

Kenai Peninsula Borough

*144 North Binkley Street
Soldotna, AK 99669*



Meeting Agenda

Tuesday, March 2, 2021

6:00 PM

Zoom ID: 938 6524 5999 Passcode: 886199

Betty J. Glick Assembly Chambers

Assembly

Brent Hibbert, President

Brent Johnson, Vice President

Jesse Bjorkman

Kenn Carpenter

Lane Chesley

Tyson Cox

Richard Derkevorkian

Willy Dunne

Bill Elam

Zoom ID: 938 6524 5999 Passcode: 886199

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Any invocation that may be offered at the beginning of the assembly meeting shall be a voluntary offering of a private person, to and for the benefit of the assembly. No member of the community is required to attend or participate in the invocation.

[Clerk's Note: The invocation will be offered by Ty Handley.]

ROLL CALL

COMMITTEE REPORTS

APPROVAL OF AGENDA AND CONSENT AGENDA

(All items listed with an asterisk () are considered to be routine and non-controversial by the Assembly and will be approved by one motion. Public testimony will be taken. There will be no separate discussion of these items unless an Assembly Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.)*

ACTION ITEMS CURRENTLY ON CONSENT AGENDA:

Resolution 2021-019 – Emergency Declaration Extension
Resolution 2021-017 – Regional Aquaculture Associations
Resolution 2021-018 – North Pacific Fishery Management Veto
Ordinance 2020-19-23 – Redoubt Roof Project Bond Interest
Ordinance 2020-19-24 – Voting Equipment
Ordinance 2021-010 – KPB 14.06 Road Maintenance Exemption
Ordinance 2021-11 – Communication Lease Vertical Bridge LLC
Petition to Vacate – Government Lot 17
KESA Appointment
APC Appointments

ACTION ITEMS ELIGIBLE TO BE ADDED TO THE CONSENT AGENDA:

Ordinance 2020-19-19 – Community Projects Funding
Ordinance 2020-19-20 – EagleView Imagery Sole Source
Ordinance 2020-19-21 – Homer High Roof Replacement Phase 1
Ordinance 2020-19-22 – Slash Disposal Site Appropriation
Ordinance 2021-07 – Nikiski Fire Equipment Award
Ordinance 2021-08 – River Center Leases

APPROVAL OF MINUTES

- *1. [KPB-3013](#) February 16, 2021 Regular Assembly Meeting Minutes

Attachments: [February 16, 2021 Regular Assembly Meeting Minutes](#)

COMMENDING RESOLUTIONS AND PROCLAMATIONS**PRESENTATIONS WITH PRIOR NOTICE**

(20 minutes total)

1. [KPB-3014](#) Kenai Peninsula Tourism and Marketing Council Update, Debbie Speakman, Executive Director (10 Minutes)
2. [KPB-3011](#) Alaska Long Trail and Land and Water Conservation Fund (LWCF) Alaska Trails Initiative, Mariyam Medovaya (10 Minutes)

Attachments: [Presentation](#)

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

(3 minutes per speaker; 20 minutes aggregate)

ITEMS NOT COMPLETED FROM PRIOR AGENDA**PUBLIC HEARINGS ON ORDINANCES**

(Testimony limited to 3 minutes per speaker)

Ordinances referred to Finance Committee

1. [2020-19-19](#) An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$426,303 for Fiscal Year 2021 and Approving Projects to be Completed for Community Purposes Under the State's 2019/2020 and 2020/2021 Community Assistance Programs (Mayor)

Attachments: [Ordinance 2020-19-19](#)
[Memo](#)
[DCCED Letter](#)
[Reference Copy - Ordinance 2020-19-12](#)
[Reference Copy - Resolution 2020-018](#)
[Reference Copy - Resolution 2013-022](#)
[Reference Copy - Resolution 2019-064](#)

2. [2020-19-20](#) An Ordinance Appropriating \$63,791.65 from the Equipment Replacement Fund for Imagery Acquisition and Approving a Sole Source Award to EagleView™ for the Purchase and Implementation of Pictometry Imagery (Mayor)
- Attachments:* [Ordinance 2020-19-20](#)
 [Memo](#)
 [GIS Information](#)
 [EagleView Quote](#)
 [Reference Copy - Resolution 2020-051](#)
 [Reference Copy - Resolution 2003-008](#)
3. [2020-19-21](#) An Ordinance Appropriating General Fund Fund Balance for Design Development of Phase I of the Homer High School Roof Replacement (Mayor)
- Attachments:* [Ordinance 2020-19-21](#)
 [Memo](#)
4. [2020-19-22](#) An Ordinance Accepting and Appropriating \$9,600 from the State of Alaska Division of Forestry to Supplement Costs to Manage the Slash Disposal Site Located in Cooper Landing (Mayor)
- Attachments:* [Ordinance 2020-19-22](#)
 [Memo](#)
 [Alaska Division of Forestry E-Mail](#)
5. [2021-07](#) An Ordinance Accepting Emergency Response Equipment from the Nikiski Firefighters Association, Inc. on Behalf of Nikiski Fire Service Area (Mayor)
- Attachments:* [Ordinance 2021-07](#)
 [Memo](#)
 [NFA Equipment Award \(Marathon\) January 2021](#)

Ordinances referred to Lands Committee

6. [2021-08](#) An Ordinance Authorizing Leases of Space at the Kenai River Center Building with the State of Alaska Department of Fish and Game and Department of Natural Resources and Repealing Ordinance 2020-30 (Mayor)

Attachments: [Ordinance 2021-08](#)
 [Memo](#)
 [Lease DNR](#)
 [Lease ADFG](#)
 [Reference Copy - Ordinance 2020-30](#)

7. [2021-09](#) An Ordinance Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

Attachments: [Ordinance 2021-09](#)
 [Derkevorkian Amendment 030221](#)
 [Memo](#)
 [Trail Management Agreement](#)
 [Trail Management Plan](#)
 [Map](#)

Ordinances referred to Policies and Procedures Committee

8. [2020-45](#) An Ordinance Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

Attachments: [Ordinance 2020-45](#)
 [Amendment Memo 030221](#)
 [Amendment Memo #2 120120 \(Motion on the floor 12/01/20 mtg\)](#)
 [Memo](#)
 [Sectional Analysis](#)
 [Public Comments 120120](#)
 [Public Comment 111020](#)
 [eComments 120120](#)
 [Planning Commission Request for Postponement 011921 \(Dealt with 011921\)](#)
 [Amendment Memo #1 102920 \(Dealt with on 12/01/20\)](#)
 [Planning Commission Recommendation 111020 \(Dealt with on 12/01/20\)](#)

9. [2021-06](#) Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)

Attachments: [Ordinance 2021-06](#)
[Memo](#)

UNFINISHED BUSINESS

NEW BUSINESS

1. Resolutions

Resolutions referred to Policies and Procedures Committee

- *a. [2021-019](#) A Resolution Extending the Disaster Emergency Declaration for the Kenai Peninsula Borough Issued Due to the Current and Expected Imminent Impacts of the COVID-19 Pandemic to June 30, 2021 (Cox)

Attachments: [Resolution 2021-019](#)
[Memo](#)

Resolutions referred to Legislative Committee

- *b. [2021-017](#) A Resolution Supporting Regional Aquaculture Associations and Opposing Proposed Changes to the Management Plan of Kachemak Bay State Park and State Wilderness Park that would Negatively Impact Tutka Bay Lagoon Hatchery (Chesley)

Attachments: [Resolution 2021-017](#)
[Memo](#)

- *c. [2021-018](#) A Resolution Asking the US Secretary of Commerce to Consider Vetoing the North Pacific Fishery Management Council's Adoption of Measures that Will Close Commercial Salmon Fishing in the Cook Inlet Exclusive Economic Zone (Dunne, Johnson, Mayor)

Attachments: [Resolution 2021-018](#)

2. Ordinances for Introduction

Ordinances for Introduction and referred to Finance Committee

- *a. [2020-19-23](#) An Ordinance Appropriating School Bond Interest to Cover the Cost of Ineligible Scope of Work on the Redoubt Elementary Roof Project (Mayor) (Hearing on 04/06/21)

Attachments: [Ordinance 2020-19-23](#)
[Memo](#)

- *b. [2020-19-24](#) An Ordinance Appropriating Funds and Authorizing the Borough Clerk to Contract for Necessary Voting Machines, Software, and Related Equipment to Provide an Accessible Voting System for Persons with Disabilities (Hibbert, Johnson) (Hearing on 04/20/21)

Attachments: [Ordinance 2020-19-24](#)
[Memo](#)

Ordinances for Introduction and referred to the Lands Committee

- *c. [2021-10](#) An Ordinance Providing an Exemption from KPB Chapter 14.06 Road Standards to Allow Acceptance of a Non-Conforming Road into the Borough Road Maintenance Program (Mayor) (Hearing on 04/06/21)

Attachments: [Ordinance 2021-10](#)
[Memo](#)

- *d. [2021-11](#) An Ordinance Authorizing a Communications Site Lease Agreement to Vertical Bridge Development, LLC (Mayor) (Hearing on 04/06/21)

Attachments: [Ordinance 2021-11](#)
[Memo](#)
[LEASE](#)
[APPENDIX A](#)
[APPENDIX B](#)
[Attachment A - Map](#)
[Attachment B - IMAGERY](#)

3. Other

Other items referred to Lands Committee

- *a. [KPB-3009](#) Petition to Vacate a 30' by 273' Right-of-Way Permit ADL 220394 Adjoining the South Boundary of Government Lot 17 Within Section 34 Township 8 North Range 11 West

[Clerk's Note: The Planning Commission approved the referenced petition at its February 8, 2021 meeting by unanimous consent.]

Attachments: [Petition to Vacate](#)

Other items referred to Policies and Procedures Committee

- *b. [KPB-3010](#) Confirming an Appointment to the Kachemak Emergency Service Area Board

Jeffrey Serio, Seat B, Term Expires October, 2021

Attachments: [Appointment](#)

- *c. [KPB-3003](#) Confirming the Appointments to the Kenai Peninsula Borough Advisory Planning Commissions

Anchor Point APC, Sonshine D. Konovalov; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Kathryn A. Medcoff; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Krista Schooley; Seat C; Term Expires September 30, 2023

Attachments: [Appointments](#)

MAYOR'S REPORT

[KPB-2996](#) Mayor's Report Cover Memo

Attachments: [Cover Memo](#)

1. Assembly Requests/Responses - None.
2. Agreements and Contracts

- a. [KPB-2997](#) Authorization to Award a Contract for ITB21-018 Gravel Road Project - Escape Route N2 Region to Foster Construction, LLC., Soldotna, AK

Attachments: [Authorization to Award Contract for ITB21-018](#)

3. Other

- a. [KPB-2998](#) Revenue - Expenditure Report - January 2021

Attachments: [Revenue - Expenditure Report - January 2021](#)

- b. [KPB-2999](#) Budget Revisions - January 2021

Attachments: [Budget Revisions - January 2021](#)

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS**ASSEMBLY COMMENTS****PENDING LEGISLATION**

(This item lists legislation which will be addressed at a later date as noted.)

1. [2020-19-07](#) An Ordinance Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments: [Ordinance 2020-19-07](#)
[Memo](#)
[Admin's Request to Table \(Dealt with on 12/01/20\)](#)
[Amendment Memo \(Dealt with 10/13/20\)](#)
[Reference copy: Resolution 2020-044](#)
[Reference copy: Resolution 2012-091](#)

2. [2020-19-08](#) An Ordinance Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments: [Ordinance 2020-19-08](#)
[Memo](#)
[Admin's Request to Table \(Dealt with on 12/01/20\)](#)
[Amendment Memo \(Dealt with 10/13/20\)](#)
[Reference copy: Resolution 2013-071](#)
[Reference copy: Resolution 2020-042](#)

3. [2020-19-09](#) An Ordinance Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

Attachments:

[Ordinance 2020-19-09](#)

[Memo](#)

[Admin's Request to Table \(Dealt with on 12/01/20\)](#)

[Amendment Memo \(Dealt with 10/13/20\)](#)

[Reference copy: Resolution 2011-073](#)

[Reference copy: Resolution 2020-043](#)

INFORMATIONAL MATERIALS AND REPORTS

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

1. April 6, 2021 Regular Assembly Meeting

6:00 PM This meeting will be held through Zoom Meeting ID: 938 6524 5999 Passcode: 886199

And in person from the
Betty J. Glick Assembly Chambers
Borough Administration Building

ADJOURNMENT

This meeting will be broadcast on KDLL-FM 91.9 (Central Peninsula), KBBI-AM 890 (South Peninsula), K201AO(KSKA)-FM 88.1 (East Peninsula).

The meeting will be held through Zoom, the Meeting ID: 938 6524 5999 Passcode: 886199 and in-person from the Betty J. Glick Assembly Chambers, Borough Administration Building, Soldotna, Alaska. COVID-19 mitigation protocols will be observed. To join the meeting from a computer, visit <https://zoom.us/j/93865245999>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247 and enter the Meeting ID: 938 6524 5999 Passcode: 886199. Detailed instructions will be posted on at the Kenai Peninsula Borough's main page at kpb.us: "Meeting and Public Notices" "Current Assembly Agenda".

Copies of the agenda and ordinances to be considered can be viewed on the website referenced above or at the Public Bulletin Board located on the window right of the double doors in the back of the Borough Administration Building. For further information, please call the Clerk's Office at 714-2160 or toll free within the Borough at 1-800-478-4441, Ext. 2160. Visit our website at www.kpb.us for copies of the agenda, meeting summaries, ordinances and resolutions.



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Minutes

Assembly

Brent Hibbert, President

Brent Johnson, Vice President

Jesse Bjorkman

Kenn Carpenter

Lane Chesley

Tyson Cox

Richard Derkevorkian

Willy Dunne

Bill Elam

Tuesday, February 16, 2021

6:00 PM

Betty J. Glick Assembly Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

[Clerk's Note: No invocation was given.]

ROLL CALL

Present: 9 - Jesse Bjorkman, Kenn Carpenter, Tyson Cox, Willy Dunne, Brent Hibbert, Brent Johnson, Richard Derkevorkian, Bill Elam, and Lane Chesley

Also present were:

Charlie Pierce, Borough Mayor

Colette Thompson, Borough Attorney

Johni Blankenship, Borough Clerk

Michele Turner, Deputy Borough Clerk

Randi Broyles, Borough Clerk Assistant

COMMITTEE REPORTS

Assembly Member Cox stated the Finance Committee met and discussed its agenda items.

Assembly Member Derkevorkian stated the Lands Committee met and discussed its agenda items.

Assembly Member Bjorkman stated the Policies and Procedures Committee met and discussed its agenda items.

Vice President Johnson stated the Legislative Committee met and discussed its

agenda item.

APPROVAL OF AGENDA AND CONSENT AGENDA

Johnson moved to approve the agenda and consent agenda.

Copies have been made available to the public, Borough Clerk Johni Blankenship noted by title only the resolutions and ordinances on the consent agenda.

[KPB-2991](#) February 2, 2021 Regular Assembly Meeting Minutes

Approved.

[2020-19-17](#) An Ordinance Authorizing the Acquisition of Real Property Located at 4135 Hohe Street, Homer, Alaska on Behalf of South Peninsula Hospital, Appropriating \$315,000 from the South Peninsula Hospital Plant Replacement and Expansion Fund for the Purchase, and Authorizing an Amendment to the SPH, Inc. Operating Agreement (Mayor)

[Clerk's Note: The final Whereas clause was amended to read: "the Kenai Peninsula Borough Planning Commission, at its regular meeting of January 25, 2021 recommended approval by unanimous consent." and the ninth Whereas clause was amended to read: "the South Peninsula Hospital Service Area Board, at its meeting of January 14, 2021 recommended approval by the passage of SPHSA Resolution 2021-01."]

This Budget Ordinance was enacted as amended.

[2020-19-18](#) An Ordinance Appropriating Supplemental Funds to Support the Western Emergency Service Area for the Remainder of Fiscal Year 2021 (Mayor)

[Clerk's Note: The final Whereas clause was amended to read: "at its regular meeting of February 10, 2020, the WESA board recommended approval of this ordinance by unanimous consent."]

This Budget Ordinance was enacted as amended.

[2021-04](#) An Ordinance Approving the Transfer of Assets from Ninilchik Emergency Services, Inc. to the Kenai Peninsula Borough on Behalf of the Newly Expanded Fire & Emergency Medical Service Area (Mayor)

[Clerk's Note: The final Whereas clause was amended to read: "the Planning Commission at its regularly scheduled meeting held on February 8, 2021 recommended approval by unanimous consent."]

This Ordinance was enacted as amended.

2021-05

An Ordinance Authorizing the Negotiated Lease of Office Space at the Western Emergency Service Area Fire Department, Ninilchik Station (Mayor)

[Clerk's Note: The second to last whereas clause was deleted in its entirety and the final Whereas clause was amended to read: "the Western Emergency Service Area Board at its regularly scheduled meeting of February 10, 2021 recommended approval by unanimous consent."]

This Ordinance was enacted as amended.

2021-011

A Resolution Accepting Emergency Response Training Manikin Equipment from the Southern Region Emergency Medical Services Council, Inc. on Behalf of Nikiski Fire Service Area (Mayor)

[Clerk's Note: The second to last Whereas clause was amended to read "at its regularly scheduled meeting held on February 10, 2021, the Service Area board recommended approval of this resolution;" (technical amendment)]

This Resolution was adopted as amended.

2021-016

A Resolution Authorizing the Kenai Peninsula Borough Mayor to Submit a Bond Reimbursement Application to the Alaska Department of Education and Early Development for the Approval of Additional Projects in the Bond Reimbursement Program for Bonds Sold in 2014 (Mayor)

[Clerk's Note: The Title was amended to read: "A Resolution Authorizing the Kenai Peninsula Borough Mayor to [SUBMIT] Enter Into a Bond Reimbursement [APPLICATION] Agreement [TO THE] With the State of Alaska Department of Education and Early Development for [THE APPROVAL OF] Additional Projects in the Bond Reimbursement Program for Bonds Sold in 2014." and

Amend the third Whereas clause to read, "the assembly authorized the mayor to [SUBMIT] enter into a bond reimbursement [APPLICATION] agreement [TO] with the State of Alaska Department of Education and Early Development ("DEED") for the approval of the Redoubt Elementary roof project in 2019;" and

Amend the seventh Whereas clause to read, "this project is eligible under the Debt Funding Categories per AS 14.11.100 (j)(4) of the Bond Reimbursement program; [AND] and

Delete the eight whereas clause in its entirety and

Amend Section to read, "The mayor is authorized to [SUBMIT] enter into a Bond Reimbursement [APPLICATION TO THE] Agreement with DEED for the [APPROVAL OF THE] Homer High School Roof Replacement Project Phase 1 project."

This Resolution was adopted as amended.

[2021-012](#)

A Resolution Approving Mutual Aid and Automatic Aid Agreements and Operational Plans Between Western Emergency Service Area and Central Emergency Service Area for Fire and Emergency Response Services (Mayor)

This Resolution was adopted.

[2021-013](#)

A Resolution Approving Mutual Aid and Automatic Aid Agreements and Operational Plans Between Western Emergency Service Area and Kachemak Emergency Service Area for Fire Response Services (Mayor)

This Resolution was adopted.

[2021-014](#)

A Resolution Approving Mutual Aid and Automatic Aid Agreements and Operational Plans Between Western Emergency Service Area and the Homer Volunteer Fire Department for Fire Response Services (Mayor)

This Resolution was adopted.

[2020-19-19](#)

An Ordinance Accepting and Appropriating Funding from the State of Alaska in the Amount of \$426,303 for Fiscal Year 2021 and Approving Projects to be Completed for Community Purposes Under the State's 2019/2020 and 2020/2021 Community Assistance Programs (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-19-20](#)

An Ordinance Appropriating \$63,791.65 from the Equipment Replacement Fund for Imagery Acquisition and Approving a Sole Source Award to EagleView™ for the Purchase and Implementation of Pictometry Imagery (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-19-21](#)

An Ordinance Appropriating General Fund Fund Balance for Design Development of Phase I of the Homer High School Roof Replacement (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2020-19-22](#)

An Ordinance Accepting and Appropriating \$9,600 from the State of Alaska Division of Forestry to Supplement Costs to Manage the Slash Disposal Site Located in Cooper Landing (Mayor)

This Ordinance was introduced and set for public hearing.

[2021-07](#) An Ordinance Accepting Emergency Response Equipment from the Nikiski Firefighters Association, Inc. on Behalf of Nikiski Fire Service Area (Mayor)

This Budget Ordinance was introduced and set for public hearing.

[2021-08](#) An Ordinance Authorizing Leases of Space at the Kenai River Center Building with the State of Alaska Department of Fish and Game and Department of Natural Resources and Repealing Ordinance 2020-30 (Mayor)

This Ordinance was introduced and set for public hearing.

[2021-09](#) An Ordinance Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

This Ordinance was introduced and set for public hearing.

Approval of the Agenda and Consent Agenda

President Hibbert called for public comment.

Dave Mastolier, Snomads, Inc. spoke in support of Ordinance 2021-09.

There being no one else who wished to speak, the public comment period was closed.

The motion to approve the agenda and consent agenda as amended carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

COMMENDING RESOLUTIONS AND PROCLAMATIONS

PRESENTATIONS WITH PRIOR NOTICE

1. [KPB-2990](#) Central Peninsula Hospital Quarterly Report (10 Minutes)

[Clerk's Note: Rick Davis, Central Peninsula Hospital CEO gave a quarterly report to the assembly.]

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Hibbert called for public comment with none being offered.

ITEMS NOT COMPLETED FROM PRIOR AGENDA

PUBLIC HEARINGS ON ORDINANCES

[2021-03](#) An Ordinance Amending KPB 21.06.040, Administration, and KPB

21.06.070, "Development" Definition, for Floodplain Management Purposes (Mayor)

Derkevorkian moved to enact Ordinance 2021-03.

President Hibbert called for public comment with none being offered.

The motion to enact Ordinance 2021-03 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

UNFINISHED BUSINESS

NEW BUSINESS

1. Resolutions

[2021-010](#)

A Resolution Approving Additional Positions in the Central Emergency, Nikiski Fire, Kachemak Emergency and Western Emergency Service Areas Using Existing Available FY21 Funds (Mayor)

Cox moved to adopt Resolution 2021-010.

President Hibbert called for public comment.

The following people spoke in support of Resolution 2021-010:

Leslie Morton, Soldotna

Julie Dennison, Soldotna

There being no one else who wished to speak, the public comment period was closed.

Bjorkman moved to amend Resolution 2021-010 as follows:

Amend Section 2 to read, "As requested by the Nikiski Emergency Service Area Board, the Kenai Peninsula Borough Assembly approves two [THREE] additional Firefighter positions [AND ONE ADDITIONAL ASSISTANT CHIEF FOR TRAINING POSITION,] temporarily for FY2021, and authorizes the use of [\$185,257] \$92,629 in available FY2021 funds to support assess continuation of these positions and an additional firefighter position and assistant chief for training position for FY2022 to be presented by the Mayor as a part of the FY2022 budget."

Assembly Members Dunne, Johnson and Elam spoke in support of the amendment.

The motion to amend Resolution 2021-010 carried by the following vote:

Yes: 7 - Bjorkman, Carpenter, Cox, Dunne, Johnson, Derkevorkian, and Elam

No: 2 - Hibbert, and Chesley

Cox moved to amend Resolution 2021-010 as follows:

The sixth Whereas clause was amended to read, " the Western Emergency Service Area Board requested and unanimously approved this resolution on February 10, 2021, to increase the number of personnel assigned to the Western Emergency Service Area to include four additional fire fighters and one assistant chief for FY2021 and FY2022; and"

The motion to amend Resolution 2021-010 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

Assembly Member Dunne spoke in support of Resolution 2021-010 as amended.

The motion to adopt Resolution 2021-010 as amended carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

2021-015

A Resolution Encouraging Alaska Representatives and Governor Dunleavy to Fully Fund the State's Budget for Abandoned Vehicle Removal within the Kenai Peninsula Borough (Cox, Johnson, Mayor)

Johnson moved to adopt Resolution 2021-015

President Hibbert called for public comment with none being offered.

Assembly Members Carpenter and Elam spoke in support of Resolution 2021-015.

The motion to adopt Resolution 2021-015 carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

3. Other

KPB-2979

Petition to Vacate a Segment of a 100' Right-of-Way Adjoining the East Boundary of Lot 1 Block 6 and the West Boundary of Lot 7 Block 3 Caribou Island Amended (Plat SW-37)

[Clerk's Note: The Planning Commission approved the referenced petition at its January 25, 2021 meeting, by majority vote.]

Derkevorkian moved to veto the action of the planning commission.

President Hibbert called for public comment.

The following people spoke in support of the motion to veto the Planning Commission's action:

Christian Washburn

Russell Nogg

Ernie Alvarez

Daniel Moose, Kenai
Deborah Wing
Krista Schooley, Soldotna
James Merrian

The following people spoke in opposition to the motion to veto the Planning Commission's action.

Mike Clements, Sterling
Peggy Clements, Sterling

There being no one else who wished to speak the public comment period was closed.

Assembly Members Johnson, Carpenter, Bjorkman, Cox and Elam spoke in support of the motion to veto the Planning Commission's action.

President Hibbert passed the gavel to Vice President Johnson and spoke in support of the motion to veto the Planning Commission's action. Vice President returned the gavel to President Hibbert.

The motion to veto the Planning Commission's action carried by the following vote:

Yes: 9 - Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Derkevorkian, Elam, and Chesley

MAYOR'S REPORT

[KPB-2987](#) Mayor's Report Cover Memo

1. Assembly Requests/Responses - None.
2. Agreements and Contracts
 - a. [KPB-2988](#) Sole Source: Lateral Medical Corporation SimJunior Patient Simulator
 3. Other
 - b. [KPB-2989](#) Capital Project Reports - December 31, 2020

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Hibbert called for public comment with none being offered.

ASSEMBLY COMMENTS

Assembly Member Elam thanked everyone for their participation and encouraged everyone to participating in person. He stated he looked forward to participate in person at the next meeting.

Assembly Member Dunne wished everyone a good evening.

Assembly Member Chesley stated his pleasure for meeting in person in the newly remodeled assembly chambers. He thanked the assembly for their hard work throughout the evening.

Assembly Member Carpenter thanked everyone for their participation and advocated for the public to testify in person. He encouraged everyone to drive safely.

Assembly Member Bjorkman thanked the assembly for a good evening. He stated he had a great few weeks at school with students and was thankful to have everyone back to in person learning. He stated he looked forward to parent-teacher conferences at the end of the week. He reminded everyone of early release day on February 17th. He expressed his excitement for the Kenai Peninsula Economic Development District (KPEDD) and the great things they were accomplishing. He stated he would like to see internet services providers be incentivized to provide residents with high speed internet services. He met with Purchasing Director, John Hedges to discuss borough master planning. He also met with Mayor Pierce to discuss capital projects and maintenance. He stated great things were happening at the borough and encouraged everyone to drive safely.

Assembly Member Derkevorkian thanked everyone who testified. He stated he enjoyed hearing from the public. He reminded the public that the chambers were open for in person participation. He stated that the "Shop Here All Year in Kenai!" program was underway.

Assembly Member Cox stated he was attending the upcoming KPEDD board meeting. He stated the school district's student allocation was closer to \$15,000 rather than the \$19,000 as previously reported. He shared an article he found from 2020 which stated the State of Alaska's average student cost was roughly \$16,000. He encouraged people to go to the source to find accurate information. He stated that Soldotna High School sports were in full swing and their hockey team was in their state tournament and the basketball team's had upcoming games against Homer. He stated the cross-country team was hosting boroughs over the weekend at Tsateshi Trails.

Vice President Johnson provided a history of Alaska's Elizabeth Peratrovich Day.

President Hibbert thanked everyone for their participation. He stated he attended the latest Kenai River Social Management Advisory Board Meeting and they were looking to create a sockeye salmon stamp to raise money. He expressed his excitement for longer Alaskan days and wished everyone a good evening.

PENDING LEGISLATION

1. [2021-06](#) Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)
2. [2020-19-07](#) An Ordinance Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended
3. [2020-19-08](#) An Ordinance Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended
4. [2020-19-09](#) An Ordinance Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor) Tabled as amended

INFORMATIONAL MATERIALS AND REPORTS**ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS**

1. March 2, 2021 Regular Assembly Meeting
This meeting will be held through Zoom
Meeting ID: 938 6524 5999 Passcode: 886199

And in person from the Betty J. Glick Assembly
Chambers, Borough Administration Building

ADJOURNMENT

With no further business to come before the assembly, President Hibbert adjourned the meeting at 9:38 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of February 16, 2021.

Johni Blankenship, MMC, Borough Clerk

Approved by the Assembly: _____

Building a Stronger Alaskan Economy

Alaska Trails Initiative

Alaska Long Trail &

Land and Water Conservation Fund:

Opportunities for strengthening Kenai outdoor recreation economy

Presentation for KPB

March 2, 2021



Alaska Trails Initiative

Who's Involved? Sponsored by Alaska Trails and a growing Alliance of statewide partners including agencies, businesses, trail user groups, regional marketing and related tourism organizations

Partners include

Sitka Trails Works | Juneau Trail Mix |
Mat Su Parks and Trails | Anchorage Park
Foundation | NPS RTCA | KMTA | USFS
Alaska Regional Office



Alliance Goals

- Build a more durable, **stronger AK economy**
- Better **attract and retain** residents, retirees, businesses
- Make it more inviting to lead **active, heathy lives**
- Expand **diversity** in outdoor recreation users
- Guide growth to help **sustain what makes Alaska unique**

More information <https://www.alaska-trails.org/alaska-trails-initiative>





We need investments that better deliver what we promise in our marketing material

Alaska has barely tapped our state's remarkable outdoor resources.

With smart investments in trails, huts, signs and trail marketing we could build a stronger, more durable Alaska economy.

Investing in trails and outdoor recreation infrastructure is one of the best ways to rebuild Alaska's economy

One More Day: “OMD”

Average length of stay for visitors to New Zealand – **19 days** ...for out of state visitors to Alaska – **9.1 days**

If just half of a typical year' out of state visitors spend one more day in Alaska the result is an extra **\$137 million in-state spending**



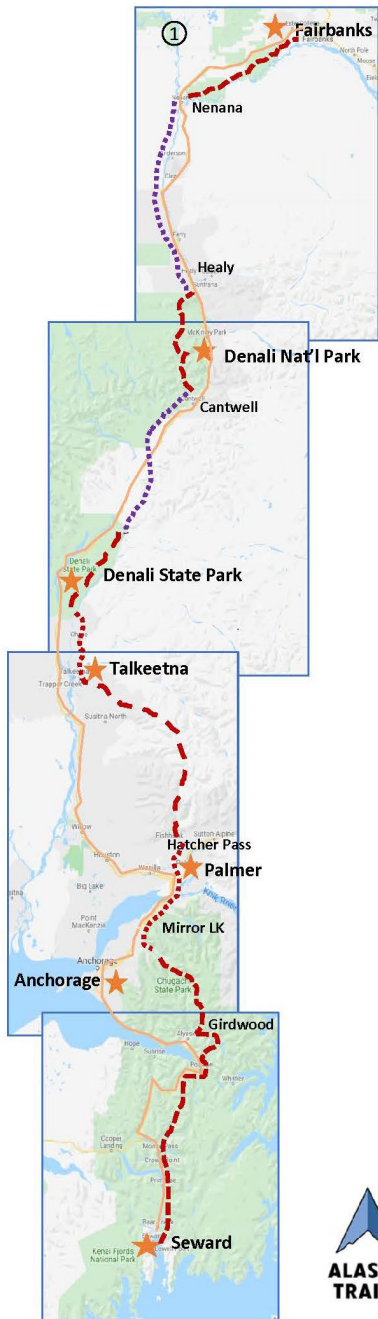
Sources: Economic Impact of Alaska's Visitor Industry, 2017 - Nov 2018

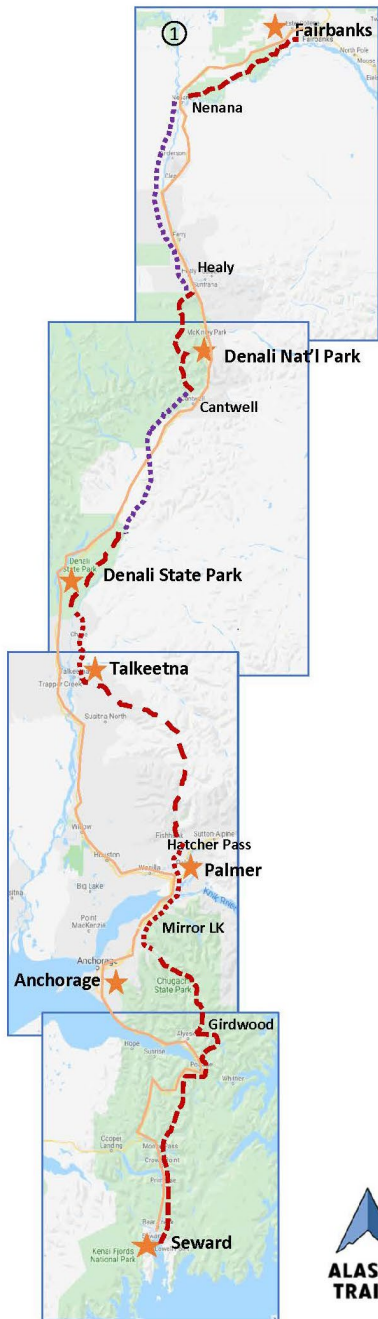
<https://www.stats.govt.nz/news/record-breaking-3-7-million-visitors-to-new-zealand>

<https://www.commerce.alaska.gov/web/ded/dev/tourismdevelopment/tourismresearch.aspx>

WHY AN ALASKA “LONG TRAIL”?

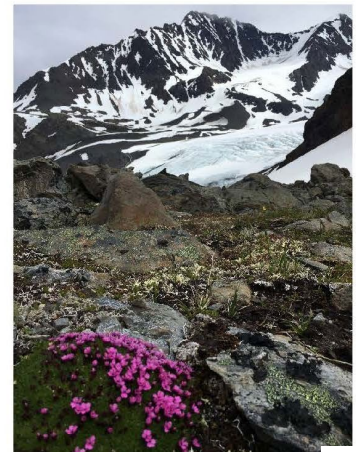
- A Long Trail creates **more value than the sum of its parts.**
- World-class trails like Appalachian, Pacific Crest & Continental Divide Trails in the US are **destinations.**
- Appalachian Trail: In 50 years, 30,000 have hiked the full trail; **three million visitors** hike a portion each year.
- 100% Increase in growth in John Muir Trail Park Service permits 2011 to 2015.
- Growing Interest: hiking was the fastest growing activity for both independent and cruise out-of-state travelers in Alaska from 2011-2016.





WHY FAIRBANKS TO SEWARD?

- **Momentum & landowner support**
- **Economic Impact** - near to communities.
- **Manageable Costs** - portions already exist
- **“Goldilocks Factor”** - wild but not too wild
- **Wow Factor** - spectacular country
- **Flexible** - 4-season/multi-use route





Stitching it all Together The Alaska Long Trail

<https://www.alaska-trails.org/the-alaska-long-trail>

Alaska Trails Initiative

STATEWIDE TRAILS INVESTMENT STRATEGY

Draft April 2020



Large sections of the proposed Long Trail are already identified as priorities for improvement.



See the full document at www.alaska-trails.org/trails-investment-strategy

Investment Strategy – Partners & Supporters



The Investment Strategy is prepared by the Alaska Trails Initiative, sponsored by Anchorage-based nonprofit Alaska Trails. This document would not be possible without active participation and support from dozens of individuals and agencies. Alaska Trails is deeply grateful for the active participation and contributions from the following individuals, listed by area of focus.

Seward to Anchorage Trail Projects

Mackenzie Barnwell – Alaska Huts Association
Judy Bittner – Iditarod Nat'l Historic Trail Alliance
Tim Channon, Karen Kromrey, Alicia King – USFS Chugach National Forest
Jessica Szelag, Lia Slemmons – Kenai Mountains-Turnagain Arm Heritage Area (KMTA)

Mat Su Trail Projects

Wes Hoskins – Mat-Su Trails and Parks Foundation
Stuart Leidner – AK DNR Parks & Outdoor Recreation
Joe Meehan, AK Department of Fish & Game
Eric Phillips, George Hoden - Mat Su Borough
Bonnie Quill, Mat Su CVB

Southeast Trail Projects

Lynne Brandon, Sitka Trail Works
Ryan O'Shaughnessy, Juneau Trail Mix
Erik Boraas, Former Juneau Trails Mix
Dan Kirkwood, Pack Creek/Juneau Econ Development

Denali Trail Projects

Trena Haugen, Clay Walker – Denali Borough
Miriam Valentine, Jennifer Johnston - Denali Nat'l Park

Fairbanks Trail Projects

Alison Arians, State Division of Forestry
Deb Hickok, Visit Fairbanks
Brooks Ludwig, State Division of Parks
Geoffrey Orth, Interior Trail Association
Eric Troyer, multiple trail organizations
Jon Underwood, Happy Trails
Bryant Wright, Fairbanks No. Star Borough
Glen Hemingson, Skylar Travel
Jomo Stewart, Fairbanks Economic Development

Anchorage Trail Projects

Joe Hall, Kurt Henzel – AK DNR DPOR
Chugach State Park Citizens Advisory Board, (in particular Mark “St Mark” Spano, Claire LeClair, Kevin Keeler, Shannon Donovan, David Hart, Irene Turletes, & Joe Hall)
Josh Durand, Steve Rafuse, Maeve Nevins – Muni. of Anchorage Parks Department
Beth Nordlund, Diana Rhoades – Anchorage Park Foundation
Bill Popp, Emma Irish – Anchorage Economic Development Corporation
Julie Saupe, Visit Anchorage

Statewide/Multiple Sections

Keith Comstock, State of AK, DCCED
Mike Downs, Rivers Trails Conservation Assistance, NPS
Ricky Gease, Alaska DNR DPOR
Lee Hart, Alaska Outdoor Alliance
James King, Sharon Seim - USFS Alaska Regional Office
Julie Jessen, Sarah Leonard, Josh Howes chair and other members of the ATIA Tourism Policy & Planning Committee

Jean Ayers – AK State Parks LWCF
Wendy Sailors, Alaska DNR DPOR
Don Striker, Peter Christianson – NPS
Jeff San Juan, AIDEA
Erin Dovichin, Alaska Venture Fund
Patrick Shannon, National Forest Foundation
Reps of a range of outdoor rec businesses

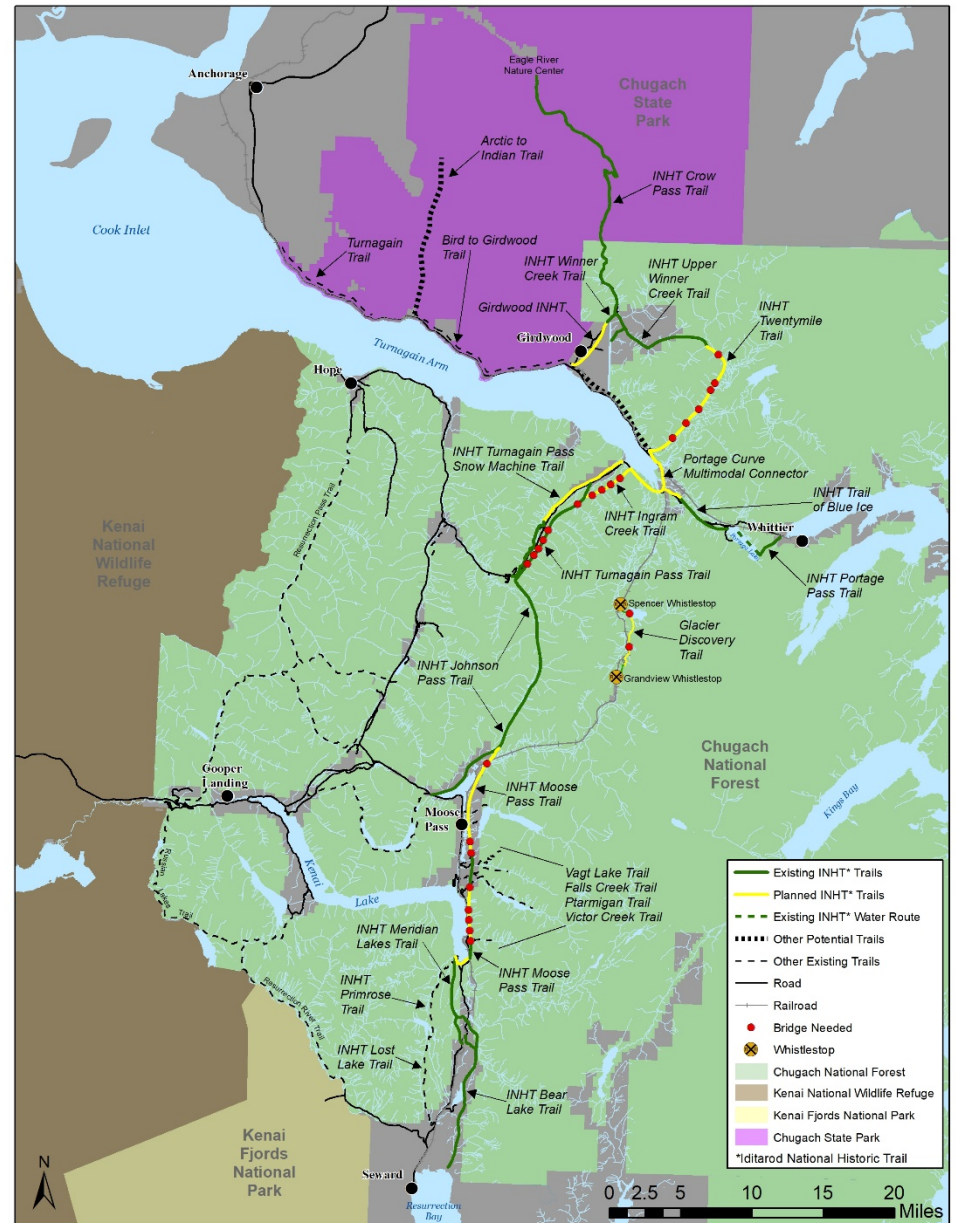
Investment Strategy Extract – Anchorage-Seward



The Turnagain Pass area has all the ingredients of an accessible, enticing destination – except a trail. Phase 1 of this project would fill that gap. Source: USFS

“Southern Trek” of the Iditarod

Identified as one leg of the full Iditarod Trail, one of 15 recognized National Trails in the US. Completing this section focuses on filling gaps, building bridges.



We would love to hear from you!

- Do you have Long Trail project ideas for the Kenai?
 - Would you like to be part of the Kenai Long Trail working group?
 - Do you have questions about the project?
-

**CITY OF SEWARD, ALASKA
RESOLUTION 2021-014**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEWARD,
ALASKA, SUPPORTING THE CONTINUED DEVELOPMENT OF THE
ALASKA LONG TRAIL FROM SEWARD TO FAIRBANKS**

WHEREAS, the Alaska Long Trail is an initiative sponsored by Alaska Trails that seeks to establish a 500-mile trail from Seward to Fairbanks, with a potential expansion extending north of Fairbanks for a total length of 2000 miles; and

WHEREAS, supporting the Alaska Long Trail is consistent with Seward Parks & Recreation's mission to preserve, improve, and promote the city's natural resources, parkland, and recreational opportunities for current and future generations; and

Land and Water Conservation Fund

- Federal \$\$ for outdoor recreation
- \$40M in 350 projects in AK since 1965
- Doubles local and state investments through 50%-50% match (cash, labor, in-kind)
- Eligibility: ½ municipal, borough and tribal governments, ½ state DPOR
- Increase to \$2.5M a year going forward through 2020 Great American Outdoors Act
- 3 year allocation – FFY2018 \$\$ are lost
- 2019 state portion of LWCF is slated for Kenai projects
 - \$1.25 M Kasilof boat launch
 - \$650,000 Morgan's Land boat launch



Photo credit Karen J. Laubenstein, BLM



**ALASKA NEEDS TO
CLAIM ITS ANNUAL
\$2.5M OF LWCF!**

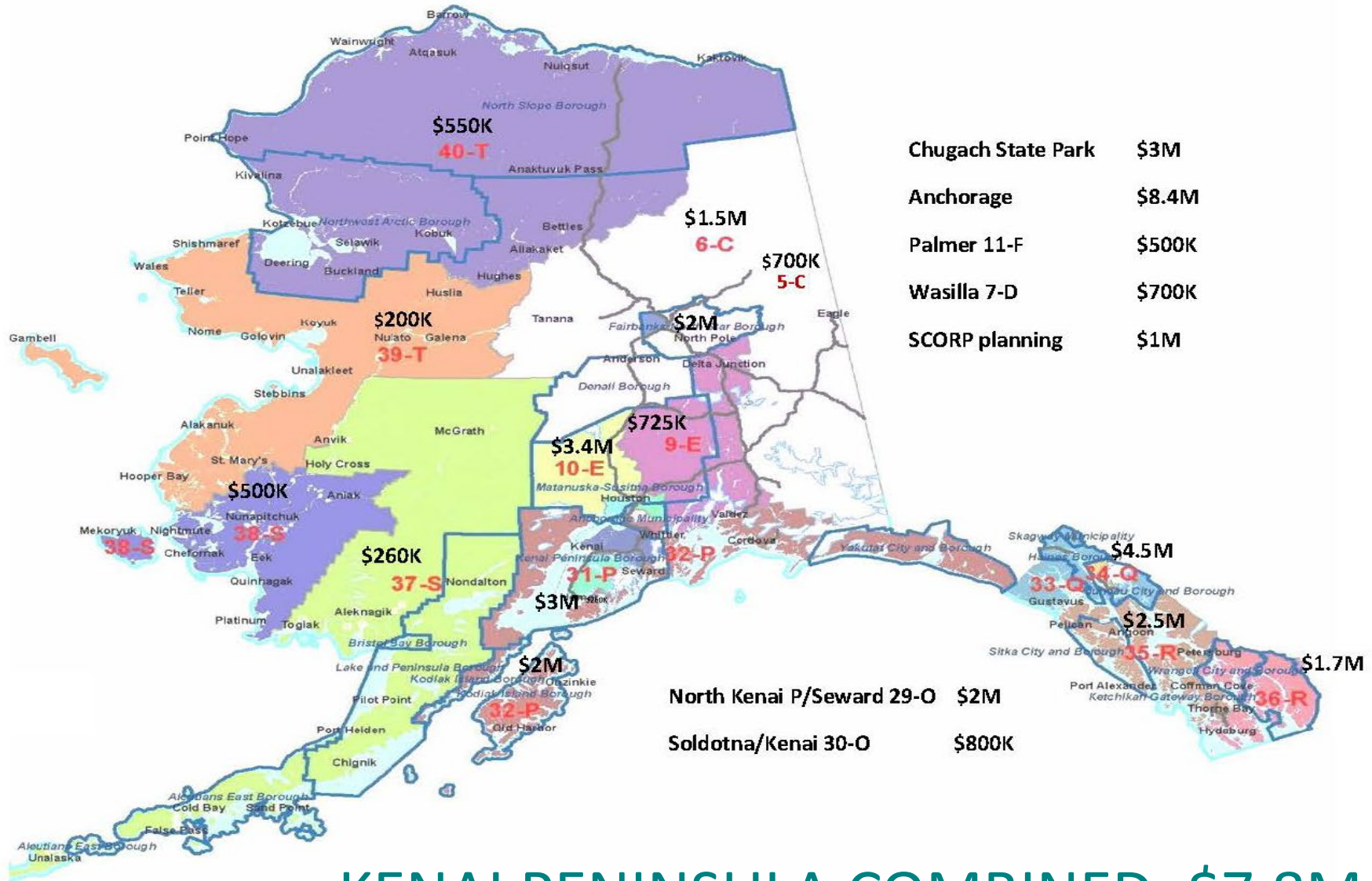
This is the amount confirmed for 2021 and going forward

LWCF is a 1:1
matching federal
grant program for
outdoor projects

**TELL OUR
LEGISLATORS
TO KEEP
LWCF IN
ALASKA'S
BUDGET**

LWCF Awards by District / Area 1966-2017

Total: \$40M



Recommended Actions - LWCF

- **Approve the Governor's recommended AK FY2021 DNR Supplemental Budget** to accept \$3.4M of combined Federal FY 2019 & 2020 LWCF
 - \$900,000 in state funding to cover administrative costs and State match for federal funds
- **Approve the Governor's recommended AK FY2022 DNR Budget** to accept \$3.5M of FFY2021 LWCF
 - \$2.205M in state funding to cover administrative costs, the State's half of the required match (the other half to be matched by local/tribal governments), and help support the update of the State Comprehensive Outdoor Recreation Plan (SCORP)

More information on LWCF: www.alaska-trails.org/funding-for-trails



The Alaska Trail Stewards Program volunteer crews – Chugach State Park

Thank you for your time!

www.alaska-trails.org/alaska-trails-initiative



CONTACTS

Chris Beck, ATI Coordinator
Chrisak1beck@gmail.com

Mariyam Medovaya, ATI Support Staff
Mariyam.Medovaya@alaska-trails.org

Steve Cleary, Alaska Trails ED
steve.cleary@alaska-trails.org³⁶

Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-19**

**AN ORDINANCE ACCEPTING AND APPROPRIATING FUNDING FROM THE
STATE OF ALASKA IN THE AMOUNT OF \$426,303 FOR FISCAL YEAR 2021 AND
APPROVING PROJECTS TO BE COMPLETED FOR COMMUNITY PURPOSES
UNDER THE STATE’S 2019/2020 AND 2020/2021 COMMUNITY ASSISTANCE
PROGRAMS**

- WHEREAS,** the Alaska State Legislature has provided funding to municipalities and unincorporated communities through the Community Assistance Program (“Program”); and
- WHEREAS,** AS 29.60.865 requires the assembly of a borough or unified municipality to adopt a resolution identifying those unincorporated communities located within their municipal boundaries that the assembly determines meet the Program eligibility criteria established under AS 29.60.865; and
- WHEREAS,** through enactment of KPB Resolution 2020-018, the borough assembly certified that 27 unincorporated communities within the Kenai Peninsula Borough are eligible for participation in the state’s Program; and
- WHEREAS,** funds in the amount of \$426,303 have been received from the Alaska Department of Commerce, Community and Economic Development for the benefit of the 27 unincorporated communities; and
- WHEREAS,** pursuant to KPB Resolution 2013-022, a fee of 2.0 percent of the grant amount will be charged against the grant to cover general administrative costs; and
- WHEREAS,** the \$426,303, less administrative costs, is to be distributed evenly among the 27 unincorporated communities within the borough, or may be expended by the borough on behalf of the community; and
- WHEREAS,** the CAP program allows funds to be used for any public purpose at the discretion of the local governing body and as allowed by state statutes and borough code; and
- WHEREAS,** it is in the best interest of the borough and the 27 unincorporated communities to accept these state funds to help defray costs of providing services and programs to their residents; and

WHEREAS, the assembly approved acceptance of fiscal year 2020 Program funds and appropriated \$426,303 to a project contingency account through enactment of KPB Ordinance 2019-19-12; and

WHEREAS, the non-profit corporations or tribal entities representing the communities of Hope, Nanwalek and Razdolna deferred fiscal year 2020 awards to be combined with fiscal year 2021 to fund community projects; and

WHEREAS, it is in the best interest of the borough and the communities of Hope, Nanwalek and Razdolna to approved their proposed projects to be completed using the approved fiscal years 2020 and 2021 allocations; and

WHEREAS, the coronavirus virus pandemic created challenges for communities to create safe meeting locations that could ensure limited group interaction and physical separation; and

WHEREAS, it is in the best interest of the borough to approve the fiscal year 2020 non-profit or tribal entities, projects and award amounts as authorized in Resolution 2019-064 to ensure that the fiscal year 2021 Program funds are used for public purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to accept \$426,303 from the State of Alaska for distribution to eligible communities or for expenditure by the borough on the community's behalf.

SECTION 2. That the mayor is authorized to execute any documents deemed necessary to accept and expend the Community Assistance Program funds and to fulfill the intents and purposes of this ordinance.

SECTION 3. That state funds in the amount of \$426,303 are appropriated to account 271.94910.21CAP.49999 contract services for fiscal year 2021.

SECTION 4. That the mayor is authorized to enter into grant agreements and any other documents necessary with tribal or nonprofit organizations on behalf of the qualified unincorporated communities for public projects that benefit the community as identified in the following chart for fiscal year 2021:

FY2020/2021 Community Assistance Program - Recipients and Projects			
Community	Recipient	Project	Amount
Anchor Point	Anchor Point Food Pantry	Office equipment / transportation	\$5,159.81
	Anchor Point Public Library	General operations	\$5,159.80
	Anchor Point Senior Citizens, Inc.	Office and surveillance equipment	\$5,159.80

Bear Creek	Bear Creek Volunteer Fire & EMS	Preparedness & Education	\$15,479.41
Clam Gulch	Caribou Hills Cabin Hoppers	Parking lot and trail improvements	\$15,479.41
Cohoe	Kasilof Public Library	Personnel costs	\$7,739.70
	Boys & Girls Club of Kenai Peninsula	Personnel costs	\$7,739.71
Cooper Landing	Cooper Landing Community Club, Inc.	Community projects	\$15,479.41
Crown Point	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Diamond Ridge	Kachemak Ski Club, Inc.	General operations	\$4,739.71
	Homer Cycling Club	Trail grooming equipment	\$4,739.70
	Kachemak Nordic Ski Club, Inc.	Trail improvements	\$3,000
	Snomads, Inc.	Trails maintenance	\$3,000
Fritz Creek	Kachemak Nordic Ski Club, Inc.	Trail improvements/equipment	\$7,739.70
	Snomads, Inc.	Trails maintenance	\$7,739.71
Funny River	Funny River Chamber of Commerce and Community Association	General operations	\$15,479.41
Hope	Hope, Inc.	Support community services and programs	\$15,479.41
Kachemak Selo	Village of Kachemak Selo Water Co., Inc.	Village roads lighting	\$15,479.41
Kalifornsky Beach	Love, Inc.	Breakfast program at K-Beach El	\$3,869.85
	Tsalteshi Trails Association, Inc.	Trail maintenance	\$3,869.85
	Bridges Community Resource Network, Inc. on behalf of Peninsula Spay/Neuter Fund	Area Spay/Neuter campaign	\$3,869.86
	Kenai Peninsula Food Bank, Inc.	Food provisions	\$3,869.85
Kasilof	Kasilof-Cohoe Cemetery Assoc.	General operations	\$7,739.70
	Kasilof Regional Historical Assoc.	General operations	\$7,739.71
Lowell Point	Lowell Point Community Council, Inc.	General operations	\$15,479.41
Moose Pass	Moose Pass Chamber of Commerce	Tourism and economic development	\$15,479.41
Nanwalek	Native Village of Nanwalek	General operations	\$15,479.41
Nikiski	Nikiski Senior Citizens, Inc.	Meal programs	\$7,739.71
	North Peninsula Community Council, Inc.	Community park project	\$7,739.70
Ninilchik	Ninilchik Senior Citizens, Inc.	Van transportation costs	\$4,524.81
	Ninilchik Community Library	General operations	\$4,524.81
	Kenai Peninsula Fair Association	General operations	\$4,524.81

	Bridges Community Resource Network, Inc. on behalf of Ninilchik Saturday Lunch Program	Student meals	\$1,904.98
Nikolaevsk	Nikolaevsk, Inc.	General operations	\$15,479.41
Port Graham	Port Graham Village Council	Safety facility expenses	\$15,479.41
Primrose	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Razdolna	Village of Razdolna, Inc.	General operations	\$15,479.41
Salamatof	AK Children's Institute for the Performing Arts, Inc.	General operations	\$15,479.41
Seldovia Village	Seldovia Village Tribe	Fire station expenses	\$15,479.41
Sterling	Sterling Community Club	General operations	\$5,159.80
	Rural Alaska Community Action Program, Inc. dba Sterling Head Start	General operations	\$5,159.81
	Sterling Area Senior Citizens	General operations	\$5,159.80
Tyonek	Boys & Girls Clubs of Southcentral Alaska	Elder and youth program	\$15,479.41
Voznesenka	Voznesenka Community Council, Inc.	General operations	\$15,479.41

SECTION 5. That state funds in the amount of \$46,438.23 in account 271.94910.20CAP.49999 contract services are approved for fiscal year 2020 projects in Hope, Nanwalek and Razdolna.

SECTION 6. That the mayor is authorized to enter into grant agreements and any other documents necessary with tribal or nonprofit organizations on behalf of the qualified unincorporated communities for public projects that benefit the community as identified in the following chart for fiscal year 2020:

FY2019/2020 Community Assistance Program - Recipients and Projects			
Community	Recipient	Project	Amount
Hope	Hope, Inc.	Support community services and programs	\$15,479.41
Nanwalek	Native Village of Nanwalek	General operations	\$15,479.41
Razdolna	Village of Razdolna, Inc.	General operations	\$15,479.41

SECTION 7. That each eligible non-profit or tribal entity, representing an unincorporated community, shall enter into a grant agreement with the borough prior to receipt of any community assistance program funds.

SECTION 8. That due to the length and nature of this project, a community shall forfeit any remaining grant distribution at the end of two consecutive fiscal years if the community has not fulfilled the intent and purpose of its grant agreement to be reappropriated by the assembly.

SECTION 9. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: February 4, 2021

SUBJECT: Ordinance 2020-19- 19, Accepting and Appropriating Funding from the State of Alaska in the Amount of \$426,303 for Fiscal Year 2021 and Approving Projects to be Completed for Community Purposes Under the State's 2019/2020 and 2020/2021 Community Assistance Programs (Mayor)

The Alaska Department of Commerce, Community and Economic Development (DCCED) annually releases pass-through funds under the Community Assistance Program from the borough to the qualified 27 unincorporated communities, which is based upon the state's approved fiscal year budget (Program). The Program provides \$15,479.41 to support services and/or projects for a public purpose (\$15,789 less 2.0 percent administrative costs pursuant to KPB Resolution 2013-022). DCCED has indicated that funds may be used for public purposes at the discretion of the local governing body and as allowed by state law and borough code.

This ordinance recognizes three actions: (1) accepting and appropriating the fiscal year 2021 allocation; (2) supports the solution to distribute the fiscal year 2021 funds to the current nonprofits or tribal entities that have a proven history of providing Program services or projects to their respective communities based upon last year's allocations because trying to conduct meetings during the coronavirus pandemic was not an option for a majority of the communities; and, (3) approves the distribution of fiscal years 2020 and 2021 awards to Hope, Nanwalek and Razdolna, which needed to defer and combine award years.

The Community & Fiscal Projects Manager shall oversee the Program.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No. <u>271-94910-20CAP-49999</u>	- \$ <u>46,438.23</u>
Acct. No. <u>271-94910-21CAP-49999</u>	- \$ <u>426,303.00</u>
By: <u>PP</u>	Date: <u>2/1/2021</u>
FY20 funds have been received FY21 funds have not been received	



THE STATE
of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Commerce, Community,
and Economic Development

Division of Community and Regional Affairs
Juneau

P.O. Box 110809
Juneau, AK 99811-0809
Main: 907.465.5647
Toll free: 877.769.4539
Fax: 907.465.4761

Received 01/04/21

December 30, 2020

Mr. Charlie Pierce, Mayor
Kenai Peninsula Borough
144 North Binkley Street
Soldotna, AK 99669

RE: Fiscal Year 2021 Community Assistance Program Payments

Dear Mr. Pierce:

As you are aware the FY21 Community Assistance Program(CAP) application deadline was extended until November 15, 2020, due to the COVID-19 health emergency disaster. This delayed the CAP payments calculation. The CAP fund balance as of June 30th supported the base payments and these were distributed to municipalities and communities meeting all program requirements.

We have now finalized the FY21 CAP payments to include the base and per capita amounts. The municipality/community's total CAP payment is \$739,195.86, this includes a base payment of \$300,000.00 and a per capita amount of \$12,892.86.

For the unincorporated community inside a borough only a base payment is made. The FY21 payment is \$15,789.

If a municipality/community has met all requirements and has received the base payment, the per capita payments will be distributed beginning January 4, 2021. If a municipality/community has not yet provided the require documentation, the total FY21 CAP payment will be dispersed upon submittal.

If you have any questions or concerns, you may contact me by phone at (907) 465-5647 or via email: jeanine.mason@alaska.gov.

Regards,

A handwritten signature in blue ink that reads "Jeanine Mason".

Jean Mason
Grants Administrator II

Introduced by:	Mayor
Date:	11/10/20
Hearing:	12/01/20
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-12**

**AN ORDINANCE TRANSFERRING REMAINING PLANT REPLACEMENT
EXPANSION FUNDS FROM THE SOUTH PENINSULA HOSPITAL SERVICE AREA
SPECIAL REVENUE FUND TO THE SOUTH PENINSULA HOSPITAL CAPITAL
PROJECT FUND**

WHEREAS, prior to fiscal year 2004, the Plant Replacement and Expansion Funds (“PREF”) for each hospital were maintained in each of the previous Enterprise Funds respectively; and

WHEREAS, in fiscal year 2004, PREF deposits were posted directly to the capital project funds in order to make the appropriation process simpler and more efficient; and

WHEREAS, this ordinance moves the remaining PREF funds from the South Peninsula Hospital Special Revenue Fund to the South Peninsula Hospital Capital Project Fund to be adjoined with the existing PREF funds and to have all PREF funds accounted for in one account;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That funds in the amount of \$324.45 are transferred from the South Peninsula Hospital Special Revenue Fund Plant Replacement and Expansion Fund account 601.20601 and appropriated to the South Peninsula Hospital Capital Project Fund Plant Replacement and Expansion Fund account 491.20601.

SECTION 2. This ordinance takes effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST
DAY OF DECEMBER, 2020.

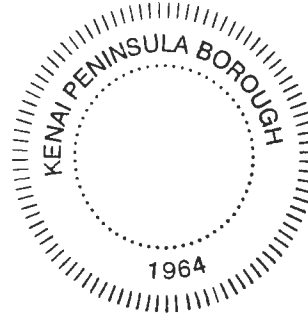


Brent Hibbert, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert
No: None
Absent: None

Introduced by:	Mayor
Date:	03/17/20
Action:	Adopted
Vote:	8 Yes, 0 No, 0 Absent, 1 Abstained

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-018**

**A RESOLUTION APPROVING TWENTY-SEVEN UNINCORPORATED
COMMUNITIES FOR PARTICIPATION IN THE STATE’S FISCAL YEAR 2021
COMMUNITY ASSISTANCE PROGRAM**

WHEREAS, the Community Assistance Program (“CAP”) as governed by AS 29.60.865 and 3 AAC 180.010 require the assembly of a borough or unified municipality to adopt a resolution identifying those unincorporated communities located within their municipal boundaries that the assembly determines meet the CAP eligibility criteria established under AS 29.60.865, AS 29.60.879, and 3 AAC 180.110; and

WHEREAS, AS 29.60.865 requires the unincorporated community to have either a native village council or incorporated nonprofit entity within its boundaries that will agree to receive and spend the CAP payment for the public benefit of the unincorporated community; and

WHEREAS, AS 29.60.865(a) requires eligible native village councils must be willing to waive immunity from suit for claims arising out of activities of the council related to the payment; and

WHEREAS, AS 29.60.865(c) requires that at least three of the following services be available to all residents of the unincorporated community: fire protection, emergency medical, water and sewer, solid waste management, public road or ice road maintenance, public health, and search and rescue, and that each of the three services, in any combination, be provided by one or more qualifying incorporated nonprofit entity or a native village council, or are substantially paid for by the residents of the unincorporated community through taxes, charges, or assessments levied or authorized by the borough; and

WHEREAS, AS 29.60.879(1) requires the unincorporated community to have 25 or more residents residing as a social unit as defined under 3 AAC 180.110;

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

SECTION 1. That the assembly hereby determines that the following 27 unincorporated communities and their respective native village council or incorporated nonprofit entity are eligible for funding under the state’s fiscal year 2021 Community Assistance Program:

<u>Unincorporated Community</u>	<u>Possible Community Recipient</u>
Anchor Point	Anchor Point Cemetery Anchor Point Chamber of Commerce Anchor Point Safewater Corporation Anchor Point Public Library Anchor Point Senior Citizens Anchor Point Volunteer Fire & EMS Kachemak Gun Club Snomads, Inc.
Bear Creek	Bear Creek Volunteer Fire & EMS
Clam Gulch	Caribou Hills Cabin Hoppers
Cohoe	Kasilof Community Library (located in Cohoe) Boys & Girls Club of the Kenai Peninsula
Cooper Landing	Cooper Landing Community Club
Crown Point	Moose Pass Volunteer Fire Co. (Crown Point Unit)
Diamond Ridge	Kachemak Emergency Services Members Association Kachemak Nordic Ski Club Kachemak Ski Club Snomads, Inc.
Fritz Creek	Kachemak Emergency Services Members Association Kachemak Nordic Ski Club McNeil Canyon Elementary School Community Council, Inc. Snomads, Inc.
Funny River	Funny River Chamber of Commerce
Hope	Hope, Inc.
Kachemak Selo Village	Village of Kachemak Selo Water Co., Inc.
Kalifornsky	Cook Inlet Aquaculture Association Kenai Peninsula Food Bank Love, Inc. Peninsula Spay/Neuter Fund Tsalteshi Trails Association
Kasilof	Kasilof Regional Historical Association Kasilof-Cohoe Cemetery Assoc.
Lowell Point	Lowell Point Community Council
Moose Pass	Moose Pass Volunteer Fire Co. Moose Pass Chamber of Commerce & Visitor Bureau Moose Pass Sportsmen's Club
Nanwalek	Nanwalek IRA Council Project GRAD Chugachmiut, Inc.
Nikiski	North Peninsula Community Council Nikiski Senior Citizens, Inc.
Nikolaevsk	Nikolaevsk, Inc.
Ninilchik	Kenai Peninsula Fair Association Ninilchik Emergency Services Ninilchik Community Library

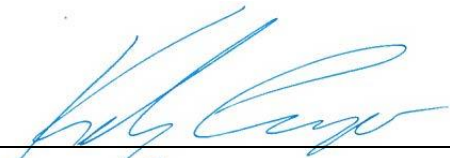
	Ninilchik Senior Citizens
	Ninilchik Chamber of Commerce
Primrose	Moose Pass Volunteer Fire Co. (Primrose Unit)
Port Graham	Port Graham Village Council
Razdolna Village	Village of Razdolna, Inc.
Salamatof	Alaska Children's Institute of the Performing Arts
Seldovia Village	Seldovia Village Tribe
Sterling	Sterling Community Club
	Sterling Area Senior Citizens
	Sterling RuralCAP Headstart Program
Tyonek	Boys & Girls Clubs of Southcentral Alaska
Voznesenka Village	Voznesenka Community Council, Inc.
	Project GRAD

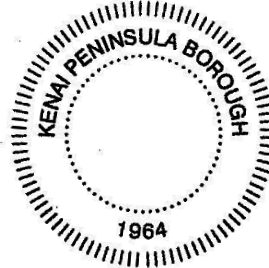
SECTION 2. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF MARCH, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Smalley, Cooper
 No: None
 Absent: None
 Abstained: Johnson

Introduced by:	Mayor
Date:	03/19/13
Action:	Adopted
Vote:	6 Yes, 0 No, 3 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2013-022**

**A RESOLUTION MAKING CHANGES TO THE BOROUGH'S COST ALLOCATION
PLAN FOR CAPITAL PROJECTS**

WHEREAS, Resolution 2006-036 established a cost allocation plan using an indirect rate that charge service areas, grants and capital projects a fee for intergovernmental services that were provided by the borough's General Fund; and

WHEREAS, the services provided include, but are not limited to: processing of payroll, purchasing, accounts payable, cash receipts, cash disbursements, cash management, grant management, real and personal property valuation, tax billing and collection, miscellaneous billing and collection, legal services, and computer support services; and

WHEREAS, the assembly in FY10 eliminated the charge to service areas and the current indirect rate being charged to grants and capital projects is 3.04 percent; and

WHEREAS, for large capital projects and capital equipment purchases, the rate being charged can generate cost recovery in excess of the costs that were incurred; and

WHEREAS, allowing a reduced indirect rate on capital projects and capital equipment is more reflective of the time and cost incurred for these projects;

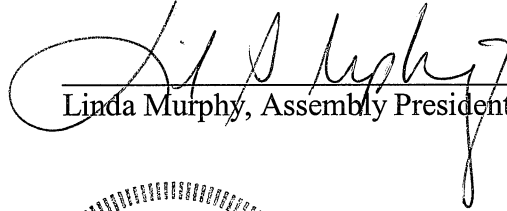
NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The indirect rate for capital projects less than \$500,000 shall be 2 percent of the project budget and the indirect rate for capital projects \$500,000 or greater shall be 1 percent.

SECTION 2. The indirect rate for capital equipment purchases less than \$500,000 shall be 1 percent of the project budget and the indirect rate for capital equipment purchases \$500,000 or greater shall be 0.5 percent.

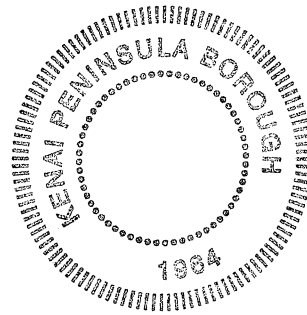
SECTION 3. That this resolution takes effect retroactive to January 1, 2013.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF MARCH, 2013.


Linda Murphy, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Haggerty, Johnson, Pierce, Smith, Wolf, Smalley
No: None
Absent: McClure, Murphy, Tauriainen

Introduced by:	Mayor
Date:	12/03/19
Action:	Adopted
Vote:	8 Yes, 0 No, 0 Absent, 1 Abstention

**KENAI PENINSULA BOROUGH
RESOLUTION 2019-064**

**A RESOLUTION AUTHORIZING COMMUNITY ASSISTANCE PROGRAM
EXPENDITURES FOR UNINCORPORATED COMMUNITIES**

- WHEREAS,** the Alaska State Legislature has provided funding to municipalities and unincorporated communities through the Community Assistance Program (“Program”); and
- WHEREAS,** AS 29.60.865 and 3 AAC 180.070 require the assembly of a borough or unified municipality to adopt a resolution identifying those unincorporated communities located within their municipal boundaries that the assembly determines meet the Program eligibility criteria established under AS 29.60.865, AS 29.60.879, and 3 AAC 180.110; and
- WHEREAS,** the assembly approved the list of 27 unincorporated communities within the Kenai Peninsula Borough that are eligible for participation in the state’s fiscal year 2019 Program by way of resolution 2019-019; and
- WHEREAS,** public community meetings were held throughout the borough as well as direct mail and electronic communications to provide Program information to community residents and eligible nonprofit or tribal entities; and
- WHEREAS,** the assembly approved acceptance of Program funds and appropriated \$426,303 to a project contingency account through enactment of KPB Ordinance 2019-19-12; and
- WHEREAS,** the Program allows funds to be used for any public purpose at the discretion of the local governing body and as allowed by state statutes and borough code; and
- WHEREAS,** the non-profit corporations or tribal entities representing the communities of Anchor Point, Bear Creek, Clam Gulch, Cohoe, Cooper Landing, Crown Point, Diamond Ridge, Fritz Creek, Funny River, Kachemak Selo, Kalifornsky Beach, Kasilof, Lowell Point, Moose Pass, Nikiski, Nikolaevsk, Ninilchik, Port Graham, Primrose, Salamatof, Seldovia, Sterling, Voznesenka and Tyonek have submitted grant requests to fund community projects; and
- WHEREAS,** it is in the best interest of the borough and the communities to approve the proposed projects and to distribute community assistance funds to eligible non-profit or tribal entities;

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

SECTION 1. That the mayor is authorized to enter into grant agreements and any other documents necessary with tribal or nonprofit organizations on behalf of the qualified unincorporated communities for public projects that benefit the community as identified in the following chart:

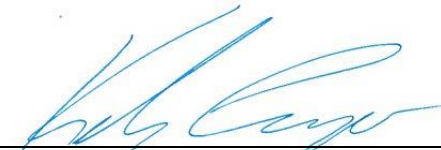
FY19 Community Assistance Program - Recipients and Projects			
Community	Recipient	Project	Amount
Anchor Point	Anchor Point Food Pantry	Office equipment / transportation	\$5,159.81
	Anchor Point Public Library	General operations	\$5,159.80
	Anchor Point Senior Citizens, Inc.	Office and surveillance equipment	\$5,159.80
Bear Creek	Bear Creek Volunteer Fire & EMS	Preparedness & Education	\$15,479.41
Clam Gulch	Caribou Hills Cabin Hoppers	Parking lot and trail improvements	\$15,479.41
Cohoe	Kasilof Public Library	Personnel costs	\$7,739.70
	Boys & Girls Club of Kenai Peninsula	Personnel costs	\$7,739.71
Cooper Landing	Cooper Landing Community Club, Inc.	Community projects	\$15,479.41
Crown Point	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Diamond Ridge	Kachemak Ski Club, Inc.	General operations	\$4,739.71
	Homer Cycling Club	Trail grooming equipment	\$4,739.70
	Kachemak Nordic Ski Club, Inc.	Trail improvements	\$3,000
	Snomads, Inc.	Trails maintenance	\$3,000
Fritz Creek	Kachemak Nordic Ski Club, Inc.	Trail improvements/equipment	\$7,739.70
	Snomads, Inc.	Trails maintenance	\$7,739.71
Funny River	Funny River Chamber of Commerce and Community Association	General operations	\$15,479.41
Kachemak Selo	Village of Kachemak Selo Water Co., Inc.	Village roads lighting	\$15,479.41
Kalifornsky Beach	Love, Inc.	Breakfast program at K-Beach El	\$3,869.85
	Tsalteshi Trails Association, Inc.	Trail maintenance	\$3,869.85
	Bridges Community Resource Network, Inc. on behalf of Peninsula Spay/Neuter Fund	Area Spay/Neuter campaign	\$3,869.86
	Kenai Peninsula Food Bank, Inc.	Food provisions	\$3,869.85

FY19 Community Assistance Program - Recipients and Projects			
Community	Recipient	Project	Amount
Kasilof	Kasilof-Cohoe Cemetery Assoc.	General operations	\$7,739.70
	Kasilof Regional Historical Assoc.	General operations	\$7,739.71
Lowell Point	Lowell Point Community Council, Inc.	General operations	\$15,479.41
Moose Pass	Moose Pass Chamber of Commerce	Tourism and economic development	\$15,479.41
Nikiski	Nikiski Senior Citizens, Inc.	Meal programs	\$7,739.71
	North Peninsula Community Council, Inc.	Community park project	\$7,739.70
Ninilchik	Ninilchik Senior Citizens, Inc.	Van transportation costs	\$3,619.85
	Ninilchik Community Library	General operations	\$3,619.85
	Ninilchik Emergency Services	General operations	\$3,619.85
	Kenai Peninsula Fair Association	General operations	\$3,619.85
	Bridges Community Resource Network, Inc. on behalf of Ninilchik Saturday Lunch Program	Student meals	\$1,000.01
Nikolaevsk	Nikolaevsk, Inc.	General operations	\$15,479.41
Port Graham	Port Graham Village Council	Safety facility expenses	\$15,479.41
Primrose	Moose Pass Volunteer Fire Company	General operations	\$15,479.41
Salamatof	AK Children's Institute for the Performing Arts, Inc.	General operations	\$15,479.41
Seldovia Village	Seldovia Village Tribe	Fire station expenses	\$15,479.41
Sterling	Sterling Community Club	General operations	\$5,159.80
	Rural Alaska Community Action Program, Inc. dba Sterling Head Start	General operations	\$5,159.81
	Sterling Area Senior Citizens	General operations	\$5,159.80
Tyonek	Boys & Girls Clubs of Southcentral Alaska	Elder and youth program	\$15,479.41
Voznesenka	Voznesenka Community Council, Inc.	General operations	\$15,479.41

SECTION 2. That each eligible non-profit or tribal entity, representing an unincorporated community, shall enter into a grant agreement with the borough prior to receipt of any community assistance program funds.


SECTION 3. This resolution shall become effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF DECEMBER, 2019.

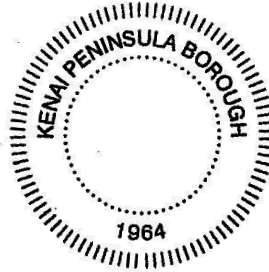


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes:	Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Smalley, Cooper
No:	None
Absent:	None
Abstention:	Johnson

Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-20**

**AN ORDINANCE APPROPRIATING \$63,791.65 FROM THE EQUIPMENT
REPLACEMENT FUND FOR IMAGERY ACQUISITION AND APPROVING A SOLE
SOURCE AWARD TO EAGLEVIEW™ FOR THE PURCHASE AND
IMPLEMENTATION OF PICTOMETRY IMAGERY**

- WHEREAS,** aerial imagery serves a multitude of purposes for general government, public safety, and a wide variety of public uses and businesses cases; and
- WHEREAS,** the most recent general capture of imagery was in 2012/13 for the western Kenai Peninsula; and
- WHEREAS,** in conjunction with CARES funding and pursuant to Resolution 2020-51, the KPB Assessing Department was able to acquire and integrate a form of imagery known as pictometry to provide remote assessments while limiting the risk of COVID19 exposure along the eastern peninsula, which translates into savings on personnel costs and worker safety; and
- WHEREAS,** pursuant to Resolution 2003-008 the Assessing Department has established a rotating geographical 5-year canvassing schedule which can best be implemented by a corresponding pictometry imagery acquisition schedule; and
- WHEREAS,** a quote has been secured from EagleView™ for scheduled pictometry imagery acquisition to update imagery along the western Kenai Peninsula and to match the annual assessing canvassing schedule through 2024; and
- WHEREAS,** the quote to capture the western Kenai Peninsula, meeting assessing canvassing method specifications for 2021, is \$338,791.65; and
- WHEREAS,** in FY21 the GIS Division budgeted \$250,000 through the equipment replacement fund for imagery acquisition for general imagery acquisition to update the borough's imagery data resources; and
- WHEREAS,** an additional \$25,000 is available to this project in the equipment replacement due to other borough projects being under budget; and
- WHEREAS,** an appropriation from the equipment replacement fund in the amount of \$63,791.65 would enable this project to proceed meeting coordinated objectives; and

WHEREAS, EagleView™ Pictometry is the only oblique imagery product that will integrate with the Thomson Reuters Pro Val CAMA that the Assessing Department uses for property valuation; and

WHEREAS, KPB 5.28.280(B) requires assembly approval of purchases without competition costing more than \$40,000; and

WHEREAS, the administration requests assembly approval to sole source award a multi-year purchase with EagleView™ for imagery and implementation, contingent on annual appropriation of funds; and

WHEREAS, the GIS Division would be responsible for annual budgeting and coordinating contract specifications in cooperation with the Assessing Department; and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular meeting of _____ recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That \$63,791.65 is appropriated from the Equipment Replacement Fund account 705.27910 to account 705.94910.21E09.48525 for imagery acquisition.

SECTION 2. That the assembly approves the four-year sole source purchase of imagery from EagleView™ with FY21 approval in the amount of \$338,791.65 and future years are subject to annual appropriation by the assembly.

SECTION 3. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:






Absent:

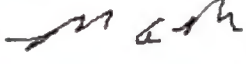
Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Brandi Harbaugh, Finance Director 
John Hedges, Purchasing and Contracting Director 
Adeena Wilcox, Acting Assessing Director 
Melanie Aeschliman, Planning Director 

FROM: Marcus A Mueller, GIS Manager 

DATE: January 4, 2021

RE: Ordinance 2020-19-20, Appropriating \$63,791.65 from the Equipment Replacement Fund for Imagery Acquisition and Approving a Sole Source Award to EagleView™ for the Purchase and Implementation of Pictometry Imagery (Mayor)

EagleView™ pictometry imagery products integrate with the Pro Val CAMA that the Assessing Department uses for property valuation. The Assessing Department is using pictometry for the eastern peninsula canvas area, which was acquired through CARES funding to limit the risk of COVID19 exposure. This use is resulting in cost savings, along with employee safety, and overall efficiency in accomplishing canvassing requirements.

Funds have been budgeted in FY21 for GIS to update the borough's imagery resources. The borough's current imagery resources for the western Kenai Peninsula are from 2012/13 which is no longer reliable considering wildfire, beetle kill, new road construction, land development and other changes that have occurred. Borough imagery is extremely important to public safety, general government, landowners, and a wide variety of public uses and private business matters. For instance, KPB online viewers are used more than 200K times per year.

GIS and Assessing have come together with a strategy to accomplish the objective of general imagery updating combined with Assessing's specifications for continuing the geographically rotating 5-year canvas schedule.

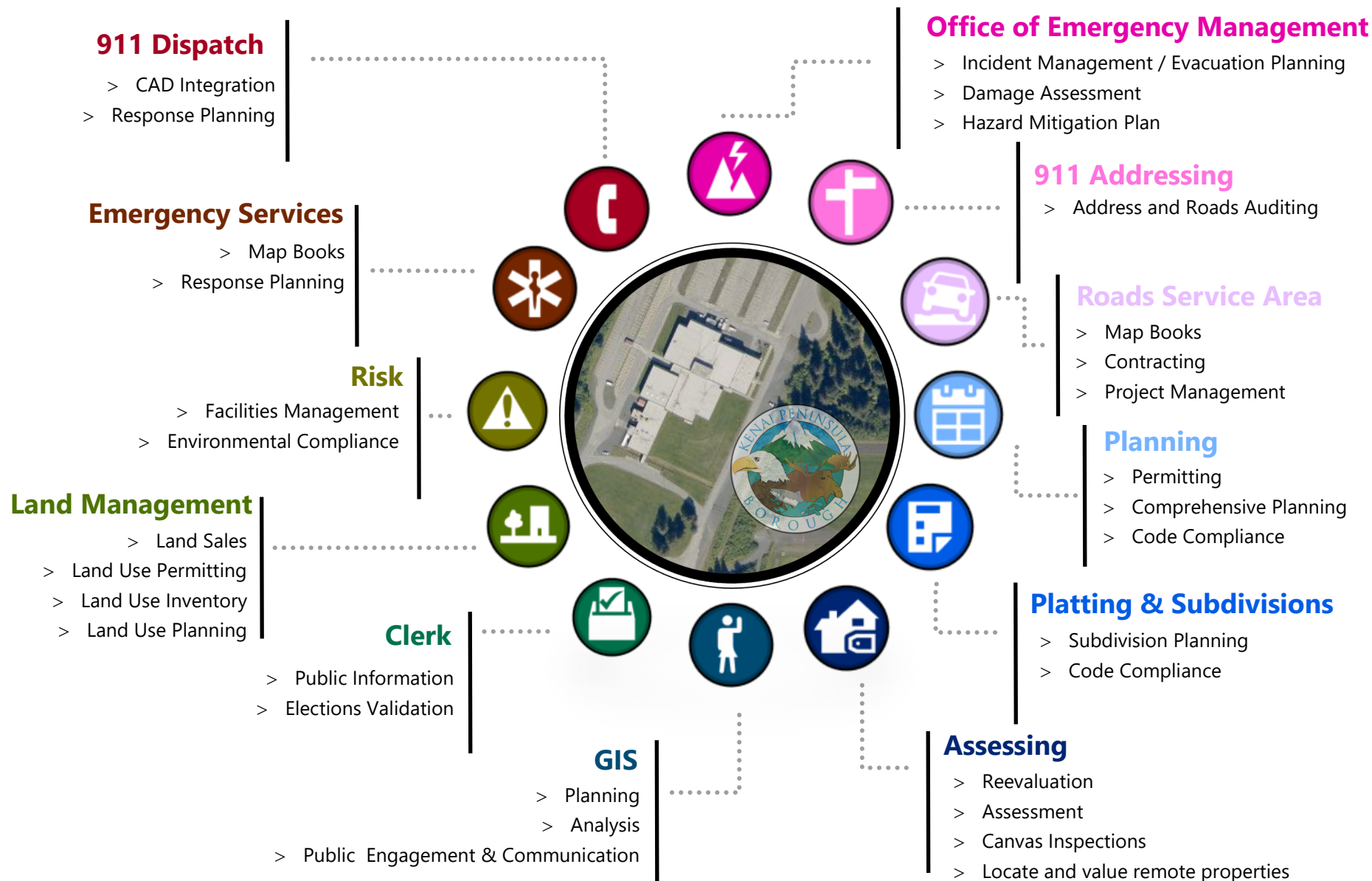
The attached ordinance would appropriate funds in addition to those already available in the GIS budget to accomplish a spring 2021 imagery capture and would approve a sole source award to EagleView™ for a multi-year purchase of pictometry imagery. The approval is contingent on annual appropriation of

Page -2-
February 4, 2021
Re: O2020-19- 20

funding by the Assembly. The GIS Division will provide internal services to budget for and manage the contract specifications and deliverables.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No. <u>705-94910.21E09-48525</u>	- Amount: <u>\$275,000.00</u>
Acct. No. <u>705-27910</u>	- Amount: <u>\$ 63,791.65</u>
By: <u>PP</u>	Date: <u>2/2/2021</u>

Imagery is an integral component of the GIS Division and provides direct benefits/services to the daily functions of KPB Departments. Modern planning, analysis and communication expectations require current imagery to be effective. Currently available imagery is obsolete. **KPB 2020-19-20** establishes a plan to update and maintain an imagery dataset that is no older than five years while meeting the legal requirements for the Assessing Dept to complete assessments efficiently and at a reduced cost from traditional methods. Collaboration also enables us to work together effectively to potentially diversify funding sources in the future.



Comparison of Pictometry Imagery and 2012/2013 data*

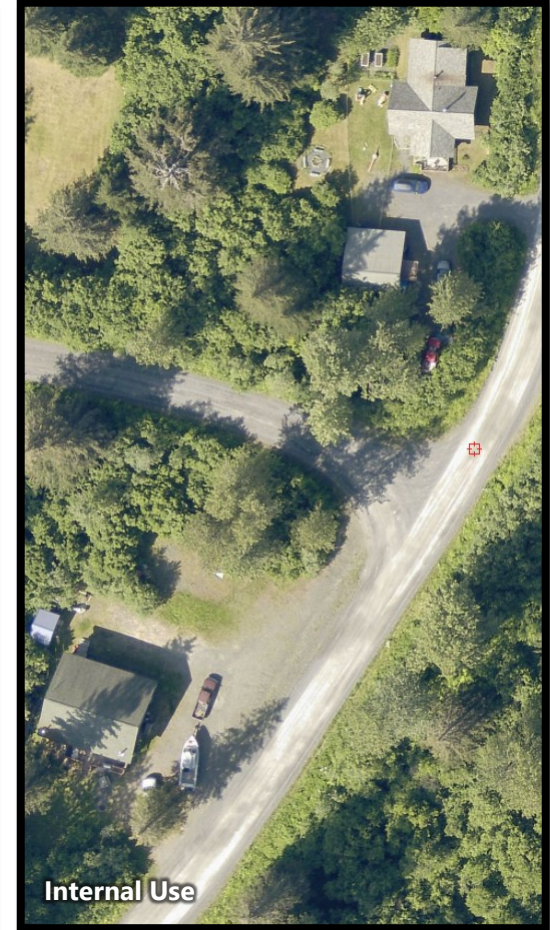
**Imagery datasets are shown here at (different) scales that represent the largest map scale appropriate for their resolution.*



**Best-available KPB Dataset
(2012/2013)**



Publically Available



Internal Use



Footprints

2020 Pictometry Products

Pictometry deliverables include high resolution ortho and oblique (not shown) imagery as well as automatically-extracted building footprints. These footprints are an incredible resource to the borough.

Proposal for: Kenai Peninsula Borough, AK
 Project Name: AKKENA-2021-Scenario B
 Quote Number: Q-71994
 Contract Term: 6 Year(s)
 Number of Projects: 4

EagleView Rep: Dustin Walters
 Phone Number:
 Email: dustin.walters@eagleview.com
 Expiration Date: 7/31/2020
 Targeted Capture: 2021-b-Spring

Multi-Project Summary

4 Projects over 6 year(s)

Flight 1 - Spring 2021	Flight 2 - Spring 2022	Flight 3 - Spring 2023	Flight 4 - Spring 2024
Total: \$338,791.65	Total: \$127,700.25	Total: \$116,088.82	Total: \$63,989.87



This quote is non-binding, creates no legal rights, duties or obligations, expressed or implied, on either party, and shall become binding only in the event that Pictometry and Customer enter into a definitive agreement incorporating it. The pricing quoted above does not reflect applicable taxes, which will be reflected in any resulting definitive agreement with Customer. This quote is valid until the date shown above, after which it expires. All Discounts are approximate.



Budget Proposal

Proposal for: Kenai Peninsula Borough, AK
 Project Name: AKKENA-2021-Scenario B
 Contract Term: 6 Year(s)
 Number of Projects: 4

EagleView Rep: Dustin Walters
 Expiration Date: 7/31/2020
 Targeted Capture: 2021-b-Spring

Flight 1 - Spring 2021

Qty	Product	List Price	Discount (%)	Subtotal
1	Reveal Orthomosaic - Combined	\$0.00		\$0.00
251	Reveal Essentials+ Property	\$400.00	5	\$95,380.00
3082	Reveal Essentials+ Community	\$70.00		\$215,740.00
1	Pictometry Connect - CA - 50	\$2,200.00		\$2,200.00
1	Pictometry Connect - EarlyAccess	\$10,000.00	100	\$0.00
55639	Building Outline Creation; Digital Parcel File Provided	\$0.35		\$19,473.65
1	ChangeFinder - Project Fee	\$1,000.00		\$1,000.00
2	FutureView Adv Training	\$2,499.00		\$4,998.00
1	RapidAccess - Disaster Response Program	\$0.00		\$0.00
1	Oblique Imagery Bundle with One (1) Year of Maint & Support	\$0.00		\$0.00
Flight 1 - Spring 2021 TOTAL:				\$338,791.65

Flight 2 - Spring 2022

Qty	Product	List Price	Discount (%)	Subtotal
1	Reveal Orthomosaic - Combined	\$0.00		\$0.00
76	Reveal Essentials+ Property	\$400.00	5	\$28,880.00
1229	Reveal Essentials+ Community	\$70.00		\$86,030.00
1	Pictometry Connect - CA - 50	\$2,200.00		\$2,200.00
1	Pictometry Connect - EarlyAccess	\$10,000.00	100	\$0.00
11775	Building Outline Creation; Digital Parcel File Provided	\$0.39		\$4,592.25
1	ChangeFinder - Project Fee	\$1,000.00		\$1,000.00
2	FutureView Adv Training	\$2,499.00		\$4,998.00
1	RapidAccess - Disaster Response Program	\$0.00		\$0.00
1	Oblique Imagery Bundle with One (1) Year of Maint & Support	\$0.00		\$0.00
Flight 2 - Spring 2022 TOTAL:				\$127,700.25

Flight 3 - Spring 2023

Qty	Product	List Price	Discount (%)	Subtotal
1	Reveal Orthomosaic - Combined	\$0.00		\$0.00
52	Reveal Essentials+ Property	\$400.00	5	\$19,760.00
1173	Reveal Essentials+ Community	\$70.00		\$82,110.00
1	Pictometry Connect - CA - 50	\$2,200.00		\$2,200.00
1	Pictometry Connect - EarlyAccess	\$10,000.00	100	\$0.00
15438	Building Outline Creation; Digital Parcel File Provided	\$0.39		\$6,020.82
1	ChangeFinder - Project Fee	\$1,000.00		\$1,000.00
2	FutureView Adv Training	\$2,499.00		\$4,998.00
1	RapidAccess - Disaster Response Program	\$0.00		\$0.00

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1	Oblique Imagery Bundle with One (1) Year of Maint & Support	\$0.00		\$0.00
Flight 3 - Spring 2023 TOTAL:				\$116,088.82

Flight 4 - Spring 2024

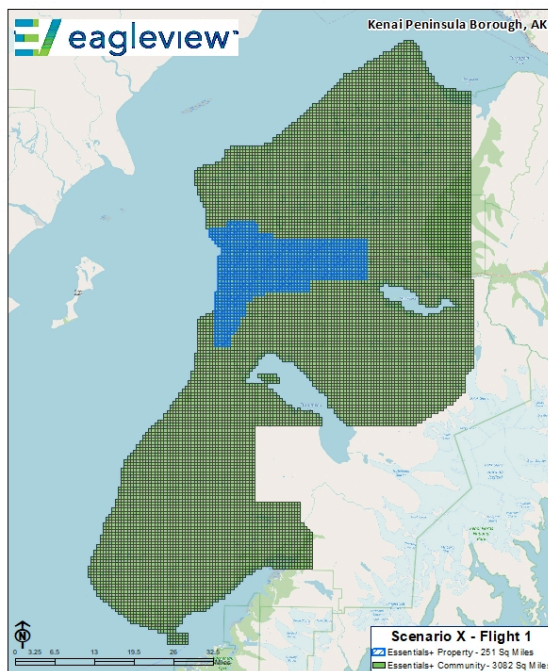
Qty	Product	List Price	Discount (%)	Subtotal
1	Reveal Orthomosaic - Combined	\$0.00		\$0.00
110	Reveal Essentials+ Property	\$400.00	5	\$41,800.00
110	Reveal Essentials+ Community	\$70.00		\$7,700.00
1	Pictometry Connect - CA - 50	\$2,200.00		\$2,200.00
1	Pictometry Connect - EarlyAccess	\$10,000.00	100	\$0.00
16133	Building Outline Creation; Digital Parcel File Provided	\$0.39		\$6,291.87
1	ChangeFinder - Project Fee	\$1,000.00		\$1,000.00
2	FutureView Adv Training	\$2,499.00		\$4,998.00
1	RapidAccess - Disaster Response Program	\$0.00		\$0.00
1	Oblique Imagery Bundle with One (1) Year of Maint & Support	\$0.00		\$0.00
Flight 4 - Spring 2024 TOTAL:				\$63,989.87

TOTAL: \$646,570.59

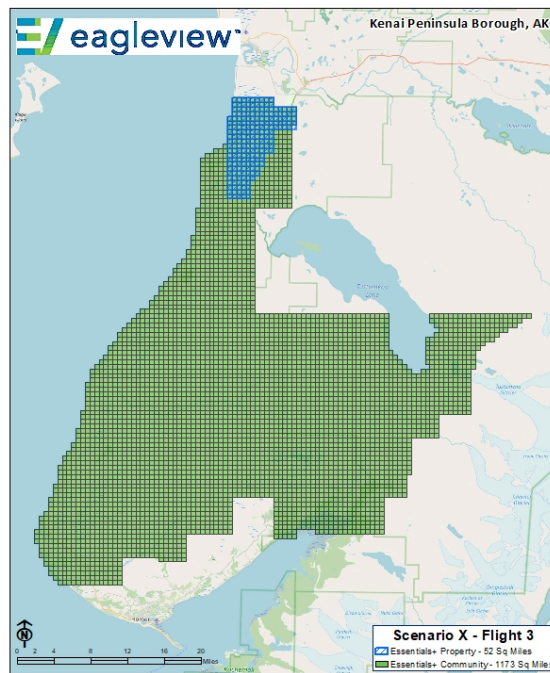
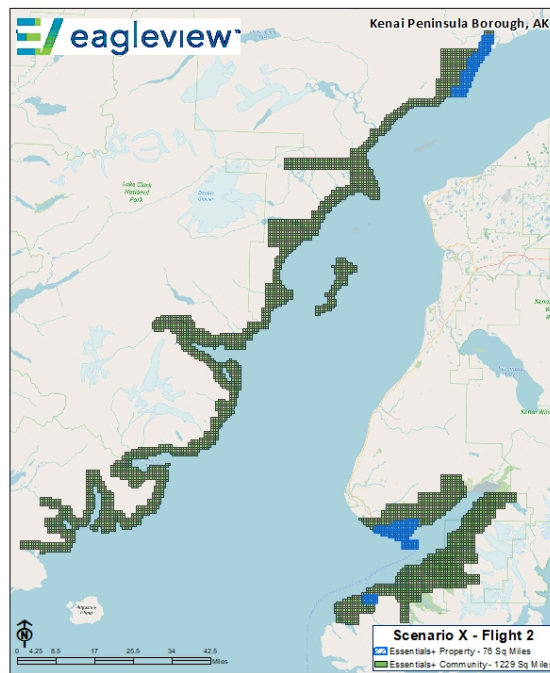
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Proposal for: Kenai Peninsula Borough, AK
 Project Name: AKKENA-2021-Scenario B
 Contract Term: 6 Year(s)
 Number of Projects: 4

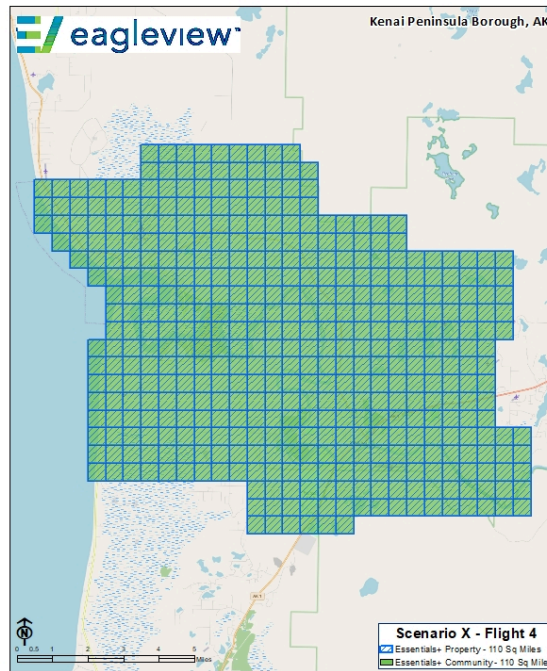
EagleView Rep: Dustin Walters
 Expiration Date: 7/31/2020
 Targeted Capture: 2021-b-Spring



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Introduced by:	Mayor
Date:	08/04/20
Action:	Adopted
Vote:	7 Yes, 1 No, 1 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-051**

**A RESOLUTION APPROVING A SOLE SOURCE AWARD TO EAGLEVIEW™ FOR
THE PURCHASE AND IMPLEMENTATION OF PICTOMETRY OBLIQUE IMAGERY**

WHEREAS, AS 29.45.150 provides that a systematic reevaluation of taxable real property by the assessor must be completed in the shortest period of time practicable, as fixed by resolution; and

WHEREAS, Resolution 2003-008 established the timeframe for systematic reevaluation of real property to be not greater than five years which is not feasible using the current processes; and

WHEREAS, implementation of oblique imagery for capturing field inspections will allow for canvass inspections to continue with limited or no contact between property owners and borough staff; and

WHEREAS, limiting contact during a public health crisis is in the best interests of both the public and the borough; and

WHEREAS, the borough's Assessing Department uses Thomson Reuters ProVal CAMA for real property valuation; and

WHEREAS, Eagleview™ is the only oblique imagery product that will integrate with Thomson Reuters for use with ProVal CAMA; and

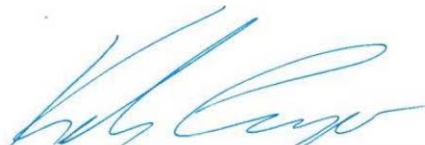
WHEREAS, KPB 5.28.280(B) requires assembly approval of purchases without competition costing more than \$40,000;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That the assembly approves the sole source purchase of oblique imagery from Eagleview™ in the amount of \$379,852.82.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2020.

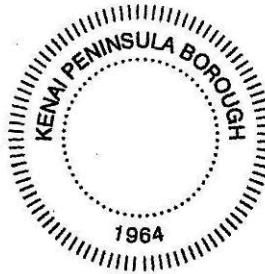


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: Bjorkman
Absent: Blakeley

Introduced by:	Mayor
Date:	01/21/03
Action:	Adopted
Vote:	7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2003-008**

**A RESOLUTION PROVIDING FOR A SYSTEMATIC REEVALUATION OF ALL
TAXABLE PROPERTY WITHIN THE BOROUGH**

WHEREAS, AS 29.45.150 provides that a systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the municipality directing a systematic reevaluation of all taxable property in the municipality over the shortest period of time practicable, as fixed in the resolution or act; and

WHEREAS, all taxable personal property within the borough is evaluated each year on the basis of returns of property made by owners of such property; and

WHEREAS, because of the vast geographic area of the Kenai Peninsula Borough it is impossible to evaluate all taxable real property for ad valorem tax purposes within the borough each year without hiring additional appraisers and staff, significantly increasing administrative costs; and

WHEREAS, the assessor has advised the assembly that a three-year cycle for the reevaluation of real property parcels per Resolution 75-6 is no longer practicable, and that a five-year cycle of reevaluation would most efficiently employ available resources; and

WHEREAS, the Kenai Peninsula Borough has in the past systematically reevaluated all taxable real property within the borough at six to seven year intervals on a rotating basis; and

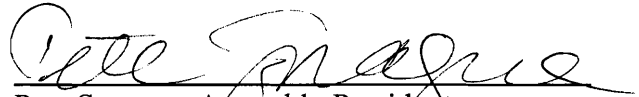
WHEREAS, a systematic reevaluation of all taxable real property at not greater than five-year intervals on a rotating basis is inherently fair and equitable to taxpayers;

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

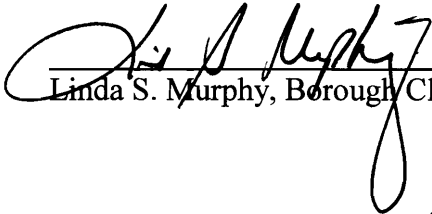
SECTION 1. That the Assembly of the Kenai Peninsula Borough, considering the difficulty and expense of hiring enough additional personnel to evaluate all taxable real property annually, and the basic equity of reevaluating all taxable real property on a rotating basis at intervals of not greater than five years, hereby determines and directs that the Assessor of the Kenai Peninsula Borough shall undertake a systematic reevaluation of all taxable real property within the borough on a rotating basis at intervals not greater than five years, which is determined to be the shortest period of time practicable considering the size of the Kenai Peninsula Borough.

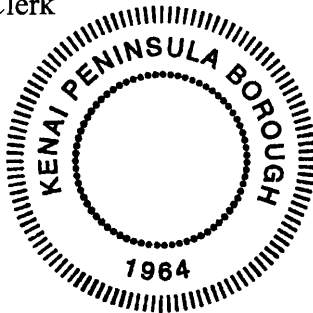
SECTION 2. That this resolution shall take effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF JANUARY 2003.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk



Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-21**

**AN ORDINANCE APPROPRIATING GENERAL FUND FUND BALANCE FOR
DESIGN DEVELOPMENT OF PHASE I OF THE HOMER HIGH SCHOOL ROOF
REPLACEMENT**

- WHEREAS,** the Homer High School roof was installed in 1983 and has exceeded its useful life; and
- WHEREAS,** regular failures in the roof system have led to increased maintenance costs, interruptions in the programs supported by the facility and degradation of other facility infrastructure; and
- WHEREAS,** approximately 34,000 square feet of the roof is in immediate need of replacement; and
- WHEREAS,** the project is proposed to be funded through the use of \$1,252,552.88 in remaining 2014 school bond funds transferred from the Redoubt Elementary Roof replacement project, interest of \$25,523.17 and a supplemental amount from the general fund of \$521,923.95 for a total estimated project cost of \$1,800,000; and
- WHEREAS,** a resolution will be proposed on February 16, 2021 requesting that the Borough Mayor be authorized to submit a Bond Reimbursement Application to the Alaska Department of Education and Early Development for the approval of additional projects in the bond reimbursement program for bonds sold in 2014; and
- WHEREAS,** design development must start immediately if the project is to be completed this construction season; and
- WHEREAS,** the cost to develop a comprehensive scope of work and complete bid ready documents is estimated to be \$180,000;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That funds in the amount of \$180,000 from the General Fund fund balance are appropriated from account 100.27910 to account 401.78050.22SCH.49999 to provide for development of a comprehensive scope of work and bid ready documents for the Homer High School Roof Replacement Phase I project.

SECTION 2. That upon enactment this ordinance shall take effect immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*

DATE: February 4, 2021

Subject: Ordinance 2020-19-21, Appropriating General Fund Fund Balance for Design Development of Phase I of the Homer Roof Replacement (Mayor)

The Homer High School roof was constructed in 1983 and has exceeded its useful life. Periodic system failures have led to increased maintenance costs, interruptions in the programs supported by the facility and degradation of other facility infrastructure. The dilapidated cedar shingle construction further complicates the borough's ability to initiate repairs without further impacting the integrity of the system.

The entire roof system at the high school is in need of replacement. The approximately 33,700 square foot section covering the gym area and the approximately 1,200 square foot section of flat roof covering the loading dock area have been identified as the areas needing the most immediate attention.

A resolution will be proposed on February 16, 2021 requesting that the Borough Mayor be authorized to submit a Bond Reimbursement Application to the Alaska Department of Education and Early Development for the approval of additional projects in the bond reimbursement program for bonds sold in 2014. Redirected 2014 bond funds from the Redoubt Elementary Roof Replacement will then be supplemented by appropriated funds from the General Fund and interest earned on school bonds to provide funding for the Homer Roof Replacement Phase I project.

It is the intent of this ordinance to appropriate supplemental funds necessary to complete the design development process and produce bid ready

Page -2-
February 4, 2021
RE: O2020-19- 21

documents for Phase I of a phased approach to the replacement and rehabilitation of the Homer High School roof.

The project is proposed to be funded through the use of \$1,252,552.88 in remaining 2014 School Bond funds transferred from the Redoubt Elementary Roof replacement project, interest of \$25,523.17 and a supplemental amount from the general fund of \$521,923.95 for a total estimated project cost of \$1,800,000. This scope will include design and construction that addresses roof system replacement, insulation, storm water system improvements, roof ventilation, and infrastructure repair/replacement as necessary.

Due to the immediate need to advance on the design development, it is necessary to appropriate the initial design cost. That budgeted portion is estimated at \$180,000. This work will include the design development and the administrative requirements for project approval that must be coordinated with the Department of Education and Early Development (DEED).

Once the project has been approved by DEED and a more substantial design scope has been completed, a more accurate project cost will be provided to the assembly for consideration.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT	
ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>100-27910</u>
Amount:	<u>\$ 180,000.00</u>
By: <u>PP</u>	Date: <u>2/4/2021</u>

Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-22**

**AN ORDINANCE ACCEPTING AND APPROPRIATING \$9,600 FROM THE STATE
OF ALASKA DIVISION OF FORESTRY TO SUPPLEMENT COSTS TO MANAGE
THE SLASH DISPOSAL SITE LOCATED IN COOPER LANDING**

WHEREAS, the borough provides the Snug Harbor Material Site located in Cooper Landing for the public to dispose of woody debris that includes large materials such as brush and tree stumps; and

WHEREAS, the State of Alaska Division of Forestry (“Forestry”) recognized the high use of this site as a result of the statewide burn suspension enacted during the 2020 wildland fire season; and

WHEREAS, Forestry supplemented the cost to maintain the site in the amount of \$9,600; and

WHEREAS, it is in the best interest of the borough to accept these state funds to help defray costs of providing these services the residents;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to accept \$9,600 from the State of Alaska to supplement the cost of maintaining the Snug Harbor Material Site.

SECTION 2. That the mayor is authorized to execute any documents deemed necessary to accept and expend the funds and to fulfill the intents and purposes of this ordinance.

SECTION 3. That state funds in the amount of \$9,600 are appropriated to account 250.21210.00000.43011.

SECTION 4. This ordinance shall become effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*
Brandi Harbaugh, Finance Director *BH*
Marcus Mueller, Land Manager *[Signature]*
Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

FROM: Trevor Kauffman, Land Management Agent *TK*

DATE: February 4, 2021

SUBJECT: Ordinance 2020-19- 22, Accepting and Appropriating \$9,600 from the State of Alaska Division of forestry to Supplement Costs to Manage the Slash Disposal Site Located in Cooper Landing (Mayor)

The Kenai Peninsula is currently experiencing widespread spruce mortality due to the increase in spruce bark beetle activity in area forests. Many land managers and private residents have chosen to remove infected trees in order to reduce risk of wildland fire on their property. Typically, the spruce is used for firewood or saw timber after removal, but the limbs, tops and other slash must be disposed in order to avoid stockpiling of fuel, which would create an exposure to fire hazard. Many landowners choose to burn the slash as it is often costly to haul it to solid waste disposal sites.

In Alaska, slash burning is regulated by the Alaska Division of Forestry between the months of April and September to manage the risk of escaped fires which may turn into large, destructive, and costly wildland fires. Slash burning is allowed under permit. However in 2020, the Alaska Division of Forestry suspended all burn permits, large and small, on the Kenai Peninsula for nearly the entire summer season to help mitigate the risk of wildland fire starts. The Division of Forestry anticipated difficulties in mobilizing firefighting resources due to the constraints imposed by the COVID-19 travel restrictions. This generated an increase in slash disposal transported to the solid waste sites.

The borough provides a slash disposal area in Cooper Landing at the Snug Harbor Material Site. The site saw significant use in 2020, and it is understood that this increased use was an indirect product of the State's burn suspension. Furthermore, Division of Forestry staff encouraged area residents to use the slash

Page -2-
February 4, 2021
Re: O2020-19-22

disposal area, as part of a grant-funded initiative to reduce fire risk around residential areas.

The Division of Forestry offered to supplement the borough's increased contractual cost of slash handling at the Snug Harbor Material Site in the amount of \$9,600.00 to burn the slash October 2020, after the State's regulated fire season had ended, and it was safe to do so.

Please consider the attached ordinance, which would accept and appropriate the \$9,600.00 from the Division of Forestry.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No.	<u>250.00000.00000.34147</u>
Amount	<u>\$9,600.00</u>
By: <u>PP</u>	Date: <u>2/4/2021</u>

From: [Gaiser, Mary L \(DNR\)](#)
To: [Ahlberg, Brenda](#); [Kauffman, Trevor](#)
Subject: FW: Cooper Landing Stump Dump grant funding
Date: Wednesday, January 20, 2021 8:29:27 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[RE Backup for reimbursement .msg](#)
[Copy of Evergreen Invoice to KPB #200.xlsx](#)
[Invoice Cooper Landing Stump Dump Grant Funding.pdf](#)
[Evergreen Check #365761.pdf](#)

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Brenda/Trevor – regarding Forestry’s reimbursement of \$9,600 to the Kenai Peninsula Borough for the Cooper Landing Landowner grant slash disposal service.

This was not a grant to KPB; but a reimbursement of the costs for the slash disposal services.

Please let me know if you have any other questions!

Take Care, Stay Well, Be Safe!! *Mary*

Mary Gaiser, Accountant III
Alaska Division of Forestry
550 W. 7th Avenue, Anchorage, AK 99501
Phone: (907) 269-8450 / Fax: (907) 269-8931
Email: mary.gaiser@alaska.gov

Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-07**

**AN ORDINANCE ACCEPTING EMERGENCY RESPONSE EQUIPMENT FROM THE
NIKISKI FIREFIGHTERS ASSOCIATION, INC. ON BEHALF OF NIKISKI FIRE
SERVICE AREA**

WHEREAS, Nikiski Firefighters Association, Inc. is a nonprofit (“Nonprofit”) entity that works in collaboration with the Nikiski Fire Service Area to support the preparedness, response and recovering needs of the service area; and

WHEREAS, the Nonprofit purchased and granted a transportable monitor system and a hose-nozzle system to the Service Area valued at \$5,046.85; and

WHEREAS, at its regularly scheduled meeting held February 10, 2021, the Service Area Board recommended _____; and

WHEREAS, it is in the best interest of the borough and the service area to accept the equipment grant;

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

SECTION 1. That the Mayor is authorized to accept the emergency response equipment valued at \$5,046.85 from the Nikiski Firefighters Association on behalf of the Nikiski Fire Service Area.

SECTION 2. This ordinance shall become effective immediately upon its enactment.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Community & Fiscal Projects

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Brandi Harbaugh, Finance Director *BH*
Bryan Crisp, Nikiski Fire Chief *BC*

FROM: Brenda Ahlberg, Community & Fiscal Projects Manager *BA*

DATE: February 4, 2021

RE: Ordinance 2021-07, Accepting Emergency Response Equipment from the Nikiski Firefighters Association, Inc. on Behalf of Nikiski Fire Service Area (Mayor)

The Nikiski Firefighters Association, Inc. ("nonprofit") received a grant from the Marathon Petroleum Foundation to purchase items that support the Nikiski Fire Service Area's (service area) mission. This memo recognizes that the service area has accepted the items from the nonprofit (itemized list below). There is no match requirement.

This matter is scheduled to come before the service area at its regularly scheduled meeting on February 10, 2021. The recommendations of the service area will be submitted to the assembly prior to the February 16 meeting.

ITEM TITLE	VALUE PER ITEM (UNDER \$5,000)
Hemisphere Combination Packages Transportable Monitor System Includes: <ul style="list-style-type: none"> 1 - HPM111A Hemisphere Monitor 1 - MDA12A Max-Series Tip 1 - HPM-A I-BEAM Clamp/2" Hitch Mount 	\$3,620.00
2.5NH 500GPM Master Foam Fixed Gallonage Self-Educting Foam Nozzle With 10' 1.5" Concentrate Hose Coupled 1.5" & 2" Camlock Ends	\$1,426.85

Crisp, Bryan

From: Deveer, Harrison
Sent: Tuesday, January 12, 2021 6:16 PM
To: Crisp, Bryan
Subject: Fwd: <EXTERNAL-SENDER>Your Application Has Been Approved

Sent from Harrison's iPhone

Begin forwarded message:

From: "Deveer, Harrison" <hdeveer@kpb.us>
Date: July 17, 2020 at 6:56:58 AM AKDT
To: "Crisp, Bryan" <BCrisp@kpb.us>, Mike A Van De Grift
<MAVanDeGrift@marathonpetroleum.com>
Subject: Fwd: <EXTERNAL-SENDER>Your Application Has Been Approved

I just received this.

Sent from Harrison's iPhone

Begin forwarded message:

From: "premiersupport@foundationsource.com"
<premiersupport@foundationsource.com>
Date: July 17, 2020 at 6:51:44 AM AKDT
To: "Deveer, Harrison" <hdeveer@kpb.us>
Cc: "stoland@marathonpetroleum.com" <stoland@marathonpetroleum.com>
Subject: <EXTERNAL-SENDER>Your Application Has Been Approved

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Dear Mr. Deveer:

The Marathon Petroleum Foundation is committed to collaborating with our stakeholders to invest in organizations and initiatives that make a positive, meaningful impact in communities where we operate.

I am pleased to announce that the Foundation has approved a grant in the amount of \$5,000.00 to support Nikiski Fire Equipment Purchase. You can expect to receive our check and the grant contract in the mail within ten business days.

If you have any questions, please contact Sarah Toland, Adv Administrative Assistant, at (419) 421-3807 or stoland@marathonpetroleum.com, who will be

coordinating our support of this grant.

We are proud to support Nikiski Firefighters Association Inc.. Best wishes for continued success.

Sincerely,
Marathon Petroleum Foundation, Inc.

Ph: 206-622-2875
TF: 800-426-6633
Fax: 253-236-2997
nwsales@lncurtis.com
DUNS#: 00-922-4163

CURTIS

TOOLS FOR HEROES

Northwest Division
6507 South 208th Street
Kent, WA. 98032
www.LNCURTIS.com
Quotation No. 156369

Quotation

CUSTOMER:	SHIP TO:	QUOTATION NO.	ISSUED DATE	EXPIRATION DATE
Western Refining Company, LP PO Box 599701 San Antonio TX 78259-9701	Marathon Petroleum Company 54741 Tesoro Rd. Kenai AK 99611	156369	06/10/2020	08/09/2020

SALESPERSON	CUSTOMER SERVICE REP
Steve Martin AK smartinAK@lncurtis.com 209-855-1104	Robert Briggs rbriggs@lncurtis.com 907-483-0117

REQUISITION NO.	REQUESTING PARTY	CUSTOMER NO.	TERMS	OFFER CLASS
	Mike Van De Grift	C31075	Net 30	FR

F.O.B.	SHIP VIA	DELIVERY REQ. BY
DEST	Best Way	

NOTES & DISCLAIMERS

THANK YOU FOR THIS OPPORTUNITY TO QUOTE. WE ARE PLEASED TO OFFER REQUESTED ITEMS AS FOLLOWS. IF YOU HAVE ANY QUESTIONS, NEED ADDITIONAL INFORMATION, OR WOULD LIKE TO PLACE AN ORDER, PLEASE CONTACT YOUR SALESPERSON OR CUSTOMER SERVICE REP AS NOTED ABOVE.

TRANSPORTATION IS INCLUDED IN BELOW PRICING.

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	1	EA	HPM-32 TFT	HEMISPHERE COMBINATION PACKAGES TRANSPORTABLE MONITOR INCLUDES: * 1 - HPM111A HEMISPHERE MONITOR * 1 - MDA12A MAX-SERIES TIP * 1 - HPM-A I BEAM CLAMP/2" HITCH MOUNT	\$3,620.00	\$3,620.00

DUNS NUMBER: 009224163
SIC CODE: 5099
FEDERAL TAX ID: 94-1214350

THIS PRICING REMAINS FIRM UNTIL 08/09/2020. CONTACT US FOR UPDATED PRICING AFTER THIS DATE.

Ph: 206-622-2875
TF: 800-426-6633
Fax: 253-236-2997
nwsales@lncurtis.com
DUNS#: 00-922-4163



Northwest Division
6507 South 208th Street
Kent, WA. 98032
www.LNCURTIS.com
Quotation No. 156369

Subtotal	\$3,620.00
Tax Total	\$0.00
Transportation	\$0.00
Total	\$3,620.00

[View Terms of Sale and Return Policy](#)

Ph: 206-622-2875
TF: 800-426-6633
Fax: 253-236-2997
nwsales@lncurtis.com
DUNS#: 00-922-4163



Northwest Division
6507 South 208th Street
Kent, WA. 98032
www.LNCURTIS.com
Quotation No. 156371

Quotation

CUSTOMER:	SHIP TO:	QUOTATION NO.	ISSUED DATE	EXPIRATION DATE
Western Refining Company, LP PO Box 599701 San Antonio TX 78259-9701	Marathon Petroleum Company 54741 Tesoro Rd. Kenai AK 99611	156371	06/10/2020	08/09/2020
		SALESPERSON	CUSTOMER SERVICE REP	
		Robert Briggs rbriggs@lncurtis.com 907-483-0117	Michael Duncan mduncan@lncurtis.com 206-596-7904	

REQUISITION NO.	REQUESTING PARTY	CUSTOMER NO.	TERMS	OFFER CLASS
	Mike Van De Grift	C31075	Net 30	FR
F.O.B.	SHIP VIA	DELIVERY REQ. BY		
DEST	Best Way			

NOTES & DISCLAIMERS

THANK YOU FOR THIS OPPORTUNITY TO QUOTE. WE ARE PLEASED TO OFFER REQUESTED ITEMS AS FOLLOWS. IF YOU HAVE ANY QUESTIONS, NEED ADDITIONAL INFORMATION, OR WOULD LIKE TO PLACE AN ORDER, PLEASE CONTACT YOUR SALESPERSON OR CUSTOMER SERVICE REP AS NOTED ABOVE.

TRANSPORTATION IS INCLUDED IN BELOW PRICING.

LN	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	1	EA	ZMF12A TFT	2.5NH 500GPM Master Foam fixed gallonge self-educting foam nozzle with 10' 1.5" concentrate hose coupled 1.5" & 2" Camlock ends	\$1,426.85	\$1,426.85

DUNS NUMBER: 009224163
SIC CODE: 5099
FEDERAL TAX ID: 94-1214350

THIS PRICING REMAINS FIRM UNTIL 08/09/2020. CONTACT US FOR UPDATED PRICING AFTER THIS DATE.

Subtotal	\$1,426.85
Tax Total	\$0.00
Transportation	\$0.00
Total	\$1,426.85

[View Terms of Sale and Return Policy](#)



Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-08**

**AN ORDINANCE AUTHORIZING LEASES OF SPACE AT THE KENAI RIVER
CENTER BUILDING WITH THE STATE OF ALASKA DEPARTMENT OF FISH AND
GAME AND DEPARTMENT OF NATURAL RESOURCES AND REPEALING
ORDINANCE 2020-30**

- WHEREAS,** federal appropriations were provided for the construction and operation of the borough's Donald E. Gilman Kenai River Center ("Kenai River Center"); and
- WHEREAS,** the Kenai River Center is designed to increase coordination and communication between permitting agencies in order to streamline the permitting process for landowners, improve protection of the Kenai Peninsula's natural resources, and serve as a source of information and education for landowners and others concerned with resource management; and
- WHEREAS,** staff within the borough's planning department, the State of Alaska Department of Fish & Game, and the State of Alaska Department of Natural Resources currently occupy the facility; and
- WHEREAS,** the Kenai Peninsula Borough and the State of Alaska desire to continue to utilize the Kenai River Center for its designed purpose; and
- WHEREAS,** entering into new lease agreements with the State of Alaska would provide for the continued use of space by each agency and would protect the interests of each party; and
- WHEREAS,** this ordinance will also repeal ordinance 2020-30, which approved cooperative leases at the river center, provided that rent shall be \$1.00 per annum, and stated that the cooperative leases shall be subject to a shared services agreement; and
- WHEREAS,** a repeal of ordinance 2020-30 is necessary because following negotiations with state officials there will no longer be a shared services agreement and rent will be greater than \$1.00, and instead the state will pay a monthly rent attributable to the square footage space occupied by the lessee under shared space terms set by the lease; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That Ordinance 2020-30, an ordinance authorizing cooperative leases of space at the Kenai River Center building with the state of Alaska Department of Fish and Game and Department of Natural Resources, is hereby repealed.

SECTION 2. That the mayor is hereby authorized, pursuant to KPB 17.10.100(D), to enter into leases, in substantially the form as the ones attached for approval, to the State of Alaska Department of Fish and Game and to the Department of Natural Resources, within the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, described as follows:

Tract 1A, Soldotna Airport Property Funny River Road
Realignment Addn. Part One, Plat No. 2011-22, located at 514
Funny River Road, Soldotna, Alaska

SECTION 3. That the cooperative leases are authorized pursuant to KPB 17.10.100(D) as leases in cooperation with a government entity, and the provisions of KPB 17.10.140 do not apply to these leases.

SECTION 4. The mayor is authorized to negotiate and sign any documents necessary to effectuate this ordinance.

SECTION 5. That this ordinance shall become effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*
Melanie Aeschliman, Planning Director *MA*
Marcus Mueller, Land Management Officer *mm*

FROM: Julie Denison, Land Management Technician *JD*

DATE: February 4, 2021

RE: Ordinance 2021-08, Authorizing Leases of Space at the Kenai River Center Building with the State of Alaska Department of Fish and Game and Department of Natural Resources and Repealing Ordinance 2020-30 (Mayor)

Ordinance 2020-30 authorized the mayor to enter into cooperative leases and a share services agreement for multi-agency occupancy and use of space at the Kenai River Center facility. During lease negotiations, the terms and lease package changed from the package authorized in Ordinance 2020-30 to an extent that it seemed necessary to repeal that ordinance and replace it with this ordinance authorizing the lease packages as negotiated.

The leases were re-arranged to a more traditional lease form using a set lease rate. The set rate is substantially similar to contribution amounts calculated under the former shared services agreement. Rents under the lease are subject to adjustment in 5-year intervals.

Your consideration is appreciated.

**KENAI PENINSULA BOROUGH LEASE
WITH THE ALASKA DEPARTMENT OF ADMINISTRATION**

WHEREAS, the Kenai Peninsula Borough (hereinafter called "KPB") and the State of Alaska, Department of Administration, on behalf of the Department of Natural Resources (hereinafter called "Lessee") are working in partnership to restore and protect the rivers of the Kenai Peninsula by providing multi-agency permitting, information and education at a single location known as the "Kenai River Center Building"; and

WHEREAS, KPB and Lessee have shared space and services in the Kenai River Center Building since it was constructed in 2000 and have operated under a cooperative lease arrangement since 2005; and

WHEREAS, KPB and Lessee desire to continue sharing space at the Kenai River Center Building in a multi-agency environment for the purpose of providing joint permitting, information and educational services to the Kenai Peninsula; and

WHEREAS, KPB owns the Kenai River Center Building and the underlying real property; and

NOW, THEREFORE, KPB and Lessee enter into the following agreement:

TERMS AND CONDITIONS

1. Consideration/Parties/Premises.

For good and valuable consideration, including the covenants and agreements contained herein, and pursuant to Ordinance 2020-____, enacted March ____, 2021, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, State of Alaska, Department of Administration, whose address is 550 West 7th Avenue, Suite 200, Anchorage, Alaska 99501, on behalf of the Alaska Department of Natural Resources, use of professional office space at the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

Room 106 within the Kenai River Center Building, located at 514
Funny River Road, Soldotna, Alaska.

This lease additionally provides full use and enjoyment of proportionately allocated shared use areas upon and within the described premises, along with available staff and visitor parking, with all respective appurtenances unto the Lessee for the duration of the lease.

2. Lease Term. This lease is for an initial term of five (5) years and may be renewed for two (2) additional terms in five (5) year increments for a total renewal options of ten (10) years, commencing July 1, 2020 and terminating June 30, 2035. This lease shall automatically renew unless the Lessee notifies KPB in writing of

Lessee's intention not to renew this lease at least 90 days prior to the expiration of the existing term.

3. **Lease Rental.** The lease rental is One Thousand One Hundred Dollars & 00/100 (\$1,100.00) per month for the initial 5-year term of this lease. The lease rental shall be adjusted at each renewal to the then-prevailing market rate.

4. **Definitions.**

- a. For the purpose of this lease the term "Kenai River Center Building" shall mean the entire premises subject to this lease, including the physical structure, the leased office space, shared use areas, storage facilities, parking areas, grounds, and other associated amenities.
- b. For the purpose of this lease the term "Kenai River Center" (KRC) shall mean the collection of agencies and personnel who cooperate to provide permitting, information, and/or education for the protection of the rivers of the Kenai Peninsula, its watersheds, and its fish and wildlife resources.
- c. For the purpose of this lease "shared use areas" include all common areas and facilities such as storage and locker areas, shared parking, conference rooms, and meeting rooms. Shared use areas may also include primary areas for administrative support, education and outreach, temporary, part time part time staff, or volunteers. Lessee and KP agree that establishment of a primary use of a shared use area shall be reasonably allowed, provided that such primary use of a shared use area is to the benefit of the Kenai River Center's mission and also provided that such primary use does not prevent the reasonable use by another due to conflict with design. Primary work areas and other primary uses within shared use areas may be moved, rearranged, extinguished or otherwise modified to provide maximum efficiency of design, over time, of a shared use area.

5. **Management, Operation and Maintenance.**

- a. Both parties shall use and occupy said premises in a careful and proper manner so that they remain in as good condition as when constructed, except for reasonable wear and tear and/or loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty during the continuance of this agreement.
- b. Neither party shall use or occupy the premises for any unlawful purpose. Neither party shall use the premises, or allow the same to be used or occupied, for any purpose or business that would present a danger to the premises or its occupants. Both parties shall keep the premises free of structural or mechanical hazards. Both parties shall comply with all Borough ordinances, State and federal statutes and regulations, and case law applicable to their occupation or use of the premises.
- c. KP and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and

individual property interests. Lessee and KPB are individually responsible for carrying liability insurance (through self-insurance or otherwise) covering liability for personal injury and any other loss.

- d. The proposed use of the premises is for a joint Lessee and KPB public permitting center and for related services. Since compatibility between uses must be maintained Lessee shall not change the general framework of occupying agency personnel or the use of said premises, nor any part thereof, without the written consent of the other parties, provided however such consent shall not be unreasonably withheld.
- e. Lessee may, at its sole cost, make minor renovations or modifications which it deems beneficial upon written approval of KPB.
- f. KPB shall have the obligation and responsibility to maintain and repair the premises as described in the paragraphs above, but may subcontract for all or part of the services. The areas of the building used by either party shall be maintained at an equal level. Lessee shall pay to KPB Lessee's share of all reasonable costs incurred by KPB as described above.
- g. KPB shall, in any contracts or agreements with contractors or subcontractors performing maintenance work at the premises after construction, require that all indemnities and waivers of subrogation it obtains and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the Lessee and to add the Lessee as an additional named indemnitee and as additional insured.
- h. Fixtures installed in the premises by Lessee remain the property of Lessee and may be removed by Lessee provided it repairs at Lessee's expense any injury to the premises.
- i. Lessee shall permit KPB staff to enter the premises at all reasonable times to examine the conditions of the same. KPB shall make every effort to not disrupt services and shall provide as much notice as possible prior to entry.

6. Dispute resolution.

- a. Procedures for building management and maintenance decisions and dispute resolution will be jointly developed by the parties and amended as appropriate by agreement of the parties. The parties will jointly develop schedules for periodic maintenance. Charges for these services shall be allocated to each party as in paragraph (e) or (f) of section 5 above.
- b. If disputes cannot be resolved by mutual agreement of the parties, the parties shall undergo mediation with a mediator chosen by mutual agreement of the parties. If disputes are not resolved through mediation, then the parties may submit to binding arbitration.

7. **Assignment.** Lessee may not assign the lease except with written approval by KPB upon a finding by KPB that such assignment is consistent with the KRC's mission and a finding that such assignment is in the best interest of KPB. The assignee should be bound by the terms and conditions of this lease, except, at KPB's benefit and sole option, this agreement may be subject to modification upon assignment provided such assignment is on a form that establishes such modification.
8. **Amendment.** The parties hereto may amend any term of this agreement, by written agreement signed by both parties. If an amendment to this agreement would cause a material effect to any other party of the shared service agreement, a letter of non-objection from that party must be obtained to effectuate such amendment.
9. **Liens and Mortgages.** Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease.
10. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
11. **Breach and Remedies**
- a. **By Lessor.** If KPB breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from Lessee, Lessee may terminate this lease.
 - b. **By Lessee.** If Lessee breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from KPB, KPB may terminate this lease.
12. **Termination**
- a. Either of the parties hereto may for the following reasons terminate this agreement by giving the other ninety (90) days' prior notice in writing. Grounds for such termination are:
 1. A breach of any of the terms and conditions herein contained when such breach is not cured as herein provided; or
 2. When and if the Lessee, because of conditions beyond its control, is unable to adequately staff the leased facilities
 - b. Unless the State Legislature provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the State Legislature fails to appropriate funds sufficient to make lease payments for the following fiscal year.

- c. At any time that this lease is in good standing it may be canceled in whole or in part upon mutual written agreement by Lessee and the KPB Mayor. This lease is subject to cancellation in whole or in part if improperly issued through error in procedure or if a mutual mistake is made with respect to material facts.
13. **Entry or Re-entry.** In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised buildings or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said buildings or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the lease.
14. **Notice.** Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on this Lease. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addresser.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley Street
Soldotna, AK 99669-7199

LESSEE

State of Alaska
Department of Administration, 11
550 West 7th, Suite 200
Anchorage, AK 99501

15. **Waiver.** The waiver by a party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
16. **Jurisdiction.** Any suits filed in connection with the terms and conditions of this lease, and of the rights and duties of the parties, shall be filed and litigated in the trial courts of the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law.
17. **Severability Clause.** Should any provision of this lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this lease or constitute any cause of action in favor of either party as against the other.

18. **Binding Effect.** It is agreed that all covenants, terms and conditions of this lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
19. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limit the content of the articles.
20. **Full and Final Agreement.** This lease agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this lease have been made with the intention of inducing execution of this agreement.

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
on behalf of the Department of
Natural Resources

KENAI PENINSULA BOROUGH

Rashaad Esters, Contracting Officer III

Charlie Pierce, Mayor

Dated:

Dated:

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Sean Kelley,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by Ashaad Esters, the Contracting Officer III for the State of Alaska Department of Administration, for and on behalf of the State of Alaska, Department of Natural Resources.

Notary Public in and for Alaska
My commission expires: With Office

**KENAI PENINSULA BOROUGH LEASE
WITH THE ALASKA DEPARTMENT OF ADMINISTRATION**

WHEREAS, the Kenai Peninsula Borough (hereinafter called "KPB") and the State of Alaska, Department of Administration, on behalf of the Department of Fish and Game (hereinafter called "Lessee") are working in partnership to restore and protect the rivers of the Kenai Peninsula by providing multi-agency permitting, information and education at a single location known as the "Kenai River Center Building"; and

WHEREAS, KPB and Lessee have shared space and services in the Kenai River Center Building since it was constructed in 2000 and have operated under a cooperative lease arrangement since 2005; and

WHEREAS, KPB and Lessee desire to continue sharing space at the Kenai River Center Building in a multi-agency environment for the purpose of providing joint permitting, information and educational services to the Kenai Peninsula; and

WHEREAS, KPB owns the Kenai River Center Building and the underlying real property; and

NOW, THEREFORE, KPB and Lessee enter into the following agreement:

TERMS AND CONDITIONS

1. Consideration/Parties/Premises.

For good and valuable consideration, including the covenants and agreements contained herein, and pursuant to Ordinance 2020-____, enacted March ____, 2021, the KPB, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, grants to Lessee, State of Alaska, Department of Administration, whose address is 550 West 7th Avenue, Suite 200, Anchorage, Alaska 99501, on behalf of the Alaska Department of Fish & Game, use of professional office space at the following described real property situated in the Kenai Recording District, Third Judicial District, State of Alaska, and described as follows:

Room 105 and Room 108 within the Kenai River Center Building,
located at 514 Funny River Road, Soldotna, Alaska.

This lease additionally provides full use and enjoyment of proportionately allocated shared use areas upon and within the described premises, along with available staff and visitor parking, with all respective appurtenances unto the Lessee for the duration of the lease.

2. Lease Term. This lease is for an initial term of two (2) years and may be renewed for eight (8) additional terms in one (1) year increments for a total renewal options of eight (8) years, commencing July 1, 2020 and terminating June 30, 2030. This lease shall automatically renew unless the Lessee notifies KPB in writing of

Lessee's intention not to renew this lease at least 90 days prior to the expiration of the existing term.

3. **Lease Rental.** The lease rental is Two Thousand Two Hundred Dollars & 00/100 (\$2,200.00) per month for the initial 5-years of this lease. The lease rental shall be adjusted at each renewal to the then-prevailing market rate.

4. **Definitions.**

- a. For the purpose of this lease the term "Kenai River Center Building" shall mean the entire premises subject to this lease, including the physical structure, the leased office space, shared use areas, storage facilities, parking areas, grounds, and other associated amenities.
- b. For the purpose of this lease the term "Kenai River Center" (KRC) shall mean the collection of agencies and personnel who cooperate to provide permitting, information, and/or education for the protection of the rivers of the Kenai Peninsula, its watersheds, and its fish and wildlife resources.
- c. For the purpose of this lease "shared use areas" include all common areas and facilities such as storage and locker areas, shared parking, conference rooms, and meeting rooms. Shared use areas may also include primary areas for administrative support, education and outreach, temporary, part time part time staff, or volunteers. Lessee and KRC agree that establishment of a primary use of a shared use area shall be reasonably allowed, provided that such primary use of a shared use area is to the benefit of the Kenai River Center's mission and also provided that such primary use does not prevent the reasonable use by another due to conflict with design. Primary work areas and other primary uses within shared use areas may be moved, rearranged, extinguished or otherwise modified to provide maximum efficiency of design, over time, of a shared use area.

5. **Management, Operation and Maintenance.**

- a. Both parties shall use and occupy said premises in a careful and proper manner so that they remain in as good condition as when constructed, except for reasonable wear and tear and/or loss or damage caused by fire, explosions, earthquakes, acts of God, or other casualty during the continuance of this agreement.
- b. Neither party shall use or occupy the premises for any unlawful purpose. Neither party shall use the premises, or allow the same to be used or occupied, for any purpose or business that would predict a danger to the premises or its occupants. Both parties shall keep the premises free of structural or mechanical hazards. Both parties shall comply with all Borough ordinances, State and federal statutes and regulations, and case law applicable to their occupation or use of the premises.
- c. KPB and Lessee are individually responsible for carrying property insurance (through self-insurance or otherwise) for their own fixtures and equipment and

individual property interests. Lessee and KPB are individually responsible for carrying liability insurance (through self-insurance or otherwise) covering liability for personal injury and any other loss.

- d. The proposed use of the premises is for a joint Lessee and KPB public permitting center and for related services. Since compatibility between uses must be maintained Lessee shall not change the general framework of occupying agency personnel or the use of said premises, nor any part thereof, without the written consent of the other parties, provided however such consent shall not be unreasonably withheld.
- e. Lessee may, at its sole cost, make minor renovations or modifications which it deems beneficial upon written approval of KPB.
- f. KPB shall have the obligation and responsibility to maintain and repair the premises as described in the paragraphs above, but may subcontract for all or part of the services. The areas of the building used by either party shall be maintained at an equal level. Lessee shall pay to KPB Lessee's share of all reasonable costs incurred by KPB as described above.
- g. KPB shall, in any contracts or agreements with contractors or subcontractors performing maintenance work at the premises after construction, require that all indemnities and waivers of subrogation it obtains and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the Lessee and to add the Lessee as an additional named indemnitee and as additional insured.
- h. Fixtures installed in the premises by Lessee remain the property of Lessee and may be removed by Lessee provided it repairs at Lessee's expense any injury to the premises.
- i. Lessee shall permit KPB staff to enter the premises at all reasonable times to examine the condition of the same. KPB shall make every effort to not disrupt services and shall provide as much notice as possible prior to entry.

6. Dispute resolution.

- a. Procedures for building management and maintenance decisions and dispute resolution will be jointly developed by the parties and amended as appropriate by agreement of the parties. The parties will jointly develop schedules for periodic maintenance. Charges for these services shall be allocated to each party as in paragraph (e) or (f) of section 5 above.
- b. If disputes cannot be resolved by mutual agreement of the parties, the parties shall undergo mediation with a mediator chosen by mutual agreement of the parties. If disputes are not resolved through mediation, then the parties may submit to binding arbitration.

7. **Assignment.** Lessee may not assign the lease except with written approval by KPB upon a finding by KPB that such assignment is consistent with the KRC's mission and a finding that such assignment is in the best interest of KPB. The assignee should be bound by the terms and conditions of this lease, except, at KPB's benefit and sole option, this agreement may be subject to modification upon assignment provided such assignment is on a form that establishes such modification.
8. **Amendment.** The parties hereto may amend any term of this agreement, by written agreement signed by both parties. If an amendment to this agreement would cause a material effect to any other party of the shared service agreement, a letter of non-objection from that party must be obtained to effectuate such amendment.
9. **Liens and Mortgages.** Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease.
10. **Violation.** Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
11. **Breach and Remedies**
- a. **By Lessor.** If KPB breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from Lessee, Lessee may terminate this lease.
 - b. **By Lessee.** If Lessee breaches this agreement by failing to comply with any of the terms and conditions herein and has not cured the breach within sixty (60) days of receipt of written notice thereof from KPB, KPB may terminate this lease.
12. **Termination**
- a. Either of the parties hereto may for the following reasons terminate this agreement by giving the other ninety (90) days' prior notice in writing. Grounds for such termination are:
 1. A breach of any of the terms and conditions herein contained when such breach is not cured as herein provided; or
 2. When and if the Lessee, because of conditions beyond its control, is unable to adequately staff the leased facilities
 - b. Unless the State Legislature provides otherwise, this lease shall automatically terminate without penalty on June 30 of any year during which the State Legislature fails to appropriate funds sufficient to make lease payments for the following fiscal year.

- c. At any time that this lease is in good standing it may be canceled in whole or in part upon mutual written agreement by Lessee and the KPB Mayor. This lease is subject to cancellation in whole or in part if improperly issued through error in procedure or if a mutual mistake is made with respect to material facts.

13. **Entry or Re-entry.** In the event that the Lease is terminated, canceled or forfeited, or in the event that the demised buildings or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said buildings or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the lease.
14. **Notice.** Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on this Lease. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressee.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley Street
Soldotna, AK 99669-7309

LESSEE

State of Alaska
Department of Administration, 10
550 West 7th, Suite 200
Anchorage, AK 99501

15. **Waiver.** The waiver by a party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.
16. **Jurisdiction.** Any suits filed in connection with the terms and conditions of this lease, and of the rights and duties of the parties, shall be filed and litigated in the trial courts of the State of Alaska, Third Judicial District at Kenai, and shall be governed by Alaska law.
17. **Severability Clause.** Should any provision of this lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this lease or constitute any cause of action in favor of either party as against the other.

18. **Binding Effect.** It is agreed that all covenants, terms and conditions of this lease shall be binding upon the successors, heirs and assigns of the original parties hereto.
19. **Titles of Articles.** The titles of articles in this lease are for ease of reference and are not definitional nor limit the content of the articles.
20. **Full and Final Agreement.** This lease agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This lease may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this lease have been made with the intention of inducing execution of this agreement.

STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
on behalf of the Department of
Fish & Game

KENAI PENINSULA BOROUGH

Rashaad Esters, Contracting Officer III

Chane Pierce, Mayor

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Sean Kelley,
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Rashad Esters, the Contracting Officer III for the State of Alaska Department of Administration for and on behalf of the State of Alaska, Department of Fish & Game.

Notary Public in and for Alaska
My commission expires: With Office

Introduced by:	Hibbert, Bjorkman
Date:	04/21/20
Action:	Adopted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-030**

**A RESOLUTION RECOGNIZING THE SUCCESSFUL EFFORTS OF THE STATE
LEADERSHIP AND ALASKAN RESIDENTS TO SLOW THE SPREAD OF COVID-19
AND ENCOURAGING THE GOVERNOR TO PROCURE SUFFICIENT COVID-19
TESTING SO HE CAN RESCIND OR MODIFY COVID-19 HEALTH MANDATES 003:
STATE WIDE CLOSURE RESTAURANTS, BARS, ENTERTAINMENT, 009:
PERSONAL CARE SERVICES AND GATHERINGS AND 012: INTRASTATE
TRAVEL, AS SOON AS REASONABLY PRACTICAL**

WHEREAS, the COVID-19 virus originated in Hubei province in China, with the first confirmed case occurring on November 17, 2019; and,

WHEREAS, on January 21, 2020, the United States of America had its first confirmed case of COVID-19; and,

WHEREAS, on January 30, 2020 the World Health Organization declared a public health emergency of international concern due the COVID-19 virus; and,

WHEREAS, on March 13, 2020, with 2,700 confirmed cases of COVID-19 in the United States, President Donald Trump declared a U.S. national emergency and,

WHEREAS, as of April 7, 2020, the United States had 400,335 confirmed cases of COVID-19; and,

WHEREAS, on March 2, 2020, the State of Alaska had its first confirmed case of COVID -19; and,

WHEREAS, in response to the confirmed presence of COVID-19 in the State of Alaska and to prevent or slow the spread of the Disease Governor Mike Dunleavy issued his first public health mandate on March 13, 2020; and,

WHEREAS, between March 16, 2020 and March 27, 2020, Governor Dunleavy issued 11 additional health mandates, all in an effort to "flatten the curve" and reduce the number of confirmed COVID-19 cases to a level that would not overwhelm the health care infrastructure of the State; and

WHEREAS, because of the early and aggressive action by the Governor and the cooperation of Alaskan residents, the number of confirmed COVID-19 cases in the state has remained low with 321 cases confirmed as of April 20, 2020; and

WHEREAS, the health mandates issued by the Governor are some of the most aggressive measures limiting virus exposure amongst the states: and

WHEREAS, the continued closure of businesses is impacting all Alaskans, resulting in a significant loss of jobs, business failures, and the loss of important sales tax revenues to municipalities jeopardizing essential services; and,

WHEREAS, reducing intrastate travel limitations and mandatory closure of certain businesses as soon as reasonably practical will allow many businesses to reopen, employees to return to work and residents to receive services; and,

WHEREAS, reduction of these limitations can be paired with continued implementation of other health mandates as necessary to continue protecting public health and safety;

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


SECTION 1. That the Kenai Peninsula Borough Assembly respectfully encourages the Governor to procure sufficient COVID-19 testing so he can rescind or modify COVID-19 health mandates 003: State wide closure restaurants, bars, entertainment, 009: personal care services and gatherings and 012: intrastate travel, as soon as reasonably practical to allow Alaskan businesses to resume operations, employees to return to work and residents to receive services in a safe manner observing social distancing requirements.


SECTION 2. That a copy of this resolution shall be sent to Governor Dunleavy and all Kenai Peninsula Borough legislators.

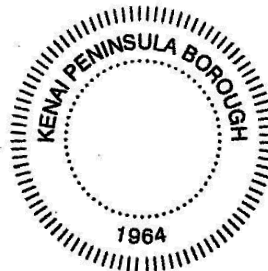
SECTION 3. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF APRIL, 2020.

ATTEST:


John Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None

Introduced by:	Mayor
Date:	02/16/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-09**

**AN ORDINANCE AUTHORIZING A COMMUNITY TRAIL MANAGEMENT
AGREEMENT WITH SNOMADS, INC.**

- WHEREAS,** KPB 17.10.185 provides for the mayor to enter into trail management agreements with appropriate non-profit and community organizations to allow for the management of public trails, trail corridors, and related facilities on borough land under the terms and conditions of the trail management agreement authorized by the assembly upon recommendation of the planning commission; and
- WHEREAS,** Snomads, Inc. (“Snomads”) is a non-profit organization dedicated to promoting individual and family activities through trails; and
- WHEREAS,** Snomads and its predecessor organization has developed snowmachine trails since the 1980’s on borough land which have been formally permitted since 2007 that it maintains through community and grant support to provide for a variety of community uses, events, and related economic benefits; and
- WHEREAS,** Snomads has applied for a Community Trail Management Agreement (“CTMA”) to develop, maintain, and manage a multi-use trail system in the Homer area; and
- WHEREAS,** a CTMA is designed to establish a base agreement with a trail manager that is scoped by a Trail Management Plan which delineates trail improvements and management actions authorized, and additionally provides for amending the Trail Management Plan over time to move, grow, and change through administrative and assembly approval process; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of February 22, 2021 recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

- SECTION 1.** That the mayor is authorized to enter into a CTMA with Snomads, as trail manager, that provides for the development, maintenance, and management of public trails, trail corridors, and related facilities on borough lands.

SECTION 2. That the mayor is authorized to approve a Trail Management Plan with the general scope being for trail facilities located in the south Caribou Hills and Homer area, for year-round management, for motorized and non-motorized uses.

SECTION 3. That the mayor is authorized, through the CTMA, to provide for the regulation of public uses on the trail facilities to prohibit motorized wheeled vehicles on groomed trails during the winter season.

SECTION 4. That the mayor is authorized to enter into a CTMA, substantially in the form of the attached CMTA.

SECTION 5. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:


No:

Absent:

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Richard Derkevorkian, Assembly Member 

DATE: February 18, 2021

RE: Ordinance 2021-09, Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

I am proposing the following amendments to Ordinance 2021-09 and the proposed Community Trail Management Plan¹:

- Amend Section 3, as follows:

SECTION 3. That the mayor is authorized, through the CTMA, to provide for the regulation of public uses on the trail facilities to ~~[PROHIBIT]~~ **reasonably regulate the use of** motorized wheeled vehicles on groomed trails during the winter season **to prolong the investment of trail grooming and prevent trail damage.**

- Amend the Community Trail Management Plan, at page 4, as follows:

Trail Usage Restrictions:

Wheeled ATV/UTV or any motorized Off Road Recreational Vehicle (ORRV) are not authorized on groomed Snomads Managed CHS trails **at any time that the wheeled vehicle is leaving visible tire depressions exceeding 1" depth and degrading the condition of the groomed trail** during the Winter Months. Fat Tire bikes are permitted on CHS groomed Trails.

Your consideration is appreciated.

¹ Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *JCB*
Melanie Aeschliman, Planning Director *MA*
Marcus Mueller, Land Management Officer *MM*

FROM: Julie Denison, Land Management Technician *JD*

DATE: February 4, 2021

RE: Ordinance 2021-09, Authorizing a Community Trail Management Agreement with Snomads, Inc. (Mayor)

Snomads, Inc., a non-profit organization, ("Snomads") develops, maintains and manages snow machine trails on borough land near Homer. Snomads has applied for a Community Trail Management Agreement ("CTMA") to continue its trail management activities into the future.

A CTMA has been prepared that provides a framework and set of management tools that can be used to implement a Trail Management Plan (TMP) in balance with other interests of the Kenai Peninsula Borough.

The trail facilities proposed are year-round, motorized and non-motorized, and human-powered uses which would be groomed in the winter and maintained in the summer. The TMP would allow for administrative amendments where modifications are consistent with the general scope authorized by the assembly. Major amendments that introduce significant changes in location, use, fees, or regulations, would go before the assembly for additional approval.

This proposal considers authorizing the trail manager to implement a trail regulation restricting public use in the form of prohibiting motorized wheeled vehicles on groomed trails during the winter season.

Your consideration is appreciated.

COMMUNITY TRAIL MANAGEMENT AGREEMENT

CTMA No. 2021-01

I. PARTIES TO THE AGREEMENT

Landowner: Kenai Peninsula Borough (KPB)
Trail Manager: Snomads, Inc. (Snomads)

II. PURPOSE OF THE AGREEMENT

The purpose of this Community Trail Management Agreement (CTMA) is to authorize the Trail Manager to perform management of certain public trail facilities on Kenai Peninsula Borough land.

III. COMMUNITY TRAIL MANAGEMENT AGREEMENT AUTHORITY

Pursuant to KPB 17.10.185 and Ordinance 2021-XX, enacted _____, KPB hereby enters into this CTMA with the Trail Manager for the management of public trails, trail corridors, and related facilities (hereinafter collectively called "Trail Facilities") as described in this agreement through a Trail Management Plan, subject to the terms and conditions of this CTMA.

IV. LOCATION & CORRIDOR INTENT

This CTMA is applicable only on lands owned by the Kenai Peninsula Borough in the locations shown in the Trail Management Plan. Each trail is considered to have an accompanying management corridor, generally 25-feet on each side of the trail, available for management in ancillary support of the physical trail and trail uses. Purposes of management corridors include vegetation management, views, resting areas, sign locations, and buffering. Management corridors may vary in width in consideration of the nature of trail facilities, adjoining uses, terrain, vegetation types, and property interests. A reasonable effort will be made through the Trail Management Plan to communicate intended corridor areas where different from the general standard for width.

V. TRAIL MANAGEMENT PLAN

The purpose of the Trail Management Plan is to establish the scope of physical trail facilities and their respective locations, along with the means and methods by which the Trail Manager shall develop, manage, and maintain those trail facilities under this CTMA.

A. The Trail Management Plan shall include the following, as applicable:

1. Written Descriptions of the means, methods and timetables to communicate the active scope of the development, use, and management of trail facilities under this CTMA.
2. Drawings of the Trail Facilities through maps, typical profile diagrams, conceptual site plans, structural drawings, and details as necessary to illustrate the position and relation of existing and proposed Trail Facilities to

land boundaries, terrain features, other land uses, and to communicate the spatial and structural scope of the Trail Facilities under this CTMA.

3. Published Rules & Regulations including major signs to be used to administer the orderly use of Trail Facilities and general the location of such postings.
 4. Fees & Reservation System, including any use fees or service fees, the basis of rates, the method of collection and entry, and the current contact for system administration. If fees are collected, then reporting of fees collected is required in the annual report along with the maintenance and service costs upon which the fees are based.
- B. Amendment or Modification of the Trail Management Plan is by mutual written agreement. The Trail Manager may submit proposed amendments or modifications to the Planning Department for consideration under this CTMA. The Planning Department shall have a minimum of 60 days to review the submittal. The borough may approve, deny, or condition the submittal. Amendments will be considered administratively when the addition is consistent in nature with the standing agreement. Major amendments will require approval by the borough Assembly. Amendments or modifications shall become effective upon written agreement by the parties and shall be incorporated into the Trail Management Plan.

VI. OPEN TO THE GENERAL PUBLIC

Trail Facilities under this CTMA shall be open to the general public.

When applicable, Trail Manager is authorized to coordinate and schedule events among user groups and to schedule Trail Facilities work and maintenance, during which times the Trail Manager may post notice and restrict uses to those events, Trail Facilities work or maintenance.

VII. RULES, REGULATIONS, AND SAFETY

- A. Trail Manager shall promulgate trail use rules and regulations necessary to promote safe and orderly use of Trail Facilities by the general public, subject to review and approval by the KPB under the Trail Management Plan.
- B. Trail Manager shall periodically assess trail conditions and is authorized to restrict or close use if conditions are determined to be unsafe or that use during such conditions would potentially cause damage to Trail Facilities, whether or not explicitly stated in the Trail Management Plan.
- C. Trail Manager shall post signs or signals necessary to guide safe use of the Trail Facilities by the general public.
- D. Pursuant to Ordinance 2021-XX, Trail Facilities under this CTMA are authorized to be regulated by the Trail Manager to prohibit wheeled vehicles on groomed trails

in the winter season, except allowance for authorized maintenance vehicles, emergency vehicles, and motorized vehicle crossings.

- E. Trail manager shall remove trash, litter, and debris on a regular basis, and keep the Trail Facilities in a neat, clean, sanitary, and in a safe condition.

VIII. ANNUAL REPORTING REQUIRED

In performance of this CTMA, the Trail Manager will provide an annual report to KPB summarizing 1) trail facilities development, 2) trail facilities use or availability for use, 3) maintenance activities, 4) management activities, and 5) accounting of fees, if any. The Trail Management Plan shall guide standard reporting metrics. Fees, if any, will include the total amount collected in US dollars, and the number of fee units. *For example: Reporting Period Jan 1 – Dec 31. Total Number of Public Use Cabins: 1, Total Cabin Use Fees Collected- \$3,500, Public Use Cabin Rental Days 100, Daily Fee \$35/Day, Cabin Availability 345 Days available for reservations, Cabin Maintenance 20 Days -volunteers stained exterior, restocked wood pile 10 times (10 cords), cleaned wood stove, and conducted routine maintenance. Maintenance and supply costs \$3,200, Cabin Maintenance Reserve Account Balance \$300.*

Annual reports are due by April 15th of each year.

IX. TERM

This CTMA is for an initial term of twenty years commencing April 15, 2021 and may be extended at any time proceeding expiration by mutual written agreement.

X. IN SUPPORT OF GRANT OPPORTUNITIES, DURABLE FOR SITE CONTROL

For the purposes of grant applications made by Trail Manager regarding improvement or maintenance of Trail Facilities under this CTMA and the Trail Management Plan, this agreement is intended to be considered durable site control to the granting agency for the duration of the grant maintenance period. In the event that a grant maintenance period extends beyond the written term of the CTMA, written acknowledgement by KPB in support of the grant application can be considered intent to extend the CTMA through the grant maintenance period as the CTMA pertains to such grant.

XI. RESERVATIONS & OTHER PROPERTY INTERESTS RETAINED

- A. Nothing contained in this CTMA creates or implies any property interests, including easements or rights-of-way beyond the terms and conditions of this CTMA.
- B. KPB reserves the right to withdraw portions of the Trail Facilities from this CTMA as necessary to serve other land uses or resolve conflicts.
- C. KPB reserves the right to require Trail Facilities to be closed, removed, or relocated by and at the expense of the Trail Manager if such trails pose a potential conflict with other land uses.
- D. KPB reserves the right to authorize other land uses on the land.

- E. KPB reserves the right to review, approve, or deny any management actions that affect trail use, land use, or development on the land.
- F. Use of the land shall be subject to all valid existing rights, including leases, permits, easements, rights-of-ways, covenants and restrictions or other interests in the real property. The KPB reserves and retains the right to grant additional easements or rights-of-ways across the property as it deems reasonable and convenient or necessary.
- G. Should circumstances warrant, this CTMA may be modified or suspended in writing by KPB to protect resources, health, safety, or the environment.

XII. LIMITATIONS

- A. This CTMA conveys no interest in the land to the Trail Manager. This CTMA does not convey any exclusive rights, nor any preferential rights to the Trail Manager for the use of the Trail Facilities or the land, different from the Trail Manager's right to secure its authorized property and administer the Trail Facilities provided in the CTMA.
- B. The Trail Manager shall not develop, manage, or maintain beyond what is specified in the Trail Management Plan, unless otherwise approved in writing by the KPB.
- C. This CTMA is not intended to, and does not, give special standing to Trail Facilities or to the Trail Manager beyond the purposes and terms of the agreement.
- D. KPB assumes no obligation to commit funds or other resources for improvements or maintenance associated with the Trail Facilities or their continuation.

XIII. ASSUMPTION OF RISKS

- A. Defense and Indemnification: The Trail Manager shall indemnify, defend, save and hold the KPB, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees resulting from the Trail Manager's performance or failure to perform in accord with the terms and conditions of this CTMA in any way whatsoever. The Trail Manager shall be responsible under this clause for any and all claims of any character resulting from the Trail Manager or the Trail Manager's officers, agents, employees, partners, attorneys, suppliers, and subcontractors performance or failure to perform this CTMA in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the KPB or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the Trail Manager shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the KPB, its agents, or employees.
- B. Liability Insurance: The Trail Manager shall purchase at its own expense and maintain in force at all times during the term of this CTMA the following insurance policy:

Commercial General Liability: Policy to include bodily injury, personal injury, and property damage with respect to the property and the activities conducted by the Trail Manager in which the coverage shall not be less than \$1,000,000.00 per occurrence or such higher coverage as specified by the KPB. The policy purchased shall name the Kenai Peninsula Borough as an additional insured with respect to the Trail Manager's activities conducted on the property.

- C. Proof of Insurance: The Trail Manager shall deliver to the KPB a certificate of insurance. This insurance shall be primary and exclusive of any other insurance held by the KPB. Failure to provide the certificate of insurance as required by this section, or a lapse in coverage, is a material breach of this CTMA entitling the KPB to revoke the agreement.

XIV. GENERAL CONDITIONS

- A. Reference to KPB. 17.10.240. The general conditions contained in KPB 17.10.240 are incorporated by reference.
- B. Responsibility of Location. It shall be the responsibility of the Trail Manager to properly locate its self and its improvements on the land authorized.
- C. Compliance With Laws. The Trail Manager agrees to comply with all applicable federal, state, borough, and local laws and regulations.
- D. Inspections. Agents or representatives of the KPB shall have access to the Trail Facilities at all times.
- H. Waste. The Trail Manager shall not commit waste or injury upon the land.

XV. ENFORCEMENT OF AGREEMENT & TERMINATION

- A. Termination. Violation of the CTMA subjects the agreement to termination 60-days after delivering notice of violation, when correction is not made to resolve the violation.
- B. Performance of Duties. The Trail Management Plan shall be considered a duty under the CTMA. Failure to materially perform according to the Trail Management Plan may be considered a violation and subject the CTMA to termination in whole or in part.
- C. Unauthorized Uses. Uses of the land other than those authorized under the CTMA may be considered a violation and subject the CTMA to termination in whole or in part.
- D. Breach of Conditions. A breach of any of the conditions of this CTMA will be considered a violation of the agreement.
- E. Suspension. Violation of the CTMA subjects the agreement to immediate suspension by Notice of Suspension for violations that create a significant risk to human safety or that are counter to the public purposes for which this CTMA is intended to serve.

- F. Notice of Violation and Suspension. Notice of violation and notice of suspension shall be in writing and shall serve to identify the violation and the standards under which a correction will be considered to resolve the violation.
- G. Cancellation. At any time that this CTMA is in good standing it may be canceled in whole or in part upon mutual written agreement by the parties.
- H. Jurisdiction. Any suits filed in connection with the terms and conditions of this CTMA, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
- I. Savings Clause. Should any provision of this CTMA fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this agreement or constitute any cause of action in favor of either party as against the other.
- J. Binding Effect. It is agreed that all covenants, terms, and conditions of this CTMA shall be binding upon the successors, heirs and assigns of the original parties hereto.
- K. Full and Final Agreement. This CTMA constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This CTMA may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. The Trail Manager avers and warrants that no representations not contained within this CTMA have been made with the intention of inducing execution of this CTMA.
- L. Warranty of Authority. The Trail Manager warrants that the person executing this CTMA is authorized to do so on behalf of the Trail Manager.

XVI. CONDITION OF PROPERTY VACATED

- A. Removal and Cleanliness. On or before the expiration date of this CTMA, or within 60-days of early termination, the Trail Manager shall leave the land in a neat, clean and sanitary condition, and shall remove all trash, waste, materials, equipment, and other personal property that the Trail Manager has placed on the land.
- B. Final Report. Any previously unstated matters between the parties must be reported in writing to the other party within 60-days of expiration or termination to be considered valid interests under this CTMA or all claims or right to claims shall cease for the purpose of this agreement.

XVII. NOTICES

All notices shall be sent to both parties as follows:

KENAI PENINSULA BOROUGH
Planning Director
144 N. Binkley Street
Soldotna, AK 99669-7599

SNOMADS, INC.
P.O. Box 3646
Homer, Alaska 99603-3646

Trail Manager shall maintain on file with KPB the name, title, address, email address and telephone number of an individual whom shall be the point of contact for day-to-day and emergency contact, information, and correspondence relative to this CTMA.

KENAI PENINSULA BOROUGH

Charlie Pierce, Mayor

Dated: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship,
Borough Clerk

Sean Kelley
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

SNOMADS, INC.

Dave Mastolier, President

Tessa Kern, Secretary

Date: _____

Date: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Dave Mastolier, President of Snomads, Inc., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Tessa Kern, Secretary of Snomads, Inc., an Alaska nonprofit corporation, on behalf of the corporation.

Notary Public in and for Alaska
My commission expires: _____

17.10.240. - General conditions.

A.

Applicability. Each of the following terms and conditions shall, unless inapplicable by its own terms, apply to every sale or lease of land or interest in land by the borough, unless otherwise specifically provided by ordinance of the assembly. The terms and conditions, as well as any others established by the assembly or the land management officer, shall be included in every agreement of sale, lease or other document disposing of land or an interest in borough land in substantially the manner set out in this section.

B.

Assignments. Any purchaser, lessee, or permittee may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected. The assignee shall be subject to and governed by the provisions and regulations applicable thereto.

C.

Breach of Agreement. In the event of a default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty days after written notice of the default, the borough may cancel the agreement, lease, or permit or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

D.

Cancellation. A purchase agreement, lease or permit in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by the purchaser, lessee, or permittee and the mayor or land management officer when applicable. A purchase agreement, lease, or permit is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

E.

Conditional Contract. The borough may conditionally lease or issue permits for land it selects under the various state land grants and lands it reasonably believes it will own or will acquire title to prior to the actual receipt of title. An agreement, lease, or permit issued on this conditional basis shall be canceled in whole or in part in the event the borough is denied title to said lands. Payment made by the lessee or permittee on the land to which title is denied the borough shall be refunded in whole or in part to the agreement holder of record and any properly recorded lienholder, if any, jointly. However, the borough shall in no way be liable for any damage that may be done to the land by the lessee or permittee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under agreement, the conditional agreement shall then have the same standing, force and effect as non-conditional agreements issued under any regulations of this chapter.

F.

Entry or Re-entry. In the event that the purchase agreement or lease is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the purchaser during the agreement term, the borough or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law or equity without being liable for any damages therefor. Entry or re-entry by the borough shall not be deemed an acceptance of surrender of the contract.

G.

Fire Protection. The purchaser, lessee, or permittee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.

H.

Hazardous Waste. The storage, handling and disposal of hazardous waste shall not be allowed on lands under lease or permit from the borough.

I.

Modification. A purchase, lease or permit agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

J.

Notice. Any notice or demand, which under the terms of an agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor, and in like manner a notice from the borough to a vendee shall be deemed received by the vendee when such notice arrives at the general or branch post office from which final delivery to the said purchaser, lessee or permittee would normally be accomplished.

K.

Notice of Default. Notice of the default will be in writing as provided in subsection I. of this section. A copy of the notice will be forwarded to all lienholders or others who have properly recorded their interest in the purchase, lease or permit agreement with the borough.

L.

Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.

1.

Improvements owned by a purchaser, lessee, or permittee on borough lands shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The retiring purchaser, lessee, or permittee may, with the consent of the mayor or land management officer when applicable, dispose of his improvements to the succeeding purchaser, lessee or permittee.

2.

If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the purchaser, lessee, or permittee under the terminated or canceled contract, be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB [Chapter 5](#). The proceeds of the sale shall inure to the former purchaser, lessee, or permittee who placed such improvements and/or chattels on the lands, or

his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

3.

If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the purchaser, lessee, or permittee shall convey said improvements and/or chattels by appropriate instrument to the borough.

M.

Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the purchaser, lessee, or permittee or placed on the land during his tenure with or without his permission and remaining upon the premises after the termination of the contract shall entitle the borough to charge a reasonable rent therefor.

N.

Resale. In the event that a purchase or lease agreement should be terminated, canceled, forfeited or abandoned, the borough may offer said lands for sale, lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations. If said land is not immediately disposed of then said land shall return to the Land Bank.

O.

Responsibility of Location. It shall be the responsibility of the purchaser, lessee, or permittee to properly locate himself and his improvements on the purchased, leased, or permitted lands.

P.

Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture of a lease or sale agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease or sale agreement for the unexpired term thereof, subject to the same terms and conditions as in the original instrument. Any party acquiring an agricultural purchase or lease agreement must meet the same requirements as the original purchaser or lessee.

Q.

Rights-of-way. All trails or roads in existence at the time the land is sold may be considered to be an easement for public use. Nothing herein contained shall prevent the mayor or land management officer when applicable from specifically reserving such additional easements and rights-of-way across borough lands as deemed reasonable and necessary prior to the sale thereof.

R.

Sale Documents. All sales of borough lands shall be on approved borough forms suitable for recording and may consist of a warranty deed, deed of trust, agreement to purchase, promissory note and any other required documents.

S.

Sanitation. The purchaser, lessee, or permittee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises under purchase or lease agreement, or permit shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

T.

Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

U.

Subleasing. No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

V.

Violation. Violation of any provision of this chapter or of the terms of the agreement of sale, lease or permit may expose the purchaser, lessee, or permittee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of his interest in accordance with state law.

W.

Written Waiver. The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

(Ord. No. 92-57, § 1(part), 1993)

TRAIL MANAGEMENT PLAN FOR PUBLIC TRAILS ON BOROUGH LAND

CTMA No. 2021-01

Trail Management for the Caribou Hills South (CHS) Trail System

TRAIL MANAGER:

SNOMADS, Inc.

PO Box 3646

Homer AK 99603

snomads@gmail.com

www.snomadsonline.org

SUMMARY OF PROPOSED ACTIVITIES (Check All That Apply)

SEASONS OF TRAIL MANAGEMENT

☐ Winter ☐ Summer ☒ Year Round

TRAIL WIDTH (Typical)

☐ Under 5 Feet

☐ 5-10 Feet

☒ 10-20 Feet

TRAIL MAINTENANCE ACTIVITIES

☒ Periodic Brushing/Clearing

☒ Grading

☒ Snow Grooming

☒ Erosion Controls

TRAIL IMPROVEMENTS

☒ Trailheads

☒ Parking Area

☒ Loading/Unloading Area

☒ Signs

☐ Sanitation (Trash/Outhouse)

☒ Picnic Area

☒ Shelters

☒ Culverts

☒ Bridges

☐ Stairs

☒ Gates & Bollards

☒ Hardening

☒ New Trails

TRAIL ADMINISTRATION

☒ Competitions/Sponsored Events

☒ Grants

☒ Signage

☒ Equipment Storage Facilities

TRAIL ACTIVITIES

Motorized:

☒ ATV

☒ Snow Machines

Non-Motorized:

☒ Dog Sleds

☒ Skiing

☒ Snowshoeing

☒ Skijoring

☒ Sledding

☒ Hiking

☒ Biking

☒ Walking/Running

☐ Biathlon

☒ Horses

☒ Pet Friendly

☒ Other:

Water Access

☐ Landing Area

Narrative description of the activities, operations, and scope:

Snomads Inc. works to guarantee Backcountry Access and protect existing Alaska recreational trails within the Kenai Peninsula Borough (KPB) Caribou Hills South (CHS) Trail System Area by establishing and maintaining legal public access for all, and for generations to come. Further, to responsibly develop and maintain and groom these trails to a sustainable level so that they can be used year round by the public. The Snomads Vision is to protect our CHS Trail System recreational trails with legally established easements and with permits/agreements acquired from all landowners. CHS Trail System groomed trails shall be uniformly marked, under one coordinated management authority, and, where appropriate, maintained by local clubs or organizations. See attachment B for a map of the CHS Trail System and where trails transit KPB lands. Snomads currently has LMD 08-02 and 07-03 Trail Management Agreements with the KPB.

History of the organization, membership size, accomplishments:

The origin of Snomads Inc. started in the mid 1980's when the organization was founded as the Homer Snow Roamers, as a group of dedicated Winter Snowmachine enthusiasts. The Club was incorporated in March 1992, and the name was changed to Snomads 23 Feb 2002 as a Non-Profit 501c4. Snomads has grown over the years and now has 450 Members, with 335 voting Members comprised of individuals and businesses. Snomads has been active over the years to establish, rehabilitate and maintain CHS Trails, including the building of roads to access trail heads, and has been granted trail easements (Boardwalk Trail). We typically organize, host and support seasonal activities like: The Snomads Fun Run, Group Trail Rides, an area Search & Rescue, Children's Snowmachine Safety Events, as well as supporting events like the Tustumena 200 Dog Sled Race and the Homer Epic (bike, ski, run) Race. Snomads Inc. is a primarily an advocate organization for Public Access to the Alaskan Backcountry, for all user groups, including Hunters and Fishermen.

Summary of proposed activities:

Snomads intends to continue its operations with the KPB CHS Trail System by rehabilitating, maintaining, marking and grooming our trails and trailheads and parking lots for year round use. We have an aggressive trails management agenda in the coming years, raising funds with grants and private funding sources to secure trail permits and easements, construct trail reroutes around native lands, and harden our trails from to a USDA Forest Service Tier 1 to a Tier 3 trail level. We accomplish our activities with a balance of both contracted services and volunteer work. Typical Sources of funding for our operations come from Snomads Gaming, KPB CAP Grants, ORTAB Grants, SnowTRAC Grooming Grants, Pittman-Robertson Grants, Membership Dues, and Event Fundraising.

Means and methods for maintenance, erosion control, and trash pick-up:

All trail clearing and trail maintenance work that the Snomads undertake are performed to written standard. Work is supervised by a Snomads assigned Committee Chairman, and task completion reports are captured in monthly Board of Director or Membership Meeting Minutes.

Weather conditions largely dictate when trail maintenance tasks can be performed throughout the year. Trail clearing with heavy construction equipment will be employed only when the ground is firm enough to support the weight of the equipment used. This is typically in the Fall or Spring, when the ground is frozen, but also in the summer when there are dry periods that will support the weight of the equipment without significantly degrading subsurface soils and vegetation. Winter Snow Grooming operations will be undertaken when snow conditions permit.

Measures of performance, timeframes, ownership of improvements & reclamation:

Trail Markers, Trail Kiosks, Signage, bridges and any “moveable” objects or structures placed on KPB lands by Snomads Inc are the sole property of Snomads. Parking Lots, access drives and other “immoveable” improvements would remain upon termination of the Agreement for any reason. Reclamation of “moveable” objects or structures would be undertaken by Snomads if this agreement were to be terminated. Although none are present to date, Snomads reserves the right to place Public Outhouses on KPB Lands at Trailheads or along Trail Corridors.

Estimated value of proposed structures and facilities:

Not applicable

Any short-term and long-range goals:

Snomads intends to execute the construction of a reroute of the Watermelon Trail around CIRI lands within 1 to 2 years (as funding permits). The Watermelon Reroute traverses ADNR Parcels that are known to be ‘KPB Select’ parcels (16523008, 16523009). See attachment B.

Long range goals:

- a. Expanding the Watermelon Trailhead Parking Lot to accommodate additional traffic, once the trail is fully cleared, and the reroute constructed.
- b. Harden the trail surface on the Dry Hole Trail near the Anchor River crossing.

Conceptual Site Plan: See attachment B for KPB CHS Trail System Traversing KPB Lands

Location of trail improvements and buffers: None as of the initial agreement

Property lines, right-of-ways, easement, access: No known conflicts, See attachments A & B

Location of wetlands, water bodies, anadromous stream crossing and major topography:

See attachment A

Detailed Plans:

Snomads is including a detailed survey for the construction of the Watermelon Trail ‘CIRI Reroute’ as attachment A. Trail Construction standards as detailed below will adhered to, and a completion report will be forwarded to KPB when accomplished.

Plans for specific improvement including architectural or engineering designs, when

Applicable:

Snomads will contact KPB Lands Management for any improvements that are planned, and where applicable, will obtain requisite approval in the planning stages.

Grant proposals, when applicable:

Snomads intends to execute an existing \$40K Pittman-Robertson Grant, managed by ADF&G to Homer Soil & Water (HS&W) for the construction of the Watermelon Trail 'CIRI Reroute', within 2021 and 2022. This will be under a separate agreement between Snomads and HS&W.

Trail Usage Restrictions:

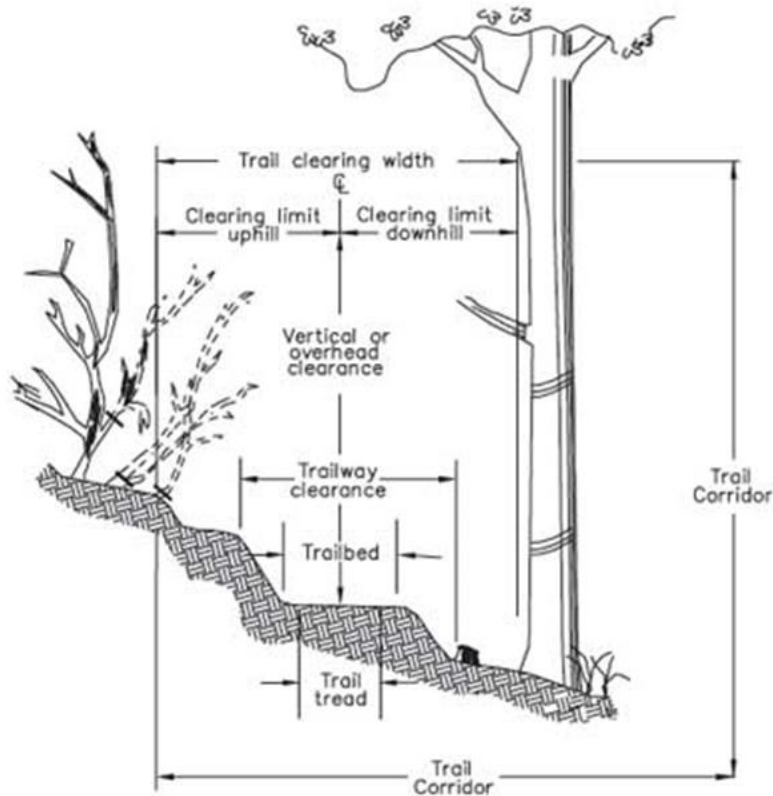
Wheeled ATV/UTV or any motorized Off Road Recreational Vehicle (ORRV) are not authorized on groomed Snomads Managed CHS trails during the Winter Months. Fat Tire bikes are permitted on CHS groomed Trails.

List of KPB CHS Trail System Trails that traverse KPB Parcels: See Attachment B

Note: Designation of 'Winter Groomed' may not denote that the entire trail is groomed

- a. **Watermelon Trailhead and Parking Lot:** KPB Parcel ID: 17113141
- b. **Watermelon Trail/Ohlson Mtn Trail (Winter Groomed):** KPB Parcel ID's: 17113141, 17113106, 17113133, 17113102, 17110117, 17112015, 17109028, (Borough Select 16523008 & 16523009)
- c. **North Fork Hills Trail and deviations**(Winter Groomed):** KPB Parcel ID's: **16521013, **16521006, **16512005, **16513003, 16513005, 16513007, 16505006, 16505007, 18515017, 18515046
- d. **Garcia Hill Trail:** KPB Parcel ID: 16513007
- e. **McNeil Power Line Trail (Winter Groomed):** KPB Parcel ID's: 17231166 (added to LMD 08-02), 17205213, 18515046, 18515017
- f. **Dry Hole Trail (Winter Groomed):** KPB Parcel ID's: 18515046, 16515006
- g. **Blue Trail (Winter Groomed):** KPB Parcel ID's: 18515046, 18515017, 18515018
- h. **McNeil Canyon Trail (Winter Groomed):** 17201726, 18521055, 18521056
- i. **Matthews Hill Trail (Winter Groomed):** KPB Parcel ID's: 18521053, 18515046, 18515018
- j. **Hidden Hills Trail:** KPB Parcel ID's: 17104022, 17104018, 17137114, 1652002, 16513003, 16513007
- k. **Eagle Lake Trail (Winter Groomed):** KPB Parcel ID's: 18521050, 18521053
- l. **Moosehorn Lake Trail:** KPB Parcel ID: 18515018
- m. **Dimond Ridge Connector Trail:** KPB Parcel ID's: 17110201 17106038, 17110117 (added to LMD 08-02)

Trail Construction, Rehabilitation, Maintenance Standards:



Trail Corridor Width: 60 ft

Trail Clearing Width: 24 ft (restricted to 12" above soil surface in Critical Habitat Areas)

Trail Clearing Limit (generally flat terrain): 20 ft vertical

Trail Clearing Limit Uphill/Downhill: 35 ft vertical

Trail Tread: 5 ft (hardened Trail Surface)

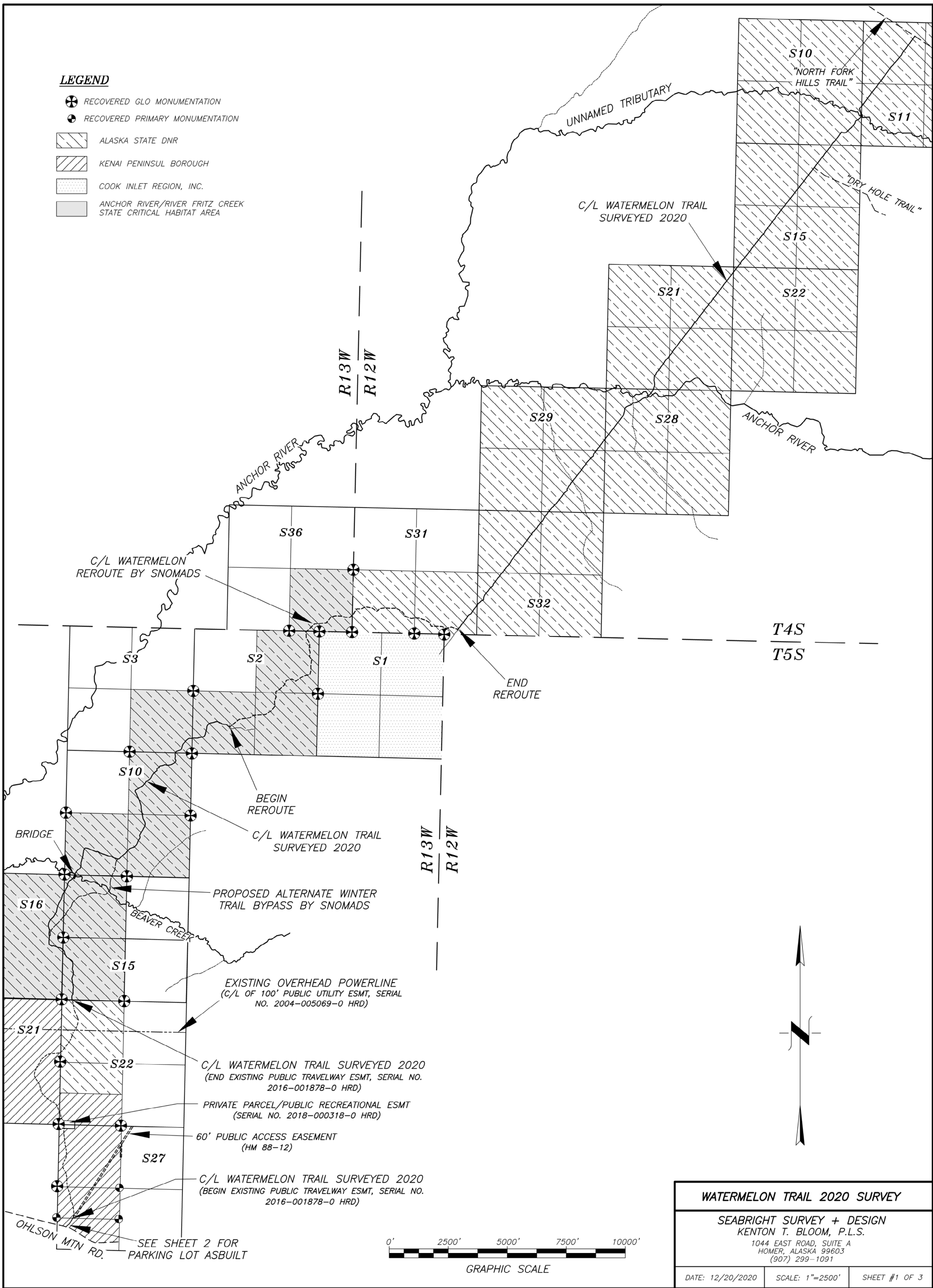
Trail Bed: 8 ft generally (except where 3/1 ratio of taper required for proper drainage)

Trailway Clearance & Trail Grooming Width (Winter): 18 ft maximum to soil surface

Ground disturbances and erosion control measures have been, or may be required. Trails can be groomed with as little as six inches of snow depth. Major trails (those within SnowTRAC Grooming Pool) are groomed to a width of 18 ft. Minor Trails may be groomed to 18 ft in width or less, if terrain and funding permits.

LEGEND

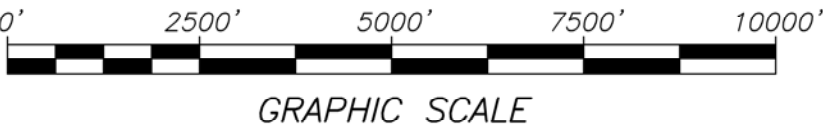
- RECOVERED GLO MONUMENTATION
- RECOVERED PRIMARY MONUMENTATION
- ALASKA STATE DNR
- KENAI PENINSUL BOROUGH
- COOK INLET REGION, INC.
- ANCHOR RIVER/RIVER FRITZ CREEK
STATE CRITICAL HABITAT AREA

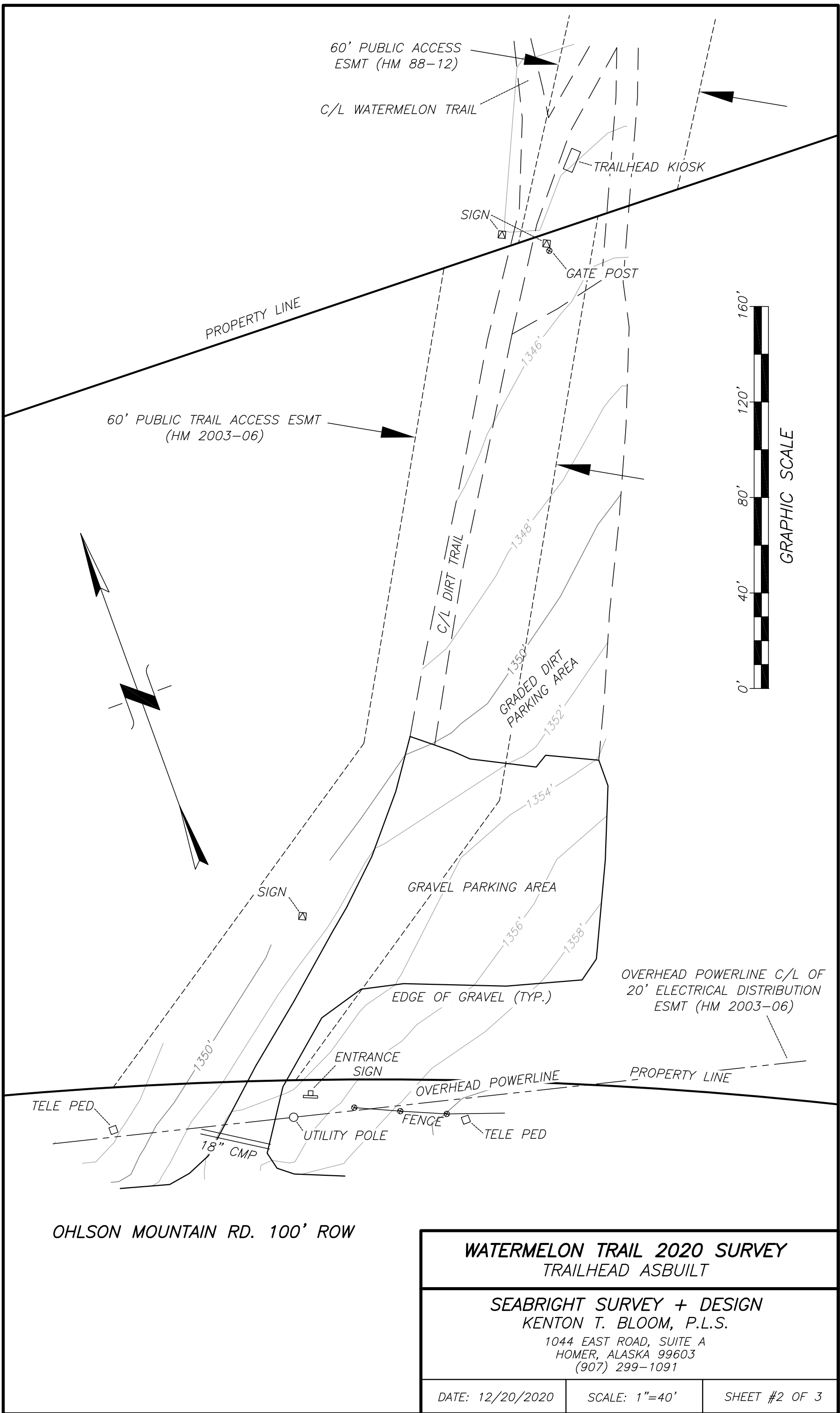


WATERMELON TRAIL 2020 SURVEY

SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.
1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

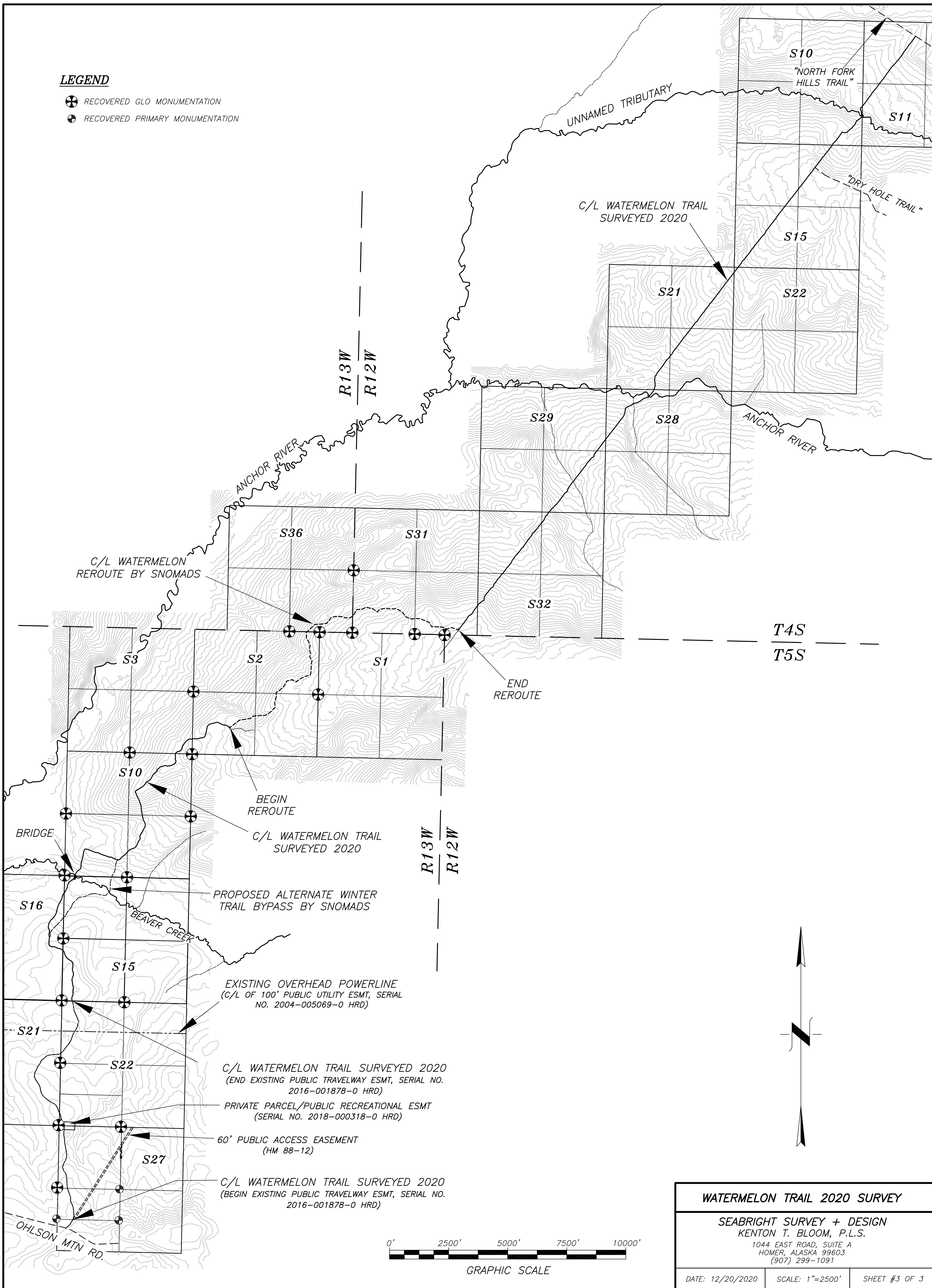
DATE: 12/20/2020 SCALE: 1"=2500' SHEET #1 OF 3





LEGEND

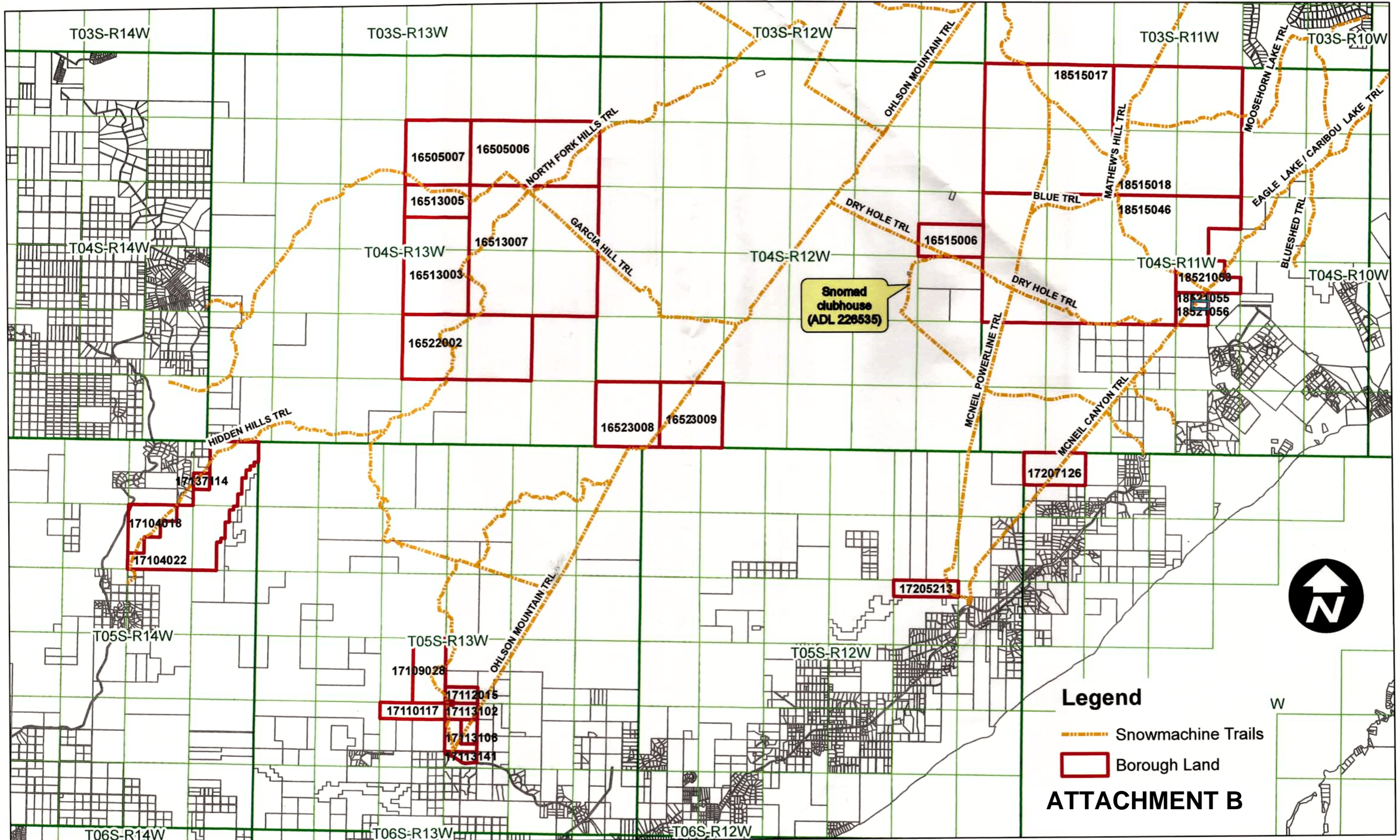
- ⊕ RECOVERED GLO MONUMENTATION
- RECOVERED PRIMARY MONUMENTATION

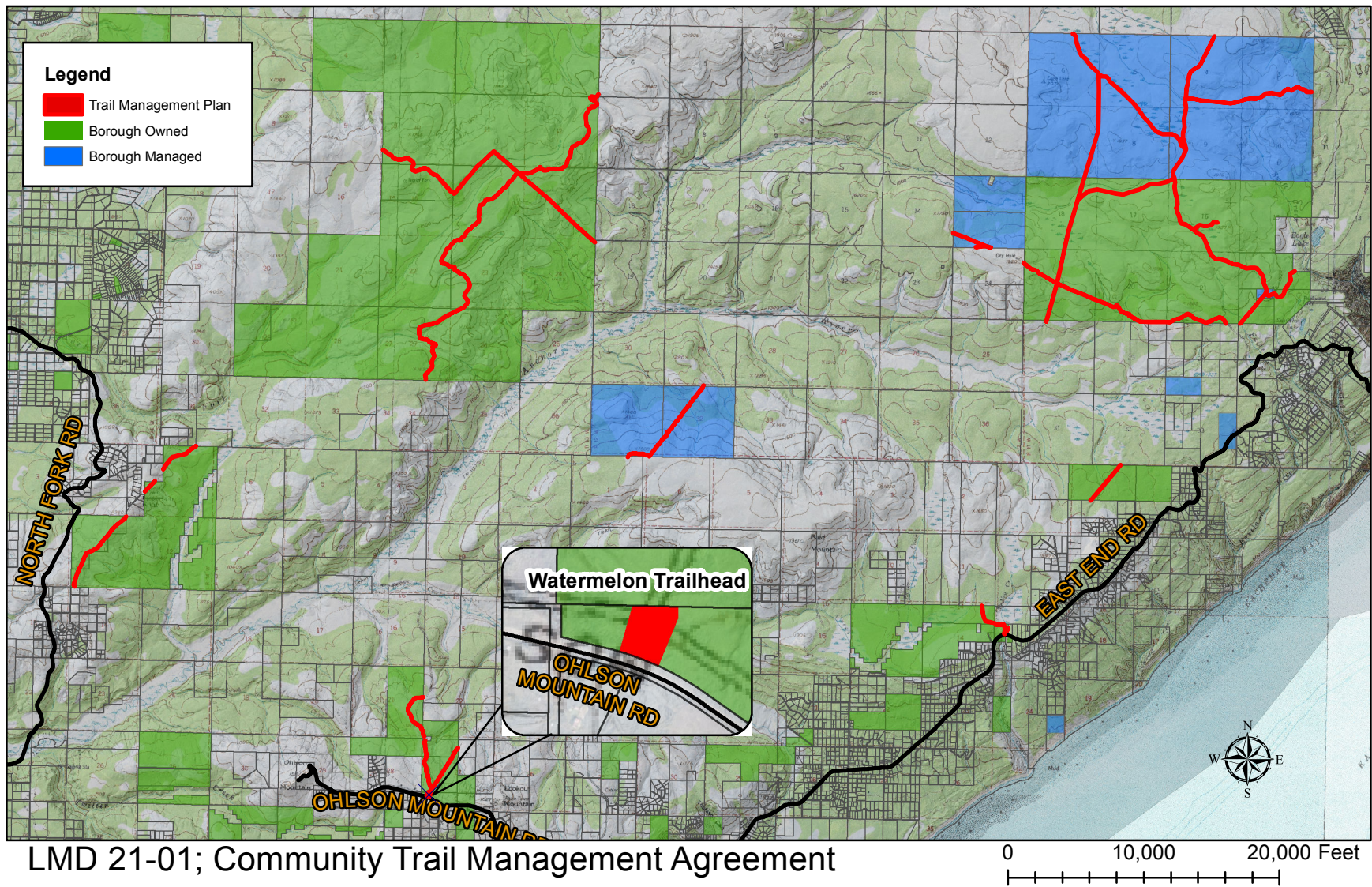


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DATE: 12/20/2020 SCALE: 1"=2500' SHEET #3 OF 3





LMD 21-01; Community Trail Management Agreement

Applicant: Snomads, Inc.

Introduced by:	Mayor
Date:	10/13/20
Hearing:	11/10/20
Action:	Postponed to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Postponed as Amended to 01/19/21
Vote:	5 Yes, 4 No, 0 Absent
Date:	01/19/21
Action:	Postponed as Amended to 03/02/21
Vote:	9 Yes, 0 No, 0 Absent
Date:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-45**

**AN ORDINANCE AMENDING KPB 2.40, PLANNING COMMISSION, KPB TITLE 20,
SUBDIVISIONS, AND KPB 21.20, HEARING AND APPEALS, TO CORRECT
GRAMMATICAL ERRORS, AND CLARIFY AND IMPROVE CERTAIN
ADMINISTRATIVE PROCEDURES**

WHEREAS, the borough’s subdivision code experienced a significant rewrite in 2014; and

WHEREAS, since that time platting staff have found a number of provisions that would benefit from clarifying language; and

WHEREAS, amendments will make Title 20 consistent with current law and statutes; and

WHEREAS, edits will clarify subdivision regulations and add a uniform notice and public hearing code section applicable to all of Title 20; and

WHEREAS, amendments will repeal KPB Chapter 20.70, Vacations Requirements, and replace it with a new vacations chapter KPB Chapter 20.65, Vacations; and

WHEREAS, work sessions were held regarding these amendments with the surveying community on February 19, 2020 at Homer City Hall and February 26, 2020 at the Kenai Peninsula Borough; and

WHEREAS, invitations were extended to review the amendments with borough staff to the cities of Homer, Kachemak, Kenai, Seldovia, Seward, and Soldotna; and

WHEREAS, the City of Homer Planning Commission held a meeting on August 5, 2020 and consented unanimously with comments requesting the borough and city clerk work together to ensure the new code is clear as to which body hears that type of appeals as well as a request to allow developers more time to construct subdivisions in cities within approved construction or subdivision development agreements in place; and

WHEREAS, the City of Kenai Planning and Zoning Commission held a work session on August 26, 2020 and discussed the ordinance; and

WHEREAS, the City of Soldotna Planning and Zoning Commission held a work session on August 5, 2020; and unanimously passed resolution PZ2020-008 recommending approval on September 2, 2020; and

WHEREAS, invitations were extended to review the amendments with borough staff to the Advisory Planning Commissions of Anchor Point, Cooper Landing, Funny River, Kalifornsky, Hope / Sunrise, Moose Pass, and Kachemak Bay; and

WHEREAS, the Cooper Landing Advisory Planning Commission held a meeting on July 8, 2020 and recommended approval with a 30-day timeframe for notification; and

WHEREAS, the Kachemak Bay Advisory Planning Commission held a meeting on July 9, 2020 and recommended approval; and

WHEREAS, the borough planning commission held a public hearing and reviewed the amended Title 20 on September 28, 2020.

WHEREAS, at its meeting of November 30, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB 2.40.080(B) is hereby amended as follows:

2.40.080. Plat committee – Powers and duties – Hearing and review procedures

The planning commission [(AND THE PLANNING COMMISSION ACTING AS THE PLATTING BOARD)] in its capacity as the platting board is authorized to delegate powers to hear and decide cases involving platting to a plat committee composed of those members of the planning commission present for such hearing so long as there are at least 4 members of the planning commission present. The following procedures are prescribed for hearings and reviews:

- A. Cases may be decided by a majority vote of the plat committee members present.

- B. Review of a decision of the plat committee may be heard by the planning commission acting as platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within [TEN] fifteen days [AFTER] of date of distribution [NOTIFICATION] of the decision of the plat committee by personal service or service by mail. A request for review may be filed by any person or agency that was sent a notice of decision. [PARTICIPATED AT THE PLAT COMMITTEE HEARING EITHER BY WRITTEN OR ORAL PRESENTATION.] [THE REQUEST MUST HAVE AN ORIGINAL SIGNATURE; FILING ELECTRONICALLY OR BY FACSIMILE IS PROHIBITED.] The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

SECTION 2. That KPB 20.10.040 is hereby amended as follows:

20.10.040. Abbreviated plat procedure.

- A. The abbreviated plat procedure may be used where the subdivision or replat[SUBDIVISION] is of a simple nature and meets all of the requirements of this section as follows:
1. The subdivision divides a single lot into not more than four lots or the subdivision moves, or eliminates, lot lines to create not more than four lots or tracts.
 2. The subdivision provides legal and physical access to a public highway or street for each lot created by the subdivision;
 3. The subdivision does not contain or require a dedication of a street, right-of-way or other area; and
 4. The subdivision does not require a vacation of a public dedication of land or a variance from a subdivision regulation.
- B. Submission Requirements. All of the submission requirements of KPB Chapters 20.25, 20.30 and 20.40 shall be met.

...

SECTION 3. That KPB 20.10.080 is hereby amended as follows:

20.10.080. [RIGHT-OF-WAY] Vacation Plat

- A. When the sole purpose of a plat is to depict [RIGHT-OF-WAY] an area approved for vacation under KPB Chapter 20.65[20.70 AS ATTACHING TO ADJOINING PARCELS IN COMPLIANCE WITH KPB 20.70.150 AND AS 29.40.150,]the following procedure shall apply:

1. Submission Requirements. All of the submission requirements of Chapter 20.25 shall be met.
2. Surveyor's Certificate. The surveyor's signature and seal on the plat certifies the surveyor is properly registered and licensed to practice land surveying in the State of Alaska, that the plat represents a survey made by the surveyor or under the surveyor's direct supervision, that the monuments shown thereon actually exist as described, and that all dimensions and other details are correct to the best of the surveyor's knowledge and belief. A written certificate is optional.
3. Statement of Plat Approval. The following form shall be printed on the final plat to be filled in after approval:

[Right-of-Way] Vacation Plat Approval

This plat was approved by the Kenai Peninsula Borough in accordance with KPB 20.10.080.

Borough Official

Date

- B. Procedure. The planning director shall review the submitted preliminary vacation plat for completeness. If the preliminary plat does not conform to the requirements of KPB 20.10.080(A)(1), the planning director shall return the plat to the petitioner with a letter describing the deficiencies.

- C. Action.

1. The platting authority for the [RIGHT-OF-WAY] vacation plat procedure is vested in the planning director. The planning director shall take action on the plat within twenty Borough working days of acceptance of the preliminary plat, subject to prior acquisition of all necessary outside reviews.
2. Preliminary approval of the plat may not extend beyond one year of the vacation consent in KPB 20.65[70.110]. No extensions of time may be granted.

3. All decisions of the planning director regarding the preliminary plat shall be final.

D. Final Plat.

1. The requirements of the final plat shall be in accord with KPB 20.40.020, KPB 20.65[70.130] and the applicable portions of KPB Chapter 20.60.
2. The requirements of KPB 20.60.190(A)(7) and (D) do not apply to vacation plats.
3. The vacated area shall be shown in a clearly discernible pattern, such as hatching, and shall be labeled as “area vacated by this plat”. The former lot area and current lot area shall be labeled or noted on the plat.
4. The date of the vacation approval by the planning commission, as well as the date of consent to the vacation by the assembly or appropriate city council, shall be noted on the plat.
5. When the preliminary plat has been approved by the planning director under this section, the final plat may be approved by the planning director if the final plat meets the conditions of the preliminary approval and complies with this title. The planning director's approval shall be on a notarized form. The planning director shall report final plat approvals under this section at the next regular plat committee meeting. If the final plat does not meet the conditions of preliminary approval, the planning director shall provide a written explanation describing the deficiencies to the applicant.

SECTION 4. That KPB 20.10.100 is hereby enacted as follows:

20.10.100 Notice; Public Hearing

- A. Notice of any public hearing required under this title shall be given in accordance with this section.
- B. Required forms of notice are as follows:

1. Publication in a newspaper of general circulation in the borough prior to the public hearing.
 2. Notices shall be mailed at least 14 days before the public hearing to all record owners of property within a distance of 600 feet of the exterior boundary of the property that is the subject of the application or hearing. All notices shall be mailed to the record owner at the address listed in the current property tax record of the borough assessor.
 3. Notice of the public hearing must be posted on the borough planning department's website and posted on the planning department's bulletin board located at 144 N. Binkley Street, Soldotna, Alaska.
 4. The planning director may direct that additional notice of the public hearing be given. The planning commission, at its discretion, may also direct additional notice of the public hearing be given. However, the failure to give such additional notice shall not affect the validity of any proceeding under this title.
- C. Notice required by this section shall state the date, time, and location of the public hearing, a description of the action requested, a description of the property that is the subject of the application, the name of the applicant, the name of the owner of the subject property, and the process for submitting of written comments.
- D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title.
- E. Parties whose sole interest in the subdivision is as a beneficiary of a deed of trust, as shown on the certificate to plat, shall be sent certified mail notice by the planning department. If a beneficial interest holder does not respond within 30 days of the date of mailing indicating that the deed of trust either prohibits or allows the proposed platting action, or requires their signature on the plat, the plat may be approved. The owner may submit a letter of non-objection from the beneficial interest holder with the plat in lieu of the notice requirement. If the final certificate to plat shows additional beneficial interest holders, and they have not signed the plat or provided a letter of non-objection, the planning department will send them notice and give them a 30 day response time prior to approval of the final plat.

SECTION 5. That KPB 20.10.110 is hereby enacted as follows:

20.10.110. – Building setback encroachment permits.

- A. Unless otherwise regulated by city zoning ordinances of properties within its boundaries, any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the planning department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- B. A permit fee shall be charged for building setback encroachment permit as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- E. The following standards shall be considered for all building setback encroachment permit applications:
1. The building setback encroachment may not interfere with road maintenance.
 2. The building setback encroachment may not interfere with sight lines or distances.
 3. The building setback encroachment may not create a safety hazard.
- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.
- G. The planning commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building

setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

- H. A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 21.20.210, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

SECTION 6. That KPB 20.10.120 is hereby enacted as follows:

20.10.120. Notice of decision.

If a notice of decision is sent pursuant to this title, the notice will be sent to: (i) an affected city, if applicable; (ii) all persons who have commented in writing or in person on the item; and (iii) the property owners, or agents of the property owner, subject to the decision.

SECTION 7. That KPB 20.25.020 is hereby amended as follows:

20.25.020. Compliance with certain provisions required.

A [SUBDIVIDER] licensed surveyor shall prepare a preliminary plat of the proposed subdivision which shall comply with the requirements of KPB 20.25.070 and 20.25.080, and other applicable provisions of this chapter except as provided in KPB 20.10.050. Revisions to the submitted preliminary plat that are received subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.

SECTION 8. That KPB 20.25.030 is hereby amended as follows:

20.25.030. Prints—Type and number to be submitted.

The format and number of [PRINTS]copies of the preliminary plat to be submitted shall be as determined by the planning director and noted on the Borough Plat Submittal form. Preliminary plat prints shall be folded to 8½ × 13 inches or smaller in a manner such that the subdivision name and legal description show.

SECTION 9. That KPB 20.25.050 is hereby amended as follows:

20.25.050. Subdivision or replat in a first class or home rule city submittal procedure.

- A. Pursuant to AS 29.40.010, upon city request first class and home rule cities within the borough [ARE] may be delegated [LIMITED AUTHORITY] platting powers [TO ADOPT BY ORDINANCE SUBDIVISION STANDARDS DIFFERENT FROM THOSE SET FORTH IN THIS CHAPTER].

- B. Proposed vacations, abbreviated subdivision plats, subdivision plat waivers, and preliminary plats showing a subdivision of land lying within the corporate boundary of a first class or home rule city shall be first submitted by the subdivider to the appropriate city for review prior to submittal of the plat to the borough planning department. [IN SUCH INSTANCES, THE CITY ADVISORY PLANNING COMMISSION SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE PRELIMINARY PLAT AND TAKE ACTION.]
- C. The preliminary plat submitted to the city shall comply with the requirements of KPB 20.25.070 and 20.25.080.
- D. The city advisory planning commission and, if required by city code or requested by the city advisory planning commission, other appropriate municipal departments, shall review the proposed action and prepare written comments which shall be included with the submittal to the borough. The subdivider bears the responsibility for presentations to, and discussions with, the city to ensure that the vacation, subdivision, subdivision plat waiver, or subdivision abbreviated plat will conform to lawful ordinances and requirements of said city.
- E. Final plats submitted to the borough for approval will be submitted by the borough to the city for review when the design deviates from the preliminary plat by a substantial change in alignment or dedication of a right-of-way, addition of lots, or major change in lot design which has not been recommended by the city. [IN SUCH INSTANCES, THE CITY ADVISORY PLANNING COMMISSION SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE FINAL PLAT AND TAKE ACTION.]
- F. [TO THE EXTENT A CITY HAS BEEN DELEGATED LIMITED PLATTING AUTHORITY, A]A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

SECTION 10. That KPB 20.25.060 is hereby amended as follows:

20.25.060. Subdivision or replat in second class city submittal procedure

- A. Preliminary subdivision plats or replats lying within the corporate boundary of a second class city shall be first submitted to the city for review prior to submittal of the plat to the borough planning department. [THE CITY SHALL HAVE 49 DAYS FROM THE DATE OF SUBMITTAL BY THE SUBDIVIDER TO THE CITY IN WHICH TO REVIEW THE

PRELIMINARY PLAT AND SUBMIT COMMENTS TO THE BOROUGH.]

- B. [TO THE EXTENT LIMITED PLATTING AUTHORITY HAS BEEN DELEGATED TO A SECOND CLASS CITY, A] A preliminary plat shall not be submitted to the borough planning department for review unless the aspects of the subdivision subject to the city authority have been first approved by the city.
- C. The preliminary plat submitted to the city shall comply with the requirements of KPB 20.25.070 and 20.25.080.
- D. The city council or its designee, and, if required by city code or requested by the city council, other appropriate municipal departments, shall review the plat or replat and prepare written comments which shall be included with the submittal of the plat to the borough. The subdivider bears the responsibility for presentations to, and discussions with, the city to ensure that the final plat will conform to lawful ordinances and requirements of said city.
- E. Final plats submitted to the borough for approval will be submitted by the borough to said city for review by the city council or its designee when the design deviates from the preliminary plat as a condition of preliminary planning commission approval by a substantial change in alignment or a dedication of right-of-way, addition of lots, or major change in lot design which has not been recommended by the city council or its designee. [IN SUCH INSTANCES, THE CITY COUNCIL OR ITS DESIGNEE SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE FINAL PLAT AND TAKE ACTION.]
- F. [TO THE EXTENT A CITY HAS BEEN DELEGATED LIMITED PLATTING AUTHORITY, A] A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

SECTION 11. That KPB 20.25.070 is hereby amended as follows:

20.25.070. Form and contents required.

The preliminary plat shall be drawn to scale of sufficient size to be clearly legible and shall clearly show all of the following:

- A. Within the Title Block.

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat;
 2. Legal description, location, date, and total area in acres of the proposed subdivision; [AND]
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor. [;]
- B. North point;
 - C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
 - D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
 - E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions, or limitations of reservations that could affect the subdivision;
 - F. The [NAMES AND WIDTHS OF PUBLIC STREETS AND ALLEYS AND] location, width and name of existing and platted streets and public ways, railroad rights-of-way, easements, and travel ways existing and proposed, within the subdivision;
 - G. The [S]status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;
 - H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding[, or storm water overflow, and the line of ordinary high water[, WETLANDS WHEN ADJACENT TO LAKES OR NON-TIDAL STREAMS, AND THE APPROPRIATE STUDY WHICH IDENTIFIES A FLOODPLAIN, IF APPLICABLE;]. This information may be provided on

an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

...

SECTION 12. That KPB 20.25.090 is hereby repealed.

[20.25.090. NOTICE.]

[A. AFFECTED PROPERTY OWNERS ARE DEFINED AS PERSONS WHO OWN PROPERTY WITHIN A PROPOSED SUBDIVISION, AND PERSONS WHO OWN PROPERTY WITHIN 600 FEET OF THE BOUNDARIES OF THE PROPOSED SUBDIVISION. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER ADDITIONAL PROPERTY OWNERS ARE AFFECTED BASED ON POPULATION, DENSITY, OWNERSHIP DATA, TOPOGRAPHY AND FACILITIES IN THE AREA OF THE SUBDIVISION.]

[B. NOTICE OF PUBLIC HEARING SHALL APPEAR AT LEAST ONCE IN A NEWSPAPER OF GENERAL CIRCULATION STATING:

- A. A GENERAL DESCRIPTION OF THE SUBDIVISION OR REPLAT;
- B. WHO FILED THE SUBDIVISION PETITION;
- C. WHEN THE SUBDIVISION PETITION WAS FILED;
- D. THE TIME AND PLACE OF THE HEARING ON THE SUBDIVISION;
AND
- E. THE PROCESS AND DEADLINE FOR SUBMITTAL OF COMMENTS.

(1) WRITTEN COMMENTS MAY BE SUBMITTED BY MAIL, HAND-DELIVERY, EMAIL OR FACSIMILE.]

[C. THE NOTICE IN SUBSECTION B SHALL BE SENT BY REGULAR MAIL TO THE AFFECTED PROPERTY OWNERS AT LEAST 14 DAYS PRIOR TO THE PUBLIC HEARING. A CERTIFICATE OF MAILING LISTING THE NAMES, ADDRESSES AND PARCEL INFORMATION FOR EACH NOTIFIED OWNER SHALL BE MAINTAINED IN THE SUBDIVISION FILE.]

[D. PARTIES WHOSE SOLE INTEREST IN THE SUBDIVISION IS AS A BENEFICIARY OF A DEED OF TRUST, AS SHOWN ON THE CERTIFICATE TO PLAT, SHALL BE SENT CERTIFIED MAIL

NOTICE BY THE PLANNING DEPARTMENT. IF A BENEFICIAL INTEREST HOLDER DOES NOT RESPOND WITHIN 30 DAYS OF THE DATE OF MAILING INDICATING THAT THE DEED OF TRUST EITHER PROHIBITS OR ALLOWS THE PROPOSED PLATTING ACTION, OR REQUIRES THEIR SIGNATURE ON THE PLAT, THE PLAT MAY BE APPROVED. THE OWNER MAY SUBMIT A LETTER OF NON-OBJECTION FROM THE BENEFICIAL INTEREST HOLDER WITH THE PLAT IN LIEU OF THE NOTICE REQUIREMENT. IF THE FINAL CERTIFICATE TO PLAT SHOWS ADDITIONAL BENEFICIAL INTEREST HOLDERS, AND THEY HAVE NOT SIGNED THE PLAT OR PROVIDED A LETTER OF NON-OBJECTION, THE PLANNING DEPARTMENT WILL SEND THEM NOTICE AND GIVE THEM A 30 DAY RESPONSE TIME PRIOR TO APPROVAL OF THE FINAL PLAT.]

- [E. COPIES OF THE SUBDIVISION PROPOSAL WILL BE PROVIDED TO OTHER AGENCIES AND BOROUGH DEPARTMENTS THAT MAY BE AFFECTED BY THE SUBDIVISION PROPOSAL FOR REVIEW AND COMMENT.]

SECTION 13. That KPB 20.25.110 is hereby amended as follows:

20.25.110. Approval—Scope—Expiration restriction.

- A. Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is the subdivider's responsibility to provide all the information required in this ordinance and to submit a correct final plat within two years of the date of the planning commission's conditional approval of the preliminary plat. Upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A second [THIRD] and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval[, ALLOWING FOR A TOTAL APPROVAL TIME OF SIX YEARS]. When the preliminary plat is located within city limits, submittal of documentation from the city advisory planning commission indicating concurrence with the time extension request must accompany a time extension request. When a preliminary plat that has been granted a time extension is finalized, the final plat must comply with the current code. Expiration of the original plat approval or time extensions will require the submission of, and action on, a new preliminary plat.
- B. Preliminary plats that will be finalized in phases must comply with current code at the time each phase is finalized. All dedications for streets that are required pursuant to KPB 20.30.030 must be provided in the first phase. The

approval of a final plat for a portion of the phased preliminary plat shall [EXTEND] reset the [PRELIMINARY] approval date for two years from the date the subdivision phase final plat is recorded. [FOR T] The remaining land within the phased subdivision[, EXCEPT THAT THE COMMISSION] may require a new preliminary plat approval if the abutting road system changes. Phases must be filed in sequential order.

- C. Any plat that requires submittal to and approval by the State of Alaska, including but not limited to section line easement vacation plats and highway right-of-way plans, will be given an initial four-year preliminary approval. Extensions of the approval may be given by the planning director as needed for completion of the project.
- D. No more than one revision process to the same preliminary plat is allowed. Major revisions to a preliminary plat shall not be approved on the final plat without first being processed under the public notice and hearing requirements for preliminary plats. Major revisions at the time of final plat which increase density, add or substantively move rights-of-way, or otherwise increase the subdivision's impact, are not allowed and will require submittal of a new preliminary plat, application and fee.
- E. Subdivision plats approved prior to February 14, 2014 under former KPB 20.12, 20.14, 20.16, and 20.20 with approvals that are greater than 10 years in length, and with approvals that will expire, will be considered expired on the expiration date. Continuation of an expired subdivision will require the submission of, and action on, a new preliminary plat that complies with current subdivision requirements.

SECTION 14. That KPB 20.25.120 is hereby amended as follows:

20.25.120. Review and appeal.

[A PARTY OF RECORD] In accordance with KPB 2.40.080, any person, agency, or city that participated at the plat committee hearing, either by written or oral presentation, may request that a decision of the plat committee be reviewed by the planning commission by filing a written request within 15[10] days of date of distribution [NOTIFICATION] of the decision. [IN ACCORDANCE WITH KPB 2.40.080.] A decision of the planning commission may be appealed to the hearing officer by a party of record within 15 days of the date of distribution[NOTICE] of decision in accordance with KPB 21.20.250.

SECTION 15. That KPB 20.30.060 is hereby amended as follows:

20.30.060. Easements—Requirements.

- A. The planning commission may require easements it determines necessary for the benefit of the public. Such easements include, but are not limited to,

lateral support (slope) easements, drainage easements for ditching or protection of a drainage, and utility easements. Required easements do not need to be for road purposes.

- B. Upon submittal of a preliminary plat, the planning department shall provide a copy to public utility companies for their comments and recommended design of utility easements. If the property is subject to existing natural gas or petroleum pipeline easements, a copy shall also be furnished to the appropriate company for comment.
- C. The subdivider bears the responsibility for coordination with the utility companies during the design and development phases. When a subdivider and the utility company cannot agree on easements, the final plat will be taken to the planning commission for determination of easements.
- D. Unless a utility company requests additional easements, the front ten feet ~~[OF THE BUILDING SETBACK]~~adjoining rights-of-way shall be designated as a utility easement, graphically or by note. Within the boundaries of an incorporated city, the width and location of utility easements will be determined by the city and affected utility providers.

SECTION 16. That KPB 20.30.110 is hereby repealed.

[20.30.110. - HALF STREETS.]

- [A. HALF STREETS SHALL GENERALLY NOT BE ALLOWED EXCEPT WHERE ONE OF THE FOLLOWING CIRCUMSTANCES APPLIES:]
 - [1. THE STREET IS IDENTIFIED ON THE BOROUGH ROAD PLAN AS AN ARTERIAL;]
 - [2. THE STREET IS A LOGICAL EXTENSION OF AN EXISTING STREET; OR]
 - [3. THE REMAINING HALF STREET CAN REASONABLY BE EXPECTED TO BE DEDICATED.]
- [B. WHEN A DESIGN CHANGE REQUIRED AS A CONDITION OF PRELIMINARY APPROVAL RESULTS IN A HALF RIGHT-OF-WAY THAT WAS NOT SHOWN ON THE ORIGINAL PRELIMINARY PLAT, ADJOINERS TO THE NEW HALF RIGHT-OF-WAY ARE PARTIES OF RECORD AND WILL BE SENT A COPY OF THE PLAT COMMITTEE MINUTES AND A SKETCH SHOWING THE NEW HALF RIGHT-OF-WAY. PURSUANT TO KPB 2.40.080 REVIEW OF THE PLAT

COMMITTEE DECISION BY THE PLANNING COMMISSION MAY
BE REQUESTED BY PARTIES OF RECORD.]

SECTION 17. That KPB 20.30.120(A) is hereby amended as follows:

20.30.120. Streets Width requirements.

- A. The minimum right-of-way width of streets shall be 60 feet.
1. Half streets shall generally not be allowed except to provide the logical extension of a right-of-way where the remaining half street can reasonably be expected to be dedicated in the future.
 2. When a design change required as a condition of preliminary approval results in a half right-of-way that was not shown on the original preliminary plat, adjoiners to the new half right-of-way will be sent a copy of the plat committee minutes and a sketch showing the new half right-of-way and per KPB 2.40.080 can request a review of the plat committee decision by the full Planning Commission.

...

SECTION 18. That KPB 20.30.150(B) is hereby amended as follows:

20.30.150. Streets – Intersection requirements.

- A. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees. Where acute street intersections are designed, a minimum 50-foot radius corner at the right-of-way line of the acute angle shall be provided.
- B. Offset intersections are not allowed. The distance between intersection centerlines shall be no less than 150 feet.

...

SECTION 19. That KPB 20.30.240 is hereby amended as follows:

20.30.240. Building setbacks.

- A. [THE COMMISSION SHALL REQUIRE A BUILDING SETBACK OF AT LEAST 70 FEET FROM THE CENTERLINE OF ALL FEE SIMPLE ARTERIAL RIGHTS-OF-WAY IN A SUBDIVISION.] A minimum 20-

foot building setback shall be required for dedicated [FEE SIMPLE NON-ARTERIAL] rights-of-way in subdivisions located outside incorporated cities.

B. Subdivision of land classified as agricultural conveyed subject to AS 38.05.321(a)(2)(B) may provide public access easements in lieu of fee simple dedications if necessary to comply with the minimum lot size restriction of the statute. The public access easements must meet all applicable right-of-way design criteria of Title 20 and are subject to the building setback requirements set forth in KPB 20.30.240.

C. The setback shall be noted on the plat in the following format:

Building setback - A setback of _____ feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

D. When a subdivision is affected by a Local Option Zoning District (LOZD), as approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback - This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

SECTION 20. That KPB 20.30.250 is hereby amended as follows:

20.30.250. Building setbacks—Within cities.

The building setback requirements for subdivisions located within cities shall be governed by the provisions of municipal zoning districts. Building setbacks as depicted, or noted, on recorded plats shall not be carried forward on a new subdivision plat located within a municipal zoning district. Provide a plat note stating, “Per KPB 20.30.250 the building setback of record has been removed. All development must comply with the municipal zoning requirements.”

SECTION 21. That KPB 20.30.270 is hereby amended as follows:

20.30.270. Different standards in cities.

Where cities have [BEEN DELEGATED PARTIAL PLATTING POWERS BY THE BOROUGH AND HAVE] enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply the city standards in lieu of those set forth in this chapter. [THE APPLICATION

OF THE CITY DESIGN STANDARD IS SUBJECT TO THE CITY HAVING AN ORDINANCE IN PLACE THAT SATISFIES THE NOTICE REQUIREMENTS OF KPB 20.25.090(A) THROUGH (D) AND A PROCESS TO APPEAL DECISIONS MADE BY THE CITY REGARDING APPLICATION OF ITS SUBDIVISION DESIGN STANDARDS.] Any appeal of a city design standard is subject to KPB 21.01.020(E).

SECTION 22. That KPB 20.30.280(C) is hereby amended as follows:

20.30.280. Floodplain requirements.

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source.
- B. Any area of the subdivision within the floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.
- C. All subdivisions which are wholly or partially located within flood hazard areas as defined by KPB 21.06.030 must comply [AREAS WHERE THE FLOODPLAIN HAS NOT BEEN MAPPED AND BASE FLOOD ELEVATION DATA IS NOT AVAILABLE SHALL PROVIDE THE INFORMATION IN COMPLIANCE] with KPB 21.06.050 standards for Floodplain Management.

...

SECTION 23. That KPB 20.30.290 is hereby amended as follows:

20.30.290. Anadromous waters habitat protection district.

If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

SECTION 24. That KPB 20.40.020(A) is hereby amended as follows:

20.40.020. Wastewater system review not required

- A. Wastewater system review will not be required if any of the following criteria are satisfied:

1. The existing parent subdivision was approved by the Department of Environmental Conservation, current state agency, or the Kenai Peninsula Borough under this chapter and the proposed subdivision is limited to:
 - a. Vacating lot lines to create fewer lots;
 - b. Moving one or more lot lines a total distance of ten feet or less without increasing the number of lots having prior onsite wastewater approval; or
 - c. Moving one or more lot lines without increasing the number of developable lots, while maintaining a minimum of 20,000 square feet of contiguous area, as described in KP.B 20.40.040(A)(4)(a), for each lot affected by the lot line movement.
2. The plat increases lot sizes by 1,000 square feet or more of area suitable for conventional development.
3. The sole purpose of a plat is to depict [RIGHT-OF-WAY] an area approved for vacation under KP.B Chapter 20.65[70] or[AS ATTACHING TO ADJOINING PARCELS IN COMPLIANCE WITH KP.B 20.70.150 AND AS 29.40.150,] under KP.B 20.10.090.
4. The sole purpose of a plat is to show a survey and delineate parcels as a condition prior to transfer of title for a municipal entitlement pursuant to AS 29.65, under KP.B 20.10.100.

...

SECTION 25. That KP.B 20.40.030 is hereby amended as follows:

20.40.030. Abbreviated submittal.

Lots within the proposed subdivision that will be at least 200,000 square feet [OR NOMINAL FIVE ACRES] in size [DO NOT REQUIRE A SOILS ANALYSIS AND REPORT PREPARED BY A QUALIFIED ENGINEER]must comply with KP.B 20.40.100(F). Before a final plat is recorded or filed for subdivision, the following note must be placed on the plat:

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.

SECTION 26. That KPB 20.40.040 is hereby amended as follows:

20.40.040. Conventional onsite soil absorption systems.

- A. If any lots within a subdivision will utilize conventional onsite soil absorption systems and are less than 200,000 square feet, the following requirements must be met and submitted to the planning director:
1. A soils analysis and report, sealed by a qualified engineer, which meets the requirements of KPB 20.40.100;
 2. A pollution abatement report, sealed by a qualified engineer, which meets the requirements of KPB 20.40.090 if:
 - a. Lot size is less than 40,000 square feet; and
 - b. There will not be a public water system serving the subdivision lots as described in KPB 20.40.090(C);
 3. A working map depicting:
 - a. Ground slopes greater than [20] 25 percent, or 5 percent where a bed system is proposed, and other topographic features as needed by a qualified engineer to meet the design requirements for wastewater disposal as defined in this chapter;
- ...
- B. Before a final plat is recorded or filed for subdivision under this section, the borough will require the engineer to sign the following note on the final plat:

WASTEWATER DISPOSAL: Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences. [AND MEETING THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH.] An Engineer's Subdivision and Soils Report is available from the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed

by a qualified engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

(Signature of) Engineer

License #

Date

SECTION 27. That KPB 20.40.070 is hereby amended as follows:

20.40.070. Connection to an existing system.

A. If any lots within a subdivision will be connected to an existing collector wastewater and treatment system, the following requirements must be met:

1. Proof that the owner of the collector wastewater and treatment system has agreed to allow the lots to be connected;
2. Documentation from the municipality, ADEC or system design engineer that the receiving system is adequate to accept the additional hydraulic and organic loading; and
3. The minimum lot size necessary to maintain the applicable separation distance [SET OUT AT] pursuant to 18 AAC 72.020 from any part of the wastewater system.

B. Before a final plat is filed for subdivision, the qualified engineer or surveyor, as applicable, must complete the following plat note which shall be placed on the plat:

WASTEWATER DISPOSAL: Plans for wastewater disposal that meet regulatory requirements are on file at the Department of Environmental Conservation.

(Signature of) Engineer

License #

Date

C. If all lots in the subdivision are served by a wastewater treatment and disposal system within a home rule or general law city, then signature by a licensed engineer or surveyor is not required.

SECTION 28. That KPB 20.40.100(F) is hereby amended as follows:

20.40.100. Soils analysis and report.

F. Soil testing requirements for subdivision lots equal or greater than 200,000 square feet [NOMINAL FIVE ACRES] consist of general soils and water

table description with sufficient detail to support the applicability of the proposed means of wastewater disposal; the description must be based on:

1. Existing information; or
2. Visual analysis by, or local knowledge of, a qualified engineer.

SECTION 29. That KPB 20.50.010(A) is hereby amended as follows:

20.50.010. Exceptions to regulations—Procedure—Commission authority.

- A. Unless prohibited under this title, the commission may authorize exceptions to any of the requirements set forth in this title. [APPLICATION] A request for an exception shall be in writing and present the commission with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. The commission shall make findings of fact meeting the following standards before granting any exception:
1. That special circumstances or conditions affecting the property have been shown [BY APPLICATION];
 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

SECTION 30. That KPB 20.60.025 is hereby enacted as follows:

20.60.025 Fee required

The fee established by the current Kenai Peninsula Borough Schedule of Rates, Charges and Fees shall accompany the submission of the final plat.

SECTION 31. That KPB 20.60.070 is hereby amended as follows:

20.60.070. Plat specifications.

The final subdivision plat shall be clearly and legibly drawn to a scale of 1 inch equal to 10, 20, 30, 40, 50, 60, 150 feet of a multiple of 100 feet. The drawing shall be plotted on good quality polyester film at least 3 mil in thickness. All lines, letters, figures, certifications, acknowledgements and signatures shall be clear, [AND] legible and in black ink. The minimum text size should be 10 point (0.1”) font or

the equivalent. Where necessary, 8 point (0.08") capitalized font or the equivalent can be used to label features. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Colors, grayscale or shading is not acceptable as it does not show when the drawing is reproduced. Sheets shall be one of these sizes: [8½" × 14"]; 11" × 17"; 18" × 24"; and 24" or 30" × 36". When more than one sheet is required, an index map shall be provided on the first sheet showing the entire subdivision and indicating the portion contained on each sheet. Each sheet shall show the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all sheets shall be the same size. Indelible ink or sealant shall be used to insure permanency.

SECTION 32. That KPB 20.60.110 is hereby amended as follows:

20.60.110. Dimensional data required.

- A. The bearing and length of every lot line, block line, and boundary line shall be shown. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Information shall be shown for all curves, including radius, central angle, arc length, chord length and chord bearing. The initial point of survey shall be shown and labeled. All non-radial lines shall be labeled. If monumented lines were not surveyed during this platting action, show the computed data per the record plat information.
- B. The natural meanders of ordinary high water (or mean high water line as applicable) is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.
- C. Any discrepancy between the survey and the record description, and the source of all information used in making the survey shall be indicated. When an inconsistency is found including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, or when any doubt as to the location on the ground of the true boundary or property rights exists, the nature of the inconsistency shall be clearly shown on the drawing.

SECTION 33. That KPB 20.60.130 is hereby amended as follows:

20.60.130. Boundary of subdivision.

The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data. The boundary of the subdivided area shall clearly show what survey markers, or other evidence, was found or established on the ground to determine the boundary of the subdivision. Bearing and distance ties to all survey markers used to locate the subdivision boundary shall be shown.

SECTION 34. That KPB 20.60.170 is hereby amended as follows:

20.60.170. Other data required by law.

- A. The plat shall show all other data that are or may be required on the plat by statute or ordinance.
- B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat. The borough will not enforce private covenants, easements, or deed restrictions.
- C. The plat must adhere to the requirements of the local option zone, where applicable.

SECTION 35. That KPB 20.60.180 is hereby amended as follows:

20.60.180. Plat notes.

- A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.
- B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required. Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

SECTION 36. That KPB 20.60.210 is hereby amended as follows:

20.60.210. Approval—Authority—Certificate issued when.

...

- E. When an application to amend a recorded plat, as defined by 11 AAC 53.900, is received, notice by regular mail of the requested amendment to the plat shall be sent to owner(s) of the affected lot or tract and, if applicable, the owners in the subdivision per borough tax rolls. Separate advertising of the proposed plat amendment is not required.

1. The surveyor shall submit a copy of the plat showing the proposed new wording and/or a sketch of the proposed amendment with the application.
2. The plat amendment may be scheduled as a consent agenda item unless otherwise requested by the owner(s), planning director or planning commission.

SECTION 37. That KPB Chapter 20.65, Vacations, is hereby enacted as follows:

CHAPTER 20.65 VACATIONS.

20.65.010. Authority; Legislative intent; Scope

This chapter is enacted under the authority of AS 29.40. A vacation decision is a discretionary legislative land use decision. The purpose of this chapter is to establish procedures for the vacation of a platted public right-of-way, public area, or other public easement depicted on a borough approved plat, and to provide procedures for the alteration, including removal, of platted utility easements. This chapter does not apply to easements or property owned or held by a city or the borough in their proprietary capacity which may only be extinguished through the terms of the controlling document or applicable law. This chapter does not apply to private easements.

20.65.020. Planning commission recommendation on state easements

The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state easements within the borough. Applications to vacate a section line easement or other public easements of the state must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state.

20.65.030. Vacation Criteria

Vacation of a platted public right-of-way, access, area or other easement granted for public use or public benefit must conform to the requirements of this chapter and AS 29.40.120 through AS 29.40.160 as now enacted or as amended.

20.65.040. Vacation Application

An informal pre-application conference by appointment with borough staff prior to the submittal of the application for vacation of a public right-of-way is encouraged. The application shall include the following items.

- A. A petition, provided by the borough planning department, signed by:
 - 1. The owners of the majority of the land abutting the area being vacated; or
 - 2. An official representative of the state, the borough, an affected utility, or a city when the area to be vacated is within the city.
- B. A sketch that depicts the area to be vacated, a preliminary vacation plat, or a copy of the existing plat showing the proposed alteration or replat. The format and number of copies of the sketch submittal shall be determined by the planning director;
- C. Written recommendations, comments, or meeting minutes from the planning and zoning commission of the affected city, if the area to be vacated is within a city. The sketch or submittal provided to an affected city must be the same submittal that is provided to the borough.
- D. The appropriate fee; and
- E. Applicant statement containing the reasons in support of the vacation.

20.65.050. Action on vacation application

- A. Staff shall review the application and supporting materials for compliance. If the application is incomplete, staff will return it to the applicant with a written list of deficiencies to be satisfied for acceptance.
- B. After acceptance of the application, staff will:
 - 1. Send notice of the proposed vacation and the public hearing in accordance with KPB 20.10.100.
 - 2. Prepare a staff report that evaluates the merits of the proposed vacation. Revisions to the application submitted subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.

- E. An accepted application shall be placed on the agenda of a regularly scheduled planning commission meeting. The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement.
- F. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
 2. A road is impossible or impractical to construct, and alternative access has been provided;
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

- G. The planning commission may impose such conditions as it deems necessary to ensure compliance with the requirements and purpose of this title.
- H. The borough will consider realignment of a right-of-way by vacation and rededication where the planning commission finds that the right-of-way realignment will enhance access and the realigned right-of-way is located to provide reasonable means of ingress and egress.
- I. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.
- J. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- K. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- L. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist

that were not available or present when the original petition was filed.

- M. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

20.65.060. Title to vacated area

- A. The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.
- B. If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid to the municipality on final vacation.
- C. Other provisions of this subsection notwithstanding, the planning commission may determine all or a portion of a vacated area should be dedicated to another purpose, and if so, title to the area vacated and held for another public purpose remains in the borough or city, as applicable.

20.65.070. Alteration of platted utility easements

- A. Where platted utility easements are reserved for the purpose of providing utility services by an agency or utility provider and are not dedicated to the public use in the same manner as public rights-of-way, public access, or public easement granted for public use, the planning commission shall review and act upon all requests to alter, including removal, platted utility easements. For purposes of types of easements covered by this section, the KPB 20.90.010 definition for Utility Easement controls.
- B. The petitioner shall include the following items when submitting a request to alter a platted utility easement.

1. A petition, provided by KPB Planning Department, signed by the owner of the land subject to the platted utility easement as shown on the borough tax rolls.
 2. Comments from the city advisory commission if applicable, and the jurisdictional authority of a dedicated right-of-way when the utility easement adjoins a dedicated right of way. A petition to alter a platted utility easement will not be approved if a city with jurisdictional authority objects to the alteration.
 3. Comments or non-objection from all appropriate utility providers. Affected utility providers must initial or comment on the same sketch or submittal that is provided to the borough.
 4. A sketch showing the alteration of the platted utility easement. If the alteration of the utility easement is due to an encroachment, then an as-built survey or site survey must be submitted with the petition.
 5. Appropriate application fee.
 6. Applicant statement containing the reasons for the alteration of the platted utility easement.
- C. Notice shall be sent per KPB 20.10.100.
- D. When the application is complete, the planning commission will take action on the requested alteration of the platted utility easement, either approving or denying the request.
- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement 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. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.
- F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.
- G. Approval of an application under this section expires in 12 months.
- H. Upon approval, the alteration of a utility easement can be finalized by either.

1. Recording of a subdivision plat which complies with Chapter 20.
2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees. The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed by a license land surveyor.

SECTION 38. That KPB Chapter 20.70 is hereby repealed.

**[CHAPTER 20.70. – VACATION REQUIREMENTS]
REPEALED**

SECTION 39. That KPB 20.80.040(B)(1) is hereby amended as follows:

B. Converting public street to private street - standards.

1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.65[70].

...

SECTION 40. That KPB 20.90.010 is hereby amended as follows:

CHAPTER 20.90. DEFINITIONS

20.90.010. Definitions generally.

...

"Architect" or "qualified architect" means a licensed architect registered to practice in Alaska under AS 08.48 and 12 AAC 36 in the branch of architecture defined by 12 AAC 36.068 applicable to the project.

...

"Date of distribution" or "distribution" means the date a notice, decision or other document is provided, manually or electronically, or is postmarked. [, TO A PARTY OF RECORD.]

...

"Monument" means a point marked on the surface of the earth for commencing or controlling a survey.

...

["NOMINAL FIVE ACRES" MEANS OF, LIKE, OR RELATING TO AN ALIQUOT FIVE-ACRE PART.]

...

["PARTIES OF RECORD" UNLESS SPECIFIED OTHERWISE MEANS THOSE PERSONS WHO HAVE COMMENTED IN A WRITTEN AND SIGNED DOCUMENT OR IN PERSON ON AN AGENDA ITEM BEFORE THE PLANNING COMMISSION OR PLAT COMMITTEE WHO OWN PROPERTY WITHIN THE NOTIFICATION RADII ESTABLISHED IN THIS CHAPTER.]

...

“Right-of-way dedication” or “right-of-way” means a right-of-way dedicated on a plat for road, street, or utility purposes in accordance with the platting requirements of the Kenai Peninsula Borough, or such rights-of-way as have been specifically granted by easement or dedicated by statute or otherwise approved by law[MEANS TRANSFER OF FEE SIMPLE UNDERLYING OWNERSHIP OF A RIGHT-OF-WAY TO THE STATE, BOROUGH, OR A MUNICIPALITY].

"Subdivision" means the division of a tract or parcel of land into two or more lots, or other divisions for the purpose of sale or building development, and includes resubdivision and relates to the process of subdividing or to the land or areas subdivided. As used in this Chapter, it also includes the elimination of lot lines and/or any change to an existing property line.

...

SECTION 41. That KPB 20.21.210 is hereby amended as follows:

21.20.210 Definitions

- A. For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:
1. "Aggrieved party or person" means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
 2. The "appellant" is the party who pays the filing fee and initially files the notice of appeal.
 3. The "applicant" is the party that made application with the planning department for a permit, plat, variance or other entitlement subject to a quasi-judicial process under KPB Title 20 or 21.

4. "Ex parte" means by or for one party; done for, on behalf of, or on the application of, one party only.
 5. "Party of record" means:
 - a. The applicant before the planning commission,
 - b. Any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use or enjoyment of real property owned by them who appeared before the planning commission with either an oral or written presentation, and who owns lands within the notification radii. A signature on a petition does not qualify the signatory as a party of record.
- [(1) A SIGNATURE ON A PETITION DOES NOT QUALIFY THE SIGNATORY AS A PARTY OF RECORD WITHOUT A SEPARATE ORAL OR WRITTEN PRESENTATION TO THE PLANNING COMMISSION.]
6. "Quasi-judicial decisions" are those decisions where general law or policy are applied or affect an individual's property interests. Such decisions include but are not limited to preliminary and final plat approvals, conditional use permits, and exception and variance applications.
 7. "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

SECTION 42. That KPB 21.20.230 is hereby amended as follows:

21.20.230. Jurisdiction.

- [A.] Unless a different appellate procedure is provided by this Code, the hearing officer is authorized to hear and decide appeals from quasi-judicial planning commission decisions.
- [B.] THE ASSEMBLY SHALL CONSIDER VACATION PETITIONS APPROVED BY THE PLANNING COMMISSION IN ACCORDANCE WITH THE PROCEDURES IN KPB CHAPTER 20.70.]

SECTION 43. That KPB 20.21.250 is hereby amended as follows:

21.20.250. Appeal of planning commission decision to hearing officer.

...

- E. *Entry of appearance.* The borough clerk shall mail or otherwise deliver copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of filing the notice of appeal. Proof of service upon each party shall accompany the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address and signature, or the name and address of the party and the name and address and signature of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. If borough staff is not participating in the appeal beyond providing the required staff overview, a notice of non-participation will be filed with the borough clerk. Proof of service of the entry of appearance upon each party shall be made in the manner prescribed in KPB 21.20.280(D). Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

...

SECTION 44. That KPB 20.21.270 is hereby amended as follows:

21.20.270. Record on appeal.

- A. *Record; contents.* For the purposes of appeal, the record shall include:
1. The filed application or complaint which initiated the proceedings before the planning commission;
 2. All informational materials supplied to the commission or relied upon by the planning director or staff in making its report or recommendations to the planning commission;
 3. All informational materials which were entered into the record or minutes of the proceeding before the commission;
 4. The report of the initial investigation by the planning department, and where applicable the enforcement order or decision of the planning director;
 5. All testimony and all documents or other evidence received by the planning commission from the parties or other witnesses during the proceedings;
 6. The decision of the planning commission;
 7. The planning commission's findings of fact; and

8. The minutes of the planning commission and a verbatim transcript of the planning commission hearing.
- B. *Record; preparation.* The planning department shall complete and file the transcript with the borough clerk within 30 days after the deadline for filing entries of appearance. The planning director shall certify the paginated and indexed record and minutes on appeal within 30 days after the deadline for filing entries of appearance. One copy of the record shall be provided to a party paying the filing fee. A copy shall also be provided to the applicant if the applicant is not the appellant. A notice of certification of record shall be provided to all parties by the borough clerk. Copies of the record may be provided to other parties or any other persons upon payment of a handling charge in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- C. *Appeal on the record; new evidence.* Appeals to the hearing officer shall be on the record. No new evidence, or illustrative documents or attachments to written statements, may be filed without prior approval of the hearing officer after a showing by the moving party that there exists cause for supplementing the record and that even with due diligence the new evidence could not have been provided at the public hearing before the planning commission and a reasonable opportunity is provided for all other parties of record to submit comments on the request prior to the hearing officer's decision.

SECTION 45. That KPB 20.21.280 is hereby amended as follows:

21.20.280. Written statements.

- A. *Opening statement.* A party of record who entered an appearance in the appeal[APPELLANT, STAFF AND THE APPLICANT IF THE APPLICANT IS NOT THE APPELLANT] shall submit a written statement which shall be filed with the borough clerk within 20 days of the clerk issuing notice that a completed record and transcript have been filed. The written statement may include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the planning commission decision, a list of asserted errors, and any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Failure to timely submit the opening written statement will result in dismissal of that party from the appeal. Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. The hearing officer may waive irregularities in the content of the notice of appeal or written statements. In appeals where staff does not enter an appearance, the staff overview may be provided in writing when opening statements are due.

- B. *Reply statement.* Each party filing an opening statement may submit a reply statement within 20 days of the filing deadline for the initial written statements. The reply shall be limited to response to matters specifically raised in the opening statement[RESPONDED TO]. A party [shall] may only file a single reply statement in response to all opening statements filed.
- C. *Extension.* The hearing officer, upon good cause shown, may grant an extension of time to any party or legal representative for the completion of any act required under this section, except for the filing of the notice of appeal, where the remaining parties will not appear to be unduly prejudiced by the delay. An extension permitted one party shall be extended to all parties by notice from the borough clerk. Motions for extensions shall comply with the provisions of KPB 21.20.280(D) and 21.20.300.
- D. *Service.* Service of written statements shall be made on all parties of record for briefs and on parties permitted to file motions and respond to motions by KPB 21.20.300. Service shall be made by the borough clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.
- E. *Additional written statements.* Unless the hearing officer requests supplemental written statements from the parties of record or staff, no additional written statements shall be accepted.

SECTION 46. That KPB 20.21.300 is hereby amended as follows:

21.20.300. Motions.

- A. *Parties.* Motions for continuances, shortened time, or other matters may be filed by the following parties and served in the manner prescribed by KPB 21.20.280(D):
 - 1. The appellant;
 - 2. The applicant if that party is not the appellant;
 - 3. A borough official if borough staff enters an appearance in the matter.

...

SECTION 47. That this ordinance is effective January 1, 2021.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2020.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

11/10/20 Vote on motion to postpone to 12/01/20:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

12/01/20 Vote on motion to postpone as amended to 01/19/21:

Yes: Chesley, Cox, Dunne, Johnson, Hibbert

No: Bjorkman, Carpenter, Derkevorkian, Elam

Absent: None

01/19/21 Vote on motion to postpone as amended to 03/02/21:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Yes:

No:

Absent:

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Sean Kelley, Deputy Borough Attorney *SK*
Scott Huff, Platting Manager *SHA*

DATE: February 18, 2021

SUBJECT: UPDATED Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

There are seven proposed amendments to Ordinance 2020-45.

At the assembly's meeting on December 1, 2020, the first four amendments below were moved, seconded, and then action on the amendments was postponed by the assembly to allow time for the planning commission to provide a recommendation on the four amendments. Thus, the first four amendments remain "on the floor".

Proposed Amendments #5 and #6 are recommended amendments passed by the planning commission.

Proposed amendment #7 adds a whereas clause to identify the procedural history where Ordinance 2020-45 (O2020-45) went back to the planning commission after its initial recommendation on this ordinance.

[Please note the bold underlined language is new with deletions crossed out.]

1. Proposed Amendment #1 to Section 37

- Amend 20.65.010 as follows:

20.65.010. – Authority; Legislative intent; Scope

This chapter is enacted under the authority of AS 29.40. A vacation decision is a discretionary legislative land use decision. The purpose of this chapter is to establish procedures for the vacation of a platted public right-of-way, public

February 18, 2021

Page -2-

Updated Amendment to O2020-45

area, or other public easement ~~dedicated depicted~~ on a borough approved plat, and to provide procedures for the alteration, including removal, of platted utility easements. This chapter does not apply to easements or property owned or held by a city or the borough in their proprietary capacity which may only be extinguished through the terms of the controlling document or applicable law. This chapter does not apply to private easements.

Explanation: This amendment is proposed to clarify that the borough's vacation authority under this chapter is limited to platted dedicated public easements shown on a borough approved plat.

2. Proposed Amendment #2 to Section 37

➤ Amend 20.65.020 as follows:

20.65.020. – Planning commission recommendation on state-**managed** easements

The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state-**managed** easements within the borough. Applications to vacate a section line easement or other ~~public state-managed easements of the state~~ must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state.

Explanation: This addresses a concern that the term "state easements" is too broad and expansive. Under the proposed change the scope of planning commission recommendations on state easements would be limited to state-managed easements within the borough. Molloy Schmidt also requested that the language "must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050" be struck because a recommendation should not have to follow the same requirements as a final decision to approve or deny a vacation. Molloy Schmidt requested a new section be added providing a different procedure for consideration of state-managed easements. The planning commission chose not to move forward with recommending adding a new section or amending the requirement that recommendations be considered in accordance with KPB 20.65.050.

February 18, 2021

Page -3-

Updated Amendment to O2020-45

3. Proposed Amendment #3 to Section 37

- Amend 20.65.050 as follows:

20.65.050. – Action on vacation application.

- A. Staff shall review the application and supporting materials for compliance. If the application is incomplete, staff will return it to the applicant with a written list of deficiencies to be satisfied for acceptance.
- B. After acceptance of the application, staff will:
1. Send notice of the proposed vacation and the public hearing in accordance with KPB 20.10.100.
 2. Prepare a staff report that evaluates the merits of the proposed vacation. Revisions to the application submitted subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.
- C. An accepted application shall be placed on the agenda of a regularly scheduled planning commission meeting. The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement.
- D. The planning commission shall consider the merits of each vacation request. **A platted dedication to public use of land or interest in land may be vacated if the dedication is no longer necessary for present or future public use. and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public.** In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
 2. A road is impossible or impractical to construct, and alternative access has been provided;
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;

February 18, 2021

Page -4-

Updated Amendment to O2020-45

4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way; and
8. **Any other factors that are relevant to the vacation application or the area proposed to be vacated.**

...

The remaining subsections should be re-lettered accordingly.

Explanation: This proposed change addresses a concern that deeming the area being vacated to be "of value" could be problematic and hard to define. Upon further review, the public's interests in the area vacated are protected by language added regarding present or future use and the 1-8 criteria provided. The proposed change adds a new number 8 to the criteria to provide for a catch-all for other factors the planning commission deems relevant to the vacation application

4. Proposed Amendment #4 to Section 37

- Amend 20.65.060 as follows:

20.65.060. Title to vacated area

....

- C.** Other provisions of this subsection notwithstanding, the planning commission may determine that ~~all or~~ a portion of **the area proposed to be**

February 18, 2021

Page -5-

Updated Amendment to O2020-45

~~vacated should be reserved a vacated area should be dedicated, for another public easement purpose,~~ and if so, title to the area **vacated reserved** and held for another public **easement** purpose remains in the borough or city, as applicable."

Explanation: A concern was raised that the language indicated the planning commission could re-dedicate the area vacated without the landowner's consent. While the current language tracks code language used by other second class boroughs and is comparable to state statutory language, this proposed change attempts to clarify the intent of this section. The intent is that the planning commission, in deciding whether or not to vacate an area, may determine that the best option is to vacate a portion of the easement while retaining or reserving a portion for other public easement purposes, such as a utility easement or pedestrian access easement. This section would provide for partial vacations to avoid the scenario of "all or nothing" vacations. A partial vacation and/or reserving a smaller public easement within the public easement being vacated is not a taking. For example, the planning commission, while evaluating the merits of vacating a 60-foot wide dedicated right-of-way, may determine it is appropriate to retain 10 feet of the 60-foot wide right-of-way for pedestrian or utility purposes and vacate the remaining 50 feet of the right-of-way. This would be a permissible partial vacation.

5. Proposed Amendment #5 to Section 47

- Amend Section 47 as follows:

Section 47. That this ordinance [~~is effective January 1, 2021~~] **shall take effect April 1, 2021.**

Explanation: The original effective date of January 1, 2021 has passed.

6. Proposed Amendment #6 to the title of the ordinance

- Amend the ordinance title as follows (added language shown in bold):

AN ORDINANCE AMENDING KPB 2.40, PLANNING COMMISSION, KPB TITLE 20, SUBDIVISIONS, **REPEALING KPB 20.70 VACATION REQUIREMENTS, ENACTING A NEW VACATIONS CHAPTER KPB 20.65,** AND **AMENDING** KPB 21.20, HEARINGS AND APPEALS, TO CORRECT GRAMMATICAL ERRORS, AND CLARIFY AND IMPROVE ADMINISTRATIVE PROCEDURES

February 18, 2021

Page -6-

Updated Amendment to O2020-45

Explanation: Changing the title provides a more descriptive summary of the ordinance being considered.

7. Proposed Amendment #7 adding a whereas clause

Add a 16th Whereas clause that reads:

WHEREAS, the planning commission held a public work session on January 25, 2021 to consider the proposed amendments, and on February 8, 2021 the planning commission recommended approval of the six proposed amendments as described in an updated memo dated February 18, 2021.

Explanation: The addition of this whereas clause provides additional context and procedural history for the proposed amendments and O2020-45

Planning Commission Action

December 1, 2020 – At public hearing on O2020-45, the assembly postponed action on the ordinance to allow time for the planning commission to review the proposed amendments

January 11, 2021 – The planning commission considered the assembly's request at its regularly scheduled meeting on January 11 and requested the assembly postpone action on O2020-45 until the Assembly's first meeting in March so that the planning commission could hold a work session on the O2020-45 amendments. (at its meeting on January 19, 2021, the Assembly postponed action on O2020-45.)

January 25, 2021 – The planning commission held a work session and discussed the proposed amendments.

February 8, 2021 – At its regularly scheduled meeting, the planning commission voted to recommend approval of proposed amendments #1-6 by a vote of 8-1.

Your consideration of these proposed amendments is appreciated.

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Scott Huff, Planning Manager *SH*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: November 19, 2020

SUBJECT: Second Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

In response to comments received from the law firm Molloy Schmidt, the administration, planning, and legal staff met with Mr. Molloy and Ms. Schmidt to discuss and fully consider their concerns. Following that discussion, some wording changes to this amendment are proposed herein. All of the proposed changes are contained within Section 37 of Ordinance 2020-45.

[Please note the bold underlined language is new with deletions crossed out.]

1. Proposed Amendment #1 to Section 37

- Amend 20.65.010 as follows:

20.65.010. – Authority; Legislative intent; Scope

This chapter is enacted under the authority of AS 29.40. A vacation decision is a discretionary legislative land use decision. The purpose of this chapter is to establish procedures for the vacation of a platted public right-of-way, public area, or other public easement **dedicated depicted** on a borough approved plat, and to provide procedures for the alteration, including removal, of platted utility easements. This chapter does not apply to easements or property owned or held by a city or the borough in their proprietary capacity which may only be extinguished through the terms of the controlling document or applicable law. This chapter does not apply to private easements.

Explanation: This amendment is proposed to clarify that the borough's vacation authority under this chapter is limited to platted dedicated public easements shown on a borough approved plat.

November 19, 2020
 Page -2-
 Second Amendment to O2020-45

2. Proposed Amendment #2 to Section 37

- Amend 20.65.020 as follows:

20.65.020. – Planning commission recommendation on state easements

The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state-managed easements within the borough. Applications to vacate a section line easement or other ~~public state-managed easements of the state~~ must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state.

Explanation: This addresses a concern that the term “state easements” is too broad and expansive. The proposed change limits the planning commission’s recommendation oversight to state-managed easements within the borough. The commenters also requested that the language “must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050” be struck because a recommendation should not have to follow the same requirements as a final decision to approve or deny a vacation. This amendment however does not propose striking that language at this time because the public may have some interest in retaining the state-managed public easement and to reach a well-informed recommendation it is prudent for the platting authority’s review to follow a standardized process.

3. Proposed Amendment #3 to Section 37

- Amend 20.65.050 as follows:

20.65.050. – Action on vacation application

- A. Staff shall review the application and supporting materials for compliance. If the application is incomplete, staff will return it to the applicant with a written list of deficiencies to be satisfied for acceptance.
- B. After acceptance of the application, staff will:
 1. Send notice of the proposed vacation and the public hearing in accordance with KPB 20.10.100.
 2. Prepare a staff report that evaluates the merits of the proposed vacation. Revisions to the application submitted subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.

November 19, 2020
 Page -3-
 Second Amendment to O2020-45

- C. An accepted application shall be placed on the agenda of a regularly scheduled planning commission meeting. The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement.
- D. The planning commission shall consider the merits of each vacation request. ~~A platted dedication to public use of land or interest in land may be vacated if the dedication is no longer necessary for present or future public use, and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public.~~ In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
 2. A road is impossible or impractical to construct, and alternative access has been provided;
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way; and
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

...

November 19, 2020
 Page -4-
 Second Amendment to O2020-45

The remaining subsections should be re-lettered accordingly.

Explanation: This proposed change addresses a concern that deeming the area being vacated to be “of value” could be problematic and hard to define. Upon further review, the public’s interests in the area vacated are protected by language added regarding present or future use and the 1-8 criteria provided. The proposed change adds a new number 8 to the criteria to provide for a catch-all for other factors the planning commission deems relevant to the vacation application

4. Proposed Amendment #4 to Section 37

- Amend 20.65.060 as follows:

20.65.060. Title to vacated area

....

- C.** Other provisions of this subsection notwithstanding, the planning commission may determine that ~~all or~~ a portion of the area proposed to be vacated should be reserved a vacated area should be dedicated, for another public easement purpose, and if so, title to the area vacated reserved and held for another public easement purpose remains in the borough or city, as applicable.”

Explanation: A concern was raised that the language indicated the planning commission could re-dedicate the area vacated without the landowner’s consent. While the current language tracks code language used by other second class boroughs and is comparable to state statutory language, this proposed change attempts to clarify the intent of this section. The intent is that the planning commission, in deciding whether or not to vacate an area, may determine that the best option is to vacate a portion of the easement while retaining or reserving a portion for other public easement purposes, such as a utility easement or pedestrian access easement. This section would provide for partial vacations to avoid the scenario of “all or nothing” vacations. A partial vacation and/or reserving a smaller public easement within the public easement being vacated is not a taking. For example, the planning commission, while evaluating the merits of vacating a 60-foot wide dedicated right-of-way, may determine it is appropriate to retain 10 feet of the 60-foot wide right-of-way for pedestrian or utility purposes and vacate the remaining 50 feet of the right-of-way. This would be a permissible partial vacation.

Your consideration of these proposed amendments is appreciated.

Kenai Peninsula Borough

Legal Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *JCB*

FROM: Marcus Mueller, Acting Planning Director *[Signature]*
Scott Huff, Platting Manager *SA*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: October 1, 2020

SUBJECT: Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

Since the last significant rewrite to the borough's subdivision code in 2014, platting staff have found a number of provisions that would benefit from clarifying language. The amendments to KPB Title 20 (Title 20) and KPB 2.40 will improve the platting process and procedure and make Title 20 consistent with current law. Among technical changes to borough subdivision regulations, the amendments will add a new uniform notice section that will be applicable to all of Title 20.

The amendments will repeal KPB 20.70, Vacation Requirements, and replace that chapter with a new vacations chapter, KPB 20.65, Vacations. The new vacation chapter will clarify that only platted public easements may be vacated by the planning commission subject to consent or veto by the borough or a city, if the easement to be vacated is within a city. The new vacation chapter will include a utility easement alteration or removal section to improve the procedure for alteration of utility easements.

The amendments to KPB 21.20 seek to improve definitions and to clarify that hearing officer appeals are on the record appeals. The amendments also provide for a process of non-participation by the borough and to remove requirements for providing statements and motions even when the borough is not a participating party.

A sectional analysis of all the changes included in this ordinance is attached.

Your consideration of this ordinance is appreciated.

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly
Blair Martin, Planning Commission Chair
Members, Kenai Peninsula Borough Planning Commission

FROM: Sean Kelley, Deputy Borough Attorney
Scott Huff, Platting Manager
Marcus Mueller, Acting Planning Director

CC: Charlie Pierce, Mayor

DATE: October 1, 2020

SUBJECT: Ordinance 2020-45, Subdivisions, Hearings and Appeals Amendment
Ordinance **Sectional Analysis**

The following provides a sectional analysis of the amendments to the subdivision regulations and KPB Chapter 21.20, Hearings and Appeals.

Section 1 amends KPB 2.40.080 to clarify that the planning commission's delegation of powers to the plat committee is done in its capacity as the platting board, to change the time to file a request for review from ten days to fifteen days, and to establish that any person or agency sent a notice of decision may request review by the full planning commission.

Section 2 amends KPB 20.10.040 clarifying when an abbreviated plat procedure may be used and adds a cross reference to KPB 20.40.

Section 3 conforms KPB 20.10.080, related to vacation plats, to recognize that there may be vacation plats that are not right-of-way vacation plats and to cross reference the new vacations chapter KPB 20.65.

Section 4 adds a new section KPB 20.10.100 to provide a uniform notice section for public hearings under Title 20.

Section 5 adds a new section KPB 20.10.110 to establish a building setback encroachment application and permit process. Currently an exception is granted to allow a building to remain within a building setback on all recorded plats. Platting exceptions are allowed only at time of preliminary plat approval. This will allow a process to review and grant (or deny) permission for a building to remain within a building setback within already platted subdivisions.

Section 6 adds a new section KPB 20.10.120 to provide for a notice of decision section to include the persons or agencies that will be sent a notice of decision.

Section 7 amends KPB 20.25.020 to clarify that the submission of a preliminary plat is the responsibility of a licensed land surveyor.

Section 8 amends KPB 20.25.030 to clarify that the planning director will determine the number of copies and format for preliminary plat submissions and this number will be noted on the submittal application.

Section 9 amends KPB 20.25.050(A) to recognize that platting powers have not been delegated but that such powers may be delegated to the cities upon request, amends KPB 20.25.050(B) & (E) to eliminate 49-day deadline for city advisory planning commission review of preliminary plat, and amends KPB 20.25.050(F) to state that a final plat may not deviate from a preliminary plat unless the city has approved the revision.

Section 10 amends KPB 20.25.060, applicable to second class cities, the changes are similar to section 9 by removing the 49-day deadline for city review of a preliminary plat and removing reference to delegation of limited platting authority.

Section 11 amends KPB 20.25.070 to require that the parent plat name be carried forward on the preliminary plat, to clarify that the preliminary plat must identify existing travel ways, to require the plat show the status of neighboring parcels within 100 feet to assist within planning for street intersections and future development, and to show low wet or swampy areas to assist owners plans for prudent placement of structures, wells, septic systems, and rights-of-way.

Section 12 repeals KPB 20.25.090 due to new uniform notice section KPB 20.10.100 proposed in this ordinance.

Section 13 amends KPB 20.25.110 to clarify the approval time frame of the preliminary plats, the expiration of preliminary plat, the number of extensions that may be granted, and to put the subdivider on notice when a preliminary plat is granted a time extension the final plat must comply with current subdivision code.

Section 14 conforms KPB 20.25.120 to the KPB 2.40.080 amendments regarding deadline for filing a request for review of a plat committee decision. A section is being added to codify that preliminary plats approved prior to February 14, 2014 (prior code which contained no time expiration) will now have ten years from

date of approval to record the plat, update to current code, or have the approval expire after 10 years.

Section 15 amends KPB 20.30.060(D) clarifies the placement of a ten-foot utility easement within borough rights-of-way and states that within the boundaries of a city the city and applicable utility providers will determine location, and/or width of utility easements.

Section 16 repeals KPB 20.30.110, half streets, in recognition that applicable half street language is moved to KPB 20.30.120.

Section 17 amends KPB 20.30.120(A) to move the half street requirements to fall within the street width requirements of code and to change the notice to adjoining property owners to be consistent with KPB 2.40.080.

Section 18 amends KPB 20.30.150(B) to add requirement that distance between street centerlines shall be no less than 150 feet.

Section 19 amends KPB 20.30.240(A) to clarify that the building setback requirement applies to all dedicated rights-of-ways and to add a plat note when a subdivision is affected by a local option zoning district.

Section 20 amends KPB 20.30.250 to allow completion of new plats without requiring an exception to KPB 20.30.240 when the recorded plat shows a building set back. This will remove the requirement for an exception request to not carry forward a plat note that no longer applies. Currently this often affects simple replats within cities with zoning powers. The change will help simplify the platting process.

Section 21 amends KPB 20.30.270 to clarify that the different design standards in cities may be applied by the planning commission even if platting powers haven't been delegated to that specific city.

Section 22 amends KPB 20.30.280(C) to clarify the applicable provision of floodplain management code that must be followed for subdivision plats.

Section 23 amends KPB 20.30.290 to conform to KPB 21.18 by adding the word "waters" to provide the correct title and description for the applicable plat note.

Section 24 amends KPB 20.40.020(A)(3) to clarify that a vacation is not limited to dedicated right-of-way vacations and to correct cross reference to new KPB 20.65.

Section 25 amends KPB 20.40.030 to remove the nominal five acre description from the abbreviated submittal for the wastewater review to eliminate confusion and adds a cross reference to KPB 20.40.100(F).

Section 26 amends KPB 20.40.040 to remove reference to borough regulatory requirements because the borough does not regulate the installation of septic systems and adding a plat note so that owners are aware that a soils analysis report is on file with the borough which is beneficial when planning for the installation of a septic system.

Section 27 amends KPB 20.40.070 by adding a new paragraph C to clarify that a licensed engineer or surveyor does not have to sign the wastewater disposal note for subdivisions served by city septic systems.

Section 28 amends KPB 20.40.100 to align with changes to 20.40.030 by removing reference to nominal five acres and replacing it with 200,000 square feet.

Section 29 amends KPB 20.50.010(A) to clarify that an exception may be requested without a formal application process.

Section 30 adds a new section KPB 20.60.025 requirement that the final plat filing fee must accompany the submission of the final plat.

Section 31 amends KPB 20.60.070 to conform with State of Alaska (DNR) platting recommendations and to clarify drawing standards to be followed (colors should not be used, appropriate drawing scales, and the appropriate font size) so that recorded plats are legible and can be reproduced in the future.

Section 32 amends KPB 20.60.110 to provide that non-radial lot lines must be labeled to provide useful information to owners and subsequent surveyors, to label computed data where lines were not measured, and to add clarification to situations where a discrepancy is found between survey markers and/or to show how new survey marker locations were established.

Section 33 amends KPB 20.60.130 to define that the boundary of the subdivision must be established and clearly shown on the drawing.

Section 34 amends KPB 20.60.170 to clarify that private covenants, easements, or deed restrictions will be shown on plat when known but that they are not enforced or regulated by the borough, and to add a requirement that subdivision plats must confirm to applicable local option zone requirements.

Section 35 amends KPB 20.60.180 to add a new paragraph B regarding plat note revision or removal.

Section 36 amends KPB 20.60.210 to add a new paragraph E to require notification to the owner(s) of the affected lot and/or owners in the subdivision when a request to amend a record plat is received.

Section 37 adds a new chapter KPB 20.65, Vacations, to borough code.

- **KPB 20.65.010** provides authority, legislative intent, scope and purpose of the chapter to clarify that the chapter only applies to platted public easements or areas. The chapter does not apply to private easements or easements created by contract, deed, or Alaska Statute.
- **KPB 20.65.020** provides for a planning commission recommendation on the vacation of state easements.
- **KPB 20.65.030** provides that vacations must conform to requirements of KPB 20.65 and AS 29.40.120 through AS 29.40.160.
- **KPB 20.65.040** provides for an informal pre-application conference with borough staff and provides the requirements for a complete application.
- **KPB 20.65.050** provides the procedure to be followed, the criteria for evaluating the merits of a vacation application, that approval of a vacation is not final without the consent of city council or assembly, as applicable, that a planning commission denial is final and that as a legislative act appeals of a vacation decision must be filed in Alaska Superior Court.
- **KPB 20.65.060** addresses title to the vacated area.
- **KPB 20.65.070** concerns process and procedure for alteration, including removal, of platted utility easements.

Section 38 repeals KPB 20.70, Vacation Requirements, as this chapter is replaced by new vacations chapter KPB 20.65.

Section 39 amends KPB 20.80.040 to conform cross reference to KPB 20.65.

Section 40 amends KPB 20.90.010 definitions.

Section 41 amends KPB 21.20.210 definitions to clarify that a party must own property within the notification radii to appeal a planning commission decision to a hearing officer.

Section 42 amends KPB 21.20.230(B) to remove confusion regarding assembly consideration of vacation approvals as that is covered in full by new KPB 20.65.050.

Section 43 amends KPB 21.20.250 to provide for a process of non-participation by the borough when only private interests are being litigated.

Section 44 amends KPB 21.20.270 to clarify that KPB 21.20 appeals are appeals on the record and new evidence will not be admitted without cause.

Section 45 amends KPB 21.20.280 for clarification regarding who must submit an opening statement and to clarify when additional written statements are allowed.

Section 46 amends KPB 21.20.300 to clarify that the borough may only file motions if it enters an appearance in the matter.

Section 47 sets the effective date of this ordinance.

Borough Assembly Members
c/o Johni Blankenship, Borough Clerk
Kenai Peninsula Borough
144 N. Binkley St.
Soldonta, AK 99669

RECEIVED
NOV 23 2020
Borough Clerk's Office
Kenai Peninsula Borough

RE: Ordinance 2020-45

Dear Assembly members,

Rita and I would like to offer our input in regards to the proposed changes being made to KPB 20.25.070.

In regards to para. F and section 11, as they pertain to "travel ways":

- 1) Travel ways typically have not been surveyed, thus, their placement on the plat is a guess or estimate. This would apply to their actual width/dimensions as well as any ditching (if any).
- 2) The legal status of existing travel ways is often unknown and it is the courts, not the borough, who has the final say on determining the legality of a travel ways status.

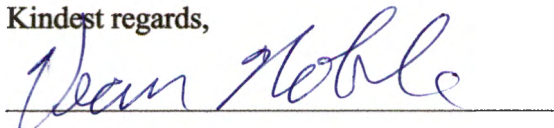
For these two reasons, we believe the borough is going in the wrong direction with this particular requirement.

Our feelings are that the platting process, both with preliminary and final, should be to create a plat that is unambiguous and only reflects what are known legal ROW's.
I.E., ...platted roads/row's or recorded easements with appropriate legal descriptions.


This is valuable, in that it helps the general public avoid buying a property that may have a questionable, or illegal access situation.

Finally, if the assembly decides that these travel ways with unknown legal and location status should be placed on the plat, we ask that you consider requiring plat note language with the disclaimer that the travel way has not been surveyed and it's legal status is unknown.

Kindest regards,



11-19-20
Veane Noble



Rita Rothgeb

MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101
Kenai, Alaska 99611
(907) 283-7373 • (907) 283-2835 (Fax)

MEMORANDUM

TO: Borough Mayor Pierce
cc: Planning Department, Legal Department

FROM: Robert J. Molloy • Kristine A. Schmidt

DATE: November 23, 2020

SUBJECT: Ordinance 2020-45 and Vacation of State Easements

Current Ordinance:	Ord. 2020-45, Sec. 37, new KPB 20.65.020
<ul style="list-style-type: none">• There is no current ordinance on vacating <i>all</i> “public easements of the state;” just:• KPB 20.70.010, Section line easement vacations: “... the petition must be reviewed and approved by the planning commission but final authority for approval and platting authority rests with DNR.”	20.65.020. Planning commission recommendation on state easements. The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state easements within the borough. Applications to vacate a section line easement or other public easements of the state must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050 . The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state.

Requested Amendment:

20.65.020. Planning commission recommendation on state easements.

The planning commission serving as the platting authority has no authority to vacate state-owned public easements under the jurisdiction of the state. The planning commission may will provide a recommendation on proposed vacations of state-owned public easements within the borough; but may also decline to provide a recommendation on the ground that the easement is not platted or is an RS 2477 right-of-way. Applications to vacate a section line easement or other state-owned public easements of the state must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any state-owned public easement under the jurisdiction of the state rests with the state.

- KPB 20.65.020 creates *new barriers* to vacating an easement, and *increases Borough jurisdiction and regulation* of those easements, which will increase the expense of a vacation petition, and prevent private development of land in the Borough.
- KPB 20.65.020 *expands current Borough regulation* over public easements owned by the State of Alaska – from current KPB 20.70.010 (section line easements), to all “Public easement under the jurisdiction of the state,” which is not defined. State regulation 11 AAC 51.065(a) (attached) uses the term “state-owned public easement.”
- KPB 20.65.020 *expands Borough jurisdiction* from KPB 20.65.010 (only easements “on borough approved plats”) to all “public easements under the jurisdiction of the state,” whether “on a borough approved plat” or not; *with no explanation*.
- State regulation 11 AAC 51.065(c) gives the Borough platting authority the option to *decline to comment* on easements which are not platted or are RS 2477 easements; KPB 20.65.020 has no exceptions, but should give the planning commission this option.
- KPB 20.65.020 incorporates KPB 20.65.050 -- KPB 20.65.050 creates *new “one size fits all” requirements* for vacations that will increase expense and prevent private development. State regulation 11 AAC 51.065(a) contains a list of many different types of State-owned easements. The Borough should use planning department policies to determine what interest it may have in a particular type of State-owned easement.

§ 11 AAC 51.065. Vacation of easements.

Alaska Administrative Code

Title 11. Natural Resources

Part 6. Lands

Chapter 51. Public Easements

Article 2. Identification, Reservation, and Modification of Public Easements

Current through October 30, 2020

§ 11 AAC 51.065. Vacation of easements

- (a) An affected person or a municipal assembly or city council may petition the department to vacate, modify, or relocate,
 - (1) in accordance with AS 19.30.410, an R.S. 2477 right-of-way, including a section-line easement under AS 19.10.010 that the department manages under AS 19.30.400 and AS 38;
 - (2) in accordance with AS 38.05.127(d), an access easement reserved under AS 38.05.127 and 11 AAC 51.045 ;
 - (3) In accordance with AS 40.15.300 - 40.15.380, a platted easement dedicated to public use and managed by the department under AS 38;
 - (4) on land that the state currently owns or formerly owned, a public easement reserved along a section line under AS 19.10.010 ; or
 - (5) another state-owned public easement managed by the department.
- (b) A petition to the department under (a) of this section must also be submitted to the platting authority for consideration, including public notice and a public hearing, in accordance with the procedures set out in
 - (1) AS 29.40.120 - 29.40.150, if the platting authority is established under AS 29.40.080 by a municipality described in AS 40.15.070(a) ; or
 - (2) AS 40.15.305 and 11 AAC 53.250, as applicable, if the platting authority is the department in accordance with AS 40.15.070(b).
- (c) If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice.
- (d) In addition to a notice, comment opportunity, or hearing provided under (b) - (c) of this section by a municipal platting authority or the department, the department will give notice of a petition under (a) of this section and provide a comment period of at least 30 days by

MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101
Kenai, Alaska 99611
(907) 283-7373 • (907) 283-2835 (Fax)

MEMORANDUM

TO: Borough Mayor Pierce
Kenai Peninsula Borough Assembly Members

FROM: Robert J. Molloy • Kristine A. Schmidt

DATE: November 23, 2020

SUBJECT: Ordinance 2020-45 and Title to Vacated Area

Current Ordinance:	Ord. 2020-45, Sec. 37, new KPB 20.65.060(C)
• The current ordinance, KPB 20.70.150, Title to Vacated Area , does not contain this language.	Title to vacated area. C. Other provisions of this subsection notwithstanding, the planning commission may determine all or a portion of a vacated area <i>should be dedicated to another purpose</i> , and if so, title to the area vacated and held for another public purpose remains in the borough or city, as applicable.

Requested Amendment: strike KPB 20.65.060(C).

- As written, new paragraph (C) appears to ***apply to all vacations***: so if a private property owner had an easement for one purpose (for example, a roadway), the Planning Commission could approve vacating that easement, but then turn around and ***dedicate*** the vacated easement area to another purpose – ***which would be an unconstitutional taking***.
- The current Borough Subdivision Code does not give the Planning Commission authority to dedicate an area proposed to be vacated to another public purpose; so paragraph (C) ***grants a new power to the Planning Commission, without any explanation***.
- New paragraph (C) ***appears to conflict with State statute***, and could subject to legal attack. AS 29.160a) states that when an easement is vacated, the interest in the easement (“title”) reverts to the underlying private property owner, not the municipality (Borough). AS 29.40.160(c) states that 29.40.160(a) applies “to home rule and general law municipalities” such as the Borough. AS 29.40.160 does not allow for an exception by ordinance, as in new paragraph (C). See attached.
- If Paragraph C is enacted, professionals will need to advise private property owners of the risk that Paragraph C poses to their development plans. Paragraph C is an ***unnecessary barrier to private property development***; and, as written, a ***violation of private property rights***.

NOTES TO DECISIONS

Applicability. — Borough's platting board provided adequate notice by publication of a site visit, which was a meeting as defined in AS 44.62.310(h)(2)(A); the board was not required to mail notices to property owners. Moreover, a subsequent

public hearing at which the public could comment cured any defect. *Gold Country Estates Pres. Group, Inc. v. Fairbanks North Star Borough*, 270 P.3d 787 (Alaska 2012).

Sec. 29.40.140. Hearing and determination. (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation. (§ 11 ch 74 SLA 1985)

NOTES TO DECISIONS

Applicability. — Borough's platting board provided adequate notice by publication of a site visit, which was a meeting as defined in AS 44.62.310(h)(2)(A); the board was not required to mail notices to property owners. Moreover, a subsequent

public hearing at which the public could comment cured any defect. *Gold Country Estates Pres. Group, Inc. v. Fairbanks North Star Borough*, 270 P.3d 787 (Alaska 2012).

Sec. 29.40.150. Recording. If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 — 40.15.020. (§ 11 ch 74 SLA 1985; am § 5 ch 161 SLA 1988)

Sec. 29.40.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.

(b) If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid to the municipality on final vacation.

(c) The provisions of (a) and (b) of this section apply to home rule and general law municipalities.

(d) The council of a second class city located outside a borough may vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the streets, alleys, crossings, sidewalks, or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city. (§ 11 ch 74 SLA 1985)

Dear President Hibbert, Policies and Lands Chairs, & Assembly Members, through the Borough Clerk:

RE: Ordinance 2020-45

We did appreciate the Assembly postponing action on Ordinance 2020-45 to the 12/01/20 meeting, and also appreciated the opportunity provided by Mayor Pierce to meet with him and his staff for further dialogue on issues and concerns about the major changes proposed to be made in this ordinance. We also appreciate the fact that amendments addressing some of our concerns are proposed in Legal Department's most recent amendment memo.

However, the Deputy Borough Attorney was out on leave 11/20/20 through 11/27/20, and we were unable to continue this productive dialogue.

Given demands of other business and the Thanksgiving holiday, we have been unable to comment further, except for the two memos that we sent. Both memos propose some amendments which are different from the Legal Department's memo.

Memo 1: We continue to recommend that vacation of state-managed easement should be an easier process, and there is no reason to require the Planning Commission to consider the same factors under proposed 20.65.050 that this Ordinance would have the Commission consider for Borough platted easements.

Memo 2: We continue to recommend that paragraph (C) of proposed KPB 20.65.060 be deleted.

We did not have time to submit suggestions for changes to proposed KPB 20.65.050 on factors to be considered by the Planning Commission when the Commission considers the merits. Based on past experience, we know that the present amended proposal will still cause more difficult and expensive process for applicants.

We ask that the Assembly either table or postpone action for an additional time period, or make the effective date July 1, 2021, or vote this ordinance down, so that there still will be opportunity for additional dialogue about other amendments before the proposed new code is effective

Thank you for your consideration.

Bob Molloy & Kristine Schmidt

Molloy Schmidt LLC, Attorneys At Law
110 S. Willow Street Suite 101
Kenai, Alaska 99611
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ATTORNEYS AT LAW

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MEMORANDUM

TO: Borough Assembly Members

FROM: Bob Molloy • Molloy Schmidt LLC 

CC: Borough Mayor Pierce

Through: Borough Clerk Blankenship

DATE: 11/09/20

SUBJECT: Ordinance 2020-45, Amending Code on Borough Planning
Commission and Subdivisions, and Repealing and Replacing Code on
Procedures for Vacations

The proposal made in Ordinance 2020-45 includes a repeal of existing Chapter 20.70 VACATION REQUIREMENTS and its replacement with Chapter 20.65 VACATIONS. The Assembly should take its time in reviewing this complete repeal and replacement, and enact amendments, if the Assembly moves forward with repeal and replace.

I have been a partner in law firms for nearly 40 years, and have represented real property developers and owners in many types of administrative agency matters or proceedings, including both applicants for, and opponents of, right-of-way and easement vacations. The cumulative changes to administrative procedures in replacement Chapter 20.65 VACATIONS, as currently presented, when considered as a whole, unduly limit the discretion of the Planning Commission, increase the burden on affected private property owners and remove the Assembly from any oversight role at all.

These comments do not strictly follow the linear page order.

Comments on Section 37 Enactment of KPB 20.65 as Repeal and Replacement of 20.70

20.65.050(F), pp. 26-27	"The planning commission shall consider the merits of each vacation request ... "
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-- In general, Subsection (F) has some subsections that will lead to many disputes. And Subsection (F) also does not provide the Planning Commission with sufficient flexibility for its task of reasonable regulation of land use.

20.65.050(F), pp. 26	".. <i>and in all cases the planning commission shall deem the area being vacated to be of value to the public.</i> " (Emphasis supplied)
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-- The phrase "*and in all cases the planning commission shall deem the area to be vacated to be of value to the public*" in the first sentence, quoted above, establishes an awkward and vague presumption, a presumptive finding and conclusion by the Planning Commission, which the applicant must rebut in the applicant's presentation to the Planning Commission.

-- Rights-of-way and easements have many different origins, the property history may be complex, and some easements, such as Small Tract Act patent easements, (which are not dedicated ROWs), may have no real value to the general public, as distinguished from the government (for roads and utilities) and property owners (also for roads and utilities to their properties). As an example, there are many Small Tract Act patent ROWs reserved in many private property lots in the Borough, and the Borough has indicated no interest in developing many of these patent ROWs as roads.

-- What is the spectrum or range of values for "*of value to the public*," especially if the easement, which is not a dedicated ROW, is not developed or constructed and is not being used by the general public, or if the Borough has no plan to develop the easement?

-- If an opponent appeals a Commission decision granting a petition to vacate, the applicant-petitioner will have to show that this Code presumption has been rebutted under applicable law and the evidence presented at the hearing.

20.65.050(F), pp. 26-27	"It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public.
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-- The second sentence also establishes a burden of proof on the applicant, but limits the applicant to showing (1) that the area proposed for vacation is not longer practical for the uses or purposes authorized, or (2) that other provisions have been made that are more beneficial to the public. The flexibility of other factors should be allowed, such as; (3) and/or that the area is not developed or constructed, or is not used by the public, or is of little or no value to the public; (4) and/or that neither the Borough or any other governmental agency has shown any interest in developing the easement for the public; (5) and/or any other reason supporting the proposed vacation.

20.65.050(F), pp. 26-27	"In evaluating the merits of the proposed vacation, the planning commission shall consider whether: ..." factors (1) -- (7)
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-- Subsection (F) also limits the discretion of the Planning Commission by limiting the factors that the Commission "**shall consider**" to subparagraphs (1) through (7). The Commission also should be able to consider, as an example: "(8) any other factors that are relevant to the vacation application or the area proposed to be vacated."

20.65.010, p. 25	Defining a "vacation decision" to be a "discretionary legislative land use decision"
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-- This is a significant change that has major effects on affected private property owners.

-- Some municipalities do define a Planning Commission's decision to be a "legislative" decision, but to my knowledge, there has not been an appeal of those ordinances decided by the Alaska Supreme Court. Under Alaska law, the test for when a governmental body is acting as an administrative agency is functional. The Alaska Supreme Court has held that the **Kenai Peninsula Borough Assembly**, in its role as the Borough's legislative body, may classify its municipal land, and that the Assembly's classification of its municipal land is a legislative act, because the Assembly is not applying general policy to particular persons in their private capacities when classifying its municipal land. *Cabana v. Kenai Peninsula Borough*, 21 P.3d 833, 835-36 (Alaska 2001).

-- In contrast, when the Planning Commission makes a vacation decision, the Commission is tasked with hearing and deciding issues of law and fact in terms of specific parties and specific transactions, which is functionally acting in a quasi-judicial capacity.

-- If an affected private property owner is in a dispute with the petitioner - applicant and Planning Department staff over whether the affected private property owner has a property interest in the easement proposed to be vacated, the elimination of all appeal procedure at the Borough level (before appeal to superior court) harms the affected private property owner, who is also a taxpayer.

- Such disputes may be infrequent, because in most cases, the petitioner and affected property owners agree that the ROW or easement is a public ROW or public easement.

- Whenever affected private property owner(s) claim(s) a private interest in the easement proposed to be vacated, the Borough must provide a public hearing with due process safeguards for the petitioner - applicant and the affected private property owner(s), even if the Assembly adopts the major change to "discretionary legislative land use decision." For due process, the Borough must provide an impartial decision-maker, notice and the opportunity to be heard, some of the procedures consistent with the essentials of a fair trial, and a reviewable record. *Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 699 (Alaska 2010).

ADDITIONAL PROCEDURE AT PLANNING COMMISSISON LEVEL:

-- For the infrequent case where competing private property rights are disputed, the Assembly can add a Code section, per AS 29.40.170, that authorizes the Planning Commission to delegate powers to hear and decide such cases to a hearing officer. Complex cases may be infrequent, but this procedure would give the Planning Commission the discretion to delegate complex cases to a hearing officer, and allow both the petitioner - applicant and the affected private property owner(s) to make a detailed, reviewable record in case of a further appeal, either to an appellate hearing officer or to the superior court.

PROCEDURE FOR APPEAL FROM DECISION AT PLANNING COMMISSION LEVEL:

-- Under the replacement code, (KPB 20.65.050(M) at p. 28), an affected private property owner no longer has any right to appeal an adverse Planning Commission decision within the Borough, either to a hearing officer or to the Assembly. There would be no appeal at the Borough level; this repeal harms affected property owners, who are also taxpayers.

-- Because of the short timeline between the date when the meeting packet with staff report is distributed and the date of the Planning Commission hearing, affected private property owners have very little time within which to make a record before the Planning Commission, especially if they claim private property rights in the easement. Then the appeal to the superior court is on the record before the Planning Commission (it is very rare for the superior court to grant a request for a de novo hearing).

-- The Assembly could provide for an appeal of a vacation decision to a hearing officer, before appeal to the superior court, as the Assembly does for other appeals, if the Assembly does not want to provide for an appeal to the Assembly as a Board of Adjustment (as it had provided for a Board of Adjustment procedure in Code in the past).

20.65.040, p. 25	Vacation application, first sentence: " An informal pre-application conference by appointment with borough staff prior to the submittal of the application for vacation of a public right-of-way is encouraged."
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-- This encouragement of an "informal pre-application conference" is an optional procedure that will benefit applicants and staff. But why limit this option to applications "for vacation of a public right-of-way"?

20.65.050(B), p. 26	After acceptance of the application
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-- Similar to an "informal pre-application conference," there should be the opportunity for the applicant and staff to have a pre-staff report conference regarding issues which staff have identified before the staff report is finalized. This optional procedure could save applicants significant expense.

20.65.050(E), p. 26	Placement on Agenda and postponement requests
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-- The second sentence -- "The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement" -- unduly restricts the discretion of the Planning Commission.

-- In *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment*, 172 P.3d 778, 773 (Alaska 2007), the Supreme Court of Alaska ruled that it is always within the discretion of the municipal administrative body to relax or modify its procedural rules adopted for the orderly transaction of business before it on appeal in a given case when the procedural rules are discretionary and the ends of justice require it. This Code change eliminates the Planning Commission's discretion. While the Supreme Court was

specifically addressing administrative appeals, this concept also applies to the Planning Commission as a decision-making body.

-- This Code change restricts the Planning Commission to considering only the applicant's request for postponement. The Planning Commission may not consider any other factors, such as a request by an affected private property owner who has not received a mailed notice of the hearing or who claims a private interest in the easement proposed to be vacated; and the Planning Commission may not consider its own business calendar or availability of Borough staff.

20.065.060 (A), pp. 28-29	Title to vacated area
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-- Paragraph A is confusing; may submit comments later.

20.065.060 (C), p. 29	Title to vacated area
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-- Paragraph C invites arbitrary action by the Planning Commission and has the potential to discourage property development plans that involve vacations.

-- Applicants often incur significant expenses for professional fees for surveyors, and sometimes for engineers and attorneys. But Paragraph C allows the Planning Commission, at the hearing, without any prior notice, "to determine all or a portion of a vacated area should be dedicated to another purpose," and deny the petition.

-- The use of the word "title" in this context also presents issues for the property owners, because not all ROWs and easements are the same. Most easements are encumbrances on the property owner's title (the "servient estate"), and the easement does not give title to the user ("the dominant estate").

20.065.070, pp. 29-30	Alteration of platted easements
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-- The last sentence of Paragraph (A), p.29, states: "For purposes of types of easements covered by this section, the KPB 20.90.010 definition for Utility Easement control."

---- This restriction will lead to disputes over whether an easement platted solely as a drainage easement, and intended to be a drainage easement, is a utility easement.

-- May have other comments, but have run out of time.

Other Comments

Sec. 11, 25.20.070(F), p.	Delete "travel ways."
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-- -- Do not require "travel ways" to be shown on preliminary plats. "Travel ways" are roads or rights-of-way that are private, not public. Because of the certification text required on plats by Code, the depiction of private "travel ways" on plats has led to expensive law suits where the landowner has had to litigate against a claim that the "travel way" was dedicated to the public by plat due to the certification text, even though there was never a dedication or grant to the public.

The Assembly's consideration of these comments is appreciated. Thank you.

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November 9, 2020

Charlie Pierce, Mayor, Kenai Peninsula Borough
Kenai Peninsula Borough Assembly Members
144 N. Binkley St.
Soldotna, Alaska 99669

Re: ORDINANCE 2020-45

Dear Mayor Pierce and Borough Assembly Members:

I request that you table Ordinance 2020-45 for the time being, especially as the Assembly has 3 new members, there is a new Planning Department director, and there are many problems with the ordinance as written. I request (and hope) that you will hold some additional meetings about this ordinance, with real estate professionals and communities, as the Borough did for the 2014 Planning Code rewrite (but not for this 2020 rewrite).

Our law firm has represented private property owners/developers, on all sides, for 40 years. I also worked for the Borough 1984-1994 as Deputy Borough Attorney; and, while there, worked on many real estate matters for the Borough. Our firm has been involved with many lawsuits over real property disputes. Many of the lawsuits were caused by or complicated by Borough planning department practices and ordinances of the past.

Ordinance 2020-45 is a major rewrite; it is not just "housekeeping." **There are major policy changes in this ordinance that will make it more expensive and burdensome for private property owners/developers.** Below are some examples. There are many other problem sections, that I can bring to your attention if the Assembly postpones action. That is why I am requesting that you table this ordinance for further review.

1. Vacations Will Be Harder And More Expensive for Property Owners, Developers and Others. Section 37, pp. 25-32 of the ordinance.

This is a complete rewrite of the current vacation ordinance, and will cause more expense and difficulty for both applicants for vacation, and opponents of vacation.

First, Sec. 20.65.050(E), page 26, requires the planning commission to "deem the area being vacated to be of value to the public." This is a *new* requirement. This "one size fits all" approach does not take into account the many different kinds of easements and rights of way under federal and State laws that are all over the Borough.

These federal and State easements and rights of way are not platted rights of way in Borough subdivision plats; and the easement rights involved differ greatly. Some of these easements and rights of way may have public value; but others may not.

Many rights of way are very old, and were put in place by the federal government or State of Alaska for reasons that no longer exist. For example, there are many section line easements; some have no utility at all, because the land is too steep, isolated, swampy, and so forth. Some federal rights of way may actually be terminated, but you won't know that unless you do a lot of research in the historical records.

Second, Sec. 20.65.050(E), items (1) through (7), page 27, are very vague and subjective; such as "being used" -- for what? Or "public interest or value" -- how is that determined at the application stage? A property owner trying to prove these requirements will need to hire expensive experts such as lawyers and contractors to submit proof with the application. In addition, it may not be possible for a property owner to provide "equal or superior access" for a right of way to a lake or river. Are they stuck with an unnecessary right of way forever?

Third, Sec. 20.65.060(C), page 29, contains very broad language that allows that Planning Commission to rededicate a vacated area "to another purpose." The language is confusing, but it appears to mean that a property owner/developer could go all the way through the vacation process, only to have the Planning Commission arbitrarily deny the vacation and substitute another purpose for the area requested to be vacated. No property owner or developer is going to take the risk of having this happen; so this requirement restricts development.

2. Requiring Preliminary Subdivision Plats to Include "Travel Ways" Will Only Lead to Property Disputes; the Borough Should Not Take Sides. Section 11, pp. 10-11 of the ordinance.

Section 11 adds a new requirement to KPB 20.25.070: that preliminary plats include "travel ways." This is a mistake. I been involved in at least two lawsuits where these "travel ways" were on both the preliminary plat and final plat, and the people claiming use rights in another person's private property tried to use the showing of a travel way -- even on a preliminary plat -- against the property owner. The claimants will argue that showing a travel way on a plat, especially since it is required by Borough ordinance, is an official Borough action that supports their claim that they have the right to use the travel way.

By requiring travel ways to be shown at all, the Borough is taking sides in a private property dispute. It is not necessary to show existing travel ways that are not public. At a minimum, if there is some critical need for this requirement (not obvious), the ordinance should contain a disclaimer that showing the travel way does not infer a right to use it.

3. New Building Setback "Encroachment" Permits Add Bureaucracy and Expense. Section 5, pp. 6-7 of the ordinance.

This new section, 20.10.110, is a major change that will add a unnecessary layer of bureaucracy and expense to private property ownership and development. It is a complete 180 degree turn from past Borough practice, where a "building setback encroachment" was only an issue when the building interfered with a Borough road right of way that was being maintained; or perhaps interfered with fire trucks or ambulances. That is, the Borough administration did not care how you developed your own property, as long as it did not interfere with Borough services. This ordinance is not even clear that it applies to rights of way.

The section also retroactive: it appears to apply to all buildings that were built within a building setback, back to Borough incorporation in 1965. And these permits have to be approved by the planning commission; which will involve more expense and resources. This permit system seems like complete overkill.

4. The Assembly Has Always Been the Reviewing Body of Planning Commission Decisions on Vacations; Ordinance 2020-45 Removes That Right.

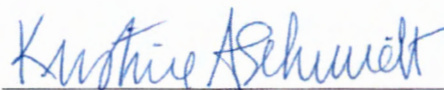
KPB 21.20.230(B) requires the Assembly to hear appeals from Planning Commission vacation decisions, which has always been the case. However, Ordinance 2020-45, in Section 37, 20.65.050(M), page 28, removes the Assembly's right to hear these kind of appeals, and a landowner or interest holder's right to appeal to the assembly -- without any logical explanation. Instead, the new requirement is that vacation appeals have to go directly to superior court.

This new requirement is clearly directed towards people who oppose vacations that have been approved by the Planning Commission. This new requirement is unfair because there is no chance to develop a case at the Planning Commission level, when the opponent to a vacation only has three minutes to speak, and limited ability to present documents in opposition. So the superior court has no real evidence to review. Every other kind of appeal of a planning commission decision goes to a hearing officer. That is why this new requirement, just for vacations, makes no sense.

This effort to remove these rights seems to be arbitrary and punitive. Please remove this language.

Thank you for considering my comments.

Sincerely,



KRISTINE A. SCHMIDT

eComments
Ordinance 2020-45

DiAnna Leaders

Location:

Submitted At: 8:32pm 11-30-20

Dear Mayor Pierce and Borough Assembly Members,

As a life-long resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Kristine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

DiAnna Leaders

Kenai Peninsula Borough Land Owner

Jeannette Ducker

Location:

Submitted At: 8:30pm 11-30-20

Dear Mayor Pierce and Borough Assembly Members,

As a long-time resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Christine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

Jeannette Ducker

Kenai Peninsula Borough Land Owner

Scot Leaders

Location:

Submitted At: 8:10pm 11-27-20

Dear Mayor Pierce and Borough Assembly Members,

As a long-time resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Christine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

Scot H. Leaders


Kenai Peninsula Borough Land Owner


Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor 

FROM: Melanie Aeschliman, Planning Director 

DATE: January 13, 2021

RE: Second Amendment to Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

The Kenai Peninsula Borough Planning Commission reviewed the amendments to subject ordinance during their regularly scheduled January 11, 2021 meeting.

A motion passed by majority vote (8 Yes, 2 No) to request postponement of Ordinance 2020-45 by the Assembly so that the Planning commission has time to hold a work session.

Attached are the unapproved minutes of the subject portion of the meeting.

defined channel.

14. The proposed plat has a plat note that addresses the city code and the setback requirements.
15. There is not a drainage easement that connects drainage C and drainage E to drainage D.
16. A drainage easement to provide a connection from drainage C and E to drainage D can be granted on the Lillian Walli Estate 2020 Replat.

STAFF RECOMMENDATION:

Based on the means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and findings 1, 2, 3, 7, 10, 13, 16, **Staff recommends** approval of the drainage easements labeled A, B and F on the Water Resources Map KPB, and the denial of the drainage easements labeled C, D and E on the Water Resources Map KPB, subject to:

1. The granting of a 15 foot drainage easement to provide a connection from drainages C and E to drainage D with the location of the easement being defined on the Lillian Walli Estate 2020 Replat.
2. Finalize the approved vacations by submitting a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
3. Any drainage easements that are retained may require additional drainage easement dedications within the vacated portion of Cheryl Lane that are approved by the City of Homer Public Works Department.

NOTE: Action after denial of 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.

END OF STAFF REPORT

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Bentz to approve the vacation of drainage easements labeled A, B & F as shown on the Water Resources Map KPB in the meeting packet, based on the means of evaluating public necessity established by KPB 20.70, and findings 1, 2, 3, 7, 10, 13 & 16.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Ruffner Venuti				
No	None				
Absent	Morgan				

AGENDA ITEM E. NEW BUSINESS

3. Second Amendment to Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

Staff report given by Scott Huff (from the December 16, 2020 memo to the Planning Commission)

The following is a timeline of events regarding Ordinance 2020-45

September 14 – Ordinance 2020-45 was introduced to the Planning Commission so that they had time to review the ordinance before the next meeting. Public comment was not available as this item was only up for introduction.

September 28 - Ordinance 2020-45 was presented to the Planning Commission. The commission opened up the item for public comment and no public comment was given. Staff provided a sectional analysis of the ordinance. The commissioners discussed the ordinance and had several questions for staff. The ordinance was postponed to allow staff time to edit the ordinance and provide answers to the commissioner's questions.

October 12 – Staff presented the ordinance with several edits that were brought about from the previous meeting. The commission opened up the item for public comment and no public comment was given. The Planning Commission unanimously approved to recommend the adoption of Ordinance 2020-45, including a revision to Section 37, to the Kenai Peninsula Borough Assembly.

October 13 – Ordinance 2020-45 was introduced to the Kenai Peninsula Borough Assembly and set for public hearing.

November 10 - The Assembly reviewed Ordinance 2020-45, listened to public testimony from Mr. Bob Molloy and Ms. Kristine Schmidt, and reviewed public comments that were submitted. The Assembly postponed the item to December 1 to allow time for additional review and time to meet with testifiers.

November 18 – A meeting was held with Mr. Molloy and Ms. Schmidt. Attending the meeting was the Planning Director, Platting Manager, Deputy Borough Attorney, Borough Chief of Staff, and Mayor Pierce.

Legal Staff and Platting Staff reviewed the comments and testimony provided by Mr. Molloy and Ms. Schmidt. Four amendments were proposed to clarify items within Section 37 of Ordinance 2020-45. The November 19, 2020 memo was sent to the KPB assembly.

December 1 – The Assembly met and discussed Ordinance 2020-45, listened to public testimony from Mr. Molloy and Ms. Schmidt, and reviewed public comments that were submitted. The Assembly approved an amendment to update the 'Where As' statement and also approved an amendment to correct Section 37 where a clerical error accidentally removed a sentence that was approved by the Planning Commission.

By a 5 to 4 vote, the Assembly postponed action on Ordinance 2020-45 to the January 19, 2021 meeting to allow time for the Planning Commission to review the memo dated November 19, 2020, and provide a recommendation to the Assembly.

Staff recommends the Planning Commission review the four proposed amendments from the memo dated November 19, 2020 and provide a separate recommendation to the Assembly for each Proposed Amendment outlined in the memo.

Staff recommends the Planning Commission also review Proposed Amendment #5 as outlined below and provide a recommendation to the Assembly.

Proposed Amendment #5 to Section 47

➤ *Amend Section 47 as follows:*

Section 47. That this ordinance [is effective January 1, 2021] shall take effect immediately upon its enactment.

Explanation: This amendment is proposed to clarify when the effective date will be. As Ordinance 2020-45 has been postponed by the Assembly it will not be approved before January 1, 2021 as Staff had originally planned. This amendment will allow the ordinance to become effective as soon as the ordinance is approved by the Assembly.

Mr. Huff then referred to the commission to the comparison table, prepared by Mr. Kelly, in the desk packet, which laid out the comparisons between the proposed ordinance approved by the commission at the October 12, 2020 meeting and proposed amendments from the November 1, 2020 meeting with Molloy and Schmidt. He believed the comparison table laid out clearly the changes in language of the proposed amendments. He then referred to comments from several APCs that were also located in the desk packet. He noted the Cooper Landing APC (CLAPC) did not provide a recommendation because four of their members felt they had insufficient time to fully consider the ordinance. The CLAPC wanted it noted they received information on this ordinance eight day before their scheduled meeting. The Kachemak Bay APC unanimously approved the recommend amendments to Ordinance 2020-45.

END OF STAFF REPORT

Chair Martin open the item for public comment.

Bob Molloy; Molloy, Schmidt LLC, 110 S. Willow St., #101, Kenai, AK 99611: Mr. Molloy wanted the commission to know that he is not receiving any compensation for the work he has put into this ordinance. He would request the commission recommend to the Assembly that action on this ordinance to be postponed to allow more time to work on this complex rewrite of code. He does not believe this ordinance is time sensitive and would like to see more time to allow for public input. He noted the time he is allowed for public comment at meetings is short and does not allow for any in depth discussion. With his allotted time, he would like to speak to two of the amendments. First, he would speak to the proposed amendment to 20.65.020 on page 57 of the meeting packet. He would ask the commission to consider his amendment language on this section of code, which can be found on page 109 of the packet. He believes the borough should have the option of declining to provide a recommendation on a state managed easements, especially those that are not section line easements or those that are not platted such as RS2477 right-of-ways. This is allowed by state regulation. There should be an easier process allowed. The second item is the amendment to 20.65.050 point D, which is on page 58 of the packet. The amendment lists eight factors the commission shall consider when considering the merits of a vacation. He believe this limits the commission discretion and he believes the commission should have a lot of discretion when considering vacations. He believed that mandating that these eight factors be to be taken into consideration in every case would place a heavy burden on the applicant. Especially with the public hearing practice of only allowing the applicant, ten minutes to present his/her case. He also believes other items not included in this rewrite need to be consider such as 20.60.160 –easements, which states that private easements may not be granted on a plat, however there is no language stating that private easement should not be shown on a plat either. He believes since the Planning Commission and Assembly are considering significant revisions to the subdivision code more time would be warranted to consider some of these issues.

Kristine Schmidt; Molloy, Schmidt LLC, 110 S. Willow St., #101, Kenai, AK 99611: Ms. Schmidt stated she agreed with Mr. Molloy's request for postponement to allowing additional time to work on the ordinance. She and Mr. Molloy appreciated the meeting they had with borough staff which allowed them to address some of their issues. She feels the amendments are a good start but she believes this is a much more complex issue than what is being billed. She then addressed concerns she had regarding the vacation factors listed on page 87 of the meeting packet. These factors address the most complicated ones that they have seen of any second-class boroughs. They believe they are unnecessarily complicated and there are easier factors from other municipalities that should be taken into consideration. These factors are too strict and do not allow for flexibility. For example, factor #2 – *A road is impossible or impractical to construct, and alternative access has been provided* – this language does not take into consideration that alternative access may not be required as there are existing accesses already in place. The petitioner should not always have to be the one to provide an alternative access when one is already in existence. This is just one of the problems they see with these factors as they are written. Since this rewrite is not time sensitive she believes a recommendation to postpone would be appropriate. Especially since the borough has a new Planning Director, Planner and Commissioners who have had little chance to review this rewrite and weigh-in on it, she believes postponement would be better in the long run.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Chesser moved, seconded by Commissioner Carluccio to recommend to the Assembly postponing action on this ordinance until after the April 12, 2021 Planning Commission meeting.

Commissioner Chesser stated he believes Mr. Molloy and Ms. Schmidt have brought up some very good points. He also noted this is a lot of information to digest, he would like more time to review the information, and have his concerns answered. He believes the commission should take the time to get this rewrite done right. He then asked staff what was the urgency in getting this ordinance passed. Mr. Huff replied there was no urgency but this ordinance has already gone through the review process. Work sessions have been done with surveyors and engineers over a year ago. He had also reviewed the ordinance with all the advisory planning commissions. They have met with all the cities. They have also brought this to the commission for review, it was introduced at one meeting and had two other meetings where the ordinance was discussed. Additional work sessions were offered to the commission at that time and none were requested. The commission reviewed the ordinance and made a recommendation to the assembly to approve it. The Assembly has reviewed it, and now is asking the Commission to review and make a recommendation on the five amendments before you tonight. Commissioner Chesser replied it seemed to him the rewrite is taking a simple process and making it more complex. As a new commissioner, he was not here for the beginning of this process. After reviewing Molloy and Schmidt's memo and listening to their testimony tonight, he has more questions and does not feel comfortable recommending approval of this ordinance yet.

Commissioner Ecklund stated she knows the commission has looked at this a couple of times and she thinks this is a very detailed ordinance and does not believe that is reflected in the title of the ordinance. She believes this ordinance is doing more than correcting grammatical errors and clarifying and improving certain administrative procedures. For example, the section on vacations is more complex than what is stated in the ordinance title. She also expressed concerns should the Assembly approve the ordinance it will go into effect immediately. She usually likes to see a little lag time between approval and the effective date. Since there is no rush to approve this ordinance, she too has noticed other small things she would like to see addressed. She would be happy to sit on a working group with Commissioner Chesser. She knows staff has put a lot of work into this rewrite but there is no rush to approve the ordinance and she would be happy to see a little more work go into it.

Commissioner Ruffner stated he was leaning toward recommending postponement but had a question for staff. His question was regarding Amendment #3 where it speaks to KPB 20.65.050(d). There is a changed language, which at first glance, appears to remove the mandate to consider the value of an easement. It also appears to remove from the applicant the burden of having to prove the easement should be vacated. He did not recall this being discussed in their previous reviews and this appears to be a significant shift. This new amendment language appears to be going in a new direction and he was curious how this fits into what they have already approved. Mr. Huff replied they removed the language "of value" to that section of code. He stated it is still on the applicant to show what is being petitioned to be vacated, why they do not want it, believe it is not necessary, and where other access is available. The burden is still on the applicant to provide a complete submittal. There was concern the term "of value" might be confusing, inferring the borough might be paying for it or reimbursing someone for it. Mr. Huff also noted what was before the commission tonight were these five amendments, and that the rest of Ordinance 2020-45 had already been approved by them and is currently before the Assembly. Commissioner Ruffner then replied he understood the counter testimony from the public on this amendment. While amendment might shift the burden from the applicant a bit making it a little easier to get through the vacation process, it becomes more prescriptive with the eight criteria that have to be met. He wanted clarification on whether this amendment made the vacation process less or more burdensome. Mr. Huff replied he believed the process would be similar to what it currently is. The eight guidelines would give the commission something to use to judge a vacation request. Currently code does not have any standards or criteria to judge a vacation. Mr. Huff believes that passing this ordinance will be good, as it will give the commission standards by which to judge vacation requests.

Commissioner Ecklund had a question for borough attorney Mr. Kelly. Can the commission request the Assembly postpone action on this ordinance or can they only make a recommendation on the amendments before them tonight? Mr. Kelly replied the commission could make a recommendation to the Assembly to postpone action on the ordinance, he cannot guarantee the Assembly will table or postpone it to a date certain. Commissioner Ecklund followed up with another question and asked if this ordinance was already scheduled for an Assembly meeting. Mr. Kelly replied he believed it was postpone to a date certain of January 19, to give the commission a chance to review the proposed five amendments. Commissioner Ecklund then stated that this had not gone before the Seward Planning & Zoning Commission. She did not

know if it had been sent to the city and the Community Development Director chose not to bring it forward. She then asked if the commission had ever had a work session on the ordinance that had not a part of a public meeting. Mr. Huff replied this was sent to the City of Seward and does not know what happen to it after that. He also stated there was not a separate work session for the commission; the ordinance was just discussed during regular meetings.

Commissioner Carluccio stated she does not recall this ordinance being addressed by the Seldovia Planning & Zoning Commission. Again, staff may have sent it to the city but it did not make it to the Commission. It might have gotten lost during the city's process of hiring a new city manager.

Commissioner Bentz asked staff if they voted to recommend postponement would they lose the opportunity to have any discussion on the amendments before them tonight. Would postponement halt their discussion tonight and allow it to be taken up at later date? Mr. Huff said it was up to the commission to decide. They could recommend postponement. The commission could also motion to set up a work group as was discussed tonight. Commissioner Bentz then asked if they postponed making any recommendations on the amendments, could the Assembly decide to move forward to approve the ordinance without the Commission's recommendations. Thus, forfeiting the opportunity to make recommendation on the five amendment before them tonight? Mr. Huff replied that yes that could happen.

Commissioner Carluccio stated while she is in favor of postponement she does not believe it needs to be postponed until April. She does not support a postponement until April.

Commissioner Chesser stated that he would be fine postponing to a sooner date. He would just like to have more time to form a work group.

AMENDMENT MOTION: Commissioner Ecklund motion, seconded by Commissioner Carluccio to recommend the Assembly postpone action on this item until after the Planning Commission's first meeting in March to allow the Planning Commission to form a workgroup with staff to go over the ordinance in more detail.

Mr. Kelly suggested the term work group can have a more technical or formal meaning. If the commission wishes to recommend the establishment of a workgroup to the Assembly, the commission might want to consider how the workgroup will be formed. Will it have members appointed from the Planning Commission as well as members from the public? Perhaps the commission might want to have something less formal.

Commissioner Ecklund stated her vision was the workgroup would be made up of Planning Commission member and staff. Mr. Kelly then recommend that perhaps the motion should be to recommend postponement until the first meeting in March, leaving the workgroup part of it out of the motion. The commission could then just schedule a work session for the commission outside of a regular meeting. Commissioner Ecklund then asked Mr. Kelly for additional clarification on what the motion should be. Mr. Kelly replied the motion could to request postponement by the Assembly so the Planning Commission has time to hold a work session. Commissioner Ecklund agreed with this language.

Chair Martin then asked Commissioner Ecklund as the maker of motion and Commissioner Carluccio who was the second, did they agreed to change the motion language to "to request postponement by the Assembly so that the Planning Commission has time to hold a work session." Both Commissioner Ecklund as the maker of the motion and Commissioner Carluccio as the second consent to the change in language.

REVISED AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to request postponement by the Assembly so that the Planning Commission has time to hold a work session.

Seeing and hearing no objection or further discussion, the revised amendment motion was carried by the following vote:

REVISED AMENDMENT MOTION PASSED BY MAJORITY VOTE:

Yes	8	No	2	Absent	1
Yes	Bentz, Carluccio, Chesser, Ecklund, Gillham, Martin, Ruffner Venuti				
No	Brantley, Fikes				
Absent	Morgan				

Seeing and hearing no objection or further discussion, the amended main motion was carried by the following vote:

MAIN MOTION AS AMENDED PASSED BY MAJORITY VOTE:

Yes	8	No	2	Absent	1
Yes	Bentz, Carluccio, Chesser, Ecklund, Gillham, Martin, Ruffner Venuti				
No	Brantley, Fikes				
Absent	Morgan				

AGENDA ITEM E. NEW BUSINESS**4. Consideration of Kachemak Bay Advisory Planning Commission Recommendation**

Staff report given by Bryan Taylor.

Mr. Taylor stated that he is forwarding the recommendation below on behalf of the Kachemak Bay Advisory Planning Commission. At their December 10, 2020 meeting a proposal was passed unanimously to amend the platting code at KPB 20.25.070, Forms and Contents Required. The amendment would require that provisions for wastewater disposal review would be applicable at the preliminary platting phase of approval, rather than only during the final plat review period.

Recommendation:

We propose changing the timing of the submittal of wastewater disposal reports so that they are submitted with the proposed rather than the final plat. Specifically, we'd like to add the following to the KPB planning code.

20.25.070. - Form and contents required.

P. An accompanying submittal of a wastewater review which complies with KPB 20.40 – wastewater review.

Mr. Taylor stated that the APC felt that having the information wastewater review information would be helpful when reviewing preliminary plats and would result in a more informed recommendation. The APC wondered if this request could be considered under the Ordinance 2020-45 code rewrite.

Mr. Taylor then asked the commission for direction on how they would like to see recommendations like these to come before them. Would they like them as an item under New Business on the agenda or submitted as informational items.

END OF STAFF REPORT


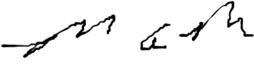
Chair Martin asked Mr. Huff for his input on the recommendation. Mr. Huff replied he had attended a meeting with the Kachemak Bay APC back in August where a preliminary plat with lots that were less than 40,000 square feet, was reviewed. He noted borough codes does allow for this if a soils analysis report shows that it can have onsite well and septic. The question posed by the APC was how can they recommend approval of the preliminary plat without the soils report showing this is possible. Mr. Huff informed the APC the soils report is not due until the final plat review and it is not a requirement for the preliminary plat. The APC wanted to see a change to code that would make the soils report a requirement for the preliminary plat application. Mr. Huff stated if the commission would like to move forward with the recommendation; it would follow the same path as Ordinance 2020-45 that was before them tonight. A factor to consider would be the cost of wastewater review. You have to pay an engineer to complete a wastewater review. Making that a requirement for a preliminary plat that may, may not be approved, or


Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Marcus Mueller, Acting Planning Director 

FROM: Scott Huff, Planning Manager 

DATE: October 29, 2020

SUBJECT: Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

At its meeting on October 12, 2020, the borough's planning commission unanimously voted to recommend the following amendment to Section 37 of Ordinance 2020-45. The amendment fixes a clerical error by adding text that was inadvertently omitted from the ordinance.

[Please note the bold underlined language is new.]

➤ Amend Section 37, as follows:

SECTION 37. That KPB Chapter 20.65, Vacations, is hereby enacted as follows:

CHAPTER 20.65 – VACATIONS.

...

20.65.070. Alteration of platted utility easements

...

H. Upon approval, the alteration of a utility easement can be finalized by either.

1. Recording of a subdivision plat which complies with Chapter 20.
2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not

October 29, 2020

Page -2-

Amendment to O2020-45

associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees. **The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed by a licensed land surveyor.**

Your consideration of this amendment is appreciated.


Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Marcus A. Mueller, Acting Planning Director 

DATE: October 14, 2020

RE: Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled October 12, 2020 meeting.

A motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend the adoption of Ordinance 2020-45.

In addition the KPB Planning Commission made a motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend additional language be added to KPB 20.65.07(H) of the ordinance; which staff will present in a separate amendment memo.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, at its meeting of October 12, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous vote.

Attached are the unapproved minutes of the subject portion of the meeting.

- *4. Plats Granted Final Approval (20.10.040) – None
- *5. Plat Amendment Requests – None
- *6. Commissioner Excused Absences
- *7. Minutes
 - a. September 28, 2020 Planning Commission Meeting

Vice Chair Ruffner asked if anyone present wanted to speak or had concerns about any of the items on the consent or regular agendas.

Hearing no one else wishing to comment, Vice Chair Ruffner returned the discussion to the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Brantley to approve the consent agenda and the regular agenda.

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

Yes		10	No	0	Absent	0
Yes		Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No		None				
Absent		None				

AGENDA ITEM D. OLD BUSINESS

1. Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures

Staff report given by Scott Huff.

PC Meeting: October 12, 2020

Since the last significant rewrite to the borough's subdivision code in 2014, platting staff have found a number of provisions that would benefit from clarifying language. The amendments to KPB Title 20 (Title 20) and KPB 2.40 will improve the platting process and procedure and make Title 20 consistent with current law. Among technical changes to borough subdivision regulations, the amendments will add a new uniform notice section that will be applicable to all of Title 20.

The amendments will repeal KPB 20.70, Vacation Requirements, and replace that chapter with a new vacations chapter, KPB 20.65, Vacations. The new vacation chapter will clarify that only platted public easements may be vacated by the planning commission subject to consent or veto by the borough or a city, if the easement to be vacated is within a city. The new vacation chapter will include a utility easement alteration or removal section to improve the procedure for alteration of utility easements.

The amendments to KPB 21.20 seek to improve definitions and to clarify that hearing officer appeals are on the record appeals. The amendments also provide for a process of non-participation by the borough and to remove requirements for providing statements and motions even when the borough is not a participating party.

The KPB Planning Commission reviewed Ordinance 2020-____, Subdivisions, Hearings and Appeals Amendment Ordinance at the meeting of September 28, 2020. After the meeting KPB Platting staff and KPB Legal staff revised the ordinance as outlined below.

- Updated the title to add the word 'AND'.
- Updated and completed the **WHEREAS** statements,
- Revise **SECTION 1** by removing AFTER NOTIFICATION and replacing with of date of distribution.

- Revise **SECTION 4** by adding a sentence to paragraph C so that the process to submit written comments is included on the notice that is sent to neighboring land owners.
- Revise **SECTION 4** by adding paragraph E. This section states that notice of any platting action must be sent by certified mail to any beneficial interest holder that is identified in the certificate to plat (title report).

E. Parties whose sole interest in the subdivision is as a beneficiary of a deed of trust, as shown on the certificate to plat, shall be sent certified mail notice by the planning department. If a beneficial interest holder does not respond within 30 days of the date of mailing indicating that the deed of trust either prohibits or allows the proposed platting action, or requires their signature on the plat, the plat may be approved. The owner may submit a letter of non-objection from the beneficial interest holder with the plat in lieu of the notice requirement. If the final certificate to plat shows additional beneficial interest holders, and they have not signed the plat or provided a letter of non-objection, the planning department will send them notice and give them a 30 day response time prior to approval of the final plat.

- Revise **SECTION 5** as follows

20.10.100(F) to read, '... the permit will be valid for the life of the structure, or for a period of time set by the Planning Commission.'

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

20.10.100(H) to correct the reference of code for party of record from 20.90 to 21.20.210.

- Revise **SECTION 11** by adding 'all of' in the first sentence so that all listed requirements must be shown and revising paragraph G to read smoother.
- Revise **SECTION 17 and SECTION 18** to identify the specific paragraphs that are being edited.
- Revise **SECTION 21** by leaving in the word 'shall' and not replacing the word with 'may'. This change is per the request of the City of Soldotna. This change will require the KPB Planning Commission to apply city subdivision standards. Any issue with a city design standard will need to be worked out between the applicant and city. Any appeal of a city design standard will follow KPB 21.01.020(E) which reads, *The borough will not be responsible to defend against any claims for damages, or other liability arising from the exercise of any power by the city, the city advisory planning commission, or any administrative officer of the city.*
- Revise **SECTION 22 and SECTION 24** to identify the specific paragraphs that are being edited.
- Revise **SECTION 27** specifically
 - o 20.40.070(A)(3) to read, 'The minimum lot size necessary to maintain the applicable separation distance [SET OUT AT] pursuant to 18 AAC 72.020 from any part of the wastewater system.'
 - o 20.40.070(C) to read, 'If all lots in the subdivision are served by a wastewater treatment and disposal system within a home rule or general law city, then signature by a licensed engineer or surveyor is not required.'

- Revise **SECTION 29** to state that the request for an exception shall be in writing.
 - Revise **SECTION 37**,
 - o Add 'CHAPTER' to the title.
 - o Edit 20.65.070(H) to require an exhibit drawing, prepared by a licensed engineer, to be recorded along with a resolution when an alteration or removal of a utility easement has been approved by the KPB Planning Commission.
- H. Upon approval, the alteration of a utility easement can be finalized by either.
1. Recording of a subdivision plat which complies with Chapter 20.
 2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees. The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

Mr. Huff noted that the "edit" language in the second bullet point under Section 37 was not included in the ordinance before them tonight and would request that the commission amend their motion to include this language.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Hearing no one wishing to comment Vice Chair Ruffner closed public comment and discussion was opened amount the commission.

Vice Chair Ruffner noted that there was a motion on the floor from the 9/28/20 meeting but he would entertain an amendment motion to add the additional language recommended by Mr. Huff.

MOTION: Commissioner Morgan motioned, seconded by Commissioner Ecklund to recommend to the Assembly the approval of Ordinance 2020-45 (from 9/28/20).

AMENDMENT MOTION: Commissioner Bentz motioned, seconded by Commissioner Venuti to recommend the following language be added to the ordinance: The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

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

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				

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

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				

Introduced by:	Mayor
Date:	02/02/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-06**

**AN ORDINANCE AMENDING KPB 16.04 – ESTABLISHMENT OF SERVICE AREAS
TO ESTABLISH RESIDENCY REQUIREMENTS FOR APPOINTED SERVICE AREA
BOARD MEMBERS**

WHEREAS, several provisions of KPB 4.30 place residency requirements on elected officials;
and

WHEREAS, specifically, KPB 4.30.010(A) places a one-year Kenai Peninsula Borough
residency requirement before a person is qualified to become a candidate for mayor;
and

WHEREAS, KPB 4.30.010(B) places a one-year residency requirement in the district from which
the candidate seeks election for borough assembly candidates; and

WHEREAS, KPB 4.30.010(D) places a one-year residency requirement for those service area
board members who are elected into office; and

WHEREAS, there is no similar residency requirement for service area board members who are
appointed; and

WHEREAS, the duties and responsibilities of service area board members are important to the
borough and the importance of one service area board over another does not change
simply because one was elected or appointed; and

WHEREAS, amending KPB 16.04 would make residency a requirement for both elected and
appointed service area board members, emphasizing that both types of boards are
valued by the borough and that neither method is preferable, but are instead
reflections of local community preferences; and

WHEREAS, by having the language that allows for exception to the residency requirement,
boards such as the Eastern Peninsula Highway Emergency Service Area which
includes no residents, can be created with the criteria for board members outlined so
as to reflect the purpose and need for the advisory board;

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:**

SECTION 1. That KPB 16.04, Establishment of Service Areas, is hereby amended by enacting KPB 16.04.064 and KPB 16.04.068 as follows:

16.04.064. Appointment of Board Members.

- A. All service areas shall have a service area board, composed of either elected or appointed board members, as provided in the code provisions applicable to each service area board.
- B. Members of appointed boards shall be appointed by the mayor and confirmed by the assembly.
- C. Members of elected boards shall be elected in accordance with KPB 16.04.065 and the procedures set out in Title 4 of the Kenai Peninsula Borough Code of Ordinances.

16.04.068 Residency Requirement.

Unless otherwise stated, all candidates, whether elected or appointed, for a service area board position must be:

- 1. A qualified voter of the State of Alaska; and
- 2. A resident of the Kenai Peninsula Borough; and
- 3. A resident of the service area for a minimum of one (1) year immediately preceding filing.

SECTION 2 That this ordinance shall become effective immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:



No:


Absent:

Kenai Peninsula Borough
Legal Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Colette Thompson, Borough Attorney 

FROM: Patty Burley, Deputy Borough Attorney 

DATE: January 21, 2021

RE: Ordinance 2021- 06, Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)

Several provisions in Chapter 4.30 of the Kenai Peninsula Borough Code of Ordinances (Borough Code) place a residency requirement on elected officials; candidates for mayor; candidates for School District Board seats; and candidates for those service area board positions which are elected. However, there is no residency requirement for appointed service area board positions.

While the newer Western Emergency Service Area section of Borough Code places a requirement that two service area members be from the Anchor Point Area and two from the Ninilchik area, there is no length of residence requirement as there is with elected service area board positions.

In order to provide consistency and uniformity throughout the Borough Code and among processes at the borough, amendments to KPB 16.04, Establishment of Service Areas are being proposed which would make the requirements for all positions the same, regardless of whether they are elected or appointed while still allowing flexibility when needed.

Your consideration is appreciated.

Introduced by:

Cox

Date:

03/02/21

Action:

Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-019**

**A RESOLUTION EXTENDING THE DISASTER EMERGENCY DECLARATION FOR
THE KENAI PENINSULA BOROUGH ISSUED DUE TO THE CURRENT AND
EXPECTED IMMINENT IMPACTS OF THE COVID-19 PANDEMIC TO JUNE 30, 2021**

WHEREAS, the borough mayor issued a Disaster Emergency Declaration on March 16, 2020, due to the current and expected imminent impacts of the COVID-19 pandemic in the areas of the Kenai Peninsula Borough outside of the cities; and

WHEREAS, the assembly extended the Disaster Emergency Declaration at its March 17, 2020, June 2, 2020, September 1, 2020, and its December 15, 2020 meetings and it will expire March 31, 2021 if not extended again; and

WHEREAS, the declaration activated the borough's emergency response plan, requested disaster assistance from the State of Alaska by making available resources as needed for the ongoing response and recovery from the current and potential impacts, and enabled the Office of Emergency Management to coordinate a variety of efforts to respond to the pandemic; and

WHEREAS, the borough continues to incur significant expenses directly related to the pandemic primarily including planning and coordinating the acquisition, storage, distribution and administration of vaccinations at various locations throughout the borough, the ongoing dissemination of information to the public about the pandemic and vaccinations, personal protective equipment to maintain the safety of first responders, and payroll costs for quarantine and overtime backfill; and

WHEREAS, the borough is utilizing emergency response personnel from borough emergency service areas to coordinate the dissemination and administration of the vaccinations throughout the borough outside their service areas, which could not be accomplished without the disaster declaration as service area funds may not be used for such purposes outside their service area, but CARES Act funds are available for these purposes; and

WHEREAS, two temporary employees who are funded by CARES Act funds are also playing a direct role in vaccine-related actions by manning the OEM call center, disseminating public information, helping to coordinate the vaccination programs and related efforts; and

WHEREAS, in order to successfully continue OEM’s role in planning and coordination of COVID vaccinations throughout the borough, processing resource requests, and other responses to the COVID pandemic as the needs arise, it is important to extend the disaster declaration until June 30, 2021 as the borough is continuing to provide daily responses for COVID-19 through its emergency medical service areas, Office of Emergency Management and numerous other departments;

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

SECTION 1. That the declaration of local disaster emergency issued by the borough mayor on March 16, 2020, is hereby extended to June 30, 2021, to allow for a more complete response. A copy of the declaration of disaster emergency extended by this resolution is attached and incorporated herein by reference.

SECTION 2. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY MARCH, 2020.

ATTEST:

Brent Hibbert, Assembly President

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of Emergency Management

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Tyson Cox, Assembly Member TC

FROM: Dan Nelson, Senior Manager – OEM DN

DATE: February 18, 2021

RE: Resolution 2021-019, Extending the Disaster Emergency Declaration for the Kenai Peninsula Borough Issued Due to the Current and Expected Imminent Impacts of the COVID-19 Pandemic to June 30, 2021 (Cox)

The COVID-19 pandemic is continuing to impact the borough, especially as vaccines became available within the Borough and the logistical needs that accompany its efficient distribution. The borough Office of Emergency Management ("OEM") continues to incur significant expenses for planning, coordination, vaccination distribution and coordinating a variety of efforts responding to the pandemic.

Most recently the OEM has devoted significant efforts towards planning and coordinating vaccination acquisition, training, storage, distribution, and the administration of shots. These activities have required additional temporary personnel and other expenses to be incurred. As the remaining CARES funding is spent, the borough may transition to FEMA reimbursement of expenses or any other funding streams that may become available for all of these expenses related to the response.

A pre-requisite for FEMA public assistance is a local disaster declaration being in effect when claimed costs are incurred. Because of the high costs still being incurred due to the ongoing COVID-19 pandemic, this extension of the disaster declaration for an additional three months is to ensure that all avenues of reimbursement and assistance are available to the borough, reducing the burden on local taxpayers.

Your consideration is appreciated.

Introduced by: Chesley
Date: 03/02/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-017**

**A RESOLUTION SUPPORTING REGIONAL AQUACULTURE ASSOCIATIONS AND
OPPOSING PROPOSED CHANGES TO THE MANAGEMENT PLAN OF KACHEMAK
BAY STATE PARK AND STATE WILDERNESS PARK THAT WOULD NEGATIVELY
IMPACT TUTKA BAY LAGOON HATCHERY**

WHEREAS, the State of Alaska Division of Natural Resources (DNR) recently proposed a management plan with the intent to adopt, which includes effective elimination of the “Fishery Enhancement - Hatcheries” category with respect to Kachemak Bay State Park (Park) and its Tutka Bay Lagoon Hatchery (TBLH); and

WHEREAS, the State of Alaska created its first state park, Kachemak Bay State Park, in 1970 using boundaries suggested by Senator Clem Tillion of Halibut Cove; and

WHEREAS, the State of Alaska created the Division of Fisheries Rehabilitation, Enhancement, and Development (F.R.E.D.) in 1971 and charged it to (1) develop and continually maintain a comprehensive, coordinated state plan for the orderly present and long range rehabilitation, enhancement and development of all aspects of the state’s fisheries for the perpetual use, benefit, and enjoyment of all citizens, and revise and update this plan annually; (2) encourage the investment by private enterprise in the technological development and economic utilization of the fisheries resources; and

WHEREAS, the State of Alaska F.R.E.D. division began building salmon hatcheries in 1973 and built TBLH in 1975-76, it being the sixth hatchery they built; and

WHEREAS, the State of Alaska contracted with Cook Inlet Aquaculture Association (CIAA) to operate TBLH in July 1991; and

WHEREAS, CIAA is a private, non-profit, regional aquaculture corporation that works with regional stakeholders to engage in salmon fisheries enhancement and habitat work throughout the Cook Inlet region for the benefit of salmon and all the groups who use salmon; and

WHEREAS, CIAA discontinued operating TBLH after the 2004 fry release due to pink salmon prices falling to 4¢/lb.; and

WHEREAS, 5 AAC 40.300. Establishes Regional Planning Teams (RPT) a regulation which states, “The commissioner will establish regions and regional planning teams for the primary purpose of developing comprehensive salmon plans for various regions of the state”;

WHEREAS, the provisions of 5 AAC 40.300 - 5 AAC 40.370 govern the structure and functions of each regional planning team and the development of a comprehensive salmon plan for each region; and

WHEREAS, the Cook Inlet RPT is made up of six members, three from ADF&G and three from CIAA, has met since at least 1981, and has approved the TBLH operation plans annually; and

WHEREAS, inside the boundaries of the Park are numerous private property holdings, many of which have houses and other improvements and, specifically, Tutka Bay has 20 private property lots; and

WHEREAS, harvests from CIAA hatchery programs are part of the Cook Inlet salmon processor business plans and closing TBLH would cause economic harm to the local processing sector; and

WHEREAS, there are 82 Lower Cook Inlet salmon seine permits and the owners of each of those and their crew would be harmed if TBLH closes;

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

SECTION 1. That the Kenai Peninsula Borough Assembly supports regional aquaculture associations in general and Tutka Bay Lagoon Hatchery in particular.

SECTION 2. That the Kenai Peninsula Borough Assembly supports scientific and unbiased methods to assess the impact of Tutka Bay Hatchery and its programs on marine ecosystems.

SECTION 3. That this resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF MARCH, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Endnotes

- Johannsen, Neil C. *Management Plan for Kachemak Bay State Park and Kachemak Bay State Wilderness Park, introductory letter, March 1995*
- Fair, Clark. *How Alaska's State Parks Came to Be*, September 8, 2020 *Peninsula Clarion*
- Roys, Robert S. *Division of Fisheries Rehabilitation, Enhancement and Development Report to the 1976 Legislature*, p1,
- Roys, Robert S. *Report to the 1975 Legislature Concerning the Activities of the Division of Fisheries Rehabilitation, Enhancement and Development*, p45 Alaska Department of Fish and Game
Division of Commercial Fisheries, February 10, 1975
- Bucher, Wesley A. and Hammerstrom, Lee. *1991 Lower Cook Inlet Area Annual Finfish Management Report*, p33, Alaska Department of Fish and Game Division of Commercial Fisheries, February 1993
- Stopha, Mark. *Alaska Salmon Fisheries Enhancement Annual Report 2017*, p81, Alaska Department of Fish and Game Division of Commercial Fisheries, March 2018.
- Holland, J.S. Ph.D. and McKean, Marianne. *FRED 1991 Annual Report*, p33, Alaska Department of Fish and Game Division of Fisheries Rehabilitation, Enhancement and Development. January 1992
- Hammerstrom, Lee F. and Dickson, Mark S. *2004 Lower Cook Inlet Area Annual Finfish Management Report*, p94, Alaska Department of Fish and Game Division of Commercial Fisheries, March 2005
- Dean, Ashley and Schwartz, Mark. Stanford News Service, news release from *Salmon Aquaculture in the Pacific Northwest: A Global Industry*, in the October 2003 *ENVIRONMENT* magazine. 9-22-03
<https://news.stanford.edu/pr/03/salmon924.html>

- Hollowell, Glenn; Otis, Ted; and Ford, Ethan. *2012 Lower Cook Inlet Area Finfish Management Report*, Alaska Department of Fish and Game Division of Commercial Fisheries. October 2013
- No author given. *Cook Inlet Aquaculture Association, 2013 Annual Report*, p10
- No author given. *1981 Annual Report*, CIAA, Committees, p

Yes:

No:

Absent:

MEMORANDUM

TO: Brent Hibbert, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Lane Chesley, Assembly Member *LC*

DATE: February 18, 2021

RE: Resolution 2021-017, Supporting Regional Aquaculture Associations and Opposing Proposed Changes to the Management Plan of Kachemak Bay State Park and State Wilderness Park that would Negatively Impact Tutka Bay Lagoon Hatchery (Chesley)

Kachemak Bay State Park is in the process of rewriting its Management Plan. The Park was created in 1970 and Tutka Bay Lagoon Hatchery (TBLH) was built in 1975-76. The State of Alaska (State) was the creator of both entities and the State managed both until 1991 when the State was abandoning all salmon hatcheries that contributed to commercial fisheries. The abandonment has been completed, long ago. At this time there is not a single State operated hatchery in Alaska with a salmon enhancement program intended to benefit a commercial fishery. Instead, the State supports Regional Aquaculture Associations and also a few private, non-profit (mom & pop) hatcheries.

Cook Inlet Aquaculture Association (CIAA) took over operation of TBLH in 1991, at about the same time it took over operation of two other State-owned hatcheries. Also, at about the same time, farm-raised salmon hammered the price of Alaska salmon. By 2004 the price of the pinks cost recovered at TBLH fell to 4¢/lb.! So CIAA discontinued operation of TBLH.

By 2011, however, the fate and popularity of pink salmon in the marketplace soared. Pink salmon were selling for 37¢/lb. and CIAA reopened TBLH. Alaska Department of Fish and Game encouraged the move and the State loaned CIAA money to accomplish needed renovations. The State also funded grants for state-owned hatcheries, including TBLH after 2011. About 2017 CIAA was able to adapt

TBLH to a fresh water egg-take (gamete collection) increasing the survival rate of eggs. The sky seemed blue and years of struggle were freshened with hope.

And now news comes that TBLH is no longer welcome in the Kachemak Bay State Park. A hatchery doesn't fit the view shed of a "scenic" park according to a document from State Parks and comments from others. Actually, TBLH cannot be seen from Tutka Bay. Other people claim hatchery pink salmon are negatively impacting ecosystems that other marine animals and other salmon depend on. To that end we can discuss various studies and scientific data, which contradict this theory. That is the issue before the Assembly today.

Your consideration is appreciated.

Introduced by: Dunne, Johnson, Mayor
Date: 03/02/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-018**

**A RESOLUTION ASKING THE US SECRETARY OF COMMERCE TO CONSIDER
VETOING THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL'S
ADOPTION OF MEASURES THAT WILL CLOSE COMMERCIAL SALMON
FISHING IN THE COOK INLET EXCLUSIVE ECONOMIC ZONE**

- WHEREAS,** the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA) directs the North Pacific Fishery Management Council (Council) to prepare a fishery management plan for each fishery under its authority that requires conservation and management; and
- WHEREAS,** the Council, at its December 7, 2020 meeting, selected Alternative 4 amending the Fishery Management Plan for the salmon fisheries that occur in waters of Cook Inlet; and
- WHEREAS,** Alternate 4 will close the Cook Inlet Exclusive Economic Zone (EEZ) to all commercial salmon fishing; and
- WHEREAS,** the commercial fishing industry has been an important economic activity for 138 years, providing many jobs for Kenai Peninsula residents; and
- WHEREAS,** the commercial fishing industry provides a large tax base for the Kenai Peninsula Borough in the form of property taxes, personal property taxes and raw fish tax; and
- WHEREAS,** commercial fishing in the EEZ has occurred to some extent for over a hundred years, and has been a main area for salmon harvest since 1947; and
- WHEREAS,** for the existing processors to produce a high-quality product it is important that they receive fish in an orderly and timely fashion; and
- WHEREAS,** the drift fleet in Cook Inlet is an integral gear group that has a substantial harvest in the lower inlet (overlapping with the EEZ); and
- WHEREAS,** the local borough government has expressed interest in maintaining a healthy economy and jobs would be reduced if the Council's adoption of Alternative 4 were enacted; and

WHEREAS, if Alternative 4 is enacted, it will eliminate jobs in the commercial fishing and processing sectors, eliminate jobs in all the support industries, and cause harm to all the coastal communities in the Kenai Peninsula Borough;

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

SECTION 1. That the Kenai Peninsula Borough Assembly asks the US Secretary of Commerce to consider vetoing the North Pacific Management Council adoption of Alternate 4.

SECTION 2. That this resolution takes effect immediately upon adoption.

SECTION 3. That copies of this resolution be submitted to Alaska Congressional Delegation, Senator Lisa Murkowski, Senator Dan Sullivan and Representative Don Young.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY MARCH, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-23**

**AN ORDINANCE APPROPRIATING SCHOOL BOND INTEREST TO COVER THE
COST OF INELIGIBLE SCOPE OF WORK ON THE REDOUBT ELEMENTARY
ROOF PROJECT**

- WHEREAS,** in the application process for the approval of the Redoubt Elementary Roof project, by the Department of Education and Early Development (DEED), it was determined that a portion of the roof was ineligible for replacement under the DEED grant reimbursement program; and
- WHEREAS,** the assembly on May 5, 2020, approved an appropriation for \$100,000 to cover the ineligible portion of the Redoubt Elementary Roof project; and
- WHEREAS,** in the design and bidding process this section of roof was compartmentalized using an additive alternate approach that clearly identified the cost for this portion of the scope of work; and
- WHEREAS,** in the construction process it was discovered that due to a moisture damaged portions of the roof and structure needed to be repaired; and
- WHEREAS,** a change order to the construction contract was processed to address the work, however there were insufficient interest funds in the contract to cover the cost of this work; and
- WHEREAS,** interest funds from school bond proceeds must be used on related school projects, the work is ineligible to be paid for by bond funds and therefore, available school bond interest is being appropriated to cover this portion of the work;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the amount of \$41,000 in school bond interest earnings from bonds issued in 2014 and prior are appropriated from account 401.27910 to account 401.76040.20SCH.49999 to cover the ineligible costs of the Redoubt Elementary Roof Project.

SECTION 2. That upon enactment this ordinance shall be effective retroactively on September 1, 2020.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough
Purchasing & Contracting Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: John Hedges, Purchasing & Contracting Director *JH*
Brandi Harbaugh, Finance Director *BH*

DATE: February 18, 2021

RE: Ordinance 2020-19- 23, Appropriating School Bond Interest to Cover the Cost of Ineligible Scope of Work on the Redoubt Elementary Roof Project (Mayor)

In the application process for the approval of the Redoubt Elementary Roof project, by the Department of Education and Early Development (DEED), it was determined that a 2,803 square foot portion of the roof was ineligible for replacement under the DEED grant reimbursement program.

In the design and bidding process this section of roof was compartmentalized using an additive alternate approach that clearly identified the \$100,000 cost for this portion of the scope of work.

Interest funds from the bond proceeds that are not regulated by DEED were appropriated through Ordinance 2019-19-32 to cover this portion of the work.

In the construction process it was discovered that due to a moisture issue some sheeting and structural damage had occurred and needed to be repaired. The condition of the roof that led to the moisture issues was also identified and corrected.

A change order to the construction contract was processed to address the work, however there were insufficient interest funds in the contract to cover the cost of this work.

This ordinance appropriates school bond interest from bonds issued in 2014 and prior to cover the cost of the ineligible scope of work.

Your consideration of this ordinance is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No. <u>401.27910</u>	Amount: <u>\$41,000.00</u>
By: <u><i>PP</i></u>	Date: <u>2/19/2021</u>

Introduced by: Hibbert, Johnson
Date: 03/02/21
Hearing: 04/20/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-24**

**AN ORDINANCE APPROPRIATING FUNDS AND AUTHORIZING THE BOROUGH
CLERK TO CONTRACT FOR NECESSARY VOTING MACHINES, SOFTWARE, AND
RELATED EQUIPMENT TO PROVIDE AN ACCESIBLE VOTING SYSTEM FOR
PERSONS WITH DISABILITIES**

- WHEREAS,** the Americans with Disabilities Act (ADA) and the Help America Vote Act of 2002 (HAVA), as applicable to federal elections, along with other federal laws related to protecting the right to vote, require full and equal opportunity to vote for all eligible voters and an accessible voting system for persons with disabilities; and
- WHEREAS,** a complaint was filed following the October 6, 2015 borough election with the Alaska State Commission for Human Rights (“ASCHR”) alleging discrimination on the basis of a physical disability due to the borough allegedly not accommodating the complainant’s vision disability by providing an accessible voting machine; and
- WHEREAS,** the case caption is *Richard Malley v. Kenai Peninsula Borough*, ASCHR No. J-15-351 (hereinafter the “*Malley case*”);
- WHEREAS,** on October 16, 2018 ASCHR issued its substantial evidence determination in the *Malley case* and offered a conciliation agreement in lieu of proceeding to public hearing; and
- WHEREAS,** the borough entered into the conciliation agreement on December 18, 2018; and
- WHEREAS,** as part of the conciliation agreement entered into in the *Malley case* the borough committed to adopting a voting system to provided private, independent voting by visually impaired citizens; and
- WHEREAS,** the borough must acquire voting equipment and related software that will accommodate individuals with disabilities by providing accessible voting machines and related software and services that allow for “meaningful access to private and independent voting” (hereinafter collectively “ADA compliant voting system”); and

- WHEREAS,** the ADA compliant voting system must be provided at every polling precinct or location in the borough where voting occurs; and
- WHEREAS,** on February 9, 2021, ASCHR approved an amendment to the conciliation agreement to provide the borough more time to acquire an ADA compliant voting system in order to comply with the terms of the conciliation agreement; and
- WHEREAS,** the current voting equipment used by the borough has passed its serviceable life; and
- WHEREAS,** the current voting tabulation server used by the borough is no longer supported by software or hardware vendors; and
- WHEREAS,** current voting equipment used by the borough is incapable of accommodating individuals with disabilities by providing accessible voting machines that allow for “meaningful access to private and independent voting”; and
- WHEREAS,** the State of Alaska is not able to provide the borough use of its ADA compliant voting system; and
- WHEREAS,** KPB 4.10.120 provides that the borough clerk may contract for the provision of specialized materials and supplies without obtaining competitive bids; and
- WHEREAS,** since 2007, only nine voting system providers in the United States have been able to meet the testing standards and accreditation requirements necessary to obtain Election Assistance Commission (EAC) certification under HAVA to provide the necessary ADA compliant voting system that will fit the borough’s needs; and
- WHEREAS,** only two EAC certified companies responded to a request for quotes for an ADA compliant voting system that will fit the borough’s needs, Dominion Voting Systems Inc. (Dominion) and Election Systems & Software, Inc. (ES&S); and
- WHEREAS,** after vetting the quotes, capabilities and services that each company could provide the borough for the costs quoted, Dominion was determined to be the superior choice to fulfill the borough’s needs; and
- WHEREAS,** Dominion is a Colorado based company that provides a certified ADA compliant election system which is used by the State of Alaska, as well as many other boroughs and other municipalities in Alaska for the purposes of conducting and administering federal, state, and local municipal elections; and
- WHEREAS,** the borough has used Dominion, including predecessors in interest, elections products, equipment and software since 1999; and
- WHEREAS,** the borough is collaborating with the cities within the borough to provide for intergovernmental administration of local elections; and

WHEREAS, the funds appropriated by this ordinance will be utilized to cover the cost of the necessary election equipment to include ADA compliant voting equipment and related software;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That \$100,816 is appropriated from the General Fund fund balance account number 100.27910 to be transferred to the General Government Capital Project Fund to account number 407.11130.21VOT.49999 for the purchase of seven ADA compliant voting machines plus \$5,000 for estimated shipping costs.

SECTION 2. That \$48,000 is currently available through the FY2021 annual budgetary process in the General Fund Assembly - Elections Division account number 100.11130.43410 to supplement the FY2021 total annual lease cost of \$148,976 for the ADA compliant voting system, which includes necessary system hardware, implementation, software licensing, support services, and \$20,000 in estimated shipping costs.

SECTION 3. That \$100,976 is appropriated from General Fund fund balance account number 100.27910 to account number 100.11130.43011 to provide funding for the FY2021 total annual lease cost of \$148,976 for the ADA compliant voting system, which includes necessary system hardware, implementation, software licensing, support services and \$20,000 in estimated shipping costs.

SECTION 4. Pursuant to KPB 4.10.120(C), the borough clerk is authorized to execute an agreement, pursuant to terms and conditions substantially similar to the attached document, between Dominion Voting Inc. and the Kenai Peninsula Borough for an ADA compliant voting system.

SECTION 5. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Office of the Borough Clerk

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Brent Hibbert, Assembly President
Brent Johnson, Assembly Vice President

FROM: Johni Blankenship, Borough Clerk JB
Ben Hanson, IT Director BH
John Hedges, Purchasing Director JH

DATE: February 18, 2021

RE: Ordinance 2020-19-24, Appropriating Funds and Authorizing the Borough Clerk to Contract for Necessary Voting Machines, Software, and Related Equipment to Provide an Accessible Voting System for Persons with Disabilities (Hibbert, Johnson)

A complaint was filed following the October 6, 2015 borough election with the Alaska State Commission for Human Rights ("ASCHR") alleging discrimination on the basis of a physical disability due to the borough allegedly not accommodating the complainant's vision disability by providing an accessible voting machine.

The borough entered into the conciliation agreement on December 18, 2018. As part of the conciliation agreement entered into in the Malley case, the borough committed to adopting a voting system to provide private, independent voting by visually impaired citizens. The ADA compliant voting equipment must be provided at every polling precinct or location in the borough where voting occurs. On February 9, 2021, ASCHR approved an amendment to the conciliation agreement to provide the borough more time to acquire ADA compliant voting equipment in order to comply with the terms of the conciliation agreement.

The implementation of a new, ADA compliant voting system will require considerable effort from multiple borough departments (Clerks, Information Technology, Maintenance). Given the competing priorities facing each of these departments, it is essential that this purchase and implementation move forward prior to the new fiscal year start.

KPB 4.10.120 provides that the borough clerk may contract for the provision of specialized materials and supplies without obtaining competitive bids. Quotes

were obtained from two companies, Dominion Voting Systems Inc. (Dominion) and Election Systems & Software (ES&S). After vetting the quotes, capabilities and services that each company could provide the borough for the costs quoted, Dominion was determined to be the superior choice to fulfill the borough's needs.

In addition, the borough is benefiting from the ability to incorporate the scope of work, deliverables, and specifications terms from the State of Alaska's Voting System RFP pursuant to KPB 5.28.030 which allows the borough to join other units of government in cooperative purchasing venture that serves the best interests of the borough.

Pursuant to this ordinance and the contract that the parties would enter into, the borough will purchase 7 ADA compliant voting machines for use at borough vote centers. The purchase price includes \$5,000 in estimated shipping costs. The Borough would lease 26 ADA complaint voting machines and related hardware components and services, to include an annual software use license, for a period of two years with an option to purchase or terminate after two years. The first year lease total includes \$20,000 in estimated shipping costs for the 26 machines and related components.

Your consideration is appreciated.

FINANCE DEPARTMENT FUNDS/ACCOUNT VERIFIED	
Acct. No. 100.27910	- Amount \$100,816
Acct. No. 100.11130.43410	- Amount \$48,000
Acct. No. 100.27910	- Amount \$100,976
By: <u>PP</u>	Date: <u>2/19/2021</u>
By: <u>BH</u>	

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-10**

**AN ORDINANCE PROVIDING AN EXEMPTION FROM KPB CHAPTER 14.06
“ROAD STANDARDS” TO ALLOW ACCEPTANCE OF A NON-CONFORMING
ROAD INTO THE BOROUGH ROAD MAINTENANCE PROGRAM**

- WHEREAS,** in 2016 the Kenai Peninsula Borough (Borough) accepted a grant agreement from the US Department of Transportation, Western Federal Lands Division (DOT-WFL) for the construction of 7.5 miles of road located along the Kenai Spur Highway right-of-way; and
- WHEREAS,** the grant was contingent upon a scope of work that would mitigate impacts to wetlands and sensitive habitat currently being impacted by off-road vehicle traffic that utilizes the right-of-way for recreational and private property access purposes; and
- WHEREAS,** as a condition of accepting the grant funding from DOT-WFL, the Borough agreed to maintain the road; and
- WHEREAS,** the grant provided to the Borough by DOT-WFL sought to direct the flow of traffic away from the wetlands and sensitive habitat and onto a roadway in order to protect the environment; and
- WHEREAS,** as a condition of accepting the grant funding from DOT-WFL, the Borough agreed to maintain the road; and
- WHEREAS,** chapter 14.06.090 requires that all Category IV Roads be built to a minimum of 26 feet in width; and
- WHEREAS,** roads that are not built to Borough Standards are not eligible under the code for inclusion into the Borough Road Maintenance Program; and
- WHEREAS,** it is in the best interest of the Borough to provide winter maintenance for this 7.5 miles of road on a regular basis to allow for public use of the access and monitoring of the road conditions; and
- WHEREAS,** summer maintenance should be applied along this section of road on an as needed basis when deemed necessary to preserve the integrity of the road embankment and infrastructure; and

WHEREAS, because the road was not constructed to meet road service area standards the typical application of road service area maintenance practices would not be an efficient use of Borough resources; and

WHEREAS, it is in the best interest of the Borough to include the Kenai Spur Extension into the road maintenance program provided by the Road Service Area in conjunction with its standard maintenance program; and

WHEREAS, the Kenai Peninsula Borough Road Service Area Board at its regularly scheduled meeting of February 9, 2021, recommended unanimous approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That notwithstanding the requirements of KPB Chapter 14.06, which sets construction standards to be met by roads for acceptance into the Borough's Road Maintenance Program, the Kenai Spur Extension is hereby granted an exception from the KPB Chapter 14.06 road construction standards and is hereby accepted onto the Borough's Road Maintenance Program.

SECTION 2. That this ordinance shall become effective upon enactment and also upon the Borough's receipt of the DOT-WFL's acceptance of final completion of the Kenai Spur Extension Project.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP

FROM: John Hedges, Purchasing & Contracting Director JH
Dil Uhlin, Purchasing & Contracting Director DU

DATE: February 18, 2021

RE: Ordinance 2021-10, Providing an Exemption from KPB Chapter 14.06 Road Standards to Allow Acceptance of a Non-Conforming Road into the Borough Road Maintenance Program (Mayor)

In 2016, the Kenai Peninsula Borough (Borough) accepted a grant agreement from the US Department of Transportation, Western federal Lands Division (DOT-WFL) for the construction of 7.5 miles of road located along the Kenai Spur Hwy right-of-way.

The grant was contingent upon a scope of work that would mitigate impacts to wetlands and sensitive habitat currently being impacted by off-road vehicle traffic that utilize the right-of-way for recreational and private property access purposes.

As part of the grant agreement, under Section C, Jurisdictional and Maintenance Commitment, the Borough has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

It is in the best interest of the Borough to provide winter maintenance on a regular basis to allow for public use of the access and monitoring of the road conditions. Summer maintenance should be applied on an as needed basis when deemed necessary to preserve the integrity of the road embankment and infrastructure.

Chapter 14.06 of the Kenai Peninsula Borough Code of Ordinances requires that all roads accepted into maintenance meet Borough standards. Per the grant agreement this road was not built to meet all necessary Road Service Area standards.

Pursuant to the DOT-WFL grant agreement the Borough is obligated to provide road maintenance at its expense.

It is in the best interest of the Borough to include the Kenai Spur Extension into the road maintenance program provided by the Road Service Area in conjunction with its standard maintenance program.

Your consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	03/02/21
Hearing:	04/06/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-11**

**AN ORDINANCE AUTHORIZING A COMMUNICATIONS SITE LEASE
AGREEMENT WITH VERTICAL BRIDGE DEVELOPMENT, LLC**

WHEREAS, Vertical Bridge Development, LLC is seeking to improve wireless services in the Summit Lake area; and

WHEREAS, Vertical Bridge Development, LLC is proposing to install a communication tower and equipment at Kenai Peninsula Borough (“borough”) managed land in the rural community of Summit Lake; and

WHEREAS, in 2015, the borough received a final decision approving conveyance of the land; and

WHEREAS, Vertical Bridge Development, LLC has determined that a 2,187 square foot site on borough-managed land to the west of Summit Lake is the most desirable to meet its requirements; and

WHEREAS, the 2,187 square-foot site is located within the 317.86-acre borough-managed parcel described as Govt. Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Seward Recording District, Third Judicial District, State of Alaska; and

WHEREAS, Vertical Bridge Development, LLC proposes a market value lease; and

WHEREAS, entering into a negotiated lease of the property with Vertical Bridge Development, LLC is consistent with Goal 2 of the Moose Pass comprehensive plan, and furthers Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of March 15, 2021, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. The assembly finds that entering into a Communications Site Lease Agreement with Vertical Bridge Development, LLC is in the best interest of the public and the borough. This finding is based on the following facts:

- a. The borough will receive a fair market rent for the term of the lease.
- b. The land will be used to provide a new communications site that will benefit communication network users, including public safety providers.
- c. The leasing of land for communication purposes is supported by Goal 2 of the Moose Pass Comprehensive Plan and Goal 2, Focus Area: Land Use and Changing Environment, Objective C of the Kenai Peninsula Borough Comprehensive Plan.

SECTION 2. The mayor is authorized, pursuant to KP 17.10.100(I), Negotiated Sale or Lease, to negotiate and enter into a lease of the above-described area to Vertical Bridge Development, LLC, subject to all lease conditions required by this ordinance and the applicable provisions of KP 17.10, Borough Land and Resources.

SECTION 3. The assembly makes an exception to KP 17.10.090 requiring classification prior to disposal. This exception is based on the following findings of facts pursuant to KP 17.10.230:

1. Special circumstances or conditions exist.
 - a. KP 17.10.080(A) states, classification of property is for review, plan implementation and management purposes. The classification system designates the most appropriate uses of the land and thereby guides borough management of such lands and implementation actions to provide for the identified users.
 - b. KP 17.10.080(E) states, classification or reclassification shall be based on a need identified in the borough Comprehensive Plan or upon recommendations from the mayor, the planning commission, an advisory planning commission, the public, or a local, state, or federal government agency. The borough has no identified management plan for this property at this time.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is in the most practical manner of complying with the intent of this chapter.
 - a. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.

3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.

- a. The communication tower site is compatible with the surrounding vacant, utility and recreational land uses.

SECTION 4. Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of 17.10.110, Notice of Disposition, based on the following findings of facts:

1. Special circumstances or conditions exist.

- a. The proposed lease is solely with Vertical Bridge Development, LLC and for the purpose of operating and maintaining a communication tower site.
- b. The notice requirement is intended to make the public aware of an opportunity to purchase borough property, which is unnecessary since the intent of the disposal is to lease the property solely to Vertical Bridge Development, LLC.

2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.

- a. The notice requirement is intended to make the public aware of an opportunity to purchase property, which is not applicable to the lease of property solely to Vertical Bridge Development, LLC.

3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.

- a. The communication tower site is compatible with the surrounding land uses.

SECTION 4. This lease is subject to a condition that the Director of the State of Alaska, Department of Natural Resources, Division of Mining, Land, and Water consents to the lease.

SECTION 5. The mayor is authorized to execute a Communications Site Lease Agreement with terms and conditions substantially similar to the agreements attached to this resolution.

SECTION 5. Vertical Bridge Development, LLC shall have 90 days from the date of enactment of this ordinance to execute the agreement.

SECTION 6. That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2021.**

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:



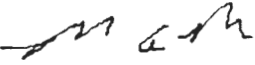
No:


Absent:

Kenai Peninsula Borough
Planning Department – Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor 
Melanie Aeschliman, Planning Director 
Marcus Mueller, Land Management Officer 

FROM: Julie Denison, Land Management Technician 

DATE: February 18, 2021

RE: Ordinance 2021-11, Authorizing a Communications Site Lease Agreement to Vertical Bridge Development, LLC (Mayor)

Vertical Bridge Development, LLC has submitted an application for a lease of borough land in the Summit Lake area for a communication tower site. In 2015, the subject land was approved to the Kenai Peninsula Borough by the State of Alaska under municipal land entitlement ADL 227985. The communications site lease has been negotiated using standard practices.

This ordinance will be brought before the Kenai Peninsula Borough Planning Commission at its March 15, 2021 meeting. The recommendations of the Planning Commission will be provided to the assembly prior to the scheduled hearing on this ordinance.

Your consideration of this ordinance is appreciated.

COMMUNICATIONS SITE LEASE AGREEMENT

This COMMUNICATIONS SITE LEASE AGREEMENT (this “Agreement”) will become effective when all parties have signed the Agreement (the “Effective Date”). This Agreement is entered into by the **Kenai Peninsula Borough**, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the “KPB” or “Lessor”), and **Vertical Bridge Development, LLC**, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487 (hereinafter “Lessee”).

PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

1. Background. The KPB owns certain real property located in the Kenai Peninsula Borough, in the state of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant the Lessee the right to use a portion of the Property in accordance with the terms of this Agreement.

2. Authorized Contact. All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party’s own risk.

KPB

Name: Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

LESSEE

Name: Vertical Bridge Development, LLC
Attn:
Mailing Address: 750 Park of Commerce Dr., Suite 200
Boca Raton, FL 33487

Name:
Attn:
Mailing Address:

3. Contract Documents. As authorized by KPB Ordinance 2021-_____, this lease agreement (“Agreement”) is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Appendix B: Site Specific Lease Provisions

Exhibit 1: Description of the “Property” and the “Leased Premises”

Exhibit 2: Leased Premises site sketch

Exhibit 3: Memorandum of Lease

If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: Appendix B, the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY.

(a) Subject to the terms and conditions of this Agreement, KPB hereby grants to Lessee an exclusive option to lease a certain portion of the Property containing approximately 2,187 square feet (5-sided perimeter measuring 25'- 50'- 50'- 25'- 35.4') including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the "Leased Premises") for the placement of a Communication Facilities.

5. TERM.

(a) The initial term will be five (5) years (the "Initial Term"), commencing on the Effective Date.

(b) Lessee will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless Lessee delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

6. CONDITIONAL LEASE.

This Lease is issued on a conditional basis and shall be cancelled in whole or in part in the event the borough is denied title to said lands. However, the borough shall in no way be liable for any damage that may be done to the land by the Lessee or liable for any claim of any third party, or to any claim that may arise from ownership. In the event the borough does receive title to the land under lease, the conditional lease shall have the same standing, force and effect as non-conditional leases issued under the provisions of KPB 17.10.

7. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by Lessee upon written notice to KPB, if Lessee is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Lessee; or if Lessee in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(b) by Lessee upon written notice to KPB, if Lessee determines, in its sole discretion, due to the title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

(c) by Lessee upon written notice to KPB for any reason or no reason, at any time prior to commencement of construction by Lessee; or

(d) by Lessee upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as Lessee pays KPB a termination fee equal to six (6) months' Rent, at the then-current rate, and subject to removal requirements contained within Section 13. No such termination fee will be payable on account of the termination of this Agreement by Lessee under any termination provision contained in any other Section of this Agreement.

8. RENT. Beginning on the Effective Date, Lessee shall pay to KPB a monthly rent payment of One Thousand and No/100 Dollars (\$1,000.00) ("Rent"), at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each anniversary of the Term Commencement Date, Rent shall adjust annually by Two percent (2%) over the prior year's Rent amount.

9. TAXES. Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Communication Facilities located on the Leased Premises, including private leasehold interests.

10. USE. The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with Lessee's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, Lessee will have the exclusive right to install and operate upon the Leased Premises communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

11. SECURITY AND BUFFER LANDSCAPING.

(a) **Fence & Site Security.** Notwithstanding Section 4 above, the Lessee will install a locked, sight-obscuring fence at least six feet (6') in height around the perimeter of the Leased Premises to protect against unauthorized access to the Leased Premises. The fence must be of a color that blends in with the surrounding landscape (i.e. brown, green or similar color). Lessee may also elect, at its expense, to construct such other enclosures and/or fences as Lessee reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. Lessee may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

12. ACCESS, MAINTENANCE, AND UTILITIES.

(a) **Access.** During the Term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPB for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased

Premises, subject to the terms and conditions herein set forth. KPB agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services. Upon Lessee's request, KPB will execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Lessee's request.

(b) **Maintenance.** Lessee will keep and maintain the Leased Premises in good condition.

(c) **Utilities.** The Lessee is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any KPB-owned electrical, communication, or other utility without KPB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

13. EQUIPMENT, FIXTURES AND REMOVAL. The Communication Facilities will at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. Lessee or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement, or upon cessation, abandonment, or non-use of the tower for communication purposes for a period of 6 consecutive months following construction of the tower (the "Removal Period"), Lessee must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation materials to a depth of ten feet (10') below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine, without any obligation on the part of KPB to account to Lessee for any proceeds therefrom. Time is of the essence.

14. ASSIGNMENT. Lessee may assign this Agreement to any person or entity, at any time with prior written consent of KPB's mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located.

15. SUBLEASING AND REVENUE SHARE.

(a) **Subleasing.** Lessee will have the exclusive right to sublease or grant licenses to use the improvements or any other towers, structures, equipment, or ground space on the Leased Premises, provided that Lessee sends Lessor written notice within (15) days of such sublease or grant licenses.

(b) **Revenue Share.** In addition to and separate from the Rent, Lessee shall pay to the Lessor thirty-three percent (33%) of rents actually collected by Lessee from any applicable sublessees, sublicenses, collocation or similar vertical space rental agreements, exclusive of non-recurring fees (e.g. structural analysis fees, mount analysis fees, and capital expenditures) and reimbursements (such as for taxes and utilities) ("Revenue Share"). The Revenue Share shall be paid to Lessor with the Rent in the month immediately following receipt by Lessee from the applicable sublessee. Upon reasonable written request,

Lessee will provide Lessor redacted copies of any applicable Sublease for the purpose of confirming relevant financial terms and information. For the purposes of this Agreement: (i) "Sublease" is defined as any arrangement in which the Lessee or any sublessee leases to another party or entity, any portion of the Lease Premises described in this Agreement or improvements thereon, including but not limited to a sublease for an antenna, microwave dish, or wireless communications equipment; and (ii) "Sublessee" means any sublessee or licensee of Lessee, that: (A) has entered into a sublease or license with Lessee for the use of the improvements after the Effective Date; and (B) is not paying any rent or fees directly to Lessor for the use of ground space related to the use of Lessee's improvements.

(c) **Authorized Contact of Sublessee.** Lessee shall provide the KPBB the name, telephone number, and email address of the authorized contact for the sublessee who is responsible for sublessee's day-to-day operations or activities on the Leased Premises.

16. CO-LOCATE RIGHTS RESERVED BY KPBB. KPBB reserves the right to install emergency response communication equipment on Lessee's tower. Ninety (90) days prior to the exercise of this reservation, KPBB shall provide Lessee with a complete inventory of equipment and proposed vertical location. Lessee shall confirm KPBB's equipment will not interfere with Lessee's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPBB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPBB's emergency response communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPBB's right to install equipment on Lessee's tower will be subject to Lessee's reasonable determination that, at the time in which KPBB proposes to install its equipment, Lessee's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPBB's proposed equipment installation. In connection with the foregoing, each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Section 15 and the consummation of the transactions contemplated hereby.

17. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) KPBB shall not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPBB will cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPBB agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

(b) To the best of KPBB's knowledge, KPBB has complied and will comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by KPBB or, to the knowledge of KPBB, by any prior owner or user of the Property. To the knowledge of KPBB, there has been no release of or contamination by hazardous materials on the Property.

(c) Subject to Section 11 above, Lessee will have access to all utilities required for the operation of Lessee's improvements on the Leased Premises that are existing on the Property.

(d) Except for the sublessees and licensees of Lessee, there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

(f) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

18. WAIVERS.

(a) KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by Lessee.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

19. INSURANCE. Insurance coverage required under this Agreement shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Agreement shall remain in effect for the life of this Agreement and shall be a part of the contract price. If Contractor's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Agreement, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Agreement and updated certificates shall be provided upon insurance coverage renewal, where applicable. Lessee and subcontractor(s), sublessees, sublicenses, of any tier shall provide and maintain:

(a) Commercial General Liability (CGL): The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. If necessary to provide the required limits, the Commercial General Liability policy's limits may be layered with a Commercial Umbrella or Excess Liability policy. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

(b) Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required.

(c) **Worker's Compensation Insurance:** For all employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) each person and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) policy limit. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included.

(d) **Property Insurance:** Insuring against all risks of loss to any Lessee improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

(e) **Automobile Liability:** The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.

(f) **Full policies.** At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska.

(g) **No Representation of Coverage Adequacy.** By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, sublessee, and/or contractor or subcontractor(s) of any tier, and such coverage and limits shall not be deemed as a limitation on the liability of the Contractor and subcontractor(s) of any tier under the indemnities granted to the Borough in this Agreement.

(h) **Self-insurance.** Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

20. WAIVER OF SUBROGATION. To the extent allowed by law, Lessee hereby grants to KPB a waiver of any right of subrogation which any insurer of said Lessee may acquire against the KPB by virtue of the payment of any loss under such insurance. It is the Lessors sole and strict responsibility to notify its insurer of this obligation and obtain a waiver of subrogation endorsement from the insurer, if required.

21. NON-EXCLUSIVITY. KPB acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by KPB to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to Lessee, KPB reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment or operations.

22. LESSEE LIABILITIES. In addition to other liabilities under this Agreement, the Lessee has the following liabilities and agrees:

(a) The Lessee assumes all risk of loss, damage or destruction to Lessee's improvements on the Leased Premises.

(b) The Lessee will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the sitting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

(c) The KPB has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The Lessee has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

23. INDEMNIFICATION.

(a) Lessee agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessee. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where the Lessee has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against KPB relating to the Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless Lessee, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of KPB arise immediately upon notice to the Lessee of any action, claim, or lawsuit. Lessee will notify KPB in a timely manner of the need for indemnification but such notice is not a condition precedent to KPB's obligation and may be waived where the KPB has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessee relating to the KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, KPB's duty to indemnify, defend, and hold harmless Lessee as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessee, its employees, its employees, affiliates, officers, directors, successors and assigns. Lessee further acknowledges the following: (1) KPB currently has no

appropriation currently available to it to defend and indemnify Lessee under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the KPB Assembly; and (3) the KPB Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of KPB.

24. INSPECTION. The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, KPB shall provide Lessee with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during KPB's inspection.

25. FORCE MAJEURE. The time for performance by KPB or Lessee of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or Lessee, as the case may be.

26. DEFAULT. The failure of Lessee or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting party must provide prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting party.

27. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

28. LESSEE MORTGAGES.

(a) KPB consents to the granting by Lessee of a lien and security interest (each, a "**Lessee Mortgage**") in Lessee's interest in this Agreement and all of Lessee's personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a "**Lender**") only to the extent and amount necessary to maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB's rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the Lessee's interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

(b) KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

29. MISCELLANEOUS.

(a) **Survival.** If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

(b) **Non-waiver.** Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party's rights hereunder, will not waive such rights.

(c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(e) **Memorandum.** A short-form Memorandum of Lease may be recorded at KPB or Lessee's option in the form as depicted in Exhibit 3, attached hereto. KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) **W-9.** As a condition precedent to payment, the KPB agrees to provide the Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

(h) **Entire Agreement.** This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

LESSOR: The Kenai Peninsula Borough

Charlie Pierce, Mayor

Date: _____

LESSEE: Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

LESSEE: Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

The Property is legally described as follows:

Govt Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Third Judicial District, State of Alaska.

The Leased Premises are described and/or depicted as follows:

On the above described Property, a 2,187 square foot area bounded by a 5-sided perimeter measuring 25'-50'-50'-25'-35.4' and a 15' wide non-exclusive access road as depicted on Exhibit 2.

EXHIBIT 3

Memorandum of Lease

(Attached)

(Above 2" Space for Recorder's Use Only)

Prepared by and Return to:

Kenai Peninsula Borough
Attn: Land Management Division
144 N. Binkley Street
Soldotna, AK 99669

Grantor: Kenai Peninsula Borough
Grantee: Vertical Bridge Development, LLC
Legal Description: Attached as Exhibit 1
Tax Parcel ID #: 03525005
Site Name: AK3 Canyon Creek
State: Alaska
Borough: Kenai Peninsula Borough
Recording District: Seward Recording District

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into by and between **KENAI PENINSULA BOROUGH**, an Alaska Municipal Corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (hereinafter called "**Lessor**") and **Vertical Bridge Development, LLC**, a Delaware limited liability company, having a mailing address of 750 Park of Commerce Drive, Boca Raton, FL 33487 ("**Lessee**").

1. Lessor and Lessee entered into a certain Communications Site Lease Agreement ("Agreement") on the ____ day of _____, 20__, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant ("Premises") and associated easements are described in Exhibit 1 annexed hereto.
4. Lessor and Lessee now desire to execute this Memorandum to provide constructive knowledge of Tenant's lease of the Premises.
5. This Memorandum and Agreement are governed by the laws of the state of Alaska.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LESSOR: The Kenai Peninsula Borough

Charlie Pierce, Mayor

Date: _____

LESSEE:

Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

LESSEE:

Vertical Bridge Development, LLC

By: _____

Print Name: _____

Its: _____

Date: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Notary Public for State of Alaska
My Commission Expires: _____

STATE OF _____)
) ss:
COUNTY OF _____)

Notary Public: _____
My Commission Expires: _____

STATE OF _____)
) ss:
THIRD JUDICIAL DISTRICT)

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES

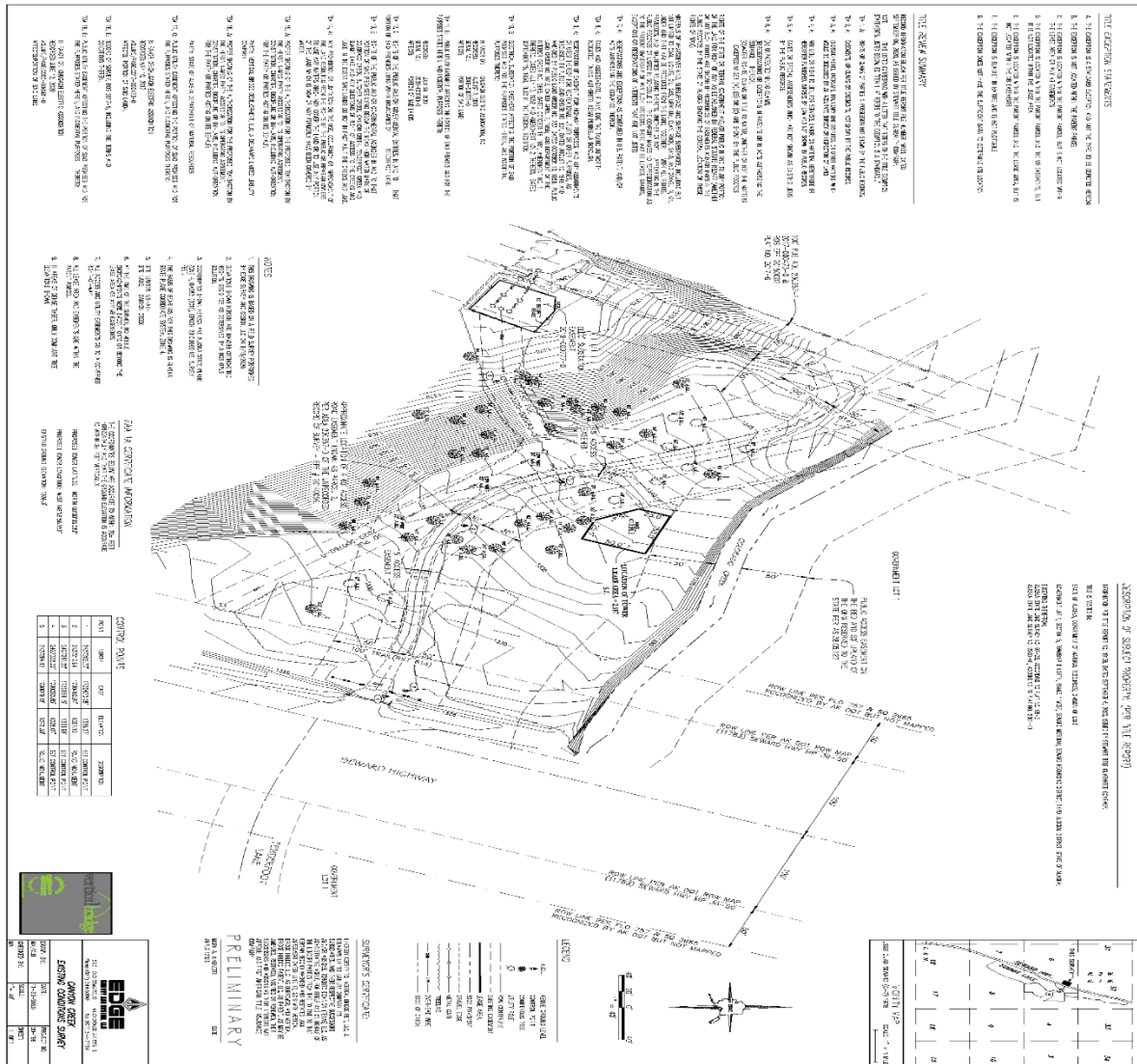
Page 1 of 1

Pursuant to the Memorandum of Lease dated _____, 20__, by and between The Kenai Peninsula Borough, as Lessor, and Vertical Bridge Development, LLC, a Delaware limited liability company, as Lessee.

The Property is legally described as follows:

Govt Lot 1 excluding ASLS 97-32 and ASLS 2000-01, Section 5, Township 6 North, Range 1 West, Seward Meridian, Third Judicial District, State of Alaska.

The Premises are described and/or depicted as follows:



APPENDIX A: LEASE PROVISIONS REQUIRED BY KPB 17.10

(1) **Accounts Current.** The Lessee shall not be delinquent in the payment of any tax, debt or obligation owed to the KPB prior to execution of the Agreement.

(2) **Assignment.** Lease may assign the lands upon which he has an agreement only if approved by the mayor or land management officer when applicable. Applications for assignment shall be made in writing on a form provided by the land management division. The assignment shall be approved if it is found that all interests of the borough are fully protected.

(3) **Breach of Agreement.** In the event of a default in the performance or observance of any of the Agreement terms or conditions, and such default continues thirty days after written notice of the default, the borough may cancel Agreement or take any legal action for damages or recovery of the property. No improvements may be removed during the time which the contract is in default.

(4) **Cancellation.** This Agreement may be cancelled at any time upon mutual written agreement of the parties.

(5) **Entry or Re-entry.** In the event the Agreement is terminated, canceled or forfeited, or in the event of abandonment of Leased Premises by Lessee during the Term, the KPB its agents, or representatives, may immediately enter or re-enter and resume possession of the Leased Premise. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the Agreement.

(6) **Fire Protection.** The Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the Property under Agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the Property is located.

(7) **Hazardous Waste.** The storage, handling and disposal of hazardous waste shall not be allowed on the Leased Premises.

(8) **Modification.** The Agreement may not be modified orally or in any manner other than by an agreement in writing signed by all parties or their respective successors in interest.

(9) **Notice.** Any notice or demand, which under the terms of the Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

(10) **Notice of Default.** Notice of the default will be in writing as provided in paragraph 10 above.

(11) **Removal or Reversion of Improvements Upon Cancellation of Purchase Agreement or Lease.**

(a) Improvements on Leased Premises owned by Lessee shall, within thirty calendar days after the termination of the agreement, be removed by him; provided, such removal will not cause injury or damage to the land; and further provided, that the mayor or land management officer when applicable may extend the time for removing such improvements in cases where hardship is proven. The Lessee may, with the consent of the mayor or land management officer when applicable, dispose of its improvements to the Sublessee or Assignee, if applicable.

(b) If any improvements and/or chattels having an appraised value in excess of ten thousand dollars, as determined by a qualified appraiser, are not removed within the time allowed, such improvements and/or chattels shall, upon due notice to the Lessee be sold at public sale under the direction of the mayor and in accordance with the provisions of KPB Chapter 5. The proceeds of the sale shall inure to the former Lessee who placed such improvements and/or chattels on the lands, or his successors in interest, after paying to the borough all moneys due and owing and expenses incurred in making such a sale. In case there are no other bidders at any such sale, the mayor is authorized to bid, in the name of the borough, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong, and the fund shall receive all moneys or other value subsequently derived from the sale of leasing of such improvements and/or chattels. The borough shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of the purchase.

(c) If any improvements and/or chattels having an appraised value of ten thousand dollars or less, as determined by the mayor, are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in the borough. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to the KPB.

(12) Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the Property and remaining upon the premises after the termination of the contract shall entitle the KPB to charge a reasonable rent therefor.

(13) Re-rent. In the event that the Agreement should be terminated, canceled, forfeited or abandoned, the KPB may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

(14) Responsibility for Location. It shall be the responsibility of the Lessee to properly locate improvements on the Leased Premises.

(15) Rights of Mortgage or Lienholder. In the event of cancellation or forfeiture the Agreement for cause, the holder of a properly recorded mortgage, conditional assignment, or collateral assignment will have the option to acquire the lease for the unexpired term thereof, subject to the same terms and conditions as in the Agreement. Any party acquiring the lease agreement must meet the same requirements as the Lessee.

(16) Sanitation. The Lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The Leased Premises under the Agreement shall be kept in a clean and sanitary condition and every effort shall be made to prevent any pollution of the waters and lands.

(17) Shore Land Public Access Easement. As established by AS 38.05, borough lands sold or leased may be subject to a minimum 50 foot public access easement landward from the ordinary high water mark or mean high water mark.

(18) **Subleasing.** No lessee may sublease lands or any part thereof without written permission of the mayor or land management officer when applicable. A sublease shall be in writing and subject to the terms and conditions of the original lease.

(19) **Violation.** Violation of any provision KPB 17.10 or of the terms of the Agreement of may expose the Lessee to appropriate legal action including forfeiture of purchase interest, termination, or cancellation of its interest in accordance with state law.

(20) **Written Waiver.** The receipt of payment by the borough, regardless of knowledge of any breach of the purchase agreement by the purchaser, lessee or permittee, or of any default on the part of the purchaser, lessee or permittee in observance or performance of any of the conditions or covenants of the agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of the borough to enforce any covenant or provision therein contained shall not discharge or invalidate such covenants or provision or affect the right of the borough to enforce the same in the event of any subsequent breach or default. The receipt by the borough of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and payment fully satisfies the breach.

APPENDIX B

SITE SPECIFIC LEASE PROVISIONS

CO-LOCATE RIGHTS RESERVED BY KPB: In addition to paragraph 15 of the Communications Site Lease Agreement (the “Agreement”), the KPB reserves forty (40) vertical feet of tower space. This reservation shall start from twenty (20) feet from the top of the tower structure and descent 40 feet, unless other space is mutually agreed to by the parties (the “Reserved Space”). To the extent this appendix conflicts with paragraph 15 of the Agreement, the terms of this appendix shall control.

The KPB may sublease the Reserved Space to other government agencies or organizations for the purpose of facilitating communications for first responders, disaster management, general government operations, or other public safety uses. The sublessee will provide an inventory of equipment and proposed vertical location to the Lessee for the purposes of ensuring that no interference is likely for the proposed installation. KPB and any sublessee will be responsible for frequency coordination and adherence to all applicable regulations to prevent interference.

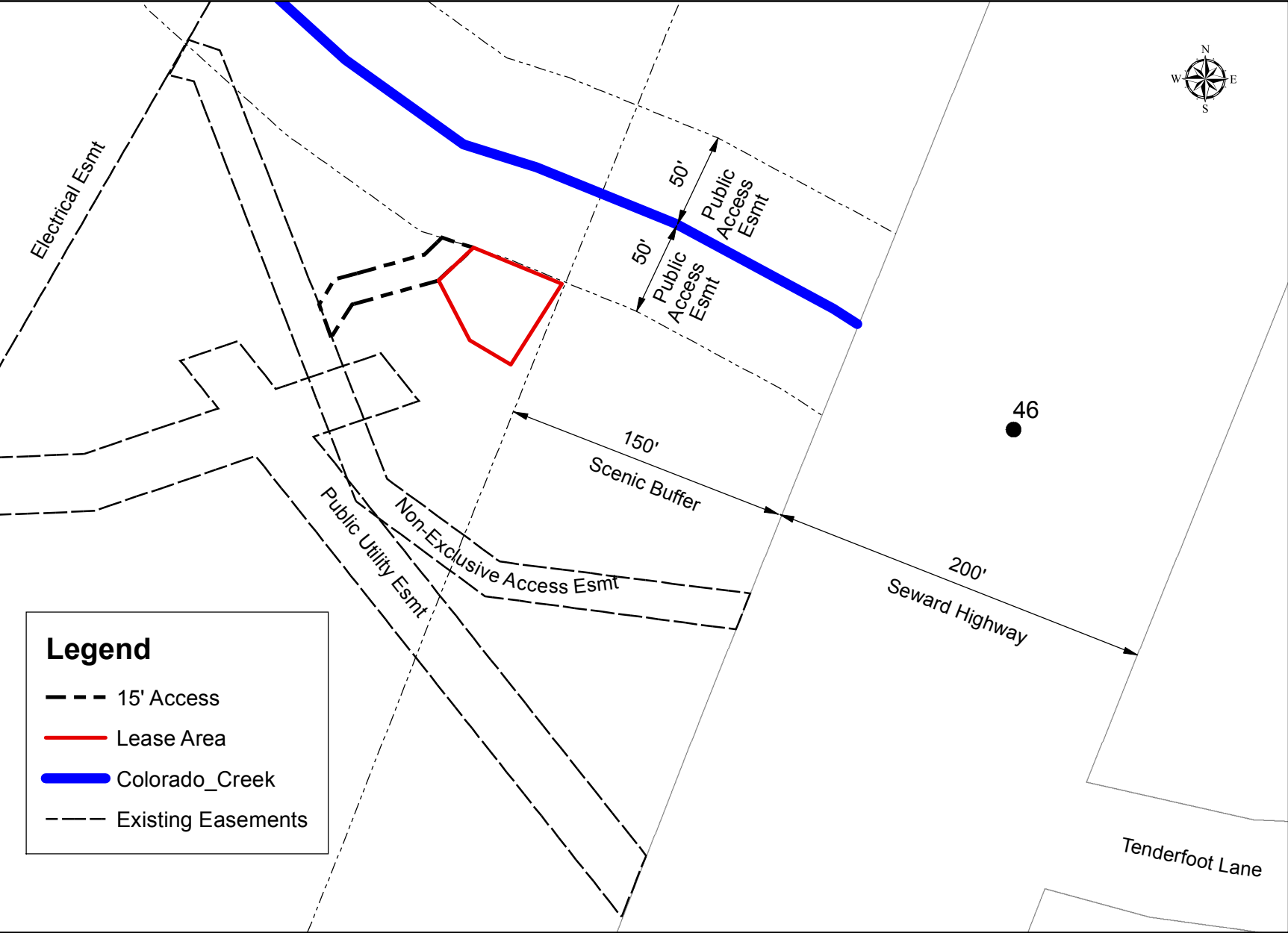
KPB AND SUBLESSEE USAGE: The KPB and any sublessee (the “KPB”) may use the Reserved Space for the purposes of providing public safety communications. The KPB may choose to install equipment to provide general government communications, monitoring equipment, and other similar uses. In general, equipment may include, but is not limited, to VHF Radio Frequency (RF) transceivers, RF repeaters, licensed or unlicensed point to point antennas, microwave backhaul, surveillance cameras and other monitoring devices, and associated items that may support conventional or trunked radio systems. All equipment or facilities placed within the Reserved Space or on the Leased Premises shall remain the personal property of the KPB or its sublessee.

INTERFERENCE WITH LESSEE EQUIPMENT: In the event that proposed or installed equipment from the KPB or sublessee interferes with equipment of the Lessee, all parties will work to explore technical solutions or changes to mitigate such interference. If mitigations are not available, the Lessee has the right to deny access to the tower for such equipment. All other provisions of paragraph 15 related to interference remain in effect.

ACCESS: The KPB may establish outdoor equipment cabinets or full equipment shelters on or within the Leased Premises, provided that such facilities do not interfere with similar facilities of the Lessee. Access will only be permitted to the Lessee upon separate mutual agreement. Such premises may have restrictions due to State or Federal policy and regulations, in such event, these regulations will prevail over the lease terms.

RENT: The Reserved Space is free of charge. The KPB is not responsible for any additional or direct rent payment to Lessee for the use of the tower or associated premises. The KPB is responsible for the costs of establishing, maintaining, and removing equipment during the life of this agreement, as well as for any utilities required to maintain KPB equipment.

LMD 20-24; Communications Site Lease Agreement



Applicant: Vertical Bridge Development, LLC
APN: 03525001

0 50 100 200 Feet

LMD 20-24; Communications Site Lease Agreement



Applicant: Vertical Bridge Development, LLC
APN: 03525001


0 50 100 200 Feet

Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Kenai Peninsula Borough Assembly Members

FROM: Melanie Aeschliman, Planning Director 

DATE: February 10, 2021

RE: Vacating a 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17 within Section 34 Township 8 North Range 11 West

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 February 8, 2021 the Kenai Peninsula Borough Planning Commission granted approval by unanimous vote (9 Yes, 0 No, 2 Absent) to the vacation as petitioned, subject to providing a matching 30-foot right-of-way dedication for Park Road by subdivision plat, based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

February 8, 2021 Planning Commission Draft Meeting Minutes
February 8, 2021 Agenda Item E2 Meeting Packet Materials

- c. **A government agency affected by the decision which appeared before the planning commission with either a written or oral presentation.**

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Ben Nabinger, 46155 Grant Avenue, Kenai, AK 99611. Mr. Nabinger is the power of attorney for the landowner Ben Nabinger. The encroachment into the building setback was discovered as while they were in the process of closing on the sale of the home. Mr. Nabinger would ask the commission to approve their exception request so that they can close on the sale.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-04 granting an exception to the 20-foot building setback limit for only the encroaching portions of the buildings for Lot 1, Block 5 Homewood Subdivision (KN 77-81), citing findings 3, 4, 6-10 in support of standards one, two and three.

Commissioner Carluccio stated from what she has heard it appeared the structures in the setback could be moved. The only reason the request is being made is they do not want to move them during the winter. She has difficulty approving a setback exception when it appears the items can be removed. Mr. Huff replied there might have been a misunderstanding; the house is approximately one foot over into the setback and is not removable. The greenhouse is unable to be moved during the winter, so they requested that it be included in the setback request. Commissioner Carluccio thank Mr. Huff for the clarification.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Chesser, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Ecklund, Ruffner				

2. **Vacate a 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17 within Section 34 Township 8 North Range 11 West**

Staff report given by Scott Huff.

Purpose as stated in petition: On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1 Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about the petitioners' property rights in GL 17, the petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was the petitioners' driveway and utilities, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that

the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of the petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own lots 2 and 3, Rappe Park Subdivision – at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in ASLS 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests' cross over from their residence to access original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests' currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

Petitioners: Louis F. Oliva Jr. and Stacy A. Oliva, of Nikiski, AK

Notification: Public notice appeared in the January 28, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the February 4, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

3 certified mailings were sent to owners of property within 300 feet of the proposed vacation as well as 1 certified mailing to the applicants' attorney. Zero receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 2 owners within 600 feet of the proposed vacation.

15 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish & Game	Nikiski Community Council
State of Alaska Dept. of Natural Resources	Alaska Communication Systems (ACS)
State of Alaska Dept. of Transportation (6)	ENSTAR Natural Gas
State of Alaska DNR Forestry	General Communications Inc. (GCI)
Emergency Services of Nikiski Fire Service	Homer Electric Association (HEA)

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

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

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

Comments Received:

ACS: Not available when the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: No comments.

KPB Addressing: Not available when the staff report was prepared.

KPB Planning: Not available when the staff report was prepared.

KPB River Center: Not within a flood hazard area. Not within an Anadromous Waters Habitat Protection District.

KPB Roads Department: The legal Department notified the property owner and the RSA (9/15/2017) that ADL 220394 is a state-managed public right-of-way. The RSA has no objection.

State Parks: No comments.

Staff Discussion: A completed petition was received on January 15, 2021 for the vacation of ROW Permit ADL 220394. Please note that this ADL easement had been previously considered by the Planning Commission on October 26, 2020 as part of a petition to vacate a combination of right-of-ways, patent right of way easements, and ADL easements in conjunction with new right of way dedications. That petition was denied by majority vote.

This current petition is only for the vacation of ROW Permit ADL 220394. Review of this new application within one year is allowable as it is not the same as the previous petition and the applicant is applying with the State to vacate ROW Permit ADL 220394. The applicant stated that they should not have included the ADL in their original petition since the State has jurisdiction over the ADL.

Per the submittal, the applicants request that the Planning Commission either:

- a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

11 AAC 51.065(c) states

"If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice."

The procedures as set out in AS 29.40.120 - 29.40.150 are as follows:

"Sec. 29.40.120. Alteration or replat petition.

A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing.

The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140. Hearing and determination.

(a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording.

If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded

in accordance with AS 40.15.010 40.15.020."

Per state statute, the Planning Commission does have the authority to decline comment to the state. The Planning Commission also has the ability to review the petition to vacate the ROW Permit and provide a recommendation to the State of Alaska DNR. Staff feels that the review and decision of the KPB Planning Commission is valuable and provides a venue where public comments can be provided and discussions can be held. **Staff recommends** that the Planning Commission review the proposed vacation and provide comments and recommendations to the State of Alaska DNR.

Per the letter dated December 28, 2020 to the Planning Direct (Kenai Peninsula Borough Submittal Letter), *"Borough Code, KPB 20.70.220, currently covers a petition to the State to vacate a section line easement, but there is nothing in Borough Code regarding the vacation of a State of Alaska right-of-way permit; so it is not clear what the Borough process is for consideration under 11 AAC 51.065."*

11 AAC 51.065 regards the Vacation of Easements. Kenai Peninsula Borough code does not specifically address an application to vacate an ADL ROW permit. Kenai Peninsula Borough Code Chapter 20.70 – Vacation Requirement outlines how to evaluate vacations for public rights-of-way and other public areas, including rights-of-way under State jurisdiction.

In reviewing this concern staff conclude that ADL 220394 is a public right of way based on the following,

- ADL 220394 application for right of way permit shows that Lou Oliva requested a right of way for public yearlong use. (See application for right of way permit ADL 220394 dated Oct. 24, 1984)
- The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the right-of-way application – ADL 220394. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit. (See letter from KPB Land Management Officer dated January 22, 1985)
- The Kenai Peninsula Borough Planning Commission met on March 11, 1985 to again review right-of-way application – ADL 220394. The Commission reaffirmed its action from the January 21, 1985 meeting to recommend a 30 ft. wide public access and utility easement. (See letter from KPB Land Management Officer dated March 12, 1985)
- ADL 220394 states that the State of Alaska DNR is the grantor and Southcentral District, Division of Land and Water, acting as representative of and on behalf of the public is the permittee. (See ADL 220394 right of way permit)
- ADL 220394 states that the permit is for a public road and public utilities access. (See ADL 220394 right of way permit)

KPB staff has reviewed this request like any other public right of way vacation by following the requirements of state statutes and Kenai Peninsula Borough Code 20.70. The Planning Commission's decision will be forwarded to the Kenai Peninsula Borough Assembly as outlined in 20.70.110 where the Assembly can either uphold or veto the Planning Commission recommendation.

Final decision rests with the State of Alaska. The State of Alaska DNR website lists 'Alaska Division of Lands (ADL) right of way, as one of the easements that require DNR approval. The Planning Commission may make recommendations to approve or deny the vacation, but the State of Alaska will have the final decision to vacate the ADL ROW permit.

The petition states that the ROW Permit ADL 220394 terminated on September 25, 1996 when Government Lot 17 transferred ownership to Alaska Mental Health Trust Authority as it was transferred without a contract. ADL 220394 does state that if it was sold under contract it would be subject to the permit. It does not state that any other conveyance would terminate the permit. The land was transferred to Alaska Mental Health Trust Authority as part of a settlement. Per 11 AAC 51.010(d)

"Unless it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state."

The review is based on the decision the permit did not terminate with the transfer of title.

Petition to the State, Item 4 - Original Purpose, explains that the petitioner applied for a driveway permit to cross Government Lot 17 to access his property, Government Lot 19 and the petitioner was not aware that the state was then going to issue the ROW Permit ADL 220394. It also states that the driveway and utilities were installed in 1985 and that no other persons use or have need to use the driveway or utilities. The

application dated October 24, 1984 for right-of-way permit shows the petitioner requesting a public yearlong right of way. The application was presented to the KPB Planning Commission on January 21, 1985. At the time the Borough had selected the lands in question as part of their municipal entitlement. The Planning Commission's recommendation was to approve the public right of way permit of not less than 30 feet in width, adding the clause that the property be returned to the borough if it is not used. The motion passed unanimously.

Within the petition are notes from the DNR offices. On February 25, 1985 it was questioned if instead of public it should be private and if the application should be amended. The internal response was that the application did not need to be amended as they could still issue a private easement but that the borough should be allowed to comment on the discussion of issuing a private instead of public easement. The right of way application was brought back before the Planning Commission on March 11, 1985. Per the State's notes in the packet that would result in the only access to Government Lot 19 would be through state land selected by the KPB. Staff still recommended a public easement and that if a private permit was granted the borough would treat it like a lease and a yearly payment would be required. The commission upheld their request for a 30 foot wide public right of way by a motion that passed unanimously.

Petition to the State, Item 5 Reasons for Vacation Request states the applicant was unsure why the ADL was recorded multiple times. The recording on March 1, 2018, serial 2018-001832-0 KRD, was to index the location. By recording the permit, it would now be found during a title search. On August 10, 2018, serial 2018-007092-0 KRD, the permit was recorded again to correct the legal description. The original ADL was recorded again on December 13, 2018, serial 2018-011190-0 KRD. On July 14, 2020, serial 2020-006563-0 KRD, the permit was once again recorded. That recording outlines that the December 2018 recording was inadvertently recorded and it did not contain the corrections. The 2020 recording provided the correct description as well as explain the multiple recordings. This would explain the multiple recordings the petitioner is questioning.

The petitioners have submitted an overall development subdivision plat for the Planning Commission's benefit. A complete plat submittal has not been received. The proposed subdivision plat shows the following,

- Vacation of entire ADL 220394
- Vacation of Sara Jane Street (50 foot dedicated ROW per Rappe Park Subdivision Amended)
- Vacation of a portion of 30 foot wide Park Road (where fronting Lot 1 Rappe Park Subdivision Amended)
- Dedication of a 30 foot right of way to provide a 60 foot wide right of way where fronting Lot 2 and Lot 3 Rappe Park Subdivision Amended)
- Dedication of a 60 foot right of way from Park Road to Daniels Lake
- The combining of all lands owned by Lou Oliva and Stacey Oliva

This overall development subdivision plat will provide:

- legal dedicated 60 foot right of way access to all lots.
- 60 foot width for all right of ways.
- Access to the lake in exchange for the vacation of the right of way to the lake.
- A T-type turnaround, as opposed to a cul-de-sac, at the end of the road to provide an area where vehicles can turn around.

This overall development subdivision plat will require exceptions to:

- KPB 20.30.030 (appropriate projection of all streets to provide reasonable means of ingress) and KPB 20.30.170 Block Length requirements.

These two sections of code are often combined into one exception request. To comply with these sections of code a ROW connection would be required between Park Road and Neighbors Road. This is to provide a continuous block and two points of legal access.

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.

- A. A recorded plat may not be altered or replatted except by the platting authority on petition of the

state, the borough, a public utility, or the owners of the majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or the owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the

- 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.**

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved with requirements that change property lines or require right of way dedication a subdivision plat will be required.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.140. Vacation resolution—easement. Upon approval of an easement vacation not associated with the vacation of a right-of-way or not requiring transfer of title or platting action, a vacation resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the vacation. The petitioner is responsible for the recording fees.

Platting Staff Comments: If the vacation is approved with no additional requirements the State should determine the method they wish to remove the permit.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: The area being discussed is a public easement with the underlying property owned by the petitioner.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: KPB standards require a 60 foot wide dedicated right of way.

Staff recommendation: *All right of way dedication comply with the minimum width standard of 60 feet.*

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: The petitioners own multiple lots surrounding the proposed vacation. They have constructed a new access from Neighbors Road, a borough maintained roadway. While this does provide them additional access as owners, staff has reviewed and notes that the access is still going through multiple lots. To state that equal or superior access to their property has been given does not eliminate the need for all lots to have adequate legal access. The vacation of the 30 foot wide ADL will result in a 30 foot wide right of way, Park Road, when requirements are for 60 foot width. The ADL and Park Road also lead to a 50 foot wide right of way, Sara Jane Street. Sara Jane Street currently provides access to Daniels Lake.

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: ADL 220394 provides access to Sara Jane Street. Sara Jane Street is affected by a low wet area but may provide pedestrian access to Daniels Lake.

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: It has been stated that the ADL was for public right of way and public utilities. The petitioner states that utilities have been placed within ADL 220394. Reviews have been sent to the utility companies.

Staff recommendation: Petitioner should work with the utility companies and grant any easements requested by the providers.

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: The proposed vacation is not direct access to public waters but does provide access to Sara Jane Street which is legal access to Daniels Lake. Previously the petitioners offered to dedicate a new access to the lake in exchange for the vacation of Sara Jane Street.

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

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: While this is not a section line easement it does fall under DNR jurisdiction and will be subject to DNR review.

STAFF RECOMMENDATION: 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 providing a matching 30 foot right of way dedication for Park Road by subdivision plat, the recommendation is also subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within four years of vacation consent (KPB 20.70.130).

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 FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Stan McLane, P.O. Box 468, Soldotna, AK 99669: Mr. McLane is the surveyor on this project. This ADL easement was requested by the Olivas years ago to provide access to their property. The Olivas have submitted with this request a conceptual drawing of their plans for re-platting all their properties into one tract. Mr. McLane noted there had been public comment made in the past regarding access issues. This vacation request will not limit anyone's access to his or her properties or access to Daniel's Lake. In particular, he noted this vacation does not affect the West's (neighbors of the Olivas) driveway. He stated the Olivas agreed with the findings in the staff report, and would ask that the commission approve the vacation request.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Chesser to approve the vacation as petitioned, subject to providing a matching 30-foot right-of-way dedication for Park Road by subdivision plat, based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Chesser, Fikes, Gillham, Martin, Morgan, Venuti				
No					
Absent	Ecklund, Ruffner				



Planning Department

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

Planning Commission

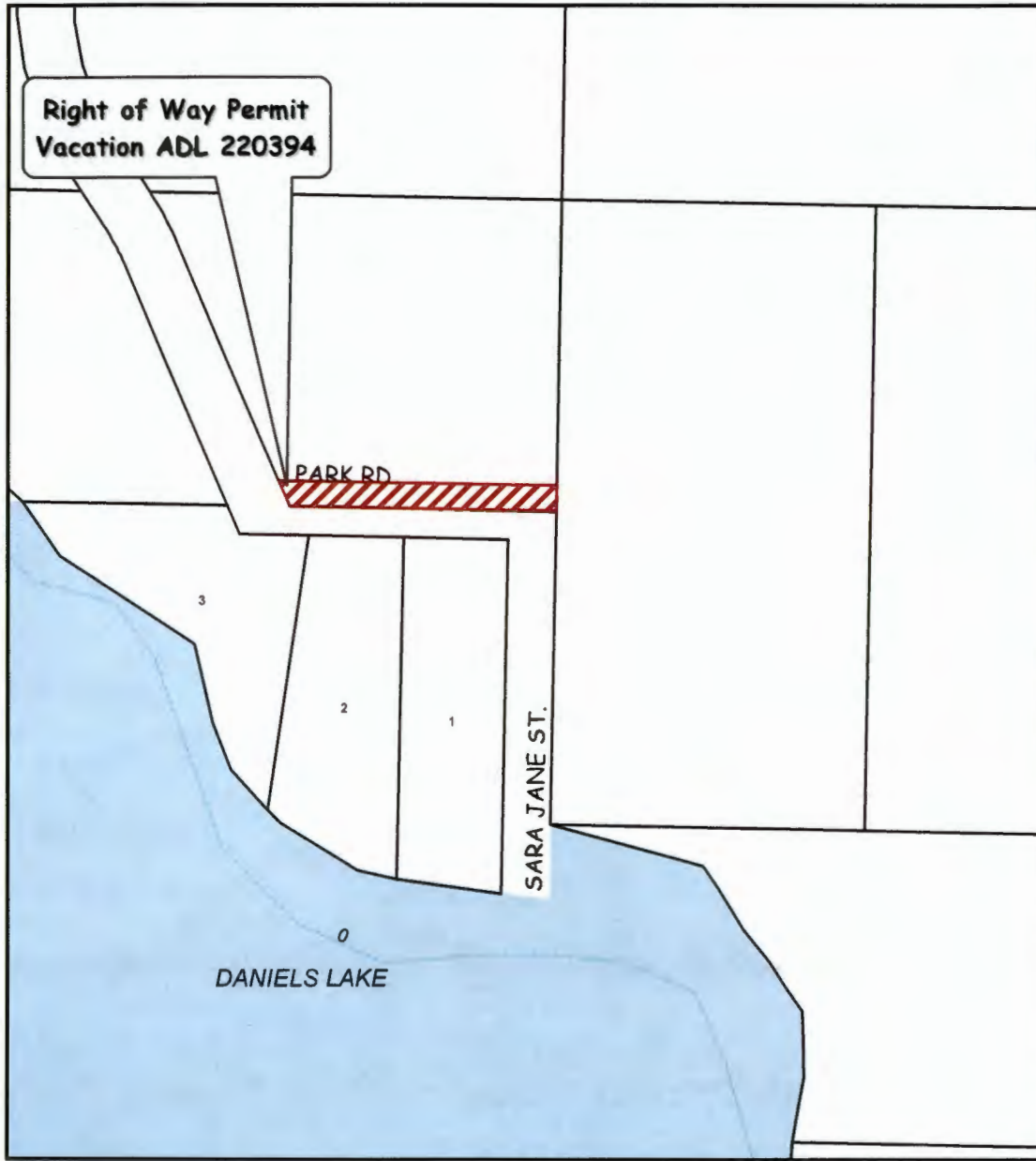
Meeting Packet

**February 8, 2021
7:30 p.m.**

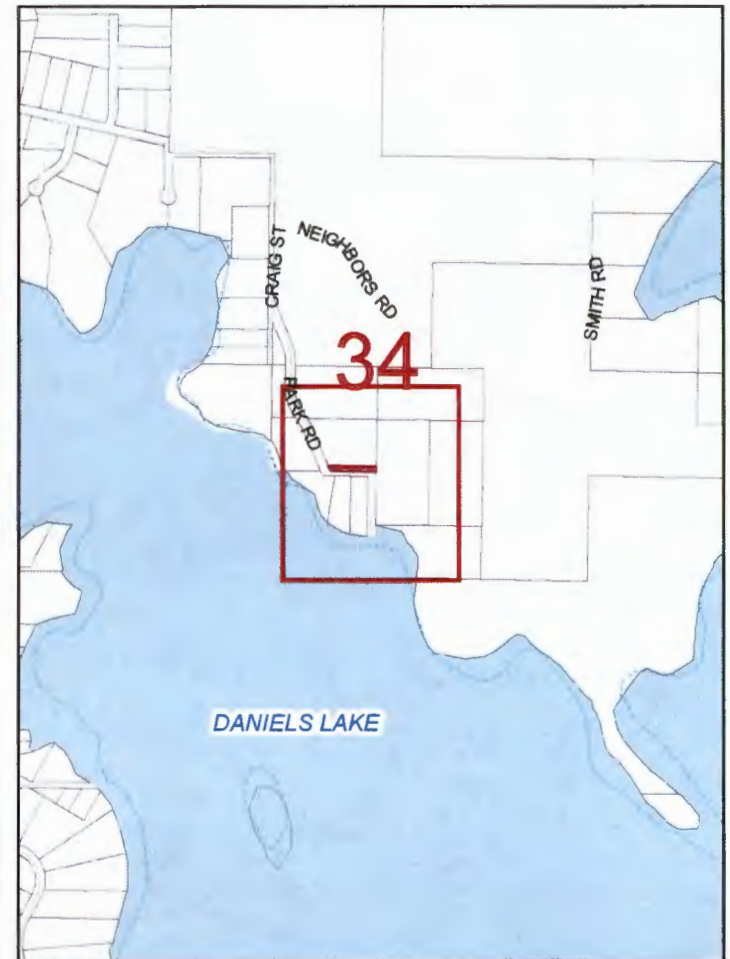
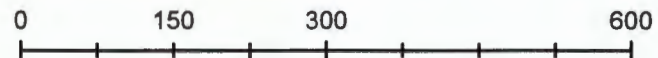
**KENAI PENINSULA BOROUGH
ASSEMBLY CHAMBERS
144 NORTH BINKLEY ST.
SOLDOTNA, ALASKA 99669**

E. NEW BUSINESS

- 2. Vacate 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17, Section 34, Township 8 North, Range 11 West as dedicated on ADL 220394. The right-of-way being vacated is developed and located within the NE1/4 SW1/4 of Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-156V. Nikiski Area**

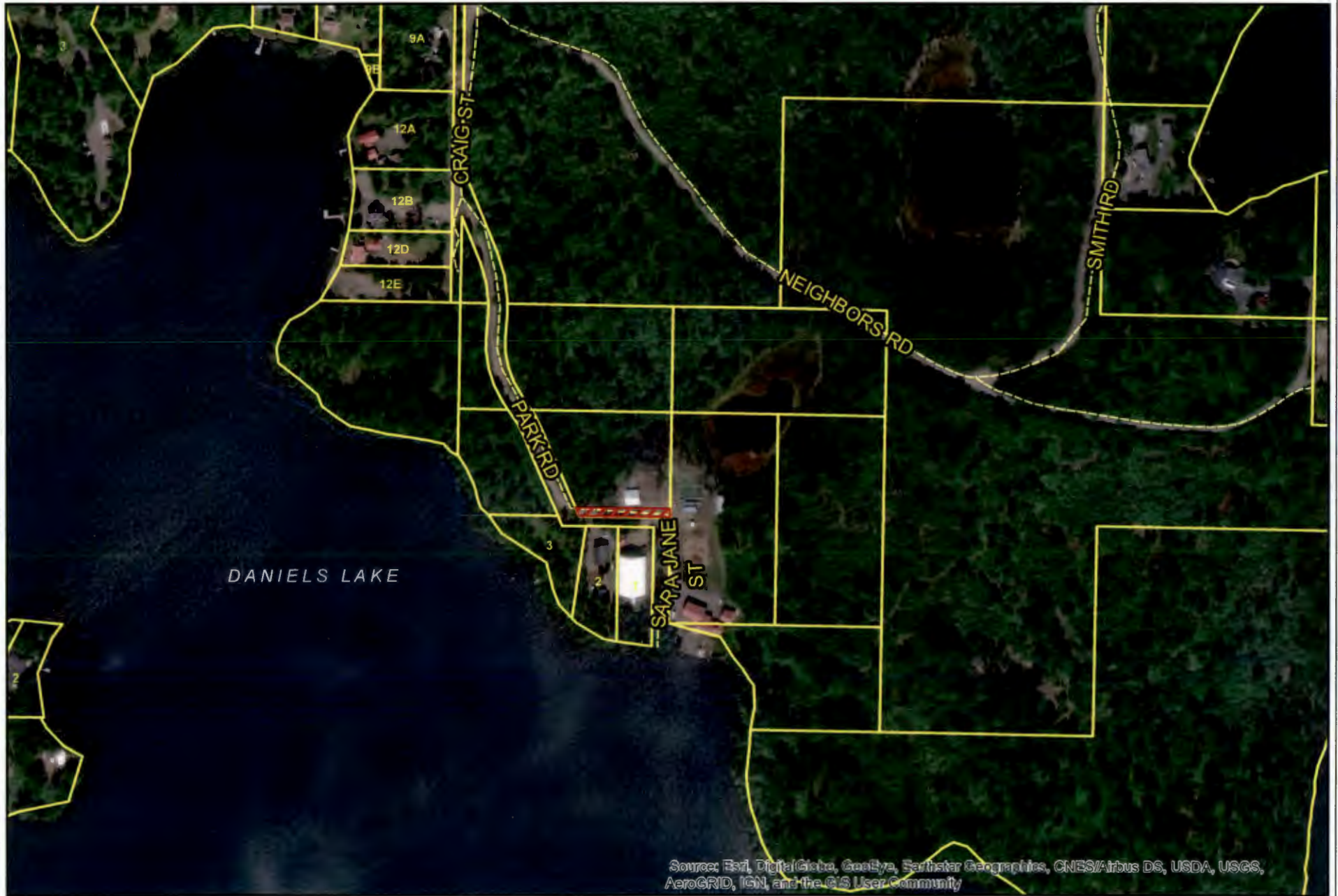


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.



KPB 2020-156V
S34 T08N R11W
NIKISKI

Date: 12/31/2020
PClements, KPB 2020-156V



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.

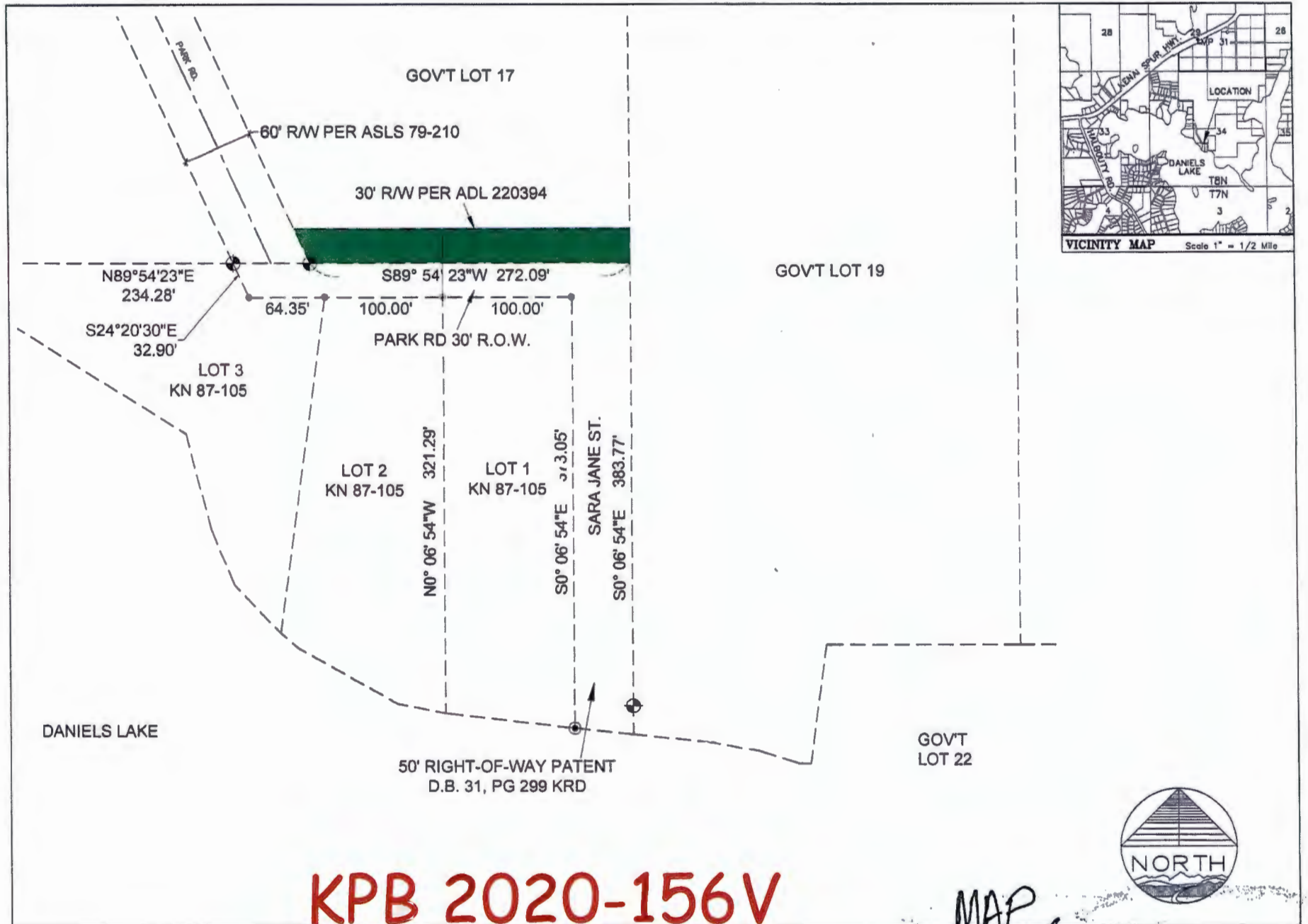
Aerial View

0 150 300 600'



Right of Way Vacation

PClements, KPB 2020-156V
Date: 12/31/2020
Imagery World



AGENDA ITEM E. PUBLIC HEARINGS

2. Vacate a 30' by 273' right of way permit ADL 220394 adjoining the south boundary of Government Lot 17 within Section 34 Township 8 North Range 11 West

STAFF REPORT

PC Meeting: February 8, 2021

Purpose as stated in petition: On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1 Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about the petitioners' property rights in GL 17, the petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was the petitioners' driveway and utilities, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of the petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own lots 2 and 3, Rappe Park Subdivision – at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in ASLS 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests' cross over from their residence to access original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests' currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

Petitioners: Louis F. Oliva Jr. and Stacy A. Oliva, of Nikiski, AK

Notification: Public notice appeared in the January 28, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the February 4, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

3 certified mailings were sent to owners of property within 300 feet of the proposed vacation as well as 1 certified mailing to the applicants' attorney. Zero receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 2 owners within 600 feet of the proposed vacation.

15 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT (6)
State of Alaska DNR Forestry
Emergency Services of Nikiski Fire Service

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

Public hearing notices were made available to 5 KPB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., River Center) via a shared database.

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

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

Comments Received:

ACS: Not available when the staff report was prepared.

ENSTAR: No comments or recommendations.

Homer Electric Association: No comments.

KPB Addressing: Not available when the staff report was prepared.

KPB Planning: Not available when the staff report was prepared.

KPB River Center: Not within a flood hazard area. Not within an Anadromous Waters Habitat Protection District.

KPB Roads Department: The legal Department notified the property owner and the RSA (9/15/2017) that ADL 220394 is a state-managed public right-of-way. The RSA has no objection.

State Parks: No comments.

Staff Discussion: A completed petition was received on January 15, 2021 for the vacation of ROW Permit ADL 220394. Please note that this ADL easement had been previously considered by the Planning Commission on October 26, 2020 as part of a petition to vacate a combination of right-of-ways, patent right of way easements, and ADL easements in conjunction with new right of way dedications. That petition was denied by majority vote.

This current petition is only for the vacation of ROW Permit ADL 220394. Review of this new application within one year is allowable as it is not the same as the previous petition and the applicant is applying with the State to vacate ROW Permit ADL 220394. The applicant stated that they should not have included the ADL in their original petition since the State has jurisdiction over the ADL.

Per the submittal, the applicants request that the Planning Commission either:

- a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

11 AAC 51.065(c) states

"If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice."

The procedures as set out in AS 29.40.120 - 29.40.150 are as follows:

"Sec. 29.40.120. Alteration or replat petition.

A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing.

The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140. Hearing and determination.

(a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording.

If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 - 40.15.020."

Per state statute, the Planning Commission does have the authority to decline comment to the state. The Planning Commission also has the ability to review the petition to vacate the ROW Permit and provide a recommendation to the State of Alaska DNR. Staff feels that the review and decision of the KPB Planning Commission is valuable and provides a venue where public comments can be provided and discussions can be held. **Staff recommends** that the Planning Commission review the proposed vacation and provide comments and recommendations to the State of Alaska DNR.

Per the letter dated December 28, 2020 to the Planning Direct (Kenai Peninsula Borough Submittal Letter), *"Borough Code, KPB 20.70.220, currently covers a petition to the State to vacate a section line easement, but there is nothing in Borough Code regarding the vacation of a State of Alaska right-of-way permit; so it is not clear what the Borough process is for consideration under 11 AAC 51.065."*

11 AAC 51.065 regards the Vacation of Easements. Kenai Peninsula Borough code does not specifically address an application to vacate an ADL ROW permit. Kenai Peninsula Borough Code Chapter 20.70 – Vacation Requirement outlines how to evaluate vacations for public rights-of-way and other public areas, including rights-of-way under State jurisdiction.

In reviewing this concern staff conclude that ADL 220394 is a public right of way based on the following,

- ADL 220394 application for right of way permit shows that Lou Oliva requested a right of way for public yearlong use. (See application for right of way permit ADL 220394 dated Oct. 24, 1984)
- The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the right-of-way application – ADL 220394. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit. (See letter from KPB Land Management Officer dated January 22, 1985)
- The Kenai Peninsula Borough Planning Commission met on March 11, 1985 to again review right-of-way application – ADL 220394. The Commission reaffirmed its action from the January 21, 1985 meeting to recommend a 30 ft. wide public access and utility easement. (See letter from KPB Land Management Officer dated March 12, 1985)
- ADL 220394 states that the State of Alaska DNR is the grantor and Southcentral District, Division of Land and Water, acting as representative of and on behalf of the public is the permittee. (See ADL 220394 right of way permit)
- ADL 220394 states that the permit is for a public road and public utilities access. (See ADL 220394 right of way permit)

KPB staff has reviewed this request like any other public right of way vacation by following the requirements of state statutes and Kenai Peninsula Borough Code 20.70. The Planning Commission's decision will be forwarded to the Kenai Peninsula Borough Assembly as outlined in 20.70.110 where the Assembly can either uphold or veto the Planning Commission recommendation.

Final decision rests with the State of Alaska. The State of Alaska DNR website lists 'Alaska Division of Lands (ADL) right of way, as one of the easements that require DNR approval. The Planning Commission may make recommendations to approve or deny the vacation, but the State of Alaska will have the final decision to vacate the ADL ROW permit.

The petition states that the ROW Permit ADL 220394 terminated on September 25, 1996 when Government Lot 17 transferred ownership to Alaska Mental Health Trust Authority as it was transferred without a contract. ADL 220394 does state that if it was sold under contract it would be subject to the permit. It does not state that any other conveyance would terminate the permit. The land was transferred to Alaska Mental Health Trust Authority as part of a settlement. Per 11 AAC 51.010(d)

"Unless it is vacated, a public easement is a valid existing right, even if the land subject to the easement is conveyed by or was never owned by the state."

The review is based on the decision the permit did not terminate with the transfer of title.

Petition to the State, Item 4 - Original Purpose, explains that the petitioner applied for a driveway permit to cross Government Lot 17 to access his property, Government Lot 19 and the petitioner was not aware that the state was then going to issue the ROW Permit ADL 220394. It also states that the driveway and utilities were installed in 1985 and that no other persons use or have need to use the driveway or utilities. The application dated October 24, 1984 for right-of-way permit shows the petitioner requesting a public yearlong right of way. The application was presented to the KPB Planning Commission on January 21, 1985. At the time the Borough had selected the lands in question as part of their municipal entitlement. The Planning Commission's recommendation was to approve the public right of way permit of not less than 30 feet in width, adding the clause that the property be returned to the borough if it is not used. The motion passed unanimously.

Within the petition are notes from the DNR offices. On February 25, 1985 it was questioned if instead of public it should be private and if the application should be amended. The internal response was that the application did not need to be amended as they could still issue a private easement but that the borough should be allowed to comment on the discussion of issuing a private instead of public easement. The right of way application was brought back before the Planning Commission on March 11, 1985. Per the State's notes in the packet that would result in the only access to Government Lot 19 would be through state land selected by the KPB. Staff still recommended a public easement and that if a private permit was granted the borough would treat it like a lease and a yearly payment would be required. The commission upheld their request for a 30 foot wide public right of way by a motion that passed unanimously.

Petition to the State, Item 5 Reasons for Vacation Request states the applicant was unsure why the ADL was recorded multiple times. The recording on March 1, 2018, serial 2018-001832-0 KRD, was to index the location. By recording the permit, it would now be found during a title search. On August 10, 2018, serial 2018-007092-0 KRD, the permit was recorded again to correct the legal description. The original ADL was recorded again on December 13, 2018, serial 2018-011190-0 KRD. On July 14, 2020, serial 2020-006563-0 KRD, the permit was once again recorded. That recording outlines that the December 2018 recording was inadvertently recorded and it did not contain the corrections. The 2020 recording provided the correct description as well as explain the multiple recordings. This would explain the multiple recordings the petitioner is questioning.

The petitioners have submitted an overall development subdivision plat for the Planning Commission's benefit. A complete plat submittal has not been received. The proposed subdivision plat shows the following,

- Vacation of entire ADL 220394
- Vacation of Sara Jane Street (50 foot dedicated ROW per Rappe Park Subdivision Amended)
- Vacation of a portion of 30 foot wide Park Road (where fronting Lot 1 Rappe Park Subdivision Amended)
- Dedication of a 30 foot right of way to provide a 60 foot wide right of way where fronting Lot 2 and Lot 3 Rappe Park Subdivision Amended)
- Dedication of a 60 foot right of way from Park Road to Daniels Lake
- The combining of all lands owned by Lou Oliva and Stacey Oliva

This overall development subdivision plat will provide:

- legal dedicated 60 foot right of way access to all lots.
- 60 foot width for all right of ways.
- Access to the lake in exchange for the vacation of the right of way to the lake.
- A T-type turnaround, as opposed to a cul-de-sac, at the end of the road to provide an area where vehicles can turn around.

This overall development subdivision plat will require exceptions to:

- KPB 20.30.030 (appropriate projection of all streets to provide reasonable means of ingress) and KPB 20.30.170 Block Length requirements.

These two sections of code are often combined into one exception request. To comply with these sections of code a ROW connection would be required between Park Road and Neighbors Road. This is to provide a continuous block and two points of legal access.

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.

- A. A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of the majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or the owners of a majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority and shall be accompanied by a copy of the
- 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

Page 5 of 8

by the planning commission. **The burden of proof shall lie with the petitioner to support the vacation.**

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: If the vacation is approved with requirements that change property lines or require right of way dedication a subdivision plat will be required.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.140. Vacation resolution—easement. Upon approval of an easement vacation not associated with the vacation of a right-of-way or not requiring transfer of title or platting action, a vacation resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the vacation. The petitioner is responsible for the recording fees.

Platting Staff Comments: If the vacation is approved with no additional requirements the State should determine the method they wish to remove the permit.

Staff recommendation: *If approved, the applicant should work with the State and the Borough to complete a plat that will finalize the approved vacation.*

20.70.150. Title to vacated area.

A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: The area being discussed is a public easement with the underlying property owned by the petitioner.

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: KPB standards require a 60 foot wide dedicated right of way.

Staff recommendation: *All right of way dedication comply with the minimum width standard of 60 feet.*

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: The petitioners own multiple lots surrounding the proposed vacation. They have constructed a new access from Neighbors Road, a borough maintained roadway. While this does provide them additional access as owners, staff has reviewed and notes that the access is still going through multiple lots. To state that equal or superior access to their property has been given does not eliminate the need for all lots to have adequate legal access. The vacation of the 30 foot wide ADL will result in a 30 foot wide right of way, Park Road, when requirements are for 60 foot width. The ADL and Park Road also lead

to a 50 foot wide right of way, Sara Jane Street. Sara Jane Street currently provides access to Daniels Lake.

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: ADL 220394 provides access to Sara Jane Street. Sara Jane Street is affected by a low wet area but may provide pedestrian access to Daniels Lake.

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: It has been stated that the ADL was for public right of way and public utilities. The petitioner states that utilities have been placed within ADL 220394. Reviews have been sent to the utility companies.

Staff recommendation: *Petitioner should work with the utility companies and grant any easements requested by the providers.*

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: The proposed vacation is not direct access to public waters but does provide access to Sara Jane Street which is legal access to Daniels Lake. Previously the petitioners offered to dedicate a new access to the lake in exchange for the vacation of Sara Jane Street.

20.70.210. Other public areas. Dedications of land for use other than rights-of-way, which are considered for vacation, shall be approved only when it is in the public interest. The commission shall consider the intended purpose of the area, and any future uses of the area when making a decision. When a legitimate public purpose is or would be served by use of the area proposed for vacation, the commission shall not approve the vacation, unless the ownership of the land by the city or borough in a form other than dedicated would adequately serve the intended use.

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: While this is not a section line easement it does fall under DNR jurisdiction and will be subject to DNR review.

STAFF RECOMMENDATION: 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 providing a matching 30 foot right of way dedication for Park Road by subdivision plat, the recommendation is also subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within four years of vacation consent (KPB 20.70.130).

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 FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT



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

0 25 50 100'



Right of Way Vacation

PClements, KPB 2020-156V
Date: 12/31/2020
Imagery Anadromous 2014

ADL 220394
RIGHT OF WAY PERMIT



Recording Cover Sheet

This document may have been recorded at a previous time, and if so, the prior recording date takes precedence.

Please record this cover sheet as the first page of the document. The document should be indexed as follows:

RECORDING DISTRICT:

Kenai

DOCUMENT TITLE:

Easement

FILE TYPE/NUMBER:

ADL 220394

GRANTOR:

1. State of Alaska
2. Department of Natural Resources
3. Division of Lands
4. Division of Mining, Land and Water

GRANTEE:

1. State of Alaska
2. Department of Natural Resources
3. Division of Lands
4. Division of Mining, Land and Water

AFTER RECORDING RETURN TO:

Department of Natural Resources
DNR Division of Mining, Land & Water
Southcentral Region Land Office
Easement Unit, Attn: Recording Project
550 W. 7th Avenue, Suite 900C
Anchorage, AK 99501-3579

STATE BUSINESS NO CHARGE

LEGAL DESCRIPTION:

Index document according to location
index and legal description listed on
page(s) 1 and 3.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

ADL No. 220394

RIGHT-OF-WAY PERMIT

THIS AGREEMENT made and entered into this 5th day of September, 1985, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Land and Water Management, hereinafter referred to as the grantor and Southcentral District, Division of Land and Water Management, acting as representative of and on behalf of the public hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: public road and public utility access with the Division of Land and Water Management together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit: a 30 foot by 273 foot right-of-way located within the Seward Meridian, Township 8 North, Range 11 West, Section 34: the North 1/2 of the South 1/2; also described on the attached legal description, containing 0.192 acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein.

The as-built legal description revealing the right-of-way granted herein has been attached hereto and made a part hereof. See attachment Number 1.

In the event that the right-of-way granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefor has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Land and Water Management and all other Federal,

10-119 (72)
Rev. 4/83



Page 2 of 5
2018-011190-0

State or municipal laws, regulations or ordinances applicable to the area herein granted.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall be terminated by usual and customary easement vacation process with the Kenai Peninsula Borough.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.


Page 3 of 5
2018-011190-0

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

Permittee:

Richard A. LeFebvre
Richard A. LeFebvre
Acting Southcentral Regional Manager
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.

State of Alaska)

This is to certify that on the 9th day of SEPTEMBER, 1985,
before me, personally appeared RICHARD A. LEFEBVRE to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

This is a true and correct copy as the same
appears in the records of the
Department of Natural Resources.

Stuart Greenfield
Department of Natural Resources

Date 11/17/2017

Donnell Watts
Notary Public in and for the State of Alaska

My commission expires March 10, 1989

Grantor:

Tom J. Hawkins
Director
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.

State of Alaska)

This is to certify that on the 11th day of September, 1985,
before me, personally appeared Tom J. Hawkins, Director to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

Donnell Watts
Notary Public in and for the State of Alaska

My commission expires March 10, 1989



Page 4 of 5

2018-011190-0

Right-of-Way Permit, ADL 220394

Attachment 1

A parcel of land within the Kenai Peninsula Borough, Third Judicial District, Alaska more particularly described as follows:

Beginning at the Southeast corner of Government Lot Thirty-Five (35), Section Thirty-Four (34), Township Eight North (T8N), Range Eleven West (R11W), Seward Meridian, Alaska, said corner being established by Alaska State Land Survey Plat No. 80-71, Kenai Recording District, the true point of beginning and corner number one of this parcel.

Thence S89°54'41"W, 272.4 feet along the south line of Government Lot Thirty-Five (35) to an Alaska State Land Survey monument of the easterly boundary of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then S0°06'54"E, 30.00 feet along the east boundary of Government Lot 35 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey #79-210.



Page 5 of 5

2018-011190-0

RECEIVED

DEC 30 2020

TO: Platting Authority
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

Borough Clerk's Office
Kenai Peninsula Borough

SUBMISSION TO PLATTING AUTHORITY FOR CONSIDERATION
Of PETITION TO STATE OF ALASKA TO VACATE A RIGHT OF WAY PERMIT
[11 AAC 51.065]

1. We, the undersigned Petitioners, being the owners of the property described in Right-of-Way ("ROW") Permit ADL 220394, have filed a Petition for Right of Way Permit Vacation Within A Local Platting Authority ("Petition"), with the State of Alaska, Department of Natural Resources, Survey Section, 550 W 7th Avenue, Suite 650, Anchorage, AK 99501.

2. In the Petition, we requested the State of Alaska's vacation of ROW Permit ADL 220394. A copy of the Petition, together with a copy of Attachment A to Petition, *Maps*, a copy of Attachment B to Petition, *Petition Documents Table*, and copies of the records attached to Attachment B, are all attached to and submitted with this submission.

3. **Authority for filing with State.** The Petitioners filed their Petition with the State of Alaska under the authority of 11 AAC 51.065, if 11 AAC 51.065 applies to vacation of ROW Permit ADL 220394, and without waiving Petitioner's claim that ROW Permit ADL 220394 terminated on 9/25/1996 in accordance with its own terms and conditions when the State granted Government Lot 17 to the Alaska Mental Health Trust Authority without a contract to purchase.

4. **Authority for filing with Kenai Peninsula Borough.** Under 11 AAC 51.065(b), a vacation petition must also be submitted to the platting authority for consideration, including notice and a public hearing, in accordance with the procedures set out in AS 29.40.120--150, if the platting authority is established by a municipality, unless the platting authority, under 11 AAC 51.065(c), declines to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted.

5. **Permit Location; Permit Unplatted.** The location of ROW Permit ADL 220394 is along the southern boundary of Petitioners' Government Lot 17 ("GL 17"), T8N R11W, S.M., as depicted on the map and ROW Permit ADL 220394 itself. ROW Permit ADL 220394 is unplatted, and is not a section line easement. See Attachment A to Petition, *Maps*, page 1; and Attachment B to Petition, *Petition Documents Table*, Document No. 8 listed on and attached to the *Petition Documents Table*.

6. **Other Information.** Other information submitted in the Petition includes information on the land ownership, the original purpose, the reasons for the vacation request, and a description of alternate rights-of-way. The records attached to Attachment B To Petition, *Petition Documents Table*, document the relevant history of the land ownership of GL 17, as well as other relevant land, including Government Lot 19 ("GL 19"), former Government Lot 18

("GL 18") and its later subdivision into the three lots of Rappe Park Subdivision, Plat No. 86-219.

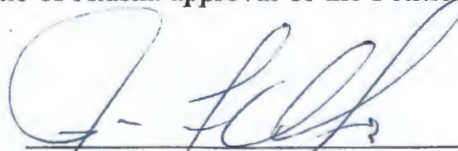
7. **Petitioners' Attorneys.** Attorneys for the Petitioners designated to receive service by mail or email are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice), bob@molloysschmidt.com.

8. **No Waiver.** By filing this application, Applicants do not waive their claim that ROW Permit ADL 220394 has terminated in accordance with its terms and conditions; or that AS 29.40.120-.150 and KPB 20.70 do not apply to this vacation because ADL 220394 is not a platted or dedicated right of way.

9. **Request.** The Applicants request that the Borough Platting Authority:

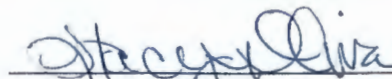
- (a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- (b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

DATE: 12/22/2020



LOUIS F. OLIVA, Jr., Applicant
P.O. Box 8567
Nikiski, AK 99635
(907) 776-8656

DATE: 01/20/2021



STACY A. OLIVA, Applicant
P.O. Box 8567
Nikiski, AK 99635
(907) 776-8656

Huff, Scott

From: Dubour, Adam J (DFG) <adam.dubour@alaska.gov>
Sent: Thursday, January 28, 2021 3:24 PM
To: Huff, Scott
Cc: Clements, Peggy
Subject: RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Scott,

Thanks, this is useful background information, particularly regarding the validity of the patent ROW easements in Lot 19. That's new information for me. As long as the 60' ROW to Daniels Lake will be dedicated on the subsequent platting action, ADF&G doesn't have any comments on this current preliminary plat.

Thank you for your time,
Adam

From: Huff, Scott <shuff@kpb.us>
Sent: Thursday, January 28, 2021 8:24 AM
To: Dubour, Adam J (DFG) <adam.dubour@alaska.gov>
Cc: Clements, Peggy <PClements@kpb.us>
Subject: RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Adam,

Yes, the last request was denied. Since that time it has been determined that the patent ROW easements are common law right of ways where the offer for the ROW has not been accepted. Therefore Govt. Lot 19 is not subject to 50 foot right of ways on the east and west boundary. Also ADL 220394 is under state management and should not have been included in the previous submittal. With this new information the ROW vacation application is allowed to be revisited by the planning department.

KPB has not yet received a new application to vacate dedicated platted right of ways. The overall concept plan is showing the final goal for the land owners.

Scott

From: Dubour, Adam J (DFG) [<mailto:adam.dubour@alaska.gov>]
Sent: Wednesday, January 27, 2021 6:07 PM
To: Huff, Scott <shuff@kpb.us>
Cc: Clements, Peggy <PClements@kpb.us>
Subject: RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Scott,

Oh interesting. Thanks for this info. I was under the impression that the last request (2020-059V) was denied by the planning commission. Was it subsequently approved after negotiations with the Olivas? Either way, I think as long as the 60' ROW from Park road to Daniels Lake will be dedicated, then ADF&G's concerns have mostly been addressed. I guess the only other question I had would be if there were any provisions regarding long-term maintenance responsibilities for the newly dedicated ROW to Daniels Lake? Other than that I don't think we'll have any further comments on the matter.

Thanks for your time.

Adam DuBour
Habitat Biologist
Access Defense Program
Alaska Department of Fish and Game
Division of Wildlife Conservation
333 Raspberry Road
Anchorage, Alaska 99518
(907)267-2292*
adam.dubour@alaska.gov

*Telecommuting, voice mails will be forwarded to email

From: Huff, Scott <shuff@kpb.us>
Sent: Wednesday, January 27, 2021 4:26 PM
To: Dubour, Adam J (DFG) <adam.dubour@alaska.gov>
Cc: Clements, Peggy <PClements@kpb.us>
Subject: RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Adam,

After the petition was submitted KPB met with the applicants and their attorneys. A letter and an overall concept subdivision was submitted to show the final goal of the applicants. The letter and drawing are attached to this e-mail.

The overall conceptual drawing is showing the following

- Vacation of ADL 220394
- Vacation of Park Rd. ROW and Sara Jane Street where fronting Lot 1 Rappe Estates KN 87-105
- Dedication of 30 feet right of way to match the remaining portion of Park Road (same area as where ADL 220394 is being vacated)
- Dedication of a 60 foot right of way from Park Rd. to Daniels Lake. This ROW has already been improved with stairs constructed and dirt excavation to provide pedestrian access to the lake.)

I believe there are two driveways that have been constructed, one in the south 30 feet of Park Rd. and one in ADL 220394. I have been on site last fall (Sept./Oct.) and took pictures of this area. I do not believe that any changes have occurred since that time. The gate located in ADL 220394 (on the extension of Lot 1 and Lot 2 boundary) is probably still there.

The Planning Commission is not expected to ground truth this area but if I have the opportunity I will try to stop by the area to provide updated photos to the commissioners.

Let me know if you have any additional questions.

Scott

From: Clements, Peggy

Sent: Wednesday, January 27, 2021 2:07 PM

To: 'Dubour, Adam J (DFG)' <adam.dubour@alaska.gov>; Huff, Scott <shuff@kpb.us>

Subject: RE: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Hello Adam,

I am forwarding your question below to Scott Huff for comment.

Kind regards,

Peggy

From: Dubour, Adam J (DFG) [<mailto:adam.dubour@alaska.gov>]

Sent: Wednesday, January 27, 2021 11:13 AM

To: Clements, Peggy <PClements@kpb.us>

Subject: <EXTERNAL-SENDER>RE: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Peggy,

I was just hoping to check in on this ROW Vacation. I assume that this preliminary plat was submitted by the Oliva's. Of course, as in the previous ROW vacation requests, ADF&G's concern is access to Daniels Lake.

Would you have any additional information that would be useful for ADF&G's review of this ROW Vacation. Without a survey its unclear if the 30' ROW for Park road would still be useable (i.e. not blocked by vegetation or structures). Would there be any effort by the Planning Commission to ground truth this?

Thanks,

Adam DuBour

Access Defense Program

Alaska Department of Fish and Game

Division of Wildlife Conservation

333 Raspberry Road

Anchorage, Alaska 99518

(907)267-2292

adam.dubour@alaska.gov

From: Clements, Peggy <PClements@kpb.us>

Sent: Tuesday, January 19, 2021 12:38 PM

To: Eaton, Belinda L (DOT) <belinda.eaton@alaska.gov>; Biloan, Joselyn (DOT) <joselyn.biloan@alaska.gov>; Simpson, Danika L (DOT) <danika.simpson@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Rinke, Hans J (DNR) <hans.rinke@alaska.gov>; Kastner, Lorraine S (DOT) <lorraine.kastner@alaska.gov>; Hooyer, Patricia (DOT) <louise.hooyer@alaska.gov>; 'mark.fink@alaska.gov' <mark.fink@alaska.gov>; Wilson, Mistee R (DOT) <mistee.wilson@alaska.gov>; 'Neuendorf, Cody' <CNeuendorf@HomerElectric.com>; Byron Jackson <byron.jackson@acsalaska.com>; Bradley Beck <bbeck@gci.com>; ENSTAR ROW <row@enstarnaturalgas.com>; Dubour, Adam J (DFG) <adam.dubour@alaska.gov>; 'Supertrucker2b4u@yahoo.com' <Supertrucker2b4u@yahoo.com>; Crisp, Bryan <BCrisp@kpb.us>

Subject: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA, ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Hello,

Attached sketch to be reviewed for the **February 8, 2021** meeting. Please provide comments by **January 29, 2021** to ensure the comments will be included in a right-of-way vacation staff report. Right-of-way vacation comments will be accepted until the Planning Commission's review has concluded.

PIN 01341069

Kind regards,

Peggy Clements

Platting Technician
Planning Department
907-714-2207



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

STATE OF ALASKA DEPT. OF NATURAL RESOURCES
SUBMITTAL LETTER

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

**PETITION FOR ROW PERMIT VACATION
WITHIN A LOCAL PLATTING AUTHORITY**

1. We, the undersigned Petitioners, being the owner of the property across which Right-of-Way ("ROW") Permit ADL 220394 is located, request the vacation of ROW Permit ADL 220394.

2. **Permit Location.** The location of ROW Permit ADL 220394 is along the southern boundary of petitioner's Government Lot 17 ("GL 17"), T8N R11W, S.M., as depicted on the accompanying map and the permit itself. For the map, see **Attachment A to Petition, Maps**, Map No. 1; the area proposed to be vacated is highlighted in green. For the permit, see **Attachment B to Petition, Petition Documents Table**, Document No. 8 listed on and attached to the *Petition Documents Table*.

3. **Land Ownership.** The Petitioners are the owners of the properties described as follows:

Government Lot 17 ("GL 17"), Sec. 34, T8N, R11W, S.M., Kenai Recording District, Third Judicial District, State of Alaska; and

Government Lot 19 ("GL 19"), Sec. 34, T8N, R11W, S.M., Kenai Recording District, Third Judicial District, State of Alaska.

The Petitioners' business, Triple-Knot Land & Livestock, LLC, is the owner of the property described as follows:

Lot One (1), Rappe Park Subdivision, according to Plat No. 86-219, Kenai Recording District, Third Judicial District, State of Alaska.¹

These three properties are adjacent to each other.

4. **Original Purpose.** On 10/23/1984, Petitioner Lou Oliva applied for a permit to build a driveway across GL 17, which was then owned by the State of Alaska (and believed to be under selection by the Kenai Peninsula Borough), in order to access his adjacent GL 19, since that lot was landlocked. On 3/28/1985, DNR issued a Land Use Permit ("LUP") to Mr. Oliva, which authorized him to build a driveway and place utilities on GL 17. Unbeknownst to Mr. Oliva, DNR then issued ROW Permit 220394 on 9/9/1985 for the location, construction,

¹ This is the original plat. Amended plats 87-49 and 87-105 were recorded later, which were not approved by the Kenai Peninsula Borough; so their legal status is uncertain.

operation and maintenance of a right-of-way. See, Attachment B to Petition, *Petition Documents Table*, Documents Nos. 5, 6, 7, 8.

In 1985, Mr. Oliva built his driveway on GL 17 and had utilities put in; and he and his family have used the driveway and utilities ever since. No other persons use or have any need to use their driveway or utilities.

5. Reasons for Vacation Request. The petitioners request the vacation of ROW Permit ADL 220394 for the following reasons.

On 9/25/1996, the State conveyed GL 17 to the Alaska Mental Health Trust Authority ("AMHTA") as Mental Health Trust Land. This conveyance terminated ROW Permit ADL 220394 in accordance with its terms and conditions. However, Petitioners discovered that DNR recorded ROW Permit ADL 220394 in 2018 through 2020, three times, for reasons unknown to the Petitioners.

The petitioners purchased GL 17, containing ROW Permit ADL 220394, from the AMHTA, and the deed was recorded on 8/30/2019. Since then, the petitioners have been moving forward with their property development plans.

Petitioners and their business now own property on all sides of the ROW Permit ADL 220394 area: GL 17, GL 19, and Lot 1, Rappe Park Subdivision. The petitioners continue to use the land in ROW Permit ADL 220394 as their private driveway, which they constructed in 1985, and which no one else uses or needs to use. ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.

To make sure that there is no confusion about Petitioners' property rights in GL 17, the Petitioners request to vacate ROW Permit ADL 220394 in order to clear DNR recordings related to ROW Permit ADL 220394, which encumber their title to GL 17. The only development under ROW Permit ADL 220394 was Petitioners' driveway and utilities, which no one else uses or needs to use. There is no public necessity or purpose to use Petitioner's driveway, as it dead-ends at petitioners' property, GL 19. It is highly unlikely that the State will use public funds to construct a public road in the ADL 220394 area, which road could be at most 30' wide and less than 300' in length, and would terminate at the property line of Petitioners' GL 19.

Vacation of ROW Permit ADL 220394 should also terminate a multi-year conflict with neighbors Jeffrey and Bonnie West, who own Lots Two (2) and Three (3), Rappe Park Subdivision -- at least with respect to their recent complaints about the Olivas' use of ROW Permit ADL 220394 area.

The Wests' complaints against the Olivas began when the Wests were the unsuccessful bidders in competition with the Olivas to buy surrounding AMHTA property, including GL 17. The Wests have other public and private access to their two Rappe Subdivision lots through: (1) original Park Road, which crosses GL 17, as shown in Alaska Land Survey 79-210, and which dead ends at platted Craig Drive shown on Plat 86-219; (2) platted Craig Drive, renamed Park Road ("Park Road Extension"), which the Wests cross over from their residence to access

original Park Road; and (3) the original road to Daniels Lake from the end of original Park Road through the Wests' property, as shown on ASLS 79-210, which the Wests currently use as a driveway(s). Original Park Road was and is currently maintained by the Kenai Peninsula Borough; Borough maintenance ends at Craig Drive/Park Road Extension.

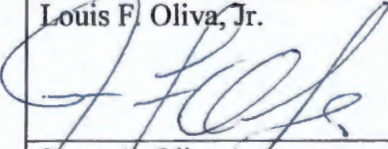
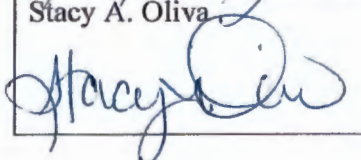
6. **Description of the alternate right(s)-of-way.** Petitioners can access GL 17 directly through original Park Road, and they can continue to use their driveway they built in the ADL 220394 area to access GL 19. Petitioners can also access GL 19 through their new driveway built in 2019, which connects with Neighbors Drive, a Borough-maintained right of way, to Petitioners' residence on GL 19. There is an alternate 30' right of way adjacent to the ADL 220394 area, platted as Craig Drive on the Rappe Park Subdivision Amended plat; renamed in 1997 as Park Road ("Park Road Extension"). Park Road Extension has been improved in sections, which are currently used by the Petitioners' neighbors Jeffrey and Bonnie West to access their Lots 2 and 3; and is almost completely built. Therefore, a new alternate right-of-way is not necessary.

As stated above, the Wests, who own Lots 2 and 3 in Rappe Park Subdivision, have public and private access to their properties through original Park Road, which crosses GL 17, as shown in Alaska Land Survey 79-210, Craig Drive/Park Road Extension, and the original road to Daniels Lake through their Lot 2, Rappe Park Subdivision Amended.

7. **Authority for filing.** The petitioners file this petition under the authority of AS 29.40.120 and 11 AAC 51.065, if AS 29.40.120 and 11 AAC 51.065 apply to vacation of ROW Permit ADL 220394, and without waiving petitioner's property rights in any of their properties or their claim that ROW Permit ADL 220394 terminated on 9/25/1996 in accordance with its own terms and conditions.

8. **Signatures.** The undersigned Petitioners by their signatures certify that they are the owners of and have possessory rights in the property described next to their signatures.

PETITIONERS:

<u>Name & Signature</u>	<u>Legal Descriptions</u>	<u>Mailing Address/Phone</u>	<u>Date</u>
Louis F. Oliva, Jr. 	See paragraph 3, above	P.O. Box 8567 Nikiski, AK 99635 (907) 776-8656	12/22/20
Stacy A. Oliva 	See paragraph 3, above	P.O. Box 8567 Nikiski, AK 99635 (907) 776-8656	12/22/20

9. **Additional Information** The accompanying **Attachment B To Petition, Petition Documents Table**, describes the records attached to **Attachment B**. Those attached records document the relevant history of the land ownership of GL 17, as well as other relevant

land, including Government Lot 19 ("GL 19"), former Government Lot 18 ("GL 18") and its later subdivision into the 3 lots of the Rappe Park Subdivision.

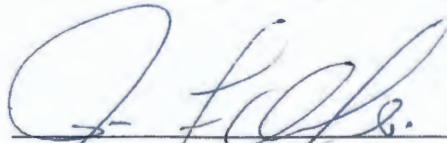
10. Petitioners' attorneys. Attorneys for the petitioners designated to receive service by mail are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice).

11. Petitioners' Surveyor. Surveyor for the petitioners is S. A. Sam McClane, McLane Consulting, Inc., P.O. Box 468, Soldotna, AK 99669, (907) 398-1054 (Voice).

12. No Waiver. By filing this position, Petitioners do not waive their claim that ROW Permit ADL 220394 has terminated in accordance with its terms and conditions.


At a later date, Petitioners may also submit additional information regarding those records and other records which relevant to the history of land ownership and this petition.

DATE: 12/22/2020



LOUIS F. OLIVA, Jr. Petitioner

DATE: 12/22/2020



STACY A. OLIVA. Petitioner

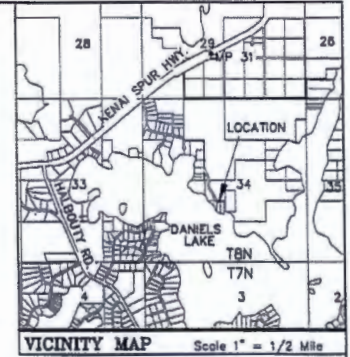
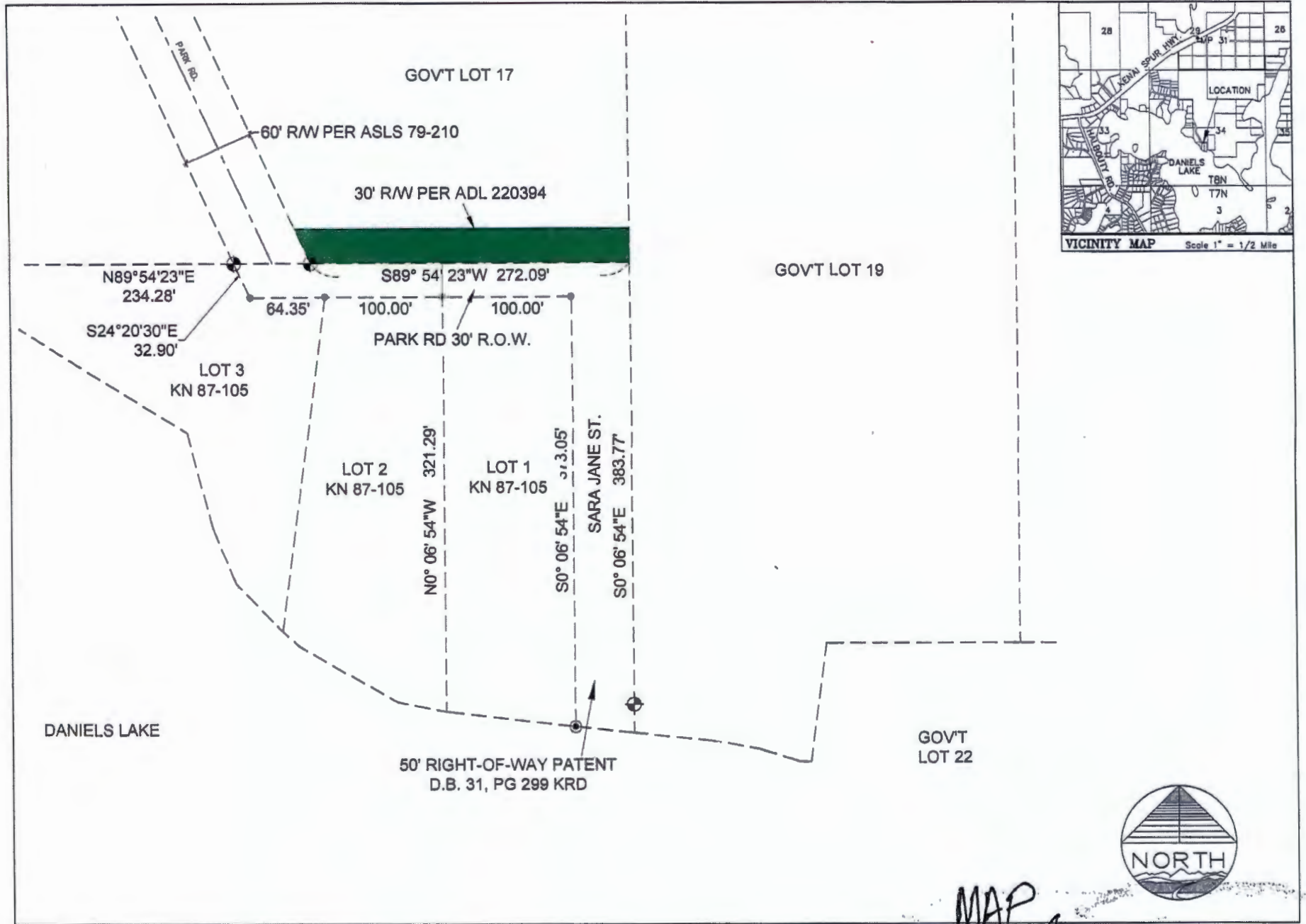
ATTACHMENT A TO PETITION

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

MAPS

<u>No.:</u>	<u>Description:</u>
1	Map -- with area to be vacated highlighted in green
2	Map -- from LUP and ROW Permit 220394
3	Map -- Orthomosaic Drone Photo 9/12/2020 with area to be vacated highlighted in green cross-hatched



MAP 1
Page 1 of 2

UTM Zone 18
N = 6 73 41.80 m
E = 7 33.59 m
Δα = 1"

C - 1/4 Cor Section 34

(ADL 201380)

60' PUBLIC R/W ISSUED EASEMENT

FOR ROAD AND UTILITY PURPOSES
Contains 0.96 Acres (0.39 Hectare)

ALASKA

OF

STATE

Temporary Turnaround
50' R to be automatically
located when road extended by
lot dedication.

BT 1 6" Spr S 6°40'W 14.7
BT 2 12" Spr S 7°25'W 46.5
BT 3 1" Spr N 51°10'E 73.7

BT 1 8" Spr S 21°05'E 51.6
BT 2 6" Spr S 25°55'W 48.9
BT 3 10" Spr N 82°50'W 26.1

BASIS OF BEARING

SELEC

Mental H
Tentative
Patent N

DEDIC,
UTILI

heret
all easen
as show:

Date 8/

APPROXIMATE LAKE MEASURES

OWNERSHIP CERTIFICATE

I, the undersigned, hereby certify that I am the director,
Division of Technical Services, and that the
State of Alaska is the owner of ASLS 79-210, as
shown herein. I hereby approve this survey and plat
for the State of Alaska.

8/21/80
Date

[Signature]
Director
Division of Technical Services

Gov't Lot 18
Private

Ownership

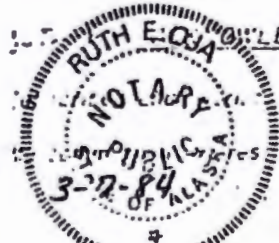
SCR/Lowm
DNR/Aska

MAP 2

Page 1 of 5

END EXIST ROAD

SEC 34



before me this 21st day of 1980

Ruth E. Oja
Notary for Alaska

220391



ORTHOMOSAIC
DRONE PHOTO
9/12/2020

LOT LINE &
IMPROVEMENTS ARE
SPATIALLY CORRECT



SCALE
1" = 80'
0 40' 80'

MAP 3
Page 1 of 1

ATTACHMENT B TO PETITION

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION DOCUMENTS TABLE

<u>No.:</u>	<u>Date:</u>	<u>Description:</u>
1	8/01/63	Patent 1232789 (excerpt) by U.S.A. to SOA of Government Lots 17, 20, 22, 23, 35, 36, and 37
2	10/15/63	Patent 1233765 by U.S.A to Rene N. Beek of Government Lot 18
3	12/5/63	Patent 1234325 by U.S.A to Jesse D. Nichols, Sr. of Government Lot 19
4	8/21/80	Alaska State Land Survey No. 79-210
5	10/23/84	Application for Right-Of-Way-Permit - Applicant: Louis F. Oliva, Jr. - File: ADL 220394
6		Documents from DNR File: ADL 220394: <i>Page 1:</i> Letter 1/22/85 by KPB Staff to DNR [KPBPC non-objection to 30' wide public ROW permit] <i>Page 2:</i> DNR Memo 2/25/85 [issue private, non-exclusive easement to Oliva] <i>Page 3:</i> Letter 3/12/85 by KPB Staff to DNR [KPBPC recommends 30' wide public access and utility easement] <i>Page 4:</i> DNR Memo 3/15/85 [Rappe will not allow use of his adjacent property for Oliva's access] <i>Pages 5 - 8:</i> DNR Memo 3/18/85 [plan was to issue private, non-exclusive easement to Oliva; KPB may select land, KPBPC recommends 30' wide public access and utility easement; decision not to object to KPBPC recommendation and to issue a land use permit to Oliva for entry onto the land for the purpose of construction]
7	10/24/84 - 10/14/20	Case File Abstract, Summary, File: ADL 220394
8	9/11/85	Right-Of-Way-Permit ADL 220394
9	6/16/86	Minutes of Meeting of Kenai Peninsula Borough Planning Commission on Preliminary Plat, Rappe Park Subdivision

10	11/12/86 Filed	Plat No. 86-219, Rappe Park Subdivision
11	8/27/87 Filed	Plat No. 87-105, Rappe Park Subdivision Amended
12	9/25/96 Recorded	Quitclaim Deed No. 8000072 (excerpt), SOA to AMHTA
13	8/27/19	Quitclaim Deed, QCD No. 928, MHT 9200669A, AMHTA to Oliva

To all to whom these presents shall come, Greeting:

Seward Meridian, Alaska.

7. 3 W., R 8 V.,
Sec. 1. 813E4, 84;
Sec. 2. Lots 3 and 4, 813E4;
Sec. 3. Lots 1, 2, 3, 4, 813W4, SE4;
Sec. 4. Lots 1, 2, 3, 4, 813W4, 84;
Sec. 5. Lo: 1, SE4NW4, E4SE4, SE4;
Sec. 6. Lots 2, 3, 4, 5, 6, 10, 11, 15, 16, 17, 18,
20, 22, 23, 24, 26, 27. SW4NW4, SW4NW4;
Sec. 7. Lot 3;
Sec. 8. E4, E4SW4;
Sec. 9. N4, SW4, W4SE4;
Sec. 10. N4W4, NE4SE4;
Sec. 11. N4W4, 84NW4, N4SW4, NW4SE4, SW4NW4;
Sec. 17. NW4NE4;
Sec. 19. Lots 1, 2, 4, 84NW4, SE4SW4, 84SE4;
Sec. 20. SE4NW4, SW4NW4, 84;
Sec. 21. Lots 2, 7, 11, 12, 13, 14, 17, 18, 32, 34,
35, 36, 37, 39, 84NW4, N4NW4NW4,
SE4NW4NW4, E4SW4NW4, SW4SW4NW4,
SW4SW4NW4, 84NW4SW4NW4, SW4;
Sec. 22. Lots 1, 2, 3, NW4, 84SW4, SE4SW4,
W4SE4,
Sec. 23. E4;
Sec. 24. Lots 1, 2, 3, 4, 5, 84NW4, 84SE4,
NW4SW4;
Sec. 25. Lots 1, 2, 3, NW4NW4, 84N4, N4S4,
N4SE4SW4, N4SW4SW4SW4, SE4SW4SW4,
SE4SE4NW4, 84SE4;
Sec. 26. Lots 2, 3, 4, 8, 9, 11, 12, 15, 16, 17, 20,
21, 24, 25, 26, 27, 28, 30, 31, 33, 84NW4,
NW4NW4, NW4, N4NW4SW4, N4SE4,
SE4NW4NW4, 84NW4SE4;
Sec. 27. Lots 1, 4, 5, 8, 9, 10, 17, 18, 19. SE4NW4,
W4SW4;
Sec. 28. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9. SE4NW4,
NW4NW4, SE4SW4, SE4;
Sec. 29. Lots 1 and 5, E4NW4, NW4, W4NW4,
NE4SW4, NW4SE4;

Page 4 of 22

Seward Meridian, Alaska.

T. 8 N., R. 11 W., (continued)

- Sec. 25, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, SE1/4, SW1/4, S1/2, NE1/4, SE1/4, SW1/4, S1/2, SE1/4, SW1/4;
 Sec. 26, Lots 1, 17, 18, 30, 37, 38, 39, 40, 52, SE1/4;
 Sec. 28, Lots 3, 4, 5, SW1/4, S1/2, W1/2;
 Sec. 29, E1/2, NW1/4;
 Sec. 31, NE1/4;
 Sec. 32, NW1/4, SW1/4;
 Sec. 33, Lot 30;
 Sec. 34, Lots 17, 20, 22, 23, 35, 36, 37, NW1/4, SE1/4, SW1/4, S1/2, NW1/4, SE1/4, SW1/4;
 Sec. 35, Lots 1, 7, 29, 38, 39, 40, 41, 42, 50, 51, 54, 55, 56, 61, 63, SE1/4, SW1/4, S1/2, SE1/4.

The areas described aggregate 34,133.41 acres, according to the Official Plats of the Surveys of the said Lands, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the said Act of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said State of Alaska, and to its assigns, the Tracts of Land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatever nature, thereto belonging, unto the said State of Alaska, and to its assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.

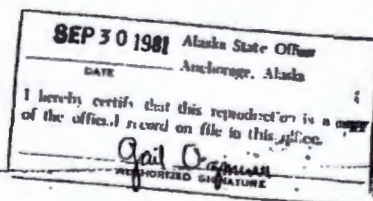
There is, also, reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines in accordance with the Act of March 12, 1914 (38 Stat. 303; 48 U.S.C. Sec. 305).

Reserving unto the United States, its permittee or licensee, the right to enter upon, occupy and use, any part or all of that portion of the SE1/4 Sec. 12, T. 8 N., R. 9 W., lying within 100 feet of the center line of the transmission line right-of-way of the Crescent Lake Project No. 2171, for the purposes provided in the Act of June 10, 1920 (41 Stat. 1063), and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1933 (49 Stat. 846).

There is also reserved a right-of-way for a Federal Aid Highway for a material site under 23 U.S.C. 317.

Except that this patent shall not convey the oil and gas rights in the following lands until the oil and gas leases listed shall terminate or be relinquished, but upon such termination or relinquishment of the said leases, all the rights and interests to the oil and gas deposits in the said lands shall automatically vest in the patentee.

1232750



Page

2 of 3

BOOK 178 PAGE 552
Kani Recording Dates

Anchorage 050380

4-1044
Only 100

Subject to such rights for natural gas pipeline and oil pipeline purposes as the Alaska Pipeline Company and the Kani Pipeline Company, respectively, may have under Section 28 of the Act of February 23, 1920 (41 Stat. 437), as amended by the Act of August 21, 1935 (49 Stat. 674).

Reserving unto the United States that certain communication path and all appurtenances thereto, constructed by the United States, through, over, or upon the RIGHT, SURVEY Sec. 4, SURVEY Sec. 5, and the SURVEY Sec. 8, T. 5 N., R. 10 W., S. M., and the right of the United States, its officers, agents, or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

81-007820

29th

RECORDED-FILED
KANI REC.
DISTRICT

OCT 16 3 30 PM '81

REQ.

ADDRESS 1015 Pular Rd #400
5371 Anch 99503

(SEAL)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/16/81 BY 1015 Pular Rd #400
ANCHORAGE, ALASKA 99503

GIVEN under my hand in the District of Columbia, the
FIRST day of AUGUST in the year of
our Lord one thousand nine hundred and EIGHTY-THREE
and of the independence of the United States the one hundred and
EIGHTY-THIRD.

For the Director, Bureau of Land Management,

Elizabeth B. Nicks

Chief, Patent Section

RECORD OF PATENTS Patent Number

1232783

8

SEP 30 1981	Alaska State Office Anchorage, Alaska
DATE	
I hereby certify that this reproduction is a true and correct copy of the original record on file in this office.	
AUTHORIZED SIGNATURE	

Page 3 of 3

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of Renee M. Beak

has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Seward Meridian, Alaska.

T. 8 N., R. 11 W.,

Sec. 34, Lot 18.

The area described contains 3.71 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat. 391, 48 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat. 305, 48 U. S. C. sec. 305).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the east boundary of said land.

RECORDED - FILED

REC. DIST.

DATE

2/23 1965

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FIFTEENTH day of OCTOBER in the year of our Lord one thousand nine hundred and SIXTY-THREE and of the Independence of the United States the one hundred and EIGHTY-EIGHTH.

For the Director, Bureau of Land Management.

By Elizabeth B. Muecke

Chief, Patent Section

Patent Number 1233765

Page 1 of 1

Anchorage 047793

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), and the acts supplemental thereto, the claim of Jesse D. Nichols, Senior,

has been established and that the requirements of law pertaining to the claim have been met, for the following described land:

Seward Meridian, Alaska.

T. 8 N., R. 11 W.,

Sec. 34, Lot 19.

The area described contains 5.19 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat. 391, 43 U. S. C. sec. 945). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat. 305, 48 U. S. C. sec. 805).

Excepting and reserving, also, to the United States all oil, gas and other mineral deposits, in the land so patented, together with the right to prospect for, mine and remove the same according to the provisions of said Act of June 1, 1938.

This patent is subject to a right-of-way not exceeding 50 feet in width, for roadway and public utilities purposes, to be located along the east and west boundaries of said land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FIFTH day of DECEMBER in the year of our Lord one thousand nine hundred and SIXTY-THREE and of the Independence of the United States the one hundred and EIGHTY-EIGHTH.

[SEAL]

For the Director, Bureau of Land Management.

By

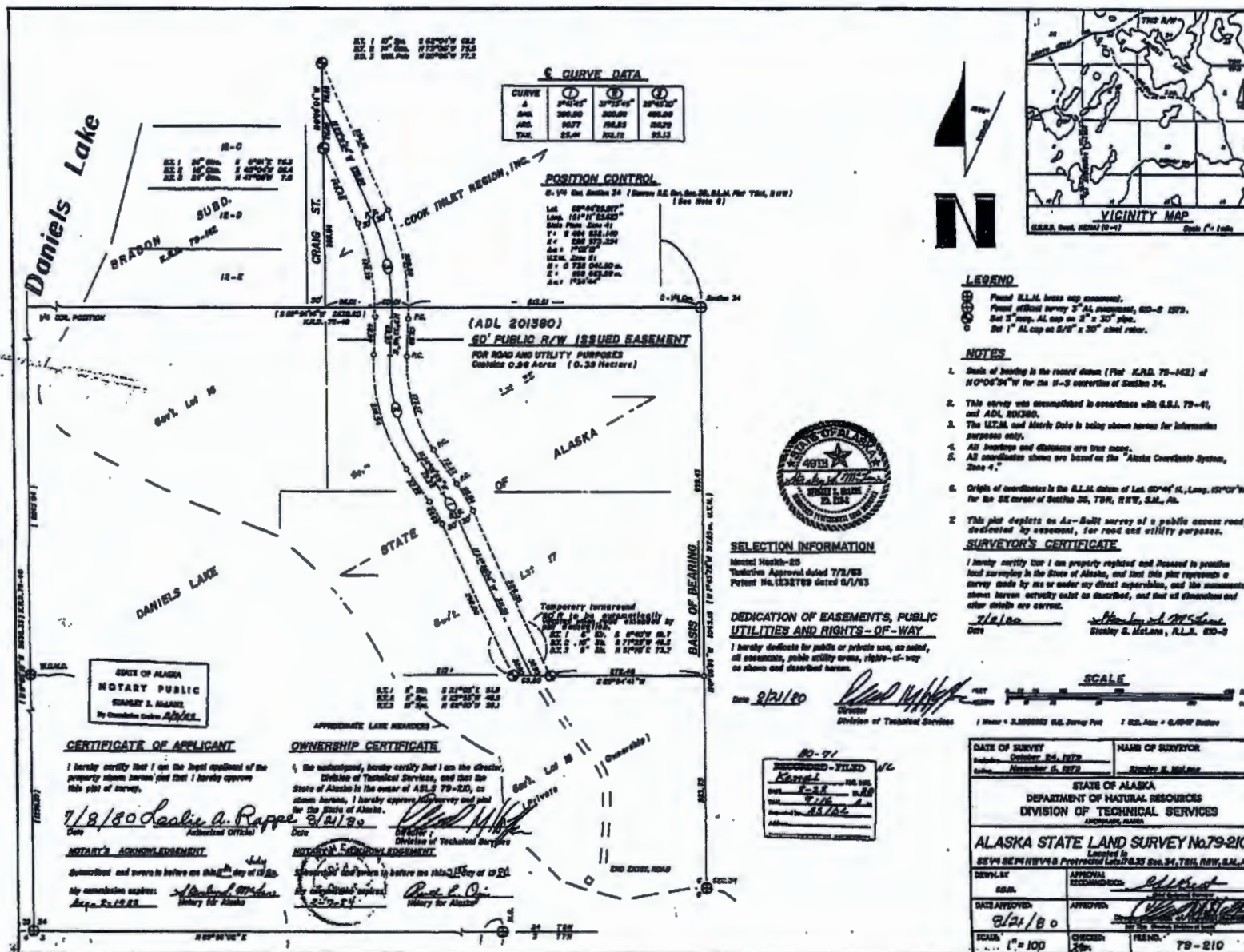
Elizabeth O. Hucker

Chief, Patents Section

Patent Number 1234325

ENCLOSURE

Page 1 of 1



STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

ADL 220394

APPLICATION FOR RIGHT-OF-WAY PERMIT

Date: 10/23/84

The undersigned Louis F. Oliva, Jr. residing at _____

Rt. 1 - Box 835-2, Kenai, Ak. 99611 (Earl Drive, Nikishka, Alaska) hereby applies to the Director of the Division of Lands, Department of Natural Resources, for Right-of-Way 20^(minimum) feet in width and 272.48 feet in length located in Section 34, Township 8 North, Range 11 West, Seward Meridian, containing an area of 544.96 ^(.012) ~~sq.~~ ^{acres} as shown on the plat attached hereto in triplicate copies, for the purpose of constructing and maintaining thereon a right-of-way for ~~private~~, public, ~~intermittent~~, yearlong use (strike inapplicable words).

State briefly the standards of construction of proposed improvements:

Gravel on gravel road; underground main gas line, underground telephone line & overhead electric line.

Constructed _____ Construction to begin As soon as permit is issued.
would like to have started Oct. 1, 1984.
To be completed within 30 days of my receiving right-of-way permit.

If this application is approved, I agree to construct and maintain the improvements authorized in a workmanlike manner, to keep the area in a neat and sanitary condition; if said right-of-way is to be constructed across leased lands, I agree to reimburse the lessee for all damages to crops and improvements, to the extent of the fair market value thereof, which may be damaged or destroyed as the result of the construction of said right-of-way, and to comply with all the laws, rules and regulations pertaining thereto; and *provided further that upon termination or relocation of the Right-of-Way for which application is herein made, I agree to remove or relocate the improvements and restore the area without cost to the State and to the satisfaction of the Director.

[Signature]
Signature of Applicant

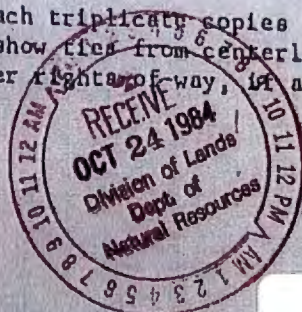
(Instructions for preparation of plat: Attach triplicate copies of letter-size plat, show centerline and boundaries of right-of-way, show ties from centerline to establish monuments and section corner, show conflicts with other rights-of-way, if any, scale 4" to 8" per mile, type of survey.)

*Not applicable to State Agencies

10-112 (75)
10/64

DAY ONE

11-28-84



220394

5
Page 1 of 2

October 23, 1984

State of Alaska
Dept. of Natural Resources
Land & Water Management
South Central Region
Pouch 7-005
Anchorage, Alaska 99510

ATTN: Mike Budville

RE: Right-of Way Application

Dear Mr. Budville:

I would like a permit to use part of your land for a minimum 20' right-of-way for road and utilities. This Will be used to access my property which will begin construction hopefully this year if your permit is issued.

I have been in the excavating business for eight years now and can assure you of a neat, orderly, and professional job, completed in a very timely manner.

Thank you,

Anita L. Oliva

Louis F. Oliva, Jr.

By: Anita L. Oliva

220394

**KENAI PENINSULA BOROUGH**BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441STAN THOMPSON
MAYOR

January 22, 1985

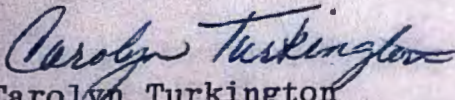
Mary Sims-Walter
Natural Resource Officer
State of Alaska
Department of Natural Resources
Division of Land & Water Management
3601 C Street - Pouch 7-005
Anchorage, AK 99510

RE: Right-of-way Application - ADL 220394
Sec. 34, T8N, R11W, S.M.

The Kenai Peninsula Borough Planning Commission met on January 21, 1985 and considered the above. The Commission voiced non-objection to the issuance of a 30 ft. wide public right-of-way permit.

Should you have any questions or desire additional information, please contact us.

Sincerely,


Carolyn Turkington
Land Management Officer



TOM HAWKINS, Director
Division of Land and Water Management
Department of Natural Resources

2/25/85

From Mike Budbill

In a recent phone call with the
Kenai Penn Boro I discovered that the
parcel of land this 273 foot driveway
accesses is private. Owned entirely
by the Oliva family.

As such I believe that due to
the private use and no public
lands are accessed by this
driveway or (utility easement) that
we can only grant a right way
to private non exclusive use.
As a result -

1) Shall I ~~do~~ this as a private
easement ~~ads~~ ~~PLFF?~~ ~~X~~ ~~y~~ ~~m~~
+ Boro Planning Comm. approval - they had the opportunity to
comment on the proposed right of way thru the agency review
process. I would call & see if they plan to comment.

2) Can I amend ~~the plan~~ ~~to~~ ~~go~~ ~~in~~ ~~and~~
issue priv. ease. ~~with~~ ~~the~~ ~~plan~~ ~~to~~ ~~go~~ ~~in~~ ~~and~~
With Boro Planning Comm. approval? Like a pub-R/W?

Please give me your recommendations -
Mike

Mike - you don't need to amend their apln. We can issue
them a private non exclusive as a result of
the adjudication process. They should know we
ARE CONSIDERING the priv non-ex R/W. Do try
and get the boro to comment.

Kim



KENAI PENINSULA BOROUGH

BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

March 12, 1985

Mike Budhill
State of Alaska
Department of Natural Resources
Land & Water Management
Pouch 7-005
Anchorage, AK 99510



Re: ADL 220394 Right-of-Way Permit
Applicant: F. J. Olivia, Jr.

Dear Mr. Budhill:

At the meeting of March 11, 1985, the Kenai Peninsula Borough Planning Commission again reviewed the referenced permit application. The action taken by the Commission was to affirm its January 21, 1985 decision which is to recommend a 30 ft. wide public access and utility easement along the south line of Lot 17, Sec. 34, T8N, R11W, S.M. AK. lying easterly of Neighbors Avenue.

Please contact me if you have any questions.

Sincerely,

Carolyn Turkington
CAROLYN TURKINGTON
Land Management Officer

CT:gp

11/2/83, 1st file

→
Craig Kappel placed no way on
Oliver R/D.

611 780 291

12/8/83
371
over
Craig Kappel the adjacent owner of the
lot along the south lot line between
parcels 17 and 18 saw map placed today
at 3:30 pm. He was not going to
sell or offer any part of his property
up for ex right of way for Oliver.

As a result of this the only
access is through state land, selected
by the KPBorough.

Mike Budbill-NRO

Memo to Mr. Kwan & Jim Fitch
 Division Memo ad

Summary of Oliver RM 220394

On October 24 1984 we received an application for a power right of way 222 feet long x 20 feet wide. This was located on a driveway and utility easement. The record shows 544 feet on a 13 acre. Please see map & plat not attached.

The easement benefits only the applicant and the adjacent land owner. Oliver To public and is already granted. Agency comments were requested 11/7/85. A delay was experienced when the applicant to a local project (Question) was requested. The applicant was requested for

any agency. The comments were received for the applicant. The comments were received for the applicant. The comments were received for the applicant.

On February 2/25/85 I decided that the applicant should be approved as a private easement. The applicant should be approved as a private easement.

On 2/25/85 the applicant phone call was received. The applicant should be approved as a private easement. The applicant should be approved as a private easement.

3/1/85 at Planning Commission meeting. He said
 that the Port/ASHA will not pursue
 in order for the parcel and a house
 w/out an easement. I explain the
 processing requirements. He tells me
 he will take the easement money
 if a easement isn't granted by
 the council. I explain the advantages
 of a easement, the parcel owner
 through selection of the parcel,
 and that I have no information
 from them.
 I plan to bring, finally need
 a need some common; explain it
 a not to be a parcel easement
 or right on creating a parcel
 easement. Or KP selected land.
 She said she would present it
 to the planning commission
 at the next regularly scheduled
 meeting. 2/13/85 KP3 letter arrives that on
 2/13/85 Planning Commission meeting it
 was to recommend a 30 foot wide
 public access at utility easement.

6

12
24
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804
816
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840
852
864
876
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912
924
936
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960
972
984
996
1000

We are going down there on Wed/Thursday
3/20-21/85
May I have a permit in hand (signed by
and ready to give them if it still has
some red problems?

Will we have a LUP for only
one lot for the purpose
of constructing a 30' foot parking
way. I guess not

With that 1 decision in mind it seems
important that the ~~the~~ ~~earlier~~ in
have decision to acquire a private
the profitable - eventual and owner
(the KPB) recommends a public second
even though only one family ~~two~~
the use. And another objection
and owner Craig Kope will
probably see the property value
rise as it would, improved access.
of the KPB (no overtures owners)
want a public easement should
we object? — yes no X
shall we have a LUP for only
one lot for the purpose
of constructing a 30' foot parking
way. I guess not

Public use
of the property
is not the
primary purpose
of the property
and the
public use
is not the
primary purpose
of the property

3/85
Notes recommending
a Public ROW

Mike are
at the
moment
what to
do

the brought
With that I decide
apparent that the
house decision
assessments is
the probable
(the KPB) - even
even though
immediately
in use. As
land owner
probably
rise as
of the KPB
want a
we

3/85
Notes recommending
a Public ROW

in mind it becomes
in -
in a private
vested.
Land owners
public consent
a family
will enjoy
adjacent
appeal will
its value
improved
owner

Notes to KMK & Jim F.
for Mike BB
Sorry about handwritten
notes but it types

3/19

Mike
I came w/ your recommendations.
Prepare a permit of stipulation regarding
survey of ROW.

SLR 85089

I think you should have your
decision memorandum typed - so as to
include it a legible portion of the
case file (later time points). J.F.

Shouder
Hughes
R.H.

Johns further problems?

on Wed/Thursday
hard negotiating
field trip

usually
leave
the medical
to high
1st
after that
read the
of 105
1214

OLIVA, Louis F. Jr.
ADL 2203

3/85

Notes
Boric

We are now accepting payments online for case agreements and mining claims bills! To make a payment by credit card or from your bank account, click here.

Results - Case File Abstract

Summary

File: ADL 220394

This case contains Mental Health Trust Lands.

Customer: 000168445

OLIVA, LOUIS F JR
BOX 8567
NIKISKI AK 99635

Case Type: 581 PUBLIC EASEMENT

DNR Unit: 200 LAND MANAGEMENT

File Location: LWMCN LWM CENTRAL OFFICE

Case Status: 35 ISSUED

Status Date: 09/11/1985

Total Acres: 0.012

Date Initiated: 10/24/1984

Office of Primary Responsibility: LSC LND-SOUTHCENTRAL REG

Last Transaction Date: 07/14/2020

Case Subtype: 8003 ACCESS

Last Transaction: DR DOCUMENT RECORDED

Land Records

Meridian: S **Township:** 008N **Range:** 011W **Section:** 34 **Section Acres:** 0

Case Actions

10-24-1984 APPLICATION RECEIVED		
RIGHT-OF-WAY FOR PUBLIC YEARLONG USE.		
03-28-1985 COMMENTS		
LUP ISSUED TO AUTHORIZE APPLICANT TO ENTER UPON STATE LANDS TO CLEAR AND CONSTRUCT DRIVEWAY AND PLACE UTILITIES SUBJECT TO SPECIAL STIPS.		
09-11-1985 ISSUED		
STATUS 23	23	EASEMENT CREATED
R/W PERMIT ISSUED FOR A PUBLIC ROAD & UTILITY ACCESS.		
08-02-1986 CASEFILE CUSTOMER DOCUMENTED		
CUSTOMER NUMBER	000168445	OLIVA, LOUIS F JR
UNIT CODE	200	LAND MANAGEMENT
RELATIONSHIP CODE	10	OWNER
THIS TRANSACTION WAS GENERATED BY THE CONVERSION TO THE NEW CUSTOMER SYSTEM TO DOCUMENT THE UNIT AND RELATIONSHIP CODES		
09-20-1996 COMMENTS		
MHPAR SM-1434, A PORTION OF THE PARCEL.		
01-02-2003 STATUS CODE STANDARDIZED		
STATUS CODE	35	ISS/APPRV/ACTV-AUTH
***** STATUS CODE STANDARDIZATION *****		

STATUS CODE CHANGED BY BATCH UPDATE		
02-20-2018 COMMENTS		
EASEMENT DOCUMENT SENT TO KENAI RECORDERS OFFICE		
03-01-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-001832-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
03-07-2018 COMMENTS		
SUBTYPES WERE RESTRUCTURED ON 3.7.2018 FOR 581 AND 582 EASEMENTS TO SIMPLIFY LAS REPORTING. NO AFFECT ON MANAGEMENT IS INTENDED.		
08-10-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-007092-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: PUBLIC ACCESS AND UTILITY EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
12-13-2018 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2018-011190-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		
07-09-2020 COMMENTS		
EASEMENT CORRECTION DOCUMENT IS COMPLETED TO ADDRESS RECORDATION ERROR		
07-14-2020 DOCUMENT RECORDED		
TYPE OF DOCUMENT	MS	MISCELLANEOUS
DOCUMENT NUMBER	2020-006563-0	
RECORDING DISTRICT	R302	KENAI
DOCUMENT DESC: EASEMENT CORRECTION GENERATED BY RECORDING THE DOCUMENT IN THE OFFICIAL PUBLIC RECORD		

Legal Description

APPLICATION LEGAL DESCRIPTION 10-24-1984

RIGHT-OF-WAY 20 FEET MINIMUM IN WIDTH AND 272.48 FEET IN LENGTH
LOCATED WITHIN SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST,
SEWARD MERIDIAN, CONTAINING APPROX. 0.012 ACRES, MORE OR LESS.

ISSUED LEGAL DESCRIPTION 09-11-1985

RIGHT-OF-WAY 30 FEET IN WIDTH AND 273 FEET IN LENGTH LOCATED WITHIN
THE N1/2 S1/2 OF SECTION 34, TOWNSHIP 8 NORTH, RANGE 11 WEST, SEWARD
MERIDIAN, CONTAINING 0.192 ACRES, MORE OR LESS.

ISSUED LEGAL DESCRIPTION UPDATED/ CORRECTED 07-09-2020

Beginning at the Southeast corner of Government Lot 17, Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, said corner being established by Alaska State Land Survey No. 79-210. (Kenai Recording District, Plat 80-71), the true point of beginning and corner number one of this parcel.

Thence S89°54'41"W, 272.48 feet along the south line of Government Lot 17 to an Alaska State Land Survey monument of the easterly boundary of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 17 and corner number four.

Thence S0°06'54"E, 30.00 feet along the east boundary of Government Lot 17 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey No. 79-210.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

ADL No. 220394

RIGHT-OF-WAY PERMIT

THIS AGREEMENT made and entered into this 5th day of September, 1985, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Land and Water Management, hereinafter referred to as the grantor and Southcentral District, Division of Land and Water Management, acting as representative of and on behalf of the public hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: public road and public utility access with the Division of Land and Water Management together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit: a 30 foot by 273 foot right-of-way located within the Seward Meridian, Township 8 North, Range 11 West, Section 34: the North 1/2 of the South 1/2; also described on the attached legal description, containing 0.192 acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein.

The as-built legal description revealing the right-of-way granted herein has been attached hereto and made a part hereof. See attachment Number 1.

In the event that the right-of-way granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefor has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Land and Water Management and all other Federal,

10-119 (72)
Rev. 4/83

8
Page 1 of 5

State or municipal laws, regulations or ordinances applicable to the area herein granted.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefor, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall be terminated by usual and customary easement vacation process with the Kenai Peninsula Borough.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited or terminated prior to the expiration of the full time for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.850, A.S. and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

Permittee:

Richard A. LeFebvre
Acting Southcentral Regional Manager
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.

State of Alaska)

This is to certify that on the 9th day of SEPTEMBER, 1985
before me, personally appeared RICHARD A. LEFEBVRE to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

Donnell W. Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989

Grantor:

Tom J. Hawkins
Director
Division of Land and Water Management

UNITED STATES OF AMERICA)

)ss.

State of Alaska)

This is to certify that on the 11th day of September, 1985,
before me, personally appeared TOM J. HAWKINS, Director to be known and
known by me to be the person named in and who executed said document and
acknowledged voluntarily signing the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal, the day and year in this certificate first above written.

Donnell W. Webb
Notary Public in and for the State of Alaska
My commission expires March 10, 1989

Right-of-Way Permit, ADL 220394

Attachment 1

A parcel of land within the Kenai Peninsula Borough, Third Judicial District, Alaska more particularly described as follows:

Beginning at the Southeast corner of Government Lot Thirty-Five (35), Section Thirty-Four (34), Township Eight North (T8N), Range Eleven West (R11W), Seward Meridian, Alaska, said corner being established by Alaska State Land Survey Plat No. 80-71, Kenai Recording District, the true point of beginning and corner number one of this parcel.

Thence S89°54'41"W, 272.4 feet along the south line of Government Lot Thirty-Five (35) to an Alaska State Land Survey monument of the easterly boundary of a 60 foot right-of-way and corner number two.

Thence N24°20'14"W, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence N89°54'41"E, 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then S0°06'54"E, 30.00 feet along the east boundary of Government Lot 35 to corner number one and the point of beginning.

Containing 0.192 acres more or less.

Basis of bearing is Alaska State Land Survey #79-210.

UTM Zone
N = 6 7 8 1.80 m.
E = 5 3.59 m.
Δα = 1°

C - 1/4 Cor Section 34

(ADL 201380)

60' PUBLIC R/W ISSUED EASEMENT

FOR ROAD AND UTILITY PURPOSES
Contains 0.96 Acres (0.39 Hectare)

ALASKA

OF

STATE

Temporary turnaround
50' H to be automatically
located when road extended by
plat dedication.

BT 1 6' Br S 60°40'W 14.7
BT 2 10' Br S 71°25'W 46.5
BT 3 1" Br N 51°10' E 73.7

BASIS OF BEARING

SELEC
Mental H
Tentative
Patent N

DEDIC,
UTILI

herety
all easen
as show:

Date 8/21/80

BT 1 8' Br S 21°05' E 51.5
BT 2 6' Spr S 25°55' W 48.9
BT 3 10' Spr N 82°50' W 26.1

APPROXIMATE LAKE MEASURES

OWNERSHIP CERTIFICATE

I, the undersigned, hereby certify that I am the director,
Division of Technical Services, and that the
State of Alaska is the owner of ASLS 79-210, as
shown herein. I hereby approve this survey and plat
for the State of Alaska.

8/21/80

[Signature]
Director
Division of Technical Services

Govt Lot 19
Private

Ownership
SCR/LWM
DNR/ALaska

Page 5 of 5



before me this 21st day of 1980

[Signature]
Notary for Alaska

END EXIST ROAD

220391

AGENDA ITEM H. CONSIDERATION OF SUBMITTED PLATS, Continued17. Rappe S/D - Preliminary
KPB File 86-187 (Malone Surveys)

STAFF REPORT STATED:

GENERAL LOCATION: North shore of Daniels Lake

USE: Residential

CURRENT ZONING: -

SEWER: On Site

WATER: On Site

Supporting Information or History:

A subdivision of Gov't Lot 18, into three lots. ROW is being dedicated along north to match ROW granted by ADL 220394.

50' ROW shown along east boundary is a right-of-way for roadway and public utilities as set out in patent.

Subdivider intends to petition to vacate a portion of ROW at some time in the future.

Lot 1 exceeds the 3:1 depth to width ratio but no exception has been requested. Staff would recommend approval if so asked.

EXCEPTIONS REQUESTED: Exception to turn around requirement at south end of ADL 201380 RW since street will continue to east. Exception no required.

STAFF RECOMMENDATIONS: Grant approval of preliminary plat subject to following conditions:

1. REVISE OR ADD TO THE PRELIMINARY PLAT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN KPB 20.12.060 AS FOLLOWS:
 - a. Provide date of this survey.
 - b. Correct the vicinity map to show: section this subdivision is in; correct number of adjacent sections to north and west.
 - c. Indicate approximate location of area subject to inundation by storm or tidal flooding. If applicable, cite study identifying flood plain.
 - d. Show ordinary or mean highwater line.
 - e. Identify by name and width all streets to be dedicated.
2. ADDITIONAL REQUIREMENTS FOR ADMINISTRATIVE APPROVAL OF FINAL PLAT IN ACCORDANCE WITH KPB TITLE 20:
 - a. Show all dimensional data required by Ordinance.
 - b. Boundary of subdivision must be wider line weight.
 - c. Identify existing easements and label use or cite record reference.
 - d. Provide or correct the dedication and approval statements with notary's acknowledgement as needed.
 - e. Survey and monumentation to meet Ordinance requirements.
3. Chapter 20.20, Design Requirements:
 - a) Show building setback statement according to 20.20.230.
4. Conform to conditions stated in KPB Planning Commission Resolution 78-6.
5. Near Title block - show Recording District.
6. Comply with the stipulations contained in KPB Planning Commission Resolution 86-05 (ADEC Regulations).

END OF STAFF REPORT

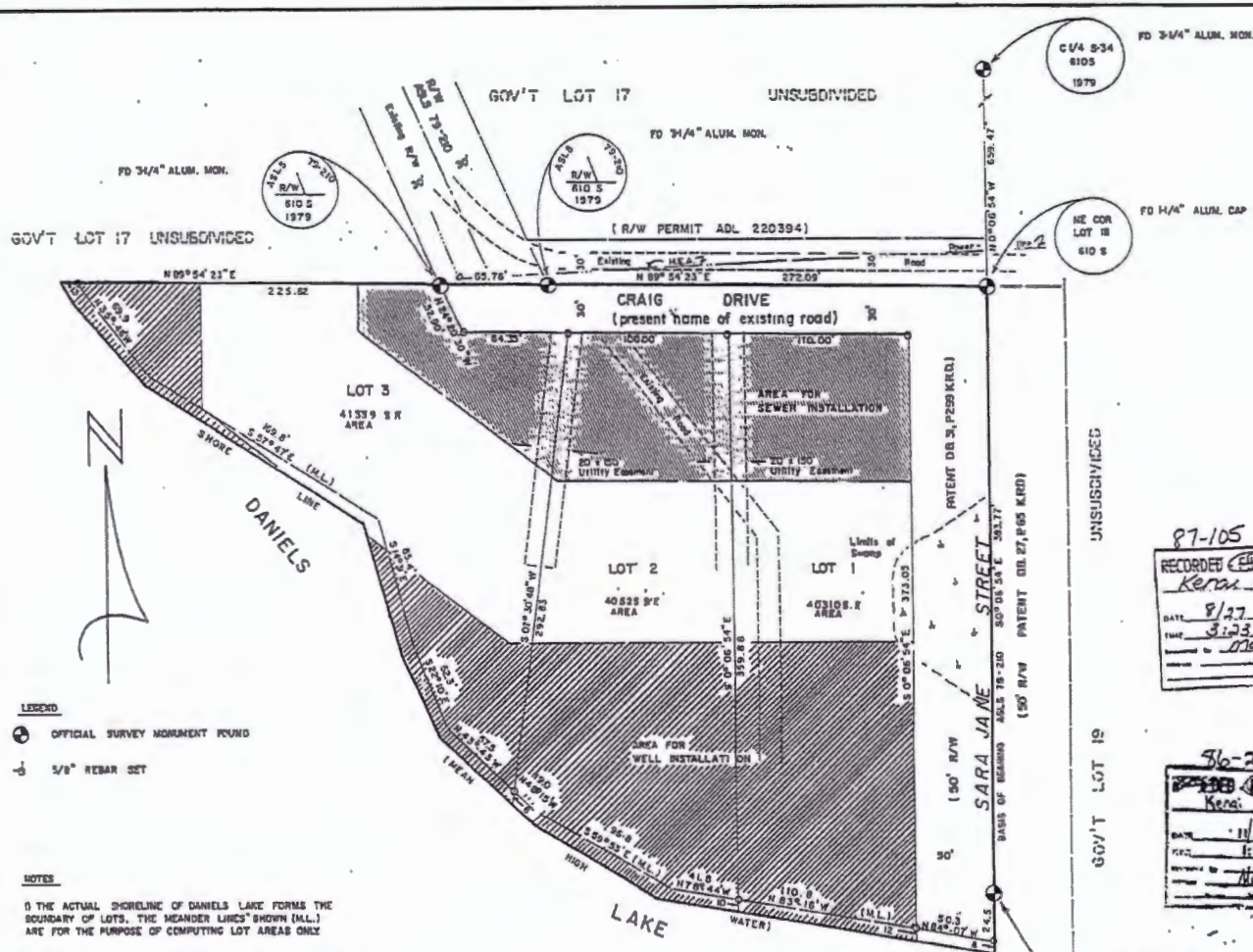
Mr. Troeger read the staff report outlining background and staff recommendations.

Commissioner Hursh: That cabin down by the lake looks like it is inaccurate.

Mr. Troeger: I think the intent is to get the cabin wholly within this lot 2 and that will probably be determined by the final field surveyor. If it comes through the cabin, I will of course ask them to revise it. The preliminary plat is not a result of the lot staking. It is just the topog. I am sure that they will keep the cabin on one lot.

MOTION: Commissioner Butler, seconded by Commissioner Hursh, made a motion to approve Rappe S/D - Preliminary plat subject to staff recommendations including an exception of 3:1 depth to width ratio for Lot 1.

Hearing no further discussion or objection, the motion carried unanimously.

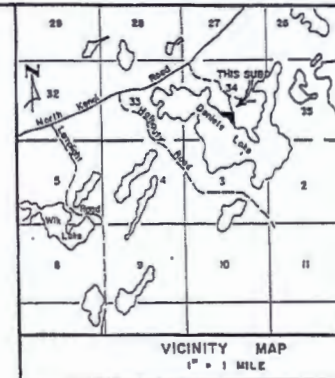


- LEGEND**
- OFFICIAL SURVEY MONUMENT FOUND
 - 5/8" REBAR SET

- NOTES**
- THE ACTUAL SHORELINE OF DANIELS LAKE FORMS THE BOUNDARY OF LOTS. THE MEANDER LINES SHOWN (M.L.) ARE FOR THE PURPOSE OF COMPUTING LOT AREAS ONLY.
 - A MINIMUM BUILDING SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS OF WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
 - SOILS ON THESE LOTS MAY OR MAY NOT BE SUITABLE FOR CONVENTIONAL ON-SITE WASTE DISPOSAL SYSTEMS. NO PERSON MAY CONSTRUCT, INSTALL, MAINTAIN, OR OPERATE A PRESSURIZED WATER SYSTEM OR A WATER-BORNE WASTE DISPOSAL SYSTEM UNLESS APPROVAL OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION IS OBTAINED. IN ADDITION ALL SEWER SYSTEMS SHALL BE INSTALLED WITHIN THE DESIGNATED AREA SHOWN ON THIS PLAT.
 - NO PART OF THIS SUBDIVISION IS WITHIN A KNOWN FLOOD PLAIN.
 - WATER WELLS AND SEPTIC SYSTEMS MAY ONLY BE INSTALLED IN THE AREAS DESIGNATED FOR SUCH INSTALLATION.

AMENDMENTS

- THE DELINEATION OF THE WATER AND SEWER INSTALLATION AREAS HAS BEEN ADDED TO THIS PLAT.
- THE ABOVE REVISION CONSTITUTED THE SOLE CHANGE MADE TO THE PLAT, ASIDE FROM THE NOTATION THEREON.
- THE ABOVE REVISIONS DO NOT ALTER LOT AREAS AND DO NOT AFFECT OR INFLUENCE ANY CHANGE OF OWNERSHIP, DRAINAGE FEATURES, RIGHTS-OF-WAY OR ANY OTHER ITEM WHICH WOULD ADVERSELY AFFECT THIS OR ADJACENT PROPERTIES. WE THEREFORE ARE SUBMITTING THIS PLAT FOR REFILE AS CORRECTED.



CERTIFICATE OF OWNERSHIP AND DEDICATION

I certify that I am the representative for the estate of Leslie A. Rappe, which is the owner of the property shown and described hereon, and that, on behalf of the estate of Leslie A. Rappe, I hereby adopt this plan of subdivision and dedicate all rights-of-way to public use and grant all easements to the use shown on.

Craig Rappe

CRAG RAPPE

BOX 112062

ANCHORAGE, ALASKA 99511

PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE

NOTARY'S ACKNOWLEDGEMENT

For *Craig E. Rappe*
 Subscribed to and sworn before me
 this 20th day of August, 1986.
 My commission expires 5/14/89

Oliver A. Thaid
 Notary Public for Alaska

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of
JUNE 16, 1986
 Kenai Peninsula Borough

By *Robert P. Torgerson*
 Authorized Official

AMENDED

RAPPE PARK SUBDIVISION

GOV'T LOT 18 IN THE NE 1/4 SW 1/4 SECTION 34
 T8N R11W SEWARD MERIDIAN, ALASKA

CONTAINING 3.464 ACRES
 KENAI RECORDING DISTRICT

FOR
 CRAG RAPPE
 BOX 112062
 ANCHORAGE, ALASKA 99511

MALONE SURVEYING
 BOX 566
 KENAI, ALASKA 99611

PERSONAL
 REPRESENTATIVE
 FOR THE ESTATE
 OF LESLIE A. RAPPE

JOB	FB	DATE OF SURVEY
8834	88-08	7/9/86
DRAWN BY	CHECKED	
dsw	hjm	7/15/86

SCALE
 1 inch = 50 feet

K.R.B. FILE NO.
 86-187

87-105
 RECORDED FILED
 Kenai, ALASKA
 DATE 8/27 1986
 TIME 3:23 P.
Malone

36-219
 RECORDED FILED
 Kenai, ALASKA
 DATE 11/12 1986
 TIME 1:30 P.
Malone

FD 3" BRASS CAP MON 87-49
 RECORDED FILED
 Kenai, ALASKA
 DATE April 18 1987
 TIME 1:55 P.
Malone



Page 11 of 1

Exhibit 14 of 5
 Page

BOOK 0493 PAGE 440

State of Alaska

Mental Health Trust Land: Fee Estate

Quitclaim Deed

No. 8000072

The Grantor, the STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES, 3601 C Street, Suite 960, Anchorage, Alaska 99503-5936, for valuable consideration hereby grants, conveys and quitclaims to the Grantee, ALASKA MENTAL HEALTH TRUST AUTHORITY, Trustee, whose mailing address of record is 3601 C Street, Suite 742, Anchorage, Alaska 99503-5936, all interest, in and to that real property situated in the KENAI Recording District, State of Alaska, as described, and designated as mental health trust land, in Section 40, Chapter 5, FSSLA 1994, as amended by Chapter 1, SSSLA 1994, and as further described by the attached parcel numbers and legal descriptions.

See Attachment A

QCD 8000072

Page 1 of 2

12
Page 2 of 5

BOOK 0493 PAGE 441

In Testimony Whereof the State of Alaska has caused these presents to be executed by the Director of the Division of Land, Department of Natural Resources, State of Alaska, pursuant to delegated authority, this 20th day of September, 1996.

By: Carol L. Shobe
Carol L. Shobe
For Jane Angvik, Director
Division of Land

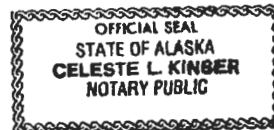
State of Alaska)
) ss.
Third Judicial District)

This Is To Certify that on the 20th day of September, 1996, appeared before me CAROL L. SHOBE, who is known to me to be the person who has been lawfully delegated the authority of Jane Angvik, the Director of the Division of Land, Department of Natural Resources, State of Alaska, to execute the foregoing document; that Carol L. Shobe executed said document under such legal authority and with knowledge of its contents; and that such act was performed freely and voluntarily upon the premises and for the purposes stated therein.

Witness my hand and official seal the day and year in this certificate first above written.

Celeste L. Kinser
Notary Public in and for the State of Alaska

My Commission Expires: 4-4-97



ATTACHMENT A

BOOK 0493 PAGE 468

Legal Description

Parcels

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1420

SECTION 32: SW1/4NW1/4, NW1/4SW1/4;

CONTAINING 80.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY MAP EXAMINED AND APPROVED BY THE U.S. SURVEYOR GENERAL'S OFFICE IN JUNEAU, ALASKA ON JUNE 26, 1923.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1434

SECTION 34: LOT 17;

CONTAINING 5.16 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1435

SECTION 34: LOT 20;

CONTAINING 2.29 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1436

SECTION 34: LOT 22;

CONTAINING 3.28 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1438

SECTION 34: LOT 35;

QCD Number 8000072

27

12
Page 3 of 5

ATTACHMENT A

BOOK 0493 PAGE 469

Legal Description

Parcels

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1439

SECTION 34: LOT 36;

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1440

SECTION 34: LOT 37;

CONTAINING 5.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 008 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-1442

SECTION 34: E1/2SW1/4SW1/4NE1/4, SE1/4SW1/4NE1/4, E1/2NW1/4SE1/4, NW1/4NE1/4SE1/4;

CONTAINING 45.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 8, 1959.

T. 007 N., R. 011 W., SEWARD MERIDIAN, ALASKA

SM-5011

SECTION 21: SW1/4SE1/4NE1/4;

CONTAINING 10.00 ACRES, MORE OR LESS.

ACCORDING TO THE SURVEY PLAT ACCEPTED BY THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT IN WASHINGTON, D.C. ON MAY 12, 1966.

Aggregating 12164.149 acres, more or less.

QCD Number 8000072

28

12
Page 4 of 5

BOOK 0493 PAGE 470

Kenai Recording District

Grantor:

State of Alaska
Department of Natural Resources
Division of Land/Realty Services
Mental Health Settlement Unit
3601 "C" Street, Suite 960
Anchorage AK 99503-5936

Return to Grantee:

Alaska Mental Health Trust
Trust Land Office
Department of Natural Resources
3601 "C" Street, Suite 880
Anchorage, AK 99503-5935

96-0027

KENAI REC NC
DISTRICT
REQUESTED BY DNR

'96 SEP 25 PM 1 00

12
Page 5 of 5



State of Alaska
Alaska Mental Health Trust
Authority
Quitclaim Deed

QCD No. 928
MHT 9200669A

**Record this document in the
Kenai Recording District**

The GRANTOR, the ALASKA MENTAL HEALTH TRUST AUTHORITY, a public corporation within the Department of Revenue (AS 47.30.011 et seq.), by its agent pursuant to AS 37.14.009(a)(2), the Alaska Mental Health Trust Land Office, Department of Natural Resources, whose address is 2600 Cordova Street, Suite 100, Anchorage, Alaska 99503, pursuant to AS 38.05.801 and regulations promulgated thereunder, for TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys and quitclaims to the GRANTEE, **Stacy A. Oliva and Louis F. Oliva, Jr.**, husband and wife, as tenants by the entirety with full rights of survivorship, whose mailing address is P.O. Box 8567, Nikiski, Alaska 99635, without warranty, all right, title and interest of the Grantor, if any, in the following described real property situated in Section 34, Township 8 North, Range 11 West, Seward Meridian, Alaska, in the Kenai Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

Lot 17, containing 5.16 acres more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on May 8, 1959.

TOGETHER with all the tenements thereon, if any; and all rights of the Grantor to any and all hereditaments and appurtenances thereto belonging or in anyway appertaining.

SUBJECT to valid existing rights, including reservations, easements, and exceptions in the

Quitclaim Deed No. 928

Page 1 of 3

U.S. Patent or other state or federal conveyance, and in acts authorizing the issue thereof; easements, rights of way, covenants, conditions, reservations, notes on the plat, and restrictions of record, if any; and encumbrances or interests of record noted on the records maintained by the Department of Natural Resources, or otherwise existing on or before the date that the land was designated as Mental Health Trust Land pursuant to Section 40, Chapter 5 FSSLA 1994, as amended by Chapter 1, SSSLA 1994.

The Grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable material, geothermal resources and fossils. The Grantor also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part of parts thereof, at any and all times for the purpose of opening, developing, drilling and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes, hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved.

Executed this 27th day of August, 2019.

GRANTOR:

ALASKA MENTAL HEALTH TRUST AUTHORITY

By:

Wyn Menefee
Wyn Menefee, Executive Director
Alaska Mental Health Trust Land Office

Quitclaim Deed No. 928

Page 2 of 3



Page 2 of 3

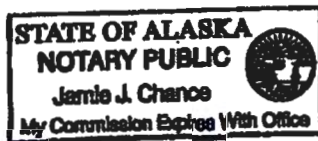
2019-007580-0

STATE OF ALASKA

)
) ss.
)

Third Judicial District

This is to certify that on this 27th day of August, 2019, personally appeared Wyn Menefee, the Executive Director of the Alaska Mental Health Trust Land Office, known to me to be the person who acknowledged that he executed the foregoing instrument, on behalf of the Alaska Mental Health Trust Land Office, as agent for the Alaska Mental Health Trust Authority, freely and voluntarily and for the purposes therein stated.



Jamie J. Chance
Notary Public for the State of Alaska
My Commission expires with office.

MHT QCD 928
MHT 9200669A
Parcel No. SM-1434

Location Index:
Township 8 North, Range 11 West, Seward Meridian, Alaska
Section 34

AFTER RECORDING, RETURN DOCUMENTS TO:
ORIGINAL TO GRANTEE:
Stacy & Louis Oliva, Jr.
PO Box 8567
Nikiski, AK 99635

CERTIFIED COPY TO GRANTOR:
Alaska Mental Health Trust Land Office
2600 Cordova Street, Suite 100
Anchorage, AK 99503

Official State Business – NO CHARGE

Quitclaim Deed No. 928

Page 3 of 3



Page 3 of 3

2019-007660-0

13
Page 3 of 3

KENAI PENINSULA BOROUGH
ADDITIONAL INFORMATION
SUBMITTAL LETTER
JAN. 22, 2021

MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101
Kenai, Alaska 99611

(907) 283-7373

(907) 283-2835 (Fax)

bob@molloysschmidt.com

kristine@molloysschmidt.com

January 22, 2021

Melanie Aeschliman, Planning Director
Planning Department
Kenai Peninsula Borough
144 N. Binkley St.
Soldotna, AK 99669

**RE: Additional Information in Support of
Submission to Local Platting Authority Under 11 AAC 51.065
Consideration of Petition to State of Alaska To Vacate A ROW Permit**

Dear Ms. Aeschliman:

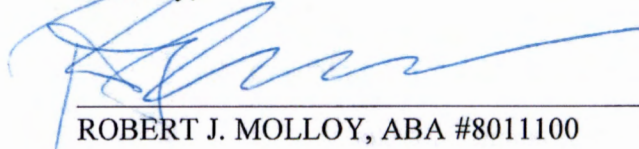
Louis and Stacy Oliva provide additional information, and a conceptual drawing, for the Borough Planning Commission in support of the Oliva's submission to the Borough Platting Authority of their Petition For Right of Way Permit Vacation filed with the Alaska Department of Natural Resources, DNR File No. EV 3-344, for platting authority comment. The attachment is the conceptual drawing showing proposed Oliva Subdivision, which would be the next step in the property development plans of Louis and Stacy Oliva and their business, Triple-Knot Land & Livestock, LLC, if the DNR approves the vacation of ADL 220394.

This next step would involve a petition to the Borough to: (1) vacate interior lot lines and combine Government Lots 17, 19, 22, 35, 36, 37 and Lot 1, Rappe Park Subdivision Amended into one large Tract A; (2) partially vacate platted Craig Drive (re-named Park Road) east of the Lot 1 property line, and (3) vacate the right-of-way shown on the Rappe Park Subdivision plat as Sara Jane Street. In exchange for the partial vacation of a portion of Craig Drive-Park Road and Sara Jane Street, the Olivas and their business propose to: (1) dedicate a portion of vacated ADL 220394, so that there would be a 60' right-of-way in front of Lots 2 and 3, Rappe Park Subdivision; (2) dedicate a triangle in the northeast corner of Government Lot 36 which currently includes a portion of Neighbors Drive; and (3) dedicate a 60" right-of-way in Government Lot 17 to Daniels Lake. The portion of ADL 220394 proposed to be dedicated was improved by the Olivas with a driveway. The proposed 60' right of way in Government Lot 17 is an improved roadway to the Habitat Protection Area line, where it becomes pedestrian access to Daniels Lake.

The DNR's approval of the vacation of ADL 220394, and that vacation, is the necessary first step in the Oliva's and Triple-Knot's property development plan, so the next step is contingent upon DNR approval of the vacation of ADL 220394.

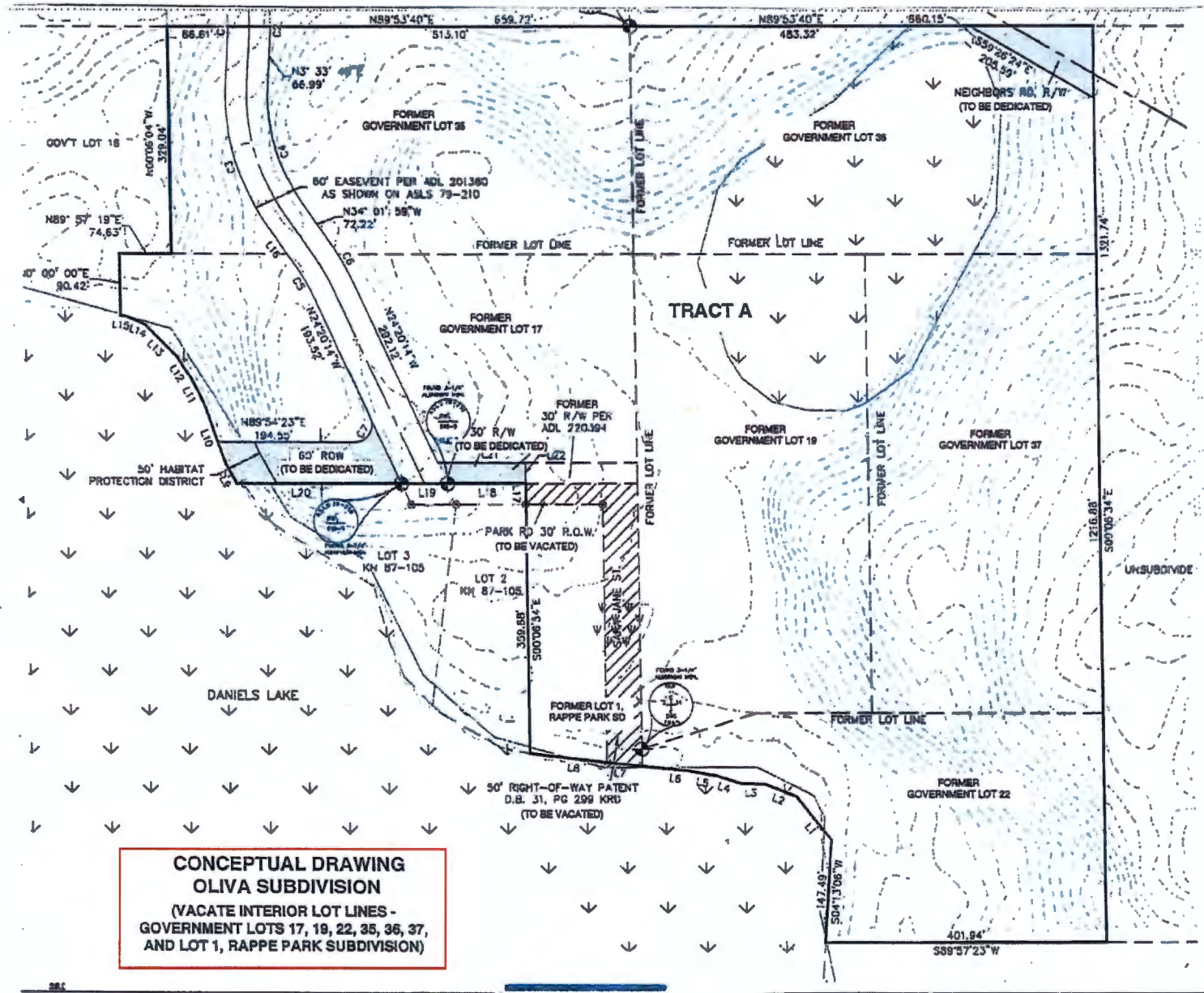
Please provide this letter and attachment to the Borough Planning Commission for its information. Thank you.

Sincerely,



ROBERT J. MOLLOY, ABA #8011100

cc: J. Poydack, Survey Section, DNR
Clients



Kenai Peninsula Borough

PLANNING COMMISSION DESK PACKET

**February 8, 2021
7:30 p.m.**

From: [Horton, George C \(DNR\)](#)
To: [Clements, Peggy](#)
Cc: [Rokos, Jay M \(DNR\)](#); [Bow, Kevin J \(DNR\)](#); [Brown, Stanley C \(DNR\)](#)
Subject: <EXTERNAL-SENDER>Proposed ADL 220394 ROW VACATION - KPB 2020-156V
Date: Wednesday, February 3, 2021 3:06:58 PM
Attachments: [image001.png](#)
[Plat Prelim KPB 2020-156V Revised 011521 Reduced.pdf](#)
[Organized Borough-EV petition packet January 2019.pdf](#)

CAUTION: This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

Hi Peggy,

Sorry for being late with my comment.

It appears from the attached sketch that ADL 220394 is proposed to be vacated by this action.

If KPB has sole management authority over ADL 220394 (that the public easement has been conveyed in full to KPB) the DML&W Survey Section does not have any comment.

HOWEVER, if said ADL is still managed by DNR, DML&W, please let the petitioner know they will have to petition the state as well as KPB to vacate any public access rights; the current fee is \$2000. Attached is DNR's petition packet. Any questions they have can be directed to me at the phone number below.

Regards,

George Horton, PLS, CFedS

Land Surveyor I

DNR, DML&W, Survey Section

550 W. 7th AVE; Suite 650

Anchorage, Alaska 99501

(907) 269-8610

<http://dnr.alaska.gov/mlw/survey/>

*"It's a dangerous business going out of your door. You step into the Road.
and if you don't keep your feet, there is no knowing where you might be swept
off to." Bilbo Baggins*

From: Clements, Peggy <PClements@kpb.us>

Sent: Tuesday, January 19, 2021 12:38 PM

To: Eaton, Belinda L (DOT) <belinda.eaton@alaska.gov>; Biloan, Joselyn (DOT) <joselyn.biloan@alaska.gov>; Simpson, Danika L (DOT) <danika.simpson@alaska.gov>; Horton, George C (DNR) <george.horton@alaska.gov>; Rinke, Hans J (DNR) <hans.rinke@alaska.gov>; Kastner, Lorraine S (DOT) <lorraine.kastner@alaska.gov>; Hooyer, Patricia (DOT) <louise.hooyer@alaska.gov>; 'mark.fink@alaska.gov' <mark.fink@alaska.gov>; Wilson, Mistee R (DOT) <mistee.wilson@alaska.gov>; 'Neuendorf, Cody' <CNeuendorf@HomerElectric.com>; Byron

Jackson <byron.jackson@acsalaska.com>; Bradley Beck <bbeck@gci.com>; ENSTAR ROW
<row@enstarnaturalgas.com>; Dubour, Adam J (DFG) <adam.dubour@alaska.gov>;
'Supertrucker2b4u@yahoo.com' <Supertrucker2b4u@yahoo.com>; Crisp, Bryan <BCrisp@kpb.us>
Subject: ROW VACATION REVIEW FOR FEBRUARY 8, 2021 MEETING: ROW State Review Group, HEA,
ACS, ENSTAR, GCI, NIKISKI COUNCIL, NIKISKI EMS

Hello,

Attached sketch to be reviewed for the **February 8, 2021** meeting. Please provide comments by
January 29, 2021 to ensure the comments will be included in a right-of-way vacation staff
report. Right-of-way vacation comments will be accepted until the Planning Commission's review
has concluded.

PIN 01341069

Kind regards,

Peggy Clements

Platting Technician
Planning Department
907-714-2207

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of
Alaska Statutes and may be made available to the public upon request.



THE STATE
of **ALASKA**

GOVERNOR MICHAEL J. DUNLEAVY

Department of Natural Resources

DIVISION OF MINING, LAND & WATER
Survey Section

550 West 7th Avenue, Suite 650
Anchorage, AK 99501-3576
Main: 907.269.8523
TDD: 907.269.8411
Fax: 907-269-8914

Subject: Petition process for Easement Vacation within a local Platting Authority

Dear Petitioner:

This letter outlines the process for vacating an easement managed by the Department of Natural Resources, when the easement lies within the jurisdiction of a local platting authority. Section-line easement vacations are the most common, but this process applies to all easements requiring DNR approval to vacate, including RS2477 rights of way and easements to and along public waters under AS 38.05.127.

RS 2477 right-of-way and section-line easement vacations must be approved by the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT&PF).

I. PETITION:

- A. A petition form completed by the petitioner or his/her representative containing the signatures of the landowners directly affected must be submitted. (A copy of the petition form is enclosed.)
- B. In order to ensure that the public interest is also addressed at the local level, **DNR requires that the applicant apply for the vacation with the local borough or municipal platting authority.** The borough considers local concerns and transportation infrastructures. The state considers these issues statewide. The applicant may apply with DNR before the local platting authority but, **the Division of Mining, Land & Water will not issue a Final Finding and Decision until the conditions of approval from the local platting authority are received. This step is not required where there is no local platting authority.** If time is critical, it is advisable to apply with the local platting authority at the same time you apply with DNR.
- C. ***Required Submittal:***
In addition to A and B above, obtain or prepare a map or plat of the area showing the following information:
 - 1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the easement proposed for vacation and the alternate access and whether they are constructed.
 - 2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
 - 3. Map or as-built identifying existing structures on petitioner's property.
 - 4. Map identifying existing section-line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.
 - 5. Map identifying available access to lands that are affected by the proposal.
 - 6. Aerial photograph (if available) and/or topography map showing contours.

7. It is not required, but it may also help the decision process if the petitioner specifically addresses, in writing, the following points concerning the existing easement **and** the alternate route:

Underlying Land Ownership
Current Public Use Patterns
Practicality of Use

- D. A RS 2477 or section-line easement vacation, must comply with Chapter 26 SLA 98, AS 19.30.410. It states that agencies of the State “may not vacate a right-of-way acquired by the state under former 43 U.S.C. 932 unless:

1. **a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses.”**

Alternate Means of Access

Before the vacation of a RS 2477 or section-line easement is approved, the petitioner **must** satisfy the department that equal or better access is available. “Equal or better access” means access protected by an easement of record that is adequately wide for the purpose, and at least equally usable considering length, type of terrain, and level of improvement, as the easement to be vacated.

The vacation of a public right-of-way involves giving up of a public right in favor of the landowner. DNR will not approve a vacation unless it determines that the action is in the state’s interest.

- E. Mail the above information and a check for the application fee to the Survey Section; Division of Mining, Land & Water; 550 W 7th Avenue, Suite 650; Anchorage, AK 99501-3576.

II. APPLICATION FEE, ADVERTISING AND POSTAGE COSTS:

The petitioner must pay the application fee and the cost of advertising the public notice (including –if applicable - reimbursement for all postage associated with public notice). The petition must be accompanied by a check for the APPLICATION fee and made payable to the Alaska Department of Natural Resources. See current Director’s Fee Order for applicable fees. After the department determines the cost to advertise the public notice in a newspaper and the cost for associated postage, you will be notified and must then submit to this office a check made payable to Alaska Department of Natural Resources.

III. STATE ACTION:

The DNR Survey Section will review the petition for completeness and verify the state’s jurisdiction under **AS 40.15.305(e), AS 19.30.410 or AS 29.35.090** for this area, and that fees have been paid.

Prior to issuance of the Preliminary Finding and Decision the department requests comments from interested State agencies, including Department of Transportation & Public Facilities (DOT&PF), Department of Fish and Game (DFG), DNR Division of Mining, Land & Water (DMLW), DNR Division of Parks and Outdoor Recreation (DPOR), and Alaska Mental Health Trust Land Office (TLO). Before a “Public Notice of Preliminary Finding” is published in a newspaper of statewide circulation it will be the applicant’s responsibility to address their concerns and/or requirements.

Then public notice will be published. After the close of the 30-day written comment period, the Director of the Division of Mining, Land & Water will approve or disapprove the petition. This written Final Finding and Decision will be subject to a 20 day appeal period. If no appeal is filed, this decision goes into effect as a final order and decision on the 31st day after issuance; and only then will the vacation plat or document be signed.

The department's decision of whether to vacate is based on consideration of the comments received by mail and E-mail, the recommendation of the local platting board, DOT&PF, and research by DNR staff. In addition to the comments received, DNR staff will also consider the existing easement and the possible alternate access in terms of underlying land ownership, land management policies, current public use patterns, and practicality of use. These factors, and others, establish the scope of the department's administrative review and finding.

Occasionally, the department may require a field investigation to be conducted by DNR staff. This inspection is to determine the current existing use and condition of the area proposed for vacation, and the adequacy of the proposed alternate route.

IV. *Vacation Document:*

- A. If the petition is approved, at the petitioner's expense, a survey plat must be prepared by an Alaska Registered Land Surveyor and submitted for review and approval. These submittals are subject to a review fee of \$192.00, for up to 6 hours of staff time.
- B. The petition approval becomes null and void if a survey plat is not submitted and recorded within 24 months of the Final Finding and Decision effective date.
- C. **DNR and DOT&PF approval of the final vacation document is required.**

V. *Alternative:*

Option other than vacating: An owner of land affected by an unplatted RS 2477 right-of-way may request the department's approval to relocate the right-of-way elsewhere on that owner's land. The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land. Such a realignment of an RS 2477 right-of-way within a parcel of land does not constitute a vacation under this section.

Should you have any questions, please contact Joe Poydack at (907) 375-7733, George Horton at (907) 269-8610, or myself at (907) 269-8521. A fact sheet on RS 2477 vacations is enclosed for your information.

Sincerely,

STANLEY BROWN
Land Surveyor II

Enclosures: Petition Form;
DOT&PF Information Required Handout;
RS 2477 and Section Line Easement Vacation Fact Sheet

TO: State of Alaska
Department of Natural Resources
Survey Section
550 W 7th Avenue, Suite 650
Anchorage, AK 99501-3576

EV No: _____

PETITION FOR: EASEMENT VACATION WITHIN A LOCAL PLATTING AUTHORITY

I (We) the undersigned petitioner (petitioners), being the owner (owners) of a majority of the property (abutting) (lying within). *(Provide a legal description of the property. PO Boxes, street addresses, tax parcel ID numbers and/or mile posts are not acceptable).*

request the (vacation) (replat) (amendment) (change of basic configuration) of

as depicted on the accompanying (plat) (map) (plan) (document).

Description of the alternate right(s)-of-way: *(Required by 11 AAC 51.065(f))*

The reasons for this request are: *(Why do you need the ROW or easement vacated? Be specific!)*

The petitioner (petitioners) file this petition under the authority of AS 29.40.120 and 11 AAC 51.065.

The undersigned petitioner (petitioners) by their signature (signatures) certify that I am the owner (they are the owners) of and have possessory rights in the property described next to my (their) signature (signatures).

Submitted this _____ day of _____, 20_____

PETITIONERS:

Name (<i>clearly printed</i>) and Signature (<i>required</i>)	Legal Description	Mailing Address/ Phone Number	Date
1. _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
2. _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PETITIONERS (cont.):

	Name (clearly printed) and Signature (required)	Legal Description	Mailing Address/ Phone Number	Date
3.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
4.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
5.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
6.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
7.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____
8.	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Add additional pages as necessary

Petitioner or attorney for the petitioner designated to receive service by mail.

Name _____ Address _____

AS 38.05.035(a) authorizes the director to decide what information is needed to process an application for the sale or use of state land and resources. This information is made a part of the state public land records and becomes public information under AS 40.25.110 and 40.25.120 (unless the information qualifies for confidentiality under AS 38.05.035(a)(8) and confidentiality is requested, AS 43.05.230, or AS 45.48). Public information is open to inspection by you or any member of the public. A person who is the subject of the information may challenge its accuracy or completeness under AS 44.99.310, by giving a written description of the challenged information, the changes needed to correct it, and a name and address where the person can be reached. False statements made in an application for a benefit are punishable under AS 11.56.210. In submitting this form, the applicant agrees with the Department to use "electronic" means to conduct "transactions" (as those terms are used in the Uniform Electronic Transactions Act, AS 09.80.010 – AS 09.80.195) that relate to this form and that the Department need not retain the original paper form of this record: the department may retain this record as an electronic record and destroy the original.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT/PF)

Research Information REQUIRED from Petitioner for DOT/PF Review of Section Line Easement Vacation Proposals

1. Preliminary plat clearly illustrating the location of the proposed vacation and proposed alternate means of access. Petitioner needs to include statement as to whether they are aware of any current or historical use of the proposed and whether the proposed are constructed.
2. Map showing property boundaries. If property has been subdivided, then provide copy of an unaltered recorded plat containing the property.
3. Map identifying existing structures on petitioner's property or as-built.
4. Map identifying existing section line easements, utilities and dedicated rights-of-way within a one mile radius or greater surrounding the petitioner's property.
5. Map identifying available access to lands that are affected by the proposal.
6. Aerial photograph (if available) and/or topography map showing contours.

Items requested and listed above can be combined therefore we do not require a separate map for each. However we ask that the information be presented in a legible format.

2-3-81 ATT:mdm/12

4/02

Fact sheet:



VACATION OF SECTION-LINE EASEMENTS UNDER A LOCAL PLATTING AUTHORITY

Division of Mining, Land and Water • July, 2018

"Vacating" a right-of-way means officially removing it. When a vacation occurs, the access right merges into the landowner's property right, and the public is no longer entitled to travel that route. Landowners are sometimes surprised to learn there is a section-line easement across their property. They want to know how to move the right-of-way, narrow it, or remove it altogether. Others ask how public access rights can be protected and used. This fact sheet explains applicable requirements.

What are section-line easements? And what do they have to do with R.S. 2477 rights-of-way? A section-line easement is a public right-of-way, 33, 50, 66, 83 or 100 feet wide, that runs along a section line of the rectangular survey system. All 33- and 66-foot-wide section-line easements were acquired by the state under R.S. 2477, regardless of whether trails have ever been developed along them. Also, some 50- and 100-foot-wide easements along section lines have narrower R.S. 2477 rights-of-way "inside" them. An R. S. 2477 right-of-way is a type of public easement that the State of Alaska acquired under long-standing federal law. To learn more about R.S. 2477 rights-of-way, look for DNR's fact sheet on that topic or visit http://dnr.alaska.gov/mlw/trails/rs2477/rst_srch.cfm.

Does every section line have an easement? How can I determine if an easement exists? Not every section line has an easement. There is a technical procedure for researching whether or not a section-line easement exists, which depends on land status during periods when specific laws were in effect. See the editor's note following 11 AAC 51.025 for more information. If land status is complex, a professional land surveyor, title company or attorney could research the existence of an easement.

I have a section-line easement on my land. I don't want to vacate the easement, just make it narrower. Narrowing a right-of-way is a partial vacation and still requires an official process.

Why doesn't the borough platting office handle the vacation? The 1999 legislature passed a new state law, AS 29.35.090, prohibiting local government from vacating RS 2477 rights-of-way. DNR believes that the local platting authority's role is still very important, allowing representation of local interests and legal notice to nearby landowners who might be affected by a vacation. (Unlike tax records kept by a borough, DNR's land status plats do not show private landholdings.) However, to ensure that a statewide perspective is taken, only DNR and the Department of Transportation and Public Facilities, or the legislature itself can make the final decision to vacate an RS 2477 right-of-way. AS 19.30.410.

What if I want to vacate a section-line easement that is not a R.S. 2477? By regulation, DNR uses the same general process for vacations of all easements managed by the department, including all section-line easements. 11 AAC 51.065.

What policy rules does DNR use in deciding on a vacation? Because a vacation means giving up a state-owned access right, DNR cannot approve it unless DNR determines that the vacation is in the state's interest, and that other access is available that meets standards set by state laws and regulations. See 11 AAC 65.065. DNR's general policy is that the replacement access must be equal to or better than the access provided by the section-line easement. AS 19.30.410 applies to R.S. 2477 vacations:

...(an) agency of the state may not vacate...unless
(1) a reasonably comparable, established alternate right-of-way or means of access exists that is sufficient to satisfy all present and reasonably foreseeable uses; [or]
(2) the right-of-way is within a municipality, the municipal assembly or council has requested the vacation, a reasonable alternative means of access is available, and the vacation is in the

How does a person apply for a vacation? To apply for a section-line easement vacation, file a "Petition to Change or Vacate an Easement" (available on request). The petition must include a map showing the portion of the route proposed for vacation and the alternate access route. Also, begin the local process by applying to the platting authority (usually this is the borough).

Are there any application costs? Yes. See current Director's Fee Order for applicable fees. The petitioner must pay public notice costs. The platting authority will probably charge fees also.

Will there be any public review? Yes. Before DNR can vacate a right-of-way, people who may want to use it, now or in the future, must have the opportunity to comment. The platting authority will probably publish notice locally and hold a hearing. Meantime, DNR will prepare a formal notice describing the proposal, opening a comment period; and:

- 1) Publish it in a newspaper of statewide circulation
- 2) Notify adjacent land owners (or the platting authority may)
- 3) Post it on the State of Alaska's public notice website
- 4) Send it to other state agencies such as the Division of Parks and Outdoor Recreation, the Department of Transportation and Public Facilities, and the Department of Fish and Game
- 5) Notify other parties likely to be interested
- 6) Posting on or near the easement (optional)

Will DNR decide the vacation entirely on its own? No, DNR will base its decision on:

- Public and agency comment DNR received
- In some cases, the results of a field inspection at the petitioner's expense to check the current existing use and condition of the route proposed for vacation, and the adequacy of the proposed alternate route
- The recommendation of the platting authority, after its own hearing
- Dept. of Transportation and Public Facilities' consent as the state's transportation authority
- Dept. of Fish & Game comments

In considering public comment, what factors will DNR look at? The department will not vacate or change a section-line easement unless it finds that the action is in the state's best interests and that the replacement access meets the standard of 11 AAC 51.065, after considering the existing easement and the possible alternate access in terms of underlying land ownership, land management policies applicable to both routes, current public use patterns, and practicality of use. See 11 AAC 51.065(e).

What if the replacement route isn't ready for use? The department might grant "contingent approval" for a vacation. After the petitioner fulfills conditions such as obtaining an easement or constructing a trail, the vacation will be finalized.

What agency in DNR is responsible for section-line easement vacations, and how can I follow the process? Various DNR personnel will coordinate to gather and review information on the proposal. DNR's Land Survey Unit staff will receive the petition, prepare the public notice, consider the comments, and draft the vacation decision, for signature by the director of the Division of Mining, Land and Water. Regional land management staff will recommend in writing whether the proposal meets the standard of 11 AAC 51.065 and is in the state's interest. Anyone may inspect DNR's vacation case file at any stage of this process. When finished, the file will contain the signed petition, the public notice and documentation of how it was distributed, the platting authority's conditions of approval or recommendation for disapproval, written comments received, a field investigation report (if applicable), and the final decision.

What are the final steps in a vacation? People who commented on the proposal will receive a copy of the final decision and may appeal it. The vacation will not be finalized until the conditions of approval have been completed and ownership verified. The vacation of a section-line easement requires a plat prepared by a land surveyor.

For additional information, contact Department of Natural Resources:

Public Information Center 550 W 7 th Ave., Suite 1360 Anchorage, AK 99501-3557 (907) 269-8400 TDD: (907) 269-2259	Division of Mining, Land and Water Public Information Office 400 Willoughby Ave., Suite 400 PO Box 111020 Juneau, AK 99801 (907) 465-3400	Public Information Center 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705
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From: Sowerwine, James E (DNR)
Sent: Tuesday, September 4, 2018 1:15 PM
To: 'Bob Molloy' <bob@molloysschmidt.com>
Subject: RE: Status Update

Bob,

Please accept my apologies for my delayed response to your email and letter below. As I believe we discussed previously over the phone, I have waited to respond until our office had an opportunity to record a technical correction to the ADL 220394 public easement that is the focus of our discussion. I can report that our office did make and record that correction, which can now be found in the recorder's office here as Kenai Recording District Document 2018-007092-0.

You note in your correspondence that your clients would like to apprise the "DNR/SCRO Easement Unit of the Olivas' general plans for future development when the negotiated purchase and sale of the MHTA's five parcels is accomplished, including eventual application for vacation of ADL 220394 and dedication of other access to Daniels Lake". Can you clarify if such a plan for vacation and relocation will require use of the land that was the subject of the Trust's sale and subsequent lawsuit? If this is the case I will suspend all work related to ADL 220394 and ask that you direct future correspondence through DNR's attorney until such time as the lawsuit has been settled as your questions will fall within the scope the issues related to the lawsuit.

FYI, I sent this email, together with a copy of the technical correction, on Friday. It bounced back as undeliverable from your address, so I'm resending without the attachment. I've also removed Mitch Behr and Judd Doucet, who were CC'd, in case I need to resend, so I don't spend unnecessary spam to others.

James

James Sowerwine
Natural Resource Manager I
Department of Natural Resources
Division of Mining, Land and Water
Southcentral Region, Easement Unit
550 W 7th Ave., Suite 900C, Anchorage, AK 99501
(907) 334-2542

From: Bob Molloy [mailto:bob@molloysschmidt.com]
Sent: Tuesday, September 4, 2018 1:14 PM
To: Sowerwine, James E (DNR) <james.sowerwine@alaska.gov>
Subject: Status Update

Hi James:

Thank you for your phone call & status update,

Bob

Robert J. Molloy

ATTACHED
3
Exhibit-
Page 2 of 12

**PUBLIC HEARING NOTICES SENT TO THE
FOLLOWING LANDOWNERS**

Parcel: 01341037
OLIVA LOUIS F JR & STACY ANN
PO BOX 8567
NIKISKI, AK 99635

Parcel: 01341051
WEST JEFFREY R LIVING TRUST & WEST
BONNIE J LIVING TRUST
PO BOX 7994
NIKISKI, AK 99635

Parcel: 01341052
WEST JEFFREY R LIVING TRUST & WEST
BONNIE J LIVING TRUST
PO BOX 7994
NIKISKI, AK 99635

Parcel: 01341053
TRIPLE-KNOT LAND & LIVESTOCK LLC
PO BOX 173
KENAI, AK 99611

Parcel: 01341069
OLIVA LOUIS F Jr
PO BOX 8567
NIKISKI, AK 99635

Parcel: 01341069
OLIVA STACY A
PO BOX 8567
NIKISKI, AK 99635

Parcel: 01341035
WERTZ JEFFERY ALAN & MAUDE ELSIE
5780 N BOLSENA AVE
MERIDIAN, ID 83646

Parcel: 01341070
OLIVA LOUIS F Jr
PO BOX 8567
NIKISKI, AK 99635

Parcel: 01341070
OLIVA STACY A
PO BOX 8567
NIKISKI, AK 99635

Parcel: 01341071
ALASKA MENTAL HEALTH TRUST AUTHORITY
3745 COMMUNITY PARK LOOP STE 200
ANCHORAGE, AK 99508


Parcel: 01341072
ALASKA MENTAL HEALTH TRUST AUTHORITY
3745 COMMUNITY PARK LOOP STE 200
ANCHORAGE, AK 99508

Parcel: 01341073
ALASKA MENTAL HEALTH TRUST AUTHORITY
3745 COMMUNITY PARK LOOP STE 200
ANCHORAGE, AK 99508

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, of the Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: March 2, 2021

RE: Appointment Kachemak Emergency Service Area Board

Pursuant to KPB 16.20.080, I hereby submit my recommendation for confirmation by the Assembly, of the following appointment to the Kachemak Emergency Service Area Board, seat B. The applicant is a registered voter and resides within the service area to be represented. Attached for your review is the request for appointment.

<u>Applicant</u>	<u>Board Seat</u>	<u>Term Expires</u>
Jeffrey Serio	Seat – B	October, 2021

Attachments: Request for Appointment Application

Kenai Peninsula Borough

Office of the Borough Clerk

Service Area Board Application Submitted 2021-02-04 20:52:02


Service Area: Kachemak Emergency Service Area Board, Seat B (Term Expires 10/2021)

Applicant Name Jeffrey Serio	Daytime Phone 907-738-1188
Email jserio84@gmail.com	Date of Birth [REDACTED]
Physical Residence Address 34668 Lusky Rd Homer, AK 99603	Mailing Address ,
SS #	Voter #
I have been a Resident of the Kenai Peninsula Borough for: 7 years, 9 months	I have been a Resident of the selected Service Area for: 7 years, 9 months

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: March 2, 2021

RE: Appointments to the KPB Advisory Planning Commission

In accordance with KPB 21.02, appointments to Kenai Peninsula Borough Advisory Planning Commissions are recommended by the Borough Mayor, subject to confirmation by the Borough Assembly. All applicants meet the residency and registered voter qualifications. I hereby submit to the Assembly my recommendation for confirmation of the following appointments to the KPB Advisory Planning Commission:

Anchor Point APC

	<u>Seat</u>	<u>Expires</u>
Sonshine D. Konovalov	A	September 30, 2023

Kalifornsky APC

Kathryn A. Medcoff	A	September 30, 2023
Krista Schooley	C	September 30, 2023

Cc: Melanie Aeschliman, Planning Director
Sandra Fletcher, Planning Senior Clerk
Bryan Taylor, Land Management
Clerk's Office

Kenai Peninsula Borough

Planning Department

Advisory Planning Commission Application Submitted 2021-02-08 16:37:48

APC/Seat: Anchor Point – Seat A (Term Expires 09/30/2023)

Name	Mobile Phone
Sonshine D Konovalov	
Home Phone	Work Phone
907 738 4410	907 738 4410
Email	Date of Birth
sonshinek@yahooo.com	[REDACTED]
SSN	Voter #
[REDACTED]	[REDACTED]
Residence Address	Mailing Address
70619 Peggy Dr Anchor Point, AK 99556	P.O Box 3462 Homer , AK 99603
How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
Almost a year	I have worked with the Public for 10 plus years throughout Kenai Peninsula. Hardworker, Honest, Responsible, Outgoing, Fun, Teamplayer, Meets Deadlines, Good computer skills, Trustworthy. Have worked for University of Southeast Alaska. Have worked for State of Alaska, Good employment history. Have been a Manager for Landlords and collected rent and advised them about decisions. This would be a great opportunity to give back to the community and to meet new people. I would learn alot of new things and be a valuable asset to Alaska and the people.

Sonshine D. Konovalov

P.O Box 3462
Homer, AK 99603
(907)738-4410

Objective

Office administrative position

Employment History

01/12/2012 -	PCA	
Present	Consumer Direct	Homer , AK
	Provided routine individualized healthcare such as changing bandages and dressing wounds, and applying topical medications to the elderly, convalescents, or persons with disabilities at the patient's home or in a care facility. Monitored and report changes in health status. Provided personal care such as bathing, dressing, and grooming of patient.	
08/01/2013 -	PCA	
2020	Rescare	Homer , AK
	Currently providing personal care services for two clients.	
09/01/2013 -	PCA	
01/01/2014	Immediate Care	Homer, AK
	Taking care of clients, filling out paper work, cleaning house, dusting, medical appointments, providing transportation to the client to the grocery store, pay bills.	
02/15/2008 -	Waitress	
01/12/2010	Elks Lodge	Sitka, AK
	Took orders, got drink orders, greeted customers, bussed tables, filled salt shaker, sugars, peppers made coffee, put reservations on tables, seated customers.	
01/01/2005 -	Janitor	
01/02/2006	Sitka Counseling	Sitka, AK
	Cleaned bathrooms, offices and other office common areas. Responsible for cleaning services in facilities.	
01/06/2001 -	Administrative Clerk	
01/05/2002	State of Alaska	Juneau, AK
	Picked up mail and paychecks and distributed to staff, helped staff with projects, copying pamphlets, making phone calls, answered multi-line phone and forwarded calls to appropriate staff, set up travel arrangements for staff. Emailed memos, to staff, picked up pay checks for employees.	

10/1/01-12/1/01 Associated Credit Agency

Answered phones, transferred calls, called customers to make payments on their accounts. Collected money in person for account collection. Mailed bills to customers and sealed envelopes. Answered multi-phone lines.

6/1/01-8/1/01 Keybank
Teller Position

Counted deposits in Atm machine, Responsible for large amounts of cash that was deposited to the bank. Verifying transactions into bank accounts. Customer service, Sales, Making deposits.

Education

High School Diploma or Equivalent

Homer High School

AK

UAA Southeast University 30 Credits away from a AA Degree

Sitka AK

Additional Information


- Extensive Customer Service experience, 2 plus years client service. Proficient with Word and familiarity with Excel most computer programs. Took college classes in computer programs and got A. 30 Credits from a AA degree. Have worked for the University Southeast while going to college full-time. Prior experience working with the elderly and disabled. 7 years working with the public. Able to make quick decisions and maintain confidential information on clients. Able to travel anywhere to meet with clients and follow up on caseload. Honest, Teamplayer, Dependable, Hardworker. Have experience answering phones, fax machine, emails, responsible. Have worked for many different companys involving healthcare throughout Alaska.

Kenai Peninsula Borough

Planning Department

Advisory Planning Commission Application Submitted 2021-01-25 13:11:34

APC/Seat: Kalifornsky – Seat A (Term Expires 09/30/2023)

Name	Mobile Phone
Kathryn A Medcoff	9072525217
Home Phone	Work Phone
9072622535	na
Email	Date of Birth
kpmilepost@gmail.com	
SSN	Voter #
	
Residence Address	Mailing Address
,	36026 Meandering Road Soldotna, AK 99669
How long have you lived in the area served by this Advisory Planning Commission?	What knowledge, experience, or expertise will you bring to this board?
March 2011	communicate with consumers that require education, additional knowledge particularly with regard to commission services

Kathy A. Medcoff
36026 Meandering Road
Soldotna, AK
907/262-2535
907/252-5217

EDUCATION:

Maple Valley High School graduate
Nashville, Michigan

MISSION STATEMENT:

To continue to learn about how government works in my
community; and
Be part of any changes that are planned

EMPLOYMENT:

MilePost Travel Magazine, Cheri Brewer, sales, 2011-2013;

Buckets Sports Grill, Fran Jones, server, kitchen prep – 2005-2012;

KSRM, Cheri Brewer, sales, created and produced ads, 1994-1996;

Mary Kay Sale Rep, self employed, sales, marketing, customer
relations, 1980-1990;

Video Rental Store Ownership, self employed with spouse, sales,
contract maintenance, 1984-1997

VOLUNTEER:

Kenai Christian Church Adult Women Leader - 1999- 2019

Kenai Peninsula Borough

Planning Department

Advisory Planning Commission Application Submitted 2021-01-22 09:56:36

APC/Seat: Kalifornsky – Seat C (Term Expires 09/30/2023)

Name Krista Schooley	Mobile Phone
Home Phone 	Work Phone 9072522081
Email kristaschooley@gmail.com	Date of Birth [REDACTED]
SSN [REDACTED]	Voter #
Residence Address ,	Mailing Address 49090 Charlie Brown Drive Soldotna, AK 99669
How long have you lived in the area served by this Advisory Planning Commission? 22 years	What knowledge, experience, or expertise will you bring to this board? See resume.

Krista Anne Schooley
49090 Charlie Brown Drive
Soldotna Alaska 99669
(907) 252-2081

EDUCATION HISTORY

GED, Kenai Peninsula College, 1994

BEREAN SCHOOL OF MINISTRY - Pastoral Degree, Online, 2000-2002

WELLSPRING HEALING AND DELIVERANCE TRAINING, Abundant Life Church/Online, Certificates, 2004 - 2006

APOSTOLIC COUNSELING TRAINING SCHOOL - Healing and Deliverance Degree, Online, 2020 - Current

REV SCHOOL OF MINISTRY, 5 - Fold Apostolic School Training, Online - 2020 - Current

VOLUNTEER HISTORY

KAREN STREET PARK, SOLDOTNA ALASKA 2010 - 2016

- Adopted Karen Street Park from the city of Soldotna.
- My efforts caused the city of Soldotna to not get any disturbance calls during the summer about the park for the first time in 10 years.
- THE TRIBE: A group we started for the kids at the skatepark.
 - Mentored kids. Taught them about ownership of the park, to make it 'theirs' instead of the drug dealers.
 - BBQ's twice a month.
- THE UNDERGROUND: grassroots non-profit I started for at-risk, homeless 13-25 year olds.
 - Opened a Day Center with resources for clients.

BIKE, SKATE, SCOOT CHALLENGE WITH PETER MICCICHE – Karen Street Park Skatepark
Soldotna, Alaska, 2010 - 2015

KENAI PENINSULA PROJECT HOMELESS CONNECT - 2010 - 2015

- Helped birth it.
- Clothing & Accessories Chair.

PEOPLE PROMOTING WELLNESS THROUGH COMMUNITY ACTION - 2010 -2015

- Member.

FUNNY RIVER HOMETOWN HEROES BBQ - 2018

- Coordinated a BBQ for First Responders and Hometown Heroes that helped with the fire.

COMMUNITY FIRST RESPONDERS APPRECIATION BBQ WITH SENATOR PETER MICCICHE - 2018 & 2019

- Coordinated the efforts of community donating desserts for the BBQ's.

REFERENCES:


Senator Peter Michicche - (907) 398-6759

Andrew Carmichael - City of Soldotna Parks and Recreation Director - (907) 262-3151

Kenai Peninsula Borough
Office of the Borough Mayor

MAYOR'S REPORT TO THE ASSEMBLY

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Charlie Pierce, Kenai Peninsula Borough Mayor 

DATE: March 2, 2021

Assembly Request / Response

None

Agreements and Contracts

- a. Authorization to Award a Contract for ITB21-018 Gravel Road Project – Escape Route N2 Region to Foster Construction, LLC., Soldotna AK.

Other

- a. Revenue – Expenditure Report – January 2021
- b. Budget Revisions – January 2021

Kenai Peninsula Borough

Purchasing & Contracting Department

MEMORANDUM

TO: Charlie Pierce, Mayor

THRU: John Hedges, Purchasing & Contracting Director *JH*

FROM: Dil Uhlin, Road Service Area Director *DU*

DATE: February 5, 2021

RE: Authorization to Award a Contract for ITB21-018 Gravel Road Project – Escape Route N2 Region

The Purchasing and Contracting Office formally solicited and received bids for the ITB21-018 Gravel Road Project – Escape Route N2 Region. Bid packets were released on January 14, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion on January 14, 2021.

The project consists of furnishing all labor, materials and equipment to place 3,200 cubic yards of KPB Type II gravel on the Escape Route Road in the North 2 Region.

On the due date of January 28, 2021, six (6) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$71,470 was submitted by Foster Construction, LLC, Soldotna, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 434.33950.20GRV.43011 and 434.33950.21GRV.43011.

Charlie Pierce

Charlie Pierce, Mayor

2/8/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>434.33950.20GRV.43011 - \$3,437.55</u>
	<u>434.33950.21GRV.43011 - \$68,032.45</u>
By: <i>PP</i> - <i>BA</i>	Date: <u>2/5/2021</u>
NOTES: .	

**KENAI PENINSULA BOROUGH
PURCHASING & CONTRACTING****BID TAB FOR: ITB21-018 Gravel Road Projects FY2021 - N2 Region - Escape Route**

CONTRACTOR	LOCATION	BASE BID
Foster Construction, LLC	Soldotna, AK	\$71,470.00
Commercial Automovite Repair & Equipment Services, Inc.	Kenai, AK	\$74,627.00
Great Northern Construction & Management	Soldotna, AK	\$76,760.00
Chumley's Inc.	Nikiski, AK	\$78,400.00
Peninsula Construction, Inc.	Kenai, AK	\$85,900.00
D & L Construction Co., Inc.	Cooper Landing, AK	\$96,000.00

DUE DATE: January 28, 2021**KPB OFFICIAL:**
John Hedges, Purchasing & Contracting Director

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *chi*

THRU: Brandi Harbaugh, Finance Director *BO*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: February 8, 2021

RE: Revenue-Expenditure Report – January 2021

Attached is the Revenue-Expenditure Report of the General Fund for the month of January 2021. Please note that 58.33% of the year has elapsed, 78.80% of budgeted revenues have been collected, and 56.15% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH
Revenue Report
For the Period
January 1 through January 31, 2021

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 28,825,613	\$ 30,249,718	\$ 236,265	\$ 1,424,105	104.94%
31200	Personal Property Tax	1,814,997	2,118,155	15,028	303,158	116.70%
31300	Oil Tax	6,668,160	7,025,200	-	357,040	105.35%
31400	Motor Vehicle Tax	676,400	236,019	59,935	(440,381)	34.89%
31510	Property Tax Penalty & Interest	590,931	369,446	56,856	(221,485)	62.52%
31610	Sales Tax	27,431,594	16,037,797	2,544,260	(11,393,797)	58.46%
33110	In Lieu Property Tax	3,600,000	-	-	(3,600,000)	0.00%
33117	Other Federal Revenue	160,000	31,521	-	(128,479)	19.70%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	(51,838)	-	(551,838)	-10.37%
34210	Revenue Sharing	300,000	-	-	(300,000)	0.00%
37350	Interest on Investments	352,913	365,039	35,462	12,126	103.44%
39000	Other Local Revenue	275,000	150,676	7,097	(124,324)	54.79%
290	Solid Waste	802,000	324,611	1,208	(477,389)	40.48%
Total Revenues		\$ 72,152,608	\$ 56,856,343	\$ 2,956,112	\$ (15,296,265)	78.80%

KENAI PENINSULA BOROUGH
Expenditure Report
For the Period
January 1 through January 31, 2021

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 484,528	\$ 305,843	\$ 15,140	\$ 16,795	\$ 161,889	63.12%
Clerk	579,316	293,554	41,483	16,399	269,363	50.67%
Elections	182,920	113,841	212	18,402	50,676	62.24%
Records Management	327,678	170,474	20,267	13,282	143,922	52.02%
Mayor Administration	792,424	377,761	48,251	612	414,051	47.67%
Purch/Contracting/Cap Proj	648,943	299,311	40,067	15,836	333,797	46.12%
Human Resources:						
Administration	700,918	371,292	53,513	5,074	324,551	52.97%
Print/Mail	204,789	81,156	11,222	26,599	97,034	39.63%
Custodial Maintenance	94,976	61,716	9,134	177	33,083	64.98%
Information Technology	2,095,903	1,029,215	106,970	14,342	1,052,346	49.11%
Emergency Management	933,183	566,874	78,192	65,841	300,469	60.75%
Legal Administration	1,120,116	475,482	62,136	148,124	496,510	42.45%
Finance:						
Administration	505,711	277,427	45,187	2,316	225,968	54.86%
Services	1,072,179	563,087	72,655	598	508,494	52.52%
Property Tax	1,141,576	523,877	56,965	77,194	540,505	45.89%
Sales Tax	901,144	520,005	59,581	4,232	376,907	57.70%
Assessing:						
Administration	1,350,530	702,241	75,808	32,678	615,611	52.00%
Appraisal	1,993,482	892,670	119,864	7,559	1,093,253	44.78%
Resource Planning:						
Administration	1,261,643	494,462	82,576	21,870	745,311	39.19%
GIS	499,590	292,662	26,464	370	206,557	58.58%
River Center	675,967	323,183	35,211	21,327	331,457	47.81%
Senior Citizens Grant Program	719,494	409,085	123,129	310,409	-	56.86%
School District Operations	55,004,255	33,821,515	4,547,267	-	21,182,740	61.49%
Solid Waste Operations	9,102,389	3,249,778	404,031	1,600,034	4,252,577	35.70%
Economic Development	360,000	131,250	89,289	180,214	48,536	36.46%
Non-Departmental	3,503,109	2,083,803	12,436	-	1,419,306	59.48%
Total Expenditures	\$ 86,256,763	\$ 48,431,564	\$ 6,237,049	\$ 2,600,284	\$ 35,224,915	56.15%

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members of the Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Borough Mayor *CP*

THRU: Brandi Harbaugh, Finance Director *BR*

FROM: Sarah Hostetter, Payroll Accountant *SH*

DATE: February 8, 2021

RE: Budget Revisions – January 2021

Attached is a budget revision listing for January 2021. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

ANCHOR POINT EMERGENCY SERVICES

Moving funds to cover initial purchase of Crew Force Software.

209-51410-00000-43019 (Software Licensing)		\$4,500.00
209-51410-00000-42120 (Computer Software)	\$4,500.00	

CLERK'S OFFICE - ASSEMBLY

To purchase telephones for Assembly Chambers after CAR10 expired.

100-11110-00000-43215 (Travel Out of State)		\$1,650.00
100-11110-00000-48710 (Minor Office Equipment)	\$1,650.00	

HUMAN RESOURCES - PRINT SHOP

To partially cover the cost of a new hand truck.

100-11233-00000-48710 (Minor Office Equipment)		\$25.00
100-11233-00000-42410 (Small Tools & Equipment)	\$25.00	

KACHEMAK EMERGENCY SERVICES

Transferring funds for Crew Force Software and to cover emergency station repairs.

212-51810-00000-48720 (Minor Office Furniture)		\$5,240.00
212-51810-00000-43011 (Contract Services)	\$3,540.00	
212-51810-00000-43019 (Software Licensing)	\$1,700.00	

OFFICE OF EMERGENCY MANAGEMENT

Moving funds to cover a janitorial services contract, services were previously performed by Borough custodians.

100-11250-00000-40120 (Temporary Wages)		\$2,702.00
100-11250-00000-60000 (Charges (to) from Other Departments)		\$1,498.00
100-11250-00000-43011 (Contract Services)	\$4,200.00	

SELDOVIA RECREATION

To purchase operating supplies and write off petty cash.

227-61210-00000-43960 (Recreational Program Expenses)		\$300.00
227-61210-00000-42210 (Operating supplies)	\$300.00	

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-07**

**AN ORDINANCE APPROPRIATING REFINANCED 2013 BEAR CREEK FIRE
SERVICE AREA GENERAL OBLIGATION BOND PROCEEDS FOR THE PURPOSE
OF PAYING BOND REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), to finance certain capital improvements in the Bear Creek Fire Service Area, issued and sold its Bear Creek Fire Service Area General Obligation Bonds, Series 2013, dated March 12, 2013, in the original principal amount of \$1,215,000 (the “2013 Bond”) to the Alaska Municipal Bond Bank (the “Bond Bank”), as authorized by Resolution No. 2012-091 of the Borough adopted on December 4, 2012 (the “Bond Resolution”), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of March 1, 2013 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2013 Series One (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-044, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That 2013 refinanced Bear Creek Fire Service Area bond proceeds in the amount of up to \$6,860 are appropriated to the Bear Creek Fire Service Area Capital Project Fund, account number 442.51210.21BND.49999 to pay costs related to the issuance.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That eligible costs incurred prior to the appropriation date will be charged to the project.

SECTION 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper

No: None

Absent: None

12/01/20 Vote on motion to table:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020-19- 07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough Assembly approved Resolution 2020-044, authorizing the Borough's participation in the refinancing of select series for the 2013 Bear Creek Fire Service Area general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2013 Bear Creek Fire Service Area bonds could be refinanced, with potential savings to borough residents of approximately \$50,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

**FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED**

Acct. No. 442.00000.21BND.39010

Amount: \$6,860.00

By: *PP* Date: 9/2/2020

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2013 Bear Creek Service Area General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-07, Appropriating Refinanced 2013 Bear Creek Fire Service Area General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the Bear Creek Fire Service Area General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the December 1, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

➤ Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date
[of September 2020] following October 1, 2020;

Your consideration is appreciated.

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-044**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE BEAR CREEK FIRE SERVICE AREA GENERAL OBLIGATION BONDS, SERIES 2013 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2013 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), to finance certain capital improvements in the Bear Creek Fire Service Area, issued and sold its Bear Creek Fire Service Area General Obligation Bonds, Series 2013, dated March 12, 2013, in the original principal amount of \$1,215,000 (the "2013 Bond") to the Alaska Municipal Bond Bank (the "Bond Bank"), as authorized by Resolution No. 2012-091 of the Borough adopted on December 4, 2012 (the "Bond Resolution"), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of March 1, 2013 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2013 Series One (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH, ALASKA:

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2013 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2013 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2013 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2013 Bond is refinanced, the 2013 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2013 Bond (the "Exchanged 2013 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2013 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2013 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

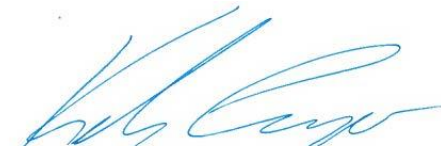
SECTION 2. Tax Matters. The 2013 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis, as determined by the Mayor or Finance Director. The Exchanged 2013 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.

SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2013 Bond are hereby ratified and confirmed.**SECTION 5. Recitals.** The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

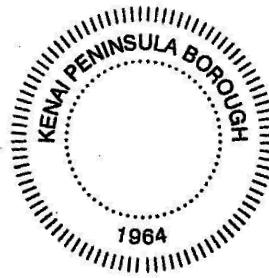


Kelly Cooper, Assembly President

ATTEST:



John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-044 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.



John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough

Introduced by:	Mayor
Date:	12/04/12
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2012-091**

**A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL
OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE
AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION
FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) TO PAY THE COSTS
OF CAPITAL IMPROVEMENTS IN THE BEAR CREEK FIRE SERVICE
AREA, FIXING CERTAIN DETAIL OF SUCH BONDS, AND PLEDGING THE
FULL FAITH AND CREDIT OF THE BEAR CREEK FIRE SERVICE AREA TO
THE PAYMENT THEREOF**

WHEREAS, pursuant to Ordinance 2007-24 of the Kenai Peninsula Borough (the "Borough") passed and approved on August 7, 2007, and as further clarified by the assembly on August 21, 2007, the following question, referred to at the election held on October 2, 2007, as Proposition No. 4, ("Proposition 4") was passed and approved:

PROPOSITION NO. 4
BEAR CREEK FIRE SERVICE AREA CAPITAL IMPROVEMENT PROJECT AND
ISSUANCE OF GENERAL OBLIGATION BONDS

Shall the Kenai Peninsula Borough spend \$3,500,000 for capital improvements related to the Bear Creek Fire Service Area and issue up to \$1,400,000 of general obligation bonds to provide funding for the project?

The bond proceeds of \$1,400,000 will be used to pay the costs of planning, designing, acquiring property for, site preparation, financing, constructing, acquiring, renovating, expanding, installing and equipping the Bear Creek Fire Service Area facility located within the Bear Creek Fire Service Area. Issuance of the bonds is subject to availability of grant funds for the remaining costs of the project; if the grant funding is not received the bonds will not be issued.

The general obligation bond debt will be paid from operating revenues generated by the Bear Creek Fire Service Area and from ad valorem taxes on all taxable property levied and collected in the Bear Creek Fire Service Area. The Bear Creek Fire Service Area will pledge its full faith and credit for payment of the general obligation bond debt.

Voter approval of this bond proposition authorizes for each \$100,000 of assessed real and personal property value in the Bear Creek Fire Service Area (based on the estimated 2007 tax year assessed valuation) an annual tax of approximately \$100.00 (an amount equal to approximately 1.0 mill) to retire the proposed general obligation bond debt.

YES [A Yes vote approves the sale of the bonds and construction of a new fire and emergency services facility – based on receiving \$2,100,000 of additional grant funding.]

NO [A No vote prohibits the issuance of the bonds and the construction project.]

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Assembly by ordinance or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, it is necessary and in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install, and equip the capital improvements within the Borough described in Proposition 4 (the "Project"), and issue not to exceed \$1,400,000 principal amount of the general obligation bonds referred to in Proposition 4, constituting all of the unsold general obligation bonds referred to therein, to pay a portion of costs of the Project; and

WHEREAS, a Loan Agreement would be entered into between the Alaska Municipal Bond Bank and the Borough, which provides for the Alaska Municipal Bond Bank to purchase the Bonds on the terms and conditions set forth therein and in this resolution, and it is in the best interest of the Borough that it sell the bonds to the Alaska Municipal Bond Bank under such terms and conditions;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Acquired Obligations" means and includes any of the following securities, if and to the extent the same are at the time legal for investment of funds of the Borough: any noncallable bonds or other noncallable obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America.

- (b) "Assembly" means the Assembly of the Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (c) "Bond" or "Bonds" means any of the Bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Proposition 4.
- (d) "Bond Bank" means the Alaska Municipal Bond Bank.
- (e) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the owners or nominees of the Registered Owners of the Bonds.
- (f) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.
- (g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (h) "Cost" or "Costs" means the cost of planning, designing, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, including interest on the Bonds during the period of planning, designing, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, the cost whether incurred by the Borough, the Service Area, or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough, the Service Area, or by another in connection with the Project prior to or during construction thereof, and allocation of portions of direct costs of the Borough or the Service Area, legal fees, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors, and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus, and equipment, cost of engineering, architectural services, designs, plans, specifications, and surveys, estimates of cost, the reimbursement of all moneys advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incidental to the acquisition and

development of the Project, the financing thereof and the putting of the same in use and operation.

- (i) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank, dated as of the first day of the month in which the Bonds are delivered.
- (j) "Registered Owner" means the person named as the registered owner of a Bond in Bond Register.
- (k) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint by resolution.
- (l) "Service Area" means the Bear Creek Fire Service Area located within the Borough.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing the funds required to pay a portion of the Costs of the Project, to provide for original issue premium or discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and to sell the Bonds in the aggregate principal amount of not to exceed \$1,400,000. The Bonds shall be designated "Kenai Peninsula Borough, Alaska Bear Creek Fire Service Area General Obligation Bonds."

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bonds as referred to in Proposition 4.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Service Area and the full faith and credit of the Service Area are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Service Area without limitation as to rate or amount, in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be dated the date of delivery, shall be in the denomination of \$5,000 or any integral multiple thereof, or such other date and denominations as may be determined by the Mayor or Finance Director, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bonds shall bear interest from the date thereof, payable and semiannually on such dates as may be determined by the Mayor or Finance Director. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor or Finance Director is authorized to fix and determine the maturity dates and the rate of interest on each principal installment of the Bonds, provided that (i) no rate of interest on a principal installment shall exceed the rate of interest on the corresponding maturity of the bonds of the Bond Bank issued to provide funds to purchase the Bonds; (ii) the true interest cost of the Bonds shall not exceed 6.0% unless approved by resolution of the Assembly; and (iii) all of the Bonds shall mature on or before December 31, 2033.

SECTION 5. Place and Medium of Payment. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. For so long as all outstanding Bonds are registered in the name of the Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer owned by the Alaska Municipal Bond Bank, payments of principal and interest on the Bonds will be made by check or draft mailed by first class mail to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on or before the payment date, provided that the final installment of principal and interest on the Bonds will be payable upon presentation and surrender of the Bonds by the Registered Owner at the principal office of the Registrar.

SECTION 6. Optional Redemption. The Bonds may be subject to redemption, at the Borough's option, as provided in the Loan Agreement.

SECTION 7. Form of Bond. Each Bond shall be in substantially the following form, subject to the provisions of the Loan Agreement:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____ \$ _____

KENAI PENINSULA BOROUGH, ALASKA BEAR CREEK FIRE
SERVICE AREA GENERAL OBLIGATION BONDS

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on ____ 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on [____ 1, 20__] and semiannually thereafter on the first days of June and December of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
_____	_____	_____

For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the bond register of the Borough on or before the payment date, provided that the final installment of principal and interest on this Bond will be payable at the office of the Borough Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the Bear Creek Fire Service Area General Obligation Bonds of like tenor and effect except as to interest rate, serial number, and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized for the purpose of paying the cost of the educational capital improvements in the Borough, and is issued under Resolution 2012-091 of the Borough entitled:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000) TO PAY THE COSTS OF CAPITAL IMPROVEMENTS IN THE BEAR CREEK FIRE SERVICE AREA, FIXING CERTAIN DETAIL OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BEAR CREEK FIRE SERVICE AREA TO THE PAYMENT THEREOF

(herein called the "Resolution").

The Bonds will be subject to redemption at the option of the Borough as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and

maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

The full faith and credit of the Bear Creek Fire Service Area are pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, or things required by the constitution or statutes of the State of Alaska to exist, to have happened, or to have been performed precedent to or in the issuance of this Bond, exist, have happened, and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution or statutes.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 2012.

Mike Navarre, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 8. Execution. The Bonds shall be executed in the name of the Borough by the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

SECTION 9. Registration.

- (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.
- (b) The Borough, in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5, but

such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.

- (c) Bonds shall be transferred only upon the Bond Register kept by the Registrar. Upon surrender for transfer or exchange of any Bond at the office of the Registrar, with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner or its duly authorized attorney, the Borough shall execute and the Registrar shall deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Registrar may prescribe and upon payment sufficient to reimburse it for any tax, fee or other governmental charge required to be paid in connection with such transfer or exchange. All Bonds surrendered for transfer or exchange shall be canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.
- (d) The Borough covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

SECTION 10. Mutilated, Destroyed, Stolen, or Lost Bonds. Upon surrender to the Registrar of Mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen, or lost and of the ownership thereof, and upon furnishing the Borough with identification satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen, or lost be at any time enforceable by anyone.

SECTION 11. Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bonds representing accrued interest on the Bonds may be applied to pay a portion of the interest due on the Bonds on the first interest payment date. The remainder of the sale proceeds of the Bonds shall be applied to pay Costs. The sale proceeds of the Bonds shall be deposited in the appropriate funds or accounts of the Borough for such purposes.

SECTION 12. Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that

such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.

SECTION 13. Sale of the Bonds; Loan Agreement. The sale of for not to exceed \$1,400,000 aggregate principal amount of the Bonds, as provided in the Loan Agreement and this resolution, is hereby authorized and approved. The Mayor or Borough Finance Director is hereby authorized to execute and deliver the Loan Agreement, and a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate issuances of the Bonds on behalf of the Borough.

SECTION 14. Authority of Officers. The Mayor, the Borough Finance Director, the Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bonds and this resolution.

SECTION 15. Defeasance. In the event that money and/or non-callable Acquired Obligations maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such Acquired Obligations are irrevocably set aside and pledged for such purpose, then no further payments need to be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 16. Amendatory and Supplemental Resolutions.

- (a) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:
 - (i) To add to the covenants and agreements of the Borough in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.
 - (ii) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this resolution or in regard to matters or questions arising

under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution and which shall not adversely affect the interest of the Registered Owner of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

- (b) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however that no such supplemental resolution shall:

- (i) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owners of each Bond so affected; or

- (ii) reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental resolution without the consent of the owners of all the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (c) Upon the adoption of any supplemental resolution under this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.

- (d) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owner of the Bonds then

outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 17. Miscellaneous.

- (a) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.
- (b) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are a debt only of the Service Area and are not and shall not be in any way a debt or liability of the Borough, the State of Alaska or of any political subdivision thereof, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of the Borough, the State or of any political subdivision thereof.

SECTION 18. Severability. If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

SECTION 19. Effective date. This resolution shall take effect immediately.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 4TH DAY OF DECEMBER, 2012.

Linda Murphy, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Wolf, Murphy
No: None
Absent: None

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-08**

**AN ORDINANCE APPROPRIATING REFINANCED 2013 SCHOOL GENERAL
OBLIGATION BOND PROCEEDS FOR THE PURPOSE OF PAYING BOND
REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), to finance certain educational capital improvements, issued and sold its Education Capital Improvement General Obligation Bond, Series 2013, dated November 14, 2013, in the original principal amount of \$20,860,000 (the “2013 Bond”) to the Alaska Municipal Bond Bank (the “Bond Bank”), as authorized by Resolution No. 2013-071 of the Borough adopted on October 8, 2013 (the “Bond Resolution”), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of November 1, 2013 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation Bonds, 2013 Series Three (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-042, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That 2013 refinanced school bond proceeds in the amount of up to \$6,860.00 are appropriated to the School Bond Capital Project Fund, account number 401.78050.21BND.49999 to pay costs related to the issuance.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That eligible costs incurred prior to the appropriation date will be charged to the project.

SECTION 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None

12/01/20 Vote on motion to table as amended:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert
No: None
Absent: None

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020-19 08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough approved Resolution 2020-042, authorizing the Borough's participation in the refinancing of select series for the 2013 school general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2013 school bonds could be refinanced, with potential savings to borough residents of approximately \$670,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

**FINANCE DEPARTMENT
ACCOUNT / FUNDS VERIFIED**

Acct. No. 401.00000.21BND.39010

Amount: \$6,860.00

By: *PP* Date: 9/2/2020

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2013 School General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-08, Appropriating Refinanced 2013 School General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the 2013 School General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the November 10, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

- Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date ~~[of September 2020]~~ following October 1, 2020;

Your consideration is appreciated.

Introduced by:	Mayor
Date:	10/08/13
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2013-071**

**A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL
OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE
AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,987,000 TO PAY THE
COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH,
FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH
AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF**

WHEREAS, pursuant to Ordinance 2013-28 of the Kenai Peninsula Borough (the "Borough") enacted on August 6, 2013, the following question, referred to at the election held on October 1, 2013 as Proposition No. 2 ("Proposition 2"), was passed and approved:

PROPOSITION NO. 2

Shall the Kenai Peninsula Borough borrow up to \$22,987,000 through the issuance of general obligation bonds?

The general obligation bond proceeds will be used to pay costs of planning, designing, site preparation, constructing, acquiring, renovating, installing and equipping educational capital improvement projects consisting of a new Homer High School field and roof replacements at Tustumena Elementary School, Skyview School, Soldotna Middle School, Homer Junior High School, Paul Banks School, Kenai Central High School, Soldotna High School, Kenai Middle School, Kenai Alternative School, and Ninilchik School, and similar education capital improvements in the Borough.

The debt will be paid from ad valorem taxes on all taxable property levied and collected areawide in the Borough. The Borough will also pledge its full faith and credit for payment of the debt. The approximate annual amount of taxes on \$100,000 of assessed real or personal property value (based on the Borough's FY2014 taxable assessed valuation) to retire the debt is \$6.77, assuming 70 percent debt service reimbursement from the State of Alaska.

No bonds will be issued, unless and until the project qualifies for at least 70 percent debt service reimbursement from the State of Alaska under existing or new legislation. Receipt of State reimbursement is subject to annual legislative appropriations.

FISCAL NOTE: it is estimated that the annual debt service for the school bonds would be approximately \$1,574,500 of which \$1,102,150 would be received from the State of Alaska under the 70% debt reimbursement program, resulting in a net cost to the Borough of \$472,350; an amount equal to \$6.77 per \$100,000 of assessed real or personal property (based upon the Borough's FY2014 taxable assessed valuation).

Shall the Kenai Peninsula Borough borrow up to \$22,987,000 through the issuance of general obligation bonds?

Yes [A "Yes" vote approves the sale of bonds only if, and to the extent that, such project qualifies for at least 70% debt reimbursement from the State of Alaska.]

No [A "No" vote opposes the sale of bonds.]

WHEREAS, Section 29.47.410 of the Alaska Statutes provides that the Assembly by ordinance or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, the Borough received formal notification from the Alaska Department of Education and Early Development ("DEED") that the Project herein is eligible for debt reimbursement at a rate of 70 percent; and

WHEREAS, it is necessary and in the best interest of the Borough and its residents that the Borough proceed to plan, design, do site preparation for, construct, acquire, renovate, install and equip the capital improvements within the Borough described in Proposition 2 (the "Project"), and issue the general obligation bonds referred to in Proposition 2 in the principal amount not to exceed \$22,987,000, constituting all of the unsold general obligation bonds referred to therein, to pay costs of the Project; and

WHEREAS, it is in the best interest of the Borough to enter into a Loan Agreement between the Alaska Municipal Bond Bank and the Borough, which provides for the Alaska Municipal Bond Bank to purchase the Bonds on the terms and conditions set forth therein and in this resolution;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Assembly" means the Assembly of the Borough, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the Bonds of the Borough, the issuance and sale of which are authorized herein as the evidence of the indebtedness referred to in Proposition 2.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank.
- (d) "Bond Register" means the registration books maintained by the Registrar, which include the names and addresses of the owners or nominees of the Registered Owners of the Bonds.
- (e) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, organized as a second class borough under Title 29 of the Alaska Statutes.
- (f) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (g) "Continuing Disclosure Certificate" means the certificate dated as of the date of the Bonds, described in Section 18 of this resolution.
- (h) "Cost" or "Costs" means the cost of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing and equipping the Project, including interest on the Bonds during the period of planning, designing, acquiring property for, site preparation, constructing, acquiring, renovating, installing, and equipping the Project, the cost whether incurred by the Borough or by another of field surveys and advance planning undertaken in connection with the Project properly allocable to the Project, the cost of acquisition of any land or interest therein required as the site or sites of the Project or for use in connection therewith, the cost of any indemnity and surety bonds and premiums on insurance incurred in connection with the Project prior to or during construction thereof, all related direct administrative and inspection expenses whether incurred by the Borough or by another in connection with the Project prior to or during construction thereof and allocable portions of direct costs of the Borough, legal fees, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, the cost of any bond insurance premium, the cost of audits, the cost of all machinery, apparatus and equipment, cost of engineering, architectural services, designs, plans, specifications and surveys, estimates of cost, the reimbursement of all moneys advanced from whatever source for the payment of any item or items of cost of the Project, and all other expenses necessary or incidental to

determining the feasibility or practicability of the Project, and such other expenses not specified herein as may be necessary or incident to the acquisition and development of the Project, the financing thereof and the putting of the same in use and operation.

- (i) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank.
- (j) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (k) "Registrar" means the Finance Director of the Borough, or any successor that the Borough may appoint through resolution.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing the funds required to pay the Costs of the Project, to provide for original issue discount or premium, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$22,987,000. The Bonds shall be designated "Kenai Peninsula Borough, Alaska General Obligation School Bonds."

The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this resolution is necessary in order to carry out and effectuate the purpose of the Borough in accordance with the Constitution and the statutes of the State of Alaska and to incur the indebtedness and issue the Bonds as referred to in Proposition 2.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Borough, and the full faith and credit of the Borough are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Borough without limitation as to rate or amount, in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Date, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be dated as of the date of delivery, shall be in the denomination of \$5,000 or any integral multiple thereof, or such other date and denominations as may be determined by the Mayor or Finance Director, and shall be numbered separately in such manner and with any additional designation as the Registrar deems necessary for purposes of identification.

The Bonds shall bear interest from the date thereof, payable on May 15, 2014, and semiannually thereafter on November 15 and May 15 of each year or such other dates as may be determined by the Mayor or Finance Director. Interest

shall be computed on the basis of a 360-day year composed of twelve 30-day months. The Mayor or Finance Director is authorized to fix and determine the maturity dates and the rate of interest on each principal installment of the Bonds, provided that (i) no rate of interest on a principal installment shall exceed the rate of interest on the corresponding maturity of the bonds of the Bond Bank issued to provide funds to purchase the Bonds; (ii) the true interest cost of the Bonds shall not exceed 6.0 percent unless approved by resolution of the Assembly; and (iii) all of the Bonds shall mature on or before November, 2034.

SECTION 5. Payment of Principal and Interest. Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts. For so long as all outstanding Bonds are registered in the name of the Alaska Municipal Bond Bank, payments of principal and interest thereon shall be made as provided in the Loan Agreement. In the event that the Bonds are no longer owned by the Bond Bank, payments of principal and interest on the Bonds will be made by check or draft mailed by first class mail to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the payment date, provided that the final installment of principal and interest on the Bonds will be payable at the principal office of the Registrar upon surrender of the Bond.

SECTION 6. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 7. Redemption. The Bonds, if any, subject to optional redemption by the Borough, the times when such Bonds are subject to optional redemption, the terms upon which such Bonds may be redeemed, and the redemption price or prices for such Bonds, shall be determined at the time of sale of the Bonds by the Mayor or Finance Director. For so long as the Bonds are held by the Bond Bank, redemption shall be in accordance with the provisions of the Loan Agreement.

SECTION 8. Form of Bond. Each Bond shall be in substantially the following form, subject to the provisions of the Loan Agreement:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____

\$ _____

GENERAL OBLIGATION SCHOOL BONDS 20____

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on _____ 1 of each of the following years, and to pay interest on such installments from the date hereof, payable on _____ 1, 2014 and semiannually thereafter on the first days of _____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, payment of principal of and interest on this Bond will be made by check or draft mailed by first class mail to the registered owner at the address appearing on the bond register of the Borough on the 15th day of the month preceding the payment date, provided that the final installment of principal and interest on this Bond will be payable at the office of the Borough Finance Director (the "Registrar") upon surrender of this Bond. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the General Obligation School Bonds, 20____ of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized

for the purpose of paying the cost of the educational capital improvements in the Borough, and is issued under Resolution 2013-071 of the Borough entitled:

A RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE KENAI PENINSULA BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,987,000 TO PAY THE COSTS OF EDUCATIONAL CAPITAL IMPROVEMENTS IN THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS, AND PLEDGING THE FULL FAITH AND CREDIT OF THE BOROUGH TO THE PAYMENT THEREOF

(herein called the "Resolution").

The Bonds will be subject to redemption at the option of the Borough as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the Kenai Peninsula Borough, and the full faith and credit of the Borough is pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the constitution or statutes of the State of Alaska to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution or statutes.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 20__.

MIKE NAVARRE
Borough Mayor

ATTEST:

JOHNI BLANKENSHIP, MMC, Borough Clerk

SECTION 9. Execution. The Bonds shall be executed in the name of the Borough by the Mayor, and its corporate seal shall be impressed or otherwise reproduced thereon and attested by the Borough Clerk. The execution of a Bond on behalf of the Borough by persons that at the time of the execution are duly authorized to hold the proper offices shall be valid and sufficient for all purposes, although any such person shall have ceased to hold office at the time of delivery of the Bond or shall not have held office on the date of the Bond.

SECTION 10. Registration. (a) The Bonds shall be issued only in registered form as to both principal and interest. The Borough designates the Borough Finance Director as Registrar for the Bonds. The Registrar shall keep, or cause to be kept, the Bond Register at the principal office of the Borough.

- (b) The Borough, in its discretion, may deem and treat the Registered Owner of each Bond as the absolute owner thereof for all purposes, and neither the Borough nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 5, but such registration may be transferred as herein provided. All such payments made as described in Section 5 shall be valid and shall satisfy and discharge the liability of the Borough upon such Bond to the extent of the amount or amounts so paid.
- (c) Bonds shall be transferred only upon the Bond Register kept by the Registrar. Upon surrender for transfer or exchange of any Bond at the office of the Registrar, with a written instrument of transfer or authorization for exchange in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner of its duly authorized attorney, the Borough shall execute and the Registrar shall deliver an equal aggregate principal amount of Bonds of the same maturity of any authorized denominations, subject to such reasonable regulations as the Registrar may prescribe and upon payment sufficient to reimburse it for any tax, fee or other governmental charge required to be paid in connection with such transfer or exchange. All Bonds surrendered for transfer or exchange shall be canceled by the Registrar. The Registrar shall not be required to transfer or exchange any Bond after the Bond has been called for redemption.
- (d) The Borough covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

- SECTION 11.** Mutilated, Destroyed, Stolen or Lost Bonds. Upon surrender to the Registrar of a mutilated Bond, the Borough shall execute and deliver a new Bond of like maturity and principal amount. Upon filing with the Registrar of evidence satisfactory to the Borough that a Bond has been destroyed, stolen or lost and of the ownership thereof, and upon furnishing the Borough with identification satisfactory to it, the Borough shall execute and deliver a new Bond of like maturity and principal amount. The person requesting the authentication and delivery of a new Bond pursuant to this section shall comply with such other reasonable regulations as the Borough may prescribe and pay such expenses as the Borough may incur in connection therewith. Any Bonds issued pursuant to this section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Borough, whether or not the Bonds alleged to be destroyed, stolen or lost be at any time enforceable by anyone.
- SECTION 12.** Disposition of the Sale Proceeds of the Bonds. The sale proceeds of the Bonds representing accrued interest on the Bonds, if any, shall be applied to pay a portion of the interest due on the Bonds on the first interest payment date for the Bonds. The remainder of the sale proceeds of the Bonds shall be applied to pay Costs. The sale proceeds of the Bonds shall be deposited in the appropriate funds or accounts of the Borough for such purposes as may be determined by the Finance Director.
- SECTION 13.** Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.
- SECTION 14.** Sale of the Bonds; Loan Agreement. The sale of not to exceed \$22,987,000 aggregate principal amount of the Bonds, as provided in the Loan Agreement and this resolution, is hereby authorized and approved. The Mayor and the Finance Director are each hereby authorized to execute and deliver the Loan Agreement, a Continuing Disclosure Certificate and such other documents as may be necessary to effectuate issuance of the Bonds on behalf of the Borough.
- SECTION 15.** Authority of Officers. The Mayor, the Borough Finance Director, and the Borough Clerk are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this resolution, or to be determined by a subsequent ordinance or resolution, to the end that the Borough may carry out its obligations under the Bonds and this resolution.

SECTION 16. Amendatory and Supplemental Resolutions. (a) The Assembly from time to time and at any time may adopt a resolution or resolutions supplemental hereof, which resolution or resolutions thereafter shall become a part of this resolution, for any one or more of the following purposes:

- (i) To add to the covenants and agreements of the Borough in this resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.
- (ii) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this resolution or in regard to matters or questions arising under this resolution as the Assembly may deem necessary or desirable and not inconsistent with this resolution and which shall not adversely affect the interest of the Registered Owner of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owners of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (b) of this section.

- (b) With the consent of a bond insurer, if any, or the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution or resolutions supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this resolution or of any supplemental resolution; provided, however that no such supplemental resolution shall:
 - (i) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the owners of each Bond so affected; or
 - (ii) reduce the aforesaid percentage of owners of Bonds required to approve any such supplemental resolution without the consent of the owners of all the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particulars of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (c) Upon the adoption of any supplemental resolution under this section, this resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this resolution for any and all purposes.
- (d) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owner of the Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 17. Miscellaneous. (a) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.

- (b) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said State or of any political subdivision thereof, except the Borough.

SECTION 18. Continuing Disclosure. The Borough acknowledges that now or in the future the Borough may be an "obligated person" under Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). In accordance with the Rule, the Borough agrees to comply with and carry out continuing disclosure obligations required under Rule 15c2-12 and the Loan Agreement. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Certificate shall not be considered a default of the Borough's obligations under this Resolution, the Loan Agreement or the Bonds; however the beneficial owner of any Bond may bring an action for specific performance, to cause the Borough to comply with its continuing disclosure obligations.

SECTION 19. Severability. If any one or more of the provisions of this resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the Bonds.

SECTION 20. Effective date. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 8TH DAY OF OCTOBER, 2013.

Linda Murphy, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Wolf, Murphy
No: None
Absent: None

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-042**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE EDUCATION CAPITAL IMPROVEMENT GENERAL OBLIGATION BOND, SERIES 2013 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2013 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), to finance certain educational capital improvements, issued and sold its Education Capital Improvement General Obligation Bond, Series 2013, dated November 14, 2013, in the original principal amount of \$20,860,000 (the "2013 Bond") to the Alaska Municipal Bond Bank (the "Bond Bank"), as authorized by Resolution No. 2013-071 of the Borough adopted on October 8, 2013 (the "Bond Resolution"), based on terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of November 1, 2013 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation Bonds, 2013 Series Three (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2013 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2013 Bond may be adjusted to reduce debt service on the 2013 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2013 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH, ALASKA:

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2013 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2013 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2013 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2013 Bond is refinanced, the 2013 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2013 Bond (the "Exchanged 2013 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2013 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2013 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

SECTION 2. Tax Matters. The 2013 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis as determined by the Mayor or Finance Director. The Exchanged 2013 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.


SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2013 Bond are hereby ratified and confirmed.


SECTION 5. Recitals. The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

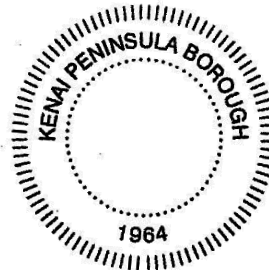
SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-042 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.


John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough

Introduced by:	Mayor
Date:	09/15/20
Hearing:	10/13/20
Action:	Postponed as Amended to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Tabled as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-19-09**

**AN ORDINANCE APPROPRIATING REFINANCED 2011 HOSPITAL GENERAL
OBLIGATION BOND PROCEEDS FOR THE PURPOSE OF PAYING BOND
REFINANCING ISSUANCE COSTS**

WHEREAS, the Kenai Peninsula Borough, Alaska (the “Borough”), refunded its Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003, dated December 18, 2003, with proceeds of its Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011, in the original principal amount of \$27,905,000 (the “2011 Bond”); and

WHEREAS, the 2011 Bond was issued pursuant to Borough Resolution 2011-073, adopted by the Assembly on July 5, 2011 (the “Bond Resolution”) and purchased by the Alaska Municipal Bond Bank (the “Bond Bank”), based on the terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of September 15, 2011 (the “Loan Agreement”); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2011 Series Three (the “Bond Bank Bonds”), to, among other things, provide funds to purchase the 2011 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2011 Bond may be adjusted to reduce debt service on the 2011 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the “Bond Bank Refunding Bonds”) for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, through Resolution 2020-043, the assembly approved the Borough’s participation in this refinancing and to authorize the mayor or his designee to accept a revised debt service schedule for the 2011 Bond if the Bond Bank successfully refinances the Bond Bank Bonds; and

WHEREAS, the Bond Bank anticipates a refinancing closing date following October 1, 2020;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That 2011 refinanced hospital bond proceeds in the amount of up to \$6,860 are appropriated to the Central Peninsula Hospital Capital Project Fund, account number 490.81110.21BND.49999 to pay costs related to the issuance.

SECTION 2. That the appropriations made in this ordinance are of a project length nature and as such do not lapse at the end of any particular fiscal year.

SECTION 3. That eligible costs incurred prior to the appropriation date will be charged to the project.

SECTION 4. This ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF *, 2020.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

10/13/20 Vote on motion to postpone as amended to 12/01/20:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper

No: None

Absent: None

12/01/20 Vote on motion to table as amended:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

Kenai Peninsula Borough
Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: September 3, 2020

SUBJECT: Ordinance 2020- 19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

In May 2020, the Kenai Peninsula Borough Assembly approved Resolution 2020-043, authorizing the Borough's participation in the refinancing of select series for the 2011 hospital general obligation bonds.

Due to reductions in long term interest rates, the Alaska Municipal Bond Bank has determined that a portion of the outstanding 2011 hospital bonds could be refinanced, with potential savings to borough residents of approximately \$200,000 in interest over the remaining life of the debt. This ordinance appropriates refinanced bond proceeds for the purpose of paying costs related to the issuance of the bond refinancing.

Your consideration is appreciated.

FINANCE DEPARTMENT ACCOUNT / FUNDS VERIFIED	
Acct. No.	<u>490.00000.21BND.39010</u>
Amount:	<u>\$6,860.00</u>
By: <u><i>PP</i></u>	Date: <u>9/2/2020</u>

Kenai Peninsula Borough

Finance Department

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor *CP*

FROM: Brandi Harbaugh, Finance Director *BH*

DATE: November 19, 2020

SUBJECT: Request to Table Ordinance 2020-19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling.

The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are looking to postpone the refinancing of the 2011 Central Peninsula Hospital General Obligation Bonds until calendar year 2021.

Therefore, we are requesting to table this ordinance until early 2021, providing more time for analysis and review of the market

Your consideration is appreciated.

Kenai Peninsula Borough

Finance Department

MEMORANDUM

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

THRU: Charlie Pierce, Mayor CP

FROM: Brandi Harbaugh, Finance Director BH

DATE: October 1, 2020

SUBJECT: Amendment to Ordinance 2020-19-09, Appropriating Refinanced 2011 Hospital General Obligation Bond Proceeds for the Purpose of Paying Bond Refinancing Issuance Costs & Request to Postpone Hearing (Mayor)

The Alaska Supreme Court's recent decision which invalidated a plan to sell bonds to pay oil tax credits has caused a certain amount of uncertainty in the Alaska bond market. The Alaska Department of Law has requested a rehearing to better define the scope of the ruling. The Alaska Municipal Bond Bank has delayed its bond issue for a time uncertain as a result of the recent decision. Therefore, pending further analysis of the effect of the Supreme Court ruling we are seeking to postpone the refinancing of the 2011 CPGH Hospital General Obligation Bonds until after October 2020.

Based on the above circumstances, postponement of the hearing on this ordinance to the November 10, 2020, meeting is requested as well as the following amendment:

(Please note the bold underlined language is new and the bracketed strikeout language is to be deleted.)

- Amend the last whereas clause, as follows:

WHEREAS, the Bond Bank anticipates a refinancing closing date ~~[of September 2020]~~ following October 1, 2020;

Your consideration is appreciated.

Introduced by:	Mayor
Date:	07/05/11
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2011-073**

**A RESOLUTION AUTHORIZING THE ISSUE OF CENTRAL KENAI PENINSULA
HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN
ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED
\$33,965,000 TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION
BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS
AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091**

WHEREAS, there are now outstanding \$35,990,000 of the Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough maturing on or after February 1, 2012 issued under Resolution 2003-121 of the Borough (the "2003 Bonds"); and

WHEREAS, the Assembly finds that it is in the best interest of the Borough to provide for the refunding, including payment of principal of, premium, if any, and interest on, those maturities of the 2003 Bonds (the "Refunded Bonds") whose refunding the Borough Mayor or Borough Finance Director determines will produce the debt service savings described in this resolution, by the issuance of Service Area general obligation refunding bonds in the aggregate principal amount of not to exceed \$33,965,000; and

WHEREAS, to effect such refunding in the most economical manner, part of the sale proceeds of the bonds authorized herein (the "Bonds") may be invested in obligations to be authorized and approved by the Borough Mayor or Borough Finance Director, maturing in such amounts and at such times as are required to pay interest on the Refunded Bonds prior to the date of their redemption and to redeem the Refunded Bonds on the earliest date on which the Refunded Bonds may be called for redemption; and

WHEREAS, Section 29.47.320 of the Alaska Statutes provides that general obligation refunding bonds may be issued without an election and that their issuance may be authorized by resolution, and Section 29.47.410 of the Alaska Statutes provides that the Assembly by resolution or resolution may provide for the form and manner of sale of bonds and notes; and

WHEREAS, the Assembly finds that it is necessary and appropriate to delegate to each of the Borough Mayor and Borough Finance Director authority to determine the maturity amounts, interest rates and other details of the Bonds, the amount of Bond proceeds and the obligations necessary to effect the refunding of the Refunded Bonds, and to determine other matters that are not provided for in this

resolution;

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

SECTION 1. Definitions. The following terms shall have the following meanings in this resolution:

- (a) "Assembly" means the Assembly of the Kenai Peninsula Borough, as the general legislative authority of the Kenai Peninsula Borough, as the same shall be duly and regularly constituted from time to time.
- (b) "Bond" or "Bonds" means any of the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011" of the Kenai Peninsula Borough, in one or more series, the issuance and sale of which are authorized herein.
- (c) "Bond Bank" means the Alaska Municipal Bond Bank, a public corporation of the State of Alaska.
- (d) "Bond Bank Bonds" means the General Obligation and Refunding Bonds, 2011 Series Three of the Bond Bank.
- (e) "Bond Register" means the registration books maintained by the Paying Agent as Bond registrar, which include the names and addresses of the owners or nominee of the owners of the Bonds.
- (f) "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska, incorporated January 1, 1964 as a second class borough under the laws of the State of Alaska.
- (g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.
- (h) "Cost" or "Costs" means allocable portions of direct costs of the Borough, legal fees, fees and expenses of the Paying Agent, costs of issuance of the Bonds by the Borough, including financing charges and fees and expenses of bond counsel, financial advisors and consultants in connection therewith, and all other expenses necessary or incidental thereto.
- (i) "Escrow Agent" means The Bank of New York Trust Company, N.A., and its successors.
- (j) "Escrow Agreement" means the Escrow Agreement between the Escrow Agent and the Borough, under which the Escrow Obligations will be deposited, together with other moneys, if necessary, to pay the interest on and the redemption price of the Refunded Bonds.

- (k) "Escrow Obligations" means. non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America or an agency or instrumentality of the United States of America.
- (l) "Letter of Representations" means the blanket letter of representations from the Borough to DTC, dated as of October 23, 2003.
- (m) "Loan Agreement" means the Loan Agreement between the Borough and the Bond Bank to be entered into in conjunction with issuing the Bonds.
- (n) "2003 Bonds" means the \$47,985,000 of Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003 of the Borough.
- (o) "Refunded Bonds" means the maturities and sinking fund installments of the 2003 Bonds whose refunding is approved by the Borough Mayor or Borough Finance Director under Section 13 hereof.
- (p) "Refunding Account" means the special account established under Section 7(C) hereof and designated as the "Service Area General Obligation Bond Refunding Account," for the purpose of holding moneys, including Bond proceeds, to be used to pay the interest on and the redemption price of the Refunded Bonds.
- (q) "Registered Owner" means the person named as the registered owner of a Bond in the Bond Register.
- (r) "Registrar" means the Borough Finance Director.
- (s) "Resolution" means this Resolution 2011-__ of the Borough.
- (t) "Service Area" means the Central Kenai Peninsula Hospital Service Area.

SECTION 2. Authorization of Bonds and Purpose of Issuance. For the purpose of providing part of the funds required to pay the Costs, providing the funds required to purchase Escrow Obligations and to provide beginning cash to effect the refunding of the Refunded Bonds in the manner and at the times hereinafter set forth, to provide for original issue discount, if any, and to pay all costs incidental thereto and to the issuance of the Bonds, the Borough hereby authorizes and determines to issue and sell the Bonds in the aggregate principal amount of not to exceed \$33,965,000.

SECTION 3. Obligation of Bonds. The Bonds shall be direct and general obligations of the Service Area and the full faith and credit of the Service Area are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all taxable property within the Service Area without limitation as to rate or amount,

in amounts sufficient, together with other funds legally available therefor, to pay the principal of and interest on the Bonds as the same become due and payable.

SECTION 4. Designation, Maturities, Interest Rates, and Other Details of Bonds. The Bonds shall be designated the "Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011." The Bonds shall be in the denomination of \$5,000 or any integral multiple thereof, shall be numbered separately in the manner and with such additional designation as the Registrar deems necessary for purposes of identification, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

The dated date, the principal and interest payment dates, the aggregate principal amount, the principal amount of each maturity, and the interest rates on the Bonds shall be determined at the time of execution of the Loan Agreement under Section 13.

SECTION 5. Redemption. The bonds are subject to redemption as provided in the Loan Agreement.

SECTION 6. Form of Bond. Each Bond shall be in substantially the following form, with such variations, omissions and insertions as may be required or permitted by this Resolution:

UNITED STATES OF AMERICA
STATE OF ALASKA

KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

NO. _____ \$ _____

CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA
GENERAL OBLIGATION REFUNDING BONDS, 2011

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The Kenai Peninsula Borough, Alaska (the "Borough"), a municipal corporation of the State of Alaska, hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or its registered assigns, the Principal Amount indicated above in the following installments on [_____] 1] of each of the following years, and to pay interest on such installments from the date hereof, payable on [_____] 1, 20__] and semiannually thereafter on the first days of _____ and _____ of each year, at the rates per annum as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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For so long as this Bond is owned by the Alaska Municipal Bond Bank (the "Bank"), payment of principal and interest shall be made as provided in the Loan Agreement between the Bank and the Borough dated as of _____, 2011 (the "Loan Agreement"). In the event that this Bond is no longer owned by the Bank, installments of principal of and interest on this Bond shall be made by check or draft mailed by first class mail to the registered owner as of the close of business on the fifteenth day of the month preceding each installment payment date; provided that the final installment of principal and interest on this Bond will be payable upon presentation and surrender of this Bond by the Registered Owner at the office of the Registrar. Interest shall be computed on the basis of a 360-day year composed of twelve 30-day months. Both principal of and interest on this bond are payable in lawful money of the United States of America which, on the respective dates of payment thereof, shall be legal tender for the payment of public and private debts.

This Bond is one of the Central Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011 of the Kenai Peninsula Borough, Alaska of like tenor and effect except as to interest rate, serial number and maturity, aggregating \$_____ in principal amount, and constituting bonds authorized for the purpose of refunding certain general obligation bonds issued by the Borough, and is issued under Resolution 2011-__ of the Borough entitled:

A RESOLUTION AUTHORIZING THE ISSUE OF CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 IN ONE OR MORE SERIES IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$_____ TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE SERVICE AREA, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE AND REPEALING RESOLUTION 2010-091.

(herein called the "Resolution").

The Bond is subject to redemption prior to maturity as described in the Loan Agreement.

This Bond is transferable as provided in the Resolution, (i) only upon the bond register of the Borough, and (ii) upon surrender of this Bond together with a written instrument of transfer duly executed by the registered owner or the duly authorized attorney of the registered owner, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution and

upon the payment of charges, if any, as therein prescribed. The Borough may treat and consider the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price, if any, hereof and interest due hereon and for all other purposes whatsoever.

This Bond is a general obligation of the Central Peninsula Hospital Service Area, and the full faith and credit of the Service Area are pledged for the payment of the principal of and interest on the Bond as the same shall become due.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the constitution or statutes of the State of Alaska and the ordinances of the Borough to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the series of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said constitution, statutes, or ordinances.

IN WITNESS WHEREOF, THE KENAI PENINSULA BOROUGH, ALASKA, has caused this Bond to be signed in its name and on its behalf by its Mayor and its corporate seal to be hereunto impressed or otherwise reproduced and attested by its Clerk, all as of the ____ day of _____, 2011.

David R. Carey, Mayor

ATTEST:

Johni Blankenship, MMC, Borough Clerk

SECTION 7. Disposition of the Sale Proceeds of the Bonds.

- (A) The sale proceeds of the Bonds representing accrued interest on the Bonds, if any, shall be applied to pay a portion of the interest due on the Bonds on the first interest payment date for the Bonds.
- (B) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be applied to pay Costs allocated to such Bonds, and shall be deposited in the appropriate funds or accounts of the Borough for such purposes.
- (C) Sale proceeds of a principal amount of Bonds to be determined by the Borough Mayor or the Borough Finance Director shall be deposited in the "Service Area General Obligation Bond Refunding Account" (the "Refunding Account") which is hereby created, and used, together with such other moneys as may be transferred to said account, to deposit cash and to purchase Escrow

Obligations maturing as to principal and interest in such amounts and at such times as necessary to provide for the payment of the interest on and the redemption price of the Refunded Bonds. Such money and escrow obligations shall be deposited in trust with the Escrow Agent pursuant to the Escrow Agreement, the terms of which shall be subject to approval by the Borough Finance Director. Such money and obligations are hereby pledged to be held and applied solely for the purpose set forth herein. When all of the Refunded Bonds shall have been redeemed and retired, the Borough may cause to be transferred to the Borough from the Refunding Account free of trust all moneys remaining therein.

SECTION 8. Designation of Refunded Bonds. The Borough Mayor and the Borough Finance Director each is authorized to designate which, if any, maturities of the 2003 Bonds, authorized to be refunded in this Resolution shall be refunded, provided that the refunding of the bonds so designated shall realize a debt service savings, net of all issuance costs and underwriting discount.

SECTION 9. Call of Refunded Bonds for Redemption. The Borough hereby elects to redeem the Refunded Bonds on August 1, 2013.

Notice of redemption of the Refunded Bonds shall be given in the manner set forth in Resolution 2003-121 authorizing the Refunded Bonds. The election to make such call for redemption shall be subject to the delivery of the Bonds to the initial purchasers thereof and shall become irrevocable upon such delivery.

SECTION 10. Tax Covenants. The Borough covenants to comply with any and all applicable requirements set forth in the Code in effect from time to time to the extent that such compliance shall be necessary for the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The Borough covenants that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 148 of the Code. The Borough covenants that it will not take or permit any action that would cause the Bonds to be "private activity bonds" as defined in Section 141 of the Code.

SECTION 11. Amendatory and Supplemental Resolutions.

- (A) The Assembly from time to time and at any time may adopt a resolution supplemental hereto, which thereafter shall become a part of this Resolution, for any one or more of the following purposes:
 - (1) To add to the covenants and agreements of the Borough in this Resolution, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the Borough.

- (2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this Resolution or in regard to matters or questions arising under this Resolution as the Assembly may deem necessary or desirable and not inconsistent with this Resolution and which shall not adversely affect the interests of the Registered Owners of the Bonds.

Any such supplemental resolution may be adopted without the consent of the Registered Owner of any of the Bonds at any time outstanding, notwithstanding any of the provisions of subsection (B) of this section.

- (B) With the consent of the Registered Owners of not less than 60 percent in aggregate principal amount of the Bonds at the time outstanding, the Assembly may adopt a resolution supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Resolution or of any supplemental resolution; provided, however, that no such supplemental resolution shall:
 - (1) extend the fixed maturity of any of the Bonds, or reduce the rate of interest thereon, or reduce the amount or change the date of any sinking fund installment, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owners of each Bond so affected; or
 - (2) reduce the aforesaid percentage of Registered Owners of Bonds required to approve any such supplemental resolution without the consent of the Registered Owners of all of the Bonds then outstanding.

It shall not be necessary for the consent of the Registered Owners of the Bonds under this subsection to approve the particular form of any proposed supplemental resolution, but it shall be sufficient if such consent approves the substance thereof.

- (C) Upon the adoption of any supplemental resolution under this section, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the Borough and all Registered Owners of outstanding Bonds shall thereafter be subject in all respects to such modification and amendment, and all the terms and conditions of the supplemental resolution shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes.
- (D) Bonds executed and delivered after the execution of any supplemental resolution adopted under this section may bear a notation as to any matter provided for in such supplemental resolution, and if such supplemental

resolution shall so provide, new Bonds modified so as to conform, in the opinion of the Borough, to any modification of this Resolution contained in any such supplemental resolution may be prepared by the Borough and delivered without cost to the Registered Owners of the Bonds then outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

SECTION 12. Defeasance. In the event money and/or non-callable direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States of America, maturing at such times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any or all of the Bonds in accordance with their terms are set aside in a special trust account to effect such redemption or retirement and such moneys and the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made to pay or secure the payment of the principal of and interest on such Bonds and such Bonds shall be deemed not to be outstanding.

SECTION 13. Sale of Bonds. The sale of not to exceed \$33,965,000 aggregate principal amount of the Bonds to the Bond Bank, as provided in the Loan Agreement is hereby authorized and approved. The Borough has been advised by the Bond Bank that bond market conditions are fluctuating and that the most favorable market conditions for the sale of the Bond Bank Bonds may not occur on the date of a regular Assembly meeting. The Assembly has determined that it would be inconvenient to hold a special meeting on short notice to approve the terms of the Bonds. Therefore, the Assembly hereby determines that it is in the best interest of the Borough to delegate the authority to approve the terms of the Bonds as provided herein. Each of the Mayor and the Borough Finance Director is hereby authorized to determine the aggregate principal amount, maturity amounts, interest rates, yields, dated date, principal and interest payment dates, and redemption terms, if any, for the Bonds, so that such terms of the Bonds conform to the terms of the corresponding Bond Bank Bonds; provided that (i) the principal amount of each maturity of the Bonds shall not exceed the principal amount of the portion of the corresponding maturity of the Bond Bank Bonds that is allocated to the making of a loan to the Borough; and (ii) the interest rate on each maturity of the Bonds shall not exceed the interest rate on the corresponding maturity of the Bond Bank Bonds. Based upon the foregoing determinations, the Mayor and the Borough Finance Director each is authorized to negotiate and execute a Loan Agreement. The authority granted to the Mayor and Borough Finance Director by this section shall expire 180 days after the effective date of this Resolution. If the Mayor or Borough Finance Director has not executed a Loan Agreement within 180 days from the effective date of this Resolution, the Loan Agreement may not be executed on behalf of the Borough without further authorization from the Assembly.

SECTION 14. Official Statement. The Borough Mayor and Borough Finance Director each is hereby authorized to approve and deem a preliminary Official Statement final

for purposes of Securities and Exchange Commission Rule 15c2-12(b)(1), and to approve and execute a final Official Statement for the Bonds.

SECTION 15. Authority of Officers. The Mayor, the Borough Finance Director, and the Borough Clerk, are, and each of them hereby is, authorized and directed to do and perform all things and determine all matters not determined by this Resolution, to the end that the Borough may carry out its obligations under the Bonds and this Resolution.

SECTION 16. Prohibited Sale of Bonds. No person, firm or corporation, or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Bonds is eligible to purchase the Bonds as a member of the original underwriting syndicate either at public or private sale.

SECTION 17. Miscellaneous.

- (A) All payments made by the Borough of, or on account of, the principal of or interest on the Bonds shall be made on the several Bonds ratably and in proportion to the amount due thereon, respectively, for principal or interest as the case may be.
- (B) No recourse shall be had for the payment of the principal of or the interest on the Bonds or for any claim based thereon or on this Resolution against any member of the Assembly or officer of the Borough or any person executing the Bonds. The Bonds are not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Borough, and do not and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said state or of any political subdivision thereof, except the Service Area.

SECTION 18. Continuing Disclosure. The Borough hereby covenants and agrees that it will comply with and carry out all of the provisions of a Continuing Disclosure Agreement, to be entered into upon issuance of the Bonds in accordance with Securities and Exchange Commission Rule 15c2-12. Notwithstanding any other provision of this Resolution, failure of the Borough to comply with the Continuing Disclosure Agreement shall not be considered a default of the Borough's obligations under this Resolution or the Bonds.

SECTION 19. Repeal. Resolution 2010-091 is repealed.

SECTION 20. Severability. If any one or more of the provisions of this Resolution shall be declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Resolution and shall in no way affect the validity of the other provisions of this Resolution or of the Bonds.

SECTION 21. Effective date. This resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
5TH DAY OF JULY, 2011.**

Gary Knopp, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Yes: Haggerty, Johnson, McClure, Murphy, Pierce, Smalley, Smith, Tauriainen, Knopp
No: None
Absent: None

Introduced by:	Mayor
Date:	06/16/20
Action:	Adopted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2020-043**

A RESOLUTION APPROVING THE KENAI PENINSULA BOROUGH'S PARTICIPATION IN A PROPOSED REFINANCING BY THE ALASKA MUNICIPAL BOND BANK OF ITS GENERAL OBLIGATION BONDS THAT PROVIDED FUNDS TO PURCHASE THE CENTRAL KENAI PENINSULA HOSPITAL SERVICE AREA GENERAL OBLIGATION REFUNDING BONDS, 2011 OF THE KENAI PENINSULA BOROUGH, UNDER A LOAN AGREEMENT BETWEEN THE KENAI PENINSULA BOROUGH AND THE ALASKA MUNICIPAL BOND BANK; AND AUTHORIZING THE KENAI PENINSULA BOROUGH MAYOR OR DESIGNEE TO APPROVE A REVISED SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON THE KENAI PENINSULA BOROUGH'S 2011 BOND, IN ACCORDANCE WITH THE LOAN AGREEMENT, IF THE ALASKA MUNICIPAL BOND BANK SUCCESSFULLY REFINANCES ITS BONDS

WHEREAS, the Kenai Peninsula Borough, Alaska (the "Borough"), refunded its Central Kenai Peninsula Hospital Service Area General Obligation Bonds, Series 2003, dated December 18, 2003, with proceeds of its Central Kenai Peninsula Hospital Service Area General Obligation Refunding Bonds, 2011, in the original principal amount of \$27,905,000 (the "2011 Bond"); and

WHEREAS, the 2011 Bond was issued pursuant to Borough Resolution 2011-73, adopted by the Assembly on July 5, 2011 (the "Bond Resolution") and purchased by the Alaska Municipal Bond Bank (the "Bond Bank"), based on the terms and conditions set forth in the Bond Resolution and a loan agreement between the Borough and the Bond Bank dated as of September 15, 2011 (the "Loan Agreement"); and

WHEREAS, the Bond Bank issued and sold its General Obligation and Refunding Bonds, 2011 Series Three (the "Bond Bank Bonds"), to, among other things, provide funds to purchase the 2011 Bond, as provided in the Loan Agreement; and

WHEREAS, Section 6 of the Loan Agreement provides that payments of principal of and interest on the 2011 Bond may be adjusted to reduce debt service on the 2011 Bond if the Bond Bank is able to achieve debt service savings by refunding the Bond Bank Bonds; and

WHEREAS, the Bond Bank now intends to issue a series of its general obligation refunding bonds (the "Bond Bank Refunding Bonds") for the purpose, among others, of refunding all, or a portion, of the outstanding Bond Bank Bonds and achieving debt service savings; and

WHEREAS, the Assembly wishes to approve the Borough's participation in this refinancing and to authorize the Borough Mayor or his designee to accept a revised debt service schedule for the 2011 Bond if the Bond Bank successfully refinances the Bond Bank Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH, ALASKA:

SECTION 1. Approval of Refinancing. The Assembly hereby approves the Borough's participation in the Bond Bank's refinancing of the Bond Bank Bonds and authorizes the Borough Mayor or his designee to approve a revised schedule of principal payment amounts and interest rates for the 2011 Bond, in accordance with Section 6 of the Loan Agreement, so long as the revised debt service schedule is financially advantageous to the Borough. The revised schedule of debt service on the 2011 Bond and other provisions as may be required by the Bond Bank will be set forth in an amendatory loan agreement (the "Amendatory Loan Agreement") and a refunding bond (the "2020 Refunding Bond") to be issued in exchange for the 2011 Bond. Notwithstanding, if only a portion of the outstanding principal amount of the 2011 Bond is refinanced, the 2011 Bond shall be exchanged for a bond reflecting the unrefunded portion of the 2011 Bond (the "Exchanged 2011 Bond"). The Borough Mayor or Finance Director is hereby authorized to execute and deliver the Amendatory Loan Agreement on behalf of the Borough and to deliver the 2020 Refunding Bond and Exchanged 2011 Bond, as the case may be, executed in accordance with the provisions of the Bond Resolution and this resolution, to the Bond Bank in exchange for the 2011 Bond. The Borough Mayor, Finance Director and other appropriate officers and employees of Borough are also hereby authorized to provide financial information about the Borough that the Bond Bank may require for the official statement for the Bond Bank Refunding Bonds.

SECTION 2. Tax Matters. The 2011 Bond was issued as a tax-exempt obligation under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). Subject to applicable law, the 2020 Refunding Bond may be issued on a tax-exempt or taxable basis, as determined by the Mayor or Finance Director. The Exchanged 2011 Bond shall retain its original tax treatment under the Code.

SECTION 3. General Authorization. The Mayor, Finance Director, Borough Clerk, Borough Attorney, and any other appropriate officers, agents, attorneys and employees of the Borough are each hereby authorized and directed to cooperate with the Bond Bank and to take such steps, do such other acts and things, and execute such letters, certificates, agreements, papers, financing statements, assignments or instruments as in their judgment may be necessary, appropriate or desirable to carry out the terms and provisions of, and complete the transactions contemplated by, this Resolution.


SECTION 4. Prior Acts. Any and all acts heretofore taken by officers, agents, attorneys and employees of the Borough in connection with refinancing the 2011 Bond are hereby ratified and confirmed.

SECTION 5. Recitals. The recitals to this resolution are hereby incorporated into this resolution as if fully set forth herein.

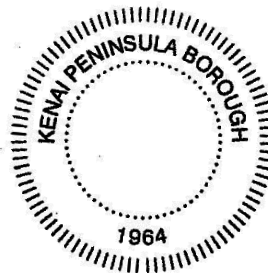
SECTION 6. Effective Date. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2020.

ATTEST:


Johni Blankenship, MMC, Borough Clerk


Kelly Cooper, Assembly President



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None


CERTIFICATE

I, the undersigned, Clerk of the Kenai Peninsula Borough, Alaska (the "Borough"), Do
HEREBY CERTIFY:

1. That the attached resolution is a true and correct copy of Resolution No. 2020-043 (the "Resolution") of the Borough as approved at a regular meeting of the Assembly of the Kenai Peninsula Borough, Alaska (the "Assembly") held on the 16th day of June, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such regular meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Assembly voted in the proper manner for the approval of the Resolution; that all other requirements and proceedings incident to the proper approval of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of June, 2020.



John Blankenship, MMC, Borough Clerk
Kenai Peninsula Borough