



Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

www.cityofhomer-ak.gov

City of Homer Agenda

City Council Special Meeting

Wednesday, September 04, 2019 at 5:30 PM

City Hall Conference Room

CALL TO ORDER, 5:30 P.M.

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 6)

PUBLIC COMMENT ON MATTERS ALREADY ON THE AGENDA (3 minute time limit)

PENDING BUSINESS

A. Vacation of a 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition granted by AA Mattox Peggi's Addition (Plat HM 99-64) within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V.

- i. Letter from Max Best KPB Planning Director
- ii. KPB Planning Commission Packet Materials
- iii. KPB Approved Minutes
- iv. Correspondence from Echo Trading Company requesting Veto of KPB Approval of the vacation of a 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition granted by AA Mattox Peggi's Addition

NEW BUSINESS

COMMENTS OF THE AUDIENCE

ADJOURNMENT

Next Regular Meeting is Monday, September 9, 2019 at 6:00 p.m., Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



Planning Department

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

Charlie Pierce
Borough Mayor

August 12, 2019

Homer City Council
491 East Pioneer Avenue
Homer, AK 99603-7645

RE: Vacate the 10-foot-wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V.

Dear Homer City Council Members:

The KPB Planning Commission approved the referenced drainage easement vacation during their regularly scheduled meeting of June 24, 2019. Attached are the minutes of the pertinent portion of the meeting and other related materials.

Sincerely,

Max J. Best
Planning Director

MJB:jah

Attachments

F. VACATIONS NOT REQUIRING A PUBLIC HEARING

- 1. Vacate the 10-foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition (HM 99-64).
Petitioner: Peggi Patton of Homer, AK
KPB File 2019-048V**

AGENDA ITEM F. VACATIONS NOT REQUIRING A PUBLIC HEARING

F. Utility Easement Vacation

1. Vacate the 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V

STAFF REPORT

PC Meeting: June 24, 2019

Purpose as stated in petition: The 10' drainage easement has not been used since it was granted in 1984. There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing drainage corridor remain in place on the North side of the long driveway. The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project. The owner understands that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff. The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefore preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property. Vacating this easement would not create any adverse effects to the surrounding properties.

Petitioner: Peggi Patton of Homer, Alaska

Location: on Nelson Avenue and Heidi Court, in the City of Homer

Notification: Notice of vacation mailings were sent by regular mail to 17 owners of property within 300 feet. Notice of the proposed vacation was emailed to 8 agencies and interested parties.

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

The City of Homer Advisory Planning Commission recommended approval of the drainage easement vacation on May 15, 2019.

Comments Received:

Alaska Communications Systems: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

Homer Electric Association: No objection.

Tony Neal: Objection

Mr. Neal is a land owner of Lot 8 and the remainder of Tract A, which are two lots located at the west end of Nelson Avenue. The two lots are currently being combined into one parcel, Lot 8-A of proposed AA Mattox Subdivision Gwen's 2019 Addition. The Plat committee approved this replat at the May 28, 2019 meeting on the condition of an access easement be granted from Sanjay Court. Currently the only legal access to the remainder of Tract A is from Nelson Drive.

Mr. Neal also owns the 37 Acre development of Barnett's South Slope Subdivision Quiet Creek Park Unit 2 (HM 2018-40). Lots 34, 35, and 36 of HM 2018-40 front on Nelson Avenue, however the constructed access is from a different Nelson Avenue located further north.

Mr. Neal's letter states his concerns with drainage and the ability to use Nelson Avenue to access proposed Lot 8-A.

Carey Meyer, Public Works Director, City of Homer

Mr. Meyer contacted the Planning Department and submitted written comments in response to Mr. Neal's letter. Mr. Meyer stated that the City of Homer has no interest in a drainage easement across private property when a dedicated Right of Way is nearby. The City of Homer prefers to utilize a dedicated street right of way, whenever possible, to provide drainage corridors to direct water to natural drainage ways. A natural drainage way is located approximately 400 feet to the east.

Staff comments:

1999 – An application was submitted to vacate the 15 foot utility and drainage easement within former Lot 24 and the 10 foot utility easement within former Lot 25 AA Mattox Subdivision.

The 1999 vacation application was approved by the City of Homer Planning and Zoning Commission.

The KPB Planning Department, after listening to concerns regarding drainage and water/sewer services, denied the application. The application was then appealed to the Homer City Council.

The Homer City Council overturned the denial and approved the vacation on the condition that a 25 foot water and sewer easement be granted on the east boundary of former Lot 25 as well as a 10 foot drainage easement be granted on the west side of former Lot 25. The request for the drainage easement came from the City of Homer Public Works Department.

The City of Homer Public Works has submitted comments stating no objection to the vacation of the 10 foot drainage easement. Public Works prefers to utilize utility and drainage corridors within dedicated right of ways whenever possible, as opposed to easements on private property. Nelson Avenue and Kallman Road contain an existing drainage corridor.

Findings:

1. Per the petition, the drainage easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and Homer Electric Association provided written non-objection to the proposed vacation.
3. The Homer Advisory Planning Commission recommended approval of the proposed vacation on May 15, 2019.
4. AA Mattox Peggi's Addition (Plat HM 99-64) granted a 10-foot wide drainage easement on Lot 24-A.
5. Per the Homer Advisory Planning Commission hearing packet, the city prefers to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible.
6. Per the Homer Advisory Planning Commission hearing packet, a draining corridor exists easterly along Nelson Avenue and southerly down Kallman Road.
7. No surrounding properties will be denied utilities or drainage.

Based upon the above findings, **staff recommends** granting the vacation as petitioned, subject to:

1. Provide a sketch clearly indicating the draining easement being vacated to be recorded with KPB Planning Commission Resolution 2019-19, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachments to the Planning Department.

NOTE: Action after denial of vacation (KPB 20.70.120)

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when

the original petition was filed.

END OF STAFF REPORT

**KENAI PENINSULA BOROUGH PLANNING COMMISSION
RESOLUTION 2019-19
HOMER RECORDING DISTRICT**

Vacate the 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V

WHEREAS, Peggi Patton of Homer, AK requested the vacation of the 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); and

WHEREAS, affected utility companies provided written non-objection to the proposed vacation; and

WHEREAS, The City of Homer Advisory Planning Commission recommended approval of the drainage easement vacation on May 15, 2019; and

WHEREAS, per the petition, the easement is not in use by any utility companies; and

WHEREAS, the proposed vacation will not deny drainage or utility easement(s) to surrounding properties; and

WHEREAS, on June 24, 2019, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed vacation; and

WHEREAS, right of way dedications of Nelson Avenue and Kallman Road exist and can provide drainage corridors and public access; and

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

WHEREAS, 20.70.140 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

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

Section 1. That the 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64), is hereby vacated.

Section 2. That a sketch showing the location of the drainage easement being vacated be attached to, and made a part of this resolution, becoming Page 2 of 2.

Section 3. That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

Section 4. That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS ____ DAY OF _____, 2019.

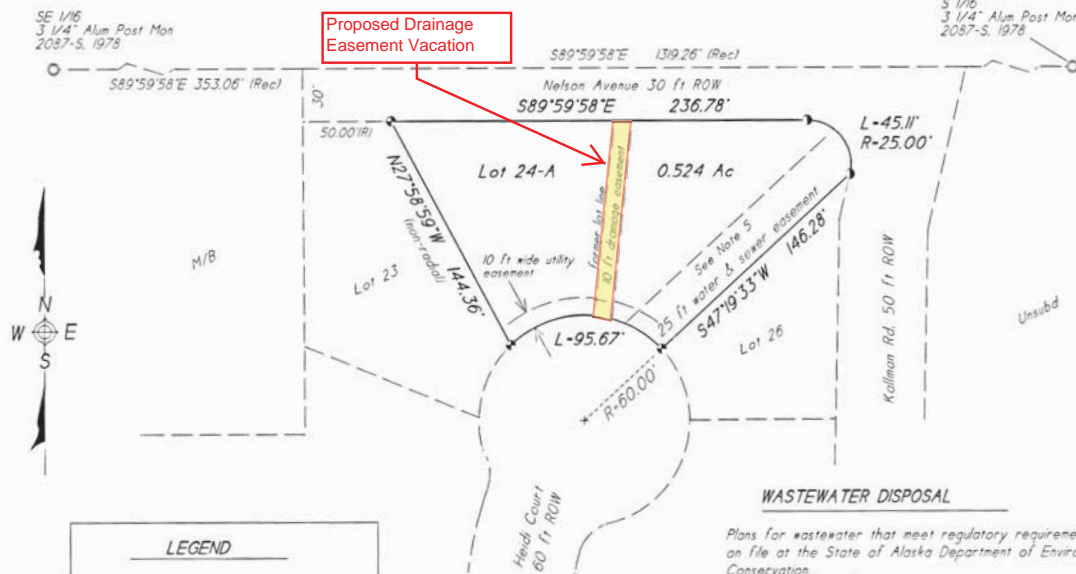
Blair J. Martin, Chairperson
Planning Commission

ATTEST:

Julie Hindman
Administrative Assistant

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

HM 99-64



LEGEND	
Found 5/8" rebar as per Plat No. 84-8 HRD	
Found 2" Aluminum Cap on 5/8" steel rebar 5780-S, 1997	

NOTES

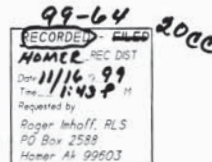
- All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
- No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- Basis of Bearing is AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District. Dimensions are record.
- Utility and Drainage Easements as shown on the Parent Plat 84-8 HRD were vacated by action of the Homer City Council at their meeting on March 22, 1999.
- The 25 ft water and sewer easement as shown hereon is not in use this date. Any use of this easement must be approved by the City of Homer Public Works Dept. and the ground must be restored to its original condition after construction. Furthermore, this easement shall be vacated by request of the City of Homer if water and sewer mains are placed in Kallman Road.
- General easement for electric lines or system is recorded in Book 19 Page 92 HRD in favor of Homer Electric Association, no definite location given.
- Covenants affecting the lot shown hereon are on file at the Homer office of the State Recorder. See Bk 141 P263, Bk 145 P201, Bk 145 P968, Bk 152 P388, Bk 169 P478.



SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Roger W. Inhoff August 6, 1999
 Roger W. Inhoff LS 5780 Date



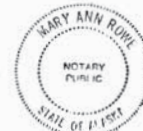
OWNERSHIP CERTIFICATE

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 to public use and grant all easements to the use shown.

We further certify that the Deed of Trust affecting this property does not contain restrictions which would prohibit this subdivision or require signature and approval of the beneficiary.

Robert D. Patton *Peggy L. Patton*
 owner of former Lot 24 owner of former Lots 24 and 25
 Robert D. Patton Date Peggy L. Patton Date
 4510 Heidi Court aka Peggy L. Forrester
 Homer AK 99603

Notary's Acknowledgement
 Subscribed and sworn to me before me this 13 day of August 1999
 for Robert D. Patton and Peggy L. Patton
Maureen Dawn
 Notary Public for Alaska
 My Commission Expires 7-30-02



WASTEWATER DISPOSAL

Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

Roger W. Inhoff August 6, 1999
 Roger W. Inhoff LS 5780 Date

PLAT APPROVAL

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

May 24, 1999

KENAI PENINSULA BOROUGH

By: *Max Reed*
 Authorized Official

Vicinity Map 1" = 1000 ft



AA Mattox Peggy's Addition

Being a Replat of Lots 24 and 25 AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District

Located within the
 SE 1/4 SE 1/4 Sec. 17, T6S, R13W, SM,
 in the City of Homer
 Third Judicial District, Alaska

Contains 0.524 Acres, more or less

Clients: Robert and Peggy Patton 4510 Heidi Cr Homer AK 99603	Surveyor: Roger W. Inhoff, RLS P.O. Box 2588 Homer AK 99603
Drawn: RWI	Date: 3-23-99
Scale: 1" = 1000'	File: patton.lvd

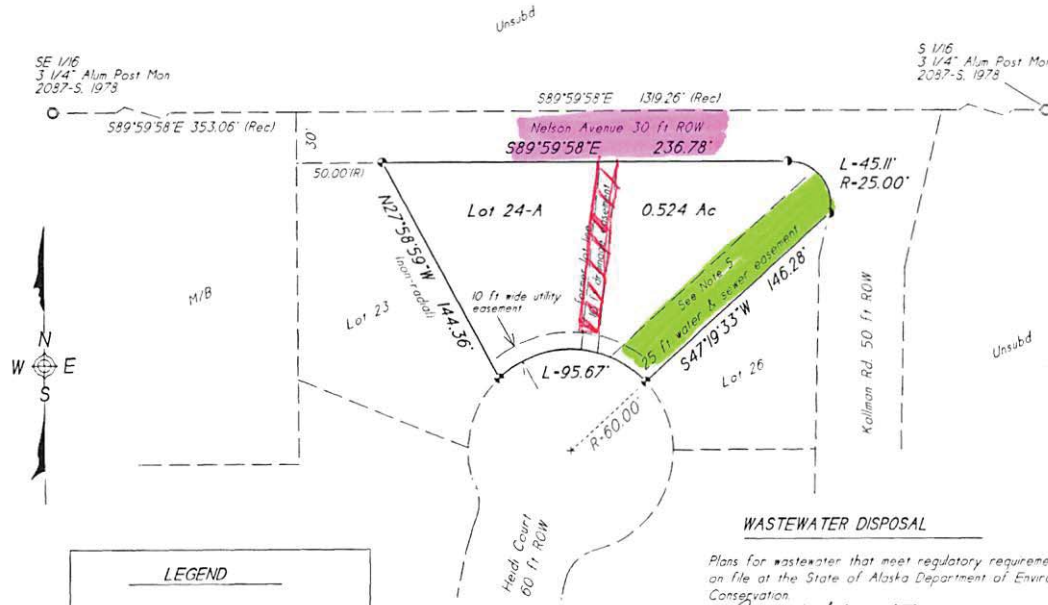
KPB File No. 98-264

TO BE VACATED

NELSON ROW

Already Vacated

HM 99-64



- LEGEND**
- Found 5/8" rebar as per Plat No. 84-8 HRD
 - Found 2" Aluminum Cap on 5/8" steel rebar 5780-S, 1997

NOTES

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WASTEWATER DISPOSAL

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Roger W. Inhoff August 6, 1999
 Roger W. Inhoff LS 5730 Date

PLAT APPROVAL

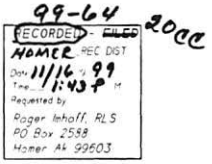
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KENAI PENINSULA BOROUGH

By: Max Reed
 Authorized Official

SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.
Roger W. Inhoff August 6, 1999
 Roger W. Inhoff LS 5730 Date



OWNERSHIP CERTIFICATE

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 owner of former Lot 24 owner of former Lots 24 and 25
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 Homer AK 99603

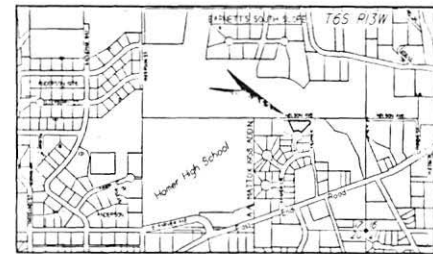
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for Robert D. Patton and Peggy L. Patton

Maureen Dawe
 Notary Public for Alaska
 My Commission Expires 7-30-02



Vicinity Map 1" = 1000 ft



**AA Mattox
 Peggi's Addition**

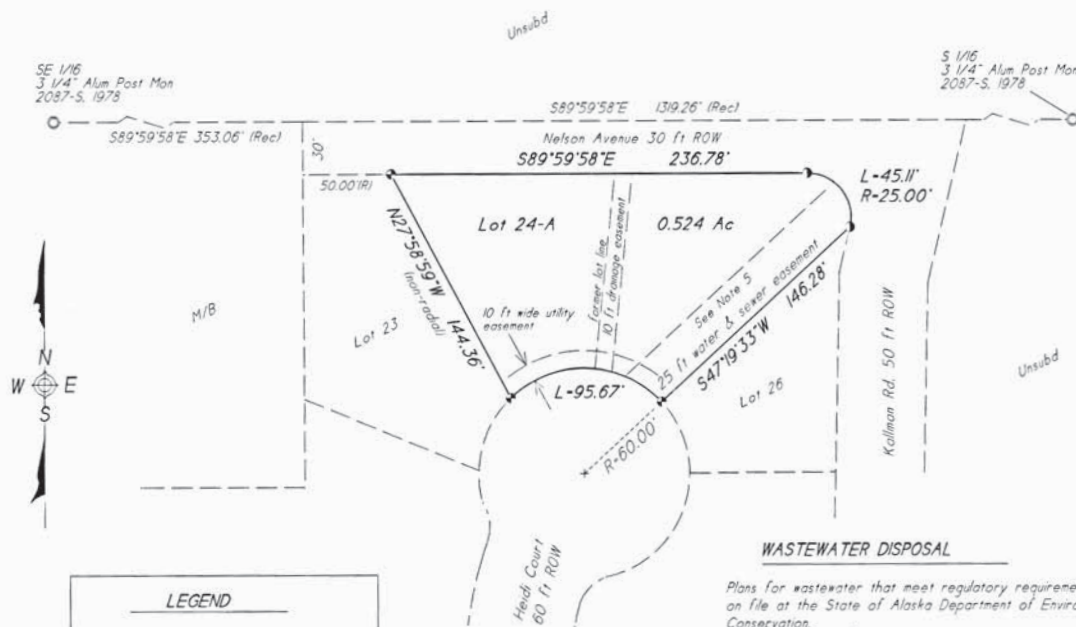
Being a Replat of Lots 24 and 25 AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District.

Located within the
 SE 1/4 SE 1/4 Sec. 17, T65, R13W, S4
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 Third Judicial District, Alaska

Contains 0.524 Acres, more or less

Clients: Robert and Peggi Patton 4510 Heid Court Homer AK 99603		Surveyor: Roger W. Inhoff, RLS PO Box 2588 Homer AK 99603
Drawn: RWI	Date: 3-23-99	
Scale 1" = 50 ft	File pattern/lvd	KPB File No. 98-264

HM 99-64



LEGEND	
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SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Roger W. Imhoff August 6, 1999
 Roger W. Imhoff LS 5780 Date

99-64 2000

RECORDED - REC DIST
 HOMER REC DIST
 Date 11/16/99
 Time 11:43 AM
 Requested by
 Roger W. Imhoff, RLS
 PO Box 2588
 Homer AK 99603

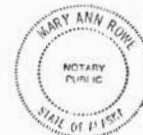
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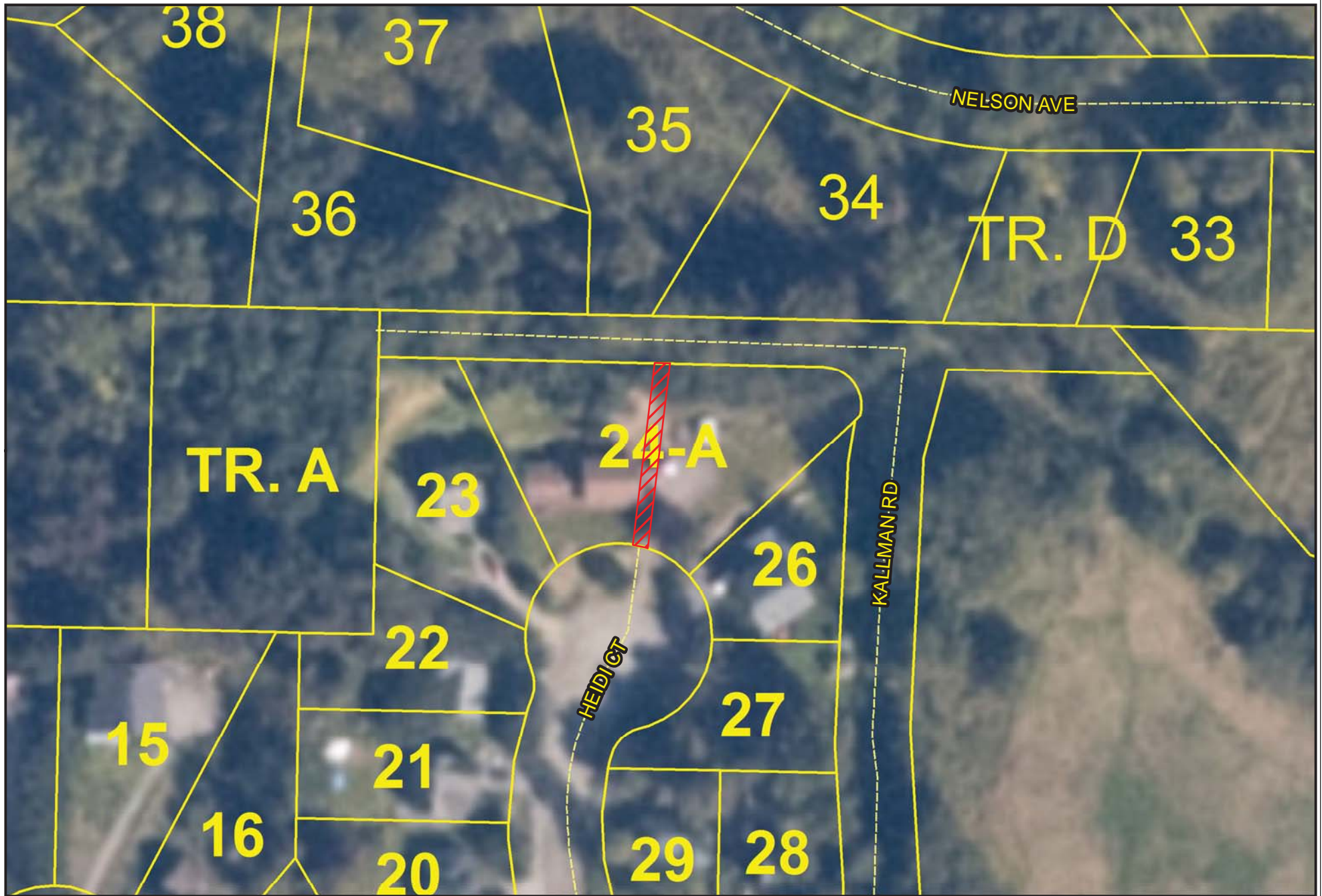
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Clients:
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 4510 Heidi Cr
 Homer AK 99603

Surveyor:
 Roger W. Imhoff, RLS
 PO Box 2588
 Homer AK 99603

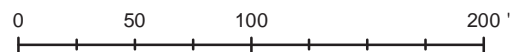
Drawn: RWI Date: 3-23-99

Scale: 1" = 1000 ft File: pattonl.vcd KPB File No. 98-264



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

Aerial View

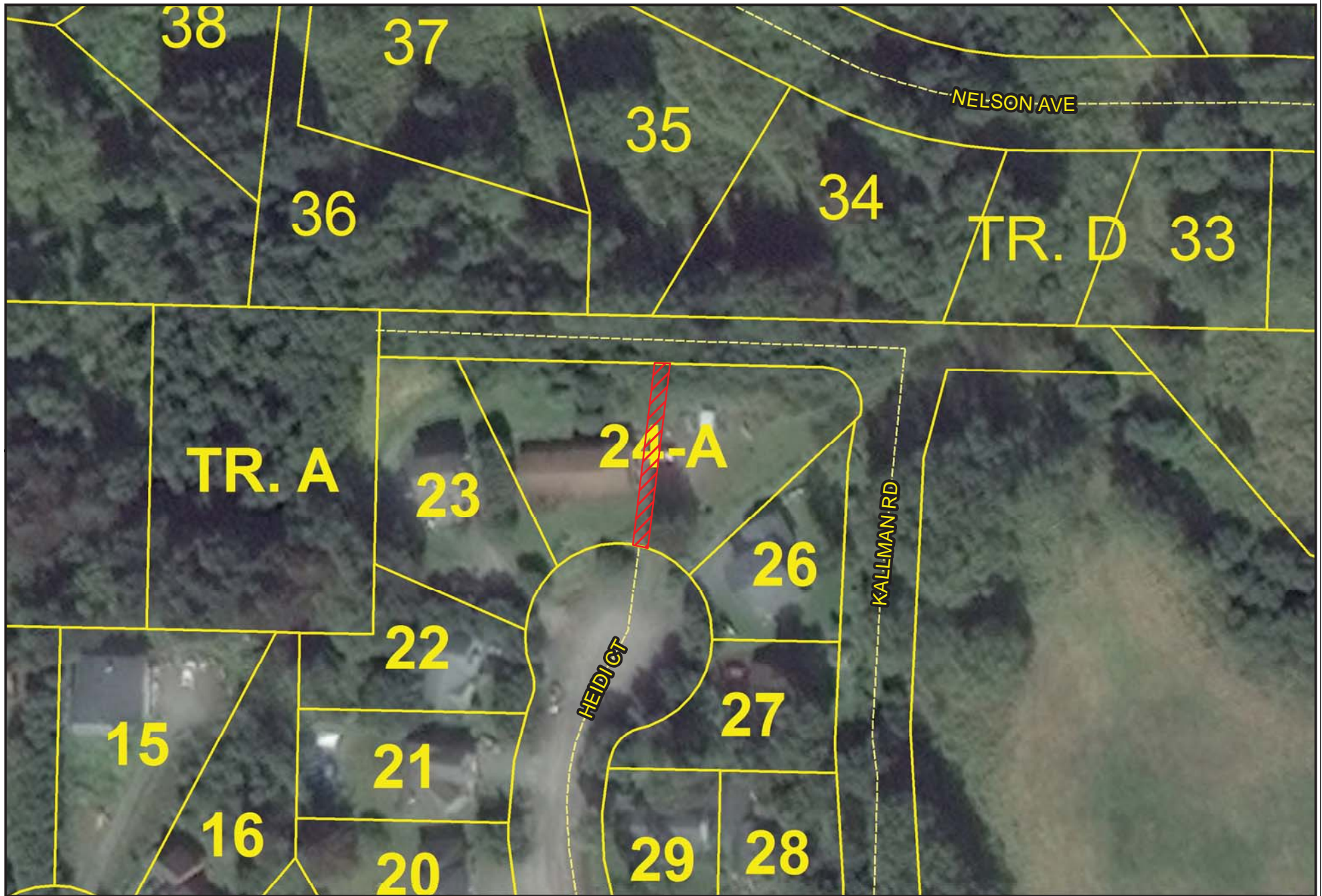


Drainage



Element Vacation

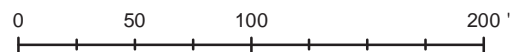
JReif, KPB
Date: 4/25/2019
Imagery: 2016



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

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Aerial View

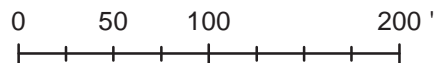
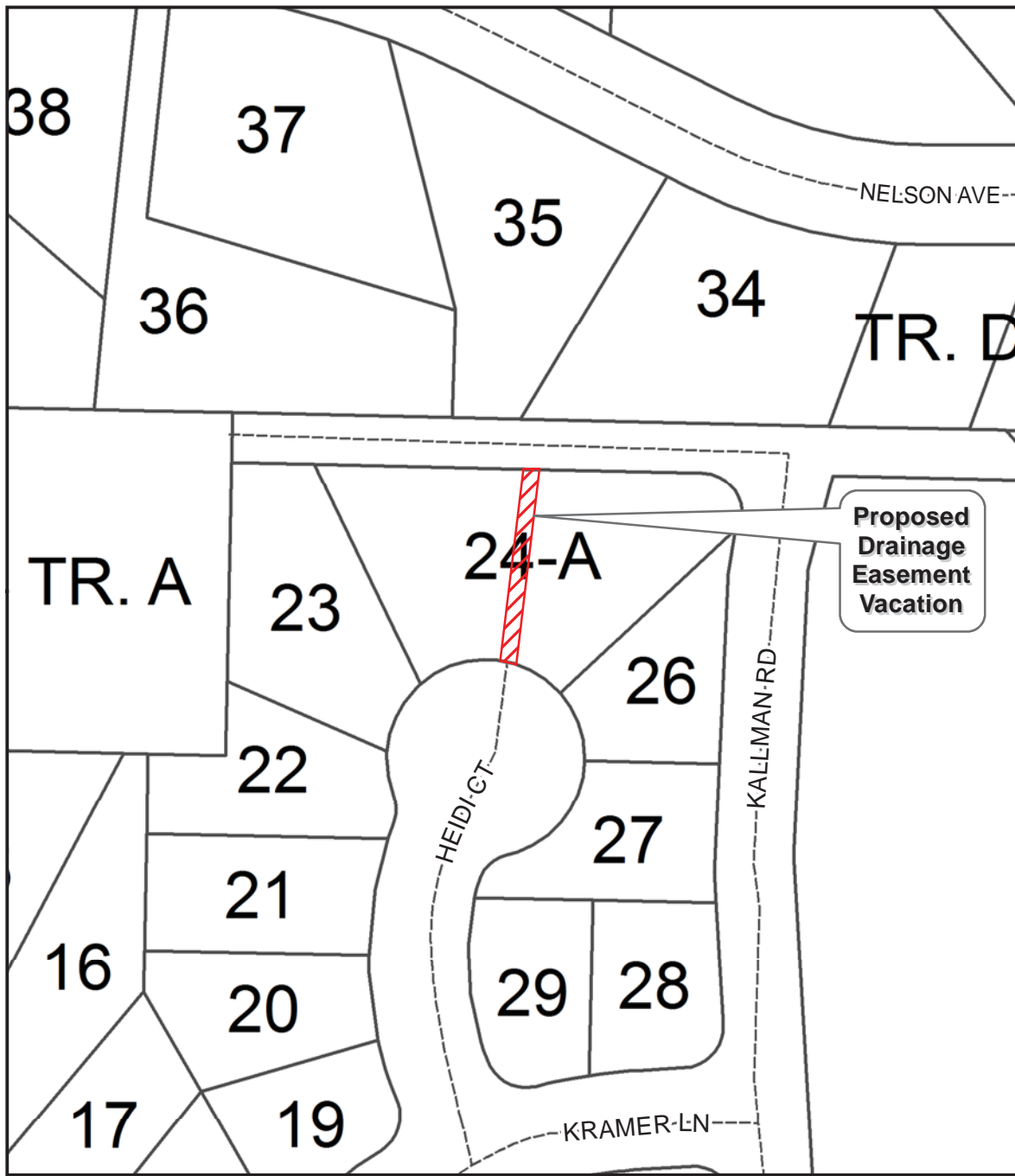


Drainage



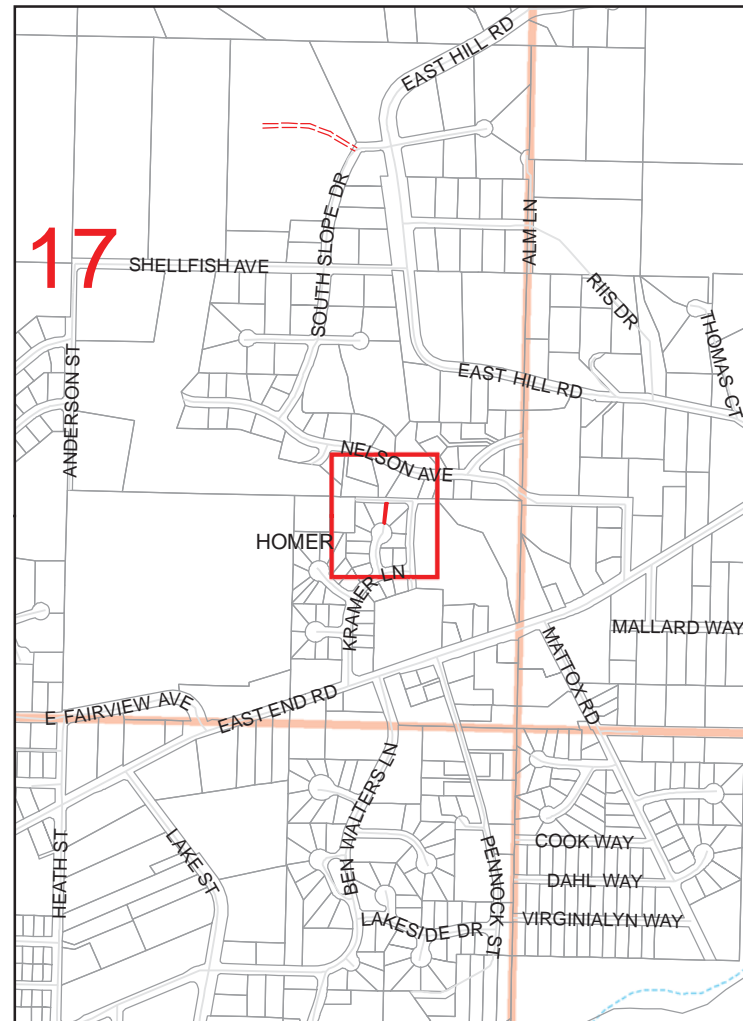
Permit Vacation

JReif, KPB
Date: 4/25/2019
Imagery: Aug 2016



The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for errors or omissions.

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KPB 2019-048V
T06S R13W S17
HOMER



JReif, KPB
 Date: 4/25/2019



CITY OF HOMER
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN
DRIVEWAY ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

839 Nelson Avenue Permit No: 2027

DRIVEWAY ADDRESS: Lot 36 Quiet Creek Park

Permittee: Echo Trading Compnay, LLC Date: 11-Jan-19
Address: P.O. Box 3368, Homer Alaska 99603 Phone: 907-299-2351
Lot: 26 Block: _____
Sub: Quiet Creek Park

CONTRACTOR: East Road Services

KPB Parcel Number: Not assigned ☒ Residential ☐ Commercial

Field inspection an notice required 24 hours in advance of construction.

Call Public Works Inspector at 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee _____ \$45.00
Code 2105 (Initials) _____

PART 2: For Public Works Department Use

☐ No ☒ Yes Culvert Required Minimum CMP Culvert 18"x20'
☐ No ☐ Yes Paving Required Maximum driveway width at culvert: _____
☐ Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS _____

Initial inspection by: _____ Date: _____
Permit granted by: _____ Date: _____
Final inspection by: _____ Date: _____
Driveway ☐ Does ☐ Does not meet requirements
Improvements or corrections required: _____

CONSTRUCTION APPROVED BY: _____ Date: _____
(Public Works Inspector)

PERMIT APPROVED BY: _____ Date: _____
(Director of Public Works)

DISTRIBUTION: 1 ~ Permittee (completed part 1)
2 ~ Inspector (permit granted)
3 ~ Planning Department (address file)
4 ~ Inspector (final inspection/and approval)

Received By: JEH
Paid By: Tony Neal
Date: 1-11-19
PAID CHK #1219 \$45

DRIVEWAY CONSTRUCTION INSTRUCTIONS

A permit to use or occupy roads or streets with access or driveway approaches must be obtained before any work shall be undertaken within the limits of a street right-of-way. **The cost of all the construction AND maintenance of the work shall be borne by the applicant, his grantees, successors and assigns (11.80.090)**

Our inspector will review the driveway site with permittee and/or contractor before construction begins and will advise permittee and/or contractor of the City requirements and grant the permit accordingly. **24 hours notice in advance of construction is required ~ 235-3170.**

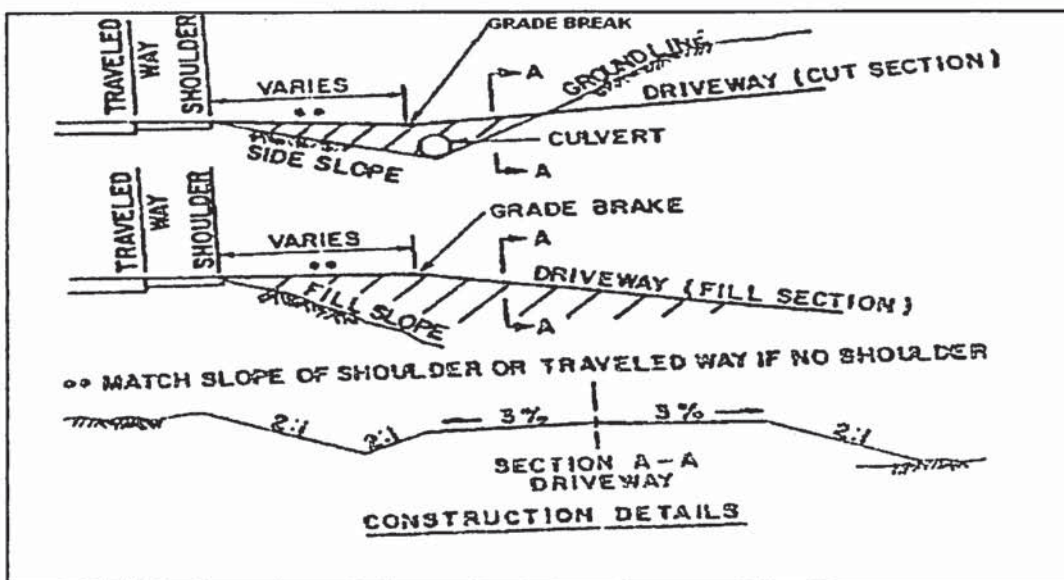
After the driveway is completed, our inspector will inspect the work. If it is acceptable, the inspector will note on the permit that the construction is approved. If not acceptable, the inspector will advise the permittee and/or contractor and note on permit why it is unacceptable to the City.

Should the permittee and/or contractor not know the exact date that the driveway construction will begin, the Public Works Inspector **must be notified at least 24 hours in advance as to when the work will begin.**

Any questions regarding the City's requirements regarding construction should be directed to the Public Works Inspector (235-3170).

CONSTRUCTION NOTES:

1. Stabilized fill material is required for the top two feet of the driveway for a distance of 15 feet from the shoulder line. Fill will not contain material exceeding two inches in diameter, and the top six inches within the R.O.W. must match the top course material of the road surface, however, not exceeding one inch in diameter.
2. Driveway will be constructed to match slope of shoulder or traveled way if no shoulder, for a distance as directed by the inspector.
3. Stabilized material for bedding for a minimum distance of six inches around the culvert will not contain material exceeding two inches in diameter.
4. All construction materials, methods and practices shall be in accordance with HMC Title 13, Standard Construction Practices.
5. Contractor must be licensed in the State of Alaska, bonded and insured to work in the City R.O.W.



244 HOMER CITY COUNCIL
REGULAR MEETING MINUTES
MARCH 22, 1999

Session 99-6, a Regular Meeting of the Homer City Council was called to order at 7:35 p.m. by Mayor Jack Cushing at the Homer City Hall Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: FENSKE, MARQUARDT, WADDELL, WELLES,
CALL TO ORDER YOURKOWSKI.

STAFF: CITY MANAGER KOEBERLEIN
CITY CLERK CALHOUN
CITY ATTORNEY TANS
POLICE LT. ROBL
INTERIM PUBLIC WORKS DIRECTOR JONKER
LIBRARY DIRECTOR HELM

ABSENT: COUNCILMEMBER: PARKS (excused)

AGENDA APPROVAL

**AGENDA
APPROVAL**

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was approved by consensus of the Council.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

**PUBLIC
COMMENTS**

**LAKE STREET
TRIANGLE
PARK**

Ginger Tornes reported that her father John Tornes and her brother James Tornes, both landscape architects, had drawn the Lake Street Triangle park conceptual that she distributed and displayed. She gave a brief description of the concept and history of the park. The salient points of this concept are:

1. Low maintenance. These trees and shrubs will need no pruning and will respond with a very small amount of water the first season. The wildflower/grass mix is perennial.
2. Plants are indigenous to Alaska and/or cold weather climates and have a natural resistance to moose.
3. Since this landscape provides a more of a back drop, the open space could be used for demonstration projects, it welcomes signage and an endless list of other items
4. Underground utilities have been considered.
5. This land scape project will not block the view of McDonalds.
6. This planting will not obscure sight distance.

Ms. Tornes felt it important that the City make a decision as soon as possible, so that work could commence by April. Her written comments are a part of the Council packet.

**PATTON
APPEAL**

Robert Patton commented on the reconsideration of the Patton appeal. He reiterated the following:

- The KPB Planning staff reviewed the file on the AA Mattox preliminary plat and that it did not show the easement currently under review for vacation
- City staff did not request the easement common to lots 24 and 25
- The City Planning Commission did not request the easement.

VOTE: The third amendment passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY NO	HENSLEY ABSENT	JOHNSON NO	SKOGSTAD YES	SIX YES THREE NO TWO ABSENT

Chairman Hammelman asked the Commission if they needed to have the main motion as amended re-stated. No requests to have the main motion repeated were heard.

VOTE: The motion as amended passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY YES	HENSLEY ABSENT	JOHNSON YES	SKOGSTAD YES	EIGHT YES ONE NO TWO ABSENT

Chairman Hammelman said the Commission would recommend enactment of Ordinance 98-33 Substitute including the Commission's recommended amendments. He thanked everyone for their comments. He thanked Assembly Members Scalzi and Drathman for attending.

AGENDA ITEM E. UNFINISHED BUSINESS

- Petition to vacate the entire of the fifteen foot wide drainage and underground utility easement within the easterly fifteen feet of Lot 24, AA Mattox 1958 Addition Unit 2 Amended (Plat 83-89 & 84-8 HRD); and vacate the ten foot wide utility easement within the westerly ten feet of Lot 25, of said AA Mattox subdivision; being within Section 17, T5S, R13W, Seward Meridian, Alaska. Within the City of Homer; KPB File - 98-264 — Carried forward from November 23, 1998

Staff report as read by Lisa Parker.

PC Meeting 1/26/99

Petitioners: Peggi L. Patton of Homer, Alaska

Purpose as stated in petition:

There is a house on Lot 24. Lot 25 is vacant. The owners may vacate the common lot line between the lots sometime in the coming year. For the present however, they wish to extend their garage easterly and develop the existing driveway on Lot 25 for access. The driveway for Lot 24 would be abandoned and reclaimed for lawn.

These plans and other construction plans require the removal of 15 foot utility and draining easement on Lot 24. The Pattons have offered and the City of Homer has agreed to dedicating a 10 foot drainage easement on Lot 25. There is an existing 10 foot utility easement already in place. Since a drainage and utility easements are not necessarily compatible, we therefore ask that the utility easement for Lot 25 also be vacated.

There is an existing 2 foot wide ditch close within Lot 25 handling the current water flow, primarily for breakup.

Notice of vacation mailings were sent to owners of property within a 300 foot radius.

During the November 23, 1998 public hearing, Bob Barnett of Homer spoke against the vacation. Following the hearing, the motion to postpone until January 26, 1999 carried.

Since the November meeting, the City of Homer, on January 5, 1999 submitted a letter wherein they state the City has no objection to the easement vacation as originally submitted. When water and sewer service would be extended to the north of the referenced subdivision, the City would plan to have the utilities placed in the Kallman right-of-way rather than in the referenced easement. The City prefers the utilities be placed in the right-of-way for the following reasons:

- 1) The utilities could serve the lots to the east of Kallman Road;
- 2) The existing 25' wide utility easement is marginal in width for accommodating both the water and sewer lines; and
- 3) Maintenance of the utilities would be more easily accomplished in the ROW than in an easement on private property. The City has also stated — *The existence of a utility easement on the referenced lots should not be interpreted to mean that the City would approve the location for placement of water and sewer mainlines.*

No other comments have been submitted since the November 23rd hearing.

Statement of non-objection — November hearing

Homer Electric Association

PTI Communications

GCI Cablevision — GCI has no objections to the vacation but has requested grandfather rights to provide service in the future to two existing CATV underground service drops.

Statement of objection — November hearing

Bernadine and Bob Barnett - no address provided. A signed letter was sent via fax. Mr. Barnett objected to the vacation stating the easements were intended (he believed) and required to provide services to adjoining property on the north.

City of Homer comments

9/16/98 City of Homer Public Works stated no objection with the understanding that a 10' drainage easement will be dedicated along the western property line of Lot 25.

10/30/98 Handwritten on the 9/16/98 City of Homer Public Works letter is the notation "OK, does not need planning commission review" — signed by Eileen R. Bechtol.

11/18/98 Homer Planning Commission meeting - Mr. Barnett requested a letter from the City indicating they had received an objection. The Planning Director agreed to do so.

11/19/98 Memorandum from City of Homer Planning/Zoning advised that Mr. Barnett objected to the vacation; that he believed the easement was in place for future development of the property to the north of Nelson Avenue. The easement was to be used to bring the sewer main to the north property for development. The City Planning Department requested the City Public Works to see if there is a viable alternative.

11/20/98 City of Homer Public Works - sent via E-mail: It has been verified in the field that the sewer mainline can be extended through the Kallman ROW rather than exclusively through the existing utility easement between Lots 24 and 25 of AA Mattox Sub. It may require running additional piping, but the Kallman ROW provides an adequate corridor for future utility expansion to Barnett's Subdivision.

Borough staff has reviewed the file for A.A. Mattox 1958 Addition Unit 2 and made the following findings.

The preliminary plat did not show the easements currently under review for vacation.

The City staff did not request the easements along the lot line common to Lots 24 and 25; nor did the City Commission.

The Borough staff did not request the easements along the lot line common to Lots 24 and 25, nor did the Borough Plat Committee or Planning Commission.

The utility companies reviewing the plat did not request the easement in this location.

The plat was filed on September 9, 1983 in the Homer Recording District as Plat 83-89 without these easements.

On February 7, 1984, an amended plat was filed in the Homer Recording District as Plat 84-8. The plat was amended to add these easements, as well as other drainage easements.

FINDINGS

1. No utility company objects to the vacation.
2. The City has stated no objections.
3. The City has advised that Kallman right-of-way provides an adequate corridor for future utility expansion to Barnett's Subdivision.
4. The existing easements were not requested or recommended by either the City or the Borough.
5. GCI Cablevision has requested rights to provide service in the future to two existing CATV underground service drops; however, they did not provide information showing the location of these existing facilities.

Based on the above findings and facts, staff has no basis upon which to recommend a denial of the vacation and is recommending the vacation be approved.

STAFF RECOMMENDATIONS:

- A. Planning Commission make their findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to the following conditions:
 1. Granting the ten foot drainage easement within the westerly ten feet of Lot 25, as requested by City of Homer Public Works Department.
 2. Granting easement for use of GCI's existing facilities.

NOTE: If the vacation is denied, the petitioner has eight calendar days in which to appeal the Planning Commission denial. Written appeal must be submitted to the Homer City Clerk.

END OF STAFF REPORT

MOTION: Commissioner Carpenter moved, seconded by Commissioner Boscacci, to concur with, accept the findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to staff recommendations.

Commissioner Gannaway opposed the motion. Mr. Barnett is being asked to put utilities along more than 400' of Kallman Road. However, the distance along the utility easement is about 100'. Commissioner Gannaway understood the expenses involved. Mr. Barnett will not recover the money he will spend on the utilities because the City does not refund money paid for utilities. The proposed vacation will force Mr. Barnett to spend three times the amount to put in utilities.

1. Bob Barnett

Mr. Barnett did not think much development would occur on the northern side in the near future. The extra cost of running a sewer line several hundred feet unnecessarily seemed like a ridiculous requirement. The easement was put in by the developer so the property to the north could be served from the cul-de-sac. Mr. Barnett thought it was unreasonable to vacate the easement.

Recalling previous discussions, someone asked if it would be acceptable to move the easement to the east or west. Mr. Barnett would not object if the easement is moved either to the east or west. He did not want the easement vacated.

2. Roger Imhoff

Mr. Imhoff said he was representing Peggy Patton. He noticed an omission from the City of Homer comments. An additional letter dated January 5, 1999 was written. In trying to resolve everyone's concerns, he asked the Homer Public Works Department if they would object to moving the easement 25' to the eastern side of Lot 25. The Public Works Department said they did not care about the location of the easement on the lot because Mr. Barnett had to use Kallman Road if he wanted to develop the property to the north. The Public Works Department does not want the water/sewer lines going through a private lot. They want the lines in the right-of-way where they can work on them without disrupting private property.

Commissioner Gannaway commented that water and sewer lines crossed private property throughout Homer.

He added that installing utility lines costs more than \$100 per foot.

3. Bob Barnett

Mr. Barnett said any property to the north that may be sold in the future will be large enough to accommodate on-site water. Homes with wells are in the area. However, sewer service is another matter. Sewer service must be installed before water is installed. Mr. Barnett said he would appreciate it very much if the Commission denied the vacation.

Commissioner Johnson preferred the easement be moved to the west or east so the petitioner can develop her property and Mr. Barnett can get a sewer line across the lot if the City will concur. If the sewer line is installed along Kallman in the future, the easement can be vacated at that time. Commissioner Johnson did not know if the easement should be on the eastern or western side.

Commissioner Gannaway said main lines and manholes were on private property within the City. Chairman Hammelman asked Commissioner Gannaway if he had suggestions about relocating the easement to the east or west. Commissioner Gannaway declined. He pointed out the subject easement was existing.

Referring to the map on Page 89 of the mailout packet, Commissioner Johnson noted it appeared if the easement were moved to the east a short distance, the property owner could proceed with her development and Mr. Barnett could accomplish what he would like to do.

Commissioner Johnson asked Mr. Imhoff if the property owner would object if the easement were moved to Lot 25. Mr. Imhoff asked Commissioner Johnson if he wanted to move the easement the entire 25'. Commissioner Johnson replied he wanted to move it the necessary distance. Mr. Imhoff could not agree to this suggestion without first talking to the property owner. Just because the easement exists does not mean the City will allow the lines to be placed in the easement if Mr. Barnett develops his property in the future.

Commissioner Whitmore-Painter asked who decided where the sewer lines would be installed. Commissioner Gannaway replied the lines were usually installed in the road rights-of-way. In this case there is no road right-of-way. He thought the Public Works Department decided the location of the utility lines. Commissioner Whitmore-Painter said Public Works stated they would not install the lines in the easement.

Ms. Parker commented that when a property owner wants to develop his property, he/she will talk with the City and work together toward a common goal.

Chairman Hammelman re-stated the motion.

Commissioner Carpenter thought the letter from the Homer Public Works Department was unclear. He read a portion of the letter:

The existence of a utility easement on the referenced lots should not be interpreted to mean that the City would approve the location for placement of water and sewer mainlines.

VOTE: The motion failed by a majority vote.

HAMMELMAN NO	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI NO	CARPENTER NO	CLUTTS NO
COLEMAN ABSENT	GANNAWAY NO	HENSLEY ABSENT	JOHNSON NO	SKOGSTAD YES	SIX NO THREE YES TWO ABSENT

AGENDA ITEM E. UNFINISHED BUSINESS

Session 19-10, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Venuti at 6:30 p.m. on May 15, 2019 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BANKS, SMITH, VENUTI, HIGHLAND, PETSKA-RUBACLAVA

ABSENT: COMMISSIONER BOS, BENTZ (EXCUSED)

STAFF: CITY PLANNER ABBOD
DEPUTY CITY CLERK KRAUSE

The Commission conducted a worksession prior to the meeting on the subject of building height maximums in the East End Mixed Use District with Fire Chief Purcell, Alan Engebretsen and Ken Moore that included previous discussion points of fire safety and building height in general.

APPROVAL OF THE AGENDA

Chair Venuti called for a motion to approve the agenda.

HIGHLAND/SMITH – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

- A.** Approval of minutes of May 1, 2019
- B.** Drainage Easement Vacation Request at 4510 Heidi Court
- C.** Time extension request for Sterling Hwy/Main Street AKDOT Right of Way Acquisition Preliminary Plat

Chair Venuti requested a motion to approve the Consent Agenda.

HIGHLAND/BANKS - SO MOVED.

From: Carey Meyer
Sent: Monday, May 13, 2019 8:47 AM
To: Travis Brown
Subject: RE: Heidi Court drainage easement vacation

Mr. Brown,

The Public Works Department has no objection to vacating the drainage easement across Lot 24-A, AA Mattox – Peggi's Addition.

We prefer to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible. Easements across private are more difficult to access (and more often than not more costly) for maintenance than dedicated right-of-way.

In this case, a drainage corridor exists easterly along Nelson Ave. and then southerly down Kallman Road.

Carey S. Meyer, P.E., MPA

Public Works Director/City Engineer

City of Homer, Alaska

3575 Heath Street

Homer, AK 99603

cmeyer@ci.homer.ak.us

(p) 907-435-3124

(f) 907-235-3145

(c) 907-399-7232

From: Travis Brown <tbrown@ci.homer.ak.us>
Sent: Friday, May 10, 2019 12:26 PM
To: Carey Meyer <CMeyer@ci.homer.ak.us>
Subject: Heidi Court drainage easement vacation

Carey,

Thanks for providing an email for the commission to see. I attached the rest of the documents associated with this request so the references are at your fingertips.

Travis Brown
Planning Technician
City of Homer
Planning and Zoning Office
(907)235-3106



Kenai Peninsula Borough Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-478-4441, extension 2200
(907) 714-2200

Petition to Vacate Utility Easement
No Public Hearing Required

Submit completed form to the Kenai Peninsula Borough Planning Department, 144 North Binkley St., Soldotna, AK 99669

Upon receipt of complete application with all required attachments the vacation will be scheduled for Planning Commission action. The petitioner must secure and submit written comments from utility companies. If the easement is within city limits; secure and submit city's written comments. **The completed petition, with all required attachments, accompanied by a \$75.00 non-refundable fee, must be submitted to the Planning Department a minimum of thirty (30) days prior to the meeting at which the Planning Commission will take action.**

☒ Fees - \$75.00 non-refundable fee attached.

To accomplish an approved vacation; a Planning Commission Resolution must be filed with the State Recorder to enter the vacation into the public records unless the vacation is accomplished by plat. Petitioner must pay filing fees (usually \$22-\$27).

☒ Utility easement requested to be vacated was granted by plat of Subdivision, filed as Plat No. 99-64 in Homer Recording District. *NOT utility easement (Drainage)*

☒ Utility easement proposed to be vacated was granted by (specify type of document) as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition) *COULDN'T FIND ANY RECORDED DOCUMENT*

☒ Comments from *Hea* Electric Association attached

☒ Comments from *N/A* Gas Company attached.

☒ Comments from *ACS* Telephone Company attached.

☒ Comment from *GCT* Cable Company attached. *emailed*

☐ Comments from the KPB Roads Department attached if applicable.

☐ Comments from City of _____ attached.

☒ One copy of plat or map (sketch) showing area proposed to be vacated. If easement was granted by document; one copy of recorded document must be submitted.

☐ If an existing structure is encroaching into easement; As-Built showing encroachment must be attached.

Is easement being used by utility company? ☐ Yes ☒ No

If yes, which utility _____

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

SEE ATTACHED REASON FOR VACATING:

The petition must be signed (written signature) by owners of the land subject to the easement proposed to be vacated. Each must include mail address and legal description of his/her property.

Submitted by: Signature *Peggy L. Patton* As ☒ Petitioner ☐ Representative

Name: PEGGY L. PATTON

Address: 4510 HEIDI CT.

HOMER, AK 99603

Phone: 907-399-4055

Petitioners:

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

The petitioner's reasonable justification for vacation of 10' drainage easement.

Subject Property: Lot 24A AA Mattox Peggi's Addition Plat No. 99-64

The 10' drainage easement on the above mentioned subject property has not been used since it was platted on the subject property original plat 84-HRD.

There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City Of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing Drainage corridor remain in place on the North side of the long driveway. (see driveway permit, original and current subject property plats 84-HRD and 99-64, attached)

The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project.

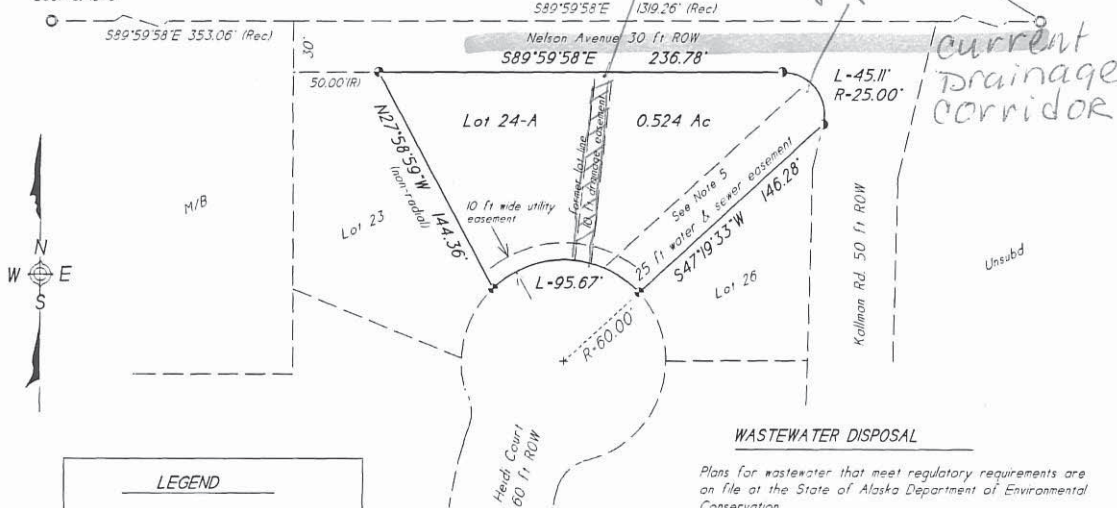
It is my understanding that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff.

The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefor preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property.

Vacating this easement would not create any adverse effects to the surrounding properties.

HM 99-64

SE 1/4
3 1/4" Alum Post Mon
2087-S, 1973



LEGEND

- Found 5/8" rebar as per Plat No. 84-8 HRD
- Found 2" Aluminum Cap on 5/8" steel rebar 5780-S, 1997

NOTES

1. All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
2. No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
3. Basis of Bearing is AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District. Dimensions are record.
4. Utility and Drainage Easements as shown on the Parent Plat 84-8 HRD were vacated by action of the Homer City Council at their meeting on March 22, 1999.
5. The 25 ft water and sewer easement as shown hereon is not in use this date. Any use of this easement must be approved by the City of Homer Public Works Dept. and the ground must be restored to its original condition after construction. Furthermore, this easement shall be vacated by request of the City of Homer if water and sewer mains are placed in Kallison Road.
6. General easement for electric lines or system is recorded in Book 19 Page 92 HRD in favor of Homer Electric Association, no definite location given.
7. Covenants affecting the lot shown hereon are on file at the Homer office of the State Recorder. See Bk 141 P263, Bk 145 P201, Bk 145 P968, Bk 152 P388, Bk 169 P478.



SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Roger W. Imhoff August 6, 1999
Roger W. Imhoff LS 5780 Date

99-64 2000
RECORDED - FILED
HOMER REC DIST
Date 11/16/99
Time 11:43 PM
Requested by
Roger Imhoff, RLS
PO Box 2588
Homer AK 99603

OWNERSHIP CERTIFICATE

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 to public use and grant all easements to the use shown.

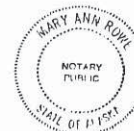
We further certify that the Deed of Trust affecting this property does not contain restrictions which would prohibit this subdivision, or require signature and approval of the beneficiary.

Robert D. Patton *Peggy L. Patton*
owner of former Lot 24 owner of former Lots 24 and 25
Robert D. Patton Date Peggy L. Patton Date
4510 Heidi Court aka Peggy L. Forrester
Homer AK 99603

Notary's Acknowledgement
Subscribed and sworn to me before me this 13 day
of August 1999

for Robert D. Patton and Peggy L. Patton

Mary Ann Rowle
Notary Public for Alaska
My Commission Expires 7-30-02



WASTEWATER DISPOSAL

Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

Roger W. Imhoff August 6, 1999
Roger W. Imhoff LS 5780 Date

PLAT APPROVAL

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

May 24, 1999

KENAI PENINSULA BOROUGH

By: *Max Reed*
Authorized Official

Vicinity Map 1" = 1000 ft



**AA Mattox
Peggy's Addition**

Being a Replat of Lots 24 and 25 AA Mattox
1958 Addition Unit 2 Amended as shown on
Record Plat 84-8 Homer Recording District

Located within the
SE 1/4 SE 1/4 Sec. 17, T6S, R13W, S1M,
in the City of Homer
Third Judicial District, Alaska

Contains 0.524 Acres, more or less

Clients:
Robert and Peggy Patton
4510 Heidi Cr
Homer AK 99603

Surveyor:
Roger W. Imhoff, RLS
PO Box 2588
Homer AK 99603

Drawn: RWI

Date: 3-23-99

Scale 1" = 50 ft

File patton.lvd

KPB File No. 98-264



CITY OF HOMER
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN
DRIVEWAY ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

839 Nelson Avenue Permit No: 2027

DRIVEWAY ADDRESS: Lot 36 Quiet Creek Park

Permittee: Echo Trading Compnay, LLC Date: 11-Jan-19
Address: P.O. Box 3368, Homer Alaska 99603 Phone: 907-299-2351
Lot: 26 Block: _____
Sub: Quiet Creek Park

CONTRACTOR: East Road Services

KPB Parcel Number: Not assigned ☒ Residential ☐ Commercial

Field inspection an notice required 24 hours in advance of construction.

Call Public Works Inspector at 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee _____ \$45.00
Code 2105 (Initials)

PART 2: For Public Works Department Use

☐ No ☒ Yes Culvert Required Minimum CMP Culvert 18"x20'
☐ No ☐ Yes Paving Required Maximum driveway width at culvert: _____
☐ Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS _____

Initial inspection by: _____ Date: _____
Permit granted by: _____ Date: _____
Final inspection by: _____ Date: _____
Driveway ☐ Does ☐ Does not meet requirements
Improvements or corrections required: _____

CONSTRUCTION APPROVED BY: _____ Date: _____
(Public Works Inspector)

PERMIT APPROVED BY: _____ Date: _____
(Director of Public Works)

DISTRIBUTION: 1 ~ Permittee (completed part 1)
2 ~ Inspector (permit granted)
3 ~ Planning Department (address file)
4 ~ Inspector (final inspection/and approval)

Received By: JEH
Paid By: Tony Neal
Date: 1-11-19
PAID CHK #1219 \$45

DRIVEWAY CONSTRUCTION INSTRUCTIONS

A permit to use or occupy roads or streets with access or driveway approaches must be obtained before any work shall be undertaken within the limits of a street right-of-way. **The cost of all the construction AND maintenance of the work shall be borne by the applicant, his grantees, successors and assigns (11.80.090)**

Our inspector will review the driveway site with permittee and/or contractor before construction begins and will advise permittee and/or contractor of the City requirements and grant the permit accordingly. **24 hours notice in advance of construction is required ~ 235-3170.**

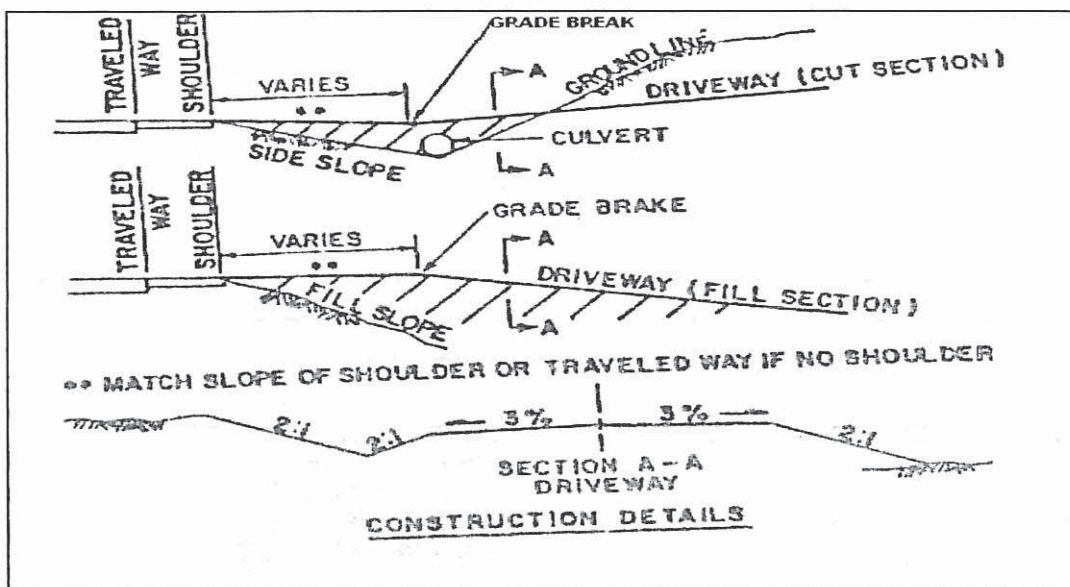
After the driveway is completed, our inspector will inspect the work. If it is acceptable, the inspector will note on the permit that the construction is approved. If not acceptable, the inspector will advise the permittee and/or contractor and note on permit why it is unacceptable to the City.

Should the permittee and/or contractor not know the exact date that the driveway construction will begin, the Public Works **Inspector must be notified at least 24 hours in advance as to when the work will begin.**

Any questions regarding the City's requirements regarding construction should be directed to the Public Works Inspector (235-3170).

CONSTRUCTION NOTES:

1. Stabilized fill material is required for the top two feet of the driveway for a distance of 15 feet from the shoulder line. Fill will not contain material exceeding two inches in diameter, and the top six inches within the R.O.W. must match the top course material of the road surface, however, not exceeding one inch in diameter.
2. Driveway will be constructed to match slope of shoulder or traveled way if no shoulder, for a distance as directed by the inspector.
3. Stabilized material for bedding for a minimum distance of six inches around the culvert will not contain material exceeding two inches in diameter.
4. All construction materials, methods and practices shall be in accordance with HMC Title 13, Standard Construction Practices.
5. Contractor must be licensed in the State of Alaska, bonded and insured to work in the City R.O.W.





ENSTAR Natural Gas Company
A DIVISION OF SEMCO ENERGY
Engineering Department
Right of Way Section
401 E. International Airport Road
P. O. Box 190288
Anchorage, Alaska 99519-0288
(907) 277-5551
FAX (907) 334-7798

April 25, 2019

Peggi Patton
4510 Heidi Ct
Homer, AK 99603

Re: Letter of Non-Objection – Drainage Easement Vacation

To whom it may concern:

ENSTAR Natural Gas Company has no objection to the vacation of the existing ten foot (10 FT) wide drainage easement, within Lot 24-A, AA Mattox Subdivision Peggi's Addition, according to Plat No. 99-64, Records of the Homer Recording District, Third Judicial District, State of Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Cassie Acres".

Cassie Acres
Right of Way & Compliance Technician
ENSTAR Natural Gas Company



April 26, 2019

To Whom It May Concern:

RE: Vacating of 10' Drainage Easement

Please be advised that Alaska Communications (ACS) has no objection to vacating the 10' Drainage Easement that runs north-south across the middle of lot 24A of the AA Mattox Subdivision Peggi's Addition (99-64).

Byron Jackson

A handwritten signature in black ink that reads 'Byron Jackson'.

ACS OSP Network Engineer III
151 Warehouse Dr
Soldotna, AK 99669
(907) 714-8791
Byron.Jackson@acsalaska.com



April 25, 2019

Peggi Patton
4510 Heidi Court
Homer, AK 99603

Dear Ms. Patton,

Provided the 10 foot utility easement along the Heidi Court ROW remains, GCI has no objection to vacating the 10 foot drainage easement running through Lot 24-A, AA Mattox Peggi's Addition, 4510 Heidi Court, between Nelson Avenue and Heidi Court.

Sincerely

A handwritten signature in cursive script that reads "Bradley Beck".

Bradley Beck
Manager OSP O&M

From: tonyneal@popsiefishco.com
To: [Reif, Jordan](#); [Sweppy, Maria](#)
Cc: ["Susannah Webster"](#); ["Carey Meyer"](#); Andy.Mitzel@usace.army.mil
Subject: vacation of drainage easement Lot 24A, AA Mattox Peggi addition
Date: Saturday, June 08, 2019 12:49:38 PM
Attachments: [image003.png](#)

We have received Notice of Proposed Utility Easement Vacation on Lot 24-A, AA Mattox Peggi's Addition. The notice allows written comments to be received by e mail to Jordan Reif. Please respond that this message is received, or we will need to send a certified Mail.

I am in western Alaska and cannot attend the meeting. However, we are totally opposed to the vacation and will use all legal means to prevent it. The easement that is under consideration for vacation drains Wetlands and extensive area in Quiet Creek Park and areas above.

1. We refer you to Quiet Creek Park subdivision and the extensive public record on concerns about drainage, storm water, Wetlands, and related, and all the Borough Planning Commission concerns to meet public comments, and the regulations and constraints imposed on Quiet Creek Park to protect drainage for the public interest.
2. The drainage at issue, delineated official legal Wetlands regulated by the US Army Corps of Engineers. It is, in the words of the Corps of Engineers "waters to the United States" and regulated as such.
3. The Pattons, themselves, went above their property line, entered the Nelson right of way, entered our property, and built an earth fill dam, damming the flow down the natural water flow protected by this drainage easement. They dammed the flow to keep it from the drainage easement. They went on to Wetlands in Violation of the Corps regulation, with no permit and no notice. They dug a ditch with an excavator diverting the dammed water east from its natural southerly flow down the center of the Nelson Avenue public right of way. The water now empties on to the Kalman Street right of way where it has created a swamp.
4. The Pattons may claim they have City approval to enter on the Wetlands, dam the drainage, and divert the flow down Nelson. However, there is no record of the legally required City permit that is required to be issued to do work on a City right of way..
5. The Nelson right of way is our only legal access to our property at the end of Nelson, we have been forced to create a new easement for access because Nelson is unbuildable, but Nelson remains a legal public access for several lots.
6. We did apply for and obtain a driveway construction permit from the City of Homer (something the Pattons did not do). This was to build our legal access to our property on Nelson Avenue.
7. However, upon our inspection and after hiring a surveyor, we discovered the Pattons had dug the unregulated, non-permitted, drainage diversion right down the middle of the Nelson access, making it impossible to build our driveway. Water flowing was eastward toward Kalman in an unregulated amount, creating a swamp and making the use of Nelson as the intended public access impossible.
8. The petition submitted to the Borough in support of the vacation is untrue, a misrepresentation, fraudulent I suppose, since the truth is known by the Pattons. The drainage has not been "unused" since 1984. Water has not flowed in the drainage since the Pattons dammed it off, but that wasn't 1984 nor does it create the easement as "unused". The "alternative corridor" said to exist on Nelson is an excavated ditch dug by the Pattons down the middle of the right of way.

Therefore we are totally and legally opposed to the vacation of the drainage easement. We simply will not permit vacation without a legally approved alternative.

One solution is to have the Pattons remove the dam and allow the Wetlands to drain naturally on the drainage easement so we can build an access to our property.

We would accept an alternative for the Pattons by accepting a diversion ditch along the edge of the Nelson right of way as long as there was enough space to allow us to build our access, and the diversion was approved by City of Homer and Corps of Engineers and any other required permitting

agency and we were indemnified for working in Wetlands and along the right of way where excess water was flowing, having been diverted from its natural flow. If permitted, the Pattons could hire a surveyor and contractor to remove the unregulated and un-permitted ditch down the middle of Nelson and replace it with a ditch on the edge of the right of way and create a passable driveway access, and ditch and clean up the swamp mess on Kalman.

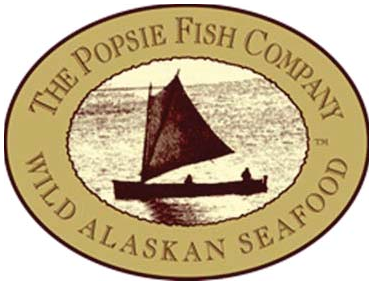
Again, we are totally and legally opposed to this vacation without an officially approved alternative that does not restrict our legal access.

Thank you, Tony Neal, Member-Manager for Echo Trading Company, LLC.

Tony Neal

907-299-2351

www.PopsieFishCo.com



From: [peggi patton](#)
To: [Reif, Jordan](#)
Subject: Re: AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V
Date: Tuesday, June 11, 2019 6:42:38 AM
Attachments: [image001.png](#)

Dear Jordan

Mr Neal is incorrect. The drainage easement on our property has not been used for above property drainage. We did not create the drainage on the Nelson ave ROW I encourage the borough to speak with Kerry Meyer at the City of Homer.

Sent from my iPhone

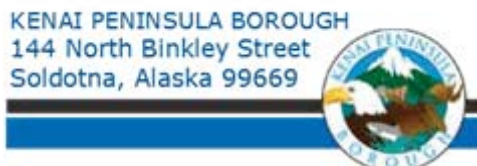
On Jun 10, 2019, at 8:38 AM, Reif, Jordan <jreif@kpb.us> wrote:

Hi Peggi,

Attached please find a comment from the public on AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V. The comment will be presented to the Planning Commission for their review.

Best,

Jordan Reif
Platting Technician
(907) 714-2200
(907) 714-2378 Fax



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

<KPB 2019-048V Neal Comment 6_10_19.pdf>

From: [Carey Meyer](#)
To: [Reif, Jordan](#); [Sweppy, Maria](#)
Cc: [Tony Neal \(tonyneal@popsiefishco.com\)](mailto:tonyneal@popsiefishco.com)
Subject: RE: vacation of drainage easement Lot 24A, AA Mattox Peggi addition
Date: Wednesday, June 12, 2019 12:42:44 PM
Attachments: [image002.png](#)
[photos of Nelson Avenue culvert conditions prior to removal.pdf](#)

Mr. Huff,

Although I have expressed my recommendations (in support of the vacation of the drainage easement) to the Homer Advisory Planning Commission (through Planning Department staff), I wanted to respond to the email from Tony Neal (see [below](#)).

Carey S. Meyer, P.E., MPA

Public Works Director/City Engineer
City of Homer, Alaska
3575 Heath Street
Homer, AK 99603
cmeyer@ci.homer.ak.us
(p) 907-435-3124
(f) 907-235-3145
(c) 907-399-7232

From: tonyneal@popsiefishco.com <tonyneal@popsiefishco.com>
Sent: Saturday, June 8, 2019 11:47 AM
To: jreif@kpb.us; msweppy@kpb.us
Cc: 'Susannah Webster' <susannahwebster@popsiefishco.com>; Carey Meyer <CMeyer@ci.homer.ak.us>; Andy.Mitzel@usace.army.mil
Subject: vacation of drainage easement Lot 24A, AA Mattox Peggi addition

We have received Notice of Proposed Utility Easement Vacation on Lot 24-A, AA Mattox Peggi's Addition. The notice allows written comments to be received by e mail to Jordan Reif. Please respond that this message is received, or we will need to send a certified Mail.

I am in western Alaska and cannot attend the meeting. However, we are totally opposed to the vacation and will use all legal means to prevent it. The easement that is under consideration for vacation drains Wetlands and extensive area in Quiet Creek Park and areas above.

1. We refer you to Quiet Creek Park subdivision and the extensive public record on concerns about drainage, storm water, Wetlands, and related, and all the Borough Planning Commission concerns to meet public comments, and the regulations and constraints imposed on Quiet Creek Park to protect drainage for the public interest. [Mr. Neal has protected wetlands and the existing drainage features within his subdivision development.](#)
2. The drainage at issue, delineated official legal Wetlands regulated by the US Army Corps of Engineers. It is, in the words of the Corps of Engineers "waters to the United States" and regulated as such. [I meet in Homer with Corps personnel regarding this issue. There is no reason to believe that there are any](#)

wetlands within the drainage easement proposed to be vacated or below in the developed subdivision. The Corps representative was not concerned that the work completed by the Patton's was a regulatory issue. Future work along this Nelson Ave./Kallman St. corridor might require coordination with the Corps.

3. The Pattons, themselves, went above their property line, entered the Nelson right of way, entered our property, and built an earth fill dam, damming the flow down the natural water flow protected by this drainage easement. They dammed the flow to keep it from the drainage easement. They went on to Wetlands in Violation of the Corps regulation, with no permit and no notice. They dug a ditch with an excavator diverting the dammed water east from its natural southerly flow down the center of the Nelson Avenue public right of way. The water now empties on to the Kalman Street right of way where it has created a swamp. Contractor and property owner say all work occurred within the Nelson Avenue right-of-way; admit that they removed the existing culvert (permission granted by Public Works); no ditching was completed within Nelson Avenue. Surface water always was connected to an existing ditch in the center of Nelson Avenue. (See photos taken prior to work being completed showing water always flowed down the center of Nelson Avenue).
4. The Pattons may claim they have City approval to enter on the Wetlands, dam the drainage, and divert the flow down Nelson. However, there is no record of the legally required City permit that is required to be issued to do work on a City right of way. The City never issues a permit to do work in wetlands. Verbal permission was given to remove the badly deteriorated "culvert".
5. The Nelson right of way is our only legal access to our property at the end of Nelson, we have been forced to create a new easement for access because Nelson is unbuildable, but Nelson remains a legal public access for several lots. In my opinion, nothing that the Patton's did made Nelson Avenue unbuildable.
6. We did apply for and obtain a driveway construction permit from the City of Homer (something the Pattons did not do). This was to build our legal access to our property on Nelson Avenue. No comment.
7. However, upon our inspection and after hiring a surveyor, we discovered the Pattons had dug the unregulated, non-permitted, drainage diversion right down the middle of the Nelson access, making it impossible to build our driveway. Water flowing was eastward toward Kalman in an unregulated amount, creating a swamp and making the use of Nelson as the intended public access impossible. The Patton's did not dig a ditch down the center of Nelson. The photos show this "ditch" pre-existed any work by the Patton's.
8. The petition submitted to the Borough in support of the vacation is untrue, a misrepresentation, fraudulent I suppose, since the truth is known by the Pattons. The drainage has not been "unused" since 1984. Water has not flowed in the drainage since the Pattons dammed it off, but that wasn't 1984 nor does it create the easement as "unused". The "alternative corridor" said to exist on Nelson is an excavated ditch dug by the Pattons down the middle of the right of way. No comment.

Therefore we are totally and legally opposed to the vacation of the drainage easement. We simply will not permit vacation without a legally approved alternative.

One solution is to have the Pattons remove the dam and allow the Wetlands to drain naturally on the drainage easement so we can build an access to our property.

We would accept an alternative for the Pattons by accepting a diversion ditch along the edge of the

Nelson right of way as long as there was enough space to allow us to build our access, and the diversion was approved by City of Homer and Corps of Engineers and any other required permitting agency and we were indemnified for working in Wetlands and along the right of way where excess water was flowing, having been diverted from its natural flow. If permitted, the Pattons could hire a surveyor and contractor to remove the unregulated and un-permitted ditch down the middle of Nelson and replace it with a ditch on the edge of the right of way and create a passable driveway access, and ditch and clean up the swamp mess on Kalman.

Again, we are totally and legally opposed to this vacation without an officially approved alternative that does not restrict our legal access.

Thank you, Tony Neal, Member-Manager for Echo Trading Company, LLC.

Tony Neal

907-299-2351

www.PopsieFishCo.com





This photo (taken prior to culvert removal) looks north across the Nelson. Note that the “ditch” is turning east down Nelson Avenue.



This photo looks west along Nelson Avenue and shows that surface water ran down the center of Nelson Avenue prior to culvert removal.



This photo looks north at the downstream end of the culvert that was removed.

Google Maps 4598 Heidi Ct

Page 73.1 of 173



Image capture: Aug 2009 © 2019 Google

Homer, Alaska



Street View - Aug 2009

From: tonyreal@popsiefishco.com
To: [Reif, Jordan](#); [Sweppy, Maria](#)
Cc: ["Susannah Webster"](#); ["Carey Meyer"](#)
Subject: Peggi addition drainage easement
Date: Tuesday, June 18, 2019 6:52:34 PM
Attachments: [image002.png](#)

Hello Jordan,

This supplements our comments to the Planning Commission for the 24 June meeting.

We will not accept vacation of the drainage easement unless there is a Court order to do so.

We will accept a compromise. We will agree to the vacation of the drainage easement if Nelson Avenue is restored to the buildable public access that it was intended to be and once was, and the restoration is paid for by the responsible parties and accepted by the permitting agencies. If the creek also drains on Nelson, not a problem as long as we have buildable and maintainable access. We intend to move for our own Court order to accomplish this, if no compromise is reached. We own property that is served by the Nelson Public Access right of way.

The creek in question is pictured in Carey Meyer's first photo. The man and the creek are on our property, in 2017. In 1999 that creek flowed naturally through our property, across Nelson Avenue, and down the drainage easement shown on the 1999 plat "Peggi's Addition" approved by the Borough and attached to the Patton application, and into City ditch on Heidi Court.

In 1999, Nelson Avenue was a dry public easement and buildable.

After the Borough approved Peggi's Addition (with drainage easement intact), the Pattons caused the creek to be dammed and the water to be diverted down the middle of Nelson and onto the Kalman Street right of way, making a swamp of Kalman and making Nelson unbuildable. This was before 2017 when they involved the City in removing an old culvert and Carey's photos were taken. In our opinion, there is no public interest in the easement damming and creek diversion. This was only for the personal financial self-interest of the Pattons.

1. Carey Meyer is in error when he writes the Planning Commission "Surface water always was connected to an existing ditch in the center of Nelson Avenue." Carey is again in error when he writes "(See photos taken prior to work being completed showing water always flowed down the center of Nelson Avenue)". Neither of these comments are true.

Carey's photo looking east on Nelson, with a man's back to the camera, shows the dam ... he is standing on it... and shows the ditch dug onto Nelson, turning the water onto Nelson. The ditch material was cast to the side, creating sort of a levee. Clearly, this ditch as shown in the photo is not a natural waterway. Again, water diverted down Nelson is 100% man-made.

We want the buildable access to our property that is expected on a public right of way easement and existed on Nelson until it was destroyed for the personal financial self-interest of the Pattons.

Thank you,

Tony Neal
907-299-2351
www.PopsieFishCo.com

Roll call vote was requested for the main motion to approve a conditional land use permit application for Beachcomber LLC, Resolution 2018-23, that has been amended with voluntary conditions.

MOTION PASSED BY MAJORITY VOTE: 8 Yes, 2 No, 1 Recused, 1 Absent.

Yes: Bentz, Ecklund, Fikes, Foster, Martin, Morgan, Ruffner, Venuti
No: Carluccio, Whitney
Recused: Brantley
Absent: Ernst

Chairman Martin thanked the public that attended, did their research and participated in the process.

AGENDA ITEM F. VACATIONS NOT REQUIRING A PUBLIC HEARING

F. Utility Easement Vacation

1. Vacate the 10-foot-wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition, granted by AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2019-048V

Staff Report given by Scott Huff

PC Meeting: June 24, 2019

Purpose as stated in petition: The 10' drainage easement has not been used since it was granted in 1984. There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing drainage corridor remain in place on the North side of the long driveway. The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project. The owner understands that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff. The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefore preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property. Vacating this easement would not create any adverse effects to the surrounding properties.

Petitioner: Peggi Patton of Homer, Alaska

Location: on Nelson Avenue and Heidi Court, in the City of Homer

Notification: Notice of vacation mailings were sent by regular mail to 17 owners of property within 300 feet. Notice of the proposed vacation was emailed to 8 agencies and interested parties.

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

The City of Homer Advisory Planning Commission recommended approval of the drainage easement vacation on May 15, 2019.

Comments Received:

Alaska Communications Systems: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

Homer Electric Association: No objection.

Tony Neal: Objection

Mr. Neal is a land owner of Lot 8 and the remainder of Tract A, which are two lots located at the west end of Nelson Avenue. The two lots are currently being combined into one parcel, Lot 8-A of proposed AA Mattox Subdivision Gwen's 2019 Addition. The Plat committee approved this replat at the May 28, 2019 meeting on the condition of an access easement be granted from Sanjay Court. Currently the only legal access to the remainder of Tract A is from Nelson Drive.

Mr. Neal also owns the 37 Acre development of Barnett's South Slope Subdivision Quiet Creek Park Unit 2 (HM 2018-40). Lots 34, 35, and 36 of HM 2018-40 front on Nelson Avenue, however the constructed access is from a different Nelson Avenue located further north.

Mr. Neal's letter states his concerns with drainage and the ability to use Nelson Avenue to access proposed Lot 8-A.

Carey Meyer, Public Works Director, City of Homer

Mr. Meyer contacted the Planning Department and submitted written comments in response to Mr. Neal's letter. Mr. Meyer stated that the City of Homer has no interest in a drainage easement across private property when a dedicated Right of Way is nearby. The City of Homer prefers to utilize a dedicated street right of way, whenever possible, to provide drainage corridors to direct water to natural drainage ways. A natural drainage way is located approximately 400 feet to the east.

Staff comments:

1999 – An application was submitted to vacate the 15-foot utility and drainage easement within former Lot 24 and the 10-foot utility easement within former Lot 25 AA Mattox Subdivision.

The 1999 vacation application was approved by the City of Homer Planning and Zoning Commission.

The KPB Planning Department, after listening to concerns regarding drainage and water/sewer services, denied the application. The application was then appealed to the Homer City Council.

The Homer City Council overturned the denial and approved the vacation on the condition that a 25-foot water and sewer easement be granted on the east boundary of former Lot 25 as well as a 10-foot drainage easement be granted on the west side of former Lot 25. The request for the drainage easement came from the City of Homer Public Works Department.

The City of Homer Public Works has submitted comments stating no objection to the vacation of the 10-foot drainage easement. Public Works prefers to utilize utility and drainage corridors within dedicated right of ways whenever possible, as opposed to easements on private property. Nelson Avenue and Kallman Road contain an existing drainage corridor.

Findings:

1. Per the petition, the drainage easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and Homer Electric Association provided written non-objection to the proposed vacation.
3. The Homer Advisory Planning Commission recommended approval of the proposed vacation on May 15, 2019.
4. AA Mattox Peggi's Addition (Plat HM 99-64) granted a 10-foot wide drainage easement on Lot 24-A.
5. Per the Homer Advisory Planning Commission hearing packet, the city prefers to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible.
6. Per the Homer Advisory Planning Commission hearing packet, a draining corridor exists easterly along Nelson Avenue and southerly down Kallman Road.
7. No surrounding properties will be denied utilities or drainage.

Based upon the above findings, **staff recommends** granting the vacation as petitioned, subject to:

1. Provide a sketch clearly indicating the draining easement being vacated to be recorded with KPB Planning Commission Resolution 2019-19, becoming Page 2 of 2.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicants will provide the recording fee for the resolution and its attachments to the Planning Department.

NOTE: Action after denial of vacation (KPB 20.70.120)

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

END OF STAFF REPORT

Mr. Huff noted in the laydown packet another letter was received from Tony Neal, the neighboring landowner. There is also a Google map street view image that looks up the driveway of the subject parcel. It appears the easement is between the driveway and the existing house. There are trees and grass growing in the area. There is also a contour map included to show the natural drainage patterns of the area.

Chairman Martin opened public comment. Seeing and hearing no one wishing to comment, Chairman Martin closed public comment and discussion was opened among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Venuti to approve the vacation of a 10-foot-wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition in Homer, Alaska subject to staff recommendations and compliance with borough code.

Commissioner Ruffner noted that this had gone back and forth in the past. He wanted clarified the City of Homer's current position. Mr. Huff said the City of Homer does not want a drainage easement on private property when there is a right-of-way that can be used. City of Homer has reviewed this and they approved to have it vacated.

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

SPECIAL CONSIDERATIONS

AGENDA ITEM G. SPECIAL CONSIDERATIONS

1. Review of May 13, 2019 Plat Committee Conditional Approval of Preliminary Plat Diamond Ridge Estates No. 5, KPB File No. 2019-037; Geovera, LLC/Arno

Location: intersection of Estate Drive and Skittles, north of Skyline Drive, Diamond Ridge area

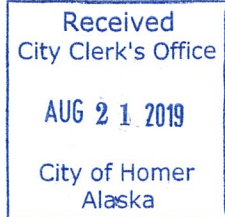
Staff Report given by Scott Huff

Planning Commission Meeting: 6/24/19

The following staff report was presented to the Plat Committee for Preliminary Plat Diamond Ridge Estates No. 5, KPB File No. 2019-037; Geovera, LLC/Arno on May 13, 2019:

AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS

4. Diamond Ridge Estates No. 5



Echo Trading Company LLC

PO Box 3368

Homer, AK 99603

(907)-299-2351

tonyneal@popsiefishco.com

20Aug2019

Homer City Council

Re: Memorandum 19-0xx from City Clerk Re: Kenai Peninsula Borough Approval of the vacation of a 10 ft. wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough KPB File 2019-048V.

I am here to ask you to veto the planning commission decision approving the petition to vacate this drainage easement.

Vacating this drainage easement has no public benefit. It is harmful to the Public, and to the neighbors, including Echo Trading Company as an adjacent uplands owner benefited by this drainage easement, and to the integrity of The City of Homer.. It contradicts numerous Homer City codes.

The planning commission did not consider the need to replace the vacated drainage easement with an alternative drainage easement when approving vacation of the existing, platted drainage easement. The planning commission may require easements it determines necessary for the benefit of the public, including drainage easements for ditching or protection of a drainage. See, KPB 20.30.060.A. But this issue was not considered by the planning commission.

If the Homer City Council vetoes the decision to vacate this drainage easement, the petitioner could then reapply and include an alternative drainage easement, with proper location, permitting, and construction that is approved by the City according to City rules, to replace the drainage easement to be vacated.

So I am asking you to veto this vacation to allow petitioners and the land owners the opportunity to negotiate an agreement for an alternative drainage easement to be constructed according to the City Code and laws in replacement of the drainage easement to be vacated, an alternative drainage easement we can all agree on.

History

Delineated official Wetlands along the slope above drained down into a creek. In 1984 the A A Mattox subdivision was approved and the drainage and the creek were protected by a drainage easement on that Plat. Please see this in the packet from the Borough.

In 1999 Petitioners, Pattons, owned lots 24 and 25 A A Mattox and applied for a replat to combine these lots for the purpose of enhancing their land value and expanding their house. This became an involved, contested process, please also review the Borough's packet and see the minutes.

Please note the important detail that the Homer City Council agreed to the Pattons' plat only on the condition that Pattons follow the recommendation of Homer Public Works that a 10' drainage easement be platted to protect the drainage. The minutes state that Petitioners volunteered this drainage easement.

This drainage was described in the minutes to include a 2' wide stream. No place is any alternate drainage on Nelson Avenue described. In fact, at this time Nelson Avenue was a dry undisturbed access street. There was no diversion of drainage on to Nelson Avenue.

This is the drainage easement Pattons now seek to vacate, and we are asking you to veto that vacation.

Some time after that plat was approved, the wetlands and creek were dammed along the Pattons' property line, and a ragged ditch was cut down the middle of the Nelson right-of-way, making Nelson unusable for the required public access. The creek was diverted from its natural course in the drainage easement, and on to Nelson Avenue, thus drying up the easement as it crossed Pattons property but making Nelson unusable as the public access it was created for, and making a quagmire on Kalman Drive.

Homer Code 11.08.050 States that a permit shall be issued by the City for work on the right-of way "for any purpose"... No such permit exists for this work on the right-of-way, The damming of Wetlands and the ditch on Nelson was done in violation of 11.08.050.

The Pattons then built an addition to their house that some say is actually on the drainage easement.

When Echo Trading Company LLC applied to replace the original Quiet Creek Park plat with a new one, there was a great deal of Public Input on drainage, and the Kenai Borough only conditionally approved the plat and required us to bring our engineered drainage plan back to them so that there was additional oversight that the drainage was properly designed.

On June 4, 2018, Peggi Patton wrote the Borough objecting to our drainage plan. Her point was that our drainage plans interfered with her property and the drainage ditch now on Nelson Avenue. She tells the Borough that she, herself, caused the drainage to be dug on Nelson. Our surveyor objected to Borough that the letter was rude and self serving. There is no record that it was taken seriously by the Borough, but... it does exist and was written by Peggi Patton on June 4, 2018. See attached Patton letter and its attachments.

Early 2019 Peggi Patton submitted a request to the Borough on their form "Utility Easement Vacation" to vacate the drainage easement. The form she used was for Utility Easements, and vacation of Utility Easements follows different and more relaxed rules for vacation than does drainage easement. In error, the borough administered this drainage easement vacation petition as a utility easement.

In error, the Borough sent the vacation to the Homer Advisory Planning Commission as a utility easement and it was approved as a consent item. There was no notice to adjacent land owners and no notice of public hearing. These are legal requirements for vacation of drainage easements but this was not done.

I was working overseas at the time and had no idea this was being considered and received no notice.

Drainage easement vacations require public hearing and direct notice..

The Borough planning staff relied on the Patton petition, see the minutes attached.

Attachments:

1. Quiet Creek Park Presentation Plat attached, 1 page. Please see the location of Wetlands and creek that drain down to Patton property and the drainage easement.
2. A A Mattox 1984 Plat, 1 page, see drainage easement.
3. A A Mattox Peggi's Addition plat, 1 page. This is the drainage easement now being vacated.

4. 3 pages of minutes from 1999 Homer City Council meeting approving the Peggi's Addition plat showing 1) recognizing a 2' water flow, 2) City of Homer Public Works understanding that a 10' Drainage Easement will be dedicated, and 3) Staff recommendations that a 10' drainage easement is granted.
5. 1 page aerial photo from Borough showing the easement and relation to the house Pattons built on the property after the Wetlands were dammed and the water was ditched down the middle of Nelson Ave.
6. 4 page letter to Borough dated June 4, 2018 from Peggi Patton in which she complains about the drainage easement and admits contracting the drainage ditch on Nelson Ave.
7. Vacate Utility Easement form, 2 pages, as submitted by Peggi Patton and approved by the Borough and Homer Planning Commission. This is a Utility easement form that plainly says "no Public Hearing Required", but the easement is in truth a drainage easement and Public Hearings are required by law. See the 3 comments on page 2 that conflict with the evidence.
8. 1 page communication to Jordan Rief at Borough in which Peggi Patton incorrectly states "we did not create the drainage on the Nelson Ave. ROW".

Analysis

The June, 2018 letter from Peggi Patton to Borough to object to Quiet Creek Park was a contemporaneous document that can be taken as valuable evidence. This letter is in the official records of the Borough but it was never considered in this vacation application. Obviously, Peggi Patton would hope her letter never came out as she now applied for this vacation.

The June 4, 2018 Peggi Patton letter to the Borough contradicts her 2019 petition to vacate the drainage easement.

The June 4, 2018 letter that I am providing is new evidence to this vacation application, never considered to this point.

Peggi Patton said in the 2019 vacation petition ... "that the drainage easement was never used since 1984" ... that is directly contradicted by the minutes of 1999 referring to 2' stream and HCC requirement for a drainage easement.

Peggi Patton again directly contradicts herself when she wrote "the drainage has affected her property for 22 years" in her 2018 letter but wrote "the drainage easement was never used since 1984" in the 2019 petition.

Please refer to page 94 of the Borough minutes and the reply Peggi sent to Borough in support of her petition:

Dear Jordan Mr Neal is incorrect. The drainage easement on our property has not been used for above property drainage. We did not create the drainage on the Nelson ave ROW I encourage the borough to speak with Kerry Meyer at the City of homer. Sent from my iPhone.

In the June, 2018 letter Peggi Patton tells the Borough she contracted digging the ditch on Nelson and included the invoice from the contractor, but in 2019 to support the vacation she tells the Borough “we did not create the drainage on Nelson Avenue”.

Peggi Patton tells the Borough more than once that she had “City approval”. There is not one record of any permit for work on the right-of-way. “City Approval” simply cannot exist without the legally required Permit as required by 11.08 and plat approval required by Chapter 21:

11.08.050 Permit – Application.

Any owner or user or the agent of the owner or user of property abutting City roads, streets, or alleys, before beginning any construction, shall make application for a permit from the City for construction within any dedicated right-of-way for any purpose. All applications shall be submitted to the City Planner who shall transmit the application to the Director of Public Works for approval. The following must accompany applications:

21.14.050 Site development standards.

All [development](#) in the Urban Residential District shall comply with the level one [site](#) development standards contained in HCC [21.50.020](#). [Ord. [08-29](#), 2008].

21.50.020 Site development standards – Level one.

This section establishes level one [site](#) development standards.

b. Drainage. All [development activity](#) on lands shall conform to the following:

1. Development shall provide a drainage system that is designed to deposit all runoff into either an engineered drainage system or into a natural drainage.

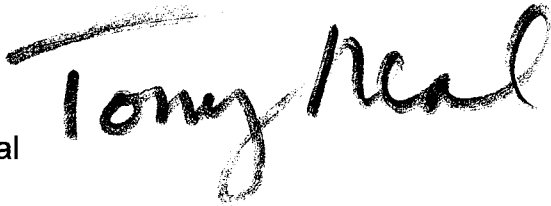
Conclusion and Request

The Borough decision to approve the vacation of this drainage easement without requiring an alternative drainage easement harms Echo Trading Company LLC and its adjacent uplands properties benefited by this drainage easement. Our lots 35 and 34 need this public access for driveways.

So, I conclude by saying, again, that this drainage easement vacation was not legally obtained, the Wetlands dam and ditch on Nelson Ave. is not conforming to City Standards and is not legally permitted, and that this vacation is harmful to the Public and to Echo Trading as an adjacent uplands owner and its properties benefited by this drainage easement. .. Homer City Council has the opportunity to rectify that and protect the Public Interest by denying approval of it.

Legally viable alternatives are available.
Thank you.

Echo Trading Company LLC by Tony Neal

A handwritten signature in black ink that reads "Tony Neal". The signature is written in a cursive, flowing style with a long horizontal stroke at the beginning.

1.

PRESENTATION PLAT

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____ KENAI PENINSULA BOROUGH

BY: _____ AUTHORIZED OFFICIAL

VICINITY MAP

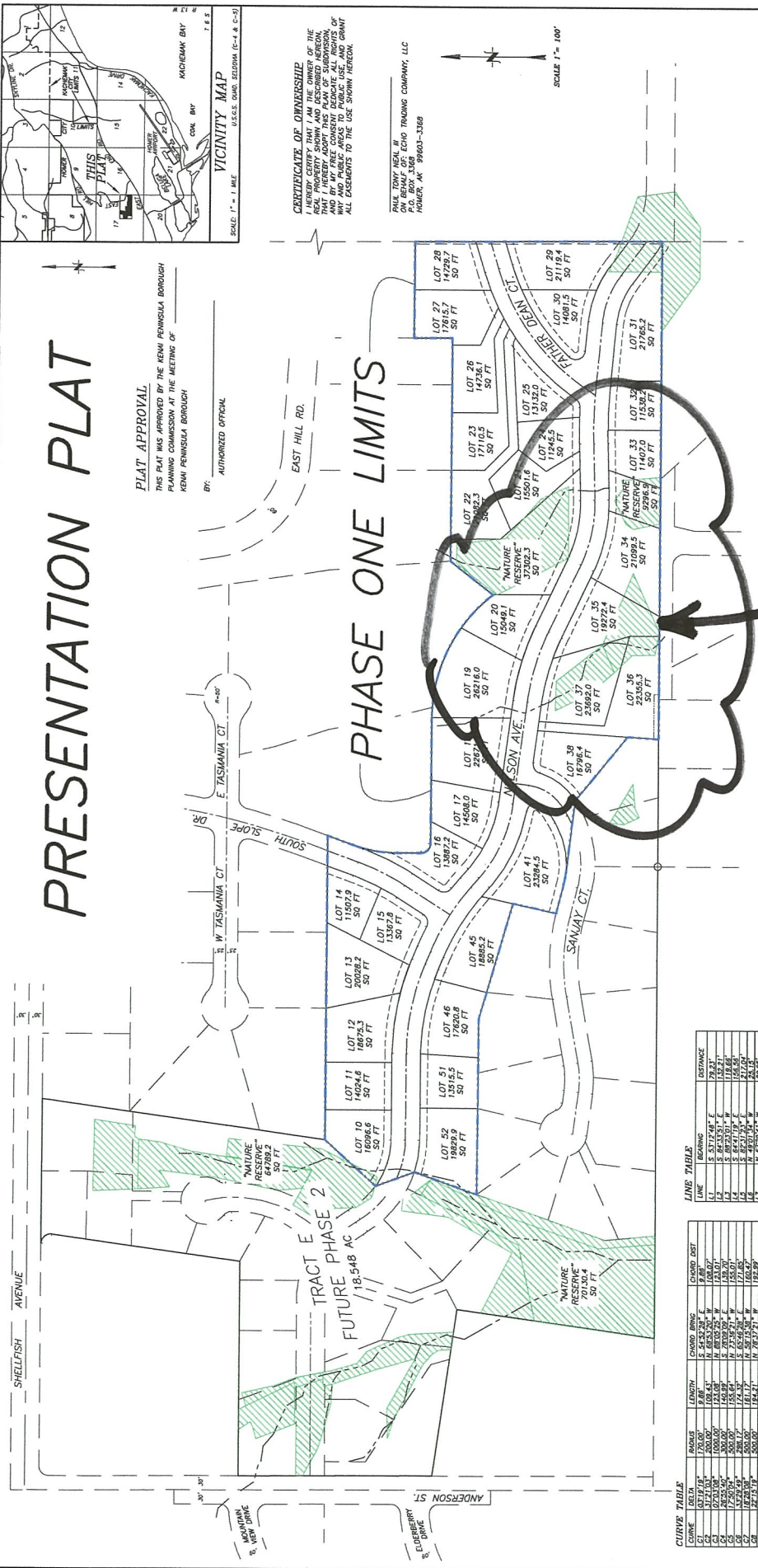
SCALE 1" = 1 MILE
USGS 6000 STANDARD (4-4 & C-3)

CERTIFICATE OF OWNERSHIP
THE REAL PROPERTY SHOWN AND DESCRIBED HEREIN, TOGETHER WITH THE PLAT OF SUBDIVISION, HAS BEEN REVIEWED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AND BY THE KENAI PENINSULA BOROUGH ENGINEER AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

PAUL TONY NEAL III
10000 W. 10TH AVE., SUITE 100
HOUMA, LA 70063-3368

SCALE 1" = 100'

PHASE ONE LIMITS



NOTES

1. BASE OF RECORD FOR THIS SURVEY IS BETWEEN THE C 1/4, SECTION 17 AND THE CS 1/4 SECTION 17 AS SHOWN ON RECORD PLAT #77-81 W.D. N 071055' W 70'.
2. THE FRONT 15 FEET ALONG THE RIGHTS-OF-WAY AN ADDITIONAL 5 FEET ADJACENT TO SIDE LOT LINES (UNLESS NOTED OTHERWISE) IS A UTILITY EASEMENT. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
3. THESE LOTS WILL BE SERVED BY CITY OF HOUMA WATER AND SEWER.
4. THE USE OF THE PLAT ON LOT 64 IS LIMITED TO UNDERGROUND UTILITY SERVICES TO LOT 64.
5. PROPERTY OWNERS SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT METADANS DESIGNATION (IF ANY).
6. THE PLAT MUST BE SUBMITTED TO THE CITY OF HOUMA FOR REVIEW AND APPROVAL PRIOR TO CONSTRUCTION. OWNERS SHOULD CHECK WITH THE CITY OF HOUMA PRIOR TO DEVELOPMENT ACTIVITIES.
7. CUL-DE-SACS ARE 50 FT RADIUS. ALL CURVE RETURNS ARE 20 FT RADIUS.
8. DRAINAGE SUBJECT TO PREVIOUS SEASONAL INUNDATIONS. UPRILL DEVELOPMENT MAY CHANGE DRAINAGE PATTERNS AT ANY TIME.
9. ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING APPLICABLE LAWS AT THE TIME OF CONSTRUCTION.
10. SET A SELF-IDENTIFYING 2" ALUMINUM CAP AT ALL LOT CORNERS AND ROW POINTS OF CURVATURE FOR THIS SURVEY (UNLESS OTHERWISE NOTED).

NOTES, CONT.

11. EASEMENTS ARE PERMITTED WITHIN THE HAMMOLE PORTION OF THE FLAG LOTS.
12. THERE ARE NO EASEMENTS ON EITHER SUBDIVISION OF THESE LOTS DUE TO ISSUES REGARDING ACCESS, DEVELOPMENT TRENDS IN THE AREA, AND TOPOGRAPHY.
13. EXCEPTIONS WERE GRANTED TO KPB 20.03.03 (PROPOSED) AND 20.03.12 (STREET CURVE REQUIREMENTS) BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF MARCH 10, 2014.
14. THERE IS A 15' WIDE NATURAL GAS EASEMENT CENTERED ON THE NATURAL GAS PIPELINES INSTALLED UNDER, OVER, UPON AND THROUGH THE PLAT LOTS AND ADJACENT TO THE PLAT LOTS.
15. THERE IS A GENERAL EASEMENT GRANTED TO HOUMA ELECTRIC CO., INC. THAT AFFECTS THESE LOTS RECORDED BK 318 PG 837-838.
16. THERE IS A 24' WIDE RAMPAGE EASEMENT CENTERED ALONG THE EXISTING CREEKS DEPICTED ON THIS PLAT.

NOTES

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CURVE TABLE

LINE	BEARING	DISTANCE
L1	S 57°12'48" E	78.21'
L2	S 88°10'12" E	118.68'
L3	S 88°10'12" E	118.68'
L4	S 88°10'12" E	118.68'
L5	S 88°10'12" E	118.68'
L6	S 88°10'12" E	118.68'
L7	S 88°10'12" E	118.68'
L8	S 88°10'12" E	118.68'
L9	S 88°10'12" E	118.68'
L10	S 88°10'12" E	118.68'
L11	S 88°10'12" E	118.68'
L12	S 88°10'12" E	118.68'
L13	S 88°10'12" E	118.68'
L14	S 88°10'12" E	118.68'
L15	S 88°10'12" E	118.68'
L16	S 88°10'12" E	118.68'
L17	S 88°10'12" E	118.68'
L18	S 88°10'12" E	118.68'
L19	S 88°10'12" E	118.68'
L20	S 88°10'12" E	118.68'
L21	S 88°10'12" E	118.68'
L22	S 88°10'12" E	118.68'
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L40	S 88°10'12" E	118.68'
L41	S 88°10'12" E	118.68'

LINE TABLE

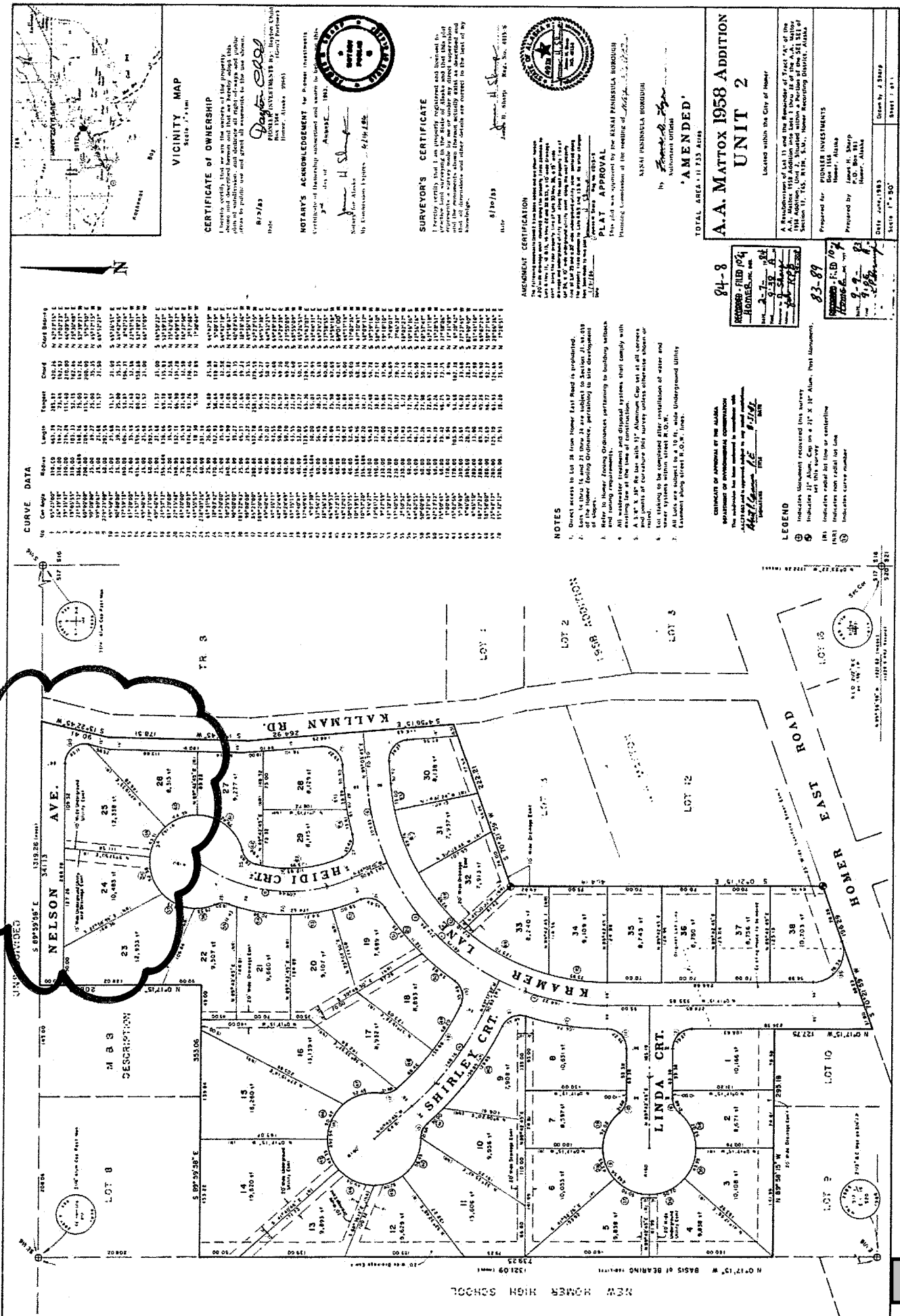
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NOTARY'S ACKNOWLEDGMENT

SUBSCRIBED AND SHOWN TO BEFORE ME THIS _____ DAY OF _____, 2016.
FOR: _____
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES _____

WASTEWATER DISPOSAL
PLANS FOR THE WASTEWATER DISPOSAL THAT MEET
REGULATORY REQUIREMENTS ARE ON FILE AT THE DEPT. OF
ENVIRONMENTAL CONSERVATION.

JOHN BISHOP, CE-10889 DATE: _____



HM 99-64

OWNERSHIP CERTIFICATE

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 to public use and grant all easements to the use shown.

We further certify that the Deed of Trust affecting this property does not contain restrictions which would prohibit this subdivision or require signature and approval of the beneficiary.

Robert D. Patton Owner of Lot 24
Peggy L. Patton Owner of Lot 25
450 Heidi Court Date
Homer AK 99603



Notary's Acknowledgment
 Subscribed and sworn to me before on this 13 day
 of August, 1999
 for Robert D. Patton and Peggy L. Patton
Notary Public for Alaska
My Commission Expires 7-30-02

Vicinity Map 1" = 1000 ft



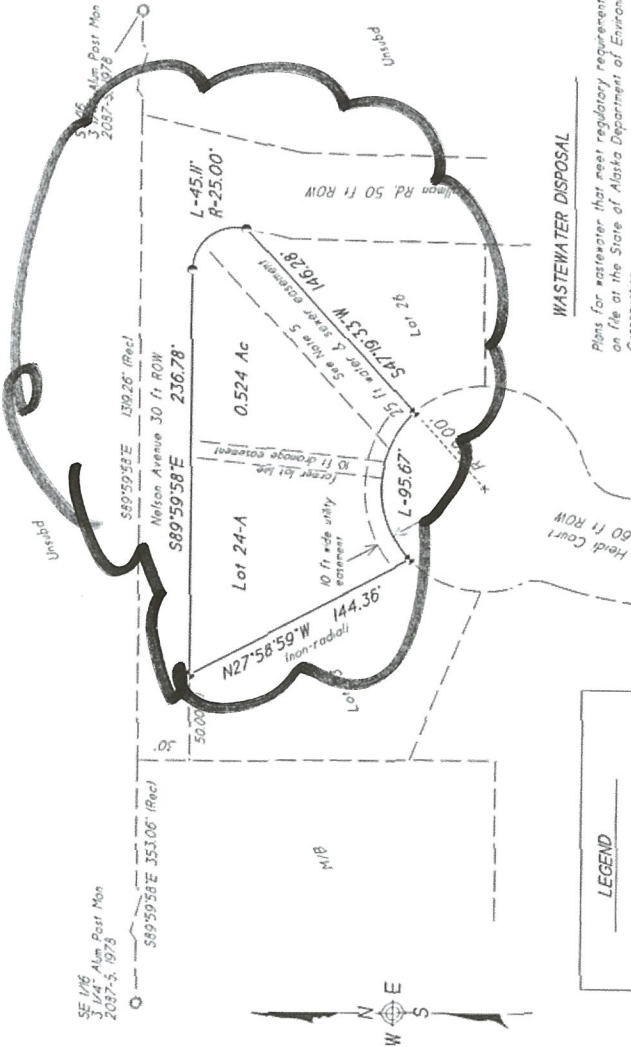
AA Mattox Peggy's Addition

Being a Replator of Lots 24 and 25 AA Mattox
 1958 Addition Unit 2 Amended as shown on
 Record Plat 84-8 Homer Recording District

Located within the
 SE 1/4 SE 1/4 Sec. 17, T6S, R13W, SM,
 in the City of Homer
 Third Judicial District, Alaska

Contains 0.524 Acres, more or less

Clients: Robert and Peggy Patton 450 Heidi Ct. Homer AK 99603	Surveyor: Roger W. Ishoff, RLS P.O. Box 2588 Homer AK 99603
Drawn: RWH	Date: 3-23-99
Scale 1" = 50 ft	File partitioned KPB File No. 99-264



WASTEWATER DISPOSAL

Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

Robert W. Ishoff August 6, 1999
Reg. W. Ishoff LS 5780 Date

PLAT APPROVAL

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

May 24, 1999

KENAI PENINSULA BOROUGH

By: Mr. Bob
 Authorizing Official



SURVEYORS CERTIFICATE

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the measurements shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Robert W. Ishoff August 6, 1999
Reg. W. Ishoff LS 5780 Date

99-64 2000
 RECORDED - REC DIST
 HOMER REC DIST
 Date: 11/16/99
 Registered by
 Roger W. Ishoff, RLS
 P.O. Box 2588
 Homer AK 99603

NOTES

- All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
- No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- Base of Bearing is AA Mattox 1958 Addition Unit 2 Amended as shown on Record Plat 84-8 Homer Recording District. Dimensions are record.
- Utility and Drainage Easements as shown on the Parent Plat 84-8 HRD were vacated by action of the Homer City Council at their meeting on March 22, 1999.
- The 25 ft water and sewer easement as shown hereon is not in use this date. Any use of this easement must be approved by the City of Homer Public Works Dept. and the ground must be restored to its original condition after construction. Furthermore, this easement shall be vacated by request of the City of Homer if water and sewer mains are placed in Kalkan Road.
- General easement for electric lines or system is recorded in Book 19 Page 82 HRD in favor of Homer Electric Association, no definite location given.
- Covenants affecting the lot shown hereon are on file at the Homer office of the State Recorder. See BK 141 P263, BK 145 P204, BK 145 P068, BK 152 P338, BK 169 P478.

4 113

VOTE: The third amendment passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY NO	HENSLEY ABSENT	JOHNSON NO	SKOGSTAD YES	SIX YES THREE NO TWO ABSENT

Chairman Hammelman asked the Commission if they needed to have the main motion as amended re-stated. No requests to have the main motion repeated were heard.

VOTE: The motion as amended passed by a majority vote.

HAMMELMAN YES	BRYSON YES	WHITMORE-PAINTER YES	BOSCACCI YES	CARPENTER YES	CLUTTS NO
COLEMAN ABSENT	GANNAWAY YES	HENSLEY ABSENT	JOHNSON YES	SKOGSTAD YES	EIGHT YES ONE NO TWO ABSENT

Chairman Hammelman said the Commission would recommend enactment of Ordinance 98-33 Substitute including the Commission's recommended amendments. He thanked everyone for their comments. He thanked Assembly Members Scalzi and Drathman for attending.

AGENDA ITEM E. UNFINISHED BUSINESS

- Petition to vacate the entire of the fifteen foot wide drainage and underground utility easement within the easterly fifteen feet of Lot 24, AA Mattox 1958 Addition Unit 2 Amended (Plat 83-89 & 84-8 HRD); and vacate the ten foot wide utility easement within the westerly ten feet of Lot 25, of said AA Mattox subdivision; being within Section 17, T5S, R13W, Seward Meridian, Alaska. Within the City of Homer; KPB File - 98-264 — Carried forward from November 23, 1998

Staff report as read by Lisa Parker.

PC Meeting 1/26/99

Petitioners: Peggi L. Patton of Homer, Alaska

Purpose as stated in petition:

There is a house on Lot 24. Lot 25 is vacant. The owners may vacate the common lot line between the lots sometime in the coming year. For the present however, they wish to extend their garage easterly and develop the existing driveway on Lot 25 for access. The driveway for Lot 24 would be abandoned and reclaimed for lawn.

These plans and other construction plans require the removal of 15 foot utility and draining easement on Lot 24. The Pattons have offered and the City of Homer has agreed to dedicating a 10 foot drainage easement on Lot 25. There is an existing 10 foot utility easement already in place. Since a drainage and utility easements are not necessarily compatible, we therefore ask that the utility easement for Lot 25 also be vacated.

There is an existing 2 foot wide ditch close within Lot 25 handling the current water flow, primarily for breakup.

Notice of vacation mailings were sent to owners of property within a 300 foot radius.

During the November 23, 1998 public hearing, Bob Barnett of Homer spoke against the vacation. Following the hearing, the motion to postpone until January 26, 1999 carried.

4 2) 12

Since the November meeting, the City of Homer, on January 5, 1999 submitted a letter wherein they state the City has no objection to the easement vacation as originally submitted. When water and sewer service would be extended to the north of the referenced subdivision, the City would plan to have the utilities placed in the Kallman right-of-way rather than in the referenced easement. The City prefers the utilities be placed in the right-of-way for the following reasons:

- 1) The utilities could serve the lots to the east of Kallman Road;
- 2) The existing 25' wide utility easement is marginal in width for accommodating both the water and sewer lines; and
- 3) Maintenance of the utilities would be more easily accomplished in the ROW than in an easement on private property. The City has also stated — *The existence of a utility easement on the referenced lots should not be interpreted to mean that the City would approve the location for placement of water and sewer mainlines.*

No other comments have been submitted since the November 23rd hearing.

Statement of non-objection — November hearing

Homer Electric Association

PTI Communications

GCI Cablevision — GCI has no objections to the vacation but has requested grandfather rights to provide service in the future to two existing CATV underground service drops.

Statement of objection — November hearing

Bernadine and Bob Barnett - no address provided. A signed letter was sent via fax. Mr. Barnett objected to the vacation stating the easements were intended (he believed) and required to provide services to adjoining property on the north.

City of Homer comments

- 9/16/98 City of Homer Public Works stated no objection with the understanding that a 10' drainage easement will be dedicated along the western property line of Lot 25.
- 10/30/98 Handwritten on the 9/16/98 City of Homer Public Works letter is the notation "OK, does not need planning commission review" — signed by Eileen R. Bechtol.
- 11/18/98 Homer Planning Commission meeting - Mr. Barnett requested a letter from the City indicating they had received an objection. The Planning Director agreed to do so.
- 11/19/98 Memorandum from City of Homer Planning/Zoning advised that Mr. Barnett objected to the vacation; that he believed the easement was in place for future development of the property to the north of Nelson Avenue. The easement was to be used to bring the sewer main to the north property for development. The City Planning Department requested the City Public Works to see if there is a viable alternative.
- 11/20/98 City of Homer Public Works - sent via E-mail: It has been verified in the field that the sewer mainline can be extended through the Kallman ROW rather than exclusively through the existing utility easement between Lots 24 and 25 of AA Mattox Sub. It may require running additional piping, but the Kallman ROW provides an adequate corridor for future utility expansion to Barnett's Subdivision.

Borough staff has reviewed the file for A.A. Mattox 1958 Addition Unit 2 and made the following findings.

The preliminary plat did not show the easements currently under review for vacation.

The City staff did not request the easements along the lot line common to Lots 24 and 25; nor did the City Commission.

The Borough staff did not request the easements along the lot line common to Lots 24 and 25, nor did the Borough Plat Committee or Planning Commission.

The utility companies reviewing the plat did not request the easement in this location.

The plat was filed on September 9, 1983 in the Homer Recording District as Plat 83-89 without these easements.

On February 7, 1984, an amended plat was filed in the Homer Recording District as Plat 84-8. The plat was amended to add these easements, as well as other drainage easements.

FINDINGS

4 3 0/3

1. No utility company objects to the vacation.
2. The City has stated no objections.
3. The City has advised that Kallman right-of-way provides an adequate corridor for future utility expansion to Barnett's Subdivision.
4. The existing easements were not requested or recommended by either the City or the Borough.
5. GCI Cablevision has requested rights to provide service in the future to two existing CATV underground service drops; however, they did not provide information showing the location of these existing facilities.

Based on the above findings and facts, staff has no basis upon which to recommend a denial of the vacation and is recommending the vacation be approved.

STAFF RECOMMENDATIONS:

- A. Planning Commission make their findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to the following conditions:
 1. Granting the ten foot drainage easement within the westerly ten feet of Lot 25, as requested by City of Homer Public Works Department.
 2. Granting easement for use of GCI's existing facilities.

NOTE: If the vacation is denied, the petitioner has eight calendar days in which to appeal the Planning Commission denial. Written appeal must be submitted to the Homer City Clerk.

END OF STAFF REPORT

MOTION: Commissioner Carpenter moved, seconded by Commissioner Boscacci, to concur with, accept the findings, and approve KPBPC Resolution 99-03, thereby granting the vacation subject to staff recommendations.

Commissioner Gannaway opposed the motion. Mr. Barnett is being asked to put utilities along more than 400' of Kallman Road. However, the distance along the utility easement is about 100'. Commissioner Gannaway understood the expenses involved. Mr. Barnett will not recover the money he will spend on the utilities because the City does not refund money paid for utilities. The proposed vacation will force Mr. Barnett to spend three times the amount to put in utilities.

1. Bob Barnett

Mr. Barnett did not think much development would occur on the northern side in the near future. The extra cost of running a sewer line several hundred feet unnecessarily seemed like a ridiculous requirement. The easement was put in by the developer so the property to the north could be served from the cul-de-sac. Mr. Barnett thought it was unreasonable to vacate the easement.

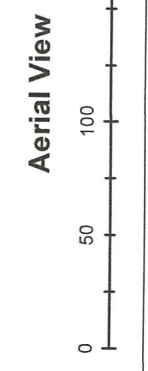
Recalling previous discussions, someone asked if it would be acceptable to move the easement to the east or west. Mr. Barnett would not object if the easement is moved either to the east or west. He did not want the easement vacated.


2. Roger Imhoff

Mr. Imhoff said he was representing Peggy Patton. He noticed an omission from the City of Homer comments. An additional letter dated January 5, 1999 was written. In trying to resolve everyone's concerns, he asked the Homer Public Works Department if they would object to moving the easement 25' to the eastern side of Lot 25. The Public Works Department said they did not care about the location of the easement on the lot because Mr. Barnett had to use Kallman Road if he wanted to develop the property to the north. The Public Works Department does not want the water/sewer lines going through a private lot. They want the lines in the right-of-way where they can work on them without disrupting private property.

Commissioner Gannaway commented that water and sewer lines crossed private property throughout Homer.

S.



 Drainage Easement Vacation

6 1/4

June 4, 2018

Peggi & Robert Patton
4510 Heidi CT.
Homer, Alaska 99603

Kenai Peninsula Borough
Planning Department
144 N. Binkley ST.
Soldotna, AK 99669

ATTN: Maria Sweppy

Reference: KPB File 2014-016 Prelim Platt Approval Postponed to June 11, 2018

Maria Sweppy,

My Husband and I own Lot 24-A of A.A.Mattox Peggi's Addition by AA Mattox Peggi's Addition Plat HM 99-064. KPB File 2017-003.

We firmly object to the approval of Barnett's South Slope Subdivision, Quiet Creek Park. A 64 Lot proposal being considered.

I have a copy of the proposed drainage system for this subdivision (Attached).

Since we purchased the property in 1995 there has been adverse water damage to our home. This is due to poor drainage behind our home and a culvert that consisted of two 50-gallon drums welded together across a dedicated, across but never developed, 30' ROW called Nelson Ave. This failed drainage has been draining onto the back of our property, causing problems in our crawl space, plumbing and electrical systems for 22 years.

Since the discovery of the failed drainage. We hired Paul Hodgedon, dba Homer Winter Services Inc. to come and give us a bid to do the remediation with the appropriate permits/Permissions from the City of Homer. The remediation consisted of removing of the (Inappropriate culvert), complete new drainage

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behind our garage, and the drainage ditch on the 30' Nelson Ave. Row. This remediation was at a cost of \$14854.00. There has been no compensation from the City of Homer for the 22 years of adverse drainage, nor remediation of the drainage issue to our property. We are certainly not interested in having further drainage problems due to poor planning.

This new subdivision is proposing to culvert Nelson Ave. into the natural drainage, and the ditch in 30' Nelson Ave. Row, (low volume ditch). This proposed drainage plan would dump even more water from the hillside above us onto our property. (See attached Plat).

The new proposed Nelson Avenue, (the main thoroughfare into this new subdivision), with lot numbers 36, 37 & 38, (with lot 38 being a big flag lot), all abutting the North side of our property.

The above-described culvert will empty into the drainage between lots 37 & 36, and the NE corner of lot 38. Again all of which abut the North side of our property. This particular drainage plan has ZERO plan to prevent further adverse drainage issues to our property, as well as, other properties below the proposed subdivision.

It is our position that this contractor has a very poor reputation in our community for poor quality development projects. This particular proposed project would inflict further financial damage and is devaluing our property. We also feel that the City of Homer and the Kenai Peninsula Borough have been Complicit in protecting surrounding properties, when approving past and present developments, which usually results in further financial damages and devaluation of their properties.

PLEASE, take further consideration to the poorly designed drainage that are clearly present. Also, consider a report from an outside engineering company that shows all adverse effects to the existing drainage plan. Also, please remember we are property tax payers as well.

We appreciate your attention and considerations.

Robert D. & Peggi L. patton

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Homer Winter Services, Inc.
P.O. Box 3055
Homer, AK 99603
 907-235-7119 Fax 907-235-8332
 hws@acsalaska.net

Invoice

Date	Invoice #
8/25/2017	4832

Bill To
Bob Patton Heidi Court

PAID
08/25/2017

Terms	Account #

Serviced	Qty	Description	Rate	Amount
8/14/2017		Service Provided - Remove old culvert and reline ditch	0.00	0.00T
	6.5	9020 Backhoe	250.00	1,625.00T
	6.5	Labor	85.00	552.50T
		Subtotal		2,177.50
8/15/2017		Service Provided - stock piling drain rock and cement blocks	0.00	0.00T
	11	Labor	85.00	935.00T
		Subtotal		935.00
8/16/2017		Service Provided - haul away trees and brush	0.00	0.00T
	6.5	9020 Backhoe	250.00	1,625.00T
	6.5	Dump Truck	105.00	682.50T
	6.5	Labor	85.00	552.50T
		Subtotal		2,860.00
8/17/2017		Service Provided - hooking up temp fuel tank	0.00	0.00T
	4	Labor	85.00	340.00T
	1	Dump Truck	105.00	105.00T
		Subtotal		445.00
8/21/2017		Service Provided - Remove old tank	0.00	0.00T
	4	Labor	85.00	340.00T
		Subtotal		340.00
8/23/2017		Service Provided - Installing under drains	0.00	0.00T
	8	9020 Backhoe	250.00	2,000.00T
	13	Labor	85.00	1,105.00T
	3	Dump Truck	105.00	315.00T
		Subtotal		3,420.00
8/25/2017		Service Provided	0.00	0.00T
	6	Dump Truck	105.00	630.00T
	2.5	9020 Backhoe	250.00	625.00T
Thank You			Total	
			Payments/Credits	
			Balance Due	

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Homer Winter Services, Inc.

P.O. Box 3055

Homer, AK 99603

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8/25/2017	4832

Bill To
Bob Patton Heidi Court

PAID
08/25/2017

Terms	Account #

Serviced	Qty	Description	Rate	Amount
	6.5	Skidsteer/Takeuchi Loader	165.00	1,072.50T
	16	Labor	85.00	1,360.00T
	60	Gravel	24.00	1,440.00T
		Service Provided - Clean up	894.00	894.00T
		Subtotal		6,021.50
		Homer Sales Tax	37.50	37.50
		Customer Discount	-1,382.50	-1,382.50
		Sales Tax	0.00%	0.00

Thank You	Total	\$14,854.00
	Payments/Credits	-\$14,854.00
	Balance Due	\$0.00



Kenai Peninsula Borough Planning Department
144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-477-4441, extension 2200
(907) 714-2200

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Petition to Vacate Utility Easement
No Public Hearing Required

Submit completed form to the Kenai Peninsula Borough Planning Department, 144 North Binkley St., Soldotna, AK 99669

Upon receipt of complete application with all required attachments the vacation will be scheduled for Planning Commission action. The petitioner must secure and submit written comments from utility companies. If the easement is within city limits; secure and submit city's written comments. The completed petition, with all required attachments, accompanied by a \$75.00 non-refundable fee, must be submitted to the Planning Department a minimum of thirty (30) days prior to the meeting at which the Planning Commission will take action.

☒ Fees - \$75.00 non-refundable fee attached.

To accomplish an approved vacation; a Planning Commission Resolution must be filed with the State Recorder to enter the vacation into the public records unless the vacation is accomplished by plat. Petitioner must pay filing fees (usually \$22-\$27).

☒ Utility easement requested to be vacated was granted by plat of Subdivision, filed as Plat No. 99-64 in Homer Recording District. *NOT utility easement (drainage)*

☒ Utility easement proposed to be vacated was granted by (specify type of document) as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition) *COULDN'T FIND ANY RECORDED DOCUMENT*

☒ Comments from *Hea* Electric Association attached.

☒ Comments from *N/A* Gas Company attached.

☒ Comments from *ACS* Telephone Company attached.

☒ Comment from *GCT* Cable Company attached.

☐ Comments from the KPB Roads Department attached if applicable.

☐ Comments from City of _____ attached.

☒ One copy of plat or map (sketch) showing area proposed to be vacated. If easement was granted by document; one copy of recorded document must be submitted.

☐ If an existing structure is encroaching into easement; As-Built showing encroachment must be attached.

Is easement being used by utility company?

☐ Yes

☒ No

If yes, which utility _____

Please note comments or no comments on the sketch or plat that is to be submitted with the petition.

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

SEE ATTACHED REASON FOR VACATING:

The petition must be signed (written signature) by owners of the land subject to the easement proposed to be vacated. Each must include mail address and legal description of his / her property.

Submitted by: Signature *Peggy L. Patton* As ☒ Petitioner ☐ Representative

Name: PEGGY L. PATTON

Address: 4510 HEIDI CT.

HOMER, AK 99603

Phone: 907-399-4055

Petitioners:

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

Signature _____

Name _____

Address _____

Owner of _____

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The petitioner's reasonable justification for vacation of 10' drainage easement.

Subject Property: Lot 24A AA Mattox Peggi's Addition Plat No. 99-64

The 10' drainage easement on the above mentioned subject property has not been used since it was platted on the subject property original plat 84-HRD. 1

There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City Of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing Drainage corridor remain in place on the North side of the long driveway. (see driveway permit, original and current subject property plats 84-HRD and 99-64, attached) 2

The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project.

It is my understanding that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff.

The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefor preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property.

Vacating this easement would not create any adverse effects to the surrounding properties. 3

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From: [peggi_patton](#)
To: [Reif, Jordan](#)
Subject: Re: AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V
Date: Tuesday, June 11, 2019 6:42:38 AM
Attachments: [image001.png](#)

Dear Jordan

Mr Neal is incorrect. The drainage easement on our property has not been used for above property drainage. We did not create the drainage on the Nelson ave ROW I encourage the borough to speak with Kerry Meyer at the City of Homer.

Sent from my iPhone

On Jun 10, 2019, at 8:38 AM, Reif, Jordan <jreif@kpb.us> wrote:

Hi Peggi,

Attached please find a comment from the public on AA Mattox Peggi's Addition Lot 24-A Drainage Easement Vacation KPB 2019-048V. The comment will be presented to the Planning Commission for their review.

Best,

Jordan Reif
Platting Technician
(907) 714-2200
(907) 714-2378 Fax

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



PUBLIC RECORDS LAW DISCLOSURE: This email and responses to this email may be subject to provisions of Alaska Statutes and may be made available to the public upon request.

<KPB 2019-048V Neal Comment 6_10_19.pdf>