



Kenai Peninsula Borough

144 North Binkley Street
Soldotna, AK 99669

Meeting Agenda Lands Committee

Richard Derkevorkian, Chair
Brent Johnson, Vice Chair
Bill Elam, Member

Tuesday, August 3, 2021

3:00 PM

Assembly Chambers

Zoom ID: 938 6524 5999 Passcode: 886199

Zoom ID: 938 6524 5999 Passcode: 886199

PUBLIC HEARINGS ON ORDINANCES

2. [2021-27](#) An Ordinance Authorizing WISP Tower and Ground Lease Agreement at Certain Locations with SpitwSpots, Inc. (Mayor)

Attachments:

[Ordinance 2021-27](#)

[Memo](#)

[Lease](#)

[Funny River Fire Map](#)

[Lease Maps](#)

3. [2021-28](#) An Ordinance Authorizing a Lease to Robert Gibson, dba Alaska Land and Cattle Company of Approximately 280 Acres of Borough Land in the Basargin Road Area for Agricultural Use (Mayor)

Attachments:

[Ordinance 2021-28](#)

[Memo](#)

[Ak Land & Cattle MAP](#)

[AK Land & Cattle Rate MAP](#)

[Lease](#)

[Farm and Rangeland Development Plan](#)

UNFINISHED BUSINESS

1. Postponed Items

- a. [2021-046](#) A Resolution Classifying 420 Acres of Borough Land Located within Section 1, T5S, R14W, Seward Meridian, Alaska as Rural and Agriculture (Mayor)

Attachments: [Resolution 2021-046](#)
[Memo](#)
[Land Classification Maps](#)
[Land Classification Staff Rpt \(DRAFT\)](#)
[Public Comment 061521](#)
[Advisory Board Recommendations](#)

NEW BUSINESS

1. Ordinances for Introduction

- *h. [2021-31](#) An Ordinance Authorizing an Amendment to a Master Land Lease Development Agreement with Alaska Department of Transportation and Public Facilities in Support of the Sterling Highway MP 45-60 Construction Project Near Cooper Landing to Include a Staging Area at Tract C Quartz Creek Subdivision and Appraisal Provisions (Mayor) (Hearing on 08/17/21)

Attachments: [Ordinance 2021-31](#)
[Memo](#)
[DOT - Quartz Master Lease Amendment](#)
[DOT - Master Lease Attachments 3&4](#)

- *i. [2021-32](#) An Ordinance Authorizing a Negotiated Lease at Fair Market Value with Edward and Kathleen Martin, dba Cozy Inn, in Kenai for a Parking Area (Mayor) (Hearing on 08/17/21)

Attachments: [Ordinance 2021-32](#)
[Memo](#)
[Cozy Inn Lease](#)
[Cozy Inn Lease Map](#)
[Cozy Inn Development Plan](#)

3. Other

- *b. [KPB-3358](#) Petition to Vacate a Portion of C St. Right-of-way Adjoining Lot 1 Block 2 and Lot 3 Block 3 as Dedicated on US Survey No. 4901 Tracts A through D, Townsite of English Bay Plat SL 71-62. KPB File 2021-085V. (Mayor)

[Clerk's Note: The Planning Commission approved the referenced petition to vacate at its July 12, 2021 by unanimous consent.]

Attachments: [Petition to Vacate](#)

- *c. [KPB-3362](#) Petition to Vacate a 60' Right-of-way and Cul-de-sac on Adjoining Lots 8-A, 9-A, 10-A and 18-A per Stanley's Meadow Subdivision No 11 ADEC Power-Trip Replat HM 93-60 as Dedicated on Stanley's Meadow No. 11 HM 91-47. KPB File 2021-086V1(Mayor)

[Clerk's Note: The Planning Commission approved the referenced petition to vacate at its July 12, 2021 by unanimous consent.]

Attachments: [Petition to Vacate](#)

Introduced by:	Mayor
Date:	07/06/21
Hearing:	08/03/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-27**

**AN ORDINANCE AUTHORIZING A WISP TOWER AND GROUND LEASE
AGREEMENT AT CERTAIN LOCATIONS WITH SPITwSPOTS, INC.**

WHEREAS, SPITwSPOTS, Inc. is proposing to install single provider towers and equipment at borough owned locations in the communities of Sterling and Funny River; and

WHEREAS, the purpose of the agreement would be to expand wireless internet connectivity in the borough;

WHEREAS, suitable sites have been identified near borough solid waste and Central Emergency Services operating sites known as the Sterling Transfer Site, the Funny River Transfer Site, CES Sterling Station #3, and CES Funny River Station #5; and

WHEREAS, SPITwSPOTS, Inc. has the capability to assist KPB with communication equipment installations and services that would benefit KPB operations through the information technology services available between the sites and save costs to KPB through the services provided; and

WHEREAS, communication tower lease agreements have been negotiated on terms which would provide wireless internet connectivity services to KPB, with a cash rent alternative should connectivity be discontinued; and

WHEREAS, entering into a WISP (Wireless Internet Service Provider) Tower and Ground Lease Agreement with this provider benefits borough infrastructure while also providing a community-wide benefit in expanding existing wireless internet infrastructure and connectivity in the borough; and

WHEREAS, the Central Emergency Service Area Board at its regularly scheduled meeting of _____, 2021 recommended _____; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of July 12, 2021 recommended _____;

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

SECTION 1. That the assembly finds that entering into a WISP Tower and Ground Lease Agreement with SPITwSPOTS, Inc., pursuant to KPB 17.10.100(I), authorizing the negotiated lease of borough lands, is in the best interest of the borough at the following locations:

- A. Lot 2 Sterling Fire Station Subdivision, Plat No. 86-139, Kenai Recording District (Parcel 063-680-15);
- B. Gov Lots 3 & 4 Section 10, T5N, R9W, S.M. lying north of the Sterling Highway, excepting that portion per Q/D Book 380, Page 957 (Parcel 063-860-17);
- C. Lot 5 Salmon Bend Subdivision FRVFD Addition, Plat No. 2002-24, Kenai Recording District (Parcel 066-170-31);
- D. Lot 1A, Block 2 Beacon Subdivision, Plat No. 92-10, Kenai Recording District (Parcel 066-010-21);

This finding is based on the following facts:

- 1. The borough will receive a fair market rent, or a fair value in services in lieu of cash rent, for the term of the lease.
- 2. The land will be used to provide new wireless internet provider sites that will improve internet connectivity services in rural areas of the Kenai Peninsula Borough.
- 3. That the proposed wireless internet service facilities and improvements are compatible with the sites.

SECTION 2. Pursuant to KPB 17.10.230, the assembly authorizes an exception to the requirements of KPB 17.10.080, KPB 17.10.090 and KPB 17.10.110 governing classification, disposition, and notice with respect to leasing of borough lands, based on the following facts:

- 1. That special circumstances or conditions exist.
 - a. The proposed lease agreement is solely with SpitwSpots, Inc, for the purpose of constructing or installing new broadband wireless internet tower sites.
 - b. The lease agreement is for ancillary uses that do not conflict with, or that do enhance, the primary use of the properties.

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 borough property, which is unnecessary since the intent of the disposal is to lease the property solely to SpitwSpots, Inc,
 - b. The communications uses are not primary factors in the land classification system.
3. That the granting of this exception will not be detrimental to the public welfare or injurious to other property in the area.
 - a. Lease of wireless internet communications sites on the subject parcels to SpitwSpots, Inc, is compatible with the current land uses and surrounding land uses.
 - b. The development of communications infrastructure on these sites will benefit the KPB operations on those sites, and provide a community-wide benefit by expanding the availability of wireless internet service connectivity.

SECTION 3. Based on the foregoing and pursuant to KPB 17.10.100(I), the mayor is hereby authorized to execute a WISP Tower and Ground lease Agreement for the properties identified in Section 1 that contains terms and conditions substantively similar to the the agreement attached to this ordinance.

SECTION 4. SPITwSPOTS, Inc. shall have 120 days from the date of enactment of this ordinance to execute the lease agreement(s).

SECTION 5. That rent revenue from the subject lease shall be submitted to the borough finance department and deposited as follows:

Funny River Fire Station: Central Emergency Service Area account 211.00000.00000.36316.

All other sites: Land Trust account 250.00000.00000.36316.

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 *Blt for CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: June 24, 2021

RE: Ordinance 2021-27, Authorizing WISP Tower and Ground Lease Agreement at Certain Locations with SpitwSpots, Inc. (Mayor)

SpitwSpots, Inc. is a peninsula based commercial broadband communications provider. SpitwSpots, Inc., has requested to enter into a lease agreement for new Wireless Internet Service Provider (WISP) Tower and Ground Lease Agreement on certain borough land in Sterling and Funny River. The sites under consideration are the CES Sterling Station #3, the CES Funny River Station #5, the Sterling Solid Waste Transfer Site, and the Funny River Solid Waste Transfer Site. The use at the Funny River Solid Waste Transfer would be in the form of collocation of equipment on an existing KPB owned tower. The other locations proposed would be new single provider WISP towers owned by SpitwSpots.

The WISP Tower and Ground Lease Agreement proposes in-kind services as payment in lieu of cash payments for all operation sites. The Agreement has been negotiated with a focus on their infrastructure and service value to the borough with regard to specific borough entity internet expansion and connectivity needs as well as the general community benefit from expanded internet connectivity and availability borough-wide. The KPB IT department has evaluated the communication link strategy and determined certain benefits and cost savings would be produced. In the event that communications services are discontinued, the leases would revert to cash rent.

The planning commission will hold a public hearing on this item at its regularly scheduling meeting on July 12, 2021.

Your consideration of this ordinance is appreciated.

WISP TOWER AND GROUND LEASE AGREEMENT

This WIRELESS INTERNET SERVICE PROVIDER (WISP) TOWER AND GROUND LEASE AGREEMENT (this "Agreement") is entered into by and between the Kenai Peninsula Borough, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the "**KPB**" or "Lessor"), and SPITwSPOTS, Inc., an Alaska business corporation, whose mailing address is PO Box 15364, Homer, AK 99603 (hereinafter "**SWS**" or "Lessee"). The Effective Date of this Agreement shall be the date the KPB executes the Agreement.

PART I. BACKGROUND

1. Purpose. 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 SWS 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: SPITwSPOTS, Inc.
Attn: McKenzie McCarthy
369 E. Pioneer Avenue
Suite B
Homer, AK 99603

3. Contract Documents. As authorized by KPB Ordinance 2021-____, this 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

Exhibit 1: Description of the "Property" and the "Leased Premises"

Exhibit 2: Leased Premises site sketch or maps

Exhibit 3: Memorandum of Lease

If in conflict, the Agreement shall control. If in conflict, the order of precedence shall be: the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.

4. Definitions.

4.1. The term "Leased Premises" means the area within the Property that may be used by SWS for the uses, purposes and upon the terms and conditions of this Agreement as more particularly described and shown on Exhibit 1 and Exhibit 2.

4.2. The term "Property" means the real property owned by the Kenai Peninsula Borough that is subject to this Agreement wherein a portion of the real property or vertical space of a tower at the Property, whatever the case may be, is leased to SWS pursuant to the terms of this Agreement.

4.3. The term "Site" refers to the individual area set out in Section 5.1 used to construct and install the WISP Facilities.

4.4. The terms "WISP Facilities" or "WISP Facility" includes erecting, installing, operating and maintaining radio or communications tower for wireless internet connectivity purposes, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment; and

4.5. The term "WISP Communications Equipment" includes antenna, dishes, mounting structures, flexible transmission, lines, cables, radio, amplifiers, filters and other transmission equipment shelters or cabinets and any integrally related components thereto (including interconnect transmission equipment, transmitter(s), receiver(s) and accessories) and such other associated software as may be necessary.

4.6. The term "WISP" means Wireless Internet Service Provider.

PART II. PROPERTY DESCRIPTION; USE; RENT

5. Description of Property.

5.1. Subject to the terms and conditions of this Agreement, KPB hereby leases to SWS the following generally described property and/or vertical space:

a) CES Sterling Station #3. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

b) CES Funny River Station #5. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

c) Sterling Solid Waste Transfer Site. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.

WISP TOWER AND GROUND LEASE AGREEMENT

Site Name: ____

d) Co-Location at Funny River Solid Waste Transfer Site Tower. The exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communication Equipment.

5.2. The Leased Premises description may be adjusted by mutual written agreement of the parties, subject to the condition that the adjusted description may not conflict with the predominant use of the property, and may not impair or constrict public ingress or egress to the property and related compatible uses.

6. Allowed Use.

6.1. *CES Sterling Station #3; CES Funny River Station #5; Sterling Solid Waste Transfer Site.* The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining a radio or communications tower for the purpose of wireless internet service connectivity, including but not limited to transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "WISP Facilities"). SWS may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by SWS for the permitted use herein. SWS will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with SWS's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, SWS will have the exclusive right to install and operate, or contract for the installation, operation and maintenance, upon the Leased Premises a WISP Facility, which may include a guyed, partially guyed, or self-supporting tower, related buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

6.2. *Funny River Solid Waste Transfer Site.* The Leased Premises are being leased for the purpose of SWS' exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communications Equipment. This Agreement shall not grant SWS the right to install or construct a separate tower facility at the Site. Notwithstanding any contrary indications in this Agreement, with regard to the Funny River Solid Waste Site, this Agreement only and exclusively grants collocation rights to SWS on the already existing tower facility at the Site, unless the parties agree otherwise in writing.

7. Rent; In-Kind Services.

7.1. *Rent.* In the event the in-kind services described in Section 7.2 below fail or are otherwise disconnected for a period greater than one (1) consecutive week of any month or months during the term of this Agreement, SWS shall pay to KPB a monthly rent payment of 750.00 and No/100 Dollars (\$750.00) ("Rent") per Site, at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due as a result of failed connectivity of the in-kind services. On each anniversary of the Effective Date, Rent shall adjust annually by Three percent (3%) over the prior year's Rent amount.

7.2. *In-Kind Services as Payment in Lieu of Cash Rent.* As part of the Rent, the SWS shall provide the Kenai Peninsula Borough with 100mbit download / 50mbit upload ethernet

network connectivity per Site between a Kenai Peninsula Borough facility serviceable from the Leased Premises and central network location at 144 North Binkley Street, Soldotna, AK, or another location if agreed upon in writing by the parties and providing that such connectivity standards may be updated from time to time by written mutual agreement.

7.3. *In-Kind Services Effective Date; Option Payment.* The in-kind services as rent payment as provided in Section 7.2 shall become effective within 60 days of commencement of construction or improvement activities within the Leased Premises. If the WISP Facility is not constructed, completed and operational by July 1, 2022, in lieu of cancellation of this Agreement pursuant to Section 9.6 below, SWS shall owe an option payment of \$3,500, payable by August 1, 2022, and shall pay rent in accordance with Section 7.1 paid monthly until it is able to complete the WISP Facility and provide in-kind services pursuant to Section 7.2.

8. Term.

8.1. The initial term will be five (5) years (the "Initial Term"), commencing on the Effective Date.

8.2. SWS 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 SWS delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of SWS's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

8.3. Should SWS or any assignee, sublessee or licensee of SWS 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.

PART III. TERMINATION; SECURITY; ACCESS; REMOVAL

9. Termination; Cancellation. This Agreement may be terminated or cancelled, without penalty or further liability, as follows:

9.1. by SWS within 180 days of executing this Agreement, upon written notice to KPB, if SWS 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 SWS; or if SWS in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

9.2. by SWS within 90 days of executing this Agreement, upon written notice to KPB, if SWS 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;

9.3. by SWS upon written notice to KPB for any reason or no reason, at any time prior to commencement of any construction, which includes access clearing, or improvements on the Leased Premises by SWS; or

9.4. by SWS upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as SWS 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 SWS under any termination provision contained in any other Section of this Agreement.

9.5. By KPB, upon written notice to SWS, if SWS is in breach of any term of this Agreement and fails to cure the breach within 30 days of the date a Notice of Breach is sent to SWS.

9.6. By KPB, upon written notice to SWS, if by July 1, 2022, a WISP Facility is not constructed, installed, and operational within the Leased Premises as contemplated under Section 6. This provision is subject to Section 7.3 above.

10. Taxes. SWS shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the WISP Facilities located on the Leased Premises, including private leasehold or possessory interest taxes as may be assessed by the KPB Assessing Department.

11. Fence & Site Security. Notwithstanding Section 4 above, the SWS 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). SWS may also elect, at its expense, to construct such other enclosures and/or fences as SWS 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. SWS 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.

12.1. Access. During the Term, SWS, 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 SWS, 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 SWS's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, SWS may utilize such utilities and services. Upon SWS's request, KPB will execute and deliver to SWS requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of SWS's request.

12.2. Maintenance. SWS will keep and maintain the Leased Premises in good condition.

12.3. **Utilities.** SWS 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 WISP Facilities will at all times be the personal property of SWS and/or its sublessees and licensees, as applicable. SWS 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 SWS 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 SWS 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"), SWS 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 SWS for any proceeds therefrom. Time is of the essence.

PART IV. ASSIGNMENT; KPB COLLOCATION; WARRANTIES

14. Assignment. SWS 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, SWS may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with SWS, or (b) in connection with the sale or other transfer of substantially all of SWS's assets in the FCC market area where the Leased Premises is located.

15. Co-Locate Rights Reserved by KPB. KPB reserves the right to install communication equipment on SWS's tower. Ninety (90) days prior to the exercise of this reservation, KPB shall provide SWS with a complete inventory of equipment and proposed vertical location. SWS shall confirm KPB's equipment will not interfere with SWS'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 communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPB's right to install equipment on SWS's tower will be subject to SWS's reasonable determination that, at the time in which KPB proposes to install its equipment, SWS'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.

16. Covenants, Warranties And Representations.

16.1. KPB represents and warrants that KPB is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to SWS in writing prior to the execution hereof, and that KPB alone has full right to lease the Leased Premises for the Term.

16.2. KPB will not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any SWS's quiet enjoyment and use of the Leased Premises or cause SWS's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPB will cooperate with SWS in any effort by SWS 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 SWS to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

16.3. Subject to Section 12 above, SWS will have access to all utilities required for the operation of SWS's improvements on the Leased Premises that are existing on the Property.

16.4. KPB has not granted any third party 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 SWS in writing prior to the execution hereof.

16.5. 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.

17. Waivers.

17.1. KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the WISP 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 SWS 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 SWS.

17.2. 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.

PART V. INSURANCE; INDEMNIFICATION; MISCELLANEOUS TERMS

18. 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 SWS'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. SWS shall provide and maintain:

18.1. 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.

18.2. Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. SWS may use any combination of primary and excess insurance to meet the total limits required. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

18.3. 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.

18.4. Property Insurance: Insuring against all risks of loss to any SWS improvements at full replacement cost with no insurance penalty provision. SWS shall have the right to self-insure such Property Insurance.

18.5. 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.

18.6. 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.

18.7. No Representation of Coverage Adequacy. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect SWS, 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.

18.8. Self-insurance. Notwithstanding the foregoing, SWS may self-insure any required coverage under the same terms as required by this Agreement.

19. Waiver of Subrogation. To the extent allowed by law, SWS hereby grants to KPB a waiver of any right of subrogation which any insurer of said SWS may acquire against the KPB by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the KPB has received a waiver of subrogation endorsement from the insurer. 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.

20. Lessee Liabilities. In addition to other liabilities under this Agreement, the SWS has the following liabilities and agrees:

20.1. The SWS assumes all risk of loss, damage or destruction to SWS's improvements on the Leased Premises.

20.2. The SWS 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.

20.3. 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 SWS has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

21. Indemnification.

(a) SWS 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 SWS. 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 SWS arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify SWS in a timely manner of the need for indemnification but such notice is not a condition precedent to SWS's obligation and may be waived where the SWS 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 SWS's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, SWS's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless SWS, 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 SWS of any action, claim, or lawsuit. SWS 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 SWS 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 SWS as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of SWS, its employees, its employees, affiliates, officers, directors, successors and assigns. SWS further acknowledges the following: (1) KPB currently has no appropriation currently available to it to defend and indemnify SWS 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.

22. 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 SWS with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. SWS reserves the right to have a representative present at all times during KPB's inspection.

23. Force Majeure. The time for performance by KPB or SWS 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 SWS, as the case may be.

24. Default. The failure of SWS 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. 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.

25. Lessee Mortgages.

WISP TOWER AND GROUND LEASE AGREEMENT

Site Name: ____

25.1. KPB consents to the granting by SWS of a lien and security interest (each, a "SWS Mortgage") in SWS's interest in this Agreement and all of SWS'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 SWS 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 SWS 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 SWS's interest in the Leased Premises. It is a material breach of this Agreement for SWS to attempt to encumber any interest in KPB's title to or interest in the Leased Premises or the Property.

25.2. 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 SWS 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.

26. Miscellaneous.

26.1. *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.

26.2. *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.

26.3. *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

26.4. *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.

26.5. *Memorandum.* A short-form Memorandum of Lease may be recorded at KPB or SWS'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 SWS.

26.6. *W-9.* As a condition precedent to payment, the KPB agrees to provide the SWS with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

26.7. *Counterparts.* This Agreement may be executed in counterpart, and may be executed by electronic signature in compliance with AS 09.43 and 15 USC 7002, 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.

26.8. *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.

PART VI. 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

By: _____

Print Name: _____

Date: _____

LESSEE: SPITwSPOTS, Inc.

By: _____

Print Name: _____

Its: _____

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 _____, 2021, 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:
THIRD JUDICIAL DISTRICT)

On the ____ day of _____, 2021, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of SPITwSPOTS, Inc., an Alaska corporation, the SWS named in the attached instrument, and as such was authorized to execute this instrument on behalf of the SWS.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

The Property is legally described as follows:

INSERT LEGAL DESCRIPTION OF PROPERTY

- a) CES Sterling Station #3.
- b) CES Funny River Station #5.
- c) Sterling Solid Waste Transfer Site.
- d) Funny River Solid Waste Transfer Site

The Leased Premises are described and/or depicted as follows:

- a) CES Sterling Station #3. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- b) CES Funny River Station #5. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- c) Sterling Solid Waste Transfer Site. A certain portion of the Property containing approximately ____square feet (____) including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of a single provider WISP Tower Facility.
- d) Co-Location at Funny River Solid Waste Transfer Site Tower. The exclusive use of the top twenty feet (20') of the tower structure at the Site, including the air space above, and necessary related ground space for equipment cabinets and integrally related components, as described and depicted on Exhibit 1 and Exhibit 2 attached hereto for the placement of its WISP Communication Equipment

EXHIBIT 2

Leased Premises

(Attached)

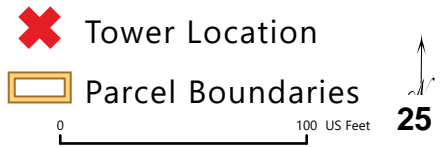
INSERT SITE SURVEY DIAGRAM / SITE SKETCH / MAPS

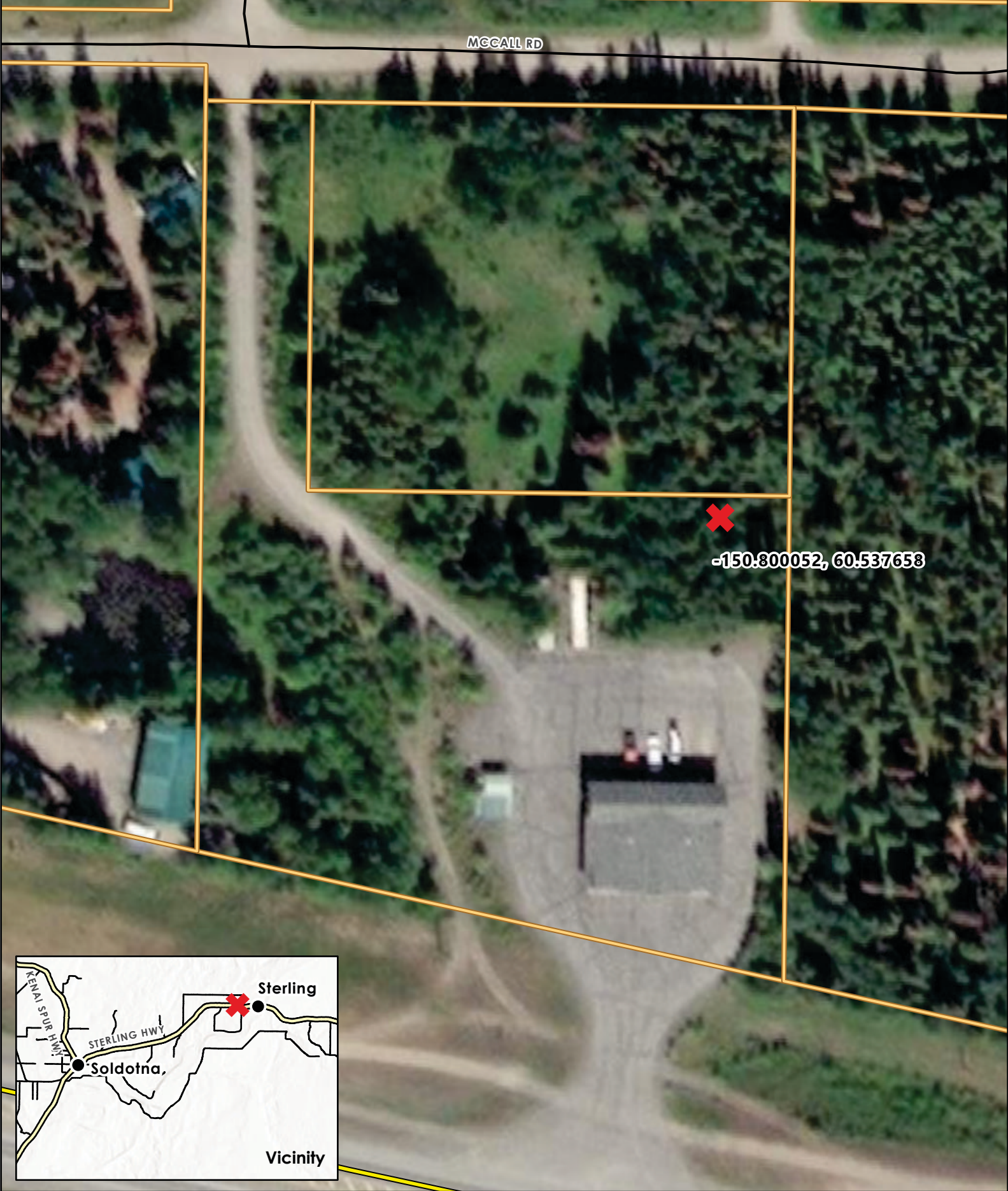
APPENDIX A – PLACE HOLDER TO INSERT AS ATTACHMENT
MEMORANDUM OF LEASE – PLACEHOLDER, IF NECESSARY



Tower Location


CES Station 5 - Funny River








Tower Location

CES Station 3 - Sterling

 Tower Location

 Parcel Boundaries

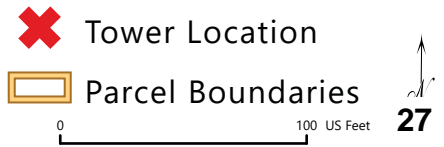


 26



Tower Location

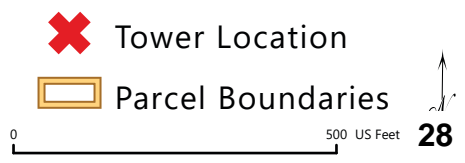
CES Station 5 - Funny River





Tower Location

Sterling Transfer Station



Funny River Solid Waste Existing KPB Tower



Introduced by:	Mayor
Date:	07/06/21
Hearing:	08/03/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-28**

**AN ORDINANCE AUTHORIZING A LEASE TO ROBERT GIBSON, DBA ALASKA
LAND AND CATTLE COMPANY FOR APPROXIMATELY 280 ACRES OF
BOROUGH LAND IN THE BASARGIN ROAD AREA FOR AGRICULTURAL USE**

WHEREAS, Robert Gibson, dba Alaska Land and Cattle Company, applied for an agricultural use lease of borough land in the Basargin Road area; and

WHEREAS, the parcel is described as NW1/4 & NW1/4NE1/4 & S1/2NE1/4, Section 22, Township 4 South, Range 11 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska (Parcel No. 18521053); and

WHEREAS, the parcel is subject to the Basargin Road right-of-way, a haul route to the borough's Eagle Lake Material Site, section line easements, and recreational trails; and

WHEREAS, the subject parcel is 280 acres +/- and is classified Agriculture and Resource Management per KPB Resolutions 2017-024 and 2020-020; and

WHEREAS, pursuant to KPB 17.10.100(I), assembly approval of the lease shall be by ordinance upon receipt of the planning commission's recommendation; and

WHEREAS, leasing borough land for agricultural purposes with enforceable lease terms is consistent with the KPB Comprehensive Plan Agriculture Focus Area, Objective A, Strategies 1 and 2; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of July 12, 2021, recommended _____.

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

SECTION 1. That the assembly finds that leasing this land to Robert Gibson, dba Alaska Land and Cattle Company for agricultural use is in the best interest of the public and the borough. This finding is based on the following facts:

1. The borough will receive rent for the term of the lease.
2. The land will be used for grazing and agricultural production.

SECTION 2. The mayor is authorized, pursuant to KPB 17.10.100(I), Negotiated Sale or Lease, to negotiate and enter into a lease of the above-described parcel to Robert Gibson, dba Alaska Land and Cattle Company, subject to all lease conditions required by this ordinance and the applicable provisions of KPB 17.10, Borough Land and Resources.

SECTION 3. The mayor is authorized to sign any documents necessary to effectuate this ordinance.

SECTION 4. That this ordinance shall become effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
* 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
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Mayor *BAFC*
Melanie Aeschliman, Planning Director *MA*

FROM: Marcus Mueller, Land Management Officer *mm*

DATE: June 24, 2021

RE: Ordinance 2021-28, Authorizing a Lease to Robert Gibson, dba Alaska Land and Cattle Company of Approximately 280 Acres of Borough Land in the Basargin Road Area for Agricultural Use (Mayor)

The borough owns approximately 280 acres of land near Basargin Road which has been classified as Agriculture and Resource Management per KPB resolutions 2017-024 and 2020-020. The land is bisected by Basargin Road, the Eagle Lake Material Site Haul Road, and by two designated trails.

Mr. Robert Gibson, DBA Alaska Land and Cattle Company, has applied for an agricultural lease of the land.

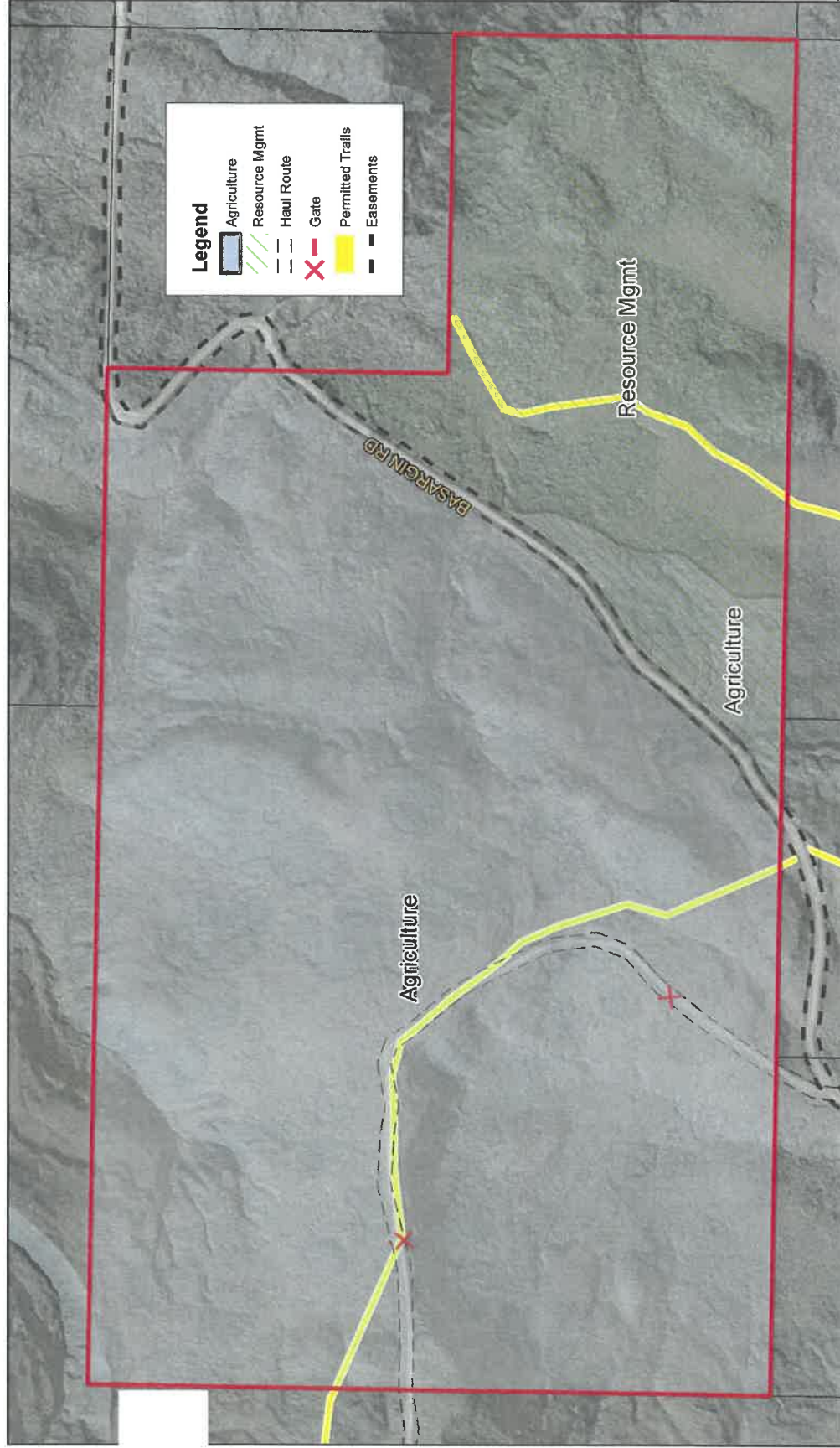
The lease rates were set by ordinance 2021-01, which are included in the borough's schedule of rates and fees.

The proposed lease is based on a farm management and development plan which is provided as an attachment to the lease. The proposed term is 20 years.

Your consideration of this ordinance is appreciated.

LMD 19-36; Agricultural Use Lease
Alaska Land and Cattle Company

Ordinance 2020-XX



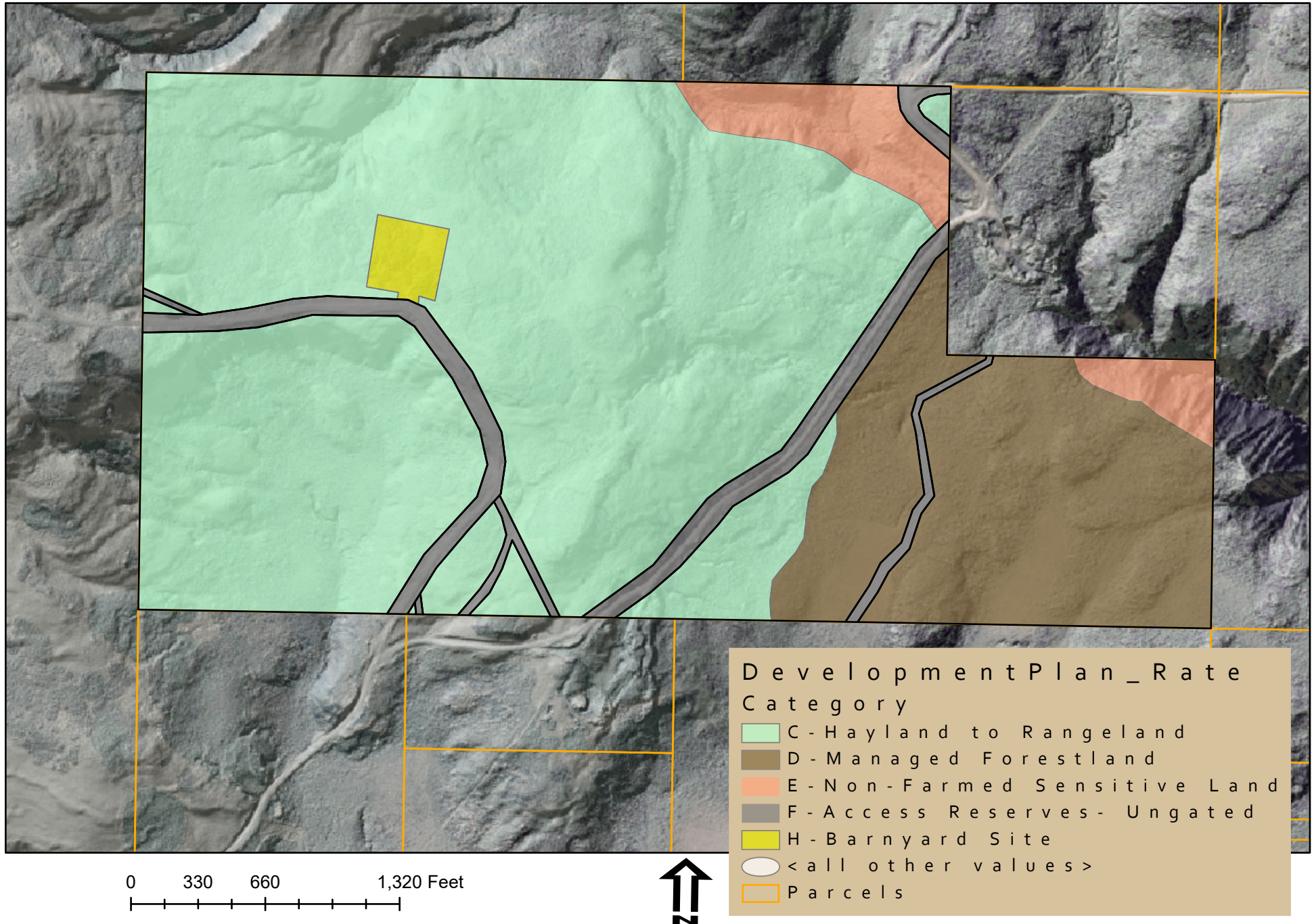
APN: 18521053 NW1/4 & NW1/4 NE1/4 & S1/2 NE1/4, Section 22,
280 acres +/- Township 04 South, Range 11 West, Seward Meridian,
Homer Recording District

N
0 240 480 Feet
+++++
jd-07.01.20

Agriculture Lease Rate Map

Township 04 South, Range 11 West

Section 22: NW1/4 & NW1/4NE1/4 & S1/2NE1/4, Seward Meridian, containing 280 +/- acres



AGRICULTURAL LEASE

KPBL# xx-xxxx-xx

For good and valuable consideration, and pursuant to Ordinance 2021-xx, enacted MM-DD-YYYY, this Grazing Lease (hereinafter called "LEASE"), is made and entered into by and between the Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter called "LESSOR"), and Robert Gibson and Filip Martushev, DBA Alaska Land and Cattle Company, whose address is PO Box 650, Cooper Landing, AK 99572 (hereinafter called "LESSEE").

I. DESCRIPTION OF REAL PROPERTY

This LEASE grants LESSEE use of the following described real property, located in the Homer Recording District, Third Judicial District, State of Alaska:

Section 22, Township T04S, Range R11W

NW1/4 & NW1/4NE1/4 & S1/2NE1/4, Section 22, T04S, R11W, Seward Meridian, containing 280 gross (273.5 net) more or less (hereinafter called "PROPERTY").

Property is subject to ADL 63711, a 60' wide public access road and utility easement recorded on December 17, 2018 in the Homer Recording District as document number 1980-00067, and commonly referred to as Basargin Road. An additional 20 feet on either side of this easement is reserved by KPB for road construction, utilities, and public transportation.

Property is further subject to the reservation of a 80' wide roadway to the Eagle Lake Material Site. Property is further subject to CTMA 2021-01, a Community Trail Management Agreement to develop, use, and maintain open to the public recreational trails, with management widths to 50-feet.

Property is further subject to the reservation of sand and gravel materials and communication sites along with the right to enter the property for the exploration, development, and use of the same in the time and manner as may be convenient to Lessor.

II. PURPOSE OF LEASE

1. Authority. Pursuant to Ordinance 2021-xx and KPB 17.10.140(C), the purpose of this lease is for agricultural purposes according to the terms set forth herein including the applicable land classifications; and the use, improvements and development timetable specified in the approved Farm Management and Development Plan.

III. TERMS AND CONDITIONS

2. Performance. The LESSOR and the LESSEE agree that this LEASE is conditioned on satisfactory performance by the LESSEE of all covenants and conditions contained in this LEASE. Failure to substantially use and develop the lease in accordance with the approved Range Management and Development Plan within the time frame specified in the plan shall constitute grounds for cancellation.
3. Lease Term. This lease is for a term of 20 years commencing September 1, 2021, and ending August 30, 2041.
4. Lease Rental.
 - a. Rental Rates: The annual lease rental rates are set according to the Kenai Peninsula Borough Schedule of Rates, Charges, and Fees pursuant to KPBL 1.26, as may be amended from time to time by resolution of the Kenai Peninsula Borough Assembly.
 - b. Agricultural Lease Areas: The lease is divided into several lease areas according to allowed use/management, and soils/topographic features as shown on Attachment B "Lease Rates Map" and summarized below, which shall be the basis for applying lease rental:

i. Category C: Rangeland to Hayland	190.4 Acres
ii. Category D: Managed Forestland	55.9 Acres
iii. Category E: Non-Farmed Sensitive Land	13.7 Acres
iv. Category F: Access Reserves- Ungated	16.7 Acres
v. Category H: Barnyard Site	3.0 Acres (1 Each)
 - c. Rents are subject to any applicable sales taxes as may otherwise be required by law, which shall be due with each annual lease payment. The first annual lease rental payment shall be due within 30 days of the execution of this Lease. Thereafter, the annual lease payment is due and payable on or before September 1 of each year. Rent is subject to adjustment each lease year in according to the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees (KPBL 1.26).

d. Initial Rent, for the first year of the lease, is calculated as follows:

Agricultural Lease Area	Acres	KPB 1.26 Rate	2021 Rent
Category C: Rangeland to Hayland	190.4 Acres	\$5/Ac	\$952.00
Category D: Managed Forestland	55.9 Acres	\$2.5/Ac	\$139.75
Category E: Non-Farmed Sensitive Land	13.7 Acres	\$1/Ac	\$13.70
Category F: Access Reserves- Ungated	16.7 Acres	No Fee	\$0.00
Category H: Barnyard Site	(1 each) 3.0 Acres	\$25ea +\$10/Ac	\$55.00

1st Year Rent: \$1,160.45

5. Defense and Indemnification. LESSEE shall indemnify, defend, save and hold LESSOR, 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 attorney's fees resulting from LESSEE's performance or failure to perform in accord with the terms of this LEASE in any way whatsoever. LESSEE shall be responsible under this clause for any and all claims of any character resulting from LESSEE or LESSEE's officers, agents, employees, partners, attorneys, suppliers, and subcontractor's performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by LESSOR or its agents which are said to have contributed to the losses, failure, violations, or damage. However, LESSEE shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of LESSOR, its agents or employees.

To the extent allowed by law and subject to assembly appropriation of available lands, LESSOR shall indemnify, defend, save and hold LESSEE, 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 attorney's fees resulting from the sole negligence or willful misconduct of LESSOR, its agents or employees.

6. Insurance.

- a. General terms. 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.

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. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Borough may choose to maintain.

No Representation of Coverage Adequacy. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Contractor and its 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.

- b. Commercial General Liability. LESSEE shall provide and maintain, Commercial General Liability Insurance (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.

- c. Auto Liability. LESSEE shall provide and maintain, Auto Liability Insurance (ALI). 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.
 - d. Worker's Compensation. LESSEE shall provide and maintain, for all of its employees engaged in work under this Agreement, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The LESSEE 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 the minimum amounts required by law. Where applicable, coverage for all federal acts (i.e., U.S.L. & H and Jones Act) must also be included. Subrogation shall be waived.
7. Use of Leasehold. LESSEE may use and develop the property only for agricultural purposes as specified in the approved Farm Management and Development Plan, attached hereto and incorporated by reference; and within the scope of provisions of this lease.

Failure to use the Property in accordance with the provisions of this lease above may result in the LESSOR, at the LESSOR'S discretion and upon 60 days written notice, reducing the lease area to reflect the actual level of use or may constitute grounds for cancellation.

If utilization of the lease, even under an approved practice, causes or begins to cause substantial damage to vegetation, soil stability, water quality, or any other valuable resource it is the responsibility of the LESSEE to take immediate actions to abate and correct the problem. The LESSOR should be notified as soon as possible of the required actions that were taken and the proposed changes in

management that will address the situation into the future. Failure to take corrective actions or to notify the LESSOR shall be grounds for cancellation. The LESSEE shall use and occupy the leasehold in compliance with the all applicable laws, regulations, ordinances, and orders that a public authority has put into effect or may put into effect. The LESSEE shall properly locate all activities and improvements on the leasehold, and may not commit waste of the parcel. The LESSEE shall maintain and repair the leasehold including improvements in a reasonably neat and clean condition, and shall take all necessary precautions to prevent or suppress grass, brush, or forest fires, and to prevent erosion, unreasonable deterioration, or destruction of the land or improvements.

8. Farm Management and Development Plan. A Farm Management and Development Plan is required for this lease. No activities or improvements are authorized on the leasehold unless they are in a plan approved by LESSOR.

A Range Management and Development Plan shall be a record containing explicit information specific to the leasehold, accompanied by supporting maps and references that serve to document existing and proposed improvements, operational details and activities, and schedules thereof. The planning process shall include technical guidance from the appropriate Soil and Water Conservation District. The plan must be based on sound farm management practices, it must be supported by technical procedures, and it must conform to the uses authorized by this lease.

The minimum requirements of a development plan are: 1) disclosure of use of the Property including crop or animal type, cultivation or feeding practices; crop volume or animal unit months as applicable; 2) location and nature of existing improvements and their estimated value; 3) location and nature of proposed improvements, their purpose, and their value; 4) a development, use, and construction time table.

The Farm Management and Development Plan is subject to approval by the mayor or mayor's designee, and may be modified with stipulations, conditions and/or exclusions by the mayor, or the mayor's designee, as deemed reasonable and appropriate to ensure that the use of the leasehold is within the scope of the lease and sound management practices. An approved Farm Management and Development Plan may be later modified and/or amended by mutual agreement subject to written approval by the mayor, or the mayor's designee. The LESSEE shall provide the LESSOR with an updated Farm Management and Development Plan within 120 days of the date a request is made by the LESSOR to update the Farm Management and Development Plan required by this lease.

Pursuant to 17.10.140(D)(4), failure on the part of the LESSEE to substantially use and develop the leasehold in accordance with the Farm Management and Development Plan within the timeframe specified in the plan shall constitute grounds for cancellation. Utilization or development of the leased land for uses other than those allowed by this lease and specified in the approved Farm Management and Development Plan shall be grounds for termination of the lease. The mayor or his designee shall determine whether the plan is substantially complete and may extend these deadlines for good cause shown or when the mayor determines it to be in the borough's best interests.

9. Identification of Livestock. All livestock permitted on a borough grazing lease shall be properly identified and, if applicable, such identification registered in accordance with AS 03.40.010 -03.40.270.
10. Health of Livestock. Prior to placing livestock on the lease all animals shall be examined by a veterinarian, experienced cattleman or other qualified professional, and if determined necessary treated for any diseases and parasites. Livestock shall be cared for using acceptable livestock husbandry practices at all times. Sick or dead animals shall be promptly treated or disposed of in a lawful manner which affords the greatest protection of humans, other livestock, wildlife and domestic animals. If applicable, AS 03.45 controls over this section.
11. Control of Livestock. LESSEE shall have sufficient control of livestock to keep all livestock within the boundaries of the leasehold at all times. It is the responsibility of the LESSEE, upon approval and at no expense to the LESSOR, to properly locate and place fencing or other deterrents to the movement of livestock.
12. Certified Seed, Forage and Other Plant Materials. Whenever possible, any plant seed introduced to the property shall be certified. Certification shall be by a state program or a state recognized program or authority. LESSEE shall take all other reasonable precautions to avoid the spread of noxious or invasive species through forage products, plant seeds, other plant materials, feedstuffs or any other means.
13. Surface Resources. Unless otherwise provided by this lease, Farm Management and Development Plan, or other written authorization, the LESSEE may not sell or remove from the leasehold any timber, stone, gravel, peat moss, topsoil, or any other material valuable for building or commercial purposes.

Up to 1,000 Cubic Yards of on-site materials may be utilized at the current rate set forth in the Kenai Peninsula Borough Schedule of Rates, Charges, and Fees pursuant to KPBL 1.26, provided LESSEE includes the borrow site location and utilization plan in the Farm Management and Development Plan.

14. Petroleum Products, Chemicals, and Hazardous Materials. LESSEE shall comply with all applicable laws and regulations concerning petroleum products, chemicals, hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials including petroleum products.

Storage and use of petroleum products, pesticides, or other chemicals is allowed only in amounts necessary, only as specified in the approved Farm Management and Development Plan, and only upon condition that LESSEE exercise proper care, handling, and safe and proper storage, and according to labeled directions when applicable. Fuel may not be placed within 100 feet of any wetland or the mean or ordinary high water mark of any lakes, streams, or other bodies of water. Fuel and pesticides must be stored in leak proof containers and placed within a secondary containment, impermeable berms and basins capable of retaining 110 percent of storage capacity plus 12 inches of free board to minimize uncontained spills or leaks.

The LESSEE agrees that it will not discharge or dispose of or suffer the discharge or disposal of any petroleum products, gasoline, hazardous chemicals, or hazardous materials into the atmosphere, ground, wastewater disposal system, sewer system, or any body of water. Pesticides may be used only according to labeled directions. Aerial spraying of pesticides shall not be allowed.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, LESSEE shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

15. 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. In the event that any prohibited lien is placed against the property, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to LESSOR any monies that LESSOR may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees.

IV. RIGHTS RESERVED BY LESSOR

16. Reservation of Easements. The LESSOR expressly reserves the right to take for the use of the LESSOR and the right to grant to third parties, easements or rights-of-way of unlimited size across the parcel herein leased if it is determined to be in the best interest of the LESSOR to do so, even if the creation of the easement or right-of-way terminates the entire leasehold estate; provided, however, that the LESSEE shall be entitled to compensation for all improvements which are damaged or destroyed as a direct result of such easement or right-of-way. LESSEE will not be entitled to compensation for loss of available forage, however the rental rates may be adjusted to reflect any changes in total lease-hold acreage.
17. Surface Reservations. The LESSOR 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 lands, or any part or parts thereof, at any and all times, for the purpose of exploring for, opening, developing, harvesting, drilling and working surface mines, excavations, or timber sales on these or other lands and taking out and removing therefrom all valuable surface resources such as timber, stone, gravel or any other material valuable for building or commercial purposes 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, power lines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient to 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.

The parties acknowledge and agree that this lease and land are subject to a reservation of rights by the State of Alaska to enter and extract minerals and to use the surface as provided in AS 38.05.125.

As the parties agree that these are reserved rights, which are reflected in the annual lease rental, in the event that LESSOR exercises a right in Items 1 or 2 above, it is agreed and understood that LESSEE shall receive no damages for such grant or action.

V. MISCELLANEOUS TERMS AND CONDITIONS

18. Assignments. Lessee may assign this Lease only if approved in advance by KPB. 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 KPB are fully protected. The assignee shall be subject to and governed by the provisions of this Lease and laws and regulations applicable thereto. No agricultural lease may be assigned within two years of the anniversary date.
19. Subleasing. LESSEE shall not sublease the Premises or any part thereof without written permission of the KPB Mayor when applicable. A sublease shall be in writing and subject to the terms and conditions of this Lease.
20. Waste. LESSEE shall not commit waste upon or injury to the lands leased herein.
21. Fire Protection. 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, 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.
22. Safety. LESSEE shall be solely responsible for maintaining the premises in a safe and fit condition, including without limitation snow and ice removal from all improvements and areas on the PROPERTY as needed for LESSEE's use of the PROPERTY. LESSEE is responsible for the safety of all persons conducting activities on the PROPERTY under this LEASE.
23. Sanitation. LESSEE shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The PROPERTY shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environmental Conservation regulations.

24. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on PROPERTY. LESSEE shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the PROPERTY. In no event may LESSEE utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the PROPERTY during the term of this LEASE, LESSEE shall IMMEDIATELY report such release to LESSOR and any other agency as may be required by law, and LESSEE shall, at its own cost, assess, contain, and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 CFR 171.8, and any other substance determined by the federal government, the State of Alaska or Kenai Peninsula Borough, to pose a significant health and safety hazard. The covenants and obligations described in this article shall survive the termination of this License.

25. Compliance with Laws. LESSEE shall abide by all applicable federal, state, city, and borough statutes, ordinances, rules, and regulations. LESSEE is responsible for obtaining all federal, state, and local permits applicable to licensee's activities and shall keep such permits in good standing.

26. Easements and Rights-of-Way. This LEASE is subject to all easements, rights-of-way, covenants and restrictions of which LESSEE has actual or constructive notice. LESSOR reserves and retains the right to grant additional easements for utility and public access purposes across the PROPERTY and nothing herein contained shall prevent LESSOR from specifically reserving or granting such additional easements and rights-of-way across the PROPERTY as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the PROPERTY, it is agreed and understood that LESSEE shall receive no damages for such grant.

27. Inspections. LESSEE shall allow LESSOR, through its duly authorized representative, to enter and inspect the PROPERTY at any reasonable time, with or without advance notice to LESSEE, to ensure compliance with the terms and conditions of this lease. LESSOR's right to enter and inspect shall be exercised at LESSOR's sole discretion and the reservation or exercise of this right, and any related action or inaction by LESSOR, shall not in any way impose any obligation whatsoever upon LESSOR, and shall not be construed as a waiver of any rights of LESSOR under this LEASE.
28. Property Taxes. LESSEE shall timely pay all real property taxes, assessments and other debts or obligations owed to the Kenai Peninsula Borough. Pursuant to KPB Code, Section 17.10.150(H), any taxes levied against the leasehold interest shall be the responsibility of the LESSEE to pay when due. Pursuant to KPB Code, Section 17.10.120(F) this LEASE will terminate automatically should LESSEE become delinquent in the payment of any such obligations.
29. Cancellation. At any time that this LEASE is in good standing it may be canceled in whole or in part upon mutual agreement by LESSEE and LESSOR, on such terms as the Mayor, or Mayor's Designee determines to be in the best interest of the Kenai Peninsula Borough.
30. Termination. Upon termination of this LEASE, LESSEE covenants and agrees to return the property to LESSOR in the condition which existed immediately prior to entry on the PROPERTY by LESSEE, and to immediately remove all items of personal property subject to the conditions of Section 24 below. All terms and conditions set out herein are considered to be material and applicable to the use of the PROEPRTY under this LEASE. Subject to the following, in the event of LESSEE's default in the performance or observance of any of the LEASE terms, conditions, covenants and stipulations thereto, and such default continues for thirty (30) calendar days after written notice of the default, LESSOR may cancel this lease, or take any legal action for damages or recovery of the PROPERTY. No improvements may be removed during the time in which the LEASE is in default.
- In the event LESSEE breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials, or hazardous waste on the PROPERTY, and fails to immediately terminate the operation causing such release upon notice from LESSOR, then LESSOR may immediately terminate this LEASE without notice to LESSEE.
31. 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.

32. Notice of Default. Notice of the default, where required, will be in writing and as provided in Section 27 of this LEASE.

33. Entry or Re-entry. In the event that this LEASE is terminated, canceled or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the LESSEE during the LEASE term, LESSOR or its agents, servants or representatives, 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 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 LESSOR shall not be deemed an acceptance of surrender of the contract.

34. Removal or Reversion of Improvements Upon Termination of Lease.

Improvements on the PROPERTY owned by LESSEE shall, within ninety (90) calendar days after the termination of the LEASE, be removed by LESSEE; provided such removal will not cause injury or damage to the land; and further provided that LESSOR may extend the time for removing such improvements in cases where hardship is proven. LESSEE may dispose of its improvements to a succeeding lessee with the consent of LESSOR.

If LESSEE fails to remove improvements or chattels upon LESSOR's request, the LESSOR may do so at the expense of LESSEE.

At LESSOR's sole option, it may choose to retain the improvements or chattels rather than having them removed. If LESSOR elects to retain the improvements and chattels, it shall give written notice of the election to LESSEE. Upon request, LESSEE shall convey said improvements and/or chattels by appropriate instrument to LESSOR.

35. Rental for Improvements or Chattels Not Removed. Any improvements and/or chattels belonging to LESSEE or placed on the PROPERTY during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle LESSOR to charge a reasonable rent therefor.

36. Resale. In the event that this LEASE is terminated, canceled, forfeited, or abandoned, LESSOR may offer said land for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.

37. 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 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.

All notices shall be sent to both parties as follows:

LESSOR:

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

LESSEE:

Robert Gibson, Partner
Alaska Land and Cattle Company
PO Box 650
Cooper Landing, AK 99572

38. Responsibility of Location. It shall be the responsibility of LESSEE to properly locate itself and its improvements on the PROPERTY.

39. 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. In the event that any prohibited lien is placed against the PROPERTY, LESSEE shall immediately cause the lien to be released. LESSEE shall immediately refund to LESSOR any monies that LESSOR may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorney's fees. For the purpose of interim financing or refinancing of the improvements to be placed upon the PROPERTY, and for no other purpose, LESSEE may, upon written approval of LESSOR, encumber by mortgage, deed of trust, assignment or other appropriate instrument, LESSEE's interest in the PROPERTY and in and to the LEASE, provided said encumbrance pertains only to the leasehold interest. Any such encumbrance shall be entirely subordinate to LESSOR's rights and interest in the PROPERTY.

A leasehold mortgagee, beneficiary of a deed of trust or security assignee shall have and be subrogated to any and all rights of the LESSEE with respect to the curing of any default hereunder by LESSEE.

In the event of cancellation or forfeiture of this LEASE for cause, the holder of a properly recorded mortgage, deed of trust, or assignment will have the option to

acquire the LEASE for the unexpired term thereof, subject to the same terms and conditions as in the original instrument, as may be amended.

40. Non-Waiver Provision. The receipt of payment by LESSOR, regardless of LESSOR's knowledge of any breach by LESSEE, or of any default on the part of LESSEE in observance or performance of any of the conditions or covenants of this LEASE, shall not be deemed to be a waiver of any provision of the LEASE. Failure of LESSOR to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of LESSOR to enforce the same in the event of any subsequent breach or default. The receipt by LESSOR of any payment of any other sum of money after notice of termination or after the termination of the LEASE for any reason, shall not reinstate, continue or extend the LEASE, 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 the payment fully satisfies the breach.
41. Jurisdiction. Any lawsuits filed in connection with the terms and conditions of this LEASE, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law, without regard to conflict of law principles.
42. Savings 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.
43. 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 parties hereto.
44. Full and Final Agreement. This LEASE 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 LEASE.
45. Warranty of Authority. LESSEE warrants that the person executing this LEASE is authorized to do so on behalf of LESSEE.

LESSEE: Robert Gibson and Filip
Martushev, DBA Alaska Land &
Cattle

LESSOR: Kenai Peninsula Borough

Robert Gibson, Partner

Charlie Pierce, Borough Mayor

Dated

Dated

Filip Martushev, Partner

Dated

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship
Borough Clerk

Sean Kelley
Deputy Borough Attorney

KPB 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
Commission expires: _____

LESSEE NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)

Kenai Peninsula Borough
KPBL# «Authorization»; Alaska Land & Cattle Co

THIRD JUDICIAL DISTRICT) ss.
)

The foregoing instrument was acknowledged before me this _____ day of _____,
2021, by Robert Gibson, of Alaska Land and Cattle Company, for and on behalf of the
company.

Notary Public for State of Alaska
Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____,
2021, by Filip Martushev, of Alaska Land and Cattle Company, for and on behalf of the
company.

Notary Public for State of Alaska
Commission Expires: _____

FARM- & RANGELAND

DEVELOPMENT PLAN for KENAI BOROUGH OWNED LAND Parcel # 18521053

The following plan is designed and submitted by
Robert Gibson for ALASKA LAND & CATTLE COMPANY.

Land parcel Description

The total land parcel size is 280 acres of undisturbed land
The land has never been cultivated and is massively overgrown by alder patches and thick willow brush.
There are some open alpine meadow patches of land with very thick tussock forming
Calamagrostis reed grass as well as other grasses and forbes.
Some noxious weeds has been found throughout these meadows.
The terrain is undulating and steep with multiple deep ravines parts of which will have to be graded
To provide access to farmable fields.
This land parcel is located 22 miles outside of the city of Homer proper.
There is no electricity nor any landline or cellular service provided in the vicinity.
The parcel is transected by the Basargin Road and the Echo Lake gravel pit.

Mission Statement and Use of Land

It is our desire to develop this virgin land for the purpose of
Production of Hay
Development and creation of Pastured land for livestock.
Utilize a portion of the land (Described in Contract as Managed Forestry) to harvest Forestry Products.

Fencing of Leased lands

Alaska Land & Cattle Company practices a Holistic and Permaculture approach to dealing with the land.
Therefore we will use the grazing technique called Rotational Grazing in which livestock is moved
frequently from paddock to the next paddock giving the grazed vegetation a better chance for

regenerated growth Upon which that regenerated area is again visited by livestock for fresh new grazing.

In this grazing method there is no need for permanent fencing , as the fences have to be moved frequently.

Barn yard site

A barn site of up to 3 acres in size will be created to provide ample space for

Hay Storage facilities

Tool Sheds

Livestock Sorting Corrals

Loading

Farm Machinery and Implements Storage

Cattlemen's Cabin

The Barnyard Site will be permanently fenced and marked for information of it's existence to the public

And trail users.

Location of the Barnyard Site is marked on attached map with the label B.

Water

Given the fact of Rotational Grazing It is obvious that drinking water stations for livestock also have to be rotated in their locations.

Therefor no permanent water troughs will be installed.

However, depending of weather and climatic conditions it may become necessary to excavated one or several ponds within the grazing area.

If that need arises the landowner will be notified.

Access

A few graded pads will later be constructed for egress to the different fields.

Livestock to graze the leased land

Beef Cows , Horses , Sheep and Goats.

Each animal will be verified and inspected by a licensed veterinarian or skilled livestock manager prior to placement on the land.

Each animal will carry proper Identification as required by Alaska Department of Agriculture.

Identification by bhy Branding and a numbered Ear Tag.

Sheep and Goats will be registered with a Scrapie NJumber Identifier.

Development Work Schedule and Time Table

The first 2 years will be mainly concentrated on clearing vegetation to give room for hay fields and p0astures.

There is a fairly good amount of vegetative biomass already on the land so we will initially allow some grazing with a controlled numbers of livestock on select and suitable meadow open land sections.

Weather allowing we will attempt to seed in some cleared areas.

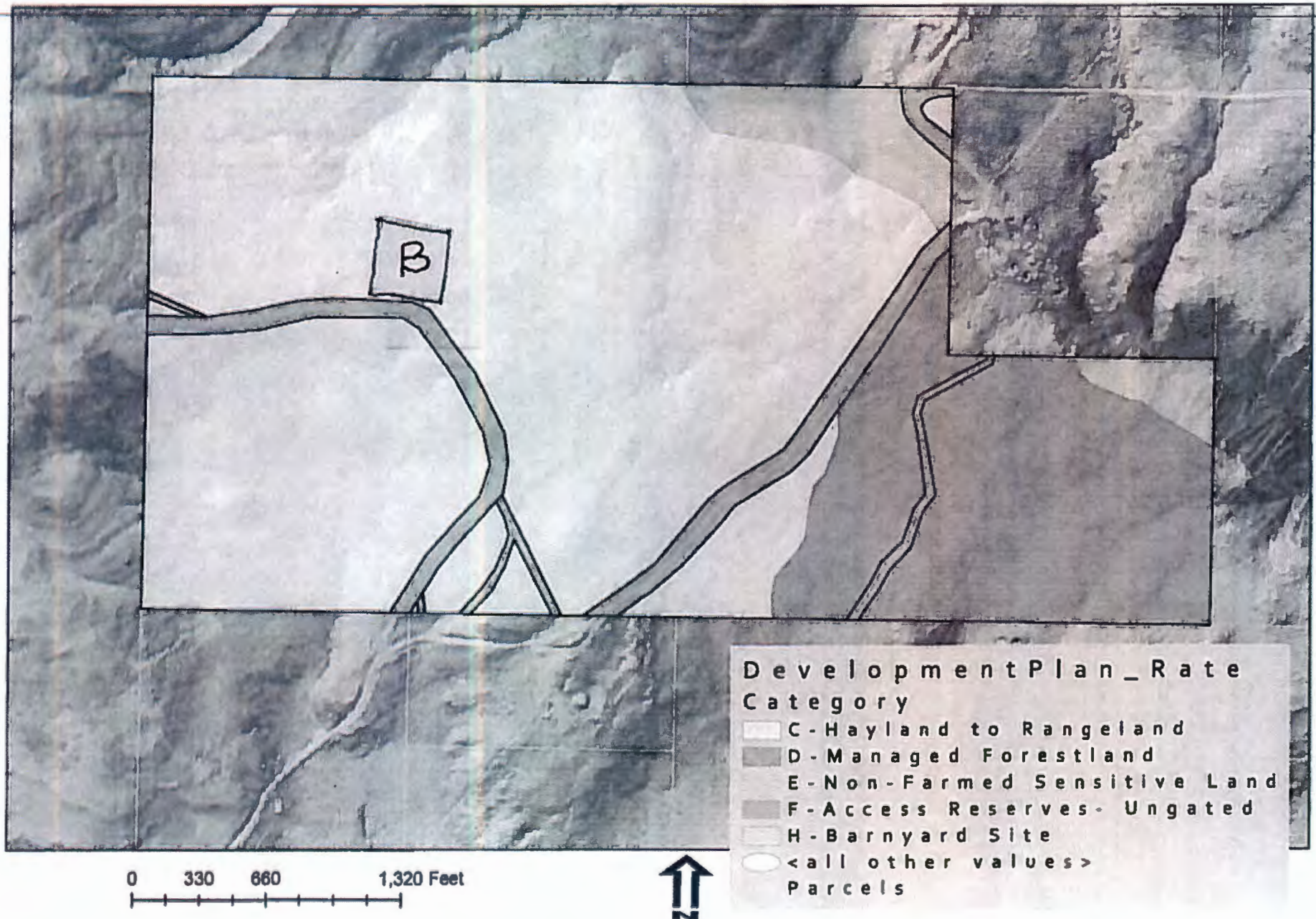
Third year continued clearing of bru8sh and alders growths with more areas seeded in.

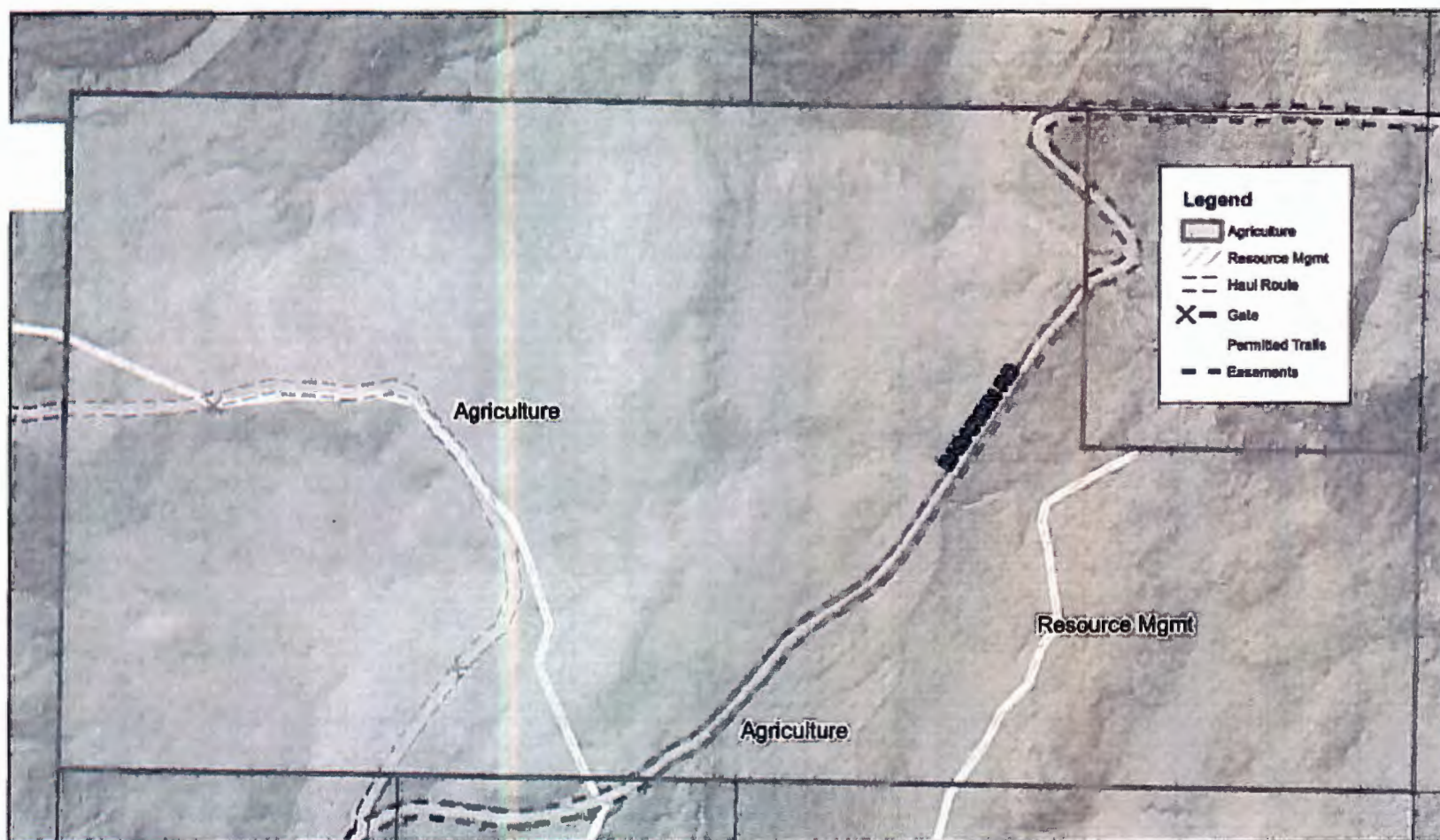
Consecutive years will hopefully see the first harvest of our efforts..

Agriculture Lease Rate Map

Township 04 South, Range 11 West

Section 22: NW1/4 & NW1/4NE1/4 & S1/2NE1/4, Seward Meridian, containing 280 +/- acres





APN: 18521053 NW1/4 & NW1/4 NE1/4 & S1/2 NE1/4, Section 22,
280 acres +/- Township 04 South, Range 11 West, Seward Meridian,
Homer Recording District

N
0 240 480 Feet
jd-07.01.20

Introduced by:	Mayor
Date:	06/15/21
Action:	Postponed to 08/03/21
Vote:	8 Yes, 0 No, 1 Absent
Date:	08/03/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
RESOLUTION 2021-046**

**A RESOLUTION CLASSIFYING 420 ACRES OF BOROUGH LAND LOCATED
WITHIN SECTION 1, T5S, R14W, SEWARD MERIDIAN, ALASKA AS RURAL
AND AGRICULTURE**

WHEREAS, the Kenai Peninsula Borough has received title to the subject land; and

WHEREAS, pursuant to KPB Chapter 17.10.080 classification provides direction for the management of borough land; and

WHEREAS, public notice was published and notification was sent to land owners and/or leaseholders of record within a one-half mile radius of the land proposed for classification, applicable departments, agencies, and interested parties in accordance with KPB 17.10.080(H); and

WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular scheduled meeting of June 14, 2021, recommended approval by majority consent;

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

SECTION 1. Based on the findings of fact, analysis, and conclusions contained in the staff report of June 14, 2021, the following classifications for borough lands described below are compatible with the surrounding land use.

SECTION 2. The following described borough land shall be classified as follows:

PARCEL No.	GENERAL LOCATION	LEGAL DESCRIPTION	ACRES	CLASSIFICATION
Portion of 171-040-22	Anchor Point	Section 1, T5S, R14W, S.M.: NE1/4NW1/4	40±	Rural
Portion of 171-040-22	Anchor Point	Section 1, T5S, R14W, S.M.: SE1/4NW1/4 & NE1/4SW1/4 & S1/2SW1/4 & N1/2NE1/4 & SW1/4NE1/4 & NW1/4SE1/4 & W1/2SW1/4SE1/4 & W1/2SE1/4SW1/4 & SE1/4 & W1/2NE1/4SW1/4SE1/34 & NW1/4SE1/4NE1/4 & N1/2NE1/4SE1/4NE1/4 & SW1/4NE1/4SE1/4NE1/4 & NE1/4SW1/4SE1/4NE1/4 & W1/2SW1/4SE1/4NE1/4 & NW1/4NW1/4NE1/4SE1/4	380±	Agriculture

SECTION 2. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 15TH DAY OF JUNE, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

06/15/21 Vote on Motion to Postpone to 08/03/21:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Johnson, Hibbert

No: None

Absent: Elam

Yes:



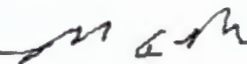
No:


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: June 1, 2021

RE: Resolution 2021-046, Classifying 420 Acres of Borough Land Located within Section 1, T5S, R14W, Seward Meridian, Alaska as Rural and Agriculture (Mayor)

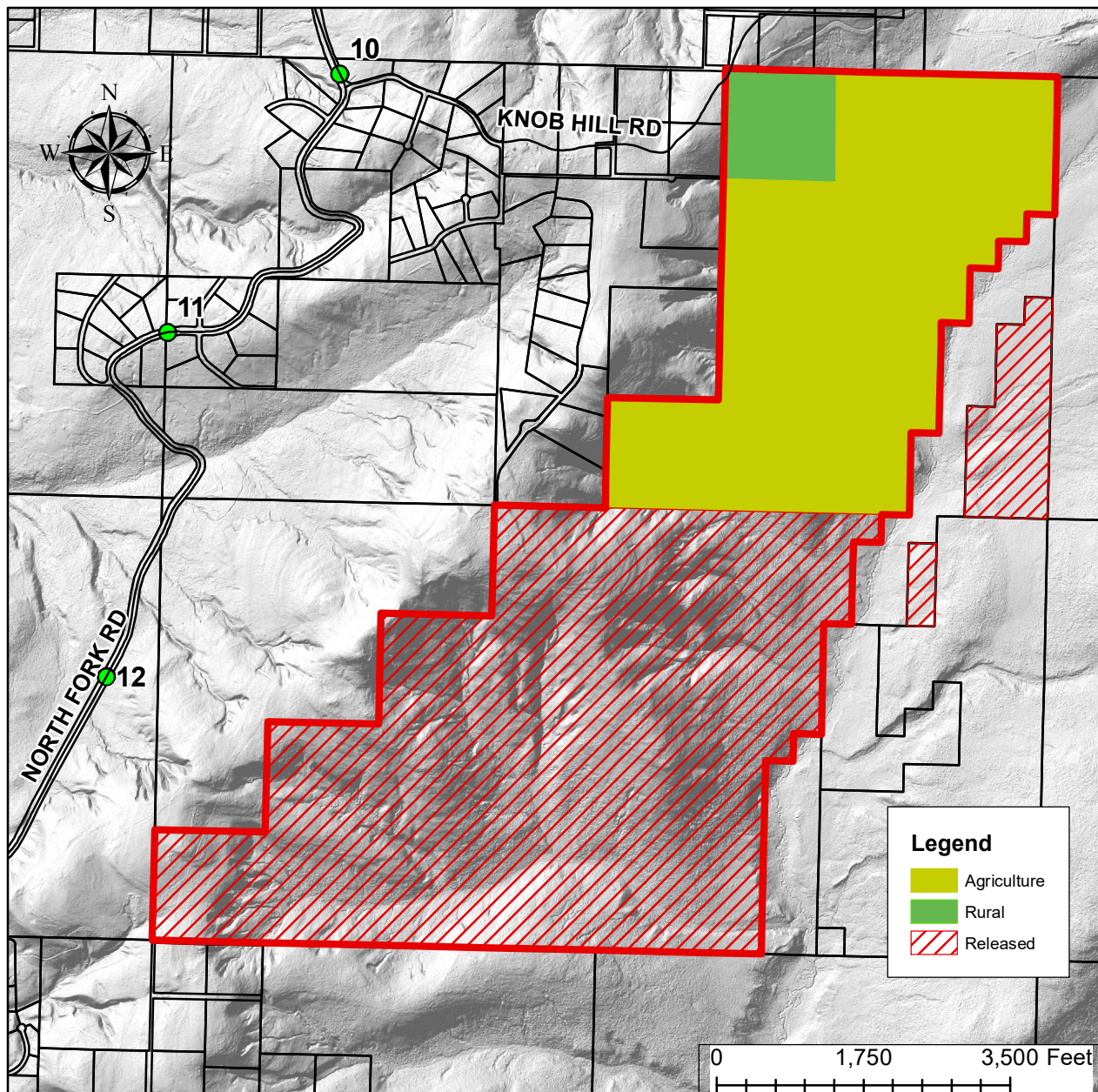
Pursuant to KPB 17.10.080, classification provides direction on how the Borough should manage its land. An application has been received to classify a 40-acre portion of a 1,115.64-acre parcel in the Anchor Point area. The parcel is subject to a 55-year Grazing-Resource Management lease issued by the State of Alaska in 1974. Land Management proposes to classify an additional 380-acre portion to reflect the uses currently conducted and the land's ability to support agriculture. The remaining 695-acres of the parcel are not being proposed for classification.

Public notice was published and notification was sent by US mail as required to all owners/leaseholders of record within a one-half mile radius of the parcel proposed for classification. Notice was also sent to borough and state agencies. The notice consists of a cover letter, map and list of land classification definitions.

The attached draft staff report provides information regarding the classification process and detailed information regarding the parcel proposed for classification. This resolution would classify a 420-acre portion of the parcel, consistent with the findings contained in the staff report.

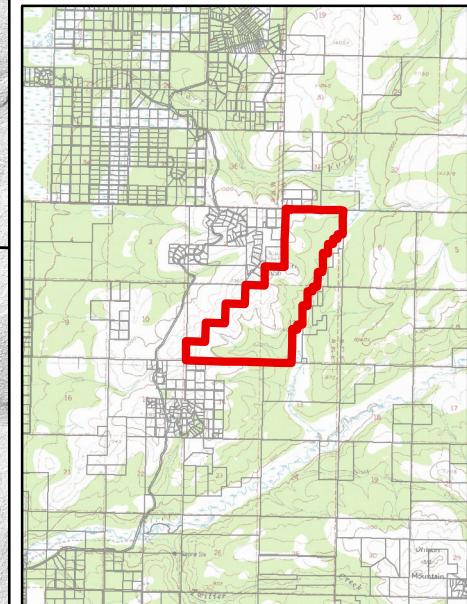
This resolution is scheduled to come before the Planning Commission at its June 14, 2021 meeting. The recommendations of the Planning Commission will be submitted to the assembly prior to its consideration of this resolution.

Your consideration of this resolution is appreciated.



Proposed Land Classification

Assessor Tax
Parcel Number
171-040-22



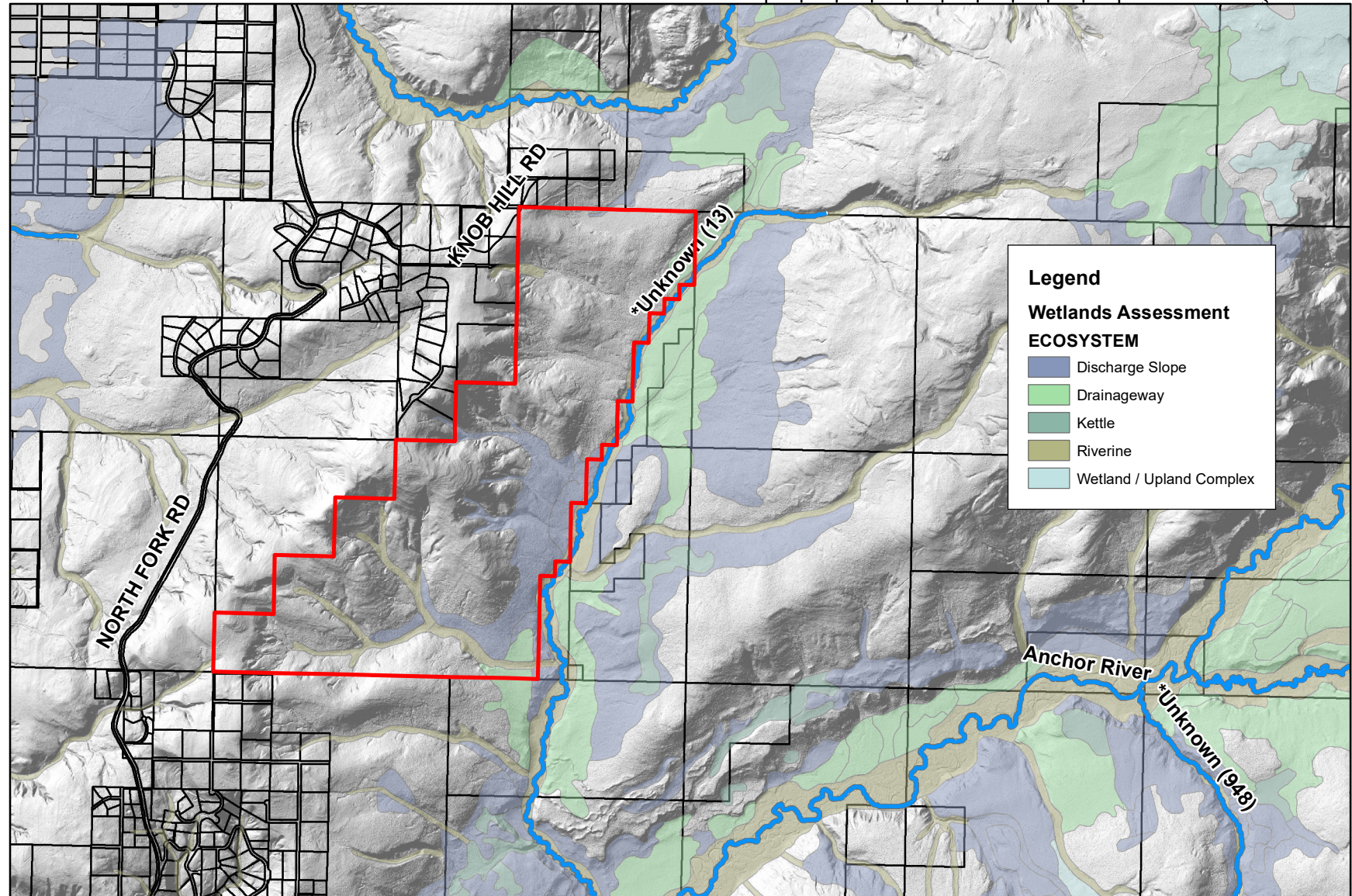
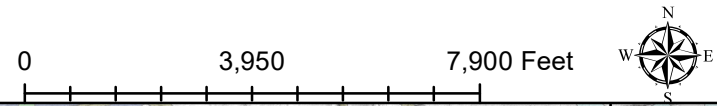
*The information depicted hereon
is for a graphical representation
only of best available resources.*

*The Kenai Peninsula Borough
assumes no responsibility for
any errors on this map*

jd 4.29.21

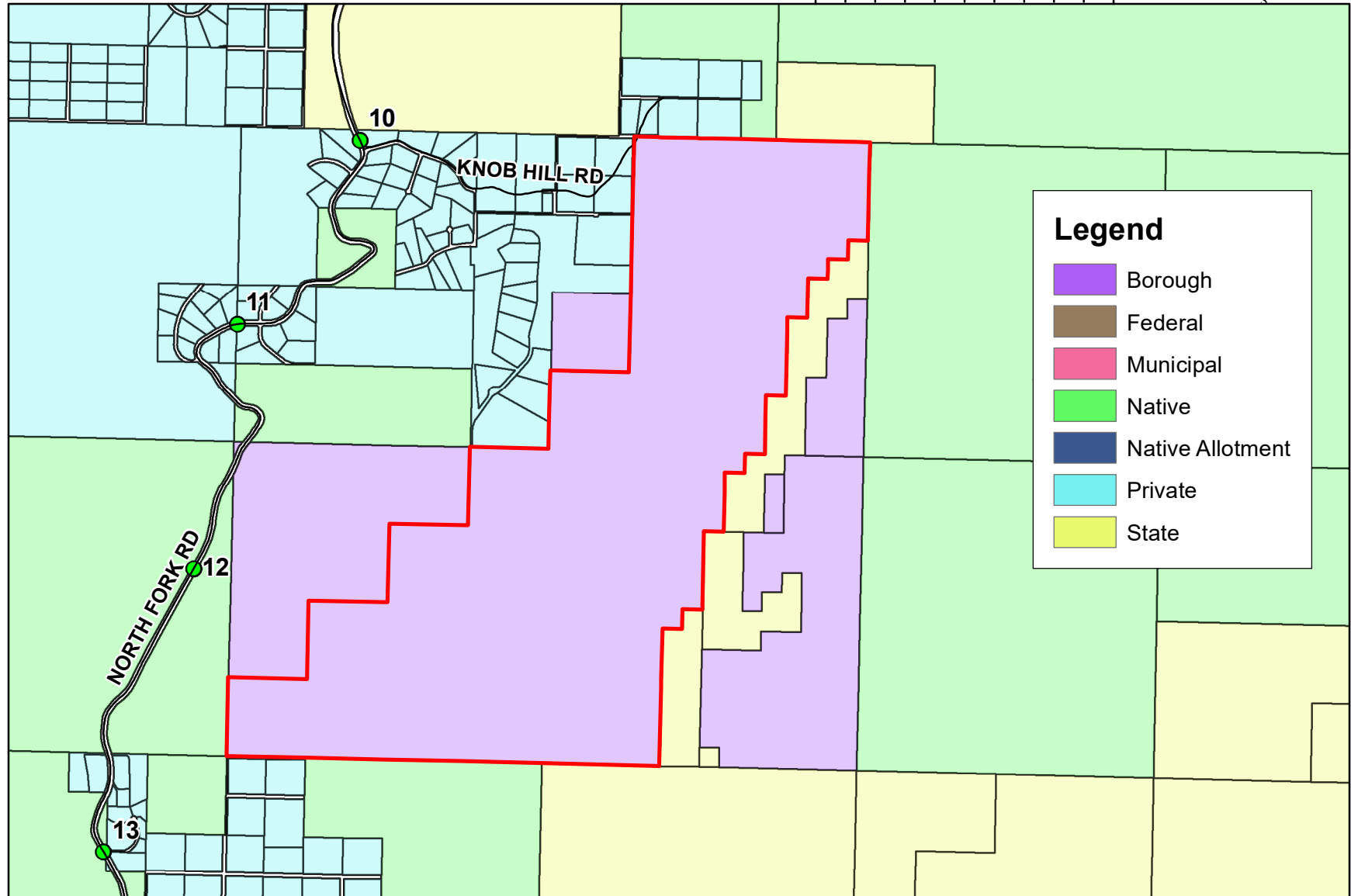
TOPOGRAPHY

APN: 17104022



SURROUNDING LAND OWNERSHIP

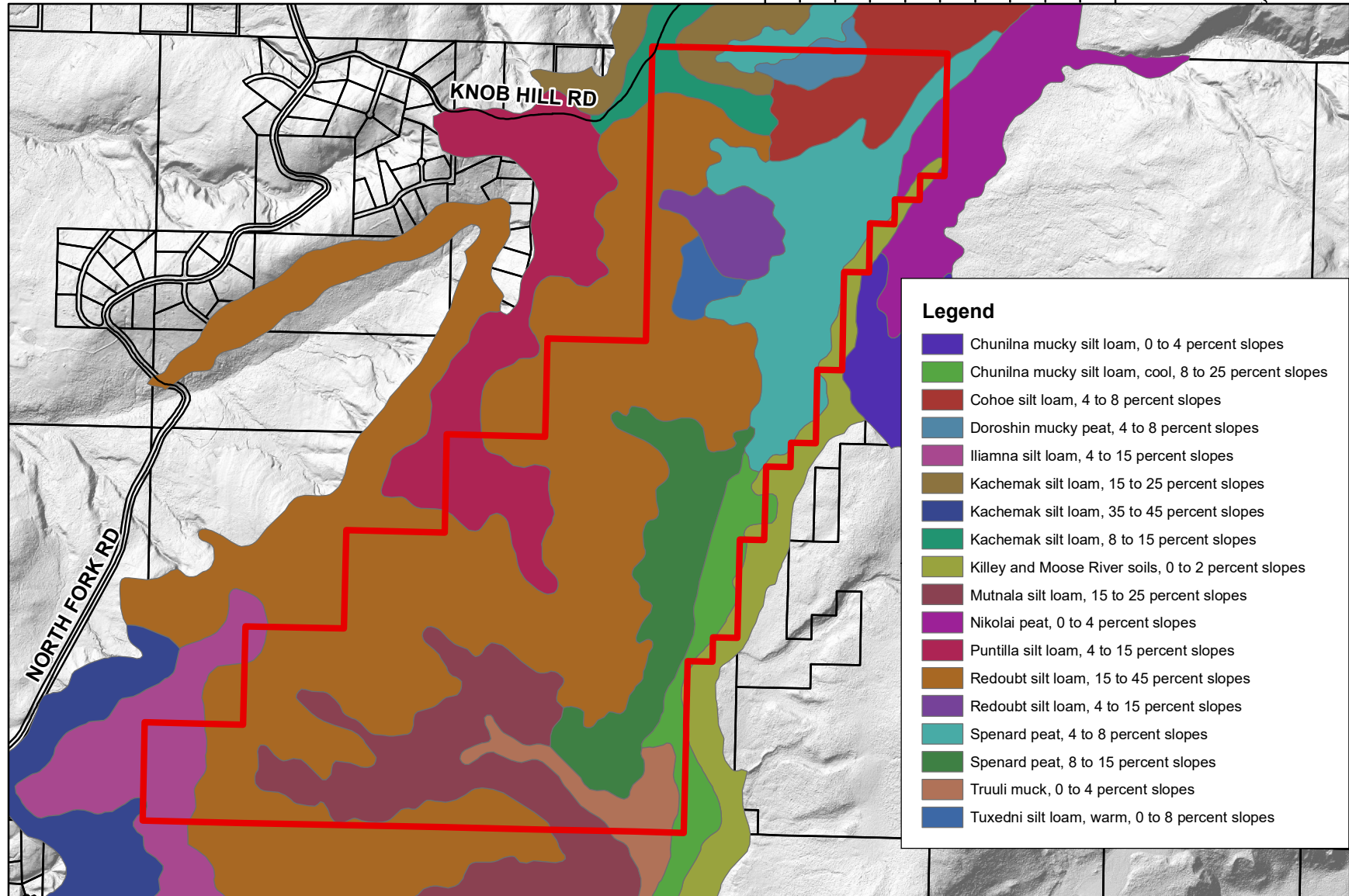
APN: 17104022



SOILS

APN: 17104022

0 2,350 4,700 Feet



____. Proposed Classification of 420 acres of Borough Land Located in the Anchor Point Area, Pursuant to KPB Code of Ordinances, Chapter 17.10.080(G).

STAFF REPORT

PC Meeting: June 14, 2021

Petitioner: Ronald and Charlotte Broste.

Basis for Classification: To establish the most appropriate use and management intent of borough land. This parcel is not classified.

Proposed Classifications:Rural

Rural means lands which are located in a remote area. This classification will have no restrictions.

Agriculture

Agriculture means activities that result in products for human or animal use. Agriculture activities may include raising crops, animals, or grazing animals. Agriculture does not include human habitation.

Location of Borough Land Proposed for Classification: As shown on the attached map, the land proposed for classification is located in the Anchor Point area on Epperson Knob, Section 01, Township 05 South, Range 14 West, Seward Meridian, Homer Recording District, Third Judicial District, State of Alaska, containing 420 acres more or less (APN: 17104022).

Public Notice: Public notice was published in the Peninsula Clarion Newspaper on May 16 & 26, 2021 and in the Homer News on May 20 & 27, 2021. Public notice is sent to all land owners and/or leaseholders within a one-half mile radius of the land proposed to be reclassified, applicable agencies, and interested parties. The notice consists of a cover letter, map and list of land classification definitions. Written public comments were requested to be returned by 5:00 p.m. on June 2, 2021 to be included in the Planning Commission mail-out packets.

Anchor Point Advisory Planning Commission (APAPC) Review: The APAPC is scheduled to hold a public meeting on June 10, 2021. The APC's recommendation will be forwarded to the Planning Commission.

Department / Agency Review: The following agencies provided written comments:

- KPBSD; No Comment
- River Center; No Objection. Any development within 50 feet of ordinary high water of the regulated anadromous stream along the southeastern property line is subject to KPB Chapter 21.18.
- Maintenance/Roads; No Objection

Findings of Fact:

1. Property Status: The borough received title by State patent. The patent is subject to the petitioners lease issued by the State of Alaska in 1974 as ADL 63239 for a 55-year term. The parcel is subject to a Community Trail Management Agreement with Snomads, Inc. Hidden Hills Trail is shown as traversing through the property, however, the trail, its location and status is unverified and not currently maintained by Snomads.
2. Topography: Subject parcel is located on east side Epperson Knob and contains many areas of escarpment. The parcel is relatively steep with discharge and riverine ecosystems which feed into *Unknown (13) river, Anchor River, and North Fork Anchor River, each being cataloged as anadromous waterbodies. There are a few areas of relatively flat, rolling terrain.

Source Data: Homer Soil & Water Conservation District

Land cover on the parcel is primarily white or black spruce, with areas of dwarf, low, and tall shrub.

Source Data: UAA, [Alaska Land Cover and Wetlands](#)

3. Soil:

3.3% Chuniina mucky silt loam. 8% to 25% slopes, poorly drained with a depth to water table at 28 inches or less, very limited for a dwelling with a basement and for a commercial building site, somewhat limited for a dwelling without a basement.

4% Cohoe silt loam. 4% to 8% slopes, well drained with a depth to water table at more than 80 inches, not limited for a dwelling with or without a basement, somewhat limited for a commercial building site.

1% Doroshin mucky peat. 4% to 8% slopes, very poorly drained with a depth to water table at more than 80 inches, very limited for a dwelling with or without a basement and for a commercial building site.

2.3% Iliamna silt loam. 4% to 15% slopes, well drained with a depth to water table at more than 80 inches, somewhat limited for a dwelling with or without a basement and very limited for a commercial building site.

1.5% Kachemak silt loam. 8% to 15% slopes, well drained with a depth to water table at more than 80 inches, somewhat limited for a dwelling with or without a basement and very limited for a commercial building site.

0.9% Kachemak silt loam. 15% to 25% slopes, well drained with a depth to water table at more than 80 inches, very limited for a dwelling with or without a basement and a commercial building site.

1.5% Killey and Moose River soils. 0% - 2% slopes, poorly drained with a depth to water table between 12 and 24 inches, and very limited for dwellings with or without a basement and a commercial building site.

10.7% Mutnanla silt loam. 15% to 25% slopes, well drained with a depth to water table at more than 80 inches, very limited for dwellings with or without a basement and a commercial building site.

0.9% Nikolai peat. 0% to 4% slopes, poorly drained with a depth to water table about 0 to 18 inches, very limited for dwellings with or without a basement and a commercial building site.

3.5% Puntilla silt loam. 4% to 15% slopes, well drained with a depth to water table at more than 80 inches, somewhat limited for a dwelling with or without a basement and very limited for a commercial building site.

2.7% Redoubt silt loam. 4% to 15% slopes, well drained with a depth to water table at more than 80 inches, somewhat limited for dwellings with or without a basement and very limited for a commercial building site.

42.6% Redoubt silt loam. 15% to 45% slopes, well drained with a depth to water table at more than 80 inches, very limited for dwellings with or without a basement and a commercial building site.

12.4% Spenard peat. 4% to 8% slopes, very poorly drained with a depth to water table about 8 to 24 inches, very limited for dwellings with or without a basement and a commercial building site.

8.8% Spenard peat. 8% to 15% slopes, very poorly drained with a depth to water table about 8 to 24 inches, very limited for dwellings with or without a basement and a commercial building site.

2.7% Truuli muck. 0% to 4% slopes, poorly drained with a depth to water table about 8 to 18 inches, very limited for dwellings with or without a basement and a commercial building site.

1.2% Tuxedni silt loam. 0% to 8% slopes, somewhat poorly drained with a depth to water table about 14 to 30 inches, very limited for a dwelling with a basement, somewhat limited for a dwelling without a basement and a commercial building site.

Source Data: USDA Natural Resource Conservation Service [Web Soil Survey](#)

4. Surrounding Land Use. Subject land is a large acre parcel containing 1,115.64 acres. The parcel is situated between the North Fork Anchor River and the Anchor River and is surrounded by recreational land uses. Some residential uses exist to the west, while land to the east is primarily undeveloped, large acre parcels.
5. Surrounding Land Ownership. The borough owns five other parcels which abut the subject parcel or are within close proximity. Nine privately owned parcels abut the north, west, and south of the parcel. The remaining surrounding ownership is State of Alaska and Cook Inlet Region, Inc.
6. Access. Access to the parcel is provided by Knob Hill Road, an existing gravel road located at approximately MP 10 of North Fork Road. The borough provides maintenance on the first 2,350 feet of Knob Hill Road, which ends approximately 2,900 feet from the subject parcel.

A 50' wide section line easement exists on each side of the section lines common to Section 1, T05S, R14W and Section 31, T04S, R13W, Section 1, T05S, R14W and Section 6, T05S, R13W, and Sections 1 & 12, T05S, R14W. A 33' wide section line easement exists on each side of the section line common to Sections 1 & 2, T05S, R14W, Seward Meridian.

Knob Hill Road is a prior existing road which has been dedicated in part. A 100'-wide grant of right of way easement was issued in 1974 to the Alaska Department of Highways along the existing road for ingress and egress to a gravel pit known as Material Source 21-1-04-1, recorded in Book 88 Page 980, Homer Recording District.

When the subject parcel is subdivided, rights-of-way will be dedicated, including Knob Hill Road and a matching dedication at Biblegum Street.

7. Utilities. Electric and telephone utilities are available. No other utilities are available at this time.

Analysis:

Access to the parcel is from Knob Hill Road and utilities are within close proximity. Over the last 42 years, the parcel has been developed to support grazing operations, and is currently operated as *Circle B Ranch*. Since 2011, the petitioners have maintained a non-commercial land use permit for structures used to support farming and agriculture but were not allowed under the grazing lease. An approved Grazing Lease Conservation Plan for the leasehold was developed in conjunction with the Homer Natural Resource Conservation Service. The draft South Peninsula Plan recommends a rural classification for this parcel. There is no comprehensive land use plan for borough lands in the Anchor Point area.

The intent of this classification is to reflect the uses currently conducted within the leasehold and the recommendation of the draft South Peninsula Plan. Land Management has identified this parcel as being capable of supporting agriculture and is proposing to classify 380-acres as agriculture. In consideration of a negotiated sale of 40-acres, Petitioners are willing to release the south 695 acres from the lease. Classification of this area is not proposed.

An agriculture classification meets the objectives of Goal 1, Focus Area: Agriculture and Mariculture, Objective A, Strategies 1 & 2, as well as Objective B, Strategy 1 and Goal 2, Focus Area: Land Use, Objective C, Strategies 1 & 2 of the Kenai Peninsula Borough Comprehensive Plan.

Conclusion:

RURAL CLASSIFICATION: (40-acres)

The proposed Rural classification is compatible with the surrounding land use. A Rural classification is consistent with the recommendation of the draft South Peninsula Plan and is appropriate for the current onsite activities.

AGRICULTURE CLASSIFICATION: (380-acres)

The proposed Agriculture classification is compatible with the surrounding land use in that the parcels abutting the subject land are large acreage parcels of undeveloped land. An Agriculture classification is appropriate and is supported by the Kenai Peninsula Borough Comprehensive Plan.

STAFF RECOMMENDATION: Based on the findings of fact, analysis, and conclusion, KPB staff recommends that the KPB Planning Commission recommend adoption of the resolution classifying subject 40-acres as Rural and 380-acres as Agriculture, as shown on Attachment 'A' of the Resolution.

END OF STAFF REPORT

Hello

To: the Planning Committee

June 11, 2021

From: Michael Mungoven, 34287 Bluegrass Street, Anchor Point

Re: Classification of 380 acres on the East side of Epperson Knob near Anchor Point. APN 17104022.

I went to the Anchor Point Chamber of Commerce on June 10 at 7 pm to take part in the AP advisory planning meeting regarding this issue. No one showed up so I can only conclude that the meeting was cancelled or rescheduled and I missed the notice.

I oppose classifying that acreage in parcel 17104022 as Agricultural. Recreational or Preservation would be a better classification.

My standing: My wife and I own 6 lots in Knob Hill subdivision adjacent to this land. I was part of the USDA-NRCS soils crew that mapped the Kenai Peninsula between 1995 and 2004 and I personally mapped areas close to this land. We ski, hike, and snowshoe on this ground and know it well.

My argument:

~32% of the soils on this land are classified as poorly drained or wetter.

~55% of this terrain is classified as steep or very steep.

Item #2 in the staff report about this classification says quite clearly "The subject parcel contains many areas of escarpment. The parcel is relatively steep with discharge slopes and riverine ecosystems that drain into anadromous water bodies (the Anchor River). There are few areas of relatively flat rolling terrain". Those are thorough staff observations.

The conclusion of the staff report claims that the classification is compatible with surrounding land use. I disagree. The uses of this parcel and adjacent lands are recreational, including snow machining, hunting, hiking, skiing, and snowshoeing. Fences associated with agricultural uses are not compatible with any of these activities.

The soils of this area have high erosion potential and are subject to high compaction. Most of this parcel that's not wet is really steep. The naturally high K value (a measure of erodibility) of these soils is multiplied by the long steep slopes found here. The fact that these slopes are a favorite of local backcountry skiers is indicative of their steep nature.

The area also contains important wildlife habitat. Wolves, bears, lynx, and moose use the area extensively. We have observed brown bear dens in some of the drainages. Salmon can be found in the stream flowing in the valley below. It is an important travel corridor for creatures from this interior valley to the lowlands around Anchor Point. The land sits above and adjacent to the Anchor River critical habitat area. As for accessibility, the downed timber from the mid 90's beetle kill is extensive and makes passage through the forested areas really hard. All in all, this plot is an important part of the Anchor River ecosystem that produces salmon and moose for local subsistence.

This area and the land to the west side of Epperson Knob are part of a current grazing lease. Over the years my wife and I and our neighbors have removed a lot of abandoned barbed wire from the slopes to the west of Epperson Knob. Barbed wire is dangerous to skiers and wildlife. People have been injured

due to running into downed barbed wire while skiing. Furthermore, the area of the current grazing lease along North Fork Road is littered with abandoned vehicles, trailers, and old junk piles. I can't imagine this is what the borough wants to see on agricultural lands.

Very little of this area is suitable for general agriculture (~7% in my view). Even less of this land is suitable for grazing than for general ag. We live on the old Epperson homestead where cattle raising was tried and failed. I encourage the planners to consider putting this land into a Recreation or Preservation classification. We strongly believe that the best use of this area is for subsistence and recreation for the common good of all Borough residents.

Michael Mungoven


June 11, 2021.

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

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

THRU: Johni Blankenship, Borough Clerk

FROM: Michele Turner, Deputy Borough Clerk 

DATE: June 15, 2021

RE: Resolution 2021-046: Classifying 420 Acres of Borough Land Located within Section 1, T5S, R14W, Seward Meridian, Alaska as Rural and Agriculture (Mayor)

Per KPB 22.40.050(F), the borough clerk, or the clerk's designee in his or her absence, has the authority to revise pending resolutions and ordinances prior to assembly action, by filling in any blanks in the legislation stating advisory board recommendations made concerning the legislation. This serves as our memorandum to advise the assembly of same.

Conforming to the Planning Commission's actions, the fourth Whereas clause has been updated to read:

"WHEREAS, the Kenai Peninsula Borough Planning Commission, at its regular scheduled meeting of June 14, 2021, recommended approval by majority consent;"

Thank you.

Turner, Michele

From: Shirnberg, Ann
Sent: Tuesday, June 15, 2021 6:16 AM
To: Turner, Michele; Broyles, Randi
Subject: Planning Commission 06-14-21 Resolution Recommendations

Importance: High

Good Morning,

The following resolutions were recommended for approval at the 6-14-21 Planning Commission meeting:

- Resolution 2021-044 passed by unanimous vote.
- Resolution 2021-045 passed by unanimous vote.
- Resolution 2021-046 passed by majority vote (7-Yes, 4-No)
- Resolution 2021-048 passed by unanimous vote.

Thank You,

Ann Shirnberg
Administrative Assistant
Planning Department
(907) 714-2215

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 public upon request.

Introduced by:	Mayor
Date:	08/03/21
Hearing:	08/17/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-31**

**AN ORDINANCE AUTHORIZING AN AMENDMENT TO A MASTER LAND LEASE
DEVELOPMENT AGREEMENT WITH ALASKA DEPARTMENT OF
TRANSPORTATION AND PUBLIC FACILITIES IN SUPPORT OF THE STERLING
HIGHWAY MP 45-60 CONSTRUCTION PROJECT NEAR COOPER LANDING TO
INCLUDE A STAGING AREA AT TRACT C QUARTZ CREEK SUBDIVISION AND
APPRAISAL PROVISIONS**

- WHEREAS,** the State of Alaska Department of Transportation and Public Facilities (“DOT&PF”) is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing; and
- WHEREAS,** Ordinance 2021-14 authorized the lease of multiple staging and disposal sites on borough lands to DOT&PF under a Master Land Lease Development Agreement (“Master Lease”); and
- WHEREAS,** Ordinance 2021-13 authorized the lease of Tract C Quartz Creek Subdivision to one of DOT&PF’s contractors, Kiewit Infrastructure West Company, for staging in support of the state project; and
- WHEREAS,** DOT&PF has requested that the lease of Tract C be issued directly to DOT&PF and that state procurement methods for valuation be included as an overall provision of the Master Lease; and
- WHEREAS,** the Master Lease can be amended to include Tract C and to provide for methods of valuation consistent with state procurement standards; and
- WHEREAS,** state procurement standards for land valuation would protect the borough’s interests in fair compensation for the use of borough land; and
- WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended _____;

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

SECTION 1. That the assembly finds that leasing to DOT&PF the parcel of land described as Tract C Quartz Creek Subdivision pursuant to KPB 17.10.100(I) is in the best interest of the borough to support the highway project which will significantly improve road access to and from the western half of the borough and provide revenue to the borough..

SECTION 2. That the provisions of KPB 17.10.080-.090 and KPB 17.10.110-.240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this lease to DOT&PF in cooperation with the Sterling Highway MP 45-60 project.

SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to amend the Master Lease to include Tract C Quartz Creek Subdivision for project staging and to amend the lease rental provisions to include appraisal methods for establishing or adjusting rent for all sites included in the Master Lease, substantially in the form of the amendment document accompanying this ordinance. The authorization is only for a lease of the property to the DOT&PF, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.

SECTION 4. The mayor is authorized to execute a lease amendment substantially similar in form to the Master Lease Amendment No. 1 form approved by the assembly.

SECTION 5. DOT&PF shall have 120 days from the time of enactment of this ordinance to execute the lease document.

SECTION 6. That revenue from the subject lease shall be deposited in the Land Trust Fund.

SECTION 7. That the authorization to lease Tract C provided by Ordinance 2021-13 is superseded by this ordinance.

SECTION 8. 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 *CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Marcus A Mueller, Land Management Officer *MA*

DATE: July 22, 2021

RE: Ordinance 2021-31, Authorizing an Amendment to a Master Land Lease Development Agreement with Alaska Department of Transportation and Public Facilities in Support of the Sterling Highway MP 45-60 Construction Project Near Cooper Landing to Include a Staging Area at Tract C Quartz Creek Subdivision and Appraisal Provisions (Mayor)

Alaska Department of Transportation and Public Facilities (DOT&PF) is actively working on the Sterling Highway MP 45-60 Construction Project which follows the Juneau Creek Alternative near Cooper Landing.

KPB Land Management has been working with the project team as it seeks to implement this major project. DOT&PF has entered into a Master Lease that includes three project staging and disposal sites on borough owned or managed land. A fourth site related to the project had been proposed to be leased by a DOT&PF contractor. However, DOT&PF now requests that the lease of this fourth site, located at Tract C Quartz Creek Subdivision, be included in DOT&PF's Master Lease.

In discussions, DOT&PF has indicated that it would like to have the ability to go through an appraisal process on Tract C as well as the other sites. An appraisal process would conform to DOT standards and would protect KPB's interests in receiving a fair market rent for the surface use of the KPB land.

This ordinance would authorize an amendment to DOT's Master Lease to include Tract C Quartz Creek Subdivision and to provide for rental rates to be adjusted to the appraised fair market rental value once DOT completes such appraisals.

Your consideration is appreciated.

Master Land Lease Development Agreement
AMENDMENT NO 1
KPBL# 21-0501-01

WHEREAS, KPB and DOT&PF have entered in a certain Master Land Lease Development Agreement (the "Agreement") serialized KPBL# 21-0501-01 for multiple staging and disposal sites associated with the Sterling Highway MP 45-60 project; and

WHEREAS, KPB and DOT&PF desire to amend the Master Land Lease Development Agreement to include an additional site known as Tract C Quartz Creek Subdivision and to include appraisal provisions for the establishment of adjustment of rents on all sites included in the Agreement;

NOW THEREFORE,

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter "KPB" or "Lessor"), and the State of Alaska, Department of Transportation and Public Facilities, whose address is 4111 Aviation Avenue, Anchorage, AK 99519 (hereinafter "DOT&PF" or "Lessee") enter into this Master Land Lease Development Agreement Amendment No 1 (Amendment No 1) and agree herein to amend the Agreement as follows (**bold underline** indicates amended language):

Amend Section I (2) to update contact information as follows:

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 staff do not have authority to bind the KPB. Any material amendments or changes to the Agreement must be approved in writing signed by the KPB Mayor.

KPB

DOT&PF

Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.
Soldotna, AK 99669

DOT&PF Central Region Construction
Attn: **Jonathan Tymick**
4111 Aviation Avenue
Anchorage, AK 99519-6900

Amend Section II (5) as follows:

II. Leased Property Description; Term; Rent

5. **The Property.** The KPB leases to DOT&PF and DOT&PF leases from the KPB, the following

described Property in an “as-is” condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

West #1 Staging and Disposal Site; 14.0 acres +/-, located within the N1/2 Section 27, T5N, R4W, S.M. AK

West #2 Staging and Disposal Site; 4.6 acres +/-, located within the N1/2 Section 26, T5N, R4W, S.M. AK

East #2 Staging and Disposal Site; 4.7 acres +/-, located within Tract A USS 5105 situated within Section 30, T5N, R3W, S.M. AK

Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District; 15.81 acres +/-

Each Site more particularly described and depicted in Attachment 3- Site Survey Drawings.

Amend Section II (7) as follows:

7. Term.

7.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026. **The initial term as applied to Tract C Quartz Creek Subdivision commences August 15, 2021.**

Amend Section II (8) as follows:

8. Rent.

8.1. Surface Use Rent (“Rent”). The Rent for the use of the surface area of the Property is shown on the table below, for the first year of the Agreement, payable on the commencement date of the lease and each anniversary thereof. This Rent shall increase annually at 3% per annum.

SITE DESCRIPTION	AREA	INITIAL RENT
West #1 Staging and Disposal Site	14.0 acres +/-	\$8,400/YR
West #2 Staging and Disposal Site	4.6 acres +/-	\$5,520/YR
East #2 Staging and Disposal Site	4.7 acres +/-	\$5,640/YR
<u>Tract C Quartz Creek Subdivision</u>	<u>15.81 acres +/-</u>	<u>\$35,640/YR</u>
TOTAL		<u>\$55,200/YR</u>

8.2. Material Extraction and Disposal. The consideration, fees or royalties associated with

material extraction, disposal, and reclamation under the Agreement shall be set forth in Attachment 1 – Materials Extraction and Disposal Terms & Conditions.

- 8.3. **Rent for Tract C Quartz Creek Subdivision is prorated for the initial partial year through April 30, 2022 as $(258 \text{ days divided by } 365) \times (\$35640) = \$25,192.10$.**
- 8.4. **Rent for each site may, at any time, be adjusted to the appraised fair market rental value. DOT&PF may have the sites appraised according to DOT&PF appraisal standards as to the fair market value or fair market rental value. In the case of a fair market value appraisal, 8% of the appraised fair market value will be used as the lease rate. Upon acceptance of the appraisal by each party the appraised fair market rent will be adopted and any rental adjustment payment, or reimbursement due either party will be made within 60 days for the annual period in which the appraisal is conducted. The adjusted rent shall then increase annually at 3% per annum.**

Amend Section III (9) as follows:

9. **Authorized Uses.** The Agreement is entered into for the use of the Property for the following authorized uses:
 - 9.1. Subject to Section 11 below, Rights Reserved by KPB, DOT&PF shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Master Lease. Surface uses include, but are not limited to, staging of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Staging/Disposal Operations Plan.
 - 9.2. Subject to the terms set forth in Attachment 1, Materials Extraction and Disposal Agreement, DOT&PF may use the Property to dispose, develop, process, explore, excavate, crush, stockpile, remove, gravel, soil, and other natural resource materials on the Property. The reclamation obligations set forth in Attachment 1 survive termination of the Agreement.
 - 9.3. **Terms specific to Tract C Quartz Creek Subdivision**
 - a. **Subject to reclamation obligations, DOT&PF shall have the right to develop Tract C sufficient for its authorized uses included importing clean, construction grade gravel fill material, installation of utilities, installation of DEC approved septic system or holding tanks, drilling of on-site water wells, and installation of road approaches, pads, and durable surfaces. DOT&PF shall conserve topsoil on site and maintain such material available for site reclamation at the end of the Agreement.**
 - b. **Vegetated Buffers/ Clearing Plan. Uses of Tract C under this agreement are subject to preserving certain vegetated buffers along the perimeter of the**

property. Prior to commencement of the Agreement, a clearing plan had been agreed upon and implemented through which certain areas of vegetation were preserved. The cleared area shall be available for DOT&PF's development and use under this agreement. No further clearing or expansion of use into vegetated areas will take place unless first approved by KPB in writing. Vegetated areas may be incorporated into DOT&PF's storm water management practices. Individual trees within the vegetated buffer that are a substantial hazard risk may be removed by DOT&PF as necessary without changing the buffer status.

c. Site Closure.

9.3.c.1. Notwithstanding KPB 17.10.240, prior to termination of this Agreement the KPB reserves the right, at KPB's sole option, to require Lessee to restore the site to a natural condition, free of contamination, to leave the site in a condition suitable for use by another, or any combination thereof. KPB declares an intent for the site to be useful for a commercial business subdivision at the end of the Agreement.

9.3.c.2. Pre-closure Inspection. KPB and Lessee will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of Agreement. KPB and Lessee shall agree in writing the condition that site will be left in prior to termination of Agreement. KPB, at its sole discretion, may require Lessee to take any or all of the actions listed in paragraphs A and B of this section.

A. Removal of Improvements. The KPB may require Lessee to remove any and all improvements including septic systems, utilities, imported materials, and closure of wells.

B. Reclamation. Site shall be reclaimed by adding organic topsoil material to bring site to a consistent topographic level as adjacent features and then planted with local plant species.

9.3.c.3. Post-closure Inspection. KPB and Lessee will jointly inspect site to confirm site is left in a condition acceptable to KPB and KPB will issue a document to Lessee affirming its findings.

Except as expressly set forth and amended herein, all remaining covenants, terms, and conditions of the Agreement, as amended, shall remain in full force and effect.

LESSOR: Kenai Peninsula Borough

**LESSEE: State of Alaska, Department of
Transportation and Public Facilities**

By: Charlie Pierce
Its: Mayor
Date: _____

By: _____
Its: _____
Date: _____

ATTEST:

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

KPB NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2021,
before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned
and sworn, personally appeared Charlie Pierce, known to me to be the Mayor, Kenai Peninsula
Borough, and who acknowledged to me that the foregoing instrument was executed freely and
voluntarily on behalf of Kenai Peninsula Borough, for the uses and purposes therein set forth
and who is authorized to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day
and year written above.

Notary Public in and for Alaska
Commission expires: _____

DOT&PF NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

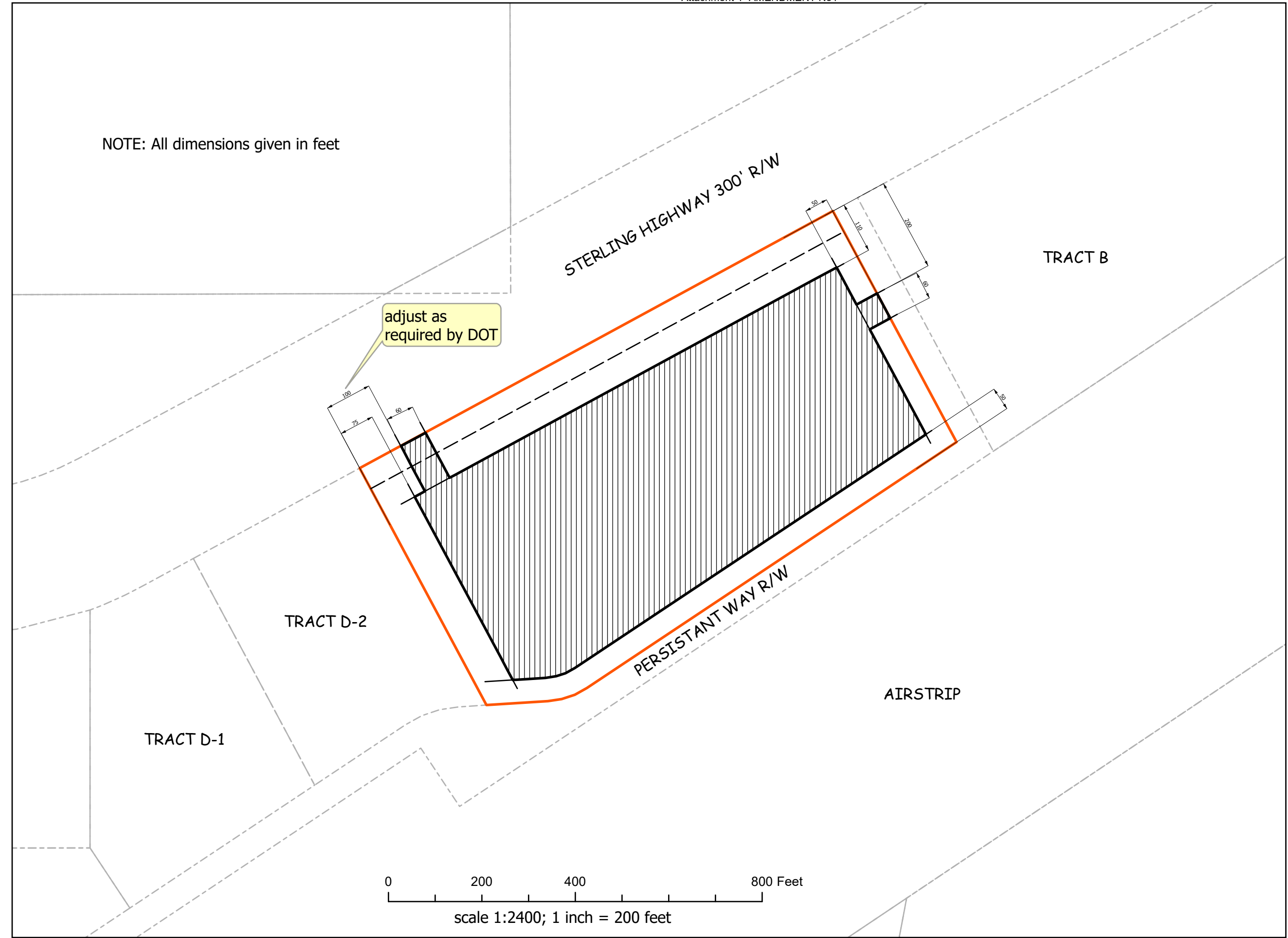
THIS IS TO CERTIFY that on this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared _____, known to me to be the _____, Department of Transportation and Public Facilities, State of Alaska, and who acknowledged to me that the foregoing instrument was executed freely and voluntarily on behalf of the State of Alaska, Department of Transportation and Public Facilities, for the uses and purposes therein set forth and who is authorized by said State of Alaska to do so.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.

Notary Public in and for Alaska

My Commission Expires:

NOTE: All dimensions given in feet



Legend

- Clearing Limits
- TRACT C
- Parcels

LEGAL DESCRIPTION:
T 5N R 3W SEC 36 SEWARD
MERIDIAN SW 0940011
QUARTZ CREEK SUB TRACT C

**Attachment 3
Clearing Plan**

Proposed Clearing Limits
for LMD 20-17.

Permittee: Kiewit
Infrastructure

-KPB Land Management
9/23/2020



Project Number:
OA33028/CFHWY00684
Date: 1/20/2021

Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC

Tract C Lease Application

ATTACHMENT 4 to Lease Agreement

Prepared For:

Kenai Peninsula Borough Land Management
Division

Section

Page

Prepared By:

Kiewit Infrastructure West Co.
2000 W. International Airport Rd. C-6
Anchorage, AK 99502

Contents

Section	Page
Acronyms and Abbreviations.....	ii
Introduction	1
Existing Improvements.....	2
Proposed Permanent Improvements	3
Plan for Future Use	4
SWPPP and SPCC.....	4

Acronyms and Abbreviations

ADOT&PF	Alaska Department of Transportation & Public Facilities
KIWC	Kiewit Infrastructure West Co.
KPB	Kenai Peninsula Borough
SWPPP	Storm Water Pollution Prevention Plan
APDES	Alaska Pollutant Discharge Elimination System
SPCC	Spill Prevention Control and Countermeasure
HMA	Hot Mix Asphalt

Introduction

KIWC proposes a negotiated lease of Tract C.

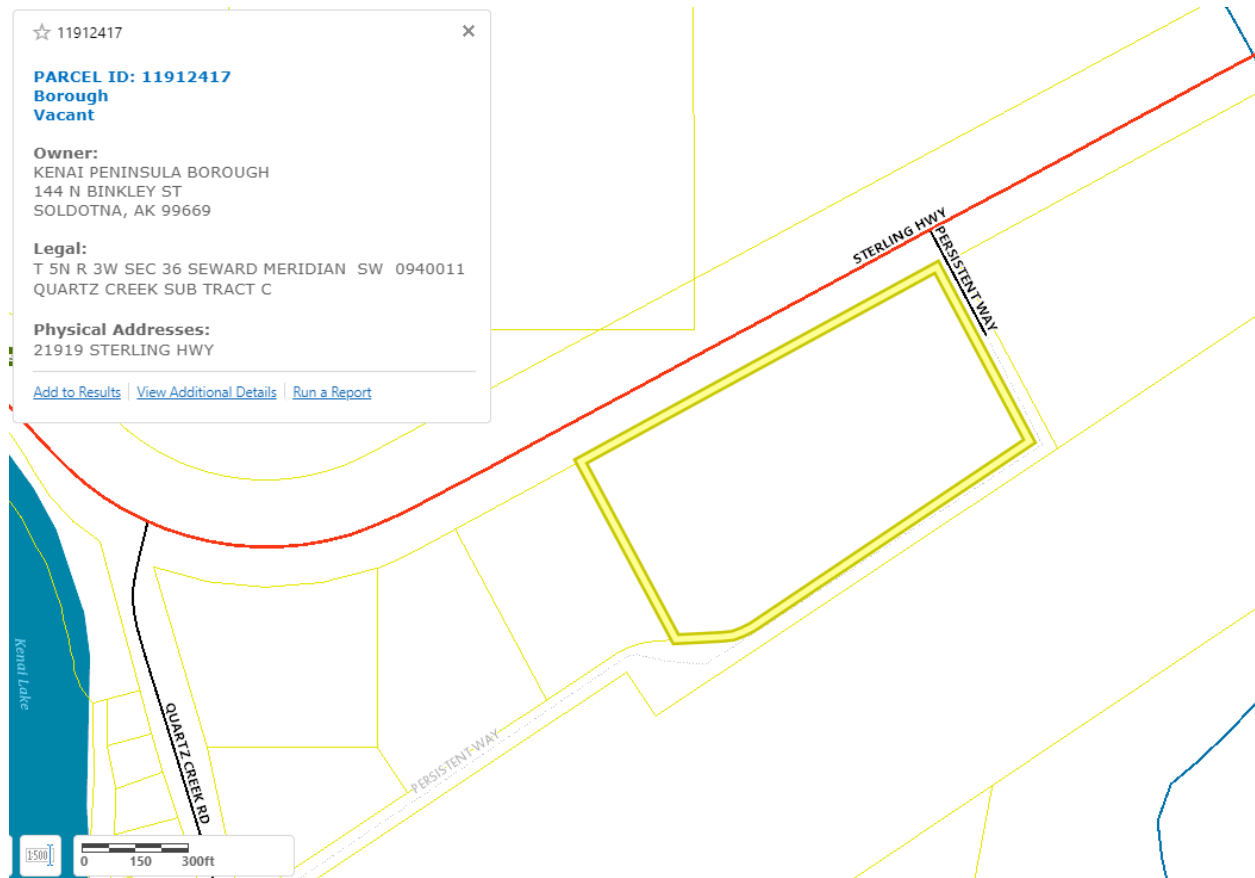
The parcel known as Tract C is described as the following:

Legal Description: T 5N R 3W SEC 36 SEWARD MERIDIAN SW 0940011 QUARTZ CREEK SUB TRACT C

Physical Address: 21919 Sterling Hwy

Tax Parcel ID: 11912417

Acreage: 15.81 Acres



The proposed primary use for this parcel under the negotiated lease is to develop a temporary project field office; and temporary materials and equipment laydown area to facilitate construction activities for the Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Project for AKDOT&PF.

The proposed term for the negotiated lease is April 2021 until the highway project completion. The project is anticipated to be completed by the end of year 2025.

Existing Improvements

Under existing KPB Land Use Permit LMD 20-17, KIWC has completed 10.8 Acres of timber clearing and salvage; and soil sampling at Tract C during the week of November 16th, 2020. The current condition of the parcel is shown in the photo below.



Figure 1 - Site Photo 11/20/2020

A copy of Land Use Permit LMD 20-17 is attached.

Prior to the work performed in 2020 under the land use permit, the parcel existed as a wooded lot with a paved driveway apron access at the intersection of Persistence Way and Sterling Hwy leading to a single lane gravel road.

Proposed Permanent Improvements and Temporary Structures

During the lease, KIWC proposes to develop Tract C to be a working field office. Site work including utility installation and earthwork will be required to facilitate access and installation of the temporary office structures. A portion of this work may be considered permanent improvement for integration into the future development plan.

Proposed permanent improvements include the following:

- Utility Installation
 - Electric Service (Chugach Electric Association Inc.)
 - Phone Service (TelAlaska)
 - Leach Field Sewage System
 - Potable Drinking Water Well System
- Site Earthwork
 - Grubbing
 - Drainage
 - Grading and placing gravel for a driveable working surface

The preliminary plan for the site is shown below in Figure 2. This plan includes several temporary structures that are planned to be removed by the end of the lease term.

Proposed temporary structures include the following examples:

- Job office - consisting of mobile trailer units
- Area Lighting
- Fencing and Entrance Gates
- Hot Mix Asphalt (HMA) Plant
- Concrete Batch Plant
- Bathroom facilities
- Parking area
- Secondary Access to Sterling Hwy
- Materials testing lab
- Maintenance facility
- Fuel Storage

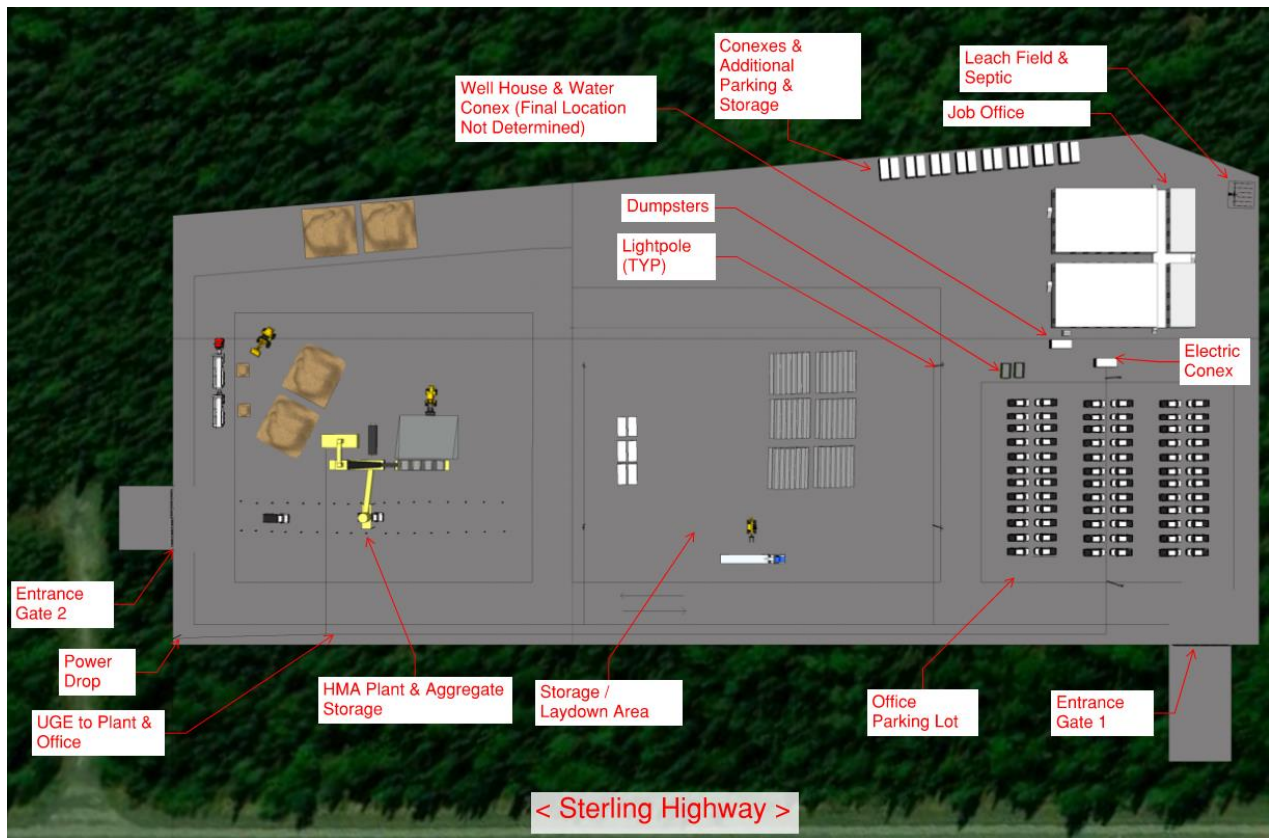


Figure 2 - Preliminary Site Layout

Plan for Future Use

KIWC intends to cooperate with KPB's future development plan for Tract C. Engineering resources will be available.

SWPPP and SPCC

The site work at Tract C including ground disturbing work, will be performed and maintained in adherence with the APDES Construction General Permit (CGP) and the project SWPPP and SPCC Plan programs for the duration of the lease. Documentation for this program will be located at the project office. Reporting of spills or discharges will follow the protocols listed in the program.

Introduced by:	Mayor
Date:	08/03/21
Hearing:	08/17/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-32**

**AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT FAIR MARKET
VALUE WITH EDWARD AND KATHLEEN MARTIN, DBA COZY INN, IN KENAI
FOR A PARKING AREA**

WHEREAS, Edward and Kathleen Martin are owners of Lots 1 & 2, Block 4, Inlet View Subdivision 1st Revision, Plat KN-1515 in the City of Kenai; and

WHEREAS, the Martins own and plan to operate Cozy Inn on the property in conjunction with a local construction academy job training program, to house the students; and

WHEREAS, the Martins property lacks sufficient space for customer parking; and

WHEREAS, the borough owns an adjacent large parcel that is classified as Residential and zoned Rural Residential; and

WHEREAS, the Martins have applied for a negotiated lease of an area to be improved and serve as a parking area; and

WHEREAS, the Martins would be responsible for acquiring any necessary conditional use permits required by the City of Kenai for the proposed use; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended _____;

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

SECTION 1. Pursuant to KPB 17.10.100(I) and 17.10.120(D), the assembly finds that leasing approximately 0.58 Gross/ 0.43 Net acres of borough land more particularly described in Section 2 below at fair market value to Edward and Kathleen Martin, DBA Cozy Inn, for a parking area is in the best interest of the borough based on the following findings of fact:

- A. The proposed use is compatible with the land classification and zoning, subject to City of Kenai conditional use permitting.

- B. The lease of land would support local business and job training and would provide a revenue stream to the Land Trust Fund.
- C. The configuration of the proposed lease would allow for future development of the remaining borough-owned land.

SECTION 2. Subject land lease is described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56'00"E a distance of 180.00 feet to the point of beginning; thence S 00°09'00"E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56'00"E a distance of 130.00 feet; thence N 00°09'00"W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56'00"W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area; and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District.

SECTION 3. That the assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:

- 1. Special circumstances or conditions exist.
 - A. The purpose of advertising, pursuant to KPB 17.10.110, is to notify the public of an opportunity to purchase or lease borough land. However, because the authorization of this ordinance is for a sole source lease, advertising will not serve a useful purpose.
- 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. Making an exception to advertising, pursuant to KPB 17.10.110, will not affect any substantial property right as this is public land with previous seasonal field uses.
- 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.

- A. Making an exception to advertising, pursuant to KP.B 17.10.110, will not be detrimental or injurious to any public or private parties as leasing the subject land is subject to the acquisition of city of Kenai conditional use permits which address such matters.

SECTION 4. Based on the foregoing, the mayor is hereby authorized, pursuant to KP.B 17.10.100(I) and 17.10.120(D) to lease the land described in Section 2 above to Edward and Kathleen Martin, DBA Cozy Inn, for a term of 10 years with a 10-year renewal option at fair market value as determined by appraisal methods contained in the lease. The authorization is for lease solely to Edward and Kathleen Martin, DBA Cozy Inn, and they may not assign any rights to negotiate or enter an agreement for lease with any other person or entity without obtaining prior approval in accordance with the lease.

SECTION 5. That the mayor is authorized to execute a lease substantially similar to the one attached, and sign any documents necessary to effectuate this ordinance.

SECTION 6. That Kathleen Martin, DBA Cozy Inn shall have 180 days to execute the lease document from the date of enactment of this ordinance.

SECTION 7. 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 *CP*
Melanie Aeschliman, Planning Director *MA*

FROM: Marcus A. Mueller, Land Management Officer *MA*

DATE: July 22, 2021

RE: Ordinance 2021-32, Authorizing a Negotiated Lease at Fair Market Value with Edward and Kathleen Martin, dba Cozy Inn, in Kenai for a Parking Area (Mayor)

Ed and Kathleen Martin have applied for a negotiated lease of borough-owned land for a parking area adjacent to their property. The Martins' stated purpose is to operate their property for housing students undergoing job training in a local construction academy. In order to serve their customers and meet the zoning requirements of the City of Kenai (City), they would need 16 parking spaces that they do not have space for on the land that they own.

The adjacent borough-owned land is classified as residential and is zoned by the City as Rural Residential. A use as a parking area would require compliance with City zoning regulations and the applicants are willing to go through the permitting processes.

The area being proposed measures 130' of frontage along Lawton Drive and 194' from the center of the street, the north 50' of which is a section line easement serving Lawton Drive. The net area is approximately 0.43 acres after subtracting the Lawton Drive section line right-of-way. A City storm water drain easement (30' wide) also crosses the lease area, but may be compatible with the simple surface use of parking.

The KPB Planning Commission will hold a public hearing on August 9th and will forward its recommendations to the assembly.

The initial appraised rental value will also be reported to the assembly as soon as it is available. Your review and consideration of this ordinance is appreciated.

KENAI PENINSULA BOROUGH REAL PROPERTY LEASE

This LEASE (hereinafter called this "Lease"), for good and valuable consideration, and pursuant to Ordinance 2021-____, enacted _____, 2021, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and Edward and Kathleen Martin d.b.a. Cozy Inn, whose address is 35555 Kenai Spur Highway, PMB 471 Soldotna, Alaska 99669 (hereinafter called "Lessee").

I. DESCRIPTION OF REAL PROPERTY

This Lease grants Lessee use of the real property (hereinafter called "Property") described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56'00"E a distance of 180.00 feet to the point of beginning; thence S 00°09'00"E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56'00"E a distance of 130.00 feet; thence N 00°09'00"W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56'00"W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area;
and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District;

Containing 0.43 acres +/- acres in Net.

II. PURPOSE OF LEASE

Pursuant to Ordinance 2021-____ the purpose of this lease is for parking area (hereinafter called "ACTIVITIES"). The allowed uses shall be in conformance with of the Lessee's Development Plan (, and the terms and conditions of any city zoning permits.

Development Plan

The Lessee's Development Plan illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the nature of uses. The Development Plan approved under this lease describes the scope

of ACTIVITIES authorized by the lease. The initial approved development plan is incorporated by reference as Attachment A.

- a. Modification of Development Plan. The Development Plan may be modified by mutual agreement as necessary to advance the purposes of this lease. Modifications of Lessee's development plan may be made through the written approval of the KPB Mayor of a modified development plan submitted by Lessee to KPB in writing at least 60 days prior to anticipated modification of ACTIVITIES. Approved modifications shall be attached to this lease and effective upon the Mayor's written approval.

Ingress and Egress

Lessee may, at any time, have ingress and egress directly from Lessee's own property. As a revocable matter of permission, Lessee may have ingress and egress along the existing driveway from Lawton Drive to the east of the lease area, until such time as permission is revoked in writing by KPB. Lessee has the option of developing a new driveway directly to Lawton Drive along the frontage of the lease area, subject to any permitting requirements of the local road authority.

III. RECITALS AND RIGHTS RESERVED TO KPB

1. Nothing contained herein creates or implies any additional property interests, including easements or rights-of-way in the Property beyond the terms and conditions of this Lease.
2. The KPB reserves the right to require improvements to be removed by the Lessee at the termination of the Lease.
3. Lessee shall not develop beyond what is specified in the development plan, unless approved in writing by KPB.
4. KPB reserves the right to authorize other land uses on the Property by easement or permit which do not unreasonably interfere with Lessee's use.

IV. TERMS AND CONDITIONS

1. Lease Term. This lease is for term of ten (10) years commencing September 1, 2021 and with an option to renew, by written mutual agreement, for a renewal term of ten (10) years.
2. Lease Rental. The annual lease rental for the first 5 years of this lease is \$_____, which is based on 8 percent of the fair market appraisal of the net leased area. The annual lease rental for each successive 5-year period of the lease shall be set

at 8 percent of the fair market value. The KPB Assessing Department shall conduct the appraisal. Should lessee dispute the value of KPB's appraisal, then Lessee may obtain an appraisal from a professional independent fee appraiser upon which the parties can agree to adopt one appraisal, and if no agreement is reached then then the rate shall be set at the average of the two appraisals.

3. Defense and Indemnification.

The Lessee shall indemnify, defend, save and hold the borough, 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 Lessee's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The Lessee shall be responsible under this clause for any and all claims of any character resulting from Lessee or Lessee's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, Lessee shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

4. Insurance

Insurance coverage required under this Lease shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Lease shall remain in effect for the life of this Lease and shall be a part of the contract price. If Lessee'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 Lease, 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 Lease and updated certificates shall be provided upon insurance coverage renewal, where applicable.

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. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Borough may choose to maintain. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on the liability of the Lessee

under the indemnities granted to the Borough in paragraph 3 of this Lease.

4.1 Commercial General Liability. Lessee shall provide and maintain, Commercial General Liability Insurance (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. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.

4.2 Workers' Compensation. Lessee shall provide and maintain, for all of its employees engaged in work under this Lease, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Lessee shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Lease. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Subrogation shall be waived.

4.3 Auto Liability. Lessee shall provide and maintain, Auto Liability Insurance (ALI). 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.

5. Waste. Lessee shall not commit waste or injury upon the lands leased herein.

6. Fire Protection. 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 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.

7. Safety. Lessee shall be solely responsible for maintaining the premises in a safe and fit condition. Lessee is responsible for the safety of all persons conducting activities on the property under this lease. Lessee agrees to provide the public with information regarding rules and regulations and other information pertaining to the property and the lease.
8. Sanitation. Lessee shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environment Conservation regulations.
9. Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

Lessee shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may Lessee utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and Lessee shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

10. Compliance With Laws. The Lessee agrees to comply with all applicable federal, state, borough, and local laws and regulations.

11. Easements and Rights-of-Way. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which Lessee has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that Lessee shall receive no damages for such grant.

12. Inspections. Lessee shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with or without advance notice to Lessee, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.
13. Property Taxes. Lessee shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should Lessee become delinquent in the payment of any such obligations.
14. Assignments. Lessee may assign this Lease only if approved in advance by KPB. 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 KPB are fully protected. The assignee shall be subject to and governed by the terms and conditions of this lease and applicable laws and regulations.
15. Cancellation. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the Lessee and either the KPB Mayor or Planning Director when applicable.

This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

Lease lands shall be utilized for the purposes of the development, management,

and maintenance of the SPARC facility within the scope of the terms and conditions of the lease and in conformity with the lessee's development plan, applicable classification, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and will become subject to cancellation.

Failure on the part of the lessee to substantially complete the development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

16. Termination. Upon termination of this Lease, Lessee covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of Paragraph 23 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease. Subject to the following, in the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the contract is in default.

In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without notice to Lessee prior to the effective date of the termination.

17. 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.
18. Notice of Default. Notice of the default, where required, will be in writing and as provided in the Notice provision of this Lease.
19. Entry or Re-entry. In the event that the Lease is terminated, canceled, or forfeited, or in the event that the demised lands, 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 lands 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 contract.

20. Removal or Reversion of Improvements upon Termination of Lease.

Improvements on the property owned by Lessee shall, within ninety (90) calendar days after the termination of the agreement, be removed by Lessee; provided such removal will not cause injury or damage to the land; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The Lessee may dispose of its improvements to a succeeding lessee with the consent of the KPB mayor.

If any improvements and/or chattels that are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to KPB.

21. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the land during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle KPB to charge a reasonable rent therefor.

22. Resale. In the event that this Lease agreement should be terminated, canceled, forfeited, or abandoned, KPB may offer said lands for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.

23. 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 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.

All notices shall be sent to both parties as follows:

LESSOR

Kenai Peninsula Borough
Planning Director
144 N. Binkley
Soldotna, AK 99669-7599

LESSEE

Edward and Kathleen Martin,
DBA Cozy Inn
35555 Kenai Spur Highway, PMB 471
Soldotna, AK 99669

26. Responsibility of Location. It shall be the responsibility of the Lessee to properly locate its self and its improvements on the leased lands.
27. 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. In the event that any prohibited lien is placed against the property, Lessee shall immediately cause the lien to be released. Lessee shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys' fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the KPB, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.

28. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by Lessee, or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB 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 the payment fully satisfies the breach.
29. 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 prosecuted at Kenai, Alaska and shall be governed by Alaska law.
30. Savings 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.
31. Binding Effect. It is agreed that all covenants, terms, and conditions of this agreement shall be binding upon the successors, heirs and assigns of the original parties hereto.

32. Full and Final Agreement. This agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This agreement 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 agreement have been made with the intention of inducing execution of this agreement.
33. Warranty of Authority. Lessee warrants that the person executing this agreement is authorized to do so on behalf of Soccer Association of Homer.

KENAI PENINSULA BOROUGH

Charlie Pierce, Mayor

Dated:_____

ATTEST:

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY:

Johni Blankenship
Borough Clerk

Sean Kelley
Deputy Borough Attorney

Lessee

Edward Martin Jr.
Dated: _____

Kathleen Martin
Dated:_____

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: _____

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021, by Ed Marin Jr, DBA Cozy Inn.

Notary Public in and for Alaska
My commission expires: _____

NOTARY ACKNOWLEDGMENT

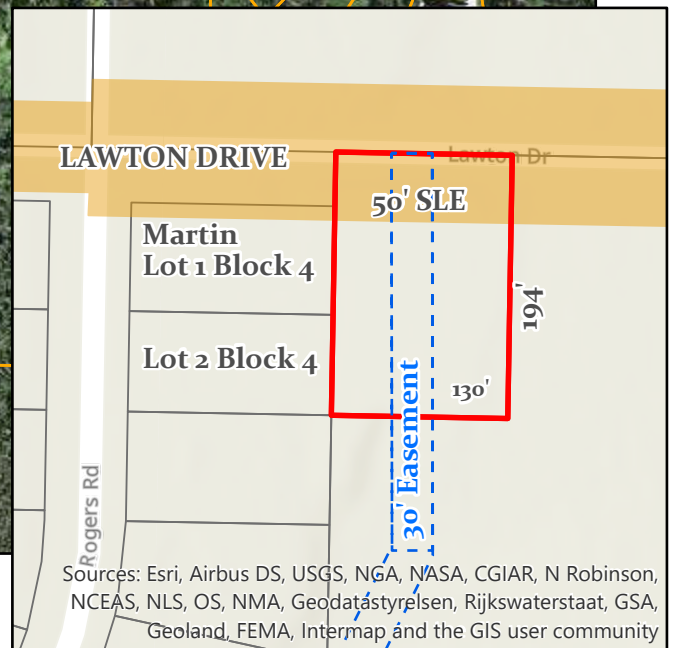
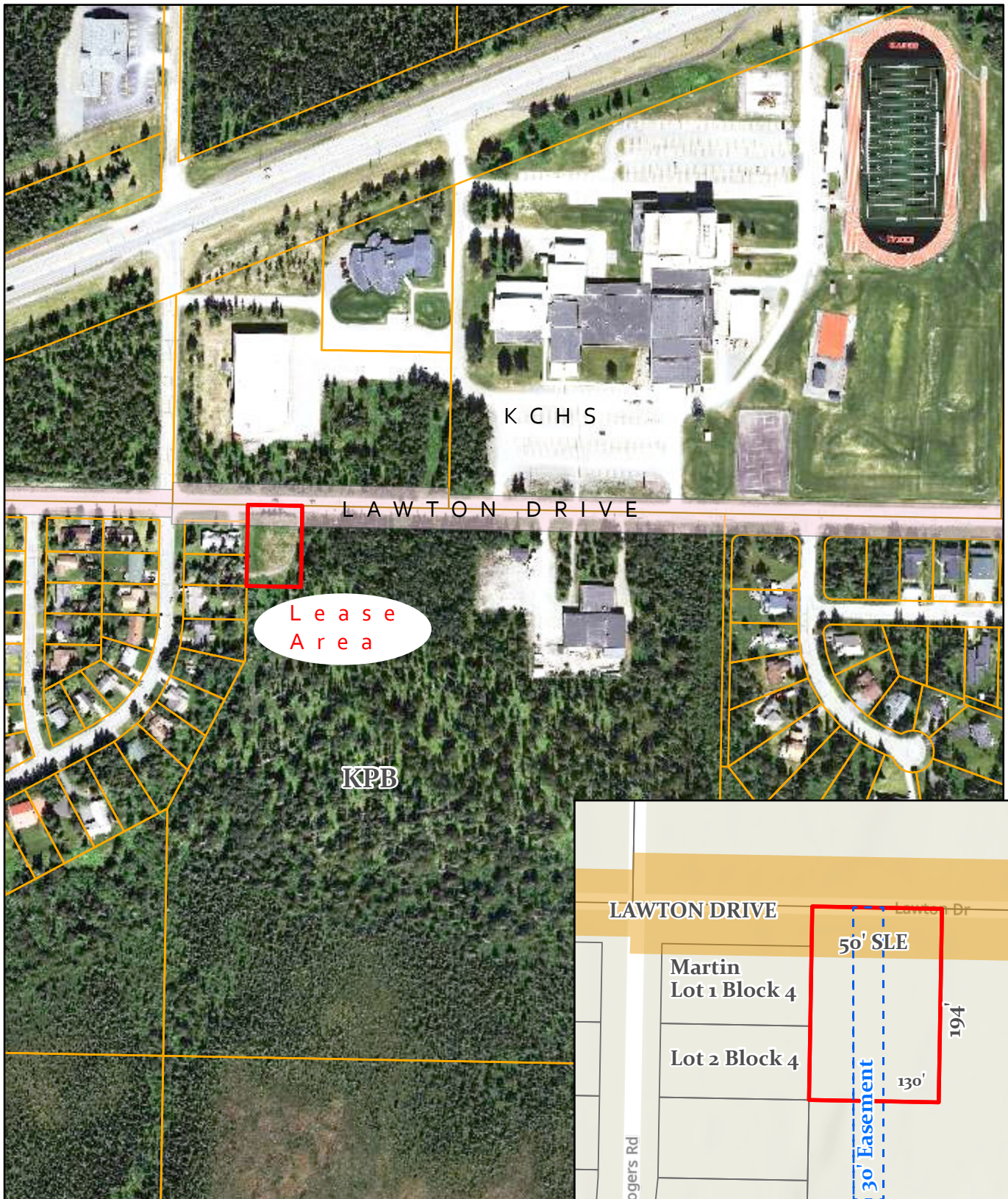
STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of
_____ 2021, by Kathleen Martin, DBA Cozy Inn.

Notary Public in and for Alaska

My commission expires: _____

Parking Area Lease Map



ATTACHMENT A DEVELOPMENT PLAN

Kathleen A. Martin

DBA Cozy Inn

Mailing Address: 35555 Kenai Spur Hwy., PMB 471 Soldotna, AK 99669

Physical Address: 702 Lawton Drive Kenai, AK 99611

Email: keeconstructionllc@yahoo.com

Phone: (907)252-8163

July 1, 2021

Julie Denison, Land Management Technician
 Kenai Peninsula Borough
 144 N. Binkley Street
 Soldotna, AK 99669

Re: Letter Dated 6/29/2021 via certified mail 7019 2280 0000 7385 7087
 Application for Land Use Permit and Negotiated Lease
 APN: 04901048

Dear Ms. Denison,

In regards to your letter requesting more information as noted above:

To clarify, the Land Use Permit and Negotiated Lease are both requested for the proposed use of the NW corner of APN 04901048 as parking for student vehicles. Specifically, the students are all adults attending Commercial Drivers License and/or Basic Civil Construction courses.

HOWEVER, they are NOT attending these courses at 35555 Kenai Spur Highway in Soldotna; that is the location of our mail box. They are attending courses held at our 37200 Thomas Street property in Sterling, AK.

Types and quantity of vehicles anticipated is unclear you said; the vehicles will be the students privately owned vehicles (cars, vans, pick-up trucks, SUVs). There can be up to 8 students in each class, so up to a total of 16 (8x2) student vehicles parking on the requested property (Marcus Mueller computes .5 acres) at any one time. Each class last 3 weeks, so the specific vehicles parking on property will change as new classes begin with new students.

Development Plan

USE: Parking of Student owned vehicles as described above.

Nature of Improvements: Clearing, use of existing on-site material or imported gravel to meet requirements & log bumpers.

Estimated value of Improvements: \$5,000.00

The property, APN: 04901048, had been cleared/used in the past by the former owners of Irene's B&B. Some trees have begun to grow in the area again as you would have noticed on your site visit. We would like to mulch some of said trees to provide a flat parking area. A 34' vegetation boarder of second growth can be left within the 50' ROW (we would like to do this if you don't object). The area would be designated as a parking area so that each student can be assigned a specific parking space. The property would be kept clean with regular litter patrols and maintained to keep plant life, like trees, from re-growing in the area we clear. The estimated value of the improvements is \$5,000.00

In your letter you also asked that we not materially interfere with or hinder the City of Kenai's ability to manage storm water. The City of Kenai's storm water line is located underground in this area. We will not be constructing anything onto the site, nor will we be fencing in the site; we are simply asking to park privately owned vehicles on the site. City of Kenai Municipal Code 14.20.250 you provided (4A) states bumper guards should be used where needed; we can use

ATTACHMENT A DEVELOPMENT PLAN

lengths of log that can be rolled/moved out of their way should they need to dig up their line for replacement or maintenance. A durable, well drained and dust free surface can be accomplished with gravel. We have no intention of hindering any City of Kenai employee(s) from access to do his/her/their job(s).

Site Plan Drawing (see Exhibits A, B & C)

Exhibit A – detailed drawing

Exhibit B – smaller in scale to give a clearer view of the property/project as a whole

Exhibit C – Photo taken from KPB map site to show exact location of old entrance/exit used by Irene's B&B.

In your letter you state that the property is located within the City of Kenai and the west half is zoned Rural residential; the east half is zoned Education – please provide me with the documentation. The Kenai Peninsula Borough map site list the property uses as "Institutional." I spoke with Marcus Mueller about this and we both understood this property to be "educational" in use and therefore a good fit as we are intending its use to be for the parking of students' vehicles.

You go on to say the parcel is subject to a 50' wide section line easement along the north boundary.

I have made multiple calls to you for further information/clarification because I need to know where the 50' starts/originates to avoid the totality of it (the photo you provided is too digitalized to see even the roadway clearly and there are no labeled reference points). I understand you may be busy, but without a point of origin a layman can understand, I have to assume it begins at the centerline of Lawton Drive. If this is true, half the width of the road (16'4") plus a 34 foot vegetation buffer will avoid the 50' section line easement.

If I am incorrect as to where the 50' section line easement begins, we can shift the area on the Site Plan Drawing, with your assistance to identify where it actually is, to make it avoid the area.

As you can see on the Site Plan Drawing enclosed, I have drawn out 24 (12'x20') parking spaces in a herringbone pattern. A typical personally owned pick-up truck measures 6.9'x20' – this will allow for plenty of space to open doors without denting/scratching the vehicle that may be in the neighboring spaces. We can keep the design at 24 spaces to allow for future class growth or we can eliminate spaces to avoid the 50' section line easement if necessary. The parking spaces can also be shifted west to east if necessary; we are willing to work with you to accomplish whatever will work.

To clarify that we read and are planning to be consistent with the City of Kenai Municipal Code 14.20.250 Off Street Parking and Loading Requirements:

(a) For commercial development, there shall be provided at the time of construction of any main building or at the time of the alteration, enlargement, or change in use of any main building, permanently maintained off-street parking facilities for the use of occupants, employees, or patrons of such building. It is the joint and several responsibility of the owner and/or occupant of any main building or structure to provide, and thereafter maintain, minimum free off-street parking facilities as required in this section.

We purchased an existing structure built in 1976 that was used as Irene's B&B. We are trying to provide parking as required that the prior owners did not have.

(b) No existing parking area and no parking area provided for the purpose of complying with the provisions of this chapter shall hereafter be relinquished or reduced in any manner below the requirements herein established.

OK.

(1) Site Plan Submission. A site plan showing all parking and loading areas shall accompany all applications for building permits. The plan shall show dimensions of spaces, curb cuts, and other information necessary to determine compliance with the provisions of this chapter. The administrative official shall approve or reject the site plan on the basis of compliance with the requirements of this chapter. No certificate of zoning compliance and building permit shall be issued unless the parking site plan is approved.

We do not need a building permit. A site plan has been included to show the dimensions of spaces. A curb cut is not necessary to utilize the egress from our 436 Rogers Road lot (back yard). A curb cut will be necessary if the Kenai Peninsula Borough is willing to allow us to utilize the old access shown in Exhibit C (marked with blue dot) off of Lawton Drive.

(2) Joint Parking Areas. Where there is more than one (1) use in a single structure or on a site (e.g., doctor, attorney, and retail grocery) or two (2) or more separate instances of the same use, off-street parking requirements shall be the sum of the requirements for the various uses; provided however, that where two (2) or more uses provide a single joint parking area, and their total required spaces totals twenty (20) or more, the minimum requirement will be seventy-five percent (75%) of the sum of the requirements for the various computed separately.

Doesn't apply; no joint parking area.

(3) Location of Parking. Any parking space provided pursuant to this section shall be on the same lot with the main use it serves or on an adjoining lot except that the Commission, by a conditional use permit as specified in this chapter, may allow parking spaces on any lot if it is determined that it is impractical to provide parking on the same or adjoining lot.

Impractical; need 16 spaces. That is why we have applied to lease property from the adjoining lot.

(4) Design Standards.

(A) All parking lots shall be provided with a durable, well-drained, and dust-free surface and shall have appropriate bumper guards where needed;

This can be accomplished with gravel. If the City of Kenai wants us to have bumper guards we can use logs that can be rolled/moved out of their way if they should need to dig up their line for repair/replacement.

(B) Parking areas and front yards as defined in KMC [14.20.320\(b\)](#), which includes the required parking spaces, in commercial use areas shall not be used for storage, repair work or any purpose other than parking, landscaping, signage, or sales displays. A non-conforming use of parking areas and front yards prohibited by this section shall be made to conform to this section within a period of one (1) year after adoption of the ordinance codified in this section. OK.

Exception: Semi-trailers or containers may be parked in these areas for no more than thirty (30) consecutive days to facilitate unloading. Trucking terminals and bona fide construction sites are exempt; N/A No semi-trailers

(C) Any lighting of parking lots shall be arranged to reflect away from public rights-of-way and from any adjoining residential areas; No lighting

(D) Curb cuts shall be located so as to avoid traffic hazards and shall be approved by the administrative official; OK – please let me know if a curb cut at the afore mentioned old entrance/exit point on Exhibit C would be considered a traffic hazard. I don't believe it would be.

(5) Interpretation of Space Requirements. If a use is not specifically mentioned in this section, the administrative official shall determine the most similar use which is specifically mentioned. Parking requirements shall be the same as for that use; OK.

(6) Exception to this Section—Public Parking Lots. Notwithstanding other provisions of this section, when a use is located within three hundred feet (300') of an existing or planned public lots, the off-street parking requirements of this chapter may be met if under the procedures specified in this chapter, the Commission issues a conditional use permit stating that the following conditions have been met: The closest Public Parking lot is the City of Kenai Multipurpose Facility (9775 Kenai Spur Hwy.). It is across Lawton Drive from our property and does not abut our property. I have no idea what types of events they may host, how much "extra" parking area they may have, etc.

(A) The public parking lot exists within reasonable distance of the use, or plans for the public parking lot are sufficiently advanced to give reasonable assurance that the lot will be in use within one (1) year of the time of issuance of the conditional use permit;

(B) The owner and/or occupant of the use in question shall sign a covenant agreeing to join an assessment district to pay for the public parking lot;

(C) The public parking lot has or will have sufficient capacity to accommodate the use in question plus other parking needs of existing and potential uses within a reasonable distance of the lot. The Commission shall use the off-street parking requirement as cited above to estimate the parking spaces needed within a reasonable distance of the lot.

(7) Off-Street Loading. Every building or structure used for business, trade, or industry and normally requiring truck loading or unloading with respect to the use, shall provide space as herein indicated for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public alley, or, if there is no alley, to a street. Off-street loading and unloading space shall be in addition to and not considered as meeting a part of the requirement for off-street parking space. Off-street loading and unloading space shall not be used or designed, intended, or constructed to be used in a manner to obstruct or interfere with the free use of any street or adjoining property. The minimum off-street loading and unloading space required for specific uses shall be as follows: No off-street loading.

(A) Retail business and service establishments shall provide one off-street loading and unloading space at least ten feet (10') wide and thirty-eight feet (38') long with a fourteen-foot (14') height clearance per building;

(B) Industrial plants shall provide one off-street loading and unloading space for each twenty thousand (20,000) square feet of gross floor area. Each loading space shall be minimum of twelve feet (12') wide and fifty feet (50') long with a fourteen-foot (14') height clearance;

(C) Trucking terminals shall provide one off-street loading and unloading space for every five thousand (5,000) square feet of total floor area used for storage, warehousing, and shipping. Each loading space shall be a minimum of fourteen feet (14') wide and sixty-five feet (65') long with fourteen-foot (14') clearance.

(8) Off-Street Parking Requirements.

DWELLING AND LODGING

MINIMUM NUMBER OF PARKING SPACES REQUIRED

Lodges, rooming/boarding houses, dormitories, bed and breakfast, and other structures containing sleeping rooms other than, or in addition to dwelling units	One (1) per principal dwelling unit and one (1) per guest room or one for every two (2) beds whichever is greater.
Mobile home parks	Two (2) per mobile home.
Motels, hotels and cabin rentals	One (1) per unit plus two (2) spaces.

DWELLING AND LODGING

MINIMUM NUMBER OF PARKING SPACES REQUIRED

Multiple-family dwellings, retirement homes and other places containing multiple dwelling units	One (1) per efficiency unit; and two (2) per other units.
Single-family dwellings, two-family dwellings and child care homes	Two (2) per dwelling units.

Development & Construction Timetable

The 2 storage buildings you mentioned as in trespass have been moved; they were placed there by the prior owners apx. 21 years ago. We had our 2 lots surveyed so we could be assured that we moved them completely onto our property. See photo below. We are ready for your site visit.



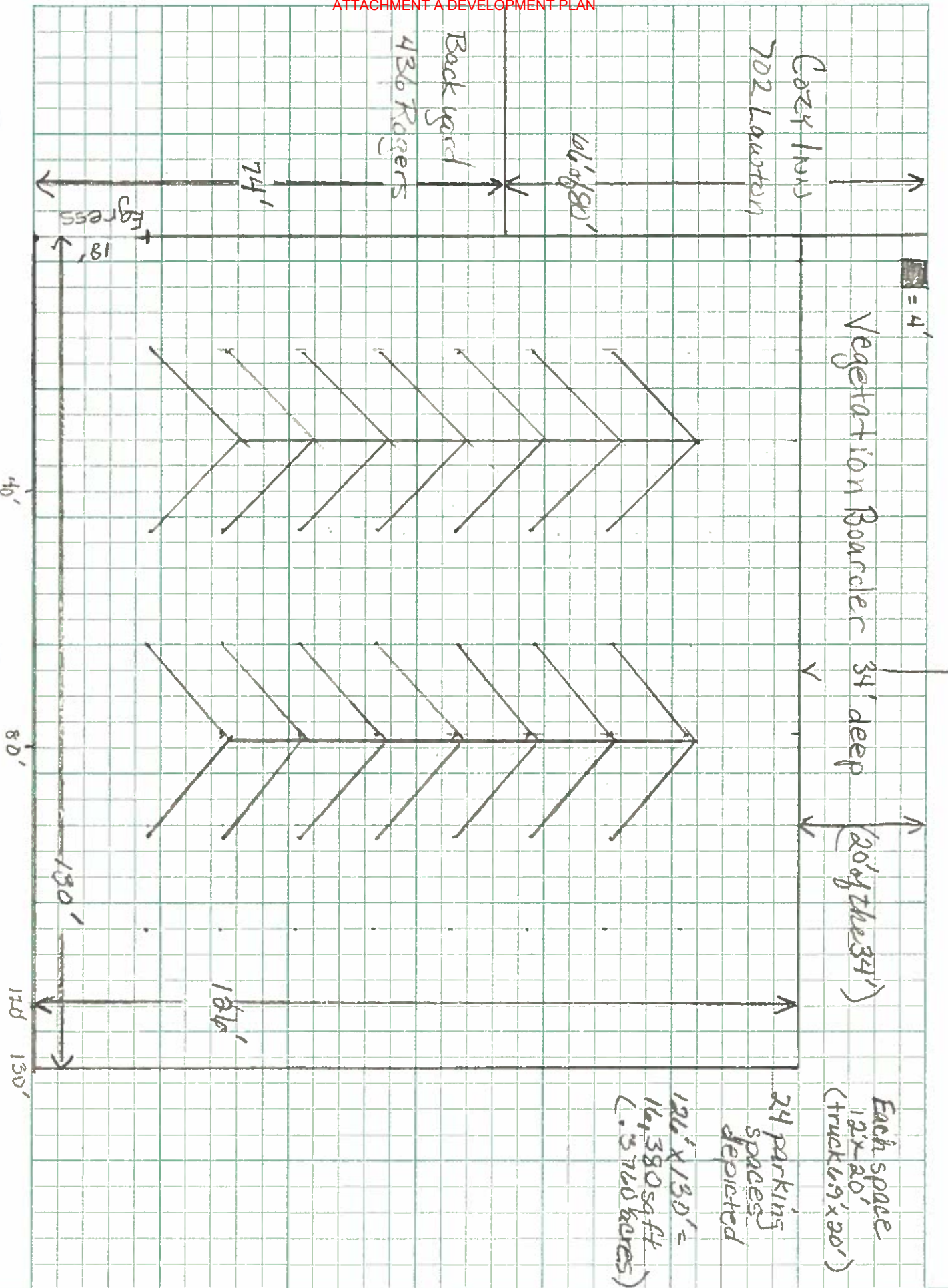
Sincerely,

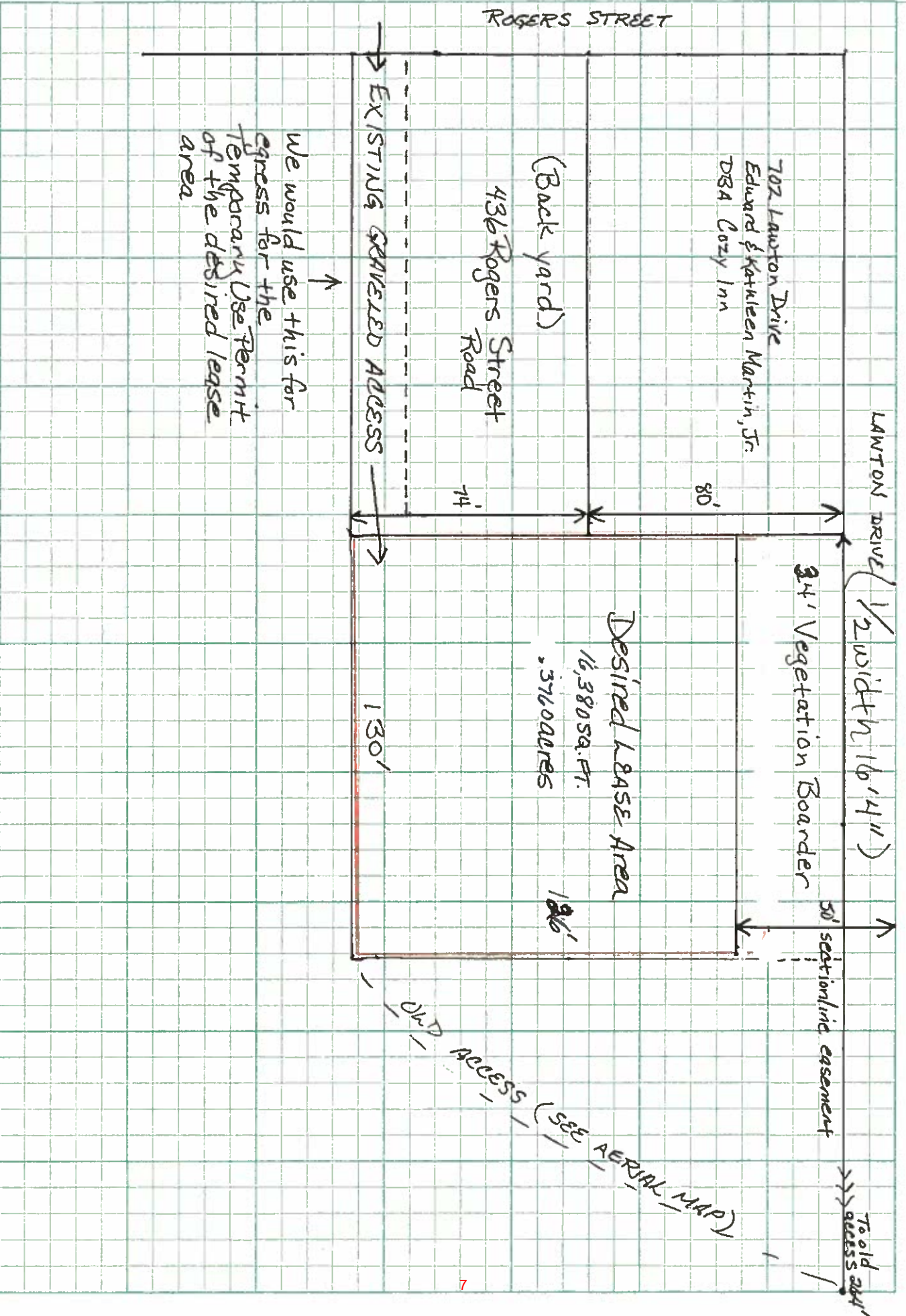
Kathleen A. Martin
 Kathleen A. Martin, Owner
 (907)252-8163
 7/12/2021

← LAMION DRIVE →

Exhibit A

ATTACHMENT A DEVELOPMENT PLAN







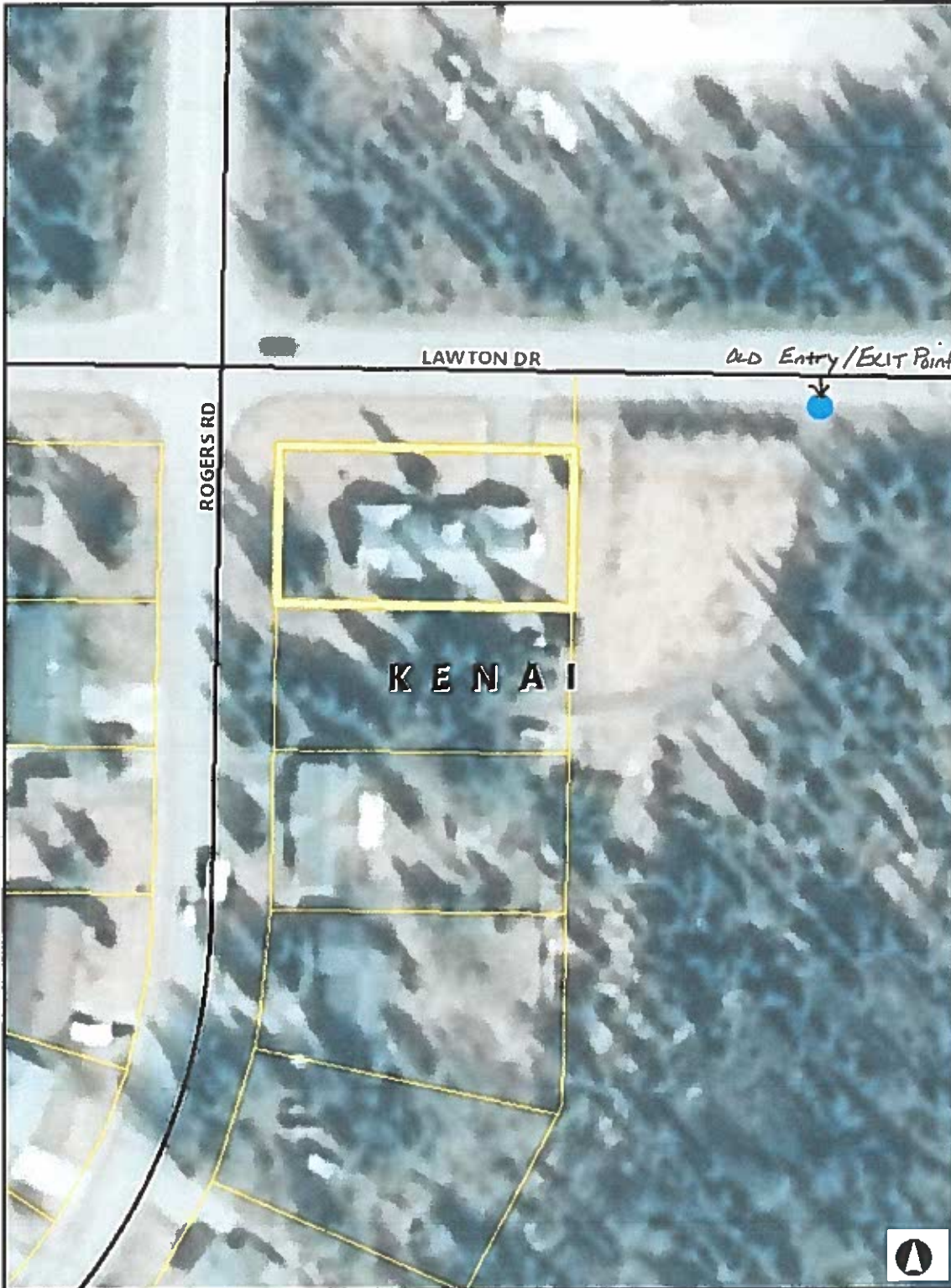
Geographic Information Systems

144 North Binkley Street, Soldotna, Alaska 99669

ATTACHMENT A DEVELOPMENT PLAN

Temp. Use Perm. & Lease App 04901046

116



Legend

- Mileposts
- City Limits
- Highways
- Major Roads
- Roads
 - Town Medium Volume
 - Town Low/Seasonal; Other
 - Proposed
- Parcels
- Image
 - Red: Band_1
 - Green: Band_2
 - Blue: Band_3

Exhibit C

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

Notes

Map of 702 Lawton Drive, 436 Rogers Road and 750 Lawton Drive


DATE PRINTED: 7/6/2021

Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director 

DATE: July 14, 2021

RE: Right-of-way Vacation: Vacating a portion of C St. right-of-way adjoining Lot 1 Block 2 & Lot 3 Block 3 as dedicated on US Survey No. 4901 Tracts A through D, Townsite of English Bay Plat SL 71-62. KPB File 2021-085V

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 July 12, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation of a portion of the above right-of-way by unanimous vote based on the means of evaluating public necessity established by KPB 20.70 (10-Yes, 0-No, 1-Absent) This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

July 12, 2021 Planning Commission Draft Meeting Minutes
July 12, 2021 Agenda Item E2 Meeting Packet

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Ruffner to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS**ITEM 2 - RIGHT OF WAY VACATION****Townsite English Bay USS 4901****C Street adjoining Lot 1 Block 2 Right of Way Vacation**

KPB File No.	2021-085V
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Village Council Nanwalek Village of Nanwalek, Alaska
Surveyor:	Kenton Bloom / Seabright Surveying
General Location:	C Street, Nanwalek, AK
Legal Description:	C Street / Townsite English Bay USS 4901/ Seldovia Recording District / Section 35, Township 09 South, Range 16 West, S.M.

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: The proposed right of way vacation, and dedication, will adjust the right of way to encompass the existing travel way as well as alleviate the encroachment of the Nanwalek Village community building into the right of way. The adjustment of the dedicated right of way will allow future construction on the Nanwalek Village community building to be completed without creating an encroachment into the right of way.

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

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

9 public hearing notices were emailed to agencies and interested parties as shown below;

- State of Alaska Dept. of Fish and Game
- State of Alaska DNR
- State of Alaska DOT

- Library of Seldovia
- Post Office of Seldovia
- Alaska Communication Systems (ACS)
- ENSTAR Natural Gas
- General Communications Inc., (GCI)
- Homer Electric Association (HEA)

Legal Access (existing and proposed): The right of way vacation and dedication is located within Nanwalek. The portion of C Street proposed for vacation is accessed from Chicklounk Street to the north and Saints Sergus and Herman Street to the south. Chicklounk Street is a 40 foot wide right of ways that have been improved but is not maintained. Access to the south is from Saints Sergus and Herman Street which is a 60 foot wide right of way that has been improved and is maintained by the State of Alaska.

C Street is an improved roadway but a portion is located outside of the dedicated right of way and within Lot 3. The proposed vacation, if approved, will be finalized with a plat that will dedicate right of way centered on the existing travel way.

The design for the subdivision was created in 1967 and recorded in 1971. The block length fits into the design of the village and if the block indeed is short of the minimum qualification staff will ask for the Plat Committee to concur that this subdivision, which is to correct an encroachment issue, is not able to improve the block length.

KPB Roads Dept. comments	Comments not available at the time the staff report was prepared.
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed the ROW vacation, for interpretation of any existing State ROW. Since this does not appear to be a State Road, we have no comment on this ROW vacation.

Site Investigation: The area proposed to be vacated and the new dedication do not appear to have any low wet areas. The area is within Flood Zone C which is minimal flood risk.

Contour information is not available for the area. The top of the cliff is depicted on Lot 3 Block 3. If any steep slopes are found in the proposed right of way dedication when the field survey is performed they will need to be depicted and additional easements may be required.

Floodplain Hazard Review	Comments not available at the time the staff report was prepared.
Anadromous Waters Habitat Protection District Review	Comments not available at the time the staff report was prepared.
State Parks Review	Comments not available at the time the staff report was prepared.

Staff Analysis: U.S. Survey No. 4901 was recorded in 1971 and the plat provided public right of way dedications. Lot 1 Block 2 and Lot 3 Block 3 is owned by the Nanwalek Village. The Nanwalek IRA Council issued a letter authorizing Chief Kvasnikoff to pursue this action and authority to sign all required documents to finish this vacation.

If the vacation is approved a subdivision plat will be required as property boundaries are being altered. The vacated portion of C Street will attach to Lot 1 Block 2 to the north. Additional right of way will be required to be dedicated from Lot 3 Block 3 so that the right of way will remain 40 feet in width. The sketch in the application depicts an additional right of way dedication at the south corner of Lot 1 Block 2 so that the travel way will be within a right of way.

Lot 3 Block 3 is owned by the Bureau of Indian Affairs (BIA). Proper documentation will be required with the plat submittal to show who has the authority to sign on behalf of BIA and they will need to sign the application as well as the final mylar.

Per Kenai Peninsula Borough Comprehensive Plan 2019 a focus area is Historic Preservation. The right of way width of 40 feet does not comply with KPB subdivision standards but can be found to support the Comprehensive Plan as the minimum width helps maintain the character of historic towns, districts and properties while encouraging commercial, tourist, and cultural development. The Village of Nanwalek is defined within the Comprehensive Plan as a federally recognized Alaska Native tribe. The ability for them to further develop their village community building is supported by the Comprehensive Plan and the proposed vacation is being initiated by them and has the village council's support.

Lot 3 Block 3 is approximately 14,810 square feet in size. The granting of additional right of way will further reduce the square footage of this lot. Due to the steep slopes along the western boundary and the reduced size, this lot may be greatly limited on future use.

The vacation will not pose any access issues as the right of way is currently constructed and used just not within the dedicated area. The new dedications will place the existing gravel road within a dedication. This will eliminate any encroachment issues as shown on the sketch.

The letter submitted states the new dedication will include the utility corridor. Current utility information was not available to staff. The utility providers for the area have been notified to be able to provide comment. **Staff recommends** any utility easements requested by the utility providers be granted on the plat, or work with the utility providers to provide the necessary easements.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is constructed and used but not fully within the dedicated area.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is already constructed and the new alternative right of way will allow the existing access to remain where it is located.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area is part of the Nanwalek Village as created by U.S. Survey No. 4901. All neighboring lots front on dedicated right of ways. The surrounding area has been improved and additional right of ways do not appear to be needed. Comments from the utility providers should be considered to determine if additional utility easements will be needed.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: The right of way does not provide access to a public area or water body. The Nanwalek Village community building is located on Lot 1 Block 2. Moving the location of the right of way will allow an addition to be constructed to the village building.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

Staff comments: This vacation will not limit opportunities for interconnectivity and additional right of way will be dedicated so that the location is shifted to be centered on the existing travel way.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: All lots in the area have access via Chicklounk Street, Saints Sergus and Herman Street, and the remaining portion of C Street. The nearby right of ways have been improved.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: The shift in the location of the right of way will provide equal or superior access.

If approved, a plat will finalize the proposed right of way vacations. The plat has not been submitted at the time the staff report was prepared. An exception to right-of-way width (KPB 20.30.120) will be required. Additional exceptions may be required based on the final size of the new lots. Any wastewater systems in place or plans should be noted and included with submittal of the plat. Exceptions may include lots minimum size (KPB 20.30.200) and portions of wastewater disposal (KPB 20.40).

KPB department / agency review:

Planner – Bryan Taylor	
Code Compliance – Eric Ogren	
Addressing – Derek Haws	
Assessing – Matt Burns	
City Advisory Comments	N/A
Advisory Planning Commission	N/A

Utility provider review:

HEA	
ENSTAR	No comments or recommendations.
ACS	A comment was received and was in the desk packet stating they had no objection as long as there was an agreement with the landowner to relocate the ACS cables affected by the realignment of the right-of-way.
GCI	

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends approval of the right of way vacation as petitioned, subject to;

4. Consent by KPB Assembly.
5. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
6. Grant utility easements requested by the utility providers.
7. Dedication of right of way to keep the right of way width a minimum of 40 feet wide.
8. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other

cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.

- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

**ITEM 3 - RIGHT OF WAY VACATION
VACATE COVE VIEW COURT and ADJOINING 10 FOOT UTILITY EASEMENT
STANLEY'S MEADOW 2021, HM 93-60**

KPB File No.	2021-086V1
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Cecil R. and Ina L. Jones of Fritz Creek, Alaska and Billy Ray and Stephanie Joy Jones of Homer, Alaska
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Fritz Creek Area / Kachemak Bay APC
Legal Description:	Perkins Road, Stanley's Meadow No. 11 Plat 93-60 Homer Recording District, Section 34, Township 04 South, Range 11 West, S.M.

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: Vacate Cove View Court right of way. Petitioner's statement, 'Lots are being replatted.'

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

Public hearing notices were sent by regular mail to 8 owners within 600 feet of the proposed vacation.

16 public hearing notices were emailed to agencies and interested parties as shown below;

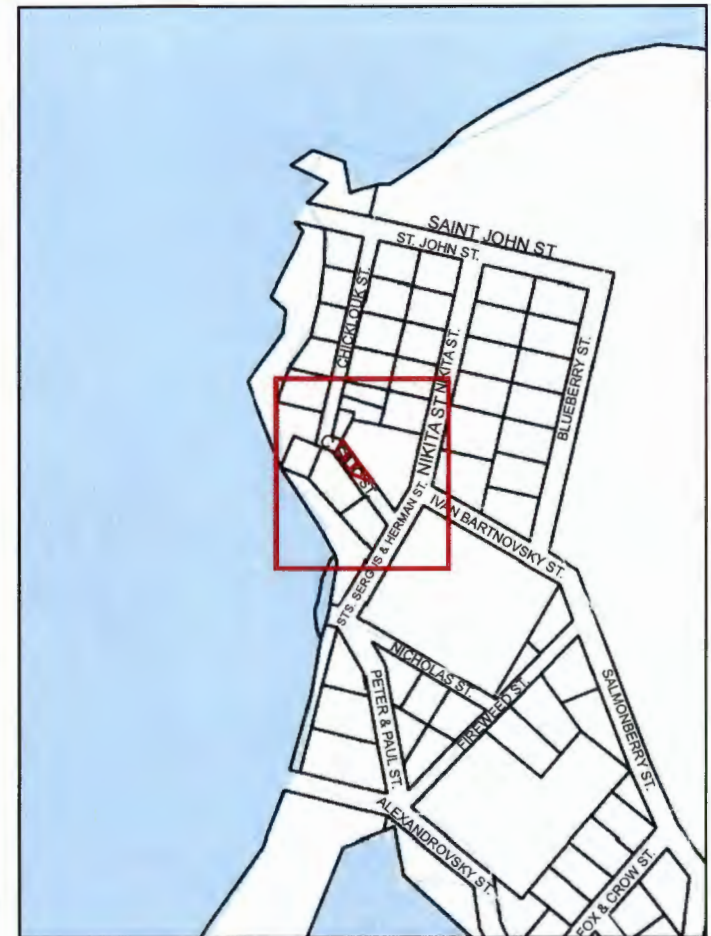
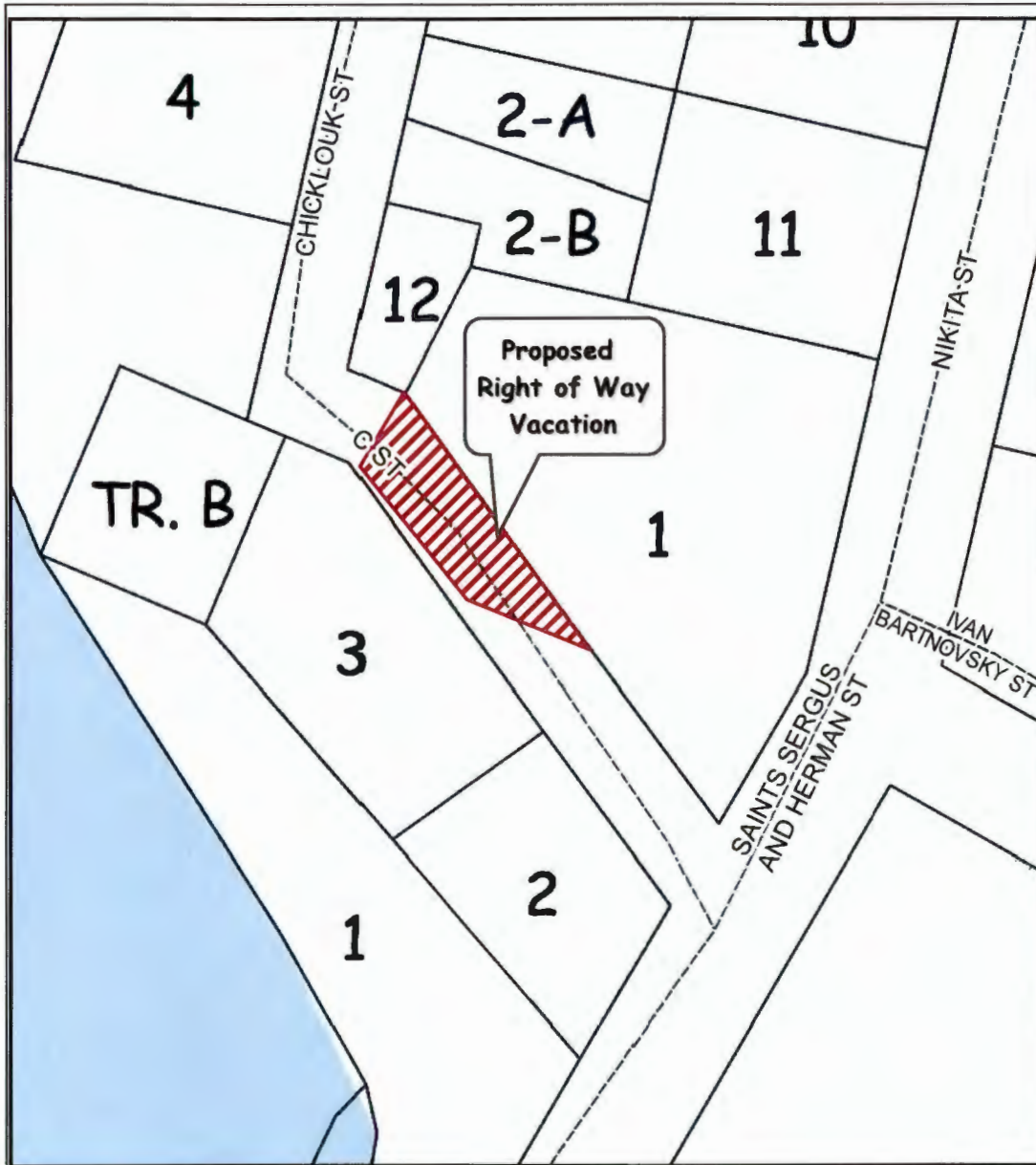
- State of Alaska Dept. of Fish and Game
- State of Alaska DNR
- State of Alaska DOT
- State of Alaska DNR Forestry
- Kachemak Bay Advisory Planning Commission
- Emergency Services of Kachemak
- Homer Kenai Peninsula Borough Office

E. NEW BUSINESS

2. Right-Of-Way Vacation; KPB File 2021-085V

Location: Vacates a portion of C Street right of way adjoining Lot 1 Block 2 and Lot 3 Block 3 as dedicated on U.S. Survey No 4901 Tracts A through D, Townsite of English Bay, Plat SL 71-62.

Petitioner: Village Council of Nanwalek, AK.



0 200 400 800 Feet

KPB 2021-085V
S35 T09S R16W
NANWALEK



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

0 50 100 200'

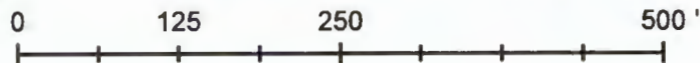
Date: 6/16/2021
 PClements, KPB 2021-085V



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.



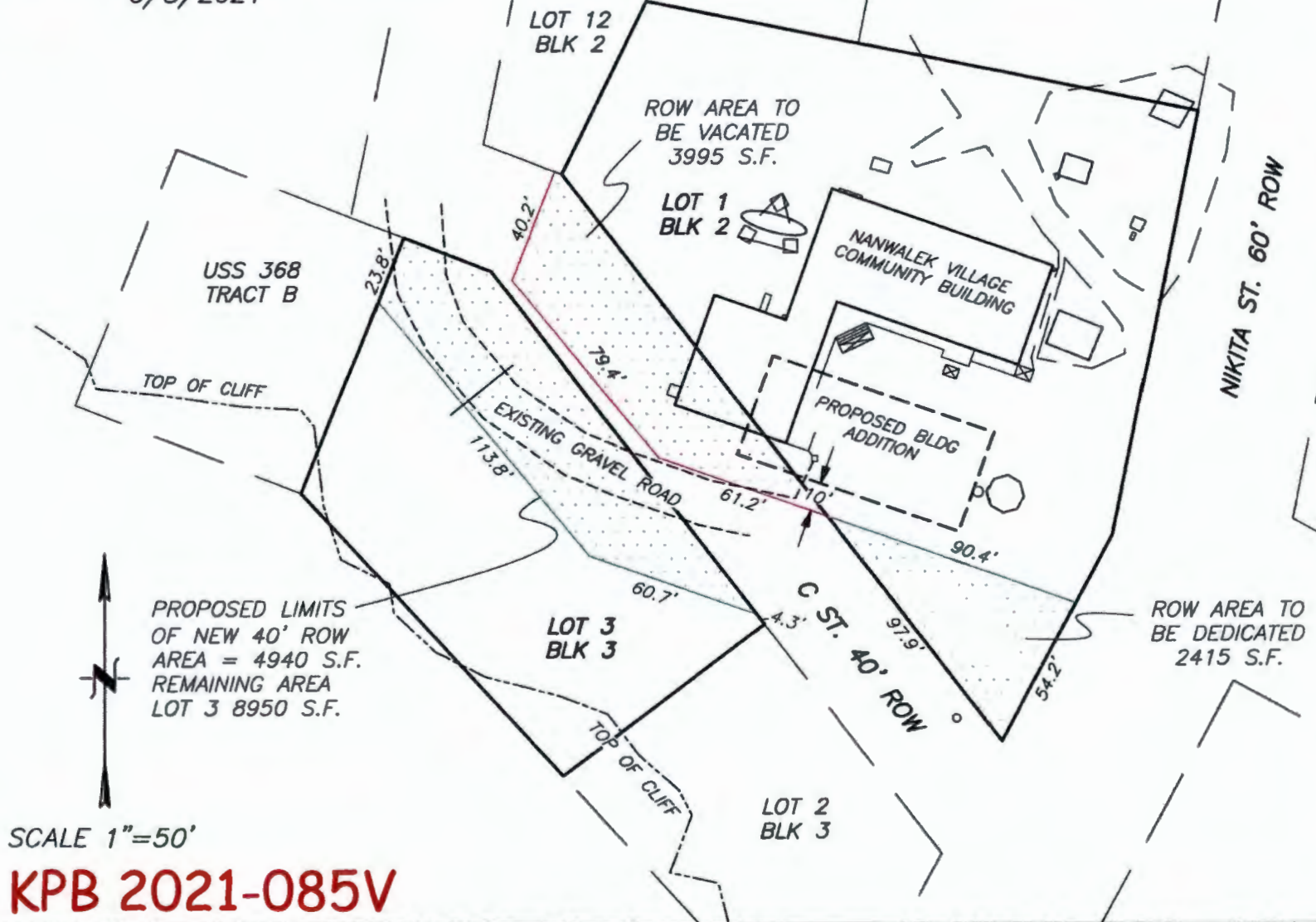
Aerial View



 Right of Way Vacation

PClements, KPB 2017-085V
Date: 6/16/2021
Imagery WORLD

U.S. SURVEY 4901
NANWALEK TOWNSITE
PROPOSED RIGHT OF WAY VACATION
6/8/2021



AGENDA ITEM E. NEW BUSINESS

**ITEM 2 - RIGHT OF WAY VACATION
Townsite English Bay USS 4901
C Street adjoining Lot 1 Block 2 Right of Way Vacation**

KPB File No.	2021-085V
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Village Council Nanwalek Village of Nanwalek, Alaska
Surveyor:	Kenton Bloom / Seabright Surveying
General Location:	C Street, Nanwalek, AK
Legal Description:	C Street / Townsite English Bay USS 4901/ Seldovia Recording District / Section 35, Township 09 South, Range 16 West, S.M.

STAFF REPORT

Specific Request / Purpose as stated in the petition: The proposed right of way vacation, and dedication, will adjust the right of way to encompass the existing travel way as well as alleviate the encroachment of the Nanwalek Village community building into the right of way. The adjustment of the dedicated right of way will allow future construction on the Nanwalek Village community building to be completed without creating an encroachment into the right of way.

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

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

9 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game
State of Alaska DNR
State of Alaska DOT
Library of Seldovia
Post Office of Seldovia

Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc, (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The right of way vacation and dedication is located within Nanwalek. The portion of C Street proposed for vacation is accessed from Chicklounk Street to the north and Saints Sergus and Herman Street to the south. Chicklounk Street is a 40 foot wide right of ways that have been improved but is not maintained. Access to the south is from Saints Sergus and Herman Street which is a 60 foot wide right of way that has been improved and is maintained by the State of Alaska.

C Street is an improved roadway but a portion is located outside of the dedicated right of way and within Lot 3. The proposed vacation, if approved, will be finalized with a plat that will dedicate right of way centered on the existing travel way.

The design for the subdivision was created in 1967 and recorded in 1971. The block length fits into the design of the village and if the block indeed is short of the minimum qualification staff will ask for the Plat Committee to concur that this subdivision, which is to correct an encroachment issue, is not able to improve the block length.

KPB Roads Dept. comments	Comments not available at the time the staff report was prepared.
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SOA DOT comments	<u>The SOA Central Region Right of Way Engineering section has reviewed the ROW vacation, for interpretation of any existing State ROW. Since this does not appear to be a State Road, we have no comment on this ROW vacation.</u>
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Site Investigation: The area proposed to be vacated and the new dedication do not appear to have any low wet areas. The area is within Flood Zone C which is minimal flood risk.

Contour information is not available for the area. The top of the cliff is depicted on Lot 3 Block 3. If any steep slopes are found in the proposed right of way dedication when the field survey is performed they will need to be depicted and additional easements may be required.

Floodplain Hazard Review	<u>Comments not available at the time the staff report was prepared.</u>
Anadromous Waters Habitat Protection District Review	<u>Comments not available at the time the staff report was prepared.</u>
State Parks Review	<u>Comments not available at the time the staff report was prepared.</u>

Staff Analysis: U.S. Survey No. 4901 was recorded in 1971 and the plat provided public right of way dedications. Lot 1 Block 2 and Lot 3 Block 3 is owned by the Nanwalek Village. The Nanwalek IRA Council issued a letter authorizing Chief Kvasnikoff to pursue this action and authority to sign all required documents to finish this vacation.

If the vacation is approved a subdivision plat will be required as property boundaries are being altered. The vacated portion of C Street will attach to Lot 1 Block 2 to the north. Additional right of way will be required to be dedicated from Lot 3 Block 3 so that the right of way will remain 40 feet in width. The sketch in the application depicts an additional right of way dedication at the south corner of Lot 1 Block 2 so that the travel way will be within a right of way.

Lot 3 Block 3 is owned by the Bureau of Indian Affairs (BIA). Proper documentation will be required with the plat submittal to show who has the authority to sign on behalf of BIA and they will need to sign the application as well as the final mylar.

Per Kenai Peninsula Borough Comprehensive Plan 2019 a focus area is Historic Preservation. The right of way width of 40 feet does not comply with KPB subdivision standards but can be found to support the Comprehensive Plan as the minimum width helps maintain the character of historic towns, districts and properties while encouraging commercial, tourist, and cultural development. The Village of Nanwalek is defined within the Comprehensive Plan as a federally recognized Alaska Native tribe. The ability for them to further develop their village community building is supported by the Comprehensive Plan and the proposed vacation is being initiated by them and has the village council's support.

Lot 3 Block 3 is approximately 14,810 square feet in size. The granting of additional right of way will further reduce the square footage of this lot. Due to the steep slopes along the western boundary and the reduced size, this lot may be greatly limited on future use.

The vacation will not pose any access issues as the right of way is currently constructed and used just not within the dedicated area. The new dedications will place the existing gravel road within a dedication. This will eliminate any encroachment issues as shown on the sketch.

The letter submitted states the new dedication will include the utility corridor. Current utility information was not available to staff. The utility providers for the area have been notified to be able to provide comment. **Staff recommends** any utility easements requested by the utility providers be granted on the plat, or work with the utility providers to provide the necessary easements.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021.

20.65.050 – Action on vacation application

D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is constructed and used but not fully within the dedicated area.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is already constructed and the new alternative right of way will allow the existing access to remain where it is located.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area is part of the Nanwalek Village as created by U.S. Survey No. 4901. All neighboring lots front on dedicated right of ways. The surrounding area has been improved and additional right of ways do not appear to be needed. Comments from the utility providers should be considered to determine if additional utility easements will be needed.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: The right of way does not provide access to a public area or water body. The Nanwalek Village community building is located on Lot 1 Block 2. Moving the location of the right of way will allow an addition to be constructed to the village building.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: This vacation will not limit opportunities for interconnectivity and additional right of way will be dedicated so that the location is shifted to be centered on the existing travel way.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: All lots in the area have access via Chicklounk Street, Saints Sergus and Herman Street, and the remaining portion of C Street. The nearby right of ways have been improved.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: The shift in the location of the right of way will provide equal or superior access.

If approved, a plat will finalize the proposed right of way vacations. The plat has not been submitted at the time the staff report was prepared. An exception to right-of-way width (KPB 20.30.120) will be required. Additional exceptions may be required based on the final size of the new lots. Any wastewater systems in place or plans should be noted and included with submittal of the plat. Exceptions may include lots minimum size (KPB 20.30.200) and portions of wastewater disposal (KPB 20.40).

KPB department / agency review:

Planner – Bryan Taylor	
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Code Compliance – Eric Ogren	
Addressing – Derek Haws	
Assessing – Matt Burns	
City Advisory Comments	N/A
Advisory Planning Commission	N/A

Utility provider review:

HEA	
ENSTAR	No comments or recommendations.
ACS	
GCI	

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends approval of the right of way vacation as petitioned, 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. Dedication of right of way to keep the right of way width a minimum of 40 feet wide.
5. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

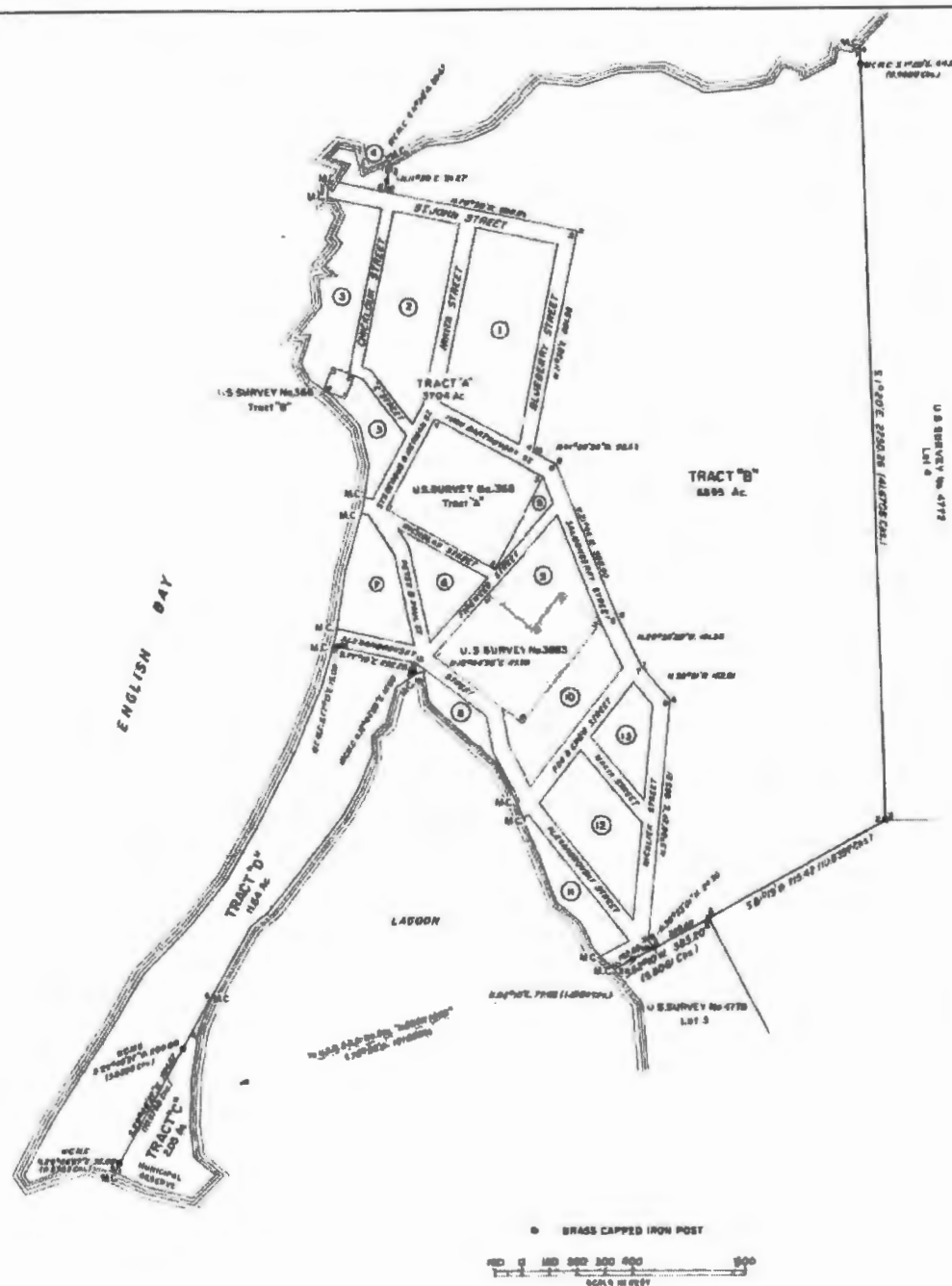
Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination of residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT



U. S. SURVEY No. 4901, ALASKA

TRACTS "A" THROUGH "D" IN THREE SHEETS

FOR DETAILS OF SUBDIVISION OF TRACT "F"
SEE SHEETS 2 & 3

SITUATED

AT THE VILLAGE
OF ELLERRE BAY, ALASKA
WITH TRACTS A THROUGH C
COMPLETING THE TOWNSHIP
OF ELLERRE BAY

AND

THE DEPARTMENT OF THE INTERIOR OF U. S. SURVEY NO. 3863;

LINE 3-4, LOT 4, U. S. SURVEY NO. 4772;

AND

LINE 2-3, LOT 3, U. S. SURVEY NO. 4776

CELESTIAL POSITION

AT WITHIN SEAMER CORNER NO. 12, TRACT A
LATITUDE $59^{\circ}21'17.25''$ N., LONGITUDE $151^{\circ}34'30.43''$ W.

AREA: 119.05 ACRES

DESIGNED BY:

MARION W. THAYER, SUPERVISORY CHIEF, SURVEYOR

JULY 6, 1901, TO AUGUST 17, 1901

Under Special Instructions
Dated June 8, 1907
Approved June 5, 1907

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. April 1, 1911

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Charles F. Shuman

Chief, Division of Cadastral Survey

U. S. SURVEY
No. 4901, ALASKA
TOWNSITE OF ENGLISH BAY

Reference should be made to sheet No. 1,
for survey information.

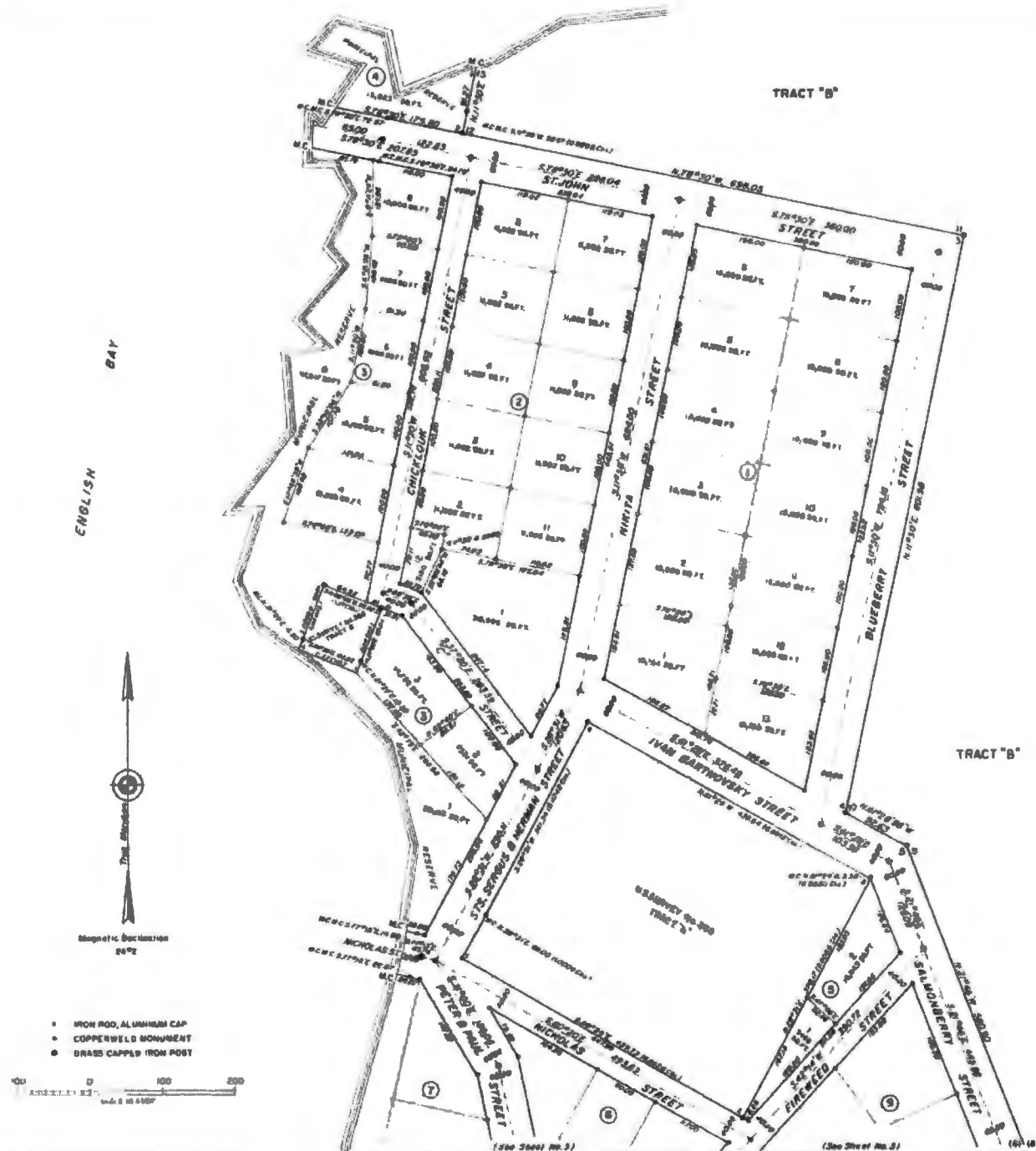
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. April 1, 1971

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Clark F. Lumm

Chief, Division of Cadastral Survey



U. S. SURVEY
No. 4901, ALASKA
TOWNSITE OF ENGLISH BAY

Reference should be made to Sheet No. 1,
for survey information.

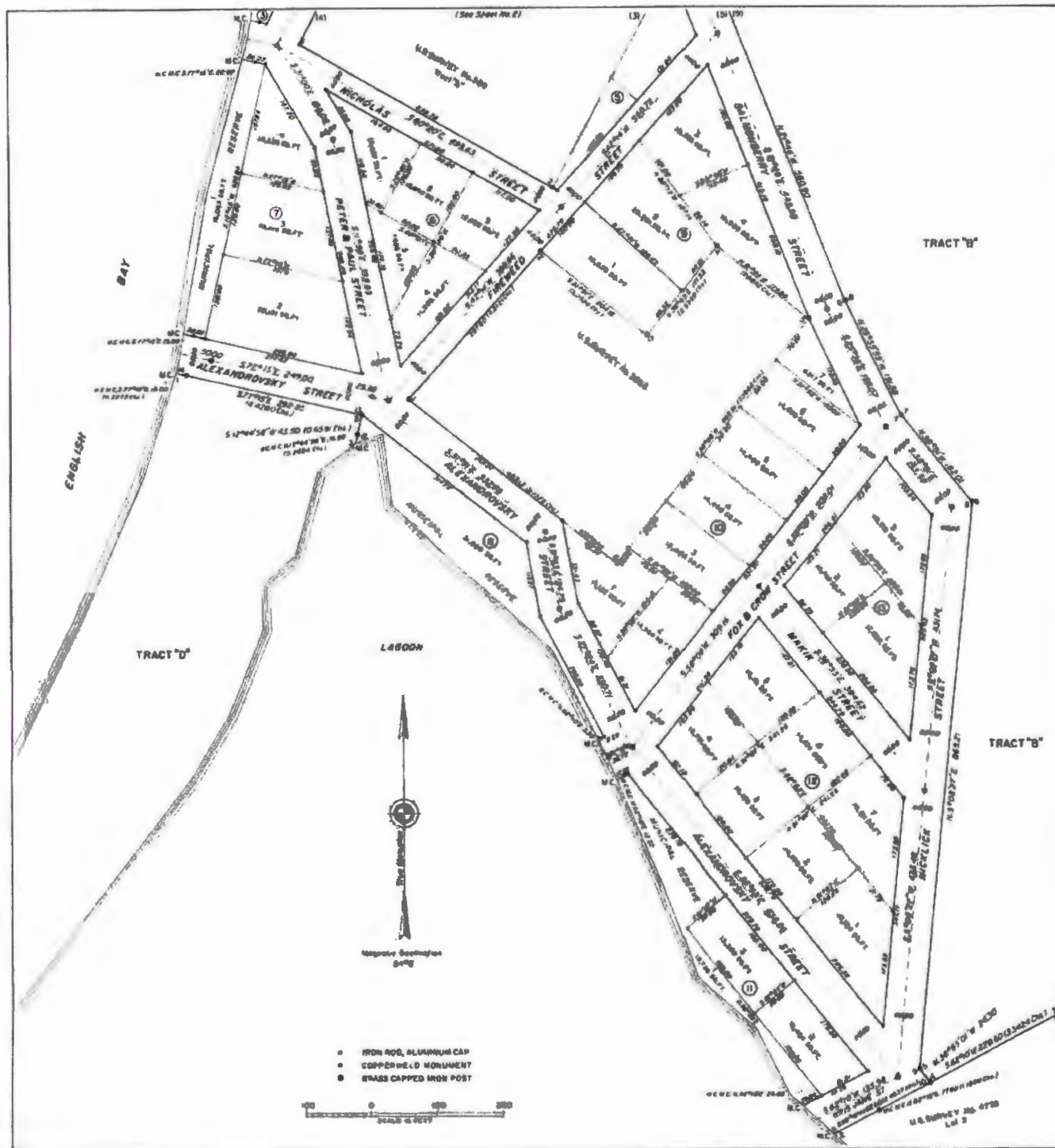
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. April 1, 1972

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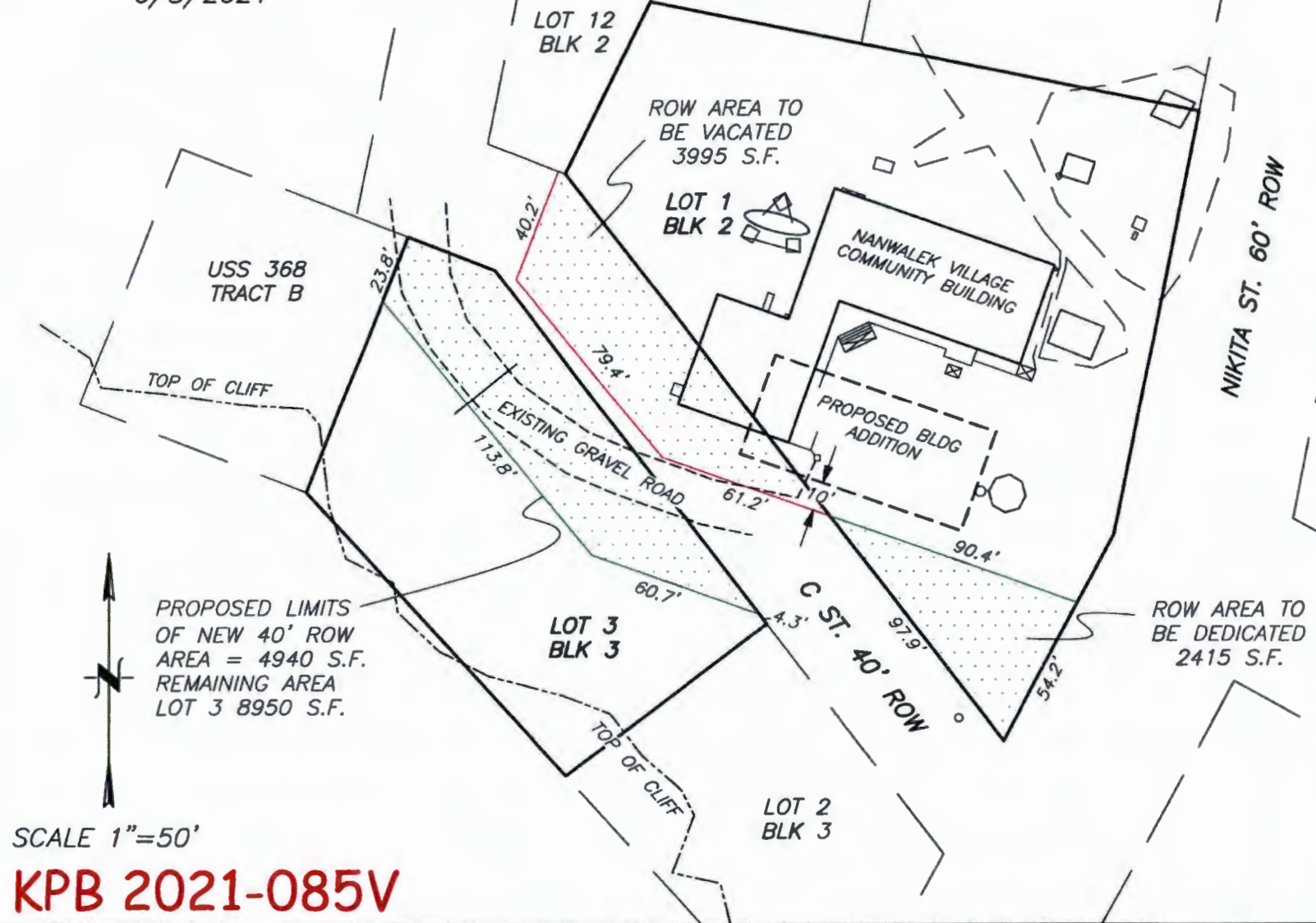
For the Director

Clark F. Shuman

Chief, Division of Cadastral Survey



U.S. SURVEY 4901
NANWALEK TOWNSITE
PROPOSED RIGHT OF WAY VACATION
6/8/2021




Kenai Peninsula Borough

Planning Department

MEMORANDUM

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

FROM: Melanie Aeschliman, Planning Director 

DATE: July 14, 2021

RE: Right-of-way Vacation: Vacating a 60' right-of-way and cul-de-sac on adjoining Lots 8-A, 9-A, 10-A & 18-A per Stanley's Meadow Subdivision No 11 ADEC Power-Trip Replat HM 93-60 ass dedicated on Stanley's Meadow No. 11 HM 91-47. KPB File 2021-086V1

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 July 12, 2021 the Kenai Peninsula Borough Planning Commission granted approval of the proposed vacation of a portion of the above right-of-way by unanimous vote based on the means of evaluating public necessity established by KPB 20.70 (10-Yes, 0-No, 1-Absent) This petition is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

July 12, 2021 Planning Commission Draft Meeting Minutes
July 12, 2021 Agenda Item E3 Meeting Packet

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

**ITEM 3 - RIGHT OF WAY VACATION
VACATE COVE VIEW COURT and ADJOINING 10 FOOT UTILITY EASEMENT
STANLEY'S MEADOW 2021, HM 93-60**

KPB File No.	2021-086V1
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Cecil R. and Ina L. Jones of Fritz Creek, Alaska and Billy Ray and Stephanie Joy Jones of Homer, Alaska
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Fritz Creek Area / Kachemak Bay APC
Legal Description:	Perkins Road, Stanley's Meadow No. 11 Plat 93-60 Homer Recording District, Section 34, Township 04 South, Range 11 West, S.M.

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: Vacate Cove View Court right of way. Petitioner's statement, 'Lots are being replatted.'

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

Public hearing notices were sent by regular mail to 8 owners within 600 feet of the proposed vacation.

16 public hearing notices were emailed to agencies and interested parties as shown below;

- State of Alaska Dept. of Fish and Game
- State of Alaska DNR
- State of Alaska DOT
- State of Alaska DNR Forestry
- Kachemak Bay Advisory Planning Commission
- Emergency Services of Kachemak
- Homer Kenai Peninsula Borough Office

- Post Office of Homer
- Ninilchik Traditional Council
- Alaska Communication Systems (ACS)
- ENSTAR Natural Gas
- General Communications Inc, (GCI)
- Homer Electric Association (HEA)
- Library of Homer

The notice was placed on the Planning Commission board at the Kenai Peninsula Borough George A. Navarre Administration Building. The notice was emailed to the Post Office and Library of Homer with a request for the notice to be posted.

Legal Access (existing and proposed): Cove View Court is located off East End Road at milepost 17.5. Access is from East End Road to Ratone Street, to Elmers Way to Perkins Road. All access right of ways are at least 60 feet in width and are a combination of dedicated right of ways and section line easements. A travel way is constructed to the south portion of Perkins Road but is not maintained by KPB Roads Department.

Perkins Road originally continued north and connected to a northern section. A section of Perkins Road was vacated in 1993 and the northern section terminates in a cul-de-sac.

The proposed plat that will finalize the vacation of Cove View Court shows the four lots being combined into two lots that will both have access from Perkins Road (southern portion).

The block is incomplete and distances do not comply with Kenai Peninsula Borough code. Perkins Road is a dead end and does not connect to another right of way. Along Elmers Way, the distance from Perkins Road to Skidoo Street is approximately 3,840 feet. Due to terrain and the layout of the lots in the area, the subdivision will not be able to provide a dedication to improve the block length or create a complete block.

KPB Roads Dept. comments	This vacation only affects the applicant and the Road Service Area has no comments at this time.
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed the right of way vacation for interpretation of any existing State ROW. Since these do not appear to be State roads, we have no comment on this ROW vacation.

Site Investigation: The plat submitted with this vacation depicts the Kenai Watershed Forum ecosystem identified as riverine. The riverine ecosystem appears to be location within a portion of Cove View Court and Perkins Road.

The slopes greater than 20 percent are shaded. The steep slopes affect a portion of Cove View Court and Perkins Road.

Floodplain Hazard Review	Not within a floodplain area.
Anadromous Waters Habitat Protection District Review	Not within a HPD.
State Parks Review	No comments.

Staff Analysis: Cove View Court is a 60 foot wide right of way cul-de-sac that is approximately 512 feet long. The intersection with Perkins Road is 120 feet in width. Cove View Court has dedicated on Stanley's Meadow No. 11, Plat HM 91-47. Cove View Court was also shown on Stanley's Meadow No. 11 ADEC Power-Trip Replat, Plat HM 93-60. That plat created the current lot configuration. Cove View Court is not improved.

The proposed lot reconfiguration will reduce four lots to two lots. Both proposed lots will have legal access

from Perkins Road. Cove View Court does not help with block length or provide legal access to any other lots.

Access to these lots will be difficult due to steep terrains within Perkins Road. The usable area of the parcels is limited due to steep terrain and wet areas. The parcel to the north could be further subdivided and provide additional access. Steep slopes and low wet areas will need to be considered with any new right of way dedications.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021. The subdivision plat, when recorded, will finalize the right of way vacation.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
8. The right-of-way or public easement to be vacated is being used;
Staff comments: Cove View Court is unconstructed and does not appear to be used for access.
 9. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: An alternate right of way will not be needed, as the proposed subdivision plat will create two lots that both will have legal access to Perkins Road. Steep slopes affect portions of the Cove View Court. Access to this right of way may be difficult due to the slopes within Perkins Road. Additional easements may be required along Perkins Road due to terrain.
 10. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The lots fronting Cove View Court are not developed but with the reduction of four lots to two lots, the cul-de-sac right of way is not needed. Lot 8-A appears to be used as an agricultural parcel.

The surrounding area is a mixture of residential lots and agricultural parcels. Legal access is available to all nearby parcels.

Utility companies have been contacted for review.
 11. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: This does not provide access to a waterbody or public interest area.
 12. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: Cove View Court is a cul-de-sac that does not provide interconnectivity to other right of ways.
 13. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Cove View Court does not provide a use to the general public.
 14. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists,

the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: The utility easements adjoining Cove View Court will be vacated with this action. The vacation of the easements on the property lines, as depicted on the application, will require a separate application and will be reviewed by the KPB Planning Commission at a later meeting.

15. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments:

If approved, Stanley's Meadow 2021 will finalize the proposed right of way vacations. The Plat Committee will review Stanley's Meadow 2021 on August 9, 2021. The platting action will require exceptions to 20.30.170 – blocks-length requirements and 20.30.190 – Lots-dimensions for the depth to width ratio of both lots.

KPB department / agency review:

Planner – Bryan Taylor	
Code Compliance – Eric Ogren	No comments
Addressing – Derek Haws	No addresses affected.
Assessing – Matt Bruns	
Advisory Planning Commission – Kachemak Bay	Minutes were not received prior to staff report being written. Any comments or minutes received will be available in the desk packet.

Utility provider review:

HEA	
ENSTAR	No comments or recommendations
ACS	
GCI	Approved as shown.

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

9. Consent by KPB Assembly.
10. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
11. Grant utility easements requested by the utility providers.
12. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final

plat must be recorded within one year of the vacation consent.

- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
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Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Gary Nelson, Ability Surveys; 152 Dehel Ave., Homer, AK 99603: Mr. Nelson was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Ruffner to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

**4. PC Resolution 2021-24; Trail Creek Bridge Replacement
Retition: USAD Forest Services
PIN 125-324-07 & 125-324-01
Moose Pass Area**

Conditional Use Permit Anadromous Waters Habitat Protection District

KPB File No. 2021-24

Planning Commission Meeting: July 12, 2021

Applicant USDA Forest Service

Mailing Address 33599 Ranger Station Spur

Seward, AK 99664

Legal Description Section 24, T004N, R001W, Meridian Seward, USGD
Seward B-7 NE

Physical Address Lower Creek Trail

KPB Parcel Number 12532407, 12532404

Staff report given by Samantha Lopez

Project Description

The USDA Forest Service is seeking a Conditional Use Permit to replace the existing two-span timber-structured bridge that spans Trail Creek near the Trail Lake Campground on the Chugach National Forest's Seward Ranger District. The replacement bridge will be a single span, pre-stressed concrete bridge. The proposed work includes the removal of the existing concrete pier located in the middle of Trail Creek.

Project Details within the 50-foot Habitat Protection District

1. Remove old concrete abutments and bridge.
2. Construct a new 30-foot wide by 145-foot long pre-stressed concrete girder bridge.
3. Project involves the excavation of existing material within the HPD to accommodate a rock retaining wall to be installed on the northern end of the bridge and a concrete abutment to be installed on the southern end of the bridge.
4. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.

General Standards

Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:

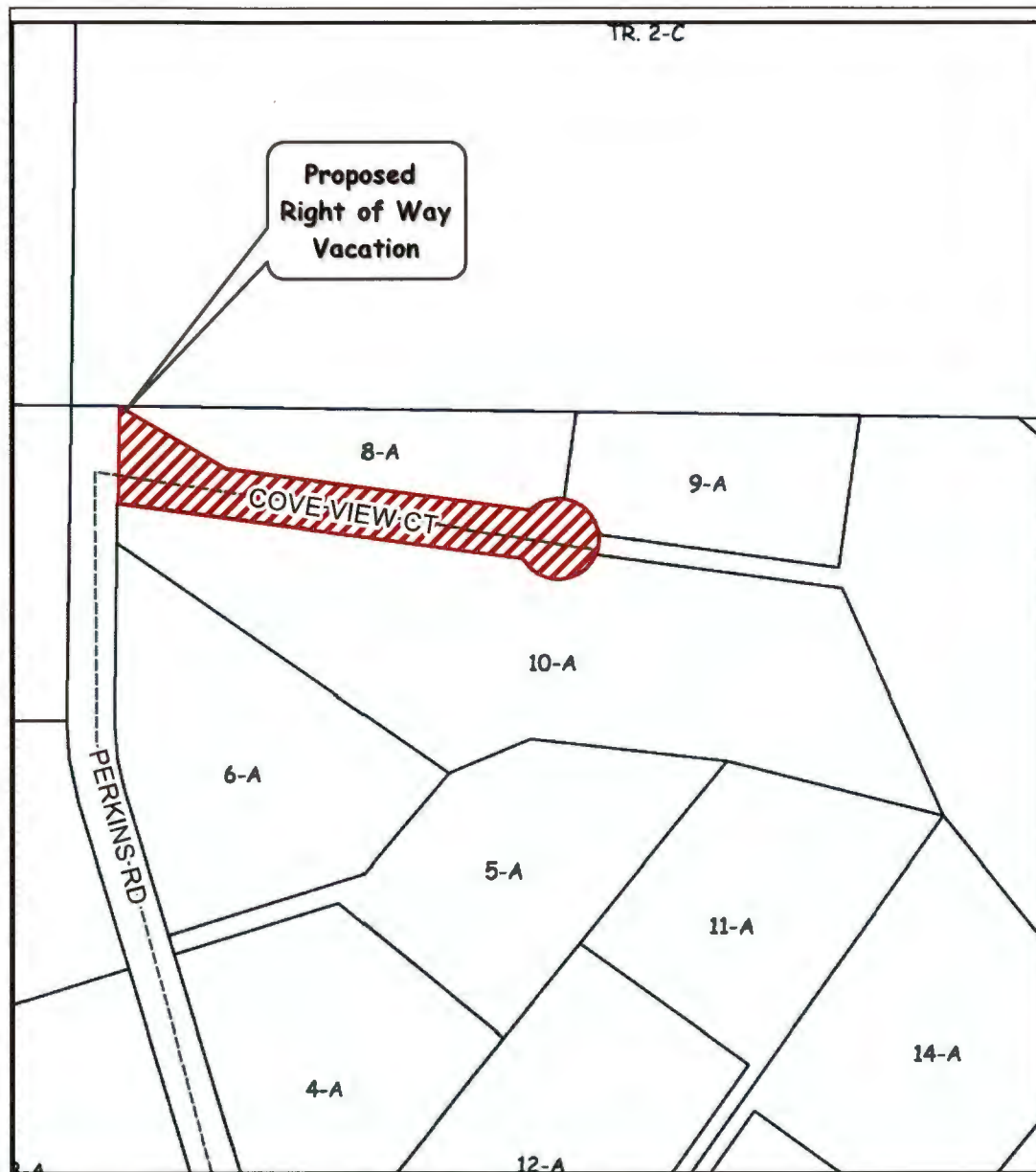
1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;

E. NEW BUSINESS

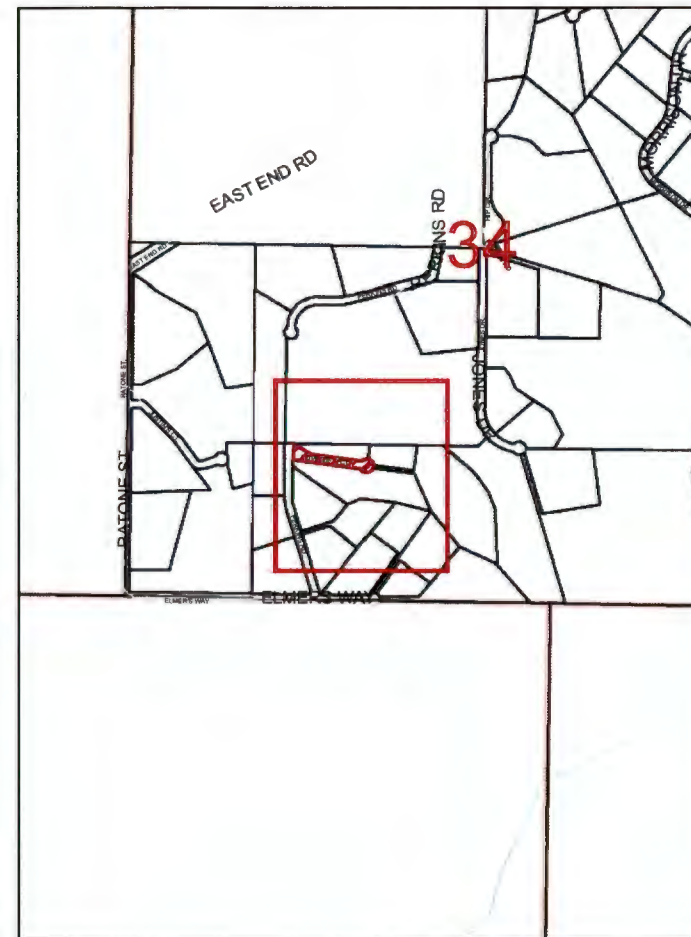
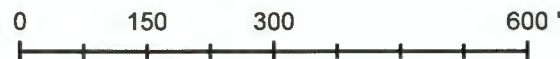
3. Right-Of-Way Vacation; KPB File 2021-086V1

Location: Vacates a 60' right of way and cul-de-sac on adjoining lots 8-A, 9-A, 10-A and 18A per Stanley's Meadow Subdivision No 11 ADEC Power-Trip Replat (Plat HM 93-60) as dedicated on Stanley's Meadow No 11 (Plat HM 91-47).

Petitioner(s): Ina L., Cecil R., Stephanie J. & Billy R. Jones of Fritz Creek, AK.



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



KPB 2021-086V1
S34 T04S R11W
FRITZ CREEK

Date: 6/21/2021
PClements, KPB 2021-086V1



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 75 150 300'

Aerial View



Right of Way Vacation

PClements, KPB 2021-086V1
Date: 6/21/2021
Imagery FixedWing 2012-2013

CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the real property shown and described hereon, and that we hereby adopt this plan of subdivision, and by our free consent dedicate all public rights-of-way and grant all easements to the use shown.

BILLY RAY JONES
AKA BILLY R. JONES
FOR LOTS 9-A, 10-A, 18-A
33675 PERKINS RD.
HOMER, AK 99603

STEPHANIE JOY JONES
AKA STEPHANIE J. JONES
33675 PERKINS RD.
HOMER, AK 99603

NOTARY'S ACKNOWLEDGEMENT

For BILLY RAY JONES AND STEPHANIE JOY JONES
Acknowledged before me this _____ day of _____, 2021.

Notary public for Alaska My Commission Expires _____

NOTARY'S ACKNOWLEDGEMENT

For CECIL R. JONES AND INA L. JONES
Acknowledged before me this _____ day of _____, 2021.

Notary public for Alaska My Commission Expires _____

CECIL R. JONES (LOT 8-A)
P.O. BOX 15401
FRITZ CREEK, AK 99603

INA L. JONES (LOT 8-A)
P.O. BOX 15401
FRITZ CREEK, AK 99603

HM99-30 BLK 1 TR-2-C

S89°56'47"E 1121.04'

LOT 8-B
1.617 AC.

COVE VIEW CT. TO VACATE
N63°00'00"W 956.61'
& VACATING UTIL. ESMTS. AS SHOWN
20' BUILDING SETBACK
& 10' UTILITY ESMT. PER HM91-47

LOT 9-B
14.035 AC.

UTIL. ESMT. VACATION HATCHING TYP.

LOT 6-A

LOT 5-A

LOT 11-A

LOT 14-A

LOT 17-A

LOT 15-A

NOTES

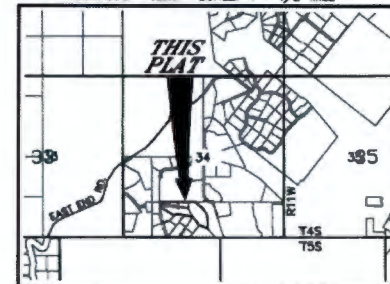
1. A BUILDING SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
2. ADJACENT TO PERKINS ROAD RIGHT-OF-WAY IS A 20 FEET WIDE BUILDING SETBACK AND ROAD SLOPE EASEMENT, AND A 10 FEET WIDE UTILITY EASEMENT (PER HM91-47 & 93-80).
3. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
4. SOLID GREY HATCHING REPRESENTS SLOPES STEEPER THAN 20 PERCENT, BASED ON CONTOURS PUBLISHED ON KENAI PENINSULA BOROUGH GIS TERRAIN VIEWER.
5. WETLAND HATCHING IS BASED ON KENAI WATERSHED FORUM WETLAND MAPPING PUBLISHED ON KENAI PENINSULA BOROUGH GIS TERRAIN VIEWER.

PLAT APPROVAL

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

BY _____
Authorized Official

VICINITY MAP SCALE: 1" = 1/2 MILE



STANLEY'S MEADOW 2021

VACATING COVE VIEW COURT
RIGHT-OF-WAY & A REPLAT OF LOTS
8-A, 9-A, 10-A, 18-A STANLEY'S
MEADOW NO. 11 ADEC POWER-TRIP
REPLAT (HAW93-80).
WITHIN SW1/4 SECTION 34, T4S, R11W, S4M,
KENAI PENINSULA BOROUGH, HOMER
RECORDING DISTRICT, STATE OF ALASKA
CONTAINING 15.652 ACRES

OWNERS:
BILLY R. and STEPHANIE J. JONES
33675 PERKINS RD.
HOMER, AK 99603
CECIL R. and INA L. JONES
P.O. BOX 15401
FRITZ CREEK, AK 99603

ABILITY SURVEYS

GARY NELSON, PLS
(907) 235-8440
152 DONALD AVE., HOMER ALASKA 99603

KPB 2021-086V1



PLAT #	
Rec Dist	
Date	20
Time	M

KPB FILE No. 2021-

DATE	6-11-21	SCALE	1" = 100'	GRID No.	AK-21	JOB No.	5281	DRAWING:	5281_5153
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AGENDA ITEM E. NEW BUSINESS

**ITEM 3 - RIGHT OF WAY VACATION
VACATE COVE VIEW COURT and ADJOINING 10 FOOT UTILITY EASEMENT
STANLEY'S MEADOW 2021, HM 93-60**

KPB File No.	2021-086V1
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Cecil R. and Ina L. Jones of Fritz Creek, Alaska and Billy Ray and Stephanie Joy Jones of Homer, Alaska
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Fritz Creek Area / Kachemak Bay APC
Legal Description:	Perkins Road, Stanley's Meadow No. 11 Plat 93-60 Homer Recording District, Section 34, Township 04 South, Range 11 West, S.M.

STAFF REPORT

Specific Request / Purpose as stated in the petition: Vacate Cove View Court right of way. Petitioner's statement, 'Lots are being replatted.'

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

Public hearing notices were sent by regular mail to 8 owners within 600 feet of the proposed vacation.

16 public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish and Game	Post Office of Homer
State of Alaska DNR	Ninilchik Traditional Council
State of Alaska DOT	Alaska Communication Systems (ACS)
State of Alaska DNR Forestry	ENSTAR Natural Gas
Kachemak Bay Advisory Planning Commission	General Communications Inc, (GCI)
Emergency Services of Kachemak	Homer Electric Association (HEA)
Homer Kenai Peninsula Borough Office	Library of Homer

The notice was placed on the Planning Commission board at the Kenai Peninsula Borough George A. Navarre Administration Building. The notice was emailed to the Post Office and Library of Homer with a request for the notice to be posted.

Legal Access (existing and proposed): Cove View Court is located off East End Road at milepost 17.5. Access is from East End Road to Ratone Street, to Elmers Way to Perkins Road. All access right of ways are at least 60 feet in width and are a combination of dedicated right of ways and section line easements. A travel way is constructed to the south portion of Perkins Road but is not maintained by KPB Roads Department.

Perkins Road originally continued north and connected to a northern section. A section of Perkins Road was vacated in 1993 and the northern section terminates in a cul-de-sac.

The proposed plat that will finalize the vacation of Cove View Court shows the four lots being combined into two lots that will both have access from Perkins Road (southern portion).

The block is incomplete and distances do not comply with Kenai Peninsula Borough code. Perkins Road is a dead end and does not connect to another right of way. Along Elmers Way, the distance from Perkins Road to Skidoo Street is approximately 3,840 feet. Due to terrain and the layout of the lots in the area, the subdivision will not be able to provide a dedication to improve the block length or create a complete block.

KPB Roads Dept. comments	
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed the right of way vacation for interpretation of any existing State ROW. Since these do not appear to be State roads, we have no comment on this ROW vacation.

Site Investigation: The plat submitted with this vacation depicts the Kenai Watershed Forum ecosystem identified as riverine. The riverine ecosystem appears to be location within a portion of Cove View Court and Perkins Road.

The slopes greater than 20 percent are shaded. The steep slopes affect a portion of Cove View Court and Perkins Road.

Floodplain Hazard Review	Not within a floodplain area.
Anadromous Waters Habitat Protection District Review	Not within a HPD.
State Parks Review	No comments.

Staff Analysis: Cove View Court is a 60 foot wide right of way cul-de-sac that is approximately 512 feet long. The intersection with Perkins Road is 120 feet in width. Cove View Court has dedicated on Stanley's Meadow No. 11, Plat HM 91-47. Cove View Court was also shown on Stanley's Meadow No. 11 ADEC Power-Trip Replat, Plat HM 93-60. That plat created the current lot configuration. Cove View Court is not improved.

The proposed lot reconfiguration will reduce four lots to two lots. Both proposed lots will have legal access from Perkins Road. Cove View Court does not help with block length or provide legal access to any other lots.

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If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021. The subdivision plat, when recorded, will finalize the right of way vacation.

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1. The right-of-way or public easement to be vacated is being used;
Staff comments: Cove View Court is unconstructed and does not appear to be used for access.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: An alternate right of way will not be needed, as the proposed subdivision plat will create two lots that both will have legal access to Perkins Road. Steep slopes affect portions of the Cove View Court. Access to this right of way may be difficult due to the slopes within Perkins Road. Additional easements may be required along Perkins Road due to terrain.

3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;

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The surrounding area is a mixture of residential lots and agricultural parcels. Legal access is available to all nearby parcels.

Utility companies have been contacted for review.

4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;

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7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: The utility easements adjoining Cove View Court will be vacated with this action. The vacation of the easements on the property lines, as depicted on the application, will require a separate application and will be reviewed by the KPB Planning Commission at a later meeting.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

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 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT





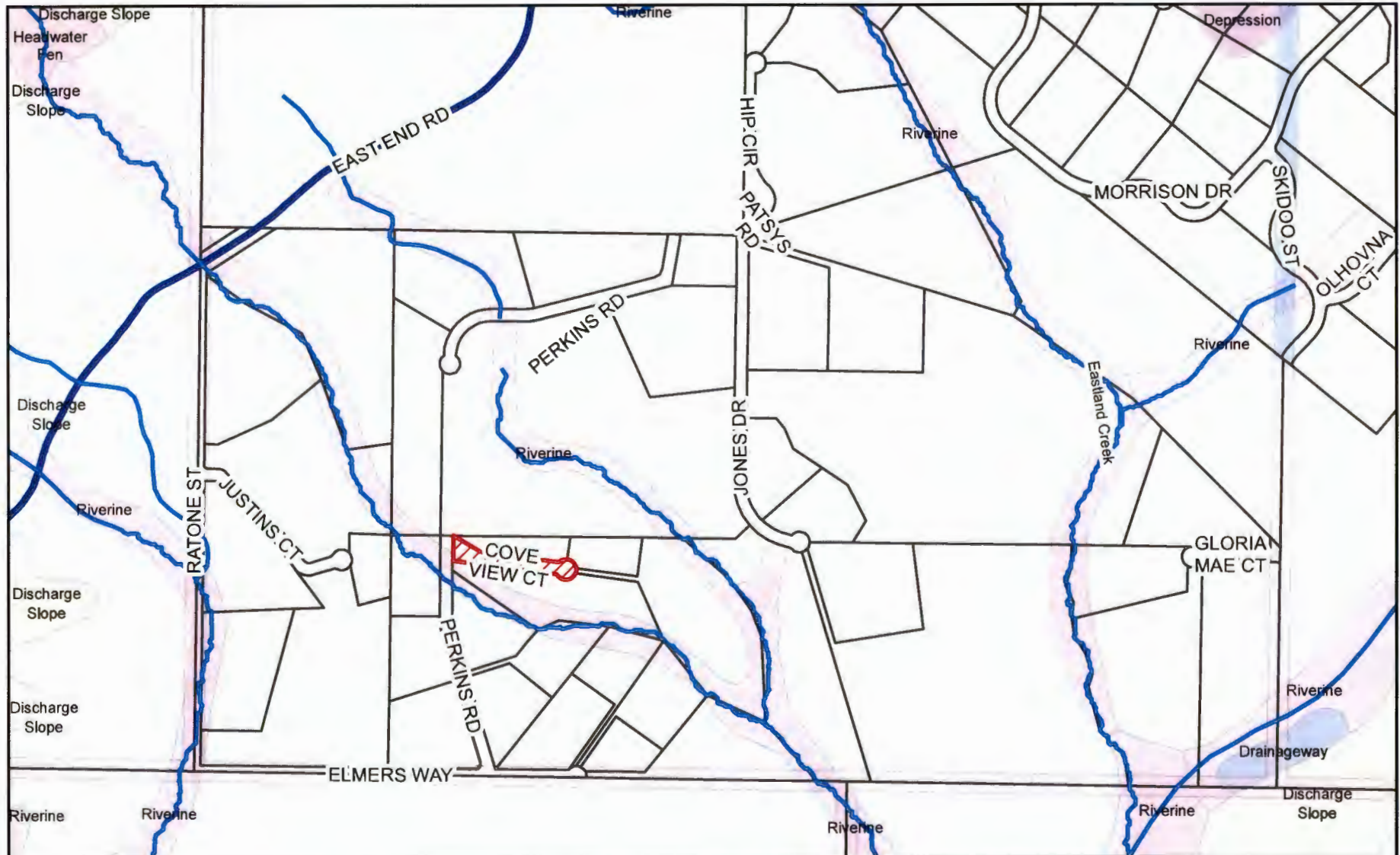
Kenai Peninsula Borough Planning Department

Kenai Watershed Forum Wetlands Assessment / Streams and Creeks

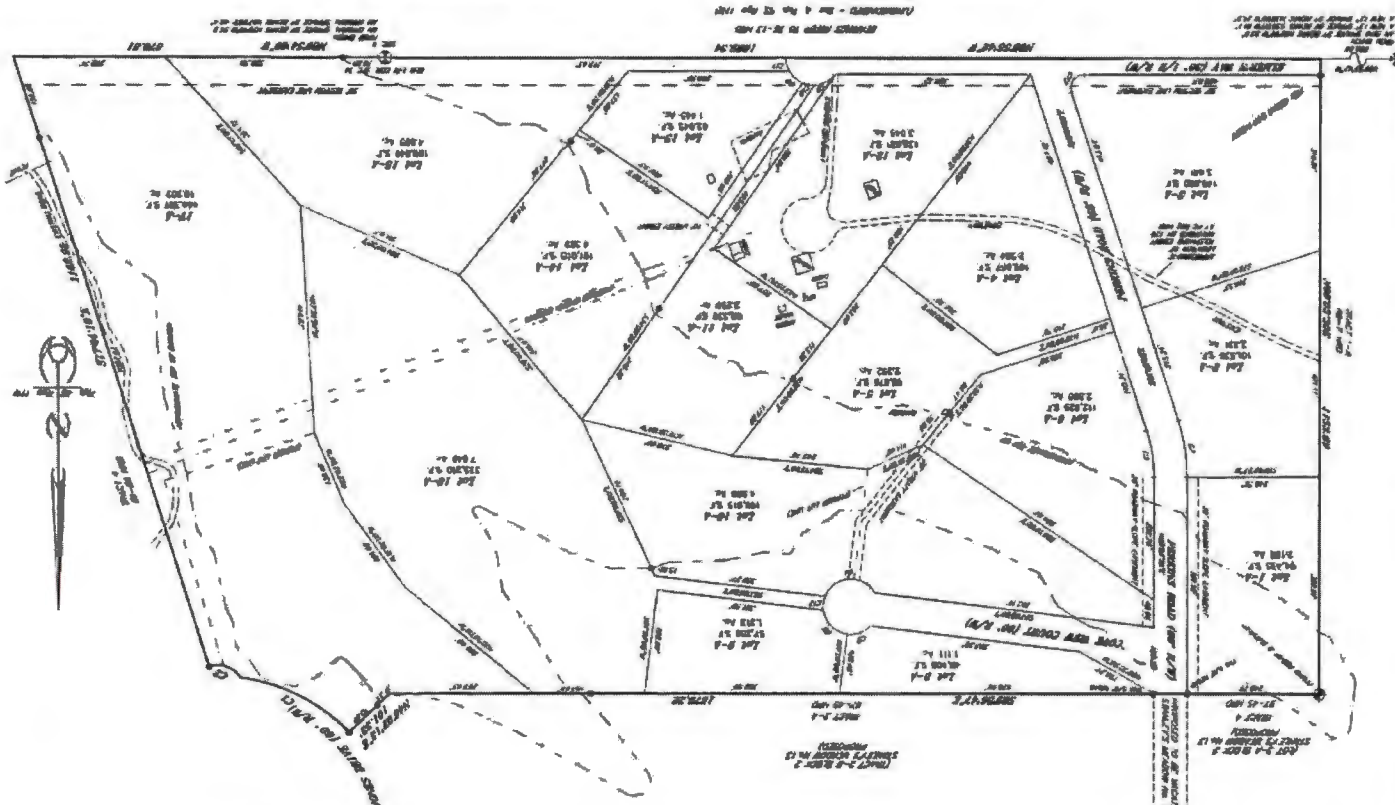
Date: 6/23/2021



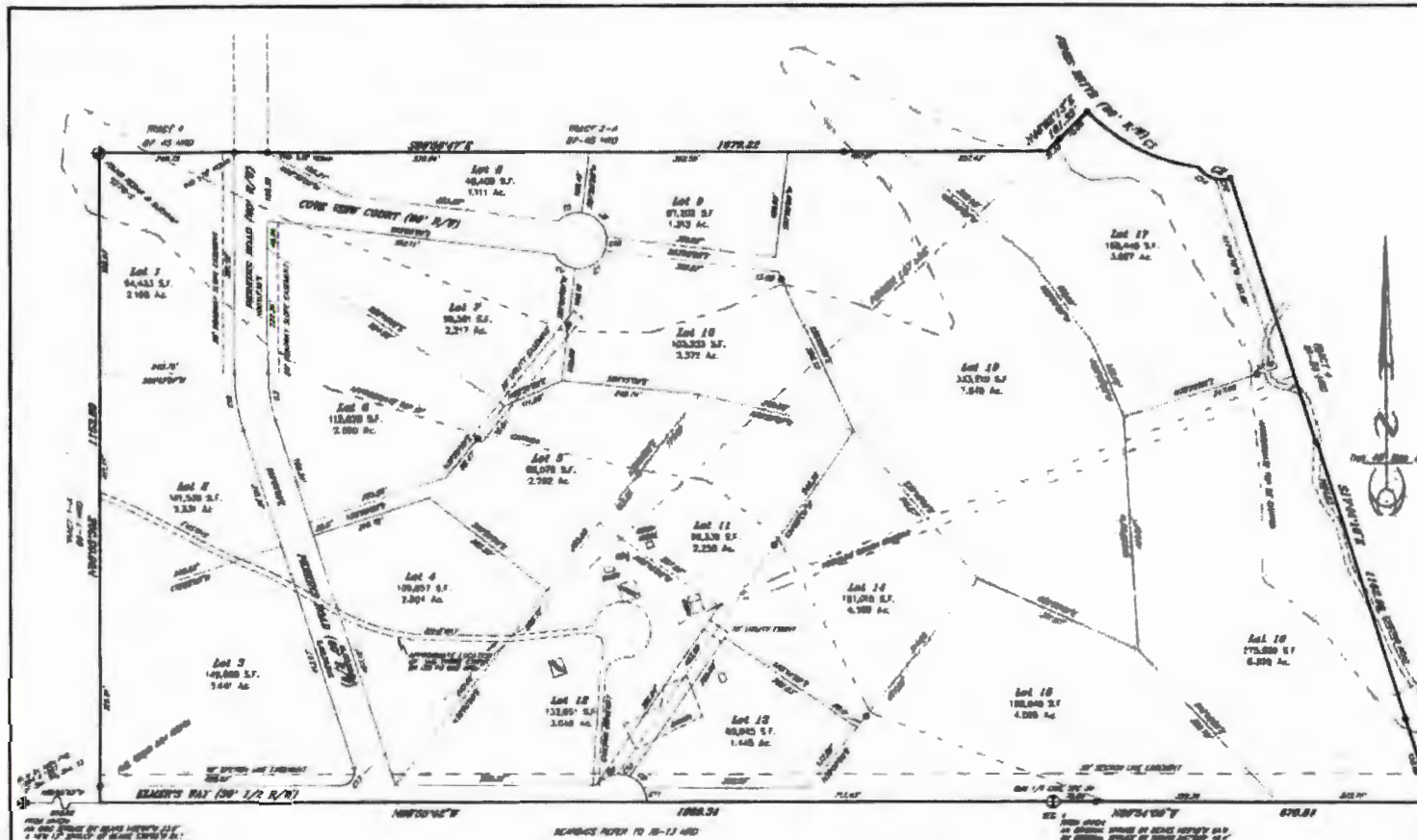
Cove View Court Vacation
KPB File 2021-086V1



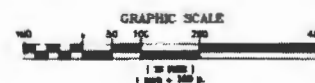
The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

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2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2818 2819 2820 2821 2822 2823 2824 2



No.	Point	Radius	Length	Chord	Bearing
1	10-12	10.00	10.00	10.00	N 0° 0' 0" E
2	10-12	10.00	10.00	10.00	N 0° 0' 0" E
3	10-12	10.00	10.00	10.00	N 0° 0' 0" E
4	10-12	10.00	10.00	10.00	N 0° 0' 0" E
5	10-12	10.00	10.00	10.00	N 0° 0' 0" E
6	10-12	10.00	10.00	10.00	N 0° 0' 0" E
7	10-12	10.00	10.00	10.00	N 0° 0' 0" E
8	10-12	10.00	10.00	10.00	N 0° 0' 0" E
9	10-12	10.00	10.00	10.00	N 0° 0' 0" E
10	10-12	10.00	10.00	10.00	N 0° 0' 0" E
11	10-12	10.00	10.00	10.00	N 0° 0' 0" E
12	10-12	10.00	10.00	10.00	N 0° 0' 0" E
13	10-12	10.00	10.00	10.00	N 0° 0' 0" E
14	10-12	10.00	10.00	10.00	N 0° 0' 0" E
15	10-12	10.00	10.00	10.00	N 0° 0' 0" E
16	10-12	10.00	10.00	10.00	N 0° 0' 0" E
17	10-12	10.00	10.00	10.00	N 0° 0' 0" E
18	10-12	10.00	10.00	10.00	N 0° 0' 0" E



91-47
RECORDED BY
STANLEY'S MEADOW NO. 11
DATE 10-23-91
BY 10-23-91
STANLEY'S MEADOW NO. 11
STANLEY'S MEADOW NO. 11
STANLEY'S MEADOW NO. 11

CONTENTS OF EASEMENT
I hereby certify that I am the owner of the real property shown and described herein, and that I hereby assign the right of way and public use to public use and grant an easement to the use shown.

STANLEY'S MEADOW NO. 11
PLAT 80-04
RECORDED ALASKA 1980

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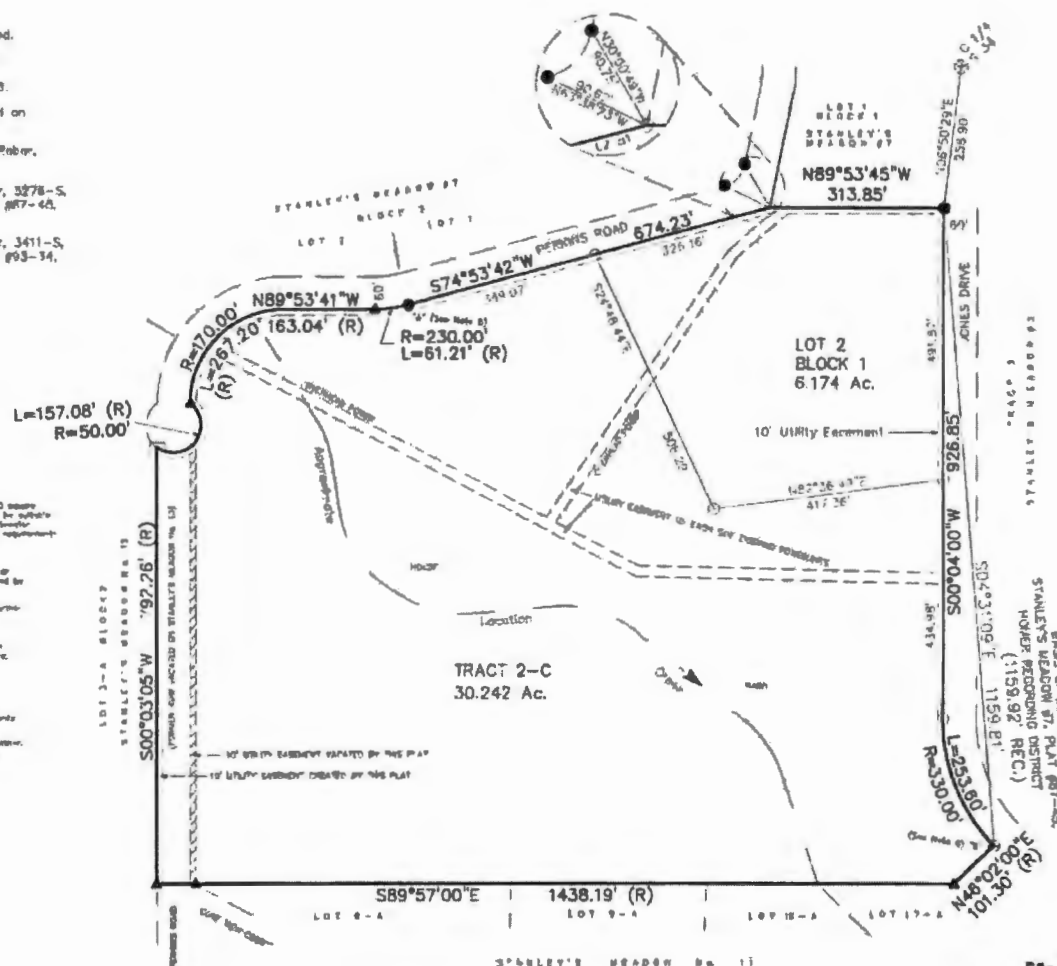
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RECORDED ALASKA 1980

STANLEY'S MEADOW NO. 11
RECORDED ALASKA 1980

[illegible]

☐ Monument of Record, S/B* Rehab, 3411-S,
1993, NOT RECOVERED (See Plot #93-34,
Stoney's Meadow No. 1.)



Erroll R. Jones
17879 Jones Drive
Hawthorne, NJ 07033

Subscribed and sworn before me this 15th day of August, 1954 for Cecil R. Jones.

Oswald Markson
Newly Paid & Award
My Commission Expires 6-18-99

This plot was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____ March 22, 1999.

By: Edward J. Best
Special Agent in Charge

On 4th ground slt. 10th/11th (London) No. 3
2nd-4th. 10th/11th (London) No. 1. 10th-11th

STANLEY'S MEADOW
Vikki's Replat

[illegible]

SUPERVISOR	SUBORDINATES
WILLIAM WILKINS PO Box 70 Durham AL 36003	OFDA & JOHNS 57075 Morris Oriskany Hawthorn AL 36003
Scoper 1" on YOEI	Scoper May 12, 1999
Burn Map #2 24	Drug File : 4/1/99
Scoper 1" on YOEI	STP 10/1/99 4/1/99-03
Scoper 1" on YOEI	Scoper 10/1/99

158