



# City of Homer

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

Office of the City Clerk

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## Memorandum

### Agenda Changes/Supplemental Packet

TO: MAYOR CASTNER AND HOMER CITY COUNCIL  
FROM: MELISSA JACOBSEN, MMC, CITY CLERK  
DATE: July 27, 2020  
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

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#### **WORKSESSION**

Water and Sewer Rates

- Memorandum 20-115 from Finance Director Re: Water and Sewer Rate Model
- Rate Comparison

#### **REGULAR MEETING**

##### **Visitors**

Prince William Sound Regional Citizens Advisory Council (PWSRCAC) Report

Written PWSRCAC Briefing

##### **New Business**

Memorandum 20-108 from City Clerk Re: Vacation of the 10 foot wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition Granted by Peggi's Addition (Plat HM 99-64); within Section 17, Township 6 South, Range 13 West, Seward Meridian, Alaska within the Kenai Peninsula Borough

Written public comments

##### **City Manager's Report**

June General Fund Monthly Report

Memorandum 20-115 from Interim City Manager Re: Follow-Up to Resolution 20-061

##### **Resolutions**

Resolution 20-072, A Resolution of the City Council of Homer, Alaska Approving a Policy to Establish Campground Host Stipends as a Proactive Step to Incentivize Campground Hosts for City Owned Campgrounds in an amount not to exceed \$100 per Week. City Manager/Public Works Director.

Written public comment



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Finance Department

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## Memorandum 20-115

TO: Mayor Castner and Homer City Council  
THROUGH: Rick Abboud, Acting City Manager  
FROM: Elizabeth Walton, Finance Director  
DATE: July 25, 2020  
SUBJECT: Water and Sewer Rate Model

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The purpose of this memo is to provide an overview of the model used to generate the water and sewer rates.

### **Introduction:**

The basic principles and assumptions of this model were developed by the most recent Water and Sewer Task Force. The purpose of this model is to generate a utility rate that is a product of budget assumptions and the backing out of fixed fee components. The intent was to provide the City with a mechanism that connected the water and sewer rates to the actual costs to maintain the infrastructure.

The format of the rate model has changed from the one the Water and Sewer Task Force generated, but the basic principles and assumptions remain the same. These changes were made to more accurately reflect the City's budget structure.

### **Water Rate Model:**

This model generates a rate based on water revenues and consumption.

### **Revenues**

The total revenue required is pulled directly out of the current year's budget (as this is current model formula, but it might be worth discussing a change in methodology now that we utilize a biannual budget). To be more transparent with the budgeting of the transfer to reserves, the transfer has been backed out of the revenue amount and is now listed in its own line on this model.

The reserve requirement is currently set at 15% of the total revenue required. This percentage was derived by conversations with the Water and Sewer Superintendent, our three year average transfer and by industry standard research. The City has to work diligently towards maintaining the extensive water and sewer infrastructure. The infrastructure is aging and the City needs to be prepared for upcoming maintenance expenses.

The model backs out three fixed fee components. The first fixed fee is related to the overhead costs assigned to the fund. These costs cover a portion of the administrative costs associated with the processing of utility payments. This fee is backed out because the Monthly Fee amount is used to cover such expenses. The second fee is Hydrant Rents and it is related to the costs associated with maintaining the water hydrants. This cost is budgeted at 10% of total water revenue required and the costs are shared 50/50 between the General Fund and the Water/Sewer Fund. The final fixed fee references Bulk Water Sales. This amount is determined by applying the bulk surcharge (0.004/gallon) to the prior year total gallons consumed by bulk users. This is backed out because these expenses are captured by the separate rate for bulk users.

## **Consumption**

The water consumption line is determined by prior years gross meters water sales (in gallons). The water usage at the Sewer Treatment Plant has been backed out of this figure, as it has been determined to be an operational cost. The model rounds up to the nearest million for ease of reporting.

## **Rates**

The water rates are broken into three categories. The commodity rate (per gallon) is generated by dividing the total revenue required by the estimated water sales. This ensures that the whole population of water users are contributing to an equal share of costs. The bulk rate (per gallon) is applying a surcharge of 0.004 per gallon to the set commodity rate. The monthly fees is determined by dividing the budgeted administrative costs by the current number of water meters. As of the March 2020 billing, there were a total of 1,808 meters.

Compared with the rates set for 2020, the model is recommending a rate increase for both residential and bulk users. The model was not used for rate setting in 2020, as council opted to keep rates flat between 2019 and 2020. Had the model been used, the rates would be decreasing for 2021. The included rate comparison sheet illustrates the proposed rate change between 2020 and 2021.

## **Sewer Rate Model:**

This model generates a rate based on sewer revenues and usage.

## **Revenues**

The total revenue required is pulled directly out of the current year's budget (as this is current model formula, but it might be worth discussing a change in methodology now that we utilize a biannual budget). To be more transparent with the budgeting of the transfer to reserves, the transfer has been backed out of the revenue amount and is now listed in its own line on this model.

The reserve requirement is currently set at 15% of the total revenue required. This percentage was derived by conversations with the Water and Sewer Superintendent, our three year average transfer and by industry standard research. The City has to work diligently towards maintaining the extensive water and sewer infrastructure. The infrastructure is aging and the City needs to be prepared for upcoming maintenance expenses.

The model backs out four fixed fee components. The first fixed fee is related to costs associated with the lift station. These costs are pulled straight from the current budget and have a built in inflation cost of 2% (could be worth discussing a change now that we issue a biannual budget). These costs are backed out because the users on the lift station bear the complete costs associated with maintaining this infrastructure. The second fixed fee is the pumping fee for Kachemak City users. The City RFP's the pumping contract every three years and the costs of the contract is divided up amongst the number of users in this LID. As of March 2020 billing, there are currently 134 users. The third fixed fee is the dumping station fee and that comes directly from the previous year's budget. This fee has been determined to be an operational cost and, as such the fee is not forwarded along to customers. The final fixed cost is a set rate assigned to only multi-units and Kachemak City meters. This is an additional fee charged to help offset added costs associated with maintaining such infrastructure.

### **Usage**

The sewer usage is determined by the by the number of gallons actually billed for in the prior fiscal year. The model rounds up to the nearest million for ease of reporting.

### **Rates**

The sewer rate is broken into two categories (non-lift and lift station). The non-lift rate is generated by dividing the total revenue required by the projected billable volume for non-lift. The lift station rate is generated by dividing the total revenue required by the projected billable volume for only the lift zone.

Compared with the rates set for 2020, the model is recommending a rate increase for both lift and non-lift customers. The model was not used for rate setting in 2020, as council opted to keep rates flat between 2019 and 2020. Had the model been used, the rates would be decreasing for 2021, with the exception of non-lift as this rate still showed an increase. The included rate comparison sheet illustrates the proposed rate change between 2020 and 2021.

### **Recommendation:**

Review the model and approve the rates set forth.

**City of Homer**  
**Water and Sewer Rates Comparison**  
**Presented July 27, 2020**

<b>Water Rates</b>	<b>Current</b>	<b>Proposed</b>	<b>Variance</b>
Monthly Service Fee (all users)	\$ 13.00	\$ 13.00	\$ -
Additional Monthly Fee per Unit for Multi-Units	\$ 5.00	\$ 5.00	\$ -
Per Gallon Rate (Residential & Commercial)	\$ 0.0132	\$ 0.0133	\$ 0.0001
<b>Rate per 100 Gallons</b>	<b>\$ 1.32</b>	<b>\$ 1.33</b>	<b>\$ 0.01</b>
Per Gallon Rate (Bulk)	\$ 0.0172	\$ 0.0173	\$ 0.0001
<b>Rate per 100 Gallons - Bulk</b>	<b>\$ 1.72</b>	<b>\$ 1.73</b>	<b>\$ 0.01</b>
<b>Sewer Rates for Water Customers</b>			
	<b>Current</b>	<b>Proposed</b>	<b>Variance</b>
Monthly Service Fee (all users)	\$ -	\$ -	\$ -
Additional Monthly Fee per Unit for Multi-Units	\$ 5.00	\$ 5.00	\$ -
Per Gallon Rate Regular (Residential & Commercial)	\$ 0.0145	\$ 0.0157	\$ 0.0012
<b>Rate per 100 Gallons - Non Lift</b>	<b>\$ 1.45</b>	<b>\$ 1.57</b>	<b>\$ 0.12</b>
Per Gallon Rate Lift Station (Residential & Commercial)	\$ 0.0224	\$ 0.0256	\$ 0.0032
<b>Rate per 100 Gallons - Lift Station</b>	<b>\$ 2.24</b>	<b>\$ 2.56</b>	<b>\$ 0.32</b>
<b>Water and Sewer Rates Combined</b>			
	<b>Current</b>	<b>Proposed</b>	<b>Variance</b>
Combined Costs Water/Sewer Regular	\$ 0.0277	\$ 0.0290	\$ 0.0013
<b>Rate per 100 Gallons - Non Lift</b>	<b>\$ 2.77</b>	<b>\$ 2.90</b>	<b>\$ 0.1300</b>
Combined Costs Water/Sewer Lift Station	\$ 0.0356	\$ 0.0389	\$ 0.0033
<b>Rate per 100 Gallons - Lift Station</b>	<b>\$ 3.56</b>	<b>\$ 3.89</b>	<b>\$ 0.3300</b>
<b>Sewer Rates for Sewer ONLY Customers (3,000 Gallons/Month of Sewage Applied)</b>			
	<b>Current</b>	<b>Proposed</b>	<b>Variance</b>
Monthly Service Fee (all users)	\$ 5.00	\$ 5.00	\$ -
Additional Monthly Fee per Unit for Multi-Units	\$ 5.00	\$ 5.00	\$ -
Monthly Fee for Septic Pumping Services	\$ 6.25	\$ 6.25	\$ -
Per Gallon Rate Regular (Residential & Commercial)	\$ 0.0145	\$ 0.0157	\$ 0.00
<b>Rate per 3,000 Gallons - Non Lift</b>	<b>\$ 43.50</b>	<b>\$ 47.10</b>	<b>\$ 3.60</b>
Per Gallon Rate Lift Station (Residential & Commercial)	\$ 0.0224	\$ 0.0256	\$ 0.00
<b>Rate per 3,000 Gallons - Lift Station</b>	<b>\$ 67.20</b>	<b>\$ 76.80</b>	<b>\$ 9.60</b>



## Prince William Sound Regional Citizens' Advisory Council

### BRIEFING SHEET – HOMER CITY COUNCIL – 7/27/20

#### Alarming Increase of Oil Spill Risk Factors at the Valdez Marine Terminal and in Prince William Sound

The Council has had growing concerns about what it views as a steady, on-going, and alarming deterioration of federal and state oil spill prevention, response, oversight, and enforcement capabilities in Prince William Sound. There are a variety of factors contributing to this situation including, but not limited to, state and federal regulation and enforcement rollbacks, budget and staff reductions at key oversight agencies, the current COVID-19 emergency, the low price of oil, and reduced oil consumption and throughput in the Trans Alaska Pipeline System (TAPS). These factors would all be cause for concern on their own. Collectively, the cumulative impacts of them all raise the level of concern substantially to that of alarm and could substantially increase the risk of an oil spill in Alaska.

#### Federal Rollbacks

In recent years, the federal government has been rolling back regulations, oversight, and enforcement of many environmental laws, including those related to oil spill prevention and response. Reportedly, an acceleration of additional rollbacks is expected to take place to reduce the burden on industry during the COVID-19 emergency and to stimulate economic recovery.

Budget cuts and reductions in staffing levels at key oversight agencies are also taking a toll. The Bureau of Land Management (BLM), which has traditionally been the lead federal agency with oversight responsibility for TAPS and the Valdez Marine Terminal (VMT), has experienced significant budget cuts and staff reductions and there appears to be a slow but steady erosion of its role and responsibilities. The BLM recently completed a reorganization and strategic plan that significantly reduced the staffing levels in the Branch of Pipeline Monitoring and assigned or delegated many of their former responsibilities to other agencies with statutory authority. Unfortunately, all those other state and federal agencies are experiencing budget and staffing reductions of their own and it is not clear if they have assumed these added responsibilities.

#### Alaska Department of Environmental Conservation: Regulatory Reform Initiative, Suspended Oversight, and Funding Shortfall

The Alaska Department of Environmental Conservation (ADEC) is currently reviewing oil spill contingency plan regulations because it has reportedly heard from industry that such regulations are too burdensome. This review included a [public scoping process](#) (open from October 2019 to March 2020) to solicit comments and input from stakeholders, the public, and industry. The City of Homer submitted public comments during this process. No timeline has been given on when next steps in this review process will begin.

ADEC recently announced that the state would largely suspend oversight and enforcement activities during the current public health emergency. The Council recognizes the possible need to scale back some such activities, but such actions need to be measured and temporary so protections remain strong and the risk of a major oil spill is not increased.



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The state Oil and Hazardous Substances Spill Prevention and Response Fund is currently unsustainable unless there are adjustments to its funding sources and mechanisms. The Prevention Account, within that Fund, which funds ADEC's Division of Spill Prevention and Response operations is expected to be in a deficit position by 2023. The Response Account within the Fund is being tapped for hazardous substance responses around the state including non-oil industry related spills such as per and polyfluoroalkyl substances (PFAS), and the balance is not being replenished quickly because of low oil prices and diminished TAPS throughput. The amount remaining in the Fund balance is not sufficient to respond to a significant oil spill.

#### Staffing Reductions at Alyeska Pipeline Service Company

Perhaps the most critical issue in terms of oil spill prevention and response is the low price of oil and diminished TAPS throughput. Several years ago, Alyeska undertook a restructuring initiative that resulted in an approximately 10% reduction in staffing levels, elimination of the VMT Manager and Ship Escort/Response Vessel System (SERVS) Director positions in Valdez, and consolidation of the Alyeska Emergency Preparedness and Response Director position that now has greatly expanded responsibilities.

Alyeska recently conducted additional staff reductions and the information the Council received indicated that a reduction of close to 5% occurred. Cutting staff positions, reduced accountability and supervision, and increasing workloads logically are likely to elevate risk and the chances of an accident. Further, when budgets have to be reduced, some of the first things to feel the effects are staffing, infrastructure maintenance, and training.

#### BP's sale of Alaska Assets to Hilcorp/Harvest

As one of the most newsworthy events in Alaska in 2019, in late August there was an announcement that BP planned to sell all its assets in Alaska to Hilcorp and their wholly-owned subsidiary Harvest Alaska LLC. This sale includes BP's ownership share (49.1069%) of TAPS, including the VMT. State agencies plan to complete their review of the sale in its entirety by September 2020, which would transfer the majority ownership of Alyeska to Hilcorp/Harvest, a company that, according to state agencies, has a track record of reducing costs. This could be very problematic if those reductions lead to further diminishment of safety, prevention, and response readiness. The new owner is reported to be heavily leveraged already and proposes to finance its acquisition of BP's assets largely through additional debt. This, in addition to low oil prices, will increase the incentive to reduce costs that are not directly related to profit centers.

As part of the approval process by the Regulatory Commission of Alaska (RCA), a petition was filed by Hilcorp/Harvest for the confidential treatment of certain financial information. The RCA has ruled that Hilcorp/Harvest's financial information will be kept confidential from the public. While state agencies will review the proposed transaction subject to their statutory authorities, it is important to note there is a lack of publicly available financial and operational information to determine whether Hilcorp and/or Harvest (or affiliates) is financially fit, willing, and able, as an owner and majority stakeholder, to assume responsibility for ensuring the safe and reliable operation and maintenance of the VMT and SERVS.



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Given the importance of this transaction and the opaque nature of the Hilcorp/Harvest's finances and corporate structure, the Council believes there should be full transparency on information regarding this transaction for the public to exercise its own due diligence and independent oversight to assure that this transaction, if approved, will be in the overall best public interest.

#### Other Risk Factors

There are numerous other factors that are presently contributing to heightened risk. These include, but are not limited to, ageing TAPS infrastructure, the introduction of foreign flagged vessels for transporting oil overseas, limited oil storage capacity, and the lack of reliable and rapid virus testing capacity for critical infrastructure workers in the oil storage and transportation sector. According to the U.S. Coast Guard, there have been intermittent and persistent breakdowns in communication and vessel tracking infrastructure including VHF capability, Search and Rescue coverage, and the radar coverage which protects the shipping lanes used by tankers entering and leaving the Port of Valdez. The Coast Guard has had difficulty securing the funding, priority status, and other resources necessary to address this problem.

And finally, there is the serious matter of "complacency." This problem was specifically identified by Congress as one of the key factors leading to the Exxon Valdez oil spill. It would be easy for complacency to settle in since there has not been a major oil spill in Prince William Sound since 1989, and the entire nation is distracted with other issues related to COVID-19 and the resulting economic slump caused by lockdowns imposed to prevent the spread of the virus. Vigilance is necessary in order to prevent the type of complacency and backsliding that could contribute to the occurrence of another major oil spill that would be devastating for the public, for livelihoods, for fish and wildlife, and for the marine and terrestrial environment.

In Alaska, stakeholders from across the oil spill region have tragically seen first-hand what can happen when industry, government regulators, and the public grow complacent and are not adequately diligent. Over the past 30 years, to the credit of all involved—industry, federal and state regulators, legislators, and citizen stakeholders, Alaska has developed one of the best and most effective oil spill prevention and response systems in the world. Efforts need to be made at all levels of government to do what can be done to keep it that way and improve on it wherever feasible.

Alaskans know all too well, if such problems are allowed to persist unabated, the fish and wildlife, marine and terrestrial environments, economy, and livelihoods in Alaska will all be put at unacceptably high risk of serious harm at a time when our state is already struggling on many levels. The Council is trying to help address these issues by raising awareness of them so that sensible and effective actions can be taken in time to rectify them and thereby help prevent another major oil spill.



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## Other Topics of Note

### Judge rules on EPA dispersant use lawsuit

A federal judge recently rejected the Environmental Protection Agency's (EPA) request to dismiss a lawsuit by environmental groups (including two Alaska groups, Cook Inletkeeper and Alaska Community Action on Toxins, as well as Rosemary Ahtuanguak, an Iñupiat Alaskan who has been working with Tribal Councils on these issues) and ordered the EPA to update its spill plan in light of evidence about the public health and environmental effects of oil dispersants.

The [lawsuit](#), filed in federal court in January, compels the Environmental Protection Agency to issue rules restricting the use of chemical agents, such as Corexit, to clean up oil spills. The ruling passed earlier this month, allows this lawsuit to proceed, which could result in drastic changes to how dispersants are included, or not, in federal oil spill cleanup directives. One of the groups included in the lawsuit, Earth Island Institute, has [set up a webpage with more information](#) for those interested.

Should the EPA be required to update its spill plans as a result of this lawsuit, a public comment period will have to be conducted as part of that process. While that could be years away still, in that event, PWSRCAC would certainly plan to share that information widely and urge our partners and stakeholders to submit comments.

PWSRCAC has previously [adopted a position against the use of dispersants](#) in the *Exxon Valdez* oil spill region. The Council maintains that mechanical recovery and containment of crude oil spilled at sea should remain the primary methodology employed in our region, until such time as chemical dispersant effectiveness is demonstrated in our region and shown to minimize adverse effects on the environment.

### Impacts of COVID-19 to PWSRCAC activities

Both PWSRCAC offices (Anchorage and Valdez) are temporarily closed as a safety precaution due to COVID-19. Council staff are performing key job functions remotely and are still conducting business. If you need to reach staff it is recommended you [do so by EMAIL](#) for the most prompt response.

Based on recommended precautions to reduce the risk of exposure and propagation of the virus, all PWSRCAC meetings are currently being held through teleconferencing capability (Zoom). The next PWSRCAC Board meeting will be online on [September 17-18, 2020](#).

As state and city reopenings continue to progress, the Council is taking a very cautious approach to our reopening to protect the health and safety of our volunteers and staff.



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## PWSRCAC Recertification

Each year, the U.S. Coast Guard (USCG) is required to review the certification for PWSRCAC under the Oil Pollution Act of 1990. Every three years, of which this was one, a more extensive application process is conducted, followed by a public comment period.

PWSRCAC submitted our application for review at the end of 2019 and the public comment period was subsequently opened. It is extremely important that the USCG hear from our member organizations, partners, and the public during this process and PWSRCAC would like to express our appreciation for the letter of support submitted by the City of Homer.

## Other Recent Projects by PWSRCAC

- Weather stations: The Council supports two weather stations, one in Prince William Sound and the other in the Gulf of Alaska. This information is collected via the Prince William Sound Weather Station Network, developed and maintained by the Prince William Sound Science Center (PWSSC). The Council co-funds this network. [Weather data](#) is shared with the Alaska Ocean Observing System (AOOS), making it readily available to the public. Projects planned for the future include adding a weather station at Cape Hinchinbrook and a wind meter at Seal Rocks in the Hinchinbrook Entrance.
- Port Valdez Weather Buoys: The Council has assembled, deployed, and maintains two buoys capable of measuring ocean currents, waves, and other common weather parameters in Port Valdez. The [first buoy](#) is installed near Jackson Point, offshore of the VMT. The [second buoy](#) is installed near the Valdez Duck Flats. The PWSSC and City of Valdez have been partnering with the Council to facilitate this project. The Council has been working with AOOS to share the buoy data regionally. A Memorandum of Agreement with NOAA to establish a [PORTS® \(Physical Oceanographic Real Time System\)](#) site for Port Valdez has been completed and the site for Port Valdez should go live later this year. NOAA will be using our buoy data along with information derived from their weather stations and tide gauges located in Valdez.
- Long-term Environmental Monitoring: Every year the Council collects environmental samples and has them chemically analyzed for oil contamination stemming from the operation of the VMT. The sampling includes retrieving blue mussels, marine sediments, and special plastic strips (called passive sampling devices), then having them all chemically analyzed for oil contamination. In 2019, mussels, marine sediments, and passive sampling devices were collected from around Port Valdez. The 2019 chemical analysis of the mussels showed that Port Valdez was “exceptionally clean” compared to other parts of Alaska and the United States. The passive sampling device results showed that water column concentrations of oil contamination were “well below any known toxicity thresholds for sensitive marine organisms and life stages.” The marine sediment results also showed relatively low levels of oil contamination in Port Valdez, but the signature of the VMT could still be detected in the sediments samples.



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- [Potential Places of Refuge](#): A Council-sponsored study reviewed eight “potential places of refuge,” which are locations where an oil tanker in distress can anchor and take action to stabilize its condition. Of the eight reviewed in the study, none were found to be safe for use by tankers. However, several safe alternate locations were identified, analyzed, and proposed for future consideration. Identifying these sites in advance allows decision-makers to save time during their critical initial response to a potential oil spill. Establishment of these places of refuge is recognized by the International Maritime Organization and other governmental agencies as an important marine safety and pollution mitigation measure.
- [Vessel Traffic Services: Review of Technology, Training, and Protocols](#): The U.S. Coast Guard operates 12 Vessel Traffic Service (VTS) facilities across the country. Personnel at these facilities use surveillance and communications systems to reduce vessel collisions, allisions, and groundings. The Council recently commissioned a review of the VTS system in Prince William Sound, which was established primarily to ensure the safe transportation of crude oil from the VMT to the Gulf of Alaska. The goal of this review was to gain a better understanding of what constitutes best available technology in the field of VTS and how that technology, as well as practices and procedures, compare to those used in the Prince William Sound.
- [Tanker Towline Deployment Best Available Technology Review](#): Oil tankers operating in Prince William Sound are required to carry emergency towing equipment systems. These systems require a successful connection be made by passing a tow line, also called a messenger line, between the rescue tugboat and the vessel to be towed. Messenger lines to stricken vessels can be passed by hand, heaved or thrown aboard, projected by mechanical means or picked out of the water. Weather is often a factor in vessel casualties and retrieving a line can be difficult and dangerous in poor weather conditions. While rescue of a tanker in distress depends on successfully passing a tow line, little research has been done on evaluating the methods used to do so. The Council worked this past year to evaluate the best technology available for delivery devices and best use practices.
- [Contingency Plan Reviews](#): The contingency plan for the VMT underwent a five-year renewal in 2019, and the Council participated in the state public review process. Several concerns were identified including the integrity of the secondary containment liner, adequate numbers of trained personnel to respond to a spill, and protection of environmentally sensitive areas. The contingency plan for tankers in Prince Williams Sound was amended by the shipping companies to change ice scouting measures. The Council provided input during the public review process for this change, seeking reassurance that changes in the plan do not increase the risk of oil spills.

### More Information

If the City Council would like further information on any of these topics, please contact your representative to PWSRCAC, Robert Archibald, or Director of Communications Brooke Taylor ([brooke.taylor@pwsrcac.org](mailto:brooke.taylor@pwsrcac.org) or 907-301-3784).



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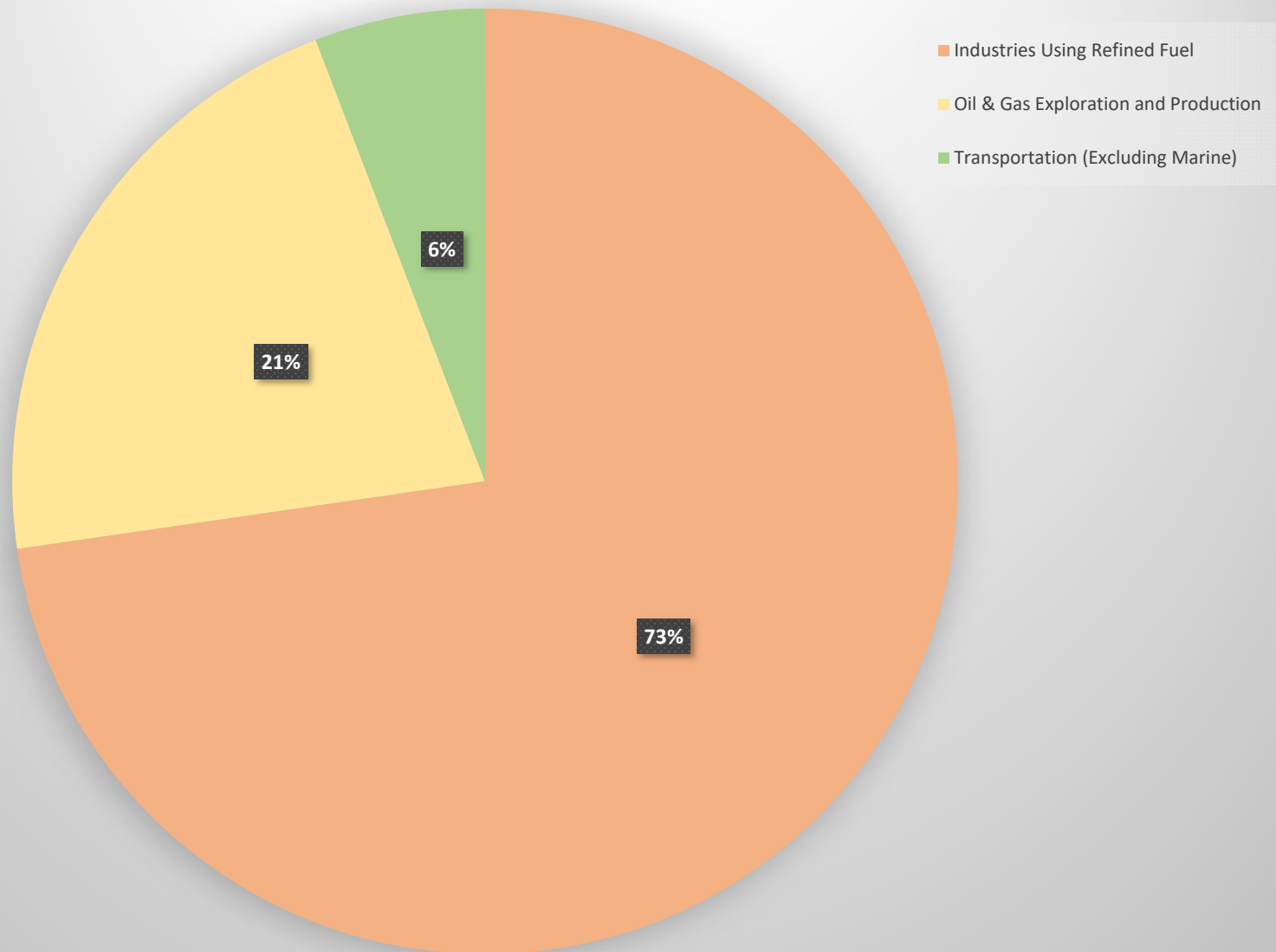
**Division of Spill Prevention and Response**  
**FY 2019 Unreimbursed Costs by Industry**

Industry Type	Percentage of Costs Billed (No Grants or RSAs)
Salvage/Storage/Dump	23%
Commercial/Retail/Office	14%
Gas Station	8%
Military Installation <sup>1</sup>	6%
Vessel/Seafood/Water	6%
Laundry/Dry Cleaner	4%
Other	3%
Mining Operation	3%
Residential	2%
Power Generation	2%
Park/Recreation Area	1%
School	1%
Firing Range	0%
<b>Industries Using Refined Fuel Total</b>	<b>73%</b>
Fuel/Oil/Transmission Pipe	19%
Refinery Operation <sup>2</sup>	2%
<b>Oil &amp; Gas Exploration and Production Total</b>	<b>21%</b>
Air	4%
Vehicle	1%
Rail	1%
<b>Transportation (Excluding Marine) Total</b>	<b>6%</b>

<sup>1</sup> Nearly all division work relating to military installations is covered under the Defense State Memorandum of Agreement (DSMOA), a federal grant. The few costs that are not subject to the grant are billed through cost recovery.

<sup>2</sup> Costs relating to the Flint Hills case (totaling approximately \$515K) have been excluded from this category. Flint Hills costs are not representative of the division's normal workload associated with refinery operations.

## FY 2019 Unreimbursed Costs by Industry



City of Homer  
General Fund  
Monthly Comparison

General Fund	Actual June 2018	Actual June 2019	Actual June 2020
<b><u>Revenues</u></b>			
Property Taxes	30,357	26,859	14,153
Sales and Use Taxes	158,123	153,994	108,898
Other Income	128,713	107,962	192,038
<b>Total Revenues</b>	<b>317,193</b>	<b>288,815</b>	<b>315,089</b>
<b><u>Expenditures &amp; Transfers</u></b>			
Administration	94,213	74,407	60,378
Clerks	66,451	34,469	24,872
Planning	37,336	27,765	27,376
Library	84,245	65,767	52,583
Finance	65,082	50,502	49,477
Fire	82,934	66,968	104,959
Police	312,683	240,496	233,146
Public Works	330,677	227,158	166,285
Airport	17,812	14,109	5,817
City Hall, HERC	10,670	21,194	5,132
Non-Departmental	-	-	-
Total Operating Expenditures	1,102,102	822,837	730,024
Transfer to Other Funds			
Leave Cash Out	-	-	-
Total Transfer to Other Funds	-	-	-
Total Transfer to Reserves	-	-	-
<b>Total Expenditures &amp; Transfers</b>	<b>1,102,102</b>	<b>822,837</b>	<b>730,024</b>
<b>Revenues Over (Under) Expenditures</b>	<b>(784,910)</b>	<b>(534,022)</b>	<b>(414,934)</b>



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[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 20-116

TO: Mayor Castner and Homer City Council  
FROM: Rick Abboud, Interim City Manager  
DATE: July 27, 2020  
SUBJECT: Follow-Up to Resolution 20-061

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Under the direction of Resolution 20-061, *“City Council requests an action plan from City Administration at the July 27, 2020 Council meeting outlining steps to accountability that would satisfy a federal audit for the spending of all CARES Act funds, including plans for engagement with grantees and record-keeping.”*

### Engagement with Grantees

Currently, the only active program working with grantees is SBERG. After consulting with CARES Act Local Implementation Manager Mastey, it was not her intent to conduct outreach to applicants about spending the issued grants since it is clearly defined in the policy documents and applications associated with SBERG. During general outreach by phone or in person (which has been the bulk of outreach), Ms. Mastey emphasizes that the City will not be requiring proof of spending, reiterates the fact that this is a federal grant and is subject to audit, and if an audit were to occur the grantee would need to supply proof of spending. Ms. Mastey liked the idea of following up with SBERG grantees since it offers a way for the city to collect information about small business owners' impacts due to COVID-19 and (will help the City see how funding was applied in economic recovery efforts). However, her approved contract did not incorporate this component of work and would require additional time and contractor labor costs to complete.

The City recently hired Cares Act Program Administrator Sara Perman as a temporary employee to assist the City with grant programs established by Council. This includes outreach responsibilities as well as assembling information required for successful management of grant funds. Ms. Perman would be able to follow up with grantees depending on the reporting direction given by Council as described in Memorandum 20-111. As stated in the July 24<sup>th</sup> Manager's Report, additional staff support may be necessary though to ensure efficient, timely response to the public and administrative management of paperwork and expense tracking.

### Record Keeping

Per Finance Director Walton:

- A folder has been created that contains paper copies of all purchases made in regards to our efforts associated with COVID
- All unbudgeted personnel costs (OT, emergency hires, and standby) have been coded to a COVID project account
- All budgeted personnel costs (employee regular time spent on COVID and quarantine time) are being tracked using a dedicated code for reporting purposes



- CARES funding has a dedicated bank account and any interest earned on the money will remain in such account

A way to ensure we meet audit requirements and our records are kept in top notch form is to hire a “compliance officer” similar to the borough. There are a lot of moving parts and the Finance department would benefit significantly from having some on staff that has the sole responsibility of making sure our records are sufficient for audit purposes. More information can be provided on this topic depending on guidance and input from Council.

**CITY OF HOMER  
HOMER, ALASKA**

Lord

**RESOLUTION 20-061**

A RESOLUTION OF THE HOMER CITY COUNCIL AMENDING THE SMALL BUSINESS ECONOMIC RECOVERY GRANT (SBERG) PROGRAM TO CLARIFY ELIGIBILITY REQUIREMENTS RELATED TO DELINQUENT STATUS WITH THE KENAI PENINSULA BOROUGH TAX DEPARTMENT AND REQUESTING A REVIEW OF AUDIT REQUIREMENTS AND CITY PROCESS FROM STAFF.

WHEREAS, The City Council passed Resolution 20-057 on June 8, 2020 establishing the City's Small Business Economic Recovery Grant (SBERG) Program to assist small businesses within the City of Homer with economic recovery as a result of the COVID-19 pandemic; and

WHEREAS, The intention of the SBERG program is to create a straightforward mechanism to provide these grants with as few roadblocks as possible for business owners; and

WHEREAS, One of the SBERG eligibility requirements set through Resolution 20-057 is that a business "must not be delinquent on payments and filed returns with the Kenai Peninsula Borough Tax Department with no missed filings or balance due on record" ; and

WHEREAS, In a memorandum from the Acting City Manager dated June 16, 2020 that summarized borough-wide communication regarding CARES Act funds, feedback from the Borough was "There could be a substantial number of entities that are delinquent, quite possibly due to COVID-19"; and

WHEREAS, The Kenai Peninsula Borough Tax Department is working earnestly during this difficult economic time to establish payment plans with businesses and assist them with compliance on an extended timeline, though the technical status for these responsive businesses may still be "delinquent"; and

WHEREAS, Also in the June 16, 2020 memo is a section on accountability, noting that all spending of CARES Act funding will be subject to federal audit and the steps the Borough is taking to "assist grantees in being accountable in how they use the funds" as well as assuring staff support for not only the mobilization but also the demobilization of their grant program(s); and

41 WHEREAS, The City of Homer will be held to the same audit requirements and  
42 accountability standards as the Borough, and will similarly be liable for misspent funds and/or  
43 lacking documentation.  
44

45 NOW, THEREFORE BE IT RESOLVED, that the City Council of Homer, Alaska, strikes the  
46 SBERG Policy Eligibility Requirement #4 and replaces it with "Must not be delinquent with the  
47 Kenai Peninsula Borough Tax Department as a result of a lien or violation of payment plan."  
48

49 BE IT FURTHER RESOLVED, that the City Council requests an action plan from City  
50 Administration at the July 27, 2020 Council meeting outlining the steps to accountability that  
51 would satisfy a federal audit for the spending of all CARES Act funds, including plans for  
52 engagement with grantees and record-keeping.  
53

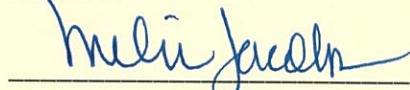
54 PASSED AND ADOPTED by the Homer City Council this 1<sup>th</sup> day of July, 2020.  
55

56 CITY OF HOMER

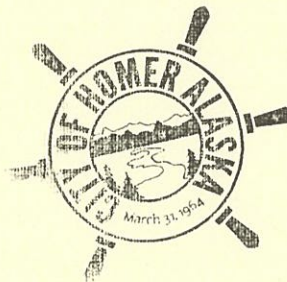
57 

58 \_\_\_\_\_  
59 KEN CASTNER, MAYOR

60 ATTEST:

61 

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



**From:** [AnnaLisa Cox](#)  
**To:** [Caroline Venuti](#); [Rachel Lord](#); [Joey Evensen](#); [Donna Aderhold](#); [Storm Hansen-Cavasos](#); [Heath Smith](#)  
**Cc:** [Melissa Jacobsen](#); [Carey Meyer](#); [Janette Keiser](#)  
**Subject:** Action Item - Utility Drainage Easement Vacation for Lot 24A, AA Mattox Peggi's Addition  
**Date:** Friday, July 24, 2020 1:24:52 PM  
**Attachments:** [2020.07.24 Cox Letter to the City Council.pdf](#)  
[4 - 2018.11.28 - Echo Trading Nelson-Kallman Permit from City of Homer.pdf](#)  
[2 - 1999.03.08 - City of Homer Memorandum 99-52\(a\).pdf](#)  
[1 - 1998.09.16 - Letter from City of Homer requesting Easement Placement.pdf](#)  
[3 - 2003 Aerial Imagery.pdf](#)  
[Unapproved Minutes\\_071320.pdf](#)

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Members of the Homer City Council,

I would like to request that the Homer City Council grant consent to the Utility Drainage Easement Vacation on Lot 24A, AA Mattox, Peggi's Addition. The Utility Drainage Easement has now been approved for vacation by the KPB Planning Commission twice. It will be reviewed by the City Council for vacation consent on Monday, July 27<sup>th</sup>, in accordance with KPB 20.70.110.

The Utility Drainage Easement on Lot 24A was requested by the Homer Public Works Department in 1998. <sup>[1]</sup> The Homer City Council stipulated that the Utility Drainage Easement be granted on Lot 25 "as requested by the City of Homer Public Works Department." <sup>[2]</sup>

Homer City Code 18.12.060

- a. The City may reserve from any conveyance of real property any easement or right-of-way that the Council finds to be required for existing or future public purposes.
- b. The vacation of streets, alleys or other public areas, and the disposition of title to the vacated area, is governed by Chapter 20.70 KPBC

KPB 20.70.110. - Vacation consent—City council or assembly

A vacation of a city street, public right-of-way, public area, or public easement located within an incorporated city may not be approved without the consent of the city council.

The utility drainage easement placed through the middle of Lot 24A limits what I am able to do on my private property without just cause. The Nelson/Kallman Public Rights of Way have historically housed the seasonal run off that runs through them. <sup>[3]</sup> The drainage easement on Lot 24A has never been utilized, nor will it because the Nelson/Kallman ROWs provide superior drainage and optimal maintenance access for the department of Public Works. The issued permit for the Nelson/Kallman ROW clearly dictate that the drainage pattern should not be altered and should run along the north side of the Nelson ROW. <sup>[4]</sup> The Homer Department of Public Works when asked, stated non-objection to the vacation of this utility drainage easement, thus confirming the easement is no longer needed by the City of Homer.

- Homer City Code 18.12.020(b) "**The disposal of real property shall be authorized by ordinance.** The ordinance shall include a finding that the property is no longer required for a public use, and shall include such terms and conditions of the disposal as the Council shall determine."

The easement is no longer needed for city utility purposes. I would like to request that the Homer City Council grant consent to the vacation of the easement at the Monday meeting thus, releasing the

easement placed by request of the Department of Public Works and Homer City Council in 1998-99. I have included the Meeting Minutes from the July 13, 2020 Planning Commission Meeting. My statement is available for review on page 6. Should you have any additional questions for me, I will be present at the Monday City Council meeting.

Thank you for your time and consideration,

AnnaLisa Cox

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[\[1\]](#) 1998 Letter from Dan Gardener

[\[2\]](#) City Council Memorandum 99-52(a)

[\[3\]](#) Aerial Imagery from 2003 that clearly shows the drainage along the Nelson Ave ROW

[\[4\]](#) Agreement for use of undeveloped right-of-way

July 24, 2020

AnnaLisa Cox  
4510 Heidi Ct  
Homer AK 99603

Homer City Council  
491 E. Pioneer Avenue  
Homer, Alaska 99603

Re: Utility Drainage Easement Vacation for Lot 24A, AA Mattox Peggi's Addition

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Thank you for your time and consideration,



AnnaLisa Cox

<sup>1</sup> 1998 Letter from Dan Gardener

<sup>2</sup> City Council Memorandum 99-52(a)

<sup>3</sup> Aerial Imagery from 2003 that clearly shows the drainage along the Nelson Ave ROW

<sup>4</sup> Agreement for use of undeveloped right-of-way



# CITY OF HOMER

## PUBLIC WORKS

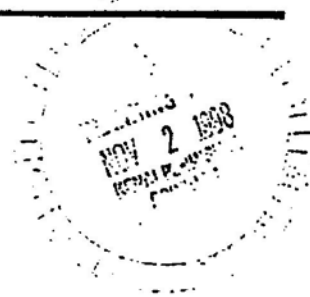
3575 HEATH STREET

HOMER, AK 99603

TELEPHONE (907) 235-3170  
TELECOPIER (907) 235-3145

September 16, 1998

Roger Imhoff, RLS  
P.O. Box 2588  
Homer, Alaska 99603



RE: Lots 24 & 25 AA Mattox 1958 Addition Unit 2 Amended  
Drainage/Utility Easement Vacation

Dear Mr. Imhoff:

The City of Homer; Public Works Department has no objection to the proposed easement vacation as outlined in your letter to me of 9/11/98. This approval is with the understanding that a 10' drainage easement will be dedicated along the west property line of lot 25.

Since there is no property line vacation as part of this proposal, the property owners must still abide by the building setback when constructing the proposed garage extension.

Please call or write with any further questions regarding this matter.

Sincerely,

Dan Gardner, Inspector

C: Planning Department

10/30/98  
OK, DOES NOT  
NEED PLANNING  
COMMISSION REVIEW.  
Green & Reckler

166

NELSON AVE

NELSON AVE

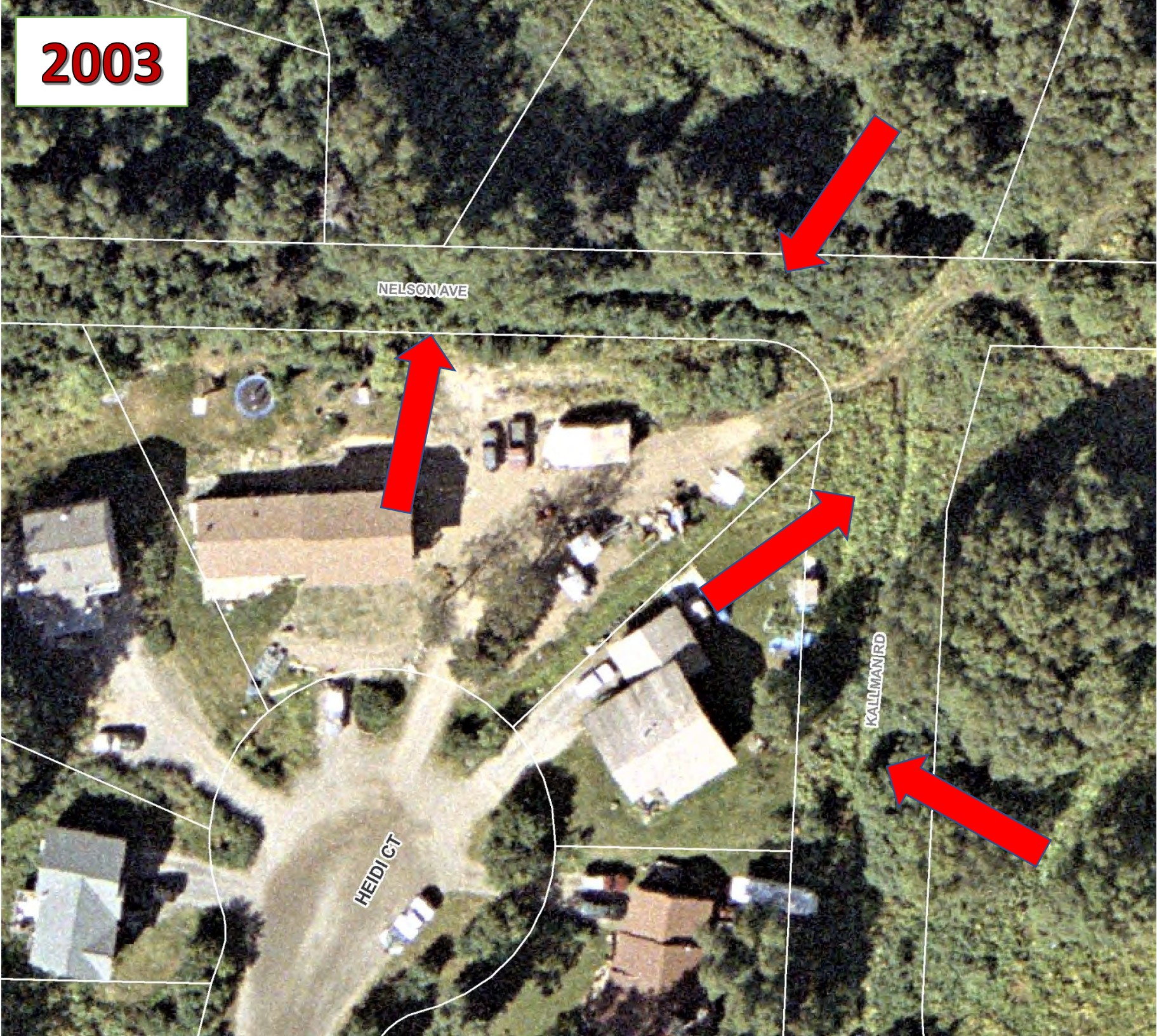
KALLMAN RD

HEIDI CT





**2003**



NELSON AVE

HEIDI CT

KALLMAN RD

# Office of the City Clerk

Mary L. Calhoun, City Clerk  
Julia J. Martin, Deputy City Clerk



491 E. Pioneer Avenue  
Homer, Alaska 99603-7624  
(907) 235-3130  
(907) 235-8121; ext: 2224 or 2227  
fax: (907) 235-3148  
home # (907) 235-2843  
email: clerk@xyz.net

MEMORANDUM 99-52(A)

TO: MAYOR AND HOMER CITY COUNCIL

FROM: MARY L. CALHOUN, CMC/AAE, CITY CLERK *mlc*

DATE: MARCH 3, 1999

SUBJ: APPEAL OF THE KENAI PENINSULA BOROUGH PLANNING COMMISSION'S DENIAL OF THE PETITION TO VACATE THE ENTIRE WIDTH OF FIFTEEN FOOT WIDE DRAINAGE AND UNDERGROUND UTILITY EASEMENT WITHIN THE EASTERLY FIFTEEN FEET OF LOT 24, AA MATTOX 1958, ADDITION UNIT 2 AMENDED (PLAT 83-89 & 84-89 HRD); AND VACATE THE TEN FOOT WIDE UTILITY EASEMENT WITHIN THE WESTERLY TEN FEET OF LOT 25 OF SAID AA MATTOX SUBDIVISIONS; BEING WITHIN SECTION 17, T5S, R13W, SEWARD MERIDIAN, ALASKA, WITHIN THE CITY OF HOMER, KPBC FILE -98-264 CARRIED FORWARD FROM NOVEMBER 23, 1998 KPBC MEETING 1/26/99.

Kenai Peninsula Borough Code §§ 20.28.080 and 110 elucidates the action after denial of a vacation petition. The appeal is submitted to the local City Council and conducted as a public hearing. Property owners within a 300 foot radius were duly notified of this hearing. It is the City Council's job to make findings regarding this matter, which are then forwarded to the Kenai Peninsula Borough Planning Commission by the City Clerk so that further action concerning surveying and platting may be initiated.

## RECOMMENDATION:

City Council make findings in favor of the appeal: That there is no objection to the vacation of these utility easements by the City of Homer Planning and Public Works Departments, as noted within the record pertaining to the KPBC P/C denial of the petition to vacate the entire width of a fifteen foot wide drainage and underground utility easement within the easterly fifteen feet of lot 24, AA Mattox 1958, addition unit 2 amended (plat 83-89 & 84-89 HRD); and vacate the ten foot wide utility easement within the westerly ten feet of lot 25 of said AA Mattox Subdivisions; being within Section 17, T5S, R13W, SM; and

That the City Council agrees with the KPBC P/C conditions of granting a ten foot drainage easement within the westerly ten feet of Lot 25, as requested by the City of Homer Public Works Department and granting easement for the use of GCI's existing facilities.

*fiscal note: NA*

APPROVED AS AMENDED: THIS FINDING IS CONDITIONAL ON A SUITABLE 25 FOOT SEWER/WATER EASEMENT ON THE EAST SIDE OF LOT 25 WITH THE CONDITION THAT THE PROPERTY BE RETURNED TO ITS PREVIOUS CONDITION IF THE SEWER LINE IS NOT USED AND THE EASEMENT BE VACATED IF SEWER DOES GO UP KALLMAN ROAD. *erk*

131

**AGREEMENT FOR USE OF UNDEVELOPED RIGHT-OF-WAY  
(FOR PRIVATE DRIVEWAY ACCESS) AND FOR FUTURE ASSESSMENTS**

Fee \$105.00

Date Paid 11/27/18

Code 104

THIS AGREEMENT, made and entered into this 28<sup>th</sup> day of November, 20\_\_\_\_, by and between the CITY OF HOMER, a municipal corporation, hereinafter referred to as the "City", and **Echo Trading Company, LLC**, hereinafter referred to as the "Owner", whose address is **P.O. Box 3368, Homer, AK 99603**

**WITNESSETH**

WHEREAS, the City owns a public right-of-way(s) known as **Nelson Avenue and Kallman Road**, some portion of which has not been developed into a street conforming to City standards, and

WHEREAS, the Owner under this Agreement owns certain real property abutting said right-of-way(s), said property being described as: **T 6S R 13W SEC 17 Seward Meridian HM 003746, A.A Mattox Sub 1958 Addn, Tract A H.R.D.** Also identified by Tax Assessor's Parcel No. **177-051-08** and said Owner hereby requests permission to construct a driveway on an undeveloped portion of said right-of-way(s) to provide access to said property;

NOW THEREFORE, in consideration of the covenants hereinafter set forth and the mutual benefits to be derived therefrom, the parties agree as follows:

1. The City does hereby permit and allow the Owner to develop said undeveloped right-of-way(s), for use as an access driveway, at Owner's expense. Area of use of undeveloped right-of-way(s) known as **Nelson Avenue and Kallman Road** and the work further described as follows:
2. Installation of approximately 900 lineal feet of road, commencing at the intersection of Kramer Lane and Kallman Road, and terminating at the above referenced property. Drainage and culverts are depicted on the Attached Exhibit A.
3. The Owner agrees to construct said driveway, in accordance with the following conditions:
  - a. Access driveway cross-section shall consist of a minimum 12 inch layer atop geotextile fabric;
  - b. Existing drainage patterns shall not be altered or disturbed; minimum 18 inch cmp culverts as required;
  - c. Minimum driveway width shall be 14 feet from shoulder to shoulder;
  - d. Construction shall be in accordance with Homer City Code 11.08 Driveway Construction Permits;

- d. Construction shall be in accordance with Homer City Code 11.08 Driveway Construction Permits;
3. The Owner further covenants and agrees that he will not object to the creation of any improvement district which may in the future be created for the purpose of extending a street, built to City standards, adjacent to any boundary of the above described parcel of land.
4. It is specifically understood and agreed between the parties hereto that the covenant set forth in the immediately preceding paragraph shall be held to run with and bind the land previously described hereinabove, and to bind all subsequent owners and occupants of such land.
5. Liability and Maintenance:
- a. The Owner assumes all risk of liability or loss for or resulting from damages of any kind whatsoever caused by or arising out of use of the driveway on said right-of-way. The City shall have no liability for any such loss or damages whether sustained by Owner or any member of the public.
- b. All improvements made by the Owner within the right-of-way may be destroyed or removed, without compensation to Owner, if and when a public street is constructed in said right of way.
- c. The Owner shall provide all maintenance, including snow removal, necessary for use of the driveway in the right-of-way. The City shall have no responsibility for maintenance of the right-of-way until the time, if ever, that the City formally accepts the street for maintenance.
- d. If so directed by the City, the Owner shall erect and maintain at the intersection of the driveway with any public street a sign indicating the driveway is a private road and not maintained by the City.
6. This document shall be recorded in the Homer Recording District after execution by the Parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first mentioned above.

CITY OF HOMER  
3575 Heath St  
Homer, Alaska 99603

By: Carey Meyer 11/28/18  
Public Works Director

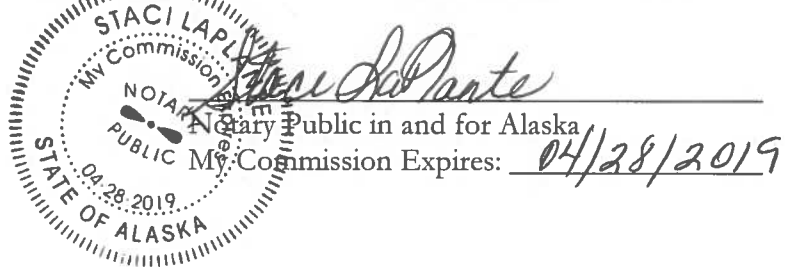
PROPERTY OWNER(S):

By: Tony Neal Trustee  
Echo Trading Company, LLC

STATE OF ALASKA )  
)ss  
THIRD JUDICIAL DISTRICT )

Before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, this day personally appeared Carey Meyer, known to be to be the person(s) described in and who executed the above instrument and they acknowledged to me that they signed the above instrument and they acknowledged to me that they signed the same freely and voluntarily for the means and purposes mentioned.

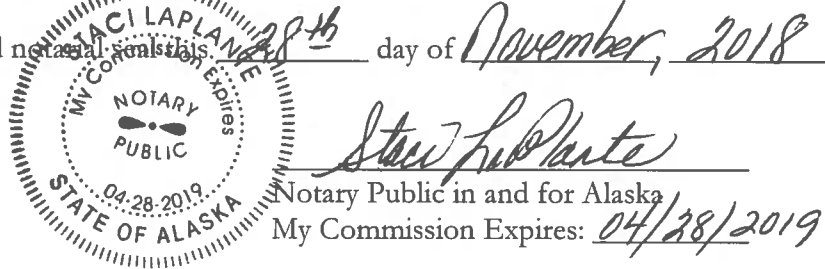
WITNESS my hand and notarial seal this 28<sup>th</sup> day of November, 2018



STATE OF ALASKA )  
)ss  
THIRD JUDICIAL DISTRICT )

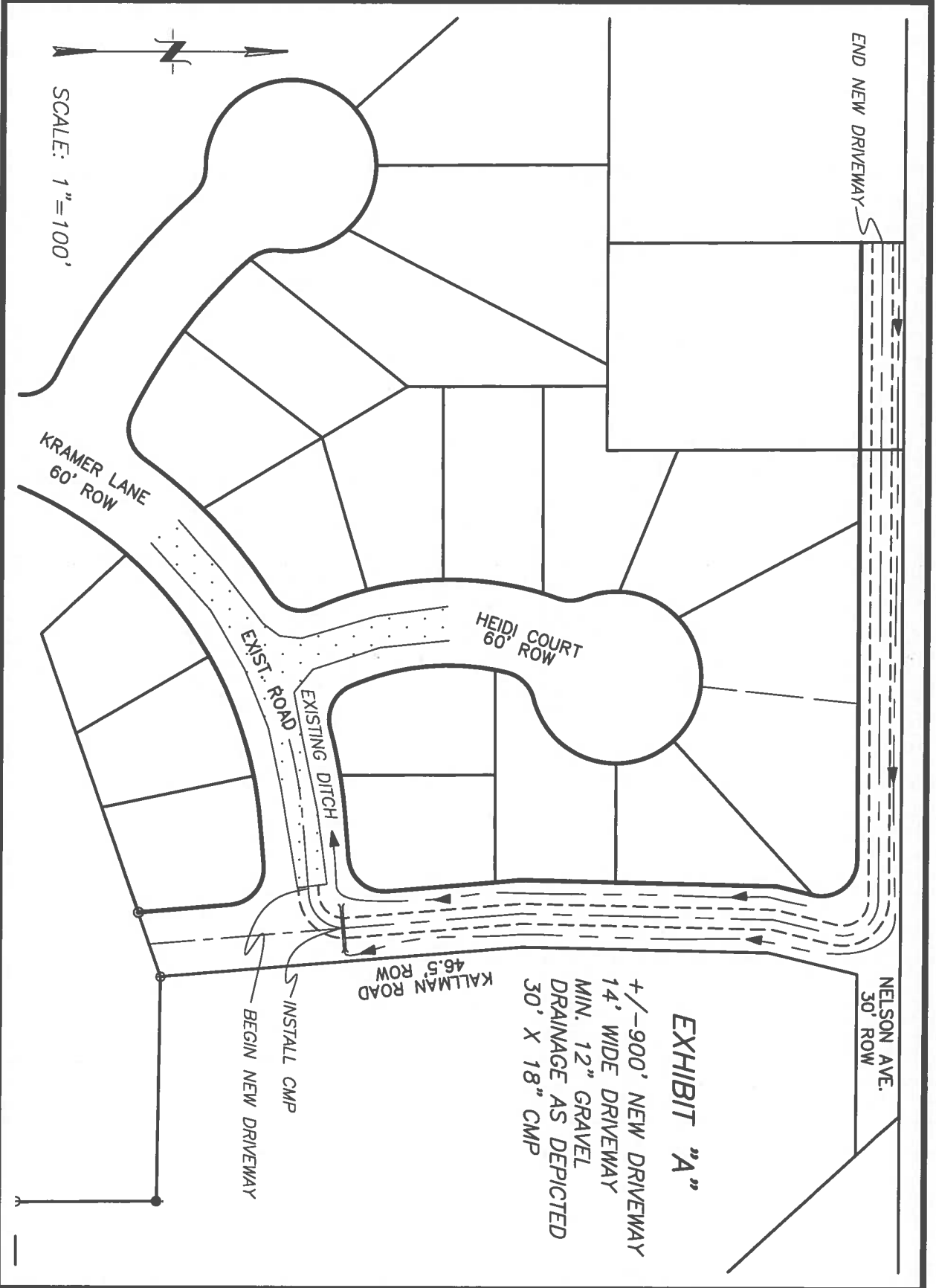
Before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, this day personally appeared **Tony Neal** known to be to be the person(s) described in and who executed the above instrument and they acknowledged to me that they signed the above instrument and they acknowledged to me that they signed the same freely and voluntarily for the means and purposes mentioned.

WITNESS my hand and notarial seal this 28<sup>th</sup> day of November, 2018



Return Original to:  
City of Homer, City Clerk  
491 East Pioneer Avenue  
Homer, Alaska 99603

c: City of Homer, Department of Public Works  
City of Homer, Planning Department



END NEW DRIVEWAY

SCALE: 1"=100'

KRAMER LANE  
60' ROW

HEIDI COURT  
60' ROW

EXIST. ROAD

EXISTING DITCH

KALLMAN ROAD  
46.5' ROW

NELSON AVE.  
30' ROW

### EXHIBIT "A"

+/-900' NEW DRIVEWAY  
14' WIDE DRIVEWAY  
MIN. 12" GRAVEL  
DRAINAGE AS DEPICTED  
30' X 18" CMP

INSTALL CMP  
BEGIN NEW DRIVEWAY



**AGENDA ITEM G.** UTILITY EASEMENT VACATIONS**G.** Utility Easement Vacation

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

Staff report given by Scott Huff

**STAFF REPORT**

PC Meeting: July 13, 2020

**Purpose as stated in petition submitted on May 29, 2019:** The 10' drainage easement has not been used since it was granted in 1984. There is an alternative corridor in place on the Nelson Avenue ROW above the north lot line of the subject property. A long driveway permit on the Nelson Avenue ROW has been issued by the City of Homer to the Quiet Creek Park LLC Project. The long driveway permit requires that the existing drainage corridor remain in place on the North side of the long driveway. The current corridor on the Nelson Avenue ROW handles any storm or seasonal water runoff from the Quiet Creek Park LLC Project and above, as well as, the drainage plan in place in the Quiet Creek Park LLC Project. The owner understands that the City of Homer prefers not to cross personal property when other more adequate options or corridors are available to the City of Homer for drainage and seasonal runoff. The subject property is currently for sale and buyers are concerned about the future use of the subject property 10' drainage easement, therefore preventing them from making an offer on the subject property. This is creating an adverse effect to the subject property. Vacating this easement would not create any adverse effects to the surrounding properties.

**Petitioner:** AnnaLisa Cox, of Homer Alaska - current applicant and land owner  
(Peggi Patton of Homer, Alaska – original applicant and former land owner)

**Location:** on Heidi Court, in the City of Homer

**Notification:** Notice of vacation mailings were sent by regular mail to 17 owners of property within 300 feet and also the original applicant and Robert Molloy of Molloy Schmidt LLC. representing a neighboring landowner. Notice of the proposed vacation was emailed to 8 agencies and interested parties.

The public notice was posted on the Planning Department's bulletin board at the KPB Administration Building. The petition was published as part of the agenda in the Homer News on July 9, 2020.

During the meeting a message was received in the Zoom meeting chat box from Derotha Ferraro, the owner of Lot 36 stating that she did not receive notice and requested postponement on this item. Upon staff, reviewing of the public mailing notice list Ms. Ferraro was not on the list. The parcel had been recently sold to Ms. Ferraro and the mailing list used for public notice was not updated to include the new owner of Lot 36.

**Utility Company Comments Received:**

Alaska Communications Systems: No objection.

ENSTAR Natural Gas: No objection.

GCI: No objection.

Homer Electric Association: No objection.

**Staff comments:**



June 24, 2019 - This drainage easement vacation was heard and approved by the Kenai Peninsula Borough Planning Commission. During the meeting, the Planning Commission considered the proposed easement vacation, as well as the various comments that were submitted. Chairman Martin opened up the meeting to allow public comments. Seeing and hearing no one wishing to testify Chairman Martin closed public comment and discussion was opened among the Commission. A motion was made to approve the easement vacation and the motion passed unanimously.

July 17, 2019 - a Notice of Appeal of the Planning Commission's decision was submitted. The application was submitted by Tony Neal for Echo Trading Company LLC (Echo Trading). c/o Molloy Schmidt LLC. Tony Neal is the trustee of Delta Transfer and Storage Trust which is the owner of Echo Trading. Tony Neal (Echo Trading) is the developer of Barnett's South Slope Subdivision Quiet Creek Park Unit 2 (HM 2018-40) located 30 feet north of the drainage easement. Tony Neal (Echo Trading) is also the owner of Lot 8-A-1, AA Mattox Aplin 2019 Replat, located 177 feet to the west of the drainage easement.

May 6, 2020 – KPB Assembly conducted an Appeal Hearing following KPB Chapter 21.20 – Hearings and Appeals. The appellant presented the following issues for review in this matter. In its remand decision, within the Conclusion section on page 14, the Assembly provided instruction to the Planning Commission to “consider the arguments raised by the Parties in this matter, and take such subsequent action upon the Resolution as it determines is appropriate.” The primary arguments raised by the Appellant, along with staff response comments, are as follows:

1. Whether the Borough Planning Commission properly treated the subject easement as a “utility easement” when it considered and approved the proposed vacation.

*STAFF COMMENTS: Utility easement is defined in KPB 20.90 as follows, ‘Utility Easement. The right to install and maintain utilities normally associated with developed land such as electric, telephone, gas, drainage, wastewater disposal, and water facilities. The right of ingress and egress for conducting utility operations is implicit.’ Staff used this definition when determining what process to follow for the drainage easement vacation application.*

2. Whether the Borough Planning commission was obligated to conduct a public hearing regarding the proposed vacation prior to taking official action on the proposed vacation.

*STAFF COMMENTS: Under KPB 20.70.080 – Utility easement vacation, ‘A public hearing is not required in the case of vacation of a utility easement that is not associated with the vacation of a right of way.’ Comments in opposition were received prior to the June 24, 2019 Planning Commission meeting. Due to those comments, the Planning Commission removed the item from the consent agenda, opened up the meeting to allow public comment, and conducted a public hearing. After seeing and hearing no one in the audience, the Commission closed public testimony, deliberated on the vacation, and then approved the vacation application. On appeal, the Assembly determined that a property noticed public hearing was required and remanded to the Planning Commission so that it may conduct a public hearing regarding this matter.*

3. Whether KPB 20.70.210 requires the Borough Planning Commission to find that, a proposed vacation serves the public interest prior to approving it.

*STAFF COMMENTS: The 10 foot drainage easement was a condition of approval by Homer City Council on March 22, 1999, to vacate and relocate a 25 foot underground utility easement, and vacate a 15 foot drainage easement on former Lot 24.*

*The City of Homer has jurisdiction for the use of the current 10 foot drainage easement. The City of Homer Advisory Planning Commission approved the vacation of the 10 foot drainage easement on May 15, 2019. Homer Public Works Department stated, ‘We prefer to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible. Easements across private are more difficult to access (and more often than not more costly) for maintenance than dedicated right of way. In this case, a drainage corridor exists easterly along Nelson Ave. and then southerly down Kallman Road.’*

*The Planning Commission approved the vacation with findings 3, 5, and 6 showing that the City of Homer Advisory Commission approved the vacation of the 10 foot drainage easement.*

*The Planning Commission decision was forwarded to the Homer City Council. The City Council has 30 days from the Planning Commission date of decision in which to veto the vacation. The Homer City Council did not affirm, or veto, the KPB Planning Commission decision to vacate the 10 foot drainage easement.*

4. Whether the easement in question is a private easement, and if so, whether the Borough Planning Commission's action constitutes a taking without just compensation in violation of the United States and Alaska constitutions.

*STAFF COMMENTS: The 10 foot drainage easement was granted by Plat HM 99-64 on condition of approval by the Homer City Council. The easement was granted for public benefit, not public use. The easement is not a private easement. The easement was not granted to a specific person or parcel of land. The easement is under the City of Homer jurisdiction. Any use of the drainage easement, by the public, would require approval from the City of Homer Public Works Department.*

5. Whether the appeal procedure prescribed by Borough Ordinance 2019-29, which authorizes the Assembly to serve as hearing officer in this matter, violates KPB 21.20.220(B), which provides that appeals shall be heard by the Assembly.

*STAFF COMMENTS: This was an issue on appeal but not an issue that needs to be addressed by the Planning Commission on remand.*

6. Whether the Assembly, in rendering a decision in this matter, has authority to consider evidence not included in the Record on Appeal prepared and certified by the Borough Clerk.

*STAFF COMMENTS: This was an issue on appeal but not an issue that needs to be addressed by the Planning Commission on remand.*

### **Excerpts from Remand Decision**

May 21, 2020 – Decision on Appeal issued by the Assembly stated the following,

At page 1, Introduction:

"For the reasons set forth herein, the Assembly finds that, while the Commission did correctly follow the procedures established by the Borough Code for determining whether to approve the vacation of a utility easement, which provides that such vacations do not require a public hearing, such a hearing is nonetheless required by Alaska law. Consequently, the Assembly REVERSES at the Commission's action and REMANDS the matter to the Commission so that it may conduct a public hearing regarding this matter.

At Page 14, Conclusion:

'The resolution to vacate the drainage easement is REVERSED, and the matter REMANDED back to the Planning Commission with the instruction that it conduct a public hearing regarding Resolution 2019-19, consider the arguments raised by the Parties in this matter and take such subsequent action upon the Resolution as it determines is appropriate. In taking such action, the Planning Commission shall specifically address whether the drainage easement is a private easement or a public utility easement, taking into account the history of the subdivision's easement developers, including Mattox Subdivision.'

### **Additional information - timeline of events**

September 9, 1983 – AA Mattox 1958 Addition Unit 2, Plat HM 83-89  
- Owner: Pioneer Investments by Dayton Child

February 7, 1984 – AA Mattox 1959 Addition Unit 2 AMENDED, Plat HM 84-8,

- Owner: Pioneer Investments by Dayton Child
- The surveyor amended the plat by adding a 15 foot wide underground utility and drainage easement affecting Lot 24 and a 10 foot wide underground utility easement affecting Lot 25.

November 16, 1999 – AA Mattox Peggi's Addition, Plat HM 99-64,

- Owner: Robert D. Patton and Peggi L. Patton
- Former Lot 24 and 25 were combined into Lot 24-A.
- A 10 foot drainage easement was granted on the west boundary of former Lot 25.
- The 25 foot utility easement (water and sewer) were moved from the common lot line to the southeast boundary of Lot 24-A.

November 14, 2018 – Barnett's South Slope Subdivision Quiet Creek Park Unit 2, Plat HM 2018-40,

- Owner: Tony Neal – Echo Trading
- located on the north side of Nelson Avenue (south).
- exception was granted to KPB 20.30.030 – proposed street layout, to not provide a matching 30 foot dedication for Nelson Avenue (south). Nelson Avenue (south) remains a 30 foot dedicated right of way.
- The plat shows all lots using Nelson Avenue (north) for access. The Plat Committee approved the double frontage lots based on other physical conditions, and that all lots front on Nelson Avenue (north).

September 4, 2019 – AA Mattox Gwen's 2019 Addn., Plat HM 2019-23

- Owner: Tony Neal – Echo Trading
- located on the west end of Nelson Avenue (south)
- Exception granted to KPB 20.30.030 – extension of right of way for Nelson Avenue (south)
- Exception granted to KPB 20.30.100 – dedication of a cul-de-sac on the west end of Nelson Avenue (south).
- Per the request for review submittal, the true access plan for this replatted lot is a driveway easement from Sanjay Court in Quiet Creek Park Subdivision.

March 2, 2020 – AA Mattox Aplin 2019 Replat, Plat HM 2020-3

- Owner Tony Neal – Echo Trading, located on the west end of Nelson Avenue (south)
- Carried forward exceptions granted to HM 2019-23
  - o KPB 20.30.030 – extension of right of way for Nelson Avenue (south)
  - o KPB 20.30.100 – dedication of a cul-de-sac on the west end of Nelson Avenue (south)

### **Findings:**

1. Per the petition, the drainage easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and Homer Electric Association provided written non-objection to the proposed vacation.
3. The Homer Advisory Planning Commission recommended approval of the proposed vacation on May 15, 2019.
4. AA Mattox Peggi's Addition (Plat HM 99-64) granted a 10-foot wide drainage easement on Lot 24-A.
5. Per the Homer Advisory Planning Commission hearing packet, the city prefers to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible.
6. Per the Homer Advisory Planning Commission hearing packet, a draining corridor exists easterly along Nelson Avenue and southerly down Kallman Road.
7. KPB 20.90 "Easement" B. - Utility Easement. The right to install and maintain utilities normally associated with developed land such as electric, telephone, gas, drainage, wastewater disposal, and water facilities. The right of ingress and egress for conducting utility operations is implicit.
8. Staff used KPB 20.90 "Easement" definition when determining what process to follow for the drainage easement vacation application.
9. Under KPB 20.70.080 – Utility easement vacation, 'A public hearing is not required in the case of vacation of a utility easement that is not associated with the vacation of a right of way.'

10. June 24, 2019 Planning Commission meeting, was opened to allow public comment and the Planning Commission conducted a public hearing. After seeing and hearing no one in the audience, the Commission closed public testimony, deliberated on the vacation, and then approved the vacation application.
11. The 10 foot drainage easement was a condition of approval by Homer City Council on March 22, 1999, to vacate and relocate a 25 foot underground utility easement, and vacate a 15 foot drainage easement on former Lot 24.
12. The City of Homer Advisory Planning Commission approved the vacation of the 10 foot drainage easement on May 15, 2019.
13. Homer Public Works Department stated, 'We prefer to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible. Easements across private are more difficult to access (and more often than not more costly) for maintenance than dedicated right of way. In this case, a drainage corridor exists easterly along Nelson Ave. and then southerly down Kallman Road.'
14. The 10 foot drainage easement was granted by Plat HM 99-64.
15. The easement was granted for the public benefit and was not granted to a specific person or parcel of land. The easement is not a private easement.
16. Any use of the drainage easement, by the public, would require approval from the City of Homer Public Works Department.
17. The objection of a neighboring landowner was considered in full. Prior to plat approvals for Barnett's South Slope Subdivision Quiet Creek Park Unit 2, AA Mattox Gwen's 2019 Addn., and AA Mattox Aplin 2019 Replat, the developer requested and was granted certain relevant exceptions to KPB subdivision regulations. Specifically, relevant to this issue is the fact that the developer did not provide a 30 foot matching right-of-way dedication for Nelson Avenue (south), or the extension of Nelson Avenue (south) based on the reason provided that the lots in Quiet Creek Subdivision had superior, alternative access and would not use Nelson Avenue for access. Nelson Avenue was never intended to serve as the vehicular access point for lots within Quiet Creek Subdivision and the City of Homer has stated that it prefers for the current drainage system to remain in place.

#### **STAFF RECOMMENDS:**

The Planning Commission complete the following:

- Conduct a public hearing regarding Resolution 2020-16.
- Consider the arguments raised by the Parties in the appeal.
- Address whether the drainage easement is a private easement or a public easement.
- Take action upon the Resolution as it determines is appropriate.

Based on the means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacation, and findings 1-17, STAFF RECOMMENDS approval of the easement vacation, subject to:

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

#### **NOTE: Action after denial of vacation (KPB 20.70.120)**

**A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**

**B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

Mr. Huff also highlighted several photos and maps that were contained in the packet as well as an as-built showing the location of the house to the drainage easement proposed for vacation. Mr. Huff also noted that there were comments from Mr. Molloy requesting postponement of this action until after August 10

because his client, Mr. Tony Neal, is not present due to commercial fishing in Bristol Bay. Mr. Molloy also submitted a second comment objecting to the hearing process. He requested that the planning commission split the public hearing into two meetings. One meeting to determine whether the drainage easement is a public or private and the second meeting so that witnesses could be called and be cross-examined.

There was also information in the meeting packet from the petitioner Annalisa Cox providing a timeline of events showing Mr. Neal's request of an exception to provide a matching dedication to Nelson Ave. and stated the following reasons to support his requests; because Nelson St. could not be constructed or used and that it should not even exist. Eleven days later Mr. Neal then objected to the vacation of this drainage easement saying he was going to use Nelson Ave. to access his lots. Ms. Cox also submitted a copy of the September 7<sup>th</sup>, 2005 Homer Planning Commission meeting minutes showing the Mr. Neal's Quite Creek Park Subdivision was approved subject to eliminating access via Kallman, unless a 60 ft. ROW is provided.

## END OF STAFF REPORT

Chair Martin open the item for public comment.

Annalisa Cox, 4510 Heidi Ct., Homer, AK 99603: Ms. Cox is the petitioner and is the current owner of Lot 24A, AA Mattox Peggi's Addition. Mrs. Cox requested that the Planning Commission approve this utility easement vacation as they did in June of 2019. She stated that a large majority of the lots within the AA Mattox 1958 Addition Subdivision have issues with groundwater drainage that ebbs and flows as the season's change. After reviewing the history of this subdivision and speaking with her neighbors and the previous owner Peggi Patton, it appears that this easement was initially placed on Plat 84-8 to address groundwater drainage problems. The 1999 easement vacation petition was filed prior to lots 24 & 25 being replatted into Lot 24A. The petition filed by the Patton's stated here is an existing 2 ft. wide ditch close within Lot 25 handling the current water flow, primarily for breakup. This statement referenced groundwater drainage on Lot 25 that handled a large majority of the groundwater drainage for lot 24 & 25. The original drainage easement on the eastern 15 ft. of the Lot 24 property line was there to ensure the drainage could be moved when Lot 25 was developed. However, Lot 25 remained undeveloped, was purchased by the Patton's, and the drainage was never moved onto the drainage easement. When the City Council granted the easement vacations in 1999 it was with the condition that a drainage easement be granted within the westerly 10 ft. of Lot 25 as requested by the Homer Public Works Department to ensure drainage between the still separated 2 lots. The drainage for groundwater on Lot 25 remained untouched until 2017, when Peggi & Bob installed french drains around the entire perimeter of house and yard. At this time, a water kitchen and culvert system for the french drains to drain into was installed. This replaced the above ground drainage on Lot 25 and rectified the drainage problems that had plagued this property. Page 253 of the meeting packet contains a copy of an as-built survey for Lot 24A, the water kitchen location has been drawn onto this survey for reference. It shows that the water kitchen does not reside within the utility drainage easement, but does sit right next to it. Mr. Neal has stated the Patton's changed the drainage pattern on the public right-of-way in 2017. That is not the case and aerial imagery from 2003 has been submitted showing the area surrounding Lot 24A. In this picture, you can see the drainage pattern has historically run on the Nelson & Kallman Right of Ways. Ms. Cox stated that Echo Trading Company claims to be the direct beneficiary of this utility drainage easement, however none of Echo Trading Company's lots boarder her property, they boarder the public right-of-way, Nelson Ave, which provides far superior drainage access to their properties in an area easily accessed by the Department of Public works for maintenance. The 2018 permit for use of the Nelson & Kallman right-of-ways to construct a driveway access to Lot 8 clearly states the existing drainage patterns should not be altered or disturbed. The permit also includes a diagram with arrows showing the drainage should flow along the North Side of the driveway. In May of 2019, Tony Neal submitted a letter to the Planning Commission to request an exemption to KPB Code 20.30.100, dedication of a cul-de-sac. The exemption was granted because Mr. Neal's letter stated that the true access plan for Lot 8 was a platted right-of-way from Sanjay Ct. Mr. Neal stated that the southern Nelson Ave. right-of-way would not be used because it could not be constructed to the most minimum City of Homer requirements and that the Nelson right of way could be used for trail, not a vehicular access. Ms. Cox stated that she had provided a copy of the letter written by Mr. Neal and that it could found in the PC packet. Ms. Cox went on to say that, Mr. Neal submitted a letter in June of 2019 stating opposition to the drainage easement vacation on Lot 24A. In this letter, he stated he was going to gain access via Nelson Ave. using his permit issued for access to Lot 8. Mr. Neal stated that the easement on my property would be required so he could divert

drainage, which has historically run along the right of way, onto my private property private property. This is the same Nelson Ave. Mr. Neal stated would never be built and should not even exist the month prior. Echo Trading has indicated that several other Quiet Creek lots will receive their legal access from the Nelson/Kallman right-of-ways. However, the platted legal access for the subdivision comes from Northern Nelson Ave. The southern Nelson right-of-way was only ever intended to serve as access to one lot, what is now Lot 8. In a letter sent to the KPB Planning Commission, the Homer Advisory Planning Commission detailed Kallman should not serve as access to the Quiet Creek Subdivision and this is found throughout the 2005/2006 preliminary plat minutes. Because of the expectation that one lot would receive access, Echo Trading was granted another exemption in which they did not have to dedicate a matching 30 ft. right of way along the southern Nelson. Ms. Cox stated that KBP code 20.70.080(a) states a public hearing is not required in the case of a vacation of a utility easement. Yet one is being required for this case, thus going against her due process rights provided by the Alaska constitution. KPB code 20.70.190 states, 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. The drainage easement that runs through the middle of her property, Lot 24A has never been used. Historically, the drainage has always run along the Nelson & Kallman right-of ways. The 2003 imagery shows that 17 years ago that drainage ran along Nelson & Kallman, not through the middle of lot 24A. KPB code 20.90.010 defines a utility easement as the right to install and maintain utilities normally associated with developed land such as electric, telephone, gas, drainage. This easement was requested in 1999 by the in Homer Department of Public Works and approved for placement by the Homer City Council. The City requested the easement in case they it ever needed it to install drainage, which by definition makes it a utility easement. Ms. Cox stated that over the last year she has spent significant amounts of time and money to defend her property. The drainage easement on her property has never been used. The sub-developer, who wants to use the easement, possesses a permit to use the public right-of-way above her property and specifies the drainage should not go through her drainage easement. The developer has been expressly told by the director of public works that he will not be permitted to use the easement to divert the drainage from the public right-of-way and that drainage should run along the north side of the right-of-way. The acting director of Homer Department of Public Works requested the drainage easement in 1999. In 2019, the Director of the Homer Public Works Department stated non-objection to the vacation of this easement further adding they prefer to utilize utility and drainage corridors in dedicated street rights-of-way whenever possible. In this case a drainage corridor exists easterly along Nelson Ave. and then southerly down Kallman Road. Ms. Cox would like to request that the commission approve the utility drainage easement vacation petition as it is not needed, has approval from the city to vacate, and will not deny drainage to anyone. The Homer city council remained silent under the impression that by not acting the drainage easement vacation would record.

Robert Molloy Molloy Schmidt LLC; 110 South Willow St., Kenai, AK 99611: Mr. Molloy is the legal representative for Echo Trading & principles, Tony & Gwen Neal. The relief that they are asking for has been laid out in the letters that have been sent to the commission. First would be the continuance of this hearing until after Aug 10, 2020. His clients, the Neals, are not able to attend this hearing because they are commercial fishing in out in western Alaska. They do not have reliable internet access or cell phone coverage so they are not able to attend this Zoom meeting. Their internet is powered by a generator, which makes the connection very slow, and bandwidth limited. The Assembly's decision noted that the Neals are not simply commenting neighbors, but are affect property owners, with a personal property interest and are parties to this proceeding. They would be prejudiced if they were not allow a continuance for their part of the hearing. As you heard from the petitioner, creditability is an issue in this and the Neals need to be seen and heard by the commission. Second, would be that hearing procedures be consistent with the directions given to the commission by the Assembly in the appeal decision. The procedure being used here has already been found to be inadequate by the Assembly in the appeal. What is being called a public hearing is a public meeting that is open for public comment and documents. The commission has not adopted any of the procedures that have been suggested by the Assembly in their decision. Where the Assembly stated that some of the specific due process requirements that the Alaska Supreme Court has found apply to administrative hearings, include the right to call witness and present witness testimony. That would allow the calling of witnesses to talk about things in addition to the permit. When the action involves the issues of creditability having an in-person hearing where you are seen and heard is required. In addition, we need to have notice of legal and administrative factors in any evidence that the government is going to rely upon. Which is not what you get on the day of the hearing. What we have asked for is not a full trial but is consistent

with what the Assembly has said in their decision. We are not asking for anything like pre-trial discoveries, motions, or rulings on evidence. The hearing with the Assembly took three hours. This is a complicated situation and there is a lot of history and documents, with explanation of documents that will be needed. We asked for bifurcation of the hearing so that the Planning Commission can first decide the legal issue of whether or not they have the legal jurisdiction to vacate the easement. The thought is that first, it should be decided whether the drainage easement is a public utility easement or a private easement. If it is a private easement, it should not be in the commission's bailiwick at all. His client is asking the commission to do the right thing here and provide for procedures consistent with what the Assembly has said. To have an orderly submission of documents and testimony.

See and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Bentz moved, seconded by Commissioner Foster to adopt PC Resolution 2020-16 to approve the vacation of the 10-foot wide drainage easement on Lot 24-A, AA Mattox Pegg's Addition, granted by AA Mattox Pegg's addition within Section 17, Township 6 North, Rand 13 West, Seward Meridian, Alaska within the Kenai Peninsula Borough.

Commissioner Foster had a question for staff. If the one homeowner did not receive notification should this item be postponed until they can comment? Mr. Huff said that she was not notified but that she is participating on this Zoom meeting and that she was aware this item.

Derotha Ferraro: P.O. Box 1408, Homer, AK 99603: Ms. Ferraro spoke up and said that she was unable to raise find the "raise hand" feature to speak up earlier. She stated that she is the owner of Lot 36 and that they did not receive notice on this item. She became aware of it through her job at South Peninsula Hospital. While making sure that all of the information was in the packet for the hospital meeting and she saw pictures of her lot, especially pictures showing drainage going across the bottom part of her lot. She stated that she is not a surveyor or lands type of person. She has not had the opportunity to review this information to discover whether vacating the drainage easement will have an effect on her property.

Mr. Huff replied that he had spoken to an owner of lot 36 about a week ago. Records show that Gary Harris is an owner. Mr. Harris had contacted the Planning Department to ask how to vacate Nelson Ave. He wanted to know how to fill out the petition and get the process going. Mr. Huff explained the vacation process and while doing so had the opportunity to explain about the vacation of the drainage easement. He told Mr. Harris that if Nelson Ave. was vacated the right-of-way land would go back to Lots 23 & 24A to the south. Mr. Huff then said the Mr. Harris wanted to think about whether or not vacating Nelson Ave. would have any benefit for him.

Commissioner Venuti had a question for staff. He finds it interesting that this vacation was not appropriate for a hearing tonight, but on June 24, 2019 it was. He wondered if notices were sent out for that meeting. He wondered if this important issue for the Neals at that point and time. He also noted that the Assembly is instructing them to do a hearing – he wondered whether that out weights current code. Mr. Huff replied thought that the Neal's business manager would have attended the meeting in 2019. It was opened up for public comment at the meeting and no one at the meeting made comment, so the commission went ahead and acted on item. As for the question about the Assembly sending this back for a public hearing, Mr. Huff said this is the hearing that the Planning Commission conducts for the vacation of public right-of-ways. The hearing is opened up for public comment, the commission discusses the merits of the petition and a decision is made.

Chair Martin then asked for the borough's lawyer, Mr. Kelley, to provide comment on Commissioner Venuti's question. Mr. Kelley replied the agenda back in 2019 identified this item as not requiring a public hearing because that is what the utility easement code KPB 20.70.080 says. This may have been a source of confusion for any interested parties, even though at the time the planning commission opened the item for public comment. The fact that the agenda went out suggesting the item would not be heard as a public hearing ended up being problematic. He would disagree with Mr. Molloy's interpretation of the Assembly's decision. The Assembly remanded the item back to the Planning Commission to hold a public hearing. That is why he recommended that a public hearing be conducted consistent with established practice and

procedures that the Planning Commission follows. As far as Mr. Molloy's request for witnesses, the commission should recognize and allow anyone who want to provide public testimony. Echo Trading or any other party wanting to provide scripts or call witnesses, one by one to provide public testimony that would be fine. The idea that the Planning Commission has to turn the public hearing process into a mini trial were cross-examination is allowed on any agenda item if requested by a party is problematic and an undue burden on the Planning Commission and administrative staff. Mr. Kelley did not agree that was what was ordered or required by law. He would say that anyone who want to testify should testify and that anyone who want to submit comments should submit comments but having cross-examination is a bit beyond.

Annalisa Cox; 4510 Heidi Ct., Homer, AK 99603: Ms. Cox stated that she does not agree that this public hearing should be split into two hearing or calling of witnesses. This is a public hearing conducted by the Planning Commission, not a judge and jury trial. This is a public hearing regarding a public utility drainage easement. To conduct a trial type of hearing would go against her due process rights given by the Alaska constitution. She would also like to let the commission know that she did let the owners of Lots 36 know about what was going on with the drainage easement vacation. She was under the impression that they understood the vacation process because they approach her about vacating the Nelson Ave. right-of-way.

Commissioner Carluccio asked how should they treat the fact that the Neals are not available, and have requested a postponement so that they could submit their testimony. Chair Martin said that was for the commission to discuss and decide with findings. Chair Martin also noted that this meeting had been properly noticed and advertised.

Seeing and hearing no further discussion Chair Martin brought it back to commission for a vote.

Ms. Shirnberg was asked to restate the motion for the commission.

Mr. Kelley

y made the recommendation that since the Assembly had asked that the commission to determine whether this drainage easement was a public or private perhaps, they would like to address that concern in their motion.

Commissioner Ruffner referred to PC Resolution 2020-16 in the desk packet. He noted that one of the whereas statements does address the easement as being a public easement referring to findings that were in the staff report. He then stated that he was inclined to vote in support of this petition.

Commissioner Ecklund requested that the findings on page 239 in the packet would be important to use as supporting adopting the resolution. She then read the finding into the record.

Mr. Huff stated that the current staff report also lists additional findings for 17 findings. He noted that the PC Resolution 2020-16 contained an error stating there were 18 findings, it needed to be corrected and changed to 17 findings.

**AMENDMENT MOTION:** Commissioner Whitney moved, seconded by Commissioner Ruffner to amended PC Resolution 2020-16 to reflect 17 findings as stated in the staff report.

See and hearing no discussion on the amendment Chair Martin brought it back to the commission for a vote.

**AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:**

Yes	9	No	0	Absent	3
Yes	Bentz, Carluccio, Ecklund, Fikes, Foster, Whitney, Venuti, Ruffner, Martin				
No	None				
Absent	Brantley, Ernst, Morgan				

Chair Martin asked if there was any further discussion on the main motion.

Commissioner Whitney noted that a whereas statement in the resolution which read "the Planning



Commission decided that the 10 foot wide drainage easement is a public easement based on the staff report and 17 findings” did cover whether or not the easement was public or private and an additional motion was not needed. He then asked Mr. Kelley if that was correct. Mr. Kelley replied that was correct and felt it was worth discussing this on the record so that everyone was clear about it. He then said the whereas statement in the resolution should sufficiently cover the issue.

See and hearing no further discussion on the main motion Chair Martin brought it back to the commission for a vote.

**MAIN MOTION PASSED BY UNANIMOUS VOTE:**

Yes	9	No	0	Absent	3
Yes	Bentz, Carluccio, Ecklund, Fikes, Foster, Whitney, Venuti, Ruffner, Martin				
No	None				
Absent	Brantley, Ernst, Morgan				

AGENDA ITEM G. UTILITY EASEMENT VACATIONS

2. Utility Easement Vacation of the following easements:

- 10 foot utility easement adjoining the south boundary of Lot 1, excluding 10 feet adjoining Owen Road right of way;
- 10 foot utility easement adjoining the east boundary of Lot 10, excluding the 10 feet adjoining Cowen Road right of way;
- 10 foot utility easement adjoining the east and north boundary of Lot 11, excluding the 10 feet adjoining Owen Road right of way,

located within Cowan-McFarland Subd. No. 3 (Plat KN 83-227), utility easements granted by Cowan McFarland Subdivision No 1 (Plat KN 1660) and Cowan-McFarland Subd. No. 3 (Plat KN 83-227); within Section 22, Township 5 North, Range 9 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-053V

Staff report given by Scott Huff

STAFF REPORT

PC Meeting: July 13, 2020

Purpose as stated in petition: Vacant not practical easements. Takes away from usable area of new lot.

Petitioners: Russell A. Stirman of Kennewick, WA.

Location: Off Owen Street and McFarland Road, Funny River area.

Notification: Notice of vacation mailings were sent by regular mail to 11 owners of property within 300 feet. Notice of the proposed vacation was emailed to 13 agencies and interested parties.

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

The proposed vacations are within the Funny River Advisory Planning Commission (APC). The Funny River APC was not able to meet on this item. The information was sent to each of the APC members. One of the members submitted a written comment that he thought the easement request was in good order and that he would recommend approval.

Staff Comments: The utility easements proposed to be vacated are along interior lot lines of three parcels. The three parcels are proposed to be combined into one lot. The preliminary plat for Cowan McFarland

**From:** [tonyneal@popsiefishco.com](mailto:tonyneal@popsiefishco.com)  
**To:** [Department Clerk](#)  
**Cc:** ["Robert J Molloy"; gmnlaw@gwenmneal.com](#)  
**Subject:** message to Council for meeting tonight..  
**Date:** Monday, July 27, 2020 12:31:34 PM  
**Attachments:** [image002.png](#)

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Hello City Council,

Greetings from the Bering Sea. It came to my attention today that Council intends to ignore our lawyer's entry of appearance and request for a timely noticed hearing on what's now your agenda item New Business item a.... for the vacation of our easement and property rights on lot 24-A.

This easement vacation was born as an illegal act for personal profit, and promoted by a fraudulently untruthful petition to the Borough. The Borough approved it because that was "recommended" by the City of Homer. That recommendation by the City included provably false statements of fact, an act of dishonesty, a corrupt act, by City of Homer. Your employee and Petitioner acted dishonestly in concert to create profit by illegal means. At the last Council meeting on this subject, The Council blew us off after the Manager provided a lay down memo that included absolutely false statements of fact intended to influence Council and intended to manipulate an approval, which it did.

Now it appears the Council again intends to blow us off with another rushed approval, and "taking no action" is approval. We object. Council approval including "taking no action" will be suborning illegality and fraud and suborning if not actively participating in a corrupt act of Homer City government. That Council action will damage us financially and we will seek recovery.

My request is that Council move to reschedule this issue and respect our lawyer's request for a properly noticed hearing at which all interested parties may participate. After Council hears the facts and testimony, then the Council will be able to make an informed decision and mitigate the damage that has occurred.

Our country is in turmoil everywhere over acts of government and protests by citizens. Even small acts of dishonesty by small governments should never be accepted, and we do not accept this one. You have the authority to make it right. Please do.

Tony Neal  
907-299-2351

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**From:** [Jack Wiles](#)  
**To:** [Department Clerk](#)  
**Subject:** Memorandum 20-112 Campground Host Stipend | City of Homer Alaska Official Website  
**Date:** Saturday, July 25, 2020 6:41:45 PM

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Honorable City Council,

I read with interest the proposal to provide the City of Homer campground Hosts a stipend. The Host is a volunteer and it seems a strange precedent to pay volunteers except for reimbursement of approved expenses or projects.

I believe the money would be far better spent providing a Host with a campsite that has water and electrical service and pay for propane refills and, if possible provide on-site septic. The development of a Camp Host site is a strong recruitment attraction. When there are multiple, qualified Host applicants then the service period should be 30 days not the entire summer and correspond to the campground season.

The Host gets free camping, with electric, water, propane and light duties in lieu of a stipend

What would be most cost-effective and ideal is for the City to hire a volunteer coordinator (or a stipend to a volunteer - volunteer coordinator) to organize city-wide volunteer efforts especially projects related to parks and trails.

Thanks.

Jack Wiles

[https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.cityofhomer-ak.gov%2fmemorandum%2fmemorandum-20-112-campground-host-stipend&c=E,1,QxuvFT\\_2\\_5kR43JWhjrmIF-TbMYih6cA3eBwscCBYkII\\_CU\\_F661jw1oidRDdy5G6NzSSTjshxRfDKZu1pjEzKt4eZOPk8G2O1sl\\_q-B1c-aHVoy6hI,&typo=1](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.cityofhomer-ak.gov%2fmemorandum%2fmemorandum-20-112-campground-host-stipend&c=E,1,QxuvFT_2_5kR43JWhjrmIF-TbMYih6cA3eBwscCBYkII_CU_F661jw1oidRDdy5G6NzSSTjshxRfDKZu1pjEzKt4eZOPk8G2O1sl_q-B1c-aHVoy6hI,&typo=1)