

**NOTICE OF MEETING  
WORKSESSION AGENDA**

1. **CALL TO ORDER, 5:30 P.M.**
2. **REGULAR AGENDA**
3. **Commissioner Training with Holly Wells**
4. **PUBLIC COMMENTS**  
The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
5. **COMMISSION COMMENTS**
6. **ADJOURNMENT, 6:20 P.M.**



## **REGULAR MEETING AGENDA**

### **1. Call to Order**

### **2. Approval of Agenda**

### **3. Public Comment**

The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

### **4. Reconsiderations**

### **5. Adoption of Consent Agenda**

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda.

**A.** Approval of minutes of May 15, 2019 **p. 1**

**B.** Decisions and Findings Document for Conditional Use Permit 19-05, approving a physical therapy clinic at 210 W. Fairview Ave. **p. 15**

**C.** Decisions and Findings Document for Conditional Use Permit 19-06, approving an assembly and fabrication building for boats and vinyl sign making at 3301 East End Road **p. 21**

### **6. Presentations/Visitors**

### **7. Reports**

**A.** Staff Report 19-47, City Planner's Report **p. 27**

### **8. Public Hearings**

Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

**A.** Staff Report 19-48, Request for a vacation of a portion of the Greatland Street right-of-way near Ohlson Lane **p. 29**

**B.** Staff Report 19-49, Remand of Conditional Use Permit 18-09 for a medical clinic at 267 Cityview Ave. **p. 41**

**C.** Staff Report 19-50, An ordinance of the Homer City Council to add "Medical Clinic" as a permitted use in the Central Business Zoning District **p. 75**

### **9. Plat Consideration**

**A. Staff Report 19-51, A. A. Mattox 2019 Preliminary Plat p. 81**

**B. Staff Report 19-52, Northern Enterprises No. 3 Preliminary Plat p. 91**

**10. Pending Business**

**A. Staff Report 19-53, Building Height in the East End Mixed Use District p. 105**

**B. Staff Report 19-54, Permitting requirements – asbuilts p. 106**

**11. New Business**

**12. Informational Materials**

**A. City Manager's Report for the May 27, 2019 Homer City Council meeting p. 109**

**13. Comments of the Audience**

Members of the audience may address the Commission on any subject. (3 min limit)

**14. Comments of Staff**

**15. Comments of the Commission**

**16. Adjournment**

The next regular meeting is scheduled for Wednesday, June 19, 2019. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

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 ABBOUD  
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.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **VISITORS/PRESENTATIONS**

**A.** Economic Development Commissioner Bill Richardson – Sign Code Recommendations

Chair Venuti read the title into the record and invited Dr. Richardson to make his presentation.

Dr. Richardson provided a short presentation to the Commission on recommendations from the Economic Development Advisory Commission (EDC) that was developed from the results of a Business Retention and Expansion Survey they conducted in 2017. Results showed that local businesses felt there was a disparity in the sign code resulting in businesses not having equal and adequate signage in a multi-tenanted structure. He spoke with former employees and current Planning Department staff on the recommendations that are being put forth.

Dr. Richardson then read a letter from Eric Nieber with First National Bank into the record regarding the issues and signage for the smaller businesses and how it relates to their success.

The Economic Development Advisory Commission requested the Planning Commission to review the options and amend the Sign Code to address the deficiency as it relates to larger commercial buildings that house several tenants.

### **REPORTS**

**A.** Staff Report 19-40, City Planner's Report

Chair Venuti introduced the item into the record by reading of the title and invited the City Planner to provide his report.

City Planner Abboud reviewed Staff Report 19-40 and highlighted the following items:

- Ordinance 19-22 was introduced and will be under Public Hearings for the May 28<sup>th</sup> Council meeting
- The Mayor put forth a resolution to request enhanced pedestrian crossing safety measures for the Pioneer Avenue project
- The decision on CUP 18-09 was received and the Commission will have it back before them for the point of adequate access at the next meeting.
- An appeal was submitted on CUP 19-04 and the Planning Office received notice from the applicant of CUP 19-04 that they are withdrawing their request for a permit for a group home.

City Planner Abboud reviewed the schedule for attendance at the City Council meetings as follows:

May 28<sup>th</sup> Tuesday – Commissioner Bos

June 10<sup>th</sup> – Commissioner Smith

### **PUBLIC HEARINGS**

**A.** Staff Report 19-41, Conditional Use Permit 19-05, for a physical therapy clinic at 210 W. Fairview Avenue

Chair Venuti introduced the item by reading the title into the record.

City Planner Abboud reviewed Staff Report 19-41 for the proposed physical therapy clinic.

William Donohue, applicant, provided a brief summary of his intent to provide aquatic physical therapy for patients. This proposed therapy will be across the street from the existing physical therapy practice and he felt that this project fits into the area due to the services already located there.

Chair Venuti opened the Public Hearing.

Lane Chesley, property and business owner within the area, disclosed he is on the hospital board however he is here representing himself not the hospital. Mr. Chesley stated that he wanted to express his support for the project in general but wanted to comment and express his concerns that it seems that we are continuing to rezone the residential office into a commercial district. Mr. Chesley referring to the Staff Report stating there was nothing referencing the Residential Office from the Comprehensive Plan and how this is consistent and recommended that they make a finding with regards to the Residential Office district. He then commented on finding more and more pedestrian traffic safety concerns as they do more commercial development in the area and they will need to consider the impact to the residential nature of the neighborhood at some point. In particular he noted the three clinics that are being built or proposed in the area that will be impacting the pedestrian traffic and that at some point they will be changing Fairview from an arterial to a collector road. He challenged the Commission to maintain the Residential Office District until they went through a legitimate planning process to make it a Commercial District.

Melissa Malcolm, physical therapist assistant with KPT, expressed support for the clinic and commented on the benefits to the patients within the community to have the aquatic therapy facility and that they have outgrown the facilities they have been using at the Bay Club noting also that those facilities are not quite what is needed citing cold water, pool is too deep and the general public is present during therapy sessions.

Dotti Harness-Foster, patient and teacher at the facility, expressed support for the project and commented on the organization of the applicant in presenting this project.

Moe Malcolm, employee with KPT for close to 20 years, commented on the traffic and suggested adding another stop sign at the intersection of Hohe and Fairview and stated that it has always caused problems not having the stop sign in that location. She expounded on the increase in the need for the aquatic therapy which assists with pain management and quick healing. She commented that the area has already turned into a medical hillside noting the few remaining residential homes and some derelict buildings in the area and believes that the project will enhance and bring betterment to this area.

Chair Venuti seeing no further public coming forward to provide testimony closed the Public Hearing.

City Planner Abboud offered rebuttal to the public testimony on the following:

- When creating the Residential Office (RO) district they considered the purpose of the district
- The RO mentioned in the Comp Plan is for the future land use map
- On that particular map they are not creating another district or expanding any more RO it is in context of the Future Land Use Map
- The traffic is always a concern and more development will create more traffic but they currently do not have a process for requiring sidewalks.
- Stop Signs may be a good idea and they can consult with Public Works on that issue.

Commissioner Smith commented on the lack of a stop sign may be because that is the emergency vehicle route for the Hospital and requested confirmation from City Planner Abboud.

City Planner Abboud responded that it may have originally been that reason, but he could not state definitively that it was the reason.

Commissioner Banks asked the applicant if he was planning to pave the parking lot and if so has he considered any Green Infrastructure for this project, acknowledging the vegetation on the parcel.

The applicant, Mr. Donohue, responded that he was unaware of what Commissioner Banks was referring to with regards to green infrastructure but expounded on previous work that was done to mitigate drainage. He commented on planning the project to deal with the effect of this current project on the water flow and drainage.



Commissioner Banks provided a brief explanation on what green infrastructure was and noted that the applicant could get additional information from the City Planner and referenced the Police Station project as an example.

Chair Venuti requested a motion hearing no further questions from the Commission.

SMITH/HIGHLAND MOVED TO ADOPT STAFF REPORT 19-41 AND APPROVE CUP 19-05 FOR A PHYSICAL THERAPY CLINIC AT 210 W FAIRVIEW AVENUE WITH FINDINGS 1-10 AND CONDITIONS 1 & 2.

There was a brief comment on how well the application and project was presented.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

**B.** Staff Report 19-42, Conditional Use Permit 19-06, to allow an assembly and fabrication building for boats and vinyl sign making at 3301 East End Road

Chair Venuti introduced the item by reading of the title into the record.

City Planner Abboud reviewed Staff Report 19-42 for the Commission.

Allen Engebretsen, applicant, cited that they do have city water and sewer. Mr. Engebretsen explained that the existing signage business has increased two-fold and requires more space.

Chair Venuti opened the Public Hearing, seeing no one from the audience coming forward he closed the Public Hearing and opened the floor to questions from the Commission.

Commissioner Highland referenced the application and noted the three items on page 2 (page 80 of the packet) of the application that were unanswered and questioned that they are not requiring applicants to answer these questions.

City Planner Abboud responded that this is an old application and the applicant has been before the commission two previous times for the same property so they probably should have used a new application but as the applicant previously stated they are hooked up to city services.

Commissioner Highland then requested clarification on increasing building height through the CUP process.

City Planner Abboud responded that it could not be done at this time.

Chair Venuti requested a motion hearing no further questions from the Commission.

SMITH/HIGHLAND MOVE TO ADOPT STAFF REPORT 19-42, AND APPROVE CUP 19-06 TO ALLOW AN ASSEMBLY AND FABRICATION BUILDING FOR BOATS AND VINYL SIGN MAKING AT 3301 EAST END ROAD WITH FINDINGS 1-10.

A brief comment was offered in support of the project and the benefits to the community from Commissioner Highland.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **PLAT CONSIDERATION**

**A.** Staff Report 19-43, 59 North Preliminary Plat

Chair Venuti introduced the item by reading of the title into the record.

City Planner Abboud referring to the map noting the location of the preliminary plat reviewed Staff Report 19-43 for the Commission and public present.

Miranda Weiss, Bob Shavelson, Applicant and Kenton Bloom, Surveyor provided input on the project being developed to accommodate the natural contours of the land so future land owners will be able to mitigate the slope of the property and providing low impact on the neighboring properties. They noted that the southern portion is a drainage easement and pointed out where the natural flow and drainage using the maps provided noting the existing drainage patterns.

Mr. Bloom stated that they are using local engineer, John Bishop.

Ms. Weiss commented on the pedestrian connections in the area and accessing the local amenities and existing trails.

Chair Venuti opened public comment.

Marvin Super, property owner lot 3, commented on the proposed subdivision and is not opposed to it but expressed concerns on the amount of drainage that comes from this property. He elaborated on prior designations of wetlands by the Corps of Engineers and encouraged the Commission to recommend input from the Corps before development. Mr. Super further encouraged the developers to clean out a drainage ditch.

Jill Fraley, property owner lot 1, expressed concerns on the amount of water drainage from the property and the possibility of how this will affect their property as they already see quite of bit of water drainage.

Chair Venuti closed the public comment period seeing no one coming forward from the audience and offered the Applicant the opportunity to respond to the comments from the public.

Mr. Shavelson, applicant, referencing the map commented that the property is very sloping while those properties to the south are fairly leveled so they do receive quite a bit of the drainage. He noted that the drainage easement granted by the prior property owner gives those property owners the right and the obligation to keep the area functional and it has largely been filled in and if maintained properly they would see those drainage problems go away. He continued that there is no indication of wetlands on the property.

Chair Venuti opened the floor to questions of the Commission.

Commissioner Highland requested clarification on the drainage ditch and who was obligated to keep it clear.

City Planner Abboud responded that it depends on what the terms of the dedication states but it is not dedicated to the city.

Mr. Shavelson added that the packet information shows that the property owners are responsible for the maintenance.

Commissioner Banks questioned if Tract A-1 was going to be developed or left as preservation and how the access would be.

Mr. Shavelson responded that it will be developed as a single home site and the access will be from Fairview Avenue.

Commissioner Banks then inquired if there was some thought on the mitigation through design for the drainage.

Mr. Shavelson responded that as previously stated they have hired an engineer and are looking at not only drainage but development as a whole is to have something sustainable and not push water issues onto other property owners.

Commissioner Banks inquired about the process and what is required from the Commission in regards to the trails dedication.

City Planner Abboud explained the process and confirmed that it is outside the CUP process and the Planning Department can provide the information and requirements for constructing any potential trails further noting that if it was marked in the drawings then the city would require a dedication.

Commissioner Petska-Rubalcava inquired about the 10 foot wide pedestrian trail easement along Lot "A" and Lot 7, requesting clarification on the access for a driveway and impact on the dedication.

Mr. Bloom responded that it will have a shared driveway and the path will go down the driveway, the driveway will continue as one until it reaches the lots then split and the trail will continue. He further noted that shared driveways are created by easement and not shown on the plat.

Commissioner Highland requested clarification on if these were flag lots and about changes by the Borough on flag lots.

Mr. Bloom confirmed that these are flag lots reiterating that they will have a shared driveway to the main body of the two lots, there is a maximum of 150 feet on the flag without an exception.

Commissioner Highland, referring to the laydown by Mr. Adams, asked if Mr. Bloom can respond to his concerns.

Mr. Bloom stated that they addressed most of those but he will again try; he continued by stating it is being engineered for drainage and minimized surface flows; there will be a sewer main installed and they can work with the property owners to mitigate drainage and they can probably use some of the muck that is removed; the exit point of the drainage itself is set by the plat of the previous subdivision to the south and the pedestrian easement goes to the road and the adjacent subdivision so there is already a built in problem that was created. They will get with Public Works and flag the trail where they want it and then have a little discussion on how everyone feels about it and any changes can be made and that will be the basis for the trail easement. Trail construction would then follow.

Mr. Shavelson stated he walked the property with Mr. Adams and provided him with a copy of the drainage easement. He stated Mr. Adams was unaware of it and while he did not want to speak for Mr. Adams, Mr. Shavelson expressed that Mr. Adams appeared to understand that the drainage needed to be properly maintained and if the property owners did that it would alleviate issues with drainage.

Commissioner Highland inquired if there was any probability of using green infrastructure ideas such as rain gardens, swales, etc.

Mr. Bloom responded that currently the ditch along the south boundary is basically a long retention pond now. Over time it fills up with leaves and debris. There has to be some optimization to let it go away or get in there and clean it up every so often. The vegetation makes a nice visual buffer and lots of positive things happening there but it is a sensitive balance to address the privacy issues and drainage requirements. He believes that the property owners involved are willing to work together to come to an acceptable conclusion.

Mr. Bloom provided further clarification on the shared driveway and pedestrian trail easement for Commissioner Petska-Rubalcava.

Commissioner Banks asked if the applicant would be willing to work with the property owners along that drainage easement to clean it out during construction.

Mr. Bloom stated that it is a substantially long ditch and it is reasonable to consider where they are installing the sewer main, that would be considered, but beyond where they are working he hesitated, then commented that the property owners could probably work together.

Mr. Shavelson responded that they would be willing to work the adjacent property owners as it would behoove them not to have a problem running off, referring to the drainage, to adjacent property owners.

Chair Venuti hearing no further questions from the Commission requested a motion.

SMITH/ HIGHLAND MOVE TO ADOPT STAFF REPORT 19-43 AND APPROVE THE 59 NORTH PRELIMINARY PLAT TO CREATE 10 RESIDENTIAL LOTS, ONE LARGE TRACT AND DEDICATE A CUL DE SAC WITH THE FOLLOWING COMMENTS:

1. DEDICATION OF TRAIL EASEMENTS ON THIS PLAT IS THE DEVELOPER'S CHOICE; NO TRAIL DEDICATIONS ARE REQUIRED. ACCEPTANCE OF THE TRAIL EASEMENTS WILL REQUIRE ACTION OF THE HOMER CITY COUNCIL.
2. TRAILS SHALL BE DESIGNED ACCORDING TO HCC 11.04.120 (C), REFERENCING THE CITY OF HOMER DESIGN CRITERIA MANUAL.
3. DEDICATE A 15 FOOT WIDE DRAINAGE EASEMENT CENTERED ON THE DRAINAGES SHOWN ON THE PLAT.
4. ADD A PLAT NOTE REGARDING THE DRAINAGE EASEMENT PER DOCUMENT 2004-002558-0.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chari Venuti called for a recess at 7:58 p.m. The meeting was called back to order at 8:03 p.m.

### **PENDING BUSINESS**

**A.** Staff Report 19-44, Building Height Maximum in the East End Mixed Use District

Chair Venuti introduced the item into the record by reading of the title.

City Planner Abboud commented on the height limitation and noted that the Staff can relay any questions to Fire Chief Purcell. He can ask if there is any other concerns that the Fire Department may have. He continued by stating that it could be permitted outright at 8000 square feet and as far as addressing viewshed they are not worried about that; if there is any other concerns outside of aesthetics, setbacks he requested input from the Commission. City Planner Abboud acknowledged the requirement for stormwater plan. He requested any additional concerns from the Commission.

Commissioner Smith commented on some recent research he conducted on steel buildings and believed if they stayed away from 1950s style shed buildings and require sprinklered buildings and complied as much as possible with the Comprehensive Plan it would be beneficial. He believed the Police Station did a pretty good design.

City Planner Abboud responded that he appreciates the sentiment and by the requirement of a metal building could not picture the aesthetics that could be employed.

The Commission discussed what type of design standards they could apply to the district and questioned whether it should be permitted outright or require a conditional use permit so it does come before the Commission to make the public aware of the project. They also discussed keeping it to one floor, not multi floored buildings; fire marshal requirements and the occupancy of the building information can be researched and brought back and the concern expressed by Fire Chief Purcell on working around the occupancy requirements.

Chair Venuti inquired if City Planner Abboud would like a motion.

City Planner Abboud stated that if they agree by consensus for him to bring back draft language regarding 70 height limitation he was good with that.

The Commission expressed by consensus the desire to have draft language at the next meeting.

### **NEW BUSINESS**

**A.** Staff Report 19-45, Medical Clinic in the Central Business District

Chair Venuti introduced the item by reading of the title.

City Planner Abboud reviewed Staff Report 19-45 explaining that in a technical rewrite of the Homer City Code in 2008 there was inadvertently a change in the definition of medical clinic. He would like to get something on the books right now that allows clinic in CBD out right and they can leave the size requirements, etc., to the CUP process. Currently only professional office is allowed and this does not allow medical clinics. They can then permit medical clinic outright.

City Planner Abboud brought forth points on medical clinics in the Residential Office district. He responded to a question on the ramifications to eliminating the term medical clinic would result in the requirement to make amendments to Professional Office. He commented on an instance when at one time there was a dispensary or pharmacy in the RO. The district was changed to RO because of demand and if the need is there the demand will grow and sometime in the future will change to possibly CBD because of the changes in the nature of the district.

Commissioner Banks reiterated the need for the change in the CBD by having the commission make a motion on amending City Code to add allowing Medical Clinics in the CBD and outlining the process that would be required to effect that change. He questioned if the Commission could address the medical district overlay at the same time.

City Planner Abboud explained that the Commission will have to follow the process on the remand first and appeal if that happens before addressing those changes.

Commissioner Highland pointed out that they would have to have a public hearing at the next meeting then it would go to City Council and they would not approve it until their meeting in July.

HIGHLAND/BANKS MOVED TO ADD MEDICAL CLINIC TO THE CENTRAL BUSINESS DISTRICT AS A PERMITTED USE.

There was a brief discussion on the amendment being the most reasonable.

VOTE. NON-OBJECTION. UANIMOUS CONSENT.

Motion carried.

**B. Staff Report 19-46, Sign Ordinance**

Chair Venuti introduced the item by reading of the title.

City Planner Abboud stated that he appreciated the work done by Dr. Richardson and advocacy on the recommendations that were proposed. He acknowledged the difficulties with the

current sign code and commented on two of the proposed recommendations that were presented.

Discussion ensued and the following points and comments were made:

- Building owner responsibility on signage allotment
- Allowance of signage for buildings that face multiple streets, dual level building signage
- Interior tenant signage allotment
- View sign code from Gilbert, Arizona which can be used as a guideline
- Previous work and education done by Planning staff and Commissioners
- Educating the public
- Signage types and measurement of light, electronic sign messages
- Not wanting an ugly clutter of signs, issues with signage sizes and what that actually looks like

Commissioner Highland favored having a short discussion on the issue as a courtesy to see what was possible.

Chair Venuti noted that a recommendation to motion this to a future meeting.

Commissioner Banks commented that they currently have several items on their worklist and did not think that they should hold worksessions during the summer and recommended that they address this in the fall.

Commissioner Smith requested input from City Planner Abboud on that recommendation.

City Planner Abboud responded that they are waiting on some items but that a response should be motioned as a courtesy.

Commissioner Petska-Rubalcava mentioned the previous presentation on Wayfinding and Trail signage and asked about combining those two things as they promote business also which provides a better gateway.

City Planner Abboud did not want to combine those two things as he believed that they can allow that type of signage without messing with the city code.

Commissioner Smith recommended putting this in a worksession in September.

Commissioner Banks agreed with the suggestion of adding it to the worklist and they can address the topic.

SMITH/HIGHLAND MOVED TO ADD THIS TO A WORKSESSION ON SEPTEMBER 4, 2019



There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **INFORMATIONAL MATERIALS**

A. City Manager's Report for the May 13, 2019 Homer City Council meeting

### **COMMENTS OF THE AUDIENCE**

### **COMMENTS OF THE STAFF**

Deputy City Clerk Krause inquired about using monument signage noting that several businesses could be advertised on that type of sign for a multi tenanted building.

City Planner Abboud responded that they do allow that type of signage. He then reminded the Commissioners to read the administrative law decision on the Medical Clinic. He noted the good information and decisions and how they need to make decisions defensible. He has also arranged to have the City Attorney perform some training at a worksession.

City Planner Abboud responded to question on the status of the Wayfinding that it was presented to Council but it is awaiting funding. He provided a bit of history on the Wayfinding idea and ended that it currently is in Council's hands for funding.

City Planner Abboud responded that if the commission would like to go there and address the issues regarding the clear cutting they can go there.

City Planner Abboud assured Commissioner Smith that the property owners are getting well above value for their properties, noting he is aware of who is buying up the property so they should not worry about it.

### **COMMENTS OF THE COMMISSION**

Commissioner Highland inquired about the status of the Wayfinding plan and would not like to see the EDC go ahead on signs without input from the Commission. She then questioned the clear cutting of the lot on the way up West Hill and is cringing and waiting for someone to question who authorize that to be done. She wish that they have something that addressed that issue and is really concerned about improving the aesthetics.

Commissioner Smith commented on the topic of establishing a Medical District and it has come to his attention that the more of those properties that changeover are they in effect

jeopardizing the value of those residential properties remaining. He stated that he is planning to ask Mayor Castner to support funding \$50,000 towards a Transportation Plan out of the \$150,000 that was referenced in the City Manager's Report in the packet.

Commissioner Petska-Rubalcava and Banks did not have any comments.

Chair Venuti commented on the signage for Pioneer Avenue and if there was a sign at the new stop light that directed people to downtown Homer. He also suggested lobbying all Councilmembers for the funding not just the Mayor.

### **ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 9:08 p.m. The next regular meeting is scheduled for Wednesday, June 6, 2019 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession scheduled at 5:30 p.m. prior to the meeting.

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RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: \_\_\_\_\_



**City of Homer**

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## **HOMER ADVISORY PLANNING COMMISSION**

### **Approved CUP 19-05 at the Meeting of May 15, 2019**

**RE:** Conditional Use Permit (CUP) 19-05

**Address:** 210 W. Fairview Avenue

**Legal Description:** Lot 9, Block 3 Fairview Subdivision

## **DECISION**

### **Introduction**

William Donohue, (the “Applicant”) applied to the Homer Advisory Planning Commission (the “Commission”) for a conditional use permit to allow a medical clinic in the Residential Office District, under Homer City Code 21.16.030(d).

The applicant requested a 3,200 square foot medical clinic in the Residential Office District. The application was scheduled for a public hearing, as required by Homer City Code 21.94, before the Commission on May 15, 2019. Notice of the public hearing was published in the local newspaper and sent to 32 property owners of 28 parcels prior to the meeting.

At the May 15, 2018 meeting of the Commission, the Commission voted to approve CUP 19-05 with unanimous consent and five Commissioners present.

### **Evidence Presented**

City Planner Abboud summarized the staff report. The Applicant provided testimony on the application and drainage mitigation. There were four that testified in support of the project and two of those expressed concern for traffic. One of those who testified expressed concern about the impact to the residential nature of the district.

### **Findings of Fact**

After careful review of the record, the Commission approves Condition Use Permit 19-05 for a medical clinic in the Residential Office District, under HCC 21.16.030(d).

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.**

**a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding 1:** HCC 21.16.030(d) authorizes medical clinics as a conditional use in the Residential Office District.

**b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding 2:** A 3,200 square feet aquatic therapy practice is compatible with the district in both structure and use.

**c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding 3:** A medical clinic is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

**d. The proposal is compatible with existing uses of surrounding land.**

**Finding 4:** The proposal is compatible with existing uses of surrounding land.

**e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding 5:** Existing public, water, sewer, and fire services are adequate to serve the lot, as are the nearby public rights-of way.

**f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding 6:** The Commission finds the proposal will not cause undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

**g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding 7:** The proposal is not unduly detrimental to health, safety, or welfare.

**h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding 8:** The proposal will comply with applicable regulations.

**i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding 9:** No evidence has been found that the proposal is contrary to the applicable land use goals and objects of the Comprehensive Plan.

**j. The proposal will comply with all applicable provisions of the Community Design Manual.**

**Condition 1:** Outdoor lighting must be downward directional and must not produce light trespass or glare per the CDM and HCC 21.59.030.

**Finding 10:** Condition 1 will assure that the proposal complies with level one lighting standards and the Community Design Manual.

**In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:**

1. Special yards and spaces.
2. Fences, walls and screening. **Condition 2: Dumpster shall be screened on three sides.**
3. Surfacing of vehicular ways and parking areas.
4. Street and road dedications and improvements (or bonds).
5. Control of points of vehicular ingress and egress.
6. Special restrictions on signs.
7. Landscaping.
8. Maintenance of the grounds, buildings, or structures.
9. Control of noise, vibration, odors, lighting or other similar nuisances.
10. Limitation of time for certain activities.
11. A time period within which the proposed use shall be developed and commence operation.

12. A limit on total duration of use or on the term of the permit, or both.
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**Conclusion:** Based on the foregoing findings of fact and law, Conditional Use Permit 19-05 is hereby approved, with Findings 1-10 and Conditions 1 & 2.

**Condition 1:** Outdoor lighting must be downward directional and must not produce light trespass or glare per the CDM and HCC 21.59.030.

**Condition 2:** Dumpster must be screened on 3 sides.

_____	_____
Date	Chair, Franco Venuti
_____	_____
Date	City Planner, Rick Abboud

#### NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

#### CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on \_\_\_\_\_, 2019. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

---

Date

---

Travis Brown, Planning Technician

William Donohue  
5012 Pine Terrance Cir.  
Homer, AK 99603

Holly C. Wells  
Birch, Horton, Bittner & Cherot  
1127 West 7th Ave  
Anchorage, AK 99501

Katie Koester, City Manager  
491 E Pioneer Avenue  
Homer, AK 99603







**City of Homer**

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

**Planning**

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

## **HOMER ADVISORY PLANNING COMMISSION**

### **Approved CUP 2019-06 at the Meeting of May 15, 2019**

**Address:** 3301 East End Road

**Legal Description:** Lot 5 Commerce Park Subdivision SW ¼ SW ¼ SEC 11, T 6S, R 13W, Seward Meridian HM 0850014

## **DECISION**

### **Introduction**

Allen Engebretsen (the “Applicant”) applied to the Homer Advisory Planning Commission (the “Commission”) for a Conditional Use Permit under Homer City Code HCC 21.27.040(d), which allows a lot in the East End Mixed Use District to develop more than 8,000 square feet of building area (all buildings combined).

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on May 15, 2019. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of 12 neighboring parcels.

At the May 15, 2019 meeting of the Commission, the Commission voted five to zero to approve CUP 2019-06, with findings 1-10.

### **Evidence Presented**

City Planner Abboud reviewed the staff report. The Applicant testified and there was no public testimony.

### **Findings of Fact**

After careful review of the record, the Commission approves Condition Use Permit 2019-06 with findings 1-10.

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.**

**a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.**

**Finding 1:** HCC 21.27.040(d) authorizes more than 8000 square feet of building area with an approved conditional use permit. HCC 21.27.20(mm) authorizes more than one building containing a permitted principal use on a lot in the East End Mixed Use District.

**b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.**

**Finding 2:** The proposed building expands the use of a business that requires motor vehicle access and a larger land area and is, therefore, compatible with the purpose of the East End Mixed Use district.

**c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

**Finding 3:** The addition of a commercial building is not expected to have a negative effect on property values more so than other permitted or conditionally permitted uses in this district.

**d. The proposal is compatible with existing uses of surrounding land.**

**Finding 4:** The proposal is compatible with existing uses of surrounding.

**e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

**Finding 5:** City water and sewer serve the site and the public fire services are adequate to serve the proposal.

**f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.**

**Finding 6:** The proposal is not expected to cause undue harmful effect upon desirable neighborhood character.

**g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.**

**Finding 7:** The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

**h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.**

**Finding 8:** An approved CUP along with the zoning permit process will address applicable regulations including Fire Marshal approval of the proposed structure prior to construction.

**i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.**

**Finding 9:** No evidence has been found that the proposal is contrary to the applicable land use goals and objects of the Comprehensive Plan.

**j. The proposal will comply with all applicable provisions of the Community Design Manual.**

**Finding 10:** The Community Design Manual does not apply in the East End Mixed Use District.

**HCC 21.71.040(b) In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:**

- 1. Special yards and spaces.**
- 2. Fences, walls and screening.**
- 3. Surfacing of vehicular ways and parking areas.**
- 4. Street and road dedications and improvements (or bonds).**
- 5. Control of points of vehicular ingress and egress.**
- 6. Special restrictions on signs.**
- 7. Landscaping.**
- 8. Maintenance of the grounds, buildings, or structures.**
- 9. Control of noise, vibration, odors, lighting or other similar nuisances.**
- 10. Limitation of time for certain activities.**
- 11. A time period within which the proposed use shall be developed and commence operation.**
- 12. A limit on total duration of use or on the term of the permit, or both.**

**13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.**

**14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.**

**Conclusion:** Based on the foregoing findings of fact and law, Conditional Use Permit 2019-06 is hereby approved, with Findings 1-10.

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Date

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Chair, Franco Venuty

---

Date

---

City Planner, Rick Abboud

#### NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

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Date

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Travis Brown, Planning Technician

Allen Engebretsen  
3301 East End Road  
Homer, AK 99603

Katie Koester  
City Manager  
491 E Pioneer Avenue  
Homer, AK 99603

Holly C. Wells  
Birch, Horton, Bittner &  
Cherot  
1127 West 7th Ave  
Anchorage, AK 99501





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

TO: Homer Advisory Planning Commission  
FROM: Rick Abboud AICP, City Planner  
DATE: June 5, 2019  
SUBJECT: Staff Report 19-47 City Planner's Report

---

### City Council 5/28/19

Ordinance 19-22, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.05.030(b) to Change How Building Height is Measured within Areas of Special Flood Hazard. Smith/Erickson.

Public Hearing and Second Reading May 28, 2019 APPROVED

6/10/19

Ordinance 19-xx, An Ordinance of the City Council of Homer, Alaska, Repealing and Reenacting Homer City Code Title 14 to be entitled Homer Public Utility Systems and Homer City Code Title 17 to be Entitled Public Assessments; Repealing Homer City Code Chapters 9.08; 13.24, and 13.28 to Consolidate Water and Sewer System Regulations and Rates, Relocate Connection Fee Requirements and Assessments, Update Definitions and Common Terms and Create Uniformity between Service and Assessment Practices. Lord. Recommended dates: Introduction May 28, 2019, Public Hearing June 10, 2019. Subsequent hearings may be held, Second Reading date pending.

Ordinance 19-xx, An Ordinance of the City Council of Homer, Alaska Adding Rural Residential Zoning District 21.12.060 Lighting Standards And Urban Residential Zoning District 21.14.060 Lighting Standards. City Manager/City Planner. Recommended Dates: introduction May 28, 2019, Public Hearing and Second Reading June 10, 2019.

Memorandum 19-0xx from City Planner as back up.

### Work list

- Green Infrastructure – Syverine to attend conference and report back to HAPC. Goal is to increase capacity for a future plan update.
- Medical district – awaiting decision on the appeal
- Transportation plan – nothing to report at this time
- Permit requirements – Agenda item

City Council report sign up

6.10.19 Scott

6.24.19

7.22.19





# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report 19-48

TO: Homer Advisory Planning Commission  
THROUGH: Rick Abboud, City Planner  
FROM: Julie Engebretsen, Deputy City Planner  
DATE: June 5, 2019  
SUBJECT: Vacation of a portion of Greatland Street

**Requested Action:** Conduct a public hearing and recommend approval of the vacation of a portion of Greatland Street, south of the Sterling Highway. This vacation was considered, and recommended for approval in spring 2017. This matter is back before the HAPC because the vacation was never completed.

### General Information:

Applicants:	Tom Livingston 3900 Arctic Blvd Ste 301 Anchorage, AK 99503	Kenton Bloom, PLS Seabright Survey and Design 1044 East End Rd Ste A Homer, AK 99603
Location:	South end of Greatland Street in Old Town, between the Sterling Highway and Ohlson Lane	
Zoning Designation:	Central Business District	
Existing Land Use:	Vacant	
Surrounding Land Use:	North: Alaska USA Bank, Homer Chamber of Commerce South: Baywatch Condominiums, Ohlson Lane East: Old Town Cottages/residential West: Vacant land	
Comprehensive Plan:	The 2005 Homer Transportation Plan does not show future construction of a road within this right of way. The Homer Non-Motorized Transportation and Trail Plan shows a pedestrian connection east-west between Islands and Ocean Visitor Center, and the Chamber of Commerce.	
Utilities:	City sewer main is located in the existing Right of Way.	
Public Notice:	Notice was sent to 23 property owners of 42 parcels as shown on the KPB tax assessor rolls.	

**Analysis:** This vacation is within the Central Business District. This action would vacate a portion of Greatland Street.

The applicant has conferred with Planning and Public Works, and both departments find it unlikely the City will ever develop this Right of Way as a road, or that it will be needed for vehicles. The adjoining property owners, the Chamber of Commerce and Alaska USA FCU did not use Greatland for access.

**Review of relevant Kenai Peninsula Borough Code:**

20.30.170. - Blocks—Length requirements.

Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

**Staff Finding 1:** The current block length along the Sterling Highway is about 500 feet to Main Street, and 550 feet to Ohlson Lane. Vacation of Greatland Street south of the Sterling Highway would create a block length of about 1100 feet. Vacation of Greatland Street complies with the requirement that block lengths be not less than 800 feet on an arterial and state maintained roads.

20.70.170. - Vehicular access.

The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

**Staff Finding 2:** Equal or superior access exists for vehicular access. Greatland Street is undeveloped within this block. The primary parcel will access on Ohlson Lane. Other properties affected have access on Ohlson Lane or the Sterling Highway, which are both paved and maintained roads. Two or more access points are not necessary in this area.

20.70.190. - Utility provisions.

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

**Staff Finding 3:** City staff has considered the existing a future municipal infrastructure and finds that utility easements are sufficient.

**Public Works Comments:**

The Transportation Master Plan does not show the portion of Greatland Street south of the Sterling Highway being an important roadway corridor. This in itself does not mean it should not be

constructed, but Public Works can find no reasonable argument that it should be. If the consensus is that no road will ever be constructed in the existing Greatland right-of-way (south of the Sterling Highway), Public Works will not object to vacating a portion of Greatland as proposed.

The vacation of any portion of Greatland should reserve utility easements for the water and sewer mains that exist or are proposed to be constructed, and a pedestrian access easement should be considered.

**Vehicular Access:**

If no right-of-way vacation is approved or it is approved as proposed by the applicant, Public Works would allow for a “driveway” to be extended from Bunnell to the property within the dedicated Greatland Street right-of-way. A permit and maintenance agreement would be required. The Fire Department has required (in similar situations) that this driveway be at least 20’ wide and be able to support emergency vehicle access.

**Fire Department Comments:** No comments received.

**Staff Recommendation:**

Planning Commission recommend approval of the vacation.

**Attachments:**

1. Vacation petition
2. Public Notice
3. Aerial Map



**SEABRIGHT SURVEY + DESIGN**

**Kenton Bloom, PLS**  
1044 East Road Suite A  
Homer, Alaska 99603  
(907) 299-1091  
seabrightz@yahoo.com

May 15, 2019

City of Homer  
Planning Dept.  
491 E. Pioneer  
Homer, Alaska 99603

**RE: Preliminary Plat Submittal Chamberlain and Watson Subd. ROW Vacation  
2019 Replat**

Dear Planning Department:

Here are the two full size copies for the preliminary plat referenced above. We have emailed an 11x17 pdf copy to Julie and Travis. We are submitting the \$500 fee for the ROW vacation as well as a signed copy of the KPB ROW vacation petition form. We have also provided a pdf copy of Chamberlain and Watson Subd. 2017 Replat, which vacates the lot lines of former lots 18A & 19A HM #50-24. This plat has been approved by COH and KPB and will be sent in for recording this week. Please let me know if there are any concerns or clarifications I can address.

Cordially,

A handwritten signature in black ink, appearing to read "Kenton Bloom". The signature is fluid and cursive, with the first name "Kenton" and last name "Bloom" clearly distinguishable.

Kenton Bloom, P.L.S.  
Seabright Survey + Design



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 Public Right-of-Way/Easement/Platted Public Area**  
**Public Hearing Required**

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- ☒ \$500 non-refundable fee to help defray costs of advertising public hearing.
- ☐ City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- ☐ Name of public right-of-way proposed to be vacated is dedicated by the plat of Chamberlain & Watson Subdivision, filed as Plat No. \_\_\_\_\_ in Homer Recording District.
- ☐ Are there associated utility easements to be vacated? ☐ Yes ☒ No
- ☒ Are easements in use by any utility company? If so, which company City of Homer, HEA
- ☐ Easement for public road or right-of-way as set out in (specify type of document) \_\_\_\_\_ as recorded in Book \_\_\_\_\_ Page \_\_\_\_\_ of the \_\_\_\_\_ Recording District. (Copy of recorded document must be submitted with petition.)
- ☐ Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11x17 inches in size. In the case of public right-of-way, the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.
- Has right-of-way been fully or partially constructed? ☐ Yes ☒ No
- Is right-of-way used by vehicles / pedestrians / other? ☐ Yes ☒ No
- Is alternative right-of-way being provided? ☒ Yes ☐ No

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

Row deemed unnecessary by City of Homer.

The petition must be signed (written signature) by owners of the majority of land fronting the right-of-way, easement, or platted public area proposed to be vacated. Each petitioner must include address and legal description of his/her property.

Submitted By:

Name: Seabright  
Address: 1044 East Rd.  
Suite A  
Homer, AK 99603  
Phone: 907 299 1091

Signature as:

☒ Petitioner ☐ Representative

Petitioners:

Signature <u>[Signature]</u>	Signature _____
Name <u>Livingston Stone Development, LLC</u>	Name _____
Address _____	Address _____
Owner of _____	Owner of _____
Signature _____	Signature _____
Name _____	Name _____
Address _____	Address _____
Owner of _____	Owner of _____



NOTARY'S ACKNOWLEDGMENT

FOR: \_\_\_\_\_  
ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2019  
\_\_\_\_\_  
NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES \_\_\_\_\_

NOTES

1. NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE SAID EASEMENT.
2. THIS SUBDIVISION IS SUBJECT TO THE ZONING REGULATIONS OF THE CITY OF HOMER.
3. THIS LOT IS SERVED BY CITY OF HOMER WATER AND SEWER.
4. ALL WASTEWATER DISPOSAL SYSTEMS SHALL COMPLY WITH EXISTING APPLICABLE LAWS AT THE TIME OF CONSTRUCTION.
5. THE FRONT 15' ADJOINING THE RIGHTS-OF-WAY AND 20 FEET WITHIN 5' OF SIDE LOT LINE IS ALSO A UTILITY EASEMENT.
6. ANY PERSON DEVELOPING THE PROPERTY IS RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS, INCLUDING A U.S. ARMY CORPS OF ENGINEERS WETLAND DETERMINATION IF APPLICABLE.
7. THERE IS A 30' SEWER EASEMENT CENTERED ALONG THE CENTERLINE OF THE EXISTING 8" SEWER MAIN (HM XXX-XXX).
8. THERE IS A BLANKET EASEMENT GRANTED TO HOMER ELECTRIC ASSOCIATION THAT AFFECTS LOT 1 RECORDED BK 49 PG 260 HRD.
9. ROW VACATION WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF MAY 22, 2017.
10. AN EXCEPTION TO KPB 20.30.120 STREET WIDTH REQUIREMENTS WAS GRANTED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF JUNE 12, 2017.
11. THERE IS A 20' WIDE UTILITY EASEMENT CENTERED ON THE EXISTING OVERHEAD POWERLINES (HM XXX-XXX).
12. THESE IS A 10' WIDE UTILITY EASEMENT CENTERED ON THE EXISTING FIBER OPTIC LINE (HM XXX-XXX).

WASTEWATER DISPOSAL

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

PLAT APPROVAL

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

AUTHORIZED OFFICIAL  
KENAI PENINSULA BOROUGH

DATE \_\_\_\_\_

LINE TABLE

LINE	BEARING	DISTANCE	REC. BEARING	REC. DIST.
L1	S 00°00'02" W	4.90'	S 00°00'20" W	5.00'
L2	S 89°49'16" E	36.93'		

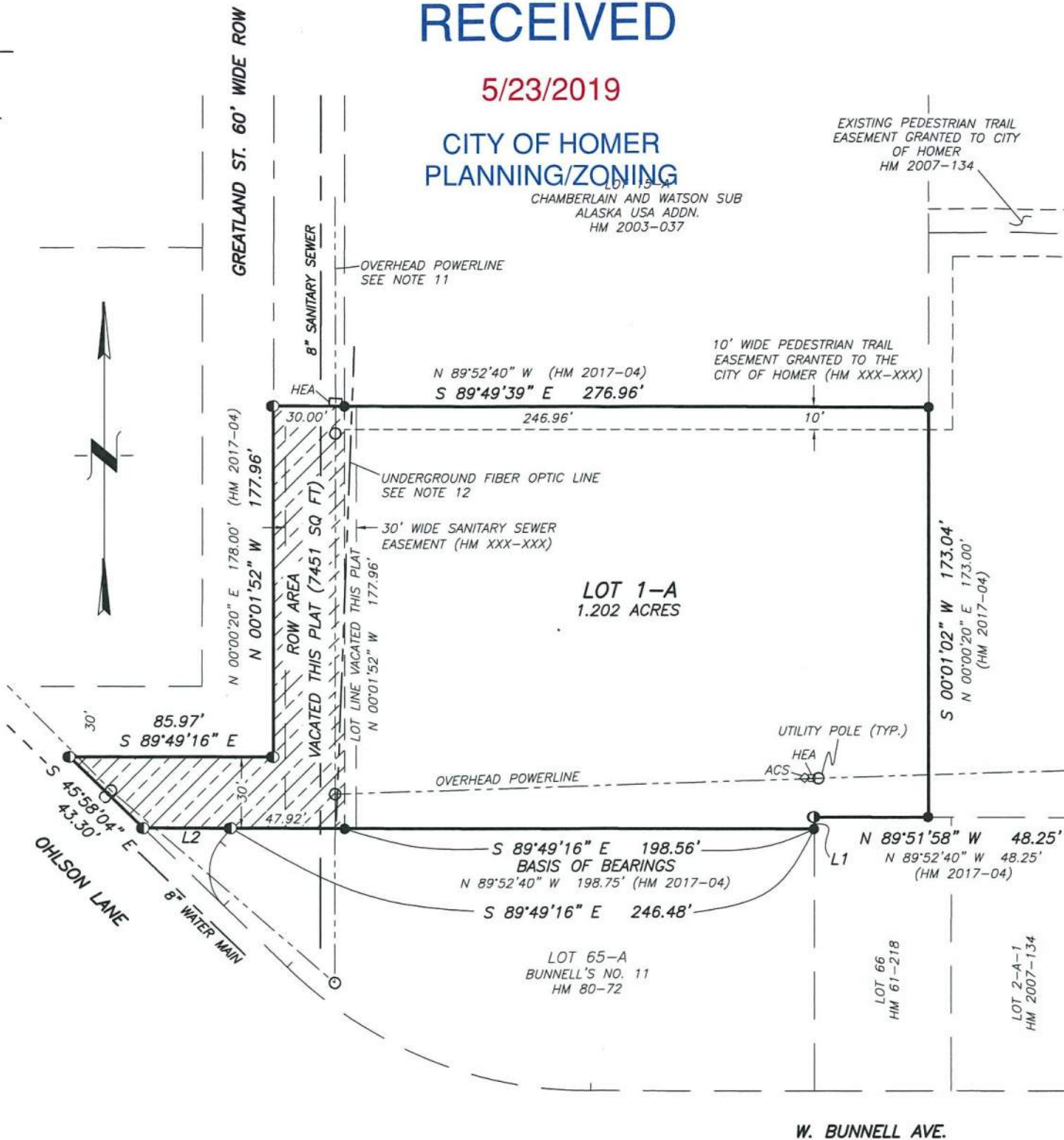
(HM 2017-04)

RECEIVED

5/23/2019

CITY OF HOMER  
PLANNING/ZONING

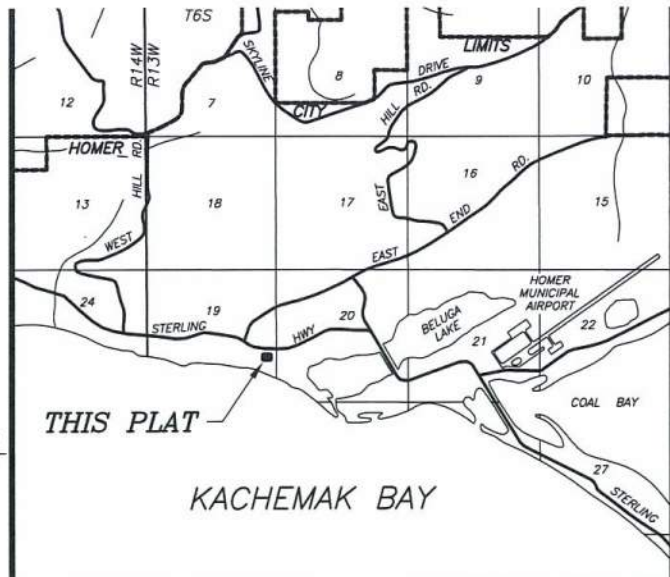
LOT 13-A  
CHAMBERLAIN AND WATSON SUB  
ALASKA USA ADDN.  
HM 2003-037



W. BUNNELL AVE.

LEGEND

- FOUND 2" AL-CAP ON A 5/8" REBAR 7610-S 2017
- ⦿ FOUND 2" AL-CAP ON 5/8" REBAR 7968-S 2019
- ⦿ SET 2" AL-CAP ON 5/8" REBAR 7968-S 2019



VICINITY MAP

SCALE: 1" = 1 MILE

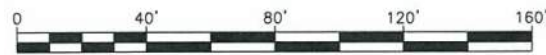
U.S.G.S. QUAD. SELDOVIA C-4 & C-5

CERTIFICATE OF OWNERSHIP

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, THAT I HEREBY ADOPT THIS PLAT OF SUBDIVISION, AND BY MY FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

TOM LIVINGSTON  
3900 ARCTIC BLVD.  
SUITE 301  
ANCHORAGE, AK 99503

DATE \_\_\_\_\_



GRAPHIC SCALE

HOMER RECORDING DISTRICT

KPB FILE No. 2019-XXX

CHAMBERLAIN AND WATSON SUBD.  
ROW VACATION 2019 REPLAT

A REPLAT VACATING A PORTION OF GREATLAND STREET  
LOCATED WITHIN THE SE 1/4 SEC 19,  
T. 6 S., R. 13 W., SEWARD MERIDIAN,  
IN THE CITY OF HOMER, KENAI PENINSULA BOROUGH,  
THIRD JUDICIAL DISTRICT, ALASKA

CONTAINING 1.174 ACRES

OWNER: TOM LIVINGSTON 3900 ARCTIC BLVD. SUITE 301  
ANCHORAGE, AK 99503

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

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

DRAWN BY: KB

CHKD BY: KB

JOB #2017-07

DATE: 5/2019

SCALE: 1"=40'

SHEET #1 OF 1





## **PUBLIC HEARING NOTICE**

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, June 5, 2019 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matter:

**A proposal to vacate +/- 7,500 square feet of Greatland Street south of the Sterling Highway near the intersection of Ohlson Lane, located within the Chamberlain and Watson Subdivision, SE ¼ Sec. 19 T. 6 S., R. 13 W., S.M.**

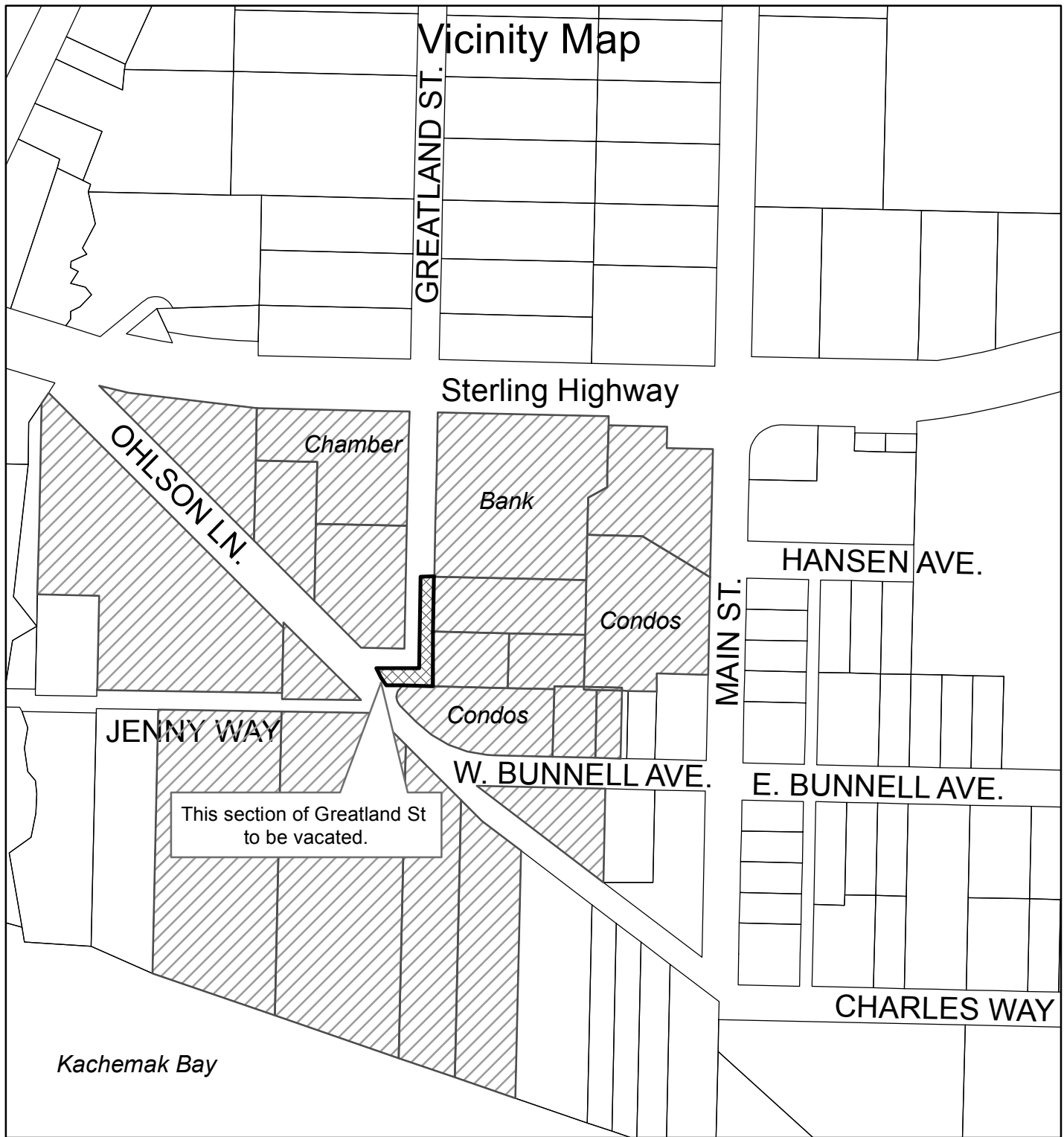
Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown at the Planning and Zoning Office, 235-3106.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.**

.....

**VICINITY MAP ON REVERSE**



City of Homer  
Planning and Zoning Department

March 23, 2019

## Request for the vacation of a portion of Greatland St

Marked Lots are w/in 300 feet  
and property owners notified.

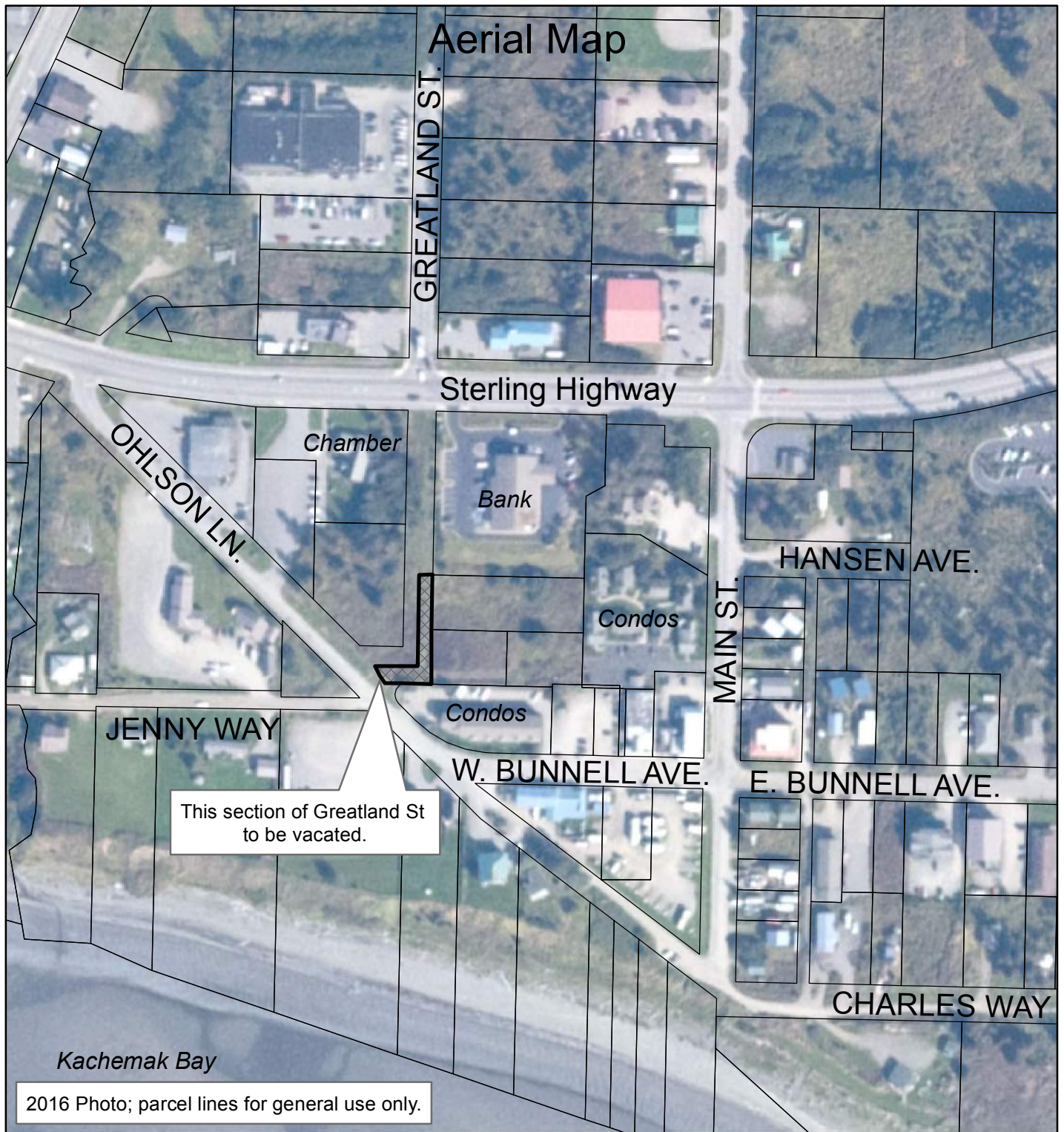
0 150 300 Feet



*Disclaimer:*  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.







City of Homer  
Planning and Zoning Department

March 23, 2019

## Request for the vacation of a portion of Greatland St

0 150 300 Feet



**Disclaimer:**  
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report PL 19-49

TO: HOMER ADVISORY PLANNING COMMISSION  
FROM: RICK ABOUD AICP, CITY PLANNER  
DATE: June 5, 2019  
SUBJECT: CONDITIONAL USE PERMIT 19-01, APPROVAL OF A MEDICAL CLINIC PER HCC 21.16.030(D) AND MORE THAN 8000 SQUARE FEET OF BUILDING AREA PER HCC 21.16.030(E) AT 267 CITYVIEW AVENUE, T 6S R 13W SEC 18 SEWARD MERIDIAN HM 2005061 FAIRVIEW SUB FLYUM ADDN LOT 2A BLK 6 – REMANDED TO THE HOMER ADVISORY PLANNING COMMISSION BY THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS.

### Introduction

The Homer Advisory Planning Commission approved CUP 18-09 on September 19, 2019 and subsequently approved CUP 19-01 as an amendment to CUP 18-09 on January 2, 2019. The approved CUP permits a medical clinic per HCC 21.16.030(d) and a structure of over 8000 square feet of building area per HCC 21.16.030(e) as prescribed by HCC 21.71. Conditional Use Permits.

CUP 19-01 was appealed. The appeal was considered by an Administrative Law Judge from the Alaska Office of Administrative Hearings, as allowed per HCC 21.93. A copy of the Decision on Appeal and Order of Remand is attached. The Administrative Law Judge remanded the matter back to the Commission to develop an adequate record and prepare better findings limited to the review criterion regarding adequacy of public services and facilities.

### **HCC 21.71.030(e), Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

Specifically, the item was remanded to the Commission to:

1. Gather additional facts necessary to address the issue of road access in the context of Homer City Code 21.71.030(e), including, if desired, consulting with the applicant regarding his willingness and ability to secure adequate access;
2. Create a record on the issue of road access in the context of Homer City Code 21.71.030(e);
3. Make new findings regarding the criterion in Homer City Code 21.71.030(e), which shall be based on the augmented record; and

4. Impose any new Conditions related to access that the Commission, in its best judgment, feels are warranted.

### **Response to the remand item**

Previously, in staff report 18-09, staff addressed the site access;

*“The site is well served with city sewer, natural gas, fire and police services. Currently both Cityview and W Danview are not city maintained roads. Driveways have been built within the public right of way to provide access to the property. **It is the applicants’ obligation to provide access to the property either by improving the driveway, building a road, or cost sharing with the City to build a road.** All three of these or any other options are outside the purview of the CUP process. Access to the facility will be reviewed and approved by the State Fire Marshal, prior to issuance of a zoning permit.”*

Two (2) Findings were made in relation to HCC 21.71.030(e);

***Finding 6 (staff report finding):*** Existing public services are or will be adequate to serve the medical clinic.

***Finding 7 (finding of the Commission):*** Recommendation that the applicant work with the City of Homer to share costs of improving the roads so that access is adequate.

The Administrative Law Judge found that Finding 7 is inconsistent with Finding 6 and that the record does not determine what deficiencies in access are (implied in finding 7) and what might need to be done to make access “adequate.”

### **Analysis**

#### **e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.**

In terms of supporting staff report 18-09, the applicant may cost share with the City to build a road and the Planning Commission recommended that he do so. The recommendation is in context of the three options that are available to the applicant. What was under-stated is that road access, the complete build out of the undeveloped rights-of-ways, is not necessary as long as the development has proper fire department access as determined by our local Fire Department and/or the State Fire Marshal.

Adequate access may be obtained with a design and build that is approved by our local Fire Department and/or State Fire Marshal. Adequate access in this particular case can amount to

providing the proper turn radius and driveway construction to facilitate navigation by firefighting equipment. Driveways are commonly found in rights-of-way in Homer.

Fire Marshal approval is a separate permitting process by a State agency. The State Fire Marshall solicits comments and recommendations from the local fire authority to be incorporated into permit requirements. The Fire Marshall is responsible for the permit and any follow up and has the authority to issue stop work orders and forbid occupancy of the structure, which they have done in the past on non-compliant projects in Homer. In a CUP, the Planning Office may remind the Commission and applicant of the requirement that all commercial projects must comply with State Fire Marshall regulations. We do not make conditions on the requirement because it is addressed in HCC 21.70.030, Permit issuance and denial. A condition is not required. I have provided a condition below, if the Commission feels that it is warranted for this additional review.

Additionally, a finding is a statement of fact that supports or refutes a review criterion. A recommendation as a finding does not, in itself, provide support or refute a review criterion. If the Commission wishes to, they may impose binding conditions on an applicant; this would not be a recommendation. I suggest that the Commission strike Finding 7 and augment findings and condition as suggested below.

**Finding 1 Supplemental:** Adequate access to the proposal will be provided with design and construction approved by the Homer Volunteer Fire Department and/or the State Fire Marshal.

**Finding 2 Supplemental:** A Licensed Civil Engineer can confirm that the access to the project meets local Fire Department and Fire Marshall standards.

**Condition 1 Supplemental.** A written statement from Licensed Civil Engineer shall be provided to the Planning Office confirming that the access meets all standards required of the Homer Volunteer Fire Department and/or the State Fire Marshal.

W Danview Ave at southern entrance (left)  
facing East

W Danview Ave and Hohe St  
facing West





Cityview Ave at north entrance  
facing East



Cityview Ave and Bartlett St.  
facing West





**Staff Recommendation**

Adopt staff report 19-49, retract Finding 7 and replace with Supplemental Findings 1 & 2 and Supplemental Condition 1.

**Attachments:**

Decision on Appeal and Order of Remand  
Diagrams  
Public Notice  
Letter



**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE CITY OF HOMER**

In the Matter of	)	
	)	
CONDITIONAL USE PERMIT 2018-09	)	OAH No. 18-1264-MUN
<hr/>	)	

**DECISION ON APPEAL and ORDER OF REMAND**

**I. Introduction**

Dr. Paul Raymond proposes to build a 20,000-square-foot, two-story medical building on a 1.4-acre parcel across Cityview Avenue from South Peninsula Hospital. Because the area's zoning requires a conditional use permit (CUP) for medical clinics and for buildings over 8,000 square feet, he applied for a CUP with the Homer Advisory Planning Commission ("Commission"). After two contentious public meetings to take testimony from many members of the community, the Commission voted unanimously on September 19, 2018 to approve the CUP. A written decision followed on October 19, 2018.

Robin Lund, who owns and lives in residential property about 200 feet from the subject parcel, testified against the CUP before the Commission and now appeals the Commission's decision. Also appearing in the appeal proceedings were the City Planner (defending the Commission's decision), Raymond Property Management, Inc. (owner of the parcel for which Dr. Raymond applied for a CUP), and Dr. Tim Scheffel (operator of a small office in the area).

Mr. Lund requested that his appeal be heard before a hearing officer, rather than before the Board of Adjustment.<sup>1</sup> The City Clerk referred the matter to the Alaska Office of Administrative Hearings to supply a hearing officer as permitted by HCC 21.93.100 and AS 44.64.055.

Some of the matters raised in this appeal are serious concerns, on which reasonable people could have different opinions. However, in the limited context of an appellate review, no deficiencies in procedure or analysis have been shown that would support a decision to overturn the Commission's decision entirely.

One error has occurred in connection with the review criterion regarding adequacy of public services and facilities. This will necessitate a remand to the Commission for limited supplemental proceedings to develop an adequate record and prepare better findings in this area. The supplemental proceedings may lead to a different outcome, such as the imposition of new conditions on the CUP.

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<sup>1</sup> Record (R.) 12. *See also* HCC 21.93.080(b)(7).

## **II. Facts and Proceedings**

### **A. Permit Background**

The property at issue, which uses the address of 267 Cityview Avenue, is an L-shaped parcel with 225 feet of frontage on Cityview Avenue and with a depth of 320 feet. It spans the block between the main parking lot for South Peninsula Hospital and the 10,000-square-foot Homer Medical Clinic, and is therefore across the street from both of those structures. It has no frontage on Hohe or Bartlett Streets. Those margins of the block are occupied by small medical clinics or houses.<sup>2</sup>

The property is presently used as a parking lot.<sup>3</sup> There are suggestions in the record that this use predates the current owner and that it may be out of compliance with land use requirements, but there is no clear evidence on this.

Dr. Raymond proposes to build a 70-by-160-foot two-story building whose footprint would occupy one-sixth of the parcel's 60,000 square feet. Most of the remainder of the lot would be used for parking spaces for 85 vehicles, although there would also be landscaped areas.<sup>4</sup>

Dr. Raymond submitted his CUP application on a city form on July 30, 2018.<sup>5</sup> The form is filled out fairly completely but rather laconically. Dr. Raymond supplied a detailed and informative site plan, but little information about the surrounding area. The City's Planning and Zoning Department prepared and circulated an aerial photo of the vicinity and a local map that identifies some of the nearby lots.<sup>6</sup>

### **B. Area Zoning**

267 Cityview Avenue is zoned Residential Office (RO).<sup>7</sup> This zoning category has the following general description in the Homer City Code:

The Residential Office District is primarily intended for a mixture of low-density to medium-density residential uses and certain specified businesses and offices, which may include professional services, administrative services and personal services, but generally not including direct retail or wholesale transactions except for sales that are incidental to the provision of authorized services. A primary purpose of the district is to preserve and enhance the residential quality of the area while allowing certain

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<sup>2</sup> R. 30-31, 54, 57-58, 62-63.

<sup>3</sup> *E.g.*, R. 118.

<sup>4</sup> R. 47-48, 246.

<sup>5</sup> R. 117-128.

<sup>6</sup> R. 130-131. The excellent, color-coded map at Raymond Ex. A is not part of the record on which this permit can be reviewed, as discussed later in this decision.

<sup>7</sup> R. 110, 117.

services that typically have low traffic generation, similar scale and similar density. The district provides a transition zone between commercial and residential neighborhoods.<sup>8</sup>

Any building over 8,000 square feet, and any medical clinic, requires a CUP.<sup>9</sup>

### ***C. Public Hearings and Decision***

The Raymond application went to a public hearing in front of the Homer Advisory Planning Commission on September 5 and 19, 2018. At the September 5 hearing, the City Planner presented a Staff Report proposing ten findings and two special conditions.<sup>10</sup> This was supplemented on September 19, 2018, notably with a Traffic Impact Review responding to public concern on the issue of traffic.<sup>11</sup>

Robin Lund was an active participant in the public hearing process, commenting both orally and through a detailed, articulate, organized, and thoughtful set of written comments. Citizen interest in the application was quite high, with the majority of commenters expressing concern or opposition.

The Commission unanimously voted to “adopt staff report PL 18-50 and 18-58 and approve CUP 2018-09” with three conditions.<sup>12</sup> The Commission issued its formal written decision on October 19, 2018 and distributed it on October 22, 2018.<sup>13</sup>

In November of 2018 Dr. Raymond submitted an amended application, seeking approval to move the building’s site from the middle of the tract to its north margin, directly opposite the hospital.<sup>14</sup> This was approved on January 2, 2019, with a formal decision issued on January 25, 2019.<sup>15</sup>

### ***D. The Appeal***

Robin (Rob) Lund, as previously mentioned, participated actively in the public process. He owns a residence on the northeast corner of Hohe Street and Danview Avenue, across the street from the block that would be altered by the proposed development.<sup>16</sup> He submitted an

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<sup>8</sup> HCC 21.16.010.  
<sup>9</sup> HCC 21.16.030, 21.16.040(e).  
<sup>10</sup> R. 37-43.  
<sup>11</sup> R. 99-106.  
<sup>12</sup> R. 223-226.  
<sup>13</sup> R. 227-233.  
<sup>14</sup> R. 242-251.  
<sup>15</sup> R. 260-266.  
<sup>16</sup> R. 131.

“amended and resubmitted” appeal of the October 19 decision on December 11, 2018.<sup>17</sup> The circumstances under which the appeal was first initiated are not clear from the record, but the City Clerk has deemed the appeal timely and fully perfected.<sup>18</sup> By agreement, it has been deemed to encompass the January 2019 amended approval, all parties agreeing that the changes made in the amendment have little bearing on the issues in this appeal.

### **III. Discussion**

#### ***A. Procedure***

Applications for CUPs are submitted to the City Planner. The application is reviewed, and once deemed complete, the City Planner is required to schedule and notice a public hearing in front of the Commission.<sup>19</sup> Following the public hearing, the Commission is then required to act on the application and issue a decision that contains its written findings and reasoning in support of the decision.<sup>20</sup>

A person who “actively and substantively participated” in the matter in front of the Commission, has the right to appeal the Commission’s decision granting or denying a CUP.<sup>21</sup> The appeal may be either to the Board of Adjustment or a hearing officer appointed by the City Manager.<sup>22</sup>

Appeals are heard solely on the established record, unless standing of a party or disqualification of a board member are at issue (neither exception applies here).<sup>23</sup> If changed circumstances or new evidence ought to be considered, or if there simply is not enough evidence in the record on a material issue, the remedy is to remand the matter to the Commission rather than to take evidence at the appeal level.<sup>24</sup> After briefing, an oral argument is to be held, and a decision issued.<sup>25</sup>

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<sup>17</sup> R. 5-12. Note that the CUP amendment was pending, but not yet approved, at the time of the amended and resubmitted appeal.

<sup>18</sup> R. 3.

<sup>19</sup> HCC 21.71.030, HCC 21.27.050 (a).

<sup>20</sup> HCC 21.71.050(b).

<sup>21</sup> HCC 21.93.030(a), HCC 21.93.500(a).

<sup>22</sup> HCC 21.93.030, HCC 21.93.500(a).

<sup>23</sup> HCC 21.93.510.

<sup>24</sup> HCC 21.93.510 and 21.93.560.

<sup>25</sup> HCC 21.93.530 – 550.

Because new evidence may not be considered in the first instance at the appeal level, the exhibits submitted with Raymond Property Management's February 25, 2019 brief are hereby excluded. They have not been relied upon in this decision.

The Homer City Code permits the hearing officer to remand the case to the deciding body as a remedy for procedural errors or gaps in the evidence.<sup>26</sup> In this case, as we will see, there has been an apparent procedural error in handling one of the review criteria, which necessitates a remand. A remand for a procedural error leads to defined supplemental proceedings that have scheduling priority on the Commission's agenda.<sup>27</sup>

### ***B. Standard of Review***

The applicable standards of review on appeal are set by the Homer City Code. The standard of review on purely legal issues is one of independent judgment.<sup>28</sup> The standard of review for factual findings in a case such as this one is one of substantial evidence:

The Board of Adjustment or hearing officer shall defer to the findings of the lower administrative body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary implication by the lower body shall be considered as true if they are supported by substantial evidence. . . . "Substantial evidence," as used in this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>29</sup>

In a case reviewed on the substantial evidence standard, "[i]t is not the function of the [hearing officer] to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists."<sup>30</sup>

### ***C. Points on Appeal***

Mr. Lund's December 11 points on appeal are detailed and articulate, but they are difficult to work with because of cross-cutting issues. Mr. Lund recast his appeal points in his February 11, 2019 opening brief, and those points will be used in this discussion. No party has contended that the opening brief raised new issues that are outside the bounds of this appeal.

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<sup>26</sup> HCC 21.93.560.

<sup>27</sup> HCC 21.93.560(c).

<sup>28</sup> HCC 21.93.540(d).

<sup>29</sup> HCC 21.93.540(e). When a CUP is denied, it is possible to have a situation where the factual findings are made by a minority of the Commission's members (HCC 21.71.050(e)). In that circumstance, an independent judgment standard applies to the factual findings at the appeal level. In all other circumstances, the standard of review is substantial evidence.

<sup>30</sup> *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

1. Challenges to Sufficiency of Application Form: "The City Planner was in error in accepting the application . . . and recommending for approval . . . in that the application lacked ' . . . evidence sufficient to enable meaningful review of the application . . . ."<sup>m31</sup>

*a. Failure to answer two questions in application*

Mr. Lund points out that of approximately 35 questions on the application, two yes/no questions were left blank. One asked whether the applicant had a state or city driveway permit. The other asked if he had active city water and sewer permits.<sup>32</sup> The city planner explains that a blank response to such a question is simply construed as a negative answer.

These two items of information are not specifically required of an applicant by the Homer City Code. HCC 21.71.020(a)(7) requires "inclu[sion]" of "any permits . . . required by other provisions of the zoning code", but these requirements do not come from the zoning code and, in any event, one cannot include a permit one does not yet have. Hence the omission falls under the more general requirement to apply "on a form provided by the City",<sup>33</sup> a requirement that carries with it the implicit expectation that the applicant will fill out the form.

The Alaska Supreme Court faced a similar issue in *Zenk v. City & Borough of Juneau*,<sup>34</sup> a 2017 Memorandum Opinion and Judgment that, while not precedential, provides good example of how issues like this should be reviewed on appeal. In that case, an applicant for a CUP sought to build a commercial greenhouse in a residential neighborhood, but had omitted the detailed drawings of existing and proposed boundary landscaping that the application called for. Unlike Homer, Juneau has an explicit ordinance specifying that "all applications for permits must be complete . . . before the permit-issuing authority can accept the application."<sup>35</sup> Even so, the Supreme Court permitted the city planning staff to take a "substantial compliance" approach to omissions by the applicant. The court's main concern was that the CUP application provide "sufficient detail for neighbors to comment . . . and for Planning Commission members to question staff and [the applicant] about the proposed land use."<sup>36</sup>

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<sup>31</sup> Opening Brief at 1.

<sup>32</sup> See R. 45.

<sup>33</sup> HCC 21.71.020(a).

<sup>34</sup> S-16118 (Alaska MOJ 2017). MOJs are not as formal as published opinions and do not create legal precedent.

<sup>35</sup> CBJ 49.15.130(a) cited in *id.* at n.31.

<sup>36</sup> *Zenk, supra*, text following n.34.



Here, the appellant has articulated no reason that the applicant's failure to give specific information about whether he has yet obtained these collateral permits handicapped the review process. It was reasonable for the staff to treat the omissions as insubstantial, assume a "no" answer, and move on.

*b. Alleged incorrect answer to question 2b*

Mr. Lund faults the application for stating that "hospital & clinics surround the proposed use."<sup>37</sup> The argument is that this is factually inaccurate so as to make the application defective and require its rejection.

One might start by noting that applications for controversial projects will almost always contain claims that are subject to debate. That is why they are controversial, and that is why they are tested through a public process. The truth or falsity of such claims is often in the eye of the beholder. To require the planning staff or the reviewing body to reject applications on the threshold because a claim is arguable or potentially exaggerated would put the cart before the horse. The truth of the claims can be explored after the application is accepted.

Here, what has really happened is that Mr. Lund and Dr. Raymond have different understandings of the word "surrounded." Mr. Lund correctly points out that many immediately adjacent and nearby properties are residences. To him, the word "surrounded" seems to imply that everything nearby must be a hospital or clinic. But the fact remains that the tract on which the proposed clinic would be built is directly between a hospital to the north and a large clinic to the south; another clinic is directly adjacent to the west; a medical office is directly adjacent to the east; and additional clinics are close by.<sup>38</sup> This is also an acceptable use of the word "surrounded."

*c. Failure to document alleged increase in values in 2c*

Mr. Lund faults the application for simply claiming that replacing the existing parking lot with his proposed structure will "increase values" in the surrounding area,<sup>39</sup> without providing market studies, expert opinion, or other factual support. Nothing in the Code or the application form requires more than a layman's view on this subject, however. Dr. Raymond's claim was sufficient to alert commenters to the potential issue. It was addressed to a planning body where

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<sup>37</sup> See R. 46. Mr. Lund misquotes this as "hospitals and clinics", which is unfair to Mr. Raymond since that would be much more of an exaggeration than what he wrote.

<sup>38</sup> R. 173-174, accepting Mr. Lund's descriptions at p. 6 of his Reply Brief; R. 53.

<sup>39</sup> See *id.*

opposing views could be considered and there is ample expertise on what does and does not enhance or detract from real estate values. Indeed, the Commission did not make a finding that local property values would increase.

*d. Alleged mischaracterization of area in 2d*

Question 2d asks the applicant, “How is your proposal compatible with existing uses of the surrounding land?”<sup>40</sup> Dr. Raymond asserted that it would be a “medical clinic in a medical area.”<sup>41</sup> The appellant complains that “[t]his designation cannot be found in the zoning code.”<sup>42</sup> But the question does not call for a zoning classification.

*e. Single word answer to 2e*

Question 2e asks, “Are/will public services adequate to serve the proposed uses and structures?”, to which Dr. Raymond replied with a simple “Yes.”<sup>43</sup> Mr. Lund feels he should have provided a statement of the extent and status of public services in the area. However, the question can be construed as simply an effort to determine whether the applicant will seek expansion of public services in any way in connection with the project, and the short answer is adequate to establish that this developer will not. In any event, the planning staff has expertise regarding local public services, and analyzed this area in some detail in the staff report it prepared for the first public hearing.<sup>44</sup>

*f. Alleged factual errors in response to 2f*

Question 2f of the application form poses a long, compound question:

How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?<sup>45</sup>

Dr. Raymond’s answer is terse and completely non-responsive: “Project will provide need [sic] parking & add’l medical services for area.”<sup>46</sup> The appellant’s objection is not to the failure to answer the question, however, but rather to the substance of what Dr. Raymond offered. Mr. Lund asserts that no additional parking is needed in the neighborhood (basing his contention on

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Opening Brief at 4.

<sup>43</sup> R. 46.

<sup>44</sup> R. 40.

<sup>45</sup> R. 46.

<sup>46</sup> *Id.* In his November amended application, Dr. Raymond did address the question asked to some degree. R. 244.

“casual observation” rather than any record citation), and contends in conformity with other commenters that medical services are already adequate.<sup>47</sup> As with the issue addressed in subsection *b* above, this criticism of the response fails to recognize that the presence of debatable claims does not render an application unacceptable.

*g. Alleged incorrect/unsupported claim in response to 2g*

Dr. Raymond answered with a simple “no” the question whether his clinic would “be detrimental to the health, safety, or welfare of the surrounding area or the city as a whole.”<sup>48</sup> Mr. Lund faults this answer for failing to address the issue of traffic.<sup>49</sup> But it is not clear the question calls for that kind of information, which is addressed elsewhere in the questionnaire and which, in any event, is something the planning staff can and does analyze independently.

*h. Lack of detail and alleged inconsistency in response to 2h*

Question 2h asks the applicant to relate the project to the goals of the Comprehensive Plan. Mr. Lund points out that Dr. Raymond’s answer is general, not mentioning any specific Comprehensive Plan goals,<sup>50</sup> but he likewise points to no particular goals for which a deeper analysis in the initial application would have helped the subsequent staff analysis and public process. Mr. Lund is concerned that the answer refers to the clinic as “beautiful” without pointing out what is beautiful about it. This criticism is frivolous; the application provided a detailed drawing by the architect,<sup>51</sup> and beauty is surely a subjective determination best made by looking at the picture, not by analysis. Mr. Lund also faults the answer for using the term “wellness center,” which he regards as inconsistent with such prior descriptions as “medical clinic.”<sup>52</sup> Since the object of a medical clinic is wellness, it is hard to discern how this could fairly be seen as inconsistent.

*i. Lack of narrative description of existing uses of neighboring lots*

Mr. Lund points out correctly that application instructions 4 tell the applicant to provide “a map showing neighboring lots and a narrative description of the existing uses of all neighboring lots.”<sup>53</sup> Oddly, his concern regarding compliance with this requirement seems to be

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<sup>47</sup> Opening Brief at 4.

<sup>48</sup> R. 46.

<sup>49</sup> Opening Brief at 5.

<sup>50</sup> *Id.*

<sup>51</sup> R. 50.

<sup>52</sup> Opening Brief at 5; R. 46.

<sup>53</sup> R. 44.

that Dr. Raymond did not discuss such things as whether psychiatric services would be provided in the proposed building,<sup>54</sup> which has nothing to do with “existing uses” of “neighboring lots.” Mr. Lund has pointed to no deficiencies in the annotated map at R. 53 in meeting the actual objectives of instruction 4.

*j. Alleged lack of map showing uses of neighboring lots*

Mr. Lund says no map was submitted to identify residential or non-residential uses of neighboring lots.<sup>55</sup> He has overlooked R. 53.

*k. Planner’s failure to insist on “corrective actions”*

Mr. Lund points out that HCC 21.71.020 requires the Planner to determine “if the application is complete,” and if he finds it is not, to advise the applicant of “corrective actions” needed to complete the application. We may surmise that the Planner found the application to be complete because he forwarded it to the Commission. The code requires no more formal determination. As discussed in subsection *a* above, the Planner has some discretion in judging substantial completeness. He is not required to direct the applicant to take corrective actions unless he makes a determination of incompleteness. He did not make that determination here.

*l. Commission’s failure to ask for additional information*

Mr. Lund’s final argument regarding sufficiency of the application form is that the Commission itself was obliged to, but did not, “request additional information.”<sup>56</sup> His basis for this argument is HCC 21.71.040(a), which provides that an application should not be approved “unless it is established that the proposal, with conditions if necessary, satisfies the applicable review criteria.” This, however, is a substantive standard for approval, not a requirement regarding the contents of the application form that initiates the process. Sufficiency of the record as a whole--not just the application form--to support this determination will be addressed in later sections.

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All in all, Dr. Raymond’s application was not a model of exposition, but it was sufficient to define the project so that commenters and the Planning Department could address the issues it posed. Mr. Lund has not demonstrated that accepting it for review was an abuse of discretion.

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<sup>54</sup> Opening Brief at 5. Every one of the “for instance” examples is about future uses not existing uses.

<sup>55</sup> *Id.*

<sup>56</sup> Opening Brief at 6.

2. Challenges to Compliance with Zoning Requirements: “The project at 267 Cityview, as described by the applicant, failed to satisfy the zoning requirements of several chapters in Title 21 of the Homer City Code.”<sup>57</sup>

This theme from the opening summary of Mr. Lund’s brief encompasses Allegations 2, 3, 4, and 6 of his subsequent argument, which identify particular review criteria that Mr. Lund feels have not been met. These will be taken up in sections *a* through *d* below. Mr. Lund has a potentially more far-reaching “big picture” argument, omitted from his brief but articulated in his oral presentation to this tribunal, which is that in pushing the boundaries of the CUP review criteria and increasing once again the number of large clinics in the area, the Raymond project has moved beyond what should be addressed by a site-specific permit and crossed over into something that ought to be handled through a re-zone. Section *e* below addresses that argument.

*a. Compatibility with existing uses of surrounding land*

In general, a CUP may only be approved if the “proposal is compatible with existing uses of surrounding land.”<sup>58</sup> The Commission found that this criterion had been met, noting in particular that the Homer Medical Clinic to the south has a similar footprint.<sup>59</sup> Mr. Lund contends that this criterion has not been met, observing that some immediately adjacent properties are residential; that the size of the proposed structure approaches ten times that of a typical single-family residence, and that the planned 85-space parking lot is incompatible with neighboring lawns, gardens, and such.<sup>60</sup>

Substantial evidence supports the Commission’s finding of compatibility. The clinic would be across the street from a 130,000-square-foot medical center surrounded by parking lots, and would back up to a medical clinic that covers as much land as the proposed structure, coupled with significant parking. The adjacent block to the west has extensive parking lots and yet another large clinic.<sup>61</sup> That the structure is much larger than most homes is not disqualifying in itself. By limiting size to 8,000 square feet without a conditional use permit, the residential office zoning category plainly envisions that some structures will exceed this size if they obtain a CUP.<sup>62</sup> That the building is not to be surrounded by lawns and gardens (although, notably, the

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<sup>57</sup> Opening Brief at 1.

<sup>58</sup> HCC 21.71.030(d).

<sup>59</sup> R. 230.

<sup>60</sup> Opening Brief at 7-8.

<sup>61</sup> See R. 30, 40, 58, 81, 174.

<sup>62</sup> See HCC 21.16.040(e).

plan does include significant green space) is likewise not disqualifying in a zone that is expressly designed to accommodate business use.

*b. Adequacy of public services and assessment of traffic impacts*

CUP criterion (e), Homer City Code 21.71.030(e), requires that public services and facilities are, or will be, adequate to serve the proposed development. Mr. Lund contends that this criterion has not been met, focusing his argument entirely on road access.<sup>63</sup> The Planning Staff and the Commission both agree that road access is within the purview of CUP criterion (e).<sup>64</sup>

Mixed with this argument, Mr. Lund has also quarreled with the finding that the proposed clinic will likely generate fewer than 500 trips per day of vehicle traffic. If he were correct, as a factual matter, that traffic generation would exceed the 500-trip threshold, a different kind of CUP from the one sought here would apparently be required, accompanied by a traffic study.<sup>65</sup>

Let us first deal with this subsidiary argument before returning to the more general problem presented by criterion (e). The Planning Department has devoted considerable thought and analysis to its conclusion that this project would most likely generate just under 500 trips per day.<sup>66</sup> It identified two rules of thumb for estimating traffic volume generated by a new facility, one based on square footage and one based on number of employees. The square footage calculation would suggest additional traffic volume of 500-1,116 trips per day, whereas the per-employee calculation would suggest only 250-493 trips. Mr. Lund contends that the staff simply ignored the higher calculation,<sup>67</sup> but this is not so. Instead, the staff reasoned that with the current traffic on Bartlett Street--serving a 130,000 square-foot hospital and several clinics--at just 2,139 vehicles per day, the square footage calculation is simply not credible, and therefore the staff chose to be guided by the per-employee calculation.<sup>68</sup> Since this judgment by the body with planning expertise is supported by articulated, logical reasoning and substantial evidence, it cannot be disturbed on appeal.

Returning to criterion (e) more generally, however, a vexing problem remains. The problem starts with the fact that Dr. Raymond chose to submit his first application, in July of

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<sup>63</sup> Opening Brief at 8-9.

<sup>64</sup> Response Brief at 5-6; R. 40, 230.

<sup>65</sup> HCC 21.16.060(b); statement of Mr. Abboud at oral argument.

<sup>66</sup> R. 105-106.

<sup>67</sup> Opening Brief at 9.

<sup>68</sup> R. 105-106. If the square footage guideline were valid in this context, traffic on Bartlett ought to be much higher than what is being observed.

2018, flatly answering “no” to the question whether he “would be willing to make” any “[s]treet and road dedications and improvements.”<sup>69</sup> There can be no doubt about his intent, as he again answered “no” to the same question in his resubmitted application on November 19, 2018.<sup>70</sup>

To issue a CUP, the Planning Commission must find that public services—including road access--“are or will be, prior to occupancy, adequate.” The Commission did make a general finding to this effect, but immediately afterward it made another, inconsistent finding, recommending “that the applicant work with the City of Homer to share costs of improving the roads *so that access is adequate*.”<sup>71</sup> If someone needs to do something “so that access is adequate,” access must not be adequate at this time. While the record is sparse on this point, the City Planner bolsters this impression, indicating in his brief that “Citiview and Danview Streets are undeveloped.”<sup>72</sup>

Compounding the problem is the fact that the course of action the Commission feels Dr. Raymond should take is one he seems to have refused to undertake. And yet the Commission imposed no conditions that would require him to do so.<sup>73</sup>

On the existing record, it is impossible to determine what the deficiencies in access are, and what might need to be done to make access “adequate.” This matter will be remanded to the Commission to:

1. Gather additional facts as necessary to address the issue of road access in the context of Homer City Code 21.71.030(e), including, if desired, consultation with the applicant regarding his willingness and ability to secure adequate access;
2. Create a record on the issue of road access in the context of Homer City Code 21.71.030(e);
3. Make new findings regarding the criterion in Homer City Code 21.71.030(e), which shall be based on the augmented record; and
4. Impose any new Conditions related to access that the Commission, in its best judgment, feels are warranted.

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<sup>69</sup> R. 119.

<sup>70</sup> R. 244.

<sup>71</sup> R. 263 (*italics added*).

<sup>72</sup> Response Brief at 5. The Staff Report on CUP 18-50 suggested that adequate public road access is “beyond the purview of the CUP process.” This is difficult to square with both the city code and actual practice--the Commission has made a finding in the area, and the CUP application asks applicants a question regarding road improvements.

<sup>73</sup> R. 264.

*c. Harm to neighborhood character and to health/safety/welfare*

Mr. Lund's next appeal argument contests the Commission's finding number 8, that the project will not "cause undue harmful effect upon desirable neighborhood character." Much of this argument is focused on Mr. Lund's belief that the staff's traffic estimate is wrong and ought to have exceeded 500 vehicle trips per day, triggering a requirement for analysis by a traffic engineer and consideration of a CUP specific to the traffic issue.<sup>74</sup> Because, as discussed above, the Commission and staff acted reasonably and with substantial evidence in assessing the potential traffic at a much lower volume, Mr. Lund's contentions that are premised on overturning the traffic volume determination must be rejected.

Mr. Lund also objects that Dr. Raymond's CUP application was conclusory in its discussion of neighborhood effects, and made assertions without attaching any expert professional opinions. The City Code does not appear to require expert opinions from an applicant. Beyond that, Mr. Lund does not identify any missing information related to neighborhood degradation that the application could usefully provide.

The question of "undue" harm to "desirable neighborhood character" is inherently a subjective and wholistic one. Using information about the project itself supplied by the applicant, the Planning Commission can draw from a much broader array of knowledge and sources to assess what is desirable in the neighborhood and the described project might impact it negatively in "undue" ways. Apart from his claims regarding traffic volume, Mr. Lund has identified no aspect of this subjective judgment for which the Commission lacked adequate information, nor any way in which the Commission's judgment was illogical or self-contradictory. That he simply disagrees with the Commission's application of community values is not a basis to overturn the Commission's finding on appeal.

*d. Consistency with purpose of residential office district*

Mr. Lund's next concern relates to the purpose section of the Residential Office District chapter in the City Code, which includes the sentence: "A primary purpose of the district is to preserve and enhance the residential quality of the area while allowing certain services that typically have low traffic generation, similar scale and similar density."<sup>75</sup> Mr. Lund refers to this as "the" purpose of the district,<sup>76</sup> overlooking the fact that the Code identifies it as "a" purpose.

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<sup>74</sup> Opening Brief at 10-11.

<sup>75</sup> HCC 21.16.010.

<sup>76</sup> Opening Brief at 13.



He contends that “the majority” of information in the record does not support a conclusion that the proposed medical building would fit this purpose.<sup>77</sup>

The main thrust of Mr. Lund’s argument--apart from traffic generation, which has been addressed elsewhere--is a concern about scale. On this appeal point his argument is not based on the “scale and bulk” dimension of CUP review criterion (f), but rather the general reference to “similar scale” in the RO purpose clause quoted above.

Part of Mr. Lund’s concern is a puzzling remark in the September 19, 2018 supplement to the staff report, in which the staff pointed to the “vast” size of the adjacent hospital and said that it “does not see a defensible argument for requiring a reduction in the size and scale of the clinic when there is such a disparity in building size in the immediate neighborhood.”<sup>78</sup> The hospital predates the establishment of this RO zoning district and it is, in any event, a hospital, not a clinic or medical office building. Mr. Lund’s skepticism of the staff’s reasoning is well-founded: surely, the presence of one very large special-purpose structure in a mixed zoning district does not obviate all considerations of scale and bulk in other structures of different types. However, in its decision the Commission did not follow the staff’s approach to this topic. It did consider scale, and its comparison to nearby structures centered on other clinics, not on the hospital.<sup>79</sup>

Mr. Lund also contends that the reference to “similar scale” in the RO purpose clause means that any non-residential structures must “be of a size and character comparable to residences.”<sup>80</sup> In this contention he focuses too much on isolated words in the Code, without their overall context. The purpose clause makes it “a” purpose of the RO district to foster residential quality by allowing services that “typically” have similar scale.<sup>81</sup> It does not say that only structures of a residential scale are permitted, and indeed the allowance in the succeeding Code sections for churches, nursing facilities, and schools makes it clear that some structures will be far larger than homes. Moreover, the words “similar scale” are paired with “similar density,” which implies that larger structures might be more acceptable if the overall density is in keeping with residential use.

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<sup>77</sup>

*Id.*

<sup>78</sup>

R. 99.

<sup>79</sup>

R. 229.

<sup>80</sup>

Opening Brief at 12.

<sup>81</sup>

HCC 21.16.010.

The purpose clause of the RO chapter does not preclude approval of the 20,595-square-foot medical clinic as a single structure on a tract the size of five residential lots. Such approval is within the range of the Commission's discretion, assuming other zoning requirements are met.

*e. CUP Process versus Formal Rezoning*

In his oral argument, Mr. Lund articulated a more global concept of his appeal than the item-by-item approach he had taken in briefing. He suggested that the Planning Commission is engaging in de-facto rezoning-by-CUP. As one CUP after another is approved, the area gradually loses its mixed-use character and becomes a hospital district, but the change occurs without the broader review and public process that would come with formal re-zoning.

This is potentially a serious concern. However, Mr. Lund did not raise this as a formal point on appeal, and he did not brief it. This meant that other parties were not on notice that it would be argued. It therefore cannot be considered here.

3. Challenges to Consistency with Comprehensive Plan: “The project, as described by the applicant, is contrary to the goals and objectives of the Comprehensive Plan; HCC 21.71.[0]30(i), states that: ‘The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.’”<sup>82</sup>

Under Homer City Code 21.71.030(i), a proposal for a CUP must not be “contrary to the applicable land use goals and objectives of the Comprehensive Plan.” Mr. Lund contends that the Commission erred in finding this criterion to be met.<sup>83</sup>

The 2008 Comprehensive Plan, which governs this CUP approval, has six goals and a dozen or two objectives regarding land use. To meet criterion (i), the proposed development cannot be “contrary to” any of these items, although it need not further all of them. Notably, there is no requirement in the Code that the proposed development needs to align with every line of aspirational verbiage in the *text* of the plan, nor that it needs to align with the shorthand summaries of particular zoning chapters that appear in the *text* of the plan.<sup>84</sup> It is the actual goals and objectives that matter, and the potentially relevant goals and objectives are quoted below:

Goal 1: “Guide Homer’s growth with a focus on increasing the supply and diversity of housing, protect community character, encouraging infill, and helping minimize global impacts of public facilities including limiting greenhouse gas submissions.”

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<sup>82</sup> Opening Brief at 1.

<sup>83</sup> Opening Brief at 11; *see also* R. 264.

<sup>84</sup> Hence Mr. Lund’s first boldface quotation in the first bullet under “Facts” on page 11 of his Opening Brief is irrelevant to the review task under HCC 21.71.030(i).

Objective A: "Continue to accommodate and support commercial, residential, and other land uses, consistent with the policies of this plan."

Objective B: "Promote a pattern of growth characterized by a concentrated mixed use center, and a surrounding ring of moderate-to-high density residential and mixed use areas with lower densities in outlying areas."

Goal 3: "Encourage high quality buildings and site design that complements Homer's beautiful natural setting."

Objective B: "Encourage high quality site design and buildings."

Goal 5: "Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options."

Objective C: "Promote infill development in all housing districts . . . ."

Dr. Raymond's proposal probably advances Goal 1, Objective B under Goal 1, and Objective C under Goal 5. As to the others, there is no basis to conclude that the Commission was legally compelled to find that the proposed development would run contrary to those goals and objectives. Whether buildings, site design, and residential neighborhoods are "high quality" are subjective judgments that are entrusted to the Commission.

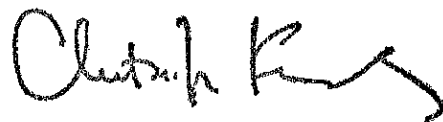
#### **IV. Conclusion**

The decision of the Homer Advisory Planning Commission dated October 19, 2018, which granted Conditional Use Permit 2018-09, is upheld in most respects. For reasons described above, the matter is remanded to the Commission for the following additional proceedings, which are entitled to priority on the Commission's agenda pursuant to HCC 21.93.560(c):

1. Gather additional facts as necessary to address the issue of road access in the context of HCC 21.71.030(e), including, if desired, consultation with the applicant regarding his willingness and ability to secure adequate access;
2. Create a record on the issue of road access in the context of HCC 21.71.030(e);
3. Make new findings regarding the criterion in HCC 21.71.030(e), which shall be based on the augmented record; and
4. Impose any new Conditions related to access that the Commission, in its best judgment, feels are warranted.

DATED: May 3, 2019

By: \_\_\_\_\_



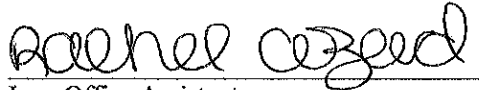
Christopher Kennedy  
Administrative Law Judge

### **NOTICE OF DEFERRED APPEAL RIGHTS**

**This is an order of remand and is not a final disposition of the matter under review. *See* HCC 21.93.550(a). Although some issues have been fully resolved and will not be revisited on remand, if you wish to appeal any aspect of this decision, you may await the final disposition. Upon final disposition, parties must file an administrative appeal to the Alaska Superior Court within 30 days from the date of disposition. *See* AS 29.40.060, HCC 21.91.130 and Alaska Rule of Appellate Procedure 602.**

**Certificate of Service:** I certify that on May 3, 2019, a copy of this document was distributed as follows:

Robin Lund (by email)  
Rick Abboud (by email)  
Paul Raymond (by email)  
Tim Scheffel (by email)  
Melissa Jacobsen, City Clerk (by email)



Law Office Assistant

ZONING INFORMATION:

LEGAL: LOT 2A, BLOCK 6 FAIRVIEW SUBD. FLYUM ADDN.  
(KPB TAX ID. No. 17505612)

ZONING: RO RESIDENTIAL OFFICE DISTRICT

PARKING:

22,000 S.F. GROSS BUILDING AREA / 300 = 74 PARKING STALLS REQUIRED  
81 PARKING STALLS PROVIDED INCLUDING 4 ADA ACCESSIBLE STALLS

SETBACKS REQUIRED:

FRONT YARD: 20 FEET  
SIDE YARD: 1 FEET (2-STORY STRUCTURE)  
REAR YARD: 1 FEET (2-STORY STRUCTURE)

MAXIMUM HEIGHT OF STRUCTURES:

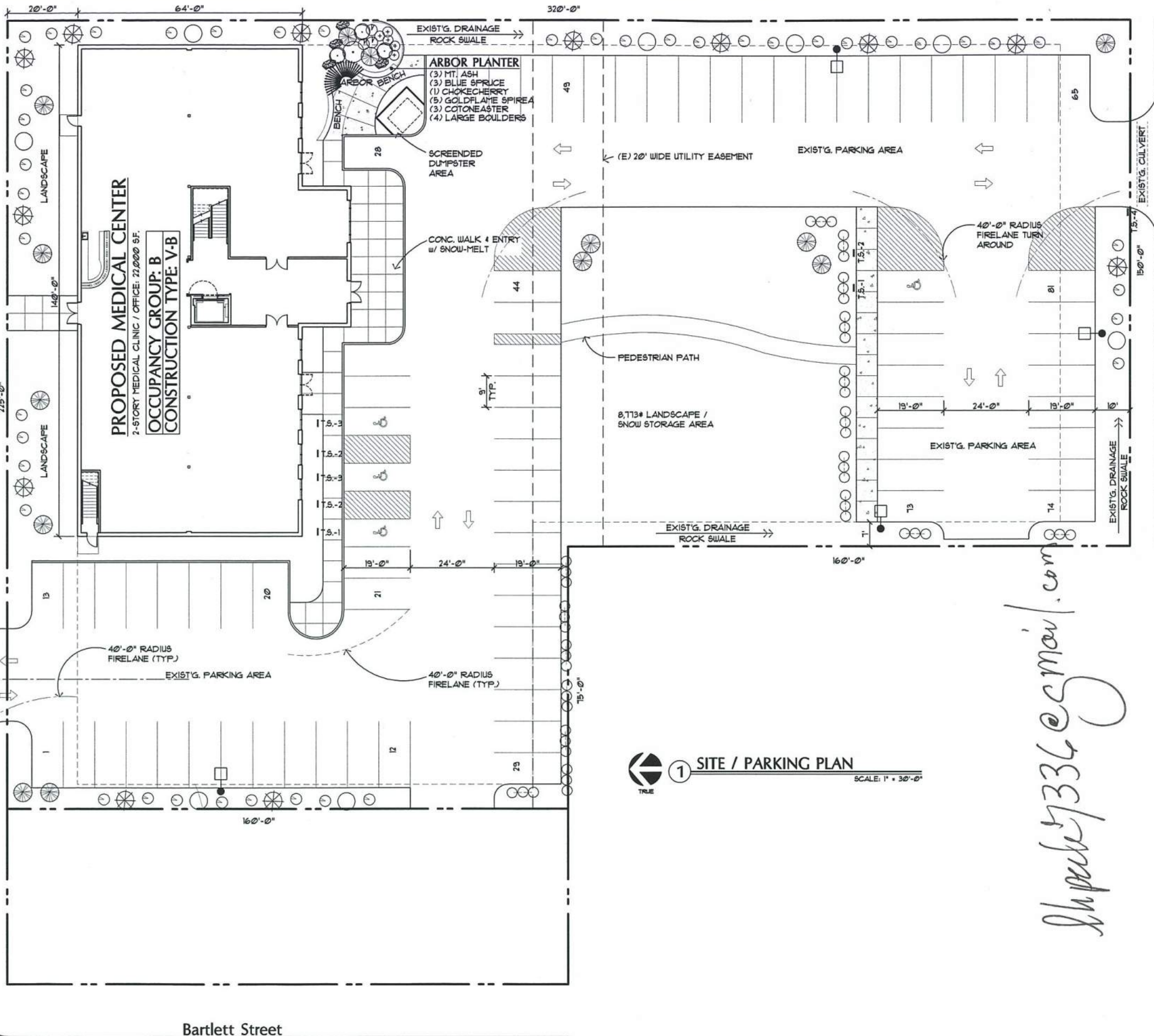
35 FEET ALLOWED  
34 FEET 11 1/2 INCHES PROVIDED

SYMBOLS LEGEND

- EXIST'G. SITE LIGHTING (POLE MOUNTED)
- T.S.-1 VAN ACCESSIBLE H.C. SIGNAGE REF. 5/A12
- T.S.-2 "NO PARKING" SIGN REF. 5/A12 SIM.
- T.S.-3 H.C. SIGNAGE REF. 5/A12
- T.S.-4 "STOP" SIGNAGE (R1-1, 30")
- F.H. FIRE HYDRANT
- H.B. HEADBOLT, REF. ELECTRICAL

SITE MATERIALS LEGEND

- EXISTING GRAVEL PARKING AREA
- CONCRETE (SERVICE AREAS AND SIDEWALK SCORED AS SHOWN ON CIVIL)
- WILDFLOWER MIX -OR- LANDSCAPE STONES (ADEQUATE EROSION PROTECTION)



1 SITE / PARKING PLAN  
SCALE: 1" = 30'-0"

*lupul7336@gmail.com*

**LAWRENCE H. PEEK ARCHITECTS**  
375 Ben Walker Lane Homer, Alaska 99603  
(907) 399-PEEK (7336) fax (907) 235-7366

**RAYMOND MEDICAL CLINIC AND OFFICES**  
LOT 2A, BLOCK 6, FAIRVIEW SUBDIVISION FLYUM ADDITION  
HOMER, ALASKA 99603  
SITE / PARKING PLAN - REVISION 7

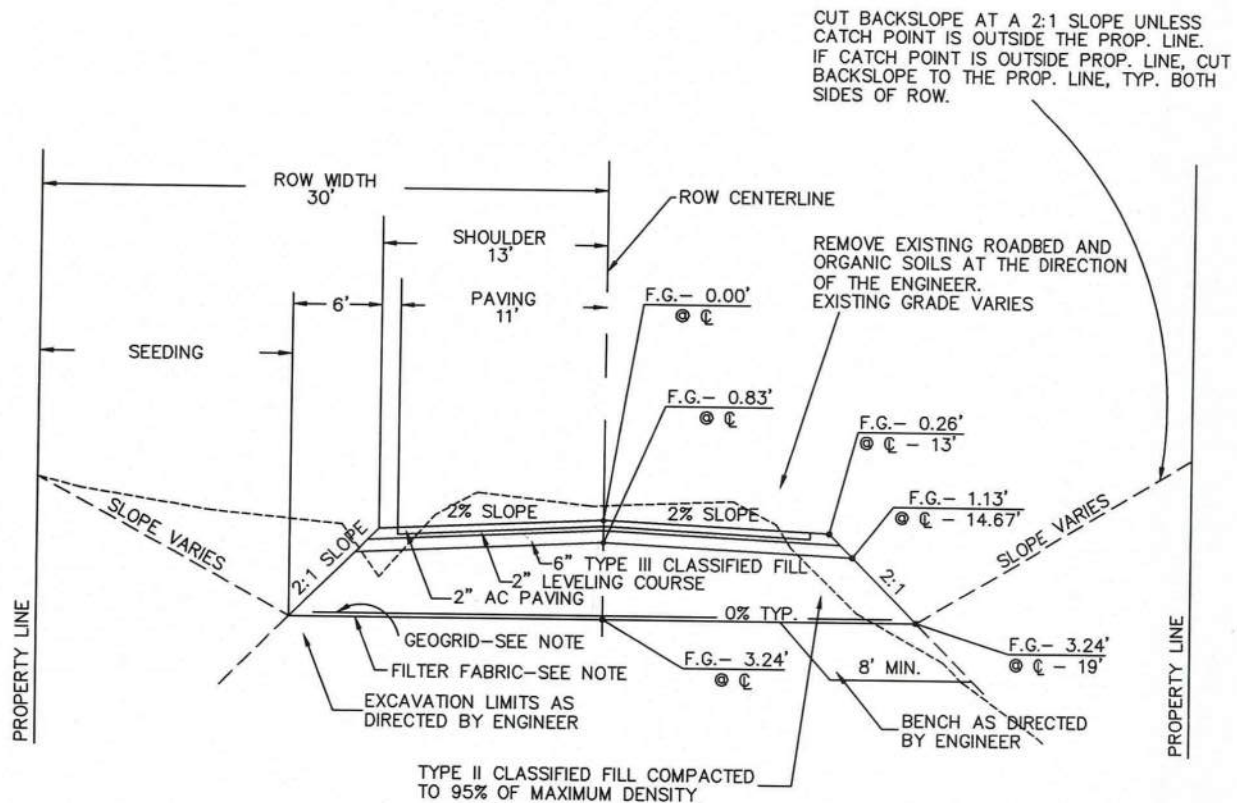
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NOTES:

1. PLACE GEOGRID AND FILTER FABRIC A MINIMUM OF 1' AND A MAXIMUM OF 2' FROM EACH EDGE OF THE EXCAVATION. THE GEOGRID AND FILTER FABRIC COMBINATION MAY BE SUBSTITUTED WITH TENCATE MIRAFI HP570 GEOTEXTILE, OR EQUAL, IF SHOWN ON THE PROJECT PLANS.
2. TYPICAL CROSS SECTION MAY VARY BASED ON R.O.W. WIDTH, GEOTECHNICAL AND DESIGN INFORMATION.



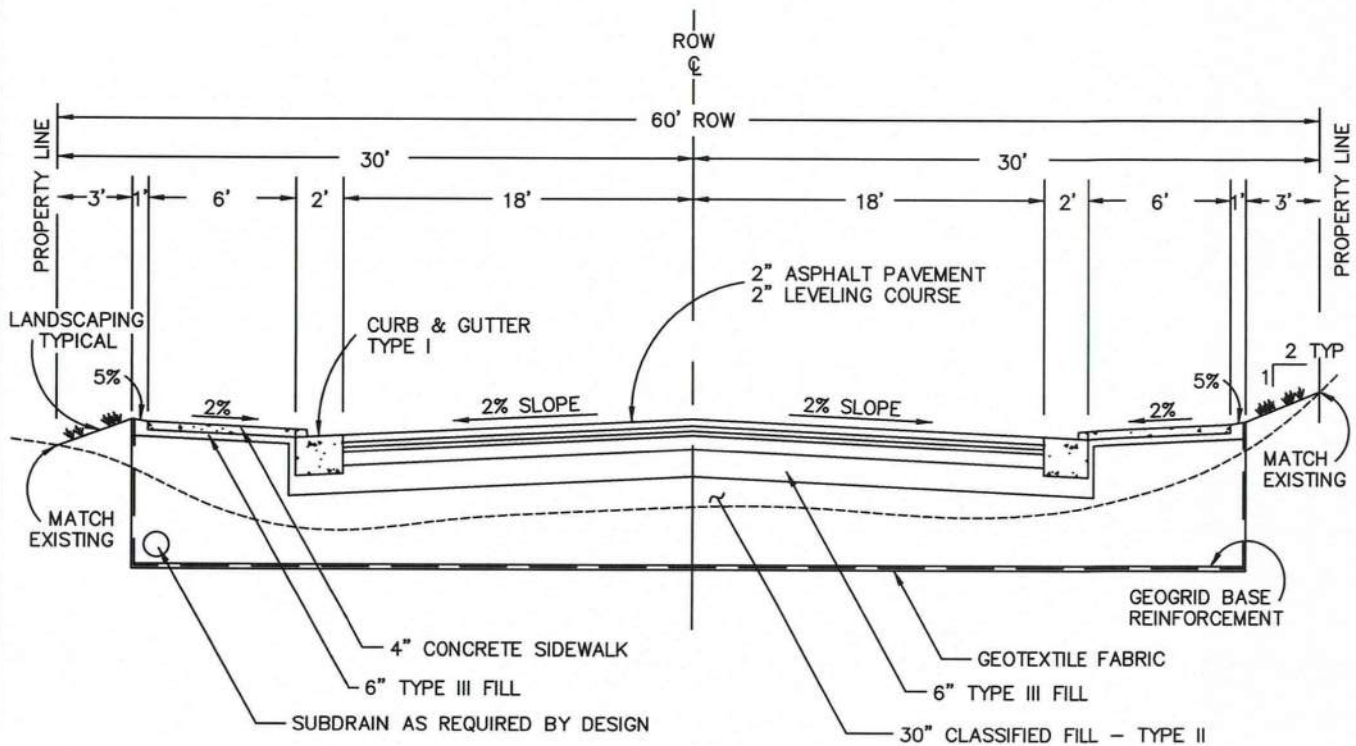
SCALE:  
NTS

REVISED:  
2/2007

# TYPICAL ROADWAY SECTION RURAL

DETAIL #

**200.01**



NOTES:

1. TYP. CROSS SECTION MAY VARY BASED ON ROW WIDTH, GEOTECH & DESIGN INFORMATION.



SCALE:  
NTS

REVISED:  
6/99

**TYPICAL ROADWAY SECTION  
URBAN  
(CURB, GUTTER + SIDEWALK)**

DETAIL #

**200.02**



## **PUBLIC HEARING NOTICE**

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, June 5, 2019 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matter:

**Remand of Conditional Use Permit (CUP) 18-09, a proposed 21,000 square foot medical clinic at 267 Cityview Avenue. A hearing officer has remanded this CUP to the Planning Commission, under HCC 21.93.560, for supplemental proceedings to develop an adequate record and prepare better findings, limited to the adequacy of public services and facilities. The subject lot is Lot 2A, Block 6, Fairview Subdivision Flyum Addition, SE ¼ Sec. 18, T6S, R13W, S.M., HM 2005061.**

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

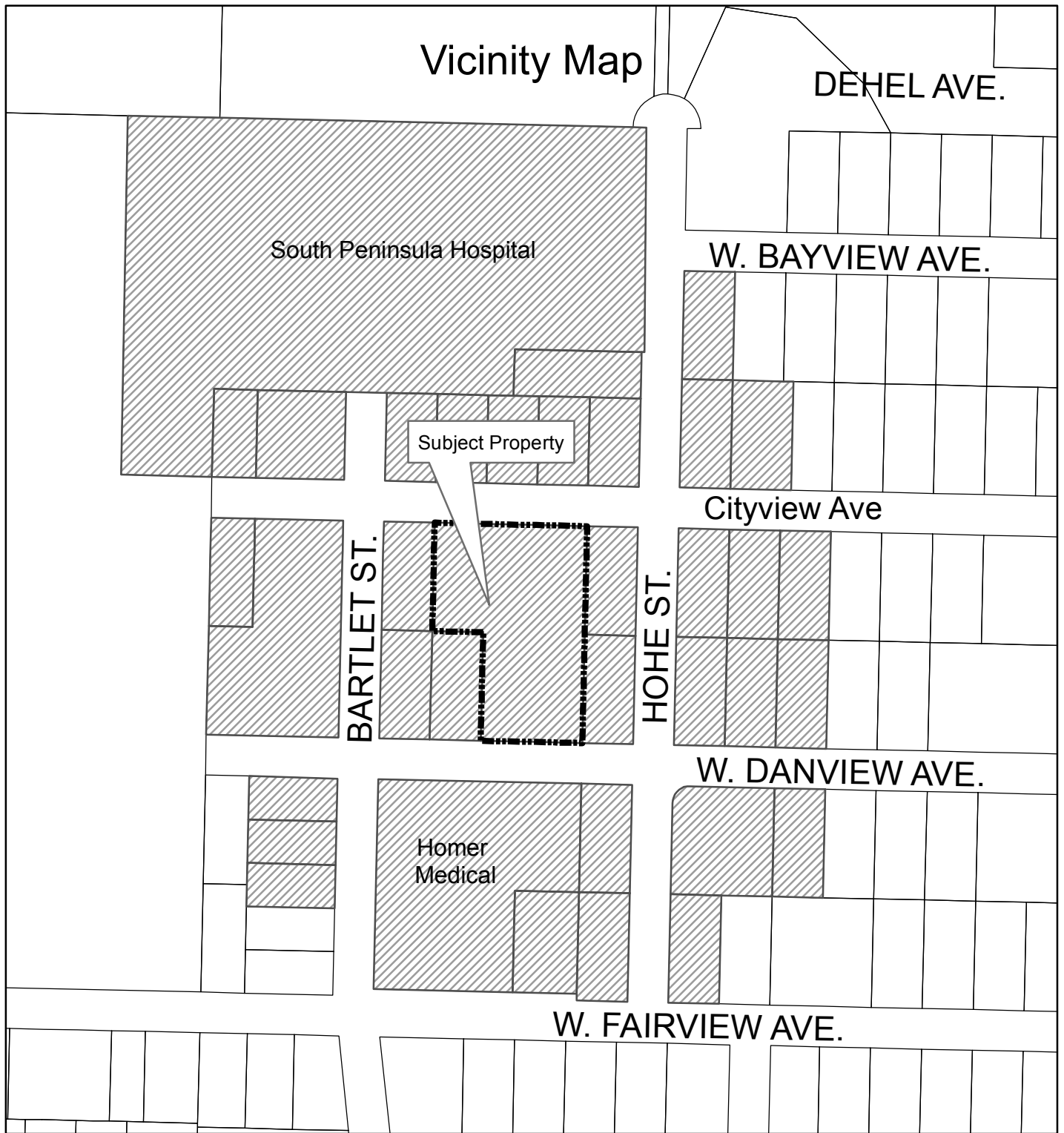
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown at the Planning and Zoning Office, 235-3106.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.**

.....

**VICINITY MAP ON REVERSE**

# Vicinity Map

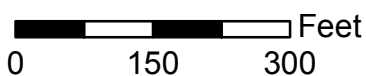


City of Homer  
Planning and Zoning Department

May 20, 2019

## Remand of CUP 18-09

Marked Lots are w/in 300 feet  
and property owners notified.



*Disclaimer:*  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.

# ZONING INFORMATION:

LEGAL: LOT 2A, BLOCK 6, FAIRVIEW SUBDIVISION FLYM ADDN. (KPB TAX ID. NO. 17505612)

ZONING: RO RESIDENTIAL OFFICE DISTRICT

## PARKING:

10595 SQUARE FEET GROSS BUILDING AREA / 300 + 69 PARKING STALLS REQUIRED

69 PARKING STALLS PROVIDED INCLUDING 4 ADA ACCESSIBLE STALLS

## SETBACKS REQUIRED:

FRONT YARD: 10 FEET  
SIDE YARD: 1 FEET (2-STORY STRUCTURE)  
REAR YARD: 1 FEET (2-STORY STRUCTURE)

## MAXIMUM HEIGHT OF STRUCTURES:

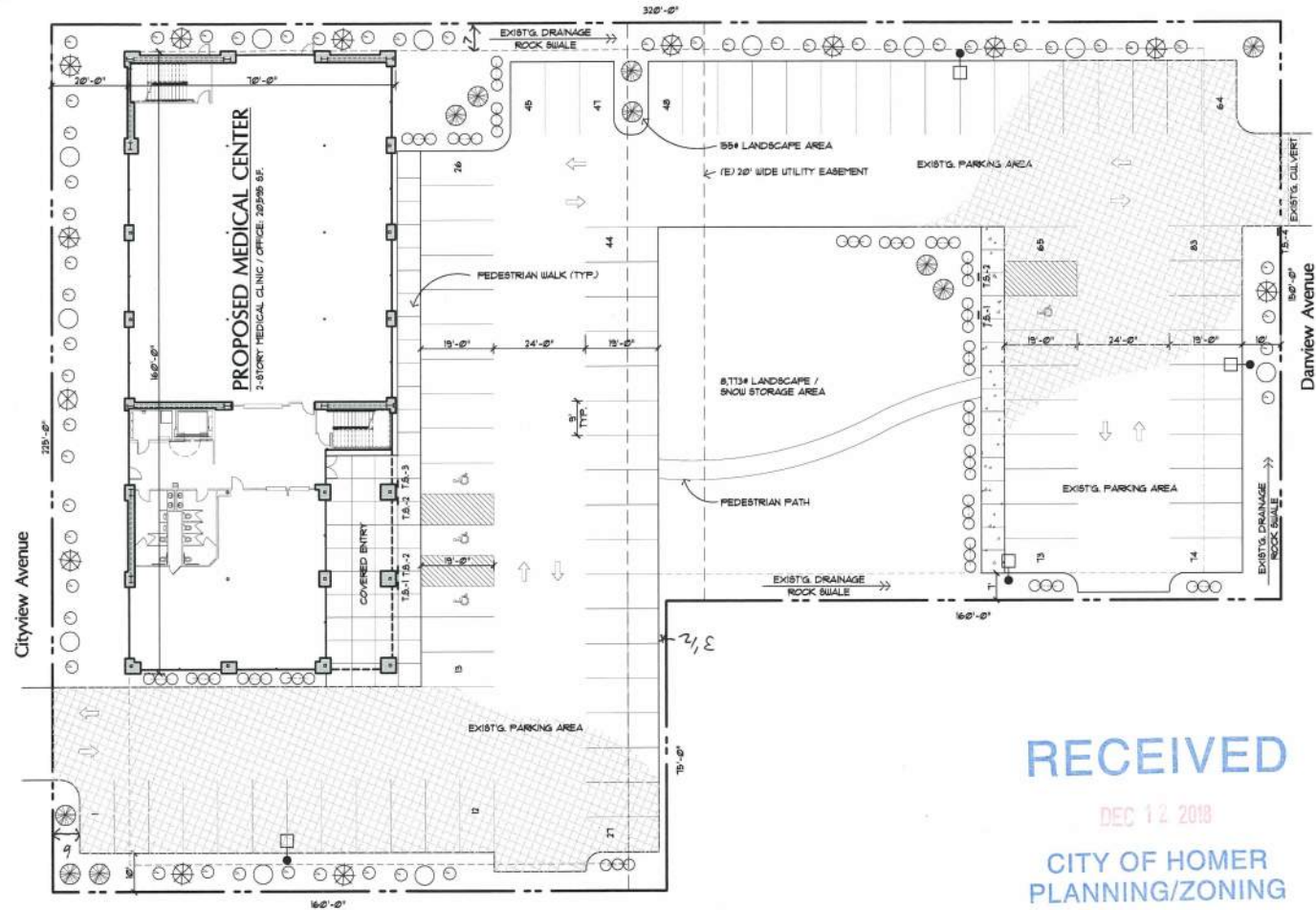
35 FEET ALLOWED  
34 FEET 6 INCHES PROVIDED

## SYMBOLS LEGEND

- EXIST'G. SITE LIGHTING (POLE MOUNTED)
- T.S.-1 VAN ACCESSIBLE H.C. SIGNAGE REF. 5/A12
- T.S.-2 'NO PARKING' SIGN REF. 5/A12 8M.
- T.S.-3 H.C. SIGNAGE REF. 5/A12
- T.S.-4 'STOP' SIGNAGE (R1-1, 30")
- P.H. FIRE HYDRANT
- H.B. HEADBOLT, REF. ELECTRICAL

## SITE MATERIALS LEGEND

- EXISTING GRAVEL PARKING AREA
- CONCRETE (SERVICE AREAS AND SIDEWALK SCORED AS SHOWN ON CIVIL)
- WILDFLOWER MIX -OR- LANDSCAPE STONES (ADEQUATE EROSION PROTECTION)



1 SITE / PARKING PLAN

SCALE: 1" = 30'-0"

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DEC 12 2018

CITY OF HOMER  
PLANNING/ZONING

RAYMOND MEDICAL CLINIC AND OFFICES  
LOT 2A, BLOCK 6, FAIRVIEW SUBDIVISION FLYM ADDITION  
HOMER, ALASKA 99603  
SITE / PARKING PLAN - REVISION 1 (Pedestrian Ice/Access Safety)

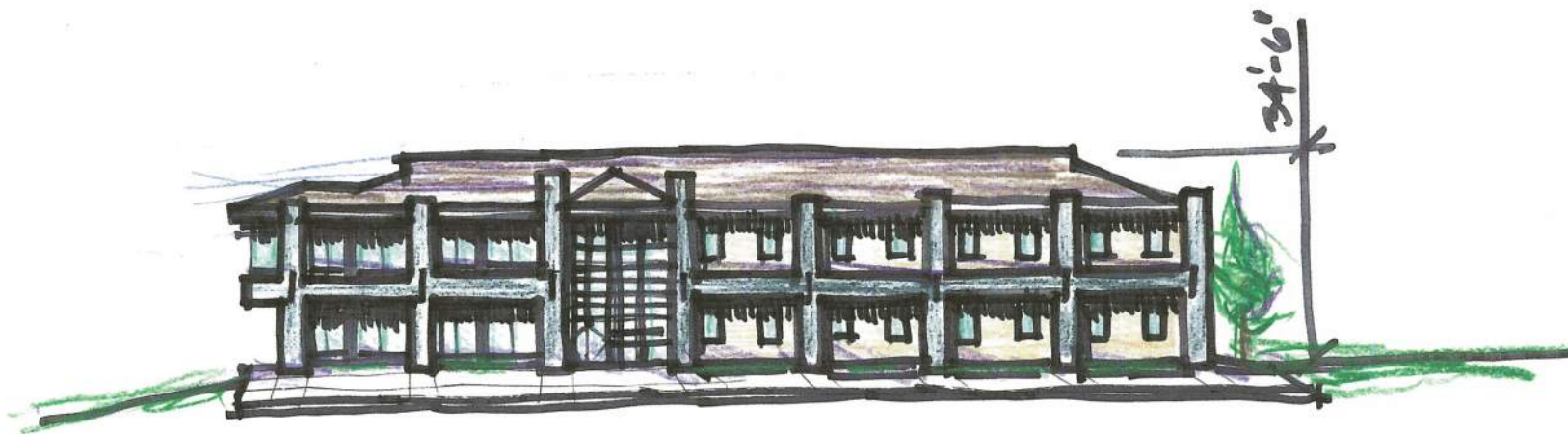
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Project: 18012



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HOMER, ALASKA 99603  
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① NORTH ELEVATION

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AUG 07 2018

CITY OF HOMER  
PLANNING/ZONING

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**LAWRENCE H. PECK ARCHITECTS, INC.**  
2700 West 10th Avenue, Suite 1000  
Anchorage, Alaska 99503  
Phone: 283-7777 Fax: 283-7778

**RAYMOND MEDICAL CLINIC AND OFFICES**  
LOT 2A, BLOCK 6, FAIRVIEW SUBDIVISION REYUM ADDITION  
HOMER, ALASKA 99603  
12/24/17 JLE/14/17

Date: 7/29/18  
Drawn:  
Check:  
Project: 18012

SHEET:  
OF 100



May 31<sup>st</sup>, 2019

Rick Abboud, AICP  
City Planner  
City of Homer, Alaska  
491 East Pioneer Avenue  
Homer, AK 99603

**RE: REMAND of CUP 18-09 (previously approved September 19, 2018)**

Mr Abboud;

Access to proposed site (267 Cityview Avenue) will meet or exceed 2009 International Fire Code (I.F.C.) Section 503 as adopted by the State of Alaska.

Best,

Lawrence H. Peek  
Architect





# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report PL 19-50

TO: Homer Advisory Planning Commission  
FROM: Rick Abboud, City Planner  
DATE: June 5, 2019  
SUBJECT: Medical Clinics in the Central Business District (CBD)

---

#### Introduction

Prior to a technical code update in 2008, a medical clinic that did not dispense medication or sell merchandise would be permitted as a 'professional office' in the CBD. The change in the definition of 'professional office' in the 2008 technical code update produced an unintended consequence of excluding medical clinics in the CBD and only allowing the use as a conditional use in the Residential Office District (RO).

#### Analysis

The RO district was never intended to be an exclusive location of Medical clinics. Medical Clinics have a long history of providing services in the CBD. The Central Business district also supports retail sales and pharmacies. Medical Clinics, whether dispensing medicine or selling general merchandise, are an appropriate use in the CBD.

#### Staff Recommendation

Planning commission move to recommend the addition of 'Medical clinic' as a permitted use in the CBD to the Homer City Council.

#### Attachments

Draft Ordinance





**CITY OF HOMER  
HOMER, ALASKA**

Planning

**ORDINANCE 19-xx**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA  
AMENDING HOMER CITY CODE 21.18.020, CENTRAL BUSINESS  
ZONING DISTRICT, ADDING MEDICAL CLINICS.

WHEREAS, the 2018 Homer Comprehensive Plan promotes a pattern of growth characterized by a concentrated mixed-use center; and

WHEREAS, the Central Business District is a centrally located area for the provision of professional services; and

NOW THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.18.020 is hereby amended to read as follows:

21.18.020 Permitted uses and structures.

The following uses are permitted outright in the Central Business District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

a. Retail business where the principal activity is the sale of merchandise and incidental services in an enclosed building;

b. Personal service establishments;

c. Professional offices and general business offices;

d. Restaurants, clubs and drinking establishments that provide food or drink for consumption on the premises;

e. Parking lots and parking garages, in accordance with Chapter 21.55 HCC;

f. Hotels and motels;

g. Mortuaries;

- h. Single-family, duplex, and multiple-family dwellings, including townhouses, but not including mobile homes;
- i. Floatplane tie-up facilities and air charter services;
- j. Parks;
- k. Retail and wholesale sales of building supplies and materials, only if such use, including storage of materials, is wholly contained within one or more enclosed buildings;
- l. Customary accessory uses to any of the permitted uses listed in the CBD district; provided, that a separate permit shall not be issued for the construction of any detached accessory building prior to that of the main building;
- m. Mobile homes, provided they conform to the requirements set forth in HCC 21.54.100;
- n. Home occupations, provided they conform to the requirements of HCC 21.51.010;
- o. Ministorage;
- p. Apartment units located in buildings primarily devoted to business or commercial uses;
- q. Religious, cultural, and fraternal assembly;
- r. Entertainment establishments;
- s. Public, private and commercial schools;
- t. Museums and libraries;
- u. Studios;
- v. Plumbing, heating and appliance service shops, only if such use, including the storage of materials, is wholly within an enclosed building;
- w. Publishing, printing and bookbinding;
- x. Recreational vehicle parks only if located south of the Sterling Highway (Homer Bypass) from Lake Street west to the boundary of the Central Business District abutting Webber Subdivision, and from Heath Street to the west side of Lakeside Village Subdivision, provided they shall conform to the standards in HCC 21.54.200 and following sections;

y. Taxi operation limited to a dispatch office and fleet parking of no more than five vehicles; maintenance of taxis must be conducted within an enclosed structure, and requires prior approval by the City Planner of a site, access and parking plan;

z. Mobile food services;

aa. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

bb. Day care homes and facilities; provided, however, that outdoor play areas must be fenced;

cc. Rooming house, bed and breakfast and hostel;

dd. Auto repair and auto and trailer sales or rental areas, but only on Main Street from Pioneer Avenue to the Sterling Highway, excluding lots with frontage on Pioneer Avenue or the Sterling Highway, subject to the following additional requirements: Vehicles awaiting repair or service, inoperable vehicles, vehicles for parts, and vehicles awaiting customer pickup shall be parked indoors or inside a fenced enclosure so as to be concealed from view, on all sides. The fence shall be a minimum height of eight feet and constructed to prohibit visibility of anything inside of the enclosure. The portion of any vehicle exceeding eight feet in height may be visible outside of the fence. Vehicle parts (usable or unusable), vehicle service supplies, and any other debris created in the repair or servicing of vehicles shall also be stored indoors or inside the fenced enclosure out of view of the public;

ee. Farmers' market;

ff. Dormitory;

gg. Financial institutions;

hh. As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts;

ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot;

jj. Marijuana cultivation facilities, manufacturing facilities, retail facilities, and testing facilities as defined by State

**kk. Medical clinics.**

Section 2: This ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS \_\_ DAY OF \_\_\_\_\_,  
2019.

CITY OF HOMER

\_\_\_\_\_  
KEN CASTNER, MAYOR

ATTEST:

\_\_\_\_\_  
MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

\_\_\_\_\_  
Mary K. Koester, City Manager

\_\_\_\_\_  
Holly Wells, City Attorney

Date:\_\_\_\_\_

Date:\_\_\_\_\_



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report 19-51

TO: Homer Advisory Planning Commission  
FROM: Julie Engebretsen, Deputy City Planner  
THROUGH: Rick Abboud, City Planner  
DATE: June 5<sup>th</sup>, 2019  
SUBJECT: A. A. Mattox 2019 Preliminary Plat

**Requested Action:** Approval of a preliminary Plat to subdivide one large lot into four smaller lots

#### General Information:

Applicants:	William Briske & Kathleen Budd 9991 E Puffin Dr Palmer, AK 99645	Farmer Surveying 9131 E Frontage Rd Homer, AK 99603
Location:	Pennock St, north of Lakeside Drive	
Parcel ID:	17730289	
Size of Existing Lot(s):	2 acres	
Size of Proposed Lots(s):	20,678 to 23,232 square feet or about 0.5 acres each	
Zoning Designation:	Urban Residential District	
Existing Land Use:	Single family home	
Surrounding Land Use:	North: Vacant South: Residential East: Residential/vacant West: Residential/vacant	
Comprehensive Plan:	Goal 1 Objective A: Promote a pattern of growth characterized by a concentrated mixed use center, and a surrounding ring of moderate-to-high density residential and mixed-use areas with lower densities in outlying areas.	
Wetland Status:	The 2005 wetland mapping shows areas of discharge slope wetlands	
Flood Plain Status:	Zone D, flood hazards undetermined.	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City sewer is available. The existing home has an easement for water service from Hillfair Court. City water to serve the other lots is in the area but would need to be extended to these lots for	

	service. Another subdivision in the area may provide a partial extension.
Public Notice:	Notice was sent to 87 property owners of 82 parcels as shown on the KPB tax assessor rolls.

**Analysis:** This subdivision is within the Urban Residential District. This plat subdivides a two acre lot into four smaller 0.5 acre lots.

**Homer City Code 22.10.051 Easements and rights-of-way**

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

**Staff Response:** The plat does not meet this requirements. Plat note 3 grants a 10 foot easement; code requires 15 feet.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

**Staff Response:** The plat meets these requirements.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

**Staff Response:** The plat does not meet these requirements. Dedicate ten feet of right of way. See Public Work's comments at the end of this report.

**Preliminary Approval, per KPB code 20.25.070 Form and contents required.** The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
  - 1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
  - 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
  - 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

**Staff Response:** The plat meets these requirements.

- B. North point;

**Staff Response:** The plat meets these requirements.

- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

**Staff Response:** The plat meets these requirements.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams;

**Staff Response:** The plat meets these requirements.

- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitation of reservations that could affect the subdivision;

**Staff Response:** The plat meets these requirements.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision; [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

**Staff Response:** The plat meets these requirements.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

**Staff Response:** The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

**Staff Response:** The plat does not meet these requirements. Wetland areas are not shown.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

**Staff Response:** The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

**Staff Response:** The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

**Staff Response:** The plat meets these requirements.

- L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets;

**Staff Response:** The plat meets these requirements.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

**Staff Response:** The plat meets these requirements.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

**Staff Response:** The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

**Staff Response:** The plat meets these requirements.

**Public Works Comments:**

In accordance with Homer City Code 11.04.040 The City shall require new subdivisions to dedicate right-of-way according to widths specified in HCC 11.04.060.

1. Dedicate the 9.85 feet of right-of-way along lots 25A through 25D.
2. Dedicate the 15' utility easement fronting the right-of-way.
3. The property owner will need to work with Public Works on the required water main extension and provide water and sewer services to the lots.

**Fire Department Comments:** No comments provided.

**Staff Recommendation:**

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Include a plat note stating "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits."
2. Dedicate the 9.85 feet of right-of-way along lots 25A through 25D.
3. Dedicate the 15' utility easement fronting the right-of-way.
4. The property owner will need to work with Public Works on the required water main extension and provide water and sewer services to the lots.

**Attachments:**

1. Preliminary Plat
2. ~~Surveyor's Letter~~
3. Public Notice
4. Aerial Map



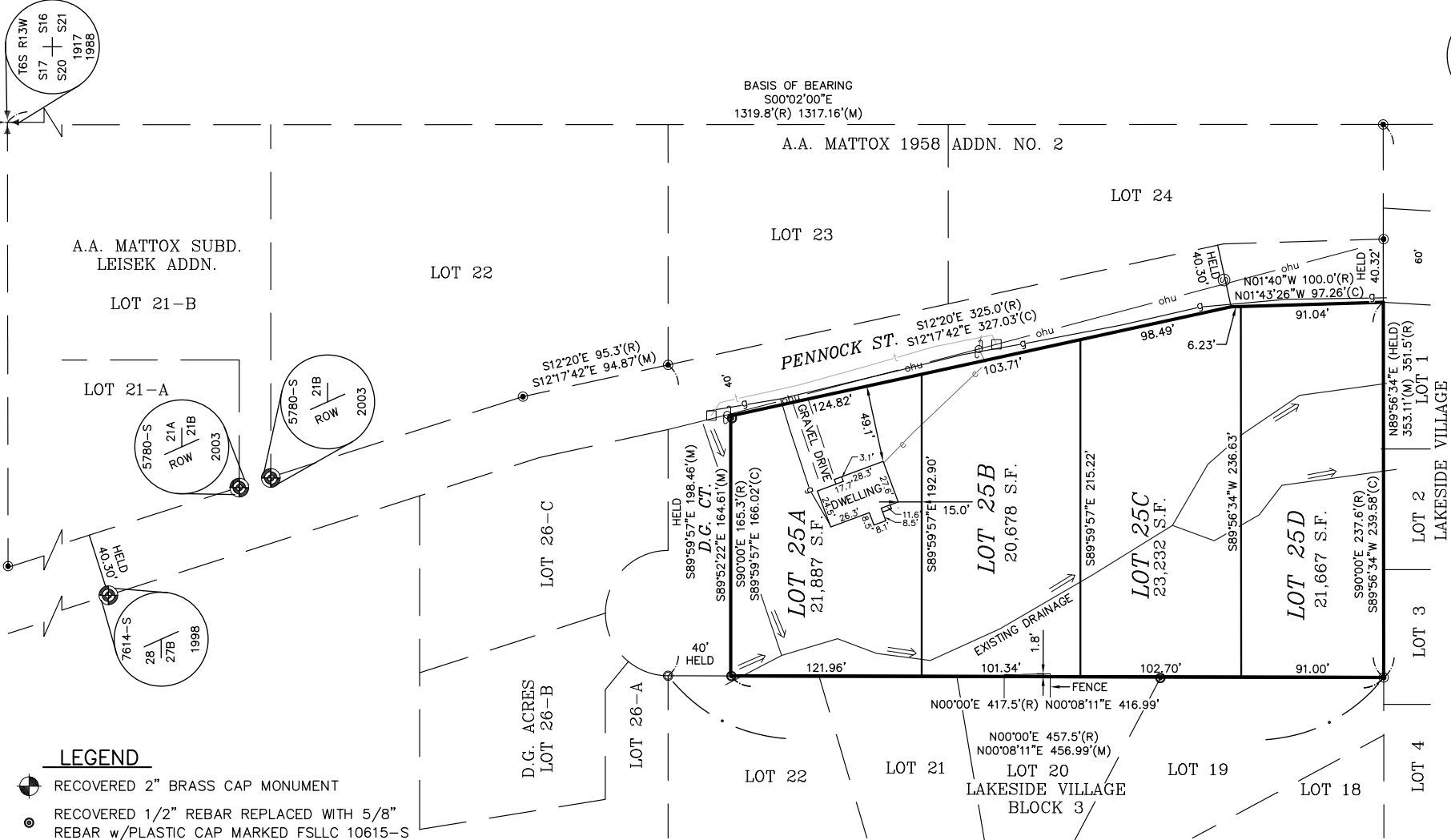
WASTEWATER DISPOSAL

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

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION KPB 20.10.040.

BY: \_\_\_\_\_ DATE \_\_\_\_\_  
BOROUGH OFFICIAL



- LEGEND**
- RECOVERED 2" BRASS CAP MONUMENT
  - RECOVERED 1/2" REBAR REPLACED WITH 5/8" REBAR w/PLASTIC CAP MARKED FSLLC 10615-S
  - RECOVERED 2" ALUMINUM CAP MONUMENT
  - RECOVERED 3 1/4" BRASS MONUMENT
  - RECOVERED 5/8" REBAR
  - RECOVERED 1/2" IRON PIPE
  - SET 5/8"x24" REBAR w/PLASTIC CAP MARKED FSLLC 10615-S
  - SANITARY SEWER MANHOLE
  - UTILITY POLE
  - UTILITY PEDESTAL
  - (C) CALCULATED DATA
  - (M) MEASURED DATA
  - (R) RECORD DATA DERIVED FROM PLAT No. 58-3995
  - DRAINAGE ARROW
  - UNDERGROUND TELECOMMUNICATION
  - UNDERGROUND ELECTRIC
  - UNDERGROUND NATURAL GAS

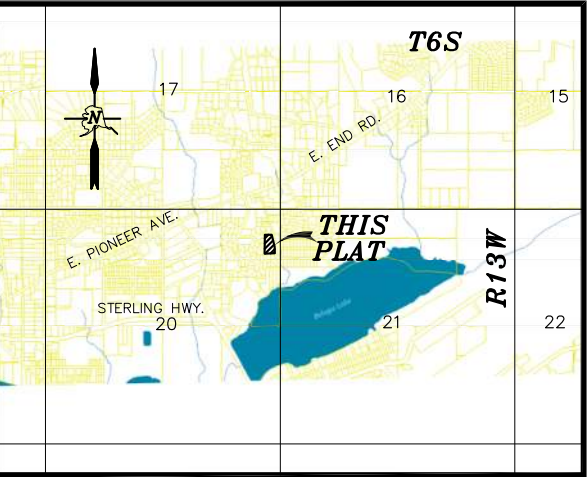
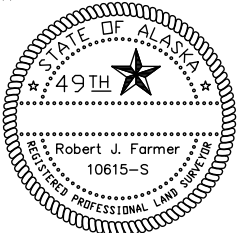
NOTES

- THERE MAY BE FEDERAL, STATE AND LOCAL REQUIREMENTS GOVERNING LAND USE. THE INDIVIDUAL PARCEL OWNER SHALL OBTAIN A DETERMINATION WHETHER THESE REQUIREMENTS APPLY TO THE DEVELOPMENT OF PARCELS SHOWN ON THIS PLAT.
- THIS SUBDIVISION WILL BE SERVED BY CITY WATER AND SEWER.
- THE FRONT 10' OF THE BUILDING SETBACK IS A UTILITY EASEMENT.
- BUILDING SETBACK - A SETBACK OF \_\_\_\_\_ FEET IS REQUIRED FROM ALL STREET RIGHT-OF-WAYS.
- THE LOTS IN THIS SUBDIVISION ARE SUBJECT TO ZONING RESTRICTIONS OF THE CITY OF HOMER.
- HOMER ELECTRIC ASSOCIATION GENERAL EASEMENT RECORDED 11/2/1959 IN BOOK 18, AT PAGE 119, H.R.D.
- ALL LOTS WITHIN THIS SUBDIVISION ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS. REFER TO THE HOMER CITY CODE FOR ALL CURRENT SETBACK AND SITE DEVELOPMENT RESTRICTIONS. OWNERS SHOULD CHECK WITH THE CITY OF HOMER PLANNING DEPARTMENT PRIOR TO DEVELOPMENT ACTIVITIES.
- HOMER SPECIAL NATURAL GAS ASSESSMENT RESOLUTION RECORDED MAY 12, 2015 PER SERIAL NO. 2015-001337-0 H.R.D.

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF ALASKA AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE MONUMENTS SHOWN ON THE PLAT ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONAL AND OTHER DETAILS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATE \_\_\_\_\_



VICINITY MAP SCALE: 1" = 1/2 MILE

CERTIFICATE OF OWNERSHIP

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED IN THIS PLAN AND THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION BY OUR FREE CONSENT.

WILLIAM K. BRISKE DATE \_\_\_\_\_  
9991 E. PUFFIN DR  
PALMER, AK. 99645

KATHLEEN A BUDD DATE \_\_\_\_\_  
9991 E. PUFFIN DR  
PALMER, AK. 99645

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ FOR \_\_\_\_\_

NOTARY FOR THE STATE OF ALASKA  
MY COMMISSION EXPIRES \_\_\_\_\_

HOMER RECORDING DISTRICT KPB FILE NO. 2019-\_\_\_\_\_

A PLAT OF  
**A.A. MATTOX 2019**  
A REPLAT OF  
LOT 25 A.A. MATTOX 1958 ADDITION No. 2  
PLAT NO. 58-3995 H.R.D.  
LOCATED WITHIN THE NE1/4 NE1/4, SECTION 20, T6S, R13W, S.M., THIRD JUDICIAL DISTRICT, STATE OF ALASKA  
WITHIN THE CITY OF HOMER  
CONTAINING 2.008± ACRES

SURVEYED BY: FARMER SURVEYING, LLC  
MAILING ADDRESS: 6183 N. STEEN RD., WASILLA, ALASKA 99654  
OFFICE: 9131 E. FRONTAGE RD., PALMER, ALASKA 99645  
PHONE: (907)745-0222 EMAIL: bob@farmersurveying.com

**FARMER SURVEYING**  
9131 E. FRONTAGE RD.  
PALMER, ALASKA 99645  
PH: (907)745-0222  
bob@farmersurveying.com www.farmersurveying.com

W.O. 1900040	DATE: MAY 2019
DRAWN BY: KA	SCALE: 1" = 60'
FILE: 1900040PL	SHEET 1 OF 1



## NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

### **A. A. Mattox 2019**

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, June 05, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown in the Planning and Zoning Office, 235-3106.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.**

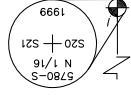
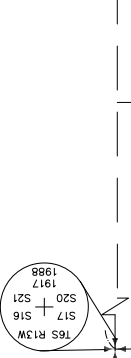
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**VICINITY MAP ON REVERSE**

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

**PLAT APPROVAL**  
THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION KPB 20.10.040.

BY: \_\_\_\_\_ DATE \_\_\_\_\_  
BOROUGH OFFICIAL



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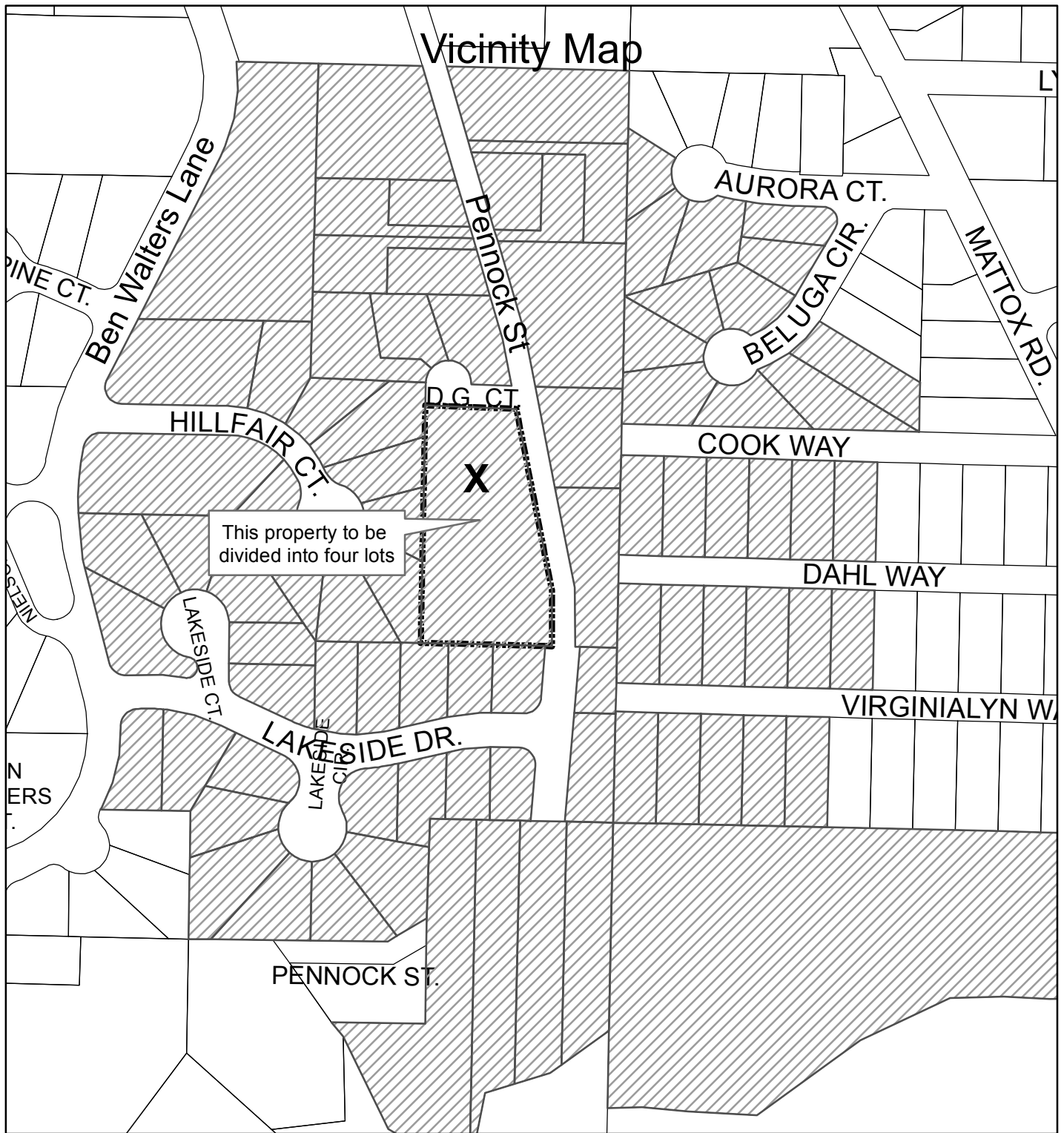
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# Vicinity Map

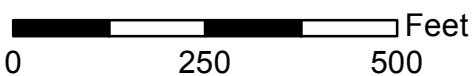


City of Homer  
Planning and Zoning Department

May 20, 2019

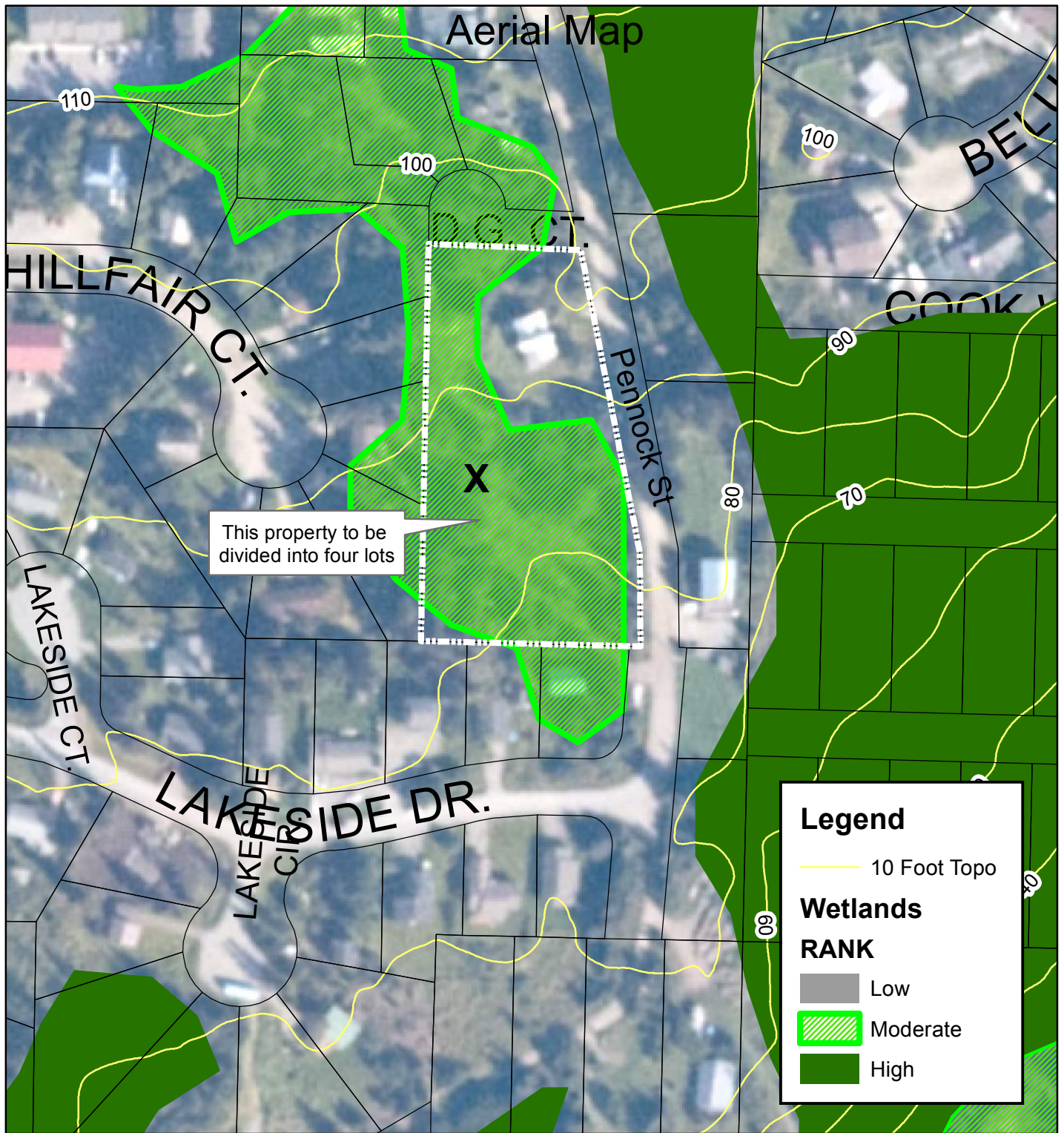
## AA Mattox 2019 Subdivision Preliminary Plat

Marked Lots are w/in 500 feet  
and property owners notified.



*Disclaimer:*  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.





City of Homer  
Planning and Zoning Department

May 20, 2019

## AA Mattox 2019 Subdivision Preliminary Plat

Aerial Map

0 150 300 Feet



*Disclaimer:*  
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# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)  
(p) 907-235-3106  
(f) 907-235-3118

### Staff Report 18-52

TO: Homer Advisory Planning Commission  
FROM: Julie Engebretsen, Deputy City Planner  
THROUGH: Rick Abboud, City Planner  
DATE: June 5<sup>th</sup>, 2019  
SUBJECT: Northern Enterprises No. 3 Preliminary Plat

**Requested Action:** Approval of a preliminary plat to change the lot lines on three upland properties, and create a new Alaska Tidelands Survey (ATS). The lot line changes are proposed as part of a project to build a larger boat haul out facility serving the boat yard.

### General Information:

Applicants:	Kenneth and Roseleen Moore Northern Enterprises Boat Yard 5140 Kachemak Dr Homer, AK 99603	Ability Surveys, Gary Nelson, PLS 152 Dehel Ave Homer, AK 99603
Location:	Kachemak Drive, at the boat lift	
Parcel ID:	17420120, 17420119, 17420112, 17420114-17	
Size of Existing Lot(s):	Upland lots: 1.1 to 1.65 acres, ATS lots : 0.24 to .4 acres	
Size of Proposed Lots(s):	Upland lots: 1.188 to 1.803 acres. New ATS lot 0.698 acres	
Zoning Designation:	East End Mixed Use District	
Existing Land Use:	Residential/commercial boat yard operations	
Surrounding Land Use:	North: Commercial/residential South: Residential/Kachemak Bay East: Kachemak Bay West: Commercial/Boat Yard/Vacant	
Comprehensive Plan:	Chapter 7 Goal3 Objective B: Promote the marine trades including mariculture and shipping industries. Implementation: "...support infrastructure for marine related industries."	
Wetland Status:	The 2005 wetland mapping shows no wetland areas.	
Flood Plain Status:	Zone X, and VE 24	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	

Utilities:	City water and sewer are available
Public Notice:	Notice was sent to 18 property owners of 28 parcels as shown on the KPB tax assessor rolls.

**Analysis:** This subdivision is within the East End Mixed Use District. The upland portion of this plat shifts the lot lines of three parcels along Kachemak Drive. The ATS portion, or the tidelands, would have all the lot lines vacated, and a new ATS survey would be created.

**Homer City Code 22.10.051 Easements and rights-of-way**

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

**Staff Response:** The plat meets these requirements.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

**Staff Response:** The plat meets these requirements.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

**Staff Response:** The plat meets these requirements.

**Preliminary Approval, per KPB code 20.25.070 Form and contents required.** The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
  - 1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
  - 2. Legal description, location, date, and total area in acres of the proposed subdivision; and
  - 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

**Staff Response:** The plat meets these requirements.

- B. North point;

**Staff Response:** The plat meets these requirements.



- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;

**Staff Response:** The plat meets these requirements.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams;

**Staff Response:** The plat meets these requirements.

- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions or limitation of reservations that could affect the subdivision;

**Staff Response:** The plat meets these requirements.

- F. The names and widths of public streets and alleys and easements, existing and proposed, within the subdivision; [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

**Staff Response:** The plat meets these requirements.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

**Staff Response:** The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

**Staff Response:** The plat meets these requirements.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

**Staff Response:** The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

**Staff Response:** The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

**Staff Response:** The plat meets these requirements.

- L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets;

**Staff Response:** The plat meets these requirements.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

**Staff Response:** The plat meets these requirements.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

**Staff Response:** The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

**Staff Response:** The plat meets these requirements.

**Public Works Comments:** No comments on the proposed plat.

**Fire Department Comments:** No comments provided.

**Staff Recommendation:**

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Add a plat note about the flood plain: "Kachemak Bay is subject to a 1-percent-annual-chance floodplain as identified by the FEMA Flood Insurance Study dated October 20, 2016, 02122CV001B. Property owner should contact the City of Homer prior to any development activity."

**Attachments:**

1. Surveyor's Letter
2. Preliminary Plat
3. Public Notice
4. Aerial Map
5. Flood Map

# ABILITY SURVEYS

**MEASURING MAPPING & REPORTING ON ALASKA'S INFRASTRUCTURE SINCE 1976**

152 DEHEL AVE. , HOMER, AK. 99603 PH. 907-235-8440 FAX. 235-8440

email; [gary@abilitysurveys.com](mailto:gary@abilitysurveys.com)

May 17, 2019

Homer Planning Dept.  
491 E. Pioneer Ave.  
Homer, AK 99603

Re: Preliminary Plat Submittal of Northern Enterprises No. 3

Enclosed herewith for preliminary plat submittal please find:

- One full sized paper copy of the preliminary plat.
- One reduced to 11"X 17" copy of the preliminary plat.
- Check number 3494 in the amount of \$300.

The owners would like to move their common boundaries for financial reasons, and desire a new tideland lease configuration. For that purpose we are submitting what would normally be two plats (upland plat and tideland plat) as one preliminary plat to facilitate a more coherent and one time review. Due to Alaska Department of Natural Resources requirements, the Alaska Tideland Survey (ATS) will be finalized as a separate plat from the uplands portion.

Water and sewer are installed and hooked up to Homer City Utilities.

Thank you for your assistance in this endeavor.



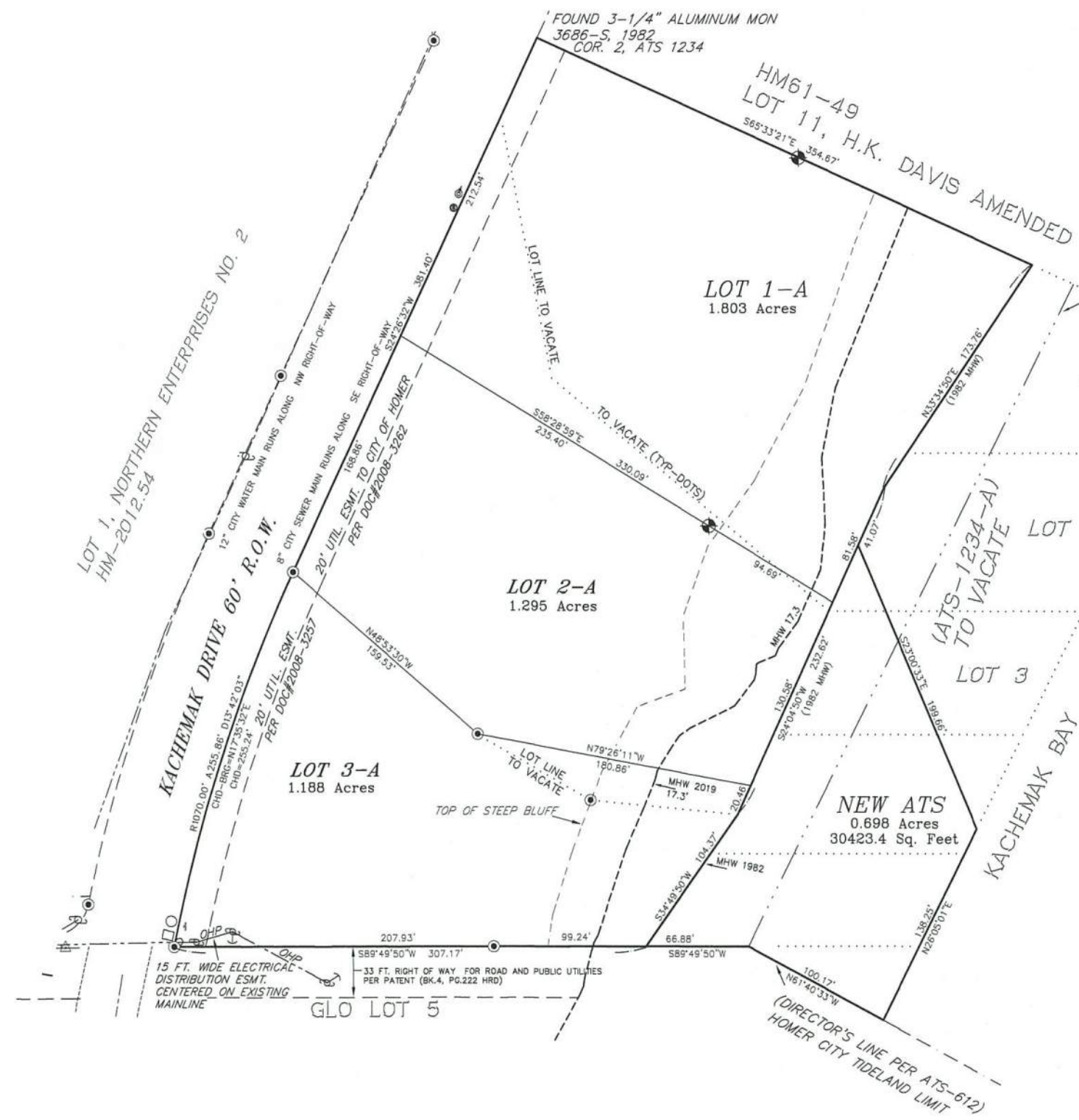
Gary Nelson, PLS

**RECEIVED**

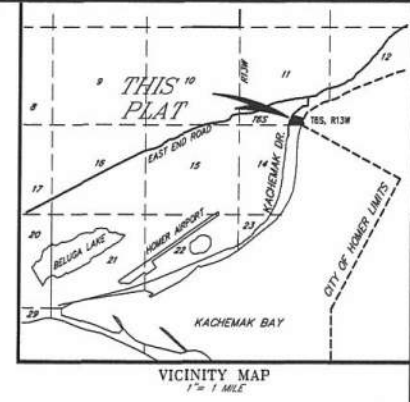
**MAY 17 2019**

**CITY OF HOMER  
PLANNING/ZONING**





- NOTES**
1. THESE LOTS ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS.
  2. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
  3. NO ACCESS TO STATE MAINTAINED RIGHTS-OF-WAY UNLESS APPROVED BY STATE OF ALASKA DEPARTMENT OF TRANSPORTATION.
  4. WASTEWATER DISPOSAL: PLANS FOR WASTEWATER DISPOSAL, THAT MEET REGULATORY REQUIREMENTS, ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
  5. PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ON-SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION (IF ANY). PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS.



**CERTIFICATE OF OWNERSHIP**

We hereby certify that NORTHERN ENTERPRISES BOAT YARD and the KENNETH AND ROSELEEN MOORE ALASKA COMMUNITY PROPERTY TRUST are the owners of the real property shown and described herein, and that NORTHERN ENTERPRISES BOAT YARD and the KENNETH AND ROSELEEN MOORE ALASKA COMMUNITY PROPERTY TRUST does hereby adopt this plan of subdivision, and by their free consent dedicate all rights-of-way and public areas to public use and grant all easements to the use shown.

BY: Kenneth D. Moore, for NORTHERN ENTERPRISES BOAT YARD, and as TRUSTEE for KENNETH AND ROSELEEN MOORE ALASKA COMMUNITY PROPERTY TRUST  
5140 Kachemak Dr., Homer AK 99603

BY: Roseleen L. Moore, for NORTHERN ENTERPRISES BOAT YARD, and as TRUSTEE for KENNETH AND ROSELEEN MOORE ALASKA COMMUNITY PROPERTY TRUST  
5140 Kachemak Dr., Homer AK 99603

**NOTARY'S ACKNOWLEDGMENT**

For Kenneth D. Moore and Roseleen L. Moore  
Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Notary public for Alaska \_\_\_\_\_ My Commission Expires \_\_\_\_\_

**PLAT APPROVAL**

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of \_\_\_\_\_, KENAI PENINSULA BOROUGH

BY \_\_\_\_\_ Authorized Official

**RECEIVED**

**MAY 17 2019**

**CITY OF HOMER PLANNING/ZONING**

- LEGEND**
- POWER POLE
  - EXISTING POWERLINE
  - ELECTRIC CABINET
  - PROPERTY CORNER MONUMENT PER HM2002-67

**PLAT #**

Rec Dist \_\_\_\_\_

Date \_\_\_\_\_ 20\_\_\_\_

Time \_\_\_\_\_ M

**DATE** MAY 17, 2019

**SCALE** 1" = 40'

**GRID No.** AR-69

**JOB No.** 5121

**DRAWING:** 5121FRM4677

KPB FILE # 2019-

**NORTHERN ENTERPRISES NO. 3**  
A REPLAT OF  
LOTS 2-A-1 AND 3-A-1, NORTHERN ENTERPRISES NO. 1 (HM2002-67), AND LOT 1-A, MOORE-HOLT No. 3 (HMB3-31), WITHIN THE SE1/4 OF SEC. 11, T6S, R13W, SM, IN THE CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, HOMER RECORDING DISTRICT, ALASKA CONTAINING 4.288 ACRES, VACATING TIDELAND ATS1234A (HM96-3), AND CREATING A NEW ATS \_\_\_\_\_ FOR ADL209326 OF ALASKA STATE TIDELANDS WITHIN NE1/4, SEC. 14, T6S, R13W.

PREPARED FOR:  
KENNETH AND ROSELEEN MOORE ALASKA COMMUNITY PROPERTY TRUST  
AND  
NORTHERN ENTERPRISES BOAT YARD  
5140 KACHEMAK DR.  
HOMER, AK 99603



**ABILITY SURVEYS**  
GARY D. NELSON, PLS  
(907) 235-8440  
152 DEHEL AVE, HOMER, ALASKA



## NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

### **Northern Enterprises No. 3**

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, June 05, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown in the Planning and Zoning Office, 235-3106.

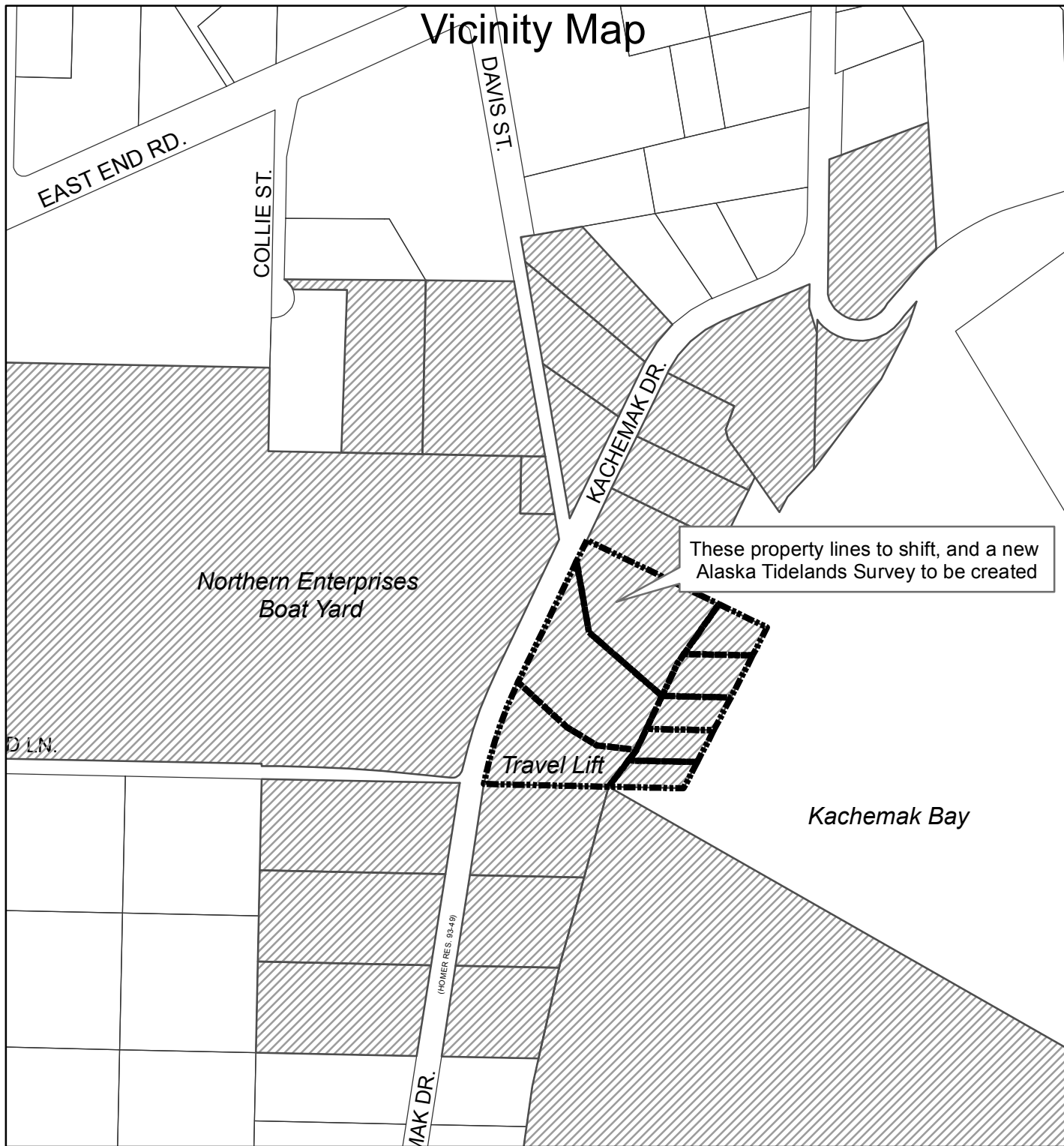
**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.**

.....

**VICINITY MAP ON REVERSE**



# Vicinity Map



City of Homer  
Planning and Zoning Department

5/21/2019

## Northern Enterprises No. 3 Preliminary Plat

Marked Lots are w/in 500 feet  
and property owners notified.

0 250 500 Feet

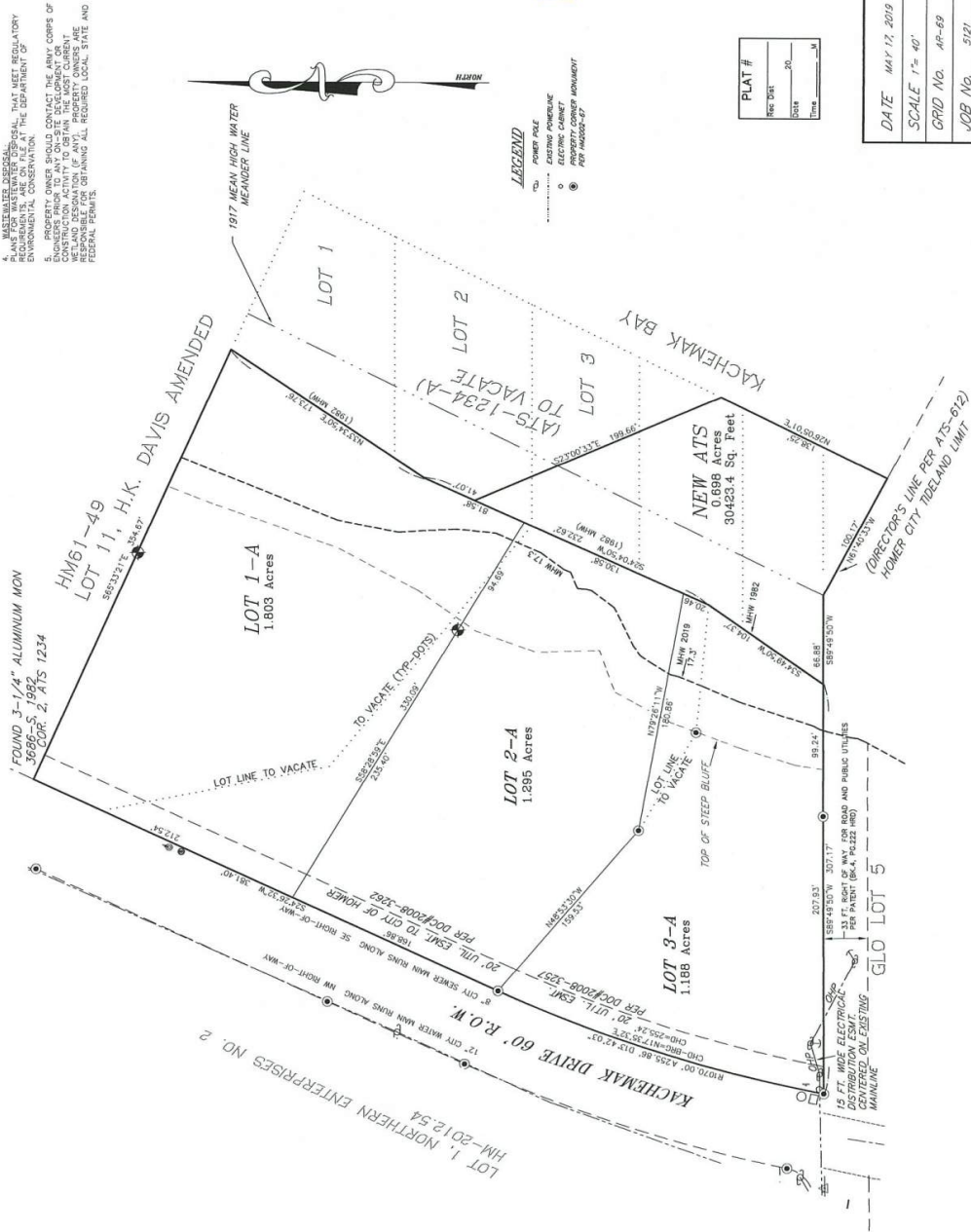


*Disclaimer:*  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.



# NOTES

1. THESE LOTS ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS.
2. ANY REPAIRS OR IMPROVEMENTS SHALL BE CONSIDERED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
3. NO ACCESS TO STATE MAINTAINED RIGHTS-OF-WAY OR TO STATE MAINTAINED RIGHTS-OF-WAY SHALL BE ALLOWED BY STATE OF ALASKA DEPARTMENT OF TRANSPORTATION.
4. MAINTENANCE OF EASEMENTS, AND ANY ASSET REGULATORY REQUIREMENTS, ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
5. A PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS FOR ANY REQUIREMENTS FOR THE MOST CURRENT CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT REQUIREMENTS FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS.



**RECEIVED**

**MAY 17 2019**

## CITY OF HOMER PLANNING ZONING

**NORTHERN ENTERPRISES NO. 3**

A REPLAT OF  
LOTS 2-A-1 AND 3-A-1, NORTHERN ENTERPRISES NO. 1  
(HM2002-57), AND LOT 1-A, MOORE-HOLT NO. 3 (HM83-31),  
WITHIN THE CITY OF HOMER, BEING THE CITY OF HOMER  
IN THE CITY OF HOMER, BEING THE CITY OF HOMER,  
HOMER RECORDING DISTRICT, ALASKA  
VACATING TIDE LAND 1512344 (HM86-31) AND CREATING  
A NEW ATS FOR ADJ202326 OF  
ALASKA STATE TIDE LANDS WITHIN ME1/4, SEC. 14, T6S, R13W.

PREPARED FOR: ROSELEE  
MOORE ALASKA  
PROPERTY TRUST  
NORTHERN ENTERPRISES  
5145 KACHEMAK DR.  
HOMER, AK 99603



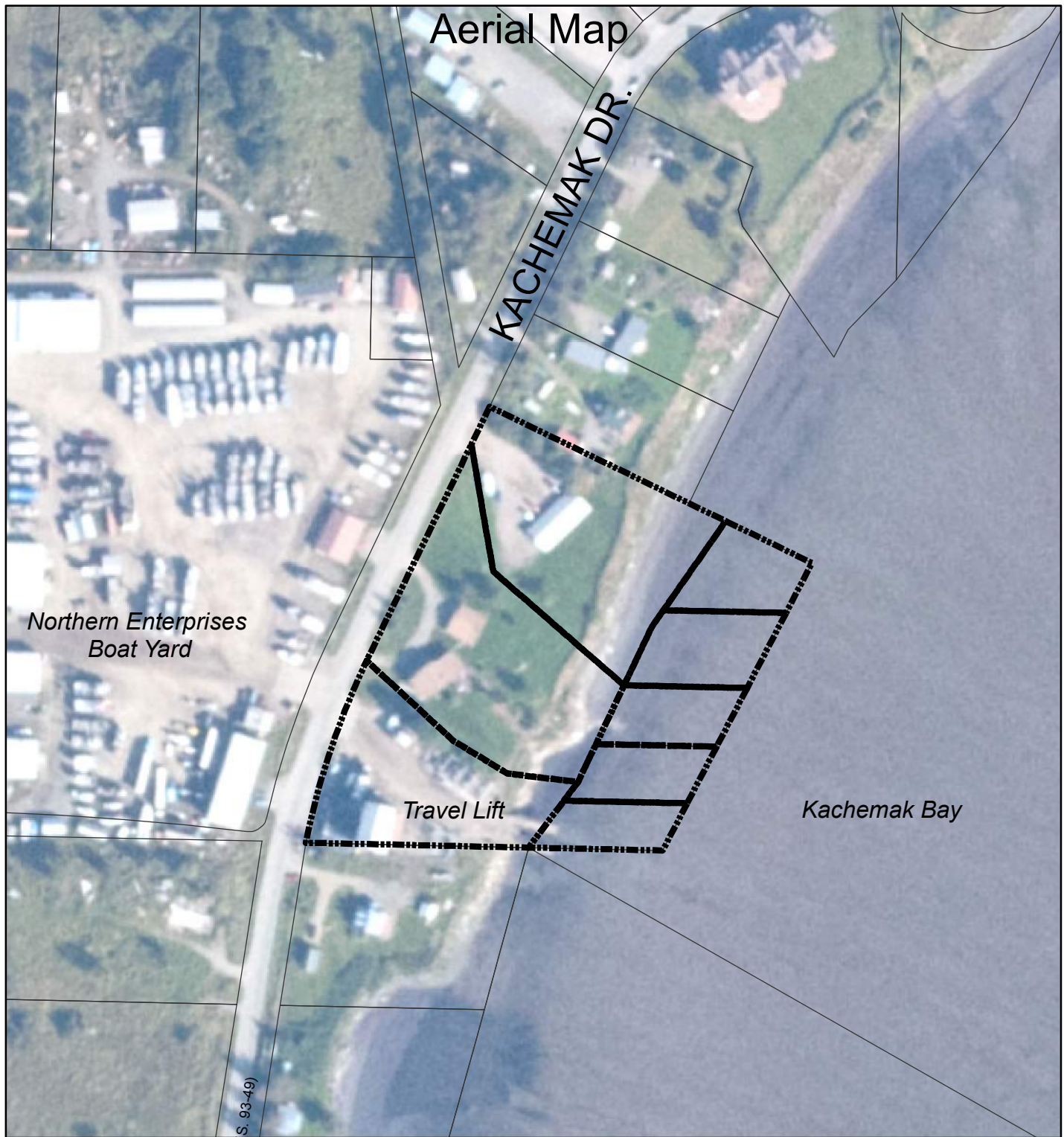
### ABILITY SURVEYS

GARY D. NELSON, PLS  
152 DENALI AVE., HOMER, ALASKA

DATE	MAY 12, 2019
SCALE	1" = 40'
GRID NO.	4R-69
JOB NO.	5121
DRAWING	5121P/HM677
MSB FILE #	2019-

PLAT #	
SEC. 14	20
DATE	

- LEGEND**
- POWER POLE
  - EXISTING POWERLINE
  - EXISTING CANAL
  - EXISTING DRAINAGE
  - EXISTING EASEMENT
  - EXISTING EASEMENT
  - EXISTING EASEMENT



City of Homer  
Planning and Zoning Department

5/21/2019

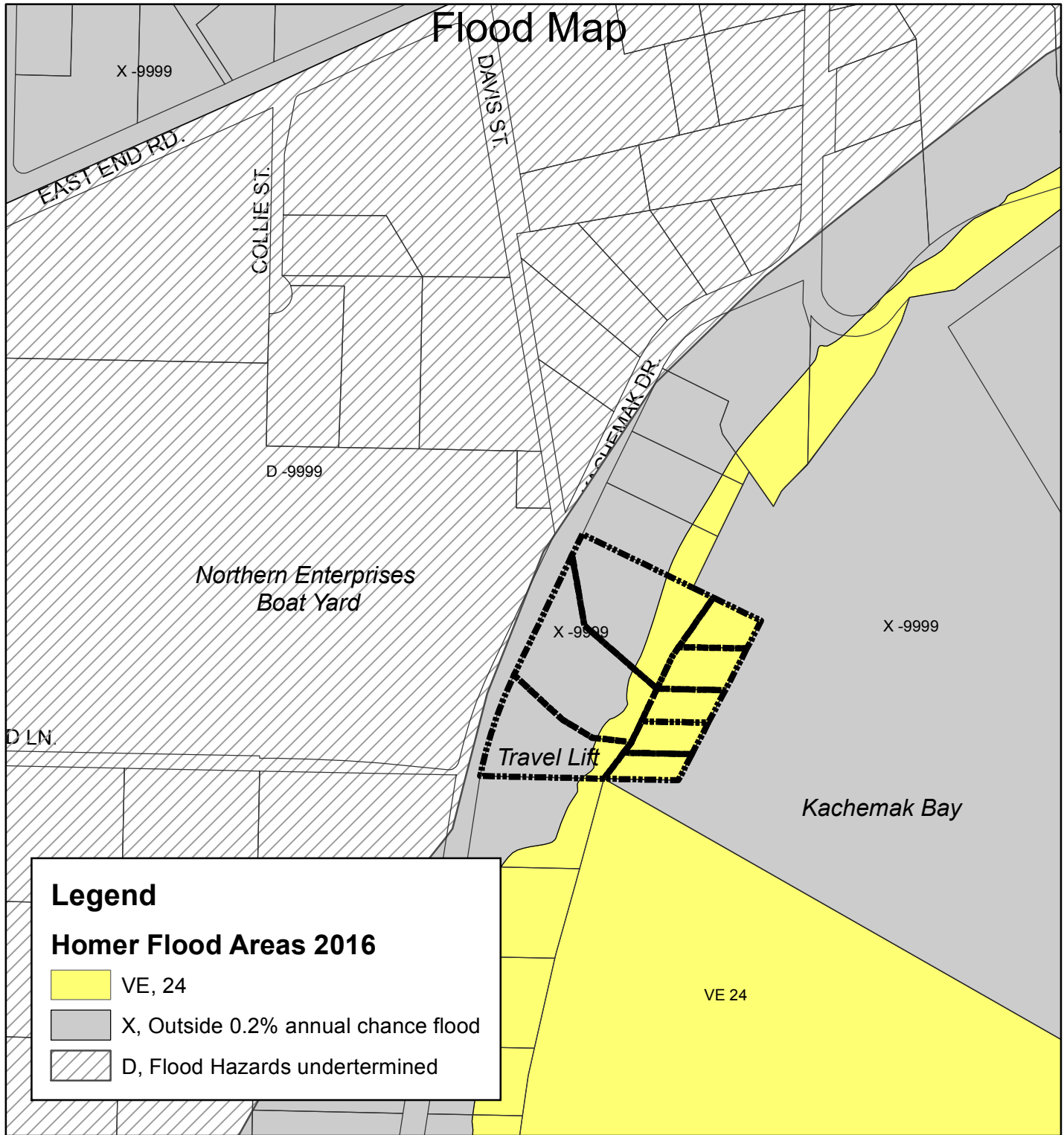
### Northern Enterprises No. 3 Preliminary Plat

0 150 300 Feet



*Disclaimer:*  
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.

# Flood Map



City of Homer  
Planning and Zoning Department

5/21/2019

## Northern Enterprises No. 3 Preliminary Plat

0 250 500 Feet



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# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report PL 19-53

TO: Homer Advisory Planning Commission  
THROUGH: Rick Abboud, City Planner  
FROM: Julie Engebretsen, Deputy City Planner  
DATE: June 5, 2019  
SUBJECT: Building Height in the East End Mixed Use District

---

#### Introduction

At the last work session (May 15), the Commission discussed building heights in the East End Mixed Use District (EEMU). Business owners commented on the foreseeable need for taller buildings to accommodate local boat building and repair services.

Please repeat some of the highlights of this work session during the regular meeting. Staff and public not in attendance at the meeting need to be able to follow the decision points and there are no minutes taken at work sessions. Its important to be able to provide a record of decision making when this ordinance moves forward.

#### Analysis

Staff recommends starting the discussion with a maximum building height of 75 feet, based on work session conversation that a 60 foot door or higher is desirable.

#### Staff Recommendation: Discuss the following

##### Discussion Points:

- Summarize why 35 feet is inadequate in the EEMU
- Should 75 feet be allowed outright, or should it be a conditional use?
- If buildings over 35 feet in height are a conditional use, what technical information would be needed for a CUP review?

##### Next steps:

- Staff will research any height concerns in relation to the airport flight path.
- Staff will draft an ordinance for the Commission to further discuss.





# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report PL 19-54

TO: Homer Advisory Planning Commission  
THROUGH: Rick Abboud, City Planner  
FROM: Travis Brown, Planning Technician  
DATE: June 5, 2019  
SUBJECT: Zoning Permit Process and Building Location Verification

---

### Introduction

This topic began with the desire of some commissioners to increase the application standard for CUPs and better ensure CUP compliance. This can be done by requiring a survey or as-built as part of the CUP application and another as-built upon project completion. Additionally, requiring property lines to be staked by a licensed surveyor for buildings that are proposed near setbacks has been brought forth as a way to prevent buildings from being built in an illegal location. Staff has proposed some options for adding additional permitting standards to CUPs.

### New permitting standards

At the last meeting, the commission generally agreed that verifying foundation locations during construction is impractical for a variety of reasons. Instead, we are looking at two other ways to better ensure legal building placement; by requiring as-builts upon project completion or by requiring property owners to have their property lines staked by a licensed surveyor prior to construction. The commission asked for some more information about as-builts, so I have provided a summary of my research below.

### As-builts

An as-built is a survey to physically locate structures and improvements on a parcel of land. Local authorities commonly require them prior to issuance of Certificates of Occupancy. For larger projects, contractors use them to track progress and ensure projects are built according to plans and in compliance with local codes. Lenders or title companies commonly use them for mortgage purposes. The information included in an as-built survey will vary depending on its purpose.

The highest standard, known as an ALTA land survey, is used for titling insurance purposes for larger commercial projects that will carry a special title insurance endorsement, offering greater protection of the investment. It will involve much research and time and will establish or reestablish boundaries, resolve property line discrepancies, show all easements and encroachments, address legal access, zoning rules, as well as show improvements. For the

typical residential mortgage, a much more simple form of as-built is utilized. These as-builts will show improvements, but not include boundary monumentation, and may not show all easements on the property. One of the title companies in Homer will typically require this simple type of mortgage as-built for new construction or when the property hasn't had an as-built documented in past transactions.

As pointed out by Syverine at the last meeting, requiring an as-built upon project completion will provide a mechanism for staff to document finished projects and close out permits. It may also provide an incentive for property owners to hire a surveyor earlier on in their project, knowing that one will be needed by the end of the project.

### **Staking property corners**

Requiring property owners to have a surveyor mark their property lines, for those projects that have the potential to encroach on setbacks, will likely greatly reduce the risk of improper building placement. This has been discussed thoroughly in past meetings.

### **Staff Recommendation**

Discuss the following four options and vote on a motion to apply one of them as a new standard for CUP projects.

**Option 1A** – Require an as-built upon project completion for all CUPs.

**Option 1B**–Option 1A AND require a current as-built as part of the CUP application, for those properties with existing improvements.

**Option 1C** – Require property lines be staked by a licensed surveyor prior to construction for all improvements that are proposed within 20 feet of a required setback, for all CUPs.

**Option 1D** – Option 1C AND require an as-built upon project completion for all CUPs.





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Manager

491 East Pioneer Avenue  
Homer, Alaska 99603

[citymanager@cityofhomer-ak.gov](mailto:citymanager@cityofhomer-ak.gov)

(p) 907-235-8121 x2222

(f) 907-235-3148

## Memorandum

TO: Mayor Castner and Homer City Council

FROM: Katie Koester, City Manager

DATE: May 22, 2019

SUBJECT: May 28<sup>th</sup> City Manager Report

---

### Visit with Open World Delegation

Mayor Castner, Harbormaster Hawkins and I had the pleasure of visiting with a delegation of fishing industry professionals from the Russian Far East who are touring Alaska through a partnership with Rotary International and the State Department. The group was composed of seafood processors, commercial fishermen, professors, government advisors, and environmental regulators. They were very engaged and drilled the Mayor with a gamut of questions regarding industry in Alaska. These cultural exchanges are a great opportunity to share our experiences, learn from others, and appreciate what we all have in common (like a true appreciation for fresh grilled salmon!).

### ISO Visit This Summer

The ISO will be in Homer on July 18<sup>th</sup> or 19<sup>th</sup> to review and evaluate Homer's fire protection. Unlike the full evaluation that was performed in 2014, this will be more similar to an audit to see if anything has changed. The process consists of the completion of a number of surveys and a thorough review of our records. There is also a quality assurance and quality control component to confirm the surveys and records are accurate. The ISO will review emergency communications provided by the Police Department's Dispatch Center, the Public Works water supply and hydrants, and all aspects of the fire suppression capabilities of the Fire Department. The surveys have been distributed to the three departments and work has begun to prepare for the evaluation. The surveys contain the information collected in 2014 so it becomes a matter of updating the information to reflect any changes. In addition the ISO will review records of relevant activities, staffing, and required maintenance that has occurred since 2014. We are beginning an internal review of the surveys and our records to determine if there might be a change in the overall Class-4 ISO Rating. The outcome of this ISO audit process will provide a thorough assessment of the City's current level of fire protection. This will provide an excellent baseline for the new Fire Department leadership team working in conjunction with the Public Works and Dispatch to develop strategies to restore the community's Class-3 ISO rating and reduce fire insurance premiums in the future.



## USS Theodore Roosevelt

Councilmembers Aderhold, Smith, Stroozas and I had the opportunity to tour the aircraft carrier USS Theodore Roosevelt in the Gulf of Alaska as part of the Navy's public outreach to local communities. In 2016, Senator Murkowski's Office contacted the City of Homer and shared that the Senator had been insisting the Navy and Alaskan Command work with local communities regarding exercise scheduling and activities. It was a fast paced and exciting peek into the world of military operations and a chance to observe an airport at sea; they can land and launch a jet airplane every 30 seconds. The USS Roosevelt is in Alaskan waters as part of Northern Edge 2019, a biennial training exercise that brings troops, aircrafts, and

ships from all the service branches together. Northern Edge representatives attended a Homer City Council meeting on December 5, 2016. A member of that delegation accompanied us on the tour to answer environmental impact questions. In addition to the four of us from Homer, there were representatives from Native villages around Kodiak and members of the Community Advisory Board.



*From right to left: Councilmember Aderhold, City Manager Koester, Councilmembers Stroozas and Smith, along with a Navy staff member who photo-bombed us!*

### **Alaska Ultimate Safaris Short Term Sublease at Homer Airport Terminal**

Alaska Ultimate Safaris, a bear viewing company, has requested a short term sublease with the City for the cargo area at the west end of the airport. The City leases the land from the State but owns the terminal, so any leases the City has within the terminal must be approved by the State. With this sublease, Alaska Ultimate Safaris will be able to use the State's tarmac to conduct business with their helicopter, which will carry passengers to Katmai and Lake Clark National Parks and Preserves. The increased activity will be beneficial to the vibrancy of the Homer airport. If you know of anyone interested in leasing space at the airport, please visit the City of Homer website where availability and rates are published <https://www.cityofhomer-ak.gov/airport/leasing-terminal-space>.

### **Fire Chief Kirko Hired**

I am pleased to welcome Mark Kirko as the new Fire Chief for the Homer Volunteer Fire Department. Mr. Kirko currently serves as Fire Chief/CEO for North Whidbey Fire & Rescue in Oak Harbor, Washington where his duties include supervising six career staff and seventy-six part time and on-call volunteer firefighters and EMS providers. He brings 34 years of experience in fire service to the position, with twenty-five of those years in Alaska. Mr. Kirko started his fire service working twenty years with the Cordova Volunteer Fire Department. Beginning as a volunteer, he advanced through lieutenant and training officer positions to Fire Chief. He then served five years as Fire Chief and Emergency Management Director for the Skagway Fire Department until the need to be near elderly parents took Mr. Kirko and his wife to Vermont where he served six years as Fire Chief at the Windsor Fire Department. The position attracted 46 candidates, but after a lengthy hiring process that included written responses to questions, two interviews, meetings with career staff, officers, and the volunteer membership while instructing a section on an emergency service subject, Chief Kirko stood out as a great fit for our fire department and our community. Chief Kirko will begin in July. In the meantime, I will be continuing to work with Chief Purcell on the transition including establishing a fleet replacement schedule and emergency operations.

### **Homer Foundation listening session June 6<sup>th</sup> at 5:30pm in Council Chambers**

The Homer Foundation will host a listening session in Council chambers June 6<sup>th</sup> at 5:30pm to gather input from nonprofits on how the Foundation might use City of Homer grant funds most effectively to support Homer's nonprofit community. Council and City staff are encouraged to attend. This will also be a great opportunity to welcome the new executive director, Mike Miller who will be replacing long serving Joy Steward. Please thank Joy for all her work on behalf of the community when you get a chance.

### **Erosion on Homer Spit**

On May 21<sup>st</sup>, representatives from Alaska Department of Transportation (ADOT), Army Corps of Engineers (Corps), and staff from the offices of Representative Vance, Senator Stevens, and Senator Murkowski met with Harbormaster Hawkins and me to discuss the recent erosion on the Homer Spit that has threatened local businesses, City property and the Sterling Highway. This was a productive meeting and I was pleased to see active participation by multiple jurisdictions. In the short term, ADOT is going to contract with a coastal engineer to study the erosion and the potential impact to the highway. This study should come out in the fall and will be the basis for pursuing federal highway dollars to protect the highway. ADOT was very clear that they can only work within their right of way and that their only obligation is to protect the Sterling Highway. A reinforcement project (think rip rap) may take many, many years to fund without a catastrophic event that opens up emergency funding channels. The Corps is going to look at doing some beach re-nourishment with City of Homer Harbor 2019 dredge materials as a pilot project this fall. Corps staff emphasized it would be difficult to see the result of beach re-nourishment in the short term as it requires ongoing sustained effort. Participants discussed initiating a Planning Assistance to States grant through the Corps (50/50 match) to

start the broader conversation on what the Spit should look like over the next 50 years. This may be a great topic for a re-write of the Homer Spit Comprehensive Plan. The community will need to be both a part of this long term conversation and educated about what the Corps, ADOT and the City can and cannot do and the significant costs associated with the different options.

### **AML Online Sales Tax Meeting in June**

At the May 13<sup>th</sup> Council meeting I briefed Council on ongoing conversations through Alaska Municipal League regarding online sales tax collection and let you know about a June 6<sup>th</sup> meeting where municipal representatives will be meeting to hash out common definitions for a state wide sales tax that could be applied to online sales. I was happy to let the Kenai Peninsula Borough take the lead on this conversation, however the City of Homer's participation was requested by the Borough and neighboring municipalities. Because the State's largest communities, Anchorage and Fairbanks, do not collect a sales tax, the Kenai Peninsula Borough is a major player in this conversation and if we can act as one voice we will have a lot to contribute. Some of the definitions that could be problematic for Homer included the definition of temporary lodging. This is a long way of saying I will be out of the office June 6<sup>th</sup> to ensure City of Homer interests are represented in the online sales tax conversation. I have attached some materials from Larry Persily that help explain the issues municipalities will be wrestling with. I welcome your comments, concerns and anything you would like me to emphasize as I dive into this topic.

### **Kenai Peninsula Public Transportation Plan Available for Public Comment**

A Coordinated Transportation Plan is required every 5 years for providers to apply for Human Services Transportation funds through DOT. City Planner Abboud has been representing the City of Homer by participating in monthly teleconference meetings. Currently in Homer, the Independent Living Center receives funding to operate a voucher program for elders and persons with disabilities. The Homer/Anchor Point area receives \$50,000 to assist approximately 150 individuals with vouchers to subsidize rides with local cab companies. The intention of the Coordinated Plan is to maintain these services and collaborate with the Borough and local Cities to develop a more comprehensive transit plan for the Kenai Peninsula road system. The Kenai Peninsula Borough is soliciting comments on the draft plan. You can contact Project Coordinator Shari Conner at 907-714-4521 [sconner@cpgh.org](mailto:sconner@cpgh.org) for more information (see attached flyer).

Enc:

FAQ on Online Sales Tax Collection from AML

Kenai Peninsula Public Transportation Plan Update Flyer

City of Homer Comments on 2019 STIP

Homer Foundation First Quarter City of Homer Fund Report

ADOT Field Survey Announcement for Sterling Highway MP 45-60

Letter of Support for Alaska State Parks' Application to Exxon Valdez Oil Spill Trustee Council Grant

Letter from Rasmuson Foundation re: Awarding Library Grant

May Employee Anniversaries

## ***AML Online Sales Tax FAQ from Larry Persily- 4-24-19***

### ***How did the June 2018 U.S. Supreme Court decision change the sales tax world?***

The U.S. Supreme Court on June 21, 2018, upheld the state of South Dakota's right to require online sellers to collect and remit sales tax on orders delivered into the state. The 5-4 decision effectively overturned a Supreme Court decision from 1992 that went against the state of North Dakota. The 2018 case is South Dakota vs. Wayfair (a nationwide online retailer of furniture and home goods).

### ***What were the issues in the court case?***

In its ruling, the Supreme Court noted that the South Dakota Legislature had determined "that the inability to collect sales tax from remote sellers was 'seriously eroding the sales tax base' ... causing revenue losses and imminent harm."

The court explained, "The central dispute is whether South Dakota may require remote sellers to collect and remit the tax without some additional connection to the state," such as an office or warehouse or employees. And although the 1992 decision against North Dakota commented that requiring remote sellers to collect and remit sales tax "might unduly burden interstate commerce" without such a physical or legal connection, called nexus, the court's 2018 decision found otherwise. "The administrative costs of compliance, especially in the modern economy with its Internet technology, are largely unrelated to whether a company happens to have a physical presence in a state," the Supreme Court said in its 2018 decision.

Allowing online sellers to avoid collecting sales taxes "has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state's consumers," the court added.

In its order, the Supreme Court said it overruled the 1992 decision because it was "unsound and incorrect."

### ***Does the court decision require online sellers to collect sales tax?***

No, it does not require online merchants of goods and services to do anything unless a state's sales and use tax is written to apply to online orders (remote merchants). If a state chooses not to extend its sales and use tax to online orders, the Supreme Court decision does not require merchants to voluntarily collect and remit the tax. The decision is up to each state.

### ***Does the court decision apply to municipalities?***

No, not exactly, not directly. The word "municipality" appears nowhere in the Supreme Court decision. The case, the briefings, the discussion and the order focused solely on state sales and use tax. But, the same reasoning, the same legal questions likely would apply to municipal sales taxes: Are they discriminatory against interstate commerce, do they pose an undue burden on interstate commerce, are they administered fairly to all parties. As Alaska is the only state that allows municipal sales taxes without an overriding set of rules in a state sales tax, Alaska is unique. But we're used to that.

***What are the challenges for Alaska municipalities?***

Without a clearly defined set of legal standards in the court decision for municipalities, Alaska cities and boroughs have to make their best legally educated guess at what set of tax definitions, rules, exemptions and administrative procedures would be needed to replicate and adhere to the intent of the court opinion allowing taxation of online sales. Such as, no undue burden on interstate commerce, no retroactive taxation, and a system that standardizes tax rules to reduce administrative and compliance costs for remote merchants. There is no checklist of what will work or what is not allowed — Alaska municipalities will have to set their own trail.

***What's the path forward for Alaska municipalities that want to collect taxes on online sales?***

A coordinated approach is best. In fact, it's probably the only way to succeed. It's hard to imagine that a large, nationwide online merchant, a small remote seller — or a court, in the event of a legal challenge — would accept dozens of municipal codes, each with its own unique set of definitions, administrative rules, limits and exemptions as an acceptable system that standardizes taxes to reduce administrative and compliance costs.

By working together, Alaska cities and boroughs stand the best chance of crafting a workable sales and use tax structure that serves local needs while establishing a legally secure path to collecting municipal taxes from online sales.

***What is the Alaska Municipal League doing to help?***

The Alaska Municipal League established a working group in 2018 to explore the best answers for bringing Alaska cities and boroughs into the world of collecting tax revenue from online sales. AML is looking into the legal issues, software and administrative costs, including the option of contracting with a third-party vendor with experience in state sales taxes to handle the collection and distribution of tax remittances from online merchants. AML plans to provide frequent updates on its progress to its members, with reports at the board meeting in Anchorage in May, the summer meeting in Soldotna in August, and a final review at the general membership meeting in Anchorage in November.

The idea is that AML would establish a cooperative effort — entirely optional for each Alaska municipality — to participate in a centralized online sales tax collection, administration and enforcement program. Municipalities that join and agree to adopt the required changes to their sales tax codes would benefit from the collective strength of presenting a unified approach to online merchants nationwide. Cities or boroughs that choose not to join still could try on their own to adopt and enforce sales taxes on online merchants.

State law allows Alaska municipalities to sign intergovernmental cooperating agreements — similar to mutual-aid pacts between fire departments. AML's legal review concluded that a cooperative tax administration and collection agreement essentially would be the same and would not require any state legislation.

***Is there any guarantee that municipalities can force online sellers to collect the tax?***

There is no guarantee that every online merchant will willingly collect and remit sales taxes to a centralized administration for Alaska municipalities. But the odds of success are much better than 100+ different sales tax administrations statewide.

The deciding factor may be how “homogenized” Alaska’s cities and boroughs are willing to make their tax codes. The more the codes are the same, the better the argument that the municipalities are adhering to the standards the Supreme Court cited in its Wayfair decision.

“Nobody can give you an absolute legal answer” as to how far municipalities can stray from the intent and spirit of the Wayfair decision and still win if taken to court, the vice president and tax counsel for the National Retail Foundation told AML. Her advice: Go with the Streamlined Sales Tax Project’s definitions

***What is the Streamlined Sales Tax Project?***

The Streamlined Sales Tax Project began in March 2000 with the goal “to find solutions for the complexity in state sales tax systems.” It was, in great part, that complexity that led to the 1992 Supreme Court decision against North Dakota’s efforts to require tax collections by remote merchants.

The result is the Streamlined Sales and Use Tax Agreement, which targets simplifying and modernizing sales and use tax administration to substantially reduce the burden of tax compliance. The agreement focuses on state-level administration of sales and use taxes; uniformity in each state’s state and local tax bases; uniformity of major tax base definitions; central electronic registration for merchants; simplification of state and local tax rates; uniform sourcing rules for all taxable transactions (defining the point of the taxable transaction); and simplified administration of exemptions, tax returns and payments.

As of March 2019, 24 states had adopted the agreement. No federal law requires states to sign on for the Streamlined Sales Tax Project, but doing so makes it easier for states to capture maximum revenues from remote merchants.

The more that Alaska municipalities can follow the Streamlined Sales and Use Tax Agreement, the better the odds of success in achieving full compliance from online merchants.

***Can complexity lead to legal objections?***

Yes, but it is unknown how much complexity would break the legal back of taxing online sales. In his dissenting opinion in the Wayfair case, Chief Justice John Roberts pointed to the complexity of sales tax laws nationwide. “Correctly calculating and remitting sales taxes on all e-commerce sales will likely prove baffling for many retailers. Over 10,000 jurisdictions levy sales taxes, each with different tax rates, different rules governing tax-exempt goods and services, (and) different product category definitions.” He noted that New Jersey collects sales tax on yarn purchased for art projects but not on yarn made into sweaters. “Texas taxes sales of plain deodorant at 6.25 percent but imposes no tax on deodorant with antiperspirant.” Illinois categorizes Twix bars as food and Snickers candy, and taxes them differently, the chief justice noted, only because Twix includes flour.



***Why are Amazon and some merchants already collecting sales tax for Alaska municipalities?***

Amazon has started collecting sales tax in several Alaska jurisdictions, though it appears that in most (many?) cases it is collecting tax only on Amazon's own goods and not on sales of third-party merchandise. A coordinated, AML-led approach could remedy this shortcoming by directing municipalities to change their codes to encompass all goods sold online, whether direct by the merchant or fulfillment by a third-party seller. A coordinated effort also would clarify which business is responsible for collecting and remitting the tax: The website that takes the order or the business that fills the order?

As of March 2019, Amazon had yet to register with all Alaska municipalities, and for most municipalities the online merchant's first sales tax returns are not due until a month after the end of the first quarter. After Amazon and other vendors file their first returns, Alaska municipalities will have a better sense of any enforcement issues.

There have been reports that Amazon is misapplying local taxes on some sales that should be tax-exempt. As it is now, each municipality has to contact Amazon individually — or any other online vendor — to educate the merchant on the details of their specific municipal tax code. A single online sales tax administrator for Alaska municipalities would improve the situation.

As to Amazon specifically, in a few cases the online retailer is collecting sales tax for deliveries in Alaska because it has a legal connection — a nexus — in that city or borough, such as an Amazon subsidiary or affiliate that does business in the municipality. But in most cases in Alaska, Amazon is collecting sales tax voluntarily. Unless a municipal code is written as a sales and use tax, or otherwise specifically addresses online sales, merchants such as Amazon are not legally obligated to collect the city or borough sales tax.

***What's a 'use tax,' and does it apply to Alaska municipalities?***

A "use tax," as part of a "sales and use tax," makes it clear under the law that the tax applies to goods regardless whether they were sold over the counter in the jurisdiction or delivered into the jurisdiction for use. The Streamlined Sales Tax Project model code recommends participating states adopt a sales and use tax. Some Alaska municipalities already have it in code, but most do not. It is unknown at this time if the AML online sales tax project will adopt sales and use tax as its recommended language for municipalities.

***How can online merchants determine which municipality gets the taxes?***

One significant problem that Alaska municipalities must overcome is to construct a user-friendly online mapping system so that merchants can accurately determine the correct tax jurisdiction. Such as, a buyer may have a Soldotna ZIP code and mailing address but does not live within the city of Soldotna and believes they should not be liable for Soldotna city sales taxes. The same can be said for Interior residents with a North Pole mailing address. (ZIP+4, unfortunately, does not always match municipal boundaries in Alaska, and therefore cannot be used for determining the tax jurisdictions.) Other states and third-party contractors provide



online mapping tools for sellers, and third-party vendors could help Alaska develop one that covers the entire state. In addition to creating the “tax look-up map” (as it is called in the state of Washington), Alaska municipalities would have to establish a system for keeping the map current with new subdivisions, new addresses for businesses and residences, annexations and such.

***Can online vendors handle additional, specific sales taxes?***

Yes, such as on alcohol or tobacco taxes, in addition to general sales taxes. Other states levy additional taxes on certain items, such as alcohol, and nothing in the Streamlined Sales Tax Project argues against such additional sales or excise taxes. The third-party vendors that offer administration software for states can accommodate such taxes.

***What are some of the tax code decisions that Alaska municipalities will have to make?***

**Taxation limits**

- Several Alaska municipalities have in place a limit on the amount of a single transaction subject to sales tax. For example, in Juneau the sales tax stops charging after a single transaction (an invoice, not a single item) reaches \$12,000 (though there is no limit to taxation of jewelry). In the Kenai Peninsula Borough, the cap is \$500. It is unknown at this time if Alaska municipalities can maintain their disparate application of such “tax caps” and still have a reasonable chance of surviving a legal challenge should an online merchant want to contest the “undue burden” of navigating different tax limitations.

**Point of taxation**

- Alaska municipalities most certainly will need to define and adopt a common definition for the point of the taxation transaction, especially since this could affect the rate charged and where the tax is remitted. Such as, if a buyer receives the order at a post office in one city but takes it to their residence in another city, where did the taxable transaction occur, and which city gets the money? Where the item was delivered or where it was used? The same difficulty would apply to the online seller as it tries to determine the tax rate — it needs to know which address to check on the tax look-up map, the point of delivery or the residence of the buyer? This definition will need to be consistent for all Alaska municipalities that choose to participate in the AML effort.

**Definitions**

- Definitions should be consistent among participating municipalities for any tax-exemptions, such as food (taxed or not taxed, or divided between prepared and unprepared, and how to define those terms), sale-for-resale, purchases by senior citizens, manufacturing components, construction materials that will be incorporated into real property in the municipality, farming supplies, funeral supplies, medical equipment, over-the-counter drugs and medical items, sales to and/or by nonprofits,

sales by government agencies. The definitions will require a lot of work between municipalities.

### **Collection thresholds**

- South Dakota sets a significantly higher minimum threshold for annual sales into the state by a remote merchant than for local businesses before the out-of-state business has to collect and remit sales taxes. Whatever Alaska municipalities decide needs to be consistent for all municipalities in the AML program. Otherwise, remote merchants could get caught up in a maze of different registration and reporting standards.
- For example, municipalities may want to exempt small-scale sellers from registering, collecting and remitting, such as businesses with less than \$2,500 a year of sales into the jurisdiction. An example would be an online jewelry maker in New York that might sell \$300 of goods into any one Alaska city in a year. How much do Alaska municipalities want to exempt occasional sellers from collecting sales tax? And should it be the same threshold for remote sellers as in-town businesses?

### **Examples of taxable decision items**

- Do municipalities want to collect sales tax on motor vehicles, boats and airplanes imported into the municipality?
- How will municipalities treat commissions that are retained by online sellers? Is the tax applied to the total price of the goods, or only on the net received by the seller after the commission is deducted?
- Are delivery charges taxable if they are listed separately from the purchase price?
- Are software downloads taxable, such as music and apps and streaming services?
- Are Amazon Prime membership dues taxable?
- Are online subscriptions taxable, such as news sites?

### **Administrative issues**

- How will municipalities handle refunds of sales taxes paid in error by the seller or collected in error by an online seller? Who will issue the refund: The seller or the municipality?
- Will municipalities allow a discount or “commission” of tax collections, intended to partially compensate the merchant for its costs of bookkeeping as the municipality’s tax collector? Should this discount, or retention, be the same for online and local vendors? Many Alaska cities and boroughs allow their local merchants to hold back a small percentage as compensation for their work as a tax collector.
- Can the AML project accommodate seasonal adjustments to a municipality’s tax rates, or special “tax holidays” as municipalities sometimes offer for back-to-school shopping or other annual categories?
- Are intrastate online sales treated differently than interstate sales?

## Central Kenai Peninsula **Public Transportation Planning**

*Let's get our community rolling!*

View the current transportation plan then share your ideas and comments about current public transportation gaps, successes and suggestions for growth.  
Contact: Shari at 714-4521 for more information

# Central Kenai Peninsula Public **Transportation Task Force**

Monday, May 20th

6pm-8pm

*Transportation Task Force planning meeting*

Location: KPB Assembly Chambers on Binkley  
Street • Soldotna

**Your Opinion  
Matters!**

**Public Comments Welcome at  
the Meeting**



Public transportation provides personal mobility  
and freedom for people from every walk of life



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

May 21, 2019

State of Alaska Department of Transportation & Public Facilities  
Division of Program Development, ATTN: STIP  
PO BOX 112500  
Juneau, AK 99811-2500

RE: STIP 2018-2021 Amendment 3

The City of Homer would like to comment on a project listed in the 2018-2021 Draft Amendment 3.

### **Need ID 23197, Lake Street Rehabilitation**

Lake Street is an essential route through Homer that supports auto-oriented businesses while functioning as one of the few roads that connect the two main East-West transportation options in town. Lake Street has not undergone a major rehabilitation project since 1997. The pavement routinely experiences major failures. The thin asphalt overlays applied to sections of the street in 2011 and 2013 are not expected to offer any structural correction of the deficiencies that will inevitably lead to reoccurrence of the frequent failures. Several public meetings have been held and a design has been produced that has been found to have the support of the city and residents.

Since the project has been designed, Grubstake Avenue has been extended and improved. Grubstake extends to Lake Street and forms a four-way intersection. It is nearly in the middle of the Lake street project, which does not have any designated pedestrian crossings between the Sterling Highway and Pioneer Avenue. The City of Homer requests that a pedestrian crossing be incorporated at Grubstake Avenue and Lake Street. We feel that it will offer pedestrians a reasonable option for a safe route between current areas of interest, which will certainly see more activity as the community grows and infill develops. A current infill project underway is the construction of a new police station on Grubstake Avenue and Snow Bird Street.

We urge the state to keep the project moving forward and not introduce any other additional delays.

Sincerely,

Rick Abboud, AICP  
Homer Alaska City Planner

## HOMER FOUNDATION

### Quarterly Report to Fund Holders

*Homer Foundation Fund Details - January through March 2019*

Fund Holder    City of Homer  
Fund            **City of Homer Fund**

Fund Type:    FIELD OF INTEREST  
Fund Code:    1305

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#### PORTFOLIO SHARE (Corpus)

Beginning Balance	185,638.84
Contributions	-
Withdrawals	-
Quarterly Portfolio Change	13,972.61
<b>Ending Balance</b>	<b>199,611.45</b>

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#### AMOUNT AVAILABLE TO SPEND (ATS)

Beginning Balance	9,624.22
FY19 ATS (posted annually in September quarter)	-
Grants Total	-
Transfer to restricted fund	-
<b>Ending Balance</b>	<b>9,624.22</b>



Alaska Department of Transportation and Public Facilities

# Central Region

search

☒ DOT&PF ☐ State of Alaska

DOT&amp;PF &gt; Central Region &gt; Projects &gt; Sterling Highway MP 45-60



DOT&amp;PF Project No. STP-F-021-2(15)/53014

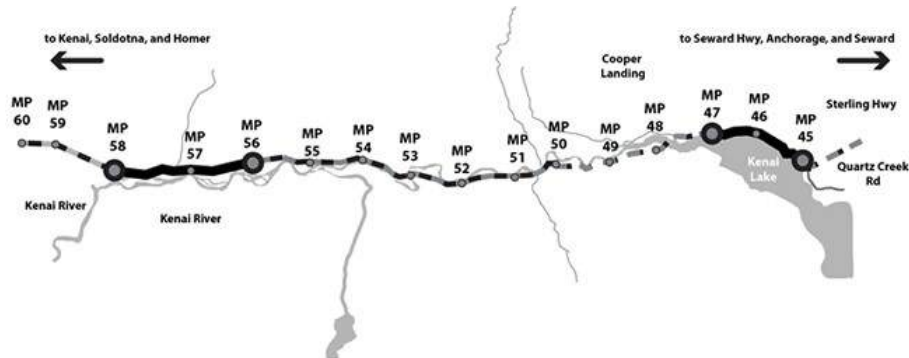


Welcome to the web site for the Sterling Highway Milepost 45 to 60 Project. This project examines highway upgrade alternatives in the Cooper Landing and Russian River area of Southcentral Alaska.

## 2019 Field Survey

The Alaska Department of Transportation and Public Facilities (DOT&PF) is beginning the design of the selected alternative, the Juneau Creek Alternative. The project will be phased and constructed in pieces, with the initial design work directed at MP 45-47 and MP 56-58, as shown in the figure below.

Surveyors from R&M Consultants will be working along the Sterling Highway from MP 45-60 in order to establish survey control. They are planning to be in the corridor from May to July 2019. They will also be flying a drone to capture aerial imagery of the corridor. A current, detailed survey will provide necessary data for the highway design team as they begin the design phase. Later this summer and fall, survey of the new highway portion (approx MP 46-56) will take place.


[DOWNLOAD PDF FLYER](#) - 106 kb pdf

## Record of Decision Published

The Federal Highway Administration (FHWA) signed a Record of Decision (ROD) on May 31, 2018. The ROD officially selects the Juneau Creek Alternative to design and construct. This completes the Environmental Impact Statement (EIS) review.

[View the ROD](#)

## Juneau Creek Alternative is Selected

The Final EIS identifies the [Juneau Creek Alternative](#) as the preferred alternative. The Juneau Creek Alternative provides the best balance between meeting the project needs and minimizing impacts to the human and natural environment. From a traffic perspective, this alternative best satisfies the project purpose and need.



Sandra Garcia-Aline, FHWA's Alaska Division Administrator signs the Record of Decision while DOT&PF Commissioner Marc Luken looks on.

## Project Information

- » [Sterling Highway Project Home](#)
- » [Project Description](#)
- » [History](#)
- » [Alternatives](#)
- » [Documents](#)
  - > [Record of Decision](#)
  - > [Final EIS](#)
  - > [Draft SEIS](#)
  - > [Other Documents](#)
- » [FAQs](#)
- » [Definitions](#)
- » [Public Involvement](#)
  - > [Contacts](#)

[Sign-up for Project Emails](#)

## Regional Links

- » [Central Region](#)
- » [Central Region Projects](#)
- » [DOT&PF Project Info](#)

## Juneau Creek Alternative Map - Click for larger view



Based on public and agency comments on the Final EIS, two additional mitigation measures have been added by DOT&PF and FHWA:

- A fourth dedicated wildlife underpass at the Bean Creek Trail crossing of the Juneau Creek Alternative. Location and design will be refined during final design. This additional crossing brings the total to five major wildlife crossings (4 underpasses and one overcrossing – Alaska's first bridge dedicated to wildlife use)
- A separated roadside pathway on the south side of the highway between Quartz Creek Road and the intersection of the "old" highway. The precise terminus at the western end and its connection to the existing "safety path" along the old highway will be determined during final design.

For more details, review the [ROD](#).

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## Public Comment Period Closed

The public comment period on the NEPA process is closed. DOT&PF and FHWA received more than 100 comments on the Final EIS. The comments received and responses to those comments are appended to the ROD.

[View the Comments and Responses](#)

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## Next Steps

DOT&PF will now move forward with design and construction of the Juneau Creek Alternative. DOT&PF plans to phase the project, with construction occurring first on the east and west segments that overlap with the existing highway (approx. MP 45-47 and MP 56-58). DOT&PF plans to begin the final design in 2018. The project will take multiple years to design and construct. Construction could begin as early as 2020.

[Site Map](#) [Policies](#) [Nondiscrimination](#) [Accessibility](#) [DOT&PF Employee Directory](#) [DOT&PF Staff Resources](#)



Department of Transportation & Public Facilities  
PO Box 112500  
3132 Channel Drive  
Juneau, Alaska 99811-2500

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## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Homer City Council

491 East Pioneer Avenue  
Homer, Alaska 99603

(p) 907-235-3130

(f) 907-235-3143

Mr. Rys Miranda  
Design and Construction Section Chief  
Alaska State Parks  
550 West 7<sup>th</sup> Street, Suite 1380  
Anchorage, AK 99501  
[Rys.Miranda@alaska.gov](mailto:Rys.Miranda@alaska.gov)  
*Submitted electronically*

May 28<sup>th</sup>, 2019

Mr. Miranda,

Homer's local and surrounding trail systems are a key resource for getting Alaskans and visitors alike outdoors. We support Alaskan State Parks' grant application to the Exxon Valdez Oil Spill Trustee Council for facility improvements at the Diamond Creek State Recreation Site. Alaska State Parks' proposed work will help protect this critical habitat while also addressing human impact occurring at this very popular area.

Installing an orientation kiosk, interpretative panels, vaulted toilet, 25-vehicle trailhead and viewpoint, and a host cabin are all ways to increase responsible public involvement and enjoyment within the Kenai Peninsula's natural environment. The facility improvements are a form of stewardship, ensuring this recreational area can accommodate multiple uses, activities, and foot traffic at a sustainable level.

Paired with Alaska State Parks' hopeful acceptance of FEMA funds to improve Diamond Creek's trail to the beach, the Diamond Creek State Recreation Site will become accessible to more users and continue to promote the importance of investing in community recreation opportunities.

Sincerely,

Katie Koester  
City Manager





May 3, 2019

301 W. Northern Lights Blvd.  
Suite 601  
Anchorage, AK 99503

907.297.2700 *tel*  
907.297.2770 *fax*  
877.366.2700 *toll-free in Alaska*  
info@rasmuson.org *email*  
www.rasmuson.org

Ms. Katie Koester  
City Manager  
City of Homer  
491 East Pioneer Avenue  
Homer, AK 99603

Dear Ms. Koester:

I am pleased to inform you that the City of Homer has been awarded a \$12,550 grant to purchase books, media, and cabinets for the Homer Public Library.

Please have one official from your organization acknowledge receipt of this award and its terms by signing and returning the attached agreement by May 31, 2019. By depositing the enclosed \$12,550 check, you are agreeing to the terms and conditions of the grant. Reference grant number 13278 on correspondence regarding this award. A final report is due by May 31, 2020.

We are interested in keeping in touch with your organization. If you have a special event or a significant accomplishment, please let us know about it. We appreciate being included on your regular mailing list.

If you have any questions, contact Tanya Dumas by email at [tdumas@rasmuson.org](mailto:tdumas@rasmuson.org), or by phone at (907) 297-2700, or toll-free in Alaska (877) 366-2700.

Congratulations on your award.

Best regards,

Alexandra Kim McKay  
Vice President of Programs

Encl:  
Grant Agreement  
Check  
Final Report form

cc: David Berry, Library Director  
RF grant number 13278 City of Homer

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## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Manager

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Homer, Alaska 99603

[citymanager@cityofhomer-ak.gov](mailto:citymanager@cityofhomer-ak.gov)

(p) 907-235-8121 x2222

(f) 907-235-3148

### Memorandum

TO: MAYOR CASTNER AND CITY COUNCIL  
FROM: Katie Koester  
DATE: May 28, 2019  
SUBJECT: May Employee Anniversaries

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I would like to take the time to thank the following employees for the dedication, commitment and service they have provided the City and taxpayers of Homer over the years.

<b>Mark Whaley,</b>	<b>Port</b>	<b>14</b>	<b>Years</b>
<b>Pike Ainsworth,</b>	<b>Port</b>	<b>11</b>	<b>Years</b>
<b>Don Huffnagle,</b>	<b>Port</b>	<b>11</b>	<b>Years</b>
<b>Mike Gilbert,</b>	<b>Public Works</b>	<b>5</b>	<b>Years</b>
<b>Jackie McDonough,</b>	<b>Library</b>	<b>5</b>	<b>Years</b>
<b>Sean McGrorty,</b>	<b>Port</b>	<b>3</b>	<b>Years</b>
<b>Ryan Johnson,</b>	<b>Police</b>	<b>2</b>	<b>Years</b>
<b>Ralph Skorski,</b>	<b>Public Works</b>	<b>1</b>	<b>Year</b>