

Kenai Peninsula Borough

*144 North Binkley Street
Soldotna, AK 99669*



Meeting Agenda

Tuesday, March 2, 2021

2:30 PM

Betty J. Glick Assembly Chambers

Lands Committee

Richard Derkevorkian, Chair

Brent Johnson, Vice Chair

Bill Elam, Member

PUBLIC HEARINGS ON ORDINANCES

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](#)

NEW BUSINESS

2. Ordinances for Introduction

- *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

- *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](#)

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 *MCM*

FROM: Julie Denison, Land Management Technician *JDM*

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 KPBA 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. KPBA 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 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 99669-7299

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

DRAFT

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

DRAFT

**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 KPBA 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. KPBA 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 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

 Charle Pierce, Mayor

Dated: _____

Dated: _____

ATTEST:

APPROVED AS TO FORM
 AND LEGAL SUFFICIENCY:

 Johni Blankenship,
 Borough Clerk

 Sean Kelley,
 Deputy Borough Attorney

DRAFT

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

DRAFT

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.

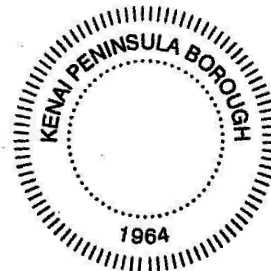
SECTION 3. That this resolution shall become effective immediately upon its adoption.

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 Tustemena 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:

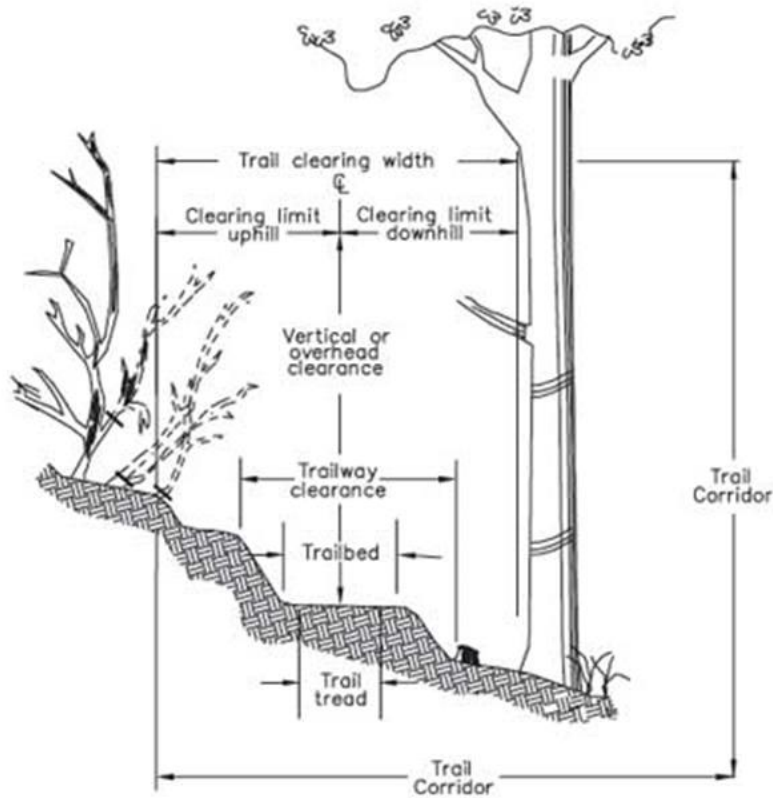
Wheeled ATV/UTV or any motorized Off Road Recreational Vehicle (ORRV) are not authorized on groomed Snomads Managed CHS trails during the Winter Months. Fat Tire bikes are permitted on CHS groomed Trails.

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

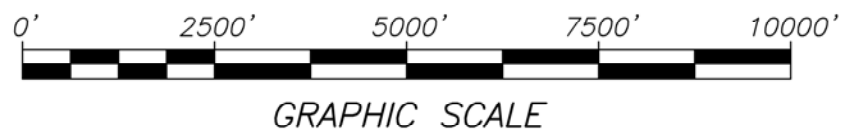
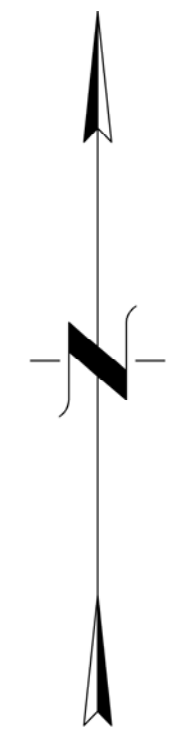
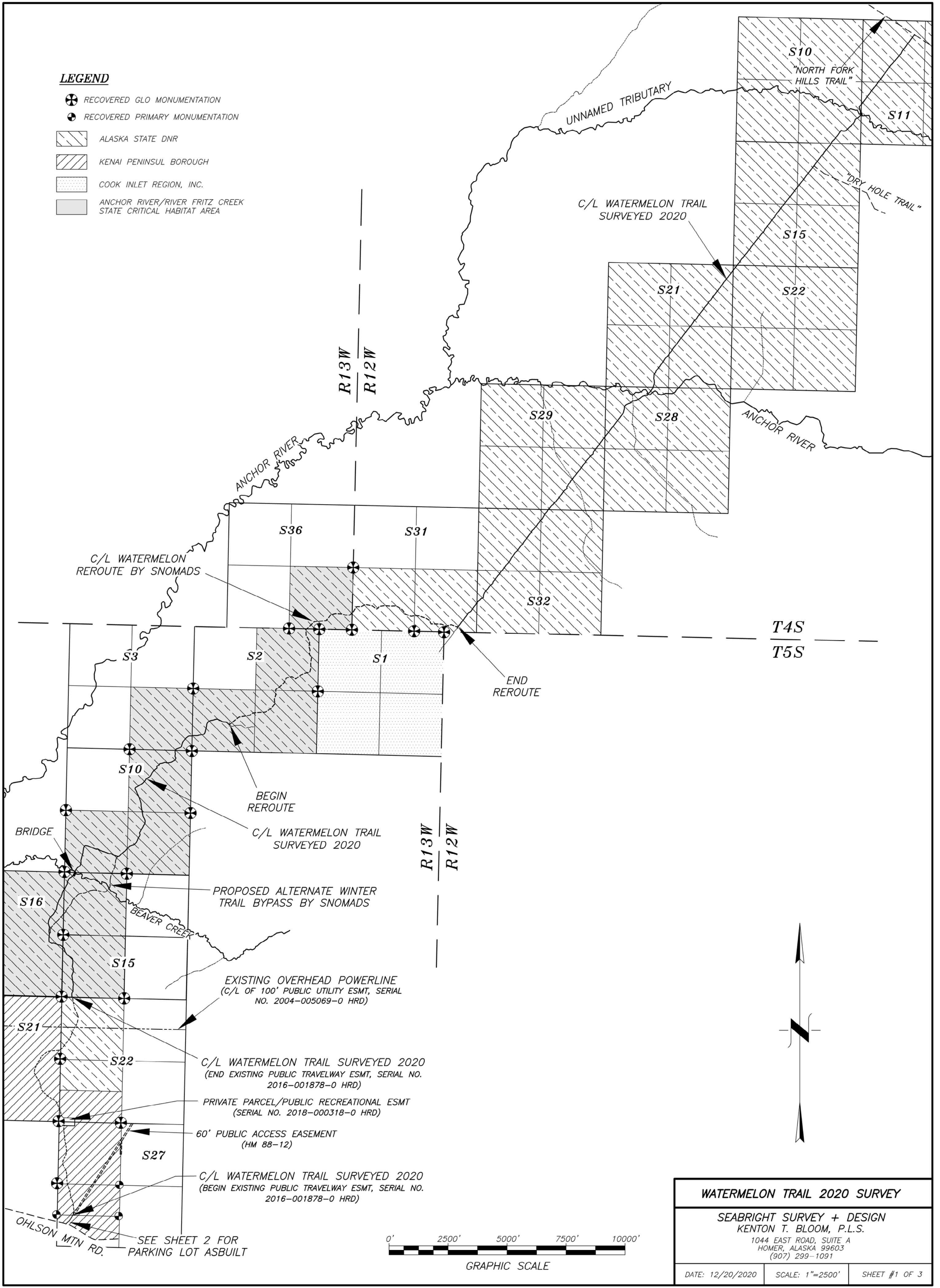
Trail Bed: 8 ft generally (except where 3/1 ratio of taper required for proper drainage)

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.

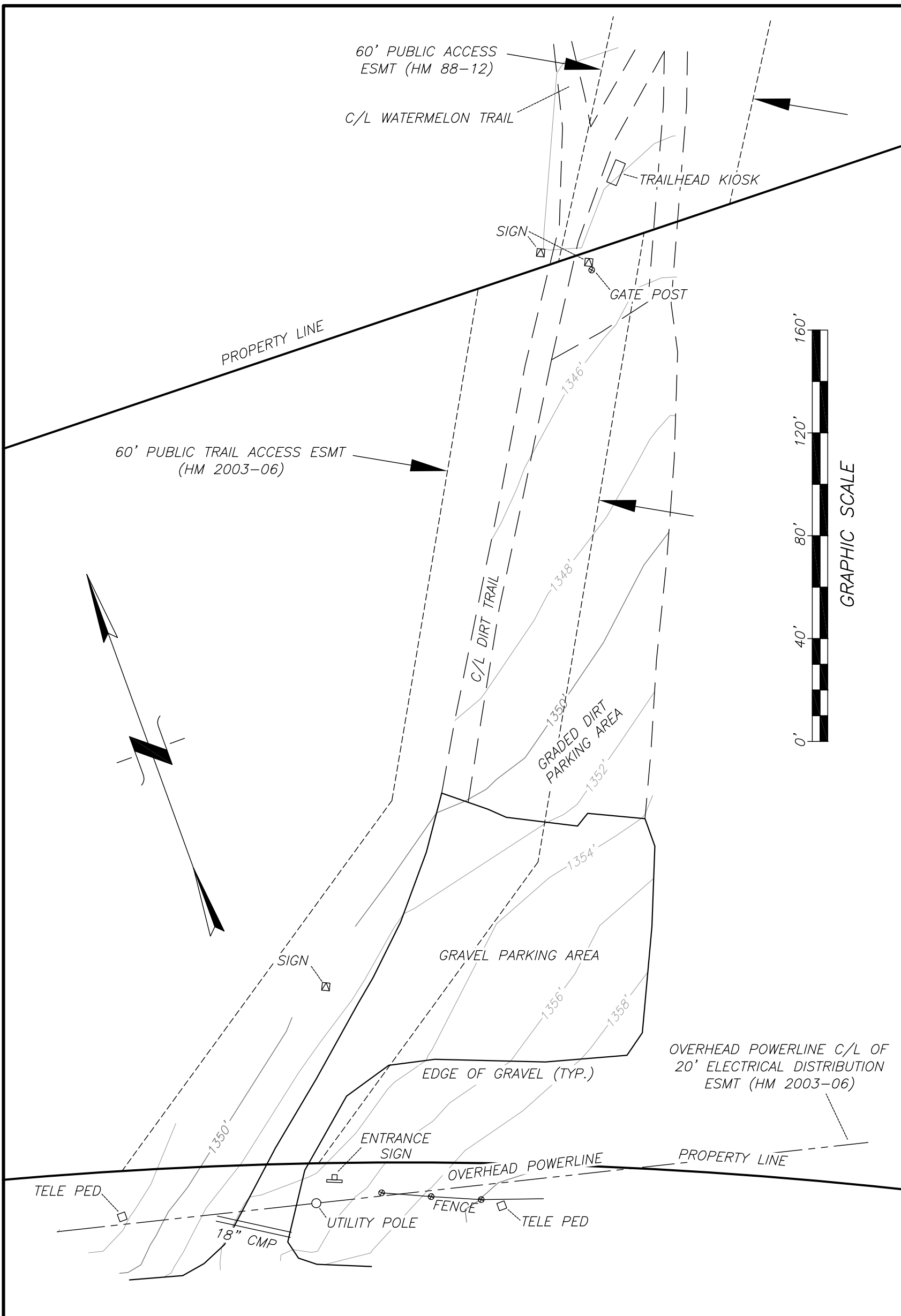
LEGEND

-  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

SEE SHEET 2 FOR
PARKING LOT ASBUILT



OHLSON MOUNTAIN RD. 100' ROW

WATERMELON TRAIL 2020 SURVEY
TRAILHEAD ASBUILT

SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

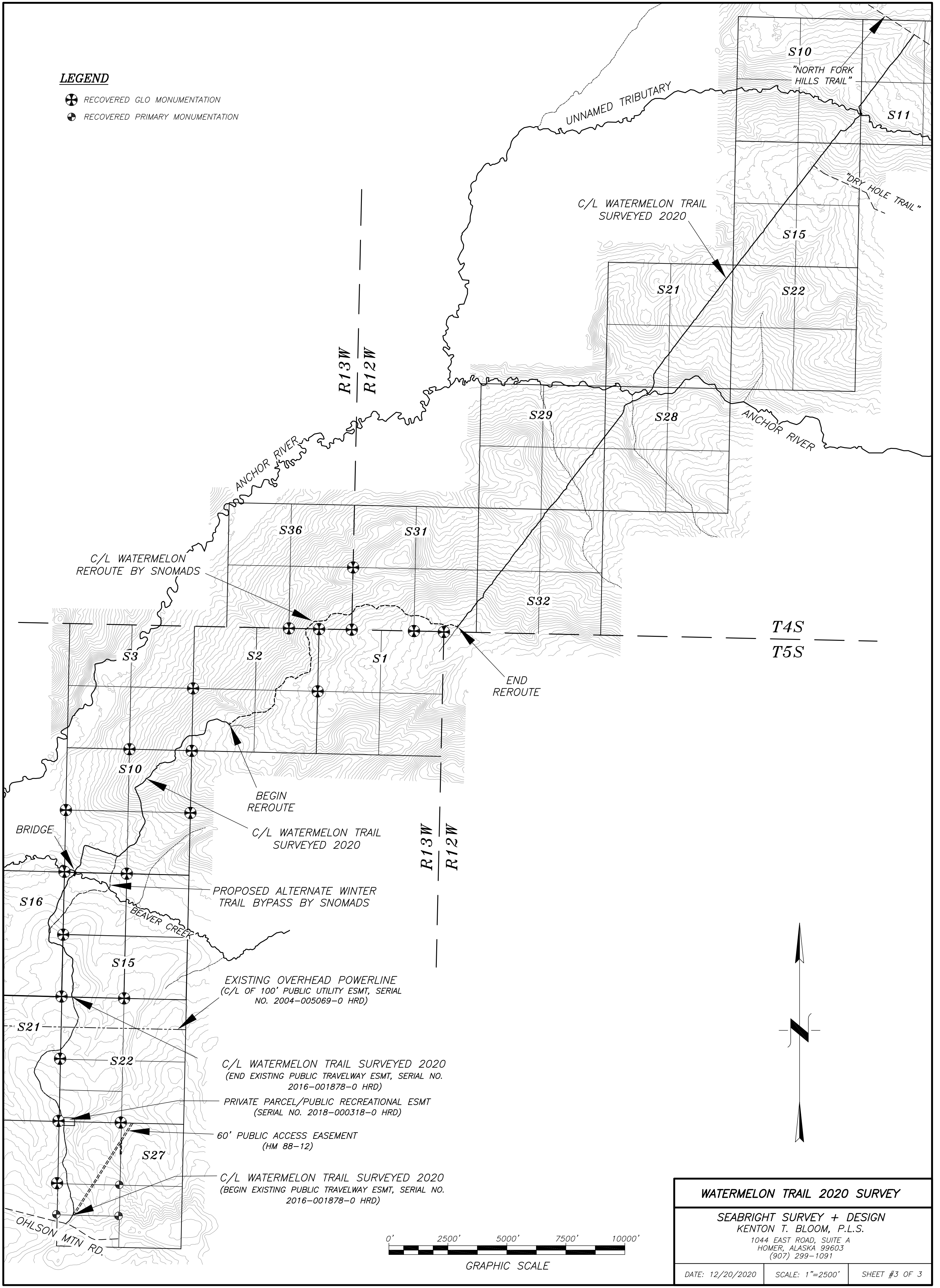
DATE: 12/20/2020

SCALE: 1"=40'

SHEET #2 OF 3

LEGEND

- ⊕ RECOVERED GLO MONUMENTATION
- RECOVERED PRIMARY MONUMENTATION



WATERMELON TRAIL 2020 SURVEY

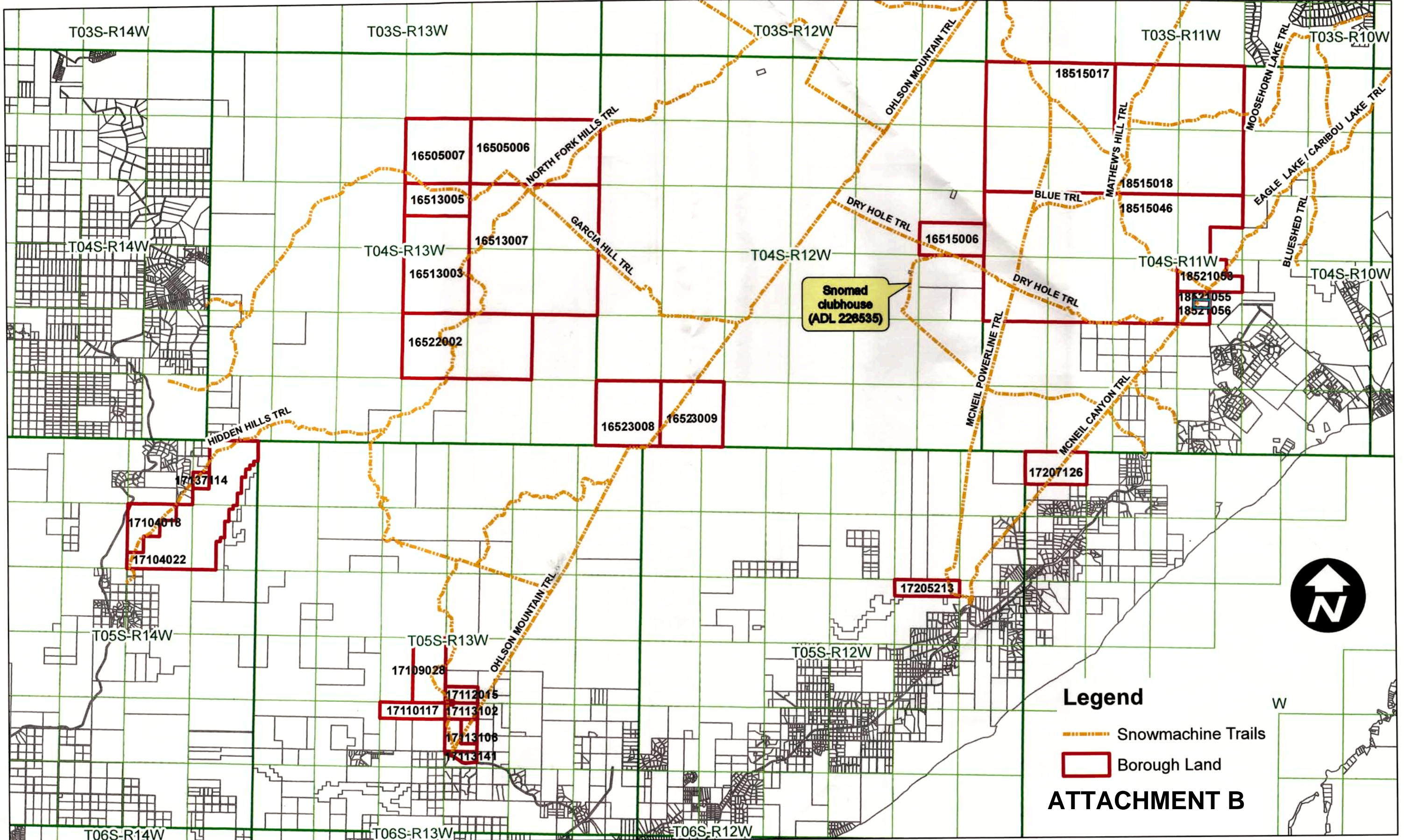
SEABRIGHT SURVEY + DESIGN
KENTON T. BLOOM, P.L.S.

1044 EAST ROAD, SUITE A
HOMER, ALASKA 99603
(907) 299-1091

DATE: 12/20/2020



SCALE: 1"=2500'

SHEET #3 OF 3



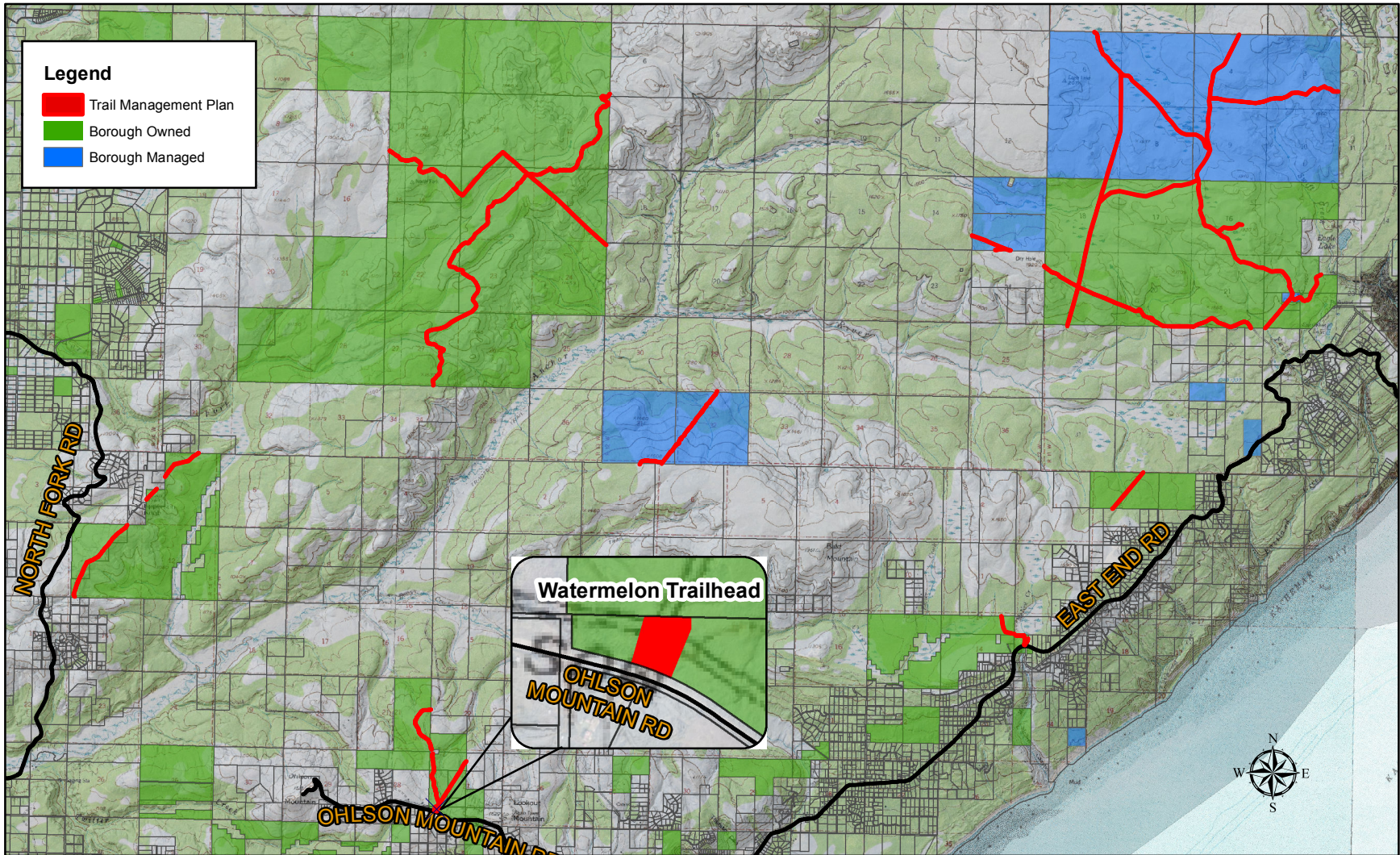
Snomed
clubhouse
(ADL 228535)

Legend

-  Snowmachine Trails
-  Borough Land

ATTACHMENT B





LMD 21-01; Community Trail Management Agreement

Applicant: Snomads, Inc.

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:



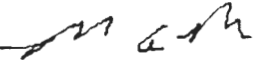
No:


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 KPB 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 KPB. KPB reserves the right to install emergency response communication equipment on Lessee's tower. Ninety (90) days prior to the exercise of this reservation, KPB shall provide Lessee with a complete inventory of equipment and proposed vertical location. Lessee shall confirm KPB's equipment will not interfere with Lessee's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPB's emergency response communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPB's right to install equipment on Lessee's tower will be subject to Lessee's reasonable determination that, at the time in which KPB proposes to install its equipment, Lessee's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPB'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) KPB 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. KPB 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. KPB 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 KPB's knowledge, KPB 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 KPB or, to the knowledge of KPB, by any prior owner or user of the Property. To the knowledge of KPB, 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 KBP as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KBP, 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

LESSEE: Vertical Bridge Development, LLC

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

LESSOR ACKNOWLEDGEMENT

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 for State of Alaska
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of Vertical Bridge Development, LLC, a Delaware limited liability company, the Lessee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Lessee.

Notary Public: _____
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of Vertical Bridge Development, LLC, a Delaware limited liability company, the Lessee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Lessee.

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: _____

LESSOR ACKNOWLEDGEMENT

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 for State of Alaska
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of Vertical Bridge Development, LLC, a Delaware limited liability company, the Lessee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Lessee.

Notary Public: _____
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
THIRD JUDICIAL DISTRICT)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of Vertical Bridge Development, LLC, a Delaware limited liability company, the Lessee named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Lessee.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE DESCRIPTION OF PROPERTY AND PREMISES

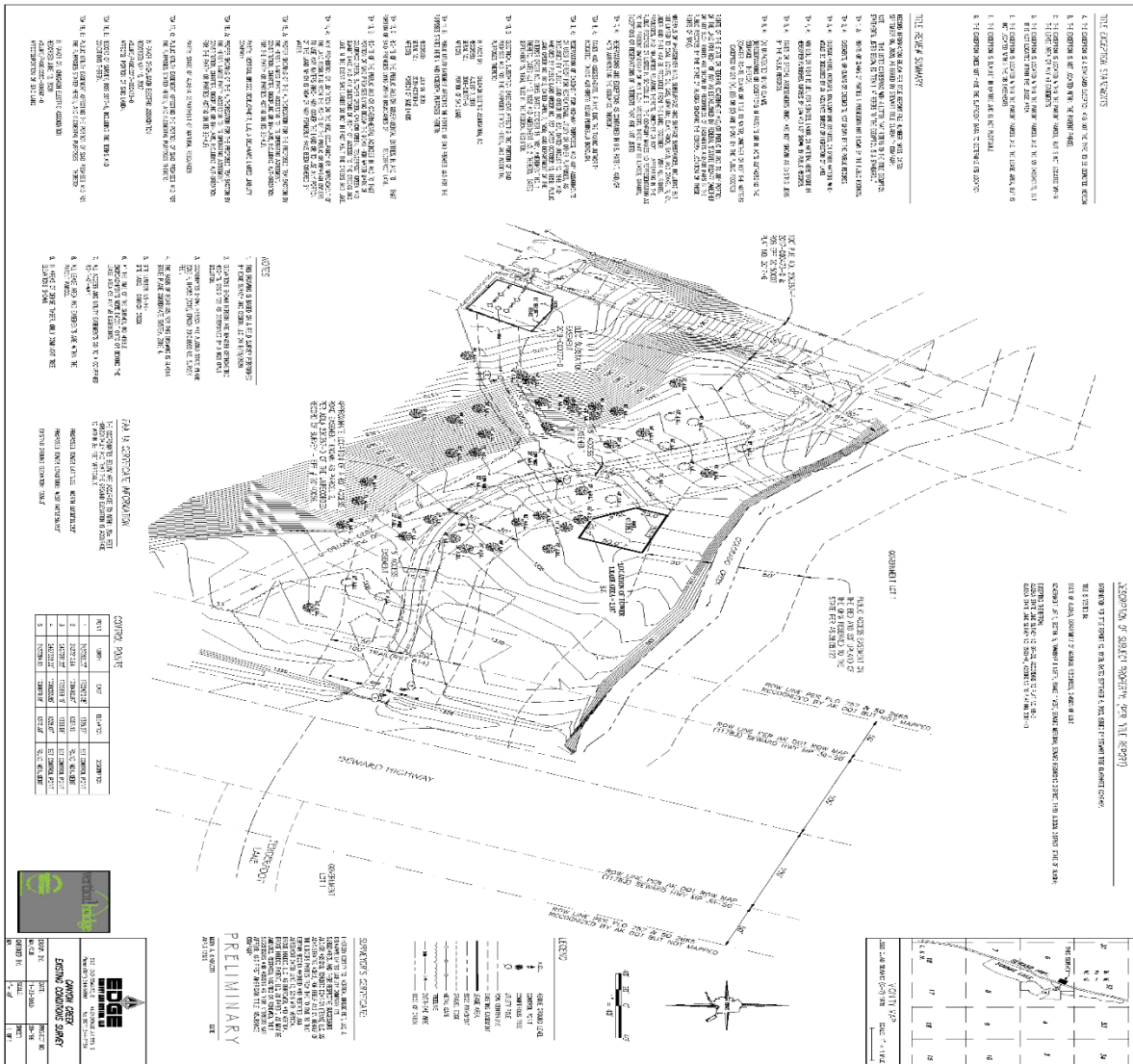
Page 1 of 1

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.

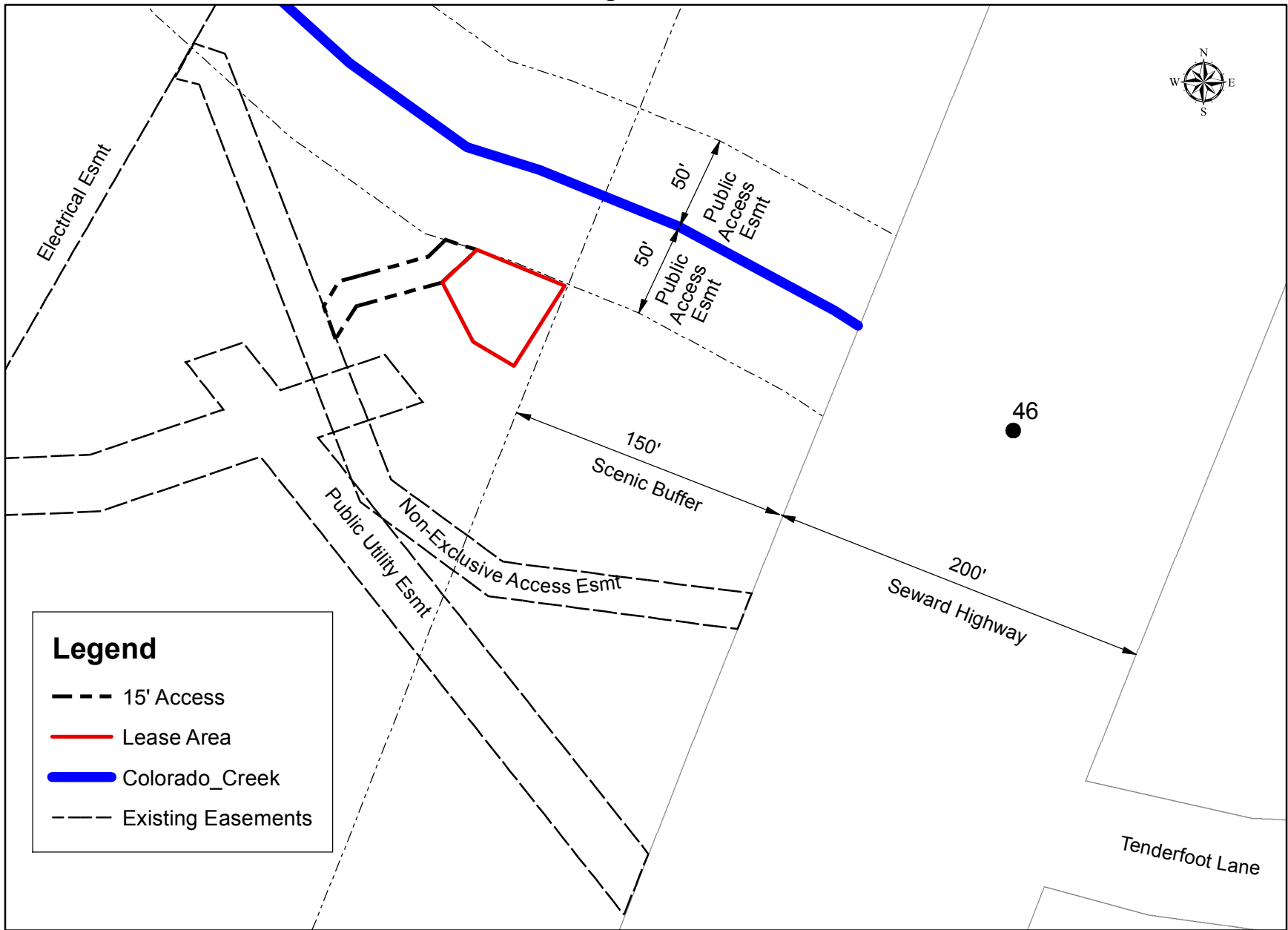
KPB AND SUBLESSEE USAGE: The KPB and any sublessee (the “KPB”) may use the Reserved Space for the purposes of providing public safety communications. The KPB may choose to install equipment to provide general government communications, monitoring equipment, and other similar uses. In general, equipment 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.

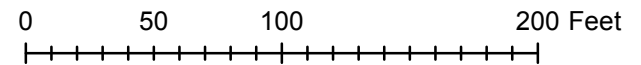
ACCESS: The KPB may establish outdoor equipment cabinets or full equipment shelters on or within the Leased Premises, provided that such facilities do not interfere with similar facilities of the Lessee. Access will only be permitted to the Lessee upon separate mutual agreement. Such premises may have 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



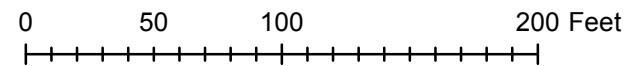
Applicant: Vertical Bridge Development, LLC
APN: 03525001



LMD 20-24; Communications Site Lease Agreement




Applicant: Vertical Bridge Development, LLC
APN: 03525001



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 Commission

Meeting Packet

February 8, 2021

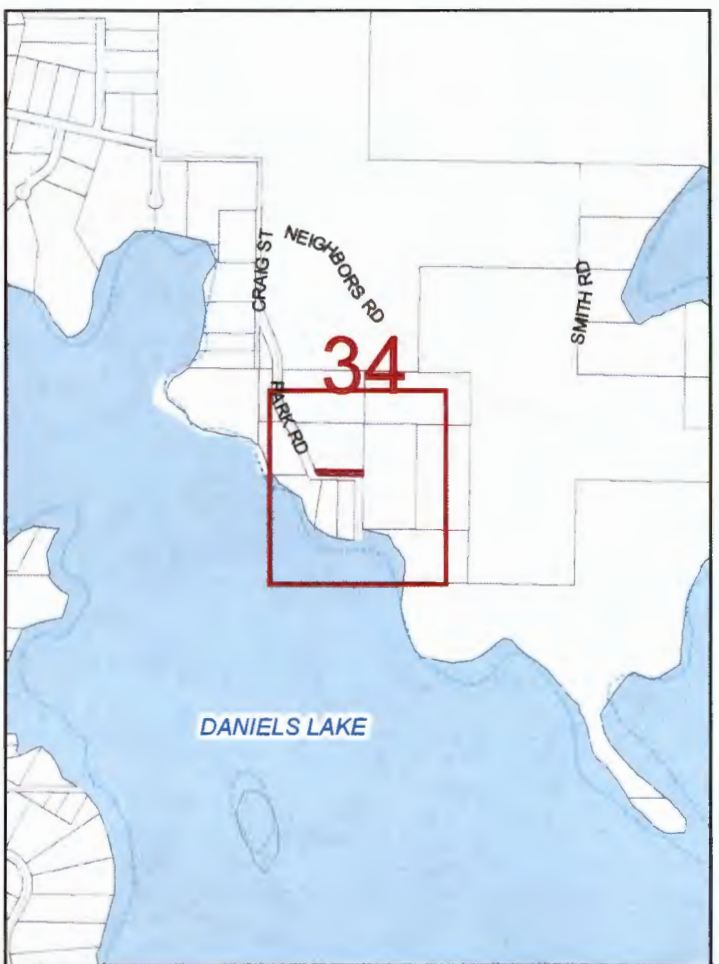
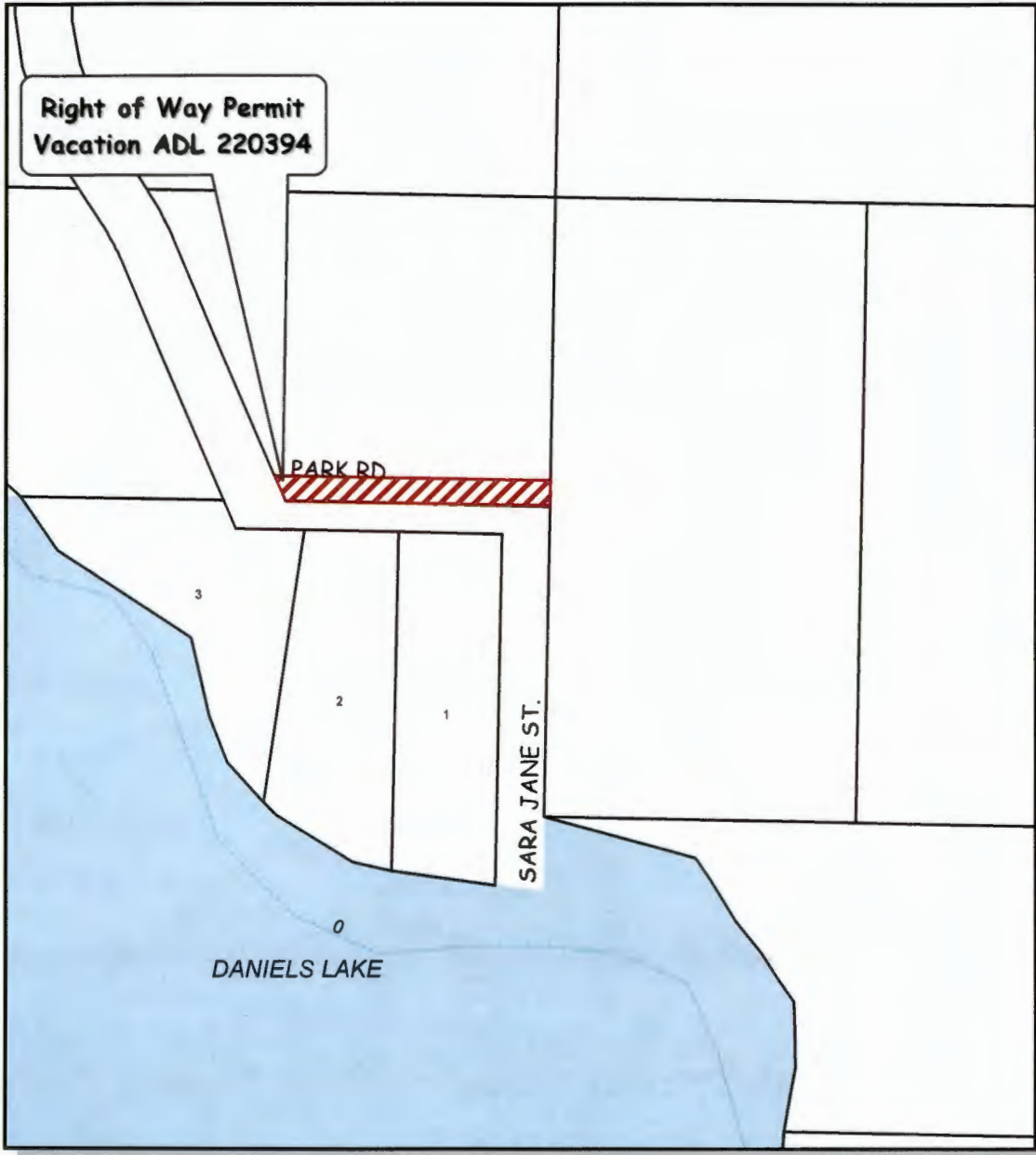
7:30 p.m.

**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**

Right of Way Permit
Vacation ADL 220394



0 500 1,000 2,000 Feet



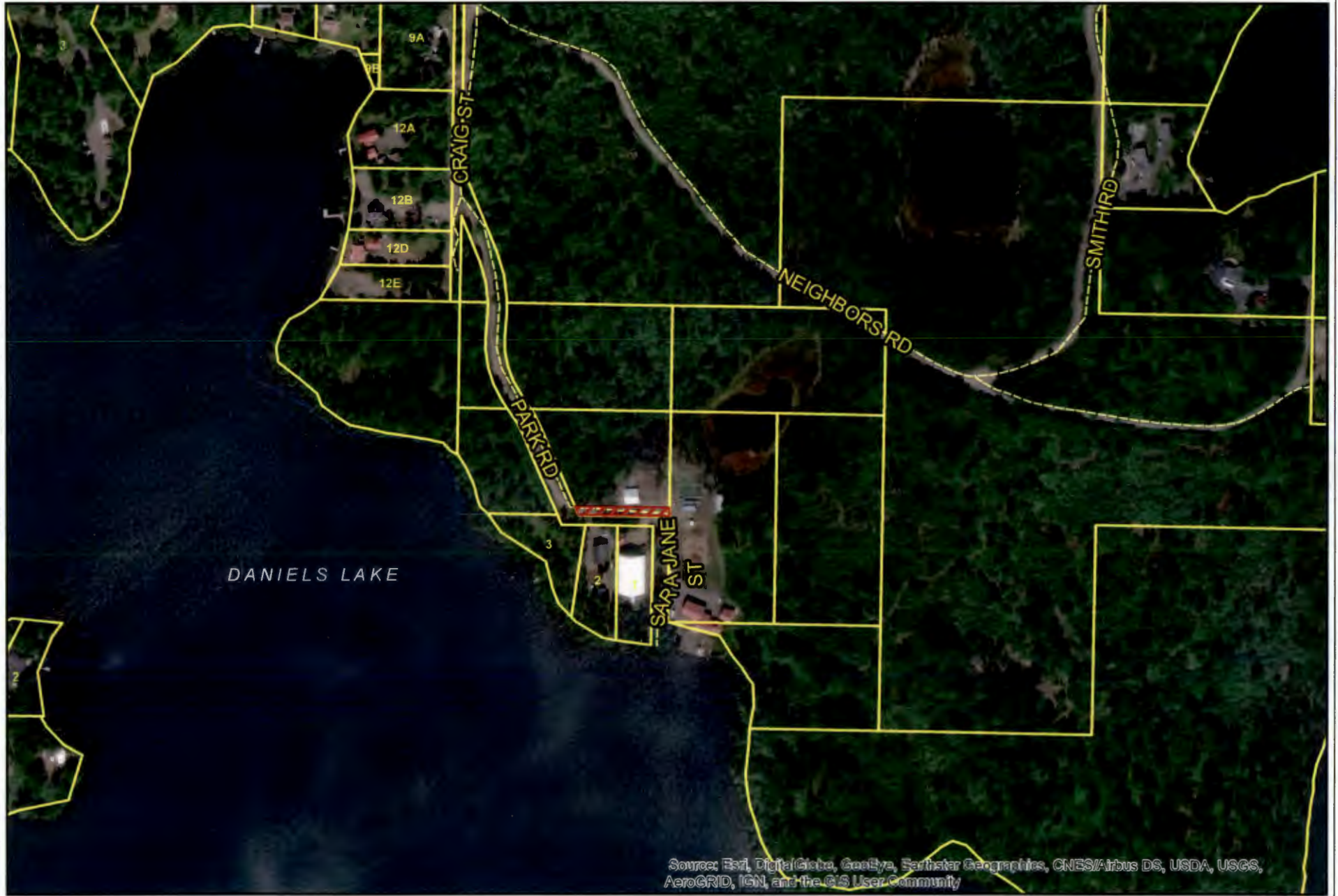
KPB 2020-156V
S34 T08N R11W
NIKISKI

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.

0 150 300 600'

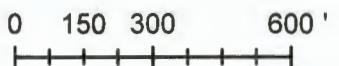



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



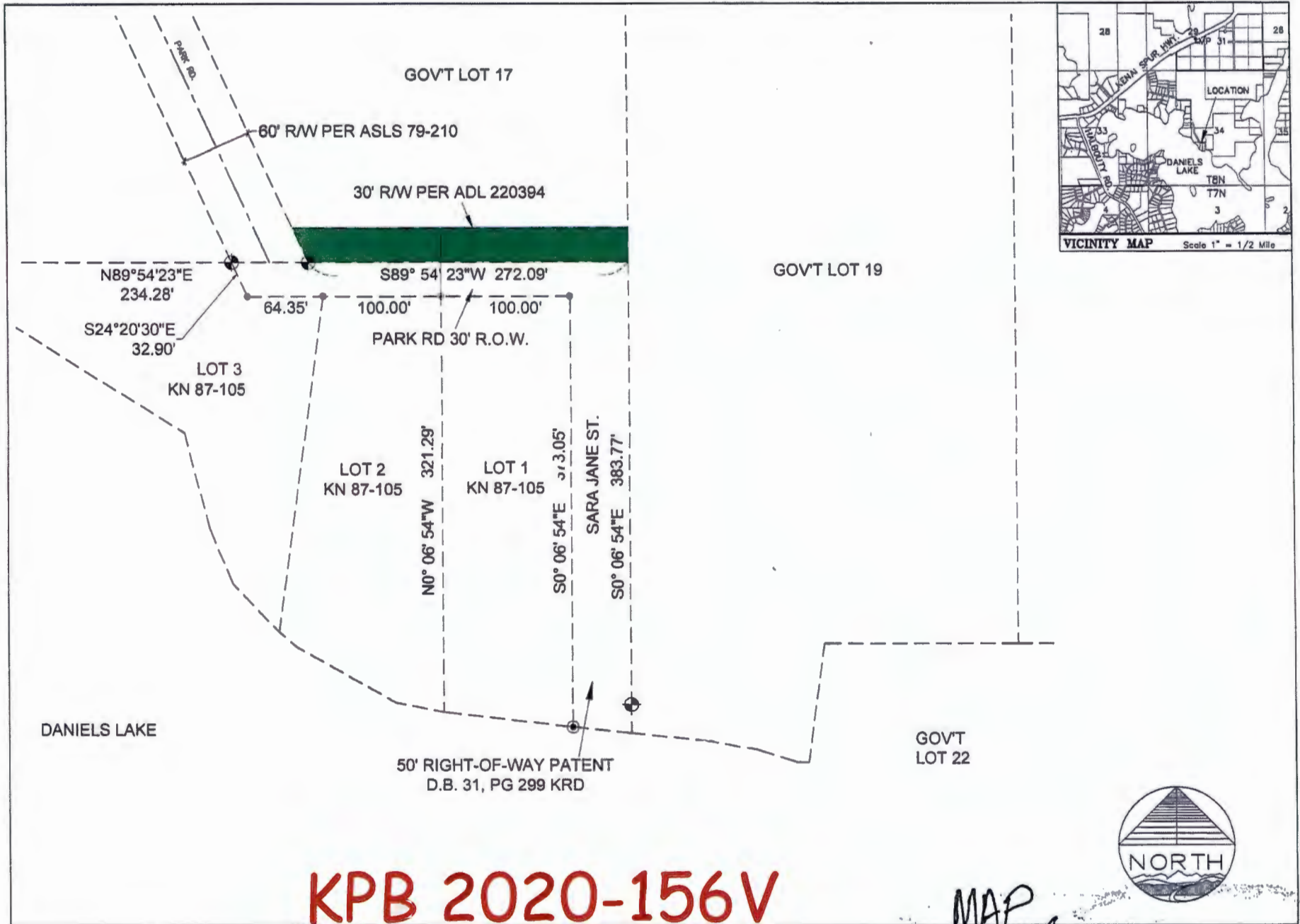
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View



 Right of Way Vacation

PClements, KPB 2020-156V
Date: 12/31/2020
Imagery World



KPB 2020-156V



MAP 1
 Page 1 of 1

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	Nikiski Community Council
State of Alaska DNR	Alaska Communication Systems (ACS)
State of Alaska DOT (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.

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- 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:

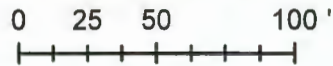
THE FINAL PLAT MUST BE RECORDED WITHIN FOUR YEARS OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT



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

Aerial View



Right of Way Vacation

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.

The following information is a true and correct copy as the same appears in the records of the Department of Natural Resources.

Stuart Greenhall
Department of Natural Resources

Date 1/17/2017

Richard Weth
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.

Richard Weth
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 $S89^{\circ}54'41''W$, 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 $N24^{\circ}20'14''W$, 32.95 feet along the easterly boundary of the 60 foot right-of-way to corner number three.

Thence $N89^{\circ}54'41''E$, 286.09 feet to the east boundary of Government Lot 35 and corner number four.

Then $S0^{\circ}06'54''E$, 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.



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.

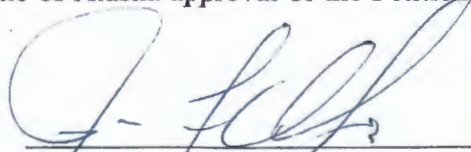
7. **Petitioners' Attorneys.** Attorneys for the Petitioners designated to receive service by mail or email are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice), bob@molloysschmidt.com.

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:

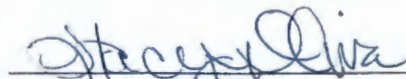
- (a) Decline to consider the petition on the grounds that ROW Permit ADL 220394 is unplatted, under 11 AAC 51.065(c); or
- (b) Do not object to State of Alaska approval of the Petition to vacate ROW Permit ADL 220394.

DATE: 12/22/2020



LOUIS F. OLIVA, Jr., Applicant
P.O. Box 8567
Nikiski, AK 99635
(907) 776-8656

DATE: 01/22/2020



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

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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>; Biloon, Joselyn (DOT) <joselyn.biloon@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 Girdley 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.

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.

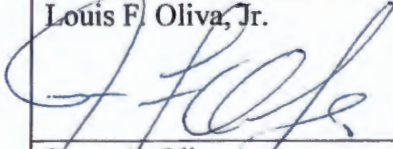
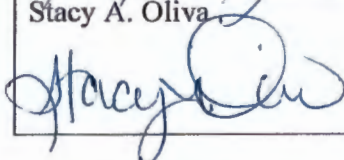
6. **Description of the alternate right(s)-of-way.** Petitioners can access GL 17 directly through original Park Road, and they can continue to use their driveway they built in the ADL 220394 area to access GL 19. Petitioners can also access GL 19 through their new driveway built in 2019, which connects 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.

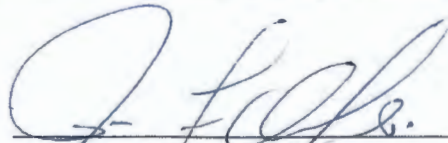
10. Petitioners' attorneys. Attorneys for the petitioners designated to receive service by mail are: Robert J. Molloy and Kristine A. Schmidt, Molloy Schmidt LLC, 110 S. Willow St., Suite 101, Kenai, AK 99601, (907) 283-7373 (Voice).

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

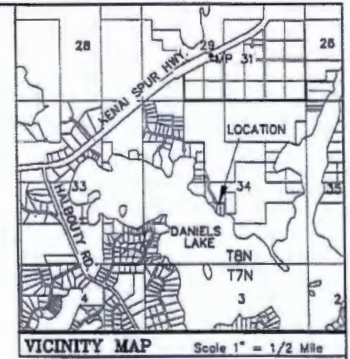
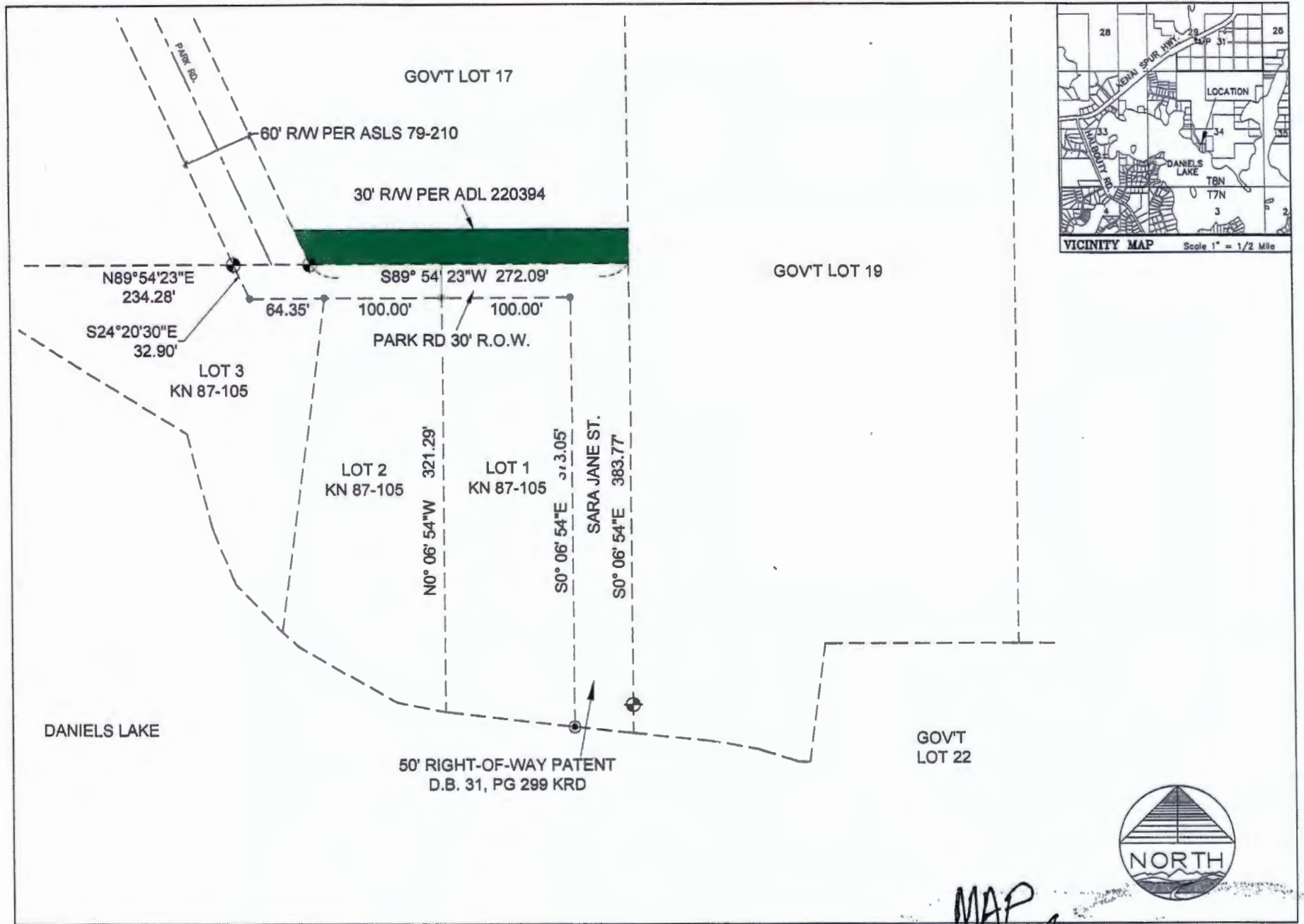
ATTACHMENT A TO PETITION

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 2:
 N = 67341.80 m
 E = 133.59 m
 Δα = 1.0"

C-1/4 Cor Section 2,4

(ADL 201380)
60' PUBLIC R/W ISSUED EASEMENT
 FOR ROAD AND UTILITY PURPOSES
 Contains 0.96 Acres (0.39 Hectare)

STATE OF ALASKA

Temporary turnaround
 50' R to be automatically
 vacated when road extended by
 plat dedication.

BT 1 6' Spr S 6°40' W 14.7
 BT 2 10' Spr S 7°25' W 16.5
 BT 3 7' 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

APPROXIMATE LAKE MEASUREMENTS

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.

per 8/21/80
 Date

[Signature]
 Director
 Division of Technical Services

Gov't Lot is
 Private

Ownership
 SCR/Lowm
 DNR/Asks

MAP 2
 Page 1 of 4



before me this 21 day of 1980
Ruth E. Oja
 Notary for Alaska

END EXIST ROAD

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

Anchorage 050580

4-2162

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 grant of lands under the Act of Congress of July 28, 1954 (70 Stat. 711), as supplemented by the Act of July 7, 1958 (72 Stat. 33), the State of Alaska has selected the following described lands:

Seward Meridian, Alaska.

- T. 3 N., R. 8 W.,
- Sec. 1. S1/2E4, S4;
- Sec. 2. Lots 3 and 4, S1/2E4;
- Sec. 3. Lots 1, 2, 3, 4, S1/2E4, S4;
- Sec. 4. Lots 1, 2, 3, 4, S1/2E4, S4;
- Sec. 5. Lots 1, S1/2E4, S4;
- Sec. 6. Lots 2, 3, 4, 5, 6, 10, 11, 15, 16, 17, 18, 20, 22, 23, 24, 26, 27. S1/2E4, S4;
- Sec. 7. Lot 3;
- Sec. 8. S1/2E4, S4;
- Sec. 9. S1/2E4, S4;
- Sec. 10. S1/2E4, S4;
- Sec. 11. S1/2E4, S4;
- Sec. 12. S1/2E4, S4;
- Sec. 13. S1/2E4, S4;
- Sec. 14. S1/2E4, S4;
- Sec. 15. S1/2E4, S4;
- Sec. 16. S1/2E4, S4;
- Sec. 17. S1/2E4, S4;
- Sec. 18. S1/2E4, S4;
- Sec. 19. Lots 1, 2, 4, S1/2E4, S4;
- Sec. 20. S1/2E4, S4;
- Sec. 21. Lots 2, 7, 11, 12, 13, 14, 17, 18, 32, 34, 35, 36, 37, 39, S1/2E4, S4;
- Sec. 22. Lots 1, 2, 3, S1/2E4, S4;
- Sec. 23. S1/2E4, S4;
- Sec. 24. Lots 1, 2, 3, 4, 5, S1/2E4, S4;
- Sec. 25. Lots 1, 2, 3, S1/2E4, S4;
- Sec. 26. Lots 2, 3, 4, 5, 11, 12, 15, 16, 17, 20, 21, 24, 25, 26, 27, 28, 30, 31, 33, S1/2E4, S4;
- Sec. 27. Lots 1, 4, 5, 8, 9, 10, 17, 18, 19, S1/2E4, S4;
- Sec. 28. Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, S1/2E4, S4;
- Sec. 29. Lots 1 and 5, S1/2E4, S4;

Alaska State Office
 Anchorage, Alaska
 DATE SEP 30 1981
 I hereby certify that this reproduction is a copy of the official record on file in this office.
 AUTHORIZED SIGNATURE

Page 1 of 3

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, SE1/4SW1/4, S1/2SW1/4, NW1/4SW1/4, SE1/4E, SW1/4E, S1/2E, SE1/4NE1/4;
- Sec. 26, Lots 1, 17, 18, 30, 37, 38, 39, 40, 52, SE1/4E;
- Sec. 28, Lots 3, 4, 5, SW1/4E, S1/2E, W1/2E;
- Sec. 29, E, NW1/4;
- Sec. 31, NE1/4E;
- Sec. 32, NW1/4, NW1/4E;
- Sec. 33, Lot 30;
- Sec. 34, Lots 17, 20, 22, 23, 35, 36, 37, NW1/4E, NE1/4SW1/4, NW1/4SE1/4, E1/2SW1/4, SW1/4E;
- Sec. 35, Lots 1, 7, 29, 38, 39, 40, 41, 42, 50, 51, 54, 55, 56, 61, 63, SE1/4NE1/4, SW1/4E, SE1/4SE1/4.

The areas described aggregate 34,133.41 acres, according to the Official Plans of the Highways 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

SEP 30 1981 Alaska State Office
 DATE Anchorage, Alaska
 I hereby certify that this reproduction is a true and correct copy of the official record on file in this office.
 [Signature]
 AUTHORIZED SIGNATURE

Page 2 of 3

Anchorage 050380

4-1044
July 1933

Subject to such rights for natural gas pipeline and oil pipeline purposes as the Alaska Pipeline Company and the Kenai Pipeline Company, respectively, may have under Section 28 of the Act of February 25, 1920 (41 Stat. 637), 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, UNDER Sec. 4, UNDER Sec. 5, and the RIGHT 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
KENAI REC.
DISTRICT

Oct 16 3 30 PM '81

REQD. *M. S. O.*
ADDRESS *701 E. Packer Bldg #400*
5371 Anch 99503

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/16/81 BY SP-10/ML/STW

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-TWO
and of the independence of the United States the one hundred and
EIGHTY-EIGHTH.

In the District of Columbia, at Washington, D.C.

Elizabeth B. Hucks
Ch. I. Patent Section

(SEAL)

RECORD OF PATENTS Patent Number 1232780

SEP 30 1981 Alaska State Office
DATE Anchorage, Alaska
I hereby certify that this reproduction is a true and correct copy of the official record on file in this office.
[Signature]
AUTHORIZED SIGNATURE

Anchorage 041461

BOOK 1443 PAGE 299
Kenai Recording District

KENAI
Serial No 65-288

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, therunto 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. 891, 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 <u>2/23</u> 19 <u>65</u>

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. Decker
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. 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 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]

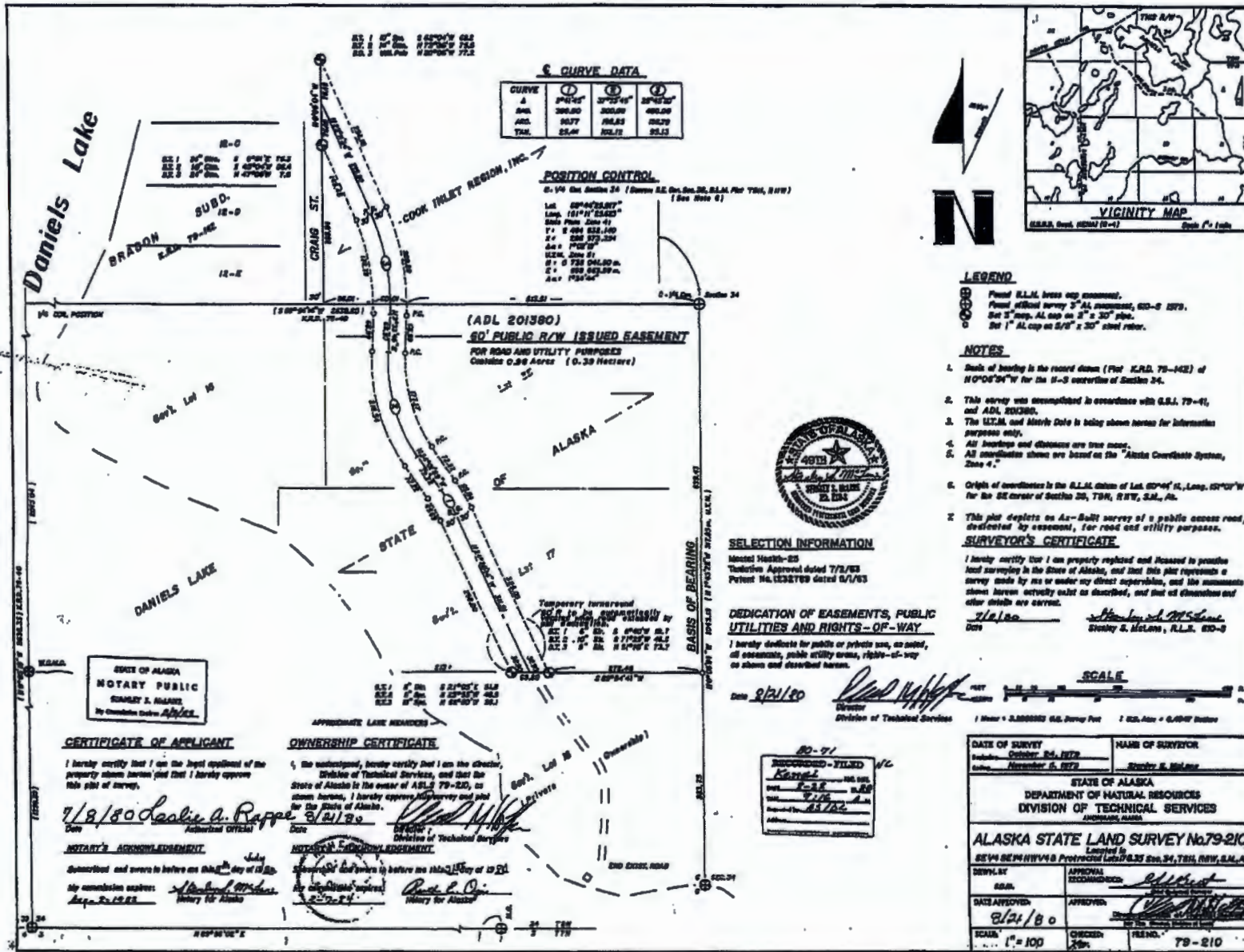
For the Director, Bureau of Land Management.

By Elizabeth B. Hucks
Chief, Patents Section

Patent Number 1234325

ENCLOSURE

Page 3 of 4



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 sq. ft 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.

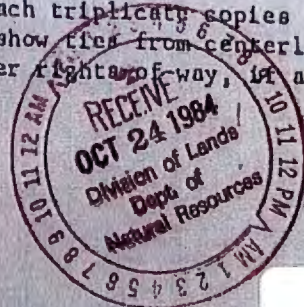
[Signature]
Signature of Applicant

(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

DAY ONE

11-28-84



10-112 (75)
10/64

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 262-4441

STAN 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
Carolyn Turkington
Land Management Officer

6
Page 1 of 8
Page 180 of 262



TOM HAWKINS, Director
Division of Land and Water Management
Department of Natural Resources

2/25/05

From Mike Budbill

In a recent phone call with the
Kenai Penn Bros 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
its 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 and a PLFF? ~~X~~ ~~Y~~ ~~N~~
+ Bros 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, and
issue part ease. ~~with Bros~~
With Bros 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 bros 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.

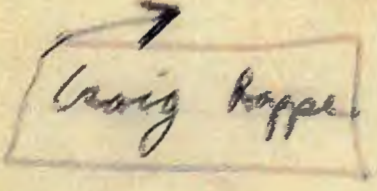
Sincerely,

Carolyn Turkington
CAROLYN TURKINGTON
Land Management Officer

CT:gp

Page 3 of 8

11/27/83 call file 31583



Craig Kappel proved no way on Oliva R/D.

OL 730 291

128
371
over

(7)

Craig Kappel the adjacent owner of the lot along the south lot line between parcels 17 and 18 see map proved today at 3:30 pm. He was not going to sell or offer any part of his property up for a right of way for Oliva.

As a result of this the only access is through state land, selected by the KPBorough.

Mike Budbill-NRO

OLIVA, Lewis F., Jr.
Right-of-Way Map
MIL 1983
SC80

Mrs & Mr. Kwac & Jim Johnson

Devin Momo ad

Summary of Olive RM 220394

On October 24 1984 we received

an application for a pole right way
22 1/2 ft long x 20 ft wide. This
was to be located near

a driveway and utility easement.

The meter requires 54 sq ft on a 13' x

feet we map & pad not attached.

The easement benefits only the applicant
and the adjacent land owner. Given
to public land in already needed.

Agency comments were requested

1/1/85. A delay ^{to allow} was experienced

when the applicant ^{to allow} a local project.

Mr. Johnson was received for

my agency. The comment were

requested from a local firm

Borough.

On February 24/85 I decided that

the ~~app should be rejected~~

proposal as private easement

was approved. Mr. Johnson

On 2/28/85 the applicant phone

called for a verbal report. He explained

the situation. The applicant explained that

the easement in question is for him to

3/1/85 Planning Commission meeting
 11/2/85 meeting Decision that decision was to recommend a 30 foot wide public access at utility easement.
 2/13/75 KPB letter arrives that on

meeting. KPB letter arrives that on
 of the next planning commission
 was to the planning commission
 She said she would present the
 easement. Or KPB selected path.
 or right on creating a private
 a not to go to proceed easement
 I need some comments; explain that
 involving Turkin, I explain that
 I plan to bring, finally work
 for them.
 and that I have no information
 through selection of the parcel.
 steps concerning the final purchase
 not made. I explain the situation
 if a easement will grant by
 he will take the easement money
 processing requirements. She tells me
 w/out an easement. I explain the
 in fees for the parcel and a lower
 that the cost/ASHA will not pay
 acquire the 5.19 acre parcel. He said

(2)

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We are going down there on Wed/Thursday
 3/20-21/89
 May I have a permit in hard copy?
 out ready to give them if it still has
 some red problems?

Will we issue a LUP for entry
 gets the land for the purpose
 of constructing a 30' post parking
 way. I go out
 We want a public easement stand
 out of the KPB (no overtones or more)

with that 1 decision in mind it seems
 appropriate that the ~~the~~ ~~earlier~~ in
 have decision to acquire a private
 easement ~~is~~ is to be returned.
 the profitable - eventual and owner
 (the KPB) recommends a public easement
 even though ~~to~~ ~~the~~ ~~new~~ ~~family~~ ~~into~~
 the use. ~~and~~ Another objective
 and owner Craig Kappeler will
 probably see the property value
 rise as it results ~~in~~ ~~improved~~ ~~access~~.

[Handwritten notes in margin]
 public all
 private
 easement
 to
 return
 to
 private
 owner
 family
 into

the benefits

3/85
 Notes recommending
 a Public Row

Mike are
what to
public
law

the brought
with that I decide
apparent that the
house decision
assessments in
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 occurs
in
in a private
vested.
land owners
public record
a family
will enjoy
adjacent
appeal will
its value
improved
owner

Notes to
to KMK & Jim F.
for Mike BB
Sorry about handwritten
notes but it types
3/19

Mike
I can w/ your recommendations.
Prepare a permit w/ stipulations regarding
survey of ROW.
I think you should have your
decision answers typed - so as to
include it a legible portion of the
case file (later time points). Jim F.

SR 85089

Shirley
Hughes
Ritter

Further problems? — yes —

on Wed/Thursday
hard to get my
field trip

usually
leave
the medical
to help
1st
after that
read the
at 1:30
1:45

OLIVA, Louis F. Jr.
ADL 2203

Notes
3/85

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: LWMCEN 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

Richard A. LeFebvre
Acting Southcentral Regional Manager
Division of Land and Water Management

UNITED STATES OF AMERICA)

State of Alaska)ss.
)

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 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)

State of Alaska)ss.
)

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 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.

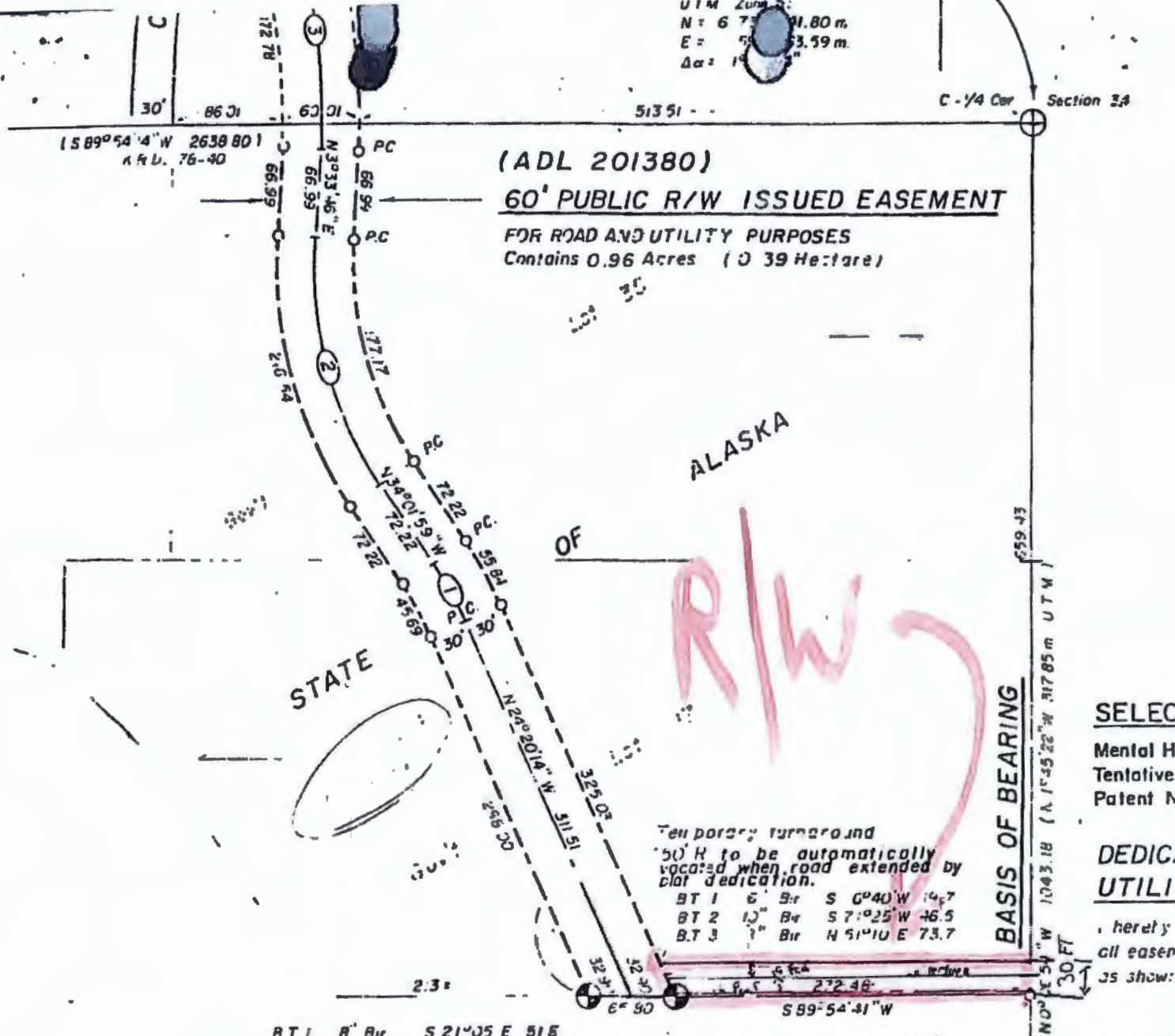
UTM Zone:
 N = 6 7 3 11.80 m
 E = 5 3 59 m
 Δα = 1 5 59 m

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)



SELEC
 Mental H
 Tentative
 Patent N

DEDIC
UTILI

Temporary turnaround
 to be automatically
 vacated when road extended by
 plat dedication.

- BT 1 5' Br S 6°40' W 14.7
- BT 2 10' Br S 7°02' W 46.5
- BT 3 7' Br N 51°10' E 73.7

- 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

heret y
 all easen
 as show:

Date 8/21/80

APPROXIMATE LAKE MEASUREMENTS

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
 Director

[Signature]
 Director
 Division of Technical Services

Gov't Lot 19
 Private

Ownership
 SCR/Lowm
 DNR

Page 5 of 5

NOTARIAL ACKNOWLEDGEMENT
 RUTH E. OJA
 NOTARY PUBLIC
 STATE OF ALASKA
 3-27-84

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

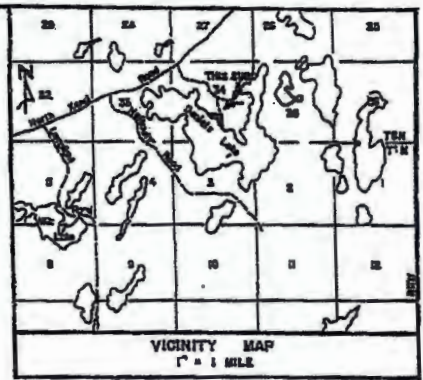
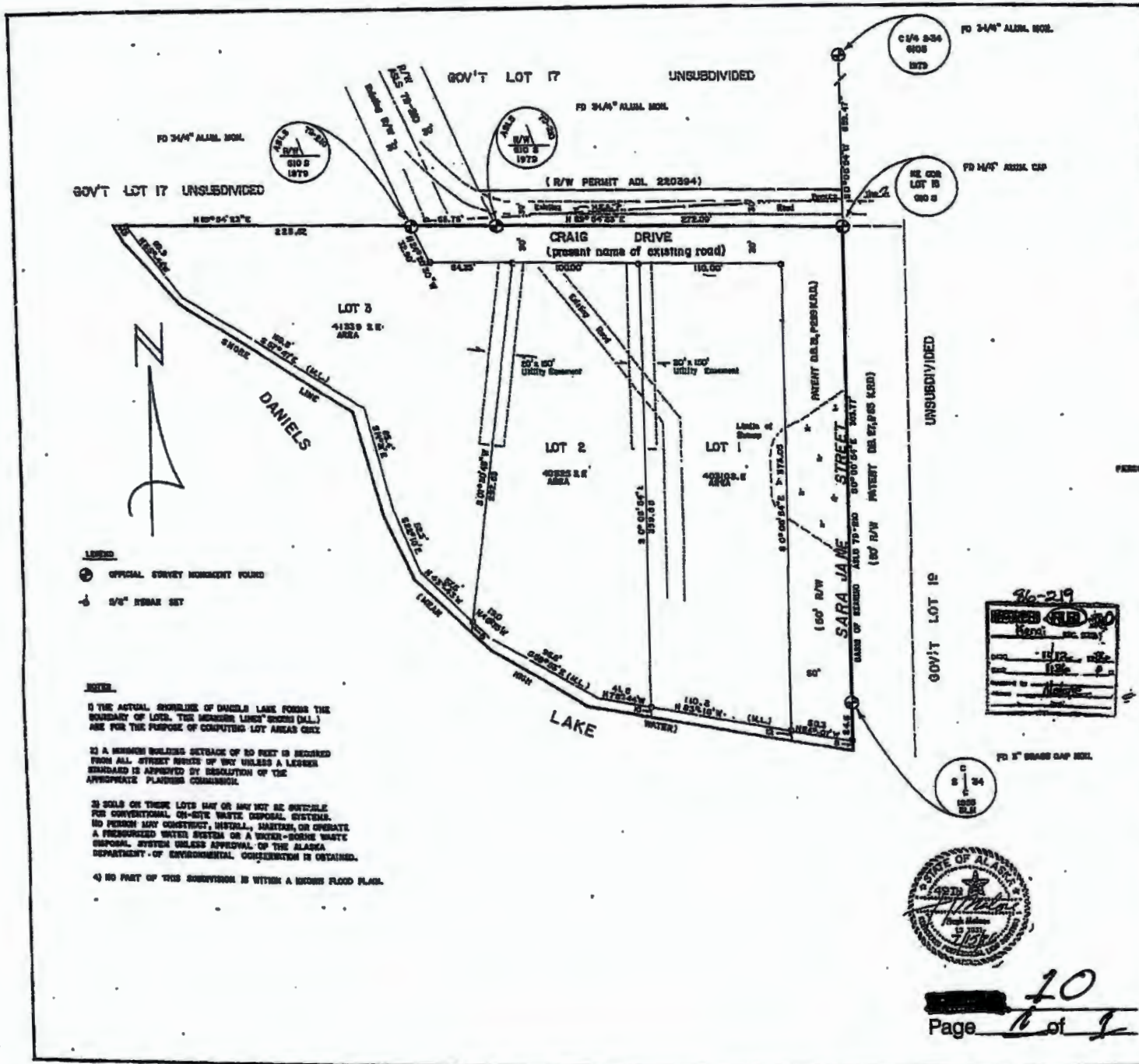
Mr. Troeger read the staff report outlining background and staff recommendations.

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.



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 herein, and that, on behalf of the estate of Leslie A. Rappe, I hereby dedicate this plan of subdivision and dedicate all rights-of-way to public use and grant all easements to the use shown on.

Leslie A. Rappe
 LESLIE A. RAPPE
 BOX 12062
 ANCHORAGE, ALASKA 99512
 PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE

NOTARY'S ACKNOWLEDGEMENT

For Leslie A. Rappe
 Subscribed to and sworn before me
 this 16th day of August, 1986.
 My commission expires 5/1/89

Oliver P. Ward
 Notary Public for Alaska

PLAT APPROVAL

This plat was approved by the Alutian Peninsula Borough Planning Commission at the meeting of
JUNE 16, 1986
 Alutian Peninsula Borough
 By Robert T. Taylor
 Authorized Officer

36-219

RECORDED FILE NO. 36-219

DATE: 8-17-86

BY: [Signature]



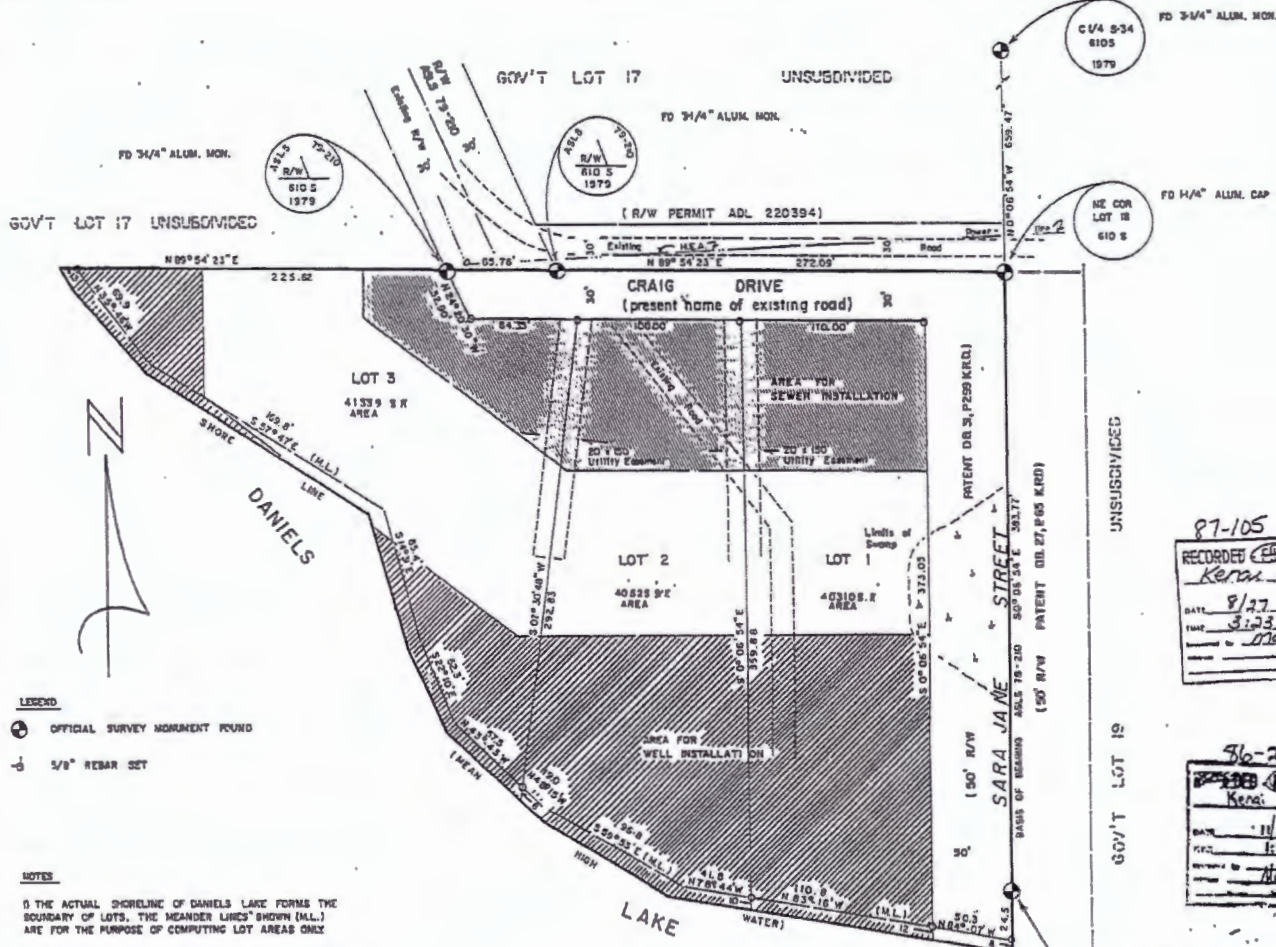
Page 10 of 1

RAPPE PARK SUBDIVISION

GOV'T LOT 19 IS IN THE NE 1/4 SW 1/4 SECTION 24
 T8N R11W SEWARD MERIDIAN, ALASKA

CONTAINING 3.46+ ACRES
 KENAI RECORDING DISTRICT

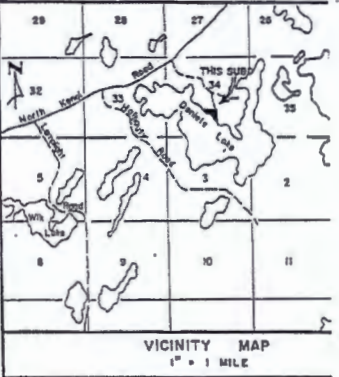
FOR CRAG RAPPE BOX 12062 ANCHORAGE, ALASKA 99512	MILONE SURVEYING BOX 596 KENAI, ALASKA 99811
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE	DATE OF SURVEY 7/2/86
SCALE 1 inch = 20 feet	CHECKED BY [Signature]
	S.E.S. FILE NO. 89-287



87-105
 RECORDED *FILED 20*
 Kenai, AK. DIST.
 DATE 8/27 1986
 TIME 3:23 P.
 BY Malone

36-219
 RECORDED *FILED 20*
 Kenai, AK. DIST.
 DATE 11/12 86
 TIME 1:30 P.
 BY Malone

FD 3" BRASS CAP MON 87-49
 RECORDED *FILED 20*
 Kenai, AK. DIST.
 DATE April 1987
 TIME 1:55 P.
 BY Malone



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
 CRAIG RAPPE
 BOX 11868
 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*, 19 *86*.
 My commission expires *5/14/89*

Olava A. Maid
 Olava A. Maid
 Notary Public for Alaska

FLAT APPROVAL
 This plat was approved by the Kenai Peninsula Borough
 Planning Commission at the meeting of

JUNE 16, 1986
 Kenai Peninsula Borough

By *Richard P. Taylor*
 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 CRAIG RAPPE BOX 11868 ANCHORAGE, ALASKA 99511	MALONE SURVEYING BOX 568 KENAI, ALASKA 99511	
PERSONAL REPRESENTATIVE FOR THE ESTATE OF LESLIE A. RAPPE	JOB NO. 88-08 DATE OF SURVEY 7/3/86	
DRAWN BY dsw	CHECKED <i>Apr 7/15/86</i>	
SCALE 1 inch = 50 feet	K.R.B. FILE NO. 86-187	



Page 11 of 1

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

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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.

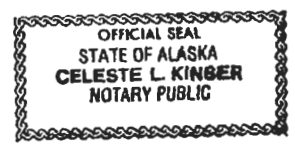
By: Carol L. Shobe
Carol L. Shobe
For Jane Angvik, Director
Division of Land

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



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Page 2 of 5

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

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Page 3 of 5

ATTACHMENT A

EDM 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

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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:

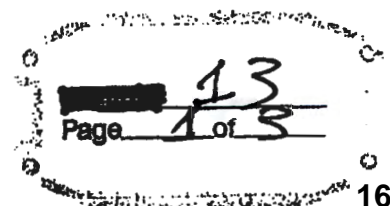
Lot 17, containing 5.16 acres more or less, according to the survey plat accepted by the United States Department of the Interior, Bureau of Land Management in Washington, D.C. on May 8, 1959.

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.

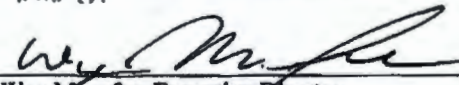
The Grantor hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or 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, Executive Director
Alaska Mental Health Trust Land Office

Quitclaim Deed No. 928

Page 2 of 3



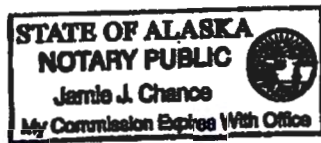
Page 2 of 3

2019-007580-0


13
Page 2 of 3

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
2019-0107660-0

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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 51.065
Consideration of Petition to State of Alaska To Vacate A ROW Permit**

Dear Ms. Aeschliman:

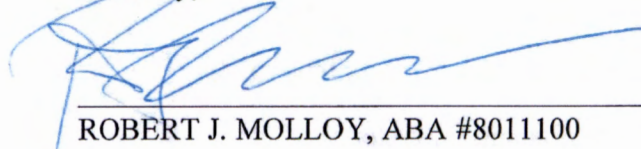
Louis and Stacy Oliva provide additional information, and a conceptual drawing, for the Borough Planning Commission in support of the Oliva's submission to the Borough Platting Authority of their Petition For Right of Way Permit Vacation filed with the Alaska Department of Natural Resources, DNR File 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.

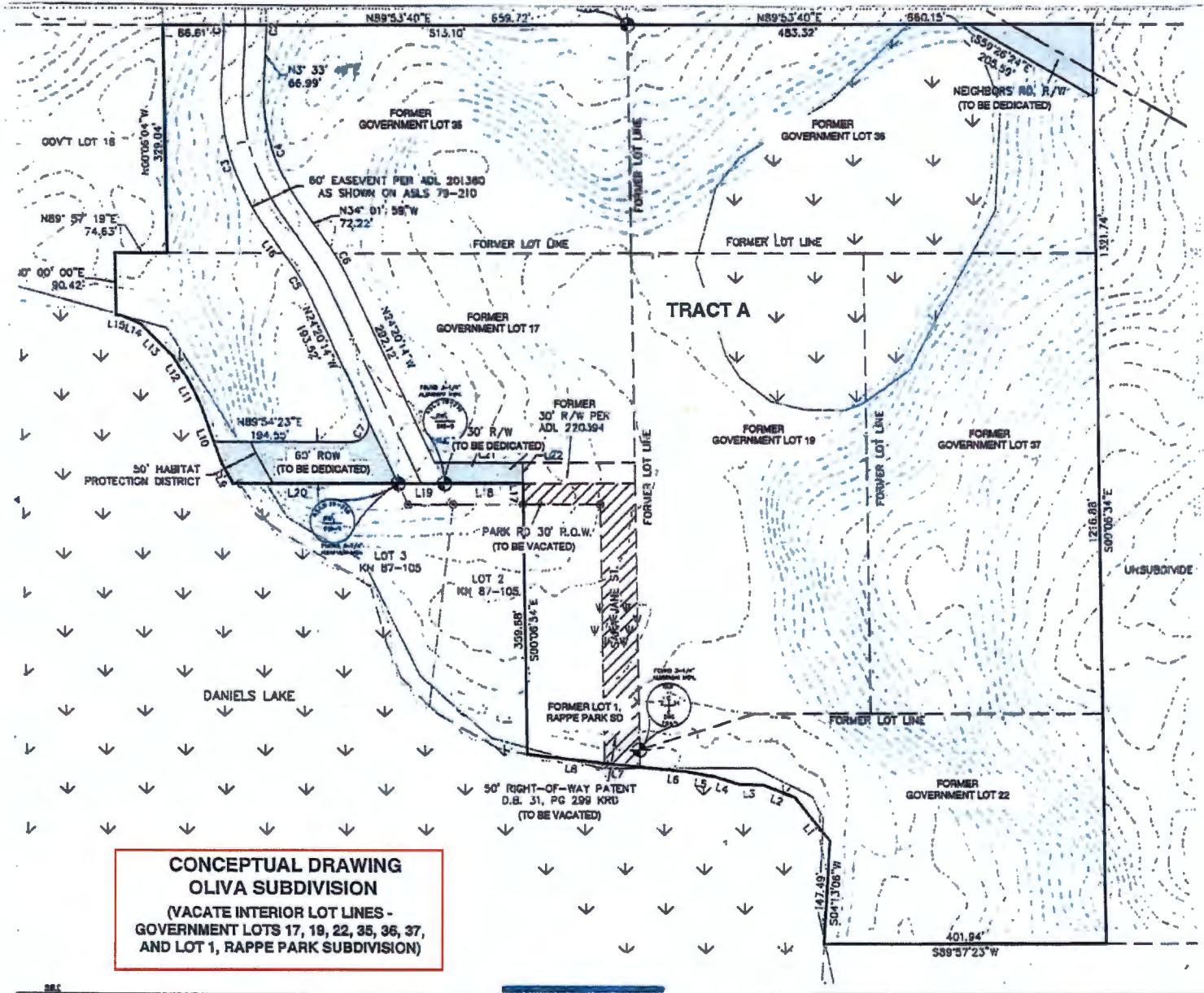
Please provide this letter and attachment to the Borough Planning Commission for its information. Thank you.

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.

23-STAT/enc11a

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@mollovschmidt.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@mollovschmidt.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

Attachment
 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