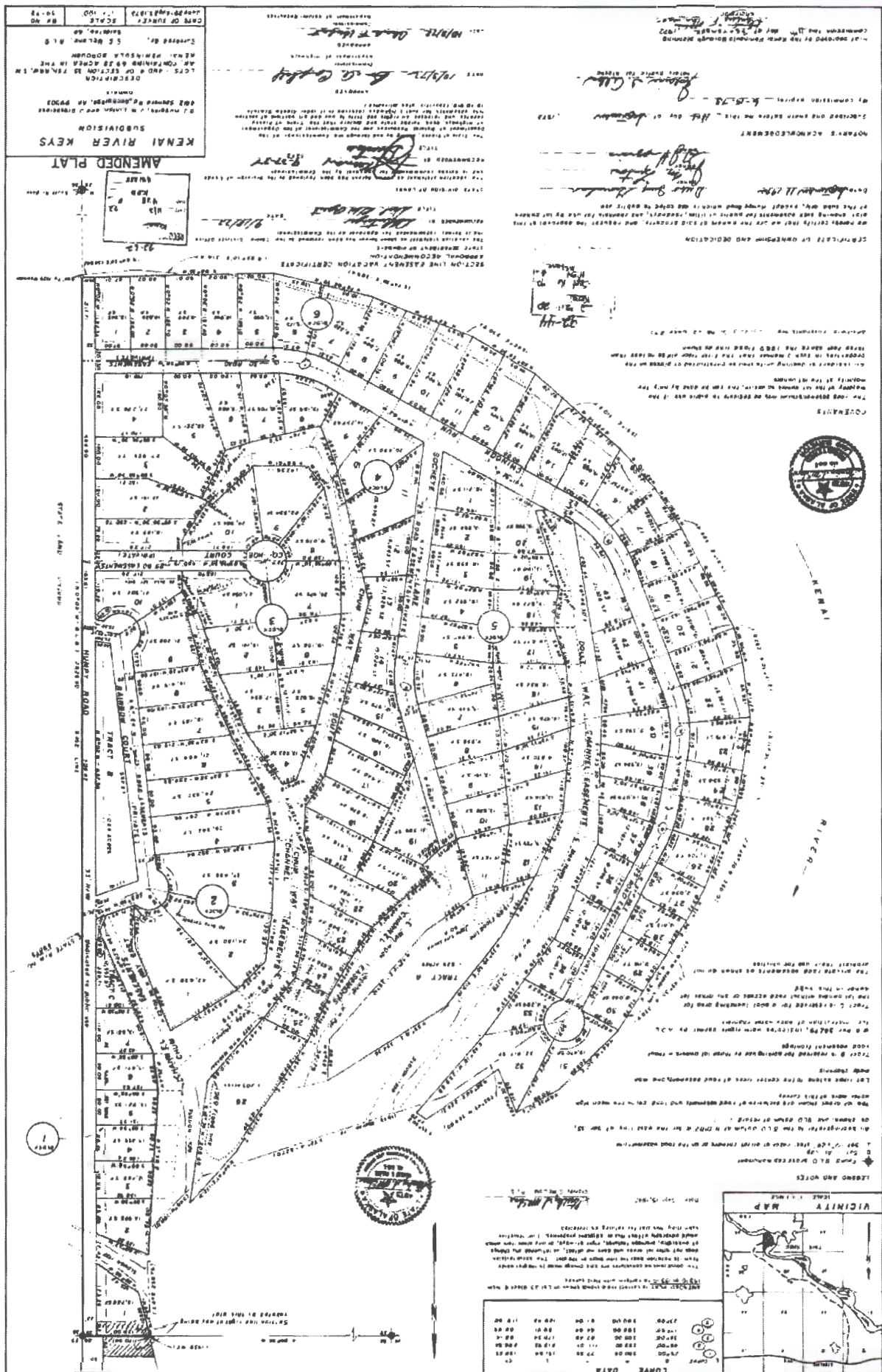
END OF STAFF REPORT

Portion of Existing  
Easement to be Vacated  
and Attached to Lot 1A



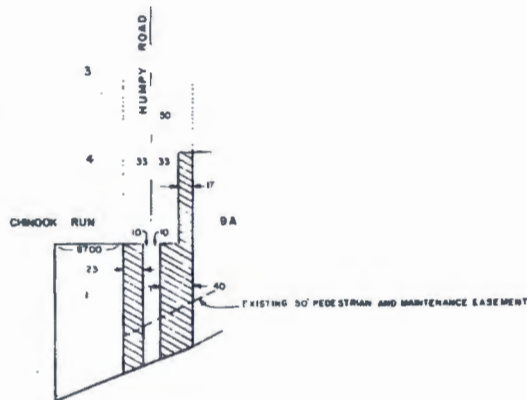
KPB 2019-148V





# NOTES

- RESTRICTED USE EASEMENT RESERVED FOR THE EXCLUSIVE USE OF LOTS 9A1, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 9L, 9M, 9N, 9O, 9P, 9Q, 9R, 9S, 9T, 9U, 9V, 9W, 9X, 9Y, 9Z, 9AA, 9AB, 9AC, 9AD, 9AE, 9AF, 9AG, 9AH, 9AI, 9AJ, 9AK, 9AL, 9AM, 9AN, 9AO, 9AP, 9AQ, 9AR, 9AS, 9AT, 9AU, 9AV, 9AW, 9AX, 9AY, 9AZ, 9BA, 9BB, 9BC, 9BD, 9BE, 9BF, 9BG, 9BH, 9BI, 9BJ, 9BK, 9BL, 9BM, 9BN, 9BO, 9BP, 9BQ, 9BR, 9BS, 9BT, 9BU, 9BV, 9BW, 9BX, 9BY, 9BZ, 9CA, 9CB, 9CC, 9CD, 9CE, 9CF, 9CG, 9CH, 9CI, 9CJ, 9CK, 9CL, 9CM, 9CN, 9CO, 9CP, 9CQ, 9CR, 9CS, 9CT, 9CU, 9CV, 9CW, 9CX, 9CY, 9CZ, 9DA, 9DB, 9DC, 9DD, 9DE, 9DF, 9DG, 9DH, 9DI, 9DJ, 9DK, 9DL, 9DM, 9DN, 9DO, 9DP, 9DQ, 9DR, 9DS, 9DT, 9DU, 9DV, 9DW, 9DX, 9DY, 9DZ, 9EA, 9EB, 9EC, 9ED, 9EE, 9EF, 9EG, 9EH, 9EI, 9EJ, 9EK, 9EL, 9EM, 9EN, 9EO, 9EP, 9EQ, 9ER, 9ES, 9ET, 9EU, 9EV, 9EW, 9EX, 9EY, 9EZ, 9FA, 9FB, 9FC, 9FD, 9FE, 9FF, 9FG, 9FH, 9FI, 9FJ, 9FK, 9FL, 9FM, 9FN, 9FO, 9FP, 9FQ, 9FR, 9FS, 9FT, 9FU, 9FV, 9FW, 9FX, 9FY, 9FZ, 9GA, 9GB, 9GC, 9GD, 9GE, 9GF, 9GG, 9GH, 9GI, 9GJ, 9GK, 9GL, 9GM, 9GN, 9GO, 9GP, 9GQ, 9GR, 9GS, 9GT, 9GU, 9GV, 9GW, 9GX, 9GY, 9GZ, 9HA, 9HB, 9HC, 9HD, 9HE, 9HF, 9HG, 9HH, 9HI, 9HJ, 9HK, 9HL, 9HM, 9HN, 9HO, 9HP, 9HQ, 9HR, 9HS, 9HT, 9HU, 9HV, 9HW, 9HX, 9HY, 9HZ, 9IA, 9IB, 9IC, 9ID, 9IE, 9IF, 9IG, 9IH, 9II, 9IJ, 9IK, 9IL, 9IM, 9IN, 9IO, 9IP, 9IQ, 9IR, 9IS, 9IT, 9IU, 9IV, 9IW, 9IX, 9IY, 9IZ, 9JA, 9JB, 9JC, 9JD, 9JE, 9JF, 9JG, 9JH, 9JI, 9JJ, 9JK, 9JL, 9JM, 9JN, 9JO, 9JP, 9JQ, 9JR, 9JS, 9JT, 9JU, 9JV, 9JW, 9JX, 9JY, 9JZ, 9KA, 9KB, 9KC, 9KD, 9KE, 9KF, 9KG, 9KH, 9KI, 9KJ, 9KK, 9KL, 9KM, 9KN, 9KO, 9KP, 9KQ, 9KR, 9KS, 9KT, 9KU, 9KV, 9KW, 9KX, 9KY, 9KZ, 9LA, 9LB, 9LC, 9LD, 9LE, 9LF, 9LG, 9LH, 9LI, 9LJ, 9LK, 9LL, 9LM, 9LN, 9LO, 9LP, 9LQ, 9LR, 9LS, 9LT, 9LU, 9LV, 9LW, 9LX, 9LY, 9LZ, 9MA, 9MB, 9MC, 9MD, 9ME, 9MF, 9MG, 9MH, 9MI, 9MJ, 9MK, 9ML, 9MM, 9MN, 9MO, 9MP, 9MQ, 9MR, 9MS, 9MT, 9MU, 9MV, 9MW, 9MX, 9MY, 9MZ, 9NA, 9NB, 9NC, 9ND, 9NE, 9NF, 9NG, 9NH, 9NI, 9NJ, 9NK, 9NL, 9NM, 9NN, 9NO, 9NP, 9NQ, 9NR, 9NS, 9NT, 9NU, 9NV, 9NW, 9NX, 9NY, 9NZ, 9OA, 9OB, 9OC, 9OD, 9OE, 9OF, 9OG, 9OH, 9OI, 9OJ, 9OK, 9OL, 9OM, 9ON, 9OO, 9OP, 9OQ, 9OR, 9OS, 9OT, 9OU, 9OV, 9OW, 9OX, 9OY, 9OZ, 9PA, 9PB, 9PC, 9PD, 9PE, 9PF, 9PG, 9PH, 9PI, 9PJ, 9PK, 9PL, 9PM, 9PN, 9PO, 9PP, 9PQ, 9PR, 9PS, 9PT, 9PU, 9PV, 9PW, 9PX, 9PY, 9PZ, 9QA, 9QB, 9QC, 9QD, 9QE, 9QF, 9QG, 9QH, 9QI, 9QJ, 9QK, 9QL, 9QM, 9QN, 9QO, 9QP, 9QQ, 9QR, 9QS, 9QT, 9QU, 9QV, 9QW, 9QX, 9QY, 9QZ, 9RA, 9RB, 9RC, 9RD, 9RE, 9RF, 9RG, 9RH, 9RI, 9RJ, 9RK, 9RL, 9RM, 9RN, 9RO, 9RP, 9RQ, 9RR, 9RS, 9RT, 9RU, 9RV, 9RW, 9RX, 9RY, 9RZ, 9SA, 9SB, 9SC, 9SD, 9SE, 9SF, 9SG, 9SH, 9SI, 9SJ, 9SK, 9SL, 9SM, 9SN, 9SO, 9SP, 9SQ, 9SR, 9SS, 9ST, 9SU, 9SV, 9SW, 9SX, 9SY, 9SZ, 9TA, 9TB, 9TC, 9TD, 9TE, 9TF, 9TG, 9TH, 9TI, 9TJ, 9TK, 9TL, 9TM, 9TN, 9TO, 9TP, 9TQ, 9TR, 9TS, 9TT, 9TU, 9TV, 9TW, 9TX, 9TY, 9TZ, 9UA, 9UB, 9UC, 9UD, 9UE, 9UF, 9UG, 9UH, 9UI, 9UJ, 9UK, 9UL, 9UM, 9UN, 9UO, 9UP, 9UQ, 9UR, 9US, 9UT, 9UU, 9UV, 9UW, 9UX, 9UY, 9UZ, 9VA, 9VB, 9VC, 9VD, 9VE, 9VF, 9VG, 9VH, 9VI, 9VJ, 9VK, 9VL, 9VM, 9VN, 9VO, 9VP, 9VQ, 9VR, 9VS, 9VT, 9VU, 9VV, 9VW, 9VX, 9VY, 9VZ, 9WA, 9WB, 9WC, 9WD, 9WE, 9WF, 9WG, 9WH, 9WI, 9WJ, 9WK, 9WL, 9WM, 9WN, 9WO, 9WP, 9WQ, 9WR, 9WS, 9WT, 9WU, 9WV, 9WW, 9WX, 9WY, 9WZ, 9XA, 9XB, 9XC, 9XD, 9XE, 9XF, 9XG, 9XH, 9XI, 9XJ, 9XK, 9XL, 9XM, 9XN, 9XO, 9XP, 9XQ, 9XR, 9XS, 9XT, 9XU, 9XV, 9XW, 9XX, 9XY, 9XZ, 9YA, 9YB, 9YC, 9YD, 9YE, 9YF, 9YG, 9YH, 9YI, 9YJ, 9YK, 9YL, 9YM, 9YN, 9YO, 9YP, 9YQ, 9YR, 9YS, 9YT, 9YU, 9YV, 9YW, 9YX, 9YY, 9YZ, 9ZA, 9ZB, 9ZC, 9ZD, 9ZE, 9ZF, 9ZG, 9ZH, 9ZI, 9ZJ, 9ZK, 9ZL, 9ZM, 9ZN, 9ZO, 9ZP, 9ZQ, 9ZR, 9ZS, 9ZT, 9ZU, 9ZV, 9ZW, 9ZX, 9ZY, 9ZZ

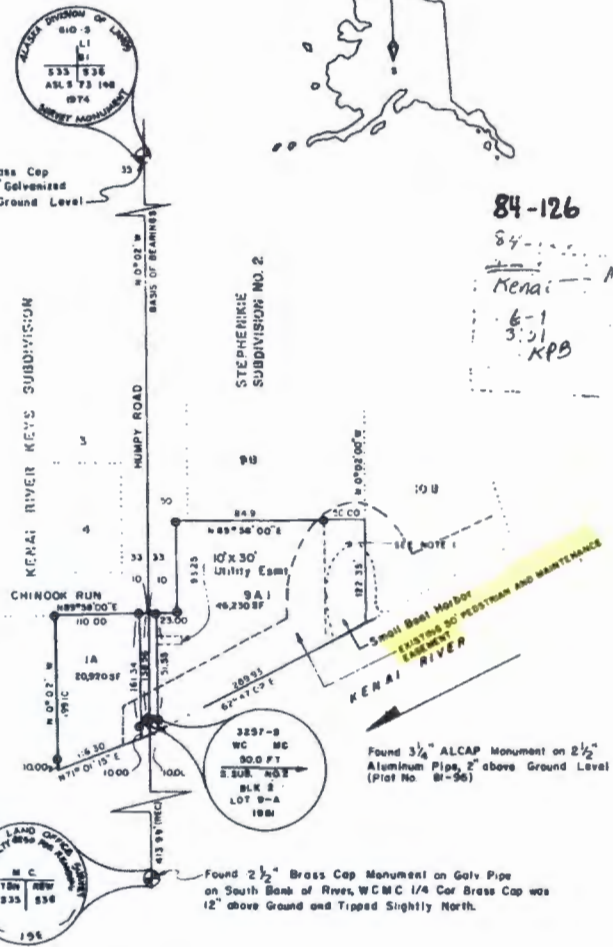


DETAILS OF VACATION  
BY KENAI PENINSULA BOROUGH

## SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS PLAN REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THE MONUMENTS SHOWN THEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND DETAILS ARE CORRECT.

4/15/84 3297-B  
DATE REGISTRATION NO. STANLEY BRUST  
REGISTERED LAND SURVEYOR



## "PLAT APPROVAL"

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF OCTOBER 23, 1984

KENAI PENINSULA BOROUGH  
BY: [Signature]  
AUTHORIZED OFFICIAL

## OWNERS

ELITE M. WHITE  
(LOT 9A1)

RURAL ROUTE 2  
BOX 268A  
STERLING, AK 99672

FRANK S. & HOPE L. TURPIN  
(LOT 1A)

13340 REEF PLACE  
ANCHORAGE, AK 99502

ALFRED TOLSON SMITH  
(LOT 1A)

4147 HAMPTON DRIVE  
ANCHORAGE, AK 99504

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND DEDICATE ALL RIGHT-OF-WAYS AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

4-30-84 [Signature]  
DATE ALFRED TOLSON SMITH (Signature)

4-30-84 [Signature]  
DATE FRANK S. TURPIN (Signature)

4-30-84 [Signature]  
DATE HOPE L. TURPIN (Signature)



## NOTARY ACKNOWLEDGEMENT

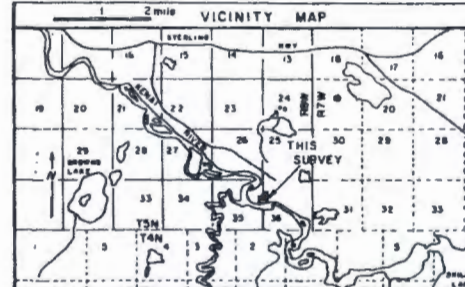
SUBSCRIBED AND SWORN BEFORE ME THIS 10th DAY OF May, 1984.  
NOTARY FOR [Signature]  
[Signature]  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES 12-31-86

## NOTARY ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 10th DAY OF May, 1984.  
NOTARY FOR [Signature]  
[Signature]  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES 12-31-86

## LEGEND

- SET 70' REBARS THIS SURVEY
- FOUND 2 - 1/2" ALUMINUM PIPE MONUMENT, WITH 3 - 1/4" ALUMINUM CAP (PLOT 81-86)
- BRASS CAP MONUMENT OF RECORD



## KENAI RIVER KEYS SUBDIVISION, LOT 1A, BLOCK 8 STEPHENIE SUBDIVISION NO. 2 LOT 9A1, BLOCK 2

A VACATION OF THE RIGHT OF WAY OF A PORTION OF HUMPY ROAD SOUTH OF CHINOOK RUN & A REPLAT OF LOT 1, BLOCK 8, KENAI RIVER KEYS SUBDIVISION & LOT 9A, BLOCK 2, STEPHENIE SUBDIVISION NO. 2, CONTAINING 15 ACRES, LOCATED IN THE NW 1/4 SECTION 36, & NE 1/4 SECTION 35, T3N, R8W, S4M AK

STANLEY BRUST & ASSOCIATES  
ENGINEERS - PLANNERS - SURVEYORS  
1610 CHORD DRIVE  
ANCHORAGE, ALASKA 99507

GRID	SCALE	DATE	BOOK	PAGE
DRAGON	1" = 100'	4/15/84	MO. NO 83-2	1
FILE NO	83-2			



DIAGONAL HATCHED AREA INDICATES THAT PORTION OF THE SECTION LINE EASEMENT TO BE VACATED WITHIN SECTIONS 33 AND 34 BY THE STATE.

8. IT IS NOT THE INTENT OF THIS PLAN TO VACATE ANY OTHER DEDICATED RIGHTS OF WAY OR EASEMENTS.

APPROVAL RECOMMENDATION

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
THE VACATION STATEMENT, AS SHOWN HEREON, HAS BEEN REVIEWED BY  
THE CENTRAL REGIONAL OFFICE AND IS HEREBY RECOMMENDED FOR  
APPROVAL BY THE COMMISSIONER

RECOMMENDED BY: Public Safety DATE: 5/29/84

TITLE: DIRECTOR, DESIGN & CONSTRUCTION

STATE OF ALASKA DIVISION OF TECHNICAL SERVICES

THE VACATION STATEMENT, AS SHOWN HEREON, HAS BEEN REVIEWED BY THE DIVISION OF TECHNICAL SERVICES AND IS HEREBY RECOMMENDED FOR APPROVAL BY THE COMMISSIONER.

RECOMMENDED BY: James R. Anderson 3/22/84

TITLE: DIRECTOR, DIVISION OF TECHNICAL SERVICES

THE STATE OF ALASKA, ACTING BY AND THROUGH THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES AND THE COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, DOES HEREBY STATE AND DECLARE THAT THE STATE OF ALASKA VACATES AND RELEASES ALL RIGHTS AND TITLE TO ANY AND ALL PORTIONS OF SECTION LINE EASEMENTS FOR PUBLIC HIGHWAYS RESERVED TO IT UNDER A.S. 19.06.010. (SPECIFIC AREA DELINEATED BY DIAGRAM, CROSS-HATCHING)

4/2/24

Donald F. Hader, Deputy

COMMISSIONER  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DATE 9/2/88

APPROVED: Robert D. Arnold Jr.  
 REGIONAL COMMISSIONER  
 DEPARTMENT OF NATURAL RESOURCES

I HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS PLAN REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THE MONUMENTS SHOWN THEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND DETAILS ARE CORRECT.

8/14/64 2857-8  
DATE REGISTRATION NO.

*Stanley Brust*  
STANLEY BRUST  
REGISTERED LAND SURVEYOR

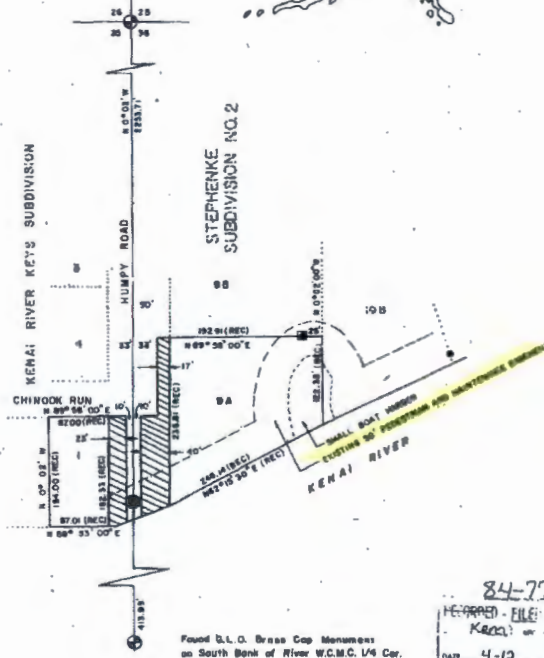


"PLAT APPROVAL"

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF SEPTEMBER 12, 1983

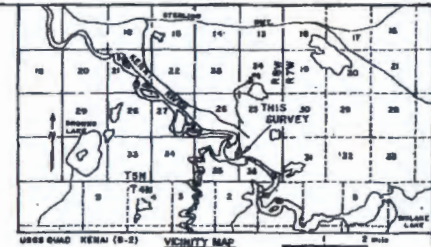
REAR: PENINSULA BOROUGH  
BY: [Signature]  
AUTHORIZED OFFICIAL

**"PLAT APPROVAL"**



Found G.L.O. Brass Cap Monument  
on South Bank of River W.C.M.C. 1/4 Cor.

84-77  
RECORDED - FILE: N/A  
Kern: [unclear]  
DATE: 4-12 1988  
TIME: 12:11 P  
CLASSIFIED BY: AS/ONE  
[unclear]



4. E. L. G. BRASS CAP MONUMENT OF RECORD

**SCALE**

0 25 50 100 200 300 FEET

0 5 10 25 50 100 METERS

1 METER = 3.280833 U.S. SURVEY FEET

1 U.S. ACRE = 0.4047 HECTARE

Elaine M. White  
DATE ELITE M. WHITE (Signature)

**NOTARY ACKNOWLEDGEMENT**  
 SUBSCRIBED AND SWORN BEFORE ME THIS 26 DAY OF February, 1984.  
 NOTARY FOR \_\_\_\_\_

Charles Brown  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES: 3-7-87

ELISE M. WHITE (LOT 9A) RURAL ROUTE 2  
BOX 263A  
STERLING, AK 99675

FRANK B. & HOPE L. TURPIN  
(LOT 1) 13240 REEF PLACE  
ANCHORAGE, AK 99508

ALFRED TOSHON SMITH  
(LOT 1)  
4187 HAMPTON DRIVE  
ANCHORAGE, AK 99504

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION, AND DEDICATE ALL RIGHT-OF-WAYS AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

3-7-84 Alfred Frank Smith  
DATE ALFRED FRANK SMITH JR. 1910-1984

3-7-84 Grant A. Simpson

DATE FRANK B. TURNER (Sigsbee)

SUBSCRIBED AND SWORN BEFORE ME THIS 1st DAY OF JANUARY 1964  
 NOTARY FOR FRANK E. TURPIN  
HOPE L. TURPIN  
 NOTARY PUBLIC  
 BY COMMISSION EXPIRES

DATE OF SURVEY: NO FIELD SURVEY PERFORMED

NAME OF SURVEYOR: BRUNET & ASSOCIATES  
WHO DRAWDY SURVEY: ANCHORAGE, ALABAMA 99007

STATE OF ALABAMA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF TECHNICAL SERVICES  
ANCHORAGE, ALABAMA

SECTION LINE EASEMENT VACATION FLAT  
ASSOCIATED WITH LOT 1, KENAI RIVER NEYS SUBDIVISION  
AND LOT #A, STEPHENSON SUBDIVISION NO. 2

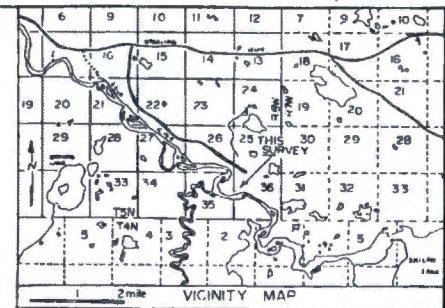
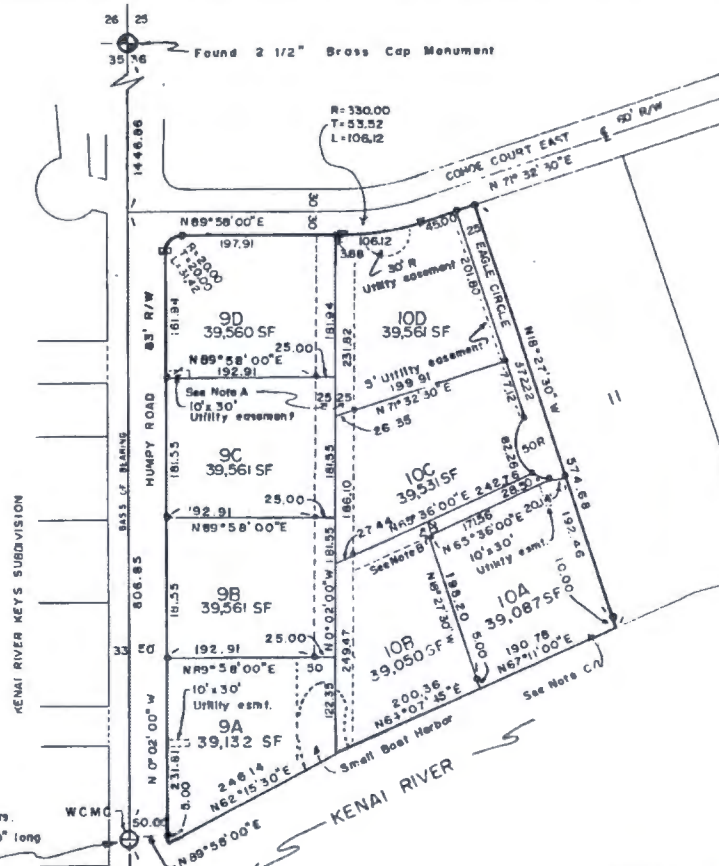
LOCATED WITHIN SECTIONS 33 & 36  
T 3 N., R 9 W., SEWARD MERIDIAN  
ALABAMA

GRADEN BY: S.L.S.  
DATE: 5-18-85  
SCALE: 1" = 100'

APPROVAL, REQUIREMENTS  
*[Signature]*  
Chief Control Surveyor

FILE NO  
KV-2-254  
CASSES





**SURVEYORS CERTIFICATE:**

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that this plat represents a survey made by me or under my direct supervision, and the monuments shown thereon actually exist as described, and that all dimensions and details are correct.

Date: 5/18/81  
Registrant No.: 3257-5  
Stanley Brust  
Registered Land Surveyor

Date of plat preparation: 5/18/81

**OWNERSHIP CERTIFICATE:**

I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of subdivision, and dedicate all right of ways to public use and grant all easements in the use shown.

Elsie M. White  
Elsie White  
1919 Dimond Drive  
Anchorage, Alaska 99507

**NOTARY'S ACKNOWLEDGMENT**

Subscribed and sworn before me this 21 day of May 1981

Elsie M. White  
Notary Public for Alaska  
My Commission expires: 1-10-1985

Building setback -- A setback of 20 feet is required from all street right of way unless a lesser standard is approved by resolution of the appropriate Planning Commission. Building setback for Lot 10A will be 25 feet.

**"PLAT APPROVAL"**

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of May 18, 1981

KENAI PENINSULA BOROUGH  
By: *Alan Thompson*  
Authorized Official

81-96  
RECORDED  
FILED  
Kenai  
7-20-81  
5:48  
KPB



**STEPHENKIE SUBDIVISION NO.2, A RESUBDIVISION OF LOTS 9B, 10, BLOCK 2 CONTAINING 7.5 ACRES**

Located in NW 1/4  
SECTION 36, T5N, 98W, S.M. AK  
ELSIE WHITE, OWNER  
1919 DIMOND DRIVE  
ANCHORAGE, ALASKA 99507

**STANLEY BRUST & ASSOCIATES ENGINEERS - SURVEYORS**

ANCHORAGE ALASKA

Date: May 18, 1981  
Scale: 1"=100'  
Drawn: S.B.  
Sheet: 1 of 1  
Checked: S.B.

- Set 2" Al Caps on 5/8" Al Bar
- Found existing 2" Al Cap corners.
- Set 2-1/2" Al Pipe Monument, 30" long with 3-1/4" Al Cap with magnet

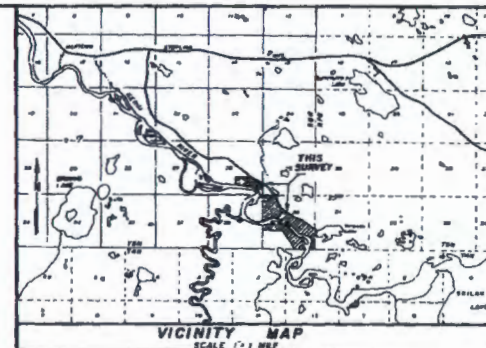
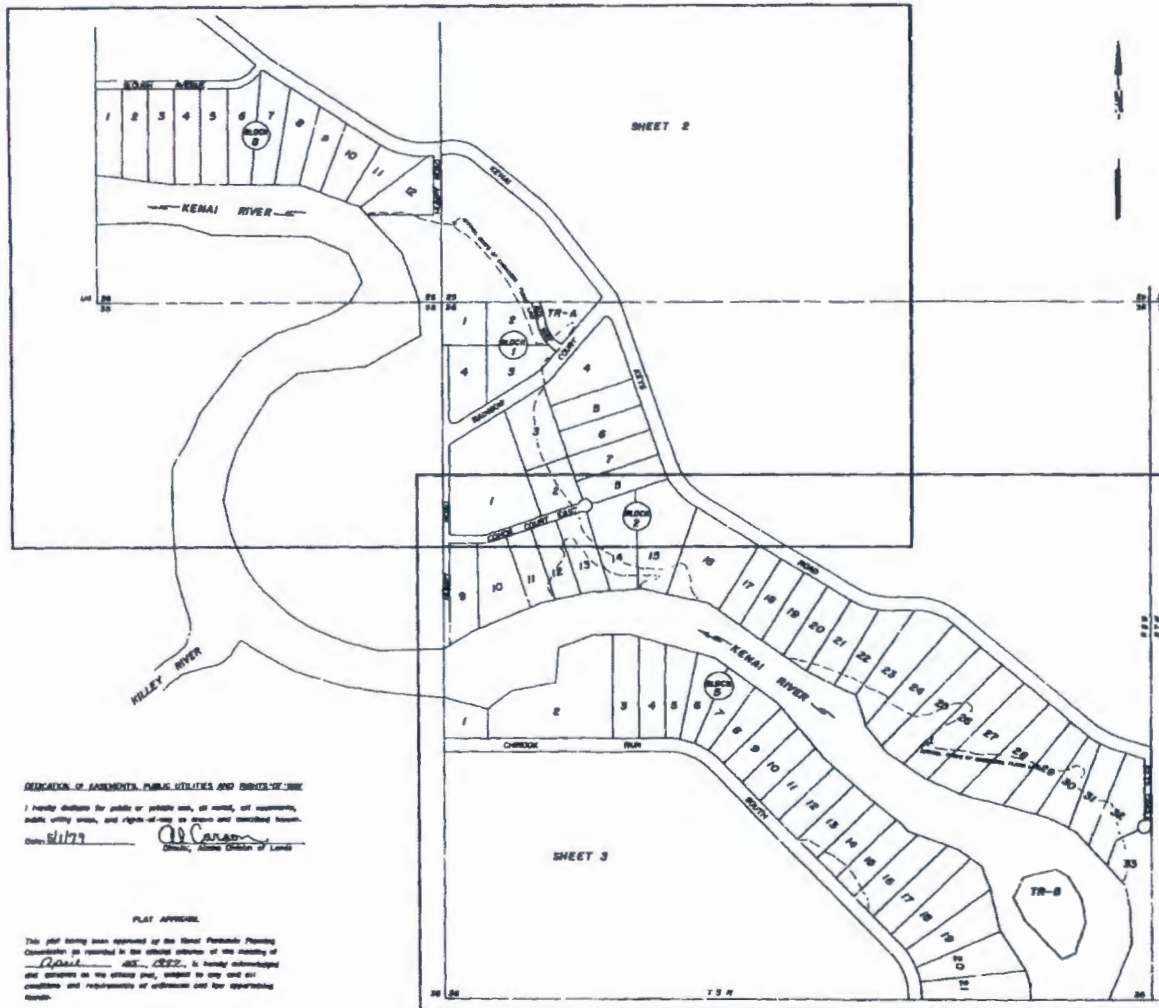
**Note A -** Restricted use easements: Reserved for the exclusive use of Lots 9A, 9B, 9C, 9D, 10A, 10B, 10C, & 10D. The Boat Harbor is Reserved for Exclusive use of Lots 9A, 9B, 9C, 9D, 10A, 10B, 10C, & 10D.

**Note B -** Restricted use easement: Reserved for exclusive use of Lot 10A.

**Note C -** River Front Lots are subject to a 50 ft. pedestrian and maintenance easement along the high water mark of the Kenai River.

**ADDITIONAL NOTES**

- Topography of area covered by these lots is flat with little variation in elevation.
- All lots lie within the Corps of Engineers 100 year floodline.
- The natural meanders of the high water mark of the Kenai River form the bounds for all lots adjoining the river. The corner monuments as set are witness corners to the meander corner, which is the extension of the lot line.



**SELECTION INFORMATION**  
 Sec. 20 Mineral Health Subdivision-25  
 Statutes Approved March 3/2/62  
 Plat No. 1532768 dated 5/1/63  
 Sec. 38 School Subdivision-13  
 State Grant dated 1/3/59

**SURVEYOR'S CERTIFICATE**

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that the plat represents a survey made by me or under my direct supervision, and the measurements shown thereon actually were so reported, and that all dimensions and angles are correct.

August 12, 1974 C.H. S. Registered Land Surveyor

Date of plat preparation August 12, 1974



**DEED MAP CERTIFICATE**

I, the undersigned, hereby certify that I am the Director, Alaska Division of Lands and that the State of Alaska is the owner of Stephenkie Alaska Subdivision, Alaska State Land Survey No. 73-146, as shown thereon. I hereby approve this survey and plat for the State of Alaska.

Date 12/10/74 Acting Director, Alaska Division of Lands

**NOTARY'S ACKNOWLEDGMENT**

Subscribed and sworn to before me this 31st day of November, 1974, by commission expires 5/28/76 Notary Public for Alaska

73-146  
 18.89  
 18.89  
 18.89  
 18.89

(This Project incorporated under S.L.C. 70)

DATE OF SURVEY August 12, 1974	NAME OF SURVEYOR C. H. S.
DATE OF PLAT August 12, 1974	NAME OF SURVEYOR C. H. S.
STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF LANDS	
ALASKA STATE LAND SURVEY NO. 73-146 BEING SEC. 26, T. 18 N., R. 18 W., S. 4 E., S. 4 E.	
DATE APPROVED 12/10/74	APPROVED [Signature]
SCALE 1" = 400'	GRAPHIC SCALE 1" = 400'

SHEET 1 OF 3

73-146

**DEDICATION OF EASEMENTS, PUBLIC UTILITIES AND SERVICE OF JOBS**

I hereby dedicate for public or private use, as noted, all easements, public utility easements, and rights of way as shown and described herein.

Date 5/1/74 [Signature]

**PLAT AVAILABLE**

This plat having been approved by the State Planning Commission as required in the official records of the county of [County Name], Alaska, is hereby acknowledged and certified as the official plat, subject to any and all conditions and requirements of ordinances and law governing recording.

KENAI PENINSULA BOROUGH

[Signature]

**STEPHENKIE ALASKA SUBDIVISION  
 ALASKA STATE LAND SURVEY NO. 73-146**









KENAI PENINSULA BOROUGH  
PLANNING COMMISSION  
RESOLUTION 89-30

BCC# 0355 PAGE 453

VACATING A FIFTY FOOT PEDESTRIAN AND MAINTENANCE EASEMENT ALONG HIGHWATER MARK OF KENAI RIVER WITHIN LOTS 9-A, 10-B AND 10-A, BLOCK 2, STEPHENKIE SUBDIVISION NO. 2 (PLAT 81-96 KRD); WITHIN SECTION 36, TOWNSHIP 5 NORTH, RANGE 8 WEST, SEWARD MERIDIAN, KENAI RECORDING DISTRICT, ALASKA

WHEREAS, a request has been received to vacate the 50 foot wide pedestrian and maintenance easement along highwater mark of the Kenai River within Lots 9-A, 10-B and 10-A, Stephenkie Subdivision No. 2; and

WHEREAS, on September 25, 1989, a public hearing was held by the Kenai Peninsula Borough Planning Commission to address all concerns about this proposed vacation; and

WHEREAS, the Planning Commission has found that vacating the pedestrian and maintenance easement will not be detrimental to the public interest; and

WHEREAS, 20.28.120 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

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

Section 1. That the fifty foot pedestrian and maintenance easement along highwater mark of the Kenai River within Lots 9-A, 10-B and 10-A, Block 2, Stephenkie Subdivision No. 2 is hereby vacated.

Section 2. That this Resolution is eligible for recording after approval of the vacation by the Assembly of the Kenai Peninsula Borough; and will be void if not recorded within 90 days of adoption.

Section 3. That this Resolution is void if the vacation approval is vetoed by the Assembly of the Kenai Peninsula Borough within 30 calendar days of adoption.

Section 4. 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 25 DAY OF Sept., 1989.

Colleen Denbrock  
Colleen Denbrock, Chairperson

ATTEST:

Nancy Jungmann  
Nancy Jungmann, Planning Secretary

Return to: Kenai Peninsula Borough  
Planning Department  
144 No. Binkley Street  
Soldotna, AK 99669

89-008254  
KENAI REC 10-  
DISTRICT  
REQUESTED BY Auria  
595348

'89 OCT 19 AM 11 37



AGENDA ITEM F. PUBLIC HEARINGS

3. Resolution 89-30; vacate 50 ft. pedestrian and maintenance easement within Lots 9A, 10A, and 10B, Block 2, Stephenkie Subdivision No. 2 KPB File 89-089

Staff Report as read by Dick Troeger:

Vacation of pedestrian and maintenance easement adjacent to Kenai River within Lots 9-A, 10-A and 10-B, Block 2, Stephenkie Subdivision.

Public Notice appeared in the September 11 and 18, 1989 issues of the Peninsula Clarion. Seventeen certified mailings were sent to owners of property within 300 feet; and to other interested parties. All receipts have been returned.

Petitioner(s): Alfred and Elsie White; Will and Glen Josey of Sterling, Alaska; and, Frank and Hope Turpin; Stanley and Helene J. Brust of Anchorage, Alaska.

Purpose as stated in petition: Purpose is to protect erosion control rip-rap, which is being damaged by fishermen and boats. Property owners went to great expense to construct this rip-rap to prevent rapid erosion of the property.

Statement of non-objection: 1) Homer Electric Association; 2) Alaska DNR, Division of Parks and Recreation partially states:

" After reviewing Mr. White's request, we have determined that there is adequate public access to the Kenai Keys State Recreation Site by road or boat. There are areas of Mr. White's bank stabilization project where increased foot traffic may accelerate the sluffing of material into the Kenai River and could contribute to project failure. Conflicts between Mr. White and the public are inevitable along the easement adjacent to his private property.

The Division has considered all these factors and has no objection to the easement being vacated."

Supporting Statements: 1) Randy Super, Lot 10C, Block 2, Stephenkie Subdivision - letter partially states:

"It is essential to all property owners in the area that the erosion control improvements constructed by those property owners be maintained so as to protect the property of all in the area. The erosion control rip-rapping will not effectively prevent erosion when used as a pedestrian easement. The only viable solution to protecting the riverbank and the property owners in the area is to grant the requested petition."

2) Ted Wellman, Lot 9C, Block 2, Stephenkie Subdivision - letter partially states:

"As an adjacent property owner, I am aware of the tremendous expense the property owners have made to stabilize the river bank. This work is being undone by pedestrian misuse.

The area in question is not an area productively used by fishermen and the easement tends to serve to promote trespassing on private property. Easy access to the river



may be had through adjacent State land and the easement is an unnecessary burden on the property. The easterly portion of the easement is showing damage as the people climb up and down the specially constructed bank. Since this bank stabilization serves to protect all of the property in the area it is vital that destruction be prevented. This can be done most effectively by granting the subject petition."

No statements of objection received.

Findings of Fact

No surrounding properties will be denied access.  
There is alternate access to river usage.  
Erosion control protection is necessary.  
Vacation is being accomplished by Resolution. Plat is not required.

STAFF RECOMMENDATIONS: Approve vacation of pedestrian and maintenance easement within Lots 9-A, 10-B, and 10-A, Block 2, Stephenkie Subdivision No. 2 as requested subject to the following conditions:

1. Filing of Planning Commission Resolution 89-30 in the appropriate Recording District.
  2. The Kenai Peninsula Borough Assembly has thirty days in which they may veto Planning Commission approval of the vacation.
- END OF STAFF REPORT

Referring to the statement in the staff report that no statements of objection were received, Mr. Troeger stated he should modify that statement as a letter was received late Friday, September 22, 1989, from State of Alaska, Division of Fish and Game and signed by Philip Bryna, a Habitat Biologist. For the record, Mr. Troeger read a portion of the letter which was addressed to the Planning Department, Kenai Peninsula Borough:

"The Alaska Department of Fish and Game has reviewed your request for comments on a proposed vacation of a 50 foot pedestrian and maintenance easement along the highwater mark of the Kenai River. The Alaska Department of Fish and Game recommends that the requested easement vacation be denied. It is our policy not to recommend approval of easement vacations if the easements provide access to public resources or rivers, lakes or streams; even if an easement does not receive public use at the present time, such easements may become important to the public in the future. If the applicants are having a problem with protection of their erosion control project, we recommend that alternatives to the easement vacation be considered. These could include posting a sign asking people to stay off the rip-rap, placement of a short fence at the top of the rip-rap or, planting vegetation would discourage access to the rip-rap."

Chairperson Denbrock opened the public hearing for testimony.

Mr. Al White: Mr. White stated he was in attendance in the event the commission had any questions. He commented he and his wife had spent in excess of \$55,000 installing the rip-rap to help prevent bank erosion.

As there was no one else wishing to provide testimony, the public hearing was closed and opened for discussion among the commissioners.

MOTION: Commissioner Brickey, seconded by Commissioner Hursh, moved to adopt Resolution 89-30 thereby accomplishing the 50 ft. vacation of pedestrian and maintenance easement within Lots 9A, 10A and 10B, Block 2, Stephenkie Subdivision No. 2.

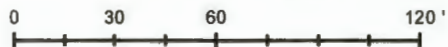
VOTE: A roll call vote was taken with all commissioners present voting yes. The motion carried.





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.

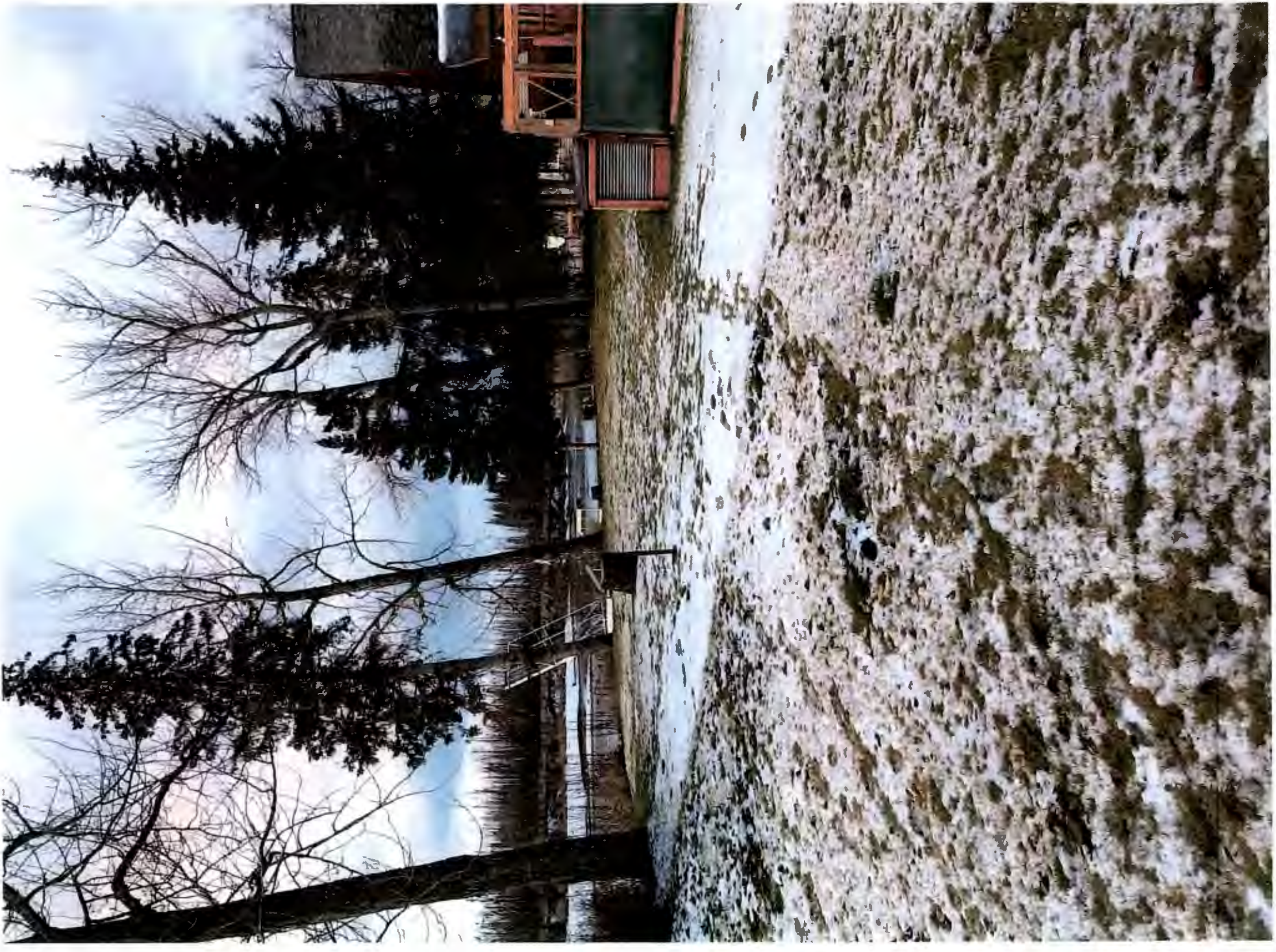
### Aerial View



Pedestrian and Maintenance Easement

PClements, KPB  
Date: 12/4/2019  
Imagery: 2010 Kenai River





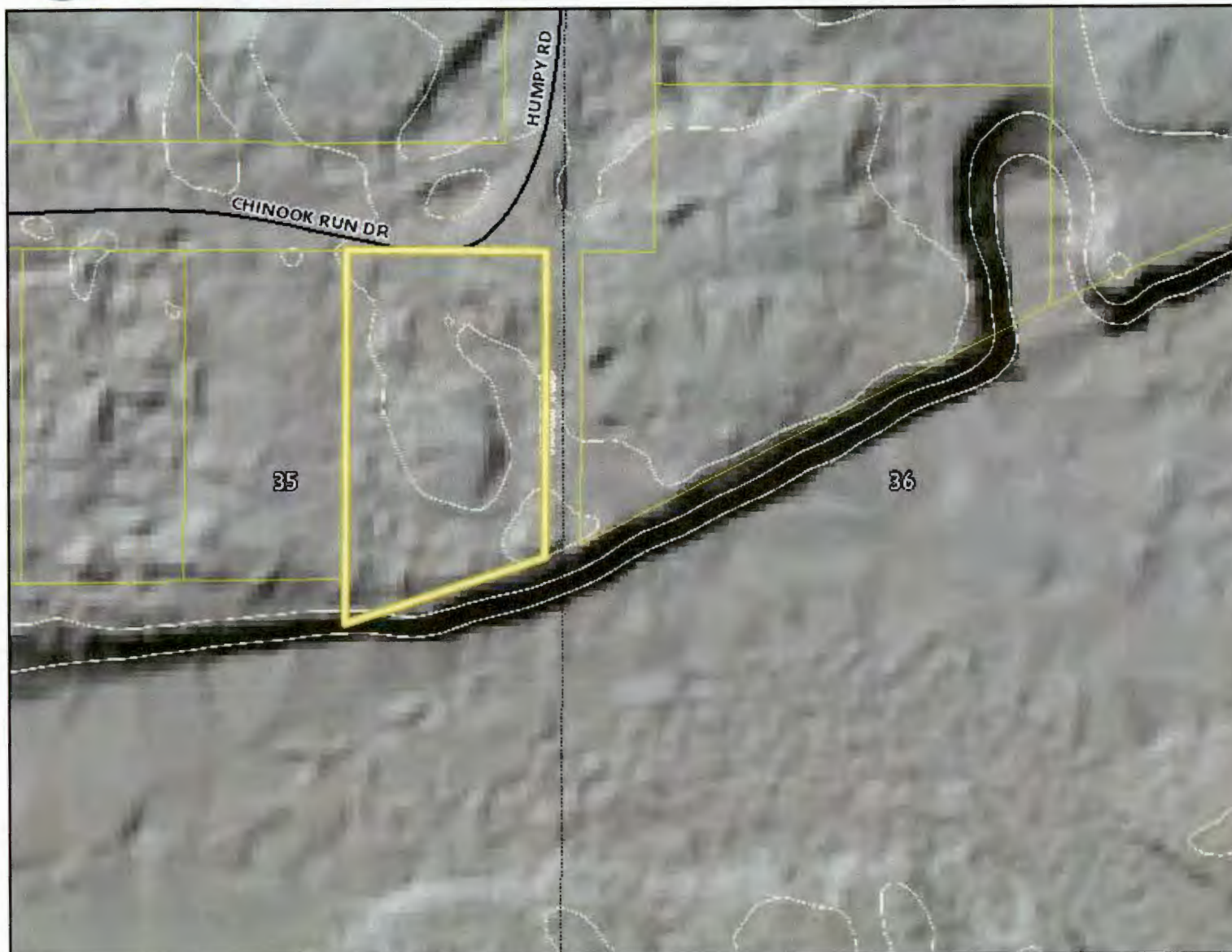
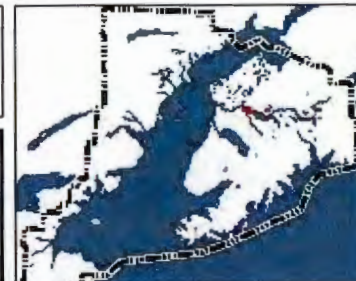




Geographic Information Systems

144 North Binkley Street, Soldotna, Alaska 99669

## Map Title



### Legend

[ ] Township Lines

[ ] Section Lines

[ ] Parcels

Elevation - Seward

High : 2600

Low : 0

Elevation

High : 2600

Low : 0

Hillshade

High : 254

Low : 0

Hillshade Seward

High : 254

Low : 0

HillshadeEast

High : 254

Low : 0



### Notes

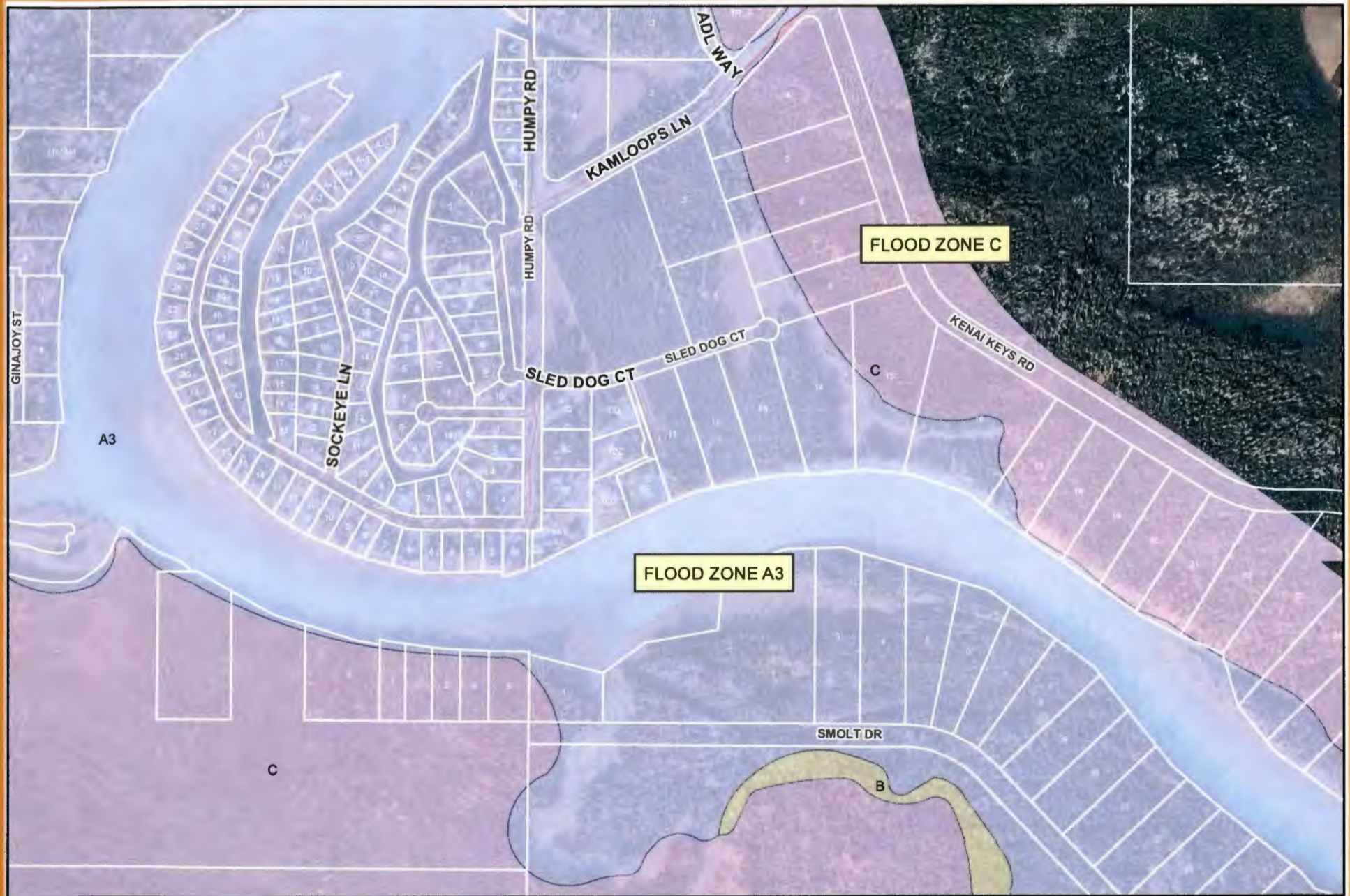
0.0 0 0.02 0.0 Miles

Coordinate System: NAD\_1983\_StatePlane\_Alaska\_4\_FIPS\_5004\_Feet

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION





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.

## FLOOD PLAIN

Date: 12/6/2019



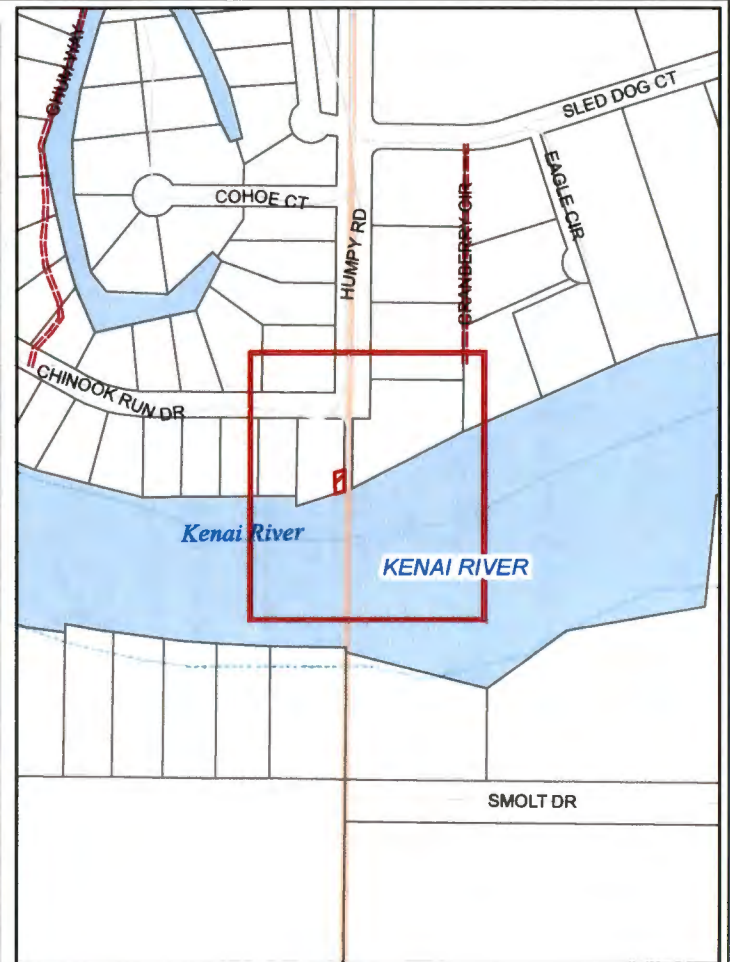
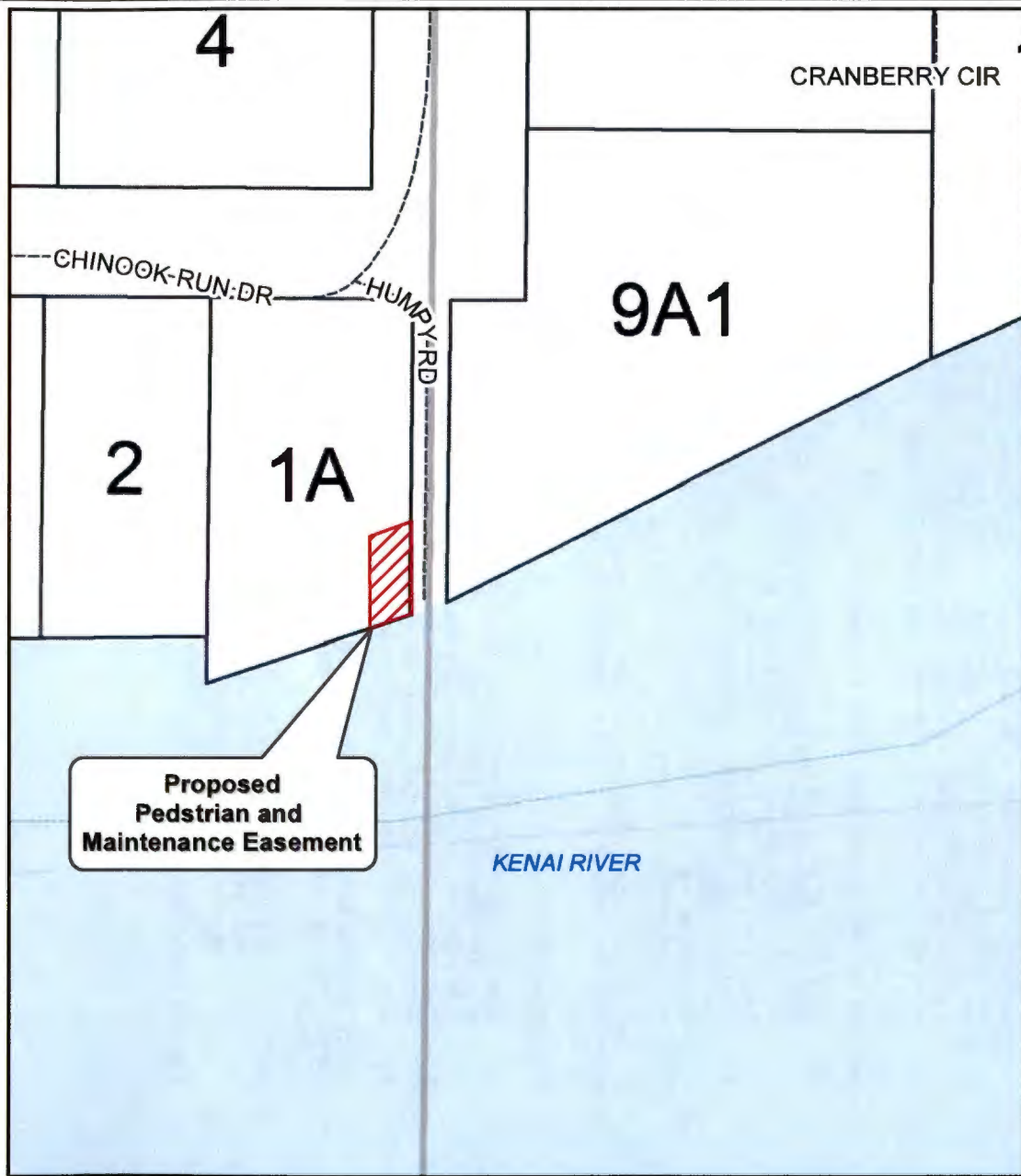


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

FLOODWAY

Date: 12/6/2019





0 300 600 1,200 Feet

**KPB 2019-148V  
T05N R08W S35  
STERLING**



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.

0 50 100 200'



PClements, KPB  
Date: 12/4/2019

**MINUTES**

Meeting of the Planning Commission  
September 12, 1983  
Page 2

**AGENDA ITEM F: PUBLIC HEARINGS**

Vice-Chairman Warfle read the rules by which a public hearing is to be conducted.

1. Vacation of Portion of Humpy Road & Portion of Underlying Sectionline Easement of Sec. 35 & 36 South of Chinook Run.

**STAFF REPORT STATED:**

Purpose: To allow abutting property owners to implement erosion control measures along the eroding bank. There is also an existing house that is within the building setback. This vacation would eliminate the encroachment.

Public notice was published in the Peninsula Clarion on August 24 and 31, 1983.

21 certified letters were sent. 20 receipts were returned.

Letters of non-objection have been received from:

1. Randall & Susan Super - "We believe that it is in the best interest of the majority of the property owners of the area that proposed erosion control measures be implemented to protect the riverbank."
2. Cynthia Wallman, Lot 9C, Stephenkie Subd. states the area is currently being unused because of the river and the existing house within the setback. Any further development could become hazardous to persons using the road as well as people living in the area.
3. Willie & Glen Josey, Lot 10C, Blk 2, Stephenkie S/D believes the bank should be rip-rapped to help stop the erosion. The parties involved have assured us that they will rip-rap the bank in order to protect it.

Letters of objection have been received:

1. Dept. of Fish & Game, William Donaldson states ADF&G are opposed to the vacation of a portion of Humpy Road. "The present and potential recreational effort on the Kenai River requires maintaining public corridors and trails to the river."
2. Division of Technical Services & Division of Land & Water Management, Paul Gallamore states proposed vacation eliminates public access to navigable waters. The vacation of the easement is not a requisite to erosion control along the river bank.

It was also stated that the 50 ft. ROW was on the survey plat when White acquired the property. This department recommends that the vacation be denied.

**Findings of fact:**

1. Due to objection from State agencies, staff feels that this ROW should not be vacated at this time.
2. ROW provides access to public waters.
3. ROW being vacated is feasible as access for pedestrians, off road vehicles, or similar modes of transportation.
4. The 50' ROW was shown on the survey plat filed May 1979.

**Staff Recommendation:** Disapprove the vacation of a portion of Humpy Road and the underlying section line easement of Sections 35 & 36.

**NOTE:** The Borough Assembly has thirty (30) days in which they may veto a vacation within the Borough which has been approved by the Planning Commission.

**END OF STAFF REPORT**



**MINUTES**  
**Meeting of the Planning Commission**  
**September 12, 1983**  
**Page 3**

**1. Humpy Road Vacation cont.**

Mr. Lazer read the staff report outlining the background and staff recommendations. He stated a phone call was received today from Don Miesner, elected president of Kensi Keys Lot Owners Assoc., who stated he is totally in favor of the proposed vacation for the following reasons:

1. Fish & Wildlife has a well and a cabin for a biologist 800 ft. upland, so they have access from that point.
2. If a boat landing is ever made at this location, there would be no parking area for cars and trailers. The surrounding land is all private.
3. The State Parks has proposed a campsite with more public access about 3/4 mile up from this proposed vacation.
4. Main reason for this request is to prevent further erosion which really is a problem.

Mr. Miesner stated it has been a long time since the State has checked this part of the river out.

Vice-Chairman Warfle opened the public hearing.

**Testimony #1:** Petitioner Alfred White passed out some pictures of the area involved. He stated the house is not actually on the right-of-way; the corner of the shop is. He pointed out on the pictures that 2 1/2 years ago when they surveyed, the trail was on the river side of the logs; he stated you can see how bad it is eroding. He indicated the other picture shows the erosion that has happened in that time. He went on to say, according to engineer's measurements, from the time it was surveyed the bank has gone almost 7 feet. He indicated he intended to rip-rap, which he can't do if it belongs to the State. He pointed out another picture that showed exactly what they are requesting to have vacated. He stated the road makes a 90° turn right before the requested vacation. He commented there's no private property almost 1000 feet on either side of that, so if they were going to use it to build a boat landing, they'd have to cut the bank down 12 feet. In that area you have to have almost a 4 to 1 slope in order to hold it and keep it from erosion. If they cut it down 12' they'd have to have 48' on each side; that would give them 96' and there's only 83' to begin with. So if they cut a V ditch they couldn't do it. He doesn't see how they intend to use it. And if they got boats in there, he doesn't know where they'd park because everything there is private land. But up the river 738 feet from that point they have their own land and they're using his road to get to it; and adjacent to that they have two other lots.

**Testimony #2:** Alfred Toulon Smith, co-owner of the property adjacent to the section line easement on the downstream side, stated the river comes down and makes a turn at this property so the power of the river is against that upstream bank just above his property. He stated they are watching with dismay the erosion that is occurring to the bank at the section line easement because the natural erosion caused by the force of the river itself, inevitably if something isn't done, will take a good portion of the front of his property in the downstream lot. He stated he would like to rip-rap that area against the power of the river. He commented it was his understanding that there is access being planned that will be useable access rather than theoretical access. He commented this section line is completely surrounded by developed, subdivided property; to wait a few years to see how things develop is what will cause the downstream property to disappear. He urged the Commission not to accept the recommendation in response to the objections from the Department of Natural Resources and the State Department of Fish & Game.

Commissioner Bryson asked if the State has rejected any request for erosion control; have the property owners asked the State for permission.

Mr. Smith answered he had not asked the State for anything. His understanding was that the private property owner should go in on State land and rip-rap that land to protect the downstream property.

Mr. Best pointed out that whether the vacation is approved or not, a permit from the Corps of Engineers will be required.



**MINUTES**

Meeting of the Planning Commission  
September 12, 1983  
Page 4

2270011

**1. Humpy Road Vacation cont.**

**Testimony #3:** Dave Bunnell, owner of lot downstream, expressed concern over the amount of erosion that is taking place. He estimated since he bought the property in 1978, that 8-10 feet of the bank has washed away. He thinks the vacation should be approved and people allowed to fix the property and rip-rap or do whatever is necessary to stop the erosion.

**Testimony #4:** Marle Eiben, Box 727, Sterling who lives in the adjacent area, stated he has attended several meetings on bank erosion held by the Kenai River Task Force and DNR and ADP&G were against improvements for erosion control and everything else to do with controls on the river. He stated he thinks this is something the State or the Corps should take care of; it shouldn't have to come out of the private property owner's pocket. He sees no reason not to proceed with the vacation; he is in favor of it.

Hearing no further testimony, Vice-Chairman Warfle closed the public hearing.

Commissioner Hursh asked Mr. Best when Kenai Keys was created, what was the flood plain projection, 5 or 10 years? Mr. Best wasn't sure of the frequency they expected.

**MOTION:** Commissioner Mumma, seconded by Commissioner Grabaugh, made a motion to approve the vacation of portion of Humpy Road & portion of underlying section line easement of Section 35 & 36 south of Chinook Run.

Hearing no further discussion, a roll call vote was taken and the motion failed on a 2 yes, 5 no vote with Commissioners Mumma and Warfle voting yes.

**2. Vacation of Fisherman's Court & Fisherman's Circle of Fisherman's Haven Subdivision**

**STAFF REPORT STATED:**

**Purpose:** Reversion back to acreage to enable the State of Alaska to manage this area as one single parcel.

Public notice was published in the Homer Weekly News on August 25 and September 1, 1983.

11 certified letters were sent, 11 receipts were received.

No comments have been received from any interested government agency or public utility company.

**Findings of fact:**

1. Sufficient ROWs have been dedicated to properly serve this area.
2. No surrounding property will be denied access.
3. Easement is not presently being utilized for public utilities.

**Staff Recommendation:** Approve the vacation of Fisherman's Court and Fisherman's Circle subject to the following:

1. Final approval and filing of plat showing ROW vacation.
2. Plat Committee standard statements as set forth in KPS Planning Commission Resolution 78-6.

**NOTE:** The Borough Assembly has thirty (30) days in which they may veto a vacation within the Borough which has been approved by the Planning Commission.

**END OF STAFF REPORT**

Mr. Lazer read the staff report outlining the background and staff recommendations.

Vice-Chairman Warfle opened the public hearing. Hearing no testimony, the hearing was closed.

**MOTION:** Commissioner Mickey, seconded by Commissioner Grabaugh, made a motion to approve the vacation of Fisherman's Court & Fisherman's Circle of Fisherman's Haven Subdivision per staff recommendations.

Hearing no discussion or objections, the motion carried unanimously.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF TECHNICAL SERVICES

BILL SHEFFIELD, GOVERNOR

POUCH 7035  
ANCHORAGE, ALASKA 99510-7035  
PHONE: (907) 276-2653

March 1, 1984

Stanley Brust & Associates  
1610 Diamond Drive  
Anchorage, Alaska 99507

File: EV-2-254 (Humpy Road)  
Subject: Vacation of a Portion of Humpy Road and the Section Line  
Easement Plat Review

Dear Mr. Brust:

This office has reviewed the above vacation plat and copies were transmitted to the Southcentral District Office of Land and Water Management. The District stated that, "Pursuant to the agreement reached with Mr. Stanley Brust at our meeting on February 27, 1984 the 50' public access easement will be graphically depicted. Because this easement will be shown around the small boat harbor and also within the Humpy Road vacation, the Southcentral District has no problems with the Deputy Commissioner's decision to approve this vacation."

If you have any questions, please feel free to contact this office.

Yours truly,

Ed Yarmak  
Survey Operations Supervisor

  
By: Paul Gallamore  
Special Projects Supervisor

EY:PG:CE:ao

cc: Vacation Files  
Rick Thompson  
Bob Arnold, Deputy Commissioner  
Joseph C. Burch, Deputy Director  
Elsie White  
Alfred Smith  
Frank Turpin  
Hope Turpin  
Frank Lazer

  
1984  
March 1



## Huff, Scott

---

**From:** Huff, Scott  
**Sent:** Monday, January 06, 2020 8:50 AM  
**To:** 'Frank Turpin'  
**Subject:** RE: Vacation of 50-ft Pedestrian and Maintenance Easement

Frank,

Per KPB 20.25.110 – preliminary plats, any plat requiring State of Alaska review and approval will be granted a 4 year initial approval. I will correct this when I give the staff report. No time extensions are allowed for right of way vacation approvals, so it will have a 4 year time frame.

KPB staff would be agreeable to approve the vacation if DNR submits a letter stating that they do not have any interest, or jurisdiction, in the easement and an easement vacation plat is not required. If this happens, we will bring the item back to the Planning Commission to approve the resolution that will be recorded to finalize the easement vacation. The commission will not review the vacation again, but they will only be reviewing, and approving, the resolution document to be recorded.

No additional fees will be charged. It is a one time petition fee.

I will discuss the above items at the meeting tonight, but feel free to ask for clarification or add any additional information during the public comment period.

Thanks,

Scott

---

**From:** Frank Turpin [mailto:fgturpin@gmail.com]  
**Sent:** Sunday, January 05, 2020 12:14 PM  
**To:** Huff, Scott <shuff@kpb.us>  
**Subject:** Vacation of 50-ft Pedestrian and Maintenance Easement

Scott, staff recommends approval by the planning commission subject to:

1. Approval by the State of Alaska DNR.
2. Submittal of a State Easement Vacation plat for plat committee review within two years of vacation approval.
3. Compliance within any State requirements for the 50-foot pedestrian and maintenance easement.

Three comments:

One, does the two year clock start with approval by the planning commission or by DNR? Given the staff statement that final authority for approval rests with DNR, I'm reading the two years as being from DNR approval – which gets to be many more years than two if DNR doesn't approve or says they don't need to approve. Would I then have a vacation without a formal resolution by the planning commission? I'm fine with that, but is this part of Max's deep state conspiracy?

Two, I will attempt to get a DNR letter saying the Borough has final authority for approval because the easement is not a public highway or RS 2477 right-of-way. That would resolve the 1989 vacation and eliminate need for a State Easement Vacation plat. Any chance items 1 and 2 above could be conditioned on whether DNR approval and/or a State Easement Vacation plat is required?



Three, if DNR says their approval is not necessary, I'm not real keen on returning to the planning commission with another \$500. Would they be able to adopt a resolution without going thru the hearing process again? Or, should we delay action by the planning commission until DNR advises one way or the other? I'm in no hurry, and have no problem handling the coordination with DNR – but I'd rather spend another \$500 on my grandkids.

Frank

## Huff, Scott

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**From:** Frank Turpin <fgturpin@gmail.com>  
**Sent:** Monday, January 06, 2020 8:53 AM  
**To:** Huff, Scott  
**Subject:** Vacation of 50' Pedestrian Easement

Scott, I should have been more explicit in suggesting that DNR does not have approval authority in vacating the pedestrian easement on my property. The State did not hold fee title on my side of the section line easement when the pedestrian easement was platted in 1984, they just held the section line easement overlaying this land. The land had been dedicated to public use on subdivision Plat 72-62 by land owners Huggins, Linton and Groseclose. Title for streets created by dedication is held by Kenai Peninsula Borough in trust for the public. It's a short leap from there to say that the Borough has authority to vacate this easement.

That's my premise. See you tonight,

Frank