

March 02, 2011
5:30 P.M.

Cowles Council Chambers
491 East Pioneer Avenue
Homer, Alaska

WORK SESSION Advisory Planning Commission AGENDA

1. Call To Order, 5:30 P.M.
2. Discussion of Items on the Regular Meeting Agenda
3. Staff Report PL 11-29, Draft Policies and Procedures *(Please refer to page 61 of the regular meeting packet.)*
4. Public Comments
The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
5. Commission Comments
6. Adjournment



**REGULAR MEETING
AGENDA**

1. Call to Order

2. Approval of Agenda

3. Public Comment

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

4. Reconsideration

- A. Staff Report PL 11-32, Reconsideration of Staff Report PL 11-15, Draft Ordinance 11-xx Amending the General Commercial One (GC1) District, HCC 21.24.030 to allow single family and duplex dwelling(s) as a Conditional Use *Page 1*

5. Adoption of Consent Agenda

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

1. Approval of Minutes of February 16, 2011 *Page 19*
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g.
4. KPB Coastal Management Program Reports
5. Draft Decision and Findings for Staff Report PL 11-20, CUP 11-04, A Request for a Conditional Use Permit (CUP) at 880 East End Road for a two-story, approximately 8,000 square foot wellness clinic for the Seldovia Village Tribe Wellness Center. A CUP is required for HCC 21.16.03(h), More than one building containing a permitted principal use on a lot *Page 27*

6. Presentations

7. Reports

- a. Staff Report PL 11-30, City Planner's Report *Page 31*

8. Public Hearings

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

9. Plat Consideration

- A. Staff Report PL 11-23, East End Road Right of Way Acquisition, State of Alaska, DOT, Mi. 160-174 *Page 33*
- B. Staff Report PL 11-25, Forest Glen No. 12 Preliminary Plat *Page 53*

10. Pending Business

- A. Staff Report PL 11-29, Draft Policies and Procedures *Page 61*

11. New Business

- A. Staff Report PL 11-26, Draft Ordinance 11-xx, East End Mixed Use *Page 97*

- B. Staff Report PL 11-27, Draft Ordinance 11-xx Amending Homer City Code 21.61.040
Nonconforming uses; regarding the effective date of the restriction on enlarging, increasing or
extending nonconforming uses *Page 105*
- C. Staff Report PL 11-28, Draft Ordinance Amending HCC Chapter 21.34,
Conservation District *Page 109*

- 12. **Informational Materials**
 - A. City Manager's Report *Page 113*

- 13. **Comments of The Audience**
Members of the audience may address the Commission on any subject. (3 minute time limit)

- 14. **Comments of Staff**

- 15. **Comments of The Commission**

- 16. **Adjournment**
Meetings will adjourn promptly at 10 p.m. An extension is allowed by a vote of the Commission.
The next regular meeting will be held on March 16, 2011 at 7:00p.m. There will be a work session at
5:30p.m.



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone... (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-32

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
MEETING: March 2, 2011
SUBJECT: Reconsideration to allow single family and duplex dwelling as a Conditional Use in the GC1 district.

At the February 16, 2011 the Commission voted NOT to amend the General Commercial One (GC1) district to allow single family and duplex dwelling(s) as a Conditional Use, HCC 21.24.030. Voting No (prevailing side) was: Highland, Venuti, Dolma.

On Friday February 18, 2011 through the Vice-Chair, (Chair was unavailable), Commission Highland requested reconsideration of the Feb. 16, 2011 vote. HAPC Bylaw, pg 3, G.

Procedure:

First, the Commission must vote to reconsider

If a majority of the Commissioners vote YES then the Commission will need a motion to discuss the GC1 topic.

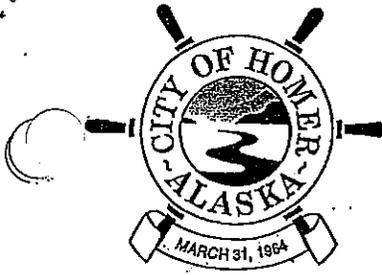
If a majority of the Commissioners vote NO the Feb. 16, 2011 decision as presented stands.

Either way, a written decision will be drafted and forwarded to the City Council, per HCC 21.95.040(c). The City Council may or may not adopt the proposal, per HCC 21.95.050(b).

Because the matter is legislative, rather than an adjudication, the requirement for findings is not so strict. However, HCC requires the Commission to send recommendations to the City Council. With a tie vote on the ordinance amendment, it would be helpful to have all seven commissioners give it consideration. A well documented discussion of the merits of the proposal will allow the City Council to understand why the Commission made a certain decision. The minutes only reflect one concern that supports the result of the vote, "public health safety and welfare issues when looking at safety issues with having children in commercial area." I do believe that I heard a concern about the limited available land for commercial activities, which is not reflected in the minutes. Regardless, it is advantageous to get a vote of the full commission with a fuller record of the reasoning behind each Commissioner's vote. This may be done by discussing the merits of the finding presented to you in the staff report and why you may feel that they are adequate or inadequate, this way one might be best able to discern how the recommendation meets or does not meet the review standards set in code.

Att. SR 11-15, Proposed Ordinance 11-xx, Petition





City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-15

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: February 16, 2011
SUBJECT: Draft Ordinance 11-xx Amending the General Commercial One (GC1) district, HCC 21.24.030 to allow single family and duplex dwelling(s) as a Conditional Use.

Introduction

On January 12, 2011 the Planning and Zoning Office received a petition for a zoning text amendment per HCC 21.95.020(a)(2). The petition states: "To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.030."

The Clerk has certified that fifty (50) registered voters within the City signed the petition. Per HCC 21.95.040 one or more public hearing(s) before the Planning Commission is required. After the public hearing(s) and the Commission's review, the draft ordinance is forwarded to the City Council.

Background: When a property owner seeks to sell or refinance their existing home, the bank and appraiser asks "If destroyed, can the home be rebuilt?" Currently, the GC1 district does not allow single family or duplex dwellings. Existing homes in the annexed GC1 East End area are nonconforming; however our nonconforming code does not allow a structure to be replaced if damaged by fifty percent (50%) or more. Without the ability to rebuild or replace, lenders will not provide favorable financing. According to the Kenai Peninsula Borough tax records; there are 43 single family homes within the GC1 zones, excluding mobile homes. Including mobile homes, (there are 9), residential dwellings account for 19.6% of the land use. This means that nearly 20% of the properties cannot be financed under current zoning rules. Without financing, buying, selling, maintaining, remodeling and insuring a structure becomes a thorny issue.

The General Commercial 1 district covers three commercial-industrial areas; from west to east:

Baycrest GC1 area at the top of Baycrest Hill includes the landfill, KPB maintenance yard, a RV park, and gas station. Annexed in 2002.

Ocean Drive GC1 area south of Beluga Lake includes residences, auto repair, commercial storage units, mechanical repair shops, restaurants and retail.

East End Road GC1 area is approximately 3 miles east of Homer's core and extends for approximately 1.3 miles along the south side of East End Road. The areas includes residences, boat yard, excavation site, storage units, warehouses, bar, and retail. Some of this area was annexed in 2002, and rezoned from Rural Residential to GC1 in 2003.

Purpose HCC 21.24.010. "The General Commercial 1 (GC1) district is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area; and to provide business locations in proximity to arterials and transportation centers. It is also intended to minimize congestion and adverse effects on adjacent residential districts and on the appearance of the community."

Comprehensive Plan:

Ocean Drive GC-1/Residential "Allow residential uses, encourage water dependant uses along Beluga Lake, and encourage small commercial enterprises on Lakeshore Drive. Maintain the neighborhood character of mixed commercial and residential use, retain mature healthy evergreen trees when practical and plant trees in landscaped areas." Ch 4, Goal 1, Obj.-B, pg 4-5.

East End Road "Mixed-use development with fewer constraints on uses than existing GC-1 and GC-2. Designed to accommodate the wide range of uses found in the area today, as well as other future uses; examples include industrial, marine-oriented, construction services (including batch plants), storage, and artist workshops. Residential and retail are allowable, but residential/retail and commercial conflicts will be resolved in favor of commercial/industrial uses." App. B, pg B6

Mobile Homes: Staff considered the effect of mobile homes in the Baycrest, Ocean Drive and East End GC1 districts. Based on the KPB tax records there are no mobile homes in the Baycrest and Ocean Drive GC1 areas. Excluding mobile homes from the Baycrest and Ocean Drive is consistent with the existing structures.

The East End GC1 area has approximately nine (9) mobile homes, which are now nonconforming. Nonconforming structures may continue; but may not be enlarged or replaced per HCC 21.16.030. The draft ordinance excludes mobile homes from all GC1 districts. If the commission wants to allow mobile homes in the East End GC1 area an amendment is needed, or this could be considered in the proposed East Mixed Use district.

East End Mixed Use: In the coming year(s) the Commission will review a draft ordinance for East End Mixed Use. Notwithstanding the need to currently resolve this single family and duplex issue, this code change will be proposed for the East End Mixed Use district, as the Comprehensive Plans states that residential and retail are allowable in the East End Mixed Use district and conflicts will be resolved in favor of commercial/industrial uses.

Conditional Use/Conflicts: Due to the purpose of the GC1 district, the Comprehensive Plan statements and the variety of permitted uses, staff has three recommendations:

1. Single family and duplex dwellings to be a conditional use as requested by the petition.
2. Require rooming houses and bed and breakfasts to obtain a CUP, as this is consistent with the intent of the GC1 district because by definition they are dwellings.
3. Amend the purpose statement to reflect the intent of the Comprehensive Plan which states residential and commercial conflicts will be resolved in favor of commercial and industrial uses.

Consistency with residential uses and structures: The GC1 district has two permitted residential use which do not require a CUP; rooming house and bed and breakfast HCC 21.24.020(ii). By definition "rooming house" and "bed and breakfast" must be in a dwelling*.

<u>Permitted uses:</u> Day care homes (provided a CUP) *Rooming house and B & B Dwelling in a primary business	<u>Conditional uses:</u> Multi-family dwelling Mobile home parks Townhouses Day care facilities
--	--

To be consistent and meet the intent of the Comprehensive Plan staff recommends requiring a CUP for rooming houses and bed and breakfasts, as in:

HCC 21.24.020(ii) Rooming house and bed and breakfast **provided a conditional use permit is obtained for the dwelling.**

Review Criteria: HCC 21.95.040 requires that the Planning Department review code amendments using the following criteria from Ord. 10-58:

a. Is consistent with the comprehensive plan and will further specific goals and objectives of the plan.

Analysis: Homer's Comprehensive Plan addresses the:

- Ocean Drive GC-1/Residential areas and states "Allow residential uses." Ch 4, Goal 1, Obj. B, pg 4-5.
- East End Road GC1 district states, "Residential and retail are allowable, but residential/retail and commercial conflicts will be resolved in favor of commercial/industrial uses." App. B, pg B6
- Baycrest GC1 district is included in the general intent, use and standards for the GC1 district. Appendix B5

Finding 1: The Comprehensive Plan recommends allowing residential use in the GC1 district, with conflicts being resolved in favor of commercial/industrial uses.

b. Will be reasonable to implement and enforce.

Analysis: Prior to construction, single family, duplexes, rooming houses and bed and breakfasts will require a Conditional Use Permit which are approved by the HAPC.

Finding 2: Adding single family and duplex dwellings as a conditional use is reasonable to implement and enforce.

Finding 3: Requiring a Condition Use Permit for rooming houses and bed and breakfast is reasonable to implement and enforce.

c. Will promote the present and future public health, safety and welfare.

Analysis: Requiring a CUP for single family, duplexes, rooming houses and bed and breakfasts allows the Planning Commission to review each proposal for health, safety and welfare per HCC 21.71.030(g).

Finding 4: Allowing single family and duplex dwellings as a conditional use in the GC1 district promotes public health, safety and welfare.

Finding 5: Requiring a Condition Use Permit for rooming houses and bed and breakfasts promotes public health, safety and welfare.

d. Is consistent with the intent and wording of the other provisions of this title.

Analysis: The GC1 district has two permitted residential uses which do not require a CUP; rooming house and bed and breakfast HCC 21.24.020(ii). To be consistent with the intent and wording of other provisions of the GC1 district staff recommends requiring rooming houses and bed and breakfast to obtain a CUP also. All conflicts would be resolved in favor of non-residential uses.

Finding 6: Allowing single family and duplex dwellings as a conditional use, with conflicts being resolved in favor of non-residential uses is consistent with the intent of the GC1 district.

Finding 7: Requiring a Condition Use Permit for rooming houses and bed and breakfasts meets the intent of the GC1 district.

STAFF RECOMMENDATIONS: The HAPC recommends the Homer City Council adopt draft Ordinance 11-xx which would amend the General Commercial One (GC1) district to add:

1. **"Single family and duplex dwellings, but not including mobile homes"** as a Conditional Use in the GC1 district.
2. **"Rooming house and bed and breakfast, provided that a conditional use permit was obtaining for the dwelling."**
3. Amends 21.24.010 Purpose: The General Commercial 1 (GC1) district is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area, and to provide business locations in proximity to arterials and transportation centers. It is also intended to minimize congestion and adverse effects on adjacent residential districts and on the appearance of the community. **Conflicts between residential and nonresidential uses shall be resolved in favor of nonresidential uses.**

ATTACHMENTS

1. Draft ordinance
2. Ord. 10-58 Rezone

CITY OF HOMER
HOMER, ALASKA

Planning

ORDINANCE 10-58

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
REPEALING AND REENACTING HOMER CITY CODE CHAPTER 21.95,
LEGISLATIVE PROCEDURES AND AMENDMENTS, REGARDING THE
STANDARDS AND PROCEDURES FOR AMENDING TITLE 21 OF THE
HOMER CITY CODE AND AMENDING THE OFFICIAL ZONING MAP.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 21.95, Legislative Procedures and Amendments, is repealed and reenacted to read as follows:

CHAPTER 21.95

LEGISLATIVE PROCEDURES AND AMENDMENTS

21.95.010	Initiating code amendment
21.95.020	Initiating zoning map amendment
21.95.030	Restriction on repeating failed amendment proposals
21.95.040	Planning Department review of code amendment
21.95.050	Planning Department review of zoning map amendment
21.95.060	Review by Planning Commission
21.95.070	Review by City Council

21.95.010 Initiating code amendment. An amendment to this title may be initiated by any of the following:

- a. A member of the City Council;
- b. A member of the Planning Commission;
- c. The City Manager;
- d. The City Planner; or
- e. A petition bearing the signatures, and the printed names and addresses, of not less than 50 qualified City voters.

21.95.020 Initiating zoning map amendment. An amendment to the official zoning map may be initiated by any of the following:

- a. A member of the City Council;
- b. A member of the Planning Commission;
- c. The City Manager;
- d. The City Planner; or
- e. A petition of property owners meeting the following requirements:
 1. The proposed amendment would either:
 - i. Apply to an area not less than two acres, including half the width of any abutting street or alley rights-of-way; or

48 ii. Reclassify the area to a zoning district that is contiguous to the area
49 or separated from the area only by a street or alley right-of-way.

50 2. The petition represents lots that include more than 50 percent of the area
51 (excluding rights-of-way) that is the subject of the proposed amendment. A lot is represented on
52 the petition only if the petition bears the signatures, and the printed names and addresses, of all
53 record owners of the lot.

54 3. The petition also shall include the following:

55 i. The following statement on each page of the petition: "Each person
56 signing this petition represents that the signer is a record owner of the lot whose description
57 accompanies the signature; that the signer is familiar with the proposed zoning map amendment
58 and the current zoning district of the lot; and that the signer supports the City Council's approval
59 of the amendment."

60 ii. The name of each record owner, the legal description and the
61 Borough tax parcel number of each lot that is the subject of the proposed amendment.

62 iii. A map showing the lots comprising the area that is the subject of
63 the proposed amendment, all lots contiguous to the boundary of that area, and the present zoning
64 and proposed zoning of each such lot.

65 iv. A statement of the justification for the proposed amendment.

66 21.95.030 Restriction on repeating failed amendment proposals. No proposal by
67 qualified voters to amend this title, or by property owners to amend the official zoning map, shall
68 be reviewed by the Planning Department, or submitted to the Planning Commission or the
69 Council, if it is substantially the same as any other amendment that the Council rejected within
70 the previous nine months.

71 21.95.040 Planning Department review of code amendment. The Planning Department
72 shall evaluate each amendment to this title that is initiated in accordance with HCC 21.95.010
73 and qualified under HCC 21.95.030, and may recommend approval of the amendment only if it
74 finds that the amendment:
75

- 76 a. Is consistent with the comprehensive plan and will further specific goals and
77 objectives of the plan.
78 b. Will be reasonable to implement and enforce.
79 c. Will promote the present and future public health, safety and welfare.
80 d. Is consistent with the intent and wording of the other provisions of this title.
81

82 21.95.050 Planning Department review of zoning map amendment. The Planning
83 Department shall evaluate each amendment to the official zoning map that is initiated in
84 accordance with HCC 21.95.020 and qualified under HCC 21.95.030, and may recommend
85 approval of the amendment only if it finds that the amendment:
86

- 87 a. Is consistent with the comprehensive plan and will further specific goals and
88 objectives of the plan.
89 b. Applies a zoning district or districts that are better suited to the area that is the
90 subject of the amendment than the district or districts that the amendment would replace, because

91 either conditions have changed since the adoption of the current district or districts, or the current
92 district or districts were not appropriate to the area initially.

93 c. Is in the best interest of the public, considering the effect of development
94 permitted under the amendment, and the cumulative effect of similar development, on property
95 within and in the vicinity of the area subject to the amendment and on the community, including
96 without limitation effects on the environment, transportation, public services and facilities, and
97 land-use patterns

98
99 21.95.060 Review by Planning Commission. a. The Planning Commission shall review
100 each proposal to amend this title or to amend the official zoning map before it is submitted to the
101 City Council.

102 b. Within 30 days after determining that an amendment proposal is complete and
103 complies with the requirements of this chapter, the Planning Department shall present the
104 amendment to the Planning Commission with the Planning Department's comments and
105 recommendations, accompanied by proposed findings consistent with those comments and
106 recommendations.

107 c. The Planning Department shall schedule one or more public hearings before the
108 Planning Commission on an amendment proposal, and provide public notice of each hearing in
109 accordance with HCC Chapter 21.94.

110 d. After receiving public testimony on an amendment proposal and completing its
111 review, the Planning Commission shall submit to the City Council its written recommendations
112 regarding the amendment proposal along with the Planning Department's report on the proposal,
113 all written comments on the proposal, and an excerpt from its minutes showing its consideration
114 of the proposal and all public testimony on the proposal.

115
116 21.95.070 Review by City Council. After receiving the recommendations of the
117 Planning Commission regarding an amendment proposal, the City Council shall consider the
118 amendment proposal in accordance with the ordinance enactment procedures in the Homer City
119 Code. The City Council may adopt the proposed amendment as submitted or with amendments,
120 or reject the proposed amendment.

121
122 Section 2. This Ordinance is of a permanent and general character and shall be included
123 in the City Code.

124
125 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 24th day of
126 January 2010.

127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

CITY OF HOMER

James C. Hornaday
JAMES C. HORNADAY, MAYOR

134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158

ATTEST

[Signature]

JO JOHNSON, CMC, CITY CLERK

YES: 5
NO: 0
ABSTAIN: 0
ABSENT: 1

First Reading: 12/13/10
Public Hearing: 1/24/11
Second Reading: 1/24/11
Effective Date: 1/25/11

Reviewed and approved as to form:

[Signature]
Walt E. Wrede, City Manager

Date: 1/24/11

[Signature]
Thomas F. Klinkner, City Attorney

Date: 1-28-11

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
✓ Merlin Cordes	<i>Merlin Cordes</i>	146 E Fairview Ave	146 E Fairview Ave
✓ Robyn Smith	<i>Robyn Smith</i>	PO Box 941 Homer AK	141 Race Rd Homer AK
✓ Marilyn Perrett	<i>Marilyn Perrett</i>	PO Box 4271 Homer AK 99613	1201 Jeffery Ave
✓ Randall Perrett	<i>Randall Perrett</i>	" "	" "
✓ MARK COOPER	<i>Mark Cooper</i>	4023 Pennock St Homer AK	SAME
NO Pat Callahan	<i>Pat Callahan</i>	385 Lee Dr.	SAME
✓ LEEETA CALLAHAN	<i>Leeeta Callahan</i>	385 LEE DR. HOMER AK	SAME
✓ Judith Mullikin	<i>Judith Mullikin</i>	33 P.O. Box 790 Homer	381 E. Bonanza Ave
✓ David A. Preskren	<i>David A. Preskren</i>	1201 Jeffery Ave 1201 Jeffery Ave, Homer AK 99613	1201 Jeffery Ave, Homer AK
✓ TIM MCELLEN	<i>Tim McEllen</i>	PO Box 2155 Homer AK	408 Soundview Ave

RECEIVED

JAN 12 2011

CITY OF HOMER
PLANNING/ZONING

Petition

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
Hope Otero	<i>Hope Otero</i>	Po Box 9516 Homer AK	483 Ocean Dr Lp Homer AK
Amunde Michelle	<i>M. Amunde</i>	P.O. Box 38 Homer AK	4530 Jade Dr Homer, AK
Scott Frazer	<i>Scott Frazer</i>	Po Box 141 Homer AK	829 Smokey Bay way Homer AK
Virginia Benson	<i>Virginia Benson</i>	Po Box 1727 Homer AK	1623 E. END RD
Kevin Stoll	<i>Kevin Stoll</i>	Po Box 2866 Homer, AK	3671 Poppy Circle
Rebecca J. Kingman	<i>Rebecca J. Kingman</i>	584 Bonanza Ave. P.O. Box 2889.	562 Bonanza Ave.
David Frako	<i>David Frako</i>	2164 Sprucewood	2664 Sprucewood
Diane K. Gilbert	<i>Diane K. Gilbert</i>	4814 Rochelle Rd - Homer AK 99605	- 4814 Rochelle Rd Homer
Mary Ellen Ulrich	<i>Mary Ellen Ulrich</i>	1233 Cook way - Homer	same
Dianna Taberner	<i>Dianna Taberner</i>	4142 Mattox St Lot 8 - Homer	same

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
Amnee Sulejovski		PO Box 2314, Homer AK 99603	1580 Lincoln Drive Homer 99603
Bruce Timmings		Box 1181 Homer AK 99603	2000 Coyote Drive
Karen West		355 Crestwood Ave Homer AK 99603	Same
GLENN CALDWELL		349 Elderberry Ct, Homer AK	PO Box 2308 Homer AK
Doug Bowen		P.O. Box 1642, Homer AK 99603	279 Lee Drive Homer AK
M. K. E. BOWEN		PO Box 2561 Homer	5165 Hopkins Way Homer AK
Scott Warner		Box 1950 Homer	1425 Mission Rd Homer AK
Robert McAllen		152 W Bayview	Same
FRANCES VAUGHAN		527 Ocean Dr. Loop Homer	Same
David Davis		1505 Hillside Pl,	PO Box 114

Petition

Proposed amendment:
HCC 21.95.020(e)(2)
To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
✓ Roddy Hahnlen	Roddy Hahnlen	4142 Mattak Lot 8	Same
✓ Elizabeth Gallagher	Elizabeth Gallagher	430 Spruceview Ave	Same
✓ Colleen Wagner	Colleen Wagner	2485 Larry Ln Homer	Same
✓ Eileen Heppner	Eileen Heppner	PO Box 2690 Homer 99603	1400 E. END RD
✓ LANA SIMPSON	Lana M. Simpson	P.O. Box 2604 Homer, AK 99603	5080 Stavin Drive
✓ FRANK ALDERFER	Frank W. Alderfer	PO Box 248 Homer, AK 99603	617 Soundview, Homer 99603
✓ Lorraine Heas	Lorraine Heas	3870 Forest Glen, Homer AK.	Same.
✓ Charles W. Valsworth III	Charles W. Valsworth III	1984 Skyline Dr, Homer, AK 99603	Same
✓ Bill B. T. Carr	Bill B. T. Carr	4121 Svedlund St Homer	Same
✓ Dolores Butler	Dolores Butler	4181 Svedlund Home	✓

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
Catherine Humpenberger		PO Box 2048 Homer AK	2025 Aspen Lane Homer
Susan Humpenberger		Box 2048 Homer AK	2225 Aspen Lane Homer
Jeanie Fabich		4976 Alder Lane Homer	same
Mussa Beacham		2013 Aspen Lane Homer	same
David Doren		Box 195 Homer AK	2213 Aspen Lane
Louisa Dunnean		Box 553 Homer AK 99603	185 East Panuicwa Ave Homer
Miss Elliott		PO Box 1102, HOMER AK 99603	61941 Paper Plat Ave HOMER
Tammy Sainwith		45425 East End Rd Homer AK 99603	SAME
Zina Molodtch		P.O. Box 15196 Fritz Creek, AK 99603	33515 Morrison Dr Homer AK 99603
Penny Roccoat		374 Ewerbeard St Homer AK 99603	SAME

Petition

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

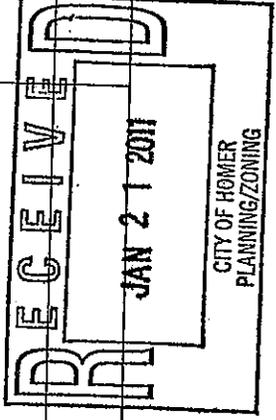
Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
Heidi Seay	<i>Heidi Seay</i>	PO Box 920 Homer	64235 Sheep Dr.
✓ Jeff Helgen	<i>Jeff Helgen</i>	PO Box 920 Homer	4486 Early Spring St.
✓ Shila Houlihan	<i>Shila Houlihan</i>	Bt#291 Homer	Blue Sky, Homer AK
✓ Nancy Hanenberger	<i>Nancy Hanenberger</i>	Box 920 Homer	4486 Early Spring
Amanda M. Mike	<i>Amanda M. Mike</i>	P.O. Box 38 Homer, Ak 99603	4530 Jade Dr.
✓ Mike Hougan	<i>Mike Hougan</i>	P.O. Box, Homer, Alaska 99603	17 Mile West Hill, Homer, Alaska

To allow single family and duplex dwellings in the General Commercial One Zoning District as a Conditional Use. HCC 21.24.30.

A specific proposal to amend the text of the zoning code will be considered by the Planning Commission and City Council if requested in writing and signed by fifty voters registered within the City.

MY SIGNATURE MEANS I AM IN FAVOR OF THIS AMENDMENT

Printed Name	Signature of Voter Registered in the City of Homer	Mailing Address	Physical Address
Cliff Rhoton	<i>Cliff Rhoton</i>	P.O. Box 2385	5045 Meadow Dr.
Timothy O'Leary	<i>Timothy O'Leary</i>	P.O. Box 173 Auctor Pt. AK	5023 MEADOW DR HOMER
Lynnda Gauthier	<i>Lynnda Gauthier</i>	P.O. Box 173 Auctor Pt. AK	5023 Meadow Dr. Homer
Renee Bond	<i>Renee Bond</i>	P.O. Box 3130 Homer AK	2775 E. End Rd. Homer





Session 11-03, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Vice Chair Bos at 7:01 p.m. on February 16, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, DOLMA, DRUHOT, HIGHLAND, KRANICH, VENUTI

ABSENT: COMMISSIONER MINSCH

STAFF: CITY PLANNER ABOUD
DEPUTY CITY CLERK JACOBSEN

APPROVAL OF AGENDA

The agenda was approved by consensus of the Commission.

PUBLIC COMMENT

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

There were no public comments.

RECONSIDERATION

There were no items for reconsideration.

ADOPTION OF CONSENT AGENDA

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

1. Approval of the January 19, 2011 minutes
2. Time Extension Requests: Lee Cole 2008 Preliminary Plat Time Extension Request
3. Approval of City of Homer Projects under HCC 1.76.030 g
4. KPB Coastal Management Program Reports
5. Draft Decision² and Findings for Conditional Use Permit (CUP) PL 11-02 to add a Petroleum Tank at 4755 Homer Spit Road.
6. Draft Decision and Findings for Conditional Use Permit (CUP) 11-03, for a day care facility in a single family residence at 4136 Hohe Street
7. Draft Decision and Findings for Conditional Use Permit (CUP) 11-01, Bridge Creek Fire Hazard Mitigation Project

KRANICH/VENUTI MOVED TO APPROVE AND ADOPT THE ITEMS ON THE CONSENT AGENDA.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PRESENTATIONS

There were no presentations scheduled.

REPORTS

A. Staff Report PL 11-114, City Planner's Report

City Planner Abboud reviewed his staff report.

PUBLIC HEARINGS

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

A. Staff Report PL 11-15, Draft Ordinance 11-xx Amending the General Commercial One (GC1) District, HCC 21.24.030 to allow single family and duplex dwelling(s) as a Conditional Use

City Planner Abboud reviewed the staff report.

Vice Chair Bos opened the public hearing. There were no comments and the hearing was closed.

HIGHLAND/KRANICH MOVED TO ADOPT STAFF REPORT PL 11-15 AMENDING THE GC1 DISTRICT, HCC 21.24.030 TO ALLOW SINGLE FAMILY AND DUPLEX DWELLING(S) AS A CONDITIONAL USE WITH RECOMMENDATIONS AND FINDINGS.

Commissioner Highland expressed reservations about changing the zoning. The Commission gets told that we need to keep commercial available so it's available for the future. This gives some leeway on the conditional use but still allows some extraneous use in GC1. She questioned if there is a way to allow what is there already because they were annexed, and stop it there.

Commissioner Kranich noted that they are only adding two uses in the GC1 as conditional uses, but not changing any area of zoning.

Commissioner Highland reiterated that she has concerns about adding those uses. She added that there are public health safety and welfare issues when looking at safety issues with having children in commercial area.

VOTE: YES: BOS, DRUHOT, KRANICH
NO: HIGHLAND, VENUTI, DOLMA

Motion failed.

B. Staff Report PL 11-20, CUP 11-04, A Request for a Conditional Use Permit (CUP) at 880 East End Road for a two-story, approximately 8,000 square foot wellness clinic for the Seldovia Village Tribe Wellness Center. A CUP is required for HCC 21.16.03(h), More than one building containing a permitted principal use on a lot. HCC 21.16.030(d) Hospitals and medical clinics. HCC 21.016.040(e), No lot shall contain more than

8,000 square feet of building area (all buildings combined), without an approved conditional use permit.

City Planner Abboud reviewed the staff report.

Caroline Storm, project architect, commented that the building is an extension of the current medical clinic but it will not actually house medical functions per say. Seldovia Village Tribe (SVT) is looking to augment their medical clinic with wellness functions like a dietician, diabetes prevention counselor, and so forth. On the second floor they want to expand the administrative space as it is very tight in the current building. Ideally they are planning to create a very similar look to the existing clinic with slight changes to differentiate between the two facilities and give it more of a campus feel. They are interested in doing a fair amount of landscaping in front of the wellness center and create a healing garden. In addition other potential function of the addition includes space for educational group type meetings in the evening not only for SVT but also for community use. She noted that the metal building removed from the lot resulted in about 3 feet of fill and they can't get the grade all the way down to the grade of the existing clinic. They are trying not to go higher than the existing clinic, but the issue with the grade may cause it to be about a foot higher.

Vice Chair Bos opened the public hearing. There were no comments and the public hearing was closed.

There was brief discussion that a replat had happened to make property one lot.

Commissioner Venuti asked for clarification that the grade on the new development is raised by about a foot. Ms. Storm concurred.

HIGHLAND/KRANICH MOVED TO ADOPT STAFF REPORT 11-20 APPROVING CUP 11-04 AT 880 EAST END ROAD FOR A TWO STORY APPROXIMATELY 8000 SQUARE FOOT WELLNESS CLINIC FOR THE SELDOVIA VILLAGE TRIBE WELLNESS CENTER WITH STAFF RECOMMENDATIONS AND FINDINGS.

VOTE: YES: HIGHLAND, DRUHOT, VENUTI, KRANICH, DOLMA, BOS

Motion carried.

PLAT CONSIDERATION

A. Staff Report PL 11-21, Land's End Subdivision Part 2 Preliminary Plat

Commissioner Druhot advised that she has a conflict of interested.

KRANICH/HIGHLAND MOVED THAT COMMISSIONER DRUHOT HAS A CONFLICT OF INTEREST.

It noted that this is the same situation as the last meetings regarding actions for relating to this property.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Planning Technician Engebretsen reviewed the staff report.

There were no applicants or public comments.

HIGHLAND/KRANICH MOVED TO ADOPT STAFF REPORT PL 11-21 LANDS END SUBDIVISION PART 2 PRELIMINARY PLAT WITH COMMENTS AND RECOMMENDATIONS.

There was brief discussion to clarify that recommendation one refers to FEMA maps that are adopted by City Council.

VOTE: YES: DOLMA, KRANICH, BOS, HIGHLAND, VENUTI

Motion carried.

PENDING BUSINESS

A. Staff Report PL 11-13 Bridge Creek Exclusions

City Planner Abboud reviewed the staff report.

HIGHLAND/BOS MOVED THAT STAFF DRAFT AN AMENDMENT TO REMOVE HCC 21.40.020(c).

Commissioner Highland expressed that it is in the best interest of our only water source that we be extremely careful and prudent. Due to the fact that we don't have any technology other than test holes, this would be a prudent way to go. Based on the previous exclusion it came to their attention that we can't determine what happens with the subsurface water.

Commissioner Kranich countered that based on staffs information that there are no other lots that have surface water that all goes away from the watershed. Yet he feels that if someone were to hire a surveyor who could document in detail regarding a particular piece of property the exclusion should stay. He noted that there were issues with the previous property in the exclusion but when it came before the Commission there were no problems with the piece of property.

There were comments in agreement with both sides.

VOTE: YES: DOLMA, HIGHLAND
NO: KRANICH, VENUTI, BOS, DRUHOT

Motion failed.

KRANICH/VENUTI MOVED THAT THE COMMISSION DO NOTHING PERTAINING TO THIS AND LEAVE HOMER CITY CODE 21.40.020(c) AS IS.

Commissioner Kranich commented that voting on this finalizes it and shows their position on this issue.

VOTE: YES: VENUTI, DOLMA, BOS, DRUHOT, KRANICH
NO: HIGHLAND

Motion carried.

- B. Staff Report PL 11-18, Draft Ordinance amending the City of Homer Comprehensive Plan to include the Homer Spit Comprehensive Plan and Recommending Adoption to the Kenai Peninsula Borough

Planning Technician Engebretsen reviewed the staff report.

HIGHLAND/VENUTI MOVED TO ADOPT THE CHANGES TO THE SPIT COMPREHENSIVE PLAN AS OUTLINED IN STAFF REPORT PL 11-18.

Commissioner Highland noted one correction on page 72 under 5 second sentence correct to say "to educate ATV users".

KRANICH/DRUHOT MOVED TO AMEND #9 THAT REFERENCES PAGE 6 IN THE COMP PLAN REMOVE "ARE" AND ADD "MAY BE" TO SAY PORTIONS OF PARCELS WITHIN THE ACREAGE MAY BE UNUSABLE FOR DEVELOPMENT.

There was brief discussion that the Commission is not making a determination as to what is and is not unusable.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

BOS/KRANICH MOVED TO AMEND #8 TO ELIMINATE "EXPANSION" SO THAT IT READS "CONCERN ABOUT FUTURE OF RESIDENTIAL DEVELOPMENT"

There was brief discussion about wording.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was discussion to clarify that number 11 should refer to page 34 on the plan.

KRANICH/DRUHOT MOVED TO AMEND NUMBER 11 TO READ PAGE 34.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was discussion about number 10 for clarifying acreages with tidal lands.

KRANICH/BOS MOVED THAT ON PAGE 26 REDO THE HARBOR OFFICE CAPTION TO DELETE THE REFERENCE TO PLAZA LOCATION.

There was discussion to clarify this is referencing the caption under the picture.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was discussion for clarification of the dock length.

VOTE: (Main motion as amended) YES: KRANICH, DRUHOT, BOS, VENUTI, HIGHLAND, DOLMA

Motion carried.

NEW BUSINESS

A. Staff Report PL 11-19, Draft Policies and Procedures

KRANICH/DRUHOT MOVED TO POSTPONE TO THE FIRST WORKSESSION AND REGULAR MEETING IN MARCH.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

INFORMATIONAL MATERIALS

- A. City Manager's Report January 25, 2011
- B. Order Rescinding Decision dated January 25, 2011 regarding Refuge Room Appeal Hearing
- C. Memo from Deputy City Clerk Jacobsen Re: Ex Parte, Conflict of Interest, and Situations of Bias

COMMENTS OF THE AUDIENCE

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

There were no audience comments.

COMMENTS OF STAFF

City Planner Abboud commented that he questions if the Commission needed to adopt findings for the vote on the GC1 amendments. He said he may confer with the City Attorney regarding the process.

COMMENTS OF THE COMMISSION

Commissioner Highland quoted words she saw in the Two Sisters ad "Always treat everyone kinder than necessary."
Vice Chair Bos thanked everyone for their help with the meeting tonight. He thanked staff for all the information.

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
FEBRUARY 16, 2011

Commissioner Kranich thanked staff for all their work over the last year or year and a half with the Spit Comprehensive Plan.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 8:31 p.m. The next regular meeting is scheduled for February 2, 2011 at 7:00 p.m. in the City Hall Cowles Council Chambers.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____





City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

E-mail: Planning@ci.homer.ak.us

Web Site: www.ci.homer.ak.us

Telephone (907) 235-3106

Fax (907) 235-3118

HOMER ADVISORY PLANNING COMMISSION Meeting of February 16, 2011

RE: CUP 11-04 Seldovia Wellness Center at 880 East End Road
Legal: Lot 10B AA Mattox Sub 1958 Seldovia Village Tribe Add. No. 2

DECISION

Introduction:

Architects Alaska applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code HCC 21.71.030 for approval of a two-story Wellness Center located at 880 East End Road. The property is zoned Residential Office pursuant to Homer City Code 21.16.030.

The application sought approval for:

- HCC 21.16.030(h) More than one building containing a permitted principal use on a lot.
- HCC 21.16.030(d) Hospitals and medical clinics.
- HCC 21.16.040(e) No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor shall any lot contain building area in excess of 30 percent of the lot area, without an approved conditional use permit.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on February 16, 2011. Notice of the public hearing was published in the local newspaper and sent to 19 property owners of 26 parcels as shown on the KPB tax assessor rolls. There was no public comment.

At the February 16, 2011 meeting of the Commission, the Commission voted to approve the request with six (6) Commissioners present and six (6) Commissioners voted in favor of the conditional use permit.

SYNOPSIS:

The proposed two-story wellness clinic will be the second building on this parcel; hence a CUP is required per HCC 21.16.030(h). The Seldovia Village Tribe provides comprehensive medical and dental care, therefore this CUP requests approval for a “medical clinic” per HCC 21.16.030(d). The combined building area will be approximately 12,257 square feet; hence a CUP is required per HCC 21.16.030(e).

EVIDENCE PRESENTED

FINDINGS OF FACT

Homer City Code §21.71.030 provides:

Review Criteria. The applicant must produce evidence sufficient to enable meaningful review of the application. Unless exceptions or other criteria are stated elsewhere in this code, the application will be reviewed under these criteria:

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

Finding 1: The proposed use and structure is authorized with an approved CUP in City Code.

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

Finding 2: This project is compatible with the purpose of the Residential Office district.

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

Finding 3: No evidence has been found that the project will have a negative impact on the adjoining properties.

D. The proposal is compatible with existing uses of surrounding land.

Finding 4: A professional medical clinic is compatible with the uses of the surrounding land.

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

Finding 5: Public services and facilities are adequate to serve the project.

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

Finding 6: The Proposal will not cause undue harmful effect upon desirable neighborhood character.

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

Finding 7: The addition of a two-story wellness center will not be detrimental to the health, safety or welfare of the surrounding area or city as a whole.

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

Finding 8: The proposed project will comply with the applicable regulations.

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

Finding 9: The site meets the goals and objectives of the Comprehensive Plan.

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

Finding 10: All exterior lighting to be down lit to avoid excess light throw per CDM pg 36-37 and HCC 21.59.030.

CONCLUSION

Based on the foregoing findings of fact and law, Conditional Use Permit 11-04 is hereby approved, subject to the following conditions:

1. Parking areas to be paved and striped within 2 years of occupancy of the new addition.
2. The dumpster or garbage area to be screened on three sides with a six foot wooden fence.
3. Project to meet local, state and federal regulations.

Date: _____
Vice-Chair, Tom Bos

Date: _____
City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

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

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on February _____, 2011. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: _____
Shelly Rosencrans, Planning Assistant

Walt Wrede, City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-30

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: March 2, 2011
SUBJECT: Planning Director's Report

February 15th City Council Meeting

Ordinance 11-03 Amending Definitions in Zoning Code

An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.03.040, Definitions Used in Zoning Code; Homer City Code 21.12.020, Rural Residential (RR), Permitted Uses and Structures; Homer City Code 21.14.020, Urban Residential (UR), Permitted Uses and Structures; and Homer City Code 21.16.020, Residential Office (RO), Permitted Uses and Structures; and Homer City Code 21.61.060, Termination of Nonconforming Use or Structure; Regarding the Accessory Use of Storage in Residential Zoning Districts. Planning.

Introduced, Public Hearing scheduled Feb. 28th

February 28th City Council Meeting

Resolution 11-007, A Resolution of the City Council of Homer, Alaska, Approving and Adopting the Comprehensive Economic Development Strategy (CEDS) and Forwarding the CEDS to the Homer Advisory Planning Commission for a Recommendation on Whether it Should be Adopted as Part of the Homer Comprehensive Plan. Economic Development Advisory Commission. (Postponed from January 10, 2011.)

Resolution 11-007(S), A Resolution of the City Council of Homer, Alaska, Approving and Adopting the Comprehensive Economic Development Strategy (CEDS) and Forwarding the CEDS to the Homer Advisory Planning Commission for a Recommendation on Whether it Should be Adopted as Part of the Homer Comprehensive Plan. Economic Development Advisory Commission.

Memorandum 11-005 from Economic Development Advisory Commission as backup.

Resolution 11-023, A Resolution of the Homer City Council Finding the Need to Create the Kachemak Drive Phase Two Water and Sewer Local Improvement District, and Scheduling a Public Hearing on the Necessity of the Improvement and Proposed Improvement Plan at the April 11, 2011 Regular City Council Meeting. City Manager/Public Works Director.

Memorandum 11-029 from Public Works Director as backup

Activities

Dotti, Julie and I are all now Certified Erosion and Sediment Control Leads (CESCL) after participating in the CESCL course in Homer Feb. 16-17, 2011. We, along with 34 others, were instructed on installation methods for control of erosion and sedimentation included all required documentation. This will definitely help us to better work with Development Action Plan's (DAP's) and evaluation of other development sites and practices.

The entire office has/is completing a workshop on dealing with difficult customers and other related problems in the workforce.

Dotti is to attend the Homer Spit/Kenai Peninsula Borough Project Area Discovery Meeting Wednesday, March 2, 2011, 9 am – 4 pm, Kenai River Center
An excerpt from a meeting organizer, Karen Amrhein to City Staff:

“This is the initial effort in FEMA’s new Risk MAP program to support communities in their efforts to become flood resilient, and we are hoping that, through meeting with you and other local representatives, we can identify the types of support that your community may need through the next several years. As you know, we are interested in more than just flood study needs, but also in learning about how you communicate about flood risk to your residents (or what kind of support you need to create an outreach program), what kind of mitigation projects may be helpful, if you have training needs, and more. Homer was specifically selected as a community of interest.”

Public meeting regarding the proposed Transfer Facility on Baycrest February 25, 2011 from 5:30 – 7:00 PM in the City Council Chambers.

Info

Status of the FEMA updating of flood maps on the spit, from Kevin Donnelly (FEMA contractor):

During the month of January, we completed the survey data quality control. We received LiDAR and orthophoto data. Intermediate Submission No. 1 of the Coastal Analysis was submitted on January 7, 2011 to the MIP and to Region X. Wave run-up calculations for non-surveyed transects have been completed. The Coastal Analysis calculations will be completed in February. The Topographic Data Development task was completed and will be submitted in February.



City of Homer

Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-23

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: March 2, 2011
SUBJECT: Sterling Highway Right of way acquisition plat

Synopsis: the Kenai Peninsula Borough is requesting comments on the proposed right of way acquisition for the Sterling Highway reconstruction project in the 1990's. The state must go through this process in order to record the plat.

GENERAL INFORMATION

The State of Alaska DOT reconstructed the Sterling Highway in the 1990's, between miles posts 169 and 174. This area is from about the DOT yard at the top of the hill, down to Main Street. The right of way has already been acquired by the state; the plat is simply another method to record the takings that have already occurred.

Under Kenai Peninsula Borough Code, a right of way acquisition plat is different than a regular preliminary plat. There is no notification of property owners. Borough code 20.04.080 (page 20-9) addresses right of way acquisition plats. The requested action from the Homer Advisory Planning Commission and city departments is to provide any comments on the plat. Again, the easements have already been required and the project has been completed for over a decade.

PUBLIC WORKS COMMENTS: The Public Works Department had no comments.

STAFF COMMENTS/RECOMMENDATIONS: HAPC provide any comments on right of way to the Borough for consideration.

ATTACHMENTS

1. DOT plan sheets





MONUMENT SUMMARY SHEET



SHEET 10

LOCATION	MONUMENT TYPE	STATION	OFFSET	BEARING AND RECORD
ROW Line, P.C.	6"X6" Conc. Post (Hwy Monument)	331+231	64.17' RT	
State of AK in ROW	6"X6" Conc. Post (Hwy Monument)	332+154	32.95' RT	
NE. Cor. Tr. A Kachemak River	1/2" Rebar	332+76.07	80.32' RT	
On E. Pl. Tr. A Kachemak River	1/2" Rebar	333+24.46	209.61' RT	
S.W. Cor. Lot 5 Derose Subd.	2"X3" Hub	334+29.42	38.61' LT	SEE NOTE 1
ROW Line, P.T.	6"X6" Conc. Post (Hwy Monument)	334+67.13	78.81' RT	
N.W. Cor. Tr. A Derose Subd.	1" Iron Pipe	335+56.53	413.59' LT	
SE. Cor. Lot 4 Derose Subd.	2"X3" Hub	335+20.11	44.53' LT	
N.W. Cor. Tr. B Mulich Survey	1/2" Rebar	335+72.05	71.90' RT	
NE. 1/16 Cor. Sec. 24	2 1/2" Alum. Cap	337+18.59	111.21' LT	
N.W. Cor. Lot 1 Lillian Wall Estate	1 1/8" Iron Pipe	337+38.55	444.77' LT	SEE NOTE 1
S.W. Cor. Lot 1 Lillian Wall Estate	1 1/2" Iron Pipe	338+07.68	45.81' LT	
N.W. Cor. Tr. C Lillian Wall Estate	1 1/2" Alum. Cap	338+30.40	456.80' LT	
S.W. Cor. Tr. C Derose Subd.	1 1/2" Alum. Cap on 5/8" Rebar	339+00.14	46.73' LT	
CE. 1/16 Cor. Sec. 24	2 1/2" Brass Cap	339+41.32	194.30' RT	
ROW, N. Part of Tr. B Mulich Survey	6"X6" Conc. Post (Hwy Monument)	339+95.14	52.92' RT	
ROW, N. Part of Tr. B Mulich Survey	6"X6" Conc. Post (Hwy Monument)	339+95.34	71.29' RT	
PC @ NE Cor. Tr. C Lillian Wall Estate	1 1/2" Alum. Cap	341+32.61	550.62' LT	
NE. Cor. Tr. B Mulich Survey	1/2" Rebar	341+45.94	52.65' RT	
PC @ SE Cor. Tr. C Lillian Wall Estate	1 1/2" Alum. Cap	341+73.82	28.33' LT	
PC @ SE Cor. Tr. C Lillian Wall Estate	1 1/2" Alum. Cap	341+95.35	151.81' LT	
S.W. Cor. Lot 77 Lillian Wall Estate	1 1/2" Alum. Cap	342+13.94	375.98' LT	
SE. Cor. Tr. C Lillian Wall Estate	1 1/2" Alum. Cap on 5/8" Rebar	342+17.15	47.42' LT	
S.W. Cor. Tr. A Lillian Wall Estate	5/8" Rebar	342+80.35	47.62' LT	
ROW, S. of Tr. A Lillian Wall Estate	6"X6" Conc. Post (Hwy Monument)	343+94.72	47.93' LT	
S.W. Cor. Lot 76 Lillian Wall Estate	1 1/2" Alum. Cap	344+10.24	538.10' LT	
N.W. Cor. Tr. B Lillian Wall Estate	1 1/2" Alum. Cap	347+00.95	567.54' LT	
N. 1/16 Cor. Sec. 24/19	3 1/4" Alum. Cap	350+20.86	1332.97' LT	
NE. Cor. Tr. B Lillian Wall Estate	1 1/2" Alum. Cap	351+24.70	681.32' LT	
W.C. 1/4 Cor. Sec. 24/19	2 1/2" Brass Cap	352+38.24	49.90' LT	SEE NOTE 1

SHEET 11

LOCATION	MONUMENT TYPE	STATION	OFFSET	BEARING AND RECORD
N.W. Cor. Lot 4 Foothills Subd. Unit 2	2" Aluminum Cap	351+81.17	386.80' LT	
NE. Cor. Lot 4 Foothills Subd. Unit 2	2" Aluminum Cap	353+37.92	418.37' LT	
PC @ NE. Cor. Lot 4 Foothills Subd. Unit 2	2" Aluminum Cap	353+65.09	125.60' LT	
SE. Cor. Lot 4 Foothills Subd. Unit 2	5/8" Rebar	353+65.29	50.13' LT	
PRO @ NE. Cor. Lot 4 Foothills Subd. Unit 2	2" Aluminum Cap	354+07.25	334.00' LT	
N.W. Cor. Lot 2 Morley-Dell Subd.	Aluminum Cap	358+33.49	129.12' LT	
SE. Cor. Lot 2 Morley-Dell Subd.	5/8" Rebar	350+58.37	51.44' LT	
SE. Portion Lot 3 Morley-Dell Subd.	1/2" Rebar	352+98.42	43.55' LT	
On W. 1/16 Line Sec. 19 Bluff Park No. 4	5/8" Rebar	353+68.19	504.77' RT	
N.W. Cor. Lot 5 Bluff Park No. 4	2" Aluminum Cap	353+82.67	66.61' RT	
On E. Pl. Lot 1 Foothills Subd. Unit 1	5/8" Rebar	355+33.32	730.19' LT	
On E. Pl. Lot 1 Foothills Subd. Unit 1	Hub & Tack	356+42.77	513.99' LT	
Inter-X W. 1/16 Line N. ROW Forest Glenn Dr. Sec. 19	1/2" Rebar	354+10.52	313.64' LT	
On E. Pl. Lot 1 Foothills Subd. Unit 1	Hub & Tack	356+10.87	75.43' RT	
N.W. Cor. Lot 4 Bluff Park No. 4	2" Aluminum Cap	367+51.11	70.00' RT	
N.W. Cor. Lot 2 Bluff Park No. 4	2" Aluminum Cap	370+00.37	37.41' RT	
N.W. Portion Lot 1 Bluff Park No. 4	2" Metal Pipe	372+57.84	40.51' RT	
NE. Cor. Lot 1 Forest Glenn Subd.	Hub & Tack	372+94.83	287.30' LT	
SE. Cor. Lot 2 Bluff Park No. 4	1 1/2" Alum. Cap	374+53.07	246.21' LT	
NE. Cor. Lot 1 Forest Glenn Subd.	2" Aluminum Cap	375+15.41	54.02' RT	
On 1/16 Cor. Sec. 19	2 1/2" Brass Cap	377+31.66	1229.39' LT	
C. 1/4 Cor. Sec. 19	Plastic Cap on 1/2" Rebar	377+56.23	54.24' RT	
N.W. Cor. Lot 18A Webber Subd. No. 7	2" Aluminum Cap	377+59.25	255.22' RT	

NOTE:
1. WHETHER LISTED OR NOT, ALL MONUMENTS OR PROPERTY MARKERS/CORNERS OR ACCESSORIES WHICH WILL BE DISTURBED OR BURIED SHALL BE REFERENCED AND RECORDED IN THEIR ORIGINAL POSITION AND RECORDED PER ASS. 34-83040.

DEPARTMENT LOCATIONS SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA AND THAT ALL RIGHT OF WAY CENTERLINE MONUMENT LOCATIONS HAVE BEEN ESTABLISHED AS INDICATED ON THE RIGHT OF WAY PLANS. ALL EXISTING FOUND SUBDIVISION MONUMENTS, PROPERTY CORNERS, AND SECTION LINE MONUMENTATION AS INDICATED ON THE RIGHT OF WAY PLANS HAVE BEEN REFERENCED TO PROJECT SURVEY CONTROLS BY ME OR UNDER MY SUPERVISION.

DATE: ANTHONY P. BONETA
REGISTRATION NUMBER:

SHEET 12

LOCATION	MONUMENT TYPE	STATION	OFFSET	BEARING AND RECORD
SE. Cor. Homer School Survey	Plastic Cap on 5/8" Rebar	385+58.81	374.16' LT	
N.W. Portion No. 4 Bower's Subd. No. 4	Plastic Cap on 5/8" Rebar	385+76.15	50.00' RT	
N.W. Portion No. 4 Bower's Subd. No. 4	Plastic Cap on 5/8" Rebar	385+88.53	49.89' RT	
Center-North Portion Homer Middle School	5/8" Rebar	386+53.99	398.79' LT	
NE. 1/16 Cor. Sec. 19	3 1/4" Alum. Cap	386+84.56	1455.63' LT	
NE. Corner Bower's Subd. No. 4	Plastic Cap on 5/8" Rebar	387+76.34	45.79' RT	
Bower's Resubd.	Plastic Cap on 5/8" Rebar	387+97.17	45.77' RT	
NE. Cor. Homer Middle School	Plastic Cap on 5/8" Rebar	389+67.76	48.28' LT	
CE. 1/16 Cor. Sec. 19	3" Brass Cap	390+56.82	190.62' LT	
S.W. Cor. Tr. 1 Bower's Subd.	2" Aluminum Cap	390+40.89	257.88' RT	
S.W. Cor. Tr. 4 Bower's Subd.	Y.P.C. w/ 1/2" Rebar	391+04.60	510.48' RT	
S.L. - Pioneer/ Sterling Hwy	3" Brass Cap	391+08.72	0.01' RT	
S.W. Cor. Tr. 2 Bower's Subd.	2" Aluminum Cap	391+44.13	507.89' RT	
N.W. Cor. Tract A Berry Adm.	1/2" Rebar	391+23.89	40.05' RT	
N.W. Cor. Tract A Berry Adm.	Plastic Cap on 1/2" Rebar	391+25.36	46.20' RT	
S.W. Portion Lot 69 Bunnell's Subd.	1/2" Rebar	391+55.17	49.43' LT	
N.W. Cor. Lot 69-3 Bunnell's Subd.	Plastic Cap on 5/8" Rebar	391+90.53	376.43' LT	
NE. Cor. Lot 69-3 Bunnell's Subd.	Plastic Cap on 5/8" Rebar	392+57.92	37.05' LT	
N.W. Corner Desjardins Property	2" Aluminum Cap	392+58.15	290.28' LT	
South Portion Lot 69 Bunnell's Subd.	2" Aluminum Cap	392+63.30	49.92' LT	
On P.L. N. End Desjardins Property	2" Aluminum Cap	392+89.27	288.63' LT	
NE. Portion Tract A Berry Adm.	5/8" Rebar (pen)	393+42.42	48.05' RT	
SE. Cor. Lot 69 Bunnell's Subd.	3/8" Rebar	393+81.25	50.66' LT	
N.W. Cor. Lot 1 Bunnell's Subd. No. 10	1/2" Rebar	394+15.28	50.20' RT	
P.L. - Sterling Hwy	3" Brass Cap	395+12.97	11.80' RT	
On P.L. Near NE Cor. Lot 70 Bunnell's Subd.	1" Iron Pipe	395+87.59	307.50' LT	
N.W. Cor. Lot 28A Chamberlain Subd.	1" Iron Pipe	395+55.47	309.11' LT	
S.W. Cor. Lot 30A Chamberlain Subd.	Plastic Cap on 1 1/2" Iron Pipe	395+61.78	50.08' LT	
N.W. Cor. Lot 32A Watson Subd.	5/8" Rebar	395+62.84	49.67' RT	
S.W. Cor. Lot 13A Chamberlain Subd.	Plastic Cap on 1 1/2" Iron Pipe	399+59.83	49.50' LT	
N.W. Cor. Lot 15A Watson Subd.	5/8" Rebar (pen)	399+59.97	50.03' RT	
S.W. Cor. Lot 14 A-1 Bunnell's Subd. No. 14	Plastic Cap on 5/8" Rebar	402+15.53	50.01' LT	
SE. Cor. Lot 14 A-1 Bunnell's Subd. No. 14	Plastic Cap on 5/8" Rebar	404+16.82	49.99' LT	
Section Corner 17/19/19/20 w/ Punch	Railroad Spike	404+41.30	299.71' LT	
Intersection Main St./ Pioneer	3 1/4" Brass Cap (no markings)	404+44.01	1433.39' LT	
1/4 Corner, Sec. 19/20	Railroad Spike	404+46.14	309.78' LT	
W.C.M.C. S. 1/16 Cor. Sec. 19/20	5/8" Rebar	404+48.37	977.42' RT	

DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SSB
1/30/95	REVISED PROJECT NUMBER	SSB
1/18/94	ADDED NOTE 1	BJH
7/1/94	REVISED STATIONS & OFFSETS	BJH
	REVISIONS	BY

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES

RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1137

9971
STERLING HIGHWAY MP 169-174,
HOMER HILL

CHECKED: BJH DATE: FEB. 1994 SHEET: 18 OF 18
SCALE: N.T.S.



MONUMENT SUMMARY SHEET



CONSULTANT LOCATION
SURVEYING LICENSE
CONSULTANT REPORT OF WAY
SURVEYORS CERTIFICATE

SHEET 4

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
South ROW Line Bk. 236 H.R.D. Pg. 365	6"X6" Conc. Post Hwy Monument	195-32.41	67.93' RT	
North ROW Line Bk. 236 H.R.D. Pg. 365	6"X6" Conc. Post Hwy Monument	195-32.41	132.19' LT	
N.W. Cor. Bk. 215, Pg. 879 H.R.D.	5/8" Rebar	196-05.77	67.77' RT	
N.E. Cor. Bk. 215, Pg. 879 H.R.D.	5/8" Rebar	203-38.63	67.64' RT	
WC C. 1/4 Cor. Sec. 15	2 1/2" Brass Cap	202-64.74	351.82' RT	
N.W. Cor. Tr. B Rogers-Tice Deed	1/2" Rebar	202-67.58	68.53' RT	
S.E. Cor. Bk. 175, Pg. 162 H.R.D.	1/2" Rebar	202-86.21	131.55' LT	
Near S.W. Cor. Tr. A-1 Rogers-Tice Adh.	3" Aluminum Cap	203-46.49	117.62' LT	
C.N. 1/16 Cor. Sec. 15	2 1/2" Brass Cap	203-46.26	774.01' LT	
C.N. 1/16 Cor. Sec. 15	3 1/4" Brass Cap	203-46.49	771.20' LT	
N.W. Cor. Tr. A-1 Rogers-Tice Adh.	3 1/4" Alum. Cap	203-76.03	771.27' LT	
S.E. Cor. Tr. A-1 Rogers-Tice Adh.	3 1/4" Alum. Cap	205-09.11	131.64' LT	
P.C. on N. ROW Line Rogers-Tice Adh.	6"X6" Conc. Post Hwy Monument	212-19.01	132.38' LT	
P.C. on S. ROW Line Rogers-Tice Adh.	6"X6" Conc. Post Hwy Monument	212-25.12	67.90' RT	
Near N.E. 1/16 Cor. Sec. 15	1/2" Rebar	214-95.41	705.10' LT	
N.E. 1/16 Cor. Sec. 15	3" Aluminum Cap	214-96.04	703.99' LT	
S.E. Cor. Tr. A-2 Rogers-Tice Adh.	1/2" Rebar	215-74.40	136.04' LT	

SHEET 5

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
N.E. Cor. Tr. B Rogers-Tice Deed	1/2" Rebar	216-20.12	61.80' RT	
WG C.E. 1/16 Cor. Sec. 15	2 1/2" Brass Cap	217-51.12	407.96' RT	
N. 1/16 Cor. Sec. 15/14	2 1/2" Brass Cap	221-95.92	1265.95' LT	
P.T. on S. ROW Line E. Side of Bk. 136, Pg. 87 H.R.D.	6"X6" Conc. Post Hwy Monument	222-80.80	16.74' RT	
P.T. on N. ROW Line 105' SE of Rogers Loop	6"X6" Conc. Post Hwy Monument	222-95.08	114.72' LT	

SHEET 6

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S. Portion Bk. 136, Pg. 458 H.R.D.	6"X6" Conc. Post Hwy Monument	229-27.42	198.28' LT	
S.W. Portion Bk. 136, Pg. 458 H.R.D.	6"X6" Conc. Post Hwy Monument	229-28.62	130.34' LT	
1/4 Corner Sec. 15/14	2 1/2" Brass Cap	229-34.86	209.73' RT	
P.C. R.O.W.	6"X6" Conc. Post Hwy Monument	229-79.62	363.98' LT	
Section Corner Sec. 15/14/22/23	2 1/2" Brass Cap	236-32.31	166.34' LT	
P.T. R.O.W.	6"X6" Conc. Post Hwy Monument	238-99.14	1879.70' RT	
C.W. 1/16 Cor. Sec. 14	2 1/2" Brass Cap	241-52.62	77.52' LT	
	2 1/2" Brass Cap	245-78.41	931.35' LT	

SHEET 7

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
P.C. @ Lot 8 Abbott Subd. No. 3	Y.P.C. w/ 1/2" Rebar	254-94.83	391.03' RT	
N.W. Cor. Lot 2 Slimkins Subd.	5/8" Rebar	254-59.63	116.80' LT	
ROW Cor. @ E. Side Abbott Subd. No. 4	6"X6" Conc. Post Hwy Monument	255-11.90	13.95' RT	
N.E. Cor. Lot 79 Abbott Subd. No. 4	6"X6" Conc. Post Hwy Monument	255-12.09	82.08' RT	
S. Portion Lot 4 Abbott Subd. No. 3	1/2" Rebar	256-24.04	509.27' RT	
P.C. @ S.E. Cor. Lot 8 Abbott Subd. No. 4	Plastic Cap on 1/2" Rebar	256-24.32	164.64' RT	
S.W. Cor. Tr. B Abbott Subd.	Y.P.C. w/ 1/2" Rebar	257-43.82	408.01' RT	
S.W. Cor. Lot 9 Abbott Subd. No. 3	1/2" Rebar	258-33.37	364.05' RT	
N.E. Cor. Lot 9 Abbott Subd. No. 3	Y.P.C. w/ 1/2" Rebar	259-35.20	115.94' RT	
S.E. Cor. Lot 9 Abbott Subd. No. 3	2" Iron Pipe	259-65.64	259.19' RT	
S.E. Cor. Lot 2 Slimkins Subd.	3" Brass Cap	259-94.69	115.38' LT	
ROW Cor. @ N. Portion Bk. 55, Pg. 187 H.R.D.	6"X6" Conc. Post Hwy Monument	259-97.91	189.75' RT	
C.S. 1/16 Cor. Sec. 14	3" Brass Cap	260-14.68	606.71' LT	
P.C. @ N. Portion Tr. A Westholme Tracts	6"X6" Conc. Post Hwy Monument	263-64.00	94.24' RT	
P.C. @ SE Portion Lot 1 Slimkins Subd.	6"X6" Conc. Post Hwy Monument	263-80.37	104.83' LT	
N.W. Cor. Lot 51 Boycrest Subd. No. 2	1/2" Rebar	265-93.44	101.70' RT	
P.T. @ S. Portion Lot 51 Boycrest Subd. No. 2	6"X6" Conc. Post Hwy Monument	267-54.83	105.62' LT	
W.C. 1/4 Cor. Sec. 14/23	2 1/2" Brass Cap	267-73.21	146.72' RT	
N.W. Cor. Lot 52 Boycrest Subd. No. 2	1/2" Rebar	268-12.31	451.27' RT	
E. Portion Lot 52 Boycrest Subd. No. 2	6"X6" Conc. Post Hwy Monument	269-26.22	137.75' RT	
P.C. @ E. Portion L. 52 Boycrest Subd. No. 2	6"X6" Conc. Post Hwy Monument	273-40.72	132.59' RT	
P.C. @ S. Portion Bk. 21, Pg. 335 H.R.D.	6"X6" Conc. Post Hwy Monument	273-43.63	100.71' RT	
S.O.A. No. TS-58	5/8" Rebar	273-63.85	97.73' LT	
E. Cor. Lot 52 Boycrest Subd. No. 2	1/2" Rebar	274-15.92	55.95' RT	
P.T. @ S. Portion Bk. 21, Pg. 335 H.R.D.	6"X6" Conc. Post Hwy Monument	275-74.50	105.80' RT	
P.C. @ S. Portion Bk. 109, Pg. 187 H.R.D.	6"X6" Conc. Post Hwy Monument	275-92.21	97.35' LT	
	6"X6" Conc. Post Hwy Monument	276-10.58	101.03' LT	

SHEET 8

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S.W. Cor. Lot 1A Boycrest Subd. No. 2	Hub & Tack	276-29.45	225.99' RT	
N.E. 1/16 Cor. Sec. 23	2 1/2" Brass Cap	281-94.57	1319.81' RT	
N.W. Cor. Tr. A Gordon Property	1/2" Rebar	283-11.73	88.59' RT	
P.C. @ N. Portion Tr. A Gordon Property	6"X6" Conc. Post Hwy Monument	284-03.63	88.22' RT	
P.C. @ SE Portion Bk. 109, Pg. 187 H.R.D.	6"X6" Conc. Post Hwy Monument	284-03.11	111.45' LT	
N.E. Cor. Tr. A Gordon Property	1 1/2" Iron Pipe	285-03.09	91.20' RT	
S.W. Portion Bk. 135, Pg. 263 H.R.D.	6"X6" Conc. Post Hwy Monument	287-07.43	42.10' LT	
W. Portion Bk. 139, Pg. 263 H.R.D.	6"X6" Conc. Post Hwy Monument	287-09.34	96.46' LT	
S. 1/16 Cor. Sec. 13/14	2 1/2" Brass Cap	287-82.82	1650.55' LT	
P.C. @ S.W. Portion Bk. 34, Pg. 319 H.R.D.	6"X6" Conc. Post Hwy Monument	290-48.86	56.77' LT	
Section Corner 14/13/23/24	2 1/2" Brass Cap	291-77.23	350.93' LT	
N. 1/16 Cor. Sec. 23/24	3 1/4" Alum. Cap	297-72.69	827.16' RT	
S. Portion Bk. 124, Pg. 183 H.R.D.	6"X6" Conc. Post Hwy Monument	298-19.05	86.10' LT	
S. Portion Bk. 124, Pg. 183 H.R.D.	6"X6" Conc. Post Hwy Monument	298-20.02	110.80' LT	
N.W. Portion Bk. 124, Pg. 183 H.R.D.	6"X6" Conc. Post Hwy Monument	299-14.81	40.53' RT	
N.W. Portion Bk. 187, Pg. 950 H.R.D.	6"X6" Conc. Post Hwy Monument	299-14.72	56.31' RT	
S.E. Cor. Bk. 87, Pg. 550 H.R.D.	Hub & Nail	300-59.34	683.98' RT	
S.E. Cor. Bk. 124, Pg. 183 H.R.D.	5/8" Rebar	300-80.45	109.37' LT	

SHEET 9

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S.E. Cor. Portion of NE 1/4 NW 1/4 Sec. 24	1/2" Rebar	310-11.32	331.01' LT	
P.C. S.E. Cor. Tr. 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	312-11.66	75.07' LT	
N.E. Cor. Tr. 1 on 1" Iron Pipe Biderkri Creek Subd.	1 1/2" Alum. Cap on 1" Iron Pipe	312-24.18	449.34' LT	
N.W. Cor. Lot 9 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	312-28.54	23.57' RT	
N.W. Cor. Lot 9 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	312-35.43	72.70' RT	
N.E. Cor. Lot 6 Biderkri Creek Subd.	5/8" Rebar	313-03.24	277.91' RT	
On-line Lot 1/2 A Biderkri Creek Subd.	Hub & Tack	313-60.30	127.75' LT	
N.W. Cor. Lot 5 Biderkri Creek Subd.	2" Aluminum Cap	313-96.51	390.24' RT	
N. Portion Lot 9 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	315-29.44	21.27' RT	
On-line Lot 3A/4A Biderkri Creek Subd.	2"X3" Hub	315-92.22	119.38' LT	
N.E. Cor. Lot 9 Bk 1 Biderkri Creek Subd.	1/2" Rebar	316-52.07	32.18' RT	SEE NOTE 1
N.W. Cor. Lot 4 Biderkri Creek Subd.	2" Aluminum Cap	316-65.20	317.64' RT	SEE NOTE 1
N.W. Cor. Lot 11 Biderkri Creek Subd.	1/2" Rebar	317-68.86	34.53' RT	SEE NOTE 1
N.W. Cor. Lot 3 Biderkri Creek Subd.	1/2" Rebar	318-63.95	240.00' RT	SEE NOTE 2
S.E. Cor. Lot 5A Biderkri Creek Subd.	Hub & Tack	318-71.99	65.34' LT	
N.E. Cor. Lot 5A Biderkri Creek Subd.	Hub & Tack (Learning S.E.)	318-72.03	345.22' LT	
N.E. Cor. Lot 6 Biderkri Creek Subd.	1 3/4" Iron Pipe (Learning S.W.)	319-92.06	345.16' LT	SEE NOTE 2
N.E. Cor. Lot 11 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	321-99.65	35.53' RT	SEE NOTE 2
N.W. Cor. Lot 1 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	322-00.48	85.31' RT	
P.C. @ N. Portion Biderkri Creek Subd.	Hub & Tack	323-48.52	341.24' RT	
N. Portion Lot 1 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	324-99.33	34.92' RT	SEE NOTE 2
N. Portion Lot 1 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	324-99.67	64.78' RT	
N.E. Cor. Lot 2 Biderkri Creek Subd.	Hub & Tack	326-01.39	244.41' RT	
On E. Pl. Lot 2 Biderkri Creek Subd.	5/8" Rebar	327-06.28	361.77' RT	
ROW, N. of Lot 1 Bk 2 Biderkri Creek Subd.	Hub & Tack	328-09.51	11.78' RT	
N.E. Cor. Lot 1 Bk 2 Biderkri Creek Subd.	1/2" Rebar	328-24.21	35.45' RT	
S.E. Cor. Lot 1 Biderkri Creek Subd.	1/2" Rebar	329-73.69	90.18' RT	

SHEET 9

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.46	110.75' LT	
N.E. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-76.31	39.23' RT	
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.94	78.24' LT	
S.W. Cor. Tr. D C. Weberg Subd.	Iron Pipe	303-71.23	556.10' RT	
N.W. Cor. Lot 2 C. Weberg Subd.	Y.P.C. w/ 1/2" Rebar	303-74.80	337.76' LT	SEE NOTE
N. Portion Tr. D C. Weberg Subd.	2"X3" Hub	304-38.45	36.86' RT	
S.W. Cor. Lot 2 C. Weberg Subd.	Plastic Cap on 1/2" Rebar	304-49.51	78.39' LT	
W. 1/16 Cor. Sec. 13/24	2" Brass Cap	305-23.66	865.12' LT	
S.E. Cor. Lot 2 C. Weberg Subd.	1/2" Rebar (Bent)	306-05.77	78.30' LT	SEE NOTE
N.E. Cor. Tr. D C. Weberg Subd.	1/2" Rebar	306-10.39	36.12' RT	SEE NOTE
S.W. Cor. Tr. C C. Weberg Subd.	Rebar	307-30.45	451.85' RT	
S.E. Cor. Lot 1 C. Weberg Subd.	Plastic Cap on 1/2" Rebar	307-50.19	78.63' LT	
N.W. 1/16 Cor. Sec. 24	2" Aluminum Cap on 5/8" Rebar	308-69.54	405.44' RT	
N. Portion Lot 8 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	309-15.25	39.67' RT	
S.E. Cor. Portion of NE 1/4 NW 1/4 Sec. 24	1" Iron Pipe	310-10.67	391.73' LT	

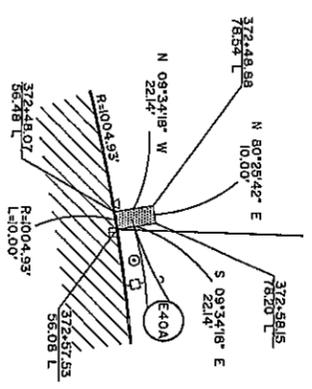
SHEET 9

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.46	110.75' LT	
N.E. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-76.31	39.23' RT	
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.94	78.24' LT	
S.W. Cor. Tr. D C. Weberg Subd.	Iron Pipe	303-71.23	556.10' RT	
N.W. Cor. Lot 2 C. Weberg Subd.	Y.P.C. w/ 1/2" Rebar	303-74.80	337.76' LT	SEE NOTE
N. Portion Tr. D C. Weberg Subd.	2"X3" Hub	304-38.45	36.86' RT	
S.W. Cor. Lot 2 C. Weberg Subd.	Plastic Cap on 1/2" Rebar	304-49.51	78.39' LT	
W. 1/16 Cor. Sec. 13/24	2" Brass Cap	305-23.66	865.12' LT	
S.E. Cor. Lot 2 C. Weberg Subd.	1/2" Rebar (Bent)	306-05.77	78.30' LT	SEE NOTE
N.E. Cor. Tr. D C. Weberg Subd.	1/2" Rebar	306-10.39	36.12' RT	SEE NOTE
S.W. Cor. Tr. C C. Weberg Subd.	Rebar	307-30.45	451.85' RT	
S.E. Cor. Lot 1 C. Weberg Subd.	Plastic Cap on 1/2" Rebar	307-50.19	78.63' LT	
N.W. 1/16 Cor. Sec. 24	2" Aluminum Cap on 5/8" Rebar	308-69.54	405.44' RT	
N. Portion Lot 8 Bk 1 Biderkri Creek Subd.	6"X6" Conc. Post Hwy Monument	309-15.25	39.67' RT	
S.E. Cor. Portion of NE 1/4 NW 1/4 Sec. 24	1" Iron Pipe	310-10.67	391.73' LT	

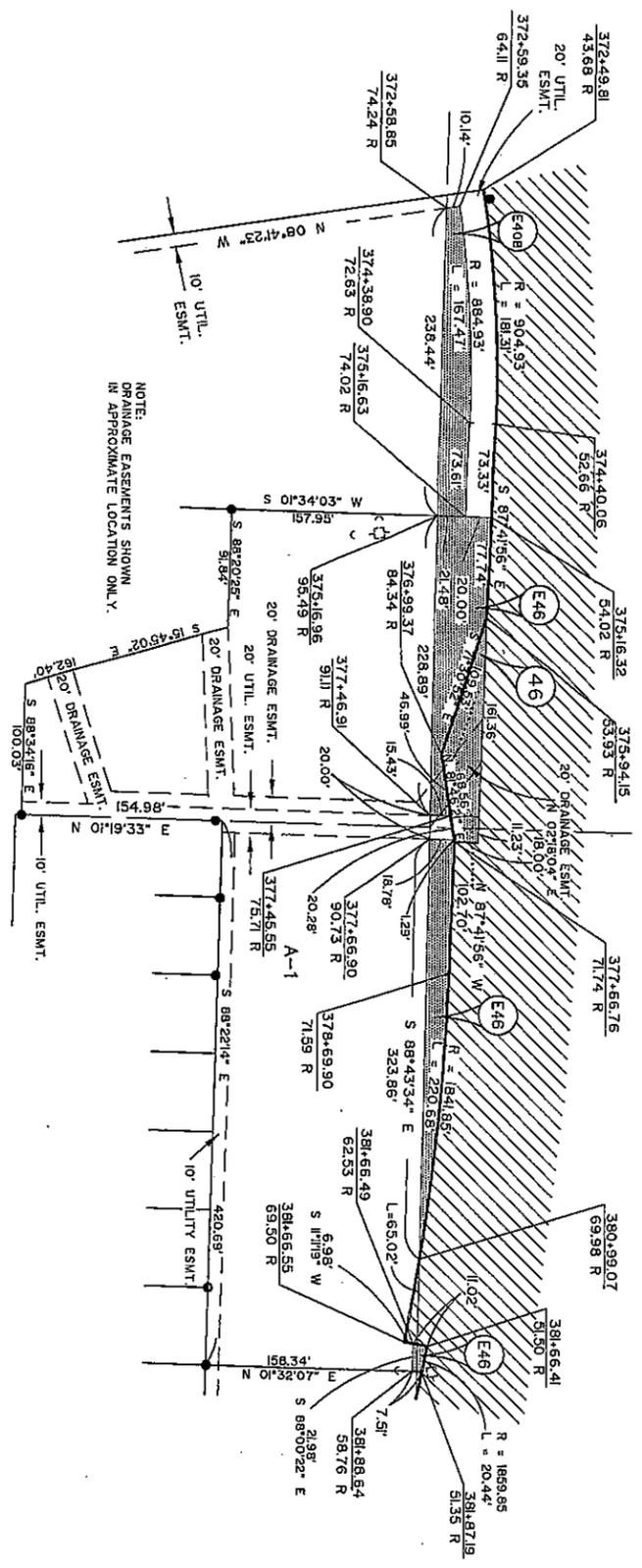
SHEET 9

LOCATION	MONUMENT TYPE	STATION	OFFSET	REMARKS (BY DATE AND RECORD)
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.46	110.75' LT	
N.E. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-76.31	39.23' RT	
S. Portion of NW 1/4 NW 1/4 Sec. 24	6"X6" Conc. Post Hwy Monument	301-74.94	78.24' LT	
S.W. Cor. Tr. D C. Weberg Subd.	Iron Pipe	303-71.23	556.10' RT	
N.W. Cor. Lot 2 C. Weberg Subd.	Y.P.C. w/ 1/2" Rebar	303-74.80	337.76' LT	SEE NOTE
N. Portion Tr. D C. Weberg Subd.	2"X3" Hub	304-38.45	36.86' RT	
S.W. Cor.				

DETAIL "11G"
N.T.S.



DETAIL "11H"
N.T.S.



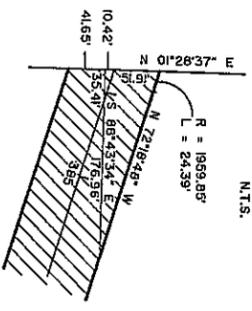
LOUNSBURY & ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 16/18	160

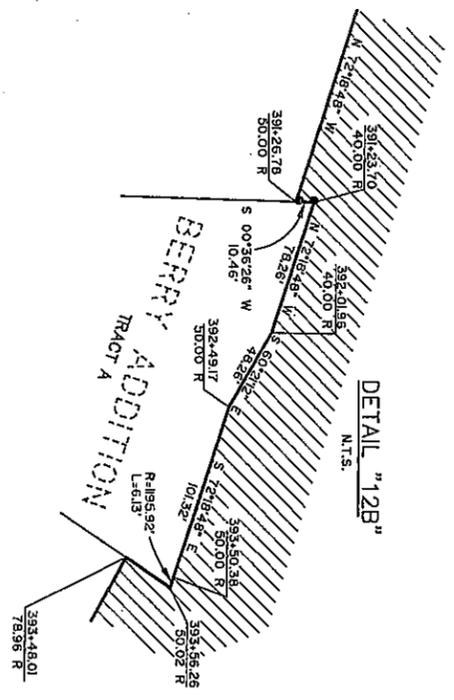
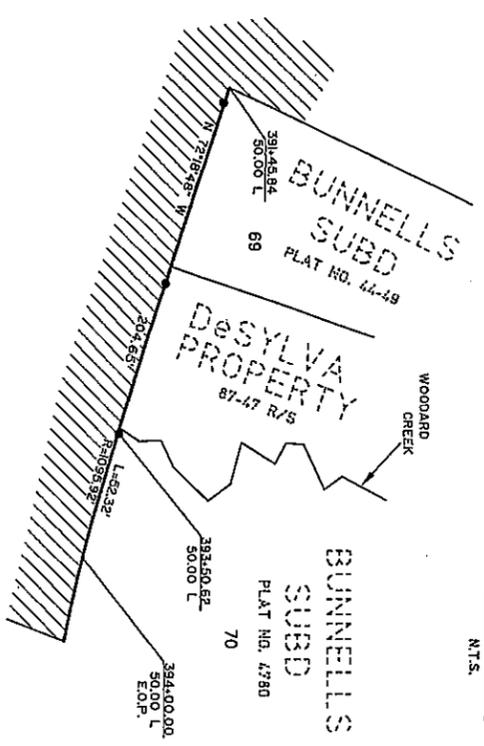
DETAIL SHEET



DETAIL "12A"
N.T.S.



DETAIL "12C"
N.T.S.



DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SSS
1/30/09	REVISED PROJECT NUMBER	BJH
5/9/05	REVISED DETAIL 11G AND 11H	BJH
2/10/05	REVISED DETAIL 11G	BJH
11/18/94	REVISED DETAIL 11F	BJH
7/11/94	ADDED DETAILS 11F, 11G, 12A, 12B & 12C	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-11371

STERLING HIGHWAY MP 169-174,
HOMER HILL

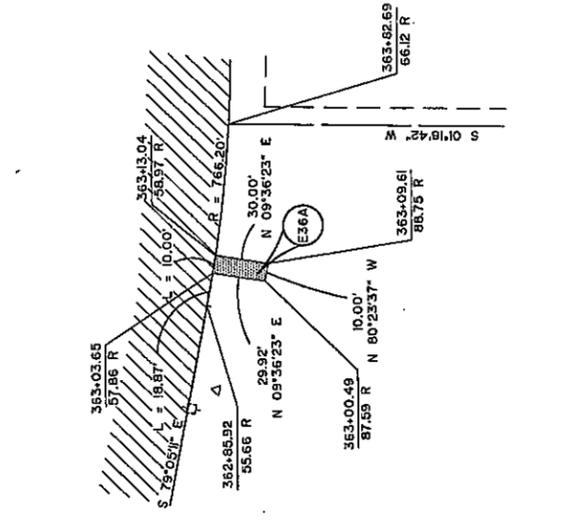
DRAWN	DATE	SCALE
BJH	FEB. 1994	1" = 100'
CHECKED	DATE	SHEET
GEL	FEB. 1994	16 OF 18

DETAIL SHEET

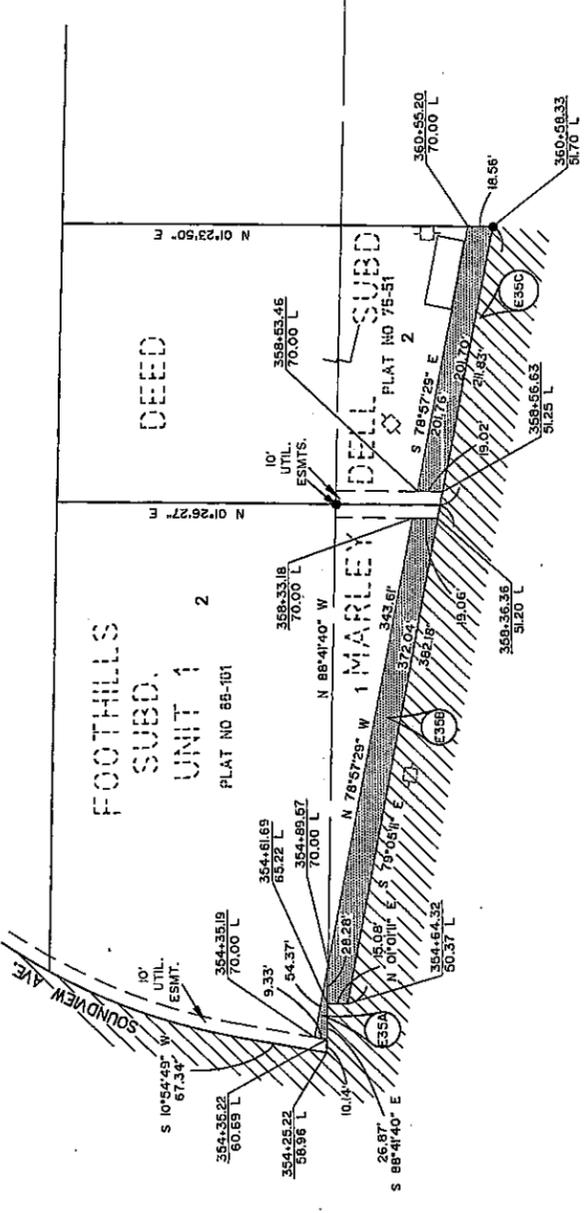


CONSULTANT LOCATIONS
SURVEYORS' CERTIFICATE
CONSULTANT RIGHT-OF-WAY
SURVEYORS' CERTIFICATE

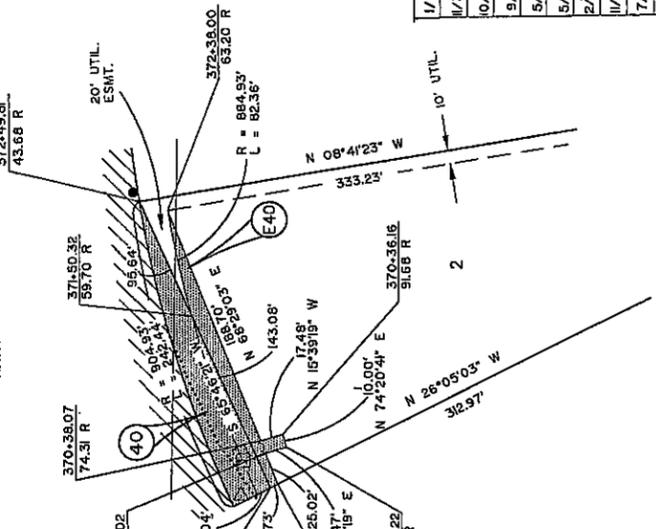
DETAIL "11C"
N.T.S.



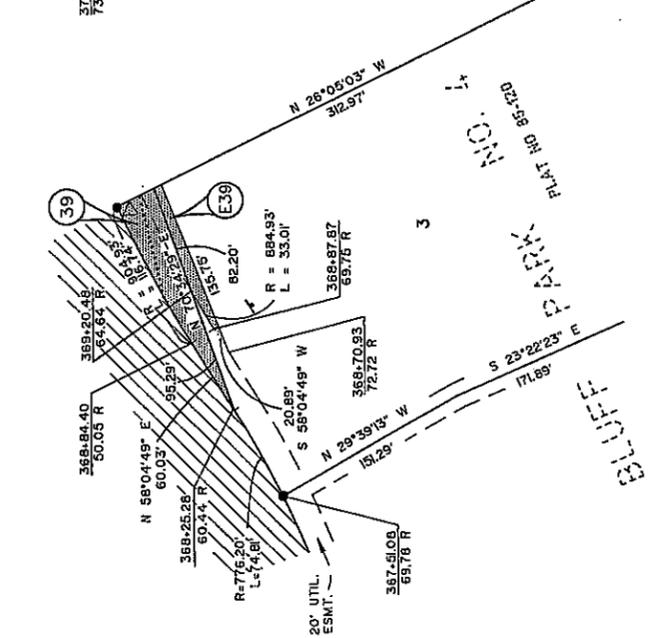
DETAIL "11B"
N.T.S.



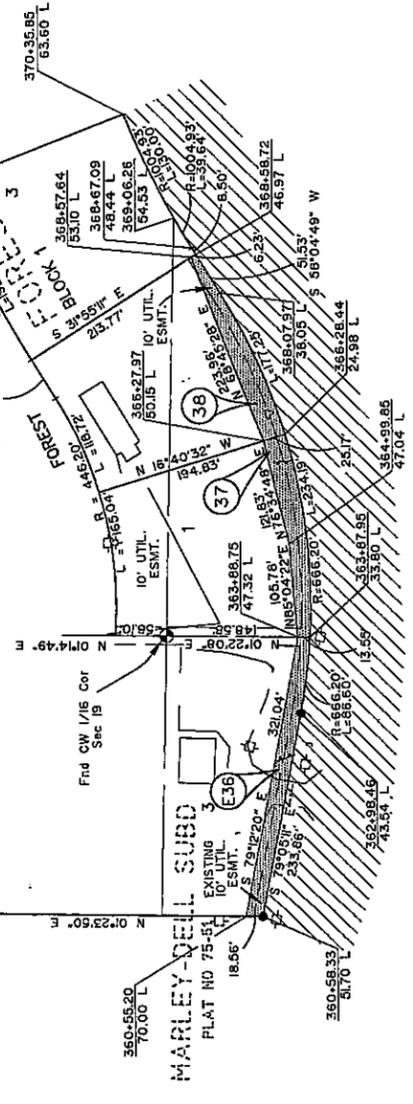
DETAIL "11F"
N.T.S.



DETAIL "11E"
N.T.S.



DETAIL "11D"
N.T.S.



DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SJS
11/30/95	REVISED PROJECT NUMBER	BJH
10/19/95	REVISED DETAIL 11B	BJH
9/11/95	REVISED DETAIL 11D	BJH
5/4/95	ADDED DETAIL 11F	BJH
5/4/95	REVISED DETAILS 11E	BJH
2/10/95	REVISED DETAILS 11D	BJH
11/18/94	REVISED DETAILS 11D 81E	BJH
7/11/94	ADDED DETAILS 11B, 11C, 11D & 11E	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F-021-1137
59171
STERLING HIGHWAY MP 169-174,
HOMER HILL

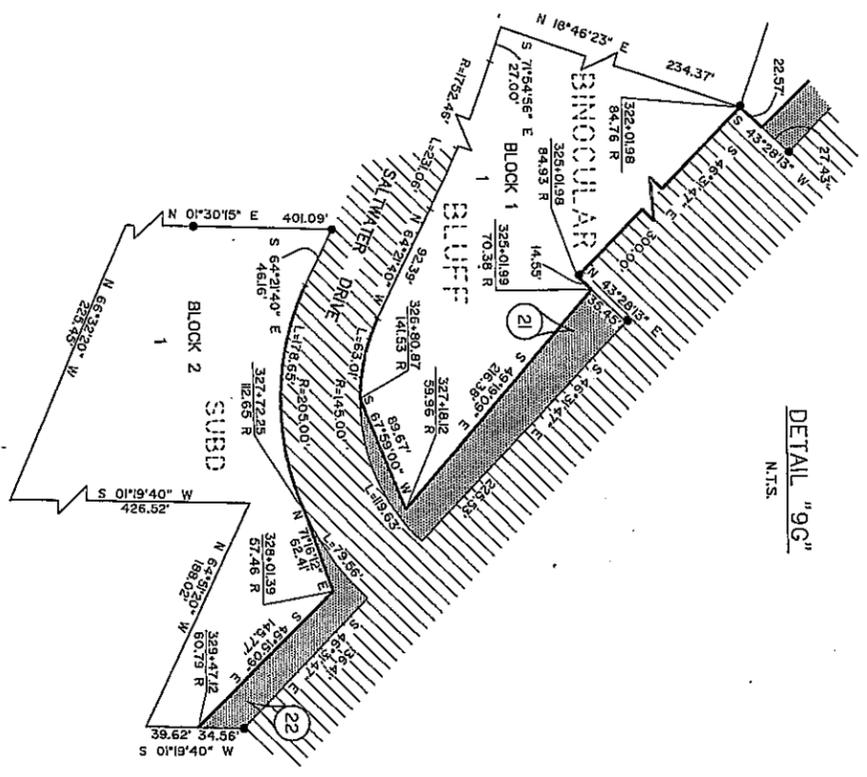
DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SJS
11/30/95	REVISED PROJECT NUMBER	BJH
10/19/95	REVISED DETAIL 11B	BJH
9/11/95	REVISED DETAIL 11D	BJH
5/4/95	ADDED DETAIL 11F	BJH
5/4/95	REVISED DETAILS 11E	BJH
2/10/95	REVISED DETAILS 11D	BJH
11/18/94	REVISED DETAILS 11D 81E	BJH
7/11/94	ADDED DETAILS 11B, 11C, 11D & 11E	BJH

DRAWN
DATE FEB. 1994
SCALE 1" = 100'

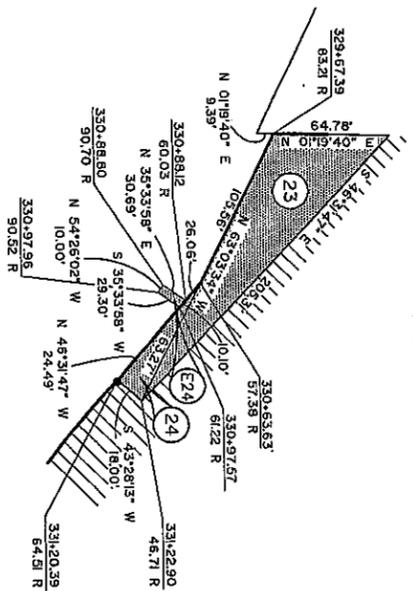
CHECKED
DATE FEB. 1994
SHEET 15 OF 18

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 14/18	160

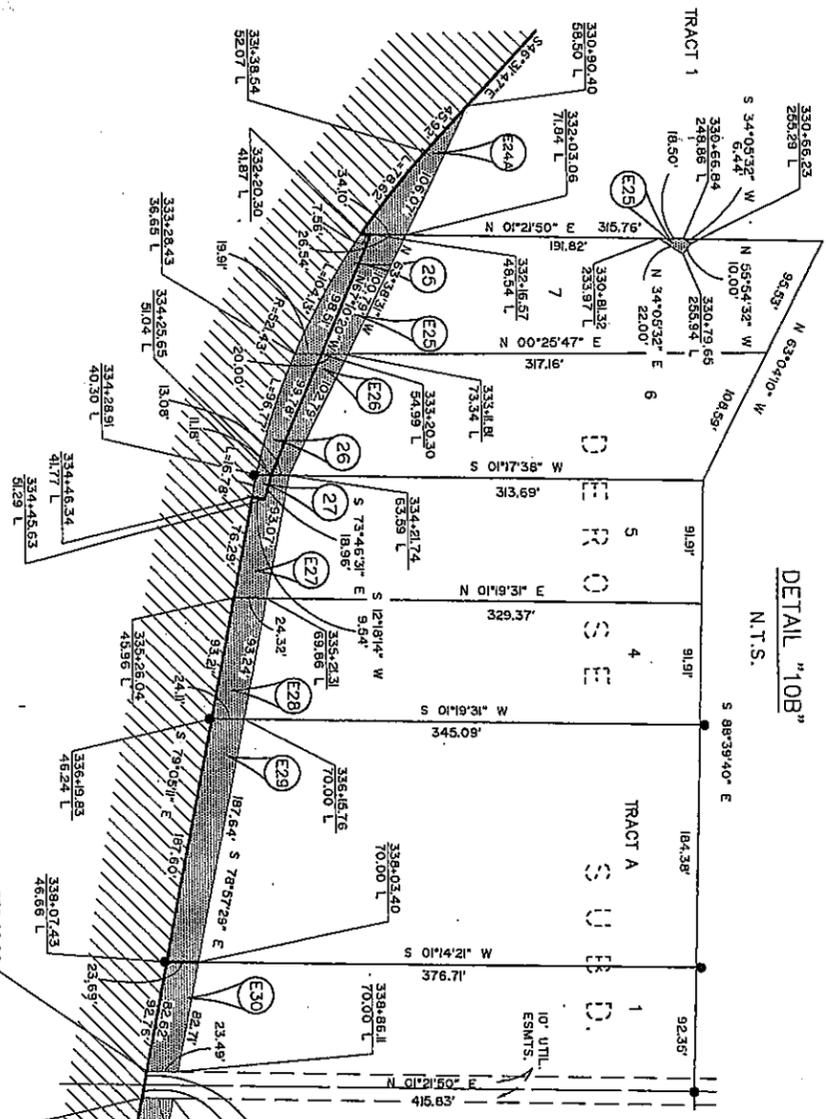
DETAIL "9G"
N.T.S.



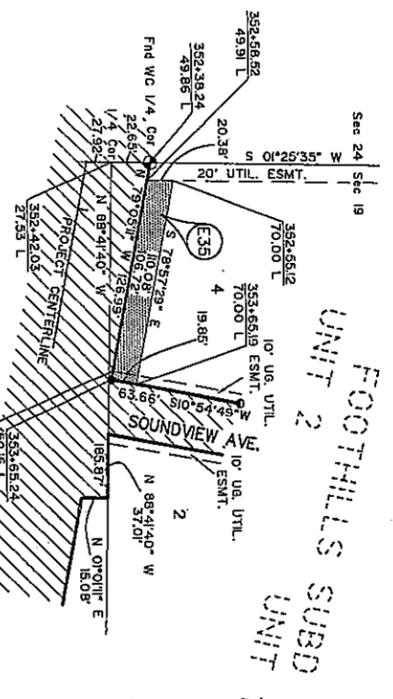
DETAIL "10A"
N.T.S.



DETAIL "10B"
N.T.S.



DETAIL "11A"
N.T.S.



DETAIL SHEET



DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SGS
1/30/95	REVISED PROJECT NUMBER	BJH
10/30/95	REVISED DETAIL 10A	BJH
5/1/95	REVISED DETAIL 10B	BJH
4/26/95	REVISED DETAIL 10A	BJH
11/19/94	REVISED DETAIL 10B & 11A	BJH
7/11/94	ADDED DETAILS 9G, 10A, 10B & 11A	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)

STERLING HIGHWAY
HOMER HILL
MP 169-174,
59171

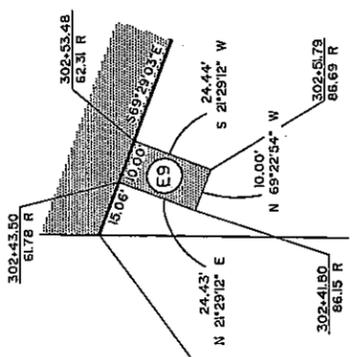
DRAWN	DATE	SCALE
BJH	FEB. 1994	1" = 100'
CHECKED	DATE	SHEET
GEL	FEB. 1994	14 OF 18

DETAIL SHEET

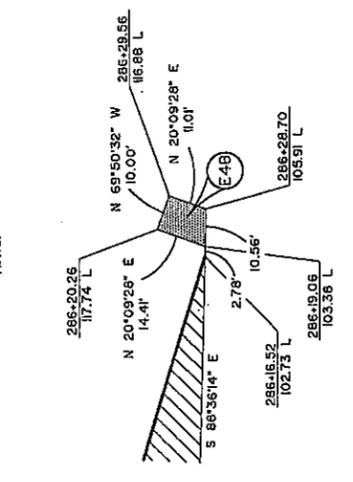


CONSULTANT LOCATIONS
SURVEYORS CERTIFICATE
CONSULTANT RIGHT-OF-WAY
SURVEYORS CERTIFICATE

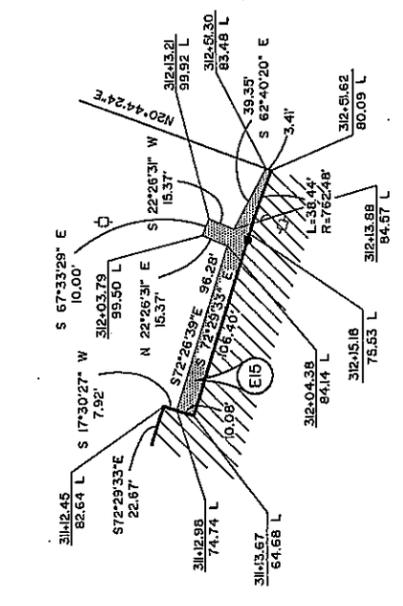
DETAIL "9B"
N.T.S.



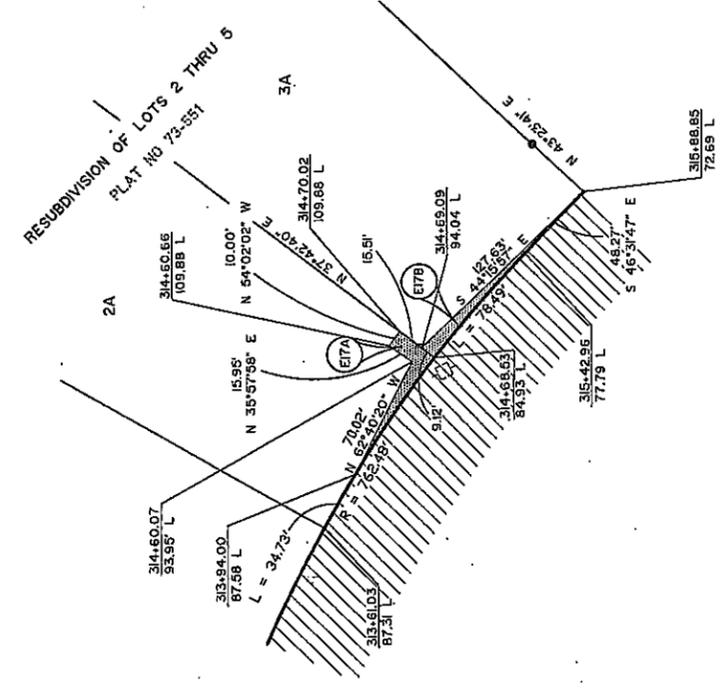
DETAIL "7D"
N.T.S.



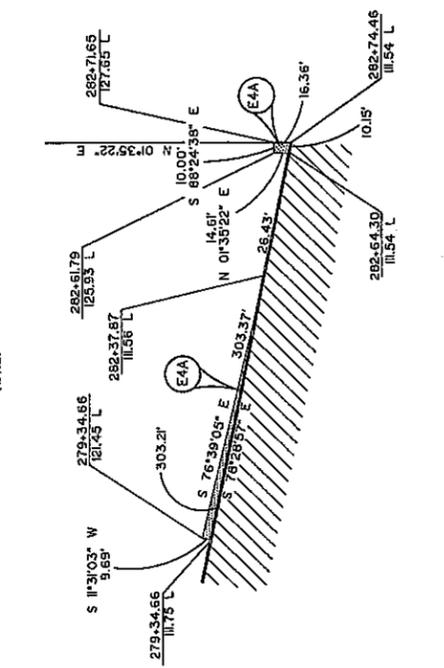
DETAIL "9E"
N.T.S.



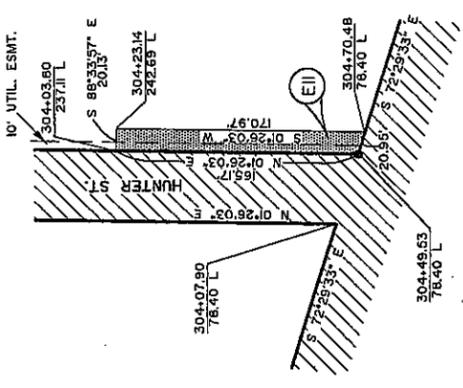
DETAIL "9F"
N.T.S.



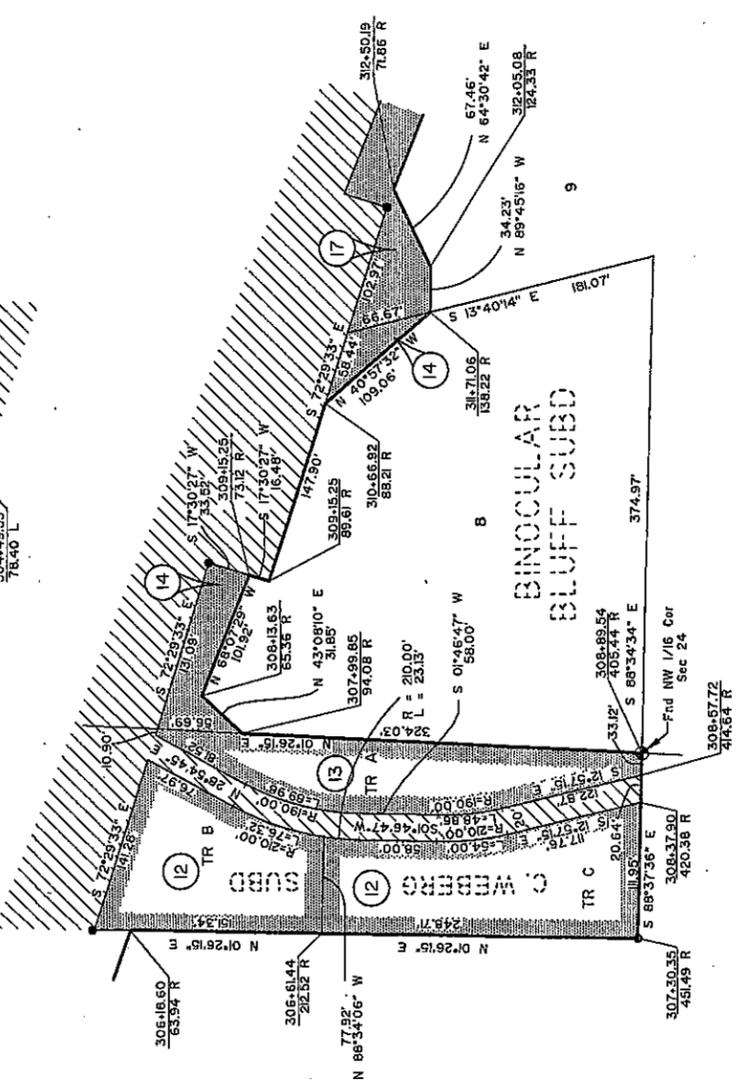
DETAIL "7C"
N.T.S.



DETAIL "9C"
N.T.S.



DETAIL "9D"
N.T.S.



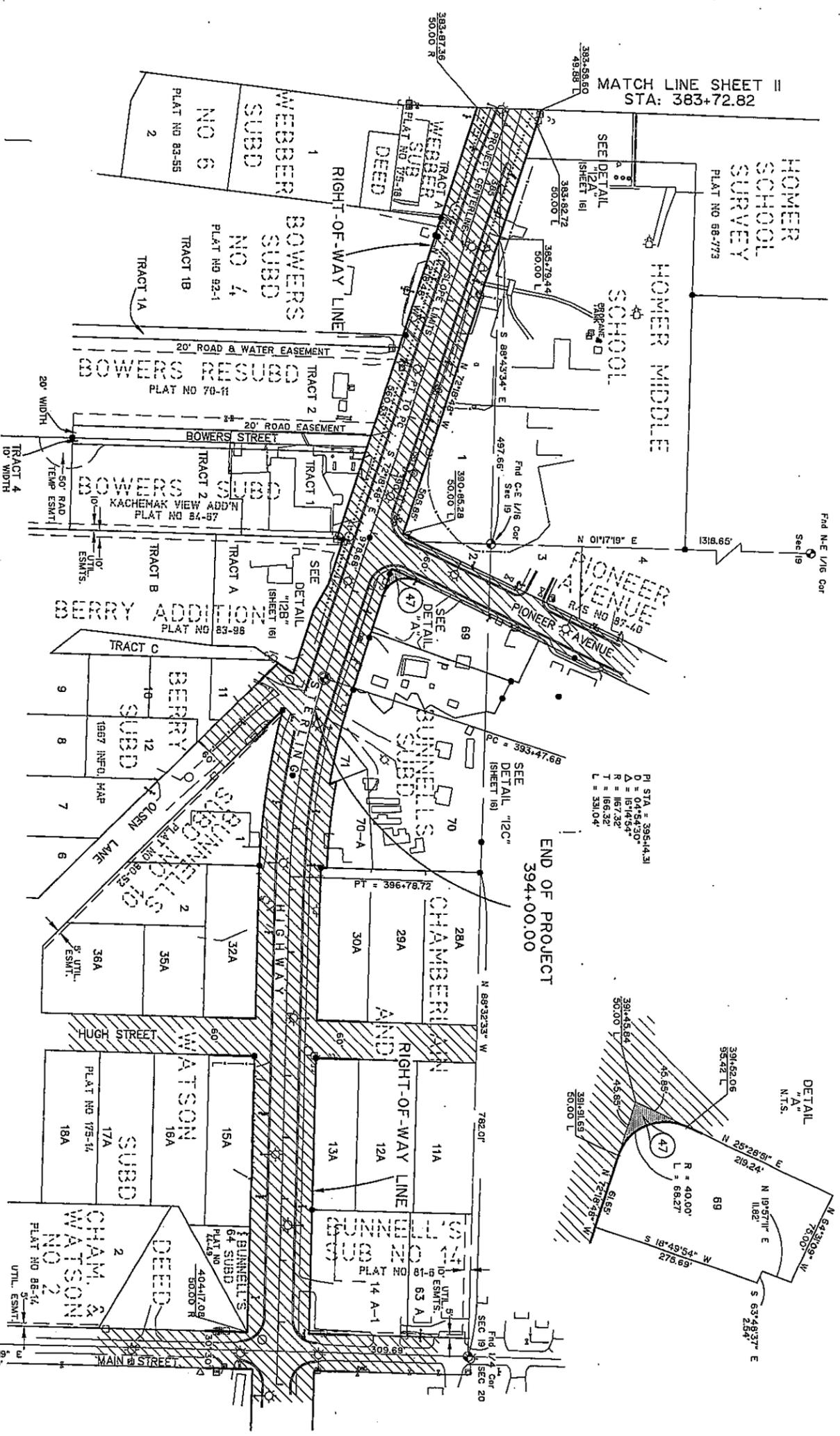
DATE	REVISIONS	BY
1/24/91	MISC. REVISIONS	SGS
1/30/95	DELETED DETAIL 9A	BUH
1/26/95	REVISED DETAIL 9C	BUH
5/2/95	REVISED DETAIL 7C	BUH
2/10/95	REVISED DETAIL 9D	BUH
1/18/94	REVISED DETAILS 9A, 9B & 9F	BUH
7/1/94	ADDED DETAILS 7C, 7D & 9A-9F	BUH

DATE	REVISIONS	BY

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)
59171
STERLING HIGHWAY MP 169-174,
HOMER HILL
DRAWN: BUH DATE: FEB. 1994 SCALE: 1" = 100'
CHECKED: GEL DATE: FEB. 1994 SHEET: 13 OF 18

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 12/19	160

LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



NOTE
1. EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
2. STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.

1. CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFIES THAT THE SURVEY AND MAPS HEREON ARE SHOWN AT RECORD DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.

CRAIG L. SAVAGE
LS-4838

DATE
12/19/94



CONSULTANT LOCATIONS SURVEYORS CERTIFICATE CONSULTANT RIGHT-OF-WAY

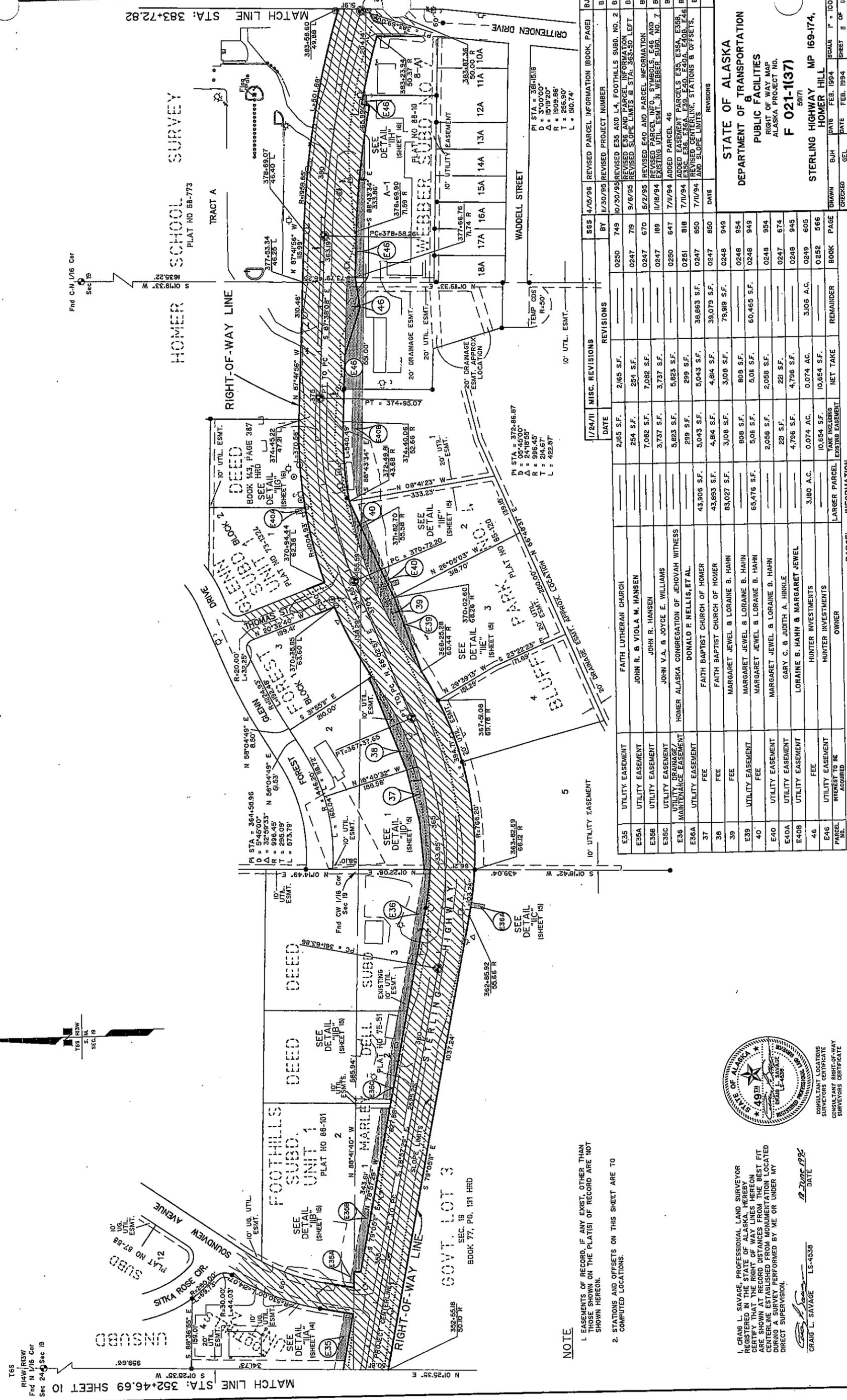
PARCEL NO.	INTEREST TO BE ACCORDED	FEE	ZABEL H. DUFFY OWNER	PARCEL INFORMATION	NET TAKE	REMAINDER	BOOK	PAGE
47	INTEREST TO BE ACCORDED		ZABEL H. DUFFY OWNER	23,770 S.F. LARGER PARCEL EXISTING EASEMENT	468 S.F.	23,302 S.F.	0282	568

DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SGS
4/18/96	REVISED PARCEL INFORMATION (BOOK, PAGE)	BJH
3/29/96	REVISED PARCEL 47 INFO. AND DETAIL "A"	BJH
2/28/96	ADDED PARCEL 47 AND DETAIL "A"	BJH
1/30/95	REVISED PROJECT NUMBER	BJH
1/18/94	REVISED SYMBOLS	BJH
7/11/94	DELETED PARCELS 43, 44 & 45.	BJH
7/11/94	REVISED CENTERLINE, SLOPE LIMITS, STATIONS AND OFFSETS	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)

STERLING HIGHWAY HOMER HILL
MP 169-174

DRAWN	BJH	DATE	FEB. 1994	SCALE	" = 100'
CHECKED	CEL	DATE	FEB. 1994	SHEET	12 OF 18



MATCH LINE STA: 352+46.69 SHEET 10

MATCH LINE STA: 383+72.82

NOTE

- EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
- STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.



I, CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE PLAT(S) OF RECORD HEREON CONTAINING THE DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.

CRAIG L. SAVAGE LS-4538
DATE 12-20-2016

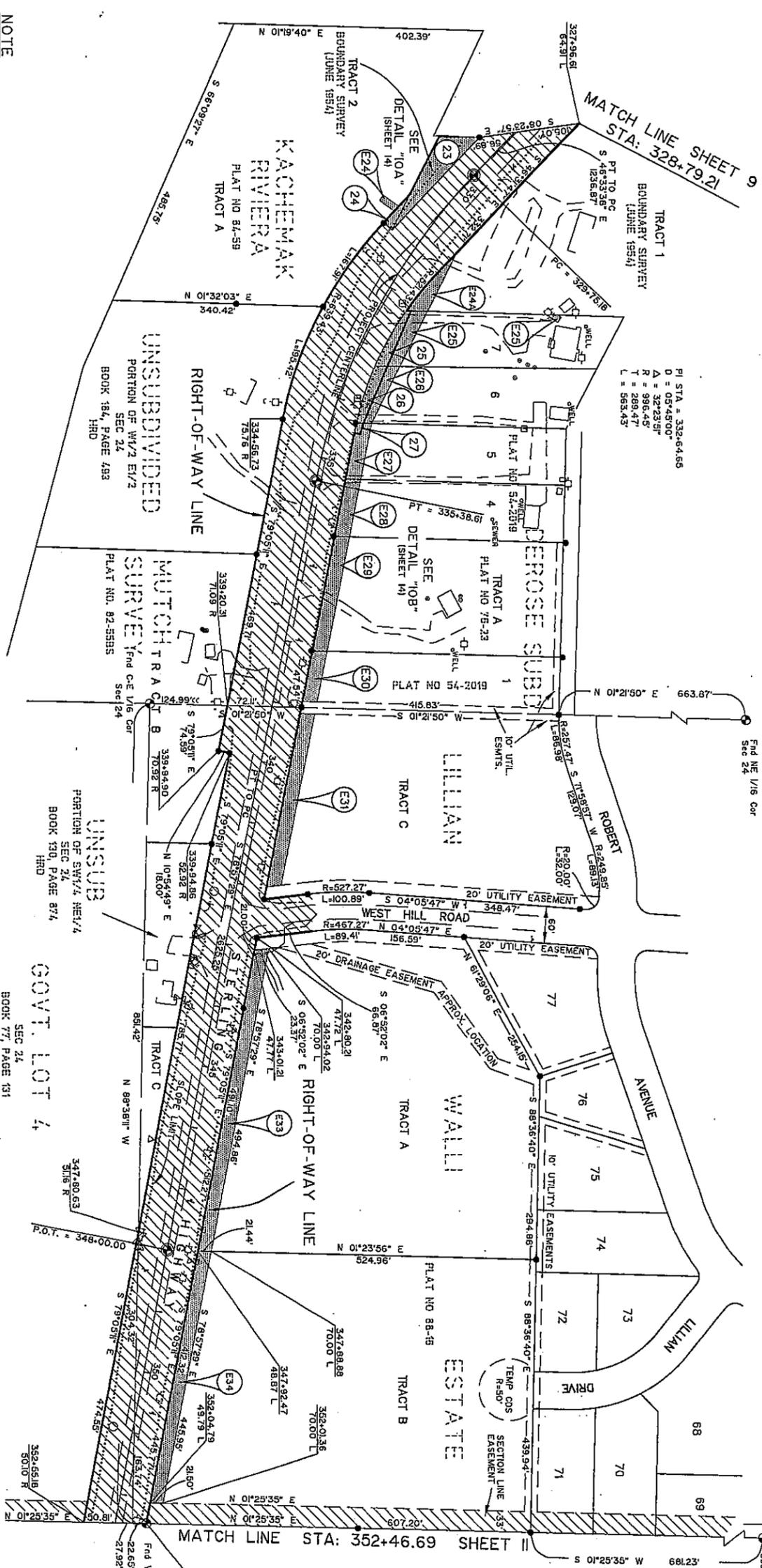
EASEMENT NO.	EASEMENT TYPE	OWNER	LARGER PARCEL NO.	PARCEL INFORMATION	REVISIONS		REVISIONS		BY	DATE	REVISED PARCEL INFORMATION (BOOK, PAGE)	
					DATE	DESCRIPTION	DATE	DESCRIPTION			BUH	BUH
E35	UTILITY EASEMENT	FAITH LUTHERAN CHURCH			1/24/71	MISC. REVISIONS	4/15/96	SGS	749	11/30/95	REVISED PROJECT NUMBER	BUH
E35A	UTILITY EASEMENT	JOHN R. & VIOLA M. HANSEN							749	10/30/95	REVISED E35 AND L4. FOOTHILLS SUBD. NO. 2	BUH
E35B	UTILITY EASEMENT	JOHN R. HANSEN							749	9/18/95	REVISED E35 AND L4. PARCEL INFORMATION LEFT	BUH
E35C	UTILITY EASEMENT	JOHN V.A. & JOYCE E. WILLIAMS							749	5/22/95	REVISED E35 AND L4. PARCEL INFORMATION LEFT	BUH
E36	UTILITY EASEMENT	HOMER ALASKA CONGREGATION OF JEHOVAH WITNESS							749	11/18/94	REVISED PARCEL INFO. SYMBOLS, E46 AND EXISTING UTIL. ESMT. IN WEBBER SUBD. NO. 7	BUH
E36A	UTILITY EASEMENT	DONALD P. NELLIS, ET AL.							749	7/17/94	ADDED PARCEL 46	BUH
37	FEE	FAITH BAPTIST CHURCH OF HOMER							818	7/17/94	ADDED EASEMENT PARCELS E35, E35A, E35B, E36, E36A, E39, E40, E40A, E40B, E46	BUH
38	FEE	FAITH BAPTIST CHURCH OF HOMER							818	7/17/94	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS	BUH
39	FEE	MARGARET JEWEL & LORRAINE B. HAHN							850	7/17/94	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS	BUH
E39	UTILITY EASEMENT	MARGARET JEWEL & LORRAINE B. HAHN							949			BY
40	FEE	MARGARET JEWEL & LORRAINE B. HAHN							949			DATE
E40	UTILITY EASEMENT	MARGARET JEWEL & LORRAINE B. HAHN							949			REVISIONS
E40A	UTILITY EASEMENT	GARY C. & JUDITH A. HINKLE							949			DATE
E40B	UTILITY EASEMENT	LORRAINE B. HAHN & MARGARET JEWEL							949			REVISIONS
46	FEE	HUNTER INVESTMENTS							605			DATE
E46	UTILITY EASEMENT	HUNTER INVESTMENTS							605			DATE
E46	UTILITY EASEMENT	HUNTER INVESTMENTS							566			DATE

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-11371
59171

STERLING HIGHWAY MP 169-174,
HOMER HILL

CHECKED: GEL DATE: FEB. 1994
DRAWN: GEL DATE: FEB. 1994
SCALE: 1" = 100'
SHEET 11 OF 18

TOWNSHIP 6 SOUTH
RANGE 14 WEST
RANGE 13 WEST
Find N 1/16 Cor
Sec 24
Find NE 1/16 Cor
Sec 24



NOTE
1. EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
2. STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.

I, CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE RECORD OF WAY LINES HEREON ARE SHOWN AT RECORD DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.
CRAIG L. SAVAGE LS-4638
DATE 12/11/94



PARCEL NO.	ACQUIRED	OWNER	TAKE INCLUDING EXISTING EASEMENT	NET TAKE	REMAINDER	BOOK	PAGE
23	FEE	THE GRACE BRETHERN HOME MISSION COUNCIL, INC.	4,931 S.F.	4,931 S.F.	0 S.F.	0245	815
24	FEE	NOEL W. CAMPBELL & WILLIAM W. BUSH	3,997 AC.	3,997 AC.	0 S.F.	0249	818
E24A	UTILITY EASEMENT	THE SALVATION ARMY	300 S.F.	300 S.F.		0249	823
25	R.O.W. EASEMENT	MICHAEL M. CARLSON	1,892 S.F.	1,434 S.F.	31,537 S.F.	0251	422
E25	UTILITY EASEMENT	MICHAEL M. CARLSON	2,266 S.F.	2,266 S.F.		0255	422
26	R.O.W. EASEMENT	EDWARD REHDER & LAURA MAE REHDER	1,580 S.F.	1,580 S.F.	33,188 S.F.	0245	817
E26	UTILITY EASEMENT	EDWARD REHDER & LAURA MAE REHDER	1,532 S.F.	1,532 S.F.		0245	821
27	R.O.W. EASEMENT	EDWARD REHDER & LAURA MAE REHDER	31,782 S.F.	183 S.F.	31,782 S.F.	0249	481
E27	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	EDWARD REHDER & LAURA MAE REHDER	2,086 S.F.	2,086 S.F.		0249	403
E28	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	EDWARD REHDER & LAURA MAE REHDER	2,228 S.F.	2,228 S.F.		0249	407
E29	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	DIANN THERESA MARTIN	4,420 S.F.	4,420 S.F.		0261	102
E30	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	JOAN ALITA RAY	1,922 S.F.	1,922 S.F.		0250	571
E31	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	LILLIAN MAY MILLER	5,478 S.F.	5,478 S.F.		0250	147
E33	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	SUPER ENTERPRISES, INC.	10,696 S.F.	10,696 S.F.		0249	668
E34	UTILITY OR DRAINAGE/ MAINTENANCE EASEMENT	LILLIAN MARIE WALLI	6,528 S.F.	6,528 S.F.		0250	668

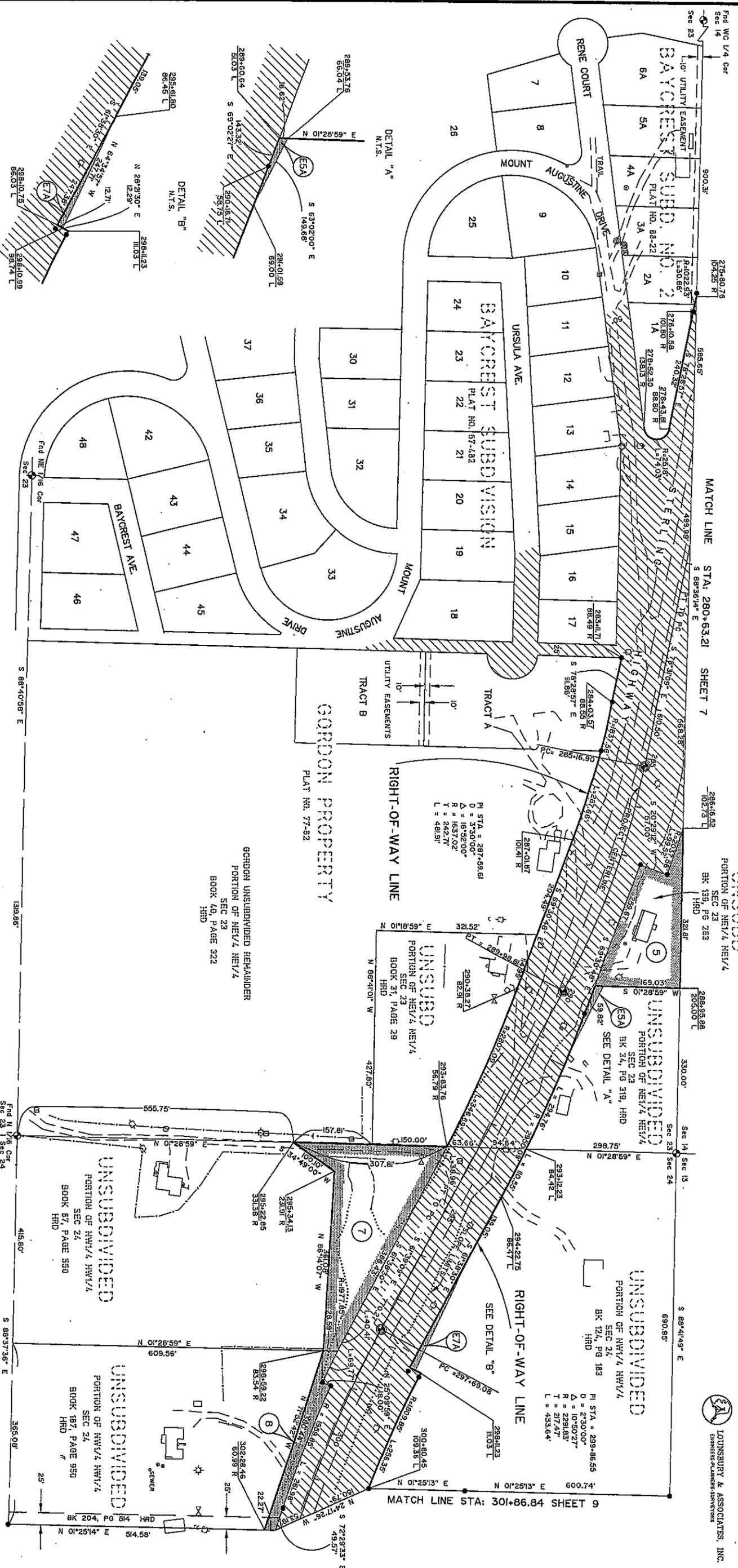
DATE	REVISIONS	BY
5/1/95	REVISED E25 AND E26 PARCEL INFORMATION	B.H.
2/10/95	REVISED PARCEL 24 OWNER INFORMATION	B.H.
1/18/94	REMOVED E24 & E29, REVISED PARCEL INFORMATION AND REVISION INFORMATION	B.H.
7/11/94	DELETED PARCELS 31, 33 & 34.	B.H.
7/11/94	ADDED EASEMENT PARCELS E24, E24A, E25, E26, E27, E28, E29, E30, E31, E33 & E34 AND SLOPE LINES, STATIONS & OFFSETS.	B.H.
7/11/94	CHANGED PARCELS 25, 26, 27, 28 AND 30 TO R.O.W. EASEMENTS, REVISED REMAINDERS	B.H.
4/12/94	REVISED PARCEL 23 TITLE	B.H.
6/6/95	REVISED PARCEL 23 TITLE	B.H.
5/1/95	REVISED PARCEL 23 TITLE	B.H.
1/24/11	MISC. REVISIONS	SBS
4/16/96	REVISED PARCEL INFORMATION (BOOK, PAGE)	B.H.
1/20/95	REVISED PROJECT NUMBER	B.H.
9/1/95	REVISED E34 PARCEL INFORMATION	B.H.
8/17/95	REVISED E27 THRU E33 PARCEL INFORMATION	B.H.
5/30/95	REVISED PARCEL 23 OWNER INFORMATION	B.H.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)
5917
STERLING HIGHWAY MP 169-174,
HOMER HILL

DATE FEB. 1994
DATE FEB. 1994
DATE FEB. 1994

PROJECT DESIGNATION	SHEET	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 8/18	160

LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



NOTE
1. EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
2. STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.

I, CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE RIGHT OF WAY LINES HEREON ARE SHOWN AT RECORD DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.

CRAIG L. SAVAGE LS-4536 DATE 15 April 1994



CONSULTANT LOCATIONS SURVEYORS CERTIFICATE SURVEYORS CERTIFICATE

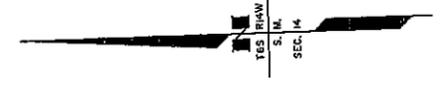
PARCEL NO.	INTEREST TO BE ACQUIRED	OWNER	PARCEL INFORMATION	EXISTING EASEMENT	NET TAKE	REMAINDER	BOOK	PAGE
ESA	UTILITY EASEMENT	WAYNE E. & DORA A. JONES	1,071 S.F.	1,071 S.F.	0248	746		
ETA	UTILITY EASEMENT	WALTER T. & SHIRLEY HEWWOOD	1,572 S.F.	1,572 S.F.	0247	193		
6	FEE	STANLEY R. AND TERRY L. HARRINGTON	31,407 S.F.	31,407 S.F.	0248	013		
7	FEE	W.B. AND JOAN EDENS	7,237 AC.	1,249 AC.	0281	935		
8	FEE	W.B. AND JOAN EDENS, LARRY LEE FARMEN, JR., NATHAN WAYNE FARMEN, & CARMEN JOY FARMEN.	4,979 AC.	0.21 AC.	0250	823		
8		KENNETH EUGENIE FARMEN & RENEE MARIE FARMEN (EMEM)						
9								

DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SGS
4/18/96	REVISED PARCEL INFORMATION (BOOK, PAGE)	BJH
7/17/94	ADDED EASEMENT PARCELS ESA & ETA	BJH
7/17/94	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS	BJH

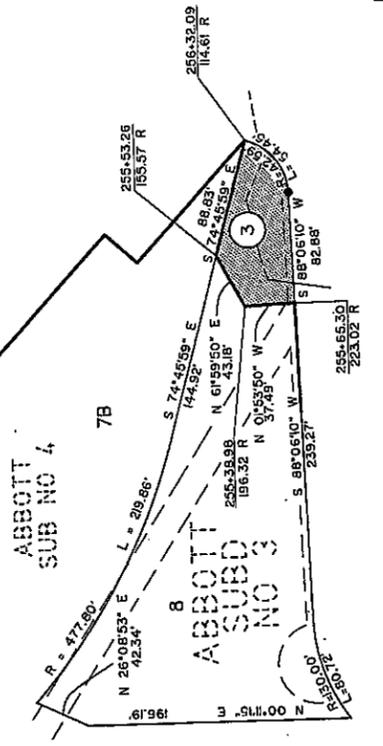
STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-11371
59171
STERLING HIGHWAY MP 169-174,
HOMER HILL.

DRAWN	BJH	DATE	FEB. 1994	SCALE	1" = 100'
CHECKED	GEL	DATE	FEB. 1994	SHEET	8 OF 18

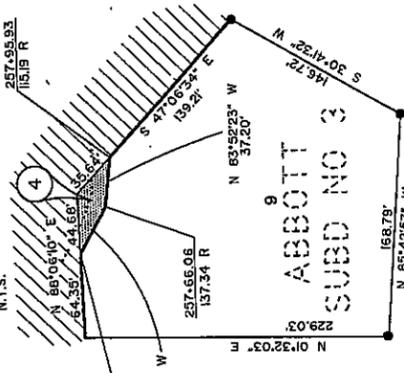
LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



DETAIL '7A'
N.T.S.

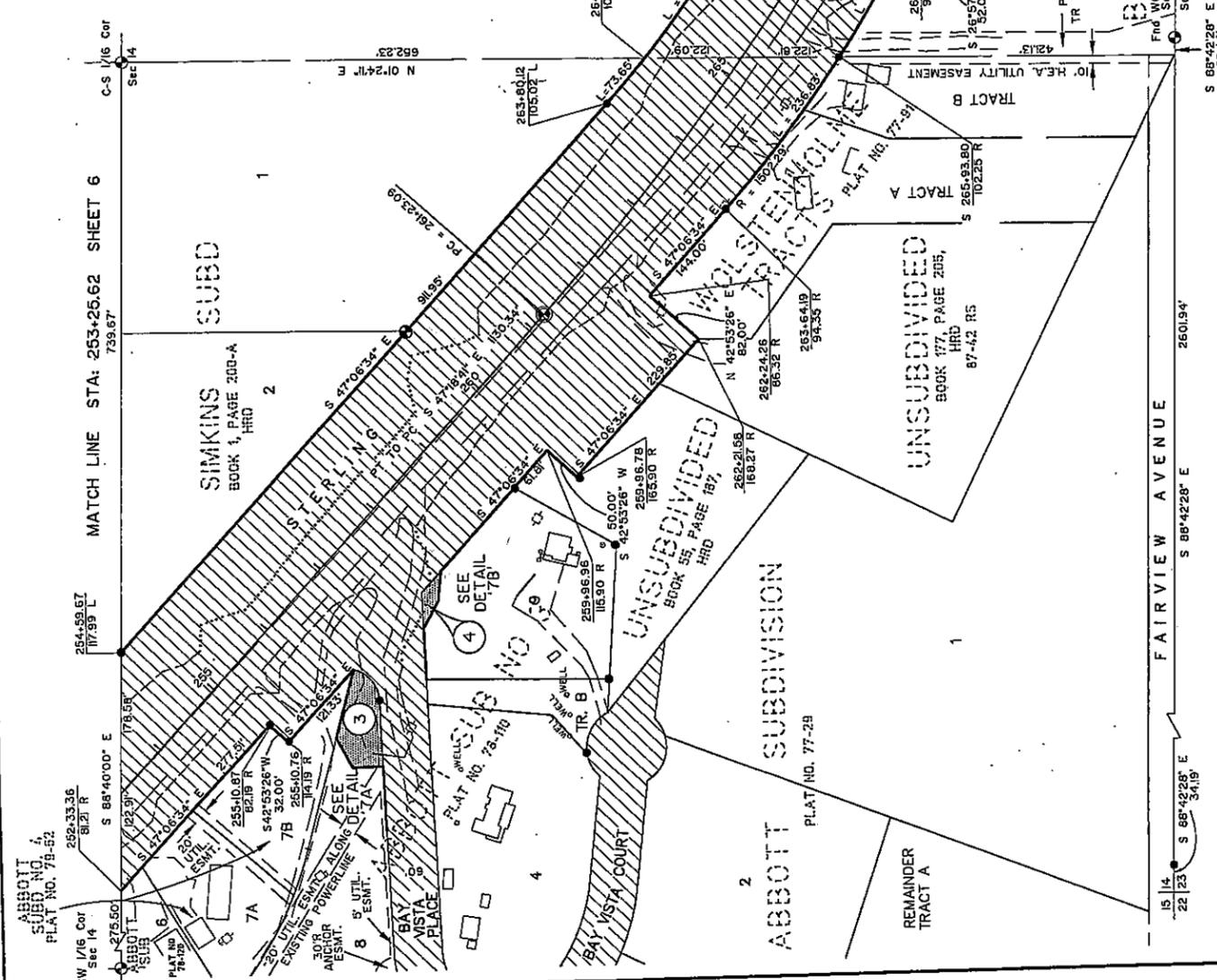


DETAIL '7B'
N.T.S.



UNSUBDIVIDED
PORTION OF SE1/4
SEC 14
BOOK 21, PAGE 335,
HRD

UNSUBDIVIDED
PORTION OF SE1/4
SEC 14
BOOK 109, PAGE 187,
HRD



DATE	BY	REVISIONS
1/24/11	SJS	MISC. REVISIONS
4/16/96	BJH	REVISED PARCEL INFORMATION (BOOK, PAGE)
11/30/95	BJH	ADDED EASEMENT PARCELS E4A & E4B
9/28/95	BJH	REVISED P3 & P4 PARCEL INFORMATION
5/2/95	BJH	REVISED E4A AND PARCEL INFORMATION
2/10/95	BJH	REVISED SLOPE LIMIT AT BAY VISTA PLACE
2/10/95	BJH	REVISED PARCEL 4 TAKE, REMAIN. & DETAIL
11/18/94	BJH	REVISED DETAIL 'A' & REVISION INFORMATION
7/11/94	BJH	ADDED EASEMENT PARCELS E4A & E4B
7/11/94	BJH	REVISED PARCEL 4 TAKE & REMAINDER
7/11/94	BJH	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1137
9911
STERLING HIGHWAY
HOMER HILL
MP 169-174,
9911

DATE: FEB. 1994
DRAWN: BJH
CHECKED: GEL

SCALE: 1" = 100'
SHEET 7 OF 16

PARCEL NO.	OWNER	NET TAKE	REMAINDER	BOOK	PAGE
3	DENNIS B. NOYAK	5,180 S.F.	4,031 S.F.	0248	761
4	STANLEY L. & NORMA WAITMAN, TRUSTEES	842 S.F.	44,456 S.F.	0252	284
E4A	YULE F. MILCHER	1,625 S.F.	0248	0248	972
E4B	DONALD K. & MARY E. SANDERS	127 S.F.	0244	0244	355

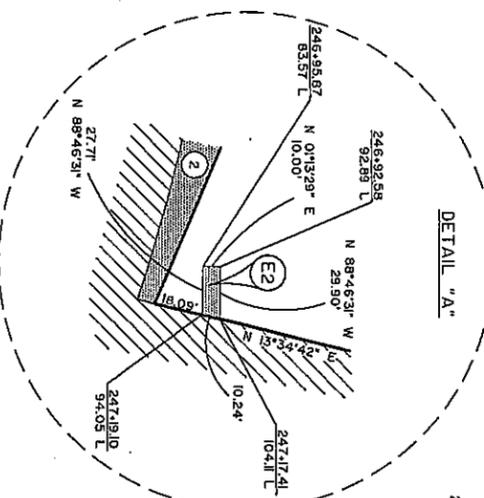
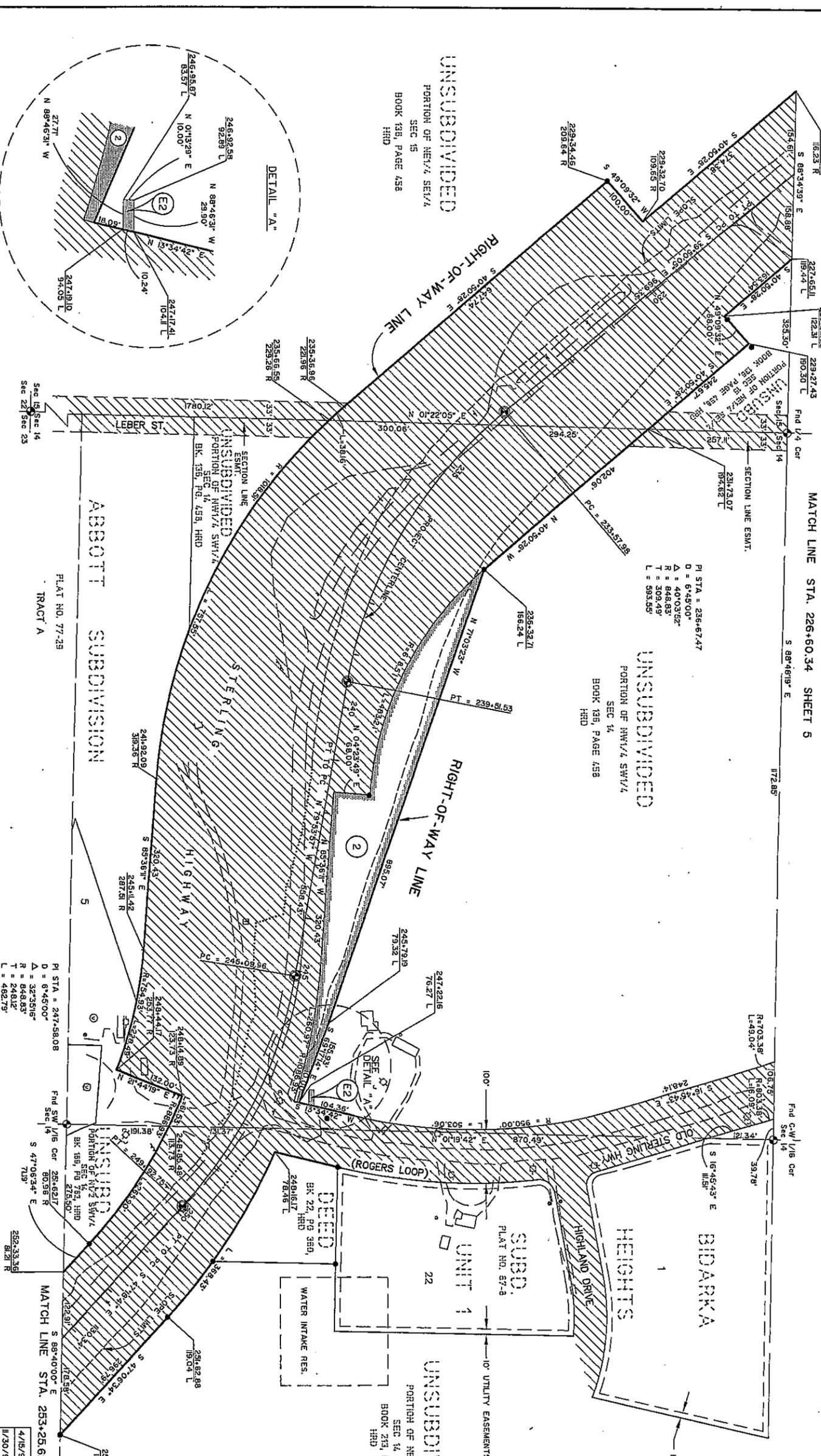
NOTE
1. EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
2. STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.



CRAIG L. SAVAGE
DATE: 4/24/1996

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 6/18	160

LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



NOTE

- EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
- STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.

I, CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE RIGHT OF WAY LINES HEREBY ARE SHOWN AT RECORDED DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.



CRAIG L. SAVAGE
LS-4538
DATE: 15 April 1994

CONSULTANT LOCATIONS
SURVEYORS CERTIFICATE
CONSULTANT RIGHT-OF-WAY
SURVEYORS CERTIFICATE

PARCEL NO.	UTILITY EASEMENT	MARY M. HILLSTRAND	OWNER	PARCEL INFORMATION
E2	UTILITY EASEMENT	MARY M. HILLSTRAND	OWNER	288 S.F. 288 S.F. 90246 963
2	FEE INTEREST TO BE ASSIGNED	MARY M. HILLSTRAND	OWNER	20,592 A.C. 1,810 A.C. 1,902 A.C. 0246 959

DATE	MISC. REVISIONS	REVISIONS	BY
1/24/11			

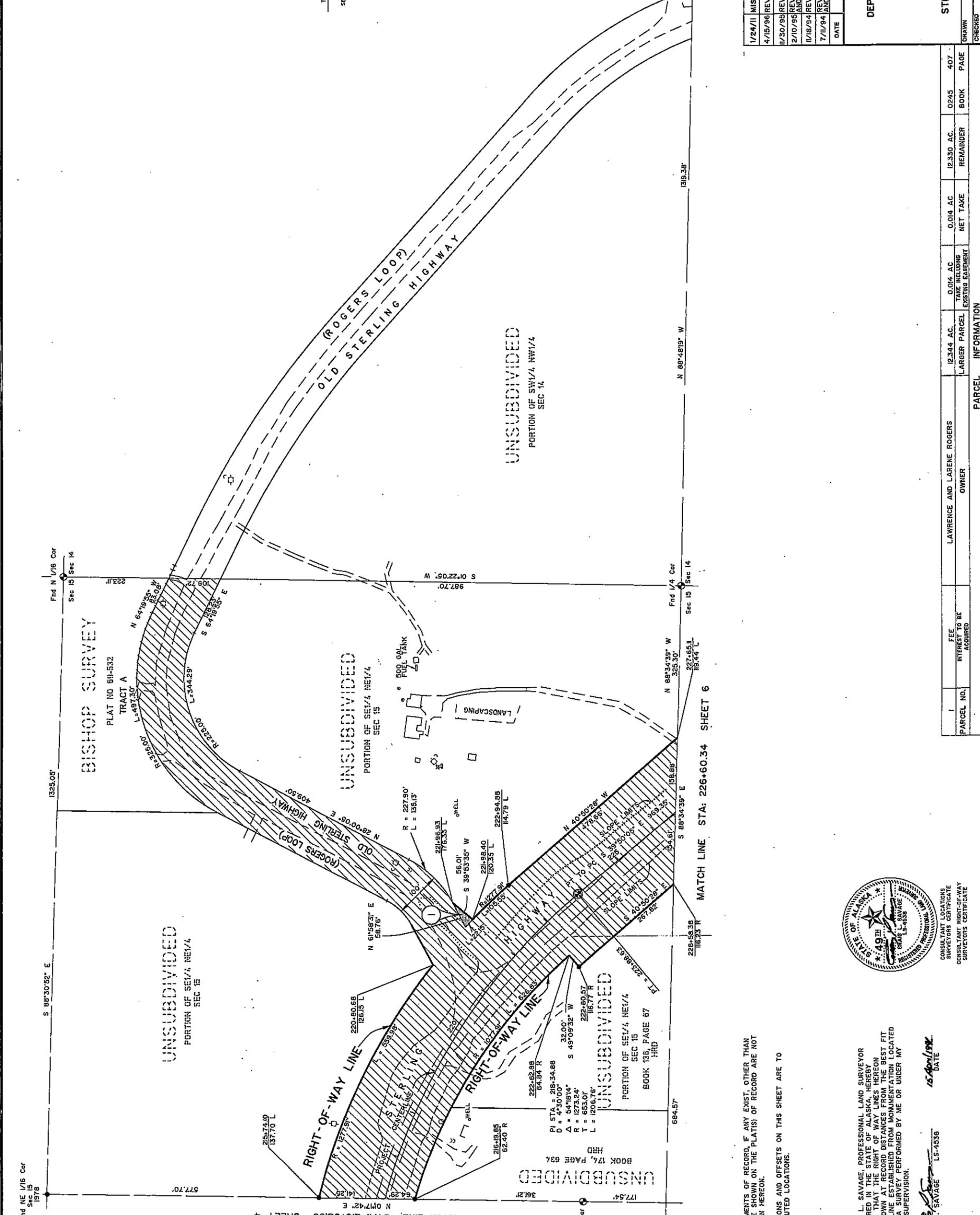
DATE	REVISIONS	BY
4/18/96	REVISED PARCEL INFORMATION (BOOK, PAGE)	BJH
1/30/95	REVISED PROJECT NUMBER	BJH
4/28/95	ADDED EASEMENT PARCEL E2	BJH
2/10/94	REVISED PARCEL 2 TAKE & REMAINDER	BJH
2/10/94	REVISED CENTERLINE, STATIONS & OFFSETS	BJH
7/11/94	REVISED PARCEL 2 TAKE & REMAINDER	BJH
7/11/94	REVISED CENTERLINE, STATIONS & OFFSETS	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)
STERLING HIGHWAY, MP 169-174,
HOMER HILL
SCALE 1" = 100'
DRAWN BY: BJH DATE: FEB. 1994 SHEET 6 OF 18
CHECKED BY: GEL DATE: FEB. 1994 SHEET 6 OF 18

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 5/18	160



LOUNSBURY & ASSOCIATES, INC.
SURVEYORS & ENGINEERS



NOTE

- EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLATS/ OF RECORD ARE NOT SHOWN HEREON.
- STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.



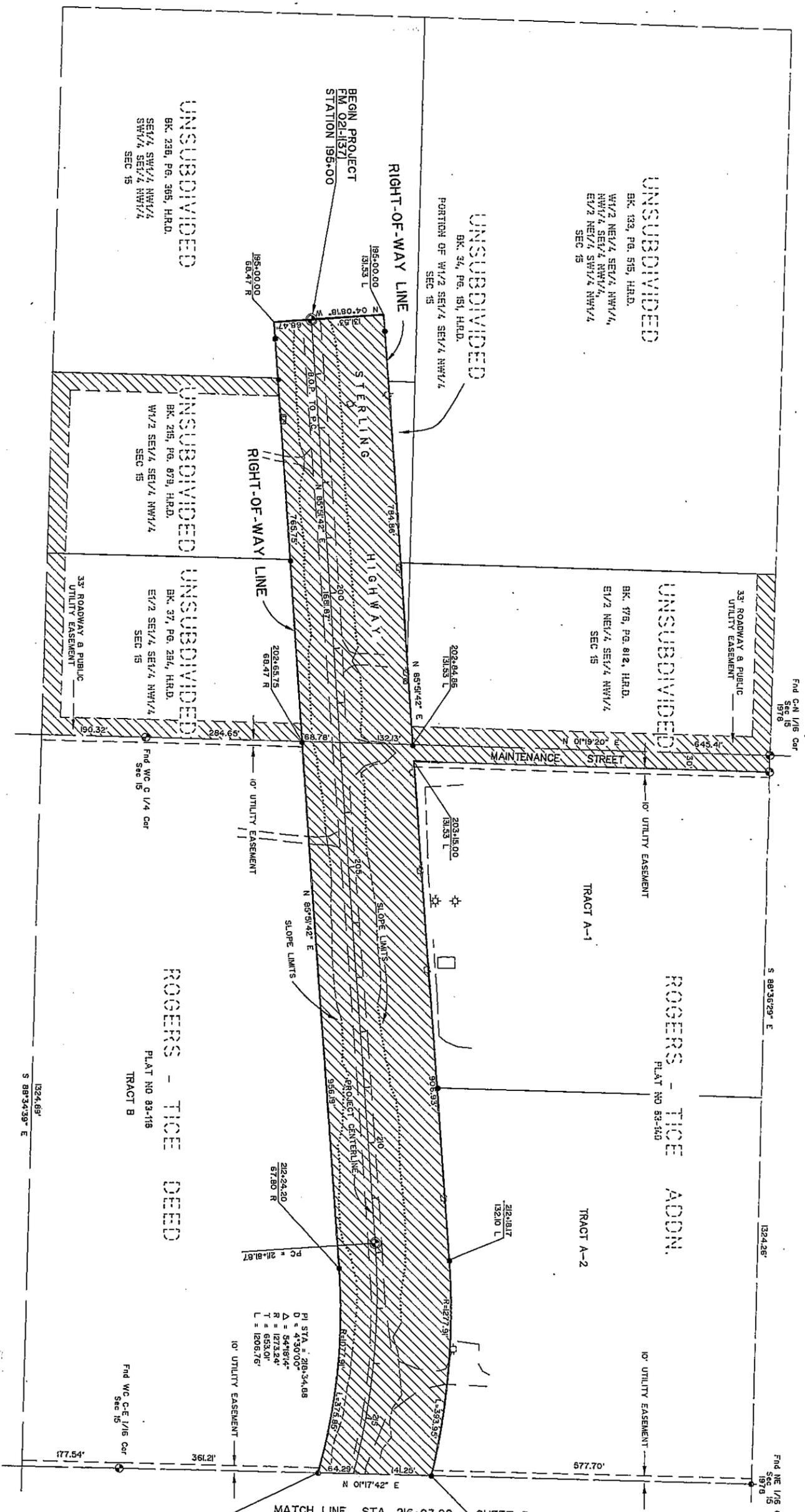
CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE RIGHT OF WAY LINES HEREON ARE SHOWN AT RECORD DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.

CRAIG L. SAVAGE
DATE: 15 April 1994

DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SGS
4/15/06	REVISED PARCEL INFORMATION (BOOK, PAGE)	BJH
11/30/95	REVISED PROJECT NUMBER	BJH
2/10/95	REVISED CENTERLINE STATIONS & OFFSETS, AND PARCEL INFORMATION	BJH
11/18/94	REVISED PARCEL INFORMATION	BJH
7/11/94	REVISED CENTERLINE STATIONS & OFFSETS, AND SLOPE LIMITS	BJH

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION PUBLIC FACILITIES RIGHT OF WAY MAP ALASKA PROJECT NO. F 021-1(37) 59171	
DRAWN	DATE
BJH	FEB. 1994
CHECKED	DATE
GEL	FEB. 1994
BOOK	PAGE
0245	407
REMAINDER	NET TAKE
12,330 AC.	0,014 AC.
LARGER PARCEL	TAKE INCLUDING EXISTING EASEMENT
LAWRENCE AND LARENE ROGERS	OWNER
12,344 AC.	0,014 AC.
PARCEL NO.	INTEREST TO BE ACQUIRED
1	
STERLING HIGHWAY	MP 169-174,
HOMER HILL	SCALE 1" = 100'
	DATE
	FEB. 1994
	SHEET 5
	OF 18

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 4/18	160



NOTE
1. EASEMENTS OF RECORD, IF ANY EXIST, OTHER THAN THOSE SHOWN ON THE PLAT(S) OF RECORD ARE NOT SHOWN HEREON.
2. STATIONS AND OFFSETS ON THIS SHEET ARE TO COMPUTED LOCATIONS.

1. CRAIG L. SAVAGE, PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, HEREBY CERTIFY THAT THE RIGHT OF WAY LINES HEREON ARE SHOWN AT RECORD DISTANCES FROM THE BEST FIT CENTERLINE ESTABLISHED FROM MONUMENTATION LOCATED DURING A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION.
CRAIG L. SAVAGE LS-4538
12 April 1994 DATE

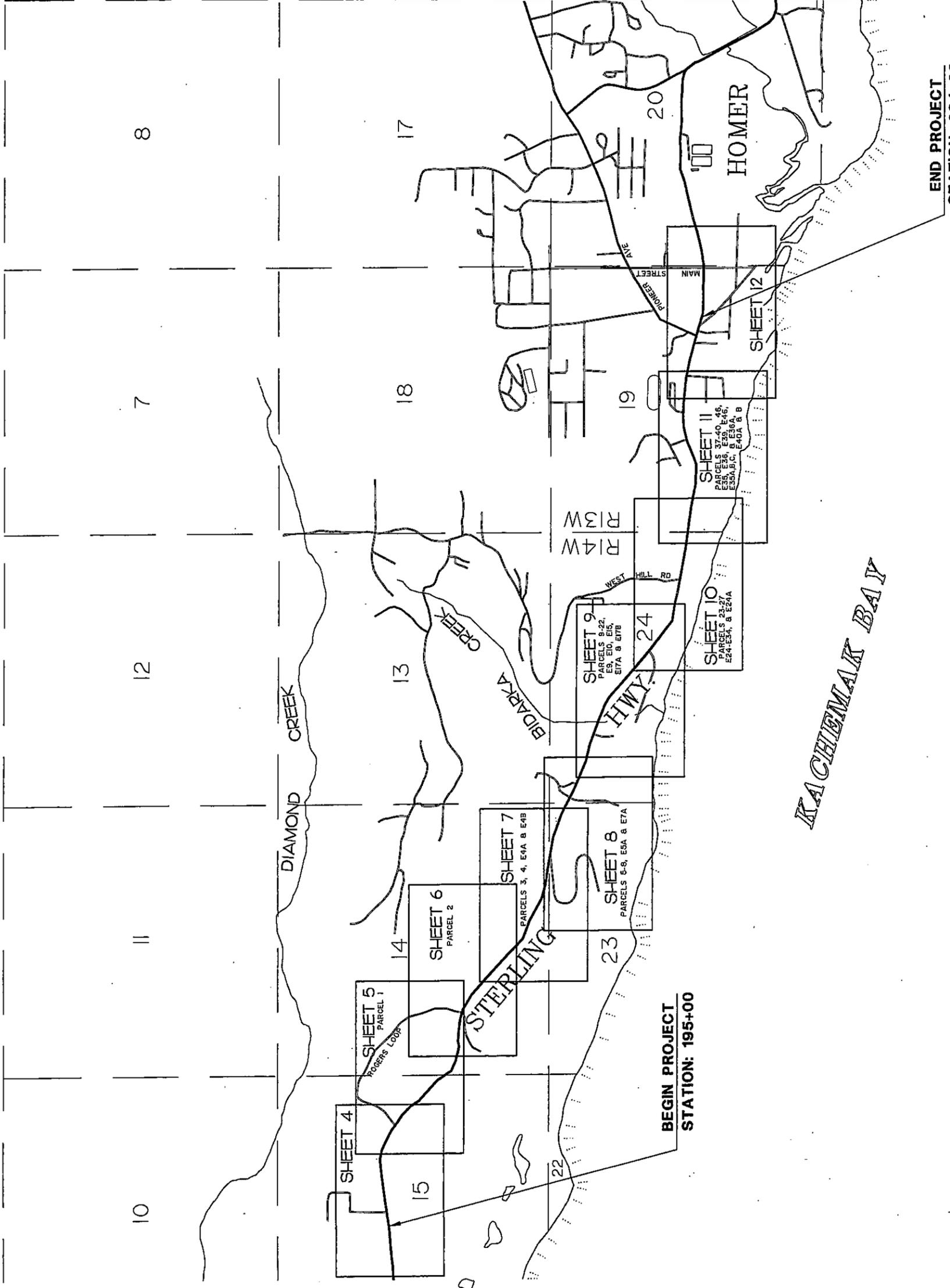


STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-1(37)
98171
STERLING HIGHWAY MP 169-174,
HOMER HILL

DATE	REVISIONS	BY
1/24/11	MISC. REVISIONS	SGS
11/20/05	REVISED PROJECT NUMBER	BJH
2/10/95	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS	BJH
7/11/94	REVISED CENTERLINE, STATIONS & OFFSETS, AND SLOPE LIMITS	BJH

DRAWN	DATE	SCALE	1" = 100'
BJH	FEB. 1994		
CHECKED	DATE	SHEET	4 OF 18
GEL	FEB. 1994		

SHEET INDEX



PROJECT DESIGNATION
STERLING HIGHWAY
MP 169-174

SHEET NO.
R 3/18

TOTAL SHEETS
160



LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



TOWNSHIP 6 SOUTH
RANGES 13 & 14 WEST
SEWARD MERIDIAN
ALASKA

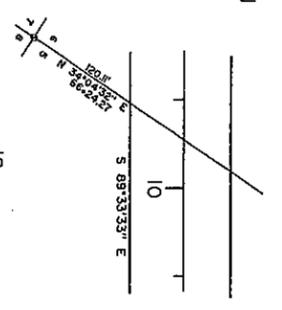
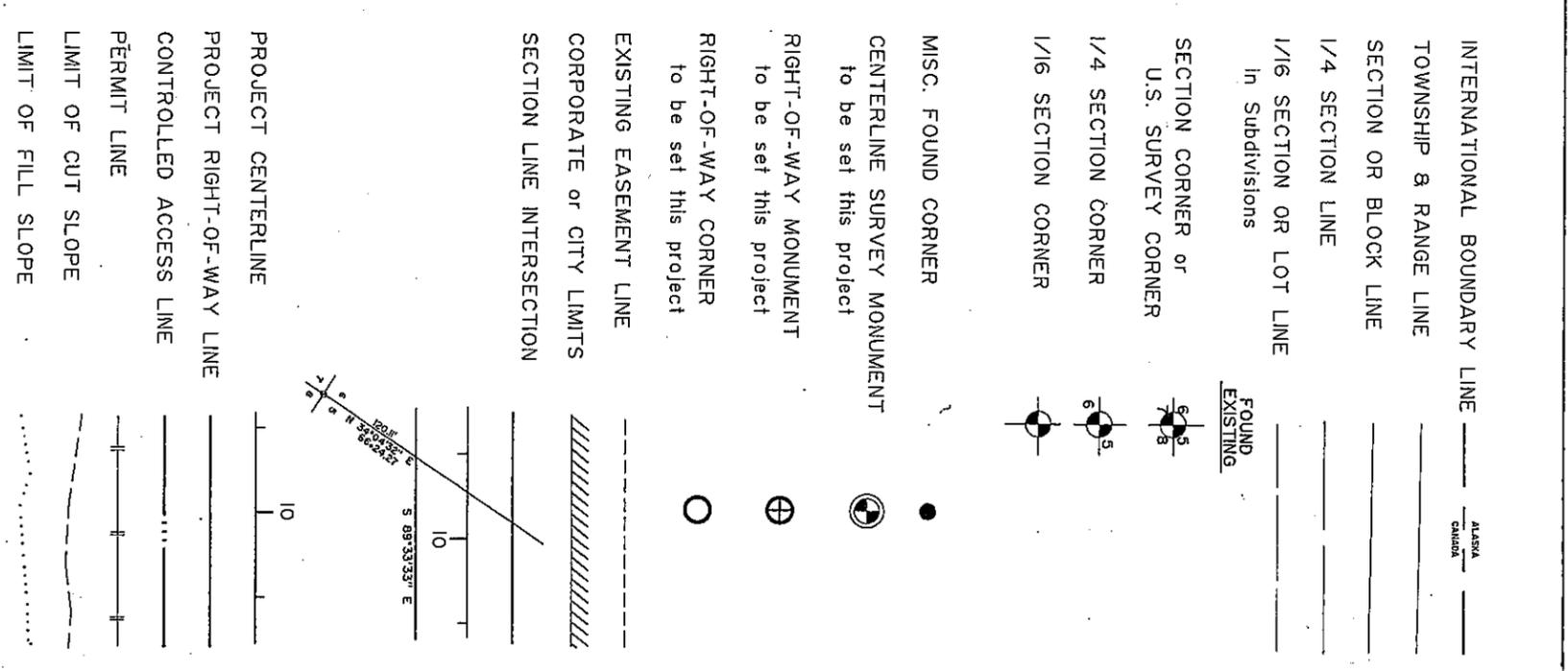
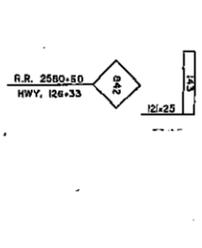
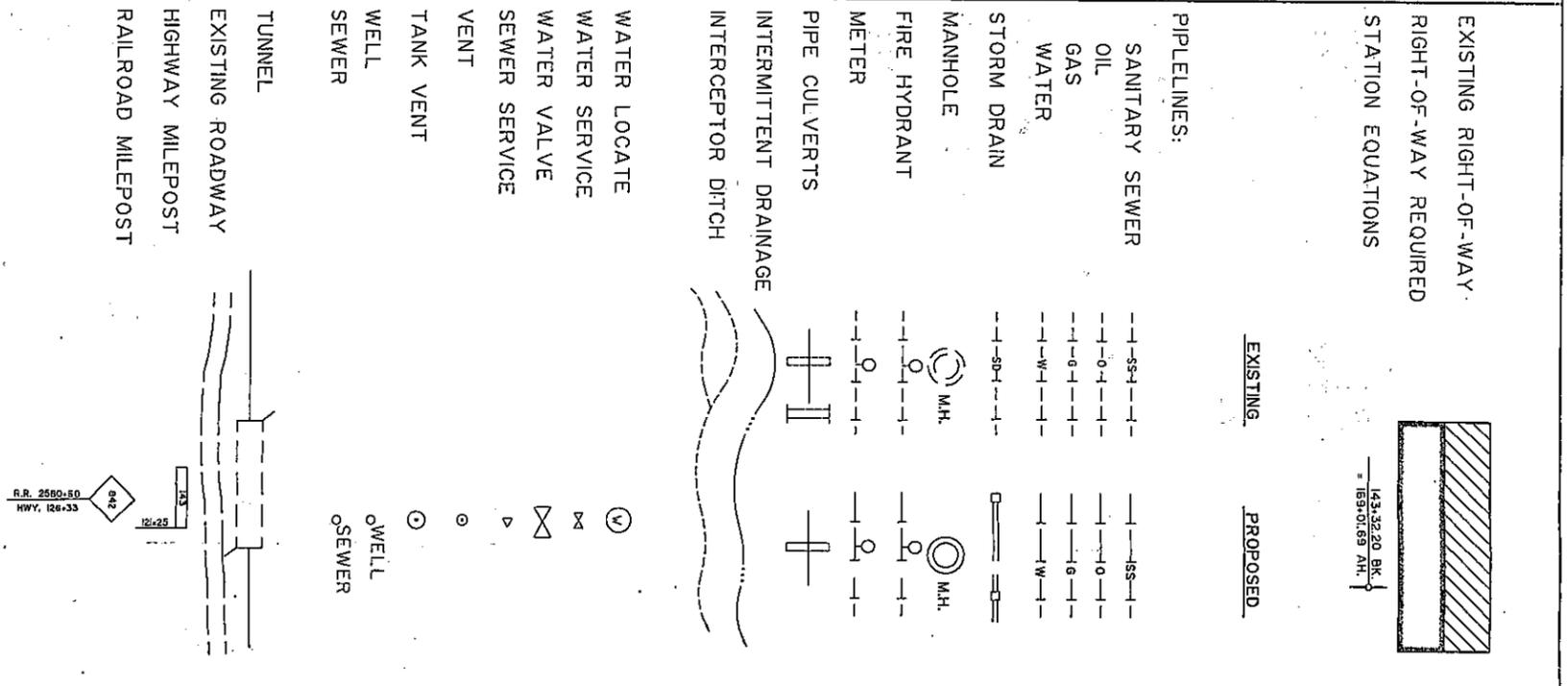
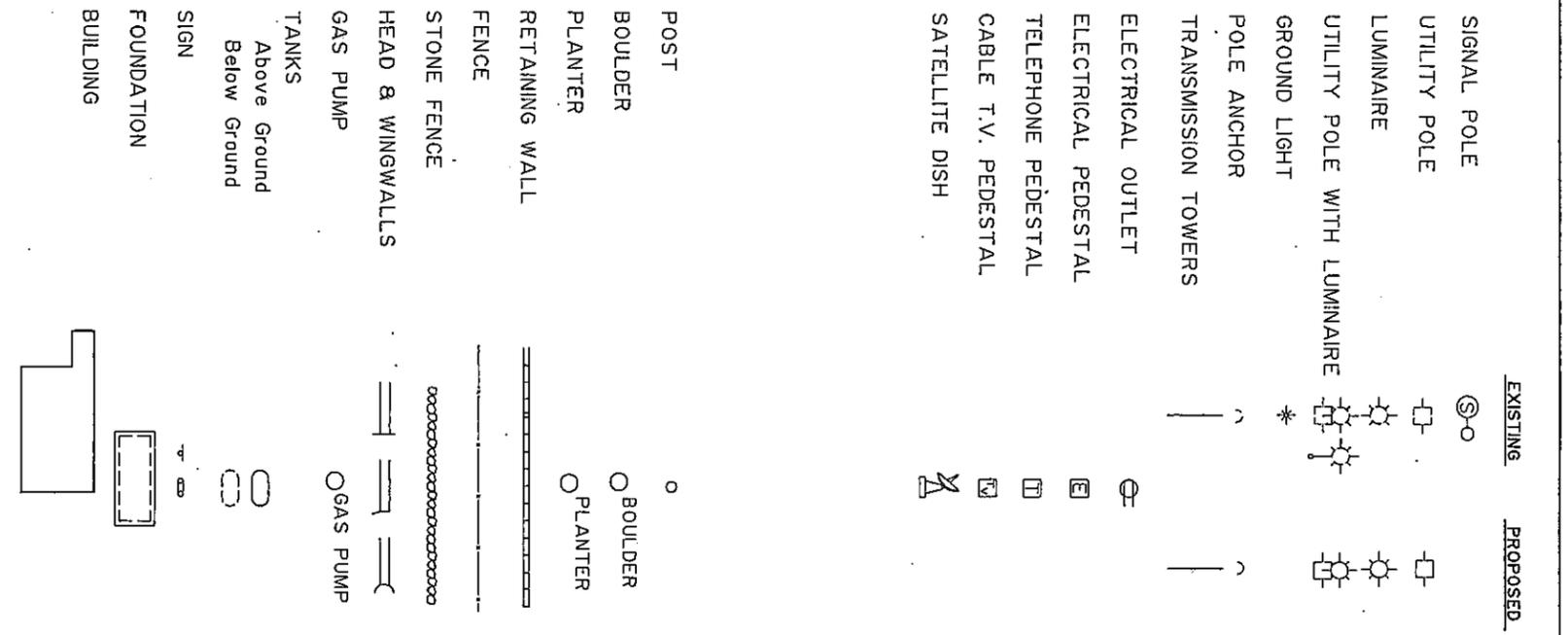
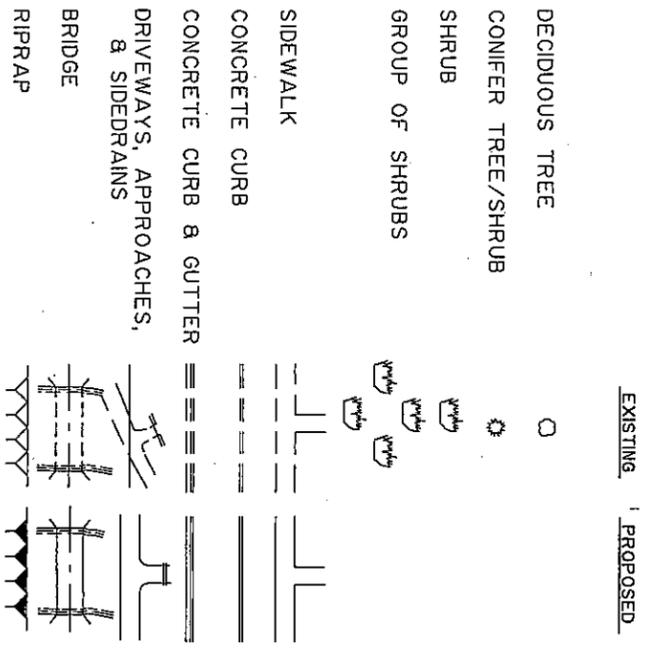
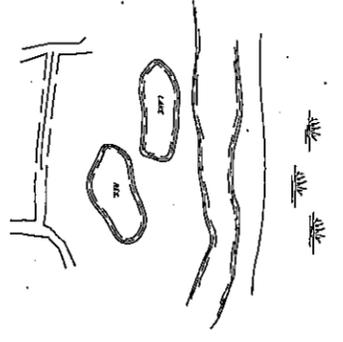


DATE	REVISIONS	BY
1/30/95	REVISED PROJECT NUMBER	BJH
1/18/94	ADDED 'E' PARCELS	BJH
7/11/94	REVISED E.O.P. STATION	BJH

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
PUBLIC FACILITIES
RIGHT OF WAY MAP
ALASKA PROJECT NO.
F 021-11371
5971
STERLING HIGHWAY MP 169-174,
HOMER HILL
DRAWN BY DATE FEB. 1994 SCALE 1" = 1000'
CHECKED GEL DATE FEB. 1994 SHEET 3 OF 18

PROJECT DESIGNATION	SHEET NO.	TOTAL SHEETS
STERLING HIGHWAY MP 169-174	R 2/18	160

LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS



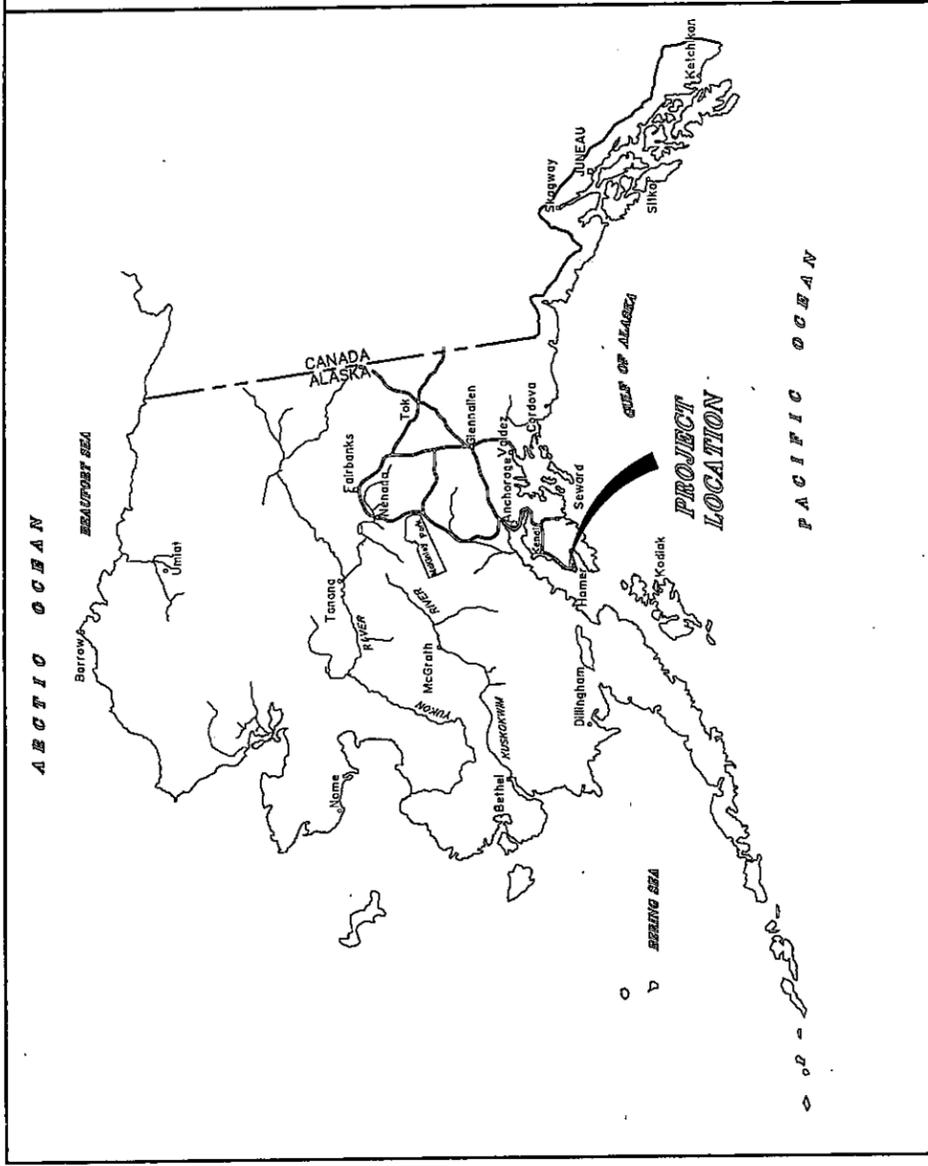
DATE	REVISIONS	BY
1/30/95	REVISED PROJECT NUMBER	BHJ
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION PUBLIC FACILITIES RIGHT OF WAY MAP ALASKA PROJECT NO. F 021-1137		
STERLING HIGHWAY MP 169-174 HOMER HILL TO MAIN STREET SCALE 1" = 100' DATE FEB. 1994 SHEET 2 OF 18		

STATE	PROJECT DESIGNATION	YEAR	SHEET NO.	TOTAL SHEETS
ALASKA	STERLING HIGHWAY	1994	R 1/18	160

LOUNSBURY & ASSOCIATES, INC.
ENGINEERS-PLANNERS-SURVEYORS

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

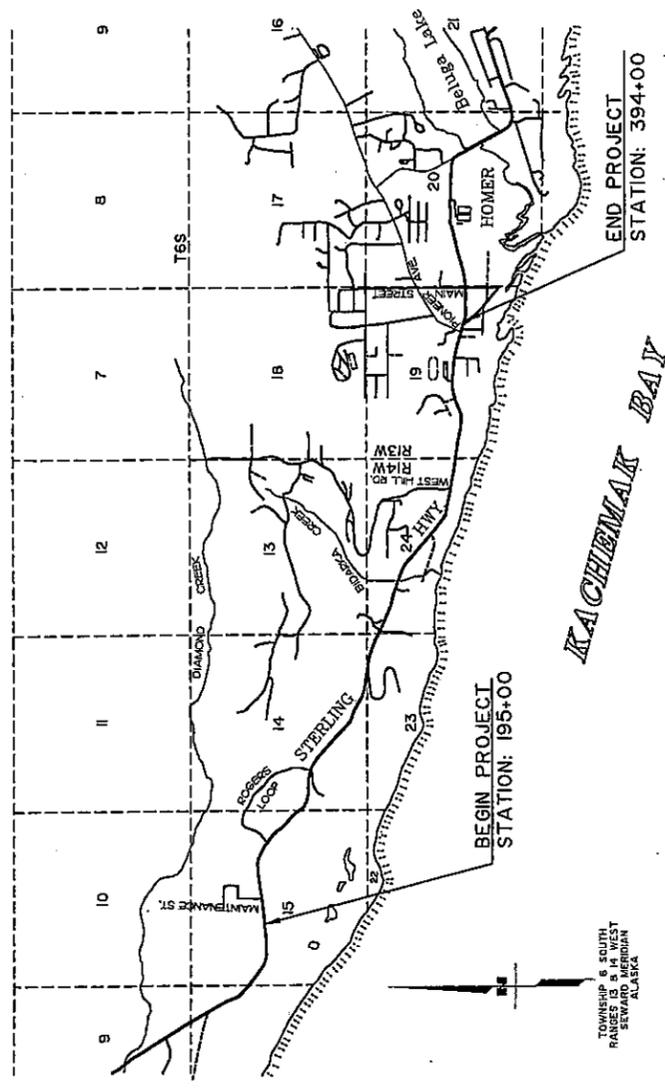
RIGHT OF WAY MAP STERLING HIGHWAY MP 169-174, HOMER HILL F 021-1(37) 59171



SPECIAL GENERAL NOTE
SUBDIVISION NAMES, PLAT NUMBERS, AND DEPICTIONS OF PROPERTIES ADJACENT TO THE RIGHT OF WAY SHOWN HEREON WERE GENERATED AT THE TIME OF THE INITIAL PLAN DEVELOPMENT. THIS DATA DOES NOT NECESSARILY REFLECT CURRENT STATUS AT THE TIME OF THE RECORDING OF THIS DOCUMENT.

PROJECT LENGTH 3.8 MI.

SCALE: 1" = 1320'



PLAT APPROVAL
THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION IN ACCORDANCE WITH KPS 20.04.080 AT THE MEETING OF _____

_____ BOROUGH OFFICIAL

CONSULTANT LOCATION SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA AND THAT ALL RIGHT-OF-WAY CENTERLINE MONUMENT LOCATIONS HAVE BEEN ESTABLISHED AS INDICATED ON THE RIGHT-OF-WAY PLANS. ALL EXISTING FOUND SUBDIVISION MONUMENTS, PROPERTY CORNERS AND SECTION LINE MONUMENTATION AS INDICATED ON THE RIGHT-OF-WAY PLANS HAVE BEEN REFERENCED TO PROJECT SURVEY CONTROLS BY ME OR UNDER MY SUPERVISION.
K. April 1994 DATE
LS 4539 REGISTRATION NUMBER

_____ REGISTERED PROFESSIONAL LAND SURVEYOR

CONSULTANT RIGHT-OF-WAY SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA AND THAT THIS PLAT WAS MADE BY ME OR UNDER MY SUPERVISION. THIS PLAT WAS BASED UPON THE MONUMENTS RECOVERED DURING THE CONSULTANT'S LOCATIONS SURVEY FOR THIS PROJECT.
K. April 1994 DATE
LS 4539 REGISTRATION NUMBER

_____ REGISTERED PROFESSIONAL LAND SURVEYOR

CLOSE OUT SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA. THE RIGHT OF WAY MAP WAS REVIEWED AND EDITED IN 2010 BY ME OR UNDER MY DIRECT SUPERVISION FOR ACCURACY AND COMPLETENESS.

DATE _____ REGISTRATION NUMBER _____

P. LOUISE HOOVER

SECTION 19, T6S, R13W
SECTIONS 14, 15, 23, AND 24, T6S, R14W
SEWARD MERIDIAN

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

APPROVED April 18, 1996 Date

_____ DIRECTOR-HIGHWAY DESIGN & CONSTRUCTION

HOMER RECORDING DISTRICT

STATE BUSINESS - NO FEE



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106
 Fax (907) 235-3118
 E-mail Planning@ci.homer.ak.us
 Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-25

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: March 2, 2011
SUBJECT: Forest Glen No. 12 Preliminary Plat

Requested Action: Preliminary Plat approval for the vacation of a common lot line

GENERAL INFORMATION

Applicants:	Tom Irons & Jean Aspen PO Box 3613 Homer, AK 99603	Surveyor: Roger W. Imhoff, RLS PO Box 2588 Homer, AK 99603
Location:	3724 (vacant) & 3898 Forest Glen Dr.	
Parcel ID:	17527017 & 17527019	
Size of Existing Lot(s):	0.34 and 0.46 acres	
Size of Proposed Lots(s):	0.801 acres	
Zoning Designation:	Urban Residential District	
Existing Land Use:	Vacant & Residence	
Surrounding Land Use:	North: Residential South: Residential East: Residential West: Residential	
Comprehensive Plan:	2008 Homer Comprehensive Plan, Chapter 4, Objective B, Promote a pattern of growth characterized by a concentrated mixed use center, and a surrounding ring of moderate to high density residential and mixed use areas with lower densities in outlying areas.	
Wetland Status:	Portions of the lots may be in a moderate value wetland	
Flood Plain Status:	Flood Hazard area D, Flood hazards undetermined	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City water and sewer are available	
Public Notice:	Notice was sent to 64 property owners of 128 parcels, as shown on the KPB tax assessor rolls.	

ANALYSIS:

This subdivision is within the Urban Residential District. The urban residential district is primarily intended to provide a sound environment for medium-density residential occupancy including single-family, duplex and low-rise multiple-family dwellings of various types and designs and other compatible uses...

This plat vacates the common lot line between two lots. The lots meet the dimensional size requirement of a minimum 7,500 square feet. The lot without the panhandle is currently vacant with a residence found on the lot with the panhandle.

Preliminary Approval, per KPB code 20.12.0060 Form and Contents Required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

1. Within the title block:
 - a. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 - b. Legal description, location, date, and total area in acres of the proposed subdivision;
 - c. Name and address of owner and registered land surveyor;
 - d. Scale.

Staff Response: The name(s) of the owner(s) need to be added within the title block.

2. North point;

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: Private parcels are shown. No public use areas other than Rights of Way are noted.

6. The names and widths of public streets and alleys and easements including drainage easements existing and proposed, within the subdivision. [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final

width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

Staff Response: The plat meets these requirements.

7. The names of adjacent subdivisions or an indication that the adjacent land is not subdivided.

Staff Response: The plat meets these requirements.

8. Approximate location of areas subject to inundation, flooding or storm water overflow. Indicate if a recognized flood plain is present. Identify and locate the major drainage systems.

Staff Response: The plat meets these requirements.

9. Approximate locations of areas subject to tidal inundation including the mean high water line.

Staff Response: The plat meets these requirements (not applicable to this area).

10. Block and lot numbering per Section 20.16.110 of the borough subdivision code.

Staff Response: The plat meets these requirements.

11. The general location of existing water and sewer utilities, and the intent and methods of the subdivision to utilize and access such utilities.

Staff Response: Lots are served by city water and sewer.

12. Provide a contour map of the subdivision and road profiles if road grades exceed 6% on arterial and 10% on other streets.

Staff Response: The plat meets these requirements. No Rights of Way are dedicated by this action.

13. Identify and locate on the plat all areas in excess of 20% grade.

Staff Response: The plat meets these requirements.

PUBLIC WORKS COMMENTS: Other than requiring that the existing water/sewer services serving Lot 10B be abandoned prior to final plat recording; PW has no comments to this proposed preliminary plat. The owner should contact PW to establish timing of and determine specific service abandonment procedures.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter had no comments.

STAFF COMMENTS/RECOMMENDATIONS:

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

1. Add plat note stating: "Portions of these lots may or may not contain wetlands. The owner should contact the Corps of Engineers for wetland information prior to any ditching and filling."
2. Existing water/sewer services serving Lot 10B to be abandoned prior to final plat recording.
3. Add name(s) of owner(s) within title block.

ATTACHMENTS

1. Preliminary Plat
2. Letter from surveyor
3. Asbuilt Survey

Surveyors Certificate

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

Roger W. Inhoff LS 5780 Date _____

Plat Approval

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

KENAI PENINSULA BOROUGH

BY: _____
Authorized Official

Notes

- All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
- WASTEWATER DISPOSAL: Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.
- All lots within this subdivision are subject to City of Homer Zoning Regulations. Refer to the Parent Plats and the Homer City Code for all current setback and site development restrictions. Owners should check with the City of Homer prior to development activities.
- The 15 ft fronting the rights-of-way is subject to an underground utility easement. No permanent structure shall be constructed or placed within the utility easement which would interfere with the ability of the utility to use the easement.
- This subdivision may be effected by covenants, conditions, and restrictions as recorded in Bk 76 Page 236 HRD.
- No permanent structures may be placed in the panhandle portions of Lot 10A-1.
- No field survey was conducted for this plat. Corner monuments of record are 2" Aluminum Caps on 5/8" rebar 5780-S per the parent plat. Dimensions are of Record.

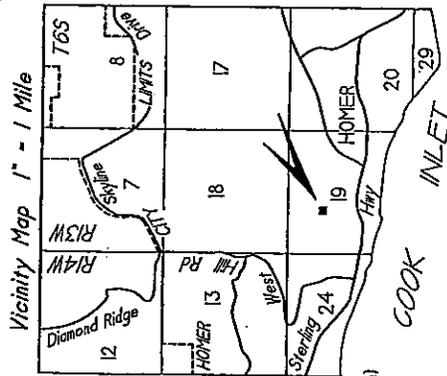
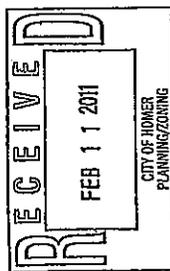
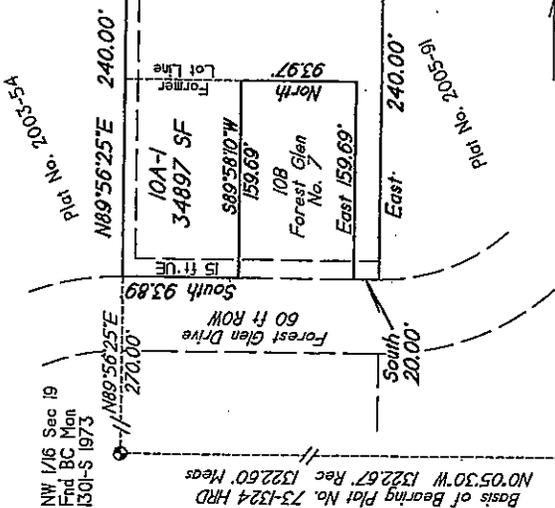
Ownership Certificate

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

Tom Irons Date _____ Jean Aspen Date _____
PO Box 3613
Homer AK 99603

Notary's Acknowledgement
Subscribed and sworn to me before me this _____ day
of _____ 20____
for Tom Irons and Jean Aspen

Notary Public for Alaska
My Commission Expires _____



PRELIMINARY

Forest Glen No. 12

Being a vacation of the common lot line between Lots 10A and 10C of Forest Glen Subdivision No. 7 as shown on Plat No. 2003-27 HRD

Located within the NW 1/4 Section 19, T6S, R13W, S14

Within the City of Homer
Homer Recording District, Third Judicial District, Alaska

Contains 0.801 Acres, more or less

Clients:	Surveyor: Roger W. Inhoff, RLS PO Box 2588 Homer AK 99603
Drawn: RWI	Date: Feb 2011
Scale 1" = 100 ft File forestglen12.vcd KPB File No. 2011-	

Roger W. Imhoff, RLS
PO Box 2588 * Homer Ak 99603
(907) 235-7279 fax (907)235-5254
rogerimhoff@alaska.net

2-10-2011

Julie Engebretsen
City of Homer
Homer Ak 99603

Preliminary Plat - Forest Glen No. 12

Please find enclosed materials for preliminary plat submittal.

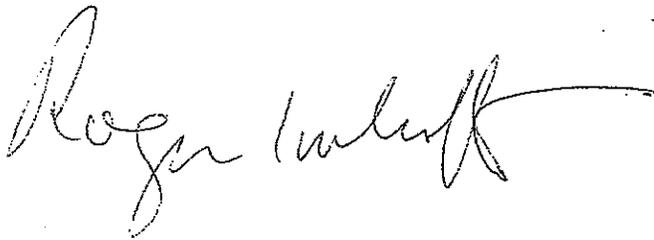
This plat is a simple vacation of the common lot line between 2 lots.

The lots are served by City water and sewer.

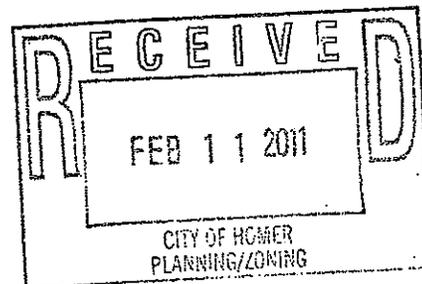
Enclosed is the 2009 asbuilt for Lot 10C. Lot 10A is vacant.

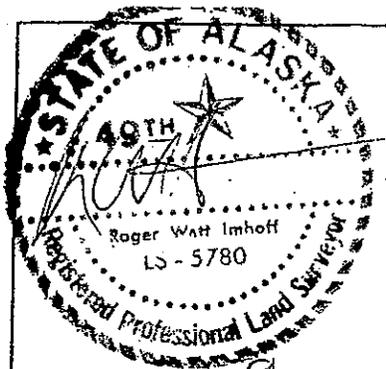
If you or staff have any questions, please feel free to contact me prior to the Planning Commission Meeting Date.

Sincerely,

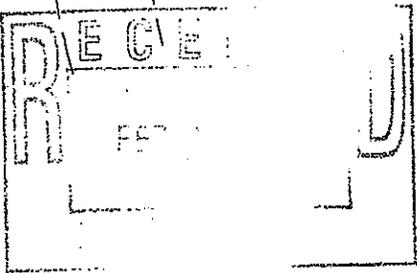
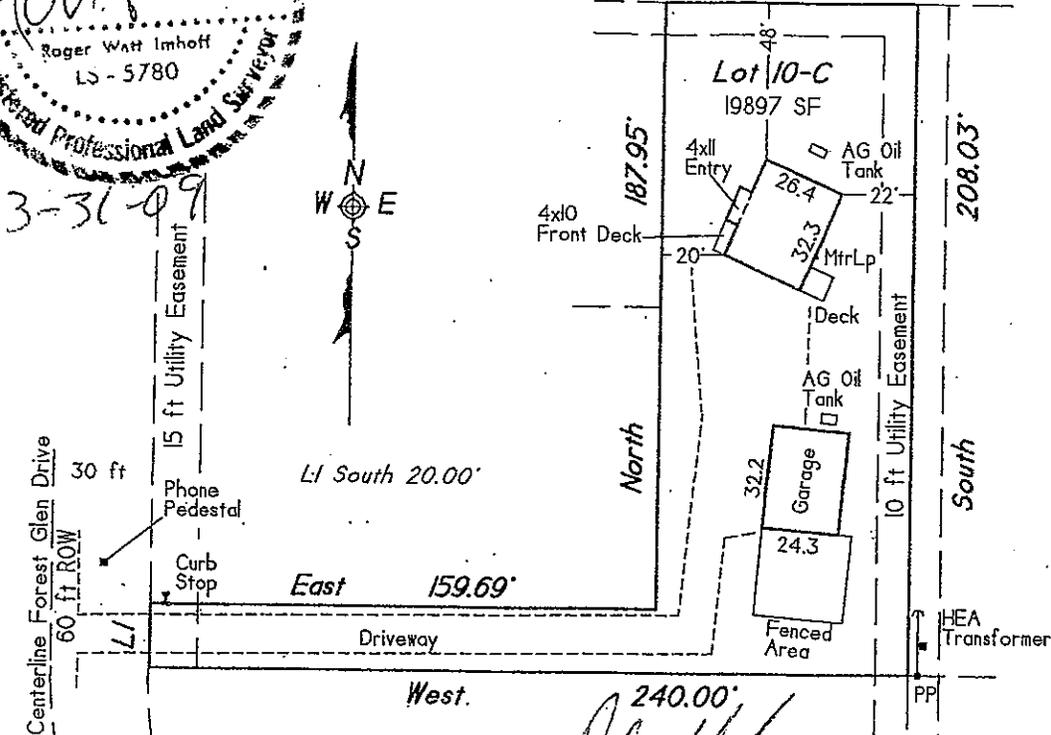


enclosures





3-31-09



RWI

UPDATED: 3-31-09 FB 2009-1 P36
 Added Garage and fenced area.
 No visible encroachments this date of survey

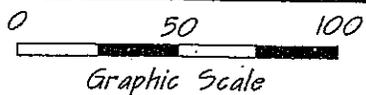
Notes

1. Subject structure is 1 1/2 story house.
2. This lot is served by City of Homer water and sewer.
3. This survey is valid for above ground improvements only and is based on the record plat.
4. This document may not be recorded or copies sold without the written permission of the Surveyor. This Survey is to be used only for the purposes intended and is valid for 120 days from the date of original survey after which it must be recertified.
5. The 15 ft fronting the rights-of-way is subject to an underground utility easement.

I hereby Certify that I have surveyed the following property and that no visible encroachments exist:

Lot 10-C Forest Glen No. 7

Exclusion Note: It is the responsibility of the Owner(s) to determine the existence of any easements, covenants, or restrictions which do not appear on the recorded subdivision plat. Under no circumstances should any data hereon be used for construction or for the establishment of fence or boundary lines.



ASBUILT SURVEY

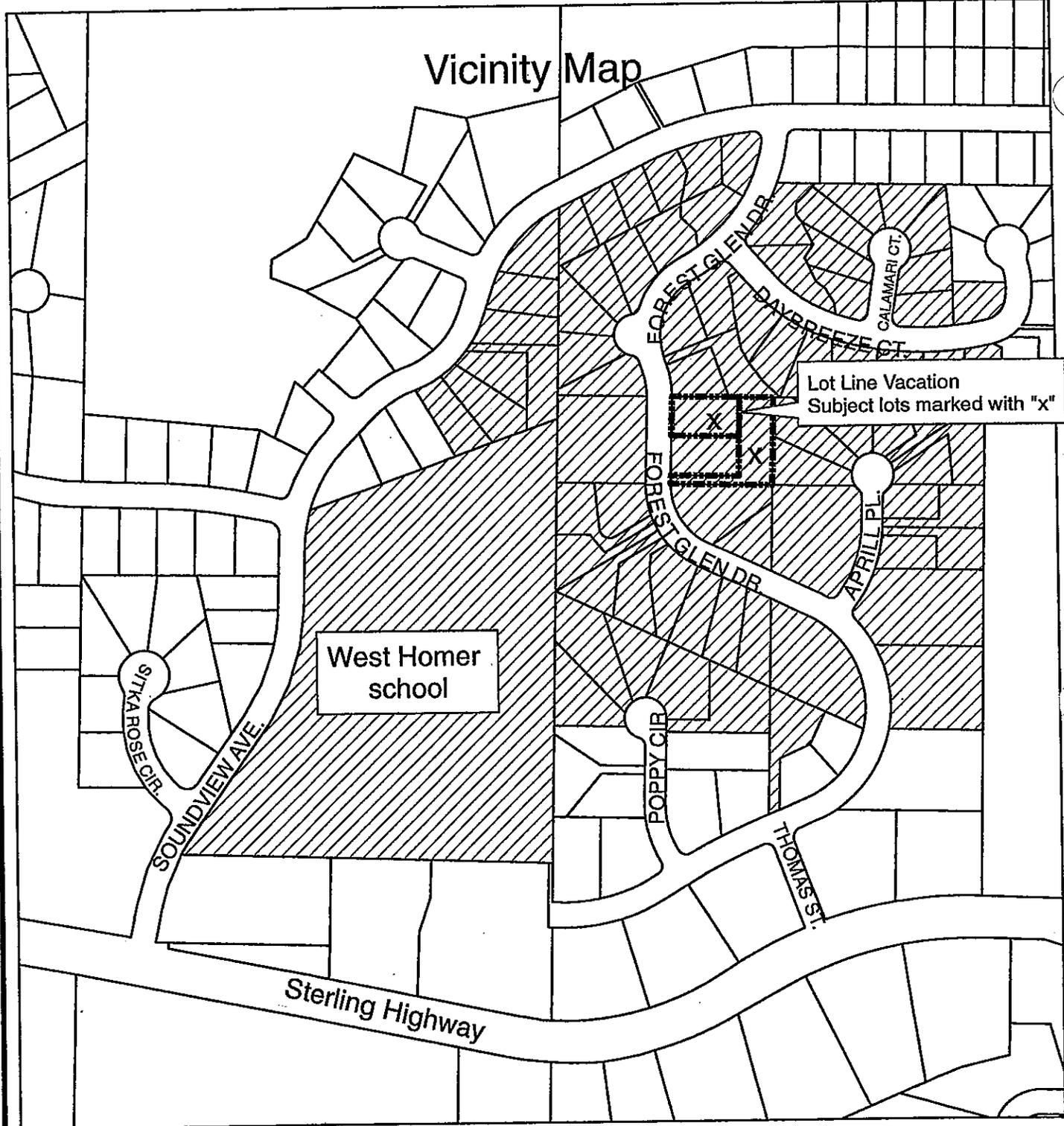
Lot 10-C Forest Glen No. 7
 as shown on Plat No. 2003-27
 Homer Recording District

Located within the NW 1/4 Section 19,
 T6S, R13W, SM

Third Judicial District, Alaska
 KPB Tax Parcel No 17527019

Clients: William Gardner PO Box 2982 Homer Ak 99603		Surveyed By: Roger W. Imhoff, RLS PO Box 2588 Homer Ak 99603	
Date 4-25-06		File L10Cforestglen7.vcd	
Drawn RWI	FB 2006-2	Scale 1" = 50 ft	

Vicinity Map



City of Homer
 Planning and Zoning Department
 2-14-11

Forest Glen No. 12 Preliminary Plat

Shaded area is w/
 500 ft. for notification



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



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-29

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: March 2, 2011
SUBJECT: Draft HAPC policies and procedures

Concept Review:

How are policies and procedures manual, and Commission bylaws, different that city code?

- Procedures are not set out in code. They are found in Robert's Rules, and adopted as part of the bylaws. (like the process for a reconsideration – its not in code, its in the bylaws)
- Policies and procedures can be more strict than City Code, but not less restrictive.
- If there is something in the policies and procedures or bylaws, and NOT part of code the Commission can change it. Example: for a while after a public hearing was held, the public would testify or speak to an issue at the end of the meeting under public comments. They would introduce new evidence, or even written comments the next day. This left the Commission in a quandary- whether or not to accept new evidence after the close of the hearing, that the applicant may or may not have had the opportunity to address. So the Commission amended the procedures manual to not allow new public testimony after the hearing is closed.

GENERAL INFORMATION

Staff reviewed Mr. Griswold's letter, and in situations where staff agreed with Mr. Griswold, amended the policies and procedures. In particular, reference to terminating a legal nonconforming use was struck from the document. An ordinance is required to change city code to allow for the termination of nonconforming uses. Termination of a legal nonconformity is not an option the HAPC has under the policies and procedures guidelines.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission review the draft policies and procedures and make amendments. Postpone action until the March 16th meeting, per HAPC Bylaws (T).

ATTACHMENTS

1. Draft policies and procedures, March 2, 2011
2. Letter from Mr. Griswold dated February 15, 2011



Policies and Procedures Homer Advisory Planning Commission



2011 Resolution 11-xx

QUALIFICATION STATEMENT

Nothing in this chapter should be considered in lieu of any applicable laws and procedures found in the Alaska State Statutes, the Kenai Peninsula Borough Code of Ordinances, where applicable, or the Homer City Code.

INDEX

	Page
<u>Introduction</u>	<u>2</u>
<u>Public Testimony and Comment</u>	<u>2</u>
<u>Deliberations</u>	<u>3</u>
<u>Appeals</u>	<u>3</u>
<u>Bridge Creek Watershed</u>	<u>3</u>
<u>Conditional Use Permits</u>	<u>4</u>
<u>Nonconformity</u>	<u>5</u>
<u>Preliminary Plats</u>	<u>7</u>
<u>Zoning Ordinance Amendments</u>	<u>7</u>
<u>Variance</u>	<u>89</u>

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

INTRODUCTION

The purpose of this policy manual is to clarify the role of the Homer Advisory Planning Commission ("Commission") in administration of the Homer Zoning Ordinance, Title 21, and Subdivisions, Title 22. Further, this manual describes policies for the Commission that are supplementary or explanatory to the requirements of Homer City Code.

This manual is divided into sections, which explain the policies for administering and implementing the land use permitting ordinances and the zoning ordinance.

The policy and procedure manual will be endorsed by resolution of the City Council and may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of the proposed amendment is given to each member in writing. Proposed amendments to the procedure manual shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting.

PUBLIC TESTIMONY AND COMMENT

The Commission invites citizen participation regarding matters brought before it for consideration.

For any public participation before the Commission, the citizen should walk to the microphone located at the rostrum directly in front of the Commission podium, sign in, and after receiving recognition from the Chair, state his/her name and address and purpose for appearing. Comments are limited to three minutes. In special circumstances, this time limit may be extended by two minutes by the Chair with concurrence of the body. Items that generate a large amount of citizen interest may be taken out of their regular position on the agenda at the discretion of the Commission as an accommodation to the public. Moving these items on a published agenda will be done at the beginning of the meeting, during the adoption of the agenda.

Comment time limits

Comments and testimony are limited to three minutes. In special circumstances, this time limit may be adjusted by two minutes up or down by the Chair with concurrence of the body.

Public Comment

Any citizen desiring to speak on any matter other than public hearing items or preliminary plats on the agenda may do so under "Public Comments." After the public comment period is introduced, the Chair may recognize any member of the public who wishes to address the Commission. No official action will be taken by the Commission under this item.

Public Hearings and Plats

The public may comment on public hearing items and preliminary plats when those agenda items are addressed by the commission. These are generally items eight and nine on the regular agenda.

Comments on topics not on the agenda

Any citizen desiring to speak on a matter not on the agenda may do so under "Comments of the Audience," item number thirteen on the regular agenda.

Page 2 of 9

~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
Resolution 11-xx

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

DELIBERATION of QUASI-JUDICIAL DECISIONS

When making a quasi judicial decision, the Commission may choose to deliberate at an open meeting, or may choose to meet at a time, date and location set by the Commission. Such a meeting for deliberations only is not subject to the Open Meetings Act and is not required to be open to the public.

APPEALS (Quasi Judicial)

PURPOSE

The purpose of review of appeals before the Commission is to ascertain that errors of fact or interpretation have not been made pertaining to zoning matters. Generally, appeals to the Commission will be appeals of a determination, decision, or permitting matter decided upon by the City Planner.

The City Council, sitting as the Board of Adjustment, hears appeals of decisions made by the Commission. For example, conditional use permits, variance, etc, can be appealed to the Board of Adjustment, or a matter that was appealed to the Commission can be further appealed to the Board of Adjustment.

Public Hearing

Appeals before the Commission require a public hearing. Notice of the public hearing will be in accordance with HCC 21.93 and HCC 21.94.

Review Standards

In reviewing an appeal request, the Commission will consider:

1. Documentation of evidence;
2. The Record of Appeal; and
3. Controlling sections of Chapter 21 Homer City Code;
4. Any new evidence or testimony presented during the public hearing.

Once the public hearing is closed, the Commission cannot hear additional comments on the topic.

Determination

All decisions will be in writing. The officially adopted minutes shall be made part of the decision. A specific statement of findings and reasons supporting the decision shall be made. Copies of the decision will be promptly mailed to the persons participating in the appeal.

An appeal from an action or determination of the Commission is to be filed with the city clerk within thirty days of the distribution of the decision document.

REVIEW OF BRIDGE CREEK WATERSHED PROTECTION DISTRICT

Page 3 of 9

~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~
~~P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx~~

Resolution 11-xx

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

PURPOSE

The Commission may approve development within the Bridge Creek Watershed Protection District (BCWPD) subject to the standards provided in the zoning ordinance and in compliance with the Comprehensive Plan, for those uses or structures specified within the Bridge Creek Watershed Protection District ordinance. The purpose is to prevent the degradation of the water quality and protect the Bridge Creek Watershed to ensure its continuing suitability as a water supply source for the City's public water utility. These provisions benefit the public health, safety, and welfare of the residents of the City of Homer and other customers of the city's water system by restricting land use activities that would impair the water quality, or increase the cost for treatment.

Conditional Use

A conditional use permit may be issued in accordance with Chapter 21.61 and subject to the requirements of the Bridge Creek Watershed Protection District Chapter 21.40.060 Conditional uses and structures, and/or Chapter 21.40.080 Erosion sediment control, Chapter 21.40.090 Agricultural activity, Chapter 21.40.100 Timber growing and harvesting operations, Chapter 21.40.110 Stream buffers, and Chapter 21.40.130 Exceptions to buffers.

Preliminary Plats

The Commission will review and comment on all subdivision proposals within the Bridge Creek Watershed Protection District.

**REVIEW POLICIES FOR CONDITIONAL USE PERMITS
(Quasi -Judicial)**

PURPOSE

It is recognized that there are certain uses which are generally considered appropriate in a district, provided that controls and safeguards are applied to ensure their compatibility with permitted principal uses. The conditional use permit procedure is intended to allow Commission consideration of the impact of the proposed conditional use on surrounding property and the application of controls and safeguards. This procedure assures that the conditional use will be compatible with the surrounding area and in keeping with the character and integrity of the neighborhood.

Public Hearing

A public hearing before the Commission is required before a conditional use permit may be granted. Notice of the public hearing will be in accordance with HCC 21.94.

Review Standards

The Commission has 45 days from the close of the public hearing to make a decision on a conditional use permit application. The applicant may agree, in writing, to the extension of the 45 day time period for Commission action.

The Commission may approve, approve with conditions, or disapprove an application. The Commission must prepare written findings and reasons supporting its decision. Approval of a conditional use permit requires five yes votes. If a conditional use permit is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission.

Formatted: Font: 8 pt, Do not check spelling or grammar
Formatted: Font: 8 pt, Do not check spelling or grammar

Specific conditions may be required. Such conditions will be part of the terms under which the conditional use permit is granted and violations of such terms shall be deemed a violation of this ordinance. Failure to meet any time limitations imposed by the conditional use permit shall void the permit. An extension may be granted following a public hearing on the matter. Extensions will be granted for good cause only.

The development of the conditional use project or site, following issuance of the permit, will be in accordance with the conditions of the permit, standards of the zoning regulations and/or the approved site plan. Failure to observe any conditions or standards will be deemed a violation.

Determination

The Commission must make findings of fact sufficient to support its decision. Upon determination the Commission will document the decision and the basis for decision. The petitioner will be notified by mail by a copy of the meeting minutes and the decision documentation.

Appeals

The Commission Chair will alert the petitioner and other interested parties in attendance that an appeal of the Commission's decision is possible and that the appeal must be filed within thirty days of the distribution of the decision document.

NONCONFORMITY REVIEW POLICIES (Quasi -Judicial)

PURPOSE

The Commission shall review and determine the nonconformity of certain structures and uses. The purpose of review is to establish the commencement date of use, establish the effective date of applicable regulations, and formally accept the nonconformity and/or establish a reasonable schedule for termination of a nonconformity which significantly impairs the public health, safety and general welfare.

City code states which nonconformities are reviewed by the City Planner and which are reviewed by the Commission. Generally, the Commission will be reviewing nonconforming uses within the city, excluding the areas annexed on March 20, 2002.

Public Hearing

The Commission shall conduct a public hearing per HCC 21.94.

Review Standards

It shall be the responsibility of the owner to show proof of continuing nonconformity of any property, use or structure.

Prior to determining the nonconformity of a use or structure, the Commission will determine:

1. The commencement date of use;
2. The effective date of applicable regulations.

There may exist uses, or structures which were legal before the effective date of the controlling regulation, but which are now prohibited under the terms of the existing ordinance. See HCC 21.61.040.

Page 5 of 9

P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx P:\PACKETS\PCPacket 2011\Resolutions\Policies and Procedures\March 2 2011 Policies and Procedures DRAFT.docx

Resolution 11-xx

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

To avoid undue hardships, actual construction lawfully begun prior to the effective date of the zoning ordinance will be allowed to continue provided the work will be carried on diligently. Actual construction is defined as the placement of materials in a permanent position and fastened to produce a product.

Nonconforming Uses of Land/Structures

When a lawful structure exists prior to September 28, 1982, or March 20 2002 for annexed areas, but does not meet the district or ordinance requirements, it shall be considered nonconforming. Nonconforming structures may be continued and/or expanded only on the legal lot if the nonconformity of the structure does not increase.

Legally existing structures are those that:

1. Exist prior to effective date of Ordinance 4-300-2 (Interim Zoning Ordinance) dated June 13, 1966.
2. Exist prior to effective date of Ordinance No. 33 (Kenai Peninsula Borough) dated May 2, 1967 and are in compliance with Ordinance 4-300-2.
3. Exist prior to effective date of Ordinance 78-13 (Kenai Peninsula Borough) dated May 16, 1978 and are in compliance with Kenai Peninsula Borough Ordinance No. 33 and Homer Ordinance 4-300-2.
4. Exist prior to effective date of Ordinance 82-15 (Homer Zoning Ordinance) dated September 28, 1982 and are in compliance with previous zoning ordinance requirements.

Once a structure made nonconforming by this title is abandoned or brought into conformity with this title, the structure shall thereafter conform to the regulations of the zone in which it is located, and the nonconformity shall not be allowed to continue.

The A lawful nonconforming use may continue so long as it remains lawful. No nonconforming use may be enlarged to occupy a greater area of land than was occupied as of the date it became nonconforming, or August 12, 2008, whichever is later. It may expand in accordance with 21.61.040. Once a use made nonconforming by this title is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the regulations of the zone which the lot is located, and the nonconformity shall not thereafter be resumed or allowed to continue.

~~A reasonable schedule for the termination of a nonconforming land use/structure which specifically impairs the public health, safety and general welfare will be established by amendment to the zoning ordinance. (See Zoning Amendment procedure.)~~

Determination

Page 6 of 9

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

Upon presentation of such proof that establishes the continuing nonconformity of any use or structure, the Commission shall formally accept the nonconformity, as a valid use or structure until such time as the use ceases. Upon determination by the Planning Commission staff will document the decision and basis for decision. The petitioner will be notified by mail by a copy of the relevant meeting minutes and the decision documentation.

Appeals

The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.

PRELIMINARY PLAT REVIEW POLICIES

PURPOSE

The purpose of this policy statement is to clarify the position of the Commission with regard to their recommendations of acceptance or denial of preliminary plats. This review provides the opportunity for the City to make comments and recommendations to the Kenai Peninsula Borough Planning Commission. The Kenai Peninsula Borough holds platting powers for the entire borough, both inside and outside the city limits. The Homer Advisory Planning Commission acts as an advisory body to the Borough Planning Commission on plat matters inside city limits and within the Bridge Creek Watershed Protection District.

The preliminary plat process allows an exchange of information between the subdivider, the Planning and Zoning Office, and the Commission. Proper utilization of the preliminary process should result in a recommendation of approval for the majority of the plats.

Procedures

General. Kenai Peninsula Borough Code 20.12.050 governs subdivisions in first class cities. A surveyor will submit one full size copy and a 11" x 17" reduced copy of the preliminary plat to the Planning Director when subdividing land in the City of Homer or the Bridge Creek Watershed Protection District. The Commission shall review the plat and take action within forty-nine days of the date of receipt unless the applicant agrees to an extension. Recommendations of the Commission based upon lawful ordinances shall be incorporated in the final plat.

The Commission will consider plats and make recommendations. The staff report and minutes are then forwarded to the borough planning department.

The borough planning commission makes the final determination. Once the preliminary plat has been accepted, the final plat is submitted to the borough for either administrative approval or approval by the borough planning commission.

ZONING ORDINANCE AMENDMENTS

PURPOSE

The Commission will review all proposals to amend the zoning ordinance or zoning map and make recommendations to the City Council. ~~Neither the Commission nor City Council may consider a zoning~~

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

~~map amendment that establishes a new zone within an area of less than one acre, excluding streets and rights of way, except for the extension of existing district boundaries. Neither the Commission nor City Council may consider a zoning ordinance request which is substantially the same as any other amendment submitted within the previous nine months and which was rejected.~~

Initiation/Application

Amendments to the zoning ordinance will be made in accordance with HCC 21.95. When the amendment request is accepted as complete by the Planning Department, the matter will be scheduled presented within 30 days to the for the next Planning Commission meeting according to the Commission meeting schedule and due dates.

Public Hearing

A public hearing before the Commission is required. Notice of the public hearing will be in accordance with HCC 21.94. In the case of a zoning ordinance amendment or major district boundary change, no notification of neighboring property will be required, but notices will be posted in at least three public places.

Review Standards

Zoning Map Amendments

Zoning map amendments submitted by citizen petition shall apply to an area of not less than two acres, including half the width of any abutting street or alley rights of way, or, reclassify the area to a zoning district that is contiguous to the area or separated from the area only by a street or alley right of way.
The Commission will generally review the zoning amendment to determine:

- ~~1. The public need and justification for the proposed change;~~
- ~~2. The effect on the public health, safety and welfare;~~
- ~~3. The effect of the change on the district and surrounding property; and~~
- ~~4. The relationship to the Comprehensive Plan and purposes of the zoning regulations.~~

~~A balanced decision on a rezone request is one that is not arbitrary, has legitimate public purpose and is consistent with the comprehensive plan.~~

The Planning Commission shall review each proposal to amend this title or to amend the official zoning map before it is submitted to the City Council.

Amendments to the official zoning map may be recommend for approval only if the amendment:

- a. Is consistent with the comprehensive plan and will further specific goals and objectives of the plan.
- b. Applies a zoning district or districts that are better suited to the area that is the subject of the amendment than the district or districts that the amendment would replace, because either conditions have changed since the adoption of the current district or districts, or the current district or districts were not appropriate to the area initially.
- c. Is in the best interest of the public, considering the effect of development permitted under the amendment, and the cumulative effect of similar development, on property within and in the vicinity of the area subject to the amendment and on the community, including without limitation effects on the environment, transportation, public services and facilities, and land use patterns

Determination

Page 8 of 9

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar

The Planning Commission shall submit to the City Council its written recommendations regarding the amendment proposal along with the Planning Department's report on the proposal, all written comments on the proposal, and an excerpt from its minutes showing its consideration of the proposal and all public testimony on the proposal. The Commission will make findings and send its written recommendations to the City Council along with meeting minutes and public records relating to the proposed amendment. Such recommendations of the Commission shall be advisory only and shall not be binding on the City Council.

POLICY FOR REVIEW OF ZONING VARIANCES (Quasi-Judicial)

PURPOSE

The Commission may grant a variance to provide relief when a literal enforcement of the regulations and standards of the zoning ordinance, Chapter 21, would deprive a property owner of the reasonable use of his real property.

The purpose of review is to ascertain that those conditions specified as necessary to granting a variance shall be satisfied; that the variance will be the minimum necessary to permit the reasonable use of land or structure, and that the variance will not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Public Hearing

A public hearing before the Commission is required before a variance may be granted. Notice of the public hearing will be in accordance with HCC 21.94.

Review Standards

In reviewing a variance request and prior to granting a variance, the Commission must consider the standards of review as established in HCC 21.72. All of the conditions must exist before a variance can be granted.

Determination

The Commission must prepare written findings and reasons supporting its decision. Approval of a variance requires five yes votes. If a variance is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission. Upon determination, staff will document the decision and the basis for decision. The petitioner will be notified by mail with a copy of the meeting minutes (those portions that apply to the petition) and the decision documentation.

The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.

Formatted: Font: 8 pt, Do not check spelling or grammar

Formatted: Font: 8 pt, Do not check spelling or grammar



Frank Griswold
519 Klondike Ave.
Homer, Alaska 99603

February 15, 2011

Dear Planning Commissioners,

Please consider the following regarding Staff Report PL 11-19:

Review Policies for Conditional Use Permits

Review Standards

"The Commission has 45 days from the close of the public hearing to make a decision on a conditional use permit application. The applicant may agree, in writing, to the extension of the 45 day time period for Commission action."

What happens if the Commission does not decide the application within 45 days? Is the application approved or denied? If approved or denied due to an untimely decision, where are the requisite conditions and findings supporting the (non) decision? If failure to decide the application within 45 days results in an automatic approval, why would any applicant agree to an extension? If failure to decide it within 45 days results in an automatic denial, why would any applicant not agree to an extension?

Nonconformity Review Policies

Purpose

This section confuses the terms "nonconformity" and "nonconforming use." A nonconforming use is, by definition, a legal use. The purpose of the Commission's review is to determine whether a use, lot, or structure qualifies for nonconforming status. The purpose of the Commission's review is not to establish a reasonable schedule for termination of a nonconformity. The Planning Commission has no authority to terminate a (legal) nonconforming use even if it significantly impairs the public health, safety and general welfare. Even if the zoning map or text were amended, a (legal) nonconforming use could not be eliminated. Furthermore, the Planning Commission does not have the discretion to authorize the continuation of an illegal use for any period, including a nonconforming use that loses its nonconforming status and becomes an illegal use.

Notwithstanding HCC Ordinance 09-10(A), all applications for formal acceptance of nonconforming use should be reviewed by the Planning Commission and be

heard at a public hearing, **including** those involving areas annexed on March 20, 2002. Formally accepting any nonconforming use substantially affects the property rights of surrounding properties. Procedural due process demands that these surrounding property owners be notified and given an opportunity to be heard. Contrary to the implications within the Planning Commission's procedural manual, the provisions adopted under Ordinance 09-10(A) provide that certain applications be submitted to the City Planner but there is no provision of HCC that actually gives the City Planner the authority to unilaterally grant or deny such applications. Furthermore, virtually all nonconforming uses within the city, excluding those in the annexed areas, would involve structures that existed legally on or before September 27, 1982 and therefore be subject to HCC 21.61.050(b)(4). The "other nonconforming uses and structures," described in HCC 21.61.050 and allegedly subject to Commission review and public hearing, are virtually nonexistent. Expediency is no justification for violating due process. Ordinance 09-10(A) should be amended or rescinded.

The provision that "actual construction lawfully begun prior to the effective date of the zoning ordinance will be allowed to continue provided the work will be carried on diligently" is excessively vague, subjective, and arbitrary. It also conflicts with HCC 21.61.015 which states "'Use' means activity actually conducted on a lot or in a structure, and for which the lot or structure is actually occupied and maintained, regardless of intent." Accordingly, the "construction underway" provision should be deleted.

Nonconforming Uses of Land/Structures

The entire first paragraph of this section should be deleted. "Structures existing prior to September 28, 1982 or before March 20, 2002 for annexed areas" is not the correct criteria for establishing nonconforming uses of land/structures. That criteria is listed under sections 1-4 that follow.

"Nonconforming structures may be continued and/or expanded only if **it** does not increase **its** nonconformity" is grammatically flawed and better stated elsewhere. This sentence should be deleted.

"A reasonable schedule for the termination of a nonconforming land use/structure which specifically impairs the public health, safety and general welfare will be established by amendment to the zoning ordinance. (See Zoning Amendment procedure)." This paragraph has nothing to do with the Planning Commission's consideration of nonconforming uses and should be deleted. No provision of HCC authorizes the termination of a nonconforming use or any other legal use that "impairs" public health, safety and/or general welfare. The termination of illegal uses is irrelevant to this section.

Zoning Ordinance Amendments

There is no need to delete the existing review standards as they were put in place to evaluate whether all of the elements for rezoning prescribed by the Alaska Supreme Court are satisfied. (See attached e-mail from former City Attorney Gordon Tans to City Planner Zak Tucker dated February 25, 2003). Why would the Planning Commission *not* want to evaluate the public need and justification for a proposed rezone, or the effect on the public health, safety, and welfare, or the effect on the district and surrounding property, or the relationship to the Comprehensive Plan and the purpose of the zoning regulations? Is it now the Planning Commission's intention to recommend approval of arbitrary rezones, rezones without legitimate public purpose, and rezones that are not consistent with the Comprehensive Plan? Why delete the requirement that the Commission make findings to support its recommendation(s) to the City Council? This seems like a good way to articulate the basis for the Commission's recommendations and to help insure that they are not arbitrary.

The Comprehensive Plan contains many conflicting goals and objectives. It is not sufficient that a rezone amendment fulfill just one or two minor goals or objectives of the Comprehensive Plan while undermining or conflicting with other goals and objectives of the plan. Any proposed amendment that does not further the *overall* goals and objectives of the Comprehensive Plan should be denied.

According to a zoning authority cited by the Alaska Supreme Court, reclassifications of parcels under three acres are nearly always found invalid. So why does the City of Homer encourage rezones of 2 acres and even less? Professor Ziegler calls an amendment intended only to benefit the owner of the rezoned tract the "classic case" of spot zoning. (See *Griswold v. City of Homer*, 925 P.2d 1015 at 1022). The Alaska Supreme Court defined spot zoning at 1020, footnote 6: "spot zoning is simply the legal term of art for a zoning decision which affects a small parcel of land and which is found to be an arbitrary exercise of legislative power." The Alaska Supreme Court also quoted Anderson 5.15 at 370 as follows: "It is inherently difficult to relate a reclassification of a single lot to the comprehensive plan; it is less troublesome to demonstrate that a change which affects a larger area is in accordance with a plan to control development for the benefit of all." *Griswold v. City of Homer*, 925 P.2d 1015 at 1024. Former City Attorney Gordon Tans stated that the 1996 *Griswold* opinion (attached hereto) should be required reading by all commission members before they decide to grant or deny any rezoning application of any size. It should also be required reading before deciding to approve the proposed amendments to the Planning Commission's Policy and Procedures Manual.

Sincerely,



Beverly Guyton

From: Tans, Gordon-ANC [GTans@perkinscoie.com]
Sent: Tuesday, February 25, 2003 3:24 PM
To: Zak Tucker (E-mail)
Cc: Walt Wrede (E-mail)
Subject: contract rezoning application

Zak,
my recent review of the contract rezoning question caused me to look at the contract rezoning application. I think the application misses almost all of the important questions. It should be revised to require the applicant to give answers to the kinds of questions that I discussed in my recent letter. In particular, it should ask questions like these:

"How is this rezoning consistent with the purposes of the Homer comprehensive plan? In answering, provide references to specific provisions of the comprehensive plan."

"Describe the public purposes served by this rezoning."

"Describe the benefits and detriments of this proposed rezoning to (a) the community, (b) the neighboring landowners, and (c) the property owner (you.)"

Basically, my idea is this. The legal burden is on the landowner requesting the change to prove that all of the elements for rezoning, as described in *Griswold v. Homer* (the 1996 decision), are satisfied. He or she should tell the commission how the proposal meets the applicable tests.

The 1996 *Griswold* opinion should be required reading by all commission members before they decide to grant or deny the Hodnik or any other rezoning application of any size.

Gordon Tans
gtans@perkinscoie.com
Anchorage, Alaska

Frank S. GRISWOLD, Appellant,

v.

CITY OF HOMER, Appellee.

No. S-6532.

Supreme Court of Alaska.

Oct. 25, 1996.

Property owner sued city, challenging amendment to city's zoning and planning code to allow motor vehicle sales and services in central business district. The Superior Court, Third Judicial District, Homer, Jonathan H. Link, J., ruled against owner on all issues and ordered owner to pay city's court costs and attorney fees. Owner appealed. The Supreme Court, Eastaugh, J., held that: (1) amendment was not improper spot zoning; but (2) conflicted city council member's vote to approve amendment necessitated remand to superior court; and (3) owner was public interest litigant who could not be assessed city's attorney fees and costs.

Affirmed in part, reversed and remanded in part.

Rabinowitz, J., filed opinion dissenting in part.

1. Zoning and Planning ⇨170

Amendment to city's zoning and planning code to allow motor vehicle sales and services in central business district was not improper spot zoning; ordinance was consistent with city's comprehensive plan, and possible detrimental effect on property values and esthetics was outweighed by benefits of encouraging filling in of vacant spaces in district, increasing convenience and accessibility for vehicle sales and service customers, and promoting orderly growth and development. Homer, AK, Ordinance 92-18.

2. Constitutional Law ⇨70.3(4)

Municipal Corporations ⇨63.10

It is role of elected representatives rather than courts to decide whether particular statute or ordinance is wise.

3. Appeal and Error ⇨842(2)

Supreme Court gives independent consideration to legal conclusions of superior court.

4. Appeal and Error ⇨1008.1(5)

Supreme Court will uphold superior court's findings of fact unless they are clearly erroneous.

5. Zoning and Planning ⇨608.1, 613

Supreme Court invalidates zoning decisions which are result of prejudice, arbitrary decision-making, or improper motives.

6. Constitutional Law ⇨278.2(1)

Legislative body's zoning decision violates substantive due process if it has no reasonable relationship to legitimate government purpose. U.S.C.A. Const.Amend. 14.

7. Zoning and Planning ⇨35, 162

Not all small-parcel zoning is illegal, but spot zoning is per se illegal; "spot zoning" is zoning decision which affects small parcel of land and which is found to be arbitrary exercise of legislative power.

See publication Words and Phrases for other judicial constructions and definitions.

8. Zoning and Planning ⇨162

In determining whether amendment to zoning ordinance constitutes spot zoning, court considers consistency of amendment with comprehensive plan, benefits and detriments to owners, adjacent landowners, and community, and size of area rezoned.

9. Zoning and Planning ⇨30, 35

Ordinance which complies with comprehensive plan may still constitute arbitrary exercise of city's zoning power, as required to support claim of improper "spot zoning," and nonconformance with comprehensive plan does not necessarily render zoning action illegal.

10. Zoning and Planning ⇨35

Consistency with comprehensive plan is one indication that zoning action challenged as "spot zoning" has rational basis and is not arbitrary exercise of city's zoning power.

11. Zoning and Planning ⇨35

Filling in vacant places, and increasing tax base and employment of community are not automatically legitimate zoning goals for purposes of deciding whether particular zoning action constitutes improper spot zoning.

12. Zoning and Planning ⇨35, 162

Small-parcel zoning designed merely to benefit one owner constitutes unwarranted discrimination and arbitrary decision-making, unless ordinance amendment is designed to achieve statutory objectives of city's own zoning scheme, even if purpose of change is to bring nonconforming use into conformance or allow it to expand.

13. Zoning and Planning ⇨162

Relationship between size of reclassification and finding of spot zoning is symptomatic rather than causal, and thus size of area rezoned should not be considered more significant than other factors in determining whether spot zoning has occurred.

14. Zoning and Planning ⇨35

Affected parcel cannot be too large per se to preclude finding of spot zoning, nor can it be so small that it mandates finding of spot zoning.

15. Municipal Corporations ⇨197

City council member had substantial financial interest in zoning reclassification which increased permissible uses of his property, and thus member should have refrained from voting. Homer, AK, City Code 1.24.040(g).

16. Municipal Corporations ⇨95

Focus of common-law conflict of interest analysis is on relationship between public official's financial interest and possible result of official's action, regardless of official's intent.

17. Municipal Corporations ⇨95

Common law of conflicts of interest, rather than Executive Branch Ethics Act, applies to municipal officers. AS 39.52.010-39.52.960.

18. Officers and Public Employees ⇨110

Integrity required of public officeholders demands that appearance of impropriety be avoided.

19. Municipal Corporations ⇨111(S)

In determining whether vote of conflicted city council member demands invalidation of ordinance, courts should keep in mind that two basic public policy interests served by impartial decision-making are accuracy of decisions and avoidance of appearance of impropriety.

20. Municipal Corporations ⇨111(S)

If city council member with disqualifying interest casts decisive vote, ordinance must be invalidated.

21. Municipal Corporations ⇨111(S)

If ordinance would have passed without vote of conflicted city council member, court should examine whether member disclosed interest or other council members were fully aware of it, extent of member's participation in decision, and magnitude of member's interest.

22. Municipal Corporations ⇨111(S)

If ordinance would have passed without vote of conflicted city council member, and member did not disclose his or her interest, ordinance is generally invalid, and can stand only if magnitude of member's interest, and extent of his or her participation, are minimal.

23. Municipal Corporations ⇨111(S)

If ordinance would have passed without vote of conflicted city council member, and member disclosed his or her interest, ordinance is valid unless member's interest and participation are so great as to create intolerable appearance of impropriety.

24. Municipal Corporations ⇨122.1(2)

Party challenging city ordinance bears burden of proving its invalidity.

25. Zoning and Planning ⇨749

Conflicted city council member's vote to approve amendment to city's zoning and planning code, to allow motor vehicle sales and services in central business district, necessitated remand to superior court, rather

whe
edge
the
sion.

26.

coun
plan
and
publ
sess
laws
publ
peop
only
to b
econ
not :

Fr

Go

for

MAI
EAS

E.

i. i

In

Ordi

and

sales

Cent

clairr

const

rior

also

coun

prop

hold

parti

the :

i. A

folh

[

st

se

v.

b

tt

60

GRISWOLD v. CITY OF HOMER

Alaska 1017

Cite as 925 P.2d 1015 (Alaska 1996)

than invalidation of amendment, to determine whether other members had actual knowledge of his interest in affected property, and the extent of member's participation in decision.

that participation invalidates the Ordinance. Finally, we hold that Griswold is a public interest litigant who cannot be assessed the City's attorney's fees and court costs.

26. Zoning and Planning 111(S)

Property owner who challenged city council's amendment to city's zoning and planning code to allow motor vehicle sales and services in central business district was public interest litigant who could not be assessed city's attorney fees and costs; owner's lawsuit was designed to effectuate strong public policies, if owner succeeded, numerous people would have benefited from lawsuit, only private party could have been expected to bring action, and owner lacked sufficient economic incentive to bring lawsuit if it did not also involve issues of general importance.

II. FACTS AND PROCEEDINGS

Alaska Statute 29.40.020 requires that each first class borough establish a planning commission which will prepare, submit, and implement a comprehensive plan. This plan must be adopted before the local government can adopt a zoning ordinance. AS 29.40.020-.040. A borough assembly "[i]n accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan ... shall adopt or amend provisions governing the use and occupancy of land." AS 29.40.040. That statute requires the borough to implement the comprehensive plan by adopting provisions governing land use, including zoning regulations. Id. A borough may delegate this responsibility and the planning power to a city within the borough, if the city consents. AS 29.40.010(b). The Kenai Peninsula Borough delegated to the City of Homer the zoning authority for areas within the City.

Frank S. Griswold, Homer, pro se.

Gordon J. Tans, Perkins Coie, Anchorage, for Appellee.

Before MOORE, C.J., and RABINOWITZ, MATTHEWS, COMPTON and EASTAUGH, JJ.

EASTAUGH, Justice.

I. INTRODUCTION

In 1992 the Homer City Council adopted Ordinance 92-18 amending Homer's zoning and planning code to allow motor vehicle sales and services on thirteen lots in Homer's Central Business District. Frank Griswold claims Ordinance 92-18 is invalid because it constitutes spot zoning. We affirm the superior court's rejection of that claim. Griswold also claims the Ordinance is invalid because a council member with a personal interest improperly participated in its adoption. We hold that the council member should not have participated. We consequently remand so the superior court can determine whether

The City adopted a comprehensive land use plan in 1988 and revised it in 1989. The City Council enacted zoning ordinances to implement the plans. Motor vehicle sales and services were not a permissible use within the Central Business District (CBD). Several businesses provided automobile services in the CBD before the City adopted the zoning ordinances. Those businesses were "grandfathered" into the zoning district and allowed to continue to provide those services as nonconforming uses, so long as those uses did not extend beyond the original lot boundaries and the property owners did not discontinue their nonconforming uses for more than one year.

1. AS 29.40.030 defines a comprehensive plan as follows:

[A] compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1) statements of policies, goals, and standards;
- (2) a land use plan;
- (3) a community facilities plan;
- (4) a transportation plan; and
- (5) recommendations for implementation of the comprehensive plan.

61

Guy Rosi Sr. owns a parcel (Lot 13) in the CBD.² Rosi Sr. has continuously operated an automobile repair service on Lot 13. His repair business remains a valid nonconforming use in the CBD. Rosi Sr. also operated an automobile dealership on Lot 13 until sometime prior to 1990, but lost the right to continue that nonconforming use on that lot by discontinuing the vehicle sales business for more than one year.

Guy Rosi Jr. owns Lot 12, which is adjacent to his father's lot. Lot 12 is also in the CBD; because it had never been used for automobile sales or services, these uses were not grandfathered for Lot 12.

In 1986 the City received complaints that Lot 12 was being used for vehicle sales in violation of the zoning ordinance. In May 1988 Rosi Jr. applied to the Homer Advisory Planning Commission for a conditional use permit for Lot 12. The commission denied the application. It found that public services and facilities were adequate to serve the proposed use. The commission also found that automobile sales were not consistent with the purpose of the CBD; were not in harmony with the Comprehensive Plan; would negatively impact neighborhood character; but might not negatively impact the value of adjoining property more than permitted uses.

Rosi Jr. then applied for a contract rezone under Homer City Code (HCC) 21.63.020(c). The City granted the application in 1986, rezoning Rosi Jr.'s lot to General Commercial (GC1) and restricting its use to vehicle sales. Griswold does not challenge the Lot 12 contract rezone in this litigation.

Rosi Sr.'s lot 13 was not affected by the Lot 12 contract rezone. In September 1990 Rosi Sr. requested that the CBD be rezoned to allow vehicle sales and related services. In August 1991 Rosi Sr., stating that he had not received any response to his earlier request, asked that Lot 13 be rezoned to allow vehicle sales and related services. During this period, there were numerous zoning proposals and public hearings regarding automobile-related services in the CBD, but some people spoke in favor of rezoning the area.

Although the Borough's tax assessment records indicate that Guy Rosi Sr. owns only part of Lot

In January 1992 a commission memorandum informed the City Manager that the commission had been wrestling with several possible amendments to the zoning code since 1990, and that "[c]entral to the issue is the Commission's desire to rezone the Guy Rosi property to allow for vehicle sales." The commission noted that a proposed ordinance would allow automobile-related services in the CBD only on Main Street from Pioneer Avenue to the Homer Bypass, excluding corner lots with frontage on Pioneer Avenue and the Homer Bypass Road. However, the commission staff recommended that the council pass an ordinance which would allow automobile-related services "everywhere in the Central Business District or nowhere." The memo stated that the City Attorney felt the proposed ordinance would be difficult to enforce and defend.

In April the City Council adopted Ordinance 92-13, which amended HCC 21.48.020 by adding the following section:

hh. Automobile and vehicle repair, vehicle maintenance, public garage, and motor vehicle sales, showrooms and sales lots, but only on Main Street from Pioneer Avenue to the Homer Bypass Road, excluding corner lots with frontage on Pioneer Avenue or the Homer Bypass Road, be allowed as a permitted use.

The Ordinance passed five-to-zero. One council member was absent. Brian Sweiven was one of the council members voting for the amendment. He owned one of the thirteen lots on which automobile sales and services were to be allowed under Ordinance 92-13. Sweiven both lived on his lot and operated an appliance repair business there. In 1994, stating he had a potential conflict of interest, he refrained from voting on Ordinance 94-13, which would have repealed subsection (hh). A week later he reversed that position and voted not to repeal subsection (hh).

[1] Frank Griswold, the plaintiff in this case, owns an automobile repair shop in the CBD. Its operation was grandfathered in

13, the parties and the trial court have referred to his parcel as "Lot 13." We do the same.

under the zoning code. He also lives in the CBD. Griswold's lot was not one of the thirteen lots directly affected by Ordinance 92-18. Griswold brought suit against the City, alleging under several theories that Ordinance 92-18 is an invalid exercise of the City's zoning power and that Sveiven's participation in the adoption of Ordinance 92-18 invalidates the Ordinance. Following a bench trial, the superior court found against Griswold on all issues. It later ordered him to pay a portion of the City's court costs and attorney's fees. Griswold appeals.

III. DISCUSSION

[2-4] We have repeatedly held that it is the role of elected representatives rather than the courts to decide whether a particular statute or ordinance is a wise one.² *Novene v. Municipality of Anchorage*, 704 P.2d 199, 202 (Alaska 1985); *Seward Chapel, Inc. v. City of Seward*, 655 P.2d 1293, 1299 (Alaska 1982). In *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974), we stated:

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

3. This appeal concerns the validity of an enactment of a legislative body, rather than a decision of a zoning board. See *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974) (analyzing a Borough Assembly's ordinance as a legislative enactment). We are here reviewing a superior court judgment rejecting claims that a municipal ordinance is invalid. We give independent consideration to the legal conclusions of the superior court. *Beesley v. Van Doren*, 873 P.2d 1230, 1231 (Alaska 1994). We will uphold the superior court's findings of fact unless they are clearly erroneous. *In re R.K.*, 351 P.2d 62, 66 (Alaska 1993).

4. We have held that, although a planning commission is not required to make specific findings

(Footnote omitted.) See also 6 Eugene McQuillan, *Municipal Corporations* § 20.05, at 12 (3d ed. 1988) ("The validity of an ordinance will be upheld where there is room for a difference of opinion 'even though the correctness of the legislative judgment is doubtful.'") (quoting *Western Springs v. Bernhagen*, 326 Ill. 100, 156 N.E. 753, 754 (1927)).

[5, 6] However, we will invalidate zoning decisions which are the result of prejudice, arbitrary decision-making, or improper motives. See *South Anchorage Concerned Coalition v. Coffey*, 862 P.2d 168, 174 (Alaska 1993) ("In reviewing zoning decisions, courts generally try to guard against prejudice, arbitrary decision-making, and improper motives.") (citing 3 Edward H. Ziegler Jr., *Rathkopf's The Law of Zoning and Planning* § 41.06, at 41-29, § 41.14(3)(b), at 41-93 (1992)). Similarly, a legislative body's zoning decision violates substantive due process if it has no reasonable relationship to a legitimate government purpose. *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452. Moreover, another court has noted, "The dividing line between . . . mere difference in opinion and what is arbitrary is the line between zoning based on objective factual evidence and zoning without a rational basis." *Smith v. County of Washington*, 241 Or. 380, 406 P.2d 545, 548 (1965) (citations omitted).⁴ In this case, Griswold argues that the City's Ordinance does not have a legitimate basis but rather is arbitrary spot zoning.⁵

We have not previously had the opportunity to consider whether a municipality's plan-

supporting its decisions, it must articulate reasons for its decisions sufficient to assist the parties preparing for review and to restrain agencies within the bounds of their jurisdiction. *South Anchorage Concerned Coalition v. Coffey*, 862 P.2d 168, 175 (Alaska 1993) (citing *City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 570, 575 (Alaska 1985); and *Kenai Peninsula Borough v. Ryherd*, 628 P.2d 557, 562 (Alaska 1981)).

5. Griswold also argues that the Ordinance is invalid because it is inconsistent with the City's zoning code and comprehensive plan. We consider this argument in conjunction with our discussion of spot zoning.

63

ning and zoning enactment is invalid because it constitutes "spot zoning." The City states that "this is not a case of 'spot zoning' at all" because the area in question remains zoned CBD. However, treatise discussions of spot zoning appear to make no distinction between cases where a zoning district has been reclassified and those where a new use without district reclassification is at issue. See, e.g., 1 Robert M. Anderson *American Law of Zoning 3d* § 5.12, at 358 (1986) ("The common [spot zoning] situation is one in which an amendment is initiated at the request of an owner or owners who seek to establish a use prohibited by the existing regulations."). See also, *Ballenger v. Door County*, 131 Wis.2d 422, 388 N.W.2d 624, 627 (App.1986) (applying spot zoning analysis in a case where the zoning district remained the same but the permitted uses within the district were expanded); *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452 (whether zoning decision violates substantive due process depends on whether it has a reasonable relationship to a legitimate public purpose).

A. Claim of Spot Zoning

[7] The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners..." Anderson, *supra*, § 5.12, at 359 (quoting *Jones v. Zoning Bd. of Adjustment of Long Beach*, 32 N.J.Super. 397, 108 A.2d 498 (1954)). Spot zoning "is the very antithesis of planned zoning." *Id.*⁶ Courts have developed numerous variations of this definition. *Id.* These variations have but minor differences and describe any zoning amendment

6. The City argues that spot zoning should not be considered *per se* illegal, but merely descriptive. Thus, whether spot zoning is valid or invalid would depend upon the facts of each case. See *Chrismon v. Guilford County*, 322 N.C. 611, 370 S.E.2d 579, 588 (1988); *Save Our Rural Env't v. Snohomish County*, 99 Wash.2d 363, 662 P.2d 816 (1983); *Tennison v. Shomette*, 38 Md.App. 1, 379 A.2d 137 (1977). However, we will follow the vast majority of jurisdictions which hold that, while not all small-parcel zoning is illegal, spot zoning is *per se* illegal. See *Chrismon*, 370 S.E.2d at 583 (noting that majority of jurisdictions regard spot zoning as a legal term of art.)

which "reclassifies a small parcel in a manner inconsistent with existing zoning patterns, for the benefit of the owner and to the detriment of the community, or without any substantial public purpose." Anderson, *supra*, § 5.12, at 362. Professor Ziegler states:

Faced with an allegation of spot zoning, courts determine first whether the rezoning is compatible with the comprehensive plan or, where no plan exists, with surrounding uses. Courts then examine the degree of public benefit gained and the characteristics of land, including parcel size and other factors indicating that any reclassification should have embraced a larger area containing the subject parcel rather than that parcel alone. No one particular characteristic associated with spot zoning, except a failure to comply with at least the spirit of a comprehensive plan, is necessarily fatal to the amendment. Spot zoning analysis depends primarily on the facts and circumstances of the particular case. Therefore the criteria are flexible and provide guidelines for judicial balancing of interests.

3 Edward H. Ziegler Jr., *Rathkoph's The Law of Zoning and Planning* § 28.01, at 28-3 (4th ed.1995).

[8] In accord with the guidance offered by Professor Ziegler, in determining whether Ordinance 92-18 constitutes spot zoning, we will consider (1) the consistency of the amendment with the comprehensive plan; (2) the benefits and detriments of the amendment to the owners, adjacent landowners, and community; and (3) the size of the area "rezoned."

Edward H. Ziegler Jr., *Rathkoph's The Law of Zoning and Planning* § 28.01 n. 2 (4th ed.1995) (compiling cases holding same); Anderson, *supra*, § 5.12, at 359 n. 46 (same).

Thus, spot zoning is simply the legal term of art for a zoning decision which affects a small parcel of land and which is found to be an arbitrary exercise of legislative power. Cf. *Concerned Citizens of S. Kenai Peninsula*, 527 P.2d at 452 ("[T]he constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy...").

64

pi:
co:
zo:
Be
(A:
he:
zor
§ 5
wit
tha
tion
of t
F
city
ter:
inte
and
bou
the
"
nes:
tivity
busi
CBI
and
ture
are
prov
merc
ty;
alrea
the ;
and
cial c
and
date
comm
(5) to
beau:
Gr:
intern
howe
are c
merci
the
cor
vices
ler of
sister:

Cite as 925 P.2d 1015 (Alaska 1996)

1. *Consistency with the comprehensive plan*

[9,10] Just as an ordinance which complies with a comprehensive plan may still constitute an arbitrary exercise of a city's zoning power, *Watson v. Town Council of Bernalillo*, 111 N.M. 374, 805 P.2d 641, 645 (App.1991), nonconformance with a comprehensive plan does not necessarily render a zoning action illegal. *Anderson, supra*, § 5.06, at 339-40. However, consistency with a comprehensive plan is one indication that the zoning action in question has a rational basis and is not an arbitrary exercise of the City's zoning power.

Homer's comprehensive plan divides the city into several zoning areas. By its own terms, Homer's comprehensive plan is not intended to set specific land use standards and boundaries; specific standards and boundaries are instead implemented through the City's zoning ordinance. The plan states, "The City shall encourage a mix of business/commercial and public/governmental activities in areas zoned or planned as central business district." The plan states that the CBD is "intended primarily for retail sales and services occurring within enclosed structures." The plan's objectives for the CBD are (1) to guide growth and development to provide a centrally located business and commercial area and focal point for the community; (2) to encourage infilling of the area already designated CBD before expanding the area; (3) to promote a safe, attractive, and easily accessible business and commercial core for pedestrian and vehicular visitors and residents; (4) to attract and accommodate a variety of uses to fill the business and commercial needs of downtown Homer; and (5) to tie into state and federal programs that beautify the business and commercial core.

Griswold does not dispute that the CBD is intended to allow commercial uses. He notes however, that although auto-related services are explicitly permitted in the General Commercial 1 District under HCC 21.49.020(d), the planning commission previously denied a conditional use permit for auto-related services on Main Street, specifically finding, *inter alia*, that automobile sales were not consistent with the purpose of the CBD and

were not in harmony with the comprehensive plan. He also notes that the comprehensive plan provides that the CBD was meant primarily for retail sales and services occurring within enclosed structures. Further, the fact that the City began phasing out auto-related services in the CBD when it adopted the comprehensive plan, while simultaneously specifically permitting these services in the General Commercial I District, indicates to Griswold that auto-related sales and services were, at least at one time, considered incompatible with the CBD.

The superior court concluded that the Ordinance was consistent with the comprehensive plan. In so concluding, it considered the policy statement implementing the Ordinance, and found that the Ordinance "encourages private investment and infilling" and "enhances convenient access to other parts of the CBD which are designated for other uses." It noted that Policy 4.1 provided: "The City shall research the nature of land uses and CBD land use needs and evaluate the need for subzones in the CBD."

Griswold points to trial evidence that the expansion of auto-related services in the CBD does not further all the goals of the comprehensive plan, but he fails to demonstrate that the superior court's finding—that the Ordinance is consistent with the plan—is clearly erroneous. Although the evidence presented by Griswold would permit a finding that the City Council had believed in 1986 that auto-related uses were incompatible with the CBD and the zoning ordinance as it then read, that evidence does not compel a finding that auto-related uses are in fact incompatible with the CBD or comprehensive plan, or that the City Council's 1992 change of opinion is unsupportable and arbitrary.

The superior court did not clearly err in making the findings discussed above. The court permissibly relied on Policy 4.1, which anticipates the type of action at issue here. The comprehensive plan does not expressly prohibit automobile sales or service establishments in the CBD. As the City notes, motor vehicle sales are most appropriately classified as a business and commercial use, for which the CBD was intended under the plan.

parcel in a manner
sting zoning patterns,
ne owner and to the
nunity, or without any
pose." Anderson, su-
rofessor Ziegler states:

gation of spot zoning,
st whether the rezon-
th the comprehensive
plan exists, with sur-
rts then examine the
enefit gained and the
nd, including parcel
s indicating that any
ld have embraced a
ng the subject parcel
rceal alone. No one
istic associated with
failure to comply with
a comprehensive plan,
to the amendment.
depends primarily on
stances of the particu-
the criteria are flexi-
ali for judicial bal-

*Jr., Rathkoph's The
ning* § 23.01, at 28-

the guidance offered
determining whether
ates spot zoning, we
consistency of the
prehensive plan; (2)
ents of the amend-
adjacent landowners,
the size of the area

Rathkoph's The Law of
§.01 n. 2 (4th ed.1995)
same); Anderson, su-
same).

mply the legal term of
which affects a small
ch is found to be an
ative power. Cf. *Con-
Peninsula*, 527 P.2d at
guarantee of substan-
only that a legislative
ratory but instead based
(7).

Homer's city planner testified at trial that the Ordinance is in accordance with Homer's comprehensive plan. We conclude that the superior court did not err in holding that Ordinance 92-18 is consistent with the City's comprehensive plan.

2. *Effect of small-parcel zoning on owner and community*

Perhaps the most important factor in determining whether a small-parcel zoning amendment will be upheld is whether the amendment provides a benefit to the public, rather than primarily a benefit to a private owner. See Anderson, *supra*, §§ 5.13-5.14; Ziegler, *supra*, § 28.03, § 28.04, at 28-19 (calling an amendment intended only to benefit the owner of the rezoned tract the "classic case" of spot zoning). Courts generally do not assume that a zoning amendment is primarily for the benefit of a landowner merely because the amendment was adopted at the request of the landowner. Anderson, *supra*, § 5.13, at 368. If the owner's benefit is merely incidental to the general community's benefit, the amendment will be upheld. Ziegler, *supra*, § 28.04, at 28-19 to 28-20. The City argues that Ordinance 92-18 serves the interests of the general community rather than primarily the interests of the Rosis. We agree.

a. *Benefits and detriments to the community*

Griswold argues that there are many negative aspects of the City's decision to allow auto-related uses in the CBD. Griswold presented evidence that the neighborhood character would be harmed by the zoning amendment. He presented evidence that a newspaper article quoted Planning Commissioner Cushing as saying that public opinion was overwhelmingly against allowing auto-related services in the CBD and that many Homer citizens expressed the opinion that

their homes and businesses would be harmed by introducing auto-related services into the area. A real estate agent testified that property in the CBD has a higher value than property in the GC1 District.

Many jurisdictions, including this one, have held that interests such as the preservation of neighborhood character, traffic safety, and aesthetics are legitimate concerns. *Barber v. Municipality of Anchorage*, 776 P.2d 1035, 1037 (Alaska) (holding the government's interest in aesthetics is substantial and should be accorded respect), *cert. denied*, 493 U.S. 922, 110 S.Ct. 287, 107 L.Ed.2d 267 (1989); *Cadoux v. Planning and Zoning Comm'n of Weston*, 162 Conn. 425, 294 A.2d 582, 584 (holding increased traffic a valid reason to deny application for rezone), *cert. denied*, 408 U.S. 924, 92 S.Ct. 2496, 33 L.Ed.2d 385 (1972). Contrary to the implication of the City's argument,⁷ these are tangible harms. Moreover, the City itself appears to be concerned about the effects of auto-related services on property values and aesthetics, as evidenced by the council's findings supporting its confinement of the zoning change to Main Street,⁸ and the commission's earlier finding that use for automobile sales would negatively impact neighborhood character.

[11] However, despite this negative aspect of Ordinance 92-18, it appears that the Ordinance will result in genuine benefits for the City of Homer. The City notes that before adopting Ordinance 92-18, for a year and a half it deliberated proposals which would allow auto-related uses in the CBD and delineated the many benefits which it believed the Ordinance will confer upon the community. These benefits include encouraging filling in vacant places in the CBD; increasing the tax base and employment in the CBD; increasing convenience and accessibility for local and regional customers for vehicle repairs or purchases; and promoting orderly growth and development in the

certain negative impacts in more tourist-oriented areas. These negative impacts include traffic congestion, visual blight, detracting from the pleasing aesthetic nature of Pioneer Avenue, and conflict with the comprehensive plan's goal of promoting sidewalks, pocket parks, and pedestrian amenities in the CBD.

7. The City argues that Griswold could not show any "concrete detriment" but instead "could only argue that car lots were not pleasant to look at, they didn't alleviate traffic, and other similar arguments."

8. At trial the City's planner testified that the Ordinance was restricted to Main Street to avoid

CBD.⁹ Homer's city planner testified that the Ordinance provides a convenience to the public and guides growth and development to a centrally located area, while restricting such uses to areas away from tourists or to areas for visitors and pedestrians.

The superior court stated that Ordinance 92-18 advances legitimate legislative goals articulated in HCC 21.28.020 including but not limited to regulating and limiting the density of populations; conserving and stabilizing the value of properties; providing adequate open spaces for light and air; preventing undue concentration of population; lessening congestion on streets and highways; and promoting health, safety and general welfare. The court found "as a matter of fact and law that Ordinance No. 92-18 bears a substantial relationship between legitimate legislative goals and the means chosen to achieve those goals."

Griswold has demonstrated that there are some negative aspects of allowing auto-related uses in the CBD. Nonetheless, giving

9. Not all of the goals articulated by the City can be considered legitimate *per se*. For example, any zoning change which eases restrictions on property use could be said to further the goal of "filling in vacant places." Similarly, increasing the tax base and the employment of a community is not automatically a legitimate zoning goal. See *Concerned Citizens for McHenry, Inc. v. City of McHenry*, 76 Ill.App.3d 793, 32 Ill.Dec. 563, 568, 395 N.E.2d 944, 950 (1979) (an increase in the tax base of the community as the primary justification for a rezone is "totally violative of all the basic principles of zoning"); *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J.Super. 11, 283 A.2d 353, 357 (1971) (finding that "fiscal zoning *per se* is irrelevant to the statutory purposes of zoning [although] 'alleviating tax burden is a permissible zoning purpose if done reasonably and in furtherance of a comprehensive plan' (citing *Gruber v. Mayor and Tp. Committee of Raritan Tp.*, 39 N.J. 1, 186 A.2d 489, 493 (1962))"; *Chrobuck v. Snohomish County*, 78 Wash.2d 858, 480 P.2d 489, 497 (1971) (allowing industrial development on only one site would be arbitrary spot zoning despite the potential tax revenue the oil refinery would produce). Thus, the goal of increasing the tax base and employment opportunities is usually legitimate only if the ordinance is otherwise reasonable and in accordance with the comprehensive plan.

Some courts have allowed inconsistent small or single parcel rezoning in order to raise tax revenues or stimulate needed industry if the public receives higher tax revenue or employment

proper deference to the City Council as legislative policymaker and to the superior court as finder of fact, we cannot conclude that these detriments so outweigh the benefits of Ordinance 92-18 that we must hold the Ordinance was arbitrarily and capriciously adopted.

b. *Benefit to the landowner*

[12] It appears that initially the City was primarily concerned with Rosi Sr.'s interests.¹⁰ Rosi Sr. initiated the inquiry into rezoning the CBD. Before the City amended the zoning code, the planning commission chair stated that "[c]entral to the issue is the Commission's desire to rezone the Guy Rosi property to allow for vehicle sales." In 1991 commissioners "voiced their dislike for spot zoning but felt it important to right a wrong [done to Mr. Rosi]." The City planning staff stated that "'spot zoning' is not good planning; however there are extenuating circumstances that support the proposed change in zone." The commission supported these con-

industries. Ziegler, *supra*, § 23.04, at 23-20. Generally, the facility being built must be indisputably needed, and the city must have secured assurance as to the existence and amount of increased employment and tax revenue. For example, in *Information Please Inc. v. County Comm'rs of Morgan County*, 42 Colo.App. 392, 600 P.2d 36 (1979), the county rezoned agricultural area to industrial to accommodate an electric utility after determining the plant would add \$45,000,000 to the tax base of the county, and provide approximately 250 jobs after it was completed. *Id.* 600 P.2d at 38. In *Watson v. Town Council of Bernalillo*, 111 N.M. 374, 805 P.2d 641, 647 (App.1991), the county made findings that the rezone would employ eighty-seven people from the community and would produce tax revenues constituting twenty-five percent of the city's budget. In *Chrisman v. Guilford County*, 322 N.C. 611, 370 S.E.2d 579, 590 (1988), the court approved the rezoning of two contiguous tracts from agricultural to conditional use industrial district to facilitate expansion of an already-operating grain elevator. The court stated that the "[e]vidence clearly shows that [the owner's] operation is beneficial to area farmers." *Id.* It also noted that spot zoning will be allowed even where the adjacent property owners object and the owner receives a greater benefit than others if there is a community-wide need for the rezone. *Id.*

10. Currently, Rosi Jr.'s lot is not affected by Ordinance 92-13 since that lot has been contract rezoned to GCI.

67

clusions with the following findings of fact: (1) the property owner had owned and operated a business on the property since the early 1950's; (2) public testimony and response to staff were positive; (3) the City Attorney's response was positive; and (4) the business was an expensive business to establish and maintain. This desire to accommodate the needs of a businessman who had been in the community for decades is understandable. Nevertheless, small-parcel zoning designed merely to benefit one owner constitutes unwarranted discrimination and arbitrary decision-making, unless the ordinance amendment is designed to achieve the statutory objectives of the City's own zoning scheme, even where the purpose of the change is to bring a nonconforming use into conformance or allow it to expand. See *Speakman v. Mayor of N. Plainfield*, 8 N.J. 250, 84 A.2d 715, 718-19 (1951). Otherwise, the City would be forced either to discriminate arbitrarily among landowners seeking relaxed restrictions or to abandon the concept of planned zoning altogether. Thus, if assisting Guy Rosi Sr. was the primary purpose of the Ordinance, we would invalidate it even if it was not the product of discriminatory animus.

However, it appears that the City Council was ultimately motivated to pass the Ordinance because of the community benefits the council perceived rather than because of the benefit the Ordinance would confer upon Rosi Sr. The Ordinance restricted auto-related uses to one street not because its real intent was to benefit Rosi Sr.'s property, but, as Homer's city planner testified, because the City desired to minimize the negative impact of auto-related uses, especially the impact of such uses on more pedestrian and tourist-oriented areas such as Pioneer Avenue. See also *supra* note 7. Similarly, it appears that vacant lots located farther from Pioneer Avenue were excluded not because Rosi did not own these lots, but in an attempt to prevent urban sprawl by filling in vacant places in developed areas before expanding develop-

ment. These reasons are legitimate, nondiscriminatory justifications for enacting the Ordinance.

3. Size of "rezoned" area

Ordinance 92-18 directly affects 7.29 acres.¹¹ The size of the area reclassified has been called "more significant [than all other factors] in determining the presence of spot zoning." Anderson, *supra*, § 5.15, at 378. The rationale for that statement is that "[i]t is inherently difficult to relate a reclassification of a single lot to the comprehensive plan; it is less troublesome to demonstrate that a change which affects a larger area is in accordance with a plan to control development for the benefit of all." *Id.* at 379.

[13, 14] We believe that the relationship between the size of reclassification and a finding of spot zoning is properly seen as symptomatic rather than causal, and thus that the size of the area rezoned should not be considered more significant than other factors in determining whether spot zoning has occurred. A parcel cannot be too large per se to preclude a finding of spot zoning, nor can it be so small that it mandates a finding of spot zoning. Although Anderson notes that reclassifications of parcels under three acres are nearly always found invalid, while reclassifications of parcels over thirteen acres are nearly always found valid, *id.*, as Ziegler notes, the relative size of the parcel is invariably considered by courts. Ziegler, *supra*, § 28.04, at 28-14. One court found spot zoning where the reclassified parcel was 635 acres in an affected area of 7,630 acres. *Chrobuck v. Snohomish County*, 78 Wash.2d 558, 480 P.2d 489, 497 (1971).

Nor does the reclassification of more than one parcel negate the possibility of finding spot zoning. Ziegler, *supra*, § 28.04, at 28-15. In this case, there was some evidence that the reclassified area may have been expanded to avoid a charge of spot zoning. Other courts have invalidated zoning amendments after finding that a multiple-parcel

11. There may be an immaterial discrepancy about the size of the reclassified area. There was testimony Ordinance 92-18 affected 7.29 acres, but the trial court's memorandum decision stated the affected lots contained about 7.44 acres.

That decision did not state that the exact size of the parcel was significant to its determination that the amendment does not constitute illegal spot zoning.

GRISWOLD v. CITY OF HOMER

Cite as 925 P.2d 1015 (Alaska 1996)

reclassification was a subterfuge to obscure the actual purpose of special treatment for a particular landowner. *Id.* See *Atherton v. Selectmen of Bourne*, 337 Mass. 250, 149 N.E.2d 232, 235 (1958) (holding that the amendment is "no less 'spot zoning' by the inclusion of the additional six lots than it would be without them" where proponents of a zoning change apparently anticipated a charge of spot zoning and enlarged the area to include the three lots on either side of the lot in question).

Homer's CBD is over 400 acres; the reclassified area is 7.29 acres. The CBD appears to contain approximately 500 lots; the reclassified area contains 13 lots. A comparison of the size of the area rezoned and the size of the entire CBD is not in itself sufficient to persuade us that the City's decision was the product of prejudice, arbitrary decision-making, or improper motives. *South Anchorage Concerned Coalition v. Coffey*, 862 P.2d 163, 174 (Alaska 1993).

Further, it is not necessarily appropriate to compare the area of the affected lots with that of the entire CBD. The comprehensive plan recognized the possibility of subzones. The City considered significant portions of the CBD to be inappropriate for automobile sales and services, particularly Pioneer Avenue and the Bypass. Subtracting those areas from the entire CBD, the reclassified area on Main Street is a relatively larger part of the remaining CBD.

Thus, having considered the relative size of the rezoned area in determining whether Ordinance 92-13 constituted spot zoning, we hold that the size of the area rezoned does not require a finding of spot zoning given other factors supporting a contrary conclusion. We conclude that the superior court did not err in finding that Ordinance 92-13 does not constitute spot zoning.

B. Claim of Conflict of Interest

[15] Homer City Council member Brian Sweiven owned one of the thirteen lots in the

12. In addition, Homer's City Code mandates that a city official "disclose any financial interest in any matter before the board or commission before debating or voting upon the matter" and prohibits the official from participating in the

reclassified area. He was one of nine owners directly affected by Ordinance 92-18. It appears that it was Sweiven who first recommended to the commission that the rezone apply only to Main Street. An article in the Homer News was titled "Sweiven proposes commercial zoning for downtown Homer." The article refers to the idea of rezoning Main Street as "Sweiven's proposal." Griswold alleges that Sweiven had a disqualifying conflict of interest under Homer municipal law and that his participation in the adoption of Ordinance 92-18 therefore invalidates the Ordinance, even though Sweiven's vote was not necessary for passage. The superior court found that Sweiven did not have a disqualifying conflict of interest and that even if he had, his participation in the deliberations and vote would not invalidate Ordinance 92-18.

1. Was there a conflict of interest?

[16.17] Homer City Code 1.24.040(g) states:

A member of the Council shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter. The Mayor or other presiding officer shall rule on the request; however, the decision may be overridden by the majority vote of the Council. Should a Council member fail to declare a substantial financial interest, the Council may move to disqualify that member from voting by a majority vote of the body. A Council member with a conflict of interest regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. [12]

The code defines "substantial financial interest" as

1. An interest that will result in immediate financial gain; or
2. An interest that will result in financial gain which will occur in the reasonably foreseeable future.

debate or vote unless the board or commission determines that a financial interest is not substantial as defined in HCC 1.12.010. HCC 1.12.070 (emphasis added).

HCC 1.12.010(a). Under common law, "the focus . . . [is] on the relationship between the public official's financial interest and the possible result of the official's action, regardless of the official's intent." *Carney v. State, Bd. of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) (citing *Marsh v. Town of Hanover*, 113 N.H. 667, 313 A.2d 411, 414-15 (1973)).¹³ The plain language of HCC 1.24.040(g) appears to coincide with this principle.

The City Council did not address Sweiven's alleged conflict of interest until after the Ordinance had been passed. After the council passed the Ordinance, the City Attorney advised the council to address the matter at its next meeting by having Sweiven declare the facts concerning his ownership of the land and ask the council to determine whether his participation in the matter constituted a conflict of interest under the City Code, and to have the Mayor then rule on this question. The City Attorney stated that if the City were to determine that Sweiven had a disqualifying conflict of interest, it should declare the Ordinance void. The City Attorney also stated that, in his opinion, Sweiven's ownership did not constitute a disqualifying conflict of interest.

The superior court found that

[t]here has been no showing that passage of the ordinance will result in a financial gain to Council member Sweiven, now or in the future. In fact, it may act as a detriment. Council member Sweiven's interest in Ordinance No. 92-18 is simply too remote and/or speculative to require his disqualification as a legislative official.

This finding is clearly erroneous. The court further stated,

Plaintiff correctly surmises that Council Member Sweiven's purpose and intent at the time he promoted and voted for the ordinance are of crucial importance in determining whether or not he had a conflict of interest.

13. At first glance it may appear that the Executive Branch Ethics Act, AS 39.52.010-960, which explicitly supersedes the common law on conflicts of interest, see AS 39.52.910, requires intent on the part of public officials subject to that Act. See AS 39.52.120(b)(4). However, that

This holding incorrectly states the law, because the proper focus is on the relationship between the official's financial interest and the result of the official's action, "regardless of the official's intent." *Carney*, 785 P.2d at 548.

Sweiven had a "substantial financial interest" within the meaning of HCC 1.12.010(a)(2) in a reclassification, which would increase the permissible uses of his property. Indeed, it seems inconsistent for the City to argue both that the Ordinance will benefit the City by increasing the tax base and property values, and that it will not benefit Sweiven's lot in a similar fashion.

The City nevertheless asserts that Sweiven's interest in the passage of Ordinance 92-18 is too remote and speculative to constitute a disqualifying interest, and argues that Sweiven's property is affected the same way as other citizens' property. The City attempts to distinguish *Carney* in which we held that fishermen who sat on the Board of Fisheries could vote on matters affecting the fishing industry as a whole but were disqualified from voting on regulations which affected the area in which they actively fished. We reasoned in *Carney* that the members should have abstained from decision-making in areas in which they had a narrow and specific interest. *Id.* at 548. The City argues that Sweiven did not have a narrow and specific interest because "Mr. Sweiven's operations (his home and appliance repair business) are not affected at all by Ordinance 92-18 (automobile sales and services)."

Ordinance 92-18 does not directly affect all of Homer, or even a large part of the City or an entire class of its citizens. Sweiven voted on an amendment which directly affects only thirteen lots, including his own, out of the 500-some lots in the CBD. According to the Alaska Department of Law, the common law requires that a legislator refrain from voting on a bill which will inure to the legislator's financial benefit if the legislator's interest "is peculiarly personal, such as when a bill bene-

Act does not apply to municipal officials. *Gates v. City of Tenakee Springs*, 822 P.2d 455, 462 (Alaska 1992). Thus, the common law of conflicts of interest continues to apply to municipal officers. *Carney*, 785 P.2d at 547-48.

GRISWOLD v. CITY OF HOMER

Alaska 1027

Cite as 925 P.2d 1015 (Alaska 1996)

fits only a tiny class of which the legislator is a member." 1982 Formal Op. Att'y Gen. 4133.

Furthermore, it is said in the context of zoning:

Most of the cases [of disqualifying conflict of interest] have involved a charge of a more-or-less direct financial interest, and it is clear that such an interest is a proper ground of disqualification, as where the officer himself holds property which is directly involved in or affected by the proceeding.

The clearest situation in which disqualifying bias or prejudice is shown is that where the zoning officer himself owns property the value of which will be directly promoted or reduced by the decision to be made and it is not surprising that upon a showing of such interest the courts have usually held the officer disqualified.

W.E. Shipley, Annotation, *Disqualification for Bias or Interest of Administrative Officer Sitting in Zoning Proceeding*, 10 A.L.R.3d 694, 697 (1966). Sweiven himself apparently believed that the Ordinance would increase the value of his property. In recommending the limited rezone to the planning commission, he stated that "it would increase the tax base and property values" of the area. The record reflects that when Sweiven was advocating rezoning the entire CBD, he was quoted in the Homer News as stating: "Even my own business. I can't sell my business, but I can sell my building, and someone who wants to put a VW repair shop there—he can't.... It's not just me. This gives everybody in town a lot more options as far as selling their business." Finally, Sweiven initially refrained from voting on Ordinance 94-13, which would have repealed Ordinance 92-18, on the ground that he had a potential conflict of interest. It consequently appears that Sweiven had a "substantial financial interest" as that term is defined in HCC 1.12.010(a).

The superior court's finding that Sweiven did not have a disqualifying conflict of interest is clearly erroneous.

2. What was the effect of the conflict of interest?

There are six voting members on the Homer City Council. Five voted for Ordinance 92-18 on its first reading. One was absent. Four weeks later, it passed its second and final reading, again by a vote of five in favor and one absent. Thus, without counting Sweiven's vote, Ordinance 92-18 would have passed. The superior court held that even if Sweiven had a disqualifying conflict of interest, his participation and voting would not invalidate the result. In support it cited *Waikiki Resort Hotel v. City of Honolulu*, 63 Haw. 222, 624 P.2d 1353, 1370-71 (1981).

Waikiki followed the rule, also articulated in several other jurisdictions, that where the required majority exists without the vote of the disqualified member, the member's participation in deliberation and voting will not invalidate the result. 624 P.2d at 1371 (citing *Singewald v. Minneapolis Gas Co.*, 274 Minn. 556, 142 N.W.2d 739 (1966); *Anderson v. City of Parsons*, 209 Kan. 337, 496 P.2d 1333 (1972); *Eways v. Reading Parking Auth.*, 385 Pa. 592, 124 A.2d 92 (1956)). The *Waikiki* court also cited *Marshall v. Ellwood City Borough*, 189 Pa. 348, 41 A. 994 (1899), where the court reasoned that because the other four members voted in favor of the disputed ordinance, the invalid vote of one city councilman had no legal efficacy; thus, the court would not invalidate the ordinance. *Waikiki*, 624 P.2d at 1371.

Waikiki cited decisions from three other jurisdictions holding that a vote cast by a disqualified member vitiates the decision in which the member participated, even if the vote does not change the outcome of the decision. 624 P.2d at 1370 (citing *Piggott v. Borough of Hopewell*, 22 N.J.Super. 106, 91 A.2d 667 (1952); *Baker v. Marley*, 8 N.Y.2d 365, 208 N.Y.S.2d 449, 170 N.E.2d 900 (1960); *Buell v. City of Bremerton*, 80 Wash.2d 518, 495 P.2d 1353 (1972)). In *Buell*, the court stated:

The self-interest of one member of the planning commission infects the action of the other members of the commission regardless of their disinterestedness. The recommendation of the planning commission to the city council could not be as-

sumed to be without impact on the council. More importantly, it would not appear to the affected public that it was without impact, and [the disqualified member's] actual financial gain is sufficient to invalidate the entire proceeding.

495 P.2d at 1362-63 (citations omitted).

These lines of authorities offer a choice between vote-counting (*Waikiki*) and automatic invalidation (*Buell*). We have not had occasion to consider this exact issue. In *Carney*, we found that four of seven fisheries board members had a disqualifying conflict. We then held the board's regulation invalid: "Because a majority of the votes cast to pass the regulation are invalid, so is the regulation." 785 P.2d at 549. *Carney* did not raise the issue now before us because there the measure would have been invalidated under either doctrine.

[18] We decline to follow the vote-counting approach adopted in *Waikiki*, notwithstanding its appealing ease of application. A council member's role in the adoption or rejection of an ordinance cannot necessarily be measured solely by that member's vote. A conflicted member's participation in discussion and debate culminating in the final vote may influence the votes of the member's colleagues. Moreover, the integrity required of public officeholders demands that the appearance of impropriety be avoided; the approach adopted in *Waikiki* will not always do so. See *Falcon v. Alaska Pub. Offices Comm'n*, 570 P.2d 469, 477 (Alaska 1977) (holding financial disclosure laws preserve the integrity and fairness of the political process both in fact and appearance); *Warwick v. State ex rel. Chance*, 548 P.2d 384, 388 (Alaska 1976) ("[I]t is important that the legislature not only avoid impropriety, but also the appearance of impropriety."). Cf. AS 39.50.010(b)(1) (public office is a public trust which should be free from the danger of conflict of interest). The superior court erred in holding that Ordinance 92-18 is

14. The portion of HCC 1.12.030 cited by the dissent states:

A City Councilmember or Mayor with a conflict of interest under section 1.12.020 shall so declare to the body as a whole and ask to be excused from voting on the matter. However, a City Councilmember or Mayor with a conflict

valid simply because Sweiven did not cast the decisive vote in its adoption.

We also decline, however, to adopt the rule of automatic invalidation endorsed in cases such as *Buell*, 495 P.2d at 1362-63. The vote and participation of a conflicted member will not invariably alter the votes of other members or affect the merits of the council's decision. This is especially true if the conflict is disclosed or well-known, allowing other members to assess the merits of the conflicted member's comments in light of his or her interest. Automatic invalidation could needlessly overturn well-considered measures which would have been adopted even if the disqualified member had refrained from participating. Automatic invalidation has the potential for thwarting legislative enactments which are not in fact the result of improper influence.

The dissenting opinion cites HCC 1.12.030 as justification for its conclusion that participation by a disqualified member requires invalidation of the council's action.¹¹

HCC 1.12.030 and 1.24.040(g), however, determine whether a member may vote or participate. They deal with disqualification, and do not address the consequences of participation by a conflicted member. The drafters of the code must have contemplated that violations might occur notwithstanding the prohibition. They nonetheless specified no remedy. Had they intended that particular consequences would follow from violation of the prohibition, such as the clear-cut remedies of automatic invalidation or vote-counting, they could have easily so provided. Their failure to specify a remedy for violation implies that the drafters intended that the courts fashion the remedy.

[19] In determining whether the vote of a conflicted member demands invalidation of an ordinance, courts should keep in mind the two basic public policy interests served by

of interest, regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. (Ord.92-49(A) § 4, 1992; Ord. 86-22(S) § 1(part), 1986).

This language is nearly identical to the similar prohibition in HCC 1.24.040(g), but also applies to the mayor.

impartial decision-making; accuracy of decisions, and the avoidance of the appearance of impropriety. See generally Mark W. Cordes, *Policing Bias and Conflicts of Interest in Zoning Decisionmaking*, 65 N.D. L.Rev. 161 (1989).

[20, 21] Guided by these basic policy concerns, we conclude that the following analysis should be applied in determining the effect of a conflicted vote. Initially the court must determine whether a member with a disqualifying interest cast the decisive vote. If so, the ordinance must be invalidated. *Carney*, 785 P.2d at 549. If the ordinance would have passed without the vote of the conflicted member, the court should examine the following three factors: (1) whether the member disclosed the interest or the other council members were fully aware of it; (2) the extent of the member's participation in the decision; and (3) the magnitude of the member's interest. The first two factors squarely bear on the accuracy of the council's decision. All three factors directly relate to any appearance of impropriety.

[22-24] If the interest is undisclosed, the ordinance will generally be invalid; it can stand only if the magnitude of the member's interest, and the extent of his or her participation, are minimal. If the interest is disclosed, the ordinance will be valid unless the member's interest and participation are so great as to create an intolerable appearance of impropriety. The party challenging the ordinance bears the burden of proving its invalidity. We recognize that this analysis is more difficult to apply than the vote-counting and automatic invalidation rules. Simple to apply, those rules are unacceptably rigid.

[25] The factual record before us is not so clear that we can decide as a matter of law whether invalidation is appropriate. The record does not reveal whether the other council members had actual knowledge of Sweiven's interest. While Sweiven's interest in his lot, where he lived and worked, was open and obvious, this is a matter of potential factual dispute to be explored on remand. Likewise, we cannot weigh the extent of Sweiven's participation or say whether it may have affected the outcome of the measure.

Nor does the record establish whether Sweiven was likely in the foreseeable future to realize any significant appreciation from the reclassification by selling or servicing motor vehicles or by selling his lot to someone who intended to do so. We therefore remand so that the superior court, applying the analysis discussed above, can determine whether Ordinance 92-18 must be invalidated.

C. Public Interest Litigant Status

[26] The superior court found that Griswold was not a public interest litigant. That finding was clearly erroneous because Griswold met all four criteria of a public interest litigant in this case: (1) his lawsuit was designed to effectuate strong public policies; (2) if Griswold succeeded, numerous people would have benefited from the lawsuit; (3) only a private party could be expected to bring the action; and (4) Griswold lacked sufficient economic incentive to bring the lawsuit if it did not also involve issues of general importance. See *Oceanview Homeowners Ass'n. Inc. v. Quadrant Constr. and Eng'g*, 680 P.2d 793, 799 (Alaska 1984) (citing *Kenai Lumber Co. v. LeResche*, 646 P.2d 215, 222-23 (Alaska 1982)).

In *Oceanview*, the plaintiff was a homeowners' association which objected to a Zoning Board of Appeals decision to set aside orders issued by the Zoning Enforcement Office of the Anchorage Department of Public Works. These orders restricted improvements to and the use of a private airstrip located in a residential area. 680 P.2d at 795. We held that the homeowners' association was a public interest litigant. *Id.* at 799. We found that "Oceanview's appeal was designed to vindicate a strong public policy in effectuating zoning ordinances, that numerous people in the area would have benefited had it succeeded, and that only a private party could have been expected to bring the appeal." *Id.*

The superior court stated that "it is hard to see how declaring a valid legislative enactment 'illegal' would be of benefit to anyone." That statement misapprehends the meaning of the public interest litigant criteria and has no application here. Griswold's appeal was

designed to vindicate the strong public policy of ensuring that zoning ordinances are not arbitrary or capricious. This public policy is quite similar to, and at least as important as, ensuring that zoning ordinances are properly enforced. The importance of this issue to the general public is evidenced by the considerable amount of public comment regarding the passage of the Ordinance, prompting one planning commissioner to state, "[t]he car lot deal drew as much public comment as anything we (planners) have had but the sign ordinance." Likewise, just as the *Oceanview* suit benefited at least the community of homeowners, Griswold's suit was intended to benefit the entire community of Homer, especially those who live, shop, and operate small businesses in the CBD, by challenging the City's alleged arbitrary deviation from its zoning plan. It is also true in this case, as in *Oceanview*, that only private citizens can be expected to bring suit against a municipality for a zoning violation of this nature, not because the issue is not one of general importance, as the superior court stated, but because the defendant in this case is the public entity which would normally be enforcing Homer's zoning code.

Only the fourth component of the public interest litigant test appears even arguable. That criterion requires that the public interest litigant not have "sufficient economic incentive to bring the lawsuit even if it involved only narrow issues lacking general importance." Griswold lives in the CBD and owns an automobile repair shop on a lot located in the CBD but not included in the reclassified area. He thus continues to be restricted by his "grandfather" status in the operation of his business, and may lose his rights if he ceases operation for more than one year. The superior court agreed with Griswold that "any economic advantage he might have gained, if successful, was slight." The court nevertheless found that this fact "does not obviate the fact that one of [Griswold's] primary motives in pursuing this litigation was to achieve this goal." Thus, the court found that even a "slight" economic gain can be sufficient to constitute a plaintiff's primary motivation in bringing a lawsuit. Neither case law nor the record in this case supports the court's finding.

In *Oceanview* we found that the homeowners' association which claimed that the "immediate effect" of the [adverse zoning board] decision is to deny or diminish the value of real property owned or leased by appellant" was nevertheless a public interest litigant, citing *Oceanview's* "consistent emphasis on health and safety to the virtual exclusion of economic concerns." 680 P.2d at 799 n. 3. Likewise, in this case, Griswold's emphasis was always on the harm to the community, the importance of public accountability, and fairness in municipal government. Griswold stated in a sworn affidavit that he did not have any expectation of financial gain as a result of filing the lawsuit. He wrote a letter to the Homer Advisory Planning Commission stating that he opposed rezoning any areas of the CBD to GC1. These facts are not contested. Moreover, it appears that Griswold only discussed the exclusion of his own lot to illustrate the equal protection problems and arbitrariness inherent to spot zoning cases, and to demonstrate his standing, disputed by the City early in the suit, to bring this lawsuit. See *id.* (stating that appellant's claim of standing due to immediate economic harm is "not synonymous with 'economic incentive'"). The court's emphasis on Griswold's "political motivation" also conflicts with its finding that the hope of slight economic gain was Griswold's primary motivation.

Griswold satisfies Alaska's four-factor public interest litigant test. We consequently hold that he is a public interest litigant.

IV. CONCLUSION

We hold that Ordinance 92-18 does not constitute spot zoning, and consequently AFFIRM that aspect of the judgment below. We hold, however, that council member Sweiven had a conflict of interest which should have disqualified him from participating in consideration of the Ordinance. We consequently REVERSE the court's finding that there was no conflict of interest and REMAND so the superior court can determine whether the Ordinance must be invalidated. We also REVERSE that portion of

MAY 1 1984

74

ate
Gr
]
Sw
vot
obs
affe
of t
Mo:
fect
own
with
recc
Ord
his
ed t
tax
whe:
the
Be
conci
finar
1.12.0
woul
)
wat
confl
at 25.
My
goes
en's c
1. Th
Th
ad
qu
my
I
wa
car
bec
sell
frai
wh
on
of i:
Op. at
2. At a
1.12.0
est" a:
1.
fina:
2.
in
a

the judgment imposing costs and fees on Griswold.

RABINOWITZ, Justice, dissenting in part.

I believe it is of particular significance that Sweiven participated in the discussion of and voted for Ordinance 92-18. As the court observes, this ordinance does not directly affect all of Homer, or even a large segment of the City or an entire class of its citizens. More particularly, the ordinance directly affects only thirteen lots, including Sweiven's own, out of approximately 500 lots located within the Central Business District. The record further reveals Sweiven's belief that Ordinance 92-18 would increase the value of his property. Indeed Sweiven explicitly stated that "[the proposal] would increase the tax base and property values" of the area when recommending the Limited Rezone to the planning commission.¹

Based on the foregoing, the court correctly concludes that "Sweiven had a 'substantial financial interest' within the meaning of HCC 1.12.010(a)[²] in a reclassification which would increase the permissible uses of his property.... The superior court's finding that Sweiven did not have a disqualifying conflict of interest is clearly erroneous." Op. at 25, 28.

My disagreement with the court's opinion goes to its discussion of the effect of Sweiven's conflict of interest and the appropriate

1. The court notes:

The record reflects that when Sweiven was advocating rezoning the entire CBD, he was quoted in the Homer News as stating: "Even my own business. I can't sell my business, but I can sell my building, and someone who wants to put a VW repair shop there—he can't.... It's not just me. This gives everybody in town a lot more options as far as selling their business." Finally, Sweiven refrained from voting on Ordinance 94-13, which would have repealed Ordinance 92-18, on the ground that he had a potential conflict of interest.

Op. at 27.

2. At all times relevant to the case at bar, HCC 1.12.010(a) defined "substantial financial interest" as follows:

1. An interest that will result in immediate financial gain; or
2. An interest that will result in financial gain which will occur in the reasonably foreseeable future.

remedy given the factual context of this case. Central to my differing analysis are the provisions of the Homer City ordinances which address the subject of conflict of interest. In my view, the court's analysis ignores that part of the Homer Municipal Code 1.12.030, which states:

A City Councilmember or Mayor with a conflict of interest under section 1.12.020 shall so declare to the body as a whole and ask to be excused from voting on the matter. However, a City Councilmember or Mayor with a conflict of interest, regardless of whether excused from voting, shall not be allowed to participate in discussion about the matter. (Ord.92-49(A) § 4, 1992; Ord. 86-22(S) § 1(part), 1986).[³]

The City of Homer, as expressed in section 1.12.030 of its Code, has adopted a policy which flatly contradicts the court's statement that

[t]he vote and participation of a conflicted member will not invariably alter the votes of other members or affect the merits of the council's decision. This is especially true if the conflict is disclosed or well known, allowing other members to assess the merits of the conflicted member's comments in light of his or her interest.

Regardless of the wisdom of the City of Homer's legislative enactment barring con-

(HCC 1.12.010 has subsequently been amended.)

HCC 1.12.020 provides:

A City Councilmember or Mayor with a substantial financial interest in an official action to be taken by the Council has a conflict of interest. (Ord.92-49(A) § 3; 1992; Ord. 86-22(S) § 1(part), 1986).

3. HCC 1.12.040 provides:

The Mayor or, in his absence, the Mayor Pro-Tem or other presiding officer, shall rule on a request by a City Councilmember to be excused from voting on a matter because of a declared conflict of interest. The Mayor Pro-Tem or other presiding officer shall rule on a request by the Mayor to be excused from participating in a matter because of a declared conflict of interest. (Ord.92-49(A) § 5, 1992; Ord. 86-22(S) § 1(part), 1986).

HCC 1.12.050 further provides:

A decision of the Mayor or other presiding officer under Section 1.12.040 may be overridden by a majority vote of the City Council. (Ord.86-22(S) § 1(part), 1986).

fllicted council members' participation in decisions,⁴ the fact remains that the City of Homer has expressly adopted a rule specifically prohibiting conflicted council members from taking part in discussion or voting on the matter of interest. In fact, the prohibition on discussion is more stringent than the rule on voting—even when the "Mayor or other presiding officer" decides that the member need not be excused from voting, and even when the council chooses not to override that decision by a simple majority vote, the member is nonetheless forbidden to participate in the discussion.

The rule adopted by the court pays no heed to this participation ban contained in the City of Homer's municipal code. The portions of the court's rule which conflict with the express non-participation policy of HCC 1.12.030 are the following:

If the interest is undisclosed, the ordinance will generally be invalid; *it can stand only if the magnitude of the member's interest, and the extent of his or her participation, are minimal.* If the interest is disclosed, the ordinance will be valid unless the *member's interest and participation are so great as to create an intolerable appearance of impropriety.*

(Emphasis added.) In short, the court's rule would permit a conflicted council member to participate in the discussion of a matter before the body responsible for official action in cases where the conflicting interest has been

disclosed, or where the conflicting interest is undisclosed and the conflicted member's participation does not create an intolerable appearance of impropriety.

Although the court's formulation might well be adopted as a general rule, I think it inappropriate to do so in the face of an ordinance completely prohibiting participation by any city council member with a substantial conflicting interest in the subject matter of a proposed ordinance. In this regard, it is noteworthy that HCC 1.12.030 is not couched in terms of *de minimis* levels of participation. On the contrary, it imposes a complete ban on the conflicted member's participation.

Given the participation ban imposed by HCC 1.12.030, Sweiven's conflict generating significant financial interest, and Sweiven's participation in the discussion of Ordinance 92-18, I conclude that the appropriate remedy is invalidation of the ordinance.

As the court recognizes, a council member's role in the adoption or rejection of an ordinance cannot necessarily be measured solely by that member's vote. A conflicted member's participation in discussion and debate culminating in the final vote may influence the votes of the member's colleagues. The court also appropriately recognizes that the integrity required of public office holders demands that even the appearance of impropriety be avoided.⁵

many instances it will only be partially effective. The inconvenience of adjusting to the disqualification of a decisionmaker is not so great as to justify the threat to accuracy and legitimacy posed by the requirement of mere disclosure.

Beyond determining what effect a conflict of interest should have on a particular decisionmaker is what judicial remedies should be available when a zoning decision in fact involved an improper conflict of interest. In those instances in which the biased decisionmaker casts a dispositive vote, courts have consistently invalidated the decision. This seems appropriate in that both accuracy and legitimacy concerns are clearly threatened when a decision appears to turn on the vote of a self-interested decisionmaker.

A more difficult issue is whether the participation of a conflicting member whose vote was not determinative to a decision should also result in invalidation. This might occur in two general situations. First is where the

4. This court has consistently held that it is not our function to question the wisdom of legislation. *University of Alaska v. Geistauts*, 666 P.2d 424, 428 (Alaska 1983); *Alaska Interstate v. Houston*, 586 P.2d 618, 621 (Alaska 1978).

5. See generally Mark W. Cordes, *Policing Bias and Conflict of Interest in Zoning Decisionmaking*, 65 N.D. L.Rev. 161 (1989). Here the author writes in part:

The second and more common provision is to prohibit participation when a conflict of interest exists. The rationales behind this are obvious. Although disclosure has some restraining effect, a significant conflict might still affect the substantive outcome of a decision. More importantly, perceptions of fairness and legitimacy are only partly addressed by disclosure.

For these reasons disqualification rather than disclosure is the preferable approach. Although in some instances disclosure might adequately address the need for impartiality, in

MADDOX v. RIVER & SEA MARINE, INC.

Alaska 1033

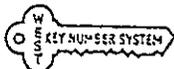
Cite as 925 P.2d 1033 (Alaska 1996)

Guided by these principles and the City of Homer's explicit ban on a conflicted member's participation, I respectfully dissent from the court's remedy. Rather than remand this issue, I would hold Ordinance 92-18 invalid because of council member Sweiven's participation.⁶

to seller, and buyer appealed. The Supreme Court, Carpeneti, J. pro tem., held that material facts issues existed as to foreseeability and causation, as well as to seller's open and obvious danger defense.

Reversed and remanded.

Eastaugh, J., dissented and filed opinion.



Jerry MADDOX, Appellant,

v.

RIVER & SEA MARINE, INC., Appellee.

No. S-6582.

Supreme Court of Alaska.

Nov. 8, 1996.

Buyer of used boat and trailer brought negligence action against seller to recover for injuries sustained when attempting to detach boat and trailer from vehicle, with buyer alleging that seller had duty to warn of dangerous condition created by allegedly mismatched boat and trailer. The Superior Court, Third Judicial District, Kenai, Charles K. Cranston, J., granted summary judgment

tainted vote was numerically unnecessary for the decision. Courts have evenly split on this issue, with a slight majority favoring invalidation. Courts refusing to invalidate such decisions have primarily reasoned that even without the tainted vote the decision would have occurred anyway and therefore invalidation is improper. In this sense the threat to accuracy and legitimacy concerns is arguably de minimis when the particular vote is apparently not crucial to a decision. In particular, legitimacy concerns are less threatened when a decision appears inevitable. As a result, the administrative burden of invalidating and remanding a decision outweighs any threat to substantive results and perceptions of fairness.

Despite these distinctions, several strong reasons exist for invalidating decisions even when a tainted decisionmaker's vote was numerically unnecessary for the decision. First, courts invalidating such decisions have noted that collegial decisionmaking ideally involves the exchange of ideas and views, often with the

1. Judgment ⇄ 131(33)

As a general rule, issues of negligence are not susceptible to summary judgment due to the highly circumstantial judgments required in their determination, but should be resolved by trial in the ordinary manner.

2. Negligence ⇄ 2

Concept of "duty" in negligence encompasses a broad range of policy considerations underlying the determination when, and to what extent, an individual should bear the costs of a given activity.

3. Products Liability ⇄ 23.1

Seller must shoulder some responsibility for the costs imposed by defective or dangerous products.

4. Negligence ⇄ 10

Ambit of one's duty does not extend beyond foreseeable consequences.

intent of persuading toward a particular position. The actual contribution of any particular decisionmaker cannot be measured with precision, but frequently extends significantly beyond the actual vote cast. For this reason, a significant threat to accuracy can exist even when a particular vote was numerically unnecessary for the decision.

For similar reasons legitimacy concerns also exist even when a vote is numerically unnecessary. Although legitimacy concerns are less substantial in such circumstances, the perception of collegial decisionmaking and the potential influence of a tainted decisionmaker on others would violate "appearance of fairness" standards. Thus, for both accuracy and legitimacy reasons the better view is that even when a vote is numerically unnecessary for a decision courts should still invalidate it.

Id. at 214-216 (footnotes omitted).

6. I note my agreement with the court's other holdings.

77





City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-26

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: March 2, 2011
SUBJECT: Draft Ordinance 11-xx East End Mixed Use District

Requested action: Please summarize the outcome of the work session discussion during the regular meeting, and make any motions during the regular meeting, so there will be a written record of your work.

- 1. Line 114 – More than on building containing a principle permitted use on a lot.** Please discuss whether this should remain a conditional use, or if it should be permitted outright. Recall that more than 8,000 square feet of building area, or 30% lot coverage, will also trigger a conditional use permit (line 156). Please make a motion if the Commission would like this to be a permitted rather than a conditional use.
- 2. Line 120- allowing mobile homes as a conditional use.** The Commission discussed mobile homes at the last work session but did not reach a clear consensus. Please further discuss this issue and make a motion to remove mobile homes if that is the desire of the Commission.
- 3. Line 160 - Large retail and wholesale size limits.** The store size limits in the ordinance are the same that are in effect now in GC1 for the East End Road area: 75,000 square feet - or about double the size of the Gear Shed. If the Commission wants to change this number, please make a motion.
- 4. Line 180 – screening from dwelling units.** Staff drafted language based on Commission discussion. At the last work session, the Commission discussed the nuisance requirements for 21.59.010, (g)(2). The code requires screening of materials and storage from residential zones (which the Commission wanted to keep) and screening from lots that had a lawful dwelling unit. Since this is a mixed use district, a dwelling unit could be a single family home or an apartment in a commercial building. Code could be interpreted to mean that if a home/dwelling is constructed, an existing business would then need to screen their operations from the home, even though the business was there first. The Commission agreed this district is primarily a business district and businesses should not have to screen operations after the fact if someone decides to build next door.

Future meeting discussion topics:

1. Landscaping requirements along East End Road. Please take a drive and observe what sticks out as attractive and unattractive to you. Remember, only the south or downhill side of the road is in the City of Homer.
2. Is there a way to slant this district towards commercial uses, so it does not become a mainly residential district over time? Is too much residential use a likely future problem?

STAFF COMMENTS:

When the Commission feels the ordinance is ready for thorough public review, we can discuss a more firm plan for public participation.

STAFF COMMENTS/RECOMMENDATIONS:

Review items 1-4 and make any amendments by motion. Summarize any work session discussion on the record during the regular meeting.

ATTACHMENTS.

1. Draft ordinance 3/2/2011 version

March 2, 2011 DRAFT

Chapter 21.27

EEMU East End Mixed Use District

21.27.010 Purpose

21.27.020 Permitted uses and Structures

21.27.030 Conditional Uses and Structures

21.27.040 Dimensional requirements

21.27.050 Site and Access Plans

21.27.060 Traffic Requirements.

21.27.070 Site Development Requirements.

21.27.080 Nuisance standards.

21.27.090 Lighting Standards.

21.27.010 Purpose. The East End Mixed Use (EEMU) District is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area. The district is meant to accommodate a mixture of residential and non-residential uses with conflicts being resolved in favor of non-residential uses.

21.27.020 Permitted uses and structures. The following uses are permitted outright in the East End Mixed Use District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter.

- a. Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair,
- b. Auto fueling stations and drive-in car washes;
- c. Building supply and equipment sales and rentals;
- d. Lumberyards;
- e. Garden supplies and greenhouses;
- f. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;
- g. Welding and mechanical repair;
- h. Restaurants, including drive-in restaurants, clubs and drinking establishments;
- i. Religious, cultural, and fraternal assembly;
- j. Studios
- k. Personal services
- l. Agricultural activities, including general farming, truck farming, livestock farming, nurseries, tree farms and greenhouses provided that:
 - Other than normal household pets, no poultry or livestock may be housed and no fenced runs may be located within one hundred feet of any residence other than the dwelling on the same lot,
- m. Storage of heavy equipment, vehicles or boats over 36 feet in length ~~as an accessory use incidental to a permitted or conditionally permitted principal use;~~
- n. Plumbing, heating and appliance service shops,

- 45 o. Home occupations, provided they conform to the requirements of HCC § 21.51.010
 46 p. Mortuaries and Crematoriums;
 47 q. Open air businesses;
 48 r. Parking lots and parking garages, in accordance with HCC Chapter 7.12.
 49 s. ~~Manufacturing, fabrication and assembly and assembly of pottery, ceramics, musical~~
 50 ~~instruments, toys, novelties, furniture, small molded products and electronic equipment,~~
 51 ~~instruments, equipment and devices;~~
 52 t. Retail businesses;
 53 u. Trade, skilled or industrial schools;
 54 v. Wholesale businesses, including storage and distribution services incidental to the
 55 products to be sold;
 56 w. Parks and open space;
 57 x. Warehousing, commercial storage and mini-storage;
 58 y. Recreational vehicles, subject to the standards set out in HCC § 21.54.320.
 59 z. Dry cleaning, laundry, and self-service laundries;
 60 aa. Mobile food services;
 61 bb. Day care homes; all outdoor play areas must be fenced and provided that a conditional
 62 use permit was obtained for the dwelling, if required by HCC § 21.27.030
 63 cc. Rooming house and bed and breakfast, provided that a conditional use permit was
 64 obtained for the dwelling, if required by HCC § 21.27.030
 65 dd. Dormitory
 66 ee. As an accessory use, one small wind energy system per lot
 67 ff. Production, processing, assembly and packaging of fish, shellfish and seafood products;
 68 gg. Construction, assembly and storage of boats and boat equipment;
 69 hh. Research and development laboratories;
 70 ii. Storage and distribution services and facilities, including truck terminals, warehouses and
 71 storage buildings and yards, contractors' establishments, lumberyards and sales, or
 72 similar uses;
 73 jj. Underground bulk petroleum storage;
 74 kk. Cold storage facilities;
 75 ll. Mobile commercial structures;
 76 mm. Dwelling units located in buildings primarily devoted to business uses;
 77 nn. *Update HERE for final district uses....this is a placeholder for now!* Customary
 78 accessory uses...(Include residential uses like too!) Accessory uses to the uses permitted
 79 in the EEMU district that are clearly subordinate to the main use of the lot or building,
 80 such as wharves, docks, restaurant or cafeteria facilities for employees; or caretaker or
 81 dormitory residence if situated on a portion of the principal lot: provided that separate
 82 permits shall not be issued for the construction of any type of accessory building prior to
 83 that of the main building.(other code examples: k. Customary accessory uses to any of the
 84 permitted uses listed in the X district, provided that no separate permit shall be issued for the
 85 construction of any detached accessory building prior to that of the main building. Needs
 86 tweaking for open air land uses..ie a tool or storage shed on a lot used for equipment storage)
 87 oo. Taxi operation;
 88 pp. Itinerant merchants, provided all activities shall be limited to uses permitted outright
 89 under this zoning district;
 90 qq. Public and private stables;

- 91 rr. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory to a
 92 residential use in a manner consistent with the requirements of all other provisions of the
 93 Homer City Code and as long as such animals are pets of the residents of the dwelling
 94 and their numbers are such as not to unreasonably annoy or disturb occupants of
 95 neighboring property;

97 **21.27.030 Conditional uses and structures.** The following uses may be permitted in the
 98 East End Mixed Use District when authorized by conditional use permit issued in
 99 accordance with HCC Chapter 21.71:

- 100 a. Construction camps;
 101 b. Extractive enterprises, including crushing of gravel, sand and other earth products and
 102 batch plants for asphalt or concrete; *(should better spell out noxious uses such as batch*
 103 *plants from more benign uses like sand pile storage for contractors who provide sanding*
 104 *services) (stockpile OK)(screen/landscape for new structures on EERoad)*
 105 c. Bulk petroleum product storage above ground;
 106 d. Planned unit developments,
 107 e. Junk yard;
 108 f. Kennels;
 109 g. Public utility facilities and structures;
 110 h. Impound yards; (allow outright w screening? Stuff is supposed to move in an impound
 111 yard as opposed to long term storage in a junk yard?)
 112 i. Shelter for the homeless, provided any lot used for such shelter does not abut an urban,
 113 rural or office residential zoning district;
 114 j. More than one building containing a permitted principal use on a lot. Allow outright?
 115 k. Day care facilities; provided, however, that outdoor play areas must be fenced.
 116 l. Group care homes and assisted living homes.
 117 m. Indoor recreational facilities;
 118 n. Outdoor recreational facilities.
 119 o. Multiple-family dwelling, only if the structure conforms to HCC § 21.14.040(a)(2)
 120 p. Single family and duplex dwellings, including mobile homes
 121 q. Townhouses;
 122 r. Other uses approved pursuant to HCC § 21.04.020.

123 **21.27.040 Dimensional requirements.** The following dimensional requirements shall apply to all
 124 structures and uses in the East End Mixed Use District:

125 a. Lot Size.

126 1. The minimum lot area shall be 40,000 square feet in areas not served by public sewer
 127 and water.

128 2. Each lot shall contain a minimum of 20,000 square feet if one of the following
 129 conditions exists:

130 i. The lot is served by public water supply approved by the State Department of
 131 Environmental conservation; or

Comment (JE1): After discussion about residential uses in GCM in general, staff thinks allowing individual mobile homes in the EEMU is appropriate. This does NOT allow mobile home parks, which is 2 or more mobile homes on a lot.

132 ii. The lot is served by public or community sewer approved by the State
133 Department of Environmental Conservation.

134 3. Each lot shall contain a minimum of 10,000 square feet if the lot is served by both
135 public water and sewer that satisfies both conditions of subsection (a)(2).

136 b. Building Setbacks.

137 1. Buildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed
138 by subsection (b)(3);

139 2. Buildings shall be set back from all other lot boundary lines according to the number
140 of stories as follows:

141 b. Building Setbacks.

142 1. All buildings shall be set back 20 feet from all dedicated rights-of-way. Alleys
143 are not subject to a 20 foot setback requirement. The setback requirements from any lot line
144 abutting an alley will be determined by the dimensional requirements of subparagraphs (2) and
145 (3) below;

146 2. Buildings shall be set back five feet from all other lot boundary lot lines unless
147 adequate firewalls are provided and adequate access to the rear of the building is otherwise
148 provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire
149 Marshal;

150 3. Any attached or detached accessory building shall maintain the same yards and
151 setbacks as the main building.

152 4. Adjacent to those rights-of-way that lead to Kachemak Bay and have been determined
153 to be unsuitable for road construction by Resolution of the City Council, all buildings shall be set back
154 from the boundary of the right-of-way according to the number of stories as provided in subsection (b)(2).

155 c. Building Height. The maximum building height shall be 35 feet.

156 d. No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor
157 shall any lot contain building area in excess of 30 percent of the lot area without an approved
158 conditional use permit.

159 e. Building Area and Dimensions - Retail and Wholesale.

160 1. The total square feet of floor area of retail and wholesale business uses within a
161 single building shall not shall not exceed 75,000 square feet.

162 2. No conditional use permit, Planned Unit Development, or variance may be
163 granted that would allow a building to exceed the limits of these subparagraphs (e)(1), and (2)

164 and no nonconforming use or structure may be expanded in any manner that would increase its
165 nonconformance with the limits of subparagraphs (e)(1), and (2).

166 f. Screening. When one or more side or rear lot lines abut land within an RO, RR, or UR district
167 or when a side or rear yard area is to be used for parking, loading, unloading or servicing, then
168 those side and rear yard areas shall be effectively screened by a wall, fence, or other sight-
169 obscuring screening. Such screening shall be of a height adequate to screen activity on the lot
170 from outside view by a person of average height standing at street level.

171 21.27.050 Site and Access Plans. a. A zoning permit for any use or structure within the East
172 End Mixed Use District shall not be issued by the City without a level one site plan approved by
173 the City under HCC Chapter 21.73.

174 b. No zoning permit may be granted for any use or structure without a level two right-of-way
175 access plan approved by the City under HCC § 21.73.100.

176 21.27.060 Traffic Requirements. A conditional use permit is required for every use that is
177 estimated or expected to generate traffic in excess of the criteria contained in HCC § 21.18.060.

178 21.27.070 Site Development Requirements. All development on lands in this district shall
179 conform to the level two site development standards set forth in HCC § 21.50.030

180 21.27.080 Nuisance standards. The nuisance standards of HCC § 21.59.010(a) through (g)(1)
181 apply to all development, uses, and structures in this zoning district. Open storage of materials
182 and equipment is permitted, subject to these exceptions and conditions:

183
184 (a) If a lot abuts a residential zoning district ~~or abuts a lot that lawfully contains a dwelling~~
185 ~~unit~~, any outdoor storage of materials and equipment on the lot must be screened from the
186 residential lot ~~or~~ district by a wall, fence, or other sight-obscuring material. The screen must be a
187 minimum of eight feet in height.
188

189 21.27.090 Lighting Standards. The level one lighting standards of HCC § 21.59.030 apply to all
190 development, uses, and structures in this zoning district.

191 Section 2. The official zoning map as drafted of the East End Mixed Use Zoning
192 District dated _____ (attached exhibit A) shall consist of the originally proposed
193 properties and adjoining properties which may by request be included. The City Clerk is
194 authorized to sign the map and adhere to the requirements set forth in the Homer City Code,
195 Section 21.10.030 (b).





City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-27

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: March 2, 2011
SUBJECT: Draft Ordinance 11-xx Amending Homer City Code 21.61.040 Nonconforming uses; regarding the effective date of the restriction on enlarging, increasing or extending nonconforming uses.

GENERAL INFORMATION

Staff found an inconsistency in city code, when reviewing the nonconforming section of the HAPC policies and procedures manual. The City Attorney drafted an ordinance to clarify city code as it applies to the expansion of nonconforming uses. Code will now be clear on the timeframe when expansion was legal, and when it became illegal.

In 2008 during the technical code rewrite, the code was changed so that nonconforming uses could not expand. Prior to 2008, nonconforming uses could expand on the original lot. Our current code, enacted in 2008, contradicts this by stating that a use may not expand to occupy a greater area of land, or another portion of the lot, than when it became nonconforming. So, any legal expansion that did occur between when the use became non-conforming; and 2008, appears to be in conflict with code.

The 2008 rewrite does not change the fact it was legal to expand a nonconforming use prior to 2008. Its just confusing now when we read the code and have to go back to trace the change in code over time. It will be much clearer for staff, the Commission and the public for the code to state exactly when the ordinance changed, and nonconforming uses could no longer be expanded.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission discuss the draft ordinance and forward to public hearing.

ATTACHMENTS

1. Draft ordinance



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

CITY OF HOMER
HOMER, ALASKA

Planning

ORDINANCE 11-

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE 21.61.040, NONCONFORMING USES;
REGARDING THE EFFECTIVE DATE OF THE RESTRICTION ON
ENLARGING, INCREASING OR EXTENDING NONCONFORMING USES.

WHEREAS, Ordinance 08-29, which rewrote the City of Homer Zoning Code, became effective on August 12, 2008; and

WHEREAS, Ordinance 08-29 enacted a new restriction on nonconforming uses in HCC 21.61.040, which provided that a nonconforming use may not be enlarged, increased, or extended to occupy a greater area of land than was occupied as of the date it became nonconforming; and

WHEREAS, Because no such restriction on the enlargement, increase or extension of a nonconforming use existed before August 12, 2008, HCC 21.61.040 should be amended to clarify that it restricts only enlargements, increases or extensions of nonconforming uses that occur on or after that date.

NOW THEREFORE THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.61.040, Nonconforming uses, is amended to read as follows:

21.61.040 Nonconforming uses. A nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. No nonconforming use shall be enlarged or increased, nor extended **beyond the lot that it occupied as of September 27, 1982, or** to occupy a greater area of land than was occupied as of the **later to occur of**

1. August 12, 2008; and

2. The date it became nonconforming;

b. No nonconforming use shall be moved in whole or in part to any other portion of the lot that was not occupied by the nonconforming use as of the **later to occur of**

1. August 12, 2008; and

2. The date it became nonconforming;

c. Any new structure built in connection with the nonconforming use must be in full compliance will all applicable provisions of the zoning code and other laws then in effect.

d. If at any time a nonconforming use is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the code provisions

[Bold and underlined added. Deleted language stricken through.]

46 applicable in the zone in which the lot is located, and the nonconforming use shall not thereafter
47 be resumed or allowed to continue.

48
49 Section 2. This Ordinance is of a permanent and general character and shall be included
50 in the City Code.

51
52 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
53 _____ 2011.

54
55 CITY OF HOMER

56
57
58 _____
59 JAMES C. HORNADAY, MAYOR

60
61 ATTEST:

62
63
64 _____
65 JO JOHNSON, CMC, CITY CLERK

66
67 YES:
68 NO:
69 ABSTAIN:
70 ABSENT:

71
72 First Reading:
73 Public Hearing:
74 Second Reading:
75 Effective Date:

76
77
78 Reviewed and approved as to form:

79
80
81 _____
82 Walt E. Wrede, City Manager
83 Date: _____

Thomas F. Klinkner, City Attorney

[Bold and underlined added. Deleted language stricken through.]



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-28

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: March 2, 2011
SUBJECT: Draft Ordinance amending Chapter 21.34 Conservation District

GENERAL INFORMATION

Staff has prepared a draft ordinance to amend the conservation district code. The changes are recommended by the Comprehensive Plan, and also include a few issues staff has identified. This is not a map amendment; only the zoning text will change. Zoning map changes will come at a future meeting, probably after any text changes have been approved by the City Council.

Homer's current conservation lands are typically areas that have formal conservation easements, such as the Exxon Valdez Oil Spill (EVOS) properties on the Spit and Beluga Slough, and sensitive lands such as the Bridge Creek Reservoir. State owned lands at Overlook Park near Bluff Point, are also zoned Conservation. In the future, the Comprehensive Plan also shows changing the Homer Airport Critical Habitat Area (CHA) from General Commercial 2, to Conservation.

Staff has been thinking about this conservation ordinance, because it is related to the East End Mixed Use District. The mapping changes (EEMU and Homer Airport CHA) are a big change and it would be nice to be able to present them to the public reasonably close together. Then the public can see the whole picture for this region of Homer. There are properties owned by nonprofits and private individuals that may prefer to have Conservation zoning (over the adjacent residential districts). Amending the conservation zone text to follow the recommendations of the comprehensive plan is a first step.

There are a few changes recommended in the ordinance. Changes include amending the purpose statement, and conditional uses.

Purpose Statement

The current purpose of the district is to enhance and protect public lands. The result is that so far Homer has not zoned any privately held lands as conservation, even if there are conservation easements on the land. Examples include Moose Habitat Inc, and the Kachemak Heritage Land Trust (KHLT). Both organizations own property near or adjacent to the Homer Airport CHA. The comprehensive plan recommends allowing private property to be zoned conservation, and that is reflected in the draft ordinance.

A note on conservation easements --

A conservation easement does not necessarily mean no development on a parcel. An easement might include an area set aside for development, such as a future home site or agricultural activity. Staff does not recommend that the presence of an easement is all that is required for inclusion in a conservation zone. In the future, any changes to Conservation zoning need to be individually studied, as all rezones are.

There are two purpose statements proposed in the ordinance. Staff requests the Commission pick one, (and make any other desired changes)

Option A. A completely new statement mainly drawn from the Comprehensive Plan.

Option B. Keep the current statement with a few amendments.

Conditional Uses

Currently, the City of Homer potable water pump station on the reservoir is zoned conservation. It is reasonable to expect future changes at the pump station over time. Currently the pump house is a nonconforming use, and cannot be expanded, both due to the nonconforming code and because the Bridge Creek Watershed Protection District does not allow expansion of nonconformities. The reservoir and pump house infrastructure are of major importance. Future changes could be handled via 21.34.030 (d), other uses, or the Commission could amend the ordinance to allow public utility facility and structures as a conditional use. Staff recommends allowing public utility facilities and structures as a conditional use, as is shown in the draft ordinance.

Staff recognizes that other utilities uses, such as cell phone towers etc, may not be appropriate. Therefore language has been added to state: **e. Public utility facilities and structures, limited to uses and structures not more appropriate in a non-conservation zoned area.** (The City Attorney will review the ordinance prior and the exact wording will probably change). If the Commission does not like the concept of allowing limited public facilities, or has other suggestions, please discuss at the meeting!

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission discuss the draft ordinance and make amendments. Please choose which purpose statement you prefer. Staff will forward the amended ordinance for attorney review. The Commission will see the ordinance again prior to public hearing.

ATTACHMENTS

1. March 2, 2011 Draft Ordinance

1
2 **March 2nd, 2011 Draft Ordinance**

3
4 Chapter 21.34

5
6 CO CONSERVATION DISTRICT

7
8 Sections:

- 9
10 21.34.010 Purpose.
11 21.34.020 Permitted uses.
12 21.34.030 Conditional uses.
13 21.34.040 Dimensional requirements.
14 21.34.050 Site development standards.

15
16 Option A Purpose Statement:

17
18 New purpose statement, based on the 2008 Comprehensive Plan, with mention of
19 public utilities (more on that at the end of the staff report)...

20
21 The conservation district is applied to sensitive public and in some instances private
22 lands that are critical to the maintenance of fish and wildlife resources, serve
23 important watershed protection areas, or serve other key environmental functions.
24 These lands are to be maintained in an undisturbed and natural state, except for
25 enhancement projects or limited public utility facilities and structures that provide
26 significant public benefit and cannot be reasonably located in another location.
27 Private landowners may agree to have this designation on their property. Acceptable
28 uses in this district include undeveloped open space, parks with passive recreation
29 activities and facilities (e.g., wildlife viewing, nature walks, educational and
30 interpretive uses) and other uses that do not change the character of the land or
31 disrupt fish and wildlife. Passive recreation activities are secondary to habitat
32 protection and enhancement.

33
34
35 Option B: Old purpose statement with a few changes

36 21.34.010 Purpose. The purposes of the conservation district are primarily to
37 identify, protect and enhance those public-lands that have been identified by state or
38 federal agencies or the City of Homer as habitat critical to the maintenance of fish
39 and wildlife resources, watershed protection areas, and secondarily including parks
40 whose recreation activities and facilities are passive in nature, e.g., those activities
41 that include wildlife viewing, nature walks, educational and interpretive uses and
42 other uses that do not change the character of the land or disrupt fish and wildlife.

43
44 21.34.020 Permitted uses. The following uses are permitted outright in the
45 conservation district:

- 46 a. Fish and wildlife habitat protection and enhancement; and

47 b. Marine-life and wildlife sanctuary or preserve

48
49 21.34.030 Conditional uses. The following uses are conditionally permitted in the
50 conservation district when authorized by conditional use permit issued in accordance
51 with HCC Chapter 21.71:

- 52 a. Pedestrian trails, including boardwalks and viewing platforms; and
53 b. Educational and interpretive displays and signs; and
54 c. Parking lots incidental to a permitted or conditionally permitted use; and
55 d. Other conservation uses that will enhance the conservation district, approved by
56 the Planning Commission, provided, however, a finding of no adverse impact to the
57 integrity of the fish and wildlife resources and habitat must be found.
58 e. Public utility facilities and structures, limited to uses and structures not more
59 appropriate in a non-conservation zoned area.

60
61 21.34.040 Dimensional requirements.

- 62 a. Lot width: Lot width is unrestricted.
63 b. Lot area: Lot area is unrestricted.

64
65 21.34.050 Site development standards. All development in this district shall comply
66 with the level one site development standards contained in HCC § 21.50.020.
67

MANAGERS REPORT
February 28, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. Fire Training Facility: The fire training facility has arrived in Homer and it is now located at its new home adjacent to the Chip Pad on the Spit. HVFD is presently looking into fencing the area for security reasons and finding the resources to move the fire hydrant to the other side of the street for easier access. Chief Painter is currently planning a "train the trainers" session to familiarize key people with the facility and equipment. A dedication ceremony and open house will be held later this Spring when it warms up a bit. We will keep you informed.
2. Bridge Creek Fire Mitigation Project: At the time this report was written, it was looking increasingly likely that no work will take place this winter. The Spruce Bark Beetle Program staff are extremely busy and no contracts for this project have yet been executed. Further, recent snows have left us with a snow depth that is not conducive to the operation of mechanized equipment. Things could change, but at this point we are likely looking at some hand work and tree stock assessment this summer, and more intensive mechanized work next winter. The Borough has confirmed that the money will be available for the project again next year.
3. Staff Turnover: Library Director Helen Hill has formally submitted her resignation letter and will be retiring at the end of April. We are currently advertising for the position and have been informed by members of the State Library Board that they believe we will get some very qualified candidates. We sure hope they are correct. This week I started the interview process for the Personnel Director position. I am hoping to get someone in that position as quickly as possible so that they can get some training and orientation with Sheri before she departs at the end of April. Sheri is working hard to complete the parity study before she leaves.
4. Potential Cuts to Borough College Funding: You may already be aware that Mayor Carey has proposed eliminating Borough funding for the college system on the Peninsula. He has also proposed eliminating tuition waivers for Peninsula residents. One of the primary stated reasons for proposing this is that the Borough needs money for the Homer landfill project. The voters authorized the Borough to contribute up to one tenth of a Mil to the college system back in 1990. This year the Borough contributed \$637,570 to the University system. Of that amount, \$194,800 or about 31% came to the Kachemak Bay Campus here in Homer. Carol Swartz, the local campus director reports that if eliminated, this funding would directly affect core services such as GED programs, the college library, tutoring, student advisors, testing, and more. It is my understanding that the City of Kenai

has already adopted a resolution opposing this proposal and other Cities in the Borough are considering doing the same. Supporting the local college campus is a big part of the City Comprehensive Plan and the College is a significant part of the local economy. Please let us know if you would like to sponsor a resolution. We can help draft it and get it on the next Council agenda.

5. City Hall Expansion / Renovation: The Task Force, the Public Works Director, and the contractors are working very hard to keep us on the ambitious construction schedule established by the Council. This project has taken priority over others at the moment, as requested by Council. A construction contract has been signed and a number of alterations have already been made to the draft site and building plans based upon input from the staff, the department heads, the architect, the building contractor, and the Task Force. At its meeting on Tuesday, the 22nd, the Task Force reviewed preliminary site and building plans, and a preliminary cost estimate for accomplishing all of the items on the current "wish list". The contractor was looking for feedback on the general direction this project is taking so that we do not waste unnecessary money later on architectural and planning work. The Task Force was presented with a very preliminary spreadsheet showing what could be accomplished with the amount of money available and what additional, identified priority items would cost. The Task Force agreed that the additional items were very desirable and necessary and encouraged us to continue planning as though those items would be included in the final project budget. Accomplishing those items would save the City money in the long run. The additional cost is about \$275,000, much of which could be accomplished with depreciation and energy efficiency funds. The Council members on the Task Force are hoping to bring the Council up to speed at this meeting. The task force will receive costs estimates that are more refined at its next meeting.
6. Lobbyist: Things are working smoothly with the new lobbyist team so far. They really enjoyed their visit to Homer. Please let me know how you would like to receive their lobbyist reports (other than the status update on bills). You might recall that the contract calls for regular updates on City priorities and what they are working on. They could call in at Council meeting or just provide written reports.
7. Energy Efficiency: Work continues to take place on this project now that the Council has approved both a project budget and a contract. We are reevaluating one of the project items (high mast lights) based upon new information we received. If we make any changes, it would simply mean that this item was delayed or placed on hold and less money would be spent than authorized.
8. TORA Agreements: Work is proceeding on all three of the TORA Agreements we discussed at the last meeting. We hope to have the one regarding Spit parking back before you soon.
9. Staff Training: The City will be providing training this week to employees who have daily contact with the public. The focus is on how to deal with difficult, angry, emotional, harassing, or unstable citizens and customers. This occurs more than you might think. The training will be geared toward providing professional and helpful responses without aggravating the situation or causing it to

- deteriorate. Training will also be provided on coping skills and how to avoid letting abusive and harassing clients affect your work, attitude, or state of mind.
10. Water and Sewer Rate Setting: As you know, the Council has decided to start working on water and sewer rates at a workshop before the first meeting in April. I think we will start out with a refresher on how rates are set now so everyone is on the same page. The letter below from the Department of Commerce reminded me that there are resources out there which could assist with this process if Council wishes. As a reminder, the Department reviewed the City methods and rate structure several years ago and determined that it was very good. A University study reached the same conclusion. Regina also attended some training this year on utility rate structuring and came back thinking that the City is in line with recommended practices.

ATTACHMENTS

1. Certificate of Achievement for Excellence in Financial Reporting
2. Letter from Department of Commerce re: various types of training Assistance
3. Letter from DOT/PF re: Work on Lake Street

