



## Meeting Agenda Planning Commission

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Monday, August 8, 2022

7:30 PM

Betty J. Glick Assembly Chambers

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**Zoom Meeting ID 907 714 2200**

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative – 10 minutes
- 3) Public testimony on the issue. – 5 minutes per person
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Staff may respond to any testimony given and the Commission may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.
- 8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

### **A. CALL TO ORDER**

### **B. ROLL CALL**

**C. APPROVAL OF CONSENT AND REGULAR AGENDA**

*All items marked with an asterisk (\*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.*

*If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.*

1. Time Extension Request
2. Planning Commission Resolutions
3. Plats Granted Administrative Approval

[KPB-4477](#) J Booth Recreational Sub 2019 Blauvelt Addition; KPB File 2021-069  
Sterling Heights Subdivision 2022 Addition; KPB File 2022-037  
Toyon Subdivision 2021 Replat; KPB File 2022-011  
Kees Tern Subdivision Phase 2; KPB File 2022-051  
Tower Hills Park Subdivision 2022 Replat; KPB File 2022-067

Attachments: [C3. Admin-Final Approvals](#)

4. Plats Granted Final Approval (KPB 20.10.040)
5. Plat Amendment Request
6. Commissioner Excused Absences
7. Minutes

[KPB-4478](#) July 18, 2022 Planning Commission Meeting Minutes

Attachments: [C7. 071822 Minutes](#)

**D. OLD BUSINESS****E. NEW BUSINESS**

1. [KPB-4479](#) Ordinance 2022-XX: Authorizing the release of a commercial deed restriction on a parcel of land located in Cooper Landing originally conveyed by the Kenai Peninsula Borough.

Attachments: [E1. ORD Deed Restriction](#)



2. [KPB-4480](#) Ordinance 2022-XX: Authorizing the acquisition of real property located in Anchor Point, Alaska on behalf of Western Emergency Services for future expansion of emergency service facilities with funding through an inter-fund loan from the Land Trust Invest Fund.  
  
*Attachments:* [E2. ORD\\_WESA Acquisition](#)
3. [KPB-4481](#) Street Naming Resolution 2022-02; Moose Pass Area  
  
*Attachments:* [E3. SN RES 2022-02](#)
4. [KPB-4482](#) Conditional Use Permit; PC Resolution 2022-36  
Installing rip rap on a parcel within the 50-foot Habitat Protection District of Quartz Creek  
  
*Attachments:* [E4. CUP Chugach Electric Association](#)
5. [KPB-4483](#) Conditional Use Permit; PC Resolution 2022-35  
Installing a fence within the 50-foot Habitat Protection District of the Kenai River  
  
*Attachments:* [E5. CUP LaFond](#)
6. [KPB-4484](#) Building Setback Permit; KPB File 2022-098  
Lot 1A, Block 1, Clearwater Sub Harpring Replat, Plat KN 2005-126  
  
*Attachments:* [E6. BSP Clearwater Sub](#)  
[E6. PC Desk Packet](#)
7. [KPB-4485](#) Building Setback Permit; KPB File 2022-099  
Lot 11-B, Block 3, Ferwood Subdivision Unit 3; PLat HM 77-17  
  
*Attachments:* [E7. BSP Fernwood Sub](#)
8. [KPB-4486](#) Building Setback Permit; KPB File 2022-100  
Lot 1, Block 2, Centennial Shores Subdivision No. 1, Plat KN 85-157  
  
*Attachments:* [E8. BSP Centennial Shores Sub](#)
9. [KPB-4487](#) Utility Easement Vacation; KPB File 2022-101V  
Lot 1, Block2, Centennial Shores Sub No. 1, Plat KN 85-157  
  
*Attachments:* [E9. UEV Centennial Shores Sub](#)
10. [KPB-4488](#) Right-Of-Way Vacation; KPB File 2022-095V  
Realignment of Mushroom Street a 60-foot Right-Of-Way  
  
*Attachments:* [E10. ROWV Mushroom Street](#)

11. [KPB-4489](#) Utility Easement Vacation; KPB File 2022-104V  
Lot 1, Block, 2, Moose Range Meadows Subdivision Phase II  
Amended  
Plat KN 96-3  
  
Attachments: [E11. UEV\\_ Moose Range Meadows Subdivision](#)
12. [KPB-4490](#) Review of Plat Committee Decision  
Scenic Ridge Lee Addition; KPB File 2022-075  
  
Attachments: [E12. Scenic Ridge Lee Addn](#)  
[Scenic Ridge Packet 062722](#)  
[E12. PC Desk Packet](#)
13. [KPB-4491](#) Review of Plat Committee Decision  
East Oyster Cove subdivision; KPB File 2022-047R1  
  
Attachments: [E13. East Oyster Cove Sub](#)  
[June 13, 2022 Packet](#)  
[E13. PC Desk Packet](#)

## F. PLAT COMMITTEE REPORT

## G. OTHER

## H. PUBLIC COMMENT/PRESENTATION

*(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)*

## I. DIRECTOR'S COMMENTS

**KPB-4493** August 8, 2022 Planning Directors Report

Attachments: 08-08-22 Directors Report

## J. COMMISSIONER COMMENTS

## K. ADJOURNMENT

### MISCELLANEOUS INFORMATIONAL ITEMS NO ACTION REQUIRED

**KPB-4494** Area Advisory Planning Commission Meeting Minutes

Attachments: MISC. PC\_080322 CLAPC Minutes  
MISC. PC 080422 K- BAY APC Minutes

**NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING**

The next regularly scheduled Planning Commission meeting will be held Monday, August 22, 2022 in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

**CONTACT INFORMATION****KENAI PENINSULA BOROUGH PLANNING DEPARTMENT**

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: [planning@kpb.us](mailto:planning@kpb.us)

website: <http://www.kpb.us/planning-dept/planning-home>

A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, 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.

## **C. CONSENT AGENDA**

### **\*3. Plats Granted Administrative Approval**

- a. J Booth Recreational Subd 2019 Blauvelt Addition; KPB File 2021-069
- b. Sterling Heights Subdivision 2022 Addition; KPB File 2022-037
- c. Toyon Subdivision 2021 Replat; KPB File 2022-011

### **\*4. Plats Granted Final Approval**

- a. Kees Tern Subdivision Phase 2; KPB File 2022-051
- b. Tower Hills Park Subdivision 2022 Replat; KPB File 2022-067



## Planning Department

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

Charlie Pierce  
Borough Mayor

### ADMINISTRATIVE APPROVAL

Subdivision: J Booth Recreational Subd 2019 Blauvelt Addition  
KPB File 2021-069  
Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 27, 2021. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Friday, July 15, 2022.

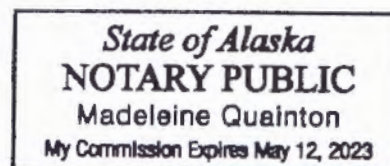
Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15 day of July 2022 by  
Vince Piagentini.

  
Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.





## Planning Department

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Charlie Pierce  
Borough Mayor

### ADMINISTRATIVE APPROVAL

Subdivision: Sterling Heights Subdivision 2022 Addition  
KPB File 2022-037  
Kenai Recording District

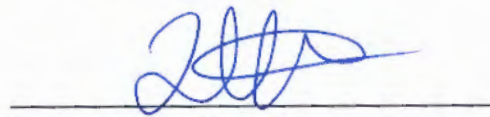
The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on April 25, 2022. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Wednesday, July 20, 2022.

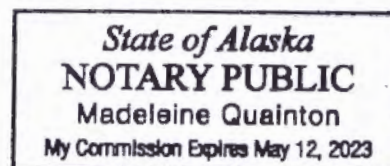
  
Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of July 2022 by  
Vince Piagentini.

  
Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



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Charlie Pierce  
Borough Mayor

### ADMINISTRATIVE APPROVAL

Subdivision: Toyon Subdivision 2021 Replat  
KPB File 2022-011  
Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on February 28, 2022. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on Tuesday, July 19, 2022.

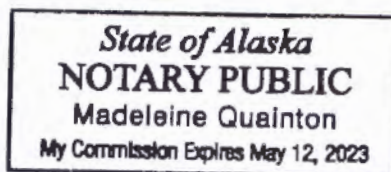
Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 19 day of July 2022 by  
Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.





## Planning Department

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

Charlie Pierce  
Borough Mayor

### FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Kees Tern Subdivision Phase 2  
KPB File 2022-051  
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Wednesday, July 20, 2022.

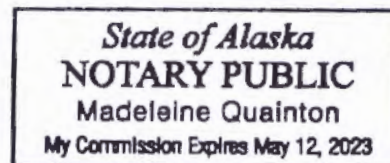
Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 20 day of July 2022 by  
Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.





## Planning Department

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

Charlie Pierce  
Borough Mayor

### FINAL APPROVAL OF PLAT SUBMITTED UNDER 20.10.040

Subdivision: Tower Hills Park Subdivision 2022 Replat  
KPB File 2022-067  
Kenai Recording District

The Kenai Peninsula Borough Planning Department has reviewed the above referenced subdivision plat in accordance with 20.10.040 Borough Code of Ordinances. The final plat meets the conditions of the preliminary approval and complies with KPB Title 20; therefore, final approval has been granted by the undersigned on Friday, July 15, 2022.

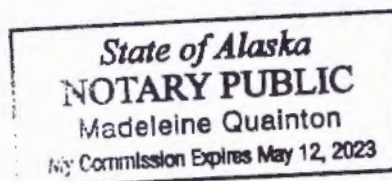
Vince Piagentini  
Platting Manager

State of Alaska  
Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 15 day of July 2022 by  
Vince Piagentini.

Notary Public for the State of Alaska

My commission expires: 5/12/23



The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

## **C. CONSENT AGENDA**

### **\*7. Minutes**

#### **a. July 18, 2022 Planning Commission Meeting**

# Kenai Peninsula Borough Planning Commission

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Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

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July 18, 2022

7:30 P.M.

## UNAPPROVED MINUTES

### **AGENDA ITEM A.**      **CALL TO ORDER**

Chair Martin called the meeting to order at 7:30 p.m.

### **AGENDA ITEM B.**      **ROLL CALL**

#### *Commissioners Present*

Syverine Abrahamson-Bentz, District 9 – South Peninsula  
Jeremy Brantley, District 5 – Sterling/Funny River  
Pamela Gillham, District 1 – Kalifornsky  
Michael Horton, District 4 – Soldotna  
Blair Martin, District 2 – Kenai  
Virginia Morgan, District 6 – East Peninsula  
Troy Staggs, City of Seward  
David Stutzer, District 8 – Homer  
Charlene Tautfest, City of Soldotna  
Franco Venuti, City of Homer

With 10 members of a 12-member seated commission in attendance, a quorum was present.

#### *Staff Present*

Robert Ruffner, Planning Director  
Walker Steinhage, Deputy Borough Attorney  
Vince Piagentini, Platting Manager  
Julie Hindman, Platting Specialist  
Ryan Raidmae, Borough Planner  
Morgan Aldridge, Resource Planner  
Ann Shirnberg, Planning Administrative Assistant

### **AGENDA ITEM C.**      **CONSENT & REGULAR AGENDAS**

#### **\*3.      Plats Granted Administrative Approval**

- a. Barbara Heights Subdivision Griffith Addition; KPB File 2021-156
- b. Barnett's South Slope Subdivision Evans Addition; KPB File 2022-015
- c. Inglebrook 2022 Replat; KPB File 2022-021
- d. Paces Pleasant Haven Subdivision Addition No 3; KPB File 2022-013
- e. Timber Hills Subdivision 2022 Replat; KPB File 2022-007
- f. Towle Subdivision 2021 Replat; KPB File 2021-153
- g. Tulchina Point Estates 2022 Replat; KPB File 2022-023

#### **\*6.      Commissioner Excused Absences**

- a. John Hooper, District 3 – Nikiski
- b. Diane Fikes, City of Kenai
- c. District 7 – Central, Vacant
- d. City of Seldovia, Vacant

**\*7. Minutes**

- a. June 27, 2022 Planning Commission meeting minutes.

Chair Martin asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he asked Ms. Shirnberg to read into the record the consent agenda items.

**MOTION:** Commissioner Bentz moved, seconded by Commissioner Venuti to approve the consent and regular agendas.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent – 2	Fikes, Hooper

**AGENDA ITEM E. NEW BUSINESS**

Chair Martin requested that Admin Assistant Ann Shirnberg read into the record the procedures for Planning Commission public hearing.

**ITEM E1 – BUILDING SETBACK ENCROACHMENT PERMIT**  
**LOT 39 STARISKI MEADOWS PLAT HM 97-65**

<b>KPB File No.</b>	2022-079
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant / Owner:</b>	John and Pamela Ehlers of Ninilchik, Alaska
<b>Surveyor:</b>	Jason Schollenberg / Peninsula Surveying, LLC
<b>General Location:</b>	St. John Road, Achernar Street, Happy Valley / Anchor Point APC
<b>Parent Parcel No.:</b>	159-200-72
<b>Legal Description:</b>	Lot 39 Stariski Meadows, Plat HM 97-62
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Horton to adopt PC Resolution 2022-28 granting a building setback encroachment permit to a portion of the 20-foot building setback to Lot 39, Stariski Meadows, Plat HM 97-62.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Hooper

**ITEM E2 - UTILITY EASEMENT ALTERATION**  
**LOT 39 STARISKI MEADOWS PLAT HM 97-62**

<b>KPB File No.</b>	2022-086V
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant / Owner:</b>	John and Pamela Ehlers of Ninilchik, Alaska
<b>Surveyor:</b>	Jason Schollenberg / Peninsula Surveying, LLC
<b>General Location:</b>	St. John Road, Achernar Street, Happy Valley / Anchor Point APC

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Staggs to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes – 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent – 2	Fikes, Hooper

**ITEM E3 – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 1B BLOCK 4 SOLDOTNA SOUTH SUBDIVISION OPHEIM REPLAT**

<b>KPB File No.</b>	2022-084
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant / Owner:</b>	Chris, Timothy, Megaera, Kathleen Opheim of Kasilof, Alaska
<b>Surveyor:</b>	John Segesser / Segesser Surveys
<b>General Location:</b>	Cardwell Road, Koshney Lane, Kalifornsky / Kalifornsky APC

<b>Parent Parcel No.:</b>	133-381-56
<b>Legal Description:</b>	Lot 1B Block 4, Soldotna South Subdivision Opheim Replat, Plat KN 2004-1
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Bentz to adopt PC Resolution 2022-30 granting a building setback encroachment permit to a portion of the 20-foot building setback to Lot 1B, Block 4, Soldotna South Subdivision Opheim Replat, Plat KN 85-162.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Hooper

**ITEM E4 - DRAINAGE EASEMENT ALTERATION  
LOT 58 OF LILLIAN WALLI ESTATE, PLAT HM 88-16**

<b>KPB File No.</b>	2022-078V
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant / Owner:</b>	Maxim Matveev / Peninsula Builders, LLC of Homer, Alaska
<b>General Location:</b>	Shelly Avenue, City of Homer

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

Commissioner Venuti requested to abstain from voting on this item, as he had voted on this item in his role

as a planning commissioner for the City of Homer.

**MOTION:** Commissioner Horton moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 9	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest
Abstain	Venuti
Absent – 2	Fikes, Hooper

**ITEM E5 - RIGHT OF WAY VACATION  
PORTIONS OF SEISMOGRAPH TRAIL AND ASSOCIATED UTILITY EASEMENTS  
WITHIN LOT 110 OF PLAT HM 84-115**

<b>KPB File No.</b>	2022-091V
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant / Owner:</b>	Brian and Jessica Ranguette of Nikiski, Alaska
<b>Surveyor:</b>	Jason Young, Mark Aimonetti / Edge Survey and Design, LLC
<b>General Location:</b>	Gravel Pit Trail, Throop Avenue, Reid Street, Steik Avenue, Reno Street, Ninilchik Area
<b>Legal Description:</b>	Seismograph Trails within Lot 110 of Right of Way Map (also known as the Ninilchik Right of Way Map), HM 84-115

Staff report given by Platting Specialist Julie Hindman.

Chair Martin opened the item for public comment.

Jason Young, Edge Surveying & Design; P.O. Box 208, Kasilof, AK 99610: Mr. Young was the surveyor on this project and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Brantley moved, seconded by Commissioner Bentz to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent – 2	Fikes, Hooper

**ITEM E6 – CONDITIONAL USE PERMIT  
GRANTING A CONDITION USE PERMIT FOR THE CONSTRUCTION OF HIGHWAY  
REHABILITATION ACTIVITIES WITHIN THE 50-FOOT HABITAT PROTECTION DISTRICT**

<b>KPB File No.</b>	2022-27
<b>Planning Commission Meeting:</b>	July 18, 2022
<b>Applicant</b>	Alaska Department of Transportation and Public Facilities
<b>Mailing Address</b>	PO Box 196900 Anchorage, AK 99519



<b>Location</b>	Between MP 157 and 169 of the Sterling Highway; Anchor Point
<b>Waterways</b>	Two Moose Creek, Beaver Creek, Ruby Creek, Anchor River and North Fork Anchor River

Staff report given by Resource Planner Morgan Aldridge.

Chair Martin opened the item for public comment.

Rich Pribyl, DOWL Engineering; 4041 B Street, Anchorage, AK 99503: Mr. Pribyl is the engineer on this project and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Staggs to adopt PC Resolution 2022-27 granting a conditional use permit for the construction of highway rehabilitation activities within the 50-foot Habitat Protection District of Two Moose Creek, Beaver Creek, Ruby Creek, Anchor River & the North Fork Anchor River.

Commissioner Bentz asked if this project was going to use certified weed-free gravel. Mr. Pribyl replied using certified weed-free gravel was not a condition for this permit but if required they would have no issues with using certified weed-free gravel. Ms. Aldridge replied that using certified weed-free gravel is not something that the borough normally requires on their permits. This type of condition would normally fall under the permit the applicant will need to get from DNR.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent – 2	Fikes, Hooper

**ITEM E7 – ORDINANCE 2022-30**

**AN ORDINANCE APPROVING STEPHENKIE ALASKA SUB BLOCK 8 RESIDENTIAL WATERFRONT (R-W) LOCAL OPTION ZONING DISTRICT & AMENDING KPB 21.46.110**

Staff report given by Borough Planner Ryan Raidmae.

Chair Martin opened the item for public comment. Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Bentz to forward to the Assembly a recommendation to adopt Ordinance 2022-30, approving Stephenkie Alaska Sub, Block 8, Residential Waterfront Local Option Zoning District and amending KPB 21.46.110.

Hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes - 10	Bentz, Brantley, Gillham, Horton, Martin, Morgan, Staggs, Stutzer, Tautfest, Venuti
Absent - 2	Fikes, Hooper

**AGENDA ITEM F. PLAT COMMITTEE REPORT**

Commissioner Brantley reported the plat committee reviewed 13 plats, granted preliminary approval to 11 plats and postponement to 2.

**AGENDA ITEM G.**

## 1. Plat Committee – August 8, 2022

- Brantley
- Venuti
- Gillham
- Staggs

**AGENDA ITEM H. PUBLIC COMMENT/PRESENTATIONS**

Chair Martin asked if there was anyone from the public who would like to comment on anything not appearing on the agenda. No one wished to comment.

**AGENDA ITEM I. DIRECTOR'S COMMENTS****AGENDA ITEM J. COMMISSIONER COMMENTS****AGENDA ITEM K. ADJOURNMENT**

Commissioner Bentz moved to adjourn the meeting at 8:25 PM.

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Ann E. Shirnberg  
Administrative Assistant



## **E. NEW BUSINESS**

1. Ordinance 2022-XX: Authorizing the release of a commercial deed restriction on a parcel of land located in Cooper Landing originally conveyed by the Kenai Peninsula Borough.




# Kenai Peninsula Borough


## Planning Department – Land Management Division

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### MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Borough Mayor   
Robert Ruffner, Planning Director   
Marcus A Mueller, Land Management Officer 

**FROM:** Aaron Hughes, Land Management Agent 

**DATE:** July 28, 2022

**RE:** Ordinance 2022-\_\_\_, Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough (Mayor)

---

Parcel D, Quartz Creek Subdivision, according to Plat No. 94-11, was conveyed by KPB as part of the 2000 KPB General Land Sale pursuant to Ordinance 99-55. The conveyance deed contained the following language required at the time under KPB 17.10.130(D) creating a deed restriction on the subject parcel: "FURTHER SUBJECT TO restrictive covenant pursuant to KPB 17.10.130(D). The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited".

KPB 17.10.130(D) was later amended by Ordinance 2003-23 to read: "Land shall be conveyed without deed restrictions unless otherwise provided by the assembly by ordinance", removing the requirement for deed restrictions to be included in conveyances from the borough.

The applicants, Shirley Ann Kuznicki (property owner) and Onie Ray Wilkes (interested party), have submitted a Petition for Modification of Conveyance Instrument Restrictions and related fees to remove the commercial deed restriction of public record. Mr. Wilkes has entered into an agreement to purchase that portion of the original Parcel D currently described as Tract D-2 from Ms. Kuznicki. As a result of the commercial deed restriction, Mr. Wilkes is not able to close on the purchase due to lender requirements to obtain a residential mortgage.

Your consideration of the ordinance is appreciated.

Introduced by:	Mayor
Date:	08/09/22
Hearing:	08/23/22
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-**

**AN ORDINANCE AUTHORIZING THE RELEASE OF A COMMERCIAL DEED  
RESTRICTION ON A PARCEL OF LAND LOCATED IN COOPER LANDING  
ORIGINALLY CONVEYED BY THE KENAI PENINSULA BOROUGH**

**WHEREAS,** Parcel D, Quartz Creek Subdivision, according to Plat No. 94-1, Seward Recording District, was conveyed by quitclaim deed from the Kenai Peninsula Borough (Borough) to Jon James as part of the 2000 General Land Sale authorized by Ordinance 99-55; and

**WHEREAS,** as required under then-existing KPB code, a “commercial use” deed restriction was placed on the deed at the time of that conveyance provided, “The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited”; and

**WHEREAS,** the original Parcel D of Quartz Creek Subdivision has been further subdivided into two parcels now known as Tract D-1 and Tract D-2, Quartz Creek Subdivision James Addition; and

**WHEREAS,** Tract D-2 currently is under contract for sale from Shirley Ann Kuznicki as seller to Onie Ray Wilkes as buyer with the intention of obtaining residential financing; and

**WHEREAS,** on the date of the conveyance, KPB Code 17.10.130(D) stated “All lands or interests in lands shall be conveyed by an instrument containing restrictions that restrict the use of the land to that classification and prohibit the use of the land for any other purpose”; and

**WHEREAS,** KPB Code 17.10.130(D) was amended by Ordinance 2003-23 to read “Land shall be conveyed without deed restriction unless otherwise provided by the assembly by ordinance”; and

**WHEREAS,** the Cooper Landing Land Use Plan identifies the intended classification for parcels in the Quartz Creek Subdivision as Commercial; and

**WHEREAS,** the proposed purchaser, Onie Ray Wilkes, has submitted a written petition to modify the deed restriction and deposited the non-refundable fee per 17.10.130(F); and

**WHEREAS,** Mr. Wilkes has stated that he is unable to obtain a residential mortgage because the property is restricted to commercial use in an otherwise unrestricted area and the best use for the property is a single-family residence; and

**WHEREAS,** public notice has been published per KPB 17.10.130(F)(2); and

**WHEREAS,** the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended \_\_\_\_\_; and

**WHEREAS,** the KPB Planning Commission at its regularly scheduled meeting of August 8, 2022, recommended \_\_\_\_\_;

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

**SECTION 1.** That pursuant to KPB 17.10.130 (F)(4), the mayor is hereby authorized to release the commercial deed restriction pertaining to Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska, as created in that Quitclaim Deed Recorded August 21, 2000 as Book 102, Page 68, Seward Recording District based on the following findings of fact:

- a. The original parcel (Parcel D) was conveyed with a commercial deed restriction to satisfy then KPB 17.10.130(D). KPB Code 17.10.130(D) was later amended by Ordinance 2003-23 to remove deed restrictions from conveyances.
- b. The subject parcel is otherwise unrestricted.
- c. The applicant is unable to proceed with closing of the purchase of the property because the commercial deed restriction impacts his ability to obtain a residential mortgage.
- d. Public notice of the proposed actions was delivered and published in accordance with KPB 17.10.130(F)(2).

**SECTION 2.** The mayor is authorized to sign a *Release of Deed Restriction*, respective to Tract D-2, Quartz Creek Subdivision James Addition, and any other documents necessary to effectuate the intent and purpose of this ordinance.

**SECTION 3.** That this ordinance is effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  
DAY OF \_\_\_\_\_, 2022.**

\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk



# Kuznicki / Wilkes Petition for Release of Commercial Deed Restriction (Tract D-2)



 Tract D-2  
 Tax Parcels

0 175 350 700 Feet



## RELEASE OF DEED RESTRICTION

**WHEREAS**, the Kenai Peninsula Borough conveyed real property to Jon James by quitclaim deed recorded on August 21, 2000 as **Book 102, Page 68 in the Seward Recording District**, pursuant to KPB Ordinance 99-55 which contained a deed restriction.

**WHEREAS**, the real property described in that initial conveyance has been further subdivided into two Tracts described as Tract D-1 and D-2, Quartz Creek James Addition.

**WHEREAS**, Shirley Ann Kuznicki, the current owner of Tract D-2, has petitioned the Kenai Peninsula Borough to release the above commercial deed restriction on the real property.

**WHEREAS**, on \_\_\_\_\_, 2022 the Kenai Peninsula Borough Assembly enacted Ordinance 2022-XX authorizing the release of said deed restriction specific to Tract D-2.

**NOW, THEREFORE**, the **GRANTOR, THE KENAI PENINSULA BOROUGH**, an Alaska municipal corporation, whose address is 144 North Binkley Street, Soldotna, Alaska 99669, for the sum of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Assembly Ordinance 2022-XX, enacted \_\_\_\_\_, 2022, releases forever unto the successor in interest and **GRANTEE, Shirley Ann Kuznicki**, whose address is 3160 Admiralty Bay Dr., Anchorage, AK 99515, her successors and assigns, the following restriction created in that quitclaim deed recorded as Book 102, Page 68 in the Seward Recording District:

*“FURTHER SUBJECT TO The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited”.*

As to the real property legally described as:

Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2022.

KENAI PENINSULA BOROUGH:

\_\_\_\_\_  
Charlie Pierce, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

\_\_\_\_\_  
Johni Blankenship  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage  
Deputy Borough Attorney

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_



Record in the Seward Recording District

Please return to: Kenai Peninsula Borough  
Planning Department  
144 North Binkley Street  
Soldotna, Alaska 99669

DRAFT

**PETITION FOR MODIFICATION OF CONVEYANCE INSTRUMENT  
RESTRICTIONS  
KENAI PENINSULA BOROUGH  
LAND MANAGEMENT DIVISION  
KPB 17.10.130(F)**

144 N. Binkley Street  
Soldotna, AK 99669-7599  
[lmweb@kpb.us](mailto:lmweb@kpb.us)

Phone: 907-714-2205  
Fax: 907-714-2378

***(Must be accompanied with a \$500.00 non-refundable fee)***

Parcel Identification Number (PIN – 8 digits): 119-124-21

Legal Description: Tract D-2 Quartz Creek James Addition

\_\_\_\_\_

\_\_\_\_\_

Conveying document recording number & recording district:  
102-69 Seward District

(i.e. 2018-000000-0 Kenai or Book 398, Page 204 Seward)

The restriction(s) petitioned for modification is/are (please list below):

See Wilkes petition

\_\_\_\_\_

\_\_\_\_\_

The justification(s) for the modification of the restriction is/are *(please list below)*:

~~My request is made on behalf of Mr Ray wilkes intention of occupying the home as soon as possible as his family residence. The home has been my residence and bed and breakfast or vacation rental home since 2006. Currently KPB has already begun future intentions and preliminary planning stages of the adjoining parcels, to include the development of Tract B and C designed to be subdivided into one acre lots each of residential or commercial lots. Thank you, Shirley Kuznicki~~

Name of Petitioner: Shirley Ann Kuznicki

Mailing Address: 3160 Admiralty Bay Dr., Anchorage, AK 99515

Phone: 907-440-1923 Email: shirleyannkuznicki@yahoo.com

Petitioner's Representative/Agent: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_



\_\_\_\_\_  
Signature

6/25/2022

\_\_\_\_\_  
Date

***IF YOU HAVE ANY QUESTIONS REGARDING THIS APPLICATION  
PLEASE CONTACT THE LAND MANAGEMENT DIVISION***

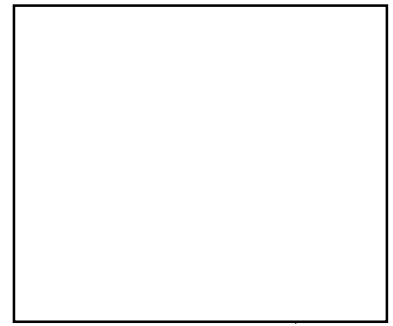
# Tax Compliance Certification

## Kenai Peninsula Borough

### Finance Department

144 N. Binkley Street  
Soldotna, Alaska 99669-7599  
www.kpb.us

Phone: (907) 714-2197  
or: (907) 714-2175  
Fax: (907) 714-2376



Fill in all information requested. Sign and date, and submit with bid or proposal.

For Official Use Only

Reason for Certificate:		For Department:	
Business Name:			
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:		
Owner Name(s):	Shirley Ann Kuznicki		
Business Mailing Address:	3160 Admiralty Bay Dr., Anchorage AK 99515		
Business Telephone:	907-440-1923	Business Fax:	
Email:	shirleyannkuznicki@yahoo.com		

As a business or individual, have you ever conducted business or owned real or personal property within the Kenai Peninsula Borough? (If yes, please supply the following account numbers and sign below. If no, please sign below.)

☐ Yes    ☐ No    Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS	
ACCT. NO.	ACCT. NAME

\_\_\_\_\_  
KPB Finance Department (signature required)

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

\_\_\_\_\_  
KPB Sales Tax Division (signature required)

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

\_\_\_\_\_  
Date    ☐ In Compliance    ☐ Not in Compliance

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

\_\_\_\_\_  
Date    ☐ In Compliance    ☐ Not in Compliance

CERTIFICATION: I, Shirley Ann Kuznicki the Owner, hereby certify that, to the best of my knowledge, the above information is correct as of 6/25/2022.

(Name of Applicant)

(Title)

(Date)

\_\_\_\_\_  
Signature of Applicant (Required)

IF ANY BUSINESS IS CONDUCTED OR IS AWARDED A BID WITHIN THE KENAI PENINSULA BOROUGH YOU MUST BE REGISTERED TO COLLECT SALES TAX. THE SALES TAX DEPARTMENT CAN BE REACHED AT (907) 714-2175.

**PETITION FOR MODIFICATION OF CONVEYANCE INSTRUMENT  
RESTRICTIONS  
KENAI PENINSULA BOROUGH  
LAND MANAGEMENT DIVISION  
KPB 17.10.130(F)**

144 N. Binkley Street  
Soldotna, AK 99669-7599  
[lmweb@kpb.us](mailto:lmweb@kpb.us)

Phone: 907-714-2205  
Fax: 907-714-2378

*(Must be accompanied with a \$500.00 non-refundable fee)*

Parcel Identification Number (PIN – 8 digits): 119-124-21

Legal Description: TRACT D-2 Quartz Creek Sub  
JAMES ADDN.

Conveying document recording number & recording district: 102 PAGE 68 SEWARD.  
(i.e. 2018-000000-0 Kenai or Book 398, Page 204 Seward)

The restriction(s) petitioned for modification is/are (please list below):

Deed Restriction AS SHOWN ON DEED.

The justification(s) for the modification of the restriction is/are (please list below):

THIS property was restricted to commercial use in Cooper Landing,  
which is a non-zoning area. This Deed restriction has halted the  
progress of my mortgage financing, which is time sensitive. The property's  
highest and best use is determined to be it current use. single family residence.

Name of Petitioner: ONIE RAY WILKES

Mailing Address: P.O. Box 871 Cooper Landing AK 99572

Phone: 907-302-1220 Email: beancreeker@yahoo.com

Petitioner's Representative/Agent: Don Onie Ray Wilkes  
Mailing Address: P.O. Box 871 Cooper Landing AK 99572  
Phone: 907-302-1220 Email: beancreeker@yahoo.com

Don Onie Ray Wilkes  
Signature

6/10/22  
Date

**IF YOU HAVE ANY QUESTIONS REGARDING THIS APPLICATION  
PLEASE CONTACT THE LAND MANAGEMENT DIVISION**

Phone: (907) 714-2197  
or: (907) 714-2175  
Fax: (907) 714-2376

For Official Use Only

Reason for Certificate:	Petition for Modification		For Department:	LAND MANAGEMENT.
Business Name:	N/A			
Business Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:			
Owner Name(s):				
Business Mailing Address:				
Business Telephone:		Business Fax:		
Email:				

☒ Yes ☐ No Kenai Peninsula Borough Code of Ordinances, Chapter 5.28.140, requires that businesses/individuals contracting to do business with the Kenai Peninsula Borough be in compliance with Borough tax provisions. No contract will be awarded to any individual or business who is found to be in violation of the Borough Code of Ordinances in the several areas of taxation.

REAL/PERSONAL/BUSINESS PROPERTY ACCOUNTS	
ACCT. NO.	ACCT. NAME

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

\_\_\_\_\_ ☐ In Compliance ☐ Not in Compliance  
Date

SALES TAX ACCOUNTS	
ACCT. NO.	ACCT. NAME

TAX ACCOUNTS/STATUS (TO BE COMPLETED BY KPB)	
YEAR LAST PAID	BALANCE DUE

\_\_\_\_\_ ☐ In Compliance ☐ Not in Compliance  
Date

best of my knowledge, the above information is correct as of 6/10/22  
(Date)

  
Signature of Applicant (Required)

E1-14



**APPRAISAL OF REAL PROPERTY**

**LOCATED AT:**

21899 Sterling Hwy  
Tract D-2 Quartz Creek Sub James Addn  
Cooper Landing, AK 99572

**FOR:**

First National Bank Alaska  
11408 Kenai Spur Hwy  
Kenai, AK 99611

**AS OF:**

05/20/2022

**BY:**

Russell Farrington  
Farrington's Appraisal Services, LLC  
PO Box 220865  
Anchorage, AK 99522



## Uniform Residential Appraisal Report

File # Loan# 0102093043

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property

Property Address **21899 Sterling Hwy** City **Cooper Landing** State **AK** Zip Code **99572**  
 Borrower **Onie Ray Wilkes** Owner of Public Record **Shirley Ann Kuznicki** County **Kenai Peninsula Borough**  
 Legal Description **Tract D-2 Quartz Creek Sub James Addn**  
 Assessor's Parcel # **119-124-21** Tax Year **2021** R.E. Taxes \$ **4,789**  
 Neighborhood Name **Cooper Landing** Map Reference **See Attached** Census Tract **0003 00**  
 Occupant ☒ Owner ☐ Tenant ☐ Vacant Special Assessments \$ **0** ☐ PUD HOA \$ **0** ☐ per year ☐ per month  
 Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)  
 Assignment Type ☒ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)  
 Lender/Client **First National Bank Alaska** Address **11408 Kenai Spur Hwy, Kenai, AK 99611**  
 Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☒ Yes ☐ No  
 Report data source(s) used, offering price(s), and date(s) **DOM Q, The current purchase is a FSBO deal. There is a 4 page purchase contract dated, 04/23/2022, for the contract price of \$755K. There is a cancelled MLS Listing #21-5498 listed 04/22/21, cancelled 02/15/22 (OLP\$859K reduced to \$755K. DOM=301)**  
 I ☒ did ☐ did not analyze the contract for sale for the subject property transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. **Arms length sale; Basic purchase contract (4 pages total), 4pg contract dated & signed 04/23/22 for \$755K. No adverse conditions/clauses noted. No addendums/counters or home inspection reports have been provided to me along w/this assignment**  
 Contract Price \$ **755,000** Date of Contract **04/23/2022** Is the property seller the owner of public record? ☒ Yes ☐ No Data Source(s) **Tax rcrds, contract**  
 Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No  
 If yes, report the total dollar amount and describe the items to be paid **\$0**

**Note: Race and the racial composition of the neighborhood are not appraisal factors.**

Neighborhood Characteristics			One-Unit Housing Trends			One-Unit Housing		Present Land Use %	
Location <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input checked="" type="checkbox"/> Rural	Property Values <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining		PRICE	AGE	One-Unit	50 %			
Built-Up <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Demand/Supply <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply		\$ (000)	(yrs)	2-4 Unit	2 %			
Growth <input type="checkbox"/> Rapid <input type="checkbox"/> Stable <input checked="" type="checkbox"/> Slow	Marketing Time <input checked="" type="checkbox"/> Under 3 mths <input type="checkbox"/> 3-6 mths <input type="checkbox"/> Over 6 mths		550	Low	Multi-Family	1 %			
Neighborhood Boundaries <b>Hope to the north, Moose Pass to the east, Harding Icefield/Chugach Mtns to the south, Sterling to the west.</b>			795	High	Commercial	5 %			
			680	Pred.	Other	42 %			

**Neighborhood Description** **Cooper Landing is located on the eastern Kenai Peninsula, approximately 130 miles south of Anchorage. Cooper Landing is a small community w/approximately 360 residents located at the headwaters of the world famous Kenai River. The population nearly doubles in the summer to support tourist businesses & activities. The area is known for it's world class trout fishing & sockeye salmon runs. The Kenai Princess Lodge is the largest single employer in the area. Cooper Landing has a K-8 school & high school students require busing to Soldotna, which is approximately 40 miles southwest. The Cooper Landing general area has somewhat of a vacation home/resort feel.**  
**Market Conditions (including support for the above conclusions)** **The Cooper Landing market is considered stable w/good overall demand. Market activity is limited due to the small size of the community & comps are diverse (market as a whole ranges from small cabin type properties to upper end water front properties). Financing options are available from a variety of sources. Interest rates remain at favorable levels (5%-5.5%+) which has been keeping demand strong. Marketing times are typically 0-90 days +/- for reasonably priced properties.**

**Dimensions** **Irregular/No As-built provided** Area **5.0 ac** Shape **Rectangular** View **B Mtn, Woods**  
**Specific Zoning Classification** **No Zoning** Zoning Description **No Zoning**  
**Zoning Compliance** ☐ Legal ☐ Legal Nonconforming (Grandfathered Use) ☒ No Zoning ☐ Illegal (describe)  
**Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use?** ☒ Yes ☐ No **If No, describe** **Highest and best use analysis was performed and the highest and best use is determined to be its' current use (SFR).**  
**Utilities** **Public** **Other (describe)** **Public** **Other (describe)** **Off-site Improvements - Type** **Public** **Private**  
**Electricity** ☒ ☐ **Water** ☐ ☒ **Private Well** **Street** **Paved** ☒ ☐  
**Gas** ☐ ☒ **Oil, Propane** **Sanitary Sewer** ☐ ☒ **Private Septic** **Alley** **None** ☐ ☐  
**FEMA Special Flood Hazard Area** ☐ Yes ☒ No **FEMA Flood Zone** **D** **FEMA Map #** **0200122150B** **FEMA Map Date** **10/20/2016**  
**Are the utilities and off-site improvements typical for the market area?** ☒ Yes ☐ No **If No, describe**  
**Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)?** ☐ Yes ☒ No **If Yes, describe**  
**No as-built survey provided. Heating oil, propane, electric & wood are the primary heat sources for this market. Above grade oil/propane tanks are common. Natural gas is not in area. Well/septic systems are common in this market. Public water/sewer are unavailable. 42% in present land use above is for vacant lands (mostly refuge & parklands). At time of my inspection, all utilities were turned on & observed to be operational. No zoning is common for this market area.**

General Description		Foundation		Exterior Description		Materials/Condition		Interior		Materials/Condition	
Units <input checked="" type="checkbox"/> One <input type="checkbox"/> One with Accessory Unit	<input type="checkbox"/> Concrete Slab <input checked="" type="checkbox"/> Crawl Space	<input type="checkbox"/> Full Basement <input type="checkbox"/> Partial Basement	<input type="checkbox"/> Foundation Walls	<input type="checkbox"/> Poured C/C/Avg	<input type="checkbox"/> Floors	<input type="checkbox"/> W/mnt crpt tile/Good					
# of Stories <b>1</b>	<input type="checkbox"/> Basement Area <b>0 sq ft</b>	<input type="checkbox"/> Basement Finish <b>0 %</b>	<input type="checkbox"/> Exterior Walls	<input type="checkbox"/> HardiPlank/Avg+	<input type="checkbox"/> Walls	<input type="checkbox"/> DW, Txt, Pnt/Good					
Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> S-Det/End Unit	<input type="checkbox"/> Outside Entry/Exit <input type="checkbox"/> Sump Pump	<input type="checkbox"/> Evidence of <input type="checkbox"/> Infestation	<input type="checkbox"/> Roof Surface	<input type="checkbox"/> Metal/Avg	<input type="checkbox"/> Trim/Finish	<input type="checkbox"/> Wood/Good					
<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Under Const.	<input type="checkbox"/> Heating <input type="checkbox"/> FWA <input type="checkbox"/> HWB <input checked="" type="checkbox"/> Radiant	<input type="checkbox"/> Dampness <input type="checkbox"/> Settlement	<input type="checkbox"/> Gutters & Downspouts	<input type="checkbox"/> Aluminum/Avg+	<input type="checkbox"/> Bath Floor	<input type="checkbox"/> Tile, Vinyl/Good					
Design (Style) <b>Ranch</b>	<input type="checkbox"/> Fuel Oil <input type="checkbox"/> Central Air Conditioning	<input type="checkbox"/> Amenities	<input type="checkbox"/> Window Type	<input type="checkbox"/> Vinyl Csmnt/Avg+	<input type="checkbox"/> Bath Wainscot	<input type="checkbox"/> Tile, Vinyl/Good					
Year Built <b>2006</b>	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Other HRV	<input type="checkbox"/> Screens	<input type="checkbox"/> Storm Sash/Insulated	<input type="checkbox"/> Triple Pane/Avg+	<input type="checkbox"/> Car Storage	<input type="checkbox"/> None					
Effective Age (Yrs) <b>8</b>	<input type="checkbox"/> Heating <input type="checkbox"/> FWA <input type="checkbox"/> HWB <input checked="" type="checkbox"/> Radiant	<input type="checkbox"/> Fireplaces(s) # <b>0</b>	<input type="checkbox"/> Screens	<input type="checkbox"/> Screens/Avg+	<input checked="" type="checkbox"/> Driveway	<input type="checkbox"/> # of Cars <b>6</b>					
Attic <input type="checkbox"/> None	<input type="checkbox"/> Drop Stair <input type="checkbox"/> Stairs	<input type="checkbox"/> Fence	<input type="checkbox"/> Amenities	<input checked="" type="checkbox"/> Woodstove(s) # <b>1</b>	<input type="checkbox"/> Driveway Surface	<input type="checkbox"/> Gravel					
<input type="checkbox"/> Floor <input checked="" type="checkbox"/> Scuttle	<input type="checkbox"/> Cooling <input type="checkbox"/> Central Air Conditioning	<input type="checkbox"/> Pool	<input type="checkbox"/> Patio/Deck	<input type="checkbox"/> C/Dk	<input checked="" type="checkbox"/> Porch	<input type="checkbox"/> C/E					
<input type="checkbox"/> Finished <input type="checkbox"/> Heated	<input type="checkbox"/> Dishwasher <input type="checkbox"/> Disposal <input checked="" type="checkbox"/> Microwave	<input type="checkbox"/> Washer/Dryer	<input type="checkbox"/> Pool	<input type="checkbox"/> None	<input type="checkbox"/> Other	<input type="checkbox"/> None					
Appliances <input type="checkbox"/> Refrigerator <input checked="" type="checkbox"/> Range/Oven	<input type="checkbox"/> Finished area above grade contains: <b>7 Rooms</b>	<input type="checkbox"/> Bedrooms <b>4</b>	<input type="checkbox"/> Bath(s) <b>2.1</b>	<input type="checkbox"/> Square Feet of Gross Living Area Above Grade <b>2,103</b>							
Additional features (special energy efficient items, etc.)	<b>Energy efficiency appears to be good (no rating provided). Subject has oil fired, in-floor radiant heat+HRV system &amp; triple pane windows. Addn't quartz counters, soft-close cabinets, kitchen bar, vaulted ceilings, T&amp;G, cast iron stove, mirrored closet doors, jetted tub, trex decks, generator switch.</b>										
<b>Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.)</b> <b>C3, Kitchen-updated-eleven to fifteen years ago; Bathrooms-updated-eleven to fifteen years ago; The subject improvements are considered to be in good, marketable condition which corresponds w/ the estimate of effective age. Kitchen features quartz counters, soft close cabinets, custom "retro" appliances, kitchen bar &amp; breakfast nook. Primary bedroom suite has sliding glass door access to the rear covered trex deck, the primary suite bath features travertine tile floors &amp; jetted tub+extra shower stall. The other 3 BR's all feature private vessel style sinks built-in. This home was observed to have good quality finishes throughout w/good overall appeal.</b>											
<b>Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>If Yes, describe</b>											
<b>The scope of work for this appraisal included an interior &amp; exterior inspection of the subject property. The scope of the inspection included observation of readily observable conditions, the scope of the inspection was not equivalent to an inspection performed by a professional home inspector. The appraiser does not guarantee the Property is free from defects. The appraisal establishes the value of the Property for mortgage purposes only.</b>											
<b>Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>If No, describe</b>											

## Public Notice of Proposed Release of a Deed Restriction

Pursuant to Kenai Peninsula Borough (KPB) Code of Ordinances, Chapter 17.10.130(f), the Kenai Peninsula Borough is considering release of a deed restriction on the use of a parcel of land owned by the Shirley Ann Kuznicki described as Tract D-2, Quartz Creek Subdivision James Addition.

The Borough encourages you to review the proposed ordinance and submit written comments. Written comments must be received no later than close of business August 3, 2022, to be included in the Planning Commission packet for its public hearing. Written comments may be sent to the following address: Kenai Peninsula Borough, Land Management Division 144 N. Binkley Street, Soldotna, AK 99669-7599

**Description of Property:** 21899 Sterling Highway, Cooper Landing, AK 99572 and being legally described as:

Tract D-2, Quartz Creek Subdivision James Addition, according to the official plat thereof, filed under Plat Number 2005-14, Records of the Seward Recording District, Third Judicial District, State of Alaska. (KPB Parcel ID: 119-124-21)

**Basis For Proposed Action:** Parcel No. 119-124-21 was deeded from the Kenai Peninsula Borough on August 21, 2000 as Book 102, Page 68 in the Seward Recording District, pursuant to KPB Ordinance 99-55, subject to the following Commercial Deed Restriction:

*"FURTHER SUBJECT TO The real property described in this conveyance instrument shall be used primarily for commercial purposes, and any other uses shall be compatible with commercial uses. The use of the land for any other purpose, incompatible with commercial use, is prohibited."*

Shirley Ann Kuznicki, the current owner of Tract D-2, and Onie Ray Wilkes, an interested party, have petitioned the Kenai Peninsula Borough to release the above commercial deed restriction in order to provide for residential use and lending.

The proposed action by would remove the commercial use deed restriction on Tract D-2, allowing the petitioner unrestricted use.

The public is invited to give testimony at the following meetings. Public meetings will be held as shown unless otherwise advertised.

Cooper Landing Advisory Planning Commission Public Hearing: August 3, 2022, 6:00 p.m. at the Cooper Landing Community Hall or Via Zoom <https://us06web.zoom.us/j/2045581076>

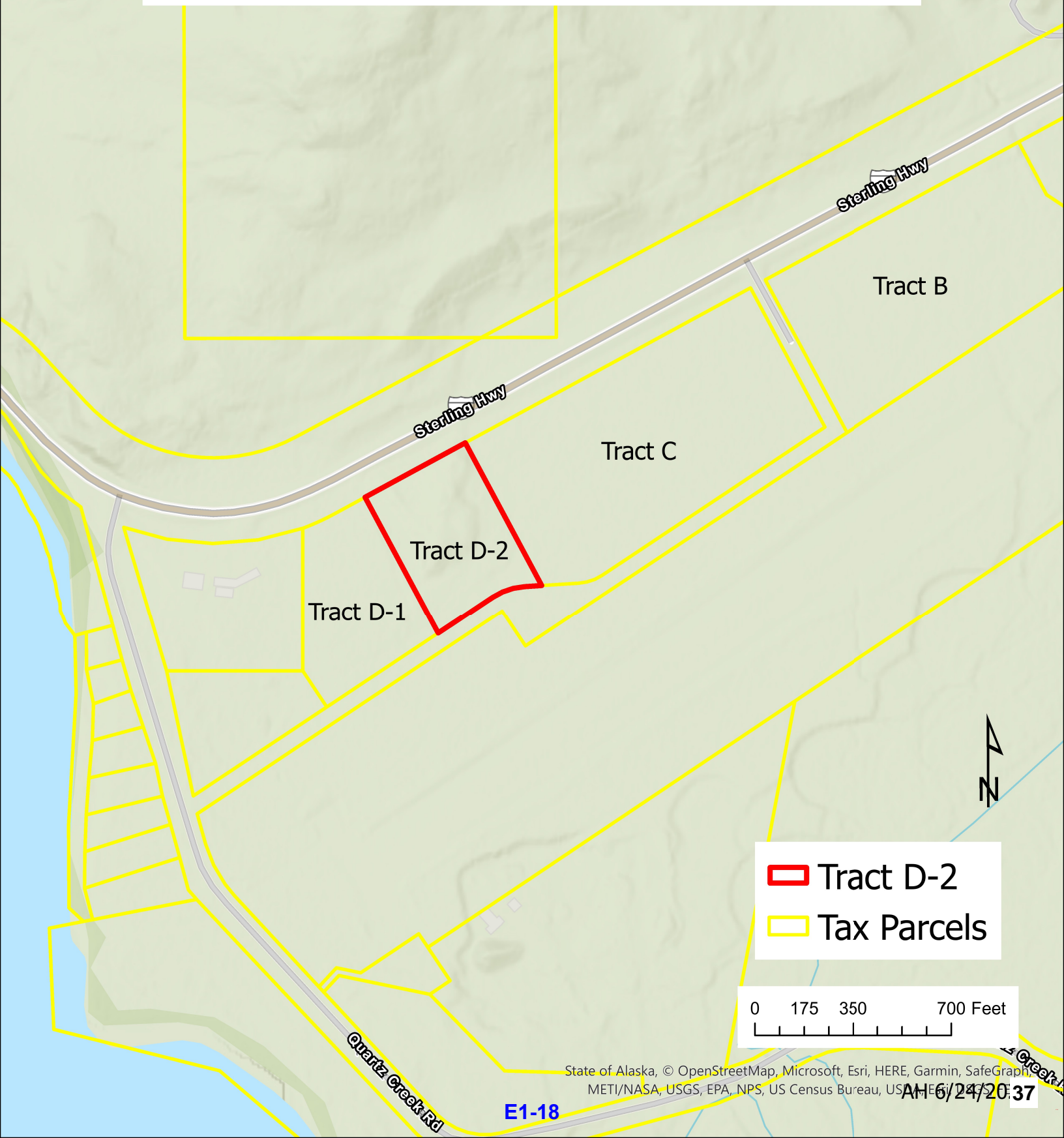
KPB Planning Commission Public Hearing: August 8, 2022, 7:30 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669 or via Zoom <https://kpb.legistar.com/Calendar.aspx>

KPB Assembly Meeting: August 23, 2022, 6:00 p.m. at the KPB Administration Building, 144 N. Binkley Street, Soldotna, AK 99669. <https://kpb.legistar.com/Calendar.aspx>

**Additional Information:** For further information contact Aaron Hughes, Land Management Division at 907-714-2205, or toll free within the Borough 1-800-478-4441, ext. 2205.

The Kenai Peninsula Borough reserves the right to waive technical defects in this publication.

# Kuznicki / Wilkes Petition for Release of Commercial Deed Restriction (Tract D-2)



## **E. NEW BUSINESS**

2. Ordinance 2022-XX: Authorizing the acquisition of real property located in Anchor Point, Alaska on behalf of Western Emergency Services for future expansion of emergency service facilities with funding through an interfund loan from the Land Trust Investment Fund.

# Kenai Peninsula Borough

## Planning Department – Land Management Division

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### MEMORANDUM

**TO:** Brent Johnson, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor *CP*  
Robert Ruffner, Planning Director *RR*  
Marcus A. Mueller, Land Management Officer *RRFMM*

**FROM:** Aaron Hughes, Land Management Agent *AH*  
Jon Marsh, Western Emergency Services Fire Chief *JM*  
Brandi Harbaugh, Finance Director *BH*

**DATE:** July 28, 2022

**RE:** Ordinance 2022-19-\_\_\_\_, Authorizing the Acquisition of Real Property Located in Anchor Point, Alaska on Behalf of Western Emergency Services through an Interfund Loan from the Land Trust Investment Fund, Appropriating Loan Proceeds for the Property Acquisition, and Appropriating Western Emergency Service Area Operating Funds for the Annual Loan Payment to the Land Trust Investment Fund (Mayor)

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Western Emergency Service Area (WESA) provides fire and emergency response services to residents and visitors of the borough. WESA's Anchor Point Station 3 is located adjacent to the parcels proposed for acquisition.

WESA is currently under a 5-year lease in the amount of \$2,000.00 per month for building space within Lot 20 that is currently being utilized for the storage and maintenance of a ladder truck and related equipment.

Although there are no current plans for expansion of the WESA Anchor Point Station 3 facility, the subject parcels have been determined to support future WESA operational needs and growth. The proactive acquisition of the subject properties will provide the real estate necessary for future expansion while converting an existing leased facility into a KPB-owned facility.

The proposed land acquisition involves 4 individual parcels of land from two different property owners. Two of the parcels contain improvements to be immediately utilized by WESA. The agreement reached with the respective



Page -2-

July 28, 2022

RE: Ordinance 2022-19-\_\_\_\_\_

property owners is based on fair market valuations determined by third-party appraisals.

The funding for the acquisition as proposed is to originate from the Land Trust Investment Fund ("LTIF") as outlined in KPB Ordinance 2018-29, which established the LTIF. KPB 5.10.200 and KPB 5.20.200 provides for the use of the LTIF as an interfund loan funding source for approved borough land acquisitions and capital improvements and provides for the terms and conditions of such loans.

From its inception, the LTIF has been utilized to preserve borough land sale proceeds within an investment strategy that provides returning benefits to the borough and financial tools to achieve long-term land program objectives. This transaction marks the first interfund loan funding from the LTIF which will be leveraged for the purpose to assist a service area meeting its land needs, showcasing the success of the LTIF framework and the importance of the continued stewardship of the fund as a powerful financial tool for the benefit of the borough for generations to come. Utilizing the fund in this manner will diversify the LTIF investment portfolio while providing a direct financial and operational benefit to borough taxpayers.

Acquisition of the proposed properties is an important proactive step in securing a long-term campus for WESA Station 3. As a part of the fiscal year 2023 budget process, Western Emergency Services appropriated \$44,400.00 to be applied as installment payments for the proposed land acquisition. The ordinance authorizes the acquisitions at a total price of \$735,000.00 plus surveying, title and closing costs, and due diligence fees not to exceed \$20,000. This ordinance also appropriates an additional \$52,560 from WESA's operating fund balance to provide for the first of ten annual loan payments of \$92,960 and appropriates the LTIF loan proceeds in the WESA Capital Project Fund for the proposed land acquisition of up to \$755,000.

Your consideration of the ordinance is appreciated.


**FINANCE DEPARTMENT  
ACCOUNT / FUNDS VERIFIED**

Acct. No. 252.10210

Amount: Not to exceed \$755,000

Acct. No. 209.27910

Amount: \$ 52,560

By:  Date: 7/27/2022

Introduced by: Mayor  
Date: 8/09/22  
Hearing: 8/23/22  
Action:  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-19-**

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF REAL PROPERTY  
LOCATED IN ANCHOR POINT, ALASKA ON BEHALF OF WESTERN EMERGENCY  
SERVICES THROUGH AN INTERFUND LOAN FROM THE LAND TRUST  
INVESTMENT FUND, APPROPRIATING LOAN PROCEEDS FOR THE PROPERTY  
ACQUISITION, AND APPROPRIATING WESTERN EMERGENCY SERVICE AREA  
OPERATING FUNDS FOR THE ANNUAL LOAN PAYMENT TO THE LAND TRUST  
INVESTMENT FUND**

**WHEREAS,** the Kenai Peninsula Borough’s Western Emergency Service Area (“WESA”) provides for the operation of fire and emergency service operations serving borough residents and visitors within the service area and mutual aid areas; and

**WHEREAS,** the WESA Anchor Point Station 3 is an important facility serving a growing area on the Kenai Peninsula as a point of operational command, equipment storage, servicing, and deployment; and

**WHEREAS,** WESA is currently under a five-year lease, at \$2,000.00 per month, for a portion of the subject property, for the storage and maintenance of a ladder truck and emergency related equipment; and

**WHEREAS,** the proposed purchase involves four parcels under the ownership of two separate owners immediately adjacent to the existing WESA Anchor Point Station 3; and

**WHEREAS,** acquisition of the subject properties will provide WESA the land holdings necessary for immediate use and future expansion; and

**WHEREAS,** the funding for the acquisition will be provided though an interfund loan to WESA from the Land Trust Investment Fund (“LTIF”) as outlined by Ordinance 2018-29 and KPB 5.10.200, in addition to funds appropriated from the FY2023 WESA budget; and

**WHEREAS,** WESA will make efforts to recover land acquisition costs through grants or other funding assistance when eligible; and

**WHEREAS,** the Western Emergency Service Area Board at its July 13, 2022, meeting unanimously recommended to proceed with the proposed acquisition; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission, at its regular meeting of August 22, 2022, recommended \_\_\_\_\_;

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

**SECTION 1.** That the assembly finds that purchasing the following described real property pursuant to KPB 17.10.040 is in the best interest of the borough:

Clark Properties:

LOT 20, 21, and 24, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Numbers: 165-170-24, 165-170-27, 165-170-22)

Andrews Property:

LOT 22, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Number: 165-170-26)

**SECTION 2.** That the terms and conditions substantially in the form of the purchase agreements accompanying this ordinance are hereby approved. The purchase price shall be \$660,000.00 for the Clark properties and \$75,000.00 for the Andrews property, plus surveying, title, closing costs, and due diligence fees not to exceed \$20,000.00, for a total not to exceed \$755,000.00.

**SECTION 3.** That this acquisition is for immediate use and future expansion of fire and emergency medical services by WESA.

**SECTION 4.** That the above-described land is classified under KPB 17.10.080 as “Government” for the property to be held and used for fire and EMS.

**SECTION 5.** An interfund loan through the LTIF to WESA is authorized as provided in KPB 5.10.200(B)(10) for the acquisition of real property described in Section 1.

**SECTION 6.** That the LTIF interfund loan shall be for an amount up to \$755,000 at the prime rate on the enactment date of this ordinance, to be repaid by WESA on a ten-year term in equal annual installments.

**SECTION 7.** The mayor is authorized to execute any and all documents necessary to purchase the real property described in Section 1 in accordance with the terms and conditions contained in this ordinance and the accompanying purchase agreements, consistent with applicable provisions of KPB Chapter 17.10 along with any documents necessary to implement the authorized LTIF interfund loan to WESA and repayment thereof.

**SECTION 8.** That \$52,560 is appropriated from the Western Emergency Service Area Operating Fund Balance to account 209.51410.50252 for the first of ten annual loan payments to the LTIF.

**SECTION 9.** That up to \$755,000 in loan proceeds from the LTIF are appropriated to the Western Emergency Service Area Capital Project Fund account 444.51410.23WLD.49999 for the acquisition and related costs of the property listed in Section 1 above.

**SECTION 10.** That appropriations made in Section 9 of this ordinance are project length in nature and as such do not lapse at the end of any particular fiscal year.

**SECTION 11.** That this ordinance shall be effective immediately upon adoption.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

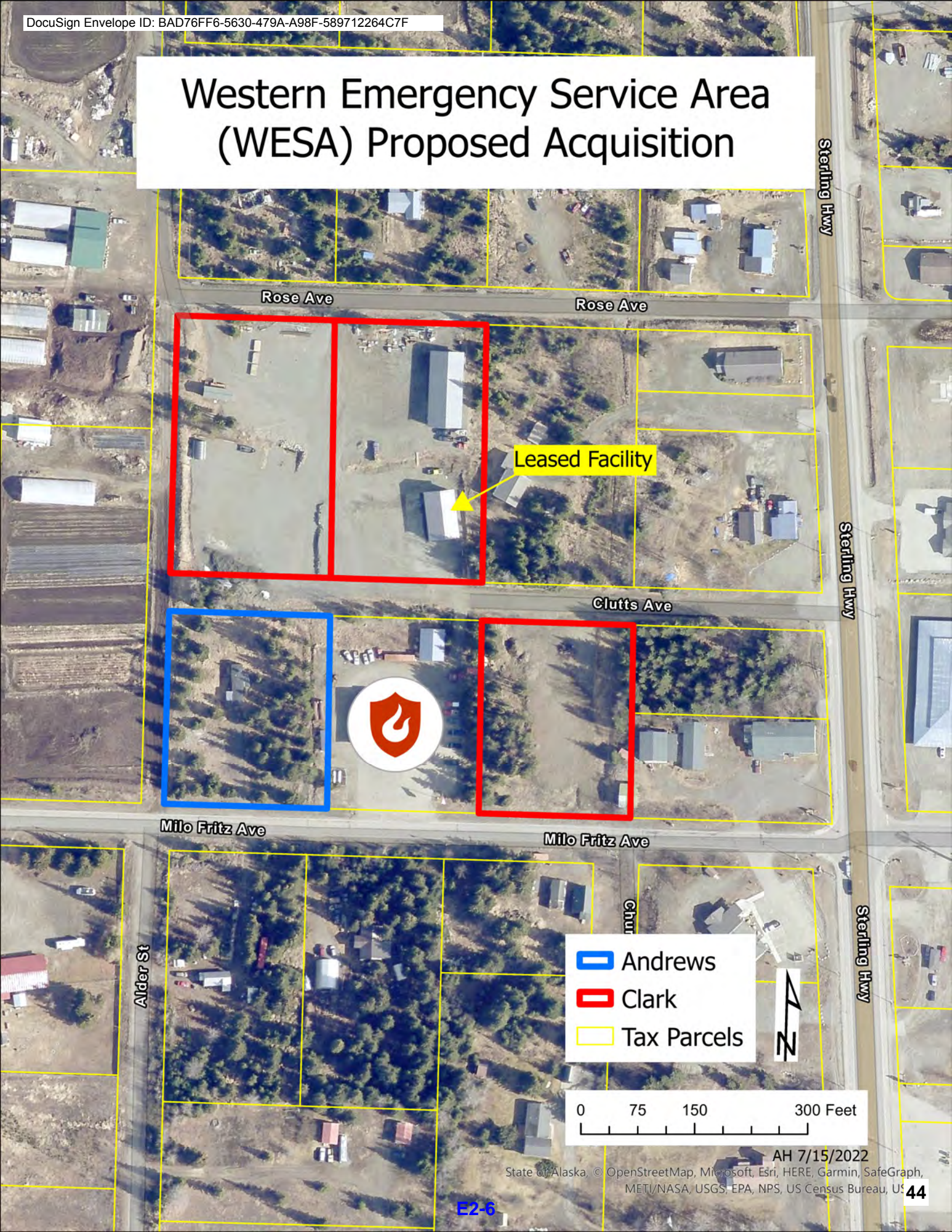
\_\_\_\_\_  
Brent Johnson, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk



# Western Emergency Service Area (WESA) Proposed Acquisition



Alder St

Milo Fritz Ave

Rose Ave

Rose Ave

Clutts Ave

Milo Fritz Ave

Clutts

Sterling Hwy

Sterling Hwy

Sterling Hwy

- Andrews
- Clark
- Tax Parcels

0 75 150 300 Feet



AH 7/15/2022

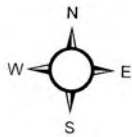




## Western Emergency Service Area (WESA)

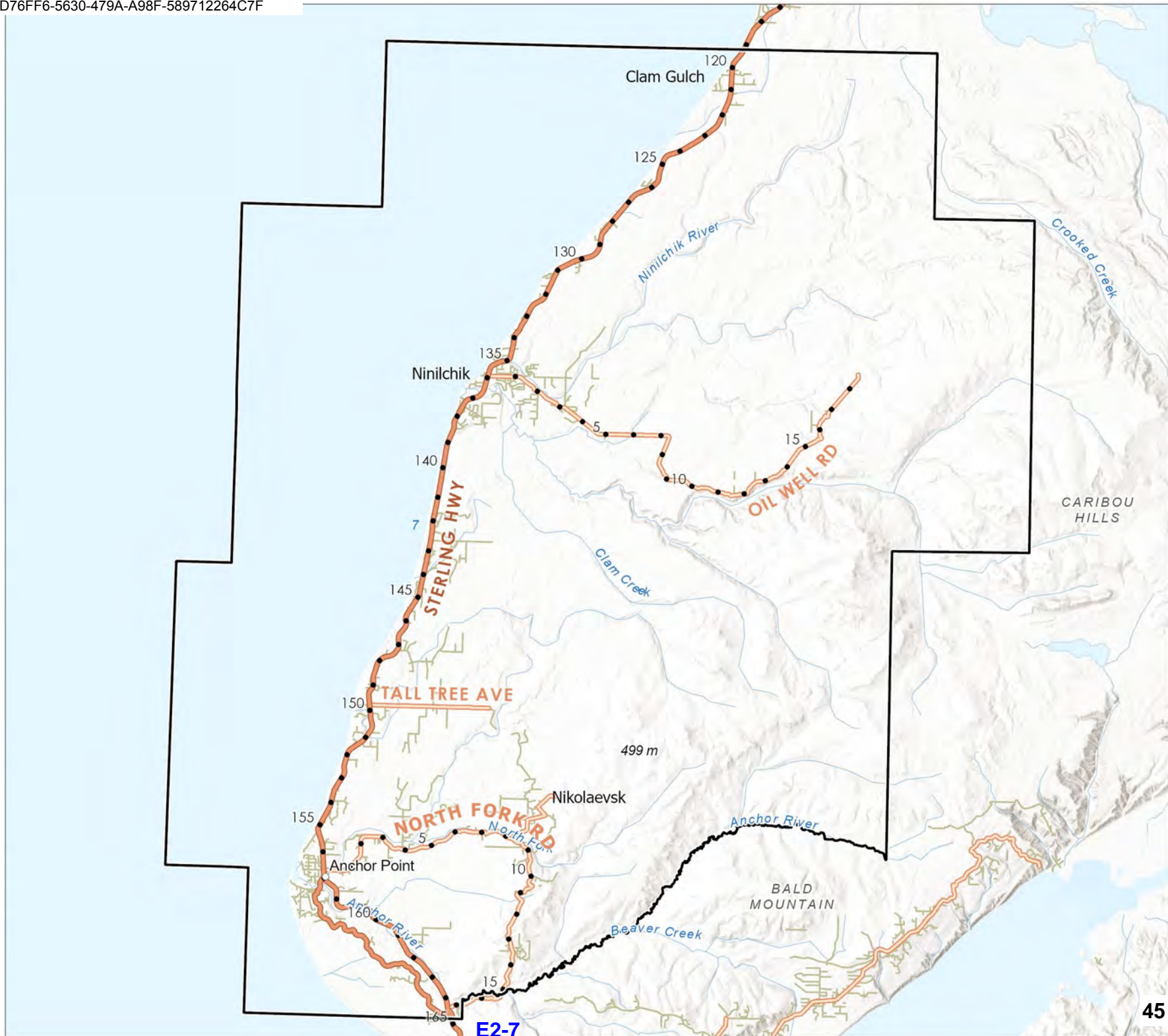
Map Data: 12/9/2020

- State Highway
- Major Road
- Minor Road



0 1 2 Miles

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.



## **PURCHASE AGREEMENT**

This Purchase Agreement (hereinafter the "Agreement") is made by and between Thomas Clark, whose address is P.O. Box 962, Anchor Point, AK 99603, (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

WHEREAS, SELLER is the owner of that real property located in the Homer Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

**LOT 20, 21, and 24, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Numbers: 165-170-24, 165-170-27, 165-170-22)**

**72405 and 72470 Clutts, Anchor Point, AK 99556  
72485 Rose Ave, Anchor Point, AK 99556**

WHEREAS, KPB has offered to buy, and SELLER is willing to sell the Property as evidenced by this Agreement; and

NOW THEREFORE, in consideration of the conditional promises herein contained, SELLER hereby agrees to sell to KPB, and KPB hereby agrees to buy from SELLER, the Property on the terms and conditions as set forth below:

1. PURCHASE PRICE

The purchase price of the Property is Six Hundred and Sixty Thousand Dollars and NO cents (**\$660,000.00**). Purchase price shall be subject to the completion of an independent third-party appraisal, with the final property valuation to be not less than the referenced purchase price. Final payment to be made by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to approval by the Borough Assembly.

2. EXPIRATION OF OFFER

SELLER shall sign and return this Purchase Agreement to KPB on or before **July 5, 2022** otherwise this offer shall terminate.

3. TITLE

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or

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judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by buyer.

#### 6. ESCROW AND CLOSING COSTS

Except as described in this paragraph, in addition to the purchase price, KPB agrees to pay for buyer related customary closing costs including the appraisal, inspection and recording fees for the conveyance deed in addition to 1/2 of the closing fee. Seller shall pay for seller related customary costs including the title insurance premium, 1/2 of closing fees and all other seller related fees. Property taxes for the current year, if any, will be prorated the date of closing. SELLER is responsible for Realtor's commission, if any, all unpaid taxes for prior years, if any, and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

#### 7. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days, or as specifically agreed to by both parties. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

#### 8. POSSESSION

Possession shall be delivered to KPB at time of recording unless otherwise agreed to in writing by all parties.

#### 9. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by the Kenai Peninsula Borough is subject to authorization by the Kenai Peninsula Borough Assembly and appropriation of funds. If the Kenai Peninsula Borough Assembly fails to authorize the purchase of the subject land and appropriate funds, this Agreement shall be terminated without penalty.

#### 10. DISCLOSURES

SELLER hereby agrees to provide property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards, that may be personally known by the seller in writing. If said disclosure presents a matter unsatisfactory to the buyer, KPB may terminate this agreement without penalty.

#### 11. CONTINGENT ON INSPECTION

This offer and agreement is contingent upon the completion of a property inspection satisfactory to KPB for its use and at KPB's expense. SELLER shall, upon reasonable notice, provide access to the property for inspection purposes to KPB and its representatives. Any invasive inspection procedures shall require SELLER's express permission and shall be promptly repaired or

replaced by KPB in a workman-like manner. KPB shall have 45 days from the execution of this agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

## 12. HAZARDOUS MATERIAL

SELLER covenants to the best of SELLER'S knowledge, that as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property owned or leased by the SELLER, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB'S ownership, possession, or control of the Property.

## 13. ENVIRONMENTAL CONTINGENCY

If during the course of KPB's due diligence of the Property pursuant to Section 11, Purchaser discovers the presence of Environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by purchaser, Purchaser shall have the right to give notice to Seller, accompanied by a copy or copies of the Third-Party Report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying Third-Party Report must be given no later than 60 days from receipt of said report. The notice under this section shall state:

- (i) that Purchaser is terminating this Contract due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Seller 30 days from notice to provide a mitigation plan outlining steps taken by seller to remedy said hazards to KPB's satisfaction at seller's expense.

Following the KPB sending the notice and report described in this section, the parties may negotiate other resolutions as may be agreeable to both parties in writing to be included as a part of this Agreement. In the event the parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement shall automatically terminate.

It is expressly understood, by execution of this agreement, seller hereby indemnifies buyer for any and all CERCLA related claims, liabilities or matters, unless otherwise provided for in this agreement. Said indemnification shall survive closing and termination of this agreement. Upon successful close of escrow said indemnification shall continue for a period of not less than 36 months, from the date of closing unless otherwise provided for in this agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) shall remain confidential and proprietary.

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The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the parties hereto. Notwithstanding, the report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

#### 14. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and SELLER or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.

#### 15. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this agreement, the SELLER or KPB may terminate this Agreement.

#### 16. PERSON PROPERTY

It is understood and agreed to by both KPB and seller that any and all personal property located on the property (mobile structure / office), shall remain the property of the seller. It is the seller's responsibility to move the mobile home from the property prior to the close of escrow. Upon notice of removal, KPB will be entitled to conduct a final inspection of the property prior to closing.

#### 17. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the KPB mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. Buyer may cancel this agreement without penalty in the event additional contracts are not secured required of this project.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the



addressor.

- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.  
SELLER shall deliver the property in its as-is condition.
- F. Confidentiality. This Agreement shall be considered proprietary to the parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which shall be deemed an original but all of which together will constitute one and the same instrument

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

SELLER:

\_\_\_\_\_  
Charlie Pierce, Mayor

*Thomas Clark*  
\_\_\_\_\_  
Thomas Clark

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship,  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage,  
Deputy Borough Attorney

Kenai Peninsula Borough, Alaska

Clark / KPB – Purchase Agreement

Page 5 of 5



RE: **4.36-Acre Anchor Point Property**

As a result of research and analysis, the value estimate(s) for the subject is/are as follows:

<b>FINAL MARKET VALUE ESTIMATE</b>	
<b>4.36-Acre Anchor Point Property</b>	
<b>Property Rights</b>	<b>Fee Simple</b>
<b>Condition</b>	<b>As Is</b>
<b>Effective Date of Appraisal</b>	<b>February 18, 2022</b>
<b>Vacant Lot 21 (16517027)</b>	<b>\$81,500</b>
<b>Improved Lot 20 (16517024)</b>	<b>\$454,100</b>
<b>Vacant Lot 24 (16517022)</b>	<b>\$64,400</b>
<b>Final Market Value Estimate - Bulk Sale</b>	<b>\$600,000</b>

The value estimates are based on a marketing period of approximately 9 months and an exposure period of approximately 9 months. The value opinion reported above is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the body of the report. This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits and Addendum. Thank you for the opportunity to be of service. If you have any questions, please feel free to call.

Respectfully submitted,

**Beverly Bowman**

Appraiser

Alaska Certified General – No. 134284

bbowman@reliantadvisory.com

**Per E. Bjorn-Roli, MAI**

Managing Member

Alaska Certified General – No. 302

## **PURCHASE AGREEMENT**

This Purchase Agreement (hereinafter the "Agreement") is made by and between Karen A. Andrews, whose address is 2298 Mount Augustine, Homer, AK 99603, (hereinafter referred to as "SELLER") and the KENAI PENINSULA BOROUGH, an Alaska municipal corporation, as buyer whose address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter referred to as "KPB").

WHEREAS, SELLER is the owner of that real property located in the Homer Recording District, Third Judicial District, State of Alaska, and more particularly described as follows:

**LOT 22, SPRUCE ACRES SUBDIVISION, ACCORDING TO PLAT NUMBER 60-45, RECORDS OF THE HOMER RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA. (Parcel Number: 165-170-26)**

**72478 Milo Fritz Avenue, Anchor Point, AK 99556**

WHEREAS, KPB has offered to buy, and SELLER is willing to sell the Property as evidenced by this Agreement; and

NOW THEREFORE, in consideration of the conditional promises herein contained, SELLER hereby agrees to sell to KPB, and KPB hereby agrees to buy from SELLER, the Property on the terms and conditions as set forth below:

1. **PURCHASE PRICE**

The purchase price of the Property is Seventy-Five Thousand Dollars and NO cents (**\$75,000.00**). Purchase price shall be subject to the completion of an independent third-party appraisal, with the final property valuation to be not less than the referenced purchase price. Final payment to be made by KPB at time of closing. The purchase of the property and appropriation for the purchase are subject to approval by the Borough Assembly.

2. **EXPIRATION OF OFFER**

SELLER shall sign and return this Purchase Agreement to KPB on or before **July 1, 2022** otherwise this offer shall terminate.

3. **TITLE**

Title shall be delivered at time of closing by Statutory Warranty Deed, which shall be issued to KPB. SELLER warrants and covenants that at the time of closing there shall be no liens or judgments recorded against SELLER in the same recording district in which the Property subject to this purchase agreement is situated. Title shall be clear of liens and encumbrances

Kenai Peninsula Borough, Alaska

Andrews / KPB – Purchase Agreement

Page 1 of 5

except title is subject to reservations, easements, rights-of-way, covenants, conditions and restrictions of record as agreed to by buyer.

#### 6. ESCROW AND CLOSING COSTS

Except as described in this paragraph, in addition to the purchase price, KPB agrees to pay for buyer related customary closing costs including the appraisal, inspection and recording fees for the conveyance deed in addition to 1/2 of the closing fee. Seller shall pay for seller related customary costs including the title insurance premium, 1/2 of closing fee and all other seller related fees. Property taxes for the current year, if any, will be prorated the date of closing. SELLER is responsible for Realtor's commission, if any, all unpaid taxes for prior years, if any, and all unpaid outstanding assessments, if any. All costs will be paid in full at the time of closing.

#### 7. CLOSING

Unless otherwise agreed in writing, closing will occur within 90 days, or as specifically agreed to by both parties. At closing, KPB will pay the balance of the purchase price. Both parties will execute all documents required to complete the Purchase Agreement and, if applicable, establish an escrow account.

#### 8. POSSESSION

Possession shall be delivered to KPB at time of recording unless otherwise agreed to in writing by all parties.

#### 9. KENAI PENINSULA BOROUGH ASSEMBLY APPROVAL

Purchase of the Property by the Kenai Peninsula Borough is subject to authorization by the Kenai Peninsula Borough Assembly and appropriation of funds. If the Kenai Peninsula Borough Assembly fails to authorize the purchase of the subject land and appropriate funds, this Agreement shall be terminated without penalty.

#### 10. DISCLOSURES

SELLER hereby agrees to provide property disclosures including any and all information regarding known defects, deficiencies, legal matters, environmental issues or hazards, that may be personally known by the seller in writing. If said disclosure presents a matter unsatisfactory to the buyer, KPB may terminate this agreement without penalty.

#### 11. CONTINGENT ON INSPECTION

This offer and agreement is contingent upon the completion of a property inspection satisfactory to KPB for its use and at KPB's expense. SELLER shall, upon reasonable notice, provide access to the property for inspection purposes to KPB and its representatives. Any invasive inspection procedures shall require SELLER's express permission and shall be promptly repaired or replaced by KPB in a workman-like manner. KPB shall have 45 days from the execution of this agreement to complete inspections and determine its satisfaction unless otherwise provided in writing.

## 12. HAZARDOUS MATERIAL

SELLER covenants to the best of SELLER'S knowledge, that as of the date of this Agreement, except as specifically identified herein, the Property is free of all contamination from petroleum products or any hazardous substance or hazardous waste, as defined by applicable state or federal law, and there are no underground storage tanks or associated piping on the Property. SELLER agrees that no hazardous substances or wastes shall be located on or stored on the Property, or any adjacent property owned or leased by the SELLER, owner or contractors, nor shall any such substance be owned, stored, used, or disposed of on the Property or any adjacent property by SELLER, its agents, employees, contractors, or invitee's, prior to KPB'S ownership, possession, or control of the Property.

## 13. ENVIRONMENTAL CONTINGENCY

If during the course of KPB's due diligence of the Property pursuant to Section 11, Purchaser discovers the presence of Environmental hazards on or released from the Property in any quantity or concentration exceeding the limits allowed by applicable law, or that are deemed undesirable by purchaser, Purchaser shall have the right to give notice to Seller, accompanied by a copy or copies of the Third-Party Report(s) disclosing and confirming the presence of such hazardous materials. The notice and accompanying Third-Party Report must be given no later than 60 days from receipt of said report. The notice under this section shall state:

- (i) that Purchaser is terminating this Contract due to the presence of such hazardous materials on or adversely affecting the Property; OR
- (ii) provide Seller 30 days from notice to provide a mitigation plan outlining steps taken by seller to remedy said hazards to KPB's satisfaction at sellers expense.

Following the KPB sending the notice and report described in this section, the parties may negotiate other resolutions as may be agreeable to both parties in writing to be included as a part of this Agreement. In the event the parties cannot agree in writing on a resolution to remedy any environmental concerns within 90 days of the notice, this Agreement shall automatically terminate.

It is expressly understood, by execution of this agreement, seller hereby indemnifies buyer for any and all CERCLA related claims, liabilities or matters, unless otherwise provided for in this agreement. Said indemnification shall survive closing and termination of this agreement. Upon successful close of escrow said indemnification shall continue for a period of not less than 36 months, from the date of closing unless otherwise provided for in this agreement.

If this Agreement is terminated pursuant to any report detailing environmental conditions that may or may not exist on the Property, such report(s) shall remain confidential and proprietary. The report(s) will be marked as confidential and will not be released to a private individual, entity, or non-profit without express agreement of the parties hereto. Notwithstanding, the



report will be released pursuant to a valid court order and may be released to the State of Alaska upon request.

#### 14. ENTIRE AGREEMENT

This Agreement and the documents referred to herein contain the entire agreement of the parties with respect to the subject matter hereof. Any changes, additions or deletions hereto must be made in writing and signed by both KPB and SELLER or their respective successors in interest. Provisions of this Agreement, unless inapplicable on their face, shall be covenants constituting terms and conditions of the sale, and shall continue in full force and effect until the purchase price is paid in full or this agreement is earlier terminated.

#### 15. BREACH REMEDY

Prior to closing of the sale, in the event that KPB or SELLER fails to make any payment required, or fails to submit or execute any and all documents and papers necessary for closing and transfer of title within the time period specified in this agreement, the SELLER or KPB may terminate this Agreement.

#### 16. PERSONAL PROPERTY

It is understood and agreed to by both KPB and Seller, that any and all personal property located on the property (mobile home) shall remain the property of the seller. It is the seller's responsibility to move the mobile home from the property prior to the close of escrow. Upon notice of removal, KPB will be entitled to conduct a final inspection of the property prior to closing.

#### 17. MISCELLANEOUS

- A. Time. Time is of the essence in performance of this Agreement.
- B. Cancellation. This Agreement, while in good standing may be canceled in whole or in part, at any time, upon mutual written agreement by SELLER and the KPB mayor. This Purchase Agreement is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts. Buyer may cancel this agreement without penalty in the event additional contracts are not secured required of this project.
- C. Notice. Any notice or demand, which under the terms of this Agreement or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

- D. Interpretation. This Agreement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Alaska. The titles of sections in this Agreement are not to be construed as limitations of definitions but are for identification purposes only.
- E. Condition of Property.  
SELLER shall deliver the property in its as-is condition.
- F. Confidentiality. This Agreement shall be considered proprietary to the parties until closing occurs. Following closing, this Agreement may be considered a public record.
- G. Counterparts. This Agreement may be executed in counterpart, and may be executed by way of copy, facsimile or verified electronic signature in compliance with AS 09.80, and if so, each of which shall be deemed an original but all of which together will constitute one and the same instrument

This Agreement has been executed by the parties on the day and year first above written.

KENAI PENINSULA BOROUGH:

SELLER:

\_\_\_\_\_  
Charlie Pierce, Mayor

  
\_\_\_\_\_  
Karen A. Andrews

ATTEST:

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Johni Blankenship,  
Borough Clerk

\_\_\_\_\_  
A. Walker Steinhage,  
Deputy Borough Attorney

Kenai Peninsula Borough, Alaska

Andrews / KPB – Purchase Agreement

Page 5 of 5



RE: **Lot 22, Spruce Acres Subdivision**

As a result of research and analysis, the value estimate(s) for the subject is/are as follows:

<b><u>FINAL MARKET VALUE ESTIMATE</u></b>	
<b><u>Lot 22 of the Spruce Acres Subdivision</u></b>	
<b>Property Rights</b>	<b>Fee Simple</b>
<b>Condition</b>	<b>As Is</b>
<b>Effective Date of Appraisal</b>	<b>February 18, 2022</b>
<b>Final Market Value Estimate</b>	<b>\$74,400</b>

The value estimates are based on a marketing period of approximately 8 months and an exposure period of approximately 8 months. The value opinion reported above is qualified by certain assumptions, limiting conditions, certifications, and definitions, which are set forth in the body of the report. This letter is invalid as an opinion of value if detached from the report, which contains the text, exhibits and Addendum. Thank you for the opportunity to be of service. If you have any questions, please feel free to call.

Respectfully submitted,

**Beverly Bowman**

Appraiser  
Alaska Certified General – No. 134284  
bbowman@reliantadvisory.com

**Per E. Bjorn-Roli, MAI**

Managing Member  
Alaska Certified General – No. 302

Introduced by:	Mayor
Date:	08/07/18
Hearing:	09/04/18
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

## KENAI PENINSULA BOROUGH ORDINANCE 2018-29

### AN ORDINANCE ESTABLISHING THE LAND TRUST INVESTMENT FUND, AND SETTING PARAMETERS FOR FUNDING, USES AND INVESTMENTS OF THE FUND

- WHEREAS,** the Land Trust Fund, per KPB 5.20.080, accounts for activities related to the acquisition, sale and use of Kenai Peninsula Borough (“borough”) lands; and
- WHEREAS,** borough lands, especially lands acquired from the State of Alaska as a result of formation of the borough, have significant value for all current and future generations of borough residents, and therefore should be managed for the long-term benefit of borough residents; and
- WHEREAS,** the creation of a Land Trust Investment Fund (“LTIF”) to account for the proceeds of borough land sales and the financial assets of the Land Trust Fund in excess of annual operating needs will enhance the ability to manage borough lands for the long term; and
- WHEREAS,** a portion of the fund balance of the Land Trust Fund will capitalize the LTIF; and
- WHEREAS,** financial endowments, due to their long time horizons, are typically invested in instruments which carry more risk and volatility and have the potential of greater returns over the long term than short term investment instruments; and
- WHEREAS,** the financial assets in the LTIF shall essentially be an endowment intended to preserve the value of land assets that are sold and to generate investment income to support and supplement the operating revenue of the Land Trust Fund and for other uses as determined by the assembly; and
- WHEREAS,** the initial capitalization of the LTIF will not exceed normal fund balance policy requirements of the Land Trust Fund; and
- WHEREAS,** this ordinance provides benefits to the General Fund including long-term autonomous funding for borough land programs and the ability in the future to utilize earnings generated by the LTIF for General Fund purposes;



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

**SECTION 1.** That KPB 5.10.010 Scope is amended as follows:

**5.10.010. Scope.**

- A. This chapter applies to the investment of all borough moneys, unless otherwise provided expressly by ordinance.
- B. Sections 5.10.040 through 5.10.120 apply to all fund types except the Land Trust Investment Fund.
- C. Objectives. The borough investment portfolio shall be managed so that the portfolio, as a whole, meets the objectives set forth below. All persons selecting investments for borough moneys shall adhere to these objectives, which are listed in order of relative importance.

**SECTION 2.** That KPB 5.10.200 Authorized Investments for the Land Trust Investment Fund is hereby enacted as follows:

**5.10.200. Authorized Investments For The Land Trust Investment Fund**

- A. Land Trust Investment Fund investments include two categories: Financial Assets and Non-Financial Assets outlined in sections B and C below. Financial assets shall be managed by the finance director with the following conditions:
  - 1. The borough shall contract for management of the financial asset investments for the Land Trust Investment Fund with one or more professional investment managers with experience handling institutional endowment investments.
  - 2. The financial asset investments of the Land Trust Investment Fund shall be approved by resolution annually, usually during the budget process, in the form of an asset allocation plan. The asset allocation plan shall have specific categories of investments for the fund with percentage targets that allow for reasonable fluctuations above and below the target percentage. The plan will establish benchmarks for evaluating the performance of each investment manager and asset classification. Investments shall be managed to adhere to the target ranges of the asset allocation plan.

3. The finance director shall submit quarterly to the assembly an investment report that summarizes the portfolio in terms of investment securities, maturities, risk categories, returns and other features.

B. Authorized Investments - Financial Assets

Moneys in the Land Trust Investment Fund shall be invested only in the following instruments and subject to the applicable limitations and requirements.

1. Investments authorized by KPB 5.10.040.
2. Bonds or other U.S. dollar denominated debt instrument of this state, its agencies, municipalities, any other state which at the time of investment have an investment grade rating by a nationally recognized rating agency. If, after purchase, these obligations are downgraded below investment grade, the obligations shall be sold in an orderly manner within ninety days of downgrading.
3. Corporate obligations of investment-grade quality as recognized by a nationally recognized rating organization. If, after purchase, these obligations are downgraded below investment grade, the obligations shall be sold in an orderly manner within ninety days of downgrading.
4. Domestic equities, which taken as a whole, attempt to mirror the characteristics or replicate the Standard and Poor's 500 Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
5. Domestic equities, which taken as a whole, attempt to replicate the Standard and Poor's 400 Mid-Cap Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
6. Domestic equities, which taken as a whole, attempt to replicate the Standard and Poor's 600 Small-Cap Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).
7. International equities, which taken as a whole, attempt to replicate the Financial Times Stock Exchange Developed ex North America Index or another index of similar characteristics, including both mutual funds and exchange traded funds (ETFs).

8. Equities, which taken as a whole, attempt to replicate the universe of domestic real estate investment trusts as represented by the Standard and Poor's REIT composite index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
9. Emerging market equities, which taken as a whole, attempt to replicate the Financial Times Stock Exchange Emerging Index or another index of similar characteristics including both mutual funds and exchange traded funds (ETFs).
10. Interfund loans for land or capital improvements.
  - a) Loans shall only be for the purpose of financing the acquisition of land or capital improvements for the borough including its service areas;
  - b) The rate of interest shall be the prime rate in effect on the date of ordinance approval;
  - c) The term of a loan shall not be longer than the term allowed for a land sale contract of similar size;
  - d) Payments shall be paid in equal annual installments upon adoption of each year's annual budget until the loan is paid in full and each payment is subject to the appropriation of available funds; and
  - e) All such loans must be approved by the assembly by ordinance, and the assembly may add such additional terms and conditions as appropriate.

C. Authorized Investments - Non-Financial Assets

Land Trust Investment Fund assets may be used to supplement Land Trust Fund assets for investment in the following:

1. Land which will be added to the inventory of land assets.
2. Income producing assets such as improvement to borough lands.

**SECTION 3.** That KPB 5.20.030. Special revenue funds are amended as follows:

**5.20.030. Special revenue funds.**

Special revenue funds account for the proceeds from specific revenue sources (other than expendable trust or major capital projects) that are legally restricted to expenditures for specific purposes. These funds consist of the following:

Nikiski Fire Service Area Fund  
 Bear Creek Fire Service Area Fund  
 Anchor Point Fire and Emergency Medical Service Area Fund

Central Emergency Service Area Fund

Kachemak Emergency Service Area Fund  
 Lowell Point Fire Service Area  
 Central Peninsula Emergency Medical Service Area Fund  
 North Peninsula Recreation Service Area Fund  
 Road Service Area Fund  
 Road Improvement Assessment District Engineer's Estimate Fund  
 RIAD Match Fund  
 School Fund  
 Post-Secondary Education Fund  
 Land Trust Fund  
Land Trust Investment Fund  
 Kenai River Center Fund  
 Coastal Zone Management Fund  
 Seward Bear Creek Flood Service Area  
 Disaster Relief Fund  
 Environmental Protection Programs Fund  
 Underground Storage Tank Removal and Upgrade Fund  
 Pass-Through Grants Fund  
 Miscellaneous Grants Fund  
 Nikiski Senior Citizen Service Area Fund  
 Solid Waste Fund  
 Local Emergency Planning Committee Fund  
 Central Kenai Peninsula Hospital Service Area Fund  
 South Peninsula Hospital Service Area Fund

**SECTION 4.** That KPB 5.20.080 is amended as follows:

**5.20.080. Land Trust Fund.**

- A. The land trust fund is established to receive, disburse, and account for all moneys accruing to the borough in lieu of lands or from the use or sale of lands. Disbursement from said fund shall be for the acquisition of property and expenses related to the borough land management operations, or such other purposes as the assembly may authorize.
- [B. FIFTY PERCENT OF ANY AMOUNT IN EXCESS OF THE HIGHEST PREVIOUS FUND BALANCE MAY BE AVAILABLE FOR APPROPRIATION TO THE GENERAL FUND. FUND BALANCES PRIOR TO 2005 SHALL NOT BE CONSIDERED WHEN DETERMINING THE HIGHEST FUND BALANCE. FOR PURPOSES OF COMPUTING REVENUES THAT MAY BE AVAILABLE FOR APPROPRIATION TO THE GENERAL FUND, ON MARCH 1 OF EACH YEAR THE BALANCE OF THE BUDGET NOT YET SPENT FOR LAND MANAGEMENT ADMINISTRATION FOR THAT FISCAL YEAR WILL BE SUBTRACTED FROM THE LAND TRUST FUND BALANCE. ALSO, REVENUES EXPECTED TO BE RECEIVED AFTER MARCH 1 AND BEFORE JULY 1 OF THAT YEAR MAY BE ADDED TO THE LAND TRUST FUND BALANCE.]



B. The net proceeds of land sales will be transferred to the Land Trust Investment Fund provided that the fund balance policy minimum requirements of the Land Trust Fund are met.

C. After the first five years, if the fund balance of the Land Trust Fund is more than 125 percent of the maximum established in the fund balance policy the amount greater than 125 percent may be transferred to the general fund or may be used for any other purpose as determined by the assembly.

**SECTION 5.** That KPB 5.20.200 – Land Trust Investment Fund is enacted as follows:

**5.20.200. Land Trust Investment Fund.**

The Land Trust Investment Fund is established to manage the proceeds of land sales and the financial assets of the Land Trust Fund in excess of annual operating needs of the Land Trust Fund and to generate investment earnings to be used for Land Trust Fund operations, General Fund functions, or for other purposes as determined by the assembly.

A. Transfers to support operations in the Land Trust Fund or the General Fund shall be limited to 5 percent of the market value (5% POMV) of the Land Trust Investment Fund. The allocation of the 5% POMV shall be first to the Land Trust Fund to subsidize operations and to ensure compliance with the fund balance policy. If the transfer to the Land Trust Fund is less than 5% POMV the excess may be transferred to the General Fund at the direction of the assembly.

B. Transfers to the Land Trust Fund to invest in non-financial assets such as land or income producing investments shall not exceed 10 percent of the market value of the Land Trust Investment Fund in any year or 25 percent in any five-year period. These limits do not apply to investment in Interfund Loans or any other allowable financial asset.

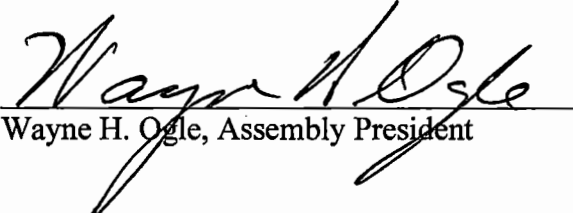
C. The Land Trust Fund may utilize an interfund loan from the Land Trust Investment Fund if the fund balance in the Land Trust Fund falls below the minimum requirements of the fund balance policy. Any such interfund loan must be repaid within five years.

D. The Land Trust Investment Fund is a special revenue fund and shall not require an annual budget.

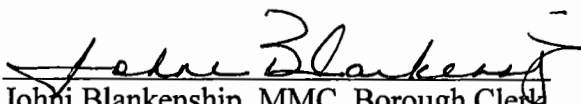
**SECTION 6.** That \$5,275,000 is appropriated from the Land Trust Fund balance, account 250.27910 for the initial operating transfer to the Land Trust Investment Fund.

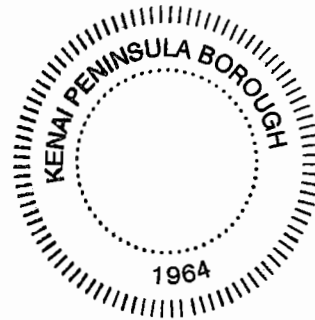
**SECTION 7.** That this ordinance takes effect upon enactment; however, no operating transfer may be made from the Land Trust Investment Fund to the Land Trust Fund until after commencement of the first full budget year following enactment of this ordinance.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF SEPTEMBER, 2018.**

  
Wayne H. Ogle, Assembly President

ATTEST:

  
John Blankenship, MMC, Borough Clerk



Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: None

## **E. NEW BUSINESS**

3. Street Naming Resolution 2022-02; Moose Pass Area  
Unnamed public rights-of-way within SEC 36, T05N, R01W;  
S.M. withing Emergency Service Number (ESN) 601 to the  
following:

- A. Expedition Avenue
- B. Destination Avenue
- C. Navigation Avenue
- D. Trek Avenue
- E. Backpacker Avenue

*AND*

Unnamed public rights-of-way within SEC 1, T04N, R01W;  
S.M. within Emergency Service Number (ESN) 601 to

- F. Meridian Avenue.
- G. Hikers Avenue
- H. Basecamp Avenue

AGENDA ITEM E      NEW BUSINESS

3.      Unnamed right-of-ways; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601  
         Unnamed right-of-way; Section 01, T04N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601

STAFF REPORT

PC MEETING: August 8, 2022

Applicant:      Kenai Peninsula Borough

Existing right-of-way names:      None

Name proposed by petitioner:      Expedition Ave, Destination Ave, Navigation Ave, Trek Ave, Backpacker Ave, Hikers Ave, Basecamp Ave

Reason for Change:      Unnamed right-of-ways in the Moose Pass area.

Background:

Name	Unnamed right-of-ways
ESN	601
Community	Moose Pass
YR Named	N/A
Constructed	No
Total Lots	28
E911 Address	11

Review and Comments:

Notice was sent by mail to the owners of the twenty eight parcels fronting the unnamed right-of-ways, as listed on the KPB tax roll.

Two comments were received from neighboring property owners, requesting the name Meridian Ave for right-of-way B and Basecamp Ave for right-of-way G. (letter designators can be found on the resolution and attached maps)

The road names request has been emailed to the Kenai Peninsula Borough Road Maintenance for review. The KPB Roads Department supplied a statement that Meridian Ave is an existing road on the peninsula, and the roads director does not recommend duplicating the name. The Roads Department had no additional objections to the other names requested.

Staff Discussion:

The unnamed right-of-ways can be found in the Moose Pass area between mileposts 27 and 30 on the Seward Highway. The unnamed right-of-ways are approximately 300 to 1200 feet in length and each provides access to at least four parcels.

The Moose Pass Advisory Commission at its' regularly scheduled meeting of July 14, 2022 recommended adopting SN Resolution 2022, naming unnamed streets in the Moose Pass area.

Staff reviewed the suggested name and found that Meridian Ave would duplicate a street name in the neighboring community of Bear Creek. Staff found no additional similar sounding or identically named streets within the same or adjacent emergency service zone.

Staff recommends Destination Ave an alternative to Meridian Ave.



## STAFF RECOMMENDATION

Name the unnamed private road **Expedition Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Destination Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Navigation Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Trek Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Backpacker Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Hikers Ave** by adoption of Resolution SN 2022-02.

Name the unnamed private road **Basecamp Ave** by adoption of Resolution SN 2022-02.

END OF STAFF REPORT

KENAI PENINSULA BOROUGH  
PLANNING COMMISSION RESOLUTION

**RESOLUTION SN 2022-02**

NAMING PUBLIC RIGHT-OF-WAYS WITHIN SECTIONS 36, T05N, R01W; SEWARD MERIDIAN;  
WITHIN EMERGENCY SERVICE NUMBER (ESN) 601

NAMING PUBLIC RIGHT-OF-WAYS WITHIN SECTIONS 01, T04N, R01W; SEWARD MERIDIAN;  
WITHIN EMERGENCY SERVICE NUMBER (ESN) 601

WHEREAS, a procedure has been developed to help implement the Enhanced 9-1-1 Street Naming and Addressing project; and

WHEREAS, eliminating duplicate and sound-alike street names will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, adding a post directional or changing the name of portions of jump streets will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, naming private roads that provide access to three or more structures will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, per KPB 14.10.060, the naming of an unnamed road will not constitute a legal dedication for public right-of-way or for road maintenance purposes; and

WHEREAS, on August 8th, 2022 public hearings were held by the Kenai Peninsula Borough Planning Commission to address all concerns about the proposed road naming; and

WHEREAS, Chapter 14.10 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish private road naming by Resolution.

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

Section 1. That the streets listed below are named as follows:

DESCRIPTION	FROM	TO	BASE MAP
A. Unnamed right-of-way; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Expedition Ave	MP02
B. Unnamed right-of-way; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Destination Ave	MP02
C. Unnamed right-of-way; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Navigation Ave	MP02

D. Unnamed right-of-way; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Trek Ave	MP02
E. Unnamed right-of-way; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Backpacker Ave	MP02
F. Unnamed right-of-way; Section 01, T04N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Hikers Ave	MP02
G. Unnamed right-of-way; Section 01, T04N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601	Unnamed	Basecamp Ave	MP02

Section 2. That according to Kenai Peninsula Borough Code of Ordinance 14.10.030, the official street name map, 1:500 scale series base map, MP02; is hereby amended to reflect these changes.

Section 3. That the map showing the location of the named private road be attached to, and made a permanent part of this resolution.

Section 4. That this Resolution takes effect immediately upon adoption.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH THIS 13<sup>th</sup> DAY OF JUNE 2022.

\_\_\_\_\_  
Blair J. Martin, Chairperson  
Planning Commission

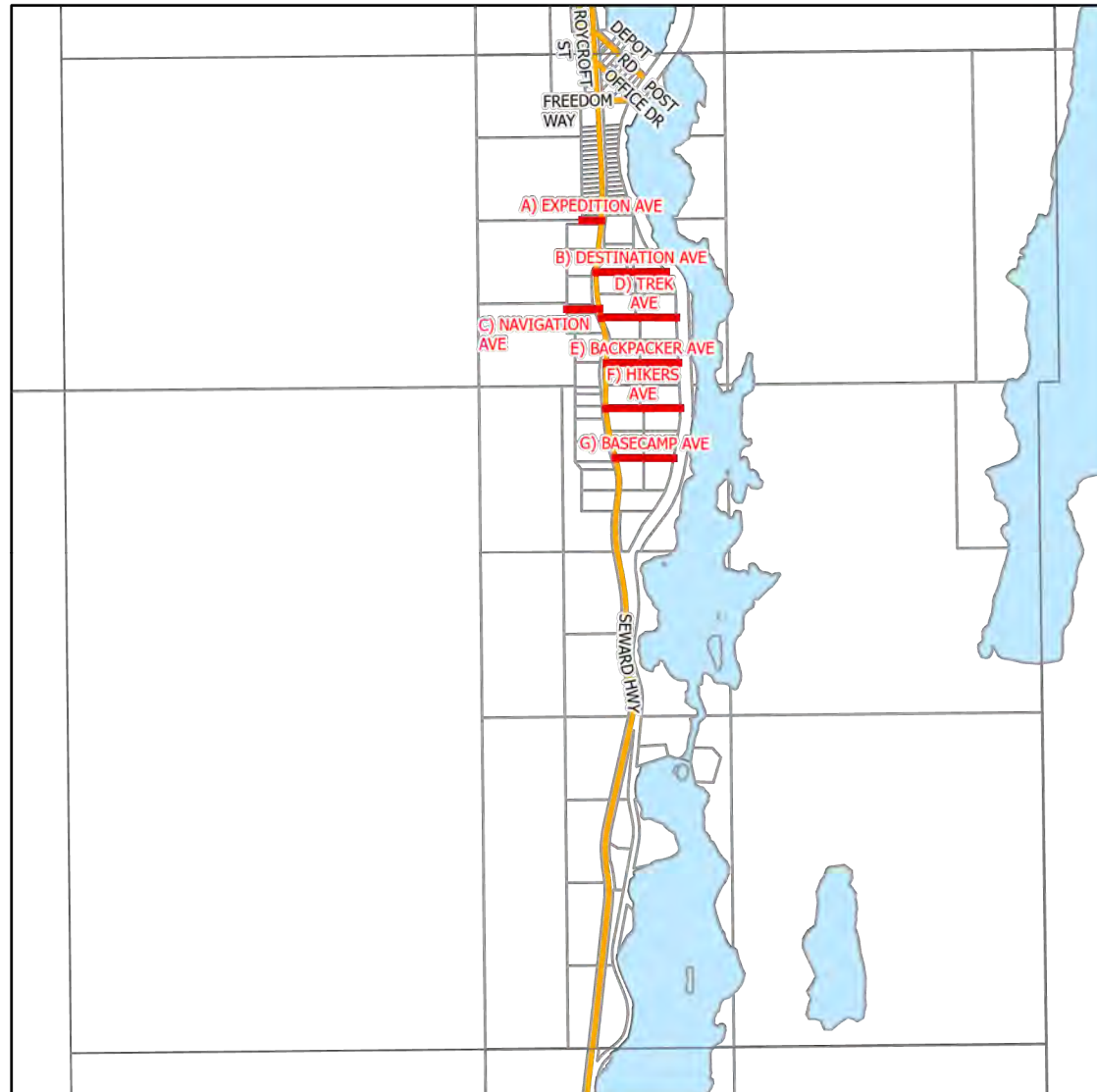
Signed and sworn to (or affirmed) in my presence this 8<sup>th</sup> day of August 2022.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_



Resolution SN 2022-02





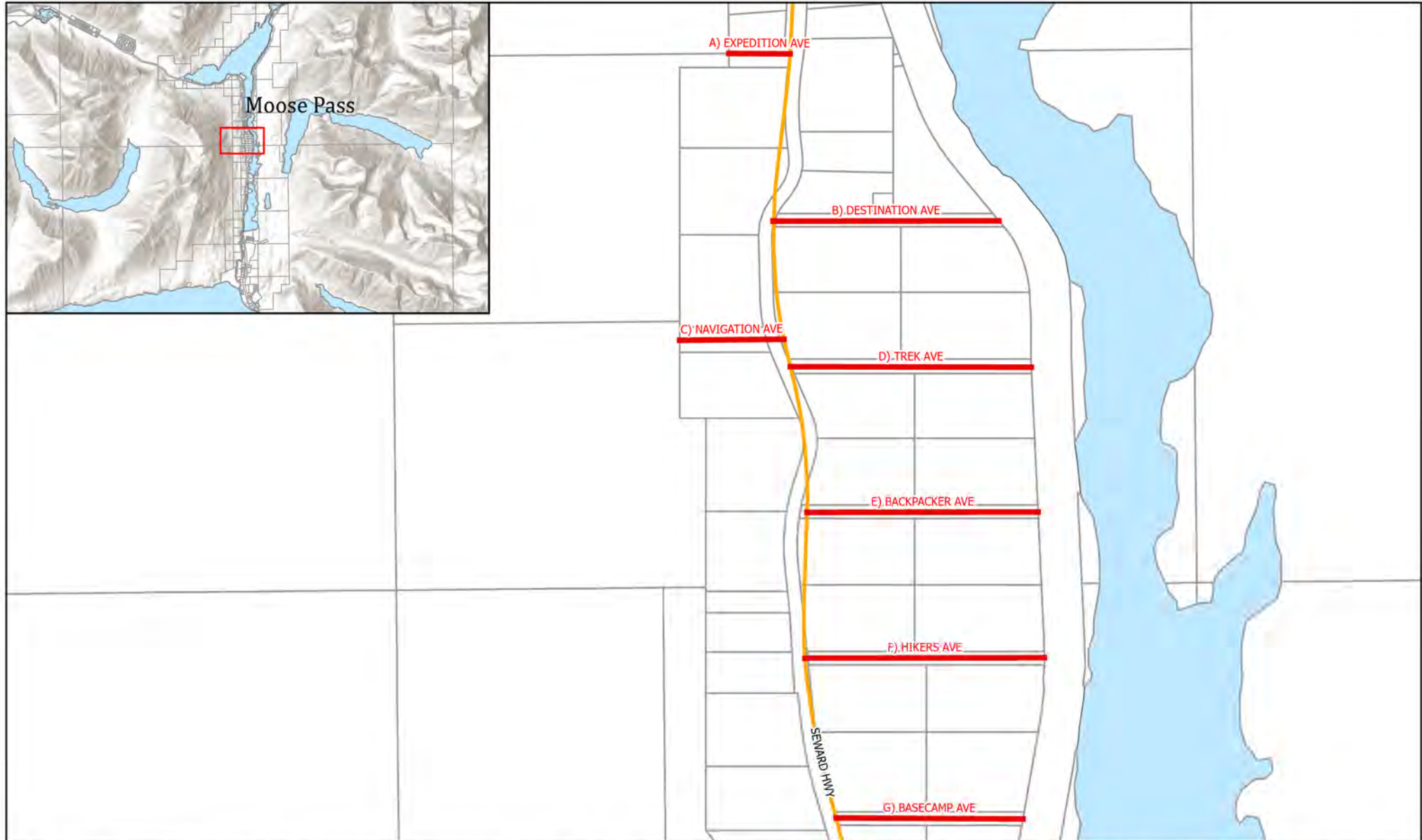
# Kenai Peninsula Borough Planning Department

## Vicinity Map

Date: 6/13/2022



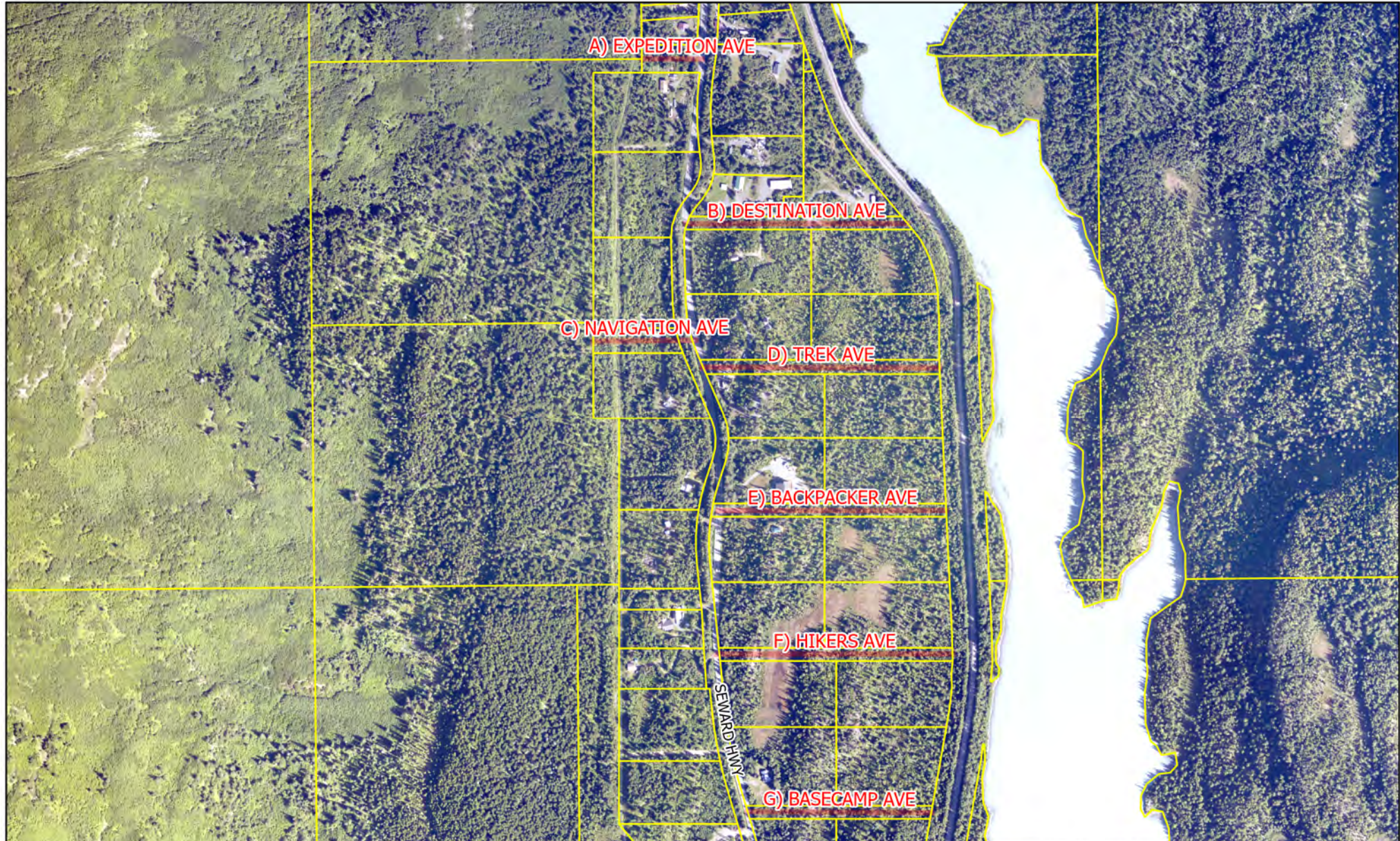
### Street Naming Resolution SN 2022-02







Street Naming  
Resolution SN 2022-02





## PENINSULA CLARION

### KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING TO NAME STREETS

Public notice is hereby given that a public hearing will be held to name public right-of-ways in the Moose Pass area. Streets under consideration at this meeting are described as follows:

- A) **Location:** *Unnamed right-of-way*; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Expedition Ave*
- B) **Location:** *Unnamed right-of-way*; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Destination Ave*
- C) **Location:** *Unnamed right-of-way*; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Navigation Ave*
- D) **Location:** *Unnamed right-of-way*; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Trek Ave*
- E) **Location:** *Unnamed right-of-way*; Section 36, T05N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Backpacker Ave*
- F) **Location:** *Unnamed right-of-way*; Section 01, T04N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Hikers Ave*
- G) **Location:** *Unnamed right-of-way*; Section 01, T04N, R01W; Seward Meridian, Kenai Peninsula Borough, AK; in the Moose Pass Community; ESN 601 **Proposed Name:** *Basecamp Ave*

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, August 8, 2022**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska.

Meeting materials may be found at <https://www.kpb.us/planning-dept/planning-commission> as well as any updates to meeting procedures.

Anyone wishing to testify, but cannot attend the zoom meeting, may submit a written statement to the attention of Addressing, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. The Planning Department recommends that written comments be received by **Friday, August 5, 2022**. [Written comments may also be sent by email to the address below or by Fax to 907-714-2378].

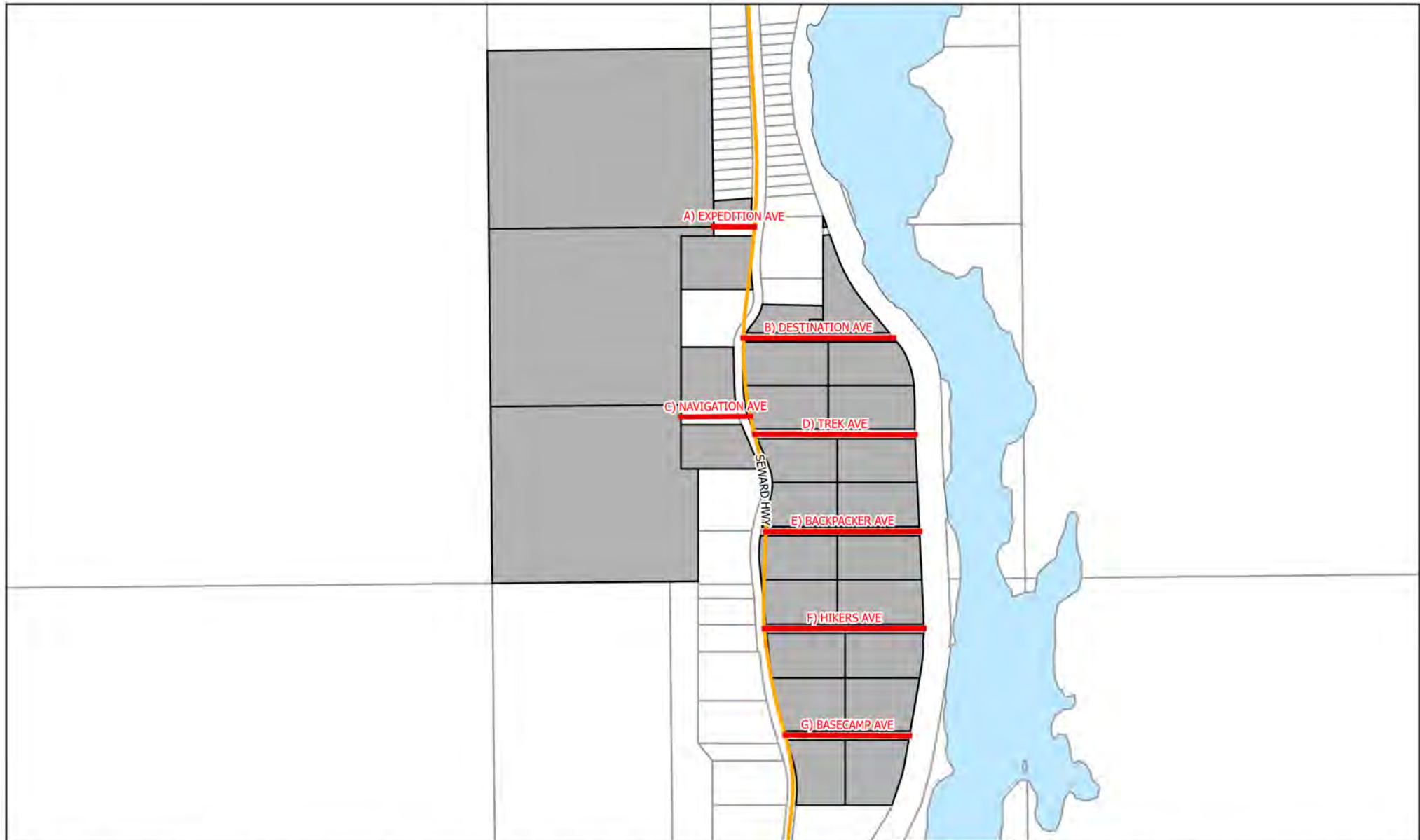
For additional information contact Addressing ([addressing@kpb.us](mailto:addressing@kpb.us)), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

PLEASE NOTE: The Planning Commission may approve a name suggested by landowners, interested parties, or the planning staff. An entirely different name can also be suggested and approved by the Commission during the public hearing.

PLEASE NOTE: Upon adoption of a street name change resolution, no reapplication or petition concerning the name of the same street may be filed within one calendar year of the final adoption, except in the case where new evidence or circumstances exist that were not available, present or reasonably ascertainable when the original resolution was adopted (KPB 14.10.050).



Street Naming  
Resolution SN 2022-02



## **E. NEW BUSINESS**

**4. Conditional Use Permit; PC Resolution 2022-36**

**Petitioner: Chugach Electric Association**

**Request: Install rip rap on a parcel within the 50' Habitat Protection  
District of Quartz Creek**

**Location: T05N R02W SEC 16, S.M., SW 2019007 ASL SNo. 2014-26  
Cooper Landing Area**



# Multi Agency Permit Application



514 Funny River Road, Soldotna, AK 99669 • (907) 714-2460 • KenaiRivCenter@kpb.us

## Applicant Information:

Name: Chugach Electric Association  
Owner? ☒ Yes ☐ No  
Mailing: Attn: Karen Keesecker, Manager, Land Services  
PO Box 196300, Anchorage, AK 99519-6300  
Phone: 907-762-4726  
Email: karen\_keesecker@chugachelectric.com

## Agent Information: (if applicable)

Name: HDR Engineering, Inc.  
Mailing: Attn: Paul McLarnon  
582 E 36th Suite 500 Anchorage Alaska 99508  
Phone: 907-250-8182  
Email: paul.mclarnona@hdrinc.com

## Project Location:

KPB Parcel ID: 11930023  
Physical Address: 24238 Sterling Highway  
Waterbody Name: Quartz Creek  
River Mile: 4 Riverbank: ☐ Right ☒ Left  
looking downstream

Subdivision: \_\_\_\_\_  
Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Addn/No.: \_\_\_\_\_  
Directions to site: Sterling Highway, approximately MP 40.75  
located east of where the Sterling Highway crosses  
Quartz Creek, substation is on the north side of the highway

## Permit Fees: (please select the applicable permit fees)

- ☒ \$100 - ADNR State Parks Permit ☒ \$300 - KPB Conditional Use Permit  
☒ \$50 - KPB Habitat/Floodplain Permit ☐ \$300 - KPB Floodway Development Permit

## Project Description:

☒ New Project **OR** ☐ Extension to RC# \_\_\_\_\_  
☐ Amendment

Provide a detailed description of your project and all related activities, use additional pages if needed. Include the following information for all existing and proposed structures:

- **Project location & dimensions**
- **Waterbody description & proximity**
- **Proximity to OHW and/or HTL**
- **Construction methods/equipment**
- **Filling/dredging/excavation:**
  - type, volume, area, location
- **Fuel Storage:** location, quantities
- **Vegetation Removal:** location, amount, type

Please see the attached project description

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## KPB Tax Credit: (skip this section if your project is prior existing, only applicable to NEW projects)

Please provide your estimated project cost(s) below. Do not include grants or other funding assistance:

Elevated Light Penetrating Structure(s) \$ \_\_\_\_\_  
Bank or Habitat Restoration & Protection \$ \_\_\_\_\_  
Other Activities \$ \_\_\_\_\_

**Project Questions:**

**Note:** Use Ordinary High Water (OHW) for non-tidal waters, and Mean High Tide (MHT) for tidal waters.

1. Start date: 9/15/2022 End date: 10/7/2022 Estimated Days of Construction: 17
2. Is the project located within 50 feet of OHW or HTL a waterbody? ☒ Yes ☐ No
3. Does any portion of the project extend **below** the OHW or HTL of the stream or waterbody? ☒ Yes ☐ No
4. Does any portion of the project cantilever or extend **over** the OHW of the waterbody? ☒ Yes ☐ No
5. Will anything be placed below OHW or HTL of the waterbody? ☒ Yes ☐ No
6. Will material be extracted or dredged from the site? ☒ Yes ☐ No
7. Including areas below OHW or HTL, what is the total area (in acres) that will be excavated or dredged?  
Total Area: 8,170 SF / 0.19 acre Type of Material: unclassified  
Location you will depositing fill: off site upland location or stored on CEA Lease Area in uplands
8. Will any material (including soils, debris, and/or overburden) be used as fill? ☐ Yes ☒ No  
Type of material: \_\_\_\_\_ Amount: \_\_\_\_\_ Permanent ☐ or Temporary ☐  
Will fill be placed below OHW or HTL: ☐ Yes ☐ No
9. List all motorized equipment to be used in this project, including access route to site, any stream or waterbody crossings, and (if applicable) how long equipment will be used below OHW or HTL: see attached project description  
\_\_\_\_\_
10. Is any portion of the work already complete? ☐ Yes ☒ No  
If yes, describe: \_\_\_\_\_

**Signature & Certification:**

This application is hereby made requesting permit(s) to authorize the work described in this application form. I certify the information in this application is complete and accurate to the best of my knowledge.

**If applying for a tax credit:** I certify that I have not begun construction of the project on this the property and that the proposed project will be constructed in a manner consistent with KPB 5.12 Real Property and Personal Property Taxes, KPB 5.14 Habitat Protection Tax Credit, and other applicable ordinances.

Karen Keesecker  
Applicant Signature (required)

7/12/2022  
Date

McLemore, Paul  
Agent Signature (if applicable)

\_\_\_\_\_  
Date

# Daves Creek Substation, Flood Mitigation Project

## Project Description

### Project Purpose

The purpose of the Dave's Creek Substation Flood Mitigation Project (the Project) is to protect the Dave's Creek Substation by redirecting flow from Quartz Creek away from the substation and back into the main channel of Quartz Creek.

### Overview

Quartz Creek has been experiencing overbank flows and has caused flooding near the Dave's Creek Substation located at 24238 Sterling Highway / MP 40.75, see **Sheet 1**. Approximately 300 feet upstream from the substation, high flows in Quartz Creek laterally eroded its streambank (downstream river left) and a portion of Quartz Creek's flow has flooded a remanent channel adjacent to the substation, creating an unacceptable level of risk to the electrical substation. The flooding was first recognized by Chugach Electric Association (CEA) in July of 2021 and CEA has been monitoring the facility since that time. In June 2022, levels increased to a point where water was flowing against the north-west edge of the substation's gravel pad and had fully surrounded the adjacent transmission line poles. At that point CEA determined that immediate action was necessary to protect the substation and transmission line poles. In June 2022, CEA obtained permits to place flexible intermediate bulk containers (Super Sacks) to temporarily divert most of the water back into the main channel of Quartz Creek. Since that time, CEA has been working with a professional engineering firm (HDR Engineering, Inc.) to design a long-term solution to protect the substation and adjacent transmission line poles from being affected by Quartz Creek.

### Proposed Project

The Project proposes to divert the water back into the main channel of Quartz Creek and protect CEA's substation and transmission assets, as well as the cross-drainage culverts running under the Sterling Highway. Prior to construction, vegetation will be cleared based on the overall project footprint, see **Sheet 2**. The Project includes three primary features, as follows:

- **Frontage Embankment** – consists of a 90-foot (ft.)-long x 24-ft.-wide, 2:1-sloped Class 3 rip-rap embankment with a 15-ft.-wide "toe" located at the base of the embankment, see **Sheets 3 and 4**.
- **Guide Bank** – consists of a 172-ft.-long x 23-ft.-wide x 4.5-ft.-high, 2:1-sloped Class 3 rip-rap embankment that abuts the sound end of the Frontage Embankment and extends to within 3 ft. of the mainstem Quartz Creek stream bank, see **Sheets 3 and 4**.
- **Trench Drain** – consists of a 182-ft.-long x 6-ft.-wide x 6-ft.-deep trench filled with Class 3 rip rap to match original grade, see **Sheets 3 and 4**.

### Proximity to Ordinary High Water

The Project's proximity to ordinary high water of Quartz Creek varies. The Frontage Embankment is located approximately 90 ft. from the main channel of Quartz Creek and the Guide Bank will terminate 3 ft. from the bank of Quartz Creek.

### Substation Lease Area

The substation is located on a parcel of land leased from the State of Alaska (ADL 225852). A portion of the Guide Bank (68 linear ft. / 0.016 acre) extends beyond the western boundary of CEA's lease area and into the easement for the Transmission Line. The Transmission Line easement is located on land owned by the State of Alaska, **see Sheet 3**.

### Construction Methods and Equipment

- **Dewatering** – Dewatering of the work area will likely be needed. If a pump is needed a screened intake will be enclosed and centered within a screened structure to avoid fish entrainment, impingement or injury to fish while pumping water. The screened mesh size will not exceed 1/8-inch and water velocity will not exceed 0.5 ft. per second at the screen surface. Intake screens will be inspected for damage (torn screen, crushed scree, screen separated from intake ends, etc.) before and after each use. Any damage observed will be repaired prior to use. The intake screen will conform to the original design specification while in use.
- **Equipment** – An excavator, loader, and dump truck will be needed to move and place material. There is a potential that a pump may be needed for dewatering activities, as identified above.

### Filling, Dredging and Excavation

- Fill type, fill volume, and total Project area:
  - **Class 3 rip rap:** 824 cubic yards,
  - **Filter Rock:** 115 cubic yards,
  - **Geotextile:** 690 square yards
  - **Total Project area:** 0.194 acres
    - **Total impacts to wetlands:** 0.054 acres

### Fuel Storage and Vegetation Clearing

- Location and Quantity – All fuel storage will have secondary containment and occur in an upland area located within the lease area for the substation.
- Vegetation removal will occur over a 0.23-acre area, **see Sheet 2**.

### Avoidance and Minimization Measures

- Unnecessary stream bank disturbance will be avoided.
- No vehicles or other equipment leaking fuels, oils hydraulic or cooling fluids will be operated during construction.
- All equipment used will be cleaned in accordance with the best management practices reference in Preventing the Spread of Invasive Species. [Unit 2 – Best Management Practices – Controlling Invasive Plants in Alaska \(uaf.edu\)](#)
- Trenches will not be constructed or backfilled in such a manner as to drain Waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods will be used to prevent this situation.
- Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials will be removed to an upland location.



- Any excavated material that may need to be temporarily side cast into wetlands will be underlain with geotextile, or similar material, to allow for removal of the temporary material to the maximum extent practicable.
- Re-vegetation of disturbed areas within the Project site will begin as soon as site conditions allow and in the same growing season as the disturbance, unless climatic conditions warrant additional time. Topsoil (the outermost layer of soil, usually the top 2 – 8 inches) removed from the construction area shall be separated and used for site rehabilitation.
- When backfilling, topsoil will be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the Project site, local native soil material obtained from an approved site may be used.
- Plant species used for seeding and planting will be in accordance with the recommendations by the Alaska Plant Material Center <http://www.plants.alaska.gov/>.
- Natural drainage patterns will be maintained using well-established and appropriate methods.

#### **Required Permits**

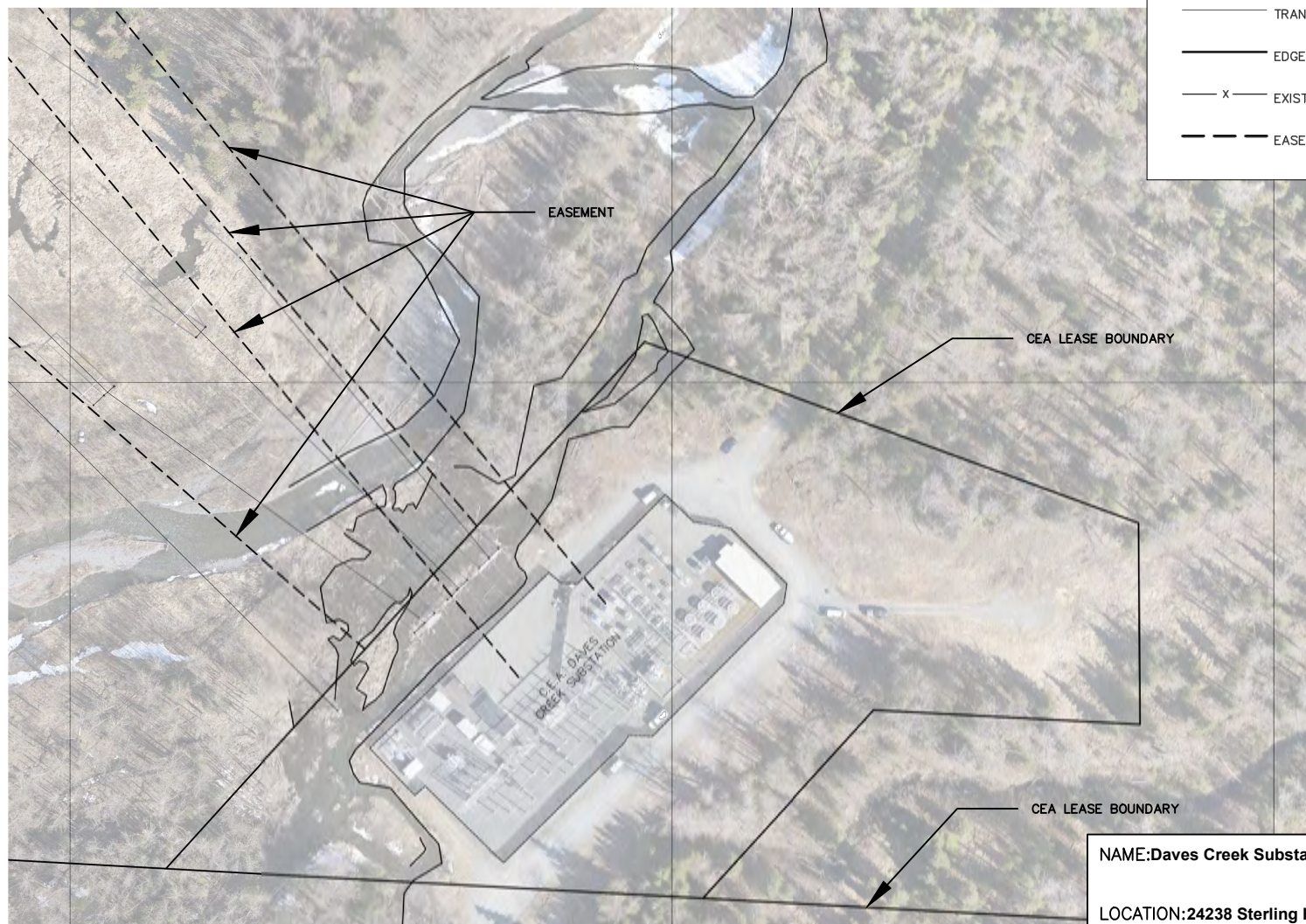
- Division of Parks and Outdoor Recreation – Special Use Permit
- Alaska Department of Fish and Game – Fish Habitat permit
- Kenai Peninsula Borough – Conditional Use Permit
- U.S. Army Corps of Engineers – Section 10/404 Nationwide Permit
- Alaska Department of Environmental Conservation – 401 Discharge Certification



**PERMT APPLICATION FIGURES**

**LEGEND**

- RIGHT OF WAY
- TRANSMISSION LINE
- EDGE OF WATER
- x — EXISTING FENCE
- - - EASEMENT

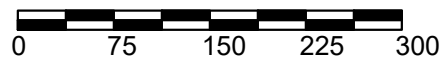


NAME: Daves Creek Substation Flood Mitigation

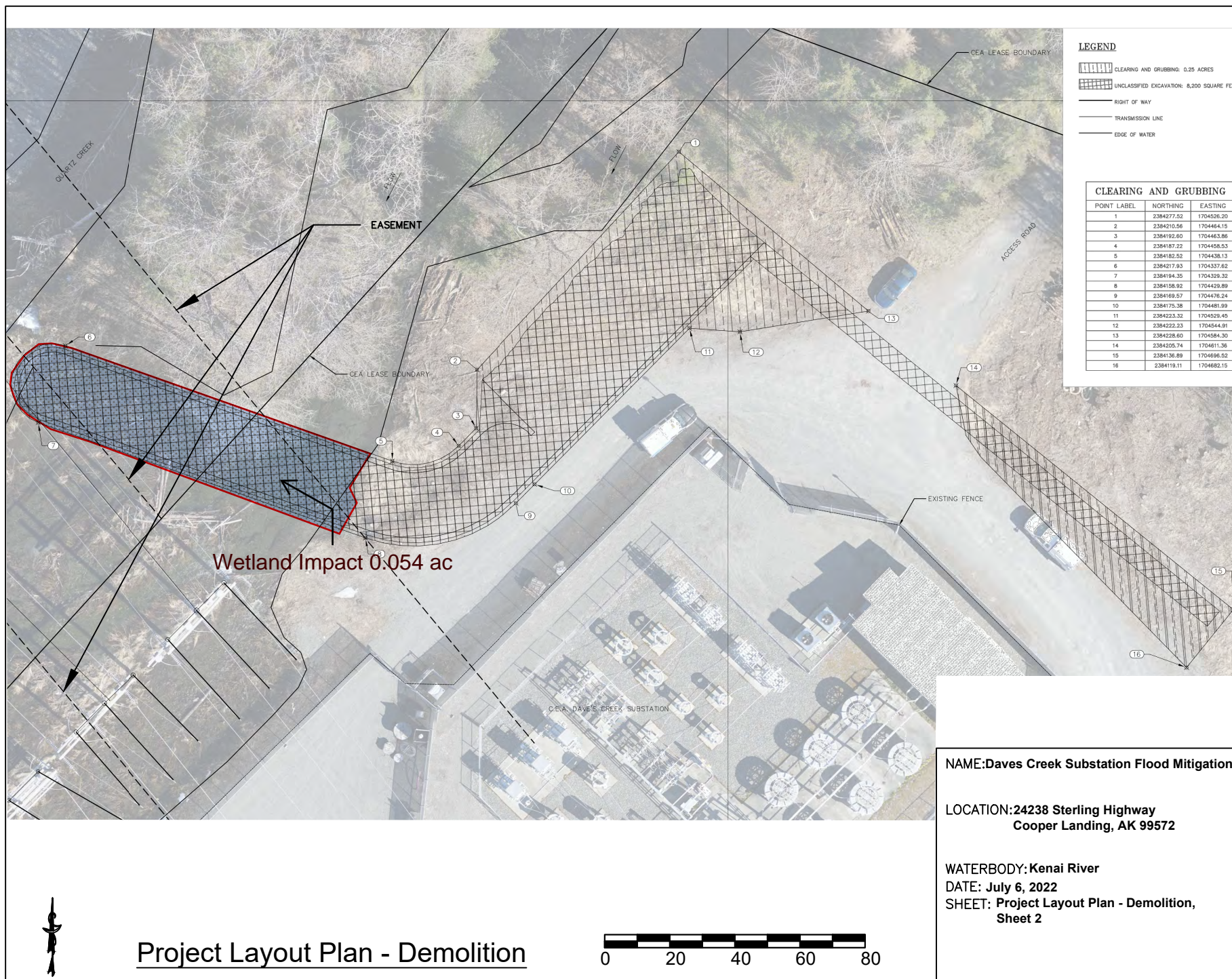
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Cooper Landing, AK 99572

WATERBODY: Kenai River  
DATE: July 6, 2022  
SHEET: Overall Plan View, Sheet 1

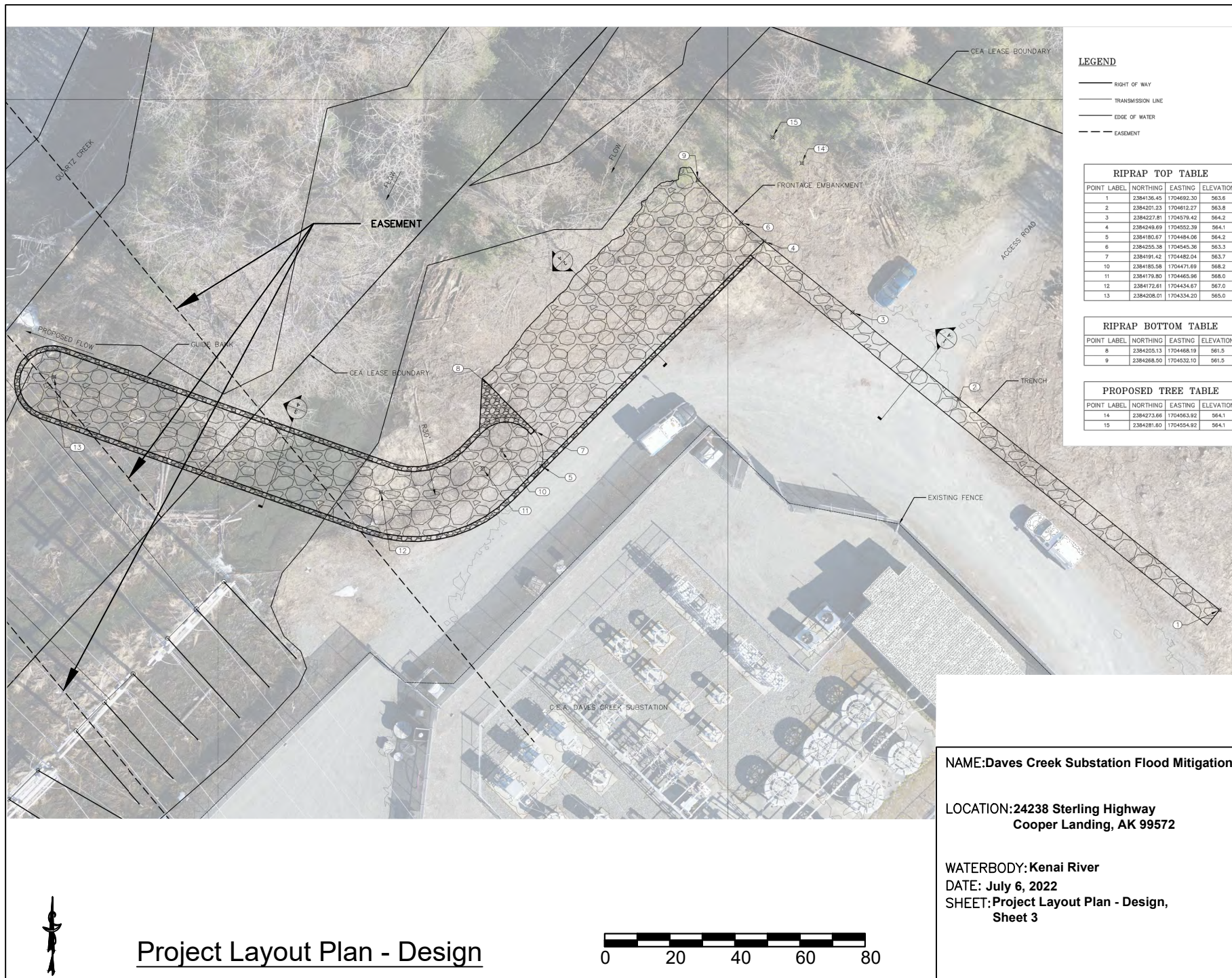
## Overall Project Plan View















# Daves Creek Substation, Flood Mitigation Project

## Project Description

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### Proposed Project

The Project proposes to divert the water back into the main channel of Quartz Creek and protect CEA's substation and transmission assets, as well as the cross-drainage culverts running under the Sterling Highway. Prior to construction, vegetation will be cleared based on the overall project footprint, see **Sheet 2**. The Project includes three primary features, as follows:

- **Frontage Embankment** – consists of a 85-foot (ft.)-long x 24-ft.-wide, 2:1-sloped Class 3 rip-rap embankment with a 15-ft.-wide "toe" located at the base of the embankment, see **Sheets 3 and 4**.
- **Guide Bank** – consists of a 140-ft.-long x 23-ft.-wide x 4.5-ft.-high, 2:1-sloped Class 3 rip-rap embankment that abuts the sound end of the Frontage Embankment and extends to within 3 ft. of the mainstem Quartz Creek stream bank, see **Sheets 3 and 4**.
- **Trench Drain** – consists of a 180-ft.-long x 6-ft.-wide x 6-ft.-deep trench filled with Class 3 rip rap to match original grade, see **Sheets 3 and 4**.

### Proximity to Ordinary High Water

The Project's proximity to ordinary high water of Quartz Creek varies. The Frontage Embankment is located approximately 90 ft. from the main channel of Quartz Creek and the Guide Bank will terminate 3 ft. from the bank of Quartz Creek.

### Substation Lease Area

The substation is located on a parcel of land leased from the State of Alaska (ADL 225852). A portion of the Guide Bank (68 linear ft. / 0.016 acre) extends beyond the western boundary of CEA's lease area and into the easement for the Transmission Line. The Transmission Line easement is located on land owned by the State of Alaska, **see Sheet 3**.

### Construction Methods and Equipment

- **Dewatering** – Dewatering of the work area will likely be needed. If a pump is needed a screened intake will be enclosed and centered within a screened structure to avoid fish entrainment, impingement or injury to fish while pumping water. The screened mesh size will not exceed 1/8-inch and water velocity will not exceed 0.5 ft. per second at the screen surface. Intake screens will be inspected for damage (torn screen, crushed scree, screen separated from intake ends, etc.) before and after each use. Any damage observed will be repaired prior to use. The intake screen will conform to the original design specification while in use.
- **Equipment** – An excavator, loader, and dump truck will be needed to move and place material. There is a potential that a pump may be needed for dewatering activities, as identified above.

### Filling, Dredging and Excavation

- Fill type, fill volume, and total Project area:
  - **Class 3 rip rap:** 906 cubic yards,
  - **Filter Rock:** 126 cubic yards,
  - **Geotextile:** 690 square yards
  - **Total Project area:** 0.214 acres
    - **Total impacts to wetlands:** 0.07 acres
    - **Dredge / excavation volume:** 233 cubic yards

### Fuel Storage and Vegetation Clearing

- Location and Quantity – All fuel storage will have secondary containment and occur in an upland area located within the lease area for the substation.
- Vegetation removal will occur over a 0.23-acre area, **see Sheet 2**. A total of eight (8) trees will need to be removed. To compensate for the tree removal, a total of eighteen (18) will be replanted on site, **see Sheet 3**.

### Avoidance and Minimization Measures

- To compensate for the tree removal, a total of eighteen (18) will be replanted on site, **see Sheet 3**.
- Unnecessary stream bank disturbance will be avoided.

- No vehicles or other equipment leaking fuels, oils hydraulic or cooling fluids will be operated during construction.
- All equipment used will be cleaned in accordance with the best management practices reference in Preventing the Spread of Invasive Species. [Unit 2 – Best Management Practices – Controlling Invasive Plants in Alaska \(uaf.edu\)](#)
- Trenches will not be constructed or backfilled in such a manner as to drain Waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods will be used to prevent this situation.
- Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials will be removed to an upland location.
- Any excavated material that may need to be temporarily side cast into wetlands will be underlain with geotextile, or similar material, to allow for removal of the temporary material to the maximum extent practicable.
- Re-vegetation of disturbed areas within the Project site will begin as soon as site conditions allow and in the same growing season as the disturbance, unless climatic conditions warrant additional time. Topsoil (the outermost layer of soil, usually the top 2 – 8 inches) removed from the construction area shall be separated and used for site rehabilitation.
- When backfilling, topsoil will be placed as the top layer to provide a seed bed for regrowth. If topsoil is not available from the Project site, local native soil material obtained from an approved site may be used.
- Plant species used for seeding and planting will be in accordance with the recommendations by the Alaska Plant Material Center <http://www.plants.alaska.gov/>.
- Natural drainage patterns will be maintained using well-established and appropriate methods.


#### **Required Permits**

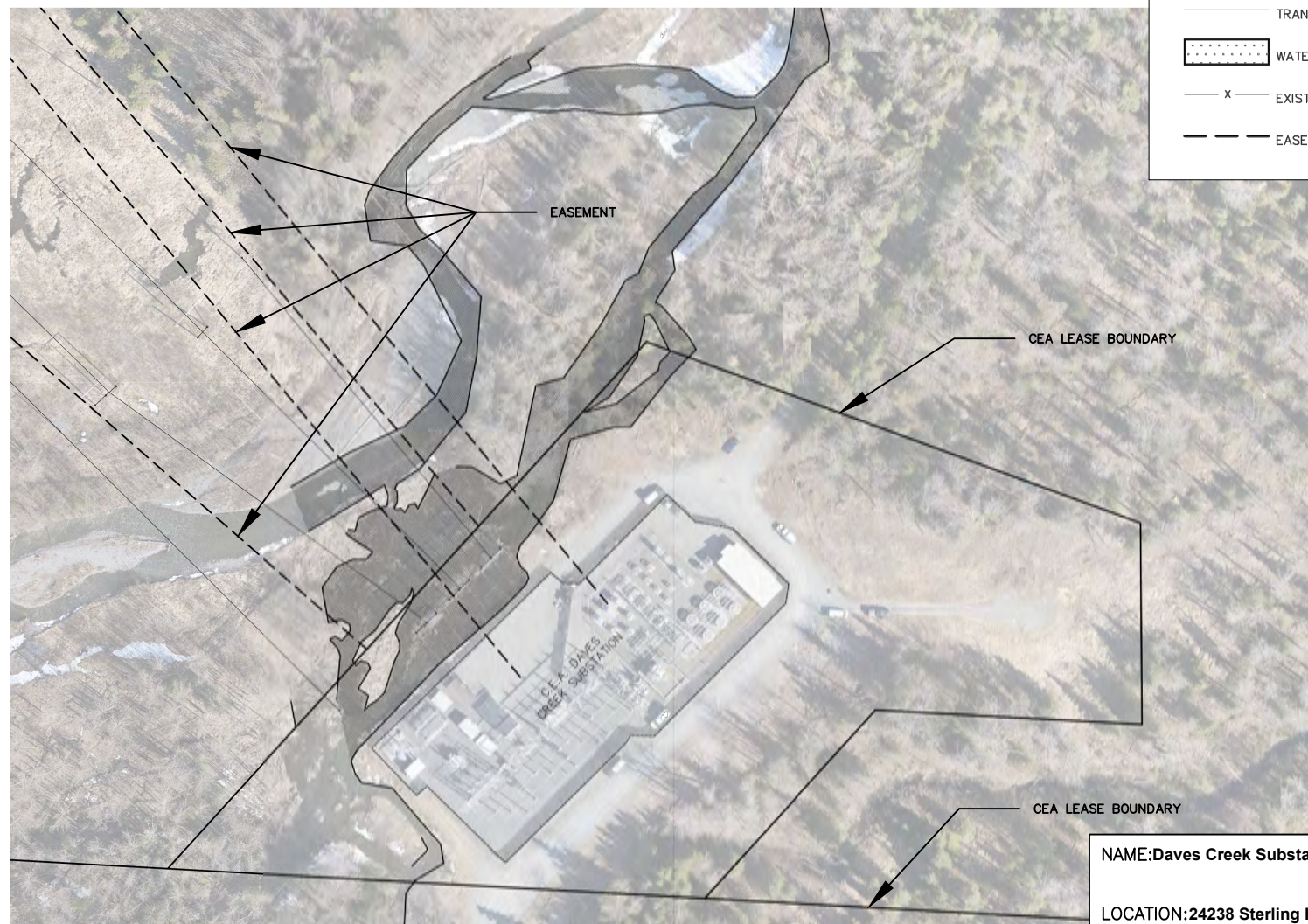
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- Alaska Department of Fish and Game – Fish Habitat permit
- Kenai Peninsula Borough – Conditional Use Permit
- U.S. Army Corps of Engineers – Section 10/404 Nationwide Permit
- Alaska Department of Environmental Conservation – 401 Discharge Certification

**PERMT APPLICATION FIGURES**



**LEGEND**

- RIGHT OF WAY
- TRANSMISSION LINE
-  WATER
- x — EXISTING FENCE
- - - EASEMENT



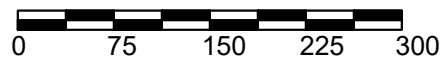
NAME: Daves Creek Substation Flood Mitigation

LOCATION: 24238 Sterling Highway  
Cooper Landing, AK 99572

WATERBODY: Kenai River  
DATE: July 25, 2022  
SHEET: Overall Plan View, Sheet 1



## Overall Project Plan View







**NAME:**Daves Creek Substation Flood Mitigation

**LOCATION:**24238 Sterling Highway  
Cooper Landing, AK 99572

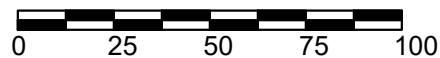
**WATERBODY:**Kenai River

**DATE:** July 25, 2022

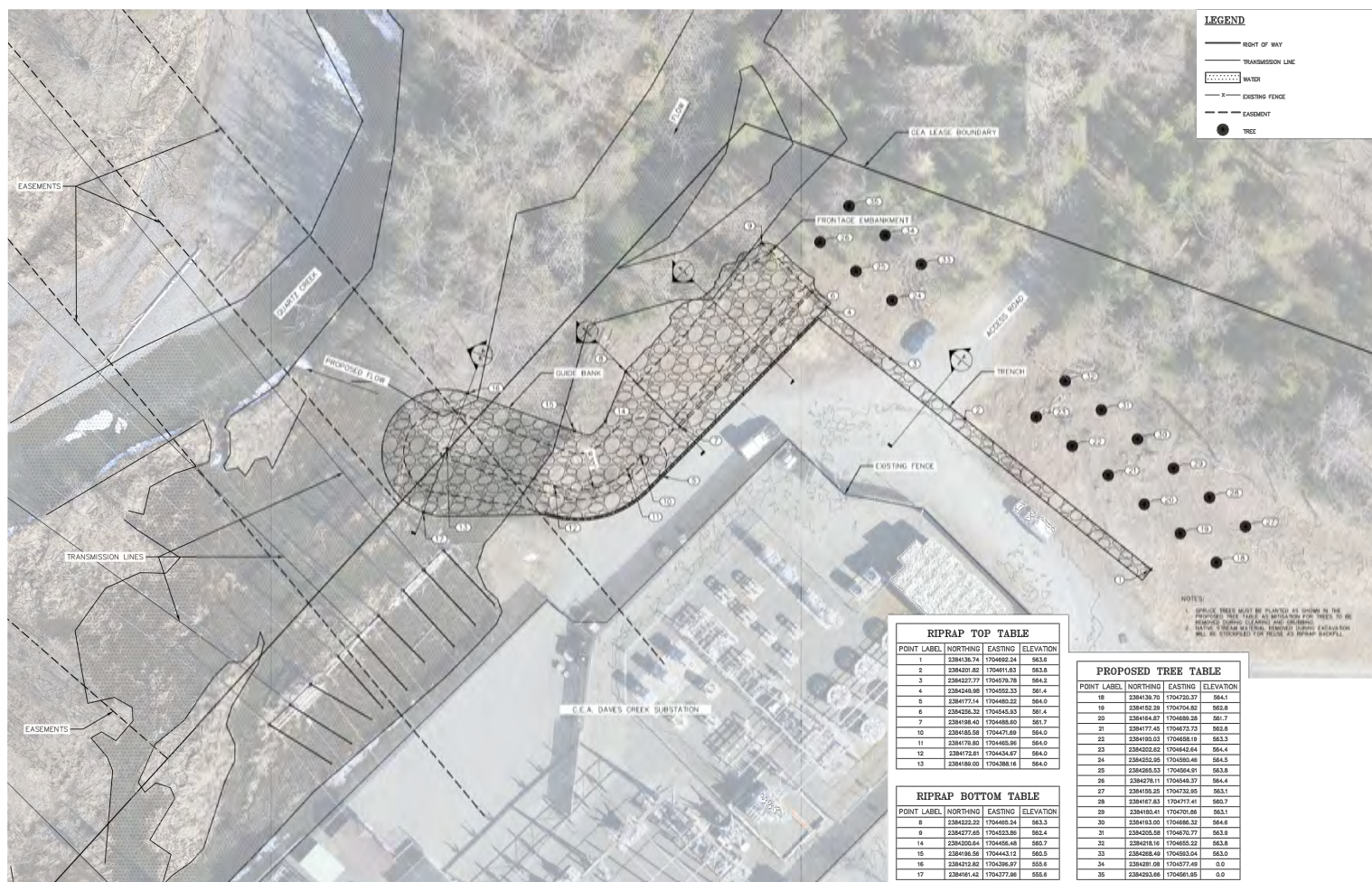
**SHEET:** Project Layout Plan - Demolition,  
Sheet 2



## Project Layout Plan - Demolition







NAME: Daves Creek Substation Flood Mitigation

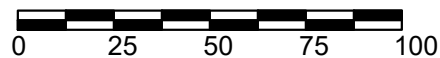
LOCATION: 24238 Sterling Highway  
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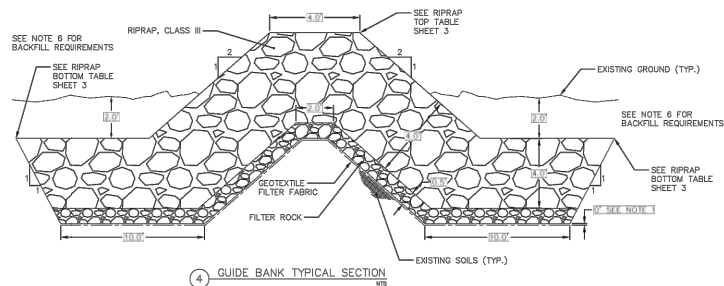
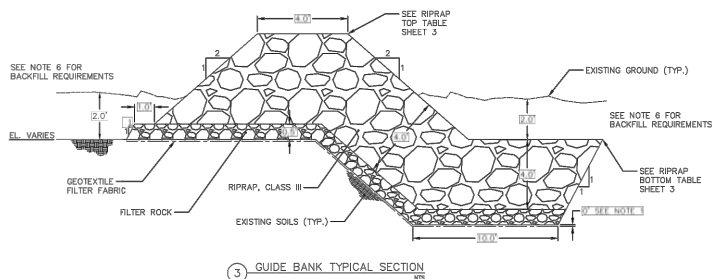
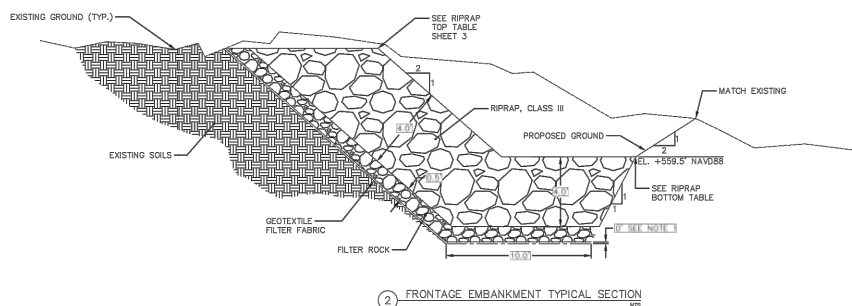
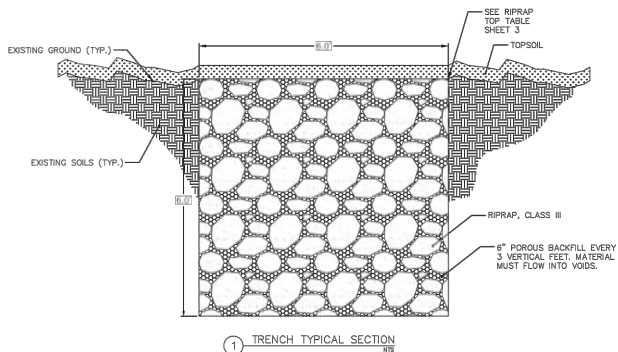
WATERBODY: Kenai River

DATE: July 25, 2022

SHEET: Project Layout Plan - Design,  
Sheet 3

Project Layout Plan - Design





- NOTES:
1. SPACE BETWEEN FILTER ROCK AND GEOTEXTILE FILTER FABRIC SHALL BE 0.50 FEET. FILTER ROCK SHALL BE PLACED DIRECTLY ON GEOTEXTILE FILTER FABRIC.
  2. FILTER ROCK SHALL CONFORM TO SPECIFICATIONS.
  3. STRIPPING OF EXISTING SOILS SHALL OCCUR BELOW GUIDE BANK AND FRONTAGE EMBANKMENT.
  4. SMOOTH TRANSITIONS BETWEEN ALL SECTIONS.
  5. ALL LINEAR DIMENSIONS HAVE AN ASSURANCE TOLERANCE OF  $\pm 0.05$ .
  6. ALL RIPRAP BELOW OCCUPANY HIGH WATER SHALL BE BACKFILLED WITH NATIVE STREAM MATERIAL AFTER PLACEMENT.
  7. TWO WEEK NOTICE SHALL BE PROVIDED TO ADJACENT PROPERTY OWNERS BEFORE ANY IN-WATER WORK OR FISH REMOVAL OCCURS.

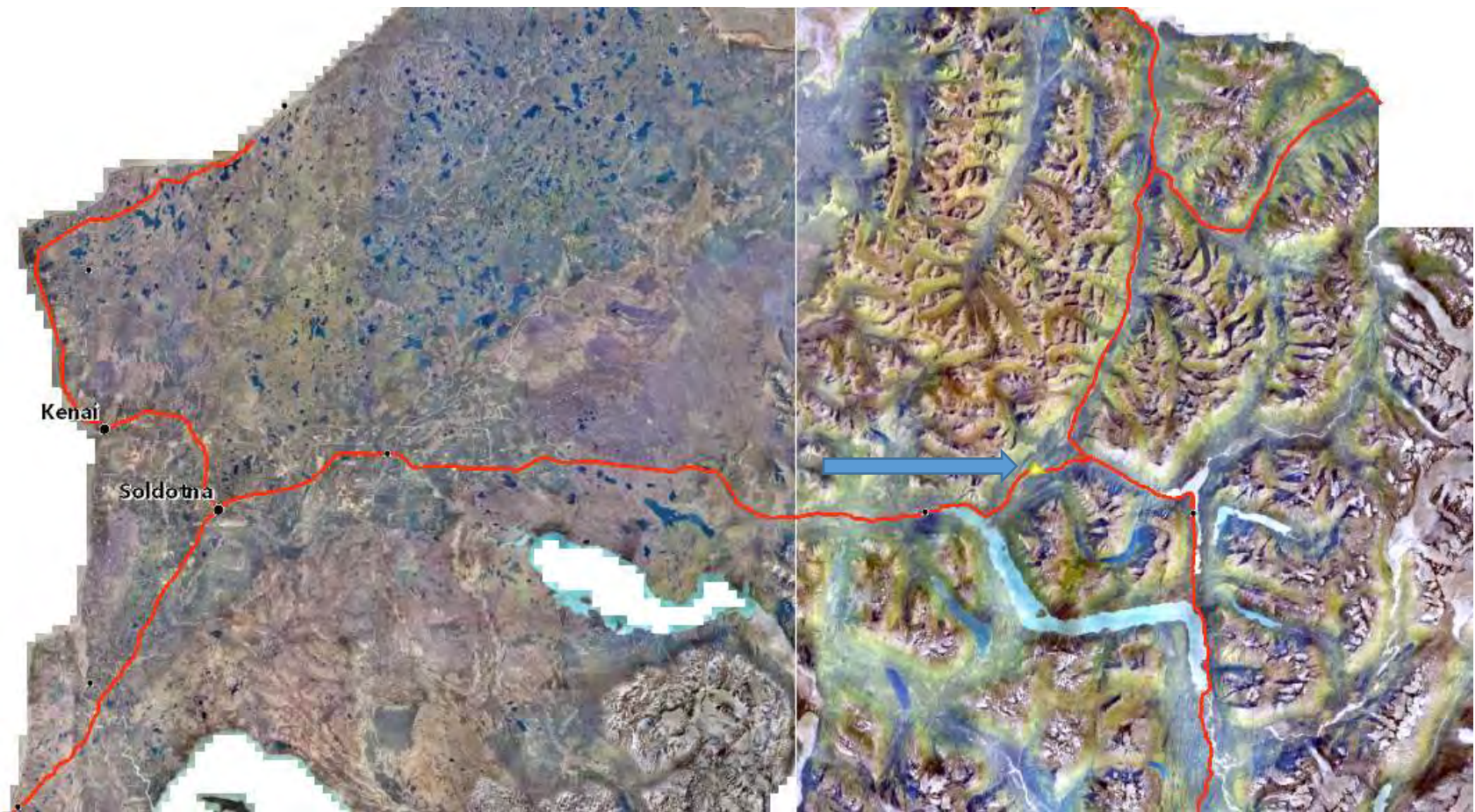
NAME: Daves Creek Substation Flood Mitigation

LOCATION: 24238 Sterling Highway  
Cooper Landing, AK 99572

WATERBODY: Kenai River  
DATE: July 25, 2022  
SHEET: Typical Sections, Sheet 4

## Typical Sections













**Conditional Use Permit  
Anadromous Waters Habitat Protection District  
Staff Report**

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<b>KPB File No.</b>	<b>2022-36</b>
<b>Planning Commission Meeting:</b>	<b>August 8, 2022</b>
<b>Applicant</b>	<b>Chugach Electric</b>
<b>Mailing Address</b>	<b>PO Box 196300</b>
	<b>Anchorage, AK 99519</b>
<b>Legal Description</b>	<b>T 05N R 02W SEC 16 SEWARD MERIDIAN SW 2019007</b>
	<b>ALASKA STATE LAND SURVEY NO 2014-26 TRACT A</b>
<b>Physical Address</b>	<b>24238 STERLING HWY</b>
<b>KPB Parcel Number</b>	<b>119-300-23</b>

**Project Description**

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of rip rap embankments within the 50-foot Habitat Protection District of the Quartz Creek, as established in KPB 21.18.040.

**Background Information**

Quartz Creek has been experiencing bank overflows and has caused flooding near the Dave's Creek Substation located along the Sterling Highway. About 300 feet upstream from the substation, high flows in Quartz Creek laterally eroded the streambank and a portion of the flow has flooded a remnant channel adjacent to the substation. In June 20022, water levels rose to a point where water was flowing along the north-west edge of the substation's gravel pad and had fully surrounded the transmission line poles. After receiving emergency permits to temporarily place a diversion in the channel in June 2022, Chugach has been working to design a long-term solution to protect the substation and transmission line poles from the waters of Quartz Creek.

To correct the current flooding and prevent future issues, the applicant proposes to create a three sectioned embankment; the Frontage Embankment will consist of a 85 foot long and 24 foot wide 2:1 slope rip rap embankment with a 15 foot wide toe located at the base. The second part, the Guide Bank; will consist of a 140 foot long 23 foot wide 2:1 slope rip rap that abuts the south end of the Frontage Embankment and extends within 3 feet of the mainstream of Quartz Creek. The final portion, the Trench Drain; will consist of a 180 foot long 6 foot wide and 6 foot deep trench filled with rip rap to match the original grade.

**Project Details within the 50-foot Habitat Protection District**

1. Placement of 906 cubic yards of Class 3 rip rap
2. Placement of 126 cubic yards of filter rock
3. Placement of 690 square yards of geotextile
4. Removal of .23 acres of vegetation, including 8 trees

**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; **Conditions 1-4 and Findings 7-8 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-5, 10-17 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 9 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 10-11 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Finding 17 appears to support this standard.**

**Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit**

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), construction of Transportation and Utility Infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. The installation of the rip rap embankments will protect the substation and transmission lines from future flooding and will divert water back into the main channel.
7. Excess materials dredged from the trench will be removed to an upland location.
8. Revegetation of disturbed areas will occur as site conditions allow. Plant species will be in accordance with the Alaska Plant Material Center.
9. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
10. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:  
*"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."*
11. While utility services are not a water-dependent use as described in Resolution 2015-35, they are listed as a permissible Conditional Use under KPB 21.18.081 (B) (5).
12. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
13. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
14. Notice of this project was sent to the Cooper Landing Advisory Planning Commission. The APC recommended approval/denial.

15. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022. A total of 1 mailing was sent.
16. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
17. The applicant is currently in compliance with Borough permits and ordinances.

### **Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to Quartz Creek
2. The rip rap embankment must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

### **Attachments**

Multi-Agency Application  
Draft Resolution 2022-36

### **Recommendation**

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for any habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2022-36.

**Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.**

**END OF STAFF REPORT**



# Donald E. Gilman River Center

514 Funny River Road, Soldotna, Alaska 99669 • (907) 714-2460 • (907) 260-5992 Fax

*A Division of the Planning Department*

Charlie Pierce  
Borough Mayor

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that an application for a Conditional Use Permit has been received to install rip rap on a parcel within the 50-foot Habitat Protection District of the Quartz Creek, near Cooper Landing, Alaska. ***You have been sent this notice because you are a property owner within 300 feet of the described property.***

Pursuant to KPB 21.18.081(B)(5) Transportation and Utility Infrastructure and KPB 21.18.091 Mitigation measures, projects within the 50-foot Habitat Protection District are not permitted unless a Conditional Use Permit (CUP) is approved by the Planning Commission. This project is located at T 05N R 02W SEC 16 SEWARD MERIDIAN SW 2019007 ALASKA STATE LAND SURVEY NO 2014-26 TRACT A, Cooper Landing, Alaska.

**Petitioner:** Chugach Electric Association  
PO Box 196300  
Anchorage, AK 99519

**Public Hearing:** The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on August 8, 2022 commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting is to be held in the Borough Administrative Building, 144 N. Binkley St., Soldotna, Alaska. The public may also attend the meeting electronically/telephonically via Zoom. To join the meeting from a computer visit <https://us06web.zoom.us/j/9077142200>. To attend the Zoom meeting by telephone call toll free **1-888-788-0099 or 1-877-853-5247**. When calling in you will need the Meeting ID **907 714 2200**.

**Public Comment:** Anyone wishing to testify may attend the above meeting to give testimony, or may submit written comment via the methods below. **Written comments must be submitted by 1:00 pm Friday, August 5, 2022.**

**Mail comments to:**

Donald E. Gilman River Center  
514 Funny River Road  
Soldotna, Alaska 99669

**Fax comments to:**

(907) 260-5992

**Email comments to:**

[planning@kpb.us](mailto:planning@kpb.us)  
[KenaiRivCenter@kpb.us](mailto:KenaiRivCenter@kpb.us)

For additional information contact Morgan Aldridge, [maldridge@kpb.us](mailto:maldridge@kpb.us), Donald E. Gilman River Center, (907) 714-2465.



**KENAI PENINSULA BOROUGH PLANNING COMMISSION**

**RESOLUTION 2022-36**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE  
CONSTRUCTION OF RIP RAP EMBANKMENT WITHIN THE 50-FOOT HABITAT PROTECTION  
DISTRICT OF QUARTZ CREEK.**

**WHEREAS,** Chapter 21.18 provides for the approval of Conditional Use Permits for certain activities within the habitat protection district; and

**WHEREAS,** KPB 21.18.081 provides that a conditional use permit is required for construction not meeting the standards of KPB 21.18.071; and

**WHEREAS,** KPB 21.18.091 provides for mitigation measures by the planning department staff to address impacts to the Habitat Protection District from a proposed, ongoing, or completed project; and

**WHEREAS,** public notice was sent to all property owners within a 300-foot radius of the proposed activity as provided in Section 21.11.030; and

**WHEREAS,** public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022 as provided in Section 21.11.020; and

**WHEREAS,** public testimony was received at the August 8, 2022 meeting of the Kenai Peninsula Borough Planning Commission;

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

That the Planning Commission makes the following findings of fact pursuant to KPB 21.18:

**Section 1. Project Details Within the 50-foot Habitat Protection District**

1. Placement of 906 cubic yards of Class 3 rip rap
2. Placement of 126 cubic yards of filter rock
3. Placement of 690 square yards of geotextile
4. Removal of .23 acres of vegetation

**Section 2. Findings of fact pursuant to KPB 21.18.081**

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), construction of construction of Transportation and Utility Infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.

4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. The installation of the rip rap embankments will protect the substation and transmission lines from future flooding and will divert water back into the main channel.
7. Excess materials dredged from the trench will be removed to an upland location.
8. Revegetation of disturbed areas will occur as site conditions allow. Plant species will be in accordance with the Alaska Plant Material Center.
9. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
10. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:  
*"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."*
11. While utility services are not a water- dependent use as described in Resolution 2015-35, they are listed as a permissible Conditional Use under KPB 21.18.081 (B) (5).
12. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
13. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
14. Notice of this project was sent to the Cooper Landing Advisory Planning Commission. The APC recommendations have not been received to date.
15. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022 A total of 1 mailing were sent.
16. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
17. The applicant is currently in compliance with Borough permits and ordinances.

### **Section 3. Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to Quartz Creek.
2. The rip rap embankment must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.

8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

**Section 4. 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; **Conditions 1-4 and Findings 7-8 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-5, 10-17 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 9 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 10-11 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 17 appears to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Blair Martin, Chairperson  
Planning Commission

ATTEST:

\_\_\_\_\_  
Ann Shirnberg  
Administrative Assistant

**Note: An appeal of a decision of the Planning Commission may be filed to the hearing officer, in accordance with the requirements of the KPB Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.**



## **E. NEW BUSINESS**

**5. Conditional Use Permit; PC Resolution 2022-35**

**Petitioner: Paul LaFond**

**Request: Install a fence within the 50' Habitat Protection District of the Kenai River**

**Location: Lot 24, Block 2, Key Stone Estates Sub Part 2, Plat KN 0760050**

**Soldotna Area**

# Multi Agency Permit Application



514 Funny River Road, Soldotna, AK 99669 • (907) 714-2460 • KenaiRivCenter@kpb.us

## Applicant Information:

Name: Paul LaFond  
 Owner? ☒ Yes ☐ No  
 Mailing: 871 Forget me Not Lane  
Homer AK 99603  
 Phone: 352 634 2473  
 Email: PaulLaFond2@yahoo.com

## Agent Information: (if applicable)

Name: \_\_\_\_\_  
 Mailing: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

## Project Location:

KPB Parcel ID: 055-150-4700  
 Physical Address: 34635 Keystone Drive  
Soldotna AK 99669  
 Waterbody Name: Kenai River  
 River Mile: \_\_\_\_\_ Riverbank: ☒ Right  
 looking downstream ☐ Left

Subdivision: Keystone Estate Sub.  
 Lot: 24 Block: 2 Addn/No.: \_\_\_\_\_  
 Directions to site: \_\_\_\_\_

## Permit Fees: (please select the applicable permit fees)

- ☐ \$100 - ADNR State Parks Permit ☒ \$300 - KPB Conditional Use Permit  
☐ \$50 - KPB Habitat/Floodplain Permit ☐ \$300 - KPB Floodway Development Permit

## Project Description:

☒ New Project ☐ Extension  
☐ Amendment to RC# \_\_\_\_\_

Provide a detailed description of your project and all related activities, use additional pages if needed. Include the following information for all existing and proposed structures:

- Project location & dimensions
- Waterbody description & proximity
- Proximity to OHW and/or HTL
- Construction methods/equipment
- Filling/dredging/excavation:
  - type, volume, area, location
- Fuel Storage: location, quantities
- Vegetation Removal: location, amount, type

We want to build an 8' high fence on left side of property  
for privacy from neighbor house. we will be about 20' above  
high water line & will be 30' long on 50' easement & 74' more beyond total by  
the 50 ft easement wood post every 8' & 8' high 1" boards no fill & no  
Fuel storage no Removal we are using dead trees to make posts to put  
up part time project will take 1 year to complete only power is post  
hole digger

## KPB Tax Credit: (skip this section if your project is prior existing, only applicable to NEW projects)

Please provide your estimated project cost(s) below. Do not include grants or other funding assistance:

Elevated Light Penetrating Structure(s) \$ \_\_\_\_\_  
 Bank or Habitat Restoration & Protection \$ \_\_\_\_\_  
 Other Activities Boards 0 screws 160 \$ 450  
Paint 300

**Project Questions:**

**Note:** Use Ordinary High Water (OHW) for non-tidal waters, and Mean High Tide (MHT) for tidal waters.

1. Start date: aug 2012 End date: aug. 2013 Estimated Days of Construction: \_\_\_\_\_
2. Is the project located within 50 feet of OHW or HTL a waterbody? ☒ Yes ☐ No
3. Does any portion of the project extend below the OHW or HTL of the stream or waterbody? ☐ Yes ☒ No
4. Does any portion of the project cantilever or extend over the OHW of the waterbody? ☐ Yes ☒ No
5. Will anything be placed below OHW or HTL of the waterbody? ☐ Yes ☒ No
6. Will material be extracted or dredged from the site? ☐ Yes ☒ No
7. Including areas below OHW or HTL, what is the total area (in acres) that will be excavated or dredged?  
Total Area: none Type of Material: \_\_\_\_\_  
Location you will depositing fill: \_\_\_\_\_
8. Will any material (including soils, debris, and/or overburden) be used as fill? ☐ Yes ☒ No  
Type of material: \_\_\_\_\_ Amount: \_\_\_\_\_ Permanent ☐ or Temporary ☐  
Will fill be placed below OHW or HTL: ☐ Yes ☒ No
9. List all motorized equipment to be used in this project, including access route to site, any stream or waterbody crossings, and (if applicable) how long equipment will be used below OHW or HTL: Post hole digger  
\_\_\_\_\_
10. Is any portion of the work already complete? ☐ Yes ☒ No  
If yes, describe: \_\_\_\_\_

**Signature & Certification:**

This application is hereby made requesting permit(s) to authorize the work described in this application form. I certify the information in this application is complete and accurate to the best of my knowledge.

**If applying for a tax credit:** I certify that I have not begun construction of the project on this the property and that the proposed project will be constructed in a manner consistent with KPB 5.12 Real Property and Personal Property Taxes, KPB 5.14 Habitat Protection Tax Credit, and other applicable ordinances.

Paul LaForte

Applicant Signature (required)

July 1 2022

Date

Agent Signature (if applicable)

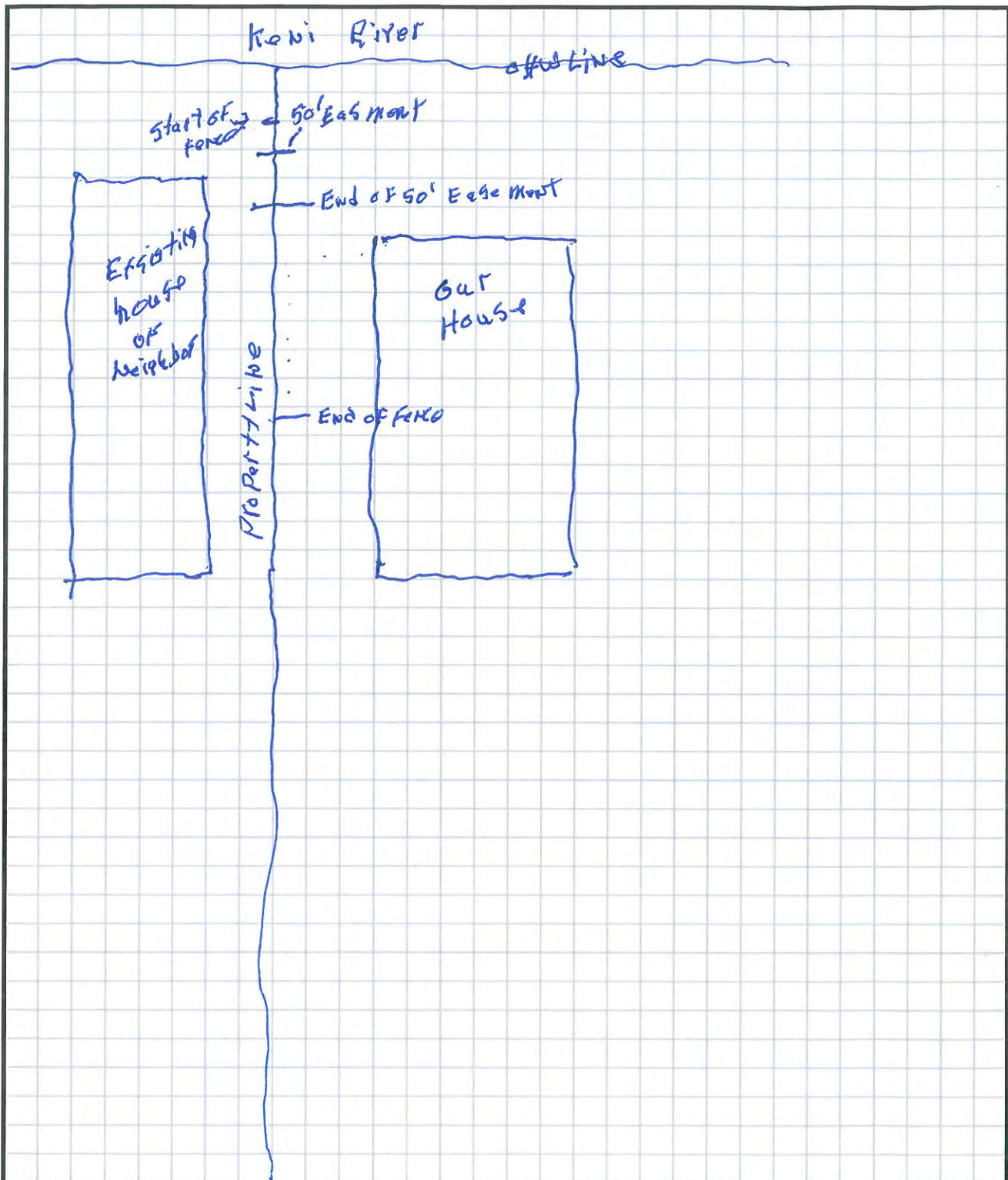
JULY 2022

Date



# Site Plan: Top View

MUST show the OHW line



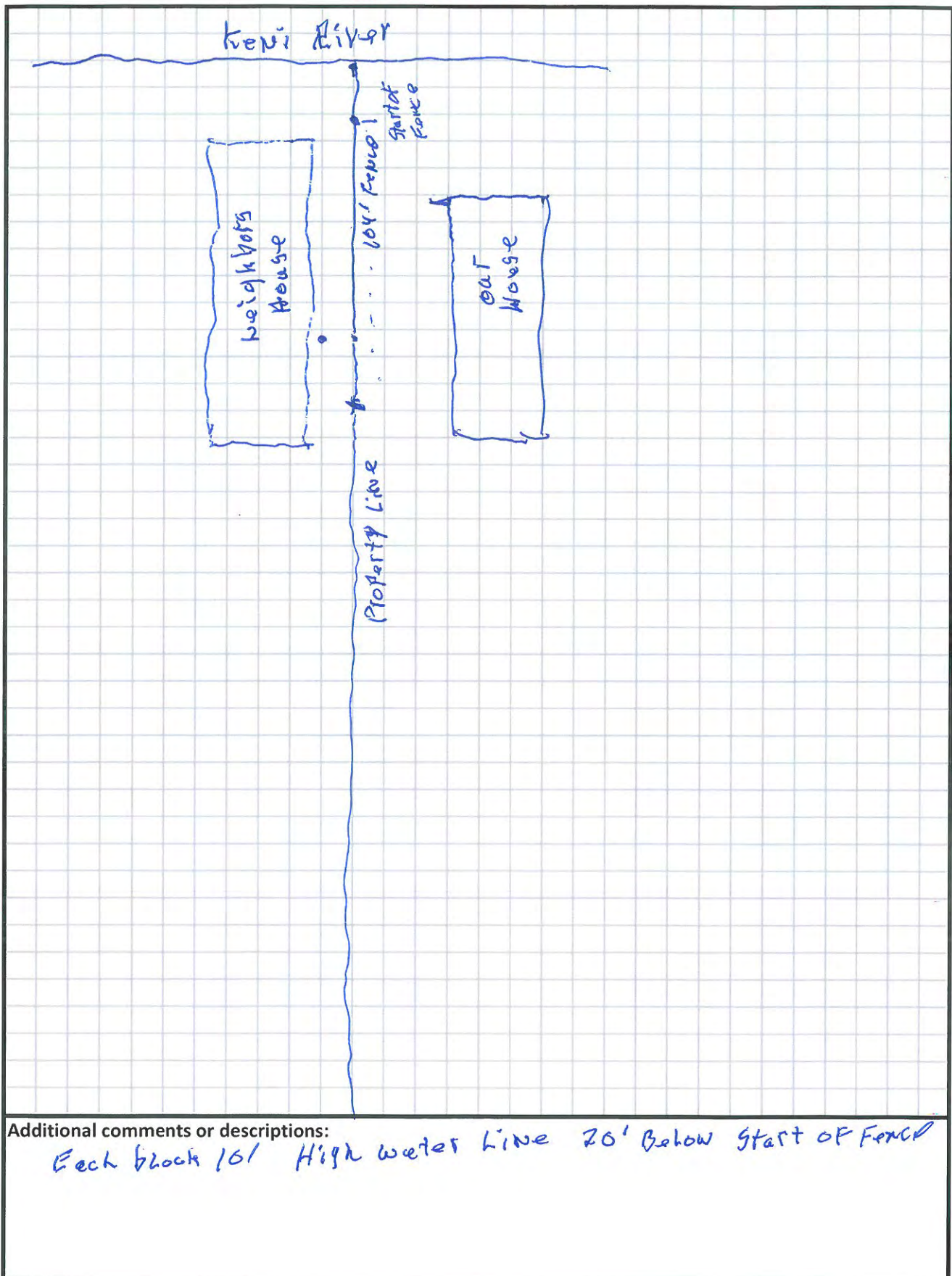
Additional comments or descriptions:

Each block 16'



# Site Plan: Elevation or Side View

MUST show the OHW line





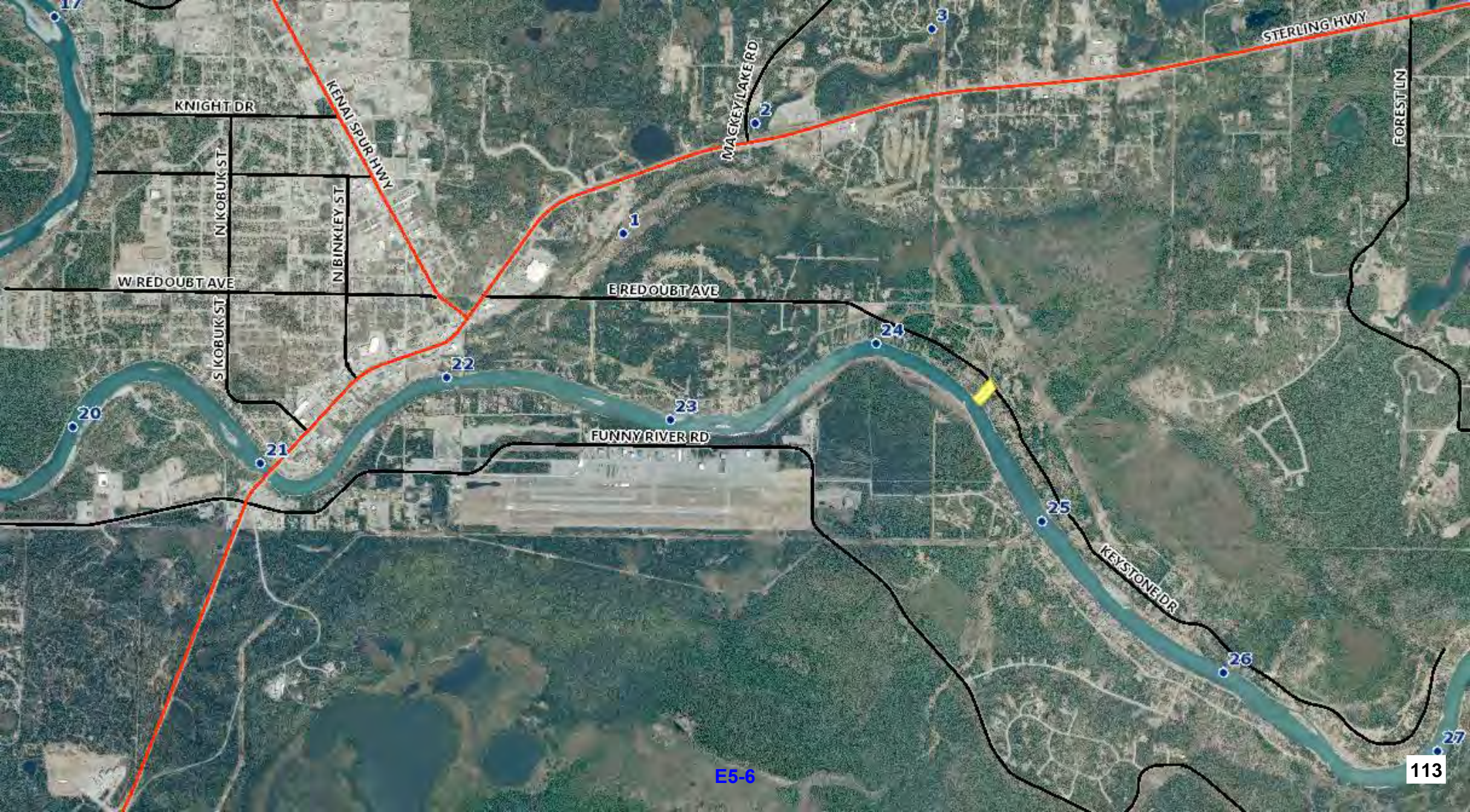


Kenall River

KEYSTONE DR

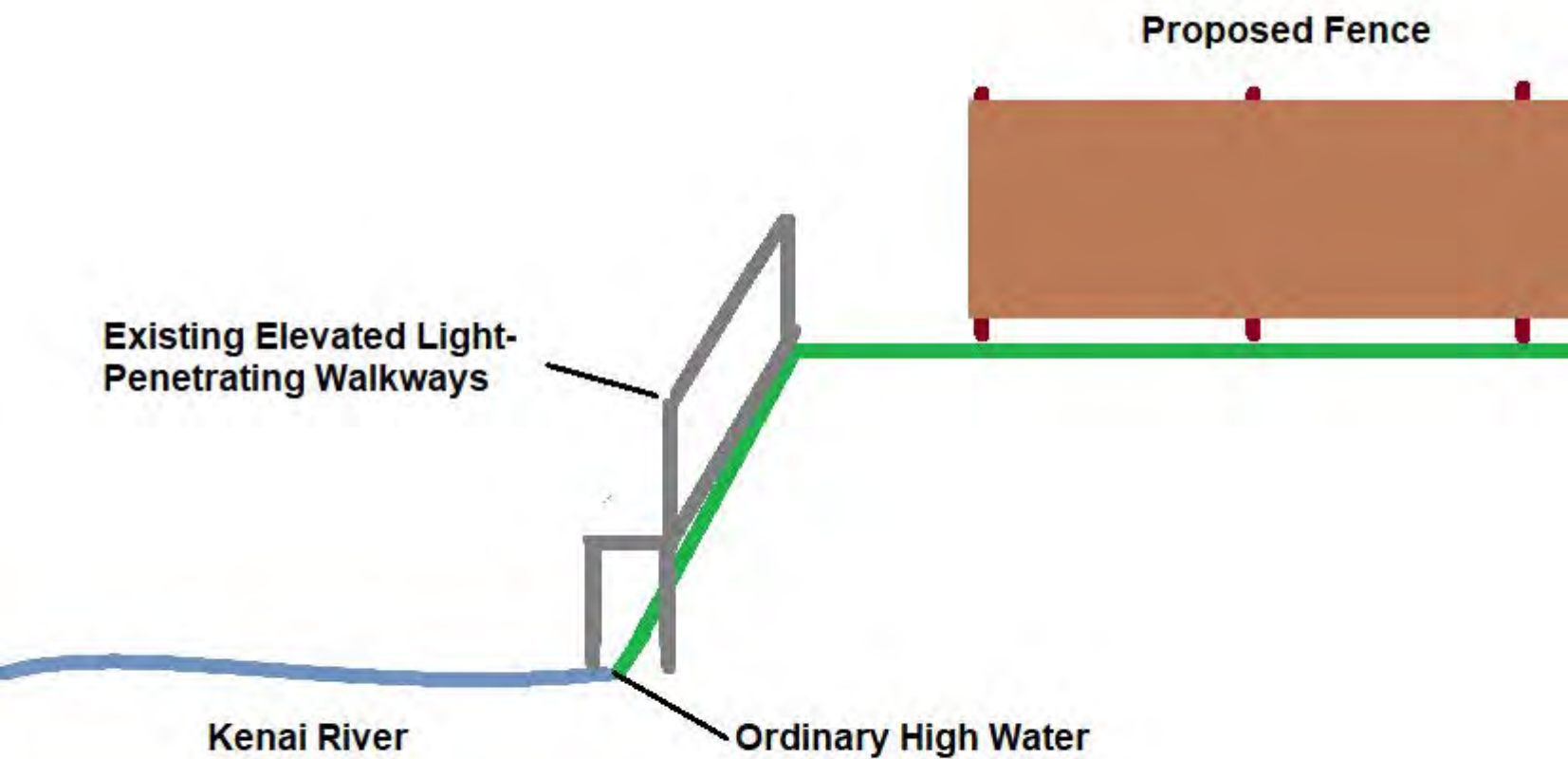
E5-5





E5-6







**Conditional Use Permit  
Anadromous Waters Habitat Protection District  
Staff Report**

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<b>KPB File No.</b>	<b>2022-35</b>
<b>Planning Commission Meeting:</b>	<b>August 8, 2022</b>
<b>Applicant</b>	<b>Paul LaFond</b>
<b>Mailing Address</b>	<b>871 Forget Me Not Lane Homer, AK 99603</b>
<b>Legal Description</b>	<b>T 5N R 10W SEC 35 SM KN 0760050 KEYSTONE ESTATES SUB PART 2 LOT 24 BLK 2</b>
<b>Physical Address</b>	<b>34635 KEYSTONE DR</b>
<b>KPB Parcel Number</b>	<b>05820027</b>

**Project Description**

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of a fence within the 50-foot Habitat Protection District of the Kenai River, as established in KPB 21.18.040.

**Background Information**

Applicant proposes to install a privacy fence along the upstream side of their parcel, as shown on the attached maps. Fence will be installed approximately five feet back from the edge of the bluff to allow for wildlife passage. Fence will be 8 feet tall and elevated approximately 6 inches off the ground, and mounted to wooden fence posts.

Upon reviewing the floodplain mapping data and performing a site visit, it was determined that the fence would be located outside the floodplain and 15-20 feet above ordinary high water. Because of this, staff finds that the fence will not impede water flows.

**Project Details within the 50-foot Habitat Protection District**

1. Installation of 8-foot tall wooden fence, of which approximately 30 feet will be in the Habitat Protection District.
2. Installation of seven wooden fence posts.
3. Minimal removal of vegetated material.

**Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit**

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(2), construction of fences may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.

5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:  
*“...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.”*
7. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
8. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
9. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022. A total of 11 mailings were sent.
10. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
11. Applicant has located and staked the property boundaries to ensure the fence does not encroach on to adjoining properties.
12. The applicant is currently in compliance with Borough permits and ordinances.

#### **Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River.
2. The fence must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

## **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; **Conditions 1-5 and Finding 4 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 11 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 6 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements; **Finding 12 appears to support this standard.**

## **Attachments**

Multi-Agency Application  
Draft Resolution 2022-35

## **Recommendation**

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for any habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2022-35.

**Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.**

**END OF STAFF REPORT**



# Donald E. Gilman River Center

514 Funny River Road, Soldotna, Alaska 99669 • (907) 714-2460 • (907) 260-5992 Fax

*A Division of the Planning Department*

Charlie Pierce  
Borough Mayor

## KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that an application for a Conditional Use Permit has been received to install a fence on a parcel within the 50-foot Habitat Protection District of the Kenai River, near Soldotna, Alaska. ***You have been sent this notice because you are a property owner within 300 feet of the described property.***

Pursuant to KPB 21.18.081(B)(3) Fences and KPB 21.18.091 Mitigation measures, projects within the 50-foot Habitat Protection District are not permitted unless a Conditional Use Permit (CUP) is approved by the Planning Commission. This project is located at T 5N R 10W SEC 35 SM KN 0760050 KEYSTONE ESTATES SUB PART 2 LOT 24 BLK 2, Soldotna, Alaska.

**Petitioner:** Paul LaFond  
871 Forget Me Not Lane  
Homer, AK 99603

**Public Hearing:** The Kenai Peninsula Borough Planning Commission meeting will hold a public hearing on August 8, 2022 commencing at 7:30 p.m., or as soon thereafter as business permits. The meeting is to be held in the Borough Administrative Building, 144 N. Binkley St., Soldotna, Alaska. The public may also attend the meeting electronically/telephonically via Zoom. To join the meeting from a computer visit <https://us06web.zoom.us/j/9077142200>. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID **907 714 2200**.

**Public Comment:** Anyone wishing to testify may attend the above meeting to give testimony, or may submit written comment via the methods below. **Written comments must be submitted by 1:00 pm Friday, August 5, 2022.**

**Mail comments to:**

Donald E. Gilman River Center  
514 Funny River Road  
Soldotna, Alaska 99669

**Fax comments to:**

(907) 260-5992

**Email comments to:**

[planning@kpb.us](mailto:planning@kpb.us)  
[KenaiRivCenter@kpb.us](mailto:KenaiRivCenter@kpb.us)

For additional information contact Morgan Aldridge, [maldridge@kpb.us](mailto:maldridge@kpb.us) Donald E. Gilman River Center, (907) 714-2465.



**KENAI PENINSULA BOROUGH PLANNING COMMISSION**

**RESOLUTION 2022-35**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT PURSUANT TO KPB 21.18 FOR THE  
CONSTRUCTION OF A FENCE WITHIN THE 50-FOOT HABITAT PROTECTION DISTRICT OF THE  
KENAI RIVER.**

**WHEREAS,** Chapter 21.18 provides for the approval of Conditional Use Permits for certain activities within the habitat protection district; and

**WHEREAS,** KPB 21.18.081 provides that a conditional use permit is required for construction not meeting the standards of KPB 21.18.071; and

**WHEREAS,** KPB 21.18.091 provides for mitigation measures by the planning department staff to address impacts to the Habitat Protection District from a proposed, ongoing, or completed project; and

**WHEREAS,** public notice was sent to all property owners within a 300-foot radius of the proposed activity as provided in Section 21.11.030; and

**WHEREAS,** public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022 as provided in Section 21.11.020; and

**WHEREAS,** public testimony was received at the August 8, 2022 meeting of the Kenai Peninsula Borough Planning Commission;

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

That the Planning Commission makes the following findings of fact pursuant to KPB 21.18:

**Section 1. Project Details Within the 50-foot Habitat Protection District**

1. Installation of 8-foot tall wooden fence, of which approximately 30 feet will be in the Habitat Protection District.
2. Installation of seven wooden fence posts.
3. Minimal removal of vegetated material.

**Section 2. Findings of fact pursuant to KPB 21.18.081**

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B) (2), construction of a fence may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.

4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:  
    *"...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."*
7. The River Center found the application complete and scheduled a public hearing for August 8, 2022.
8. Agency review was distributed on July 22, 2022. No comments or objections have been received from resource agencies to date.
9. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on July 22, 2022. A total of 11 mailings were sent.
10. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 28, 2022 and August 4, 2022.
11. Applicant has located and staked the property boundaries to ensure the fence does not encroach on adjoining properties.
12. The applicant is currently in compliance with Borough permits and ordinances.

### **Section 3. Permit Conditions**

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River
2. The fence must be designed and installed to meet KPB floodplain requirements.
3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).

10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

**Section 4. 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; **Conditions 1-5 and Finding 4 appear to support this standard.**
2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough; **Findings 1-6 appear to support this standard.**
3. The development of the use or structure shall not physically damage the adjoining property; **Finding 11 appears to support this standard.**
4. The proposed use or structure is water-dependent; **Findings 1-4, 6 appear to support this standard.**
5. Applicant's or owner's compliance with other borough permits and ordinance requirements. **Finding 12 appears to support this standard.**

THIS CONDITIONAL USE PERMIT EFFECTIVE ON \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

\_\_\_\_\_  
Blair Martin, Chairperson  
Planning Commission

ATTEST:

\_\_\_\_\_  
Ann Shirnberg  
Administrative Assistant

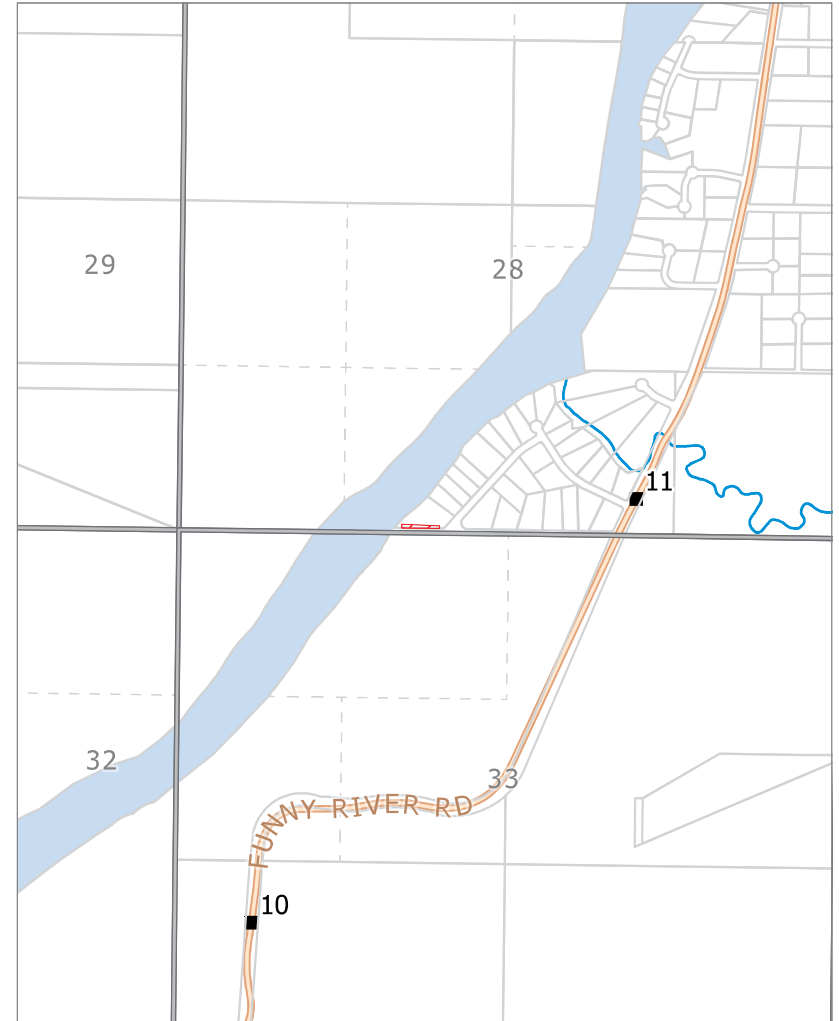
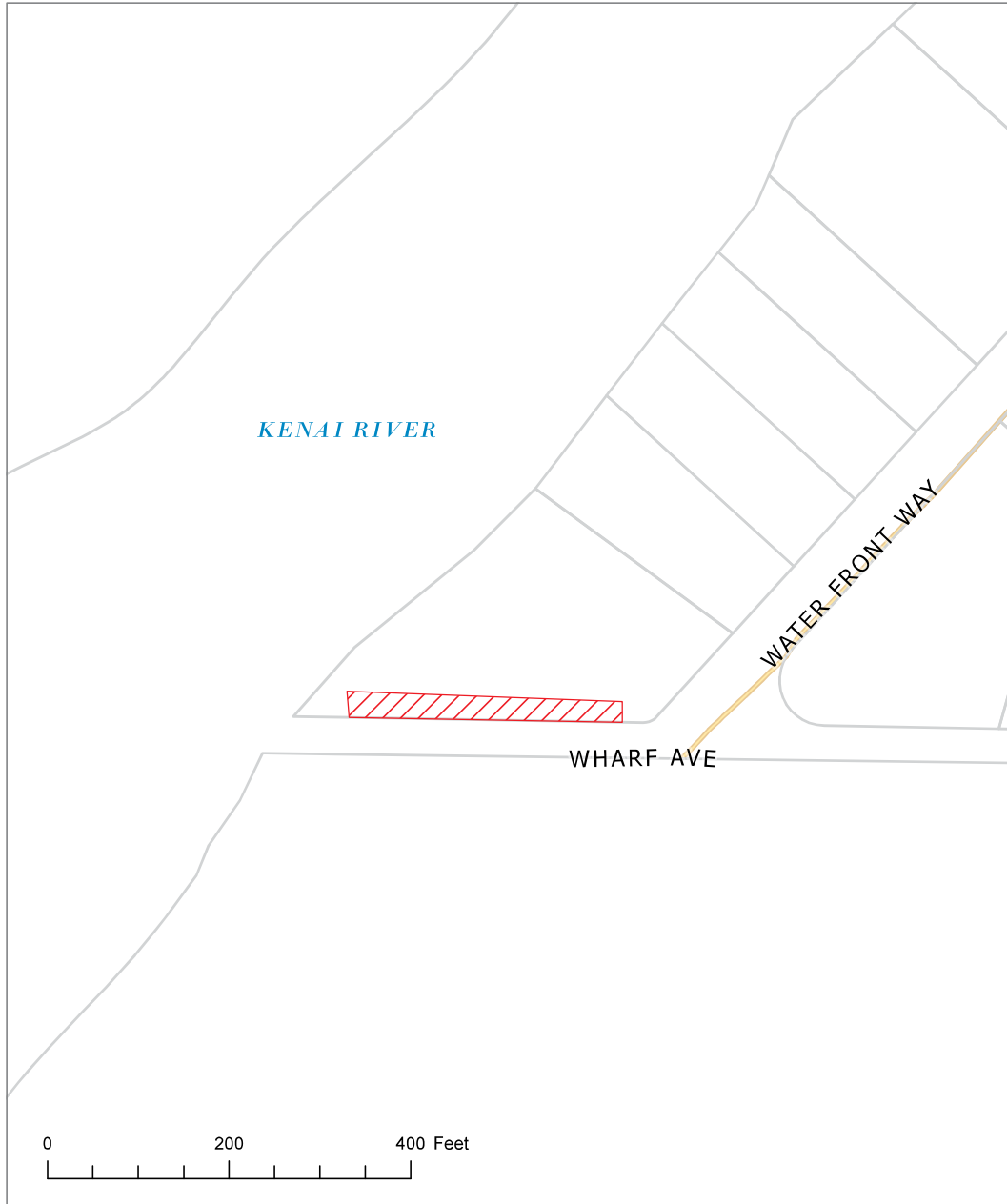
**Note: An appeal of a decision of the Planning Commission may be filed to the hearing officer, in accordance with the requirements of the KPB Code of Ordinances, Chapter 21.20.250. An appeal**

**must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.**



## **E. NEW BUSINESS**

- 6. Building Setback Permit; KPB File 2022-098; PC RES 2022-37  
Lot 1A, Block 1, Clearwater Subdivision Harpring Replat; Plat  
KN 2005-126  
No Surveyor / Harpring  
Funny River Area**

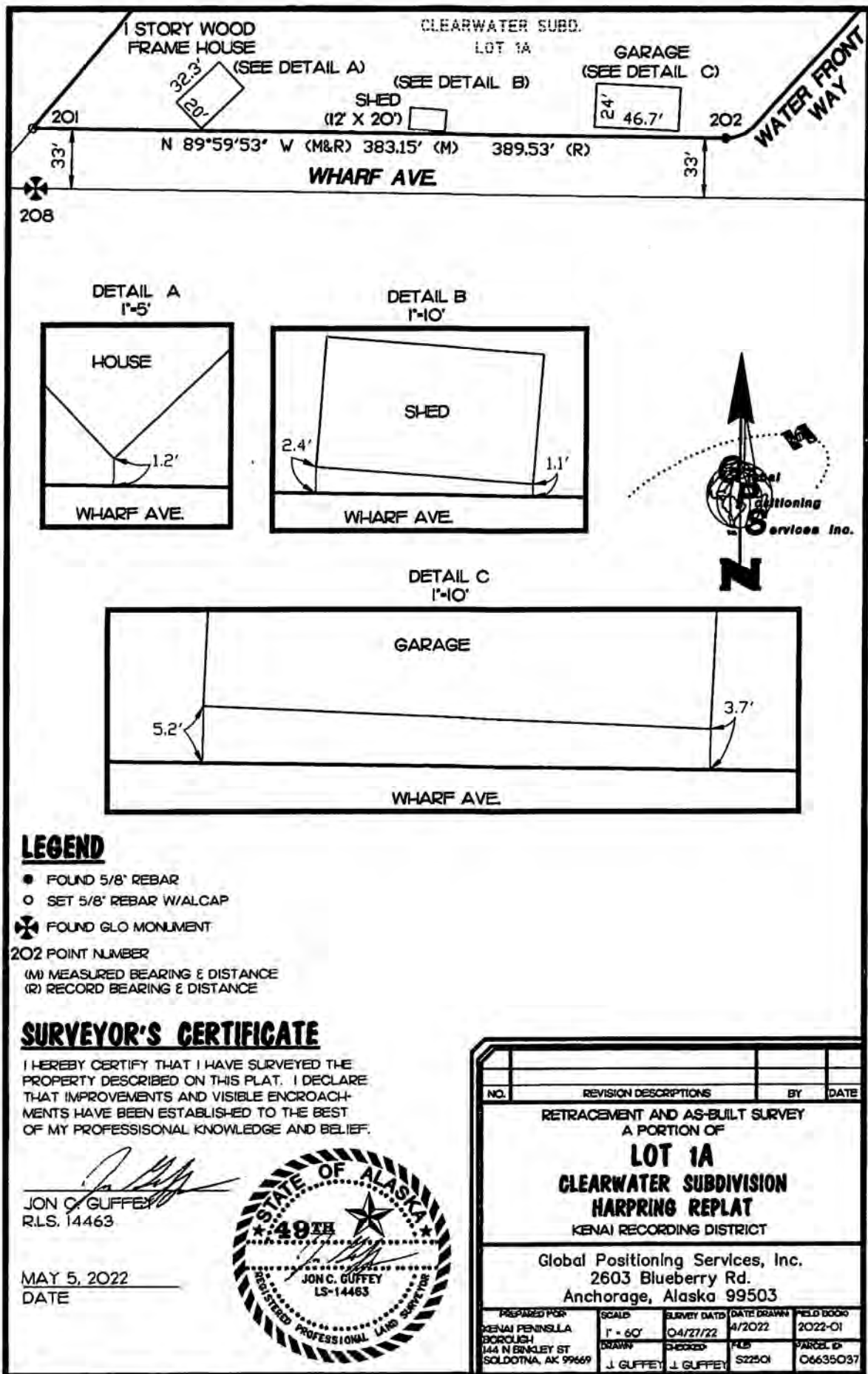


KPB File # 2022-098  
S28 T05N R09W  
Funny River



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.







**AGENDA ITEM E.      NEW BUSINESS**

**ITEM 6. – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 1A BLOCK 1 CLEARWATER SUBDIVISION HARPRING REPLAT, KN 2005-126**

<b>KPB File No.</b>	2022-098
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Blaine D. Gilman / James Harpring
<b>Surveyor:</b>	Jon Guffey / Global Positioning Services, Inc.
<b>General Location:</b>	Wharf Avenue, Water Front Way, Funny River area / Funny River APC

<b>Parent Parcel No.:</b>	066-350-37
<b>Legal Description:</b>	Clearwater Subdivision Harpring Replat Lot 1A Block 1, KN 2005-126
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** *This is a summary the entire request is included within the packet.* A request for a setback encroachment permit for three buildings within the 20 foot building setback along Wharf Avenue.

**Site Investigation:** There are numerous structures within the property lines of the subject parcel. Per the as-built provided, three of the structures are encroaching into the 20 foot building setback.

The property is on the corner of Water Front Way, a 60 foot wide dedicated right-of-way is not maintained by the borough, and Wharf Avenue. Wharf Avenue is a 33 foot wide dedication atop a section line easement. The only portion of Wharf Avenue that appears to be in use is what appears to be used as the driveway to the property. Wharf Avenue is not maintained by the borough and beyond the owner's entrance to his property it appears there may be a small clearing that ends at the Kenai River. The property south of Wharf Avenue is owned by the State of Alaska Department of Natural Resources and appears to be subject to a section line easement adjacent to the Wharf Avenue dedication.

Per the photos submitted there does not appear to be any sight distance issues.

---

**Staff Analysis:** The property was originally part of Government Lot 10, T5N, R9W, Section 28. Clearwater Subdivision, Plat KN 77-196, subdivided that government lot in addition to several others in the area. The plat created Lots 1 and 2 within Block 1. The plat also dedicated a 33 foot wide portion of Boundary Avenue, later changed to Wharf Avenue, and 60 foot wide Water Front Way. A 5 foot utility easement was placed along Boundary Avenue and Water Front Way with a depiction and label. Per the plat notes, "*All lots are subject to a 20' building set back along dedicated R/W's.*"

Clearwater Subdivision, Plat KN 77-196, was later amended and recorded as Clearwater Subdivision Amended, Plat KN 92-47. Per the surveyor's note, the correction was a bearing typo on the shared lot line between Lot 1 and Lot 2 of Block 1.

Mr. Harpring had the property replatted in 2005, Clearwater Subdivision Harpring Replat, KN 2005-126. The plat did not depict the setbacks or utility easements but did indicate they existed per the plat notes. Per plat note 2, "*Building Setback – A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution by the appropriate Planning Commission.*" Plat note 4 described the utility easements the

property was subject to, which is the code required minimum 10 feet along the dedicated rights-of-way. The minutes and the staff report presented did not address any possible issues with the setbacks or utility easements.

In 2013, Mr. Harpring petitioned to have the section line easement and the right-of-way dedication vacated. Staff reviewed the packets and staff reports from those meetings and there was no discussion specific to the setbacks or any possible encroachments.

Staff became aware that there was a possibility of right-of-way encroachments within Wharf Avenue and contacted Mr. Harpring. As the as-built provided indicates there is not any encroachments into the right-of-way but the structures in question do reside within the building setback that was put into place with Plat KN 77-196, shown on Plat KN 92-47, and carried over onto Plat KN 2005-126. There has not been an application received regarding the utility easement encroachments.

Per the as-built signed on May 5, 2022, the house is at an angle with the one corner 1.2 feet from the edge of the right-of-way resulting in an 18.8 feet encroachment. The as-built also shows a shed that is at an angle with one corner being 1.1 feet and the other corner 2.4 feet from the edge of the right-of-way, resulting in an 18.9 foot encroachment that lessens to 17.6 feet. The garage is also at a slight angle with one corner 3.7 feet and the other 5.2 feet from the edge of the right-of-way, resulting in a 16.3 foot encroachment that lessens to 14.8 feet. There was no indication of the encroaching structures foundation types.

#### **Findings:**

1. A setback was put into place by Clearwater Subdivision, Plat KN 77-196.
2. Through the years the property in question has been before the Plat Committee/Planning Commission with no discussion of possible encroachments per meeting minutes.
3. The property has a 20-foot building setback along the 33-foot dedicated Wharf Avenue.
4. Three structures are encroaching into the setback.
5. The status of the foundations is not known.
6. The house is 18.8 feet into the setback.
7. The shed is 18.9 feet into the setback.
8. The garage is 16.3 feet into the setback.
9. The right-of-way is not constructed beyond the owner's driveway.
10. The right-of-way is not maintained by the Kenai Peninsula Borough.
11. With section line easements present, there is an 83 foot wide access.
12. The KPB Roads Department provided a comment of no comment at this time.

#### **20.10.110. – Building setback encroachment permits.**

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

**Findings 9-12 appear to support this standard.**

2. The building setback encroachment may not interfere with sight lines or distances.

**Findings 9-12 appear to support this standard.**

3. The building setback encroachment may not create a safety hazard.

**Findings 9-12 appear to support this standard.**

- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

- G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

**KPB department / agency review:**

KPB Roads Dept. comments	It doesn't appear that anything is in the ROW. The RSA has no comment at this time.
SOA DOT comments	No comment given
State of Alaska Fish and Game	
Code Compliance	Mr Harpring application has the support of Code compliance for a exception of the 20 ft set back. Although evidence shows he had knowledge of the setback each time he signed the plat. The as-built created depicts that the structures are built fully in the 20 ft.
Planner	
Advisory Planning Commission	The Funny River APC heard this at their July 12, 2022 meeting. Four members were allowed to vote on the item. The motion to support the permit was approved unanimously.

**Utility provider review:**

Addressing	
Code Compliance	
Planner	
Assessing	
Advisory Planning Commission	

**RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-37 subject to compliance with KPB 20.10.110 sections F and G.

**NOTE:**

**20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.**

**END OF STAFF REPORT**



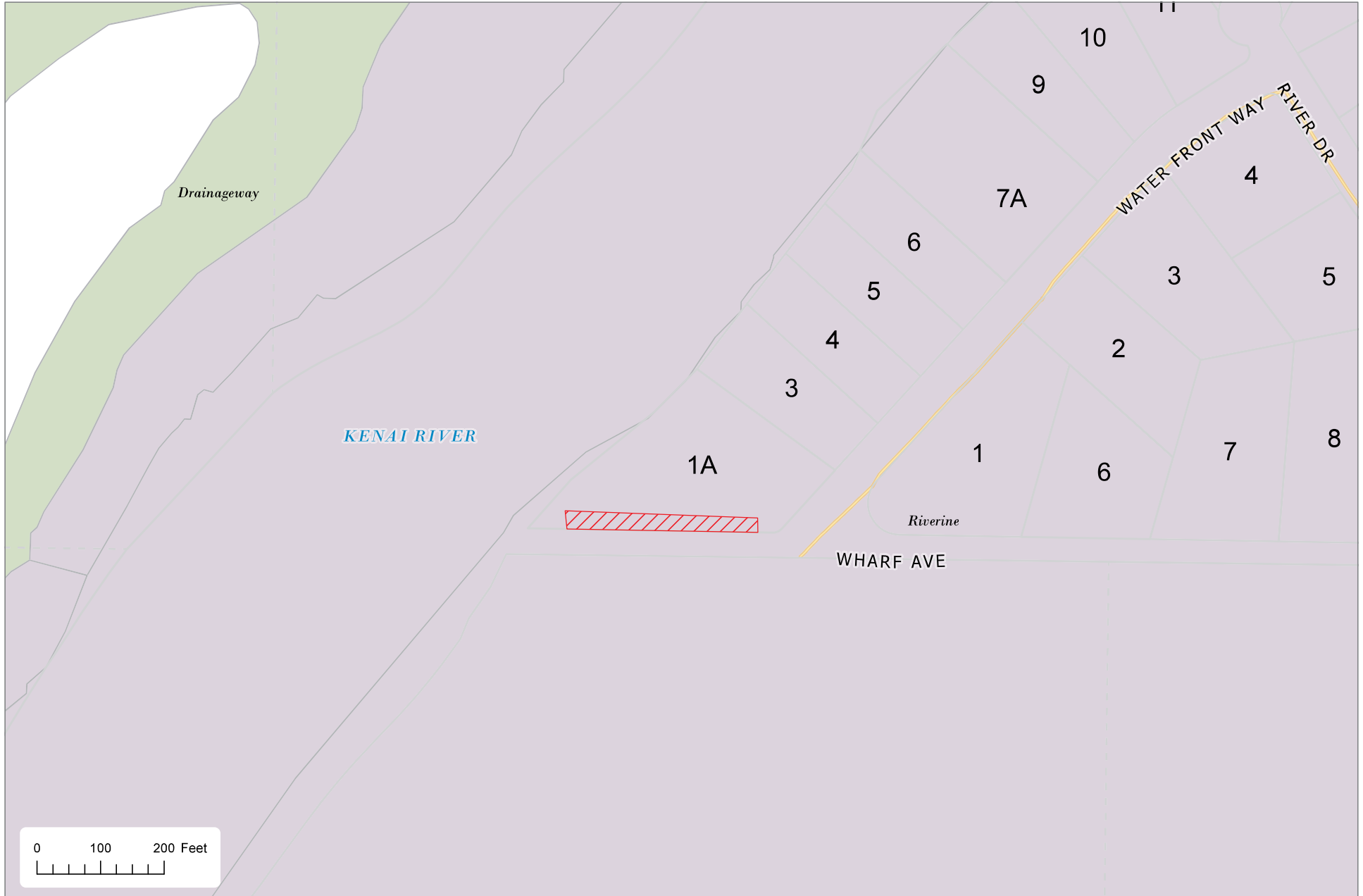




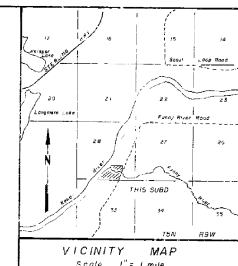


The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





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#### LEGEND AND NOTES

1. **Final USGLO brass on monument**  
 2. **Final official survey brass (on monument) [G.L.P.]**  
 3. **Final official Survey Al. monument (1932 - 5, 1977)**  
 4. **NW V2 "K24" steel ring at all other corners 8 x 6.**  
 5. **Final line**  
 6. **all bearings refer to the East boundary of Sec. 28 as being K00P05T0W G.L.O. datum**  
 7. **all lots are subject to a 20' building setback back along the fronted R/W's**  
 8. **all waste water disposal systems shall comply with existing law at time of construction.**  
 9. **The first finished floor of any dwelling shall be maintained at a minimum of 5' above the Standard Flood Hazard Level as determined by the US Corps of Engineers.**  
 10. **The boundary lines as shown are for survey computations only. The high right water line of the Hann River is the actual boundary of those lots that run from said river, the middle of the stream shall be the boundary for those lots that run from the Ferry River. The stakes set along the boundary lines are where shown.**

IDENTIFYING D. DOWNSHIP AND EDUCATION

We hereby certify that we are the owners of said property and request the removal of this sign showing such statements for public utilities, codebooks, and a statute designated by us for public use.

1. James Earl Ray  
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Walter A. Rucinski, 1000 N. Lincoln St., Suite 400, Chicago, IL 60610

PLATE APPENDIX

This report having been approved by the Honor Peninsula through Planning Committee on recorded in the official minutes of the meeting of 21st October, 1997 is hereby acknowledged and accepted as the official plan, subject to any and all conditions and requirements of ordinances and law governing thereon.

HENRI MENINGULA BROUGH  
By *Philip Morris*

NOTARY'S ACKNOWLEDGMENT  
Subscribed and sworn before me this  
29th day of December, 1972  
My commission expires Sept. 13, 1974  
Gene A. Carter  
Notary Public for Alaska

CURVE DATA				
SCALE	d	R	T	L
1	150.00	200.00	30.00	75.00
2	30.00	60.00	7.50	15.00
3	15.00	30.00	3.75	7.50

CLEARWATER  
SUBDIVISION

DESCRIPTION  
44.281 ACRES SITUATED IN 60V'T LOTS 10,16,17,  
18, 20, 21, 22, 23 SEC 28, T5N, R9W S.M. AK  
AND THE KENAI PENINSULA BOROUGH.

Prepared by: *McLane and Associates*  
*Seldovia, Alaska*

Date of Survey 2/20/75	Scale 1" = 100'	BK. NO. 76 - 09
---------------------------	--------------------	--------------------

77-196  
600  
Kensai  
DEC. 29 1977  
3:58 PM  
KPS





LEGEND:

- MONUMENT (FOUND THIS SURVEY)
- REBAR (FOUND THIS SURVEY)
- ( ) RECORD DATUM FROM PLAT 92-47 KRD.

NOTES:

- 3) Beals of being taken from Clearwater Subdivision (Amended), Plot 92-47, Kental Recording District.
  - 4) **Building Setback**—A setback of 20 feet is required from all street Rights-of-Way unless a lesser standard is approved by resolution of the Planning and Zoning Commission.
  - 5) All waste disposal systems shall comply with existing laws at the time of construction.
  - 6) Front 10 feet of the building setback and the entire setback within 5 feet of the side lot lines is also a utility easement. No permanent structures or other improvements shall be located within the utility easement which would interfere with the ability of a utility to use the easement.
  - 7) Existing underground powerline is the centerline of a 15 foot wide electrical distribution line easement.
  - 8) Portions of this subdivision are within the Kenai Peninsula Borough and are subject to the Kenai Peninsula Borough Ordinance Chapter 21.18 Borough Code of Ordinances for restrictions that affect development of this subdivision.
  - 9) An exception to KPB 2014-04 was granted by the Plot Committee at the meeting of 24 October, 2005.
  - 10) **WASTEWATER DISPOSAL**—No engineer's Subdivision and No Solar projects within this subdivision shall be permitted unless they are suitable for onsite wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
- The purpose of this plotting action is to combine 2 lots into 1 lot which will provide greater available wastewater disposal area as described in KPB 2014-04(OA)(04).

### PLAT APPROVAL

THIS PLAN WAS APPROVED BY THE KENAI PENINSULA BOROUGH  
PLANNING COMMISSION AT THE MEETING OF 24 OCTOBER, 2005.

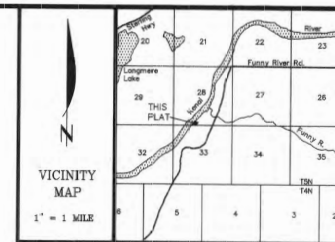
KENAI PENINSULA BOROUGH

Wm. J. Hall  
AUTHORIZED OFFICIAL



SURVEYOR'S CERTIFICATE

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

Date 2/19/05

CERTIFICATE of OWNERSHIP  
and DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

*James L. Harpring*  
JAMES L. HARPRING

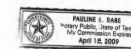
*Virginia Harpring*  
VIRGINIA HARPRING

P.O. BOX 2056  
SOLICITA, AK 99660

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 22nd DAY OF December, 2005  
FOR James L. Harpring & Virginia Harpring

PAULINE L. RABE  
Notary Public - State of Texas  
My Commission Expires 06-28-2006

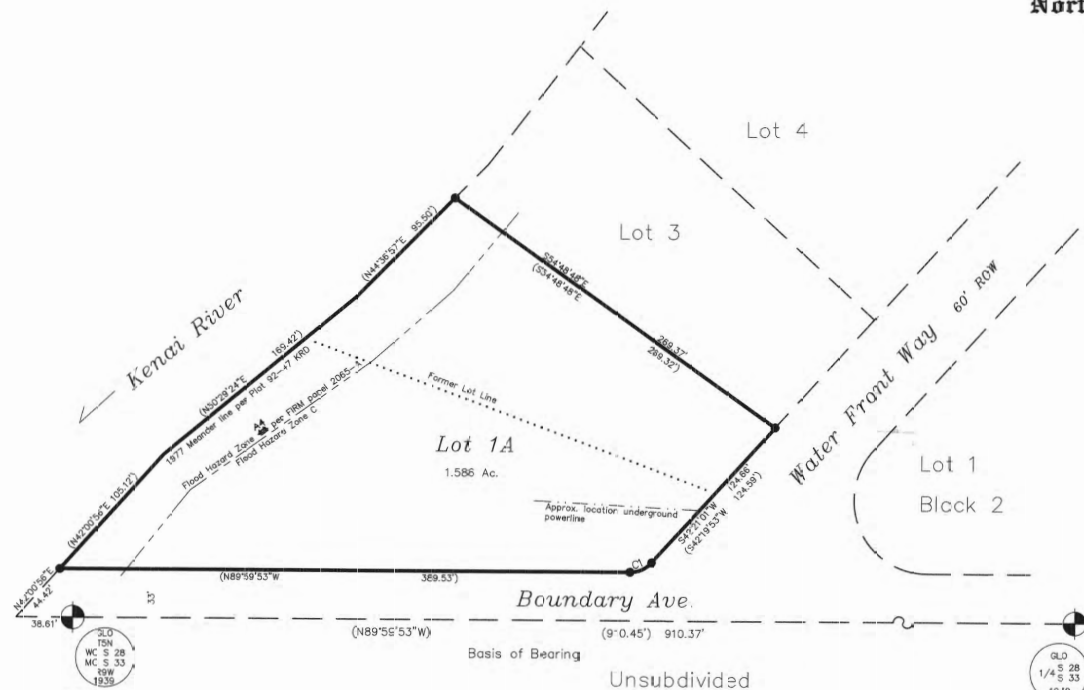


NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 30 DAY OF November, 2005  
FOR Virginia Haggins

PAULINE L. RABE  
Notary Public, State of Texas  
My Commission Expires  
April 15, 2002

*Pauline L. Rabe*  
NOTARY PUBLIC FOR Bee County, Texas  
MY COMMISSION EXPIRES Feb 28, 2006



CURVE TABLE						
CLVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BEARING
21	17°40'25"	20.00	16.84	8.84	16.17	N61°10'20"E

2005-126  
RECORDED 20-  
KENA REC. DIST.  
DATE: 12-30-200  
TIME: 11:05 A.M.  
REQUESTED BY:  
SESSER SURVEYS  
3C485 ROSLAND ST.  
SCLDONTA, AK 99869

KPB FILE No. 2005-280

Clearwater Subdivision  
Harpring Replat

A resubdivision of Lots 1 and 2, Block 1, Clearwater Subdivision (Amended), Plat 92-47, IKRD.

Located within the SE1/4 SW1/4 Section 28, T5N, R9W, S4.,  
Kenai Recording District, Kenai Peninsula Borough, Alaska.

## SEGESSER SURVEYS

30485 Rosland St.  
Soldotna, AK 99669

JOB NO.	35136	DRAWN:	2-15-C5
SURVEYED:	July, 2001	SCALE:	1"= 40'
FIELD BOOK:	01-1	SHEET:	1 of 1

# DESK PACKET

*(ITEMS THAT CAME IN AFTER MEETING PACKET WAS POSTED)*

6. Building Setback Permit; KPB File 2022-098  
PC Resolution 2022-37  
Lot 1A, Block 1, Clearwater Subdivision Harpring Replat; Plat KN  
2005-126  
No Surveyor / Harpring  
Funny River Area

## Quinton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Tuesday, August 2, 2022 11:29 AM  
**To:** Quinton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER>Building Setback Permit; KPB File 2022-098; PC RES 2022-37 Lot 1A, Block 1 Clearwater Subdivision Harpring Replat; Plat KN-2005-126  
**Attachments:** 4 photos of house, shed and garage - Harpring.pdf

## Madeleine

---

**From:** Blaine D. Gilman <bdgilman@gilmanlawak.com>  
**Sent:** Tuesday, August 2, 2022 11:19 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Building Setback Permit; KPB File 2022-098; PC RES 2022-37 Lot 1A, Block 1 Clearwater Subdivision Harpring Replat; Plat KN-2005-126

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

Please accept these four photos as laydown items for the above referenced Building Setback Permit. The photos are of the structures that encroach on the 20' building setback. Thanks.

Blaine

Blaine D. Gilman, Esq.  
Gilman Law LLC  
10672 Kenai Spur Highway Suite 112  
Kenai, Alaska 99611  
(907) 398-0840

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If you received this electronic transmission in error, please notify us by telephone (907) 283-2600 immediately.















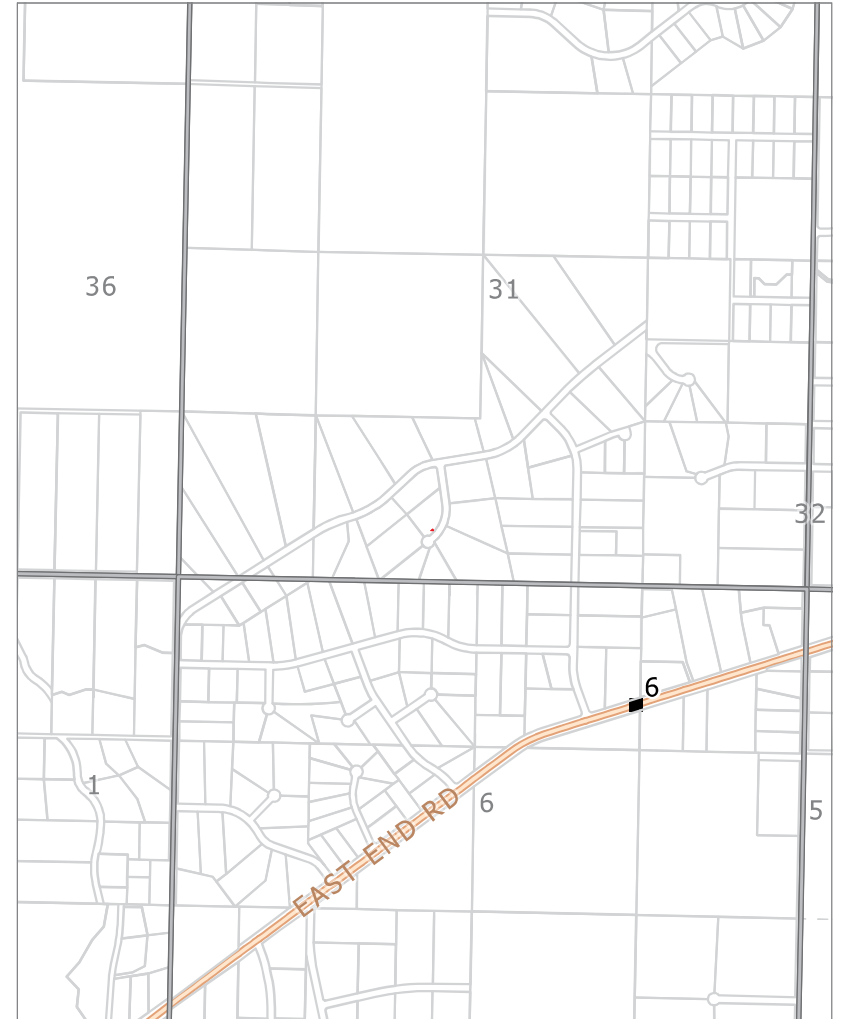
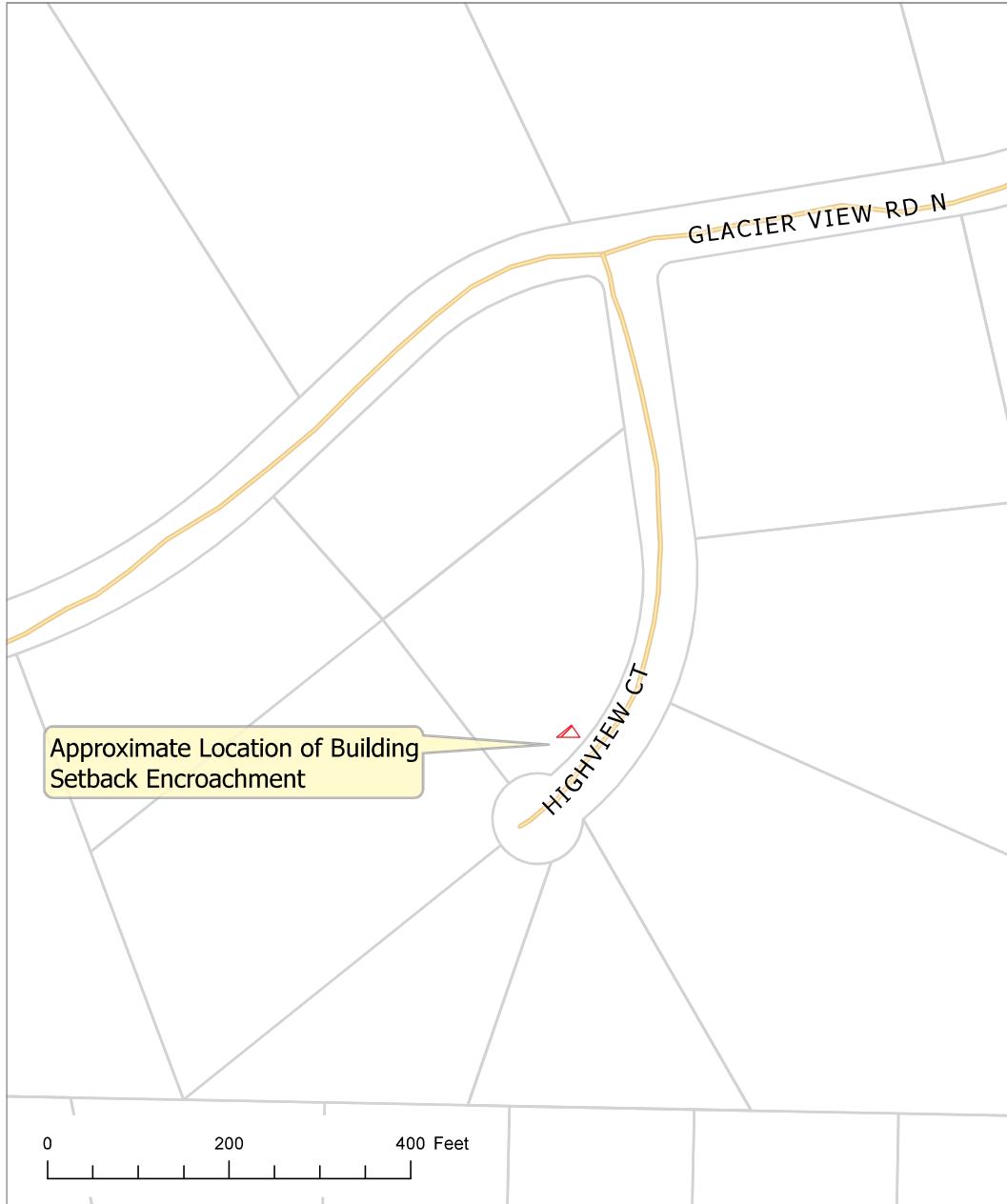




## **E. NEW BUSINESS**

- 7. Building Setback Permit; KPB File 2022-099; PC RES 2022-33  
Lot 11-B, Block 3, Fernwood Sub Unit 3; Plat HM 77-17  
Orion Surveys / Jackman  
Fritz Creek Area**





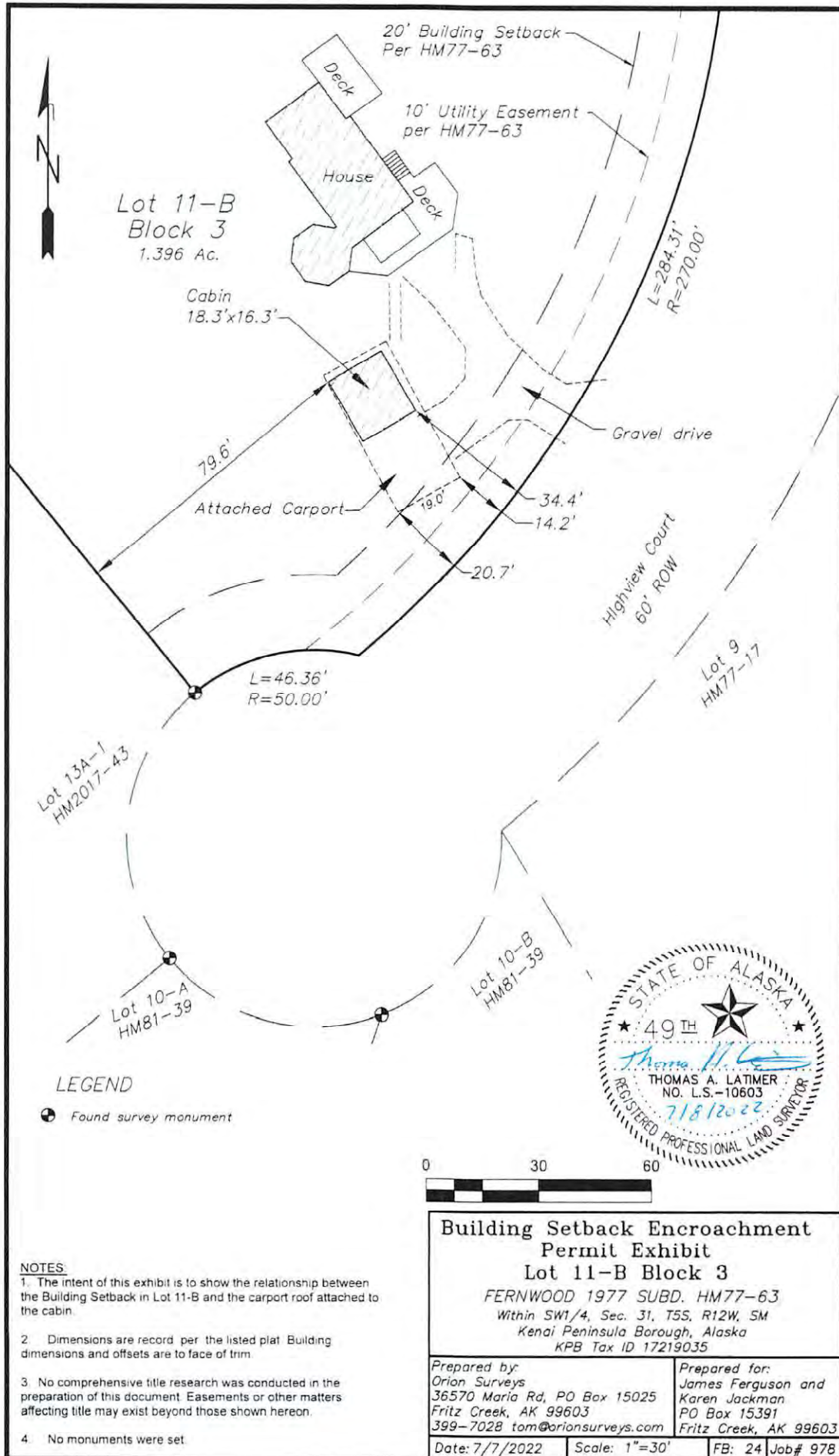
KPB File # 2022-099  
S31 T05S R12W  
Fritz Creek



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.



# Attachment 3



KPB 2022-099

**AGENDA ITEM E.      NEW BUSINESS**

**ITEM 7. – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 11B BLOCK 3, FERNWOOD 1977 SUBDIVISION HM 77-63**

<b>KPB File No.</b>	2022-099
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	James Ferguson and Karen Jackman of Fritz Creek, Alaska
<b>Surveyor:</b>	Tom Latimer / Orion Surveys
<b>General Location:</b>	Highview Court, Glacier View Road, Fritz Creek area / Kachemak Bay APC

<b>Parent Parcel No.:</b>	172-190-35
<b>Legal Description:</b>	Fernwood 1977 Subdivision Lot 11B Block 3, HM 77-63
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

---

**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** This information is provided in support of a building setback encroachment permit for Lot 11-B Block 3 Fernwood 1977, HM 77-63, address 39927 Highview Court.

Please see Attachment 2 and 3, as-built survey prepared by surveyor Tom Latimer, Orion Surveys. Attachment 4 is a portion of an aerial photograph showing the area in question.

The carport addition to the existing cabin was built in 2010 by Beachy Construction. Until the attached as-built survey was completed and provided to us, no one had been aware of the encroachment of a portion of the open carport, including the support post on the southeast corner, into the building setback.

The open carport does not interfere with the maintenance of Highview Court, does not create a safety of access hazard, and does not impede sight distance for sight lines on Highview Court. Highview Court is a short, gravel, low-speed, dead-end road with a turnaround area just past our house. It is used primarily by the residents who live along it (a total of five residences).

**Site Investigation:** Per the as-built and submittal there is an attached carport within the building setback. The carport is at an angle with the closest corner being 14.2 feet from the edge of the right-of-way resulting in being 5.8 feet into the setback.

The encroachment is located along Highview Court, a 60 foot wide dedicated right-of-way that is maintained by the Kenai Peninsula Borough. Highview Court is a approximately 600 feet long dedication that ends with a cul-de-sac. It is located off borough maintained Glacier View Road N.

Part of the dedication at the end of the bulb has portions of wetlands per the Kenai National Watershed Forum Wetlands Assessment but they do not impact the area with the encroachment or the ability to use the right-of-way.

There are some gentle slopes in the area but no steep slopes are present within the property or within any portion of the Highview Court dedication.

There are no street views available for this area. Per the image provided by the applicant it does appear that there is vegetation between the edge of the road and the encroachment and there does not appear to be a line of sight issue present.



**Staff Analysis:** The property was originally subdivided by Fernwood Subdivision Unit 3, HM 77-17. This was a replat of aliquot lands. The plat dedicated Highview Court and created Lot 11 Block 3. Setbacks were not depicted but plat note 2 stated *"A 20' Bldg Setback line exists along all road ROW."*

Lot 11 Block 3 was replatted by Fernwood 1977, HM 77-63. That plat further subdivided the lot and created the current configuration. The setback was not depicted but plat note 2 read, *"A 20' building setback line exists along all rights of way."*

Across the street from the encroachment appears to be another driveway to a lot. Three other lots are accessed by Highview Court past the encroachment.

Per Attachments 2 and 4, there are some raised garden beds within the setback. While raised they are not so high as to cause a line of sight issue and can be removed at the owner's expense if an issue arises.

The raised garden beds and carport appear to be clear of the 10 foot utility easement put into place along Highview Court by depiction on Fernwood Subdivision 1977, Plat HM 77-63. Per plat note 3, *"Utility easements shown are for underground utilities only subject to agreement between the developer and HEA."*

**Findings:**

1. A building setback along Highview Court was created by Fernwood Subdivision Unit 3, HM 77-17.
2. The building setback along Highview Court was carried over on Fernwood Subdivision 1977, HM 77-63.
3. Per the as-built an attached carport is 5.8 feet into the building setback.
4. The carport was built by a contractor in 2010.
5. It is stated that the carport is open.
6. Highview Court is 60 feet wide and maintained by the Kenai Peninsula Borough.
7. Highview Court is a cul-de-sac that ends shortly past the encroachment.
8. Three additional lots use Highview Court past the encroachment.
9. Using aerial photos, it appears if a line of sight issue was present it would be for the lot adjacent to the subject parcel to the south.
10. There is vegetation between the encroachment and the edge of the right-of-way.
11. There is 14.2 feet from the edge of the structure to the edge of the right-of-way dedication.

**20.10.110. – Building setback encroachment permits.**

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

**Findings 10-11 appear to support this standard.**

2. The building setback encroachment may not interfere with sight lines or distances.

**Findings 10-11 appear to support this standard.**

3. The building setback encroachment may not create a safety hazard.

**Findings 10-11 appear to support this standard.**

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an

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

**KPB department / agency review:**

KPB Roads Dept. comments	Out of jurisdiction
SOA DOT comments	No comment
KPB River Center review	No comments
State of Alaska Fish and Game	No objections
Addressing	Address and streets correct
Code Compliance	Structure in the setback
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	No comment
Advisory Planning Commission	

**Utility provider review:**

Addressing	
Code Compliance	
Planner	
Assessing	
Advisory Planning Commission	

**RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends** to adopt Resolution 2022-38, subject to compliance with KPB 20.10.110 sections F and G.

**NOTE:**

**20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.**

**END OF STAFF REPORT**

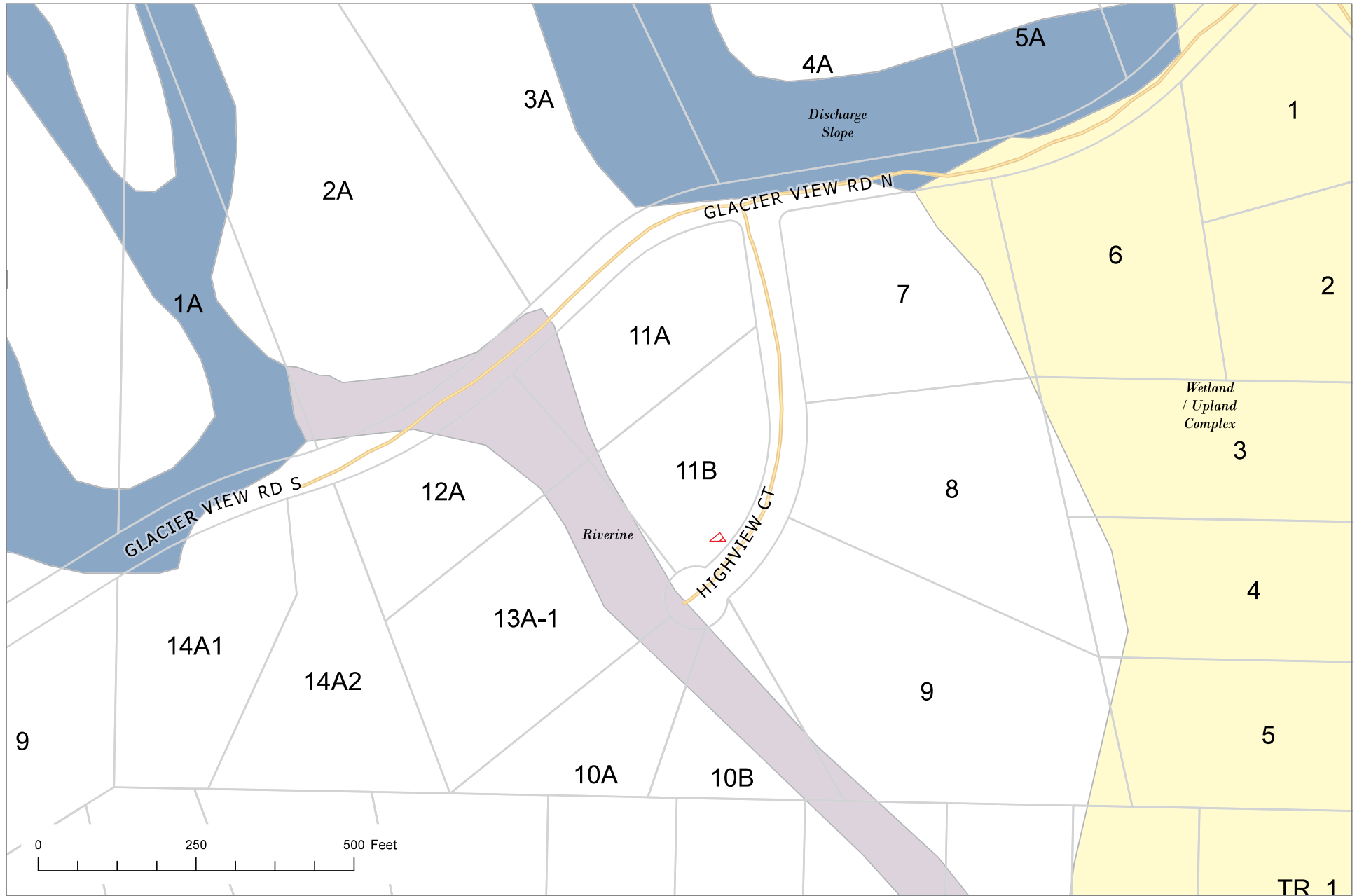












The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

77-17  
 INDEXED FILED  
 Homer REC. DIST.  
 DATE 8-15-77  
 TIME 1:33 P.M.  
 Requested by KPA  
 ASST. Sargent  
 nea Jacobs



I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON  
 I HEREBY REQUEST APPROVAL OF THIS PLAT SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, ROADS  
 AND ALLEYS DEDICATED BY ME FOR PUBLIC USE  
*Forwood, Inc. Federal Public Works Company, Inc. 4000 Whiting Lane*  
*Greenville, S.C. General Contractor for David Jacobs Construction*  
 FORWOOD ASSOCIATES  
 303 W. 5TH AVE  
 ANCHORAGE, AK

SUBSCRIBED AND SWORN TO BEFORE ME THIS 10th DAY OF February 1979  
Walter P. Apperson 8-5-79  
 NOTARY PUBLIC FOR ALASKA MY COMMISSION EXPIRES

I, THE UNDERSIGNED REGISTERED SURVEYOR, HEREBY CERTIFY THAT A LAND SURVEY HAS BEEN COMPLETED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT CORNERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.

*Jerry Anderson* 10-7-76  
JERRY ANDERSON, 3686 S

PLAN APPROVED BY THE BOROUGH PLANNING COMMISSION THIS 13<sup>th</sup> DAY OF Sept, 1976

John O. Wail  
BOROUGH MANAGER OR PLANNING DIRECTOR

Map of Kachemak Bay showing the location of the study area. The map includes latitude and longitude coordinates (48° 30' N, 124° 30' W), a scale bar (0 to 1 mile), and a north arrow. The study area is marked with a black square and labeled 'STUDY AREA'.

W 1/2 SE 1/4, SE 1/4 SW 1/4, S31,T5S,R12W,S.M

## ABILITY SURVEYS

JERRY ANDERSON, L.S. BOX 1263 HOMER, ALASKA



UNSUBD.

CERTIFICATE OF OWNERSHIP

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON. I HEREBY REQUEST APPROVAL OF THIS PLAT SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES AND ROADWAYS, DEDICATED BY ME FOR PUBLIC USE.

*Dan Thompson*  
 FERNWOOD ASSOCIATES, BY DAN THOMPSON  
 523 W 8TH  
 ANCHORAGE, ALASKA

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN BEFORE ME THIS 15 DAY OF September 1977.  
*Phil B. Jones* My COMMISSION EXPIRES  
 NOTARY PUBLIC FOR ALASKA March 20, 1978

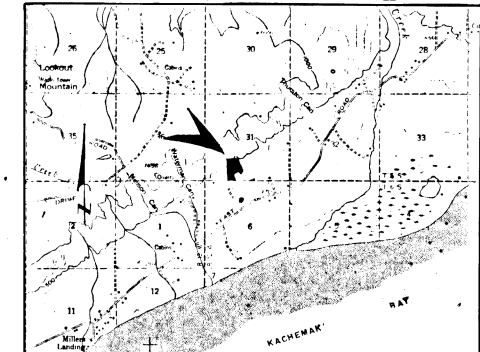
SURVEYOR'S CERTIFICATE

I, THE UNDERSIGNED REGISTERED SURVEYOR, HEREBY CERTIFY THAT A LAND SURVEY HAS BEEN COMPLETED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT CORNERS AND MONUMENTS HAVE BEEN LOCATED AND ESTABLISHED AND THAT DIMENSIONS SHOWN HEREON ARE TRUE AND CORRECT.  
*Jerry A. Anderson* 9-13-77  
 JERRY ANDERSON, 3686-S DATE

PLAT APPROVAL

THIS PLAT HAVING BEEN APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AS RECORDED IN THE OFFICIAL MINUTES OF THE MEETING OF July 11th, 1977, IS HEREBY ACKNOWLEDGED AND ACCEPTED AS THE OFFICIAL PLAT, SUBJECT TO ANY AND ALL CONDITIONS AND REQUIREMENTS OF ORDINANCES AND LAW APPERTAINING THERETO KENAI PENINSULA BOROUGH  
*Philip Waring*

VICINITY MAP



DATE: JUNE, 1977  
 SCALE: 1" = 100'  
 DESIGNED BY: J.A.  
 CHECKED BY: J.J.  
 DRAWN BY: J.H.  
 FLD. BK. NO.: 32



FERNWOOD 1977

A REPLAT OF LOTS 1, 2, & 3, BLOCK 1 AND LOTS 11, 12, & 14, BLOCK 3, FERNWOOD UNIT 3 WITHIN THE SE 1/4 SW 1/4, SEC. 31, T5S, R12W, S.M.  
 CONTAINING 23.937 AC.

ABILITY SURVEYS

JERRY ANDERSON, R.L.S. BOX 1263 HOMER, ALASKA

LEGEND:

- SET 1/2" REBAR THIS SURVEY.
- FORMER LOT AND ROAD LINES.
- 1/2" REBAR FND.

FERNWOOD UNIT 3

77-63  
 Home REC. DIST  
 10-18-77  
 FILE 936 A  
 Registered by KPB  
 Add ass. Saldana

CURVE DATA:

NO.	RADIUS	DELTA	LENGTH
1	500.00	16°00'00"	139.83
2	800.00	26°20'00"	367.68
3	300.00	34°00'00"	178.02
4	270.00	60°20'00"	284.31
5	50.00	53°07'49"	48.36
6	25.00	90°00'00"	39.27

NOTES:

- ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING LAWS AT THE TIME OF CONSTRUCTION.
- A 20' BUILDING SETBACK LINE EXISTS ALONG ALL RIGHTS OF WAY.
- UTILITY EASEMENTS SHOWN ARE FOR UNDERGROUND UTILITIES ONLY SUBJECT TO AGREEMENT BETWEEN THE DEVELOPER AND H.E.A.
- THE STATE OF ALASKA REQUIRES ALL WASTEWATER DISPOSAL SYSTEMS TO BE A MINIMUM OF 100' FROM ANY WATER SYSTEM.
- BASIS OF BEARING IS THE TRUE BEARING S 69° 51' 15" E BETWEEN USC & GS GULL 1910, AND USC & GS HOMER EAST BASE AND WAS CARRIED TO THIS SURVEY BY PREVIOUS SURVEYS IN THE AREA.

FERNWOOD UNIT 2

FND. B.C. MON.  
 3686-S 1976

N 89° 48' 34" E

772.44

1311.44

2 A  
 5.734 AC.

3 A  
 4.366 AC.

1 A  
 3.171 AC.

11 A  
 1.706 AC.

11 B  
 1.396 AC.

12 A  
 1.673 AC.

14 A  
 4.351 AC.

SEC 34  
 SEC 6

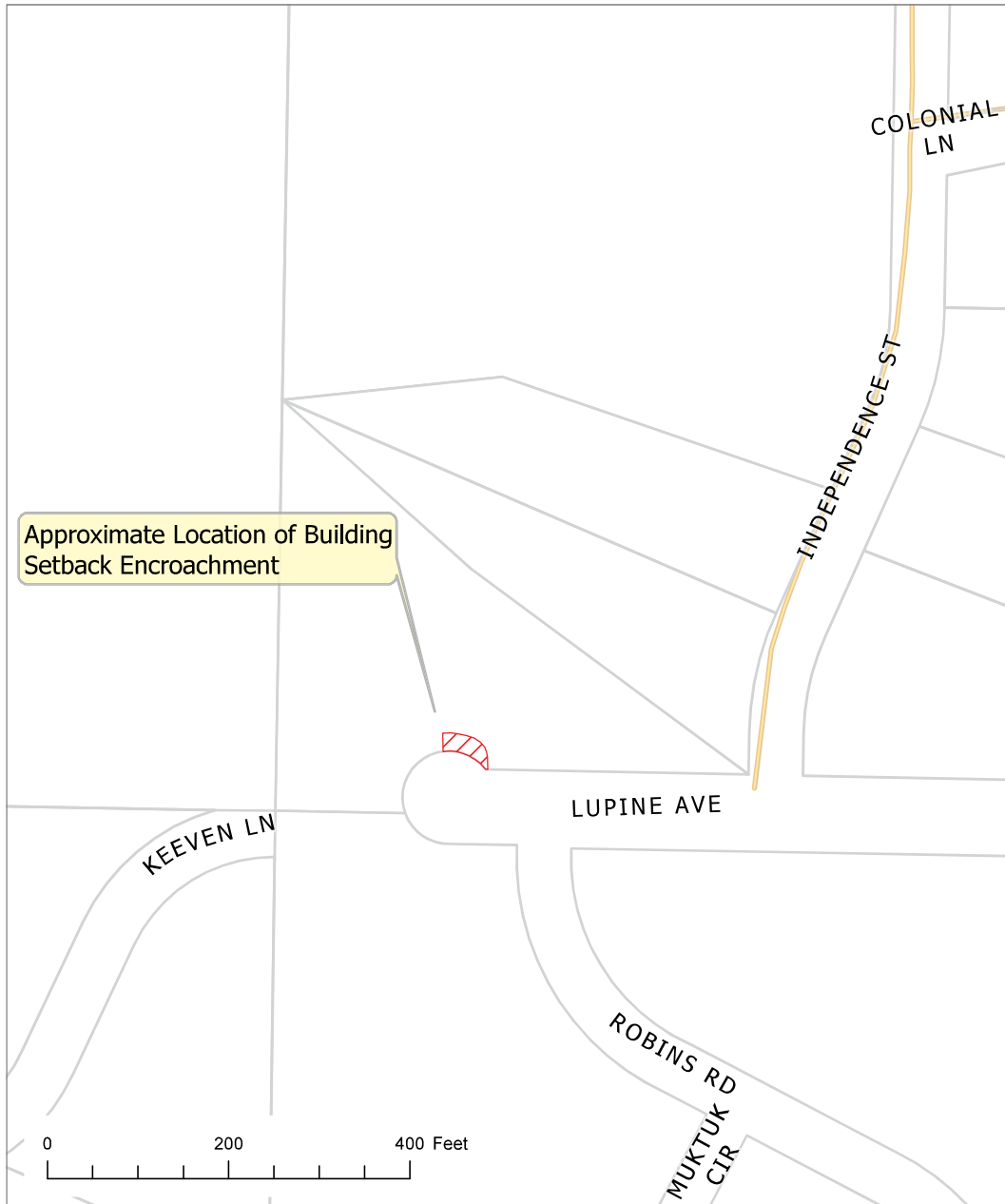
N 89° 55' 40" E

532.49

FND. B.C. MON.  
 3686-S 1976

## **E. NEW BUSINESS**

- 8. Building Setback Permit; KPB File 2022-100; PC RES 2022-39  
Lot 1, Block 2, Centennial Shores Subdivision Number One;  
Plat KN 85-157  
Edge Survey & Design / Ranquette  
Nikiski Area**



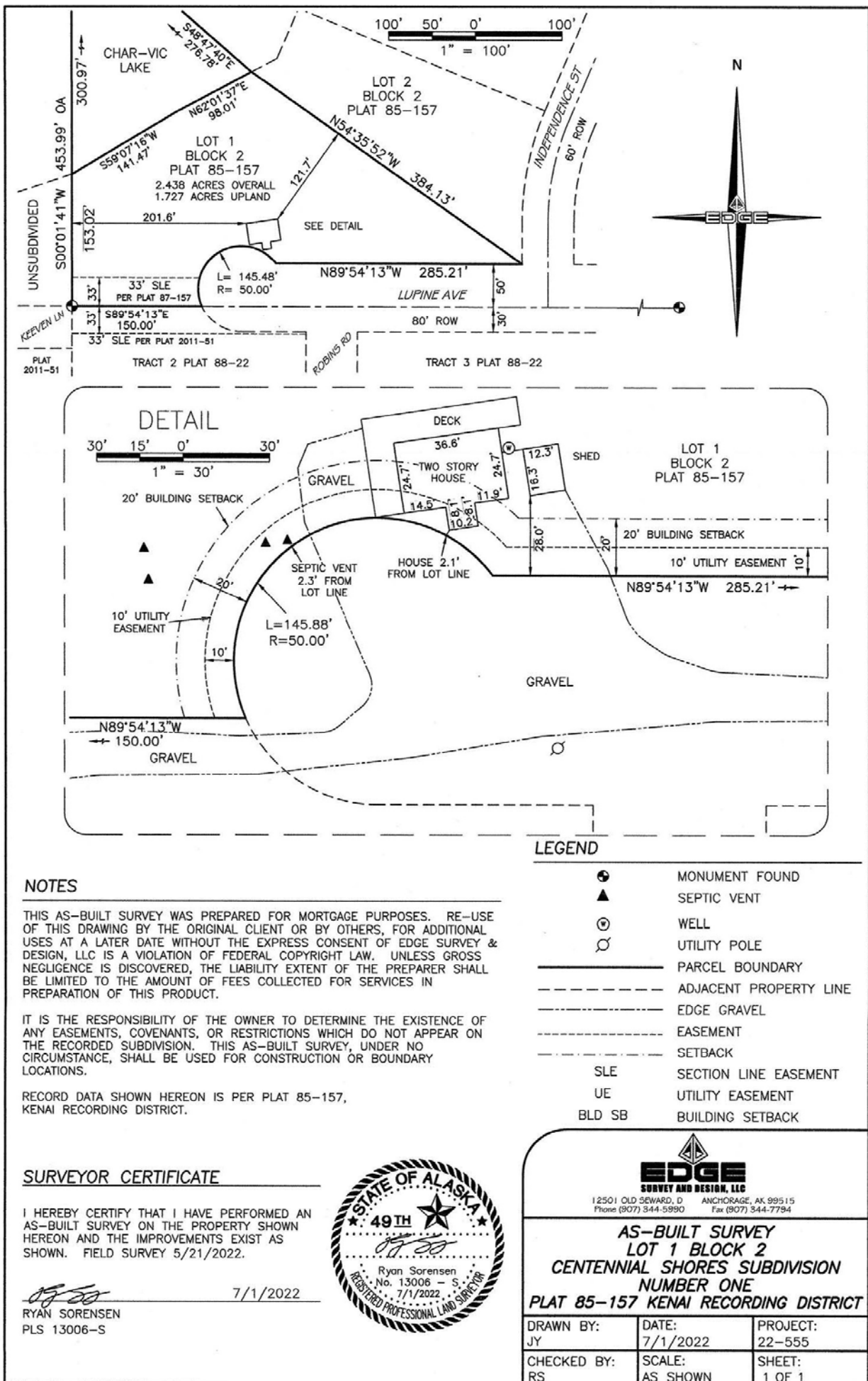
KPB File # 2022-100  
S07 T07N R11W  
Nikiski







KPB 2022-100



C:\Users\jason Young\Documents\1-Active Jobs 2022 05 27\22-555 Char Vic - Ronguette ASB\DWG\22-555 Char Vic Ronguette ASB.dwg PLOTTED: 6/30/2022 9:11:27 PM

**AGENDA ITEM E.      NEW BUSINESS**

**ITEM 8. – BUILDING SETBACK ENCROACHMENT PERMIT  
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISION NUMBER ONE (KN 0850157)**

<b>KPB File No.</b>	2022-099
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Eric Ranguette of Soldotna, Alaska
<b>Surveyor:</b>	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
<b>General Location:</b>	Lupine Avenue, Keeven Lane, Nikiski area

<b>Parent Parcel No.:</b>	013-281-24
<b>Legal Description:</b>	Centennial Shores Subdivision Number 1, Lot 1 Block 2, KN 85-157
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted

---

**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** House was purchased without setback encroachment disclosed. Easier and less expensive option than vacating or moving cul-de-sac.

**Site Investigation:** Per the as-built and submittal the house along with portions of the deck are within the building setback. The location is along the cul-de-sac bulb so with the angle of the house along with the curve of the right-of-way the encroachment varies. It appears no portions are within the right-of-way although portions of the deck are very close. A portion of the house is 2.1 feet from the lot line thus encroaching 17.9 feet in that location. Septic vents are also present within the setback but per KPB Code, are allowed within the setback.

The encroachment is located on the bulb of Lupine Avenue, a 80 foot wide right-of-way. Lupine Avenue is cleared and in use but is not maintained by the borough. Borough road maintenance ends at the end of Independence Street when it intersects Lupine Avenue. Lupine Avenue continues through the cul-de-sac bulb through this property and then connects to the 60 foot wide dedication of Keeven Lane. The lots using Lupine Avenue to access Keeven Lane should have other access from the south but the dedication are not complete and some go through wetlands. The dedication of Lupine Avenue coincides with section line easements. KPB GIS data indicates that it is 66 feet wide section line easements and these are being used for the connection between Lupine Avenue and Keeven Lane.

There do not appear to be any wetlands affecting the subject area or the right-of-way in this area. There are no steep slopes within the subject area or surrounding right-of-way.

There are no street views available for this area. Per the KPB GIS Imagery, the area is cleared as they enter onto their property and the right-of-way veers south slightly before continuing to the west. The distance from the travel way does not appear to create any sight issues.

---

**Staff Analysis:** The property was originally subdivided by Centennial Shores Subdivision Number one, Plat KN 85-157. The plat created Lot 1 Block 2 as well as dedicated Lupine Avenue, originally named Dog Bone Avenue, as a 50 foot wide right-of-way that ended with a partial bulb as an existing roadway continued to the south. Setbacks were not depicted but plat note 2 stated “*BUILDING SET BACK – A building set back of 20 ft. is required from all street rights of ways unless a lesser standard is approved by resolution of the appropriate Planning Commission.*”

Staff worked with the KPB Assessing department to determine if the structures in question may have been built prior to the creation of the setback and utility easements. Records do indicate a structure was present before the

Page 1 of 4



creation of the setback but the deck was improved after the setback was put into place. It is also unknown if any other improvements on the house were done prior or after. For those reasons staff has drafted this to include all portions encroaching to make sure there is no confusion or issues in the future.

The plat also created 10 foot utility easements and a separate petition has been received to be reviewed by the Planning Commission at the August 8, 2022 meeting.

The property to the south was originally subdivided by Robins Subdivision No. 1, KN 79-139. It did not dedicate any portion of Lupine Avenue but did indicate a section line easement was present. The property was then replatted by Kenai Timbers, Plat KN 86-133, which was amended by KN 86-195. That plat vacated the original dedication of Robins Road and dedicated the new location as currently exists. The plat also dedicated the southern portion of Lupine Avenue by granting 30 feet to 33 feet of dedication. The plat indicates 30 feet at the western portion with 33 feet on the eastern portion with a 33 foot section line easement still in place. Kenai Timbers Replat, KN 88-22, was recorded which removed lot lines to create larger tracts but the dedications remained as granted by the parent plats.

The current configuration is a 80 to 83 foot wide right of way atop section line easements. The cul-de-sac bulb has been broke through to provide access to the properties to the west by the use of the section line easements. The owner has stated that they are requesting this as it is a less expensive option. Staff has no objection if the Planning Commission wishes to grant this exception but staff would rather see a plan to vacate the bulb, reduce the right-of-way width only if needed to bring the lot into compliance with the setback, and have a dedication be granted over the existing travel way.

#### **Findings:**

1. A building setback along Lupine Avenue was created by Centennial Shores Subdivision Number 1, KN 85-157.
2. Per the as-built portions of the deck are almost to the edge of the right-of-way.
3. Per the as-built portions of the house are 17.8 feet within the setback.
4. Lupine Avenue is an 80 foot wide dedicated right-of-way.
5. Lupine Avenue is constructed and in use but not maintained by the borough.
6. The encroachments are along a cul-de-sac but access continues through the bulb within the section line easements.
7. Majority of the road is in the lower part of the right-of-way and the driveway in the bulb of the right-of-way.
8. There does not appear to be any line of sight issues due to the clearing done in the area.
9. The Kenai Peninsula Borough Roads Department gave no comment.

#### **20.10.110. – Building setback encroachment permits.**

E. The following standards shall be considered for all building setback encroachment permit applications:

1. The building setback encroachment may not interfere with road maintenance.

**Findings 4-8 appear to support this standard.**

2. The building setback encroachment may not interfere with sight lines or distances.

**Findings 4-8 appear to support this standard.**

3. The building setback encroachment may not create a safety hazard.

**Findings 4-8 appear to support this standard.**

F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

- G. The Planning Commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.

**KPB department / agency review:**

KPB Roads Dept. comments	No comment
SOA DOT comments	
KPB River Center review	<p>A. Floodplain Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Comments: No Comments</p>
State of Alaska Fish and Game	No comment
Addressing	<p>Affected Addresses: 51200 LUPINE AVE Existing Street Names are Correct: Yes List of Correct Street Names: LUPINE AVE ROBINS RD INDEPENDENCE RD All New Street Names are Approved: No Comments: 51200 LUPINE AVE will remain with lot 1.</p>
Code Compliance	It appears that a portion of the structure is in the 20' set back
Planner	<p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	No comment
Advisory Planning Commission	

**Utility provider review:**

Addressing	
Code Compliance	
Planner	
Assessing	
Advisory Planning Commission	

**RECOMMENDATION:**

Based on the standards to grant a building setback encroachment permit, **staff recommends**

- 1) To adopt Resolution 2022-39, subject to compliance with KPB 20.10.110 sections F and G and grant the building setback permit.

- 2) To deny the building setback permit and recommend petitioner return with a subdivision vacating a portion of Lupine Avenue, thereby moving and relocating the 20' building setback and also dedicating a portion of Lot 1 Block 2 Centennial Shores Subdivision No 1 85-157 on the southwesterly side as new roadway. This would begin to fix the issue of the roadway crossing and continuing west and connecting to Keeven Lane.

**NOTE:**

**20.10.110.(H) A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 20.90, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.**

**END OF STAFF REPORT**





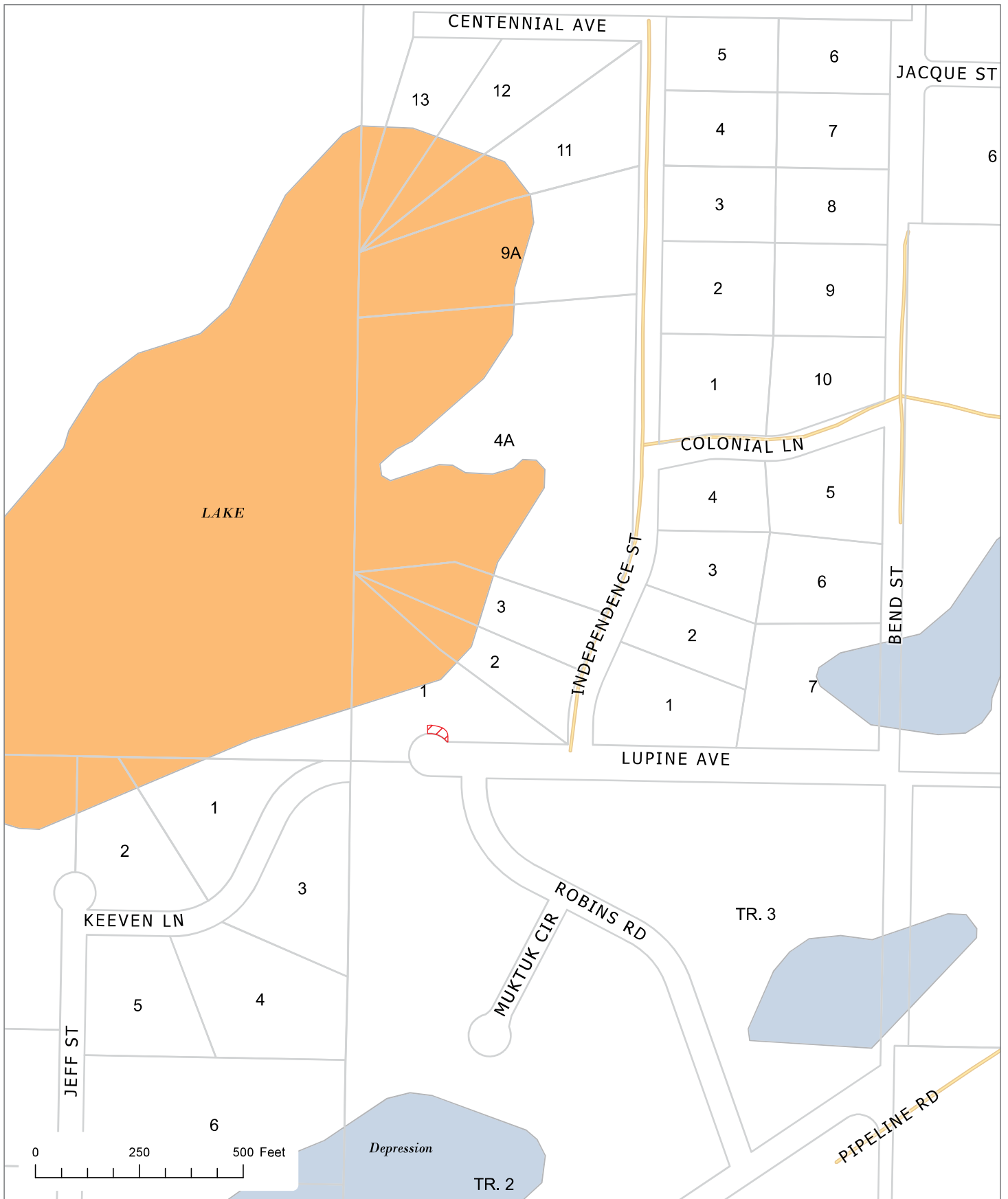
**Aerial with 5-foot Contours**

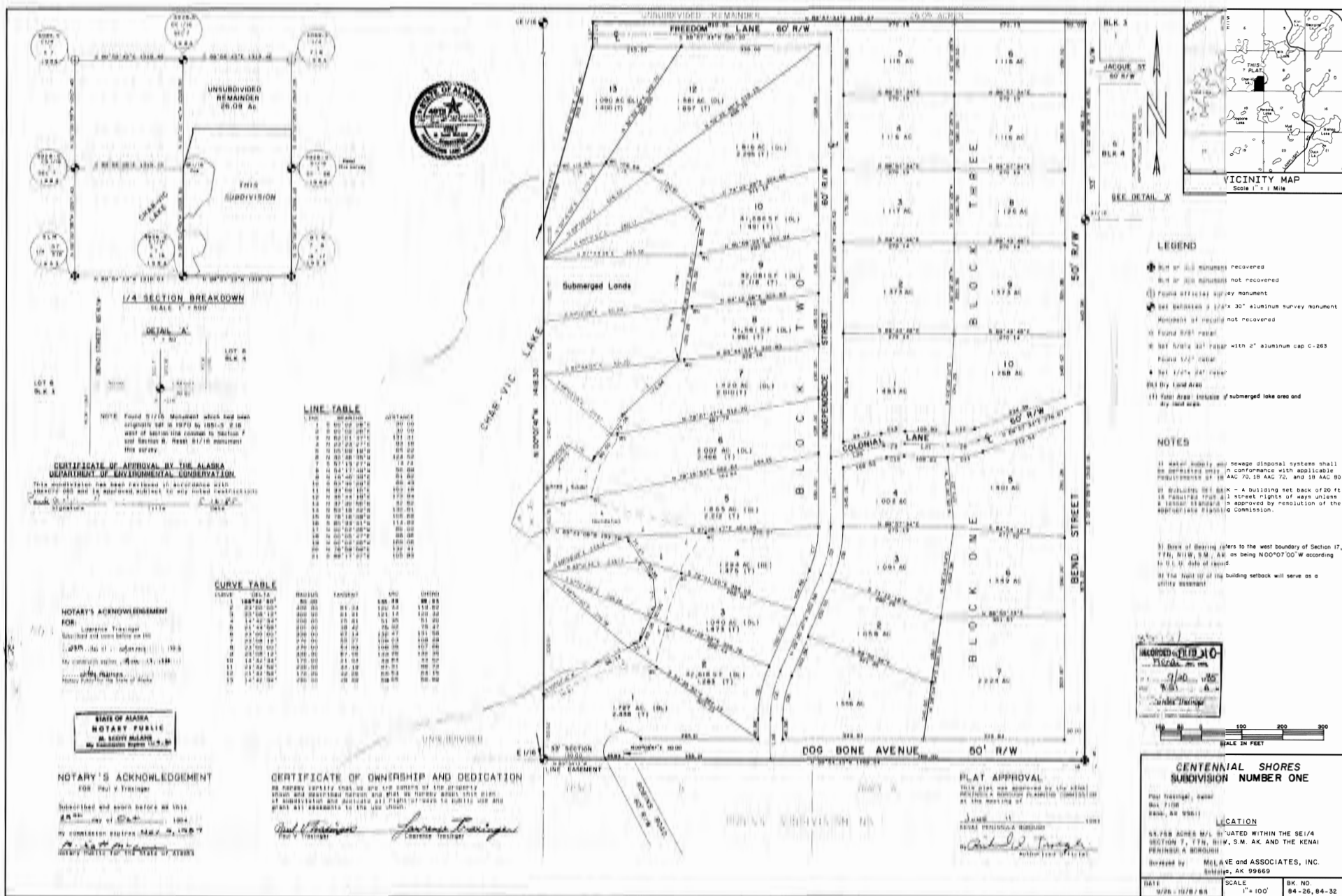






Wetlands







## **E. NEW BUSINESS**

### **9. Utility Easement Vacation; KPB File 2022-101V**

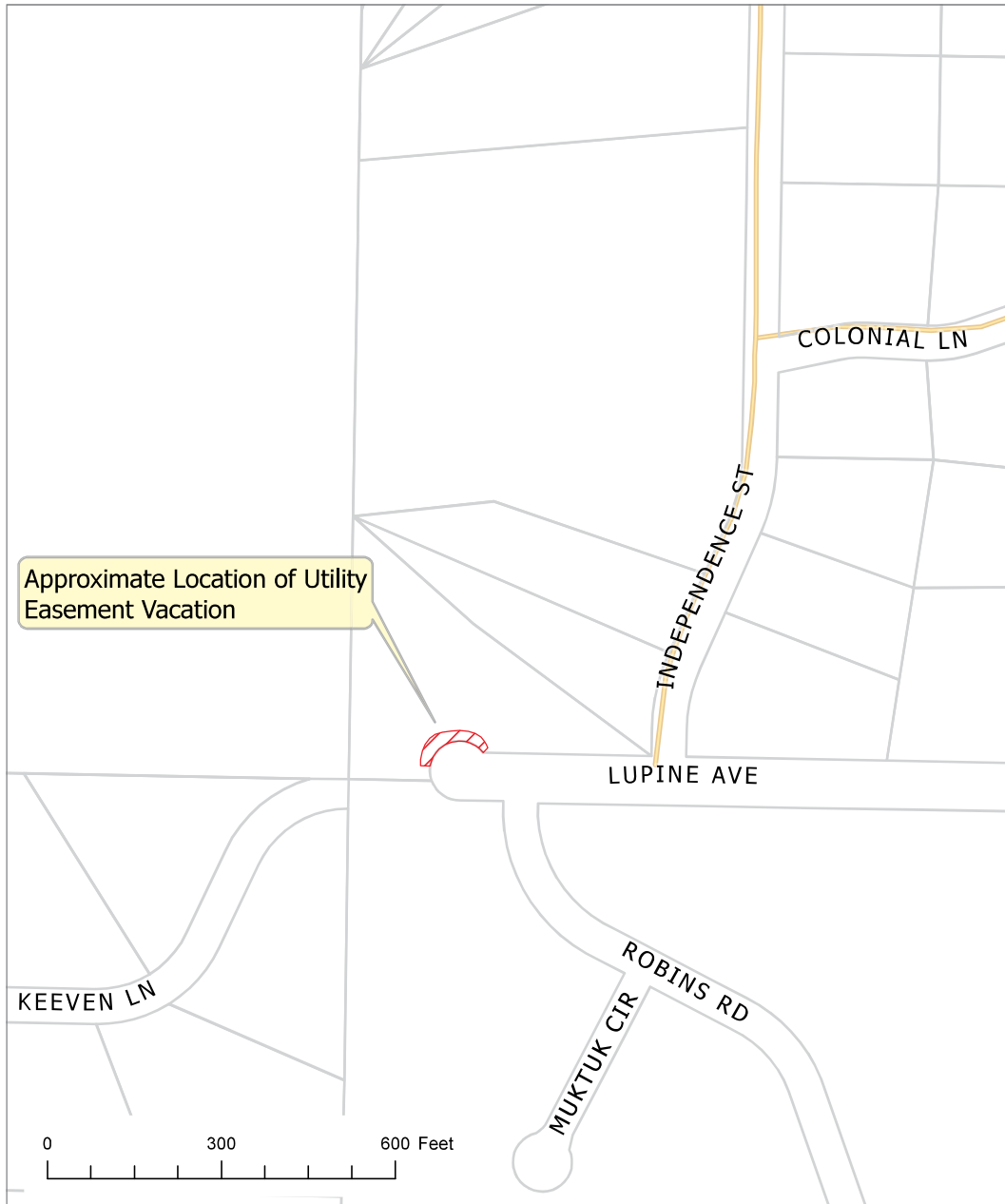
**PC Resolution 2022-40**

**Lot 1, Block 2, Centennial Shores Subdivision Number One;**

**Plat KN 85-157**

**Edge Survey & Design / Ranquette**

**Nikiski Area**



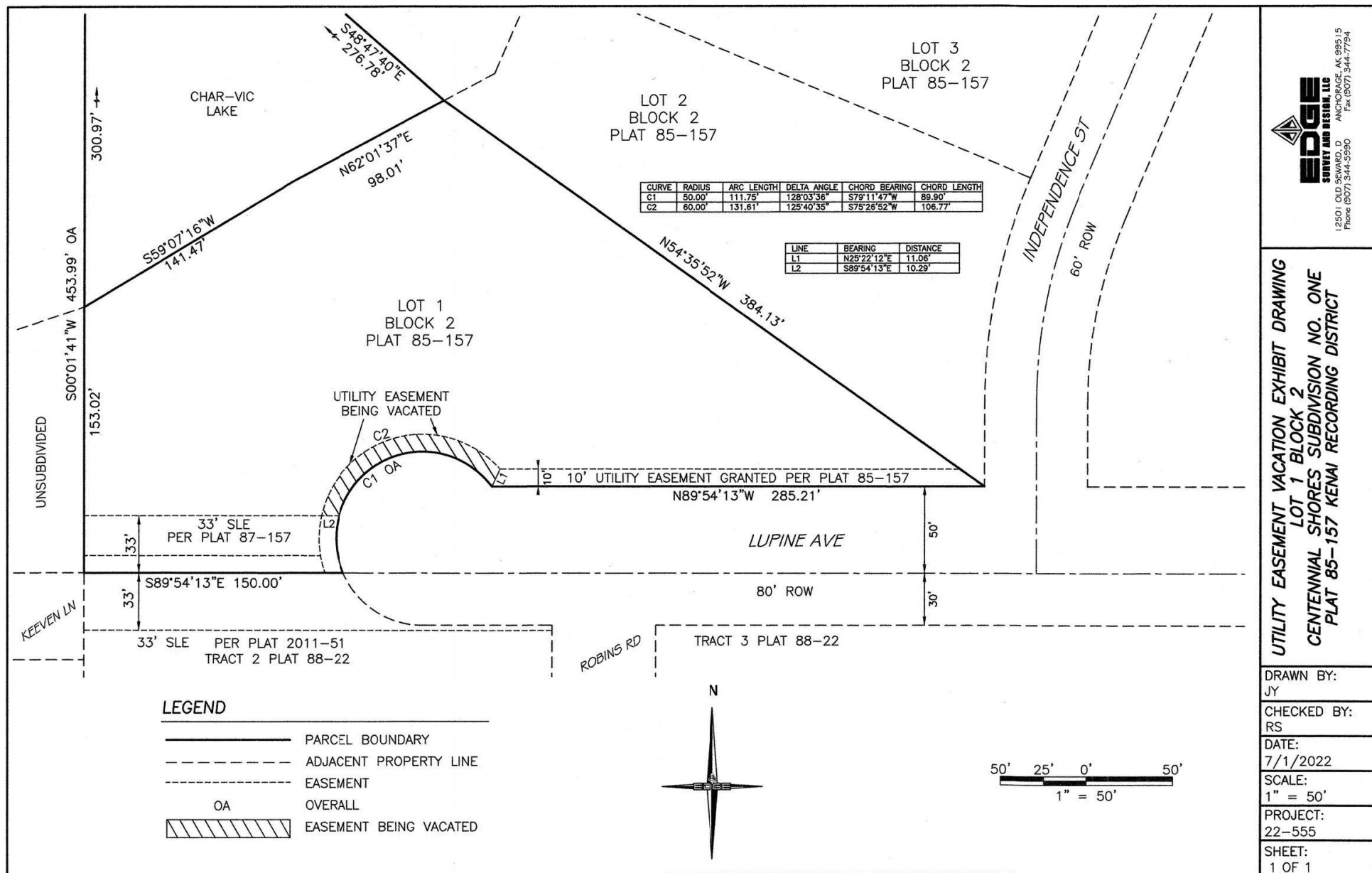
KPB File # 2022-101V  
S07 T07N R11W  
Nikiski





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 2022-101V

**ITEM 9 - UTILITY EASEMENT ALTERATION  
LOT 1 BLOCK 2 CENTENNIAL SHORES SUBDIVISON NUMBER ONE (KN 85-157)**

<b>KPB File No.</b>	2022-101V
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Eric Ranguette
<b>Surveyor:</b>	Jason Young, Ryan Sorensen / Edge Survey and Design LLC
<b>General Location:</b>	Lupine Avenue, Keeven Lane, Nikiski area

---

**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:** House was purchased without easement encroachment disclosed. House is encroaching into a non-utilized easement. All utility companies have signed off on vacation of partial easement.

**Notification:** Notice of vacation mailings were sent by regular mail to fifteen owners of property within 600 feet. Notice of the proposed vacation was emailed to twelve agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

**Staff Analysis:** The property was originally subdivided by Centennial Shores Subdivision Number one, Plat KN 85-157. The plat created Lot 1 Block 2 as well as dedicated Lupine Avenue, originally named Dog Bone Avenue, as a 50 foot wide right-of-way that ended with a partial bulb as an existing roadway continued to the south. Utility easements were not depicted but plat note 4 stated "*The front 10' of the building setback will serve as a utility easement.*" The plat did not depict the setbacks but did state in plat note 2 that they were being created along the rights-of-way.

An as-built had been done on the property that indicated that portions of the house and its attached improvements are within the utility easement and the building setback. The sketch provided with this petition indicates the desire to vacate the entire 10 foot wide utility easement along the norther portion of the bulb. 10 foot wide utility easements will remain on the straight portion of Lupine Avenue. Section line easements coincide the dedication of Lupine Avenue and continue west past the cul-de-sac. It is stated that the easement is not currently in use. If the utility providers did a connection from Lupine Avenue to the west, permits may be requested from the Borough for use of the right-of-way and section line easements.

Staff worked with the KPB Assessing department to determine if the structures in question may have been built prior to the creation of the setback and utility easements. Records do indicate a structure was present before the creation of the setback and utility easement but the deck was improved after the utility easement was put into place. It is also unknown if any other improvements on the house were done prior or after.

The property to the south was originally subdivided by Robins Subdivision No. 1, KN 79-139. It did not dedicate any portion of Lupine Avenue but did indicate a section line easement was present. The property was then replatted by Kenai Timers, Plat KN 86-133, which was amended by KN 86-195. That plat vacated the original dedication of Robins Road and dedicated the new location as currently exists. The plat also dedicated the southern portion of Lupine Avenue by granting 30 feet to 33 feet of dedication. The plat indicates 30 feet at the western portion with 33 feet on the eastern portion with a 33-foot section line easement still in place. Kenai Timbers Replat, KN 88-22, was recorded which removed lot lines to create larger tracts but the dedications remained as granted by the parent plats.

The current configuration is a 80 to 83 foot wide right of way atop section line easements. The cul-de-sac bulb has been broke through to provide access to the properties to the west by the use of the section line easements. The owner has stated that they are requesting this as it is a less expensive option. Staff has no objection if the Planning Commission wishes to grant this exception but staff would rather see a plan to vacate the bulb, reduce the right-of-

way width only if needed to bring the lot into compliance with the setback, and have a dedication be granted over the existing travelway.

There are encroachments into the building setback and a separate petition has been received to be reviewed by the Planning Commission at the August 8, 2022 meeting.

**Utility provider review:**

HEA	No comments
ENSTAR	Approved as shown
ACS	No objections to the easement vacation as shown
GCI	Approved as shown.

**Findings:**

1. The petition states that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Centennial Shores Subdivision Number One, KN 85-157, created 10 foot utility easements along dedicated rights-of-way.
4. A structure and its attached improvements are currently within the easement thus limiting its use.
5. The right-of-way width is 80 feet wide and is atop section line easements.
6. Lupine Avenue is an 80 foot wide dedicated right-of-way.
7. Lupine Avenue is constructed and in use but not maintained by the borough.
8. The encroachments are along a cul-de-sac but access continues through the bulb within the section line easements.
9. Majority of the road is in the lower part of the right-of-way and the driveway is in the bulb of the right-of-way.
10. There does not appear to be any line of sight issues due to the clearing done in the area.

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**RECOMMENDATION:**

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends

- 1) To adopt Resolution 2022-40, subject to compliance with KPB 20.10.110 sections E and F and grant the utility easement permit.
- 2) To deny the utility easement permit and recommend petitioner return with a subdivision vacating a portion of Lupine Avenue, thereby moving and relocating the 20' building setback and also dedicating a portion of Lot 1 Block 2 Centennial Shores Subdivision No 1 85-157 on the southwesterly side as new roadway. This would begin to fix the issue of the roadway crossing and continuing west and connecting to Keeven Lane.

**20.65.070 Alteration of platted utility easements**

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.**
- F. An appeal of the planning commission decision under this section must be filed in the superior**



**court in accordance with the Alaska Rules of Appellate Procedure.**

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.*

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**END OF STAFF REPORT**





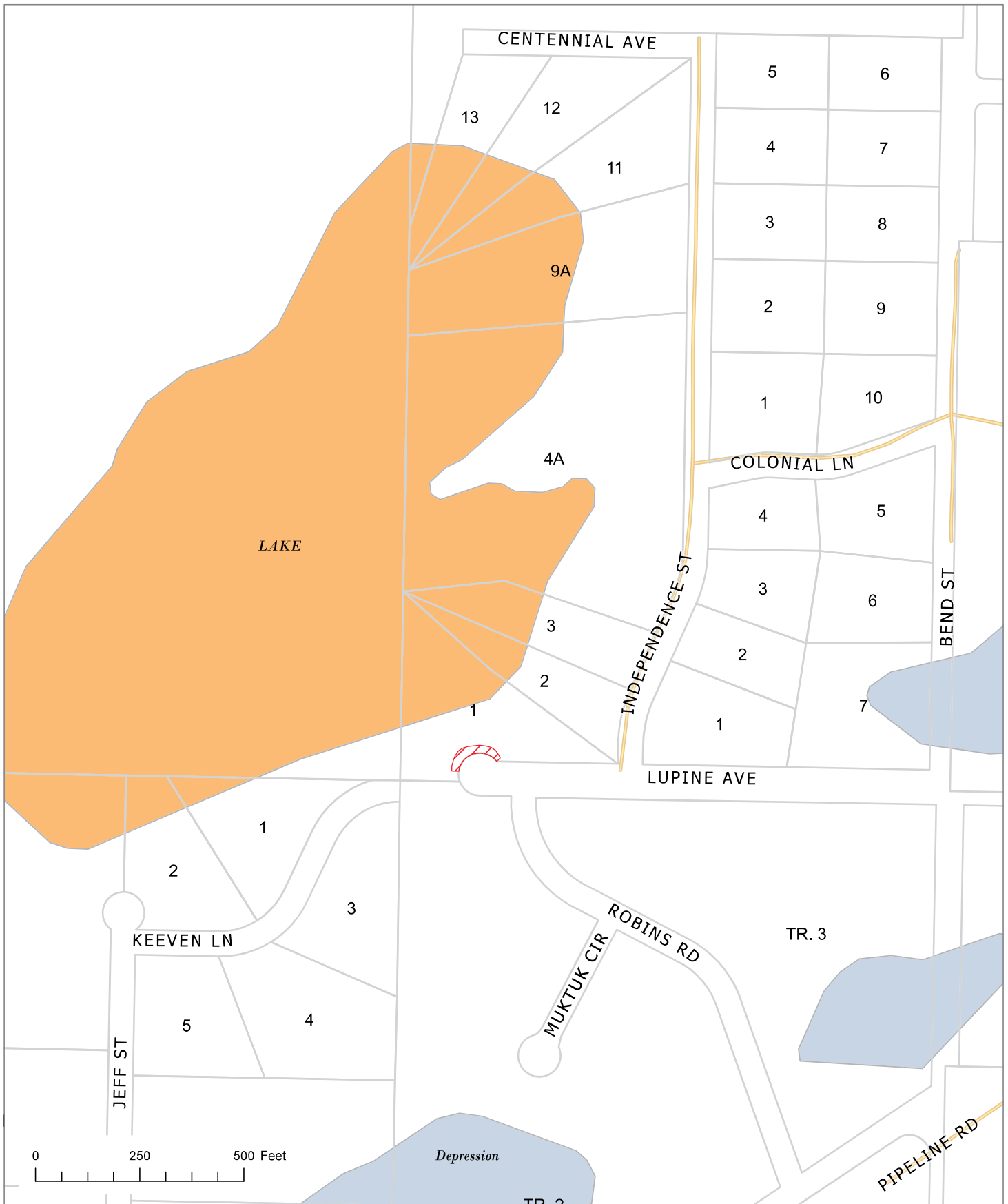
**Aerial with 5-foot Contours**



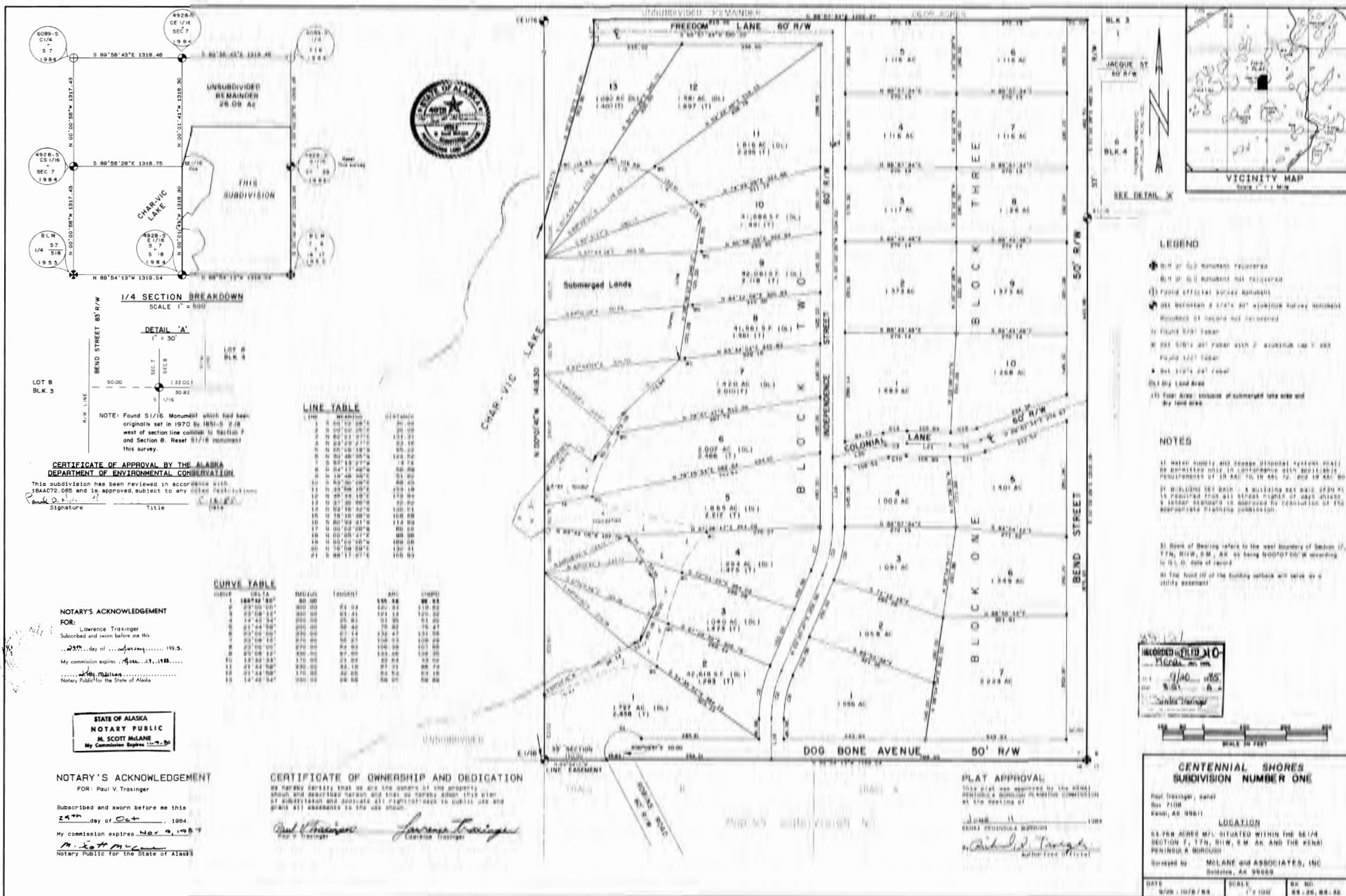




Wetlands







## **E. NEW BUSINESS**

10. **Right-of-Way Vacation; KPB File 2022-095V  
Realignment of Mushroom Street a 60' ROW  
Seabright Surveying / Gamble & Sealevel Inc.  
Fritz Creek Area**



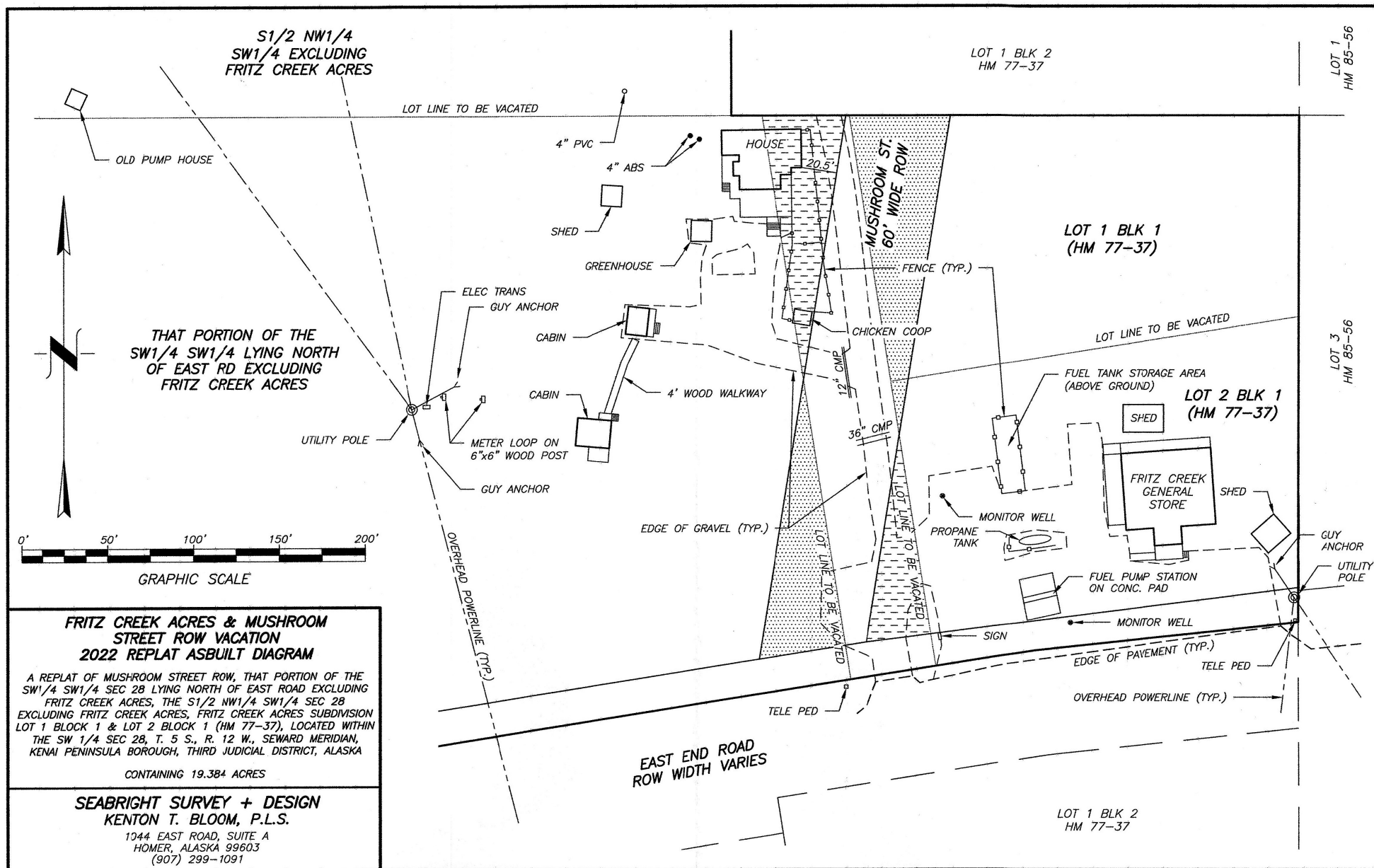
KPB File # 2022-095V  
S28 T05S R12W  
Fritz Creek













AGENDA ITEM E. NEW BUSINESS

**ITEM 10 - RIGHT OF WAY VACATION**  
**Fritz Creek Acres Right of Way Vacation of Mushroom Street**

<b>KPB File No.</b>	2022-095V
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Edward Gamble and Barbara Gamble and Sealevel Inc all of Homer, AK
<b>Surveyor:</b>	Kenton Bloom/ Seabright Surveys
<b>General Location:</b>	Mushroom Street and East End Road / Fritz Creek / Kachemak Bay APC
<b>Legal Description:</b>	Mushroom Street associated with Fritz Creek Acres Subdivision, Plat HM 77-37, Homer Recording District, Section 28 Township 5S Range 12W S.M.

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**STAFF REPORT**

**Specific Request / Purpose as stated in the petition:**

**Notification:** Public notice appeared in the July 28, 2022 issue of the Homer News as a separate ad. The public hearing notice was published in the August 4, 2022 issue of the Homer News as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Homer

Post Office of Homer

Twenty seven certified mailings were sent to owners of property within 600 feet of the proposed vacation.  
14 receipts had been returned when the staff report was prepared.

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

Kenai Peninsula Borough Office  
Ninilchik Traditional Council  
Alaska Communication Systems (ACS)  
ENSTAR Natural Gas  
General Communications Inc, (GCI)  
Homer Electric Association (HEA)

**Legal Access (existing and proposed):**

The proposed vacation is to realign Mushroom Street a 50-foot dedication due to a house encroaching into the right of way. When the realignment is complete Mushroom Street will be a 60 foot dedicated right of way accessed from state maintained East End Road. This realignment will vacate 3,717 square feet on the northwest portion and 2,176 square feet on the southeast portion. Mushroom Street was dedicated as a 50 foot right of way with a 50 foot temporary cul-de-sac on Fritz Creek Acres Plat HM 77-37.

The existing gravel road providing access to Tract C of Fritz Creek Acres Plat HM 77-37 will be outside of the dedicated right of way if the vacation is approved.

KPB Roads Dept. comments	Out of jurisdiction: No Roads Director: Painter, Jed Comments: No Comments
SOA DOT comments	

**Site Investigation:** Wetlands are present through portions of the proposal. The terrain is relatively flat within the existing right of way and within the proposed dedications.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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#### **Staff Analysis:**

Mushroom Street was dedicated as a 50-foot right-of-way by Fritz Creek Acres HM 77-37. There is a house located in the west part of the right-of-way of Mushroom Street, along with a chicken coop and some fencing. Fritz Creek Acres created a 20-foot building setback along all rights-of-way with a 5' foot underground or overhead clearing easement along streets for Homer Electric Association also.

Mushroom Street provides access to Tract C and Lot 1 Block 1 from East End Road. Lot 1 Block 1 has since been purchased by the owners of Lot 2 Block 1 located in front of it. The current road accessing Tract C is located in the existing Mushroom Street.

#### **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 as a gravel road. The portion to be vacated provides access to one additional lot other than included in the replat. The existing travel surface will be located outside of the dedication.
  2. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:** Commercial and large acreage lots, that are wanting to combine lots to allow expansions of their business and alleviate encroachments into the right of way. New dedications are proposed.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located

within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled 2022 meeting.

If approved, Fritz Creek Acres 2022 Replat will finalize the proposed right of way vacations. A complete submittal was received when this staff report was prepared. The Plat Committee is scheduled to review Fritz Creek Acres 2022 Replat KPB 2022-095 on August 8, 2022.

**KPB department / agency review:**

Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 55770 EAST END RD 38775 MUSHROOM ST  Existing Street Names are Correct: Yes  List of Correct Street Names: EAST END RD MUSHROOM ST  Existing Street Name Corrections Needed:  All New Street Names are Approved: No  List of Approved Street Names:  List of Street Names Denied:  Comments: 55770 EAST END RD will remain with lot 1-A. 38775 MUSHROOM ST will remain with tract A.
Assessing	Reviewer: Windsor, Heather Comments: No comment
Advisory Planning Commission	

**Utility provider review:**

HEA	Provide note the 5' Electric Clearing Easement along per plat HM77-37 is also being vacated
ENSTAR	
ACS	No objections
GCI	Approved as shown
SEWARD ELECTRIC	
CHUGACH ELECTRIC	



**RECOMMENDATION:**

Based on consideration of the merits as per KPB 20.65.050(D) as outlined by Staff comments, Staff recommends APPROVAL 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. 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).

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**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.*
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    - *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.*

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**END OF STAFF REPORT**









**Wetlands**





VICINITY SCALE = 1" = 1.25 MILES MAP

### LEGEND

- + indicates GLO mon found as described in record
- Stakes mon found, 266-S, 1958
- 3/4" X 3' G-I P / W brass cap set
- 1/2" X 2' rebar found
- 5/8" X 2' rebar set
- 2" X 3' X 3' stake set 1958

## Fritz Creek Acres

LOCATED IN W1/2 SW1/4 SEC 28, SE1/4 SE1/4 SEC 29, T5S-R12W S1M; HOMER, ALASKA  
SCALE = 1" = 200' AREA = 28.153 AC APRIL 12, 1977

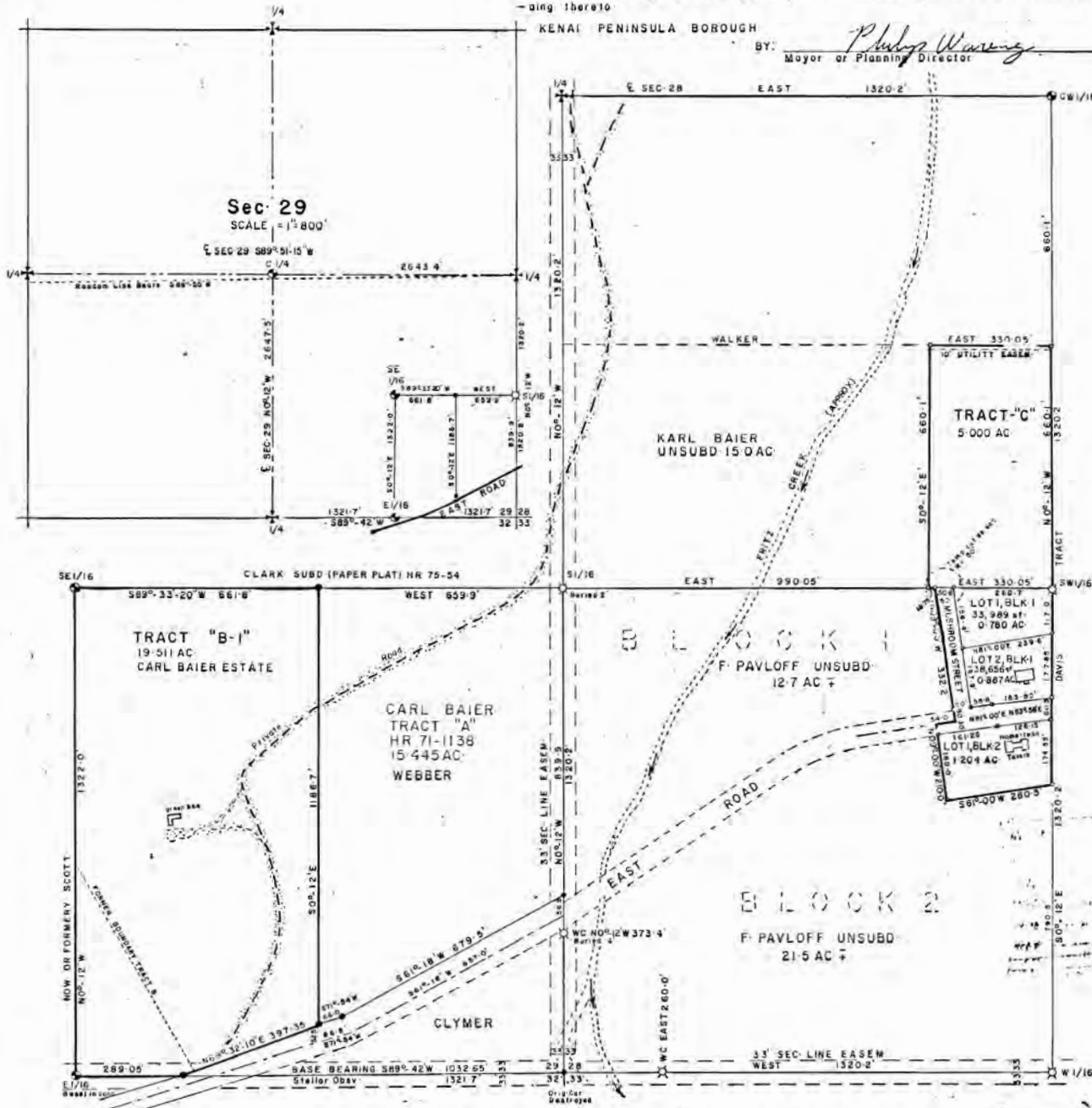
SHOWING REPLAT OF CARL BAIER TRACT "B" (HR 76-21) AS TRACT "B-1", CARL BAIER ESTATE.  
BY: KARL BAIER AND FRANCES PAVLOFF P.O. BOX 485 HOMER, ALASKA 99603  
Note a 20' building set back line along all dedicated streets.  
A 5' underground or overhead clearing easement along streets for Homer Elect. Assoc.  
All waste water disposal systems shall comply with existing laws at time of construction.

### PLAT APPROVAL

This plat having been approved by the Kenai Peninsula Borough Planning Commission as recorded in the official minutes of the meeting of April 2, 1977, 1977, is hereby acknowledged and accepted as the official plat, subject to any and all conditions and requirements of ordinances and law appertaining thereto.

KENAI PENINSULA BOROUGH

BY: Philip Waring  
Mayor or Planning Director



### CERTIFICATE OF OWNERSHIP AND DEDICATION

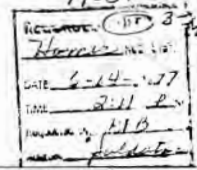
We the undersigned, hereby certify that we are the owners of the property shown and described hereon, and that we hereby adopt this plan of subdivision, and dedicate all streets to public use, and to the use of public utilities:

Karl Baier Jane Baier  
KARL BAIER JANE BAIER  
Frances Pavloff P.O. BOX 485 HOMER, ALASKA 99603  
Hilda Bauer  
HILDA BAUER  
Administratrix, for Carl Baier estate -

### STATE OF ALASKA, THIRD JUDICIAL DISTRICT

Subscribed and sworn before me this 12 day of May, 1977.  
Margaret J. Pate  
NOTARY PUBLIC FOR ALASKA

My commission expires 7/28/1977

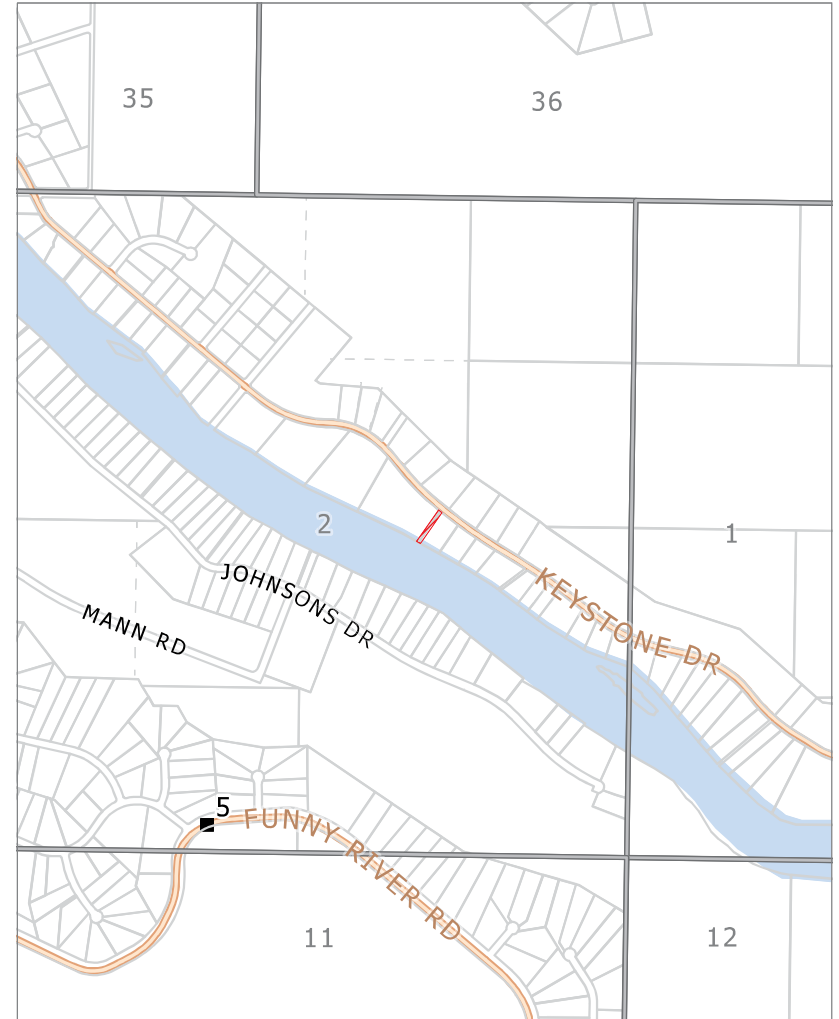
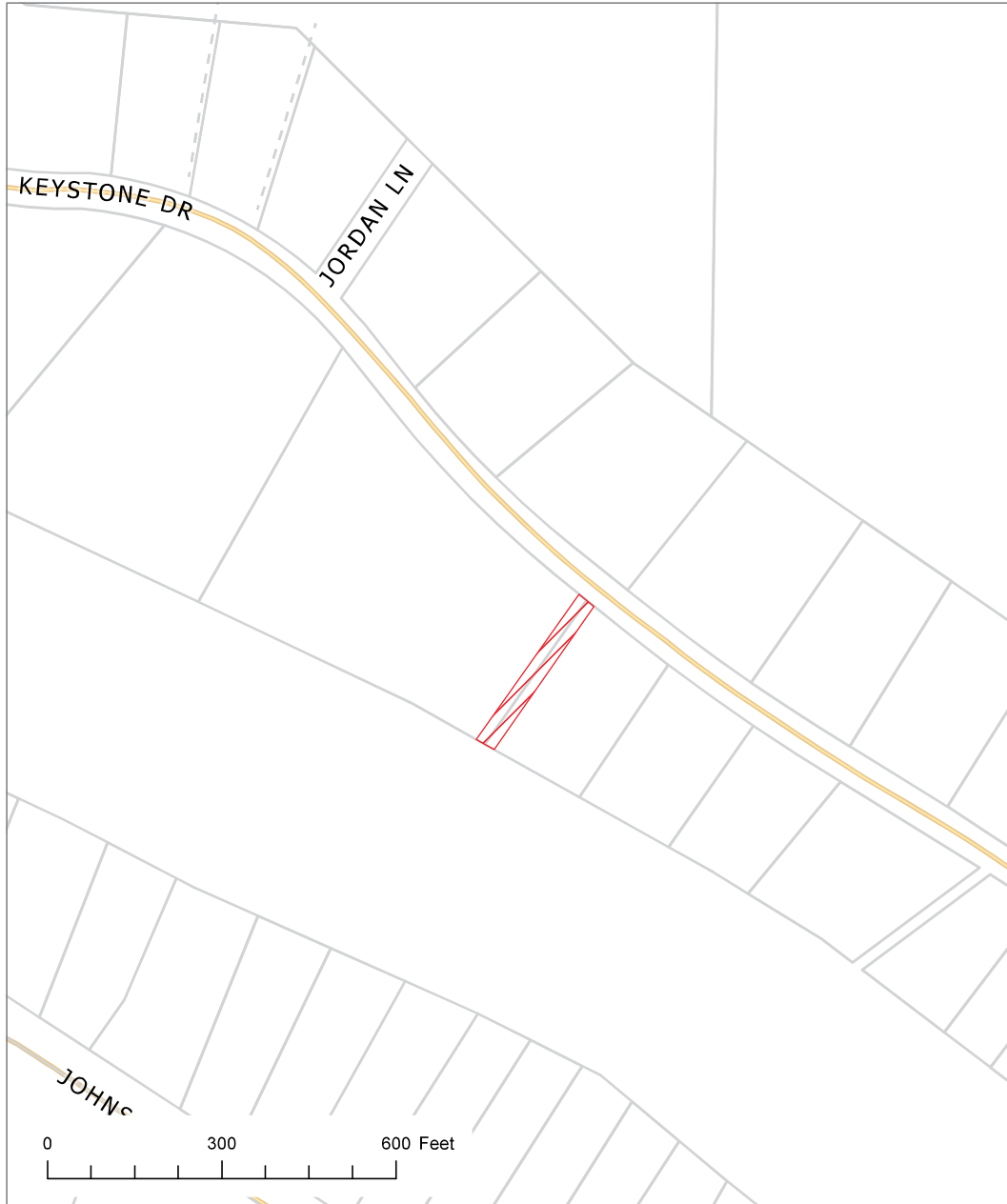


BOX 27 CLAM GULCH, ALASKA 99568

## **E. NEW BUSINESS**

- 11. Utility Easement Vacation; KPB File 2022-104V  
Lot 1, Block 2, Moose Range Meadows Sub Phase II Amended;  
Plat KN 87-100  
Lot B-5, Moose Range Meadows Sub Phase II RV; Plat KN 96-3  
McLane Consulting Group / Frawner  
Sterling Area**





KPB File # 2022-104V  
S02 T04N R10W  
Sterling





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



# KPB 2022-104V

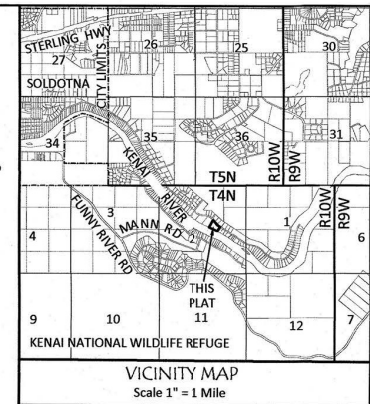
## LEGEND

- ⊕ FOUND PRIMARY MONUMENT AS DESCRIBED
- FOUND 5/8" REBAR UNLESS NOTED
- SET 5/8"x30" REBAR w/ 1" STAINLESS STEEL CAP 85032-S
- ⚡ POWER POLE
- OVERHEAD ELECTRIC
- ▨ AREA SUBJECT TO INUNDATION
- CONTOUR INTERVAL = 4'



GRAPHIC SCALE  
1 inch = 50 ft.

CURVE TABLE						
CURVE #	DELTA	RADIUS	LENGTH	TANGENT	CHORD BEARING	CHORD LENGTH
C1	12°42'49"	1825.06'	404.97'	203.32'	S 45° 43' 41" E	404.14'
C2	1°34'20"	3269.56'	89.73'	44.87'	S 52° 52' 16" E	89.72'
C3	0°52'24"	1825.06'	27.82'	13.91'	S 39° 48' 29" E	27.82'
C4	4°26'26"	1825.06'	141.45'	70.76'	S 42° 27' 54" E	141.42'
C5	4°43'20"	1825.06'	150.42'	75.25'	S 47° 02' 48" E	150.37'
C6	2°40'39"	1825.06'	85.28'	42.65'	S 50° 44' 47" E	85.28'



VICINITY MAP  
Scale 1" = 1 Mile

## NOTES

1. WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS SHALL BE PERMITTED ONLY IN CONFORMANCE WITH APPLICABLE REQUIREMENTS OF 18 AAC 72 AND 18 AAC 80.
2. BUILDING SETBACK- A BUILDING SETBACK OF 20 FT. IS REQUIRED FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION.
3. THE FRONT 20 FEET ADJOINING DEDICATED RIGHTS-OF-WAY IS A UTILITY EASEMENT WITH CLEARING RESTRICTED TO FRONT 10 FEET PER KN87-100.
4. 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.
5. THE NATURAL MEANDERS OF ORDINARY HIGH WATER FOR THE KENAI RIVER FORM THE TRUE BOUNDS OF EACH TRACT. THE RECORD MEANDER LINE SHOWN IS FOR SURVEY COMPUTATIONS ONLY. THE TRUE CORNERS BEING ON THE EXTENSION OF THE SIDE LINES AND THE INTERSECTION WITH THE NATURAL MEANDERS.
6. PORTIONS OF THIS SUBDIVISION ARE WITHIN THE KENAI PENINSULA BOROUGH ANADROMOUS WATERS HABITAT PROTECTION DISTRICT. SEE KPB CHAPTER 21.18, AS MAY BE AMENDED, FOR RESTRICTIONS THAT AFFECT DEVELOPMENT IN THIS SUBDIVISION. WIDTH OF THE HABITAT PROTECTION DISTRICT SHALL BE IN ACCORDANCE WITH KPB 21.18.040
7. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE, AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
8. THIS PARCEL MAY BE AFFECTED BY THE FOLLOWING:
  - 8.1. COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED JUNE 26, 1986 IN BOOK 289, PAGE 157 KRD AND AMENDED NOVEMBER 29, 1988 IN BOOK 338 PAGE 228 KRD
  - 8.2. NON-DEVELOPMENT AREA RECORDED APRIL 3, 1998 IN BOOK 526, PAGE 136 KRD.
  - 8.3. COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED MARCH 8, 1996 IN BOOK 480, PAGE 129 KRD.
  - 8.4. THE BOROUGH WILL NOT ENFORCE PRIVATE COVENANTS, EASEMENTS OR DEED RESTRICTIONS PER KPB 20.60.170

## CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND WE HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

EARL FRAWNER, OWNER  
16764 BRIARCLIFF POINTE CIR, ANCHORAGE, AK 99516

ANN FRAWNER, OWNER  
16764 BRIARCLIFF POINTE CIR, ANCHORAGE, AK 99516

## NOTARY'S ACKNOWLEDGEMENT

FOR: EARL & ANN FRAWNER  
ACKNOWLEDGED BEFORE ME THIS

\_\_\_\_ DAY OF \_\_\_\_\_, 2022

MY COMMISSION EXPIRES: \_\_\_\_\_

NOTARY PUBLIC FOR THE  
STATE OF ALASKA

## WASTEWATER DISPOSAL

SOIL CONDITIONS, WATER TABLE LEVELS, AND SOIL SLOPES IN THIS SUBDIVISION HAVE BEEN FOUND SUITABLE FOR CONVENTIONAL ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS SERVING SINGLE-FAMILY OR DUPLEX RESIDENCES AND MEETING THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH. ANY OTHER TYPE OF ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEM MUST BE DESIGNED BY A PROFESSIONAL ENGINEER, REGISTERED TO PRACTICE IN ALASKA, AND THE DESIGN MUST BE APPROVED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

CODY R. McLANE C.E. 11510 AK DATE \_\_\_\_\_

## PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF \_\_\_\_\_, 2022.

AUTHORIZED OFFICIAL DATE \_\_\_\_\_



Plat #	
Rec Dist	_____
Date	____/____/20____
Time	____ M

MOOSE RANGE MEADOWS FRAWNER ADDITION  
A RESUBDIVISION OF LOT 1 BLOCK 2 MOOSE RANGE MEADOWS SUBDIVISION PHASE II (KN86-137) AND TRACT B-5 MOOSE RANGE MEADOWS SUBDIVISION PHASE II, R.V. ADDITION (KN96-3)

EARL FRAWNER, OWNER  
16764 BRIARCLIFF POINTE CIR  
ANCHORAGE, AK 99516

ANN FRAWNER, OWNER  
16764 BRIARCLIFF POINTE CIR  
ANCHORAGE, AK 99516

6.207 AC. M/L SITUATED IN THE E1/2 OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 10 WEST, SEWARD MERIDIAN, KENAI PENINSULA BOROUGH, AND THE KENAI RIVER DISTRICT, ALASKA.

ENGINEERING - TESTING  
SURVEYING - MAPPING  
P.O. BOX 468  
SOLDOTNA, AK 99669  
VOICE: (907) 283-4218  
FAX: (907) 283-3265  
WWW.MCLANECG.COM



KPB FILE NO. 2022-XXX

PROJECT NO. 222023

SCALE 1" = 50'

DATE: JUN 2022

BOOK NO.: 22-02

DRAWN BY: JAH



AGENDA ITEM E. NEW BUSINESS

ITEM 11 Moose Range Meadows Frawner Addition Utility Easement Vacation

KPB File No.	2022-104V
Planning Commission Meeting:	August 8, 2022
Applicant / Owner:	Earl and Ann Frawner of Anchorage, AK
Surveyor:	James Hall / McLane Consulting
General Location:	Sterling / Keystone Drive

---

STAFF REPORT

**Specific Request / Purpose as stated in the petition:** None stated. This action will vacate a 10-foot-wide utility easement running the entire length of proposed Lot 1A Block 2 and part of Lot B-5A Block 2 which will be finalized by replat.

**Notification:** Notice of vacation mailings were sent by regular mail to 11 owners of property within 600 feet. Notice of the proposed vacation was emailed to 5 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building.

**Staff Analysis:** The utility easement was originally granted by plat note on Moose Range Meadows Subdivision Phase II plat number KN 86-137 and amended in plat number KN 87-100. The plat note reads as follows "A 5' utility easement shall be provided on each side of all lot lines" and is listed as Note #6. In the preliminary sketch that was provided it appears a carport may be encroaching into the utility easement and the vacation will resolve this via replat. The proposed replat named Moose Range Meadows Frawner Addition will be heard separately by the Plat Committee on August 8<sup>th</sup>, 2022.

If the vacation is approved there will still be a 5 foot utility easement along the entire east boundary of proposed lot 1A Block 2 that carried forward from KN 87-100. Proposed Lots 1A, B-5C, B-5B, and B-5A all in Block 2 will have a 20-foot building setback along all right of ways and there shall also be a utility easement with clearing restricted to the front 10 feet of said easement which was carried forward from KN 87-100.

**KPB department / agency review:**

KPB Roads Dept. comments	No comment
SOA DOT comments	No comment
KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: A4,C Map Panel: 020012-2405A In Floodway: False Floodway Panel:  B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: i:0#.w kpb\maldrige  C. State Parks Reviewer: Russell, Pam Comments: No Comments

State of Alaska Fish and Game	
Addressing	Address and streets correct
Code Compliance	No comments
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	No comment

**Utility provider review:**

HEA	No objection
ENSTAR	No objection
ACS	No objection
GCI	No objection

**Findings:**

1. The petition does state that the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Moose Range Meadows Subdivision Phase II R.V. Addition, Plat KN 96-3, granted a 20' x 250' utility easement adjoining the west boundary of Tract B-5 and 5' utility easements was provided on each side of all lot lines.
4. Moose Range Meadows Sub Phase II, KN 87-100, subdivided Tract B and Lot 1 Block 2, Moose Range Meadows Subdivision Phase II R.V. Addition, Plat KN 96-3, creating Tract B-5, KN 96-3.
5. The easement is not being used by any utility company.
6. The carport from Lot 1A is encroaching into easement.
7. The new property line is moving away from the easement centerline.
8. No surrounding properties will be denied utilities.

**RECOMMENDATION:**

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends **APPROVAL** of the utility easement alteration as petitioned, subject to:

1. Grant utility easements requested by utility providers.
2. Finalizing the approval of the easement alteration by either;
  - a. The recording of a subdivision plat within 12 months or,
  - b. The recording of a utility easement alteration resolution within 90 days of the adoption of the resolution by the Planning Commission, with the following requirements:
    - i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.
    - ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
    - iii. The Planning Department is responsible for filing the Planning Commission resolution.

**20.65.070 Alteration of platted utility easements**

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where**

new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.

**F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.**

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.*

---

**END OF STAFF REPORT**





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





Aerial with 5-foot Contours







**Wetlands**





## RESTRICTIVE COVENANTS

RESTRICTIVE COVENANTS WERE RECORDED  
ON JUNE 28, 1986, AT THE KENAI RECORDING  
DISTRICT IN BOOK 289 PAGE 157

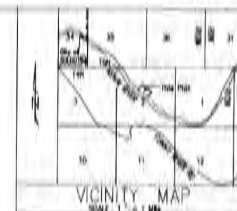
**WASTEWATER DISPOSAL :** CONDITIONS MAY NOT BE SUITABLE FOR ONSITE WASTEWATER TREATMENT AND DISPOSAL. ANY WATER CARRIED WASTEWATER TREATMENT OR DISPOSAL SYSTEM MUST BE DESIGNED BY A REGISTERED ENGINEER AND APPROVED BY THE DEPARTMENT PRIOR TO CONSTRUCTION. ALL WASTE DISPOSAL SYSTEMS MUST MEET THE REGULATORY REQUIREMENTS OF THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

SUBJECT TO ANY NOTED RESTRICTIONS, THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION APPROVES THIS SUBDIVISION FOR PLATTING.

SIGNATURE David A. Hahn TITLE Environmental Engineer DATE 2-26-96

LEGEND

- Found 5/8" rebar w/plastic cap  
● Set 5/8" rebar w/plastic cap



## NOTES

- [illegible]



MICHAEL A. SWAN  
REGISTRATION NO. LS 6940

 HESS CARMOOSE RANGE MEADOWS SUBD.  
PHASE II, R.V. ADDITION

A RESUBDIVISION OF TRACT B-1 BLOCK 2, MOOSE HANGE MEADOWS SUBD. PHASE II, TRACTS A-1, B-1 and C-1

CHIEF SALAMATY NATIVE ASSOCIATION  
P.O. BOX 2802  
KESNA, AK 99501

LOCATED WITHIN THE NW 1/4, SE 1/4, SE 1/4, SECTION 8, T4N, R2W, S4E, KENAI PENINSULA BOROUGH, KENAI RECORDING DISTRICT  
CONTAINING BLIND ADULTS



SWAN SURVEYING

P.O. Box 987  
SOLDOTNA, AK, 99669  
PHONE 907-262-1014

DATE SURVEYED APR. 1988	SCALE 1" = 100'	DRAFTED MAG
K.P.N. PRE NO. 85-178	DR. NO. M. 0000	DETAILED DESCRIPTION (OPTIONAL)

CERTIFICATE of OWNERSHIP and DEDICATION

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

We further certify that Deeds of Trust affecting this property do not contain restrictions which would prohibit this report, or require signature and approval of beneficiaries.

### Notary's Acknowledgement

Subscribed and sworn before me on this \_\_\_\_\_ day  
of February, 1996, for notarized

Connie J. Wirz  
Secretary / Treasurer  
SALAMATOF NATIVE ASSOCIATION, INC.  
Authorized

James O. Segura  
President  
SALAMATIF NATIVE ASSOCIATION, INC.

NOTARY PUBLIC FOR Franklin  
MY COMMISSION EXPIRES 12/31/2007

## PLAT APPROVAL

Title plot was approved by the KINAI PENINSULA BIOLOGICAL PLANNING COMMISSION at the session of 11/15/88.

**KEMAL PASIOGILIA**, *chickadee*

BY Richard J. Sullivan  
 DISTRICT ATTORNEY



RESTRICTIVE COVENANTS  
RESTRICTIVE COVENANTS WERE RECORDED  
ON June 26, 1986, AT THE KEN  
RECORDING DISTRICT IN BOOK 289  
PAGE 157.

55° 17' 43" E - 620  
140.00 130.00

LOT

WCMC

Nondevelopment Area

Nondevelopment Reference Line

5'

ordinary high water meander

KENAI RIVER

TYPICAL DETAIL

NONDEVELOPMENT AREAS

REL	R.D.
RWN	CHK'D





DOI: 10.1002/for

LOTS 1011, 1012 AND A PORTION OF TRACT F, BLOCK 8 ARE DESIGNATED TO HAVE A NONDEVELOPMENT AREA BOUNDED ON THE SOUTH AND SOUTHWEST BY THE ORDINARY HIGH WATER LINE MEASUREMENT OF THE KENAI RIVER, AS DEFINED BY THIS SURVEY, AND ON THE NORTH AND NORTHEAST BY A LINE LYING ONE HUNDRED FIFTY FEET UP LAND AND PARALLEL TO SAID ORDINARY HIGH WATER AS DEFINED HEREON.

LOTS 1004, 1005, 1006, 1007 ARE DESIGNATED TO HAVE A NONDEVELOPMENT AREA BOUNDED ON THE SOUTHWEST BY SAID ORDINARY HIGH WATER LINE, AS DEFINED BY THIS SURVEY AND ON THE NORTHEAST BY A LINE LYING FIVE (5) FEET UP LAND AND PARALLEL TO THE NONDEVELOPMENT REFERENCE LINE AS DEFINED HEREON.

Curve	Radius	Length	Bells	Tangent	Chord	Chord Bearing
C-1	153.78	444.02	94 25' 35"	224.86	444.82	434° 44' 32"
C-2	153.00	166.92	104 58' 44"	88.03	167.85	309° 16' 41"
C-3	201.08	198.92	147 35' 30"	100.00	198.96	3 06° 55' 48"
C-4	692.15	617.44	305° 4' 30"	138.84	630.84	8 06° 47' 05"
C-5	772.17	554.85	18° 04' 00"	590.00	555.80	181° 00' 00"

AMENDED PLAT

SHEET 3 of 4

**NAME**

MOOSE RANGE MEADOWS SUB  
PHASE II

Located within NE 1/4, SE 1/4, SW 1/4 Section 1 and NE 1/4, SE 1/4, SW 1/4 Section 2, T4N, R10W, S 1 M, ALASKA Range Recording District, consisting of 85 Lots and 8 Tracts, containing 105.37 Ac.

TO: SAC, NEW ORLEANS (157-1000) (P)  
FROM: SAC, MOBILE (157-2000) (P)  
SUBJECT: SALAMATON NATIVE ASSOCIATION  
RE: BUREAU FILE  
NEW ORLEANS, LOUISIANA 90611



PROFESSIONAL  
DESIGN  
ASSOCIATES  
BOX 8406  
KENAI, ALASKA 99611  
907-368-6084

NO. 86-14000	DATE: MAY 1986	SCALE: 1" = 100'
DRAWN	CHECKED	FOR FILE



## **E. NEW BUSINESS**

- 12. Review of Plat Committee Decision  
Scenic Ridge Lee Addition; KPB File 2022-075  
McLane Consulting Group / Bureau of Indian Affairs & Lee  
Location: Ken Street & Margaret Drive  
Nikiski Area**



**Kenai Peninsula Borough Plat Committee  
Hearing and Review Procedures**

TO: Kenai Peninsula Borough Planning Director

FROM: RICHARD AND KAREN MCGAHAN

ADDRESS (Mailing): 54025 Kenai Spur Hwy.  
Kenai, Alaska 99601

Daytime Phone: 907-252-1136

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.

A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.

The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

Cases reviewed shall be heard de novo by the planning commission acting as the platting board.

(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-18-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: JUNE 28, 2011

2. Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat of Smith Subdivision.)

APPROVAL OF SCENIC RIDGE LEE ADDITION PRELIMINARY  
PLAT KID FILE NUMBER 2022-015 ACCESS ON KEN ST.

3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision.

KEN ST. IS NOT A LEGAL ACCESS TO THE Spur Hwy  
(NO ENTRANCE - NO EVID) THE SUPERVISOR IN THE RECORDER'S  
OFFICE DID AN EXTENSIVE SEARCH FOR US THERE IS NO RECORDED  
ACCESS TO KEN ST.

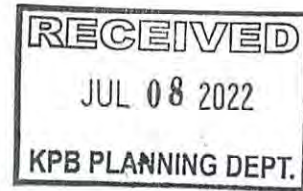
4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

WE WERE ASSURED BY THE PREVIOUS STAFF IN THE PLANNING  
DEPT. THAT KEN ST. COULD NEVER BE UTILIZED FOR ACCESS TO THE  
B.I.A 80 ACRES NEXT TO US. IT'S NOT A LEGAL ACCESS AND THE  
TOPOGRAPHY MAKES IT IMPOSSIBLE FOR A ROAD WITH VEHICLE  
USE. THIS WHOLE PLOT WAS PART OF RICHARDS PARENTS  
HOME STAD. WE HAVE LIVED HERE SINCE 1955 AND ARE  
VERY FAMILIAR WITH THE PROPERTY. WE DO NOT WANT KEN ST.  
RECOMMENDED AS AN ACCESS. THE EDGE ALSO IS TOO CLOSE TO  
A LAKE

Richard D. McArthur  
Signature (ORIGINAL SIGNATURE REQUIRED)

JULY 12, 2022  
Date

Planning Department  
144 N. Binkley Street  
Soldotna, Alaska 99669



July 5, 2022

To Whom It May Concern:

Re: Review by Planning Commission

Scenic Ridge Lee Addition Preliminary Plat  
KPB File Number 2022-075

We received a notice that we may request a review by the Planning commission of a decision by the Plat Committee.

The notice was dated June 28, 2022 and stated that we must request this review in writing Within 15 days of the notification, in accordance with borough ordinances.

We are requesting that review and request that we may testify before the Planning Commission regarding our concerns.

Thank you,

Two handwritten signatures in blue ink. The first signature is "Richard J. McGahan" and the second is "Karen L. McGahan".

Richard and Karen McGahan  
54025 Kenai Spur Hwy.  
Kenai, Alaska 99611

Physical address: Mile 29.3 Kenai Spur Hwy.  
Nikiski, Alaska 99635

Email: [boulderpoint@alaska.net](mailto:boulderpoint@alaska.net)  
Phone: 907 252 1136





# Planning Department

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

Charlie Pierce  
Borough Mayor

June 28, 2022

## **NOTICE OF DECISION KENAI PENINSULA BOROUGH PLAT COMMITTEE MEETING OF JUNE 27, 2022**

Re: Scenic Ridge Lee Addition Preliminary Plat  
KPB File Number: 2022-075

The Plat Committee reviewed and granted conditional approval of the subject preliminary plat during their regularly scheduled meeting of June 27, 2022 based on the findings that the preliminary plat meets the requirements of the Kenai Peninsula Borough Code 20.25, 20.30, 20.40 and must comply with 20.60.

### **AMENDMENT A MOTION**

An amendment motion to grant exception to KPB 20.30.030 – proposed street layout requirements, continuation or projection of right-of-way and KPB 20.30.170 blocks-length requirements, passed by unanimous vote based on the following findings of fact.

#### *Findings*

1. There are areas of steep terrain throughout the subdivision.
2. Access from the south may be limited due to access questions and concerns.
3. Developed roads to the west, along with section line easements, provide a northern access.
4. The tracts are proposed to be large acreage tracts.
5. There are wetlands present in the northeast portion of the subdivision.
6. The land could be subdivided again in the future.
7. Lot 1 will be accessed through Tract A to the south.

### **AMENDMENT B MOTION**

An amendment motion for Lot 1 to grant exceptions to KPB 20.30.200 – Lots-Minimum Size, KPB 20.30.210 – Lots-Access to Street, and KPB 20.40 – Wastewater Disposal, requirement for soils analysis, passed by unanimous vote based on the following findings of fact.

#### *Findings*

2. Lot 1 will be accessed through Tract A to the south.
3. Leaving Lot 1 from this plat will result in a gap in KPB parcel data and will leave a portion of land we do not recognize.
4. The BIA has recorded their own record at the federal level that created the lot.
5. The lot was created to fix an encroachment issue.

A party of record may request that a decision of the Plat Committee be reviewed by the Planning Commission by filing a written request within 15 days of notification of the decision in accordance with KPB 2.40.080.

For additional information please contact the Planning Department, 907-714-2200 (1-800-478-4441 toll free within the Kenai Peninsula Borough).

Notice was emailed on June 28, 2022 to:

BBenson <BBenson@mclanecg.com>; Cody McLane <crmclane@mclanecg.com>; James Hall  
([jhall@mclanecg.com](mailto:jhall@mclanecg.com))

Notice was mailed on June 28, 2022 to:

West Central AK Field Office  
Bureau of Indian Affairs  
3601 C St Ste 1100  
Anchorage, AK 99503-5947

Traci Lee  
PO Box 3501  
Kenai, AK 99611

Karen and Richard McGahan  
54025 Kenai Spur Highway  
Kenai, AK 99611

**ITEM E1 – HAPPY CREEK REPLAT**

<b>KPB File No.</b>	2022-077
<b>Plat Committee Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Clifford and Jana Johnson Investments, LLC of Mesa, Arizona and Rosemary Johnson of Anchor Point, Alaska
<b>Surveyor:</b>	Jason Young, Mark Aimonetti / Edge Survey and Design LLC
<b>General Location:</b>	Hanks Mill Road, Sterling Highway / Happy Valley / Anchor Point APC

<b>Parent Parcel No.:</b>	159-112-01, 159-112-02, and 159-112-03
<b>Legal Description:</b>	Government Lots 1 and 2 lying west of the Old Sterling Highway, Portion of Government Lot 1 lying east of the Old Sterling Highway and Portion of NW1/4 NW1/4 in Section 8, portions of Government Lots 1 and 2 in section 7 and NW1/4 NW1/4 in Section 8.
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

Staff report was given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Horton moved, seconded by Commissioner Fikes to grant preliminary approval to Happy Creek Replat, based on staff recommendations and compliance to borough code.

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

**MOTION PASSED BY UNANIMOUS VOTE**

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

**ITEM E2 – SCENIC RIDGE LEE ADDITION**

<b>KPB File No.</b>	2022-075
<b>Plat Committee Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Bureau of Indian Affairs, Alaska and Traci Lee of Kenai, Alaska
<b>Surveyor:</b>	James Hall / McLane Consulting Inc.
<b>General Location:</b>	Margaret Drive / Nikiski

<b>Parent Parcel No.:</b>	013-145-02
<b>Legal Description:</b>	E1/2 NW1/4 of Section 32 Township 8 North Range 11 West
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

Staff report was given by Platting Specialist Julie Hindman.

Chair Brantley opened the item for public comment.

Karen McGahan; 54025 Kenai Spur Hwy., Kenai, AK 99611: Mrs. McGahan requested that a note be placed on the plat that Ken Street is a private road and should not be considered a legal access for the property.

Richard McGahan; 54025 Kenai Spur Hwy., Kenai, AK 99611: Mr. McGahan requested that a note be placed on the plat that Ken Street is a private road and should not be considered a legal access for the property.



Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Martin moved, seconded by Commissioner Fikes to grant preliminary approval to Scenic Ridge Lee Addition, based on staff recommendations and compliance to borough code.

**AMENDMENT MOTION A:** Commissioner Martin moved, seconded by Commissioner Fikes, to grant exception request to KPB 20.30.030(A) – Proposed Street Layout Requirements, continuation or projection of right-of-way, and KPB 20.30.170 – Block Length Requirements, citing findings 1-7 in support of standards one, two and three.

Commissioner Horton asked staff if this exception request was directly related to the issue of legal access to the property. Ms. Hindman replied this exception was requested so that the landowners would not be required to continue dedication of Ken Street & Margaret Drive, beyond what they are proposing. They would also not be required to have an east/west dedication to make the block compliant.

Chair Brantley asked staff to confirm that this platting action has nothing to do with Margaret Drive or Ken Street access issues. Ms. Hindman replied that is correct. She then noted that she had found the deed that refers to the Ken Street access and she would recommend anyone wishing to use Ken Street for access have legal counsel review the deed to verify that it is a legitimate access.

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

**AMENDMENT MOTION A PASSED BY UNANIMOUS VOTE**

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

**AMENDMENT MOTION B:** Commissioner Martin moved, seconded by Commissioner Fikes to grant exception request to KPB 20.30.200 – Lots, Minimum Size and KPB 20.30.210 – Lots, Access to Street and KPB 20.40 – Wastewater Disposal, requirement for soils analysis report for Lot 1, citing findings 2-5 in support of standards one, two and three.

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

**AMENDMENT MOTION B PASSED BY UNANIMOUS VOTE**

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

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

**MOTION PASSED AS AMENDED BY UNANIMOUS VOTE**

Yes	5	Brantley, Fikes, Horton, Martin, Morgan
No	0	

**F. PUBLIC COMMENT - None**

**G. ADJOURNMENT**

Commissioner Martin moved to adjourn the meeting 6:58 P.M.

---

Ann E. Shirnberg  
Administrative Assistant

## Quinton, Madeleine

---

**From:** James Hall <jhall@mclanecg.com>  
**Sent:** Monday, July 25, 2022 9:21 AM  
**To:** Quinton, Madeleine; Piagentini, Vincent  
**Subject:** <EXTERNAL-SENDER>FW: Notice of Decision KPB 2022-075  
**Attachments:** Notice of Decision KPB File 2022-075.pdf; IMG\_8643.heic; Oct 2004.PNG; Aug 1996.PNG; Nov 2004.PNG; B42-Pg128 KRD.pdf

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

I received an auto-reply from Julie, please find information below supporting the Scenic Ridge Subdivision plat KPB File No. 2022-075

Thank you  
James

---

**From:** James Hall  
**Sent:** Monday, July 25, 2022 9:18 AM  
**To:** 'jhindman@kpb.us' <jhindman@kpb.us>  
**Subject:** FW: Notice of Decision KPB 2022-075

Good Morning,

I was informed by my client the plat is being contested and on schedule for review by the planning commission. I humbly request that we are informed when a plat is contested and on the agenda for review. This allows us to prepare information needed to defend the subdivision plat.

My understanding is that the McGahan's are stumping that Ken Street is not a legal access point.

We would like to inform the Borough of the following:

- August 26, 1996 the McGahan's were granted a parcel waiver allowing creation of two parcels based on public legal access being provided by Ken Street easement.
- October 11, 2004 the McGahan's again subdivided the area and the Borough required the public access be shown on the plat along with existing travel ways. The preliminary plat was granted approval but was revised and again heard in November 2004.
- November 22, 2004 the revised preliminary plat again mentions the extension of the 100-foot access easement (Ken Street).
- June 27, 2022 the McGahan's protest and petition the planning commission for review based on Ken Street being a private road.

This evidence has been compiled from Borough public records and official minutes. Public access through this 100' easement to access parcels north of the Kenai Spur Highway was created by Book 42, Page 128 KRD as shown on the plat KN2005-14. The easement document is vague in nature of the intent of the easement but clear evidence through the years of showing its public access to subdivide parcels should clarify that this is intended as public access.

Let me know if you need any additional information or have any questions/concerns

James Hall, PLS  
McLane Consulting, Inc.  
907-283-4218 office  
907-953-5886 cell

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**From:** Hindman, Julie <[jhindman@kpb.us](mailto:jhindman@kpb.us)>  
**Sent:** Tuesday, June 28, 2022 11:19 AM  
**To:** Ben Benson <[BBenson@mclanecg.com](mailto:BBenson@mclanecg.com)>; Cody McLane <[crmclane@mclanecg.com](mailto:crmclane@mclanecg.com)>; James Hall <[jhall@mclanecg.com](mailto:jhall@mclanecg.com)>  
**Subject:** Notice of Decision

Please find attached the notice of decision for Scenic Ridge Lee Addition, KPB File 2022-075.

Once the approved minutes are available they can be found at <https://kpb.legistar.com/Calendar.aspx>

If you need unapproved minutes sooner please let me know.

*Julie Hindman*

Platting Specialist  
Ph: (907) 714-2210  
Fx: (907) 714-2378

**KENAI PENINSULA BOROUGH**  
**144 North Binkley Street**  
**Soldotna, Alaska 99669**





STATUTORY WARRANTY DEED

The Grantors, KENNETH MCGAHAN and MARGARET E. MCGAHAN, husband and wife, of Route #1, Kenai, Alaska, for and in consideration of the sum of Ten Dollars (\$10.00), conveys and warrants to PAUL L. COSTA, a single man, and RONALD A. MIKA, a single man, to hold as tenants in common, the following described real property situated in the Kenai Recording District, State of Alaska, said property being more particularly described as follows:

A tract of land in Section Thirty-two (32), Township Eight North (T 8 N), Range Eleven West (R 11 W), Seward Meridian, Alaska, said tract being more particularly described as follows:

From the S $\frac{1}{2}$  corner of said Sec. 32, run N. 0°-07'-30" W. for 1011.28 feet to an intersection with the presently existing centerline of the North Kenai Highway for a Point of Beginning. Thence S. 68°-57'-30" W. along said centerline for 500 feet; thence N. 21°-02'-30" W. for 435.6 feet; thence N 68°-57'-30" E. for 1000.00 feet; thence S. 21°-02'-30" E. for 435.6 feet. to the centerline of the North Kenai Highway thence S. 68°-57'-30" W. along the centerline for 500.00 feet to the Point of Beginning, the whole comprising 10 acres more or less, excepting there from a right-of-way of 100 feet in width, said right-of-way being the northerly projection of Lamplight Road, and described as follows:

EXCEPT FOR THE FOLLOWING DESCRIBED REAL PROPERTY:  
A tract of land situated in the E $\frac{1}{2}$  SW $\frac{1}{4}$  and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 32, T. 8 N., R. 11 W., S.M., Third Judicial District, State of Alaska, more particularly described as follows, to-wit:

Beginning at a point on the westerly line of the SE $\frac{1}{4}$ , and the existing centerline of the North Kenai Road of Section 32, T. 8 N., R. 11 W., S.M., said point bears northerly along the said westerly line a distance of 1011.28 feet from the southerly quarter corner of said Section 32; thence northeasterly along the said existing centerline a distance of 500.00 feet; thence N. 21° 01' 15" W. a distance of 50.0 feet; thence S. 68° 58' 45" W. a distance of 848.45 feet; thence N. 21° 01' 15" W. a distance of 25.0 feet; thence S. 68° 58' 45" W. a distance of 151.55 feet; thence S. 21° 01' 15" E. a distance of 75.0 feet to a point on the said existing centerline; thence northeasterly along the said existing centerline a distance of 500.0 feet to the Point of Beginning.

SUBJECT TO:

(1) A reservation to the Grantors of all oil and gas mineral rights, if in fact said mineral rights are

FISHER & HORNADAY  
ATTORNEYS  
TRADE BUILDING  
P. O. BOX 397  
KENAI, ALASKA 99611  
TELEPHONE 283-7568

vested in Grantors.

(2) A restriction in favor of the Grantors, restricting Grantees from removing or selling gravel from the afore-described real property.

DATED at \_\_\_\_\_, Alaska, \_\_\_\_\_ day of October, 1966.



Kenneth McGahan  
KENNETH MCGAHAN

Margaret E. McGahan  
MARGARET E. MCGAHAN

ACKNOWLEDGMENT

STATE OF ALASKA )  
 ) ss.  
3rd JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 4 day of <sup>NOV</sup> September 1966 KENNETH MCGAHAN personally appeared before the undersigned notary public and acknowledged the foregoing Statutory Warranty Deed as his voluntary act.

Stanley F. Thompson  
Notary Public in and for Alaska  
Commission Expires: 3/21/68

STATE OF ALASKA )  
 ) ss.  
3rd JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on the 4 day of <sup>NOV</sup> September 1966 MARGARET E. MCGAHAN personally appeared before the undersigned notary public and acknowledged the foregoing Statutory Warranty Deed as her voluntary act.

Stanley F. Thompson  
Notary Public in and for Alaska  
Commission Expires: 3/21/68

FIGHER & HORNADAY  
ATTORNEYS  
TRADE BUILDING  
P. O. BOX 397  
KENAI, ALASKA 99811  
TELEPHONE 283-7565

RECORDED - FILED	
<u>Kenai</u> REC. DIST.	
DATE	<u>11-18</u> 19 <u>66</u>
TIME	<u>3:00</u> P M
Requested by	<u>Porter</u>
Address	<u>Box 441</u> <u>Kenai</u>

167597  
B4441  
10/11/66



The August 26, 1996 Planning Commission minutes indicate property subdivided by Plat Waiver 96-29 had public access by a document recorded in the Kenai Recording District. **Staff recommends** all easements affecting the subject subdivision be shown and labeled on the plat.

The property is not within an advisory planning commission.

Development within the subdivision may be subject to the administrative policies and/or enforceable policies of the KPB Coastal Zone Management Program (Ordinance 90-20).

The Certificate to Plat was provided in accordance with Planning Commission Resolution 2000-25. The Certificate to Plat indicates beneficial interests affect this property. The beneficial was notified and given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

Exception Requested: Partial survey and monumentation. The submittal states that the north 10-acre portion of Tract C was Parcel 1 of KPB Plat Waiver Resolution 96-29 and is being added to the 28-acre parcel to the south. All of the corners to the 28-acre portion of the parcel exist or will be set.

Subdivisions may be exempt from survey and monumentation requirements of Section 20.16.160 provided an application is submitted with sufficient evidence to support findings in accordance with KPB 20.04.040 (C):

1. The subdivision will not create more than four parcels.



1. P/W McGahan, Richard Sr. & Karen S.  
KPBPC Resolution 96-29  
KPB File 96-167

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KPB PLANNING COMMISSION AUGUST 26, 1996 MEETING

PAGE 19

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Location: Westerly of North Kenai Road and Daniels Lake

Staff report as read by Lisa Parker.

PC Meeting 08/26/96

The applicants propose to divide an existing 34 acre m/l parcel into two parcels. One parcel will be ten acres, and the other parcel will be 24 acres.

Access is available through dedicated rights-of-way and public access granted by a document recorded in the Kenai Recording District.

Staff finds this petition meets the conditions of AS 29.04.090.

STAFF RECOMMENDATIONS: Adopt Planning Commission Resolution 96-29, thereby granting the platting waiver.

END OF STAFF REPORT

**MOTION:** Commissioner Hensley moved, seconded by Vice Chairman Bryson, to adopt Planning Commission Resolution 96-29, thereby granting the platting waiver per staff recommendations.

**VOTE:** The motion passed by unanimous consent. **E12-13**

1. Margaret E. McGahan Homestead No. 3 (Revised Preliminary)  
KPB 2004-256; Integrity/McGahan, Davidson

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Staff Report as read by Patti Hartley

Plat Committee Meeting: 11/22/04

Location:	North of North Kenai Road in Nikiski
Proposed Use:	Residential, Recreational, Commercial, Agricultural
Zoning:	Unrestricted
Sewer/Water:	On-site
Assessing Use:	Residential, Mobile Home

Supporting Information:

The Plat Committee granted conditional approval to the preliminary plat on October 11, 2004. The preliminary subdivided four tracts from Parcel 1 of Plat Waiver Resolution 96-29.

The revised preliminary plat creates five tracts. All tracts are larger than five acres; a soils report will not be required.

A 60-foot wide right-of-way is proposed through the subdivision, extending a 100-foot easement accessing the south of the subdivision. **Staff recommends** the existing travel way be shown within the dedication. **Staff recommends** the topography be shown or it be otherwise demonstrated that a road can be constructed within the proposed dedication to meet Borough grade requirements. **Staff recommends** the east-west travel way on or near the common lot line between Tracts A and B be shown and labeled with use.

There is a travel-way and structure located on Tract C. **Staff recommends** the travel way be shown and labeled on the plat.

AGENDA ITEM E. NEW BUSINESS

ITEM E12 - SCENIC RIDGE LEE ADDITION

<b>KPB File No.</b>	2022-075
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Bureau of Indian Affairs, Alaska and Traci Lee of Kenai, Alaska
<b>Surveyor:</b>	James Hall / McLane Consulting Inc.
<b>General Location:</b>	Margaret Drive / Nikiski

<b>Parent Parcel No.:</b>	013-145-02
<b>Legal Description:</b>	E1/2 NW1/4 of Section 32 Township 8 North Range 11 West
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

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STAFF REPORT

**Summary**

This item was originally heard by the Plat Committee on June 27, 2022. Several exceptions had been requested. The exception requests to KPB Code 20.30.030(A) - proposed street layouts for a continuation or projection of rights-of-way and KPB 20.30.170 - block length requirements were grouped together. The other exceptions, KPB 20.30.200 - lots-minimum size, KPB 20.30.210 – lots-access to street, and KPB 20.40, wastewater disposal requirements for a soils analysis report, were also grouped together as they all pertained to Lot 1. The exception requests and the preliminary design subject to staff recommendations and compliance with KPB Code were approved.

A request for a Planning Commission review of the Plat Committee decision, in accordance with KPB Code, was received on July 8, 2022 from Richard and Karen McGahan. The request is presented in the packet.

Per KPB 2.40.080(C), the Planning Commission sitting as the platting board reviews cases *de novo*. This means the Planning Commission is not required to give deference to the plat committee's decision. The packet will contain the information presented to the Plat Committee and any additional information or comments that have been received in response to the scheduling of this meeting. Following is the staff report as prepared for the June 13, 2022 meeting.

Please note that under KPB 20.25.120, **A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**



## Report from June 27, 2022 Plat Committee Meeting

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide an 80 acre parcel into two tracts and one lot. The tracts will be 26 and 52.915 acres. The lot will be 22,142 square feet. A matching 30 foot dedication is proposed.

**Location and Legal Access (existing and proposed):** The subdivision is located near mile 28.5 of the Kenai Spur Highway. Margaret Drive is a 60 foot wide right-of-way that provides access from Kenai Spur Highway. It will provide access to Tract A-2. There is a private non-exclusive easement for a 20 foot wide road through Tract A located to the south to provide access to the tract being subdivided. It appears that Margaret Drive is not constructed fully within the right-of-way and the easement is granting permission to travel outside of the dedication due to some terrain restraints.

Ken Street is a dedicated right-of-way with varying widths. The plat is proposing to dedicate a 500 foot length of Ken Street at 30 feet wide to provide a matching dedication to the eastern portion already dedicated and to continue north to provide access to the northern Tract. There are some concerns regarding if Ken Street connects to the Kenai Spur Highway. There is a deed with a description of land that has been labeled as access on past plats. The deed makes reference to a 100 foot wide northern projection of Lamplight Road. A legal determination will need to be made. If the owners wish to use this for access staff recommends they contact an attorney to help determine if there is legal access. If it is determined that there is not a connection the owners will need to be aware that they will not be able to access the property from Ken Street.

Access from section line easements are available. Rounds Road, Charlies Way, and section line easement provide access from the west and then the north to the northern proposed tract.

Neighbors have informed staff that there are many private travel ways in this area. They constructed these roads to be private and intentionally did not place them within the dedications. Prior to using any of the existing travel way, staff recommends the owners have any travel ways they intent to use surveyed prior to use to make sure they are not trespassing. If any of the private roads fall within dedications they may be used by members of the public.

Due to the size of the subdivision, the block is not compliant. Exceptions have been requested for dedications and block length.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comment

**Site Investigation:** There are some low wet areas present within the northeast portion of Tract A-1. They are depicted on the plat and ***staff recommends the wetland depiction remain and the wetland determination note be added.***

Contours are shown on the plat with shading for the steep slopes. Steep areas are present throughout the plat. Some steep slopes are within the proposed dedication and appear to be approximately 22 percent. This dedication is to provide a match to already granted right-of-way. North of the proposed dedication the terrain gets steeper and has approximate slopes of 37 percent.

There are encroachments from the lot to the south onto the property. The encroachments will be contained within the proposed Lot 1.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
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	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments  C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	No objections

**Staff Analysis** This is a proposed plat of native lands. Bureau of Indian Affairs has already recorded a subdivision, BIA #975-1183, to create a Tract A and Lot 1 of Scenic Ridge. This was recorded at the federal level and not reviewed by the planning department. This is something that is allowable but the borough does not recognize the changes of property lines and we currently show the property as an aliquot piece of property.

Lot 1 was created to resolve some encroachment issues. The native allotment owners transferred the interest over for that lot but as the borough does not recognize that lot we have no record of an ownership change. Staff is requesting that Lot 1 of the BIA subdivision, Scenic Ridge, be included in this platting item to create the lot and once there is a deed recorded the owner of the lot may combine his property if chosen. Several exceptions will be required.

A soils report will not be required for the tracts and an exception has been requested for the lot. The correct plat notes will be required.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

**Utility Easements** The property had not been previously platted. 10 foot wide utility easements are proposed along the dedications.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	No comment
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

**KPB department / agency review:**

Addressing	Reviewer: Haws, Derek Affected Addresses: None  Existing Street Names are Correct: Yes  List of Correct Street Names: MARGARET DR
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	<p>KEN ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Code Compliance	<p>Reviewer: Ogren, Eric</p> <p>Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan</p> <p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Conditional Land Use Permit CLUP Resolution Number: 2015-09 CLUP Approval Date: 4/14/2015 Material Site Comments: CLUP 2015-09 is located Southeast of subject parcel at PID 013-300-52. Across Ken St.</p>
Assessing	<p>Reviewer: Wilcox, Adeena</p> <p>Comments: No comment</p>

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

#### **STAFF RECOMMENDATIONS** **CORRECTIONS / EDITS**

*Depict the setback and utility easements or provide a typical detail.*

#### **KPB 20.25.070 – Form and contents required**

**Staff recommendation:** *final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.*

- A. Within the Title Block
1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
  2. Legal description, location, date, and total area in acres of the proposed subdivision;
  3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.
- Staff recommendation:**
- *Revise to be a subdivision of the E1/2 NW1/4 of Section 32, also known as Lot 1 and Tract A of Scenic Ridge (BIA Document No. 975 1183)*
- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;
- Staff recommendation:** *Lot 1 will need to have a new lot number.*



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### **KPB 20.30 – Subdivision Design Requirements**

**Staff recommendation:** final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

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### **KPB 20.40 – Wastewater Disposal**

**Staff recommendation:** final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

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#### 20.40.010 Wastewater disposal.

*Platting Staff Comments: The tracts are larger than 200,000 square feet and do not require a wastewater review. Lot 1 – an exception has been requested. Add correct plat notes.*

**Staff recommendation:** comply with 20.40.

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### **KPB 20.60 – Final Plat**

**Staff recommendation:** final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

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20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

**Staff recommendation:** Acceptance of any dedications is required.

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

**Staff recommendation:** The boundary must be updated to include Lot 1.

#### 20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** Place the following notes on the plat.

- Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).
- Add a note for any exceptions granted.
- WASTEWATER DISPOSAL (Tracts A-1 and A-2): Lots which are at least 200,000 square feet in size may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.
- If the exception is granted, "WASTEWATER DISPOSAL (Lot 1): Conditions might not be suitable for onsite wastewater treatment and disposal systems. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

- Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:** Comply with 20.60.190.

#### **EXCEPTIONS REQUESTED:**

#### **A. KPB 2030.030(A) – Proposed street layout-Requirements, continuation or projection of right-of-way and KPB 20.30.170 – Blocks-Length Requirements**

**Staff Discussion:** Staff grouped the two exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, two motions will be required.

Per code the continuation of Ken Street and Margaret Drive should continue into this subdivision. Additional rights-of-way would be required to bring the block into compliance.

The intent of this subdivision is to divide a large acreage parcel into two large acreage parcels. A dedication is proposed to match the current 30 foot width of Ken Street and to provide a connection to the northern tract. The plat has access from section line easements to the north. The subdivision has areas of steep terrain. The property would benefit at this time from not being required to dedicate rights-of-way or continuations to allow any future roads to be planned with an overall design that will allow the rights-of-way to be created in areas where construction feasibility will be higher.

#### **Findings:**

1. There are areas of steep terrain throughout the subdivision.
2. Access from the south may be limited due to access questions and concerns.
3. Developed roads to the west, along with section line easements, provide a northern access.
4. The tracts are proposed to be large acreage tracts.
5. There are wetlands present in the northeast portion of the subdivision.
6. The land could be subdivided again in the future.
7. Lot 1 will be accessed through Tract A to the south.
8. The block is incomplete and is longer than allowable limits.
9. Proper continuation and projections would require extensions of Ken Street and Margaret Drive.

**Staff reviewed the exception request and recommends granting approval.**

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 1-7 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 1-7 appear to support this standard.**

3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 1-7 appear to support this standard.**

**B. KPB 20.30.200 – Lots-Minimum Size, KPB 2030.210 – Lots-Access to Street, and KPB 20.40 – Wastewater Disposal, requirement for soils analysis report** All for Lot 1

Staff Discussion: Staff grouped the three exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, three motions will be required.

Lot 1 was created by BIA to resolve encroachment issues from the owner of Tract A, KN 90-61. They have recorded a deed to transfer the ownership. The KPB does not recognize the property line change as it did not go through the platting process. Allowing these exceptions to be granted and to create Lot 1 will provide an opportunity for the property to get the title issues worked out. The owner of Tract A would be able to work on combining the lot with their current tract if they wish and all requirements for BIA are met.

**Findings:**

1. Lot 1 will be 22,142 square feet.
2. Lot 1 will be accessed through Tract A to the south.
3. Leaving Lot 1 from this plat will result in a gap in KPB parcel data and will leave a portion of land we do not recognize.
4. The BIA has recorded their own record at the federal level that created the lot.
5. The lot was created to fix an encroachment issue.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 2-5 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 2-5 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 2-5 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.



**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

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Kenai Peninsula Borough Planning Commission  
[planning@kpb.us](mailto:planning@kpb.us)

To whom it may concern:

I am a property owner affected by the proposed access to a proposed plat creating 2 tracts from one large parcel.

Re: KPB File No. 2022-075. Scenic Ridge Lee Addition Preliminary Plat

I was surprised that the Plat Committee did not delete Ken St. from consideration access to the proposed plat. I was raised on the property and Ken McGahan was grandfather. There is no legal access to Ken St. from the Spur Highway. The north St. topography is not suitable to build a road.

My parents, several years ago, were assured by the Kenai Peninsula Borough Planning Department that Ken St. could never be used as an access. My siblings and I own to the east of Ken St. and we would be impacted by any traffic.

My request is that the Planning Commission recommend using the legal access lines.

Signed,

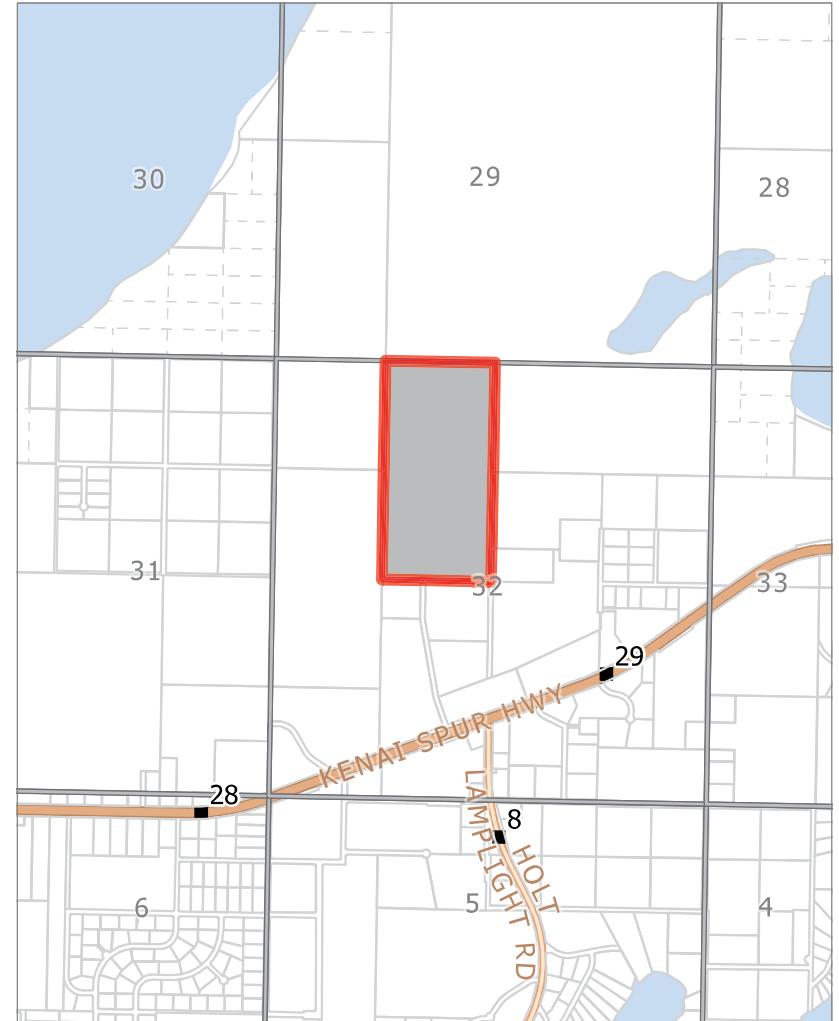
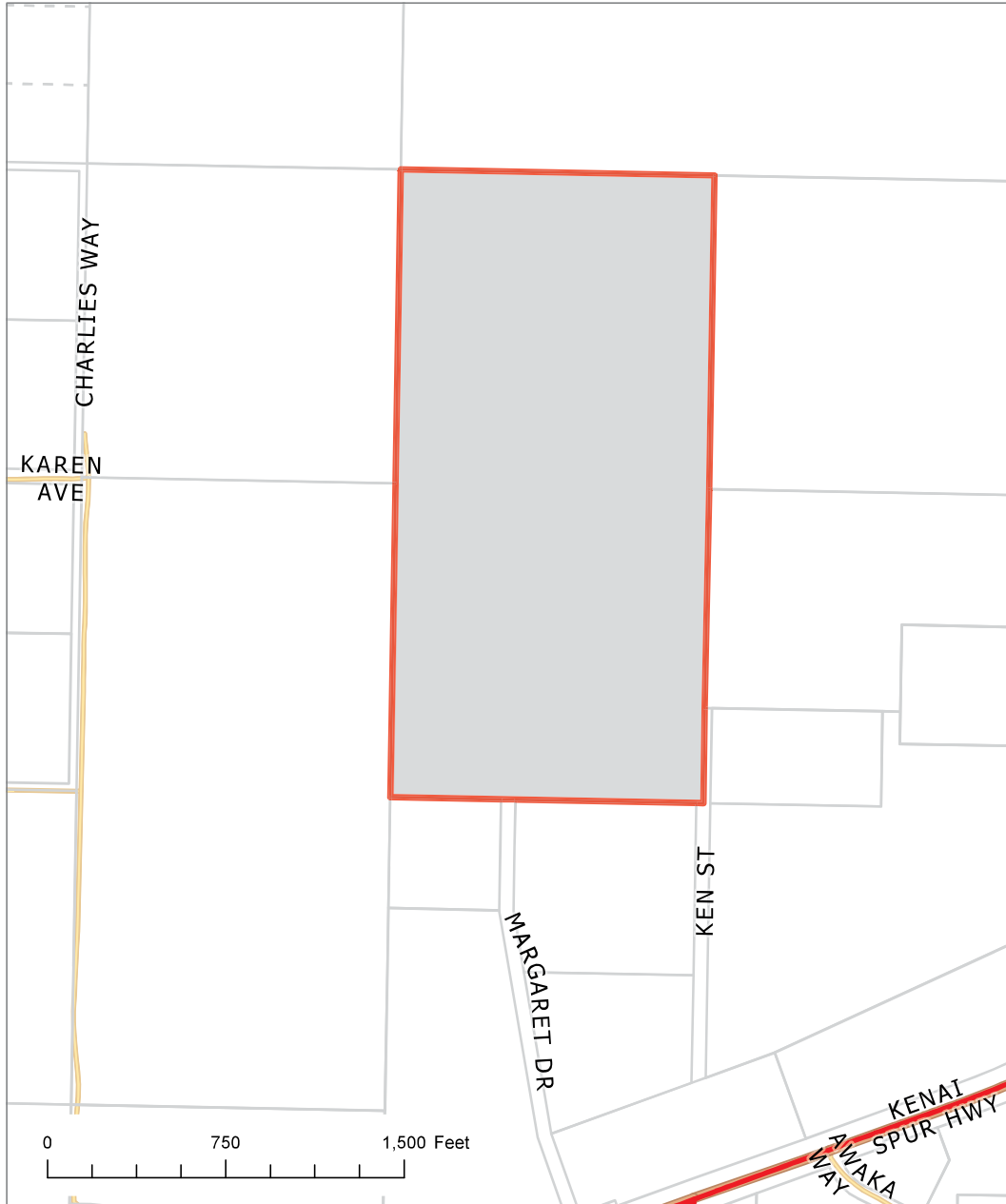


Terry R. McGahan  
P.O. Box 2249  
Kenai, Alaska 99611

## **E. NEW BUSINESS**

### **2. Scenic Ridge Lee Addition; KPB File 2022-075**



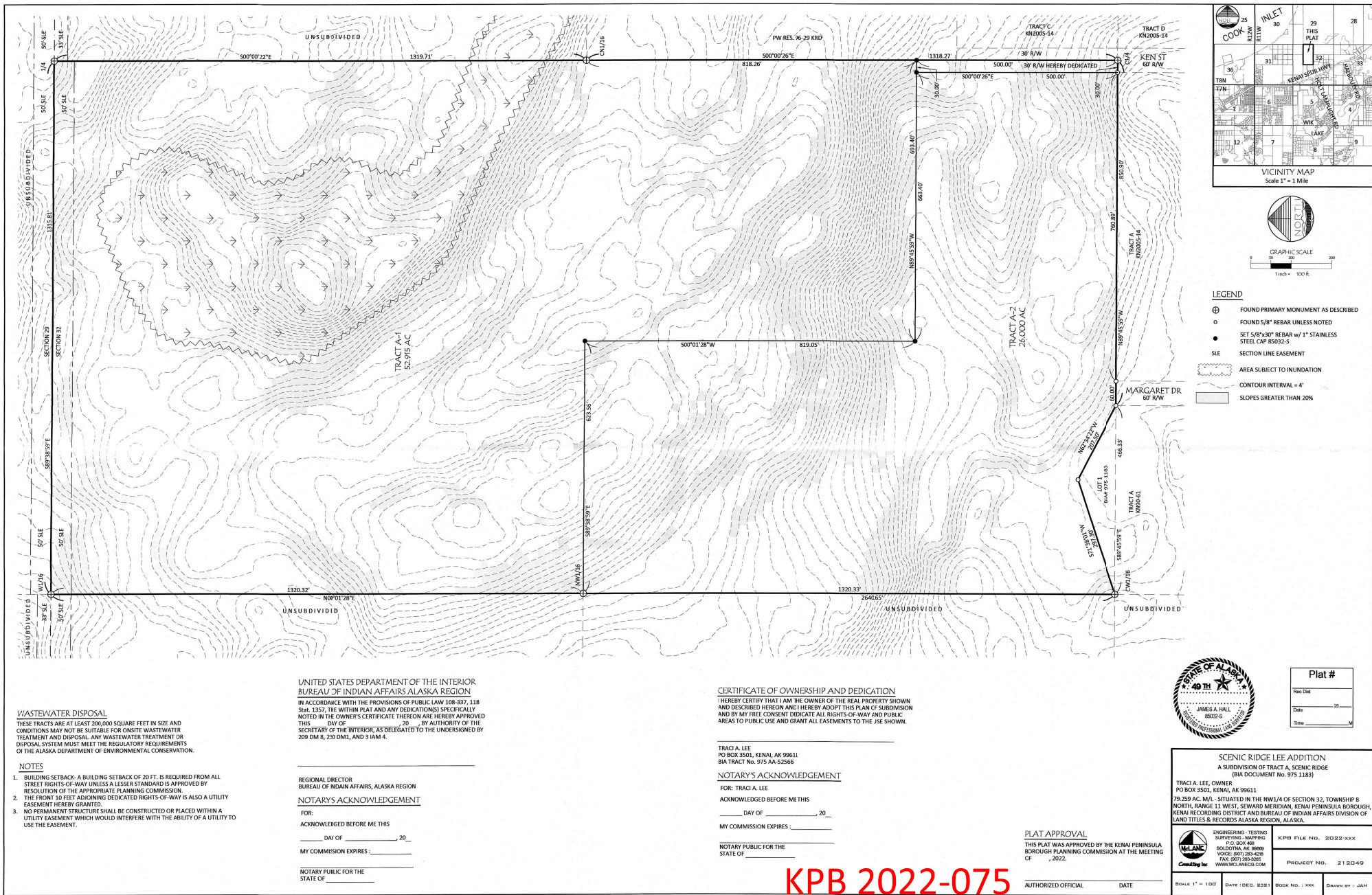


KPB File # 2022-075  
S32 T08N R11W  
Nikiski









KPB 2022-075



AGENDA ITEM E. NEW BUSINESS

ITEM 2 – SCENIC RIDGE LEE ADDITION

<b>KPB File No.</b>	2022-075
<b>Plat Committee Meeting:</b>	June 27, 2022
<b>Applicant / Owner:</b>	Bureau of Indian Affairs, Alaska and Traci Lee of Kenai, Alaska
<b>Surveyor:</b>	James Hall / McLane Consulting Inc.
<b>General Location:</b>	Margaret Drive / Nikiski

<b>Parent Parcel No.:</b>	013-145-02
<b>Legal Description:</b>	E1/2 NW1/4 of Section 32 Township 8 North Range 11 West
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On Site

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide an 80 acre parcel into two tracts and one lot. The tracts will be 26 and 52.915 acres. The lot will be 22,142 square feet. A matching 30 foot dedication is proposed.

**Location and Legal Access (existing and proposed):** The subdivision is located near mile 28.5 of the Kenai Spur Highway. Margaret Drive is a 60 foot wide right-of-way that provides access from Kenai Spur Highway. It will provide access to Tract A-2. There is a private non-exclusive easement for a 20 foot wide road through Tract A located to the south to provide access to the tract being subdivided. It appears that Margaret Drive is not constructed fully within the right-of-way and the easement is granting permission to travel outside of the dedication due to some terrain restraints.

Ken Street is a dedicated right-of-way with varying widths. The plat is proposing to dedicate a 500 foot length of Ken Street at 30 feet wide to provide a matching dedication to the eastern portion already dedicated and to continue north to provide access to the northern Tract. There are some concerns regarding if Ken Street connects to the Kenai Spur Highway. There is a deed with a description of land that has been labeled as access on past plats. The deed makes reference to a 100 foot wide northern projection of Lamplight Road. A legal determination will need to be made. If the owners wish to use this for access staff recommends they contact an attorney to help determine if there is legal access. If it is determined that there is not a connection the owners will need to be aware that they will not be able to access the property from Ken Street.

Access from section line easements are available. Rounds Road, Charlies Way, and section line easement provide access from the west and then the north to the northern proposed tract.

Neighbors have informed staff that there are many private travel ways in this area. They constructed these roads to be private and intentionally did not place them within the dedications. Prior to using any of the existing travel way, staff recommends the owners have any travel ways they intent to use surveyed prior to use to make sure they are not trespassing. If any of the private roads fall within dedications they may be used by members of the public.

Due to the size of the subdivision, the block is not compliant. Exceptions have been requested for dedications and block length.

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
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SOA DOT comments	No comment
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**Site Investigation:** There are some low wet areas present within the northeast portion of Tract A-1. They are depicted on the plat and **staff recommends the wetland depiction remain and the wetland determination note be added.**

Contours are shown on the plat with shading for the steep slopes. Steep areas are present throughout the plat. Some steep slopes are within the proposed dedication and appear to be approximately 22 percent. This dedication is to provide a match to already granted right-of-way. North of the proposed dedication the terrain gets steeper and has approximate slopes of 37 percent.

There are encroachments from the lot to the south onto the property. The encroachments will be contained within the proposed Lot 1.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	No objections

**Staff Analysis** This is a proposed plat of native lands. Bureau of Indian Affairs has already recorded a subdivision, BIA #975-1183, to create a Tract A and Lot 1 of Scenic Ridge. This was recorded at the federal level and not reviewed by the planning department. This is something that is allowable but the borough does not recognize the changes of property lines and we currently show the property as an aliquot piece of property.

Lot 1 was created to resolve some encroachment issues. The native allotment owners transferred the interest over for that lot but as the borough does not recognize that lot we have no record of an ownership change. Staff is requesting that Lot 1 of the BIA subdivision, Scenic Ridge, be included in this platting item to create the lot and once there is a deed recorded the owner of the lot may combine his property if chosen. Several exceptions will be required.

A soils report will not be required for the tracts and an exception has been requested for the lot. The correct plat notes will be required.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

**Utility Easements** The property had not been previously platted. 10 foot wide utility easements are proposed along the dedications.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	No comment
ENSTAR	No comments or recommendations
ACS	No objections
GCI	Approved as shown

**KPB department / agency review:**

Addressing	<p>Reviewer: Haws, Derek  Affected Addresses:  None</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names:  MARGARET DR  KEN ST</p> <p>Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Code Compliance	<p>Reviewer: Ogren, Eric  Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan  There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Conditional Land Use Permit  CLUP Resolution Number: 2015-09  CLUP Approval Date: 4/14/2015  Material Site Comments:  CLUP 2015-09 is located Southeast of subject parcel at PID 013-300-52.  Across Ken St.</p>
Assessing	<p>Reviewer: Wilcox, Adeena  Comments: No comment</p>

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

**STAFF RECOMMENDATIONS**  
**CORRECTIONS / EDITS**

*Depict the setback and utility easements or provide a typical detail.*



#### **KPB 20.25.070 – Form and contents required**

**Staff recommendation:** final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

**Staff recommendation:**

- Revise to be a subdivision of the E1/2 NW1/4 of Section 32, also known as Lot 1 and Tract A of Scenic Ridge (BIA Document No. 975 1183)

J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

**Staff recommendation:** Lot 1 will need to have a new lot number.

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#### **KPB 20.30 – Subdivision Design Requirements**

**Staff recommendation:** final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

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#### **KPB 20.40 – Wastewater Disposal**

**Staff recommendation:** final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

*Platting Staff Comments:* The tracts are larger than 200,000 square feet and do not require a wastewater review. Lot 1 – an exception has been requested. Add correct plat notes.

**Staff recommendation:** comply with 20.40.

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#### **KPB 20.60 – Final Plat**

**Staff recommendation:** final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

**Staff recommendation:** Acceptance of any dedications is required.

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

**Staff recommendation:** The boundary must be updated to include Lot 1.

20.60.180. Plat notes.

- A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** *Place the following notes on the plat.*

- *Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).*
- *Add a note for any exceptions granted.*
- *WASTEWATER DISPOSAL (Tracts A-1 and A-2): Lots which are at least 200,000 square feet in size may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.*
- *If the exception is granted, "WASTEWATER DISPOSAL (Lot 1): Conditions might not be suitable for onsite wastewater treatment and disposal systems. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation."*
- *Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable.*

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:** *Comply with 20.60.190.*

#### **EXCEPTIONS REQUESTED:**

#### **A. KPB 2030.030(A) – Proposed street layout-Requirements, continuation or projection of right-of-way and KPB 20.30.170 – Blocks-Length Requirements**

**Staff Discussion:** Staff grouped the two exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, two motions will be required.

Per code the continuation of Ken Street and Margaret Drive should continue into this subdivision. Additional rights-of-way would be required to bring the block into compliance.

The intent of this subdivision is to divide a large acreage parcel into two large acreage parcels. A dedication is proposed to match the current 30 foot width of Ken Street and to provide a connection to the northern tract. The plat has access from section line easements to the north. The subdivision has areas of steep terrain. The property would benefit at this time from not being required to dedicate rights-of-way or continuations to allow any future roads to be planned with an overall design that will allow the rights-of-way to be created in areas where construction feasibility will be higher.

#### **Findings:**

1. There are areas of steep terrain throughout the subdivision.
2. Access from the south may be limited due to access questions and concerns.
3. Developed roads to the west, along with section line easements, provide a northern access.
4. The tracts are proposed to be large acreage tracts.
5. There are wetlands present in the northeast portion of the subdivision.
6. The land could be subdivided again in the future.
7. Lot 1 will be accessed through Tract A to the south.
8. The block is incomplete and is longer than allowable limits.
9. Proper continuation and projections would require extensions of Ken Street and Margaret Drive.

**Staff reviewed the exception request and recommends granting approval.**

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 1-7 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 1-7 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 1-7 appear to support this standard.**

**B. KPB 20.30.200 – Lots-Minimum Size, KPB 2030.210 – Lots-Access to Street, and KPB 20.40 – Wastewater Disposal, requirement for soils analysis report** All for Lot 1

Staff Discussion: Staff grouped the three exceptions. If the planning commission wishes to discuss or vote on the code exceptions separately, three motions will be required.

Lot 1 was created by BIA to resolve encroachment issues from the owner of Tract A, KN 90-61. They have recorded a deed to transfer the ownership. The KPB does not recognize the property line change as it did not go through the platting process. Allowing these exceptions to be granted and to create Lot 1 will provide an opportunity for the property to get the title issues worked out. The owner of Tract A would be able to work on combining the lot with their current tract if they wish and all requirements for BIA are met.

**Findings:**

1. Lot 1 will be 22,142 square feet.
2. Lot 1 will be accessed through Tract A to the south.
3. Leaving Lot 1 from this plat will result in a gap in KPB parcel data and will leave a portion of land we do not recognize.
4. The BIA has recorded their own record at the federal level that created the lot.
5. The lot was created to fix an encroachment issue.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.



The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 2-5 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 2-5 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 2-5 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

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**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

**NOTE: 20.25.120. - REVIEW AND APPEAL.**

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

**A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

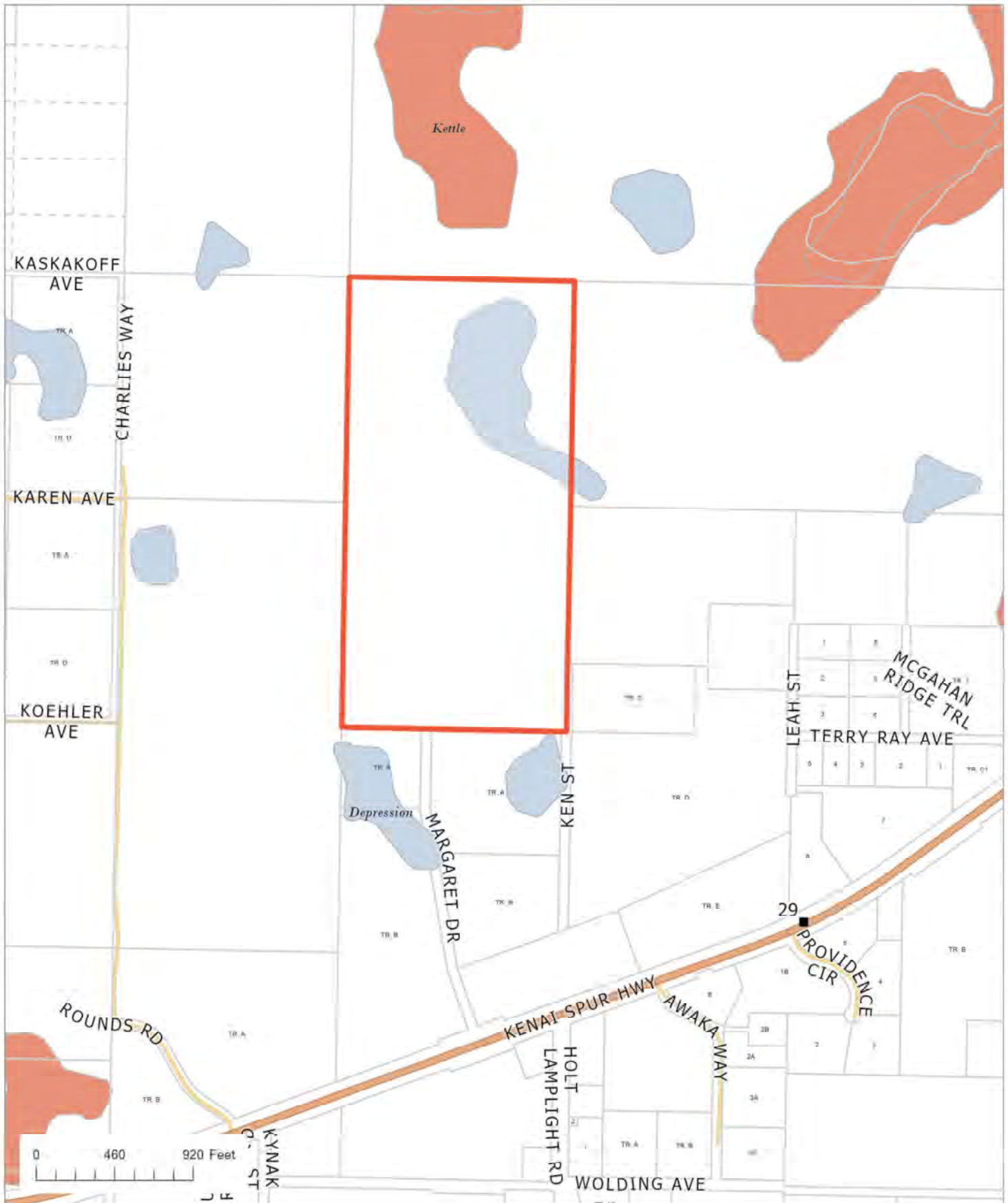
**END OF STAFF REPORT**

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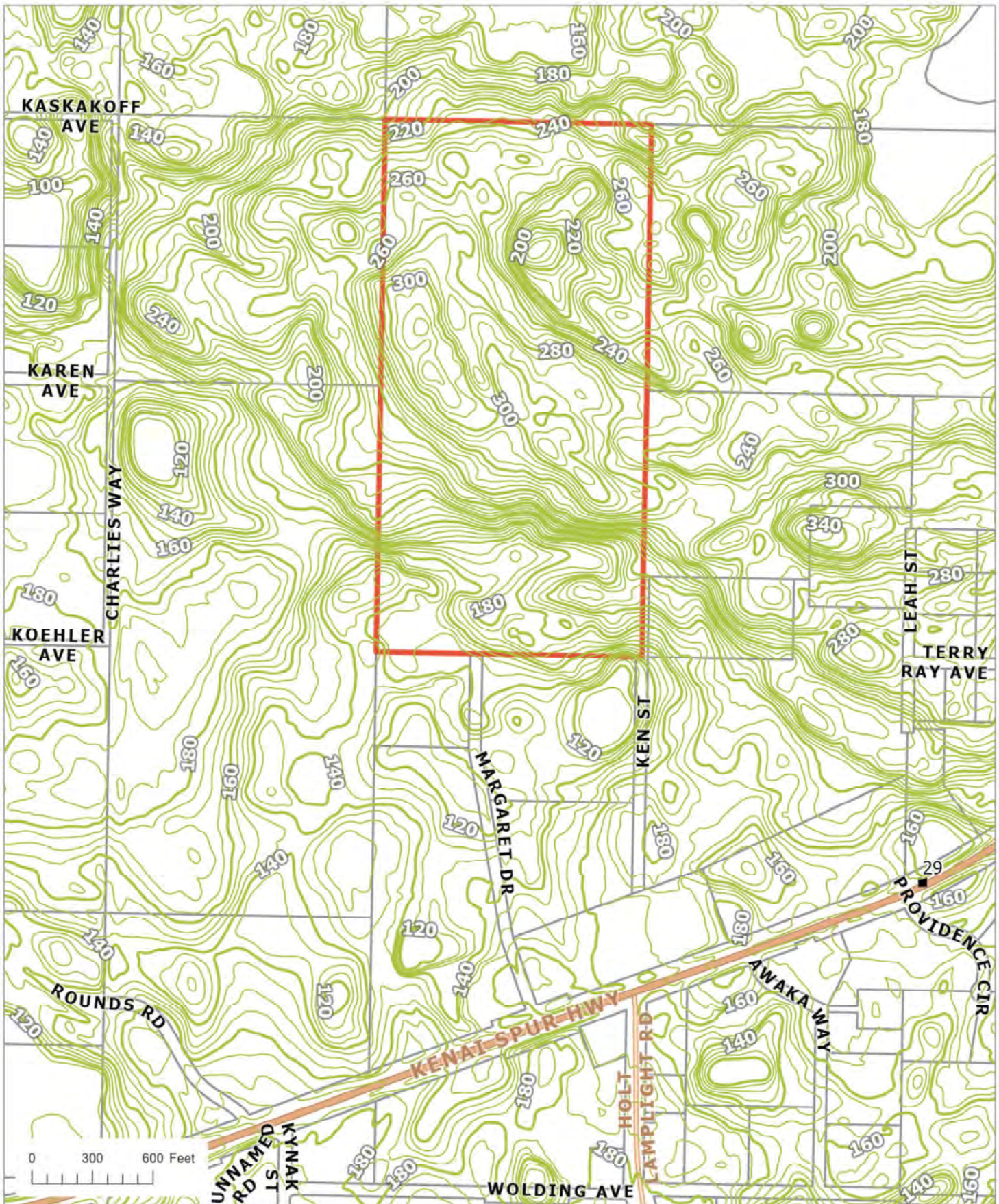














# DESK PACKET

*(ITEMS THAT CAME IN AFTER MEETING PACKET WAS POSTED)*

12. Scenic Ridge Lee Addition; KPB File 2022-075  
McLane Consulting Group / Bureau of Indian Affairs & Lee  
Location: Ken Street & Margaret Drive  
Nikiski Area

## Quinton, Madeleine

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**From:** Planning Dept,  
**Sent:** Monday, August 1, 2022 2:57 PM  
**To:** Piagentini, Vincent; Quinton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER> RE: KPB FILE 2022-075 Scenic Ridge Lee Addition Preliminary Plat

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**From:** Leah Jackson <mrsjacksonteaches@yahoo.com>  
**Sent:** Monday, August 1, 2022 2:44 PM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER> RE: KPB FILE 2022-075 Scenic Ridge Lee Addition Preliminary Plat

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

RE: KPB FILE 2022-075 Scenic Ridge Lee Addition Preliminary Plat

August 1, 2022

Dear Planning Commission Members,

My name is Leah Michele (McGahan) Jackson. I have lived south of the plat you are reviewing since I was born. I was born in 1975 when we lived on 5 acres my parents bought in the backside of my grandparent's homestead. My father, Richard C. McGahan cleared the building spot and built a road into that property, which has since been named Margaret Ave., after my grandmother. In 1976 my parents bought 80 acres to the north adjoining my grandparents homestead. My father again cleared a building spot, built a road in from the Kenai Spur Hwy., 3/10 of a mile north of my grandparent's place. That is where we moved when I was 3 years old. I married and my husband, Tony Jackson, and I built a house on the same hill where we have raised 9 children. As you can see, I understand the property and accesses involved, and the topography of the property since I have lived there all my life.

Ken St. which my grandfather built has no entrance from the Kenai Spur Hwy., and no exit. The 8.9 acres on the highway that Ken St. would need to access belonged to Ron and Louise Mika. He actually sold it to Ron, as it was part of the original homestead, and they had a handshake deal that allowed our family to cross it if we ever needed to do so. Handshake deals were common among the homesteaders on the North Road, who helped each other when needed. Ron has since passed, and the property belongs to Louise Mika now. There is other history on this piece of property that is too long to tell here, but Ron Mika and my grandfather built a post office there, and were going to name the town Gruening after Senator Ernest Gruening. The log building burnt down not long after being built. There is no recorded access across it to Ken St.

The topographical maps we have now were not available then either, but you can see now on the Borough Maps, the large jump in elevation which prohibits Ken St. from being extended.

The property my siblings and I own, and where my brother and my parents live runs along that border to the east. We live on the same hill east of my brother and parents.

There are other viable access routes to the proposed plat called Scenic Ridge Lee Addition.

As you can tell by the name, it's up on a ridge. My family calls our hill McGahan Ridge subdivision. We have no objection to Mrs. Lee obtaining this property. Our only objection is to the borough planning department even suggesting using Ken St. as an access to her property.

The best access would be to the west using section lines that come from established roads.

We are asking the Planning Commission Members to delete Ken St. as a suggested access in the recommendations from the borough.

Thank you,  
Leah Jackson

Leah Jackson  
52500 Leah St.  
Kenai, Alaska 99611



## Quinton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Tuesday, August 2, 2022 6:03 AM  
**To:** Piagentini, Vincent; Quinton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER>Attn Planning Commission

---

**From:** Geri Litzen <glitzen@outlook.com>  
**Sent:** Monday, August 1, 2022 10:12 PM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Attn Planning Commission

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

RE: KPB FILE NO. 2022-075  
SCENIC RIDGE LEE ADDITION PRELIMINARY PLAT

Dear Planning Commission Members:

I was raised on the property that my grandparents, Ken and Margaret McGahan homesteaded. Until I was 12, we lived on the end of what is now called Margaret Avenue, which was our driveway and built by my father, Richard C. McGahan. In fact, what is now the Kenai Spur Hwy. from mile 27 to their homestead was pushed in and built by my Dad when he was 18. After I was 12, we moved up to the top of the hill to the east on your plat. We enter from McGahan Ridge Trail, a private, surveyed and recorded drive to the east. I say all this so you will know that I am very familiar with the property.

My parents did an extensive search, along with the supervisor at the Alaska State Recorder's Office and were assured that there was never a recorded access from the Kenai Spur Hwy. to Ken St. They were considering seeking to vacate Ken St. at the time. However, the personnel at the K.P.B. Planning Department, including Planning Director, Max Best, also assured my parents that Ken St. could never be used to access the B.I.A. property to the north for 2 reasons: One was that there is no access to Ken St., and two was that now that the borough has topographical maps, the topography makes it impossible to build a road to the north.

My siblings and I are property owners who would be affected by the proposed access to the plat being considered.

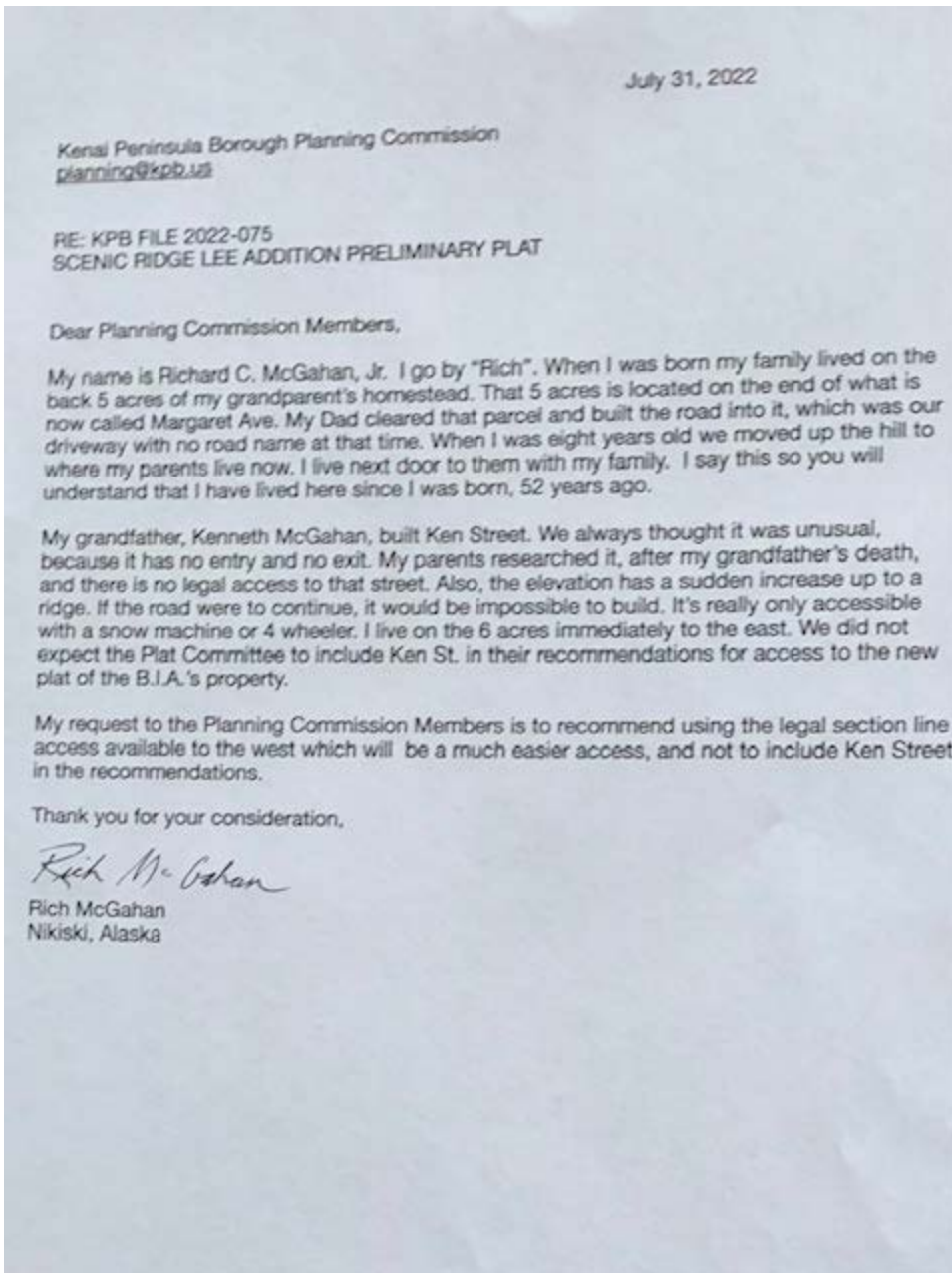
My request is that the Planning Commission recommend using the legal section line access available to the west.  
Thank you,

Geraldine K. Litzen  
Nikiski, Alaska

**From:** Karen Email  
**To:** [Planning Dept.](#)  
**Subject:** <EXTERNAL-SENDER>Resending: Re: KPB File 2022-075  
**Date:** Monday, August 1, 2022 3:52:56 PM

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



Sent from my iPhone

Kenai Peninsula Borough Planning Commission  
[planning@kpb.us](mailto:planning@kpb.us)

To whom it may concern:

I am a property owner affected by the proposed access to a proposed plat creating 2 tracts from one large parcel.

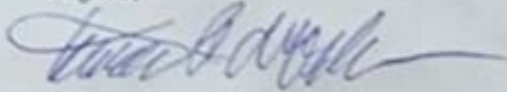
Re: KPB File No. 2022-075. Scenic Ridge Lee Addition Preliminary Plat

I was surprised that the Plat Committee did not delete Ken St. from consideration for an access to the proposed plat. I was raised on the property and Ken McGahan was my grandfather. There is no legal access to Ken St. from the Spur Highway. The north end of Ken St. topography is not suitable to build a road.

My parents, several years ago, were assured by the Kenai Peninsula Borough Planning Department that Ken St. could never be used as an access. My siblings and I own the property to the east of Ken St. and we would be impacted by any traffic.

My request is that the Planning Commission recommend using the legal access of section lines.

Signed,



Terry R. McGahan  
P.O. Box 2249  
Kenai, Alaska 99611



## **E. NEW BUSINESS**

13. Review of Plat Committee Decision  
East Oyster Cove Subdivision; KPB File 2022-047R1  
Fixed Height LLC / Alaska Mental Health Trust Authority  
Location: Oyster Cove REM SW  
Remote Area

REC. )  
JUL 08 2022

KPB PLANNING DEPT.

**Kenai Peninsula Borough Plat Committee  
Hearing and Review Procedures**

TO: Kenai Peninsula Borough Planning Director

FROM: Donald McClintock on behalf of Phillip Brudie

ADDRESS (Mailing): c/o Donald McClintock, Ashburn & Mason, P.C., 1227 W. 9th Ave. Ste. 200, Anchorage, Alaska 99501

Daytime Phone: 907-276-4331

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

**Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.**

**A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.**

**The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.**

**Cases reviewed shall be heard de novo by the planning commission acting as the platting board.**

(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-16-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: June 23, 2022

2. Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat of Smith Subdivision.)

East Oyster Cove Subdivision Preliminary Plat approved by Notice of Decision dated June 23, 2022 KPB 2022-047R1

3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision:

Please see attached letter dated 7-07-2022 from Ashburn & Mason, P.C.

4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

Plat denied and Petitioner to re-submit.

Signature **(ORIGINAL SIGNATURE REQUIRED)**

07/07/2022

Date



# ASHBURN & MASON P.C.

## LAWYERS

LAURA C. DULIC • MATTHEW T. FINDLEY • BENJAMIN J. FARKASH • EVA R. GARDNER • REBECCA E. LIPSON  
DONALD W. MCCLINTOCK III • JEFFREY W. ROBINSON • MICHAEL S. SCHECHTER • ASHLEY K. SUNDQUIST • THOMAS V. WANG  
OF COUNSEL JULIAN L. MASON III • A. WILLIAM SAUPE

July 7, 2022

Kenai Peninsula Borough  
Planning Commission  
144 N. Binkley street  
Soldotna, Alaska 99669

Re: Appeal to the Planning Commission Per Kenai Peninsula Borough Code  
Section 2.40.080; East Oyster Cove Subdivision Preliminary Plat  
KPB File Number 2022-047R1

Dear Commissioners:

This is a request for de novo review of the platting committee approval of the above plat pursuant to KPB 2.40.080. This firm represents Phil Brudie who submitted comments at both hearings scheduled on this plat.

### A. Background.

This matter was heard on June 13, 2022. The Notice of Decision was issued on June 23, 2022. This matter is timely filed on June 8, 2022. The hearing was the second scheduled on this plat. The first was heard on May 9<sup>th</sup> when the plat was heard and failed due to a lack of a second. The community presented many significant comments at the hearing. No contact was made by the petitioner to try to resolve any of the comments at hearing with those who spoke. Instead, a revised plat was submitted which included several new access easements along the water frontage of several of the lots.

The plat should be denied (to be resubmitted), or additional conditions to plat be imposed for the following reasons:

1. The Plat should reflect existing drinking water appropriations of record so that lot purchasers will know that their water rights are subject to prior rights and also to avoid polluting known drinking water sources. KPB Code 20.01.010; and KPB 20.40.060.

Planning Commission

Page 2

July 7, 2022

2. The access easements as drawn are not practical, interfere with the most likely building sites, and do not provide practical access to the lots. No findings were made that addressed whether water access to all of the lots is both practical and feasible. KPB 20.30.050.B.1.
3. The record of decision makes no actual finding adopting any of the staff recommendations. Several of those are significant to avoid contaminating the waters of this lovely area. KPB 20.10.120.

B. Discussion.

1. Water Rights.

Phil Brudie lives in Homer and has a recreational cabin adjacent to the proposed Lot 1. At both hearings he submitted evidence of his Certificate of Appropriation (LAS 11231) recorded at Book 30 Page 223 Seldovia Recording District on November 21, 1988. He perfected his rights to water coming of the petitioned land in the vicinity of Lots 1 and 2 of the proposed plat. The actual water course is not mapped but likely affects Lot 3 and uphill Lots 10 and 11. He and two other neighbors have relied on that water source for safe drinking water.

The right to appropriate water is memorialized in Article 8, Section 13 of the Alaska Constitution.<sup>1</sup> Brudie has a prior right to the waters flowing from this water source over the other future users of the lots to be created by this proposed plat.<sup>2</sup>

Brudie's request was to have this right memorialized in the plat notes and to require that the stream be surveyed and located on the plat. There are two rights implicated by this requirement. First, it would put the future owners of the lots that are appurtenant to the stream on notice that their rights to appropriate the water are subject to Brudie's prior rights. Putting this information on the plat can help avoid future disputes and confusion. Second, it implicates serious public safety concerns so that all owners in the area of the stream are on notice of its location and the need to locate the sewage

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<sup>1</sup> "All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right...."

<sup>2</sup> AS 46.15.050 (a) "Priority of appropriation gives prior right."

Planning Commission

Page 3

July 7, 2022

systems at the requisite DEC distances from the stream and its outfall and collection by Brudie.

The Record of Decision makes no findings on this request. There appeared to be a belief by staff that these actions are not required by the Kenai Code. However, KPB 20.01.010 contemplates the purpose of the Subdivision Code is “to protect and improve the health, safety and general welfare of the people.” In this case staff recommended that the marine outfall provisions of KPB 20.40.060 be complied with and the plat state that the marine outfalls for each lot meet the requirements of the Alaska Department of Environmental Conservation. However, without the notice of the appropriation of drinking water on the plat and the location of the stream on the plat, how will either the ADEC or the land owners know whether they are building their waste systems too close to the stream or the outfall where the water is collected? 18AAC 72.020(c) requires a 100-foot separation of the waste system from the drinking water source.

This simple requirement is appropriate to place on the developer to prevent future injury and conflict. Not requiring the information on the plat will allow either the unwary or the unscrupulous to encroach on these setbacks. Not requiring it now will invite future and unnecessary disputes. The following is a reasonable requirement to impose on the developer: Provide a plat note noting recorded (Brudie’s and any others of record) prior appropriation rights to the water and also requiring the stream outfall and water course be surveyed and noted on the plat with a requirement that any marine outfall system be 100 feet from the stream and its outfall.

## 2. Access and Easements.

The staff recommended that water access be allowed and that land access and street layout waivers be granted. The 6 findings in the Notice of Decision for this waiver<sup>3</sup> do not address the real question—do all of the lots have “practical and feasible” access by the ocean or by the easements that are created? No findings were made nor were any tangible facts presented that the system of water access with easements will actually be effective.

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<sup>3</sup> Findings # 6 and 7, that the land is owned by the Mental Health Land Trust, are not even relevant as the Trust is not exempt from the jurisdiction of the Platting Board.



Planning Commission

Page 4

July 7, 2022

KPB 20.30.050 A requires that every plat have an access plan. The legal access requirement can be waived under KPB 20.30.050.B.1 upon a finding that “no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, ...” The record is devoid of the necessary finding and support for a finding that water access is both practical and feasible. While the applicant focuses on the fact that this is remote and lacks roads, it fails to show how each lot will have practical and feasible access to the water. One wonders why the applicant would not want this as well rather than its blanket easements proposed that may enhance the largest number of lots, but not necessarily meet the intent of the Code.

Looking at the plat and the aerial photo submitted shows the following facts. These points were made by testimony and written records submitted to the Plat committee.<sup>4</sup> Lots 5 through 15 abut Little Jakalof Bay. While the plat was not submitted superimposed on the aerial, a simple review of the aerial photos, as corroborated by the neighbors that the water frontage of several lots is actually a cliff with no real beach or access to the uplands. Merely being adjacent to the ocean does not mean that you have “practical and feasible” access. The petitioner failed to provide “credible and convincing evidence” that each of these lots have practical and feasible access to the water.

Second, to have meaningful practical and feasible access to a parcel from the ocean, one needs to show there is adequate moorage. This includes both a beach at least at low tide to run a running line or beach a skiff, as well as a mooring buoy to secure the boats. Nothing is in the record for this. This is significant especially with Lots 1-4, which are on Kasitsna Bay (known locally as Quiet Cove) which drains at low tide and whose only moorage is already granted to the current occupants of the cove by federal permit.

The petitioner’s solution to these issues was to draw a 50-foot access easement along the coast line of Lots 9 through 15. Again, merely drawing lines on a map does not make it practical and feasible in the real world and this plat is virtually guaranteed to cause generations of conflict and strife. First, the easement locations do not answer the question whether moorage and real access (rather than cliffs) are workable for Lots 5-8.

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<sup>4</sup> It is noteworthy that there is no access to any of this material from the Borough staff. A records request was submitted but as of yet, on the eve of this appeal, it is not ready.

Planning Commission

Page 5

July 7, 2022

Second, the 50-foot easement is virtually guaranteed to conflict with the desires of the future landowners, who will want to build close to the water for the views and the proximity to their point of access. Finally, no evidence was presented to show that the access for Lots 13 and 14, which is by an estuary tidal easement from Little Tutka Bay, would really work as real access. If it does not, then access would only be allowed along the unimproved 50-foot access easement imposed on Lot 15, to these two non-water frontage lots. Again, the potential of future “Hatfield and McCoy” conflicts is significant.

It is not too much to expect to preserve the integrity of the land offerings in the borough to ask the petitioner to lay out a plat with proven access and moorage sites for each lot. Rather than the lazy solution of a blanket 50-foot access easement, a better solution would be to show which lots would need to share beaches and moorage and provide specific easements to those lots. It would be far more efficient, cause less future conflict, and in fact promote the health, welfare and general safety of its citizens. It also would improve the value of the lots and save those who buy thinking they have a lovely marine lot only to find, they have no moorage, not real access from the water and very irritable neighbors who have encroached on their access easements.

3. Staff Recommendations are not approved in the Notice of Decision.

The staff made numerous recommendations for the plat. The assumption is that the recommendations were accepted. However, the Notice of Decision only documents the access (street layout) waiver and not the adoption of those recommendations. As a result, there is no record that the community can look to as the plat proceeds to implementation. While KPB 20.10.120 does not specify contents of the Notice, it is axiomatic that a Decision should set out everything that was decided, so people do not have to guess or assume. The Notice should be complete as a matter of good practice. Some of those, such as the ADEC plat note requirements are important to this appeal, as well.

4. Conclusion.

The current plat should be denied. The petitioner can resubmit. There is a wealth of knowledge in this neighborhood that the petitioner could use if it only chose to talk to those who spent the time and money to make 2 trips to the plat hearings. The result may

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Planning Commission

Page 6

July 7, 2022

or may not have the same number of lots, but the lots developed would be useful and attractive places for the citizens of the borough to buy and enjoy.

Sincerely,

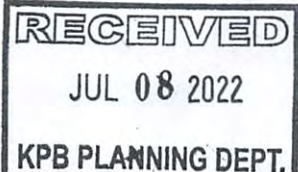
ASHBURN & MASON, P.C.



Donald W. McClintock



Kenai Peninsula Borough Plat Committee  
Hearing and Review Procedures



TO: Kenai Peninsula Borough Planning Director

FROM: TAMARA HOPKINS

ADDRESS (Mailing): 60112 NORDBY AVE  
HOMER AK 99603

Daytime Phone: 907.399.1853

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.

A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.

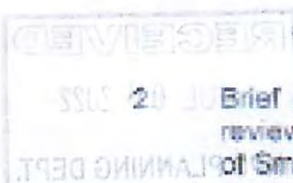
The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

Cases reviewed shall be heard de novo by the planning commission acting as the platting board.

(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-18-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: JUNE 23, 2022



Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat South Subdivision)

conditional approval of  
preliminary plat for  
East Oyster Cove  
KPB File number 2022-047R1

3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision:

As per KPB 20.30.050 The 40ft access from Little Tutka side is platted through tidal wetlands. This will create conflict with lots 15, 16 of South Kachemak AK subdivision.

4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

Little Tutka easement should be vacated.  
The access to lots 10, 11, 12, 15 unrealistic at best.

Tamara D. Hopkins  
Signature (ORIGINAL SIGNATURE REQUIRED)

7.8.2022  
Date

## **Kenai Peninsula Borough Plat Committee Hearing and Review Procedures**

TO: Kenai Peninsula Borough Planning Director

FROM: William A. Lanier

ADDRESS (Mailing): 89 S 750 E, Bountiful, Utah 84010

Daytime Phone: 503-931-9131

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

**Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.**

**A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.**

**The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.**

**Cases reviewed shall be heard de novo by the planning commission acting as the platting board.**

**(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-16-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))**

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: June 23, 2022



2. Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat of Smith Subdivision.)

The KPB Plat Committee granted conditional approval of East Oyster Cove Subdivision Preliminary Plat with KPB file number 2022-047R1

3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision:

The plat does not describe approximate locations of low wet areas or proposed means of supplying water, as required by KPB code 20.25

Additionally, discussion among the voting members at the June 13, 2022 meeting bordered on coercion for members to change their vote. This was inappropriate.

Of note: the posted minutes from the June 13, 2022 meeting are inaccurate, as they indicate an initial 4-to-0 vote on the exemption (should be 2:2).

4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

The current plat should be denied. The petitioner can resubmit a revised plat that meets the requirements. Additionally, voting members should feel free to vote as they feel is appropriate, without coercion from other voting members.

Signature (ORIGINAL SIGNATURE REQUIRED)

7/8/2022

Date

**Kenai Peninsula Borough Plat Committee  
Hearing and Review Procedures**

TO: Kenai Peninsula Borough Planning Director

FROM: Donald Fell & Mary Ann Fell Joint Revocable Trust

ADDRESS (Mailing): PO Box 615, Homer, Alaska 99603

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Daytime Phone: (907) 235-8038

Hearing and review procedures of Plat Committee decisions are governed by KPB 2.40.080.

**Review of a decision of the plat committee may be heard by the planning commission acting as the platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within 10 days after notification of the decision of the plat committee by personal service or service by mail.**

**A request for review may be filed by any person or agency that participated at the plat committee hearing either by written or oral presentation. The request must have an original signature; filing electronically or by facsimile is prohibited.**

**The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.**

**Cases reviewed shall be heard de novo by the planning commission acting as the platting board.**

**(Ord. No. 2007-34, § 1, 11-20-07; Ord. No. 2002-07, § 1, 4-16-02; Ord. No. 93-51, § 2, 1993; Ord. No. 73-34, §§ 1(part) and 2(part), 1973; KPC § 20.10.005(h))**

I am requesting a review of a decision of the Kenai Peninsula Borough Plat Committee as set forth below.

1. Date of written notice of Plat Committee decision: 8 July 2022

2. Brief description of the Plat Committee decision for which you are requesting review by the Planning Commission. (Example: Approval of the preliminary plat of Smith Subdivision.)

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This is a request for de novo review of the platting committee approval of the East

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Quiet Cove Subdivision Preliminary Plat KPB File Number 2022-047R1 pursuant to

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Kenai Peninsula Borough Code Section 2.40.080.

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3. List errors in the Committee's findings of fact or decision(s), including the sections of the borough code violated by the decision:

1. Water Rights - Prior appropriation rights to the water should be noted. Stream outfall and water should be surveyed and noted.

2. Access and Easement - Not practical and feasible and record is devoid of the necessary findings and support.

3. Staff recommendations are not approved in the Notice of Decision and as a result there is no record.

4. State the relief you are requesting from the Planning Commission including whether you want the Plat Committee's decision reversed or modified.

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The current plat should be denied.

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*Marey Can Fell*

Signature (ORIGINAL SIGNATURE REQUIRED)

8 July 2022

Date





# Planning Department

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

Charlie Pierce  
Borough Mayor

June 23, 2022

**NOTICE OF DECISION  
KENAI PENINSULA BOROUGH PLAT COMMITTEE  
MEETING OF JUNE 13, 2022**

Re: East Oyster Cove Subdivision Preliminary Plat  
KPB File Number: 2022-047R1

The Plat Committee reviewed and granted conditional approval of the subject preliminary plat during their regularly scheduled meeting of June 13, 2022 based on the findings that the preliminary plat meets the requirements of the Kenai Peninsula Borough Code 20.25, 20.30, 20.40 and must comply with 20.60.

**AMENDMENT MOTION**

An amendment motion to grant exception to KPB 20.30.030 – proposed street layout requirements, passed by unanimous vote based on the following findings of fact.

*Findings*

4. This is a remote area.
5. Only access at this time is by water.
6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
7. The owner of this subdivision is Alaska Mental Health Trust.
8. Utility easements are being requested and will need to be granted.
9. Public access easements are proposed from Little Jakalof Bay to all lots within the subdivision.

A party of record may request that a decision of the Plat Committee be reviewed by the Planning Commission by filing a written request within 15 days of notification of the decision in accordance with KPB 2.40.080.

For additional information please contact the Planning Department, 907-714-2200 (1-800-478-4441 toll free within the Kenai Peninsula Borough).

Notice was emailed on June 23, 2022 to:

Buku <buku@fixedheight.com>; 'Andre' [Andre@fixedheight.com](mailto:Andre@fixedheight.com)

Notice was mailed on June 23, 2022 to:

Alaska Mental Health Trust Authority  
3745 Community Park Loop Ste 200  
Anchorage, AK 99508-3468

Alaska Mental Health Trust Authority  
Jusdi Warner  
2600 Cordova Street, Suite 201  
Anchorage, AK 99503

Philip Brudie  
PO Box 111  
Homer, AK 99603

Gregory Welpton and  
Shannyn Moore  
PO Box RDO  
Homer, AK 99603-8999

Jakolof Bay Coyle Family Trust  
Daniel, Maurice, Jenny, and Jonathan Coyle  
938 P Street  
Anchorage, AK 99501

Dan and Zoey Coyle  
350 Mountain View Drive  
Homer, AK 99603

Doug and Margaret Kossler  
2131 Lord Baranof Drive  
Anchorage, AK 99517

William and Janelle Lanier  
89 S 750 E  
Bountiful, UT 84010

Kimberly Lanier  
2611 Shepherdia Dr  
Anchorage, AK 99508

Dennis and Lisa Poirier  
11819 Rockridge Drive,

Anchorage, AK 99516

George and Marilyn Rhyneer  
10500 Old Eagle River Road  
Eagle River, AK 99577

Mark Pfeffer  
1130 W 6<sup>th</sup> Avenue Ste 110  
Anchorage, AK 99501

Tom and Tammy Hopkins  
60112 Nordby Avenue  
Homer, AK 99603

Donald and Mary Ann Fell  
PO Box 615  
Homer, AK 99603

Sharon Whytal  
PO Box 1529  
Homer, AK 99603-1529

Ricarda Lebman and  
David Mesiar  
15740 Wind Song Drive  
Anchorage, AK 99516

Joy and Lamar Ballard  
6221 Petersburg Street  
Anchorage, AK 99507



14. Shannon Martin; Soldotna, AK
15. John Gaule; PO Box 62, Moose Pass, AK 99631

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Martin moved, seconded by Commissioner Hooper to grant preliminary approval to ROW Acquisition Seward Hwy. MP 25.5 to 36 Trial River to Sterling WYE Rehabilitation, based on staff recommendations and compliance to borough code.

Commissioner Venuti noted that based on the testimony from the community there seems to be a failure of adequate communication. There is also a suggestion to postpone action on this item. He asked Mr. Bentz what would be the effect on this project. Mr. Bentz replied it would cause a delay in securing needed funding to move the project forward. It would delay the negotiations with area property owners and the ability to address their concerns.

**AMENDMENT MOTION:** Commissioner Martin moved, seconded by Commissioner Venuti to postpone action on this item until the July 18, 2022 Planning Commission meeting.

Commissioner Brantley stated he believes what is going on here is a misunderstanding. He understands that AK DOT is working to secure funding so that they can begin negotiations with effected landowners; which in turn would result in more details for the public. He is not sure how this situation will be resolved by postponing action on this item, but he will support the postponement request.

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

**AMENDMENT MOTION PASSED BY UNANIMOUS VOTE**

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

**ITEM E11 - EAST OYSTER COVE SUBDIVISION**

<b>KPB File No.</b>	2022-047R1
<b>Plat Committee Meeting:</b>	June 13, 2022
<b>Applicant / Owner:</b>	Alaska Mental Health Trust of Anchorage, AK
<b>Surveyor:</b>	Andre Kaeppele, Buku Saliz / Fixed Height LLC
<b>General Location:</b>	Remote, Oyster Cove, Kasitsna Bay

<b>Parent Parcel No.:</b>	191-170-70 and 191-170-87
<b>Legal Description:</b>	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On site

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley open the meeting for public comment.

Andre Koeppele, Fixed Height, LLC, Surveyor: 225 W. 23<sup>rd</sup> Ave., Anchorage, AK 99503: Mr. Koeppele spoke in support of the preliminary approval of this plat. He stated there had been some revisions to the plat from the last meeting. One change was the total number of lots created by the plat was reduced by one. He noted that this is privately owned land and the landowners have a right to subdivide their land according to borough code.

Numerous individuals spoke in opposition to the preliminary approval of this plat. Their concerns have not changed from those expressed at the May 9, 2022 plat committee meeting. Some of the concerns expressed were, water right issues, the negative effect on the environment due to the significant increase of

lots into the area, inadequate access for the proposed new lots and lack of communication with the area residents. Those who spoke in opposition to granting preliminary approval to the plat were:

1. Philip Brudie, P.O. Box 111, Homer, AK 99603
2. Doug Kossler; 2131 Baranoff Dr., Anchorage, AK 99517
3. Zoey Coyle; 350 Mountain View Dr., Homer, AK 99603
4. Mark Pfeffer; 1130 W. 6<sup>th</sup> Ave., #110, Anchorage, AK 99501 (letter read by Tamara Hopkins)
5. Tom Hopkins; 60112 Nordby Ave., Homer, AK 99603
6. Dan Coyle; 350 Mountain View Dr., Homer, AK 99603
7. William Lanier; 89 S 750 E, Bountiful, UT 84010

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

**MOTION:** Commissioner Martin moved, seconded by Commissioner Hooper, to grant preliminary approval to East Oyster Cove Subdivision, based on staff recommendations and compliance to borough code.

**AMENDMENT MOTION:** Commissioner Martin moved, seconded by Commissioner Hooper, to grant exception request to KPB 20.30.030 – Proposed Street Layouts, citing findings 4-9 in support of standards one, two and three.

Commissioner Brantley noted that this exception request is in line with other communities similar to this, remote properties without platted streets. These type of exception requests have been routinely granted in the past so he will be supporting this exception request.

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

**AMENDMENT MOTION FAILED- TIED VOTE**

Yes	4	Brantley, Martin
No	0	Hooper, Venuti

Commissioner Venuti stated he agrees Kachemak Bay is a magical & beautiful place and understands the concerns expressed by the public to this plat. He understands that they do not want to see change, but change is inevitable. He then stated that it was hard for him to support this issue.

Ms. Hindman informed the committee that while they do not have to cite findings to support their denial of an exception request, you are just requiring the petitioner to comply with code. However, she wanted them to understand that by approving the preliminary plat you will be requiring the petitioner to dedicate roads instead of public access easements and that each lot will have to front a dedicated right-of-way.

Commissioner Brantley then stated that he understands that this is a remote area and that it would not be practical to all these lots to front a right-of-way. He then asked if the committee, with this additional information, would like to reconsider the exception request. There was no response.

Commissioner Brantley noted that plats are quasi-judicial matters. That it doesn't really matter so much how they feel about the request but that it complies with code. He understands the objections by the public to this plat, if he had a cabin in this area, he personally would not want these new lots. If this plat is denied the committee will have to come up with findings based in code to support the denial. Code does not require landowners wanting to subdivide their properties to first talk with their neighbors. He then noted the plat meets the code requirements and the he will be supporting preliminary approval of the plat. If this plat were denied and the petitioners appealed the decision, there would be nothing in code to support the denial and the decision would be overturned.

Borough Deputy Attorney Steinhage reminded the committee before they took their vote, AS 29.40.110(b) states the planning authority shall state in writing the findings for disapproval of a plat. Not knowing which way, the vote would go, he wanted to make sure the committee understood that if they denied the plat, they will need to provide good findings that can be reduced into writing

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

**MOTION PASSED AS AMENDED BY UNANIMOUS VOTE**

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

Commissioner Brantley stated that now that the motion has passed, he believed it would be appropriate to entertain a reconsideration for the exception request.

**RECONSIDERATION:** Commissioner Hooper moved and was seconded by Commissioner Venuti to reconsider the exception request to KPB 20.30.030 – Proposed Street Layouts, citing findings 4-9 in support of standards one, two and three.

Commissioner Martin stated he understands that it is disruptive to see all these new lots come in to this quiet and pristine area. He believes granting this exception request will be less destructive and have less of an environmental impact to the area. Building rights-of-way would require that lots of trees be cut down which would cause more harm to the environment. He will be supporting this exception request.

Commissioner Hooper encouraged the other area landowners to contact the AK Mental Health Trust Authority to see if they can negotiate a proposal to remedy some of their concerns.

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

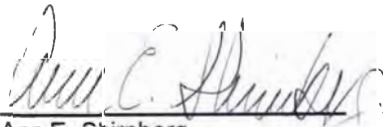
**RECONSIDERATION MOTION PASSED AS AMENDED BY UNANIMOUS VOTE**

Yes	4	Brantley, Hooper, Martin, Venuti
No	0	

**F. PUBLIC COMMENT - None**

**G. ADJOURNMENT**

Commissioner Martin moved to adjourn the meeting 8:55 P.M.

  
Ann E. Shimberg  
Administrative Assistant



AGENDA ITEM E. NEW BUSINESS

ITEM E13 - EAST OYSTER COVE SUBDIVISION

<b>KPB File No.</b>	2022-047R1
<b>Planning Commission Meeting:</b>	August 8, 2022
<b>Applicant / Owner:</b>	Alaska Mental Health Trust of Anchorage, AK
<b>Surveyor:</b>	Andre Kaeppele, Buku Saliz / Fixed Height LLC
<b>General Location:</b>	Remote, Oyster Cove, Kasitsna Bay

<b>Parent Parcel No.:</b>	191-170-70 and 191-170-87
<b>Legal Description:</b>	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On site

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STAFF REPORT

**Summary**

This item was originally heard by the Plat Committee on May 9, 2022. The Plat Committee did not take action on the plat due to lack of a second on the motion. Per KPB Code 20.25.100, once a completed application has been received the Planning Commission shall approve, conditionally approve, or disapprove the plat by determining if the plat complies with KPB Code requirements. This decision must be granted within 60 days of a completed application. Per Alaska Statutes, the platting authority must approve or disapprove a plat within 60 days and unless the applicant consents to an extension of time, the plat would be considered approved and the certificate of approval may be issued on demand if action was not taken within the required timeframe. Staff contacted the surveyor to discuss scheduling for the May 23, 2022 meeting. The turnaround time would allow for staff to provide the required notifications and for the Plat Committee to make a decision within 60 days. The surveyor requested the June 13, 2022 meeting to allow time to address some of the concerns brought up during the original meeting and to update their design. At the June 13, 2022 Kenai Peninsula Borough Plat Committee meeting a revised preliminary plat was reviewed.

An exception had been requested to KPB Code 20.30.030, proposed street layouts. This is remote property with water access and the owners requested to not dedicate rights-of-way but to grant public access easements. The exception originally failed. Staff noted to the committee that if the preliminary plat was approved they would be required to dedicated 60 foot wide rights-of-way within the subdivision. Staff also noted that findings to deny an exception are not required but do help support their decision if challenged. Discussions began on the preliminary plat. Not knowing the results of the vote, staff directed the commissioners to KPB 20.25.100, *"If denied, the decision shall make reference to the specific sections of this title with which the submitted plat does not comply."* This was to let the plat committee know that they may deny this platting action but they must specify the portion of code that it does not comply. The plat received approval. A reconsideration of the exception request was given. Several of the commissioners noted that if the plat was to go through, not requiring dedications would better fit the area. The exception was then granted.

Several requests for review of a Kenai Peninsula Plat Committee decision were received and filed in accordance with KPB 2.40.080. The requests are presented in the packet.

Per KPB 2.40.080(C), the Planning Commission sitting as the platting board reviews cases *de novo*. This means the Planning Commission is not required to give deference to the plat committee's decision. The packet will contain the information presented to the Plat Committee and any additional information or comments that have been received in response to the scheduling of this meeting. Following is the staff report as prepared for the June 13, 2022 meeting.

Please note that under KPB 20.25.120, **A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

## Report from June 13, 2022 Plat Committee Meeting

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide two parcels that are approximately 38 acres into sixteen lots. The lots will range in size from 1.508 acres to 4.631 acres. 50 foot wide public access easements are proposed to provide alternate access to lots.

**Location and Legal Access (existing and proposed):** This is considered a remote location. It is located along Oyster Cove in the Kasitsna Bay. This is along the eastern side of Oster Cove. On the western side of the cove is the Oyster Cove Airport. These lots will be water access only.

A large acreage parcel is present to the south. Adjacent to the south, east, and southeast of that parcel is more large acreage parcels. They are all owned by Alaska Mental Health Trust. The closest right-of-way is Jakolof Bay Road, about 2 miles south of the subdivision. If the large acreage parcels are ever subdivided they may be able to provide dedicated access to the various lots located along the coast of the bays in the area. KPB information has found that the status of section line easements through the large acreage tracts is not clear. Any attempt to use section lines for access will require a determination by the State of Alaska.

South Kachemak Alaska Subdivision, Plat SL 67-85, indicated a 40 foot wide access easement, centered on the share lot line of Lot 15 and Lot 16 that would provide future access to lands to the west from Little Tutka Bay. This plat is proposing to provide a 50 foot wide access easement at the end of that access easement to provide a continuation to Little Jakalof Bay. Additional 50 foot public access easements are proposed along the shore of Lots 9-13 and Lot 16. That access easement continues to the north centered on shared lot lines to provide additional access to Lots 5-8. The easements then run east-west to provide additional access to Lots 1-4 and 9-11.

Due to the location, large acreage tracts, and no dedications within the area, the block length is not compliant.

KPB Code 20.30.050, Legal Access, requires that legal access exists to the boundary of the subdivision. It is currently only accessed by water. Staff believes the requirements of 20.30.050(B) have been met as there is permanent public access by water. A plat note is present that states the current access limitations. **Staff recommends the plat committee concur to waive the legal access requirements of KPB 20.30.050(A).**

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: Per RSA standards, a 60' ROW is required for maintenance.
SOA DOT comments	No comment

**Site Investigation:** KPB GIS does not have any wetland or contour information for the area. Per older imagery the land appears to not contain any low wet areas except around the cove and bay. Within proposed Lot 14 and Lot 15 there appears some low wet areas may be present within the access easement area from Little Tutka Bay. The appropriate note regarding wetland determinations is present. **Staff recommends any low wet areas or steep terrain discovered during the field survey be depicted and labeled on the final plat.**

This appears to be property with lots of vegetation. No improvements appear on the older imagery that is available. KPB Assessing notes that the property is vacant.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments  B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
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	C. State Parks Reviewer: Russell, Pam Comments: No Comments
State of Alaska Fish and Game	No comments

**Staff Analysis** The proposed plat being reviewed was originally heard by the Plat Committee on May 9, 2022. The Plat Committee did not take action on that plat due to lack of a second on the motion. Per KPB Code 20.25.100, once a completed application has been received the Planning Commission shall approve, conditionally approve, or disapprove the plat by determining if the plat complies with KPB Code requirements. This decision must be granted within 60 days of a completed application. Per Alaska Statutes, the platting authority must approve or disapprove a plat within 60 days and unless the applicant consents to an extension of time, the plat would be considered approved and the certificate of approval may be issued on demand if action was not taken within the required timeframe. Staff contacted the surveyor to discuss scheduling for the May 23, 2022 meeting. The turnaround time would allow for staff to provide the required notifications and for the Plat Committee to make a decision within 60 days. The surveyor requested the June 13, 2022 meeting to allow time to address some of the concerns brought up during the original meeting and to update their design. What is being reviewed at this time is a revision of the original submittal.

The revision has incorporated some of the recommended changes and corrections made by staff within the original staff report. The lot numbers have had some of their numbers changed at staff's request. Concerns were addressed regarding some of the steep terrain along the water for some of the lots. Additionally, the prior existing access easement from the east contained some low wet areas that could cause access issues. In order to address both of those issues additional public access easements are proposed in addition to the previously proposed easements along Little Jakalof Bay. All lots will now have access to a 50 foot public access easement in addition to their water access. Lots 14 and 15 will now have another route if the already existing access easement is not sufficient.

Homer Electric Association had requested some additional utility easements, the surveyor has included some easements within the revision and this was forwarded to the providers for new comments.

Additional concerns discussed during the previous meeting such as eagle's nest, archeology sites, etc. are not within the purview of KPB Code. Multiple comments have been received for this review that state many of the same concerns as discussed during the previous meeting. Staff would like to note that KPB Code does not have the provision to require environmental impact studies. Additional agencies have guidelines and restrictions that any owner or developer will need to adhere to.

The surveyor has noted in conversations with staff, that the soils will not support a conventional wastewater system. They were advised that the submittal of the report will require compliance for an alternate onsite wastewater treatment and disposal system. A DEC approved alternate system should be presented with the soils report for review.

This is a 38 acre subdivision to create sixteen lots that will be accessed by water only. The two lots that do not front on any waterbody have access via a 40 foot wide access easement from Little Tutka Bay that was created by Plat SL 67-85. All lots will have additional access via 50 foot wide access easements from Little Jakalof Bay.

The land within this survey is from U.S. Survey 4700 that was done in 1965. The remainder of the property is the remaining portion of the north half of Section 21 excluding numerous U.S. Surveys and several subdivision plats.

A soils report will be required and an engineer will sign the final plat.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

**Utility Easements** The property within this subdivision has not been part of a subdivision that would have granted platted utility easements. Per South Kachemak Alaska Subdivision, Plat SL 67-85, 20 foot utility easements were granted centered on the lot lines shared with the large remainder parcel of this subdivision. That plat was a state plat but we generally do not allow easements to be granted on property not included within the boundary of the subdivision plat. This plat is depicting the easement along the eastern boundary. **Staff recommends the label include "granted by this plat".**

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	
ENSTAR	
ACS	No objections
GCI	

**KPB department / agency review:**

Addressing	Reviewer: Haws, Derek Affected Addresses: None  Existing Street Names are Correct: No  List of Correct Street Names: Existing Street Name Corrections Needed:  All New Street Names are Approved: No  List of Approved Street Names: List of Street Names Denied:  Comments: No addresses affected by this subdivision.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Wilcox, Adeena Comments: No Comment

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

**STAFF RECOMMENDATIONS**  
**CORRECTIONS / EDITS**

**Staff recommendation:** final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

**Staff recommendation:**

- Owner name should include Alaska Mental Health Trust.
- The KPB Assessing information has a different address for Alaska Mental Health. Verify the address they wish to have present on the plat.

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### KPB 20.30 – Subdivision Design Requirements

**Staff recommendation:** final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.030. Proposed street layout-Requirements.

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

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

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

**Staff recommendation:** An exception has been requested.

20.30.050. Legal access.

A. The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. The plan shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:

1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.



- B. The following situations may qualify for a waiver of the legal access requirement:
1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat. .
  2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
  3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

**Staff recommendation:** *Staff is asking the plat committee to concur that the legal access requirements should be waived, plat note 11 states only water access.*

20.30.170. Blocks-Length requirements. Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

**Staff recommendation:** *The plat does not comply. Grouped and discussed with the exception to KPB 20.30.030.*

20.30.210. Lots-Access to street. Each lot shall abut on a fee simple dedicated street except as provided by KPB 20.30.030(B).

**Staff recommendation:** *Grouped and discussed with the exception to KPB 20.30.030.*

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#### **KPB 20.40 – Wastewater Disposal**

**Staff recommendation:** *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

*Platting Staff Comments: A soils report will be required and an engineer will need to sign the plat. KPB Code 20.40.050, is specific to alternate onsite wastewater treatment and disposal.*

**Staff recommendation:** *comply with 20.40.*

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#### **KPB 20.60 – Final Plat**

**Staff recommendation:** *final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.*

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** *Place the following notes on the plat.*

- *The natural meanders of mean high water line is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.*

*Plat notes need renumbered and note 12 needs date updated.*

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:**

- *On the certificate of ownership, a signature line is not required above Alaska Mental Health Trust Authority as the signature above is on their behalf. Move the typed information to be below "Authorized Official Name".*
- *Correct the Notary's Acknowledgement should contain "Acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_." Comply with 20.60.190.*

**EXCEPTIONS REQUESTED:**

**KPB 20.30.030 – Proposed Street Layout**

Surveyor's Discussion: Based on the ocean frontage contained by all but two of the lots within the proposed subdivision, we expect the primary access for development of these lots to be by watercraft. Additionally, none of the adjoining subdivisions have dedicated ROWs due to the similar ocean front layout of the lots. Dedicating a ROW would encourage development along the landward boundaries of the proposed lots and detract from the rural nature that makes them desirable. If an exception is granted to KPB 20.30.030, 20.30.170 and 20.30.210 would no longer be applicable due to the absence of streets within the proposed subdivision.

Staff Discussion: Per KPB Code 20.30.030, dedications must be provided for continuation or appropriate projections and provide reasonable means of ingress to surrounding acreage tracts. While the exception request is for KPB Code 20.30.030, staff finds that the approval of this acceptance should also take into consideration KPB 20.30.170, Block Length Requirements, and 20.30.210, Lots-Access to streets. If this exception is granted it will not be possible to meet those requirements.

This subdivision is to be remote recreational property. There are other lots in the area that are similar. The Oyster Cove airport is across the bay to provide additional access but watercraft will still be required to get to the lots. The owner of the large acreage parcels in the area are the same of this subdivision. If they needed right-of-way access for their property they could require it at this time.

If the exception is granted, staff recommends the plat note for the exception granted include all three portions of code.

**Findings:**

1. KPB Code requires right-of-way dedications to provide adequate access to all lots within the subdivision and neighboring.
2. KPB Code requires right-of-way dedications to create compliant block lengths.
3. KPB Code requires lots to abut a fee simple dedicated street.
4. This is a remote area.
5. Only access at this time is by water.
6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
7. The owner of this subdivision is Alaska Mental Health Trust.
8. Utility easements are being requested and will need to be granted.
9. Public access easements are proposed from Little Jakalof Bay to all lots within the subdivision.

Denial of the exception will require rights-of-way dedications that will create compliant blocks and that all lots will abut.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements

set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 4-9 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 4-9 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 4-9 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

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**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

**NOTE: 20.25.120. - REVIEW AND APPEAL.**

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

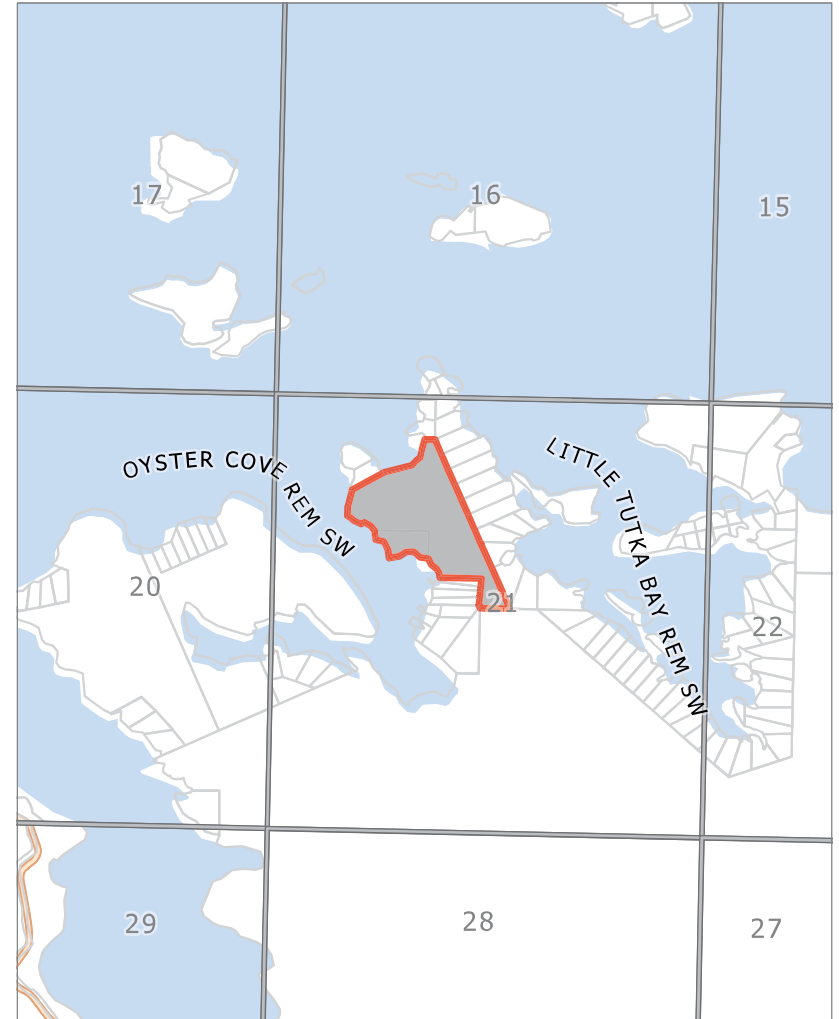
**A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

**END OF STAFF REPORT**



## **E. NEW BUSINESS**

- 11. East Oyster Cove Subdivision; KPB File 2022-047R1  
Fixed Height LLC / Alaska Mental Health Trust Authority  
Location: Oyster Cove REM SW  
Remote Area**



KPB File # 2022-047R1  
S21 T08S R13W  
Remote





WITNESS LINE TABLE					
MEASURED INFORMATION			RECORD INFORMATION		
LINE	BEARING	DIST. (ft.)	REC.	BEARING	DIST. (ft.)
WL1	N 00°17'30" E	11.09	(R1)	S 00°01'00" E	11.22
WL2	S 89°57'31" E	15.00	(R2)	EAST	15.00
WL3	S 89°57'31" E	72.83	(R2)	EAST	19.15
WL4	S 58°23'13" W	57.40	(R3)	N 59°59'00" E	53.48
WL5	N 58°23'13" E	38.54	(R3)	N 59°59'00" E	56.20
WL6	N 85°52'06" W	28.57	(R4)	N 89°31'48" W	44.80

MEANDER LINE TABLE		
LINE	BEARING	DIST. (ft.)
ML1	N 56°25'06" E	150.12
ML2	S 16°41'56" W	62.21
ML3	N 50°15'46" W	117.53
ML4	S 89°20'33" E	134.84
ML5	N 77°32'58" E	113.05
ML6	N 43°29'33" W	91.55
ML7	N 14°39'54" W	73.39
ML8	N 38°06'40" E	59.73
ML9	S 50°45'58" E	115.23
ML10	N 65°15'56" E	202.82
ML11	N 73°23'22" E	92.15
ML12	N 09°45'41" W	117.85
ML13	S 64°54'56" E	131.68
ML14	N 14°46'21" W	96.33
ML15	S 50°13'38" E	128.39
ML16	S 50°13'38" E	110.07
ML17	S 86°53'15" E	163.08
ML18	N 35°34'20" W	27.23
ML19	S 39°54'41" W	143.66
ML20	S 10°47'30" W	135.49
ML21	S 59°00'57" E	15.54
ML22	N 64°46'03" W	16.45
ML23	S 73°01'50" W	143.07
ML24	S 73°01'50" W	76.22
ML25	S 54°31'04" W	129.38
ML26	S 54°31'04" W	87.81
ML27	N 44°22'10" E	187.72
ML28	S 13°30'22" E	130.52

## MONUMENT DETAILS

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AGENDA ITEM E. NEW BUSINESS

ITEM 11 - EAST OYSTER COVE SUBDIVISION

KPB File No.	2022-047R1
Plat Committee Meeting:	June 13, 2022
Applicant / Owner:	Alaska Mental Health Trust of Anchorage, AK
Surveyor:	Andre Kaeppele, Buku Saliz / Fixed Height LLC
General Location:	Remote, Oyster Cove, Kasitsna Bay

Parent Parcel No.:	191-170-70 and 191-170-87
Legal Description:	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide two parcels that are approximately 38 acres into sixteen lots. The lots will range in size from 1.508 acres to 4.631 acres. 50 foot wide public access easements are proposed to provide alternate access to lots.

**Location and Legal Access (existing and proposed):** This is considered a remote location. It is located along Oyster Cove in the Kasitsna Bay. This is along the eastern side of Oster Cove. On the western side of the cove is the Oyster Cove Airport. These lots will be water access only.

A large acreage parcel is present to the south. Adjacent to the south, east, and southeast of that parcel is more large acreage parcels. They are all owned by Alaska Mental Health Trust. The closest right-of-way is Jakolof Bay Road, about 2 miles south of the subdivision. If the large acreage parcels are ever subdivided they may be able to provide dedicated access to the various lots located along the coast of the bays in the area. KPB information has found that the status of section line easements through the large acreage tracts is not clear. Any attempt to use section lines for access will require a determination by the State of Alaska.

South Kachemak Alaska Subdivision, Plat SL 67-85, indicated a 40 foot wide access easement, centered on the share lot line of Lot 15 and Lot 16 that would provide future access to lands to the west from Little Tutka Bay. This plat is proposing to provide a 50 foot wide access easement at the end of that access easement to provide a continuation to Little Jakalof Bay. Additional 50 foot public access easements are proposed along the shore of Lots 9-13 and Lot 16. That access easement continues to the north centered on shared lot lines to provide additional access to Lots 5-8. The easements then run east-west to provide additional access to Lots 1-4 and 9-11.

Due to the location, large acreage tracts, and no dedications within the area, the block length is not compliant.

KPB Code 20.30.050, Legal Access, requires that legal access exists to the boundary of the subdivision. It is currently only accessed by water. Staff believes the requirements of 20.30.050(B) have been met as there is permanent public access by water. A plat note is present that states the current access limitations. **Staff recommends the plat committee concur to waive the legal access requirements of KPB 20.30.050(A).**

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: Per RSA standards, a 60' ROW is required for maintenance.
SOA DOT comments	No comment

**Site Investigation:** KPB GIS does not have any wetland or contour information for the area. Per older imagery the land appears to not contain any low wet areas except around the cove and bay. Within proposed Lot 14 and Lot 15 there appears some low wet areas may be present within the access easement area from Little Tutka Bay. The appropriate note regarding wetland determinations is present. **Staff recommends** any low wet areas or steep terrain discovered during the field survey be depicted and labeled on the final plat.

This appears to be property with lots of vegetation. No improvements appear on the older imagery that is available. KPB Assessing notes that the property is vacant.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	No comments

**Staff Analysis** The proposed plat being reviewed was originally heard by the Plat Committee on May 9, 2022. The Plat Committee did not take action on that plat due to lack of a second on the motion. Per KPB Code 20.25.100, once a completed application has been received the Planning Commission shall approve, conditionally approve, or disapprove the plat by determining if the plat complies with KPB Code requirements. This decision must be granted within 60 days of a completed application. Per Alaska Statutes, the platting authority must approve or disapprove a plat within 60 days and unless the applicant consents to an extension of time, the plat would be considered approved and the certificate of approval may be issued on demand if action was not taken within the required timeframe. Staff contacted the surveyor to discuss scheduling for the May 23, 2022 meeting. The turnaround time would allow for staff to provide the required notifications and for the Plat Committee to make a decision within 60 days. The surveyor requested the June 13, 2022 meeting to allow time to address some of the concerns brought up during the original meeting and to update their design. What is being reviewed at this time is a revision of the original submittal.

The revision has incorporated some of the recommended changes and corrections made by staff within the original staff report. The lot numbers have had some of their numbers changed at staff's request. Concerns were addressed regarding some of the steep terrain along the water for some of the lots. Additionally, the prior existing access easement from the east contained some low wet areas that could cause access issues. In order to address both of those issues additional public access easements are proposed in addition to the previously proposed easements along Little Jakalof Bay. All lots will now have access to a 50 foot public access easement in addition to their water access. Lots 14 and 15 will now have another route if the already existing access easement is not sufficient.

Homer Electric Association had requested some additional utility easements, the surveyor has included some easements within the revision and this was forwarded to the providers for new comments.

Additional concerns discussed during the previous meeting such as eagle's nest, archeology sites, etc. are not within the purview of KPB Code. Multiple comments have been received for this review that state many of the same concerns as discussed during the previous meeting. Staff would like to note that KPB Code does not have the provision to require environmental impact studies. Additional agencies have guidelines and restrictions that any owner or developer will need to adhere to.



The surveyor has noted in conversations with staff, that the soils will not support a conventional wastewater system. They were advised that the submittal of the report will require compliance for an alternate onsite wastewater treatment and disposal system. A DEC approved alternate system should be presented with the soils report for review.

This is a 38 acre subdivision to create sixteen lots that will be accessed by water only. The two lots that do not front on any waterbody have access via a 40 foot wide access easement from Little Tutka Bay that was created by Plat SL 67-85. All lots will have additional access via 50 foot wide access easements from Little Jakalof Bay.

The land within this survey is from U.S. Survey 4700 that was done in 1965. The remainder of the property is the remaining portion of the north half of Section 21 excluding numerous U.S. Surveys and several subdivision plats.

A soils report will be required and an engineer will sign the final plat.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

**Utility Easements** The property within this subdivision has not been part of a subdivision that would have granted platted utility easements. Per South Kachemak Alaska Subdivision, Plat SL 67-85, 20 foot utility easements were granted centered on the lot lines shared with the large remainder parcel of this subdivision. That plat was a state plat but we generally do not allow easements to be granted on property not included within the boundary of the subdivision plat. This plat is depicting the easement along the eastern boundary. **Staff recommends the label include "granted by this plat".**

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	
ENSTAR	
ACS	No objections
GCI	

**KPB department / agency review:**

Addressing	<p>Reviewer: Haws, Derek  Affected Addresses:  None</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names:  Existing Street Name Corrections Needed:</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:  List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Code Compliance	Reviewer: Ogren, Eric

	Comments: No comments
Planner	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.  Material Site Comments: There are not any material site issues with this proposed plat.
Assessing	Reviewer: Wilcox, Adeena Comments: No Comment

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

### **STAFF RECOMMENDATIONS** **CORRECTIONS / EDITS**

#### **KPB 20.25.070 – Form and contents required**

**Staff recommendation:** final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

**Staff recommendation:**

- Owner name should include Alaska Mental Health Trust.
- The KPB Assessing information has a different address for Alaska Mental Health. Verify the address they wish to have present on the plat.

#### **KPB 20.30 – Subdivision Design Requirements**

**Staff recommendation:** final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.030. Proposed street layout-Requirements.

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

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

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

**Staff recommendation:** An exception has been requested.

20.30.050. Legal access.

A. The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. The plan shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:

1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

B. The following situations may qualify for a waiver of the legal access requirement:

1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat. .
2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

**Staff recommendation:** *Staff is asking the plat committee to concur that the legal access requirements should be waived, plat note 11 states only water access.*

20.30.170. Blocks-Length requirements. Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

**Staff recommendation:** *The plat does not comply. Grouped and discussed with the exception to KPB 20.30.030.*

20.30.210. Lots-Access to street. Each lot shall abut on a fee simple dedicated street except as provided by KPB 20.30.030(B).

**Staff recommendation:** *Grouped and discussed with the exception to KPB 20.30.030.*

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**KPB 20.40 – Wastewater Disposal**

**Staff recommendation:** *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

*Platting Staff Comments: A soils report will be required and an engineer will need to sign the plat. KPB Code 20.40.050, is specific to alternate onsite wastewater treatment and disposal.*

**Staff recommendation:** *comply with 20.40.*

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**KPB 20.60 – Final Plat**



**Staff recommendation:** final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** Place the following notes on the plat.

- The natural meanders of mean high water line is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.

*Plat notes need renumbered and note 12 needs date updated.*

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:**

- On the certificate of ownership, a signature line is not required above Alaska Mental Health Trust Authority as the signature above is on their behalf. Move the typed information to be below "Authorized Official Name".
- Correct the Notary's Acknowledgement should contain "Acknowledged before me, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_." Comply with 20.60.190.

**EXCEPTIONS REQUESTED:**

**KPB 20.30.030 – Proposed Street Layout**

Surveyor's Discussion: Based on the ocean frontage contained by all but two of the lots within the proposed subdivision, we expect the primary access for development of these lots to be by watercraft. Additionally, none of the adjoining subdivisions have dedicated ROWs due to the similar ocean front layout of the lots. Dedicating a ROW would encourage development along the landward boundaries of the proposed lots and detract from the rural nature that makes them desirable. If an exception is granted to KPB 20.30.030, 20.30.170 and 20.30.210 would no longer be applicable due to the absence of streets within the proposed subdivision.

Staff Discussion: Per KPB Code 20.30.030, dedications must be provided for continuation or appropriate projections and provide reasonable means of ingress to surrounding acreage tracts. While the exception request is for KPB Code 20.30.030, staff finds that the approval of this acceptance should also take into consideration KPB 20.30.170, Block Length Requirements, and 20.30.210, Lots-Access to streets. If this exception is granted it will not be possible to meet those requirements.

This subdivision is to be remote recreational property. There are other lots in the area that are similar. The Oyster Cove airport is across the bay to provide additional access but watercraft will still be required to get to the lots. The owner of the large acreage parcels in the area are the same of this subdivision. If they needed right-of-way access for their property they could require it at this time.

If the exception is granted, staff recommends the plat note for the exception granted include all three portions of code.

**Findings:**

1. KPB Code requires right-of-way dedications to provide adequate access to all lots within the subdivision

- and neighboring.
2. KPB Code requires right-of-way dedications to create compliant block lengths.
  3. KPB Code requires lots to abut a fee simple dedicated street.
  4. This is a remote area.
  5. Only access at this time is by water.
  6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
  7. The owner of this subdivision is Alaska Mental Health Trust.
  8. Utility easements are being requested and will need to be granted.
  9. Public access easements are proposed from Little Jakalof Bay to all lots within the subdivision.

Denial of the exception will require rights-of-way dedications that will create compliant blocks and that all lots will abut.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 4-9 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 4-9 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 4-9 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

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**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

**NOTE: 20.25.120. - REVIEW AND APPEAL.**

**A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.**

**A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.**

**END OF STAFF REPORT**



May 31, 2022

From: Joy Ballard  
Lamar Ballard

To: The Kenai Borough Assembly

Re: Mental Health Trust Subdivision Proposal in Little Jakolof Bay

Dear Assembly Members:

We have recently become aware of the proposal by the Alaska Mental Health Trust Authority to subdivide two pieces of land between Little Tutka Bay and Little Jakolof Bay into 16 parcels.

We have had our property in Little Tutka Bay since the Mid-Sixties. Since that time, we have observed private and commercial parties undertake developments that were not necessarily in the best interest of the local community. There needs to be a more thorough review of this proposal as it will dramatically increase the number of available lots for development which comes with potential issues around water/beach access, vessel anchorages or congested moorings. It appears that some of the lots in the proposed subdivision are essentially land locked with the exception of a small easement. While the future owners of the proposed lots may be well intentioned, in some instances they may be tempted to access their property through a neighboring lot which has closer beach access. It seems that some of these lots are not very suitable for development as platted.

We respectfully request that you delay any decisions regarding subdividing the area until some of these issues can be addressed by the local community. For my family, a trip to Little Tutka Bay is for leisure activity, but there are those who live in the area year-round. We are grateful to be part of this community and hope that the Kenai Peninsula Borough Planning Commission thoughtfully reviews all input from affected parties.

Thank you for the consideration in this matter.

Sincerely,

Joy and Lamar Ballard  
6221 Petersburg Street  
Anchorage, Alaska 99507  
Email: akjoyski@gmail.com

**Hindman, Julie**

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**From:** Leavitt, Rhealyn  
**Sent:** Tuesday, May 31, 2022 9:28 AM  
**To:** Shirnberg, Ann; Quainton, Madeleine; Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>written testimony regarding KPB File 2022-047R1 proposed Little Jakolof Bay subdivision

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**From:** Daniel Coyle <djcoyle1@gmail.com>  
**Sent:** Monday, May 30, 2022 8:44 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Cc:** Doug Kossler <anchoragerunner@yahoo.com>; tanomoshii@yahoo.com; Maurice Coyle <mauricecoyle3@gmail.com>; jonathan coyle <jpcoyleak@gmail.com>; keetnasimon@yahoo.com; walanier@gmail.com; jenny coyle <jen79coyle@gmail.com>; John Giuggio <giovanpietro3@gmail.com>  
**Subject:** <EXTERNAL-SENDER>written testimony regarding KPB File 2022-047R1 proposed Little Jakolof Bay subdivision

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

**To: Kenai Peninsula Borough Planning Department  
144 N Binkley Street  
Soldotna, AK 99669**

**(submitted via email)  
MAY 30, 2022**

**To: Kenai Peninsula Borough Planning Department**

As a unified group of seven local residents and landowners, we'd like to express our urgent concerns about the proposed subdivision in Little Jakolof Bay and Little Tutka Bay, KPB File 2022-047R1, for the following reasons:

1) The proposed subdivision will destroy an existing archaeological site of significant cultural and historical value. The site is located near proposed lots 8, 9, and 10. Further investigation could uncover additional sites, which would be protected by state and federal law.

In addition, the development of new lots may destroy wildlife habitat, including eagle-nesting areas

2) The proposed subdivision does not provide adequate water access or supply. Many of the proposed lots are located on bedrock, with no water source.

3) The proposed subdivision — 16 lots, many of them extremely narrow, located in a relatively small, confined area — creates multiple and overlapping problems of density and access, and will generate navigational hazards. The entrance and the western (weather-exposed) side of the bay is narrow for running lines, and not suitable for moorings.

4) A significant number of the lots are unusable because of steepness or access problems. Some lots have steep rocks on the shore and are unaccessible from the beach. In addition, two lots have access only through Little Tutka Bay, creating additional congestion for residents of Tutka Bay.

5) The alterations made to this latest version (subsequent to 2022-047) do not significantly lessen any of the concerns voiced above. Adding public-use corridors does not lessen the multiple and lasting negative impacts to the area that this subdivision will create.

We hope that these comments will provide the planning commission with guidance and clarity as it makes its decisions. We are ready and willing to answer any questions or provide any additional information the planning commission requires. We hope that the commission will delay any imminent decisions in order to give appropriate time, research, and attention to these sincere and valid concerns.



SIGNED,

**Daniel Coyle**

**Maurice Coyle**

**Jonathan Coyle**

Co-owners of Bootleggers Cove Lots 1, 3 4, and 5

**Doug Kossler**

**Margaret Kossler**

**Kimberly Lanier**

**William A. Lanier**

Co-owners of Jesse Cove Tract 3 and 4

June 3, 2022

Ms. Madelaine Quinton  
Kenai Peninsula Borough Planning Department  
144 N. Binkley Street  
Soldotna, Alaska 99669

Dear Ms. Quinton,

Subject: KPB File No. 2022-047R1 Oyster Cove Subdivision

As a follow up to our letter outlining our concerns (see below in bold italics) sent to the KPBPD on May 6<sup>th</sup>, 2022 (and on May 9<sup>th</sup> 2022) we continue to express our opposition to the Kenai Peninsula Borough file No. 2022-047R1, East Oyster Cove Subdivision.

Our local community is perplexed at the brazen approach by the Alaska Mental Health Trust Authority's latest attempt to expedite this through the KPB Planning Commission without detailed discussion or inputs from the local community.

Again, we collectively urge the KPB Planning Commission to disapprove the proposed subdivision/replat of East Oyster Cove, or at a minimum, delay consideration of the application until such time as the concerns herein have been adequately addressed.

Very Respectfully,



Donald Fell, Trustee  
Donald Fell & Mary Ann Fell Joint Revocable Trust  
55301 Oyster Cove Rem SW



Mary Ann Fell, Trustee  
Donald Fell & Mary Ann Fell Joint Revocable Trust  
55301 Oyster Cove Rem SW

CC-Oyster Cove Neighbors-

Dan & Jenny Coyle  
George & Marilyn Rhyneer  
Phil Brudie  
Doug & Margaret Kossler

Mark Pfeffer  
Kimberly Lanier  
Willy & Janelle Lanier  
Tom & Tammy Hopkins

*"Thank you for the opportunity to provide written testimony as residents/property owners of the Oyster Cove community. We write to respectfully express our opposition to Kenai Peninsula Borough (KPB) file No. 2022-047, East Oyster Cove Subdivision. The proposed subdivision/replat would create sixteen (16) lots from two (2) parcels owned by the Alaska Mental Health Trust Authority of Anchorage, Alaska.*

*As residents/property owners in Oyster Cove, the public notice of subdivision/replat came as quite a surprise to our family and neighbors. The proposed subdivision/replat would be within 600 feet of our property. Nearly all residents and property owners in the Oyster Cove area are in opposition to the subdivision/replat which we believe will adversely impact water rights, public walking trails, public access points, the environment and local wildlife and wildlife habitats.*

*A primary concern of KPB File No. 2022-047 is how the Alaska Mental Health Trust Authority plans on obtaining water rights in Oyster Cove for future landowners. Under the Alaska Water Use Act (AS 46.15) water is appurtenant to the land where the water is being used. Given the size of the proposed development, we are concerned that the subdivision may adversely impact current landowners' water rights. We also question how existing water rights will be transferred with the subdivision and resale of land within the subdivision?*

*Another concern is the potential for significant adverse environmental impact associated with the subdivision/replat. With the subdivision of the land into 16 new parcels, development potential and associated impacts increase exponentially. As lots are sold off, construction of new structures, utilities and related infrastructure is inevitable. There are significant concerns that such development will result in adverse environmental impacts related to the soil and groundwater, as well as visual impacts, noise impacts and wastewater impacts. In addition, with development there is the potential adverse impacts to the shoreline. Finally, there is significant likelihood that wetlands exist within the subdivision area, which will certainly be impacted by any development. However, it does not appear that any studies have been performed to consider these kinds of impacts or any other potential impacts (or at least none have been made available to the public to our knowledge), and what can/will be done to mitigate those impacts.*

*Given the significant size and scope of development contemplated by the subdivision/replat (which will transform the land from a pristine natural state into sixteen 16 buildable lots), a full environmental impact study should be prepared before preliminary plat approval is considered, which should be made available to the public for review. If any information or studies are available and/or have been performed, then the community should have a right to review the results of such studies, and to comment on the same before the current application is considered (at this point, we are aware of no such studies).*

*Considering Kachemak Bay State Park borders the proposed subdivision/replat, we are concerned this subdivision may adversely impact public walking trails which currently exist on the property. Please identify all public or existing walking trails in the proposed subdivision/replat area. We question whether the existing Little Tutka/Jakolof trail will be considered an easement encumbering the subdivided/replated properties, and whether the right of the public to use those trail(s) will remain intact following the subdivision.*



*Another concern is access to the proposed subdivision. With little to no existing public infrastructure (i.e. docks, airstrips, etc.), the applicant's plan for future access to the lots within the subdivision is unclear. Will there be, or are there, proposed access points to the subdivided/replated properties, or will each lot have its own access point? Are there existing covenants in place for property access, or will such covenants be put in place as a condition for approval? To the extent that each site will have its own point of access, we are concerned that adverse impacts will result from such access (and the development needed to facilitate access to the new lots).*

*Another concern is the impacts of the subdivision on flora and fauna which have been observed in the East Oyster Cove area. Any future development of the subdivision/replat could destroy, disrupt or have an adverse impact on wildlife and wildlife habitats. Oyster Cove is an existing aquatic farmsite for the purpose of harvesting Pacific oysters and blue mussels. As owners and operators of Oyster Cove Seafarms since 1992, we see several environmental conservation issues associated with the subdivision/replat of surrounding property including but not limited to the construction of new docks, waterflow, septic runoff, etc. The KPB Planning Commission should take into consideration, and study, how development of the subdivision/replat may impact the local wildlife and wildlife habitat and should require that surveys or studies be conducted for the subdivision/replat and adjacent areas. Again, it is unclear whether any such surveys or studies have been performed, and if they have been performed, the community should be allowed to review, consider, and comment on the same (and I request copies of the same) prior to considering approval of the application.*

*Finally, it is noted that it appears that one or more exceptions have been requested as a part of this application process relating to layouts, access, etc. However, we see no evidence to support, let alone substantial evidence necessary, to justify the waiver and/or exceptions being requested.*

*From recent meetings and discussions with our neighbors, the opinions and concerns identified above are shared by several others in the Oyster Cove community. Consideration of the same is necessary to protect and improve the health, safety and general welfare of the residents in close proximity to the proposed subdivision/replat. We collectively urge the KPB Planning Commission to disapprove the proposed subdivision/replat of East Oyster Cove, or at a minimum, delay consideration of the application until such time as the concerns addressed herein have been adequately addressed."*

**ITEM E5 - EAST OYSTER COVE SUBDIVISION**

<b>KPB File No.</b>	2022-047
<b>Plat Committee Meeting:</b>	May 9, 2022
<b>Applicant / Owner:</b>	Alaska Mental Health Trust of Anchorage, AK
<b>Surveyor:</b>	Andre Kaeppele, Buku Saliz / Fixed Height LLC
<b>General Location:</b>	Remote, Oyster Cove, Kasitsna Bay

<b>Parent Parcel No.:</b>	191-170-70 and 191-170-87
<b>Legal Description:</b>	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On site

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the meeting for public comment.

Donald & Mary Ann Fell; P.O. Box 615 Homer, AK 99603: The Fells are landowners in the near vicinity of this plat and spoke in opposition to this development. They expressed concerns related to water rights, adverse environmental impacts & access to the proposed lots.

Tom Hopkins; 60112 Nordby Ave., Homer, AK 99603: Mr. Hopkins is a landowner in the near vicinity of this proposed plat. He spoke in opposition to this development and shared many of the same concerns as other landowners in the area

Philip Brudie, P.O. Box 111, Homer, AK 99603: Mr. Brudie is an adjacent landowner and spoke in opposition to this development. He expressed concerns related to water rights, identification of trails used by the public and possible septic issues.

Tamera Hopkins; 60112 Nordby Ave. Homer, AK 99603: Ms. Hopkins is a landowner in the near vicinity of this proposed plat. She spoke in opposition to this development and shared many of the same concerns as other landowners in the area.

Sharon Whytal; P.O. Box 1529, Homer, AK 99603: Ms. Whytal is a landowner in the near vicinity of this proposed plat. She spoke in opposition to this development and shared many of the same concerns as other landowners in the area.

Dennis Poirier; 11819 Rockridge Dr., Anchorage, AK 99516: Mr. Poirier is a landowner in the near vicinity of this proposed plat. He spoke in opposition to this development and shared many of the same concerns as other landowners in the area. He also has concerns with an easement on the plat used to access Lots 15 & 16. This easement crosses his property and he would like more information on this easement.

Chair Brantley confirmed with staff that the easement Mr. Poirier is referring to, between Lots 15 & 16 of Little Tuka Bay, was in existence before it was depicted on the preliminary plat. Ms. Hindman responded that this easement was depicted on South Kachemak Alaska Subdivision which was done in 1969, which is centered on the common lot line between Lots 15 & 16.

Dave Messer & Ricki Lebman; 15740 Windsong Dr., Anchorage, AK 99516: Mr. Messer & Ms. Lebman are landowners in the near vicinity of this plat and spoke in opposition to this development. Mr. Messer believes that numerous lots on this proposed plat have inadequate access and that the plat at the very least needs to be redesigned. They also share many of the same concerns expressed by the other landowners in the area.

William Lanier; 89 S 750 E, Bountiful, UT 84010: Mr. Lanier is a landowner in the near vicinity of this proposed plat. He spoke in opposition to this development and shared many of the same concerns as other landowners in the area.

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

**MOTION:** Commissioner Gillham moved to grant preliminary approval to East Oyster Cove Subdivision, based on staff recommendations and compliance to borough code.

Chair Brantley asked for a second on the motion.

Commissioner Venuti asked if there was not a second, would it mean the plat failed to receive preliminary approval? Chair Brantley responded that is correct.

Ms. Hindman was then asked what the next step would be for the applicants. Ms. Hindman replied she was not sure and suggested Borough Attorney Steinhage be asked to weigh in. She believed at the very least the applicants would need to resubmit the plat, possibly with new information, and the plat would go through another public hearing process. Chair Brantley asked if the applicants could appeal the decision. Ms. Hindman replied she wasn't sure, since the committee hasn't made a decision. Again, she suggested that Borough Attorney Steinhage be asked to weigh in.

Mr. Steinhage noted that KPB 2.40.080 states that a review of the plat committee's decision may be heard by the planning commission acting as a platting board. He is not sure that this applies in this case as it implies that the plat committee has made a decision. Mr. Steinhage then asked for time to research this question.

Chair Brantley then asked if someone would like to make a motion to table the item until the end of new business.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Morgan to table the item until the end of new business.

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

**MOTION PASSED BY UNANIMOUS VOTE**

Yes	5	Brantley, Gillham, Hooper, Morgan, Venuti
No	0	

**ITEM E6 - SOLDOTNA AIRPORT LEASE LOT 2021 REPLAT**

<b>KPB File No.</b>	2022-048
<b>Plat Committee Meeting:</b>	May 9, 2022
<b>Applicant / Owner:</b>	City of Soldotna of Soldotna, AK
<b>Surveyor:</b>	Max Best / Wince-Corthell-Bryson
<b>General Location:</b>	Soldotna Airport Property, Funny River Road, City of Soldotna
<b>Parent Parcel No.:</b>	060-341-44 & 060-341-45
<b>Legal Description:</b>	Lots H-15 and H-21 Soldotna Airport Lease Lot Subdivision Plat No. KN 87-88
<b>Assessing Use:</b>	Leased Vacant Land
<b>Zoning:</b>	Industrial District
<b>Water / Wastewater</b>	City

Staff report given by Platting Specialist Julie Hindman.

Chair Brantley opened the meeting for public comment.

Max Best, Surveyor; Wince-Corthell-Bryson, P.O. Box 1041, Kenai, AK 99611: Mr. Best 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.



<b>General Location:</b>	East End Road, Little Fireweed Lane, City of Homer
<b>Parent Parcel No.:</b>	174-191-05 and 174-192-87
<b>Legal Description:</b>	Lot 4-A Block 1 Puffin Acres SVH 2021 Replat Plat No HM 2021-33 Lot 5 Commerce Park Plat No HM 1985-14
<b>Assessing Use:</b>	General Commercial
<b>Zoning:</b>	East End Mixed Use
<b>Water / Wastewater</b>	City

Staff report given by Platting Specialist Julie Hindman.

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

Commissioner Venuti informed the commission that he heard this item as planning commissioner for the City of Homer and abstain from deliberations and voting.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Morgan, to grant preliminary approval to Puffin Acres Bayweld 2022 Replat, based on staff recommendations and compliance to borough code.

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

**MOTION PASSED BY UNANIMOUS VOTE**

Yes		Brantley, Gillham, Hooper, Morgan
Abstained	1	Venuti

Chair Brantley asked Borough Attorney Steinhage for the answer to the committee's earlier question regarding East Oyster Cove Subdivision. Mr. Steinhage clarified for the committee that having a second to the motion does not mean that the individual making the second agrees with the motion. It just allows the motion to be brought to the floor for debate and decision. If there is not a second then there is no discussion or decision. In this instance it would mean that the applicant would have to resubmit the plat for reconsideration by the committee. Chair Brantley asked if the applicant could request that the planning commission hear the plat. Mr. Steinhage replied only if there is an actual decision made by the plat committee. The planning commission would need a decision in place to review. An appeal only works if there are findings by the plat committee for the planning commission to review.

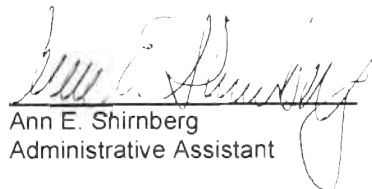
**MOTION:** Commissioner Gillham moved to remove the plat from the table, and to grant preliminary approval to East Oyster Cove Subdivision, based on staff recommendations and compliance to borough code.

**MOTION ~~FAILED~~ DUE TO A LACK OF A SECOND**

**F. PUBLIC COMMENT - None**

**G. ADJOURNMENT**

Commissioner Venuti moved to adjourn the meeting 7:48 P.M.

  
Ann E. Shirnberg  
Administrative Assistant

## **E. NEW BUSINESS**

- 5. East Oyster Cove Subdivision; KPB File 2022-047  
Fixed Height LLC / Alaska Mental Health Trust Authority  
Location: Northeast of Jakolof Bay Road  
Remote Area**



Vicinity Map

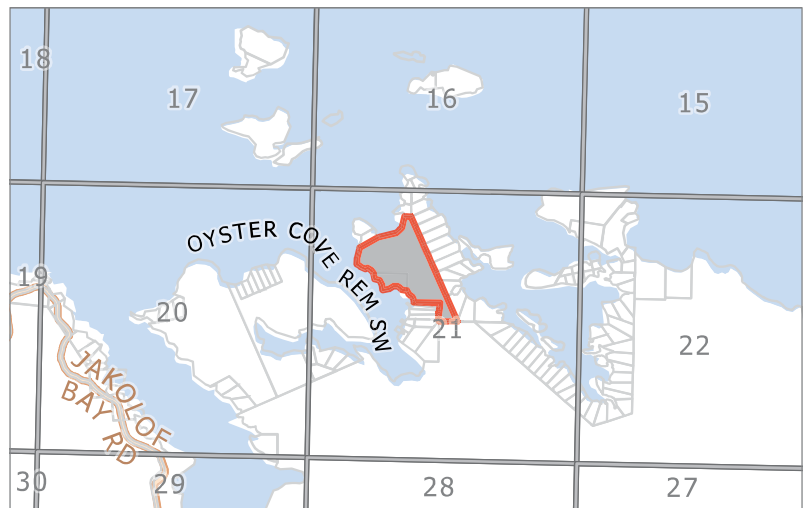
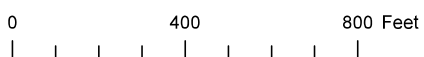


KPB File # 2022-047

S21-T08S-R13W

Remote

4/7/2022







**Aerial View**



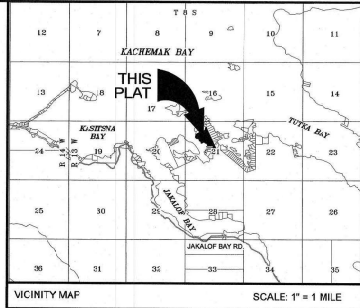
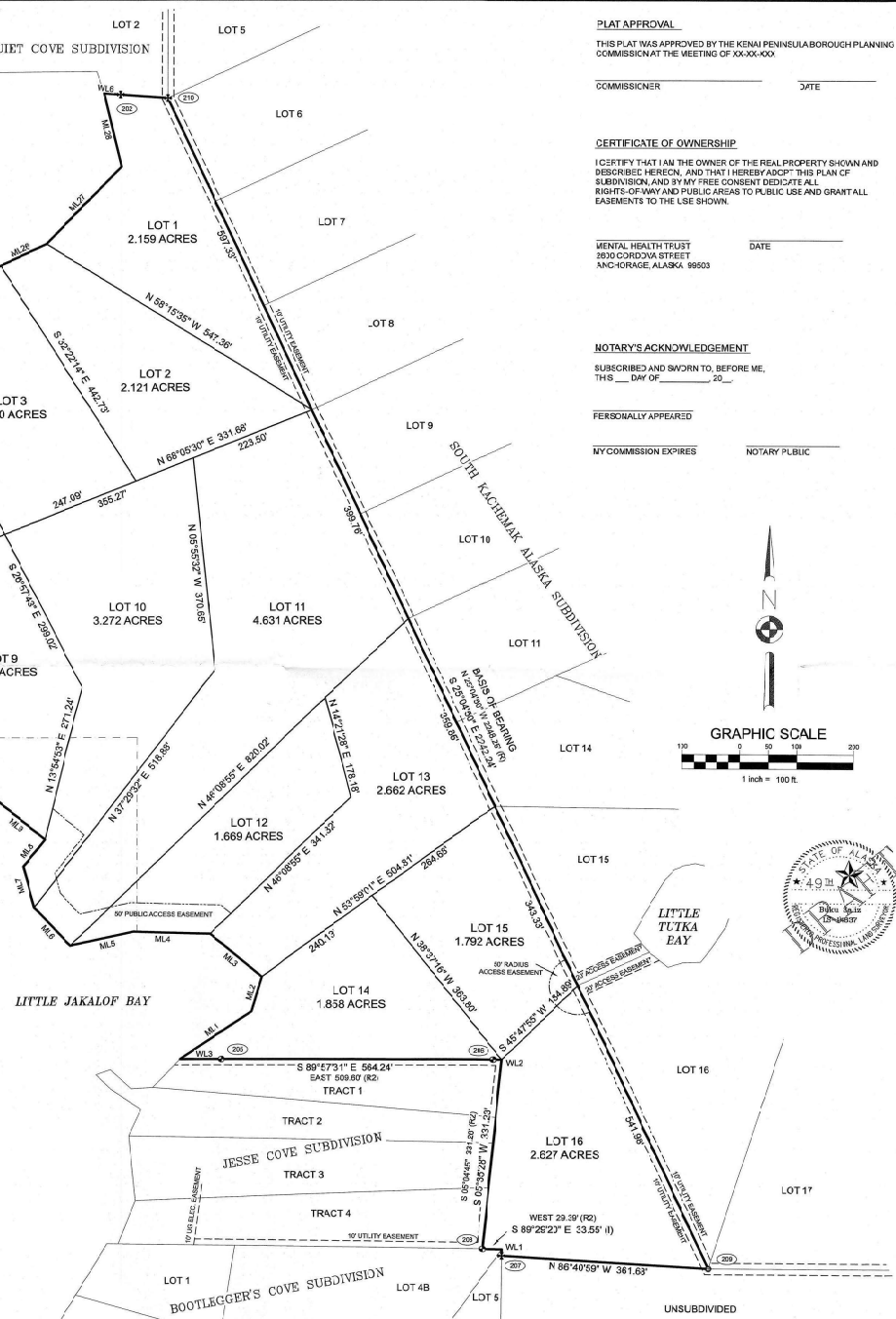
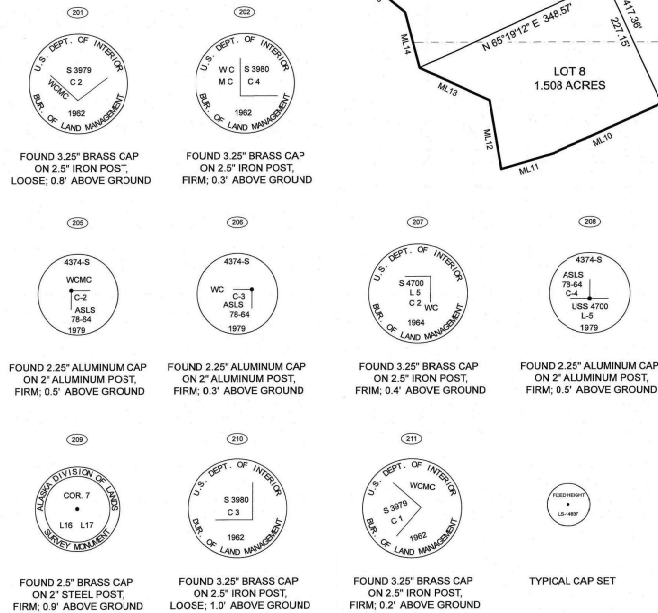


KPB 2022-047

LINE	BEARING	DIST. (ft.)	REMARKS	BEARING	DIST. (ft.)	REMARKS
ML1	N 0° 17' 32" E	11.00	(R1) S 30° 21' 08" W	11.00		
ML2	S 89° 47' 32" E	12.00	(R2) S 30° 21' 08" W	12.00		
ML3	S 89° 47' 32" E	12.00	(R3) S 30° 21' 08" W	12.00		
ML4	S 89° 47' 32" E	12.00	(R4) S 30° 21' 08" W	12.00		
ML5	S 89° 47' 32" E	12.00	(R5) S 30° 21' 08" W	12.00		
ML6	S 89° 47' 32" E	12.00	(R6) S 30° 21' 08" W	12.00		

LINE	BEARING	DIST. (ft.)	REMARKS
ML1	N 0° 17' 32" E	11.00	
ML2	S 89° 47' 32" E	12.00	
ML3	S 89° 47' 32" E	12.00	
ML4	S 89° 47' 32" E	12.00	
ML5	S 89° 47' 32" E	12.00	
ML6	S 89° 47' 32" E	12.00	
ML7	S 89° 47' 32" E	12.00	
ML8	S 89° 47' 32" E	12.00	
ML9	S 89° 47' 32" E	12.00	
ML10	S 89° 47' 32" E	12.00	
ML11	S 89° 47' 32" E	12.00	
ML12	S 89° 47' 32" E	12.00	
ML13	S 89° 47' 32" E	12.00	
ML14	S 89° 47' 32" E	12.00	
ML15	S 89° 47' 32" E	12.00	
ML16	S 89° 47' 32" E	12.00	
ML17	S 89° 47' 32" E	12.00	
ML18	S 89° 47' 32" E	12.00	
ML19	S 89° 47' 32" E	12.00	
ML20	S 89° 47' 32" E	12.00	
ML21	S 89° 47' 32" E	12.00	
ML22	S 89° 47' 32" E	12.00	
ML23	S 89° 47' 32" E	12.00	
ML24	S 89° 47' 32" E	12.00	
ML25	S 89° 47' 32" E	12.00	
ML26	S 89° 47' 32" E	12.00	
ML27	S 89° 47' 32" E	12.00	
ML28	S 89° 47' 32" E	12.00	
ML29	S 89° 47' 32" E	12.00	
ML30	S 89° 47' 32" E	12.00	

# MONUMENT DETAILS



## NOTES

- SET 5/8" X 3/8" REBAR WITH 1 1/2" DIAMETER ORANGE PLASTIC CAP AT ALL LOT CORNERS AND 50' UPLAND ON LINE AS WITNESS CORNERS TO THE MEANDER CORNERS.
- ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL LOCAL, STATE AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION, IF APPLICABLE.
- THE LOCATION OF THE MEANDERS WERE DETERMINED USING THE PUBLISHED MEAN HIGH WATER ELEVATION FOR NOAA TIDAL BENCHMARK "TIDAL 6" LOCATED AT KOKA-LAF MARITIME BAY LABORATORY APPROXIMATELY 1.5 MILES WEST OF THE SUBDIVISION LOCATION. THE PUBLISHED MEAN HIGH WATER ORTHOMETRIC ELEVATION IS 12.27 FEET (NAVD88).
- THE LOCATION OF THE SECTION CORNERS FOR PROTRACTED SECTION 21 WERE DETERMINED USING COORDINATES EXTRACTED FROM THE ALASKA DIVISION OF LANDS PROJECTION DIAGRAM No. S-16-5.

## LEGEND

- FOUND 3.25" DIAMETER BRASS MONUMENT
- FOUND 2.25" DIAMETER BRASS MONUMENT
- FOUND 2.25" DIAMETER ALUMINUM MONUMENT
- LOT LINE TO BE DEDICATED THIS PLAT
- EASEMENT TO BE DEDICATED THIS PLAT
- EXISTING EASEMENT
- BEARING BEARING INTERSECTION
- RECORD MEASUREMENT - PLAT 67-85
- RECORD MEASUREMENT - PLAT 75-283
- RECORD MEASUREMENT - PLAT 63-68
- RECORD MEASUREMENT - USS 3979
- RECORD MEASUREMENT - PLAT 67-9

## SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME AND THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE TRUE AND CORRECT.

BUKU SALIZ LS-14837 REGISTERED LAND SURVEYOR DATE \_\_\_\_\_

A PLAT OF	
EAST OYSTER COVE SUBDIVISION	
A SUBDIVISION OF	
A PORTION OF THE NORTH 1/2 OF SECTION 21 AND LOT 4 OF U.S. SURVEY No. 4700	
EXCLUDING U.S. SURVEY Nos. 3900, 3979, 3981, 4700 (LOTS 2 & 3), AND 4747 (LOT 1); SOUTH KACHEMAK ALASKA SUBDIVISION; BOOTLEGGER'S COVE SUBDIVISION; QUIET COVE SUBDIVISION; AND THOSE UPLANDS LYING NORTH OF U.S. SURVEY No. 3900 AND 3979 CONTAINING 388.761 ACRES	
LOCATED WITHIN PROTRACTED SECTION 21 TOWNSHIP 3 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ALASKA	
OWNER: MENTAL HEALTH TRUST, 2870 CORDOVA STREET, ANCHORAGE, AK 99503	207 290 8848
KPB FILE NO.: XXX-XX	DRAWN BY/DATE: AK/1-1-2022
PROJECT NO.: 21081	CHECKED BY: BS
SURVEY DATE: SEPTEMBER 7-6, 2021	SCALE: 1" = 100'
FIELD BOOK: 21-01	SHEET: 1 OF 1

AGENDA ITEM E. NEW BUSINESS

ITEM 5 - EAST OYSTER COVE SUBDIVISION

<b>KPB File No.</b>	2022-047
<b>Plat Committee Meeting:</b>	May 9, 2022
<b>Applicant / Owner:</b>	Alaska Mental Health Trust of Anchorage, AK
<b>Surveyor:</b>	Andre Kaeppele, Buku Saliz / Fixed Height LLC
<b>General Location:</b>	Remote, Oyster Cove, Kasitsna Bay

<b>Parent Parcel No.:</b>	191-170-70 and 191-170-87
<b>Legal Description:</b>	A Portion of the North ½ of Section 21 and Lot 4 of US Survey No 4700
<b>Assessing Use:</b>	Residential
<b>Zoning:</b>	Rural Unrestricted
<b>Water / Wastewater</b>	On site

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STAFF REPORT

**Specific Request / Scope of Subdivision:** The proposed plat will subdivide two parcels that are approximately 38 acres into sixteen lots. The lots will range in size from 1.508 acres to 4.631 acres.

**Location and Legal Access (existing and proposed):** This is considered a remote location. It is located along Oyster Cove in the Kasitsna Bay. This is along the eastern side of Oster Cove. On the western side of the cove is the Oyster Cove Airport. These lots will be water access only. Lots 15 and 16 will have their access from Little Tutka Bay and will use a public access easement located on Lots 15 and 16 of South Kachemak Alaska Subdivision, Plat SL 67-85.

A large acreage parcel is present to the south. Adjacent to the south, east, and southeast of that parcel is more large acreage parcels. They are all owned by Alaska Mental Health Trust. The closest right-of-way is Jakolof Bay Road, about 2 miles south of the subdivision. If the large acreage parcels are ever subdivided they may be able to provide dedicated access to the various lots located along the coast of the bays in the area. KPB information has found that the status of section line easements through the large acreage tracts is not clear. Any attempt to use section lines for access will require a determination by the State of Alaska.

South Kachemak Alaska Subdivision, Plat SL 67-85, indicated a 40 foot wide access easement, centered on the share lot line of Lot 15 and Lot 16 that would provide future access to lands to the west from Little Tutka Bay. This plat is proposing to grant a 50 foot radius access easement at the end of that access easement. An additional 50 foot public access easement is being granted along the shore of Oyster Cove within Lots 10, 11, and 12.

Due to the location, large acreage tracts, and no dedications within the area, the block length is not compliant.

KPB Code 20.30.050, Legal Access, requires that legal access exists to the boundary of the subdivision. It is currently only accessed by water. Staff believes the requirements of 20.30.050(B) have been met as there is permanent public access by water. **Staff recommends the plat committee concur to waive the legal access requirements of KPB 20.30.050(A) and require a plat note that states the mode of access.**

KPB Roads Dept. comments	Out of Jurisdiction: No  Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comment

**Site Investigation:** KPB GIS does not have any wetland or contour information for the area. Per older imagery the



land appears to not contain any low wet areas except around the cove and bay. Within proposed Lot 15 and Lot 16 there appears there could be some low wet areas within the access easement area from Little Tutka Bay. The appropriate note regarding wetland determinations is present. **Staff recommends** any low wet areas or steep terrain discovered during the field survey be depicted and labeled on the final plat.

This appears to be property with lots of vegetation. No improvements appear on the older imagery that is available. KPB Assessing notes that the property is vacant.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
State of Alaska Fish and Game	No comments

**Staff Analysis** This is a 38 acre subdivision to create sixteen lots that will be accessed by water only. The two lots that do not front on any waterbody will have access via a public access easement.

The land within this survey is from U.S. Survey 4700 that was done in 1965. The remainder of the property is the remaining portion of the north half of Section 21 excluding numerous U.S. Surveys and several subdivision plats.

A soils report will be required and an engineer will sign the final plat.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

**Utility Easements** The property within this subdivision has not been part of a subdivision that would have granted platted utility easements. Per South Kachemak Alaska Subdivision, Plat SL 67-85, 20 foot utility easements were granted centered on the lot lines shared with the large remainder parcel of this subdivision. That plat was a state plat but we generally do not allow easements to be granted on property not included within the boundary of the subdivision plat. This plat is depicting the easement along the eastern boundary. **Staff recommends** the label include "granted by this plat".

Several easements are depicted on neighboring properties. **Staff recommends** those depictions and labels be removed from the final plat.

Homer Electric Association has requested some internal utility easements be granted to provide access to all lots within the subdivision. **Staff recommends** the requested easements be depicted and labeled as being "granted by this plat."

The required plat note regarding improvements within a utility easement will need to be added.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

**Utility provider review:**

HEA	Multiple 30 foot wide utility easements centered on lot lines is being requested.
ENSTAR	No comment
ACS	No objections
GCI	Approved as shown

**KPB department / agency review:**

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: None</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: No addresses affected by this subdivision.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	<p>Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No Comment</p>

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

**STAFF RECOMMENDATIONS**  
**CORRECTIONS / EDITS**

**KPB 20.25.070 – Form and contents required**

**Staff recommendation:** final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

**Staff recommendation:**

- Owner name should include Alaska Mental Health Trust.
- The KPB Assessing information has a different address for Alaska Mental Health. Verify the address they wish to have present on the plat.
- The recording district is required within the title block. It can be added to the location description.
- Bootlegger's Cove Subdivisions do not need to be included as they are considered within the southern half of the section. Please remove and this will match the Certificate to Plat.
- For Jesse Cove Subdivision and Quiet Cove Subdivision, include their plat recording numbers.
- Update the acreage.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

**Staff recommendation:** *Provide a depiction of the boundary and label the Kachemak State Park.*

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

**Staff recommendation:** *The subdivision for Lot 4B to the south is Bootleggers Cove No. 2. Update the labels to differ it from the other lots from the original Bootleggers Cove Subdivision.*

J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

**Staff recommendation:** *Although from separate subdivisions, adjacent lot numbers that match should be avoided. Lot 15 abuts the entire length to another Lot 15 as does Lot 16. Review the lot numbers and adjust to avoid the same numbering if possible.*

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#### **KPB 20.30 – Subdivision Design Requirements**

**Staff recommendation:** *final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.*

##### **20.30.030. Proposed street layout-Requirements.**

A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.

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

C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

**Staff recommendation:** *An exception has been requested.*

##### **20.30.050. Legal access.**

A. The applicant shall provide an access plan to the planning department verifying the existence of legal access to the subdivision boundary. The plan shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB Chapter 20.30 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system, the state marine highway system or a regularly served public airport, and one of the following is met:



1. Ingress and egress will be provided over section line easements located within a surveyed section;
2. The applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. That access is a State of Alaska maintained road or municipal maintained road;
4. The applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. The right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

B. The following situations may qualify for a waiver of the legal access requirement:

1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of KPB 20.30.050(A). If access other than by road is approved, the mode of access shall be noted on the plat. .
2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of KPB 20.30.050(A) may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.

**Staff recommendation:** *Staff is asking the plat committee to concur that the legal access requirements should be waived and a plat note should be added to note the mode of access.*

20.30.170. Blocks-Length requirements. Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

**Staff recommendation:** *The plat does not comply. Grouped and discussed with the exception to KPB 20.30.030.*

20.30.210. Lots-Access to street. Each lot shall abut on a fee simple dedicated street except as provided by KPB 20.30.030(B).

**Staff recommendation:** *Grouped and discussed with the exception to KPB 20.30.030.*

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#### KPB 20.40 – Wastewater Disposal

**Staff recommendation:** *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

20.40.010 Wastewater disposal.

*Platting Staff Comments: A soils report will be required and an engineer will need to sign the plat.*

**Staff recommendation:** *comply with 20.40.*

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#### KPB 20.60 – Final Plat

**Staff recommendation:** *final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.*

20.60.140. Block and lot numbering. Blocks and lots within each block shall be numbered consecutively or all lots shall be numbered consecutively. If possible, each block should be shown entirely on one sheet. Each lot shall be shown entirely on one sheet.

**Staff recommendation:** *Adjust so adjacent lots from neighboring subdivisions do not share the same lot number if possible.*

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required. Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

**Staff recommendation:** *Place the following notes on the plat.*

- *Provide notes for any exceptions granted.*
- *The natural meanders of mean high water line is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.*
- *Rights of the public and or governmental agencies in and to that portion of said premises lying below the mean high water mark of Kasitsna Bay and any questions of right of access to Kasitsna Bay in the event said lands do not in fact abut the Kasitsna Bay.*
- *Reservations and exceptions as contained in State of Alaska Mental Health Trust Land Deed and/or in Acts authorizing the issuance thereof as recorded on September 25, 1996 in Book 35, Page 415, Seldovia Recording District.*
- *Reservations and exceptions as contained in the Approval from Bureau of Land Management as recorded on August 20, 1984 in Book 27 Page 62, Seldovia Recording District.*
- *The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170.*
- *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.*
- *The only access available to this subdivision at the time of recording is by water.*

20.60.190. Certificates, statements, and signatures required.

**Staff recommendation:**

- *The certificate of ownership should be revised to read on behalf of the Alaska Mental Health Trust. "I certify that the Alaska Mental Health Trust is the owner of the real property shown and described hereon, and that on behalf of the Alaska Mental Health Trust I hereby adopt this plan of subdivision and by my free consent dedicate all rights-of-way and public areas to public use and grant all easement to the use shown."*
- *The title of the signer on behalf of the Kenai Peninsula Borough should be changed to "Authorized Official"*
- *On the certificate of ownership signature line, we request the authorized person's name and title be added or provide an area where they can neatly print the information.*
- *Correct the Notary's Acknowledgement so it is an acknowledgement instead of a combination of an acknowledgement and a jurat.*

*Comply with 20.60.190.*

### **EXCEPTIONS REQUESTED:**

#### **KPB 20.30.030 – Proposed Street Layout**

Surveyor's Discussion: Based on the ocean frontage contained by all but two of the lots within the proposed subdivision, we expect the primary access for development of these lots to be by watercraft. Additionally, none of the adjoining subdivisions have dedicated ROWs due to the similar ocean front layout of the lots. Dedicating a ROW would encourage development along the landward boundaries of the proposed lots and detract from the rural nature that makes them desirable. If an exception is granted to KPB 20.30.030, 20.30.170 and 20.30.210 would no longer be applicable due to the absence of streets within the proposed subdivision.

Staff Discussion: Per KPB Code 20.30.030, dedications must be provided for continuation or appropriate projections

Page 6 of 8

and provide reasonable means of ingress to surrounding acreage tracts. While the exception request is for KPB Code 20.30.030, staff finds that the approval of this acceptance should also take into consideration KPB 20.30.170, Block Length Requirements, and 20.30.210, Lots-Access to streets. If this exception is granted it will not be possible to meet those requirements.

This subdivision is to be remote recreational property. There are other lots in the area that are similar. The Oyster Cove airport is across the bay to provide additional access but watercraft will still be required to get to the lots. The owner of the large acreage parcels in the area are the same of this subdivision. If they needed right-of-way access for their property they could require it at this time.

If the exception is granted, staff recommends the plat note for the exception granted include all three portions of code.

**Findings:**

1. KPB Code requires right-of-way dedications to provide adequate access to all lots within the subdivision and neighboring.
2. KPB Code requires right-of-way dedications to create compliant block lengths.
3. KPB Code requires lots to abut a fee simple dedicated street.
4. This is a remote area.
5. Only access at this time is by water.
6. Large acreage lots are in the area that are all owned by Alaska Mental Health Trust.
7. The owner of this subdivision is Alaska Mental Health Trust.
8. Utility easements are being requested and will need to be granted.

Denial of the exception will require rights-of-way dedications that will create compliant blocks and that all lots will abut.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;  
**Findings 4-8 appear to support this standard.**
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;  
**Findings 4-8 appear to support this standard.**
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.  
**Findings 4-8 appear to support this standard.**

**Staff recommendation:** place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.



**RECOMMENDATION:**

**SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:**

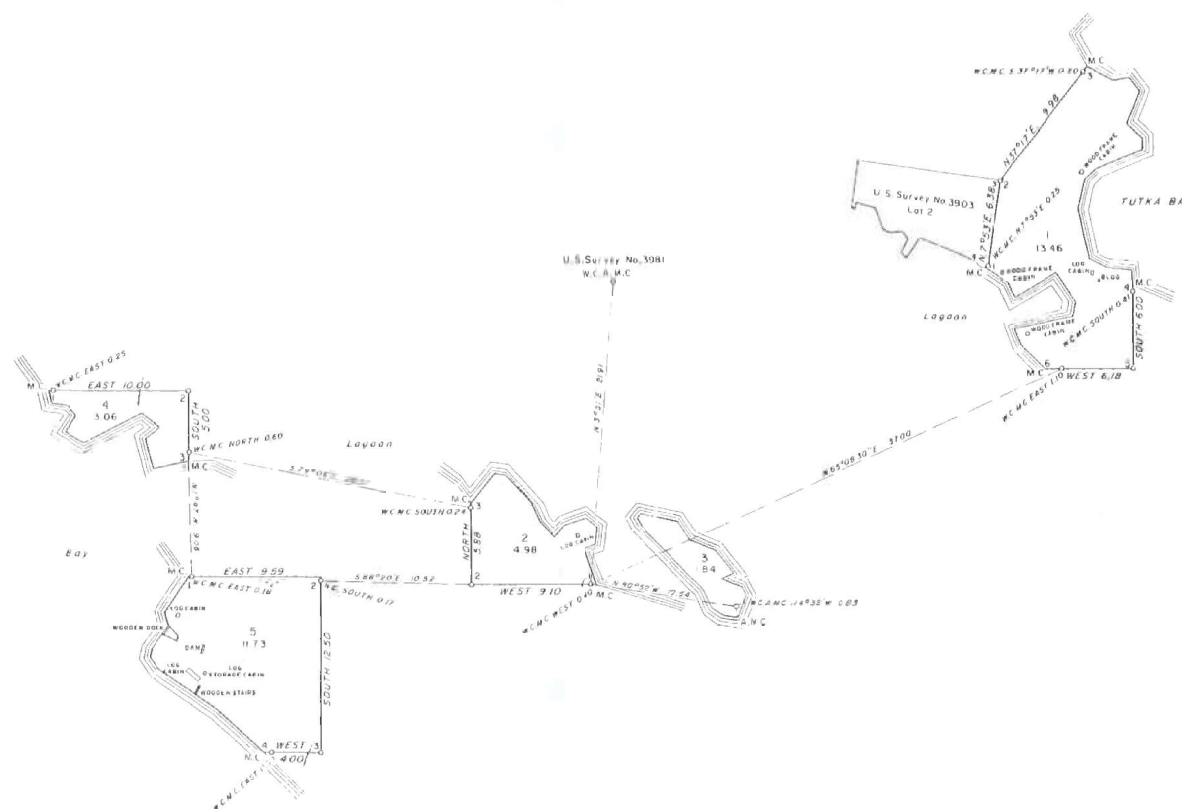
- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT



Magnetic Declination  
23°30'E

BRASS CAPPED IRON POST

SCALE IN CHAINS

# U. S. SURVEY No. 4700, ALASKA

## EMBRACING LOTS 1 THROUGH 5

5 NONCONTIGUOUS LOTS  
SITUATED  
NEAR THE MOUTH, AND  
ON THE SOUTHWESTERLY SIDE  
OF TUTKA BAY  
ON THE SOUTHEASTERLY SIDE  
OF KACHEMAK BAY  
NEAR HOMER, ALASKA

### GEOGRAPHIC POSITION

OF WITNESS MEASUREMENT CORNER NO. 1, LOT 1  
LATITUDE 59° 28' 25" N., LONGITUDE 151° 29' 00" W.

AREA: 35.07 ACRES

### SURVEYED BY:

ROBERT Q. PICKERING, SUPERVISORY CADASTRAL SURVEYOR  
JUNE 24, 1964 TO JULY 21, 1964

Under Special Instructions  
Dated March 15, 1964, and  
Approved March 19, 1964

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Washington, D. C. September 16, 1965

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

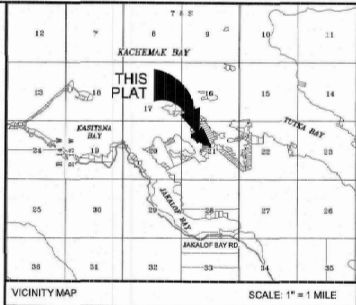
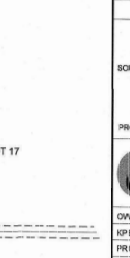
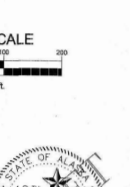
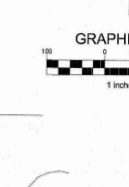
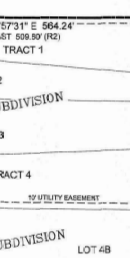
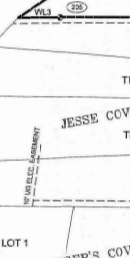
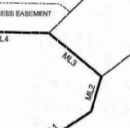
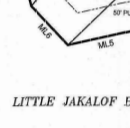
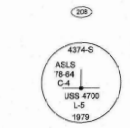
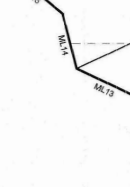
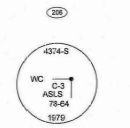
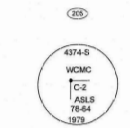
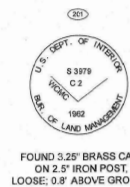
*E. E. Smith*  
Chief, Division of Engineering

KPB 2022-047

MEASURED INFORMATION	DESCRIPTIVE INFORMATION
LINE 1 BEARING DIST. (FEET)	LINE 1 BEARING DIST. (FEET)
N 10° 10' 00" E 150.00	N 10° 10' 00" E 150.00
N 10° 10' 00" E 150.00	N 10° 10' 00" E 150.00
N 10° 10' 00" E 150.00	N 10° 10' 00" E 150.00
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N 10° 10' 00" E 150.00	N 10° 10' 00" E 150.00
N 10° 10' 00" E 150.00	N 10° 10' 00" E 150.00

# MONUMENT DETAILS



- NOTES**
- SET 50" X 10" REBAR WITH 1.25" DIAMETER ORANGE PLASTIC CAP AT ALL LOT CORNERS AND 50' UPLAND ON LINES AS WITNESS CORNERS TO THE MEANDER CORNERS.
  - ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL LOCAL, STATE AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION, IF APPLICABLE.
  - THE LOCATION OF THE MEANDERS WERE DETERMINED USING THE PUBLISHED MEAN HIGH WATER ELEVATION FOR NOAA TIDAL BENCHMARK TIDAL 9' LOCATED AT NOAA-LAF KASITNA BAY LABORATORY APPROXIMATELY 1.5 MILES WEST OF THE SUBDIVISION LOCATION. THE PUBLISHED MEAN HIGH WATER ORTHOMETRIC ELEVATION IS 122.27 FEET (NAVD83).
  - THE LOCATION OF THE SECTION CORNERS FOR PROTRACTED SECTION 21 WERE DETERMINED USING COORDINATES EXTRACTED FROM THE ALASKA DIVISION OF LANDS PROJECTION DIAGRAM No. S-15-9.

- LEGEND**
- FOUND 3.25" DIAMETER BRASS MONUMENT
  - FOUND 2.5" DIAMETER BRASS MONUMENT
  - FOUND 2.25" DIAMETER ALUMINUM MONUMENT
  - LOT LINE TO BE VACATED THIS PLAT
  - EASEMENT TO BE DEDICATED THIS PLAT
  - EXISTING EASEMENT
  - BEARING BEARING INTERSECTION
  - RECORD MEASUREMENT - PLAT 87-85
  - RECORD MEASUREMENT - PLAT 75-283
  - RECORD MEASUREMENT - PLAT 83-08
  - RECORD MEASUREMENT - UBS 3979
  - RECORD MEASUREMENT - PLAT 87-9

**SURVEYOR'S CERTIFICATE**

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME AND THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE TRUE AND CORRECT.

BUKU SALIZ LS-14837  
REGISTERED LAND SURVEYOR DATE

A PLAT OF  
**EAST OYSTER COVE SUBDIVISION**  
A SUBDIVISION OF  
A PORTION OF THE NORTH 1/2 OF SECTION 21  
AND LOT 4 OF U.S. SURVEY No. 4700  
EXCLUDING U.S. SURVEY Nos. 3903, 3979, 3981, 4700 (LOTS 2 & 3), AND 4747 (LOT 3);  
SOUTH KACHEMAK ALASKA SUBDIVISION; BOOTLEGGER'S COVE SUBDIVISION; BOOTLEGGER'S  
COVE No. 2 SUBDIVISION; ESSE COVE SUBDIVISION; QUIET COVE SUBDIVISION  
AND THOSE UPLANDS LYING NORTH OF U.S. SURVEY No. 3903 AND 3979  
CONTAINING 388.781 ACRES  
LOCATED WITHIN  
PROTRACTED SECTION 21, TOWNSHIP 9 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ALASKA

**FIXED HEIGHT** LLC  
807 290.8949  
225 W 23RD AVE  
ANCHORAGE, AK 99503  
C.O.A. 122944

OWNER: MENTAL HEALTH TRUST, 2850 CORDOVA STREET, ANCHORAGE, AK 99503  
KP8 FILE NO.: XXXX-XX DRAWN BY/DATE: AK/1-1-2022  
PROJECT NO.: 21083 CHECKED BY: BS  
SURVEY DATE: SEPTEMBER 7-9, 2021 SCALE: 1" = 100'  
FIELD BOOK: 21-01 SHEET: 1 OF 1



Dear Members of the Planning Committee:

My name is Philip Brudie and I own lot 2 of Quiet Cove Subdivision (OSS 3980) which is directly adjacent to lot 1 of the proposed East Opster Cove subdivision. I request that the conditions of plat include a requirement that my DNR approved water source on the land be delineated by an easement for the reasons I outline below. Also the plat should reflect my third party rights to draw water from the water source.

I have owned my lot for fifty years. During that time I have drawn fresh water from a source on the platted property in the approximate location of the proposed lots 1 and 2 (and probably lot 3) through a plastic pipe feeding from a collection point in a small drainage on the east side of lots 1, 2, and three. The piping follows the small stream to tidewater on lot 1. There it splits and provides water to three of the existing owners of Quiet Cove. This is the only known source of available water for our small community. The actual location of the water source and delivery pipe should be fixed by survey.

In 1987 I applied for and eventually received my water right appropriation to draw water from the 'unnamed stream' in Water Rights Certificate LAS 11231, dated 2-22-1988 with priority effective as of 1-23-1987. This was recorded at book 30, page 223, Seldovia Recording District. This affects 2.33 acres of



the Quiet Cove Subdivision (lots 1 and 2)  
My legal rights to use this water have  
been perfected.

At a minimum, the plat needs to disclose  
these prior existing rights on the plat for  
the affected lots, which will require the  
location to be surveyed.

I should note that the historical use  
over the last thirty five plus years has  
extended into the uplands where the  
impoundment facility is located. The  
impoundment area should be memor-  
ialized by an easement allowing the  
users to access, maintain and draw  
from it. My use has been notorious  
and without consent all of these years.

My hope is that the petitioner will  
agree to this request so their entry  
into our neighborhood does not start  
off with a major war on water rights,  
the preservation of which is critical  
to those of us who reside and/or  
recreate here year round.

If the petitioner, despite its public  
status, does not agree, then you, the  
planning commission, should impose  
these requirements for health and  
safety questions. The location of the  
drinking water source needs to be  
delineated so that the ADEC approved  
septic or marine outfall designs  
preserve our access to safe drinking



water, which at a minimum, is legally undisputed at the mean high tide line. Plus, we do urge, for the quality of the Cove itself, as well as our drinking water, that all lots must have an approved ADEC septic design with appropriate legal setbacks from all streams and water sources.

To summarize, my request is that the following conditions to plat be required:

- ① Petitioner is to survey the existing stream, water impound area and drainage and locate it on the map.
- ② The affected lots have a plat note advising of the prior rights to appropriate water provided by LAS 11231.
- ③ The petitioner work with me to delineate an easement preserving my and my neighbors access to the impoundment area and the water supply pipe.
- ④ The plat must disclose the ADEC septic sites on all lots with sufficient distance to preserve the integrity of the surface water for drinking purposes.

Thank you,

Sincerely,

Philip L. Brodie  
April 30, 2022

Philip Brodie  
PO Box 111  
Homer, AK 99603  
907 399 6257

RECEIVED

MAY 04 2022

KPB PLANNING DEPT.



# State of Alaska



BOOK 30 PAGE 223

## Water Rights

RECEIVED

MAY 04 2022

KPB PLANNING DEPT.

### CERTIFICATE OF APPROPRIATION

LAS 11231

THE STATE OF ALASKA UNDER AS 46.15, THE ALASKA WATER USE ACT,  
AND THE REGULATIONS ADOPTED UNDER IT, GRANTS TO:

PHILIP L BRUDIE  
P.O. BOX 859  
HOMER, AK. 99603

THE RIGHT TO USE WATER FROM THE FOLLOWING SOURCE:

A) UNNAMED STREAM WITH A PRIORITY DATE OF 01/23/1987

150.0 GAL/DAY	
FOR SINGLE DWELLING	JAN 01 THRU DEC 31
20.0 GAL/DAY	
FOR POULTRY AND EGG	JAN 01 THRU DEC 31

THE LOCATION TO WHICH THIS WATER RIGHT APPERTAINS IS:

THE LAND EMBRACED IN SOLDIER'S ADDITIONAL HOMESTEAD ENTRY, U.S. SURVEY 3980, SITUATED ON THE SOUTHEASTERLY SHORE OF KASITSNA BAY AREA, ALASKA CONTAINING 2.33 ACRES, ACCORDING TO THE OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND, ON FILE IN THE BUREAU OF LAND MANAGEMENT, SAID PARCEL LOCATED WITHIN W1/2NE1/4NW1/4 PROTRACTED SECTION 21, TOWNSHIP 8 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ~~HOMER~~ RECORDING DISTRICT, STATE OF ALASKA.

SELDovia

THE LOCATION OF THE WATER SOURCE IS THAT PORTION OF AN UNNAMED STREAM LOCATED AT OR BELOW MEAN HIGH TIDE WITHIN NW1/4NE1/4NW1/4 PROTRACTED SECTION 21, TOWNSHIP 8 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ALASKA.

THE CONDITIONS THAT APPLY TO THIS APPROPRIATION ARE FOUND IN ATTACHMENT A, ATTACHED HERETO AND MADE A PART HEREOF.

PAGE 1

# State of Alaska



BOOK 30 PAGE 224

## Water Rights

CERTIFICATE OF APPROPRIATION

LAS

11231

THE WATER RIGHT IS GRANTED SUBJECT TO THE PERTINENT STATUTORY PROVISIONS IN AS 46.15, AND ADMINISTRATIVE REGULATIONS IN 11 AAC 93.

THIS CERTIFICATE OF APPROPRIATION IS ISSUED BY AUTHORITY OF AS 46.15.120 AND 11 AAC 93.130 ON February 18, 19 88.

APPROVED: \_\_\_\_\_

TITLE: \_\_\_\_\_

Chief Water Section  
DIVISION OF LAND AND WATER MANAGEMENT

STATE OF ALASKA )

) SS

3rd JUDICIAL DISTRICT)

THIS IS TO CERTIFY THAT ON FEBRUARY 18, 19 88  
BEFORE ME APPEARED EDWARD G. BARBER, Jr., KNOWN BY  
ME TO BE THE DIRECTOR OR AUTHORIZED REPRESENTATIVE OF THE DIVISION OF  
LAND AND WATER MANAGEMENT, DEPARTMENT OF NATURAL RESOURCES, AND  
ACKNOWLEDGED TO ME THAT THIS CERTIFICATE OF APPROPRIATION WAS VOLUN-  
TARILY EXECUTED ON BEHALF OF THE STATE OF ALASKA.

Bill Edgely  
NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA  
MY COMMISSION EXPIRES: 12-1-89

PURSUANT TO AS 46.15.160 AND APPLICABLE REGULATIONS THE CERTIFICATE  
HOLDER SHALL NOTIFY THE ALASKA DIVISION OF LAND AND WATER MANAGEMENT  
UPON CHANGE OF ADDRESS OR TRANSFER OF ANY REAL PROPERTY RELATED  
THERE TO.

PAGE 2



# State of Alaska



BOOK 30 PAGE 224

## Water Rights

CERTIFICATE OF APPROPRIATION

LAS

11231

ATTACHMENT A - CONDITIONS:

THE HOLDER OF THIS CERTIFICATE SHALL:

FOLLOW ACCEPTABLE ENGINEERING STANDARDS IN EXERCISING THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

DEFEND AND INDEMNIFY THE STATE AGAINST AND HOLD IT HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LEGAL ACTIONS, LOSS, LIABILITY AND EXPENSE FOR INJURY TO OR DEATH OF PERSONS AND DAMAGES TO OR LOSS OF PROPERTY ARISING OUT OF OR CONNECTED WITH THE EXERCISE OF THE WATER RIGHT GRANTED BY THIS CERTIFICATE.

COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS AND CONDITIONS.

150 GAL/DAY FOR SINGLE DWELLING IS FOR TWO UNPLUMBED CABINS.

88-284

RECORDED - <del>FILED</del> 16-
Seldovia REC. DIST.
DATE 11-21- 19 88
TIME 340 P. M.
Requested by P. BRUDIE
Address HOMER AK



## Quinton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Friday, May 6, 2022 11:56 AM  
**To:** Quinton, Madeleine  
**Cc:** Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>proposed Jakolof subdivision

Madeleine

---

**From:** shannyn moore <shannynmoore@gmail.com>  
**Sent:** Friday, May 6, 2022 11:36 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>proposed Jakolof subdivision

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

From Shannyn Moore  
PO Box RDO  
Homer, Alaska 99603-8999

To The Kenai Borough Assembly

Re: Mental Health Trust Subdivision Proposal in Little Jakolof

Dear Assembly Members,

We appreciate the opportunity to weigh in with you about the Mental Health Trust proposal to add sixteen lots to our community. There are so many different types of people who own homes in our area, but we have yet to meet one who thinks this proposal is a good idea. Thank you for taking the time to hear our different perspectives.

The Mental Health Trust has one job. Their job is to make money for the trust by selling land. They don't have to consider any factors other than making money. With \$400 million in assets, we'd say they are doing their job. You, the assembly, have quite another task at hand. Your job is to make the communities on the Kenai Peninsula better places to live for our residents.

We have one home. We live in Little Tutka Bay. We live here all year. Not everyone with property here is so lucky to get to see the winters. The Mental Health Trust has missed something we want you to understand. These tiny bays and the islands close by are a community. We have a post office, a tiny library, potlucks, wood cutting parties and businesses that employ locals when they can. There are children home schooled here. We respond to local disasters like fires, boats sinking and plane crashes. We aren't just a vacation destination. Owning a home here isn't a National Guard agreement to two weeks a year and one weekend a month for dentists from Anchorage.

The recent proposal for sixteen lots between Little Tutka Bay and Jakolof Bay has zero consideration or provision for public land use. There is no future school site, land for a community cemetery, park or post office. Why is that? Where are new residents going to park their boats? There is zero planning to expand the community with the offering. The reason is simple. It's not the job of Mental Health to make us a community with amenities. It's the job of the borough to help us through this time of proposed growth to do it right.

It's hard to build a life here. At least 70% of the work to construct is just moving supplies across the bay and up to your perch. The land proposed isn't impossible to build on, but you could see impossible from your porch if you could ever get one built.

Please postpone the approval of the subdivision until the issues brought by our community can be addressed. We thank you for your consideration.

Sincerely,

Gregor Welpton and Shannyn Moore

## Quainton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Friday, May 6, 2022 9:15 AM  
**To:** Quainton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER>written testimony regarding KPB File 2022-047 proposed Little Jakolof Bay subdivision

Madeleine

---

**From:** Daniel Coyle <djcoyle1@gmail.com>  
**Sent:** Friday, May 6, 2022 9:06 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Cc:** Doug Kossler <anchoragerunner@yahoo.com>; tanomoshii@yahoo.com; Maurice Coyle <mauricecoyle3@gmail.com>; jonathan coyle <jpcoyleak@gmail.com>; keetnasimon@yahoo.com; walanier@gmail.com; jenny coyle <jen79coyle@gmail.com>; John Giuggio <giovanpietro3@gmail.com>  
**Subject:** <EXTERNAL-SENDER>written testimony regarding KPB File 2022-047 proposed Little Jakolof Bay subdivision

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

**To: Kenai Peninsula Borough Planning Department  
144 N Binkley Street  
Soldotna, AK 99669**

**(submitted via email)**  
MAY 6, 2022

To: Kenai Peninsula Borough Planning Department

As a unified group of seven local residents and landowners, we'd like to express our urgent concerns about the proposed subdivision in Little Jakolof Bay and Little Tutka Bay, KPB File 2022-047, for the following reasons:

- 1) The proposed subdivision will destroy an existing archaeological site of significant cultural and historical value. The site is located near proposed lots 8, 9, and 10. Further investigation could uncover additional sites, which would be protected by state and federal law. In addition, the development of new lots may destroy wildlife habitat, including eagle-nesting areas
- 2) The proposed subdivision does not provide adequate water access or supply. Many of the proposed lots are located on bedrock, with no water source.



3) The proposed subdivision — 16 lots, many of them extremely narrow, located in a relatively small, confined area — creates multiple problems of density and access, and will generate navigational hazards. The entrance and the western (weather-exposed) side of the bay is narrow for running lines, and not suitable for moorings.

4) A significant number of the lots are unusable because of steepness or access problems. Some lots have steep rocks on the shore and are inaccessible from the beach. In addition, two lots have access only through Little Tutka Bay, creating additional congestion for residents of Tutka Bay.

We hope that these comments will provide the planning commission with guidance and clarity as it makes its decisions. We are ready and willing to answer any questions or provide any additional information the planning commission requires. We hope that the commission will delay any imminent decisions in order to give appropriate time, research, and attention to these sincere and valid concerns.

SIGNED,

**Daniel Coyle**  
**Maurice Coyle**  
**Jonathan Coyle**  
Co-owners of Bootleggers Cove Lots 1, 3 4, and 5

**Doug Kossler**  
**Margaret Kossler**  
**Kimberly Lanier**  
**William A. Lanier**  
Co-owners of Jesse Cove Tract 3 and 4

RE: KPB File No. 2022-047

Greetings

I am writing to express concerns about the proposed re-plat of a parcel that fronts on Little Jakolof Bay and a portion of Kasitsna Bay locally referred to as Quiet Cove.

While I respect the owners rights (Alaska Mental HealthTrust Authority, 'AMHTA') to monetize its land holdings this proposed subdivision is not, in my opinion, the way to do it. (Skip to the conclusion for a proposed methodology).

The proposed creation of these lots will add additional pressure to the local communities of Little Jakolof, Quiet Cove and Little Tutka Bay. Today these communities are self sufficient, where the land owners take care of issue themselves instead of relying partially or entirely on the services of the Borough or City of Homer, despite being taxed for services not necessarily received.

For instance, currently my property and other properties in these communities, pay borough collected taxes but receive little in return. Borough taxation for services, which include fire services are, in particular, an excellent example.

On October 19, 2019 my house burned to the ground after a 5 year construction effort. It was a heartbreaking event and an uninsured loss of over \$1.2m. Fortunately no one was injured and thanks to the immediate help of my neighbors rushing in, the event did not consume more than just my improvements and a portion of old growth forest.

What I received from the borough was a "yeah we could see it happening from Homer" and "we'll inform the State of Alaska fire officials that you may have ongoing liability should any of the smoldering roots or remains cause additional damage." In other words, absolutely nothing but a notice of potential liability. No assistance with investigation, no assistance with mitigation of potential post fire issues, no coordination with the State or City of Homer.

To add insult to injury, I then paid over \$100,000 in Landfill expenses associated with hauling the debris to Homer for disposal.

In other words if the Borough wishes to support subdivision and the receive the resulting tax revenue then the borough should be prepared to provide the services. However, despite that, as mentioned above we are a self sufficient community of homes and we are used to taking care of each other. For my part I forgo the services despite paying the taxes because of the tranquility of the area and the support of my neighbors.

Quiet Cove Specific Issues

Quiet cove is a very calm and small cove. So small that its name is only a locally named cove without an official body of water designation. At low tide the cove and the properties fronting on it are inaccessible, either by land or water or air. **In particular the proposed lots 1-4 will have NO ACESSS at low tide.**

The cove is home to Land Otters, Sea Otters, Starfish, Mussels, Clams and innumerable fish and bird species all supported by a diverse eco-system of marine plants that existing due to the tidal action that fills and empties the cove twice each day.

In addition the proposed Lot 2 has no accessibility at high tide due to the cliff face at the beach level. The only way to solve this would be a substantial dock system again impacting the sensitive Quiet Cove marine life and even then such a dock would not be accessible at low tide.

Development of the proposed lots 1-4 would A) seriously impact this bio-diversity and B) create serious impacts related to inaccessibility issues.

#### Little Jakolof Issues

Little Jakolof Bay is a larger and a more robust marine environment. There are several concerns that I assume my neighbors in Little Jakolof will address since I am less directly impacted. Non-the-less, I reached out to Janet Klein a preeminent scholar on the subject of the archeology of Kachemak Bay

<https://worldcat.org/identities/lccn-n82050143/>

Ms.Klein believes there could be anecdotal evidence of archeological significance (house pits)<sup>1</sup>, on portions of the property proposed to be subdivided, on the south facing shore of the property facing little Jakolof. This evidence may or may not prove to be accurate but at a minimum it should be investigated and considered, and if true considered as part of the proposed future use of the property.

#### Little Tutka issues

Again these issues impact others more than myself. Two of the proposed lots 15 and 16 are only accessible by a narrow easement across others properties from Little Tutka Bay. They are in essence landlocked parcels, at the end of an easement at the end of a cove at the end of a bay. Was consideration given to potential acquisition by the owners of the properties with easements? Or extended to the other adjacent parcels adjacent to these lots?

#### Conclusion

As expressed in my opening paragraph I believe the AMHTA should be allowed to seek to accomplish monetization of the value of their holdings with regard to the proposed property, for the benefit of their constituents, the citizens of Alaska accessing the mental health network of the State of Alaska. However, I feel strongly that the method of that monetization could come in many ways, the least of which is a simple commercial blanket subdivision into numerous parcels, each with unique challenges.

One example would be to pursue a conservation easement on the entire parcel wherein the AMHTA would be compensated for the value of the parcel based on a fair market value appraisal. Said appraisal could be based on an as-is valuation or even an "if improved" Valuation (subdivided). That is just one

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<sup>1</sup> Numerous examples of house pits evidenced in the Kbay area Include those found and preserved on private lands on Yukon Island by the Abbott family. Significantly examined and researched by William Workman <https://www.researchgate.net/scientific-contributions/William-B-Workman-2027733563> over numerous years.



example. In other words what are the monetization goals (dollar amount) of the AMHTA. Make that clear and give the community an opportunity to step and meet the goal.

I would encourage the Kenai Peninsula Platting Board, to postpone this action until a thoughtful process has run its course with regard to the monetization effort that explores alternatives. I believe that myself and my Little Tutka Bay, Little Jakolof Bay and Quiet Cove neighbors are willing to engage in such a process. I also believe that there are some obvious first choice alternatives that would be supported by all.

I am willing to commit to such a process with a defined schedule and without prejudice to the outcome, as I believe are other members in the community. If that ends up in a renewed application to sub-divide the property so be it. But without the engagement of the community in a process, moving forward at this time will be problematic.

Thank you for your consideration, let's engage in a process to accomplish the community goals, the borough goals and the AMHTA goals.

Mark Pfeffer  
(907) 317-5030

May 6<sup>th</sup>, 2022

RE: Proposed plat under consideration KPB File NO. 2022-047

We strongly oppose the plat as proposed with regards to the 20 foot easement from Little Tutka Bay to proposed lots 15 and 16 of East Oyster Bay Subdivision.

We own lot 15 of South Kachemak Alaska Subdivision. We have owned this property for 20 years. I am very familiar with the easement topography at every tide stage. It will be a poor easement. Depending on the exact survey line it may be impassable much of the time, leading to the trespass of adjoining property.

The easement is in a low wetland estuary with a narrow deep creek and a 40–60-foot pond nearer the natural shoreline bench that does not drain. At low tide the pond is thigh deep with muddy bottom. The survey line bisects this pond. To go around it users will trespass on the South Kachemak Alaska subdivision lot 15 or lot 16. Depending on the exact line users will then need to cross the creek, perhaps more than once.

The diagram provided by Mental Health Lands Trust (MHLT) does not depict this area accurately. Little Tutka Bay is not as near to the east line of the 2 lots as depicted. At most tide stages it will be a 300 foot slog through the estuary. At very high tides (23-25 feet) the water does get to the east boundary of the new subdivision. However, it is too shallow for any boat other than a kayak for approximately the last 200 feet. Due to undulating topography of the wetland estuary and the creek it is also impassible with hip boots or chest waders.

This week I went to the MHLT offices in Anchorage to attempt to get a good map with survey lines to better review and make my case. They had terrible mapping available with detail no better than your enclosed diagram.

In the past I have seen a plat map/as built map that showed the southwest corner of our lot 15 SOUTH of the southern edge of the estuary. I was surprised and pleased because it meant we own a fabulous berry patch. If that map is correct the northern 20 foot easement is in the worst possible area of the wetland estuary, directly on the creek. Please provide detailed, accurate mapping for the public to review prior to making any decisions on this.

In summary, this is a bad easement functionally and environmentally. The new East Oyster Bay Subdivision lots 15 & 16 should be changed. Lot 15 could easily be connected to the new lot 14 and sold as a single 3.6-acre parcel, like the new lots 10 and 11. Lot 16 is a bad idea all around. It is land locked and has no view of water or mountains from its north line most of the time. It will have a wet estuary view only at extreme high tides. The amount of damage to the wetlands estuary to develop this land is likely to be large. If lot 16 must be developed then it should be combined with 14 & 15 to provide ocean access.

We urge the Kenai Borough to reject the proposed plat outright until the MHLT addresses and corrects these problems.

Submitted by Dennis & Lisa Poirier

## Quainton, Madeleine

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**From:** Planning Dept,  
**Sent:** Friday, May 6, 2022 8:32 AM  
**To:** Hindman, Julie; Quainton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER>KPB File No. 2022-047

FYI

---

**From:** GEORGE RHYNEER <valiant@mtaonline.net>  
**Sent:** Friday, May 6, 2022 8:03 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>KPB File No. 2022-047

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Planners: I am a land owner in Little Jakalof Bay (tract 1 and 2, Jesse Cove Subdivision) When you consider approval of the plat referenced above please be aware that that there may be native middens and other archeological sites along the shoreline of Little Jakalof Bay which should be identified and protected before this land is subdivided and sold. Sincerely, George Rhyneer



## **DESK PACKET ITEMS**

**(Items received after the publishing of the meeting packet on 6/7/22)**

### **E. NEW BUSINESS**

- 11. East Oyster Cove Subdivision; KPB File 2022-047R1  
Fixed Height LLC / Alaska Mental Health Trust Authority  
Location: Oyster Cove REM SW  
Remote Area**

## Quinton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Friday, June 10, 2022 8:57 AM  
**To:** Quinton, Madeleine; Hindman, Julie  
**Subject:** FW: <EXTERNAL-SENDER>Oyster Cove Subdivision

Thank You,

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

**KENAI PENINSULA BOROUGH**  
**144 North Binkley Street**  
**Seldotns, 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.

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**From:** tamara hopkins <taxito32@gmail.com>  
**Sent:** Thursday, June 9, 2022 10:43 PM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Oyster Cove Subdivision

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KPB 2022-047R1

I am writing again to oppose this subdivision as replatted. I also would like to know how MHT will dispose of this property, auction I assume. I am fearful of what could happen to this Little Jakolof serenity if this is to happen. We have all been very protective of this quiet place. I am a newcomer to this cove, 2006 when I was introduced. It is a very special place, and that will change permanently if 15 lots are sold and developed. My concerns have been stated at the earlier hearing, and they still stand.

I walked to the back corner of our property,(Lot 4B of Bootlegger's Cove No.2 Subdivision) and looked at the proposed access for lots 13,14,15. It is right in the tidal estuary off a backwater portion of Little Tutka Bay which completely floods on any high tide greater than 15 feet or so. This platted access totally ignores the fact that this is wetlands as was pointed out to this body on the previous public hearing of May 9, 2022. It is inconceivable to me how this commission can approve this. Lots 13 and 14 are basically landlocked.

Quiet Cove like Little Jakolof Bay is just that, quiet and very small. And very tidal. I find it hard to see how it can support four lots as depicted on this plat i.e. lots 1 thru 4. Similarly lots 5 thru 12 fronting Little Jakolof Bay will ultimately create a very crowded waterfront. For these reasons , I would urge this commission to disapprove this platt.

Thank you for your consideration on this matter,

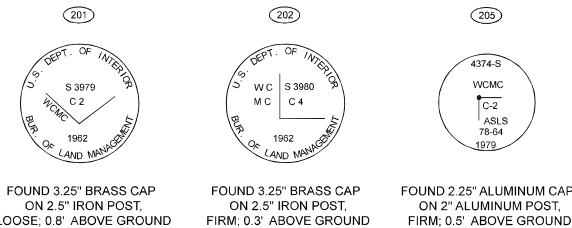
Tamara Hopkins



WITNESS LINE TABLE				RECORD INFORMATION			
LINE	BEARING	DIST. (FT.)	REC.	BEARING	DIST. (FT.)		
WL1	N 00°17'30" E	11.09'	(R1)	S 00°01'06" E	11.22'		
WL2	S 89°57'31" E	15.00'	(R2)	EAST	15.00'		
WL3	S 89°57'31" E	72.83'	(R2)	EAST	19.15'		
WL4	S 58°23'13" W	57.40'	(R3)	N 59°59'00" E	53.46'		
WL5	N 58°23'13" E	38.54'	(R3)	N 59°59'00" E	56.20'		
WL6	N 85°52'08" W	28.57'	(R4)	N 89°31'48" W	44.60'		

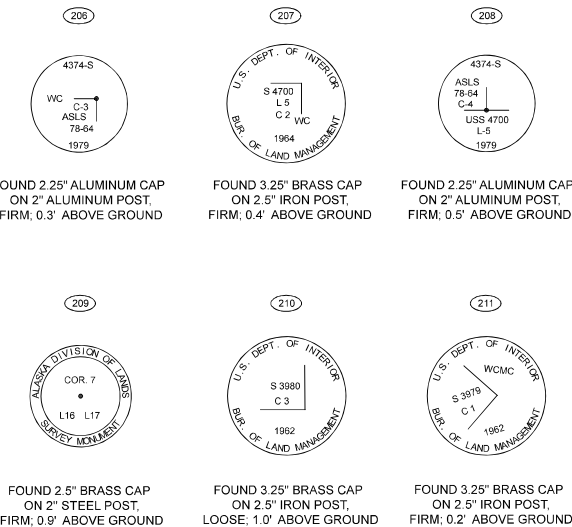
MEANDER LINE TABLE		
LINE	BEARING	DIST. (FT.)
ML1	N 56°25'06" E	150.12'
ML2	S 16°41'56" W	62.21'
ML3	N 50°15'46" W	117.53'
ML4	S 88°20'33" E	134.84'
ML5	N 77°32'58" E	113.05'
ML6	N 43°29'33" W	91.55'
ML7	N 14°39'54" W	73.39'
ML8	N 38°06'40" E	59.73'
ML9	S 50°45'56" E	115.23'
ML10	N 85°15'55" E	202.62'
ML11	N 73°23'22" E	92.15'
ML12	N 09°45'41" W	117.85'
ML13	S 64°54'56" E	131.68'
ML14	N 14°46'21" W	96.33'
ML15	S 50°13'38" E	126.39'
ML16	S 50°13'38" E	110.07'
ML17	S 86°53'15" E	163.08'
ML18	N 35°34'20" W	27.23'
ML19	S 39°54'41" W	143.66'
ML20	S 10°47'30" W	135.49'
ML21	S 59°00'57" E	15.54'
ML22	N 64°46'03" W	16.45'
ML23	S 73°01'50" W	143.07'
ML24	S 73°01'50" W	76.22'
ML25	S 54°31'04" W	129.38'
ML26	S 64°31'04" W	87.81'
ML27	N 44°22'10" E	187.72'
ML28	S 13°30'22" E	130.52'

## MONUMENT DETAILS

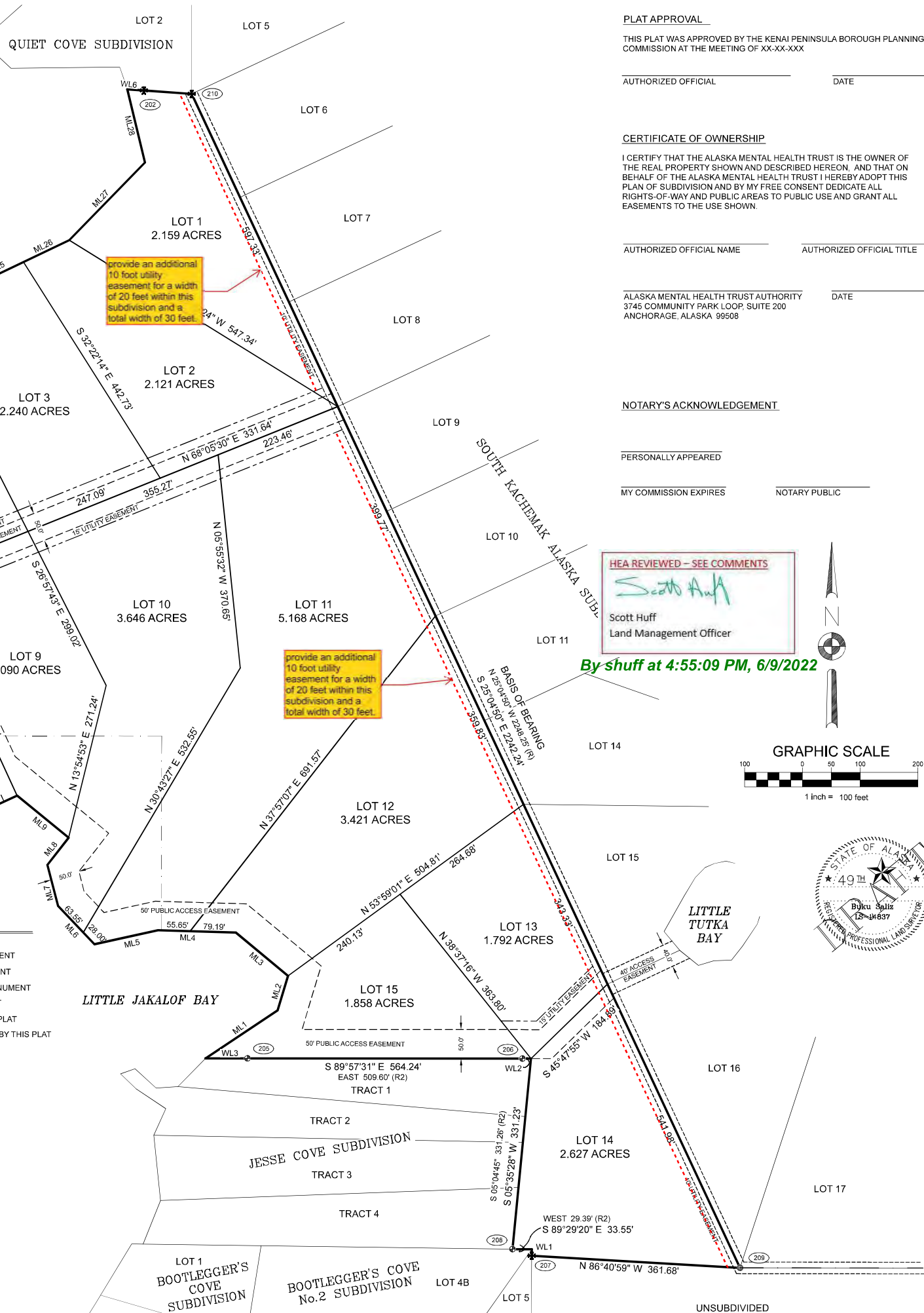


## LEGEND

- FOUND 3.25" DIAMETER BRASS MONUMENT
- FOUND 2.5" DIAMETER BRASS MONUMENT
- FOUND 2.25" DIAMETER ALUMINUM MONUMENT
- LOT LINE TO BE VACATED BY THIS PLAT
- UTILITY EASEMENT GRANTED BY THIS PLAT
- PUBLIC ACCESS EASEMENT GRANTED BY THIS PLAT
- EXISTING UTILITY EASEMENT
- (R) RECORD MEASUREMENT - PLAT 67-85
- (R1) RECORD MEASUREMENT - PLAT 75-263
- (R2) RECORD MEASUREMENT - PLAT 83-06
- (R3) RECORD MEASUREMENT - USS 3979
- (R4) RECORD MEASUREMENT - PLAT 87-9



KPB 2022-047R1



## PLAT APPROVAL

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

AUTHORIZED OFFICIAL DATE

## CERTIFICATE OF OWNERSHIP

I CERTIFY THAT THE ALASKA MENTAL HEALTH TRUST IS THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, AND THAT ON BEHALF OF THE ALASKA MENTAL HEALTH TRUST I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

AUTHORIZED OFFICIAL NAME AUTHORIZED OFFICIAL TITLE

ALASKA MENTAL HEALTH TRUST AUTHORITY  
3745 COMMUNITY PARK LOOP, SUITE 200  
ANCHORAGE, ALASKA 99508

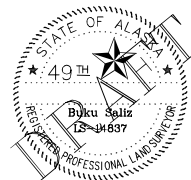
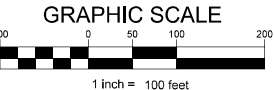
## NOTARY'S ACKNOWLEDGEMENT

PERSONALLY APPEARED

MY COMMISSION EXPIRES NOTARY PUBLIC



By shuff at 4:55:09 PM, 6/9/2022



## SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME AND THAT THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE TRUE AND CORRECT.

BUKU SALIZ LS-14837  
REGISTERED LAND SURVEYOR DATE

## A PLAT OF EAST OYSTER COVE SUBDIVISION

### A SUBDIVISION OF

A PORTION OF THE NORTH 1/2 OF SECTION 21  
AND LOT 4 OF U.S. SURVEY No. 4700  
EXCLUDING U.S. SURVEY No's. 3903, 3979, 3981, 4700 (LOTS 2 & 3), AND 4747 (LOT 3);  
SOUTH KACHEMAK ALASKA SUBDIVISION (67-85);  
JESSE COVE SUBDIVISION (83-6); QUIET COVE SUBDIVISION (87-9);  
AND THOSE UPLANDS LYING NORTH OF U.S. SURVEY No's. 3903 AND 3979  
CONTAINING 36.616 ACRES

LOCATED WITHIN  
PROTRACTED SECTION 21, TOWNSHIP 8 SOUTH, RANGE 13 WEST, SEWARD MERIDIAN, ALASKA  
SELDOVIA RECORDING DISTRICT

**FIXED HEIGHT LLC** 907.290.8949  
WWW.FIXEDHEIGHT.COM  
225 W 23RD AVE.  
ANCHORAGE, AK 99503  
C.O.A. 122544

OWNER:	MENTAL HEALTH TRUST ; 2800 CORDOVA STREET ; ANCHORAGE, AK 99503
KPB FILE NO.:	XXXX-XX
PROJECT NO.:	21083
SURVEY DATE:	SEPTEMBER 7-9, 2021
FIELD BOOK:	21-01
DRAWN BY/DATE:	AK / 1-1-2022
CHECKED BY:	BS
SCALE:	1" = 100'
SHEET:	1 OF 1

# DESK PACKET

*(ITEMS THAT CAME IN AFTER MEETING PACKET WAS POSTED)*

13. Review of Plat Committee Decision  
East Oyster Cove Subdivision; KPB File 2022-047R1  
Fixed Height LLC / Alaska Mental Health Trust Authority  
Location: Oyster Cove REM SW  
Remote Area

## Quainton, Madeleine

---

**From:** Planning Dept,  
**Sent:** Tuesday, August 2, 2022 10:16 AM  
**To:** Ruffner, Robert; Piagentini, Vincent; Hindman, Julie; Quainton, Madeleine  
**Subject:** FW: <EXTERNAL-SENDER>KPB file 2022-047R1

---

**From:** tamara hopkins <taxito32@gmail.com>  
**Sent:** Tuesday, August 2, 2022 10:09 AM  
**To:** Planning Dept, <planning@kpb.us>  
**Subject:** <EXTERNAL-SENDER>KPB file 2022-047R1

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

Dear Commissioners,

Regarding the review of this subdivision plat, I see the for sale are up already, nothing on the letter or plat seems to be addressed. Are the community members not listened to at all? We know it will be sold and new homes or cabins will be built. It would be nice to do it with common sense on the accesses, and not ruin the "remoteness" of this area. What is the review for, if it is already being put up for sale, without these issues being resolved? The entrance channel is narrow and it needs to be seen if boats and moorings, or running lines are approved by DNR or core of engineers. And the wetlands/estuary on the Little Tutka is unrealistic. Those lots should just come in from lot 15.

Frustrated,

Tamara Hopkins  
60112 Nordby ave  
Homer, ak 99603



**From:** Daniel Coyle <djcoyle1@gmail.com>  
**Sent:** Tuesday, August 2, 2022 4:32 PM  
**To:** Planning Dept,  
**Subject:** <EXTERNAL-SENDER>written testimony on KPB 2022-047R1

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

**To: Kenai Peninsula Borough Planning Commission  
144 N Binkley Street  
Soldotna, AK 99669**

**(submitted via email)**  
August 2, 2022

To: Kenai Peninsula Borough Planning Department

As a unified group of local residents and landowners, we'd like to express our urgent concerns about the proposed subdivision in Little Jakolof Bay and Little Tutka Bay, KPB File 2022-047R1, for the following reasons:

- 1) The proposed subdivision does not provide adequate water access or supply. Many of the proposed lots are located on bedrock, with no water source.
- 2) The proposed subdivision — 16 lots, many of them extremely narrow, located in a relatively small, confined area — creates multiple and overlapping problems of density and access, and will generate significant navigational hazards. The entrance and the western (weather-exposed) side of the bay is narrow for running lines, and not suitable for moorings.

3) A significant number of the lots are unusable because of steepness or access problems. Some lots have steep rocks on the shore and are inaccessible from the beach. In addition, two lots have access only through Little Tutka Bay, creating additional congestion for residents of Tutka Bay.

4) The alterations made to this latest version (subsequent to 2022-047) do not significantly lessen any of the concerns voiced above. Adding public-use corridors does not lessen the multiple and lasting negative impacts to the area that this subdivision will create.

We hope that these comments will provide the planning commission with guidance and clarity as it makes its decisions. We are ready and willing to answer any questions or provide any additional information the planning commission requires. We hope that the commission will delay any imminent decisions in order to give appropriate time, research, and attention to these sincere and valid concerns.

SIGNED,

**Daniel Coyle**

**Maurice Coyle**

**Jonathan Coyle**

Co-owners of Bootleggers Cove Lots 1, 3 4, and 5

--



Fixed Height, LLC  
225 W 23rd Avenue  
Anchorage, AK 99503  
907.290.8949  
www.fixedheight.com

July 15, 2022

Kenai Peninsula Borough  
Platting Department  
144 North Binkley St.  
Soldotna, AK 99669

RE: East Oyster Cove Subdivision

To whom it may concern,

This letter is intended to address land survey concerns related to the numerous "Requests for Review" submitted to the KPB Platting Committee on June 23<sup>rd</sup>, 2022.

*Request for Review submitted by Tamara Hopkins –*

- Review Summary – The requestor would like the 40 ft. access easement from Little Tutka Bay across Lots 15 & 16 of South Kachemak Alaska Subdivision vacated, due to the indication that it crosses tidal wetlands.
- Rebuttals – The requested easement vacation does not cross land owned by the developer, as such, the developer has no jurisdiction over easement vacation. There is alternative access to proposed Lots 13 & 14 of East Oyster Cove Subdivision across proposed Lot 15.

*Request for Review submitted by William A. Lanier –*

- Review Summary – The requestor indicates that the plat does not describe the low wet areas and does not describe the proposed means of supplying water. This is the only survey related concern in the request.
- Rebuttals –
  - This proposed subdivision of land does not destroy or disturb wetlands. Any wetlands in the proposed subdivision are protected by federal law.
  - The soils analysis currently being conducted by an engineer will describe the proposed means of supplying water on the final plat.





*Request for Review by Donald Fell & Mary Ann Fell Revocable Trust & Request for Review by Donald McClintock on behalf of Phillip Burdie*

- Review Summary – These two separate requests share identical concerns and are summarized in a letter prepared by the law firm Ashburn & Mason, P.C. dated July 7, 2022. Each concern is addressed individually in the subsequent bullet points.
- *Water Rights* –
  - Comment Summary – Mr. Burdie submitted documented water rights to an unnamed stream within U.S. Survey 3980 (the adjoining parcel to the north), the source of which is that portion of the stream lying below Mean High Tide within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Protracted Section 21 at the previous meetings (LAS 11231). Burdie's prior request was that the stream to which his water rights pertain, be located on the plat. This would prevent future developers of the lot from encroaching upon the 100' required setback between a drinking water source and wastewater system.
  - Rebuttals –
    - There are no recorded water rights over the proposed subdivision. The water rights recorded under LAS 11231 in Book 30, Page 224 are for lands within U.S. Survey 3980.
    - A soils analysis report is being conducted by an engineer as requested by the KPBB platting department. It will identify appropriate wastewater systems based on existing soil conditions, and a note will be made on the plat to indicate that all systems must meet state and federal regulations, including the required separation between drinking water sources and wastewater systems.
- *Access and Easements* –
  - Comment summary – The lawyer points out that no findings were made regarding practical and feasible access by waterfront or along the proposed easements within the proposed subdivision. They note that many of the lots abut sea cliffs with no beach or moorage. They point out that the 50' easement along the waterfront of Lots 9-15 have no evidence of being practical, or feasible, and invite future conflicts of the future landowners. Additionally, there is concern that the easement in place to access Lots 13 and 14 may traverse an estuarian habitat.
  - Rebuttals –



- All of the existing subdivision surrounding this proposed subdivision have the ocean as there legal and physical access. The existing subdivisions in this area are developed.
- The 50' easement along Lots 9-15 does, in fact, contain a suitable beach for landing watercraft without additional infrastructure and allows surrounding lot owners to use this access, if desired. The public access along the north line of Lot 15 does not cross an estuarian area, and in fact contains numerous foot paths and game trails.

Thank you for your time.

Buku Saliz, PLS, CFedS  
Fixed Height, LLC  
[www.fixedheight.com](http://www.fixedheight.com)



Kenai Peninsula Borough  
Planning Commission  
144 North Binkley St.  
Soldotna, AK 99669

2600 Cordova Street, Suite 201  
Anchorage, AK 99503  
Tel 907.269.8658  
[alaskamentalhealthtrust.org/trust-land-office/](http://alaskamentalhealthtrust.org/trust-land-office/)

August 2, 2022

RE: Review of Plat Committee Decision East Oyster Cove subdivision; KPB File 2022-047R1

Dear Commissioners:

The Alaska Mental Health Trust Authority (AMHTA) is a public corporation within the Alaska Department of Revenue (AS 47.30.011 et seq.). In 1994, the Alaska legislature mandated the creation of the Trust Land Office within the Department of Natural Resources to serve as AMHTA's land manager. Under AS 38.05.801, the Trust Land Office must manage those lands consistent with the 1956 Enabling Act; an act that set aside lands to be managed for a state mental health program. Because of AS 38.05.801 and the 1956 Enabling Act, the Trust Land Office's management decisions are guided by private trust principles – as explained by the Alaska Supreme Court in *State v. Weiss*, 706 P.2d 681, fn. 3 (Alaska 1985) – and thus all decisions are made in the best interest of the trust beneficiaries for mental health programs. Proceeds from the Trust Land Office's management is directed to AMHTA for funding mental health programs.

Regulation 11 AAC 99.020(b) reiterates the holding in *Weiss*, noting that Trust land must be managed “solely in the best interest of the Alaska Mental Health Trust and its beneficiaries.” This means that AMHTA lands are not managed by the Trust land office under the public trust doctrine or as state public domain land. Due to the 1956 Enabling Act and the Legislature's mandate in 1994, the Trust Land Office has a fiduciary responsibility to maximize revenue generation from Trust land assets and does so by selling and developing its land and resources. To maximize revenue from the subject land, it must first be subdivided.

The East Oyster Cove subdivision would provide hundreds of thousands of dollars, perhaps millions, in revenue to the Alaska Mental Health Trust Authority and its beneficiaries. The Trust Land Office respectfully asks that you approve the plat as it meets the Kenai Peninsula Borough requirements and would provide significant revenue to the Alaska Mental Health Trust and its beneficiaries.

Sincerely,

Jusdi Warner  
Executive Director  
Trust Land Office



## Directors Report to the Planning Commission 8-8-22

### Assembly Action

Three legislative items will be decided on 8/9 that have direct ties to the planning department.

1. Removing planning commission review of cannabis related businesses, and handling them in a similar manner to Alcohol license applications.
2. Changes to our existing material site code dealing with definitions and timelines
3. Allowing for stop-work orders, and penalties associated with code violations and stipulated agreements

The major item for the Assembly to take up over the next few months will be the re-write of the entire material site code, I included it as an information item in this packet and will be bringing it back to the commission after the Assembly has had a debate or two on it and amendments are brought forward.

**Code Compliance** A couple of our trespass issues have been resolved and one of the more significant cases is going to require some environmental remediation that will be coming forward to the assembly in the near future.

**Nikiski APC** I will be bringing forward an ordinance to establish an APC for Nikiski at the next meeting, this will be an actionable item for the Assembly to consider.

**Land Management** will be hold the public land sale by auction on 8/13.

**Misc.** The next PC meeting has a little less on the agenda compared to the past few months and we could offer a 30-minute mini training / discussion opportunity, I am open to suggestions.

**Open door** – Again, I want all commissioners to know they can reach out to me at any time for questions or concerns and that I do want to meet with those that are relatively new to commission and make sure you have what you need in terms of background and education on commission function. I recognize there is a learning curve to the important work we do.

**From:** Cooper Landing Advisory Planning Commission  
**To:** [jaeger06@hotmail.com](mailto:jaeger06@hotmail.com); [Tymick, Jonathan J \(DOT\)](mailto:Tymick.Jonathan.J@DOT); [Cindy Ecklund](mailto:Cindy.Ecklund); [Baski, Sean M \(DOT\)](mailto:Baski.Sean.M@DOT); [Mueller, Marcus](mailto:Mueller.Marcus); [ygalbraith@gmail.com](mailto:ygalbraith@gmail.com); [Planning Dept.](mailto:Planning.Dept); [jette.cadieux@gmail.com](mailto:jette.cadieux@gmail.com); [Laura Johnson](mailto:Laura.Johnson); [Virginia Morgan](mailto:Virginia.Morgan); [David Story](mailto:David.Story); [brandonandheather@live.com](mailto:brandonandheather@live.com); [Kathy Recken](mailto:Kathy.Recken); [Fletcher, Sandra](mailto:Fletcher.Sandra); [Carver, Nancy](mailto:Carver.Nancy)  
**Subject:** <EXTERNAL-SENDER>Re: 2022 08 03 CLAPC Unapproved Minutes  
**Date:** Thursday, August 4, 2022 9:24:31 AM  
**Attachments:** [1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf](#)

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

On Thu, Aug 4, 2022 at 9:23 AM Cooper Landing Advisory Planning Commission  
<[cooperlandingapc@gmail.com](mailto:cooperlandingapc@gmail.com)> wrote:

Commissioners:

Attached are the Unapproved Minutes from our August 3, 2022 Regular Meeting. The support documents include all but the document titled *1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf*. Due to size limitations it will be sent as a second email.

Also attached are the approved minutes from June 8, 2022

Please note that the CLAPC voted by roll call as follows:

- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. "Cozy Bear" property.**
  - Recommend the removal of the deed restriction on the land.
  - All approve.
- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.**
  - Recommend supporting the ordinance if:
    1. The 30' greenspace is maintained in its entirety
    2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
  - All approve.
- **Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.**
  - Recommend approval of the permit application as proposed.
  - All approve.

Please let me know if you have questions or need more information.

Cheers,  
David

**COOPER LANDING ADVISORY PLANNING COMMISSION  
REGULAR MEETING  
LOCATION: ZOOM TELECONFERENCE OR  
COOPER LANDING COMMUNITY HALL  
WEDNESDAY, AUGUST 3, 2022  
6:00 PM  
UNAPPROVED MINUTES**

1. CALL TO ORDER – 6:00 p.m.
2. ROLL CALL – J. Cadieux, C. Degernes, H. Harrison, K. Recken, D. Story present. Laura Johnson and Yvette Galbraith excused.
  - a. Members of Public present: Ray Wilkes, Todd Donahue, Candy Fitzpatrick
  - b. Agency Representatives: Sean Baski ADOT&PF, Cynthia Lowe HDR, Nancy Carver, KPB, Alice Rademacher, HDR, Marcus Mueller, KPB, Alvin Talbert, ADOT&PF
3. APPROVAL OF AGENDA – K. Recken moves to approve as written. C. Degernes seconds. All approve by roll call vote.
4. APPROVAL OF MINUTES for June 08, 2022 – H. Harrison moves to approve as written. K. Recken seconds. All approve by roll call vote.
5. CORRESPONDENCE – none
6. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE – none.
7. REPORT FROM BOROUGH
  - a. DOT&PF Sterling Hwy MP 45-60 Project report and questions/answers. Sean Baski, PE, Project Manager and Design Manager, AKDOT&PF.
    - i. Finalizing negotiations for Stage 3 and 4 Early Work Package – the embankment for the east and west side of the bridge.
    - ii. Pioneer roads were largely done on the east side and are working on finishing them on the west side in the next couple weeks.
    - iii. Bridge girder selection is complete. The design of the bridge itself will continue. 6.5 million tons of steel or about \$30-40 million dollars in raw steel cost so far.
    - iv. Archeological work is ongoing. Expected completion next year. Monitoring will be a part of project construction throughout.
    - v. Q: K. Recken asked about the archeological information and whether it will eventually be shared with the public.



1. A: S. Baski said that as part of the agreement the project has contracted with a group that will transcribe that information for public use but that will not necessarily include the locations of findings etc.
- vi. Stage 5 – western intersection – is aiming to be at 75% design late this year or early next year.
- vii. Stage 1A was anticipated to be completed this year but some of the archeological findings may stretch that into next year.
- viii. Q: Ray Wilkes asked whether the west end will be at a point where it is paved before winter.
  1. A: S. Baski said that is expected to be the case but he would follow up with the group if it is not anticipated to be so.

b. Nancy Carver, KPB Report:

- i. Noted that there are three seats on the CLAPC that will be up at the end of the month. One member of the group has already submitted a letter to continue on the commission.
- ii. The KPB is looking at adjusting the APC structure and whether they might be community councils instead. She suggested Cooper Landing residents and APC members research the benefits, detriments to this model in anticipation of that inquiry from the KPB.

8. OLD BUSINESS - none

9. NEW BUSINESS

1. Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. “Cozy Bear” property.
  1. M. Mueller said, in general, that the KPB will have restrictions and how to modify them on the parcels that are given out. This particular deed during the land sale had the general practice at the time that included land restrictions. These kinds of restrictions are no longer placed on land sales that are made today. This is a proposal to remove the commercial deed restriction that was placed at the time of the original land sale. The reason for the request is from R. Wilkes and S. Kuzinski because of their pending sale which is running into issue from the mortgage provider due to the classification.
    1. K. Recken said that it is her understanding that commercial land has restrictions on it while residential does not.

1. M. Mueller said this is not zoning. It would go from a commercial deed restriction to the deed not having a deed restriction at all.
2. K. Recken asked what restrictions that commercial restrictions have.
  1. M. Mueller said that it can only be used for commercial purposes.
2. J. Cadieux stated that the community still has an interest in how the land might be utilized, for example, the community may not want an industrial site set up in that location but, of course, once the deed restriction is removed it is entirely up to the land owner.
3. R. Wilkes said that when the land was sold by the borough there was no land use zoning restrictions and it is still the case so the deed restriction is irrelevant anyway. He said that he ran into issue during the financing for the land and that the title company said that they had run into this issue a fair bit.
4. J. Cadieux asked if R. Wilkes was familiar with the Cooper Landing Land Use Plan.
  1. He said yes. He said that the place was built as a single-family residence though it has been used off and on as a B&B and that a number of documents state the highest and best use of the land is as a single-family residence.
5. H. Harrison moves to recommend the removal of the deed restriction on the land. D. Story seconds. All approve by roll call vote.
2. Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.
  1. M. Mueller reported for KPB
  2. Replating the frontage of A,B, and C tracts. Two borough properties and one private: Tract A is the Transfer Station, Tract C is where QAP is staging for the MP 45-60 Project and is slated to be used as commercial property according to the local land management plan, and Tract B is Three Bears' property.
  3. This facilitates a frontage road from Quartz Creek Rd. to the Solid Waste Transfer Site.
  4. The frontage road concept was brought up by DOT to address safety concerns and reduce the number of highway turnouts on the new alignment and the surrounding areas.
  5. Three Bears has interest because the frontage road occupies the some of the same space as a conservation easement along this area.

6. This ordinance deals with parts of that starting with Tract B it would authorize the release of the conservation easement as it is written and is framed as a modification of a deed restriction. The three sides other than the one facing Dena'ina Creek would be released from the conservation easements that exist on that deed.
7. The 30' strip of land on the new alignment side would be conveyed from Three Bears to KPB and the cost of it would be, at least in part, considered the cost of the release of the deed restriction for the conservation easements.
8. To apply government designation to the newly created tracts A2, B2, C2 and would be managed in the public interest.
9. This ordinance would take effect when the new plat is recorded.
10. M. Mueller said that when the KPB conveyed Tract B originally the value of the conservation easement was not included. In this ordinance the value of the conservation easement and frontage road language is meant to help explain the process of making all parties whole
11. Q: K. Recken asked what "management for public benefit" means.
  1. A: M. Mueller said that the way he sees that rolling out is the Cooper Landing planning processes – functions of APC etc. – would mean the management of that would be deliberative. The immediate management of it would be no different than the current – managing the vegetation as is there would be some spruce bark beetle mitigations etc. but that this might be where a community sign might be placed.
  2. Q: K. Recken asked about whether we were losing the conservation easement on the road side.
    1. A: M. Mueller said that the management of that strip is to maintain community interests for green space
    2. The ordinance states: "Whereas classifying the 30-foot tracts of land created by the Quartz Creek Subdivision Outfitters Way Replat as "government" would hold the land for community gateway greenspace uses that are beneficial to the public, providing for consistent management decisions under public processes."
  3. J. Cadieux stated there is no doubt that there is fear in the community of losing this greenspace even when it comes time to put a walking biking path etc.
12. R. Wilkes said that just from the sounds of it there is a 50' conservation easement that exists right now. If they do away with that easement and put a frontage road there it would end up with no trees in between the two roads.
  1. M. Mueller said that the clearing of Tract C has currently maintained tree cover 75' from the edge of the right-of-way



so there would still be 30' of greenspace with the proposed changes.

13. S. Baski shared his screen to show some of the designs of the proposed layout of the frontage road and the edges of its ditches and fill slopes.
14. Q: J. Cadieux asked how much of the new alignment ROW would be treed.
  1. A: S. Baski said that there is no guarantee that there will be any trees within that right-of-way other than what is explicitly noted in the project requirements.
15. Q: D. Story asked about the active transportation component of the frontage road design. People will be attempting to walk and bike in this travel corridor whether we plan for them or not.
  1. A: S Baski indicated no specific accommodation has been included in preliminary design.
16. Q: J. Cadieux seconded with a question about the KPB's intention to provide for safe active transportation. Just because the mistake has been made to not account for active transportation on frontage roads elsewhere doesn't mean we need to repeat that mistake. 60' has provided for these shared functions in other places and should probably do so in this one.
  1. Our community has already made it clear that we need to accommodate for safe active transportation in this corridor. If we recommend for this ordinance tonight we are not precluding that this wouldn't be included in the design but it cannot be at the expense of the greenspace because it is very clear that there is no guarantee of any treed buffer on the DOT ROW.
  2. Q: Can we make our recommendation include guaranteed integrity of the greenspace be maintained and accommodation for a separated pathway that would accommodate non-vehicular traffic?
  3. A: S. Baski said that when dealing with 60' of space it appears there is a lot of room there but actually there isn't. Ultimately compromises would have to be made if an active transportation facility were included. In urban areas it includes curbs and gutters to gain additional space but in the rural context it becomes less desirable and often just a paved shoulder is considered adequate.
  4. As of right now there has not been an official ask from the community to include those facilities.
17. Q: J. Cadieux asked whether the design speed would play into the width required for the shoulders.
  1. A: S Baski said not really.
18. Q: M. Mueller asked whether expanding the KPB Tract C ROW to 70' would make the concept more viable?

1. A: S Baski acknowledged it may.
2. K Recken and H Harrison reiterated that the proposed extra 10' could not be taken from the 30' greenspace.
19. D. Story moved to recommend supporting the ordinance if
  1. The 30' greenspace is maintained in its entirety
  2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
  3. H. Harrison seconds. All approve by roll call vote.
3. Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.
  1. Cynthia Lowe is the project manager with HDR.
    1. She said they are trying to protect the upstream edges of the substation with rip rap. It will extend out about 100' to encourage Quartz Creek to flow back into its main channel.
    2. The intent is a one-time fix that would address future climatic or flood occurrences.
    3. If sinkholes keep developing as they have done in the last couple weeks they may need to add more rock to the front edge or go deeper with the rock and fabric. They have already re-designed to accommodate the sink holes and may need to again. The extension of rip rap in the current drawing before the APC has already been modified to sweep back closer to the CEA line and not as near the main Quartz Creek branch.
  2. C. Degernes moves to recommend approval of the permit application as proposed. K. Recken seconds.
    1. Q: K. Recken asked about the design plans should the sinkholes grow.
    2. A: C. Lowe explained the holes have already grown and the plans now include geotextile below almost 6-foot depth of class three rip rap to protect the station.
    3. All approve by roll call vote.

10. PLAT REVIEW - none

11. INFORMATION and ANNOUNCEMENTS - none

12. COMMISSIONER'S COMMENTS - none

13. ADJOURNMENT – C. Degernes moves to adjourn, K. Recken seconds. All approve. 7:56 p.m.

For more information or to submit comments please contact:

David Story, Secretary Treasurer or Janette Cadieux, Chair, P.O. Box 694, Cooper Landing, 99572 [CooperLandingAPC@gmail.com](mailto:CooperLandingAPC@gmail.com)

**KACHEMAK BAY ADVISORY PLANNING COMMISSION**  
**Regular (VIDEO CONFERENCE) MEETING**  
**LOCATION: ZOOM**  
**Thursday, August 4, 2022**  
**7:00 P.M.**

**APPROVED MINUTES**

A. CALL TO ORDER: 7:00 pm

B. ROLL CALL

Present: Eric Knudtson, Courtney Cox Brod, Owen Meyer, and Louise Seguela.  
Quorum has been met to move forward with the meeting.  
Also present are Ryan Raidmae and Mike Tupper.

C. APPROVAL OF MINUTES

D. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE

E. REPORT FROM THE BOROUGH

F. NEW BUSINESS

1. We discussed how to recruit new commissioners. Louise will solicit commissioners through the community calendar and others will verbally spread the word. We will meet next month but might pause meetings if no new commissioners are recruited.

G. OLD BUSINESS

1. We talked about our next steps with the East End Rd Snowmads parking lot. Ryan will find out the next steps that the KPB planning department will take regarding land planning and classification for this area. We also discussed holding a meeting to collect public input on the best use of this land.
2. We discussed further the development of our survey. Ryan will see if he can find anyone in the KPB who might help us with producing a survey.

H. ANNOUNCEMENTS

1. None

I. COMMISSIONERS' COMMENTS

J. ADJOURNMENT – 7:32 pm.