

December 7, 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. APA Fairbanks Training
4. Discussion of future training dates with city attorney
5. **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).
6. Commission Comments
7. 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

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 November 16, 2011 *Page 1*
2. Draft Decision and Findings for CUP 11-13, A Request to amend Conditional Use Permit (CUP) 10-06, for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive 06 to allow construction of a 96 ft tower. *Page 7*
3. Draft Decision and Findings for Variance 11-02, A Request to Amend Variance 10-01 to allow the construction of a 96 ft tower in the 20' building setback at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. *Page 13*

6. Presentations

7. Reports

- a. Staff Report PL 11-123, City Planner's Report *Page 17*

8. Public Hearings

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

- A. Staff Report PL 11-122, An Ordinance of the City Council of Homer, Alaska, Enacting Homer City Code Chapter 21.27, East End Mixed Use District *Page 21*

9. Plat Consideration

- A. Staff Report PL 11-120, Barnett Subdivision, Quiet Creek Addition No. 2 Preliminary Plat *Page 55*
- B. Staff Report PL 11-121, Eker Estates Too Preliminary Plat *Page 175*

10. Pending Business

11. New Business

12. Informational Materials

- A. City Manager's Report dated November 28, 2011 *Page 191*

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 9:30 p.m. An extension is allowed by a vote of the Commission. The next regular meeting will be held on January 4, 2011 at 6:30p.m. There will be a work session at 5:30.

Session 11-16, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 6:30 p.m. on November 16, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS DOLMA, ERICKSON, HIGHLAND, MINSCH, SONNEBORN, VENUTI

ABSENT: COMMISSIONER BOS

STAFF: CITY PLANNER ABBOUD
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 comments.

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 November 2, 2011 minutes
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 a Variance of the building setback requirements at 860 Soundview Avenue, Lot 2 Block 3, Foothills Subdivision, Sunset View Estates Addition No. 2, Phase One

The Consent Agenda was approved by consensus of the Commission.

PRESENTATIONS

Commissioner Highland reported about the Transportation Advisory Committee meeting.

REPORTS

- A. Staff Report PL11-114, 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.

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
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- A. Staff Report PL 11-117, A Request to amend Conditional Use Permit (CUP) 10-06, for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. If approved, this would amend CUP 10-06 to allow construction of a 96 ft tower.

Commissioner Erickson stated that she has a conflict of interest.

HIGHLAND/DOLMA MOVED THAT COMMISSIONER ERICKSON HAS A CONFLICT OF INTEREST.

Commissioner Erickson acknowledged that there is a financial interest with the property owner that probably meets the amounts outlined in City Code and also the property owner is a close personal friend.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Commissioner Erickson left the meeting and did not return for any other portion of the meeting.

City Planner Abboud reviewed the staff report.

Leif Petersen, applicant, commented regarding Horizon Satellite's need to place a 96 foot tower at the proposed location so they can expand their services for Homer and Anchor Point. In response to questions posed by the Commission, Mr. Petersen added:

- The tower could possibly be built down the slope, but would likely need more permitting as there will be more ground disturbance to develop a road and pad to accommodate heavy equipment to build a base, and also a taller tower would be required to compensate for the loss of height by moving down the slope.
- The proposed location is a point of origin for a fiber line. Points of origin are limited in this area and he is unaware of another location that would accomplish a connection with the tower on Diamond Ridge.
- The tower is rated for 100 mph winds with a quarter inch radial ice.

Chair Minch opened the public hearing.

Dave Becker, property owner of the proposed antenna, noted the difference for the CUP and the variance application. He also clarified issues with going down hill as it is a zero gain. Going down the hill and losing 10 feet of height will require a taller structure and the cost will increase exponentially. This increase in development cost will result in increased cost to consumers for the service. It is unnecessary to go down hill when there is the bench at the top that works. This is a critical site with optimum capability for communications, if there were other suitable locations, you would see towers there. It's true that no one wants these in their back yard, but most everyone wants the service they provide.

Kirk Olsen, local property appraiser, commented in opposition of the CUP. It is a zoning issue as this is a rural residential district and there is a reasonable expectation that this will diminish property values in the area.

Pete Arno, city resident and property owner to the west, commented in opposition to the CUP. He questioned if the hearing notice was issued timely, and the expressed concerns that the property owner has broken rules and the City has allowed it happen, existing towers were built without input, this is not compatible with the district where it's located, property values will be

HOMER ADVISORY PLANNING COMMISSION
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negatively impacted, there is noise from the wind, it's an eyesore, and a privacy issue with men up on the towers being able to see in windows.

Russell Walls, city resident and property owner across the street to the east, commented in opposition to the CUP. He questioned the ability to have antenna access in other areas and expressed concern of diminished property value.

David Nofziger, city resident, commented in opposition to the CUP. He does not see how it can be compatible with the district, the public notice should have been sent to a wider area of property owners, and the project has a negative visual impact in a primary viewing area.

Karl Stoltzfus requested to read Lane Chesley's comments into the record. Chair Minsch advised him that the Commission had received Mr. Chesley's comments and took time to read them before the meeting. She said Mr. Stoltzfus was welcome to make any additional comments. Mr. Stoltzfus commented in opposition to the CUP because it is a residential area, the area is an eye sore, and it just keeps growing. There needs to be an end to it or have another place for a tower farm.

There were no further comments and the public hearing was closed.

Dave Becker briefly rebutted with the following points:

- The first tower was installed about 27 years ago after he bought the property.
- People purchasing property since that time can see that the property is developed as a communications site.
- The City's comprehensive plan encourages developments of the technological nature as noted in the findings.
- There is a 100 foot tower providing coverage through GCI across the street from the proposed tower location.
- The proposed site is 70 feet away from the property line and the house to the west is an additional 30 to 40 feet away.

HIGHLAND/SONNEBORN MOVED TO ADOPT STAFF REPORT PL 11-117, A REQUEST TO AMEND CONDITIONAL USE PERMIT (CUP) 10-06, FOR "PUBLIC UTILITY FACILITIES AND STRUCTURES" FOR A COMMUNICATION SITE AT 1033 SKYLINE DRIVE, LOT 5 SKYLINE VIEW SUBDIVISION LYING SOUTH OF SKYLINE DRIVE WITH STAFF RECOMMENDATIONS AND FINDINGS.

VENUTI/HIGHLAND MOVED TO DELIBERATE AFTER THE MEETING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

- B. Staff Report PL 11-118, A Request to Amend Variance 10-01 to allow the construction of a 96 ft tower in the 20' building setback at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive.

City Planner Abboud reviewed the staff report.

Leif Petersen, applicant, said he was available to answer questions.

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

HIGHLAND/SONNEBORN MOVED TO ADOPT STAFF REPORT PL 11-118, A REQUEST TO AMEND VARIANCE 10-01 TO ALLOW THE CONSTRUCTION OF A 96 FT TOWER IN THE 20' BUILDING SETBACK AT 1033 SKYLINE DRIVE, LOT 5 SKYLINE VIEW SUBDIVISION LYING SOUTH OF SKYLINE DRIVE WITH STAFF RECOMMENDATIONS AND FINDINGS.

There was discussion whether to deliberate this issue after the first one or whether to postpone to a future meeting.

HIGHLAND/SONNEBORN MOVED TO DELIBERATE AFTER THE MEETING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

No plats were scheduled.

PENDING BUSINESS

A. Staff Report PL 11-115, HAPC Policies and Procedures Manual Amendments

HIGHLAND/SONNEBORN MOVED TO APPROVE THE AMENDED HAPC POLICIES AND PROCEDURES MANUAL AND FORWARD IT TO COUNCIL FOR ADOPTION.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. Staff Report PL 11-118, 2012 HAPC Meeting Schedule

HIGHLAND/VENUTI MOVED TO APPROVE THE 2012 HAPC MEETING SCHEDULE.

There was brief discussion.

SONNEBORN/HIGHLAND MOVED TO DELETE THE NOVEMBER 21 MEETING.

There was no discussion.

VOTE (Primary Amendment): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

VOTE (Main Motion as Amended): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

INFORMATIONAL MATERIALS

No informational items were presented.

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

There were no staff comments.

COMMENTS OF THE COMMISSION

Commissioner Highland said at the next worksession she would like to hear from the Commissioners who attended the Planning Conference.

Commissioner Venuti commented that if there is an issue with timely notice to property owners he wonders if it is something that staff can improve upon. He listed the training sessions he attended at the Planning Conference in Fairbanks.

Chair Minsch and the other Commissioners had no comments.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:56 p.m. The next regular meeting is scheduled for December 7, 2011 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession at 5:30 p.m. preceding the meeting.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____





City of Homer Planning & Zoning

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HOMER ADVISORY PLANNING COMMISSION Meeting of November 16, 2011

Decision and Findings: Conditional Use Permit (CUP) 11-13, 1033 Skyline Drive

DECISION

Introduction

Horizon Satellite ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.12.030(g) seeking to amend CUP 10-06 for a Public Utility Facilities and Structures located in the Rural Residential District at 1033 Skyline Drive per HCC 21.12.030(g). CUP 10-06 specifically approved one 9' x 20' building with two 50' metal towers attached. The applicant is now seeking the addition of a 96 ft. tower on the same site.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on November 16, 2011. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant and 6 members of the public were received at the public hearing along with two written comments that were distributed at the meeting. Those who testified voiced opposition due to the visual impact, incompatibility with the Rural Residential District and a concern for diminishing property values related to the proposed development. After deliberations, the commission voted to approve the CUP with 5 Commissioners present, 5 Commissioners voting in favor and 0 voting to deny the request to add a 96ft. tower to the site. Commissioner Bos was absent and it was determined the Commissioner Erickson had a conflict of interest and they did not participate in the hearing or deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to erect a 96ft. tall tower in the 20' setback at 1033 Skyline Drive, Skyline View Subdivision Lot 5 in the Rural Residential District for

the support of communication equipment. A 9' x 20' structure currently located on the property was located in the 20' setback from the Skyline Drive Right-of-Way was approved by CUP 10-6 and Variance 10-01. Other structures on the lot are legal non-conforming structures. The as-built survey dated June 29, 2010, shows a 2.6 feet encroachment of an existing building, built prior to City annexation, into the Skyline Drive state right-of-way. The approval of CUP 10-06 did not indicate acceptance of any encroachments into the right-of-way. An approved variance is required to locate a structure within the setback.

FINDINGS OF FACT

The review criteria for a Conditional Use Permit are outlined in 21.71.030.

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

Finding 1: Public utility facilities and structures are authorized by CUP 10-06.

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

Analysis: The purpose of the rural residential district per HCC: 21.12.010 Purpose. The purpose of the rural residential district is primarily to provide an area in the City for low-density, primarily residential, development; allow for limited agricultural pursuits; and allow for other uses as provided in this chapter. (Ord. 08-29, 2008).

The proposal of the use and structure does not affect the low-density, primarily residential nature of the Rural Residential District. The entire current and proposed development has a footprint equal to 2.1% of the entire lot.

Testimony given at the public hearing indicates that several people find the proposed structure as an eyesore. The Rural Residential District does not have design standards and it allows towers for wind energy up to 170 feet in height.

Finding 2: The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1700 square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.

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.

Analysis: While some testimony was received that proposed a possibility that property values may be negatively affected, it was not demonstrated how this development might be affected greater than anticipated from or permitted or conditionally permitted uses in the district, which does additionally include heliports and wind energy units.

Finding 3: The value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.

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

Analysis: The proposal is low-density in nature.

Finding 4: The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.

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 proposed use. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.

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.

Analysis: According to testimony the site was used for telecommunications well before annexation. The placement of a telecommunications tower will not impede established views of the bay.

Staff Finding 6: The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on the 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 communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.

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

Finding 8: Public utility facilities and structures are authorized by CUP 10-06.

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

Analysis: The addition of a telecommunication tower on this site does not diverge or inhibit land use goals and objectives of the Comprehensive Plan.

Finding 9: The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, in a residential zone. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

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

Finding 10: All lighting must be down lit per the Community Design Manual.

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

1. Special yards and spaces: **No conditions deemed necessary.**
2. Fences, walls and screening. **No conditions deemed necessary.**
3. Surfacing of vehicular ways and parking areas. **The property owner has a "Letter of Non-Objection" allowing employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.**
4. Street and road dedications and improvements (or bonds). **No conditions deemed necessary.**
5. Control of points of vehicular ingress and egress. **The property owner has a "Letter of Non-Objection" allowing employees servicing the equipment to park in the pull-out to the east of 1033 Skyline Drive.**
6. Special restrictions on signs. **No conditions deemed necessary.**
7. Landscaping. **No conditions deemed necessary.**
8. Maintenance of the grounds, buildings, or structures. **No conditions deemed necessary.**
9. Control of noise, vibration, odors, lighting or other similar nuisances. **No conditions deemed necessary.**
10. Limitation of time for certain activities. **No conditions deemed necessary.**

11. A time period within which the proposed use shall be developed and commence operation. **No special conditions deemed necessary.**
12. A limit on total duration of use or on the term of the permit, or both. **No conditions deemed necessary.**
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. **No conditions deemed necessary.**
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. **No conditions deemed necessary.**

CONCLUSION

The Commission approved CUP 11-13 for the placement of one additional telecommunications tower on the lot. Any tower or supporting structure must have an approved variance to be located in the 20' right-of-way setback.

Date: _____

Chair, Sharon Minsch

Date: _____

City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land 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 _____, 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

Dave Becker
P.O. Box 109
Homer, AK 99603

Horizon Satellite
PO Box 2394
Homer, AK 99603



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HOMER ADVISORY PLANNING COMMISSION Meeting of December 7, 2011

Decision and Findings: Variance 11-02, 1033 Skyline Drive, aka Lot 5 Skyline Sub lying south of Diamond Ridge Road.

DECISION

Introduction

Horizon Satellite ("Applicant") and Dave Becker ("Owner") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.72.010 seeking to amend Variance 10-01 for the addition of a 96' communications tower to be located 10' into the 20' Skyline Drive right-of-way setback requirement located at 1033 Skyline Drive. The addition of a telecommunications tower on the site does require an amendment to CUP 10-06. The applicant is seeking the variance due to the topography of the lot. An amendment to Variance 10-01 is required for an additional structure to encroach into the setback.

On November 16, 2011, a hearing was held before the Homer Advisory Planning Commission ("Commission") regarding a CUP (11-13) and Variance (11-02) request from Horizon Satellite ("Applicant") on property located in the Rural Residential District at 1033 Skyline Drive. The variance sought to amend variance 10-1 to allow a 96' tower to be located 10' into the 20' Skyline Drive right-of-way setback.

The application was scheduled for and a public hearing was held as required by Homer City Code 21.94 before the Commission on November 16, 2011. Notice of the November 16, 2011 public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

After holding a hearing and requesting public testimony, the Commission voted to deny the Applicant's variance request with a vote of 2 in favor and 3 opposed to the proposed placement of the 96' tower with the base of the tower located 10' into the 20' setback from the Skyline Drive right-of-way. Commissioner Bos was absent and Commissioner Erickson was determined to have a conflict of interest and neither of them participated in the hearing or deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission, hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to have a 96' tower with the base located 10 feet into the required 20' setback per HCC 21.12.040 (b) (1). Variance 10-1 approved of a 9' x 20' structure to be located in the set. No public testimony was offered at the hearing, although some testimony given at the hearing for CUP 11-13 immediately preceding was pertinent to the variance request.

FINDINGS OF FACT

Findings in consideration of new evidence presented that the need for a variance is moot.

Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer Zoning Code would deprive a property owner of the reasonable use of his real property.

Variance Code Requirements: HCC 21.72.020 Conditions precedent to granting variance:

a. All of the following conditions shall exist before a variance may be granted:

- 1. A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

Analysis: The applicant did respond that it could be possible to locate the structure out of the setback.

Finding 1: The lot provides other places for the tower to serve its purpose.

- 2. Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

Analysis: Mr. Petersen (representing the applicant) and Mr. Becker both stated on the record of the public hearing for CUP 11-13 that the tower could be built elsewhere on the lot or on other lots.

Finding 2: No special condition or circumstance exists.

3. The special conditions and circumstances have not been caused by the actions of the applicant.

Analysis: The applicants want to build on lot where the allowable space does not exist.

Finding 3: Given the applicants proposed choice of development, the necessity of the site specific requirements for the structure, nature of its purpose and the topographical challenges of the site, the circumstances were caused by the actions of the applicants.

B. Financial hardship or inconvenience shall not be the sole reason for granting a variance.

Analysis: Mr. Becker and Mr. Peterson's previous testimony had indicated that hardship and inconvenience were the reasons for the variance application.

Finding 4: Hardship and inconvenience appear to be the sole reasons for this variance request based on applicant's testimony.

C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

Analysis: The applicant responds to the first question on the variance application, "What regulations do you feel you are deprived of, or prevent you from enjoying your property as others in the same district?" [that the] "Existing building sets it the 20ft. setback."

Finding 5: The applicant is seeking a variance because of the existing building located in the setback.

D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

Analysis: The applicant stated that the structure could be located on the slope.

Finding 6: No variance is necessary to permit reasonable placement of the proposed tower.

E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Staff Finding 7: A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

DECISION

THE REQUEST FOR A VARIANCE OF A 96' TOWER WITH A BASE LOCATED 10' INTO THE 20' REQUIRED SETBACK FROM THE SKYLINE ROAD RIGHT-OF-WAY IS DENIED.

Date: _____

Chair, Sharon Minsch

Date: _____

City Planner, Rick Abboud

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Date: _____

Shelly Rosencrans, Planning Assistant

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491 E Pioneer Avenue
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STAFF REPORT PL 11-123

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: December 7, 2011
SUBJECT: Planning Director's Report

November 28th City Council

Ordinance 11-43, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 14.08.037, Water Meters; Regarding the Number of Water Meters Required Per Lot. City Manager. Introduction October 24, 2011, Public Hearing and Second Reading November 28, 2011.
Memorandum 11-143 from City Manager as backup.
There was no public testimony.
ADOPTED with discussion.

Ordinance 11-44, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.14.020, Permitted Uses and Structures; 21.16.020, Permitted Uses and Structures; and 21.18.020, Permitted Uses and Structures; to Add One Detached Dwelling Unit as a Permitted Accessory Building to a Principal Single Family Dwelling in the Urban Residential, Residential Office, and Central Business Zoning Districts. Planning. Recommended dates: Introduction November 28, 2011, Public Hearing and Second Reading December 12, 2011. Memorandum 11-154 from City Planner as backup.
ADOPTED with discussion.

Resolution 11-090, A Resolution of the City Council of Homer, Alaska, Supporting the Concept and Construction of Non-Motorized Pathways to Increase the Safety for Motorized and Non-Motorized Users Along Kachemak Drive Located Within the City Limits, from the Base of the Homer Spit to East End Road. Lewis/Zak/Parks and Parks and Recreation Advisory Commission. (Referred to the Planning Commission September 12, 2011.)
Memorandum 11-152 from Planning Technician as backup.
REMANDED back to the Parks and Recreation Advisory Commission.

If reconsidered: Resolution 11-099, A Resolution of the City Council of Homer, Alaska, Authorizing the City Manager to Draft and Submit a Revenue Bond Sale Application and Take Other Steps Necessary to Prepare for a Possible Bond Sale to Finance Construction of Six Top Priority Capital Projects Within the Homer Harbor. Howard, Lewis, Wythe.
Memorandum 11-145 from City Manager as backup.
Reconsideration failed under RECONSIDERATION.

Resolution 11-104, A Resolution of the City Council of Homer, Alaska, Approving a New Lease for the Pier One Theatre for a Term of Five Years and a Rental Rate of One Dollar Per Year and Finding That it is in the

Public Interest to Award the Lease Without a Competitive Bidding Process and at Less Than Fair Market Rent.
City Manager/Lease Committee.

Memorandum 11-149 from City Manager as backup.

AMENDED: Amend line 35 by inserting "certificate of occupancy" after Fire Marshall approval. 10

ADOPTED as AMENDED with discussion.

Resolution 11-106, A Resolution of the Homer City Council Directing the City Manager to Develop a Budget, Scope, and Schedule for the Waddell Way Road Improvement Project. Roberts/Transportation Advisory Committee.

ADOPTED with discussion.

Resolution 11-108, A Resolution of the City Council of Homer, Alaska, Finding the Need to Create the Crittenden Drive Reconstruction and Paving Local Improvement District (LID) and Setting a Public Hearing for January 23, 2012. City Clerk.

ADOPTED without discussion.

December 12th City Council

Ordinance 11-44, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.14.020, Permitted Uses and Structures; 21.16.020, Permitted Uses and Structures; and 21.18.020, Permitted Uses and Structures; to Add One Detached Dwelling Unit as a Permitted Accessory Building to a Principal Single Family Dwelling in the Urban Residential, Residential Office, and Central Business Zoning Districts. Planning.

Recommended dates: Introduction November 28, 2011, Public Hearing and Second Reading December 12, 2011. Memorandum 11-154 from City Planner as backup.

Subdivision of Steep Slopes

Both plats in this packet deal with parcels that fall under the City's steep slope regulations. These are lots with existing development, not raw land. Both subdivisions create a new lot that will exceed the allowed developable area, unless there is an approved steep slope site plan. This is the first time we have dealt with platting of already developed land in relation to the recently adopted steep slope rules. The happenstance of two plats at the same HAPC meeting with the same slope considerations prompted staff to create a policy on how these subdivisions will be handled in the future.

By Borough code, lots must meet the zoning code in order to subdivide. The approach staff used is that these lands can be subdivided, but that a steep slope site plan must be submitted and approved prior to recording the plat. This allows the subdivider to go through the plat process, but also ensures the new lots will meet city code requirements. If a lot does not have a steep slope site plan, recording such a lot would create a zoning violation (which is against KPB platting regulations). A zoning violation would be created because the lots would be nonconforming, and you can't create a nonconformity through the platting process.

- *Q: Does every steep lot have to have a steep slope site plan?*

A: No, only those lots that do not meet city code without an approved plan. Generally, it means the land has already been disturbed; i.e., major earthwork, or structures already built.

- *Q: Why require a steep slope site plan during the platting process?*
A: 1. So a zoning violation or nonconformity is not created and 2. To have as much assurance as possible under city code that the existing development meets city code requirements.
- *Q: Why not require the steep slope site plan when the preliminary plat is submitted?*
A: A steep slope site plan is only required when development exceeds the conditions in city code. It is common to make changes to the preliminary plat. Rather than review a plan multiple times as the proposal changes, a subdivider can go through the plat process as intended, and provide the site plan before the lots are legally created. This is similar to development agreements and the construction of infrastructure.
- *Q: Does a future land owner have to develop according to the site plan?*
A: No. The plan is demonstrating that the existing development meets code requirements. Any new future development must meet city code requirements, which could include a new plan.

Activities:

No word from FEMA about revised FIRM's yet. They are to be expected soon.

The City Hall addition is finished. The Clerks have temporarily moved into the Planning Offices downstairs while their office is remodeled. We are looking to move back right around Christmas.





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.cityofhomer-ak.gov

STAFF REPORT PL 11-122

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: December 7, 2011
SUBJECT: Draft Ordinance 11-xx creating the East End Mixed Use zoning district and amending the zoning map

Requested Action: Conduct a public hearing and make a recommendation to the City Council on:

1. Adoption of the new zoning district text;
2. Amending the zoning map to include the new district.

General Information

This ordinance proposes to create a new zoning district, and amend the zoning map to include the new district boundaries. Staff's review of the text and map amendments is attached as a memorandum to this staff report.

Items Requiring a Motion to Amend, if the Commission wishes to make changes

A. Boundaries

Planning received a letter dated October 4th, from Vikki Simpson. Ms. Simpson requests her lot, immediately south of the boat yard, be included in the new district. If the Commission wishes to amend the district boundaries of this or any parcel, a motion to amend the boundaries is needed.

B. Additional Whereas Clause

Commissioner Highland submitted wording for a whereas in the ordinance. It was received after the ordinance was submitted for legal review. If the Commission wishes to include Ms. Highlands's submittal, please do so by motion.

Whereas, While recognizing value of the existing developed commercial properties, we still need to recognize the importance, values, and functionality of the existing wetlands and discharge slopes.

Public notice and public comments

Public notices were mailed to 155 land owners of 201 properties, including all land owners within the proposed district and those within 300 feet. Notice was published in the newspaper and posted in the kiosks as required by HCC 21.94. One citizen submitted written comments; they are attached. One land

owner within the district called and was in favor of the district and the continuance of commercial zoning.

STAFF COMMENTS/RECOMMENDATIONS:

Planning staff recommends the Planning Commission conduct a public hearing, make any desired amendments, and recommend approval to the City Council.

ATTACHMENTS

1. Planning Staff Review per HCC 21.95.040 and 21.95.050
2. Draft ordinance, with attachments
3. Comments from Vikki Simpson
4. Comments from Rika Mouw
5. Comments from Dorothy Melambiankis (hand out at November 2nd meeting)
6. Public Notice



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MEMORANDUM

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: December 7, 2011
SUBJECT: Draft Ordinance 11-xx creating the East End Mixed Use zoning district and amending the zoning map

This memo contains the planning staff review of the zoning code amendment and the zoning map amendment as required by HCC 21.95.040 and 21.95.050.

Planning Staff review of the code amendment per 21.95.040

The Planning Department shall evaluate each amendment to this title that is initiated in accordance with HCC 21.95.010 and qualified under HCC 21.95.030, and may recommend approval of the amendment only if it finds that the amendment:

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

Staff response: The 2008 Comprehensive Plan Chapter 4 Land Use Goal 1 objective C states: "Develop clear and well-defined land use regulations and update the zoning map in support of the desired pattern of growth." The proposed amendment creates a new mixed use zoning district, as outlined in the Comprehensive Plan. The amendment is consistent with the plan.

b. Will be reasonable to implement and enforce.

Staff response: The district reflects the mixture of land uses that are already present. The new zoning district will be reasonable to implement and enforce.

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

Staff response: The amendment promotes present and future public health, safety and welfare by increasing the amount of land available in the city for the mixture of business uses, with moderate accessory residential activity. This land use pattern as is commonly found within the community but does not commonly fit within current the zoning code.

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

Staff response: This amendment is consistent with the intent, wording and purpose of HCC Title 21. The city attorney has reviewed and amended the ordinance for consistency.

Planning Staff review of the zoning map amendment per 21.95.050

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

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

Staff response: The proposed district and approximate boundaries are shown in the Comprehensive Plan. The zoning map amendment is consistent with and implements the goals of the Comprehensive 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.

Staff response: The rezone area is better suited to EEMU because a literal interpretation of the GC1 and GC2 districts does not allow for the range of land use activities that have historically occurred in this area. Some of the area was annexed in 2002, so there are numerous nonconforming uses in the current GC1 zone. Another portion of the district was rezoned from rural residential to GC1, created nonconforming residences. The new zoning district fits the land uses that are found in the area, and also reflects the goals of the Comprehensive Plan.

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.

Staff response: The effect of the development permitted by the map amendment on property within and near the new zoning area will be minimal. The land use patterns of the area have already been established. Part of the area was heavily developed prior to being annexed. The amendment will allow the long established land use patterns to remain as they are. The transportation network will remain unchanged.

- *Environmental impacts.* The area is currently zoned mainly general commercial 1 and general commercial 2. A very small portion is zoned rural residential. The new zoning district does not appreciably change the mix of light and heavy industrial activities allowed. The Comprehensive Plan recognizes the wetland and sensitive areas and recommends a new conservation zoning district south of the East End Mixed Use District. This will be proposed by ordinance in the near future.
- *Transportation.* East End Road and Kachemak Drive are classified as collectors in the 2005 Homer Area Transportation Plan, part of the adopted Comprehensive Plan. The change in zoning is not expected to change current or future traffic patterns. The area is a commercial area now and will continue to generate a comparable amount of traffic in the future.

- *Public services and facilities.* City water and sewer have been installed on East End Road in recent years, and are under construction on Kachemak Drive in the subject area. It is in the interests of the community to have commercial activities located in areas served by fire hydrants. The availability of water increases the fire suppression options available to businesses and area residents and increases public safety. The area is currently service by city police and fire services and the availability of services will not change or be affected by the proposed zoning change.
- *Land use patterns.* The area within the EEMU has long been a commercial area with some housing. That pattern is expected to continue. A pattern of slow commercial growth, with secondary residential development can be expected over the long term. It is in the interest of current land owners to continue this pattern, and in the interests of the community to support continued mixed use development of this part of the city.



**CITY OF HOMER
HOMER, ALASKA**

Planning

ORDINANCE 11-

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ENACTING HOMER CITY CODE CHAPTER 21.27, EAST END MIXED USE DISTRICT, AMENDING HOMER CITY CODE 21.10.010, ZONING DISTRICTS, AND AMENDING THE HOMER ZONING MAP TO REZONE PORTIONS OF THE RURAL RESIDENTIAL, GENERAL COMMERCIAL ONE AND GENERAL COMMERCIAL TWO ZONING DISTRICTS TO EAST END MIXED USE

WHEREAS, Chapter 4 Goal 1 Objective C of the Homer Comprehensive Plan states: Develop clear and well-defined land use regulations and update the zoning map in support of the desired pattern of growth; and

WHEREAS, Chapter 4 Goal 1 Objective B of the Homer Comprehensive Plan calls for the establishment of an E-MU zoning district to accommodate a wide variety of commercial and industrial uses with access to the marina and airport; and

WHEREAS, Chapter 4 Goal 4 Objective D of the Homer Comprehensive Plan states, "Introduce new commercial districts to better encourage and accommodate commercial land uses in appropriate locations, and allow new types of commercial activities to take place.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. HCC Chapter 21.27, East End Mixed Use District, is adopted to read as follows:

Chapter 21.27

EAST END MIXED USE DISTRICT

Sections:

- 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

47 21.27.090 Lighting Standards
48

49 21.27.010 Purpose. The East End Mixed Use (EEMU) District is primarily intended to
50 provide sites for businesses that require direct motor vehicle access and may require larger land
51 area. The district is meant to accommodate a mixture of existing and accessory residential with
52 non-residential uses. When a conflict exists between residential and nonresidential uses conflicts
53 shall be resolved in favor of non-residential uses.
54

55 21.27.020 Permitted uses and structures. The following uses are permitted outright in the
56 East End Mixed Use District, except when such use requires a conditional use permit by reason
57 of size, traffic volumes, or other reasons set forth in this chapter.

- 58 a. Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals,
59 service and repair;
- 60 b. Drive-in car washes;
- 61 c. Building supply and equipment sales and rentals;
- 62 d. Garden supplies and greenhouses;
- 63 e. Boat and marine equipment sales, rentals, manufacturing, storage yard, service
64 and repair;
- 65 f. Welding and mechanical repair;
- 66 g. Restaurants, including drive-in restaurants, clubs and drinking establishments;
- 67 h. Religious, cultural, and fraternal assembly;
- 68 i. Studios;
- 69 j. Personal services;
- 70 k. Agricultural activities, including general farming, truck farming, nurseries, tree
71 farms and greenhouses;
- 72 l. Private stables;
- 73 m. Storage of heavy equipment, vehicles or boats;
- 74 n. Plumbing, heating and appliance service shops;
- 75 o. Home occupations on a lot whose principal permitted use is residential, provided
76 they conform to the requirements of HCC § 21.51.010;
- 77 p. Mortuaries and crematoriums;
- 78 q. Open air businesses;
- 79 r. Parking lots and parking garages, in accordance with HCC Chapter 21.55;
- 80 s. Manufacturing, fabrication and assembly;
- 81 t. Retail businesses;
- 82 u. Trade, skilled or industrial schools;
- 83 v. Wholesale businesses, including storage and distribution services incidental to the
84 products to be sold;
- 85 w. Parks and open space;
- 86 x. Warehousing, commercial storage and mini-storage;
- 87 y. Recreational vehicles, subject to the standards in HCC § 21.54.320(a), (b) and (c);
- 88 z. Dry cleaning, laundry, and self-service laundries;
- 89 aa. Mobile food services;
- 90 bb. As an accessory use, one small wind energy system per lot;
- 91 cc. Production, processing, assembly and packaging of fish, shellfish and seafood
92 products;

- 93 dd. Research and development laboratories;
- 94 ee. Storage and distribution services and facilities, including truck terminals,
- 95 warehouses and storage buildings and yards, contractors' establishments,
- 96 lumberyards and sales, or similar uses;
- 97 ff. Cold storage facilities;
- 98 gg. Mobile commercial structures;
- 99 hh. Single family and duplex dwellings, only as an accessory use incidental to a
- 100 permitted principal use, provided that no permit shall be issued for the
- 101 construction of an accessory dwelling prior to the establishment of the principal
- 102 use;
- 103 ii. The repair, replacement, reconstruction or expansion of a single family or duplex
- 104 dwelling, including a mobile home, that existed lawfully before its inclusion in
- 105 the GC1, GC2 or EEMU zoning districts, notwithstanding any provision of HCC
- 106 Chapter 21.61 to the contrary, provided that a mobile home may not be used to
- 107 replace or expand such a dwelling ;
- 108 jj. Customary accessory uses to any of the uses permitted in the EEMU district that
- 109 are clearly subordinate to the main use of the lot or building, including without
- 110 limitation wharves, docks, storage facilities, restaurant or cafeteria facilities for
- 111 employees; or caretaker or employee dormitory residence if situated on a portion
- 112 of the same lot as the principal use, provided that no permit shall be issued for the
- 113 construction of any type of accessory building prior to the establishment of the
- 114 principal use;
- 115 kk. Taxi operation;
- 116 ll. Itinerant merchants, provided all activities shall be limited to uses permitted
- 117 outright under this zoning district;
- 118 mm. More than one building containing a permitted principal use on a lot;
- 119 nn. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory
- 120 use to a residential use in a manner consistent with the requirements of all other
- 121 provisions of the Homer City Code and as long as such animals are pets of the
- 122 residents of the dwelling and their numbers are such as not to unreasonably annoy
- 123 or disturb occupants of neighboring property.

124
125 21.27.030 Conditional uses and structures. The following conditional uses may be
126 permitted in the East End Mixed Use District when authorized by conditional use permit issued
127 in accordance with HCC Chapter 21.71:

- 128 a. Construction camps;
- 129 b. Extractive enterprises, including crushing of gravel, sand and other earth products
- 130 and batch plants for asphalt or concrete;
- 131 c. Auto fueling stations;
- 132 d. Bulk petroleum product storage;
- 133 e. Planned unit developments;
- 134 f. Junk yard;
- 135 g. Kennels;
- 136 h. Public utility facilities and structures;
- 137 i. Impound yards;
- 138 j. Indoor recreational facilities;

- 139 k. Outdoor recreational facilities;
- 140 l. Other uses approved pursuant to HCC § 21.04.020.

141
142 21.27.040 Dimensional requirements. The following dimensional requirements shall
143 apply to all structures and uses in the East End Mixed Use District:

- 144 a. Lot Size.
 - 145 1. The minimum area of a lot that is not served by public sewer or water
 - 146 shall be 40,000 square feet.
 - 147 2. The minimum area of a lot that is served by either a public water supply
 - 148 approved by the State Department of Environmental conservation, or a public or community
 - 149 sewer approved by the State Department of Environmental Conservation, shall be 20,000 square
 - 150 feet.
 - 151 3. The minimum area of a lot that is served by both a public water supply
 - 152 approved by the State Department of Environmental conservation, and a public or community
 - 153 sewer approved by the State Department of Environmental Conservation, shall be 10,000 square
 - 154 feet.

- 155 b. Building Setbacks.
 - 156 1. All buildings shall be set back 20 feet from all dedicated rights-of-way
 - 157 other than alleys, except that adjacent to rights-of-way that lead to Kachemak Bay and have been
 - 158 determined to be unsuitable for road construction by resolution of the City Council, all buildings
 - 159 shall be set back from the boundary of the right-of-way according to the number of stories as
 - 160 follows:

161	Number of Stories	Setback (in feet)
162	1	5
163	1½	6
164	2	7
165	2½	8

- 166
- 167 2. The setback requirements from any lot line abutting an alley will be
- 168 determined by the dimensional requirements of subparagraphs (b)(3) and (4);
- 169 3. Buildings shall be set back five feet from all other lot boundary lot lines
- 170 unless adequate firewalls are provided and adequate access to the rear of the building is
- 171 otherwise provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State
- 172 Fire Marshal;
- 173 4. Any attached or detached accessory building shall maintain the same yards
- 174 and setbacks as the main building.

- 175 c. Building Height. The maximum building height shall be 35 feet.
- 176 d. No lot shall contain more than 8,000 square feet of building area (all buildings
- 177 combined), nor shall any lot contain building area in excess of 30 percent of the lot area without
- 178 an approved conditional use permit.
- 179 e. Building Area and Dimensions - Retail and Wholesale. The total floor area of
- 180 retail and wholesale business uses within a single building shall not exceed 75,000 square feet.
- 181 No conditional use permit, Planned Unit Development, or variance may be granted that would
- 182 allow a building to exceed the limits of this subparagraph, and no nonconforming use or structure
- 183 may be expanded in any manner that would increase its nonconformity with the limits of this
- 184 subparagraph.

185 f. Screening.

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

192 2. Outside storage of materials, equipment and trash/dumpsters adjacent to
193 East End Road and Kachemak Drive shall be screened. Screening may consist of walls,
194 fences, landscaped berms, evergreen plantings, or any combination thereof.

195
196 21.27.050 Site and Access Plans. a. A zoning permit for any use or structure within the
197 East End Mixed Use District shall not be issued by the City without a level two site plan
198 approved by the City under HCC Chapter 21.73.

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

201
202 21.27.060 Traffic Requirements. A conditional use permit is required for every use that:

203 a. Is estimated to generate more than 100 vehicle trips during any hour of the day
204 based on the proposed land use and density, or calculated utilizing the Trip Generation
205 Handbook, Institute of Transportation Engineers (current edition),

206 b. Is estimated to generate more than 500 vehicle trips per day based on the
207 proposed land use and density, or calculated utilizing the Trip Generation Handbook, Institute of
208 Transportation Engineers (current edition);

209 c. Is estimated to generate an increase in the traffic to more than 100 vehicle trips
210 during any hour of the day due to a change in land use or intensity of use;

211 d. Is expected to generate traffic that will detract from the safety of, or degrade by
212 one level of service, the highway, road, street, alley or intersection.

213
214 21.27.070 Site Development Requirements. All development on lands in this district shall
215 conform to the level two site development standards set forth in HCC § 21.50.030.

216
217 21.27.080 Nuisance standards. The nuisance standards of HCC § 21.59.010(a) through
218 (g)(1) apply to all development, uses, and structures in this zoning district. Open storage of
219 materials and equipment is permitted, subject to the requirement that when a lot abuts a
220 residential zoning district any outdoor storage of materials and equipment on the lot must be
221 screened from the residential district by a wall, fence, or other sight-obscuring material. The
222 screen must be a minimum of eight feet in height.

223
224 21.27.090 Lighting Standards. The level one lighting standards of HCC § 21.59.030
225 apply to all development, uses, and structures in this zoning district.

226
227 Section 2. Homer City Code 21.10.010, Zoning districts, is amended to read as follows:
228

229 21.10.010 Zoning districts. a. The city is divided into zoning districts. Within each zoning
230 district only uses and structures authorized by this title are allowed.

231 b. The following zoning districts are hereby established:

232

Zone	Abbreviated Designation
Residential office	RO
Rural residential	RR
Urban residential	UR
Central business district	CBD
Town center district	TCD
Gateway business district	GBD
General commercial 1	GC1
General commercial 2	GC2
<u>East end mixed use</u>	<u>EEMU</u>
Marine commercial	MC
Marine industrial	MI
Open space--Recreational	OSR
Conservation district	CO

233 c. The zoning district boundaries shall be as shown on the official Homer Zoning
234 Map.
235
236

237 Section 3. The Homer Zoning Map is amended to transfer from the Rural Residential (RR),
238 General Commercial 1 (GC1) and General Commercial 2 (GC2) zoning districts, to the East End
239 Mixed Use (EEMU) district as shown on the attached Exhibit A, the parcels listed on attached
240 Exhibit B

241
242 Section 4. The City Planner is authorized to sign the amended Homer Zoning Map
243 and adhere to the requirements set forth in the Homer City Code, Section 21.10.030(b).
244

245 Section 5. Sections 1 and 2 of this Ordinance are of a permanent and general character
246 and shall be included in the City Code. Section 3 is a non Code Ordinance of a permanent
247 Nature and shall be noted in the Ordinance history of HCC 21.10.030.
248

249 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
250 _____ 2012.

251
252
253
254
255
256
257

CITY OF HOMER

JAMES C. HORNADAY, MAYOR

258 ATTEST:

259
260
261

JO JOHNSON, CMC, CITY CLERK

262
263
264
265
266
267
268

YES:
NO:
ABSTAIN:
ABSENT:

269 First Reading:
270 Public Hearing:
271 Second Reading:
272 Effective Date:

273

Reviewed and approved as to form:

274
275
276
277

Walt E. Wrede, City Manager

Date: _____

278
279
280
281

Thomas F. Klinkner, City Attorney

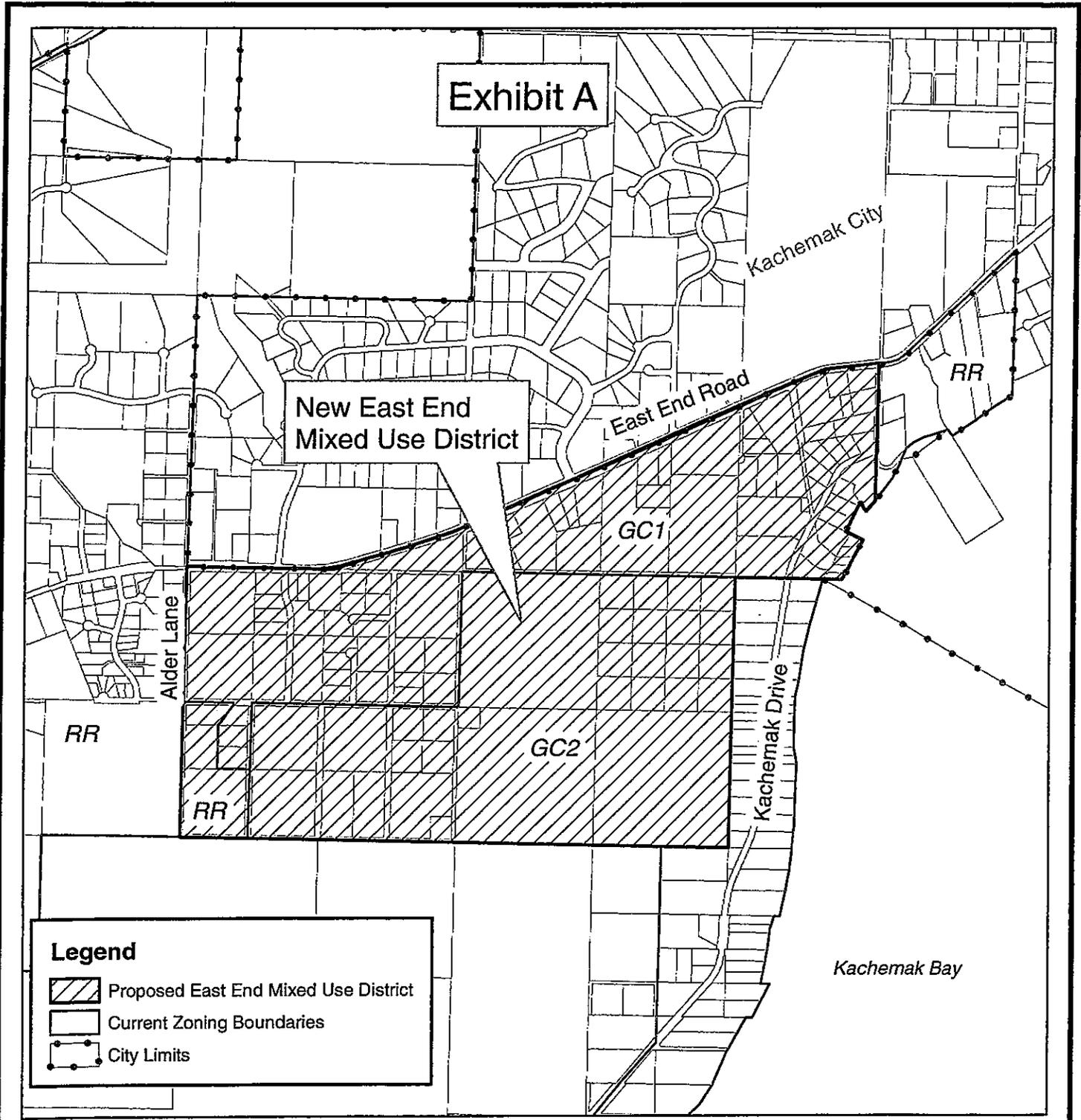
Date: _____



PARCEL_ID	LEGAL
17420206	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0610049 H K DAVIS SUB AMENDED LOT 3
17419222	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0950052 PUFFIN ACRES NO 2 LOT 2A BLK 1
17420201	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0610049 H K DAVIS SUB AMENDED LOT 8
17420308	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0870069 RUMLEY-COLLIE FOUR SUB TRACT A-3A
17420309	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0870069 RUMLEY - COLLIE FOUR TRACT A-3B
17420202	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0610049 H K DAVIS SUB AMENDED LOT 7
17420105	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0610049 H K DAVIS SUB AMENDED LOT 13
17420219	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 0860021 H K DAVIS SUB NO 5 LOT 1L
17420316	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 2002067 NORTHERN ENTERPRISES NO 1 LOT 5-A-2
17420118	T 6S R 13W SEC 11 SEWARD MERIDIAN HM 200069 H K DAVIS SUB NO 6 LOT 15-D
17908023	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 22
17908031	T 6S R 13W SEC 14 SEWARD MERIDIAN HM SE1/4 OF NW1/4
17908002	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 8
17908047	T 6S R 13W SEC 14 SEWARD MERIDIAN HM N 208.71 FT OF W 208.71 FT OF SW1/4 NW1/4
17908001	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 9
17908030	T 6S R 13W SEC 14 SEWARD MERIDIAN HM SW1/4 OF NW1/4 EXC N 208.71 FT OF W 208.71 FT
17908011	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 12
17908010	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 11
17908018	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 18
17908025	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 24
17908004	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 6
17908015	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 21
17908016	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 20
17908017	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 19
17908026	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 25
17908009	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 10
17908003	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 7
17908012	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 13
17908024	T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 23
17908029	T 6S R 13W SEC 14 SEWARD MERIDIAN HM NW1/4 OF NW1/4
17928019	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 TIETJEN SUB TRACT M
17928023	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0731385 TIETJEN SUB TR O RESUB TRACT O-1
17928045	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780037 UTTER ACRES SUB LOT 2
17928046	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780037 UTTER ACRES SUB LOT 3
17928040	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760092 TIETJEN RESUB OF TR C-1 TRACT C-1A
17928010	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 TIETJEN SUB TRACT F-1
17928041	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760092 TIETJEN RESUB OF TR C-1 TRACT C-1B
17928042	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 TIETJEN SUB TRACT P EXC THE E 200 FT OF THE S 217.8 FT

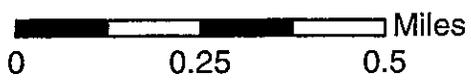
PARCEL ID	LEGAL
17928001	T 6S R 13W SEC 15 SEWARD MERIDIAN HM PTN NW1/4 NE1/4 LYING SOUTH OF EAST END ROAD & EAST OF ALDER LANE AKA TRACT A T1ETJEN SUB EXCL DOT ROW
17928028	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-3
17928051	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780050 T1ETJEN RESUB TR C-2 TRACT C2-D
17928035	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT H-4
17928014	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB TRACT K
17928055	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0860003 T1ETJEN SUB NO 7 TRACT I-3
17928044	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780037 UTTER ACRES SUB LOT 1 EXCLUDING DOT ROW
17928011	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB TRACT E
17928018	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB LOT N
17928027	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-2
17928029	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-4
17928054	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0860003 T1ETJEN SUB NO 7 TRACT I-2
17928039	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760103 T1ETJEN RESUB TR L TRACT L-3
17928050	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780050 T1ETJEN RESUB TRACT C-2 TRACT C-2C
17928020	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0731252 T1ETJEN LOT 2-B RESUB LOT B-2B
17928030	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-5
17928031	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-6
17928009	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB LOT F-2
17928059	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 2005071 T1ETJEN SUB NO 9 LOT 1
17928006	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB TRACT D
17928022	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0731385 T1ETJEN SUB TR O RESUB TRACT 0-2
17928037	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760103 T1ETJEN RESUB TR L TRACT L-1
17928049	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780050 T1ETJEN RESUB TRACT C-2 TRACT C-2B
17928043	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB PTN OF TR P BEGINNING @SE CORNER OF TR P TH W 200 FT; TH N 217.8 FT; TH E 200 FT; TH S 217.8 FT TO THE POB
17928057	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 2004063 T1ETJEN SUB NO 8 TRACT H-3A
17928004	T 6S R 13W SEC 15 SEWARD MERIDIAN HM E 312 FT OF W 1477 FT OF N 418.8 FT OF NE1/4 EXC ROAD & EXCLUDING DOT ROW
17928036	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760103 T1ETJEN RESUB TR L TRACT L-4
17928056	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0860003 T1ETJEN SUB NO 7 TRACT I-4
17928026	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT G-1
17928048	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780050 T1ETJEN RESUB TR C-2 TRACT C2-A
17928060	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 2005071 T1ETJEN SUB NO 9 LOT 2
17928013	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0700591 T1ETJEN SUB TRACT J
17928032	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT H-1
17928038	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0760103 T1ETJEN RESUB TR L TRACT L-2
17928033	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0750042 T1ETJEN RESUB OF TRACTS G & H TRACT H-2
17928047	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0780037 UTTER ACRES SUB LOT 4

PARCEL_ID	LEGAL
17928052	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0860003 TIETJEN SUB NO 7 TRACT I-5
17928058	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 2004063 TIETJEN SUB NO 8 TRACT H-3B
17928053	T 6S R 13W SEC 15 SEWARD MERIDIAN HM 0860003 TIETJEN SUB NO 7 TRACT I-1



City of Homer
Planning and Zoning Department
 October 27, 2011

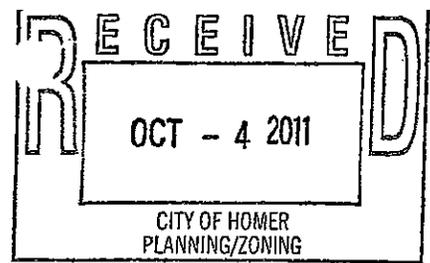
East End Mixed Use Zoning District



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.



October 4, 2011



Homer Planning Department.

It has come to my attention that the Planning Commission is working on a new zoning district called East End Mixed Use.

I own the property at 5057 Kachemak Drive, 179-080-08 which is adjacent to the Northern Enterprise boat yard.

I am writing to ask to be included in the boundary for the new zone. I work on boats and other equipment on my property as well as have my home there. The new Mixed Used zone makes more sense for my property both now and in the future. I understand that my home will be allowed to remain and can be rebuilt or expanded under the new designation.

Please let me know if there is anything further needed from me regarding this request. I am currently working in Cordova so mail is going to my mom's in Ninilchik.


Vikki A Simpson

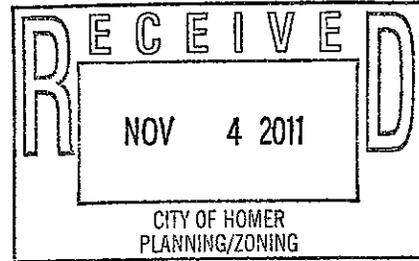
P O Box 39003

Ninilchik, Ak 99639-003

509-540-4634



East End Mixed Use



Relevant text in Comp Plan

Text in EEMU regarding the purpose of that zone
Climate change text regarding Homer

- *Identify drainage/riparian corridor and wetlands, 80 acres of borough land.
- *Pull western boundary east to avoid splitting up an existing neighborhood
- *Overlay the area in the southern part of the district which has no road access, infrastructure is important for flood control, neighborhood connectivity, outdoor recreation, important community values. All development in that area should be conditional. Development in the wetlands is pitting owners towards conflict with the Army Corps. 2 permits have been denied already and successive permits will likely be as well.

Kachemak City just north of East End Road is contiguous and is already developed and has road access. We are all a community and benefit from this combined resources. Imagine EEMU to include Kachemak City. It is already.

Imagine connecting trails to existing out door recreation activities (Cottonwood Park, horses, Jack Gist) and neighborhoods to snowshoeing, skiing, access to Beluga Lake, Paul Banks, Calvin&Coyle trail. Imagine off road corridors from East End Road to Beluga Lake, the bike trail on Ocean Drive and into town right in the middle of Homer! Imagine a Central Park in Homer that has the dual purpose of handling flood control, bluff erosion mitigation, wetland filtered waters running into our gem of Kachemak Bay. Imagine the quality of life all would experience by acknowledging that the greatest value of riparian and wetlands are for our community's quality of life.

Comments to the Homer Advisory Planning Commission on the EEMU zoning district

I thank each of the members of this commission for the time and commitment you give to our important planning and community issues. The updated 2010 Comprehensive Plan is a good one and worth supporting. Chapter 4 regarding Land Use issues contains reasonable language all can agree with. There is a paragraph that states,

'Homer's pattern of growth is also greatly influenced by environmental constraints. Steep slopes, bluff and shoreline erosion and wetland areas make development of many parcels costly, difficult and even unfeasible. While difficult for individual development, they can have great value for the community as a whole. Drainage ways, beach areas, or steep erodible slopes can form an integrated open space network ('green infrastructure') which supports the areas that may be developed more intensively. Environmental constraints and opportunities have an important role in guiding the character and location of new growth'.

Goals 2 and 3 articulate the desirability of maintaining the quality of Homer's natural environment and scenic beauty. These goals wisely encourage site development that compliments Homer's beautiful setting and environmental constraints.

Considering the fact that the proposed EEMU district covers varied land types from already developed land on East End Road to completely inaccessible wetlands, I urge the commission to consider a few points to incorporate while shaping the zoning in this area.

- 1) Identify the important Bear Creek/Palmer Creek riparian drainage running through the land on the very western edge of the proposed zoning district. Just north of East End Road this riparian drainage is protected with a conservation easement. It passes under East End Road and then crosses land on Alder Road and continues south through a rural residential neighborhood and drains into 80 acres of borough land recently designated for preservation and then finally into State established critical habitat. **It makes good planning sense to make sure drainage corridors are protected and functioning since flooding is a real concern as climate change studies show that our region will be experience more intense storms in the form of rain. Commercial development is generally more intensive and has a greater negative affect along riparian drainages.** Currently the length of Alder Lane is a residential neighborhood. It makes sense to acknowledge that and maintain this area as a residential

neighborhood. It is destructive to zone break up a neighborhood by zoning one side of a street as residential and the other side as commercial.

- 2) Recognize that the Borough and City of Homer recently identified an 80 acre parcel of land located south and adjacent to the EEMU district, for preservation designation. Certain types of commercialized development adjacent to these 80 acres and the State established critical habitat would negate the efforts the State, Borough and City have identified for conservation.
- 3) Intense commercial development is not equally feasible throughout the EEMU district. An overlay makes sense to recognize the adjacent residential neighborhoods, wetlands, trail connectivity, and remaining moose habitat that have community values equal to or greater than some of the current allowable uses listed for EEMU zoning. **The stated purpose of the EEMU is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area. A large part of the EEMU does not have road access or any infrastructure so it does not provide the purpose this zoning professes to accommodate.** It is with this idea that I suggest an 'overlay' area within the district that better addresses the enhancements the Homer community can benefit from. In the overlay area (wetlands and areas without current road access and utilities) all development would fall under conditional.
- 4) Eliminate all conditional uses from the current list except Outdoor Recreational facilities. Would we ever consider another junk yard? Kennels? Impound yards? Bulk petroleum product storage? Extractive enterprises like gravel yards or batch plants for asphalt or concrete?
- 5) Review the list of allowable commercial uses for EEMU with more consideration of what this community really needs and what brings this community a maximum benefit as a whole. What really creates healthy sustainable commercial development that also is a good neighbor to what already exists in the area?

It is within these guidelines I encourage the HAPC to look at the EEMU district with the idea of considering an overlay of different allowable uses within the larger zoning district. Not all areas within the district are equally conducive to the same development menu. Land along East End Road is very different than land in the very southern end of the district where wetlands prevail and are less suited for intensive development while having a greater community value for other purposes.

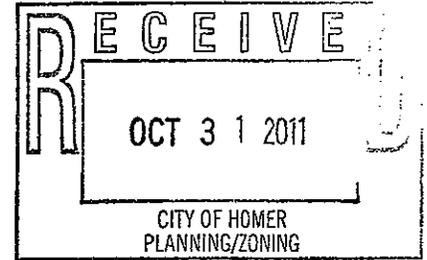
Thank you for your time.

Rika Moww



October 31, 2011

Homer Advisory Planning Commission
City of Homer
491 East Pioneer Avenue
Homer, AK 99603



Dear Commissioners Minsch, Bos, Dolma, Sonneborn, Erickson, Venuti, and Highland:

I am writing to you today to provide some information and to express some concerns regarding the proposed East End Mixed Use Zoning District. This proposed action would affect my residence property at the southeast corner of Alder Lane and Spruce Lane. Unfortunately, I will be out of town during the planned neighborhood meeting to discuss this on November 2, and therefore submit these written comments for your consideration.

Background

I understand that some property owners along Meadow Drive have been experiencing problems when seeking to expand or sell their homes due to the current GC1 zoning. With the exception of some very recent developments along Meadow Drive, the properties are all either vacant or have been residentially or agriculturally developed. I commend the Commission and the Planning Department staff for continuing to work on an acceptable solution for my neighbors, to allow them to improve, sell, and/or finance their properties without the cloud of zoning non-conformity. I also recognize that legitimizing mixed zoning in this area of existing mixed use has a value to the City by allowing uses that will enable economic development and provide affordable land to commercial enterprises.

To the west of the Meadow Drive neighborhood, along Alder Lane, the City has demonstrated changing ideas and intentions over the years. The 1999 Comprehensive Plan showed the area east of Alder Lane and south of Spruce Lane as Rural Residential. This was the basis of a re-zone request for my property in 2005, which was unanimously supported by the Planning Commission and the City Council. Per the minutes of the City Council meeting in 2005, the City Manager stated that "the Commission felt very strongly that [my property] should be a part of [the Rural Residential zoning district]". The 2008 (adopted in 2010) update to the comprehensive plan now shows boundary line adjusted to include my property as acceptable for mixed use, which apparently is the basis for the current proposal.

Concerns with Current Proposal

My primary concern is the change in zoning of the properties along Alder Lane from Rural Residential to EEMU. As stated above, the Rural Residential designation for my property was unanimously supported by the 2005 Planning

Commission and City Council, and based on that re-zone, over the past several years I have invested tens of thousands of dollars improving the property and constructing my primary residence. The proposed zoning change for my lot and the other Rural Residential properties south of me demonstrates an unprecedented reversal of the zoning pattern that the City approved only a handful of years ago.

I understand the desire to enact the recommendations of the newest version on the City's comprehensive plan, which suggests that the boundary between the Rural Residential district and the EEMU district should lie along my west property line instead of my east property line. However, simply the appearance of simplified zoning boundary lines, or blanket adoption of Comprehensive Plan maps, should not be the basis for this change. The broad visions and goals set out in the Comprehensive Plan should be flexibly incorporated to address the facts on the ground. Specifically, the Commission should take into consideration that the Alder Lane neighborhood is different than the Meadow Drive neighborhood. Splitting the zoning along a road, rather than looking at the existing patterns of use and connectivity between the parcels would be unwise in my opinion, and I urge the Commission to take a step back and examine this issue.

Recommendations

1. **Maintain or amend zoning along Alder Lane to make all those parcels part of the Rural Residential district.** These properties are either already developed residentially or are vacant. Keeping properties on both sides of Alder Lane in the same zoning district would also serve to keep a cohesive neighborhood feeling, and reduce the chance for use conflicts on the road and infrastructure in the area. Mixed use zoning along Alder Lane, with residential on one side and industrial on the other side would invite conflict and environmental degradation of this sensitive area. Palmer (Bear) Creek runs through several of these parcels, and industrial development would not be aesthetically, environmentally, or even logistically desirable due to the hydrologic conditions that exist.
2. **Remove parcels currently zoned Rural Residential from the proposed EEMU district.** Rather than expanding allowed uses to address zoning conformity problems identified earlier in this letter, changing the zoning of these Rural Residential parcels would result in a major loss of residential property rights currently held by these landowners. There is no demonstrated need to change the character of this neighborhood to enable high impact commercial or industrial enterprises in Homer.
3. **Allow residences to be replaced, either in the same footprint or a different location, rather than just allow expansion and continuance**

of the existing residences in the proposed EEMU district. Also, if a parcel is currently utilized residentially, allow additional residences on the property if the zoning code would otherwise allow it (outright or through CUP process). If a residential parcel in this district is subdivided, residential development should be allowed on the resulting parcels.

- 4. Postpone any additional action on the proposed zoning amendment until landowners and the public have had a chance to review and weigh in on the specific conditions and language of the proposed EEMU zoning district.** Affected landowners and the public should be given more information about what would be allowed and disallowed, to supplement the few sentences provided in the meeting notice. At the very least, the Commission should postpone any action at its November 2 regular meeting, since that would not allow any time for the public to absorb information provided at the open house, or to develop substantive responses.

I am very interested in the results of the November 2 open house and will be closely following the zoning process if and when it advances from this current proposal. I trust that proper consideration of the all the facts relevant to the proposal will allow the Commissioners to address the needs of the City and the two neighborhoods involved without inadvertent adverse effects to some landowners, such as myself.

Thank you for your consideration of my views. I am available to answer any questions you may have on my comments and concerns, please do not hesitate to contact me.

Sincerely,

Dorothy Melambianakis

- (907) 299-2265
- nikolaou_ak@hotmail.com
- PO Box 1733, Homer, AK 99603

Cc: Rick Abboud, City Planner
Julie Engebretsen, Planning Technician



PUBLIC NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, December 7, 2011 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matters:

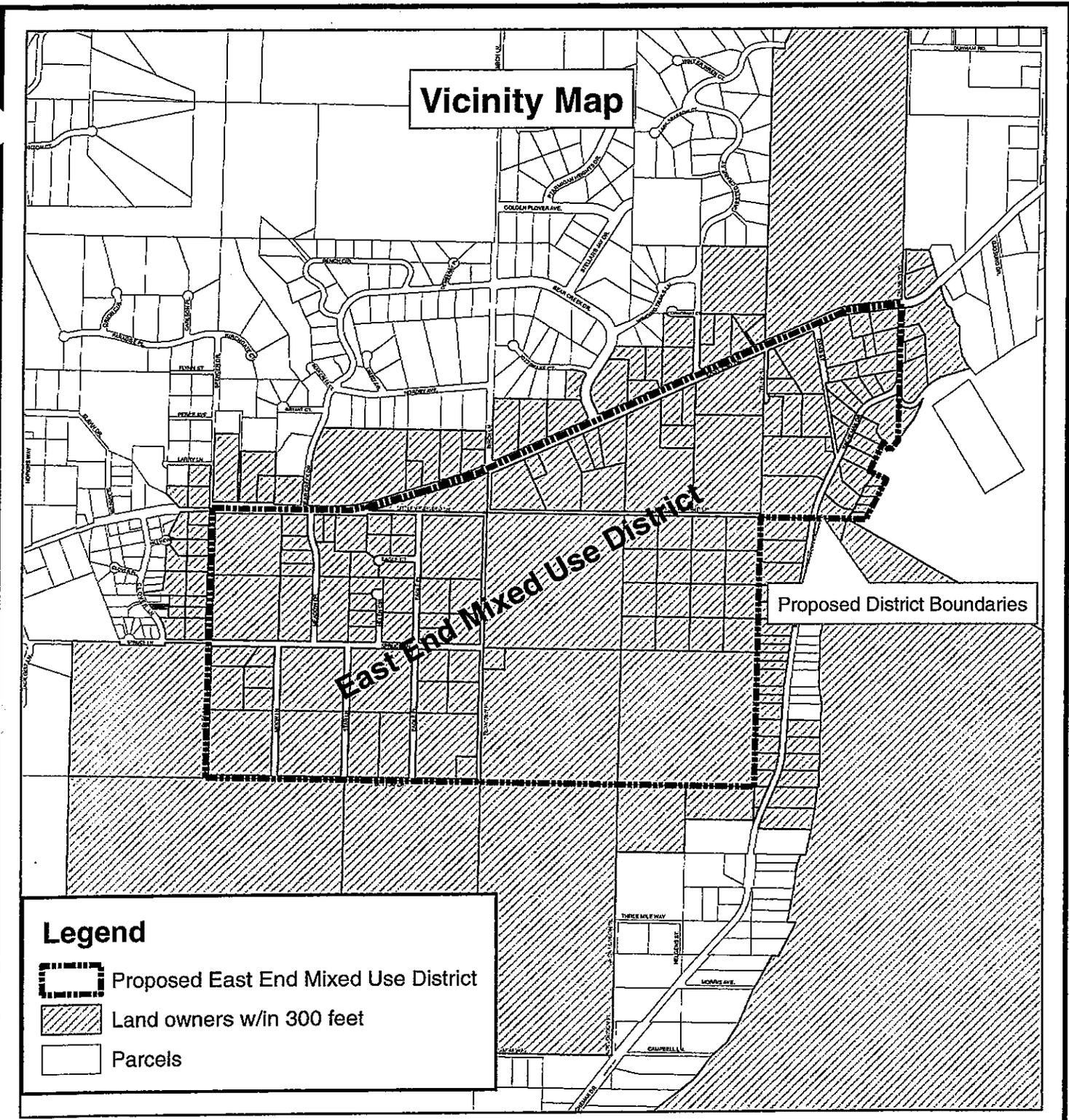
AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ENACTING HOMER CITY CODE CHAPTER 21.27, EAST END MIXED USE DISTRICT, ADDING THE EAST END MIXED USE DISTRICT TO 21.10.010(b), AND AMENDING THE HOMER ZONING MAP TO REZONE PORTIONS OF THE RURAL RESIDENTIAL, GENERAL COMMERCIAL ONE AND GENERAL COMMERCIAL TWO ZONING DISTRICTS TO EAST END MIXED USE. (The East End Mixed Use District is proposed to be south of East End Road, between Alder Lane and Kachemak Drive, extending south to Bottom Lane.)

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

For additional information, please contact Rick Abboud in the City Planning and Zoning Office at 235-8121, ext. 2236.

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









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.cityofhomer-ak.gov

STAFF REPORT PL 11-120

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: December 7, 2011
SUBJECT: Barnett Subdivision Quiet Creek Addition No. 2 Preliminary Plat

Requested Action: Preliminary Plat approval for division of one large lot into two lots.

GENERAL INFORMATION

Applicants:	David Hamilton AK USA Federal Credit Union 4000 Credit Union Drive Anchorage, AK 99503	Roger Imhoff, RLS PO Box 2588 Homer, AK 99603
Location:	South Slope Drive and Shellfish Ave	
Parcel ID:	17701082	
Size of Existing Lot(s):	16.979 acres	
Size of Proposed Lots(s):	7.111 and 9.868 acres	
Zoning Designation:	Rural Residential District	
Existing Land Use:	15 condominium units (Quiet Creek condo's)	
Surrounding Land Use:	North: Residential/vacant (steep slope) South: Vacant East: Residential/Vacant West: Residential/Vacant	
Comprehensive Plan:	Goal 1 Object 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." (4-4)	
Wetland Status:	The 2005 wetland mapping shows a possible wet area on the southwestern corner of the lot.	
Flood Plain Status:	Zone D, flood hazards undetermined.	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City water and sewer are available to the northern lot.	
Public Notice:	Notice was sent to 62 property owners of 41 parcels as shown on the KPB tax assessor rolls.	

ANALYSIS:

This subdivision is within the Rural Residential District. This plat creates two lots from one larger lot. The lots meet the dimensional size requirements of the zoning district.

NOTE: The city and HAPC role in the preliminary plat process is to make a recommendation to the Kenai Peninsula Borough on the conceptual layout of the subdivision. Staff makes this point on this plat in particular, because there are several issues outside of the plat process that may come to the Commission's attention.

First, there is a conditional use permit on this lot for the condominium development, for a total of 32 units, and encompassing all of the acreage. The Alaska USA Credit Union recently foreclosed on the property and a few of the units. Staff recommends to both the bank and the condo home owners association that at some point they amend the CUP if the remainder of the condo units will not be built. This does not need to be addressed at this time.

Second, there is some question of ownership and development rights between the bank and the condo homeowners association. This is NOT an issue the city, or the HAPC can address. In the plat process, before final platting action, a certificate to title must be provided to the Borough. If there is a dispute about the validity of this document, its not something City has any authority or role in determining; it's a matter of law only a court can decide.

This is the second time this plat has been submitted; in 2010 the bank chose to pull the plat prior to the Planning Commission meeting. The surveyor states he thinks all parties will have to sign the plat prior to recording. This implies that the condo association, individual home owners and the bank will need to reach some agreement, or take the matter to court (or withdraw the plat). Staff recommends the Commission focus on the code regarding subdivisions, and let parties take their arguments to court. Nothing planning staff or the HAPC can say or do has any bearing on the legal issues.

Steep Slopes

Under KPB code 20.20.250 where cities have enacted different design standards from the Borough, the Borough Planning Commission can apply the City standards in lieu of Borough standards. The City steep slope code as it applies to this subdivision requires a steep slope site plan. Tract A-2, as proposed, has an average slope of 23%. With this calculated slope, development cannot exceed 25% of the lot (HCC 21.44.030 (b)). The area of development on the proposed lot is approximately 37%. Therefore, a steep slope site plan meeting the requirements of 21.44.050 must be submitted and approved by the City prior to final platting.

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 plat meets these requirements.

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 does not meet these requirements. On the parent plat, note six of the parent plat describes a drainage easement along the creek north of the condos); this should be carried forward. The other creek easement is noted on the plat.

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. Major drainage systems are shown.

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: The plat meets these requirements. Tract A-2 is served by city water and sewer. Tract A-1 will be served by onsite water and waste water, unless water and sewer are extended along South Slope Drive.

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 to be 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. Areas with greater than 20% slope are shown.

PUBLIC WORKS COMMENTS:

Tract A-1 cannot use the water and sewer lines that serve Tract A-2 (condos). These are private service lines. In order for proposed Tract A-1 to obtain city water/sewer service, mainlines would need to be extended along the entire lot length of the property line. Options for a mainline extension can be discussed with the owner at such time that they inquire.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter no concerns.

STAFF COMMENTS/RECOMMENDATIONS:

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

1. Carry forward the plat notes regarding drainage and utility easements from the parent plat.
2. A steep slope site plan per HCC 21.44.050 shall be submitted by the applicant, and reviewed by the City prior to final plat approval.

ATTACHMENTS

1. Public Notice
2. Preliminary Plat
3. Letter from surveyor
4. Quiet Creek Home Owners Association Attorney Sandra Wicks submittals
5. Alaska USA Attorney Theodora Accinelli submittals
6. Emails from unit owners in objection; Leo and Beverly Nikora, Bill Frank, Mary Ann Griffith, Steve and Janice Nelson, Dr. David and Luann Nelson, Karen and Cal Forrester

NOTICE OF SUBDIVISION

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

Proposed subdivisions under consideration are described as follows:

➔ **Barnett Subdivision, Quiet Creek Addition No. 2 Preliminary Plat**

Eker Estates Too Preliminary Plat

The location of the proposed(s) subdivision is provided on the attached map(s). A preliminary plat showing the proposed subdivision may be viewed at the Planning Department. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the KPB Subdivision Ordinance. A copy of the Ordinance is available from the Planning Department. **Comments should be guided by the requirements of those Ordinances.**

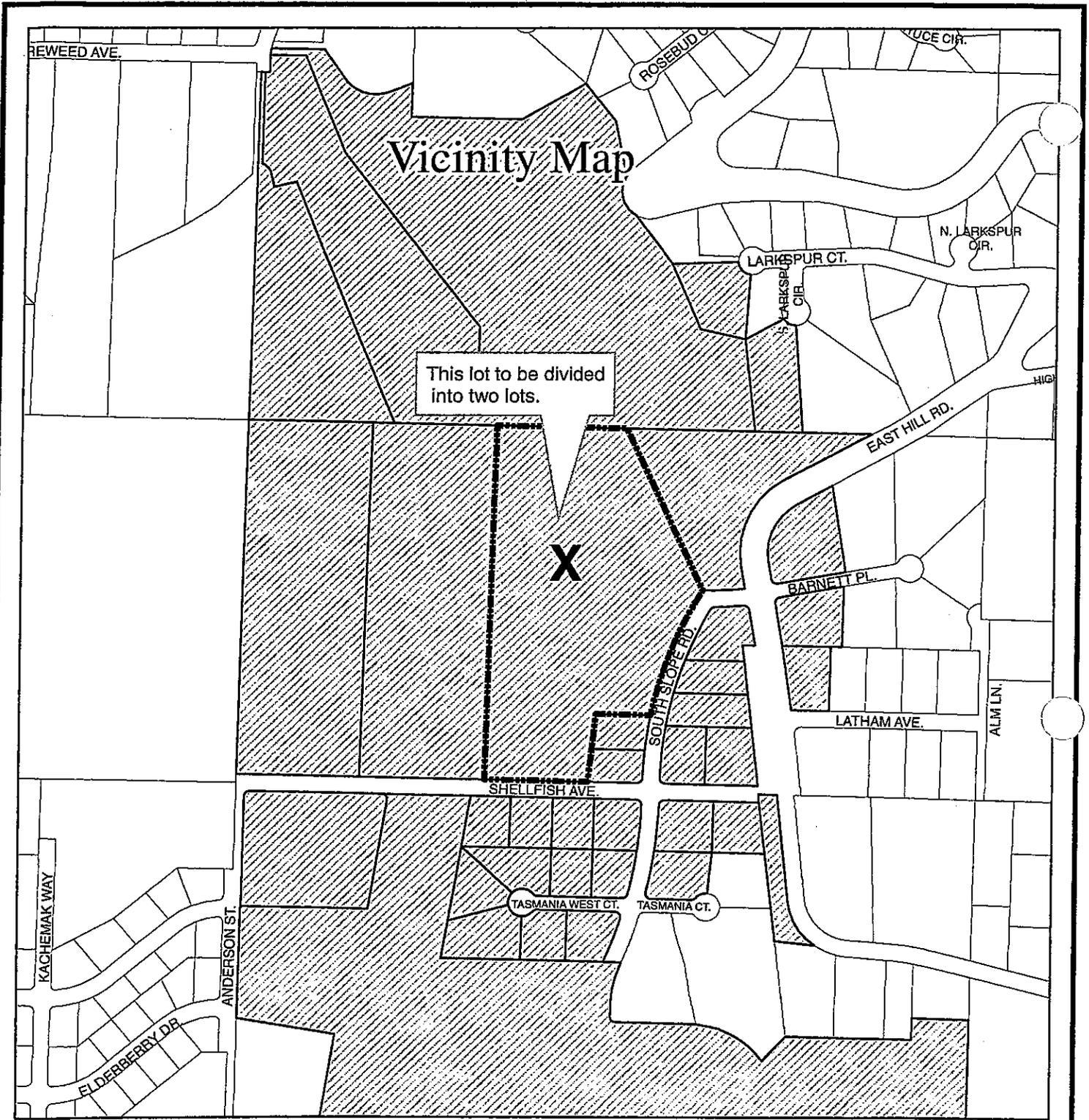
A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, December 7, 2011 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting. Written comments can be faxed to 907-235-3118.

For additional information, please contact Julie Engebretsen in the City of Homer Planning and Zoning Office at 235-8121, ext. 2237.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPOSED SUBDIVISION.

VICINITY MAP ON REVERSE



Vicinity Map

This lot to be divided into two lots.

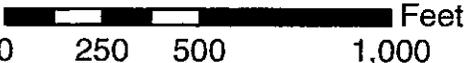
X



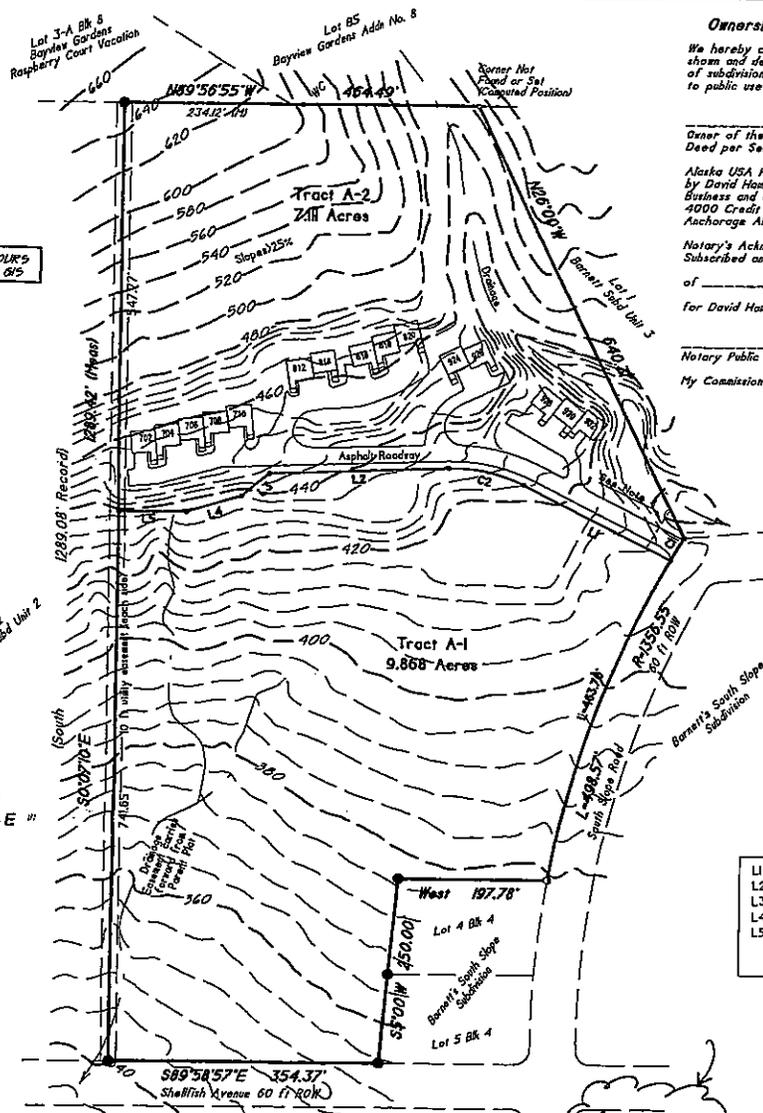
City of Homer
Planning and Zoning Department
 November 17, 2011

**Barnett Subdivision
 Quiet Creek Addition No. 2
 Preliminary Plat**

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




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



Ownership Certificate

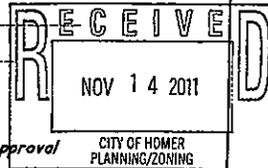
We hereby certify that we are the owners of the real property shown and described hereon and that we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way to public use and grant all easements to the use shown.

Owner of the real property described in the Trustee's Deed per Serial No. 2005-3607 HRD excepting Unit #15

Alaska USA Federal Credit Union
by David Hamilton, Executive Director
Business and Commercial Services
4000 Credit Union Drive
Anchorage Ak 99503

Notary's Acknowledgement
Subscribed and sworn to me before me this _____ day
of _____ 20____
For David Hamilton

Notary Public for Alaska
My Commission Expires _____



Plot Approval CITY OF HOMER PLANNING/ZONING

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

KENAI PENINSULA BOROUGH

By: _____
Authorized Official

Surveyor's Certificate

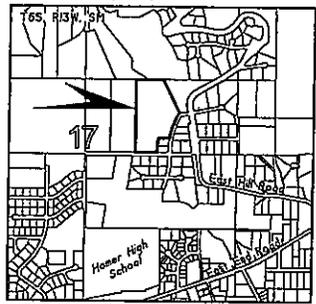
I hereby certify that I am a Registered Land Surveyor and that this plot represents a survey made by me or under my direct supervision and the easements shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

Roger W. Inhoff LS 5780 Date _____

Line & Curve Chart

L1 N63°05'S17'W 216.71'	C1 0°28'22" delta
L2 S87°47'10"W 236.07'	1356.55' radius
L3 S49°55'04"W 47.16'	34.87' arc length
L4 S73°01'47"W 75.00'	
L5 S85°58'43"W 91.51'	C2 29°08'59" delta
	205' radius
	104.18' arc length

Vicinity Map 1" = 1320 ft



Legend

- Set 2" Aluminum or Blue PVC 5780-S
- Found 1/2" Aluminum Cap or 5/8" Rebar 2087-S per Forest Plots
- Found Survey on 1/2" rebar 3686-S
- Typical Condominium with Unit Number

Notes

- All wastewater disposal systems shall comply with existing applicable laws at the time of construction.
- These lots are subject to the zoning regulations of the City of Homer. Owners are advised to check with the City of Homer Planning Dept. prior to construction activities.
- No permanent structures shall be constructed or placed within an easement which would interfere with the ability of a utility to use the easement.
- WASTEWATER DISPOSAL: TRACT A-2** - Plans for wastewater disposal that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.
- This subdivision may contain wetlands. Permitting by the US Army Corps of Engineers may be required prior to any construction on the subject lot or within the road right-of-way.
- Basis of Bearing is GPS Observation. Dimensions of Record are shown where applicable.
- This portion of the subdivision is subject to a Building Setback of 36 feet from the edge of the Rights-of-Way. The front 15 ft of all Building Setbacks is a utility easement.
- Portions of this Subdivision may be subject to covenants, conditions, and restrictions recorded in Bk 103 Page 68, Bk 94 Page 927, Bk 100 Page 61, and Bk 104 Page 746 HRD.
- This subdivision is subject to an "Agreement for Use of Undeveloped ROW" with the City of Homer per Serial No. 2005-5246 HRD.
- Portions of this subdivision are subject to "Declaration for Quiet Creek Community" Phases and Amendments per the Public Record.

Sheet 1 of 13
Sheets 2-13 are Signature
Sheets Only

REVISED PRELIMINARY II-10-11

**Barnett Subdivision
Quiet Creek Addition No. 2**
Being a subdivision of Tract "A" Barnett Subdivision Quiet Creek Addition as shown on Plot No. 2003-56 HRD

Located in the NE 1/4 Section 17, T6S, R13W, S1H in the City of Homer - Kenai Peninsula Borough Third Judicial District, Alaska

Homer Recording District, Third Judicial District, Alaska
Containing 16.979 Acres, More or Less

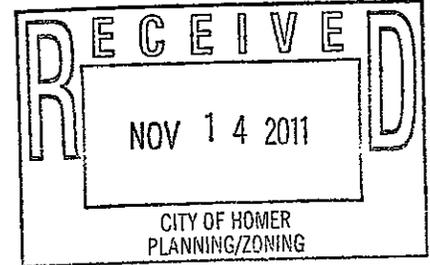
Client: Alaska USA Federal Credit Union 4000 Credit Union Drive Anchorage Ak 99503	Surveyed By: Roger W. Inhoff, RLS P.O. Box 2588 Homer Ak 99603
Date of Survey Nov 10, 2011	File QuietCreek2011.rcd
Drawn RWI Scale 1" = 100 ft	KPB FILE NO 2012-



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

11-11-2011

Julie Engebretsen
City of Homer Planning Dept
East Pioneer Avenue
Homer Ak 99603



RE: REVISED Preliminary Plat
Barnett Subdivision Quiet Creek Addition No 2

This plat is fundamentally a lot split in order to separate property interests between the Condominium Owners and the owners of the "undeveloped" portion of the Parent Parcel.

At this point in time, the entire parcel is subject to terms and conditions of a CUP. I have forwarded your email to AK USA Federal Credit Union to notify them of this fact. Presumably, AK USA wishes to remove Tract A-1 from the CUP.

As to the subdivision, both tracts meet all the requirements under Borough Code.

No additional ROW dedications are required or needed.

Tract A-2 has paved (private) road access, and is served by City of Homer Water and Sewer.

Tract A-1 fronts on constructed South Slope Road and unconstructed Shell Fish Avenue. City Water and Sewer service lines are within this tract originating from Tract A-2. But the Parcel is greater than 200,000 square feet and no soils report is required for the subdivision.

As far as I know, this subdivision, being 2 lots, is not subject to improvement agreements with the City beyond the CLIP agreement.

Enclosed is the Certificate to Plat from Kachemak Bay Title Company, which should provide answers to questions of title and of rights of the ownership groups. Right now, I assume that the Condominium Owners, or their representative, will need to sign the plat prior to recording.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Imhoff".

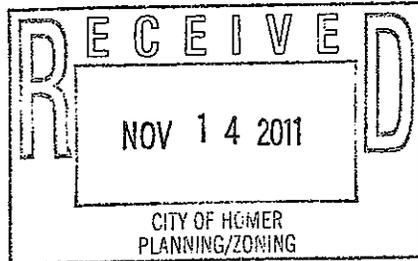


Kachemak Bay Title Agency, Inc.

3733 Ben Walters Lane, Suite 1, Homer, Alaska 99603
Phone (907) 235-8196 • Fax (907) 235-2420

CERTIFICATE TO PLAT UPDATE #2

Roger Imhoff
PO Box 2588
Homer, AK 99603
ATTENTION:



File No.: 29465
Premium: \$250.00
Tax: \$18.75

Gentlemen:

This is a certificate as of November 4, 2011 at 8:00 A.M. for a plat out of the following property:

PARCEL I:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; and

FUTURE DEVELOPMENT PHASES OF QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, excepting therefrom, all of Phase Two, Plat 2006-75; all of Phase 3, Plat 2007-88, and all of Phase 4, Plat 2008-14.

PARCEL II:

Unit 702, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL II:

Unit 704, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL IV:

Unit 706, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL V:

Unit 708, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat no. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VI:

Unit 710, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VII:

Unit 924, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VIII:

Unit 926, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL IX:

Unit 928, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL X:

Unit 930, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XI:

Unit 932, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XII:

UNIT 812, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial Number 2007-004467, and any amendments thereto.

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XIII:

UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial Number 2007-004467; and any amendments thereto.

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XIV:

UNIT 816, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto.

TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XV:

UNITS 818 and 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14 and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto.

TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities.

PROPOSED PLAT: BARNETT SUBDIVISION QUIET CREEK ADDITION NO. 2

This Company certifies that record title is vested in:

ALASKA USA FEDERAL CREDIT UNION as to Parcels I, XIII and XV, an estate in fee simple;

STEPHEN E. NELSON and JANICE L. NELSON, Trustees of THE NELSON TRUST DATED MARCH 2, 2001; as to Parcel II, an estate in fee simple;

HARLOW LOCKWOOD TRUST, HARLOW LOCKWOOD, Trustee, as to Parcel III; an estate in fee simple;

RUSSELL K. GRIFFITH AND MARY ANN GRIFFITH, husband and wife, as tenants by the entirety, as to Parcel IV, an estate in fee simple;

WILLIAM E. FRANK AND GAIL S. FRANK, husband and wife, as tenants by the entirety, as to Parcel V, an estate in fee simple;

CALVIN W. FORRESTER and KAREN R. BERG-FORRESTER, Trustee or Successor Trustees of THE FORRESTER FAMILY TRUST DATED JANUARY 23, 2007, as to Parcel VI, an estate in fee simple;

ROBERT L. AMMERMAN and GAIL M. AMMERMAN, husband and wife, as tenants by the entirety, as to Parcel VII, an estate in fee simple;

THE LEO AND BEVERLY NIKORA TRUST dated January 19, 2001, as to Parcel VIII, an estate in fee simple;

DAVID E. NELSON, a married man, as to Parcel IX, an estate in fee simple

NEAL FAMILY LIMITED PARTNERSHIP, a Florida Limited Partnership, as to Parcel X, an estate in fee simple;

LAVERN R. DAVIDHIZAR and KATHERINE M. DAVIDHIZAR, husband and wife, as tenants by the entirety, as to Parcel XI, an estate in fee simple;

DAVID L. FULLER and JOAN A. FULLER, husband and wife, as tenants by the entirety, as to Parcel XII; an estate in fee simple;

RAY M. BEERY and RANEE BEERY, as Co-Trustees of THE BEERY TRUST, dated March 3, 1992, as to Parcel XIV, , an estate in fee simple.

free from all liens, encumbrances, and objections except for as follows:

This report is restricted to the use of the addressee and is not to be used as a basis for closing any transaction affecting title to said property. Liability of the Agency is limited to the compensation received therefore.

Kachemak Bay Title Agency, Inc.

By: 
Kathy Oakland
Authorized Signator

NOTE: We will update this certificate to comply with Kenai Peninsula Borough Ordinance 90-38 upon notification from surveyor.

AFFECTS ALL PARCELS:

1. **RESERVATIONS** and exceptions as contained in U.S. Patent, and/or acts authorizing the issuance thereof.
2. **TAXES AND ASSESSMENTS**, if any, due the taxing authority indicated:
Taxing Authority: KENAI PENINSULA BOROUGH/CITY OF HOMER
3. **SUBJECT TO** all limitations, conditions, restrictions, terms and effects of the Uniform Common Interest Ownership Act, A.S. 34.08.010 et. Seq., including any lien for future common assessments created pursuant to A.S. 34.08.470.
4. **SUBJECT TO** any unpaid assessments now due or owing the herein named Homeowner's association as provided for in instrument:
Recorded: October 27, 2004
Serial Number: 2004-005284
Association: Quiet Creek Community Association, Inc., a non-profit corporation
5. **EASEMENT** for electric lines or system and/or telephone lines together with right to enter, maintain, repair and clear shrubbery:
Recorded: January 23, 1968 and February 1, 1977
Volume/Page: 48/77 and 90/166
Granted To: Homer Electric Association, Inc.
Affects: General Easement, no definite location disclosed
6. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2003-56, to the record of which reference is hereby made.
7. **EFFECT** of the notes on said Plat No. 2003-56, to the record of which reference is hereby made.
8. **COVENANTS, CONDITIONS AND RESTRICTIONS** as contained in Declaration of Protective Restrictions:
Recorded: October 19, 1978
Volume/Page: 103/88

AND AMENDMENTS thereto:
Recorded: April 17, 2003
Volume/Page: 2003-001742
9. **COVENANTS, CONDITIONS AND RESTRICTIONS** as contained in Declaration of Protective Restrictions:
Recorded: October 19, 1977
Volume/Page: 94/927

AND AMENDMENTS thereto:
Recorded: June 8, 1978
Volume/Page: 100/61

AND AMENDMENTS thereto:
Recorded: January 11, 1979
Volume/Page: 104/746

10. **COVENANTS, CONDITIONS AND RESTRICTIONS** and/or easements, including terms and provisions thereof, as contained in Declaration submitting said premises to the Common Interest Ownership Act (34.08) of the State of Alaska:
Recorded: October 27, 2004
Volume/Page: 2004-005284

AND AMENDMENTS thereto (Amendment 1):
Recorded: April 10, 2006
Volume/Page: 2006-001475

AND AMENDMENTS thereto (Adding Phase 2):
Recorded: November 6, 2006
Volume/Page: 2006-005162

AND AMENDMENTS thereto (Adding Phase 3):
Recorded: October 17, 2007
Volume/Page: 2007-004467

AND AMENDMENTS thereto (Adding Phase 4):
Recorded: April 22, 2008
Volume/Page: 2008-001629

AND AMENDMENTS thereto (Amending Phase 4):
Recorded: April 13, 2009
Serial No.: 2009-001212

AND AMENDMENTS thereto (Amendment No. 5 to withdraw land)
Recorded: October 25, 2011
Serial No.: 2011-003286

11. **RESERVATION** of oil, gas and mineral rights constructive notice of which is given by recital in deed:
Recorded: March 2, 1973
Volume/Page: 68/337
Reserved By: Milo Kallman and Alta L. Kallman
Language setting out reservation: One-half (1/2) interest in the oil, as and other minerals

FURTHER, no other examination of the excepted title to minerals has been made herein and no insurance nor responsibility therefore is implied or assumed.

12. **AGREEMENT** executed by and between the parties herein named upon the terms conditions therein provided:
Between: Bob Barnett and City of Homer
Dated: May 14, 1999
Recorded: May 20, 1999

Volume/Page: 290/332
Providing: As described therein

13. **RECORD OF SURVEY** on file in District Recorder's Office:
Plat No.: 2011-39

AFFECTS PARCEL I:

14. **THE EFFECT, IF ANY, OF TRANSFER OF DEVELOPMENT AND DECLARANT RIGHTS :**
Recorded: October 9, 2009
Serial No.: 2009-003613
Wherein: Grantor did not have a vested interest in said rights
15. **A SECURED INTEREST** under the provision of the Uniform Commercial Code as disclosed by Fixture Statement recorded in the Office of the District Recorder:
Debtor: Quiet Creek Community, LLC
Secured party: Alaska USA Federal Credit Union
Recorded: September 7, 2011
Serial Number: 2011-002688
16. **PROPER SHOWING** of the authorization for the proposed transaction by the herein named party according to its constitution, charter, discipline or by-laws, including authorization for the party or parties acting on its behalf:
Party: ALASKA USA FEDERAL CREDIT UNION

AFFECTS PARCEL II (Unit 702):

17. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
18. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.
19. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$250,000.00
Dated: September 14, 2010
Recorded: September 21, 2010
Serial No.: 2010-003032
Trustor: Stephen E. Nelson and Janice L. Nelson, husband and wife
Trustee: First American Title of Alaska
Beneficiary: "MERS", a separate corporation that is acting solely as a nominee for Lender Residential Mortgage, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

20. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: NELSON TRUST

AFFECTS PARCEL III (Unit 704):

21. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
22. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.
23. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$325,673.00
Dated: January 12, 2006
Recorded: January 30, 2006
Serial No.: 2006-000372
Trustor: John A. Neal, a married man as his sole and separate property
Trustee: John M. Mercer
Beneficiary: Saxon Mortgage, Inc.

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

NOTE: THE CERTIFICATE OF RELEASE recorded February 1, 2007 as Serial Number 2007-000429 is not sufficient to release the above Deed of Trust. A Substitution of Trustee and Deed of Reconveyance must be signed by the beneficiary and recorded, or in the alternative, a Deed of Reconveyance must be signed by the current Trustee and recorded in order to reconvey the above referenced Deed of Trust.

24. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: HARLOW LOCKWOOD TRUST

AFFECTS PARCEL IV (Unit 706):

25. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
26. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

AFFECTS PARCEL V (Unit 708):

27. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
28. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

AFFECTS PARCEL VI (Unit 710):

29. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
30. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

31. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:

Amount: \$140,000.00
Dated: October 12, 2005
Recorded: October 17, 2005
Serial No.: 2005-005019
Trustor: Calvin W. Forrester and Karen R. Berg-Forrester, husband and wife
Trustee: Kachemak Bay Title Agency, Inc.
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

THE BENEFICIAL INTEREST under said Deed of Trust assigned by instrument:

Dated: October 12, 2005
Recorded: October 31, 2005
Serial No.: 2005-005249
Assigned To: Alaska USA Federal Credit Union, its successors and/or assigns

32. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: FORRESTER FAMILY TRUST

AFFECTS PARCEL VII (Unit 924)

33. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
34. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
35. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$547,500.00
Dated: August 18, 2010
Recorded: September 13, 2010
Serial No.: 2010-002896
Trustor: Robert L. Ammerman and Gail M. Ammerman, husband and wife
Trustee: First American Lenders Advantage - MEC
Beneficiary: "MERS", a separate corporate that is acting solely as a nominee for Lender Quicken Loans, Inc.

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

AFFECTS PARCEL VIII (Unit 926)

36. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
37. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
38. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: Leo and Beverly Nikora Trust

AFFECTS PARCEL IX (Unit 928):

39. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
40. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
41. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$530,100.00
Dated: April 9, 2008
Recorded: April 11, 2008
Serial No.: 2008-001461
Trustor: David E. Nelson, a married person

Trustee: First American Title of Alaska
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

WAIVER OF HOMESTEAD:

Grantor: Luanne Nelson
Recorded: April 11, 2008
Serial No.: 2008-001462

AFFECTS PARCEL X (Unit 930):

42. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
43. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
44. **PROOF OF COMPLIANCE** with the Alaska Statutes in that a Certificate of Limited Partnership for the herein named limited partnership must be filed with the State of Alaska:
Limited Partnership: NEAL FAMILY LIMITED PARTNERSHIP

AFFECTS PARCEL XI (Unit 932)

45. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
46. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
47. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$549,000.00
Dated: March 9, 2007
Recorded: March 14, 2007
Serial No.: 2007-000903
Trustor: Lavern Davidhizar and Kathryn Davidhizar, husband and wife
Trustee: First American Title of Alaska
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

AFFECTS PARCEL XII (Unit 812):

48. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2007-88, to the record of which reference is hereby made.
49. **EFFECT** of the notes on said Plat No. 2007-88, to the record of which reference is hereby made.

AFFECTS PARCEL XIII (Unit 814)

50. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2007-88, to the record of which reference is hereby made.
51. **EFFECT** of the notes on said Plat No. 2007-88, to the record of which reference is hereby made.

AFFECTS PARCEL XIV (Unit 816):

52. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2008-14, to the record of which reference is hereby made.
53. **EFFECT** of the notes on said Plat No. 2008-14, to the record of which reference is hereby made.
54. **THE EFFECT, IF ANY, OF AMENDED PLAT:**
Recorded: April 13, 2009
Plat No: 2009-11
Wherein: Grantor did not have a vested interest in property
55. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: THE BEERY TRUST

AFFECTS PARCEL XV (Units 818 and 820):

56. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2008-14, to the record of which reference is hereby made.
57. **EFFECT** of the notes on said Plat No. 2008-14, to the record of which reference is hereby made.
58. **THE EFFECT, IF ANY, OF AMENDED PLAT:**
Recorded: April 13, 2009

Plat No: 2009-11
Wherein: Grantor did not have a vested interest in property

A
L
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2011-003286-0

Recording Dist: 309 - Homer
10/25/2011 8:39 AM Pages: 1 of 5



cc

AMENDMENT NO. 5 TO DECLARATION

FOR

QUIET CREEK COMMUNITY

Declaration Serial Number 2004-005284-0

EXERCISING DECLARANT'S

RIGHT TO WITHDRAW LAND

(NO CHANGE TO ALLOCATED INTERESTS)

After recording, return to:

Alaska USA Federal Credit Union
Business and Commercial Lending
500 W. 35th Avenue, Suite 400
P.O. Box 196615
Anchorage, Alaska 99519-6615

**AMENDMENT NO. 5 TO DECLARATION
FOR
QUIET CREEK COMMUNITY**

**By Successor Declarant
EXERCISING DECLARANT'S RIGHT
TO
WITHDRAW LAND**

WHEREAS, Alaska USA Federal Credit Union is the owner of and Successor Declarant to real property in Homer, Alaska, described as follows:

Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88 more commonly known as 4725 S. Slope Drive, Homer, AK 99603; and,

WHEREAS, Alaska USA Federal Credit Union became the owner of and Successor Declarant to such real property pursuant to a Trustee's Deed recorded February 25, 2009, Reception No. 2009-000604-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, Alaska USA Federal Credit Union has since completed and sold on August 28, 2009 Unit 816, QUIET CREEK COMMUNITY, Phase 4 and is no longer the owner of said Unit 816, and further,

WHEREAS, Alaska USA Federal Credit Union is also, except for Unit 816, the owner of and Successor Declarant to real property in Homer, Alaska, described as follows:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to the official plat thereof, filed under Plat No. 2003-56, Records of the Homer Recording District, Third Judicial District, State of Alaska

EXCEPTING THEREFROM:

Future development phases of QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of


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2011-003286-0

Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat. No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, EXCEPTING THEREFROM all of Phase Two, Plat 2006-75 and Unit 812 of Phase 3, Plat No. 2007-88; and UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial number 2007-004467, and any amendments thereto; and UNITS 816, 818 AND 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto; and TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities, more commonly known as 4725 S. Slope Drive, Homer Alaska 99603; and

WHEREAS, Alaska USA Federal Credit Union became the owner of and successor Declarant to such above described real property pursuant to a Trustee's Deed recorded October 9, 2009, Reception No. 2009-003607-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, said Trustee's Deeds described above transferred to Alaska USA Federal Credit Union all right, title to and interest in the Development rights and special Declarant rights under the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, and

WHEREAS, Amended Amendment No.4 was recorded by a third party other than Alaska USA Federal Credit Union on April 13, 2009, Reception No. 2009-001212-0 as was the survey maps and floor plans filed as Plat No. 2009-11 in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, which recordings took place after the recording of said Trustee's Deed on February 25, 2009, Reception No. 2009-000604-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, the third party recording Amended Amendment No. 4 and Plat No. 2009-11 had at that time no vested interest in the property described in the Trustee's Deed recorded on February 25, 2009, and

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2011-003286-0

WHEREAS, said Amended Amendment No. 4 and Plat No. 2009-11 are therefore invalid, void, and of no force and effect whatsoever, and

WHEREAS, Alaska USA Federal Credit Union as successor Declarant desires to exercise the Development Rights and Special Declarant Rights pursuant to Article VIII to the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, and

WHEREAS, Section 8.1(b) of the Declaration together with all valid amendments thereto, reserved the Development Right to withdraw by amendment all or any part of the land designated as "Developer Rights Reserved" on the site plan attached to said Declaration as Exhibit 1, and including all valid amendments thereto, and

WHEREAS, pursuant to Section 8.1(b) the time period for exercising such rights by successor Declarant has not expired; and

WHEREAS, pursuant to Section 8.2(a) no consents are necessary to withdraw said land; and

WHEREAS, the exercise of such Development Rights Special Declarant Right pursuant to Article VIII to the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, complies with Alaska Statutes, in particular AS 34.08.010 - 34.08.995, pertaining to Common Interest Ownership, and

WHEREAS, Plat No. 2011-39, Record of Survey of Quiet Creek Community Lands Withdrawn From Community, Reception No. 2011-003192-0, Homer Recording District, Third Judicial District, State of Alaska, provides a legally sufficient description of the real property which Alaska USA Federal Credit Union as successor Declarant withdraws;

NOW THEREFORE, Alaska USA Federal Credit Union as successor Declarant hereby exercises its Development Rights pursuant to Section 8.1(b) of the Declaration and withdraws from the Quiet Creek Community those portions of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, designated on Plat No. 2011-39 as Area A consisting of 9.868 acres and Area C consisting of 3.667 acres, said withdrawn land to be used in accordance with the Homer Land Use Code.

There is no change in the Allocated Interests.

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2011-003286-0

No other provision of the Declaration, together with all valid amendments thereto, is amended hereby, except as may be necessarily implied to give full force and effect to this Amendment No. 5.

IN WITNESS WHEREOF, successor Declarant has caused this Amendment No.5 to be executed on this 21st day of October, 2011.

SUCCESSOR DECLARANT ALASKA USA
FEDERAL CREDIT UNION

Lorran J. Skinner
By: Lorran J. Skinner
Chief Lending Officer

STATE OF WASHINGTON)
) SS;
King County)

THIS IS TO CERTIFY that on this 21st day of October, 2011, before me, the undersigned, a Notary Public in and for the State of Washington personally appeared, LORRAN J. SKINNER, known to me and to me known to be the Chief Lending Officer of ALASKA USA FEDERAL CREDIT UNION, and known to me to be the individual named herein and who executed the foregoing AMENDMENT NO. 5 TO DECLARATION FOR QUIET CREEK COMMUNITY on behalf of ALASKA USA FEDERAL CREDIT UNION for the uses and purposes therein set forth.

WITNESS MY HAND and seal the day and year first hereinabove written.

GATHERINE M. CANTLON
Notary Public
State of Washington
My Commission Expires
Sept. 8, 2015

Gatherine M. Cantlon
Notary Public in and for the State of Washington
My Commission Expires: 9-8-2015



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2011-003286-0



Julie Engebretsen

From: Sjwanch@aol.com
Sent: Sunday, November 20, 2011 8:36 PM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net
Subject: Quiet Creek Community Replat

Julie Engebretsen
Homer Planning Department
Homer, Alaska

RE: Replat of Tract A Barnett Subdivision, Quiet Creek Addition No. 2

Dear Ms. Engebretsen,

I represent the Quiet Creek Community Association, Inc., and I have been made aware that a replat application has been filed with the City of Homer to divide the above-referenced Tract A into Tracts A-1 and A-2. I see on the ownership certificate that Alaska USA Federal Credit Union purports to be the owner of Tract A when, in fact, the owners of the units in the Quiet Creek Community own all of Tract A, except their individual units, in undivided interest since all of Tract A, except the individual units, is common element of the condominium project. Alaska USA, I believe, still owns a couple of units in the project, so it is an owner in undivided interest of the common elements along with all of the other owners, but it has no title to anything that would allow it to replat out a large portion of the common elements.

For that reason, the City must reject the replat application. While the Association may at some point end up in litigation with the credit union over just what, if any, rights the credit union has in Tract A, I am sure this is not something the City wants to become embroiled in.

If some title company has provided a certificate to plat, I would appreciate your e-mailing that to me immediately, because the title company apparently does not understand the situation.

If you would like additional information about this matter, I will be happy to forward to you the analysis of the condominium and foreclosure documents applicable to this property prepared by our title consultant.

Sincerely,

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com



Julie Engebretsen

From: Julie Engebretsen
Sent: Monday, November 21, 2011 9:17 AM
To: 'Sjwanch@aol.com'; 'rogerimhoff@alaska.net'; Rick Abboud
Cc: billgail@sbcglobal.net
Subject: RE: Quiet Creek Community Replat

Hi Sandra,

I will email you a copy of the surveyor's letter and the certificate to plat report. I understand there is question of ownership rights; I believe we were in this very situation not too long ago...2010?

Is the email you cc the homeowners association president? Or?

The City of Homer's role in the plat process is for the Homer Advisory Planning Commission (HAPC) to make a recommendation to the Kenai Peninsula Borough Planning Commission (KPB PC). Homer is purely advisory, commenting on the configuration of the proposed plat. A licensed surveyor has submitted the plat, as required. If the City chooses not to process the plat, by code after 49 days we, the city and local citizens, lose the opportunity to comment locally. The process then resumes with the KPB PC in Soldotna. While I understand there are, or may be, questions as to ownership and development rights, this first part of the subdivision process does not address these issues.

I will forward your email to the Kenai Peninsula Borough Platting Officer, Paul Voeller, so that he is aware of these issues. The Borough is the platting authority, and a heads up will give KPB more time to investigate this issue and how the law applies to their subdivision process. He would also be the person to talk with about the Borough Plat process; when the certificate to plat is presented, etc.

A few housekeeping issues: if the plat is not withdrawn prior to the HAPC meeting by Alaska USA as it was last time, any written comments need to be received by 5 pm Wednesday December 30th, to be included in the meeting packet. Comments received after that time will be given to the HAPC the night of the meeting, December 7th.

Please call or email if you have any questions. I will let you know of any developments.

Sincerely,

Julie Engebretsen

Julie Engebretsen
Planning Technician
City of Homer

907-435-3119

From: Sjwanch@aol.com [<mailto:Sjwanch@aol.com>]
Sent: Sunday, November 20, 2011 8:36 PM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net
Subject: Quiet Creek Community Replat

Julie Engebretsen
Homer Planning Department
Homer, Alaska

RE: Replat of Tract A Barnett Subdivision, Quiet Creek Addition No. 2

Dear Ms. Engebretsen,

I represent the Quiet Creek Community Association, Inc., and I have been made aware that a replat application has been filed with the City of Homer to divide the above-referenced Tract A into Tracts A-1 and A-2. I see on the ownership certificate that Alaska USA Federal Credit Union purports to be the owner of Tract A when, in fact, the owners of the units in the Quiet Creek Community own all of Tract A, except their individual units, in undivided interest since all of Tract A, except the individual units, is common element of the condominium project. Alaska USA, I believe, still owns a couple of units in the project, so it is an owner in undivided interest of the common elements along with all of the other owners, but it has no title to anything that would allow it to replat out a large portion of the common elements.

For that reason, the City must reject the replat application. While the Association may at some point end up in litigation with the credit union over just what, if any, rights the credit union has in Tract A, I am sure this is not something the City wants to become embroiled in.

If some title company has provided a certificate to plat, I would appreciate your e-mailing that to me immediately, because the title company apparently does not understand the situation.

If you would like additional information about this matter, I will be happy to forward to you the analysis of the condominium and foreclosure documents applicable to this property prepared by our title consultant.

Sincerely,

Sandra J. Wicks, *Attorney-at-Law*
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: siwanch@aol.com

Julie Engebretsen

From: Sjwanch@aol.com
Sent: Monday, November 21, 2011 9:52 AM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net; georgepjr@hotmail.com
Subject: Re: Quiet Creek Community Replat
Attachments: Final Letter from George Peters11-14-2011.pdf

Julie,

Thank you for your prompt response about the attempt by Alaska USA Credit Union to replat the common elements of Quiet Creek Community. And thank you, also, for sending the certificate to plat. I will contact the title company momentarily and send the title officer a copy of the letter from our title consultant that is attached to this e-mail.

The attached letter from our title consultant, George Peters, makes it clear that Alaska USA has no title interest that would permit it to replat the common elements. For that reason, the plat application needs to be either withdrawn by Alaska USA or rejected by the Homer Advisory Planning Commission and the Kenai Peninsula Borough platting authority.

In response to your questions, yes, this is the same situation we had in 2010, and, yes, the e-mail address billgail@sbcglobal.net is for Bill Frank, the president of the Quiet Creek Community Association.

You state that the first part of the plat process does not address issues of property ownership. Isn't ownership of the property to be replatted fundamental to processing a subdivision plat? If not, anyone could present a subdivision plat on any property. If the Homer Advisory Planning Commission feels it must look at the plat, then I recommend it take action stating that the plat must be rejected because the proponent of the plat has no title interest in the property and, therefore, no right to replat it. Please enclose this correspondence in the packet that goes to the Planning Commission, if the plat is not withdrawn.

With regard to the deadline for submission of comments and the date of the hearing, there must be some confusion, since you state that comments are due December 30, but the hearing is on December 7. Would you clarify that for me, please? Thank you.

Sandra

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com

In a message dated 11/21/2011 9:17:08 A.M. Alaskan Standard Time, JEngebretsen@ci.homer.ak.us writes:

Hi Sandra,

I will email you a copy of the surveyor's letter and the certificate to plat report. I understand there is question of ownership rights; I believe we were in this very situation not too long ago...2010?

Is the email you cc the homeowners association president? Or?

The City of Homer's role in the plat process is for the Homer Advisory Planning Commission (HAPC) to make a recommendation to the Kenai Peninsula Borough Planning Commission (KPB PC). Homer is purely advisory, commenting on the configuration of the proposed plat. A licensed surveyor has submitted the plat, as required.

If the City chooses not to process the plat, by code after 49 days we, the city and local citizens, lose the opportunity to comment locally. The process then resumes with the KPB PC in Soldotna. While I understand there are, or may be, questions as to ownership and development rights, this first part of the subdivision process does not address these issues.

I will forward your email to the Kenai Peninsula Borough Platting Officer, Paul Voeller, so that he is aware of these issues. The Borough is the platting authority, and a heads up will give KPB more time to investigate this issue and how the law applies to their subdivision process. He would also be the person to talk with about the Borough Plat process; when the certificate to plat is presented, etc.

A few housekeeping issues: if the plat is not withdrawn prior to the HAPC meeting by Alaska USA as it was last time, any written comments need to be received by 5 pm Wednesday December 30th, to be included in the meeting packet. Comments received after that time will be given to the HAPC the night of the meeting, December 7th.

Please call or email if you have any questions. I will let you know of any developments.

Sincerely,

Julie Engebretsen

Julie Engebretsen
Planning Technician
City of Homer

907-435-3119

From: Sjwanch@aol.com [mailto:Sjwanch@aol.com]

Sent: Sunday, November 20, 2011 8:36 PM

To: Julie Engebretsen

Cc: billgail@sbcglobal.net

Subject: Quiet Creek Community Replat

Julie Engebretsen

Homer Planning Department

Homer, Alaska

RE: Replat of Tract A Barnett Subdivision, Quiet Creek Addition No. 2

GEORGE N. PETERS JR.

SOLE PROPRIETORSHIP
1160 N 192nd St #313
Shoreline, Washington 98133-2962
206-437-5869 (Mobile)
206-260-4731 (Fax)
georgepir@hotmail.com

November 14, 2011

Sandra J. Wicks
Attorney-at-Law
3237 W. 31st Avenue
Anchorage, Alaska 99517

Sent via email: sjwanch@aol.com

Re: Quiet Creek Community Condominium, Homer, Alaska

Dear Sandra:

Per the request from you and Bill Frank, I have read the following:

- (a) Letter dated November 2, 2011, from David Hamilton (Alaska USA Credit Union, Alaska USA) to William Frank of the Quiet Creek Community Association (Hamilton Letter).
- (b) Record of Survey (Record of Survey), recorded as No. 2011-39, Homer Recording District.
- (c) Amendment No. 5 to Declaration for Quiet Creek Community (5th Amendment), recorded as No. 2011-003286-0, Homer Recording District).

1.0 ALASKA USA ASSERTIONS

In the Hamilton Letter and the 5th Amendment, Alaska USA does the following:

- (1) It asserts that it has withdrawn land from the Quiet Creek Community Condominium project, pursuant to the 5th Amendment.
- (2) It asserts that it has the right to withdraw the land pursuant to development rights reserved to the declarant in the condominium declaration.
- (3) It asserts that it acquired those development rights as a result of foreclosing on the interest of the original declarant.
- (4) It asserts that the development rights reserved in the declaration had not expired when the 5th Amendment was recorded.
- (5) And it asserts, although in a confusing way, that a recorded amended 4th Amendment to the original declaration and also the map filed with that amended 4th Amendment are void and invalid because they were recorded by "a third party other than" Alaska USA after Alaska USA's foreclosure. (NOTE: the map filed with the amended 4th Amendment labels an area north of the existing units (approximately the areas labeled "Area B" and "Area C" on

the Record of Survey) as "Development Rights Not Reserved" and labels an area south of the existing units (approximately the "Area A" on the Record of Survey) as "Development Rights Reserved." See further discussion in "5.0 below" "VALIDITY OF 4th AMENDMENT".)

2.0 RESPONSE TO ALASKA USA ASSERTIONS

I disagree with the assertions of Alaska USA. It is my opinion that:

(1) The 5th Amendment and the Record of Survey do not accomplish a withdrawal of land from the Quiet Creek Community, and are invalid. The putative withdrawn land is a portion of the common elements of the condominium, owned by each of the 15 unit owners as tenants in common, and Alaska USA only has an undivided and indivisible interest in the common elements as a unit owner, in common with the owners of each of the other existing units. Alaska USA has no right to withdraw the land.

(2) Any development right to withdraw land, to the extent it was properly reserved in the original declaration (see additional discussion in "WITHDRAWAL RIGHT – COMPLIANCE WITH STATUTE" in "8.0 below"), expired on September 2, 2005, which was the date that the original declarant recorded the first deed conveying a unit in the condominium. (See additional discussion in "EXPIRATION OF DEVELOPMENT RIGHT TO WITHDRAW LAND" in "9.0 below".)

(3) Alaska USA may have acquired certain development rights (*BUT*, see "ALASKA USA ACQUISITION OF DEVELOPMENT RIGHTS" in "11.0 below") and special declarant rights (identified in Section 8.1(a) and Section 8.4 of the declaration) in the project pursuant to the foreclosure, but pursuant to AS 34.08.350(c) those rights did not, at any time subsequent to September 2, 2005 (the date the first conveyance of a unit was recorded), include the right that was originally provided for in Section 8.1(b) of the declaration to withdraw any property. (See additional discussion in "ALASKA USA ACQUISITION OF DEVELOPMENT RIGHTS" in "11.0 below".)

(4) The calendar period within which to exercise special declarant rights and development rights (other than the right to withdraw land) has not expired. Pursuant to Section 8.2(a) of the declaration, they continue until October 27, 2013, which is nine years after the recording of the declaration. (Note that after October 27, 2011, the exercise of such rights also requires approval of "eligible mortgagees" as defined in the declaration, and cannot be unilaterally exercised by the successor declarant.) However, pursuant to AS 34.08.350(c) and the election of the foreclosing lender (see "WAIVER OF ACQUISITION OF DEVELOPMENT RIGHTS" in "4.0 below"), all such rights probably have expired.

(5) The 4th Amendment to the declaration and a related plat and plans filing as mentioned in the 5th Amendment were both recorded after the foreclosure. However, those documents were re-recordings of the 4th Amendment to the declaration and plats and plans that were properly executed and recorded prior to the foreclosure. But the re-recorded documents *were not executed* by "a third party other than" Alaska USA, and I see no evidence that they were recorded by such a third party. See "VALIDITY OF 4th AMENDMENT" in "5.0 below".

(6) Alaska USA had a statutory right to acquire development rights in its foreclosure but waived any acquisition of any development rights because of AS 34.08.350(c) and (d). In addition, a letter from its counsel so states and appropriately cites those statutes. See also "WAIVER OF ACQUISITION OF DEVELOPMENT RIGHTS" in "4.0 below".

(7) Alaska USA had a statutory option of acquiring development rights (albeit, not the expired development right to withdraw land) in its foreclosure deeds for eventual sale to a third party, as provided in AS 34.08.350(e)(4). That Alaska USA elected not to acquire such rights, as confirmed by the letter from its counsel (see "WAIVER OF ACQUISITION OF DEVELOPMENT RIGHTS" in "4.0 below"), is further evidence that it did not wish any development rights (including any right to withdraw land, to the extent such rights may not have previously expired) to survive the foreclosure.

Based on a review of all of the documents listed on the attached chart, including those listed above, I have the following comments. Some of the issues have also been addressed in previous correspondence to you from me, but bear summarizing here. Based partly on the letter from Alaska USA's counsel, I still believe that no right to withdraw applies to any of the land within Quiet Creek Community, and have since determined that no development rights currently apply to any of the land.

3.0 CHART

I have reviewed other documents and have prepared a chart (most recently amended on November 11, 2011) showing documents that are relevant to Quiet Creek Community Condominium.

4.0 WAIVER OF ACQUISITION OF DEVELOPMENT RIGHTS

Counsel for Alaska USA, asserted in a letter dated October 5, 2009, and addressed to its client Alaska USA, that Alaska USA elected in its foreclosure to waive any acquisition of development rights, as provided for by AS 34.08.350(c) and (d). The letter correctly and appropriately stated that the foreclosure deeds to Alaska USA did not transfer any declarant rights to Alaska USA, and that such rights ceased to exist.

In addition to the statutorily required affirmative election in its foreclosure deeds to acquire development rights for itself (which Alaska USA could have done but declined to do), Alaska USA could have, pursuant to AS 34.08.350(e)(4), alternatively elected to acquire the development rights (including any right to withdraw land should such rights not have previously expired) not for itself but for a third party. The statute says it could have done so by stating in its foreclosure deeds that it did to solely to hold them for eventual transfer to a successor declarant. It elected not to do so.

5.0 VALIDITY OF 4TH AMENDMENT

As to the purported invalidity of the 4th Amendment to the declaration, that amendment was actually recorded twice, once before and once after the foreclosure. However, each recording

was identical – that is, the second recording was a duplicate of the first recording. Thus any assertion that the 4th Amendment was invalid makes no sense. In addition, the second recordation did not involve any execution or signature by a “third party other than” Alaska USA as is incorrectly claimed in the 5th Amendment, nor is there any indication that it was recorded by such a “third party.” The issue of validity for this document is therefore essentially irrelevant. In any event, this amendment created the units (independently of and unrelated to the development rights) that Alaska USA apparently acquired in its foreclosure, so the 4th Amendment could not logically be claimed by Alaska USA to be invalid.

The related plans that were recorded with the 4th Amendment were also recorded twice, once before and once after the foreclosure by Alaska USA. Again, the second recording was a duplicate of the first recording and was done solely by the surveyor to add detail to the data shown on the first recording of those plans. And again, as with the 4th Amendment, this second recordation did not involve any signature by a “third party other than” Alaska USA as incorrectly claimed in the 5th Amendment, nor is there any indication that it was recorded by such a “third party.” Rather, the only signature on the document was by the surveyor.

The detail added by the surveyor to the second filing of those plans would impact the attempt by Alaska USA to withdraw land, because portions of the common elements were labeled thereon (for the first time in any recorded condominium plans) as “Development Rights Reserved” and “Development Rights Not Reserved.” Alaska USA has attempted in the 5th Amendment and Record of Survey to withdraw land labeled on those “amended” plans as “Development Rights Not Reserved” and so presumably Alaska USA would not want that document to be effective.

6.0 DEVELOPMENT RIGHTS IN GENERAL

Question: Were development rights reserved in the original declaration?

Answer: *Yes*, but with ambiguities as to some rights, and as to any right of withdrawal, *no*. All of the land purportedly withdrawn by Alaska USA was included in the condominium of Quiet Creek Community. Sections 8.1(a) and 8.1(b) of the original declaration recited that reserved development rights affected some of that land as follows: “...land designated as “Developer Rights Reserved” on Exhibit 1 and the Plans...”.

However the plans recorded with the original declaration did not so identify any portion of the land as required by AS 34.08.130(8) and AS 34.08.170(2), and none of the amendments to the plans did so until the map filed with the amended 4th Amendment (which amendment and map are asserted by Alaska USA to be void and invalid) included a recital purporting to identify portions of the common elements that were subject to development rights and that were not subject to development rights.

As to “Exhibit 1” as mentioned in Section 8 of the declaration, no exhibit labeled as such was attached to the declaration. However, a map was attached as Page 47 of the recorded declaration, which included roughly sketched outlines of phases, without being located by survey or description. Phases 2, 3, 4 and 5 were identified on that sketch, with *all* of the remaining land identified both as “Phase 1” and as “Developer Rights Reserved.” According to this map, those

areas labeled as Phases 2, 3, 4 and 5 *were not subject to development rights*, including any right to withdraw land.

7.0 DEVELOPMENT RIGHT TO WITHDRAW LAND

Question: Did the development rights include the right to withdraw any of the land?

Answer: *Yes*, to the extent that it was so stated in the declaration in Section 8.1(b) (“...land designated as “Developer Rights Reserved” on Exhibit 1 and the Plans...”), **BUT**, perhaps *no* because of the ambiguities in whether statutory requirements were met. The same comments apply here as stated above in “DEVELOPMENT RIGHTS IN GENERAL” in “6.0 above.” There are only two ways to attempt to interpret the documents.

ALTERNATE INTERPRETATION 1: If the sketch attached to the original declaration is somehow construed to be controlling as identifying any lands that were subject to development rights, and if therefore development rights were only applicable to Phase 1, then (1) none of the land within the areas labeled as Phases 2, 3, 4 or 5 was withdrawable, and (2) pursuant to AS 34.08.180(d)(2) none of the land in Phase 1 could be withdrawn after September 2, 2005, which was the date a unit in Phase 1 was conveyed.

Furthermore, according to that sketch Phases 2, 3, 4 and 5 were not within the area labeled on the sketch as “Development Rights Reserved.” Therefore, those areas could not be withdrawn. Nonetheless, they are a large portion of the land that was purportedly withdrawn by the 5th Amendment.

ALTERNATE INTERPRETATION 2: If the sketch is not controlling, and no land was identified in the plans as withdrawable, then either (1) no such rights were reserved, or (2) pursuant to AS 34.08.180(d)(1) such rights applied to all of the land, and none of the land could be withdrawn after September 2, 2005, the date a unit in the condominium was conveyed.

8.0 WITHDRAWAL RIGHT – COMPLIANCE WITH STATUTE

Question: If the right to withdraw land was a reserved development right, did it comply with AS 34.08, *et seq.*?

Answer: Perhaps, but possibly not because of the ambiguities associated with identifying such land. As noted elsewhere in this letter, there is no recital of development rights shown on the plats and plans as required by AS 34.08.130(8) and AS 34.08.170(2) and required by Section 8.1(b) of the declaration. As to the sketch attached at Page 47 of the recorded original declaration, and (assuming that this sketch could be construed as a portion of the plats and plans) that sketch is either (1) not sufficient to describe any separate portion subject to the right to withdrawal, or (2) if it could be so construed, it conflicts with the land purportedly withdrawn by Alaska USA.

9.0 EXPIRATION OF DEVELOPMENT RIGHT TO WITHDRAW LAND

Question: Assuming the right to withdraw land was a reserved development right that complied with AS 34.08, *et seq.*, did that right expire prior to the expiration of other development rights?

Answer: Yes. There are two scenarios applicable under Alaska law: First, *if and to the extent* the development right to withdraw land applied to all of the land, pursuant to AS 34.08.180(d)(1) it expired on September 2, 2005, the date a unit was conveyed. Second, *if and to the extent* that development right to withdraw land applied to only a portion of the land, that right was ambiguous because the affected portions were not described as required by AS 34.08.180(8) and AS 34.08.170(2). Even if the sketch attached to the declaration was so construed, those portions are ambiguously identified.

More significantly, those portions are not in conformance with the land putatively withdrawn by the 5th Amendment.

In any event, pursuant to AS 34.08.180(d)(2) such rights expired on September 2, 2005, the date a unit was conveyed in that portion (e.g., the land that was identified in the sketch as Phase 1).

10.0 ALASKA USA ENCUMBRANCE OF DEVELOPMENT RIGHTS

Question: Did Alaska USA encumber the development rights?

Answer: Presumably but not explicitly, and not as to any right to withdraw land. Some deeds of trust described the land (not referencing the condominium) but did not so state, either with respect to “development rights” in general nor with respect to any specific right to withdraw land. Some deeds of trust did ambiguously state that they encumbered “future phases.” This terminology could be construed to mean development rights in a generic sense, but more importantly there are two other constructions that could be applied to this language. First, it could be construed as being a lien only on future units created by the original declarant. Second, it could be construed as being limited only to the development right reserved in Section 8.1(a) of the declaration – that is, the right to add units to the condominium (e.g. “future phases”). In no event could it be construed to encumber any right to withdraw land as reserved in Section 8.1(b) of the declaration.

11.0 ALASKA USA ACQUISITION OF DEVELOPMENT RIGHTS

Question: Did Alaska USA acquire development rights when it foreclosed?

Answer: No, but if so, only ambiguously and not as to any right to withdraw land. There are two trustee’s deeds.

The same ambiguities applicable to the legal descriptions in the deeds of trust (see “ALASKA USA ENCUMBRANCE OF DEVELOPMENT RIGHTS” in “10.0 above”) apply to this discussion, because similar descriptions are used in the trustee’s deeds. One trustee’s deed describes “future development phases.” This terminology could be construed to mean development rights in a generic sense, but more importantly there are two other constructions that could be applied to this language. First, it could be construed as being a lien only on future

units created by the original declarant. Second, it could be construed as being limited only to the development right reserved in Section 8.1(a) of the declaration – that is, the right to add units to the condominium (e.g. “future phases”). In no event could it be construed to encumber any right to withdraw land as reserved in Section 8.1(b) of the declaration.

The other trustee’s deed has an ambiguous and possibly insufficient legal description, in that it described all the underlying land (it does not describe it as being part of the condominium), and then (1) *excludes* “future development phases” of the condominium, while (2) *excepting* Phase 2 (effectively adding it back in to the legal description), even though (3) all the units in Phase 2 have been reconveyed as to that foreclosed deed of trust.

For purposes of discussion only (and without acknowledging that it is true), if it is assumed that Alaska USA may have acquired some development rights through foreclosure, for reasons independent of the foreclosure itself, those rights could not include the right to withdraw land.

It is also assumed that Alaska USA owns some units as a result of its foreclosure.

12.0 EXPIRATION OF DEVELOPMENT RIGHTS

Question: Have the development rights expired?

Answer: Yes. Pursuant to Section 8.2(a) the original calendar period during which the right to exercise development rights exist expires on October 27, 2013. Prior to October 27, 2011, the rights could be unilaterally exercised by the declarant or successor declarant. Between October 27, 2011, and October 27, 2013, they could only be exercised with consent of 51% of “eligible mortgagees” as defined in the declaration. However, all development rights have expired, and in any event, there is definitely no right to withdraw land.

13.0 ALASKA USA RIGHT TO WITHDRAW LAND?

Question: Does Alaska USA have the right to withdraw land from the condominium?

Answer: No. As noted above, such rights, to the extent they may have existed when the condominium was first recorded (albeit probably not, in light of AS 34.08.130(8) and AS 34.08.170(2)), would have in any event expired pursuant to AS 34.08.180(d) as well as the election of Alaska USA to not acquire any development rights in its foreclosure deeds.

14.0 EFFECT OF AMENDMENTS?

Question: Do the 5th Amendment and Record of Survey accomplish a withdrawal of land?

Answer: No. First, as noted above, the development right to withdraw land either did not exist or expired once the first unit had been conveyed on September 2, 2005. Second, the portions of the Record of Survey identified as “Area A” and “Area C” and which are identified in the 5th Amendment as being withdrawn, are arbitrary and not based on any descriptions previously described or identified in the original declaration or plats and plans, or in any amendments to either.

In addition, these areas include land that was *not subject to the right to withdraw* in the first place according to the sketch attached to the original declaration at Page 47.

15.0 RECORD OF SURVEY

Question: Is the Record of Survey sufficient to be either a “plats and plans” or statutory amendment thereto complying with AS 34.08.70(g)?

Answer: No. The Record of Survey does not include all of the required statutory information, including identifying which of the delineated parcels are the purportedly withdrawn land.

16.0 SUBDIVISION AND TAXATION QUESTIONS

Question: Do the 5th Amendment and the Record of Survey constitute a legal subdivision (e.g., does it create three new “legal lots”) or create new parcels subject to re-segregation of taxes?

Answer: Any withdrawal of land must itself also comply with state and local subdivision laws and ordinances. The land cannot be withdrawn so as to create a subdivision of land first, to be subject to later subdivision approval by the local subdivision approval agency. The Record of Survey and the 5th Amendment *to the extent the withdrawal could be considered effective* do appear to constitute a subdivision under state and local law without prior subdivision approval. They apparently create 3 new parcels without formal subdivision (in this case, subdividing the original condominium land into three parcels, one of which would still be considered the condominium of Quiet Creek Community and two of which (“Area A” and “Area C”) are separate “lots.”

Subdivision of the condominium land into three new parcels would also entail re-segregation of taxes among those parcels and affecting the taxes applicable to the 15 condominium units.

17.0 TITLE INSURABILITY

Question: Is the purportedly withdrawn land title insurable?

Answer: No. A title insurer would presume the 5th Amendment is invalid and that the purportedly withdrawn land is still part of the common elements of the Quiet Creek Community Condominium.

18.0 CONCLUSIONS

I do not believe that the 5th Amendment and Record of Survey are valid or legally binding on the unit owners of Quiet Creek Community Condominium.

I would suggest that a valid amendment could be duly executed and recorded by the association pursuant to the provisions of the original declaration that challenges the validity of the 5th Amendment and the Record of Survey. At a minimum the Association could record a “notice” document asserting that the 5th Amendment and the Record of Survey are void and invalid, and that Alaska USA has no right to withdraw any land from the condominium.

Sandra Wicks, Esquire
November 14, 2011
Quiet Creek Community Condominium, Homer Alaska
Page 9 of 9

It may also be appropriate to contact whatever agency deals with subdivisions and taxation, to (1) challenge the 5th Amendment and Record of Survey and assert that they are in violation of local ordinances and state law relating to subdivisions, and (2) request a determination whether a tax segregation can legally occur with respect to "Area A," "Area B," "Area C" and the 15 existing condominium units.

Please feel free to let me know if you have any questions.

Very truly yours,



George N. Peters Jr.

cc: William Frank (via email: billgail@sbcglobal.net)



George N. Peters Jr. retired as an Assistant Vice President and Division Underwriter for Chicago Title Insurance Company, Fidelity National Title Insurance Company, Ticor Title Insurance Company and Security Union Title Insurance Company. He is currently the Education Chair of the Washington Land Title Association.

He has 44 years' experience in the title insurance and real estate fields, including five years as a paralegal coordinating national title insurance requirements for a Boston law firm.

He is the author of the chapters "Title Insurance" and "Waterfront Titles" in the Washington State Bar Association's Real Property Deskbook. He was the representative of the Washington Land Title Association on the statutory Condominium Task Force which drafted the Washington Condominium Act and authored "Condominiums and Title Insurance in Washington." He currently represents the title industry on a subcommittee of the Real Property, Probate & Trust section of the Washington State Bar Association which is reviewing the Uniform Common Interest Ownership Act for possible adoption in Washington State.

Mr. Peters has written numerous other papers on various title insurance topics, including leaseholds, bankruptcy, Indian lands, probate, mineral lands, timber, easements and foreclosures. He has organized and participated in many seminars for the title insurance, lending, and escrow industries and the legal profession. He also consults on real estate projects where title insurance problems, particularly in the area of condominiums, are present, and is available as an expert witness in litigation involving title insurance.



Julie Engebretsen

From: Julie Engebretsen
Sent: Monday, November 21, 2011 10:06 AM
To: 'Sjwanch@aol.com'
Cc: billgail@sbcglobal.net; 'taccinelli@rcolegal.com'
Subject: RE: Quiet Creek Community Replat

Hi Sandra,

Thank you; your email will be included for the HAPC packet. You are correct - the submittal date for comments is November 30th, for the December 7th meeting.

Roger Imhoff has asked that I include Theodora Accinelli, AKUSA attorney in our correspondence. From this point forward I will cc you, Ms. Accinelli and Mr. Frank in all relevant correspondence. All correspondence the City receives is subject to a public records request. Rather than require the filling out of paperwork and the associated delay with these requests, I'd rather just keep everyone in the loop up front. If anyone has any questions or concerns with that, please let me know and we can discuss it.

Sincerely,

Julie Engebretsen

From: Sjwanch@aol.com [mailto:Sjwanch@aol.com]
Sent: Monday, November 21, 2011 9:52 AM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net; georgepjr@hotmail.com
Subject: Re: Quiet Creek Community Replat

Julie,

Thank you for your prompt response about the attempt by Alaska USA Credit Union to replat the common elements of Quiet Creek Community. And thank you, also, for sending the certificate to plat. I will contact the title company momentarily and send the title officer a copy of the letter from our title consultant that is attached to this e-mail.

The attached letter from our title consultant, George Peters, makes it clear that Alaska USA has no title interest that would permit it to replat the common elements. For that reason, the plat application needs to be either withdrawn by Alaska USA or rejected by the Homer Advisory Planning Commission and the Kenai Peninsula Borough platting authority.

In response to your questions, yes, this is the same situation we had in 2010, and, yes, the e-mail address billgail@sbcglobal.net is for Bill Frank, the president of the Quiet Creek Community Association.

You state that the first part of the plat process does not address issues of property ownership. Isn't ownership of the property to be replatted fundamental to processing a subdivision plat? If not, anyone could present a subdivision plat on any property. If the Homer Advisory Planning Commission feels it must look at the plat, then I recommend it take action stating that the plat must be rejected because the proponent of the plat has no title interest in the property and, therefore, no right to replat it. Please enclose this correspondence in the packet that goes to the Planning Commission, if the plat is not withdrawn.

With regard to the deadline for submission of comments and the date of the hearing, there must be some confusion, since you state that comments are due December 30, but the hearing is on December 7. Would you clarify that for me, please? Thank you.

Sandra

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com

In a message dated 11/21/2011 9:17:08 A.M. Alaskan Standard Time, JEngebretsen@ci.homer.ak.us writes:

Hi Sandra,

I will email you a copy of the surveyor's letter and the certificate to plat report. I understand there is question of ownership rights; I believe we were in this very situation not too long ago...2010?

Is the email you cc the homeowners association president? Or?

The City of Homer's role in the plat process is for the Homer Advisory Planning Commission (HAPC) to make a recommendation to the Kenai Peninsula Borough Planning Commission (KPB PC). Homer is purely advisory, commenting on the configuration of the proposed plat. A licensed surveyor has submitted the plat, as required. If the City chooses not to process the plat, by code after 49 days we, the city and local citizens, lose the opportunity to comment locally. The process then resumes with the KPB PC in Soldotna. While I understand there are, or may be, questions as to ownership and development rights, this first part of the subdivision process does not address these issues.

I will forward your email to the Kenai Peninsula Borough Platting Officer, Paul Voeller, so that he is aware of these issues. The Borough is the platting authority, and a heads up will give KPB more time to investigate this issue and how the law applies to their subdivision process. He would also be the person to talk with about the Borough Plat process; when the certificate to plat is presented, etc.

A few housekeeping issues: if the plat is not withdrawn prior to the HAPC meeting by Alaska USA as it was last time, any written comments need to be received by 5 pm Wednesday December 30th, to be included in the meeting packet. Comments received after that time will be given to the HAPC the night of the meeting, December 7th.

Please call or email if you have any questions. I will let you know of any developments.

Sincerely,

Julie Engebretsen

Julie Engebretsen
Planning Technician
City of Homer

907-435-3119

Julie Engebretsen

From: Sjwanch@aol.com
Sent: Monday, November 21, 2011 10:44 AM
To: cassie@kbaytitle.com; kathy@kbaytitle.com
Cc: taccinelli@rcolegal.com; Julie Engebretsen
Subject: Quiet Creek Community
Attachments: Letter from George Peters11-14-2011.pdf; QuietCreekCommunityCondominium-Documents List 11-10-2011.pdf

Cassie Lawver and Kathy Oakland
Kachemak Bay Title Agency
Homer Alaska

RE: Your Certificate to Plat File No. 29465, November 4, 2011

Ladies,

I represent the Quiet Creek Community Association, and I just spoke to Cassie Lawver on the phone about the above-referenced Certificate to Plat. She said that Kathy Oakland had prepared the Certificate to Plat but was on vacation all of this week. I asked Cassie to forward the attached documents to the underwriter at Stewart Title immediately, because determination of title to the common elements of Quiet Creek Community is critical at this time as Alaska USA Federal Credit Union is attempting to replat property to which it has no title, other than in its capacity as a unit owner with an undivided interest in the common elements.

The documents I am attaching are a chart of all of the relevant documents to the creation of the condominium common interest community, the deeds of trust Alaska USA took from the developer to secure its loans, foreclosures of those deeds of trust, and trustee's deeds. The chart was prepared by our title consultant, George Peters, whose professional resume is at the end of the second attachment, which is George's letter setting out the issues in this case and his responses thereto. His conclusion is that Alaska USA has no title interest that would permit it to replat and withdraw sections of the common elements.

After you and your underwriter have reviewed the attachments, I am confident you will want to change the above-referenced certificate to plat with reference to the so-called "future development phases of Quiet Creek Community". Since there is a hearing on Alaska USA's plat application before the Homer Advisory Planning Commission on December 7, time is of the essence.

Sincerely,

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com



Quiet Creek Community Condominium – Homer, Alaska
Document List – Chronological Order based on Date Recorded

Notes (as of January 2010):

- (1) Condominium currently consists of 15 units [702, 704, 706, 708, 710, 812, 814, 816, 818, 820, 924, 926, 928, 930, 932] via 4 phase amendments. Eleven units sold [702, 704, 706, 708, 710, 812, 924, 926, 928, 930, 932]; no deeds shown for 4 units [814, 816, 818, 820] so these are presumed to be unsold. Development rights remain to create 21 more units on the common elements, via phases 5, 6 and 7, for a total of 36 units. NOTE: each phase ADDS to existing condominium – that is, the Phase 4 amendment added units, but the total number of units in Phase 4 is 15.
- (2) Not known if public offering statement was delivered to purchasers, nor, if it was, whether it complied with AS 34.08.540.
- (3) Original declaration and Map showed Unit 722, a detached SFR; later torn down and deleted by amendment.
- (4) Notice of Completion (pursuant to AS 34.35.071) is not the same as Certificate of Completion (pursuant to AS 34.08.090(b)) required for condominium units, and presumably not relevant to condominium statute compliance.
- (5) There is no statutory requirement for a mortgagee or D/T beneficiary to join in or consent to a condominium declaration or amendments adding phases. However, any partial reconveyance of a unit acts as estoppel and lender cannot argue priority over the condominium declaration, or later foreclose except on remaining units.
- (6) Some subordination information shown, but based on extract from title commitment attached to D/T (6th); I don't know if there are others. No analysis has been made of processes for the two foreclosed D/Ts.
- (7) May be labor/material liens; not shown here.
- (8) No information available as to whether taxes been segregated for each created unit (e.g., is there a separate tax parcel for each unit)?

Date Recorded	Document Name	Recording No.	Comments
1	10-27-2004 Condominium Declaration Phase 1	2004-005284-0	(1) Describes 6 units [702, 704, 706, 708, 710, 722], (2) not in compliance with AS 34.08.090(b) which requires Map and substantial completion certification, (3) some plans are attached, but Map complying with AS 34.08.170 not recorded as part of or with declaration, (4) attached plans roughly outline phase lines and show clusters of units labeled as phases, but neither declaration nor plans comply with AS 34.08.130(8) which requires a "legally sufficient" description of land subject to development rights, (6) includes "boiler plate" right to withdraw land, BUT this is moot, since (a) no legal description of affected land and (b) units have been conveyed, (7) Exhibit 1 (the attached plans) does not show Unit 722 [the house], (8) Exhibit 2 (allocated interests) does not specify which units are Model A, B or C, as provided for in the declaration, BUT §4.2 does so – probably not an issue, (9) §5.2 says specified common elements "assigned on Plans" but not all listed LCE are shown, nor formally assigned that way. NOTE: Lack of contemporaneous Map and completion certificate for Phase 1 units meant that units could not yet be conveyed as of this date, but this likely moot since units were conveyed only after those were later recorded. Map recorded 9-2-2005 [2005-45].
2	11-30-2004 Construction D/T (1 st) To AK USA FCU \$1,694,250	2004-005741-0	(1) Describes underlying plat land; no mention of condominium, units or development rights, (2) recorded before Map and completion certificate for Phase 1 units, (3) however, the same lender later partially reconveyed units and made later loans on one unit and "development rights" of the condominium, and thus is estopped from treating it as a loan on the land, not subject to the condominium. NOTES: (a) Reconveyed as to sold Units 702, 704, 706, 708, 924, (b) not reconveyed as to sold Units 710, 812, 926, 928, 930, 932, (c) not reconveyed as to unsold Units 814, 816, 818, 820, (d) not shown as an exception in title commitment extract recorded with D/T (6 th) 2007-001356-0 on 4-13-2007 – not sure why, (e) CONCLUSION: this now probably a lien only on Units 814, 816, 818, 820 and development right to add 21 units.

Quiet Creek Community Condominium – Document List – Listed Chronologically Based on Date Recorded (1/10/2011)

Date Recorded	Document Name	Recording No.	Comments
2-10-2005	D/T (2 nd) To AK USA FCU \$300,000 (see subordinations)	2005-000475-0	(1) NOT identified as a construction loan, (2) describes underlying plat land; no mention of lien on a condominium, units or development rights, (3) BUT does mention that that land could become a condominium, (4) recorded before Map and completion certificate for Phase 1 units, (5) however, the same lender later partially reconveyed units and made later loans on one unit and "development rights" of the condominium, and thus is estopped from treating it as a loan on the land, not subject to the condominium. NOTES: (a) Reconveyed as to sold Units 702, 706, 708, 710, 812, 924, 926, 928, 930, (b) reconveyed as to unsold Units 814, 816, 818, 820, (c) not reconveyed as to sold Units 704, 932, (d) title report extract attached to D/T (6 th) 2007-001356-0 this was subordinated to Construction D/T (4 th) 2006-005090-0 under No.2006-005091 on 11-1-2006 (e) and also subordinated to Construction D/T (3 rd) 2005-005338 under Nos. 2005-005336 & 2006-001614 (but, as to this latter, it's moot as that D/T now reconveyed), (f) result may put it in 3 rd lien position (behind D/T (4 th)), (g) CONCLUSION: this now probably only a lien on development right to add 21 units.
9-2-2005	Condominium Map All land Shows Phase 1 Units	2005-45	(1) Shows 6 units [702, 704, 706, 708, 710, 722]. (2) includes certificate of completion per AS 34.08.090(b). (3) unit boundaries not located (that is, unit boundaries tied to west property line, but are not tied to property corners), (4) no metes & bounds description of any land subject to development rights as required by AS 34.08.130(8), (5) recorded 10 months after declaration (on 10-27-2004 [2004-005284-0]), but moot since no units sold prior to this recording, and later sale of units would serve to estop a challenge, (6) no boundary data shown for Unit 722 (moot, since that unit later deleted).
9-2-2005	Unit Deed - 706 Griffith	2005-004171-0	(1) Reconveyed by 2005-005449-0 as to D/T (1 st) [2004-005741-0] and by 2005-005450-0 as to D/T (2 nd) [2005-000475-0], (2) notice of completion 9-2-2005 [2005-004170-0]. NOTE: No reconveyance needed for any other D/T.
9-21-2005	Unit Deed - 708 Frank	2005-004525-0	(1) Reconveyed by 2005-005360-0 as to D/T (1 st) [2004-005741-0] and by 2005-005361-0 as to D/T (2 nd) [2005-000475-0], (2) notice of completion 9-21-2005 [2005-004524-0]. NOTE: No reconveyance needed for any other D/T.
10-11-2005	Unit Deed - 710 Forrester	2005-004870-0	(1) Reconveyed by 2005-005703-0 as to D/T (2 nd) [2005-000475-0], (2) notice of completion 10-11-2005 [2005-004869-0]. NOTES: (a) No partial reconveyance shown for D/T (1 st) [2004-005741-0], (b) no reconveyance needed for any other D/T.
11-1-2005	Construction D/T (3 rd) To AK USA FCU \$1,596,000 (Reconveyed in full)	2005-005338-0	(1) Identified as construction loan, (2) ambiguous and incorrect legal description = "future phases" of the condominium; it should have been a lien on "development rights." NOTES: Following all moot since this D/T (3 rd) reconveyed in full 8-18-2009 [2009-003006-0], (a) problems with legal description, (b) per title report extract attached to D/T (6 th) 2007-001356-0 subordinated to Construction D/T (4 th) 2006-005090-0 under No.2006-005091, (c) some partial unit reconveyances.
11-16-2005	Unit Deed - 702 Nelson	2005-005666-0	(1) Reconveyed by 2005-006235-0 as to D/T (1 st) [2004-005741-0] and by 2005-006234-0 as to D/T (2 nd) [2005-000475-0], (2) notice of completion 11-16-2005 [2005-005664-0]. NOTES: (a) No reconveyance needed for any other D/T, (b) resale deed to Nelson Trust [2005-005677-0],

Date Recorded	Document Name	Recording No.	Comments
10	Unit Deed - 704 John Neal	2006-000371-0	(1) Reconveyed by 2006-004616-0 as to D/T (1 st) [2004-005741-0], (2) notice of completion 12-19-2005 [2005-006182-0]. NOTES: (a) No partial reconveyance shown for D/T (2 nd) [2005-000475-0], (b) no reconveyance needed for any other D/T, (c) resale deed to Lockwood Trust [2006-005086-0] on 11-1-2006.
11	4-10-2006 Condominium Declaration - Amend 1	2006-001475-0	(1) Deletes Unit 722, leaving 5 units [702, 704, 706, 708, 710], (2) says that it corrects allocated interests for the remaining 5 units BUT corrected Exhibit 2 of allocated interests not attached, (3) no corrected Map attached or recorded with it, even though it refers to Exhibit 1 (this latter is likely because exact language from original declaration is used, and not because of an intent to attach a Map), (4) increases number of phases from 5 to 6, and number of units in each phase [5 units in Phase 3, 8 units in Phase 4, 7 units in Phase 5, 6 units in Phase 6], (5) amends development rights by (a) increasing total number of potential units from 32 to 36, (b) changing location of phases, (c) changing number of units in each phase, (d) extended declarant control of association to 7 years after 9-2-2005 sale of 1 st unit (not provided for in AS 34.08.330). NOTES: Issues (5)(a), (b) and (c), and even possibly (d) may be moot, since (1) the defects were resolved in later recordings, and (ii) all owners joined in the amendment?
12	11-1-2006 Construction D/T (4 th) To AK USA FCU \$2,163,750	2006-005090-0	(1) Identified as construction loan, (2) ambiguous and incorrect legal description = "future phases" of the condominium; should have been "development rights" but, "future phases" may have same effect. NOTES: (a) Partial reconveyance for Units sold Units 812, 924, 926, 928, 930, 932, (b) no partial recons for unsold Units 814, 816, 818, 820, (c) no partial recons needed for Units sold 702, 704, 706, 708, 710, (c) based on title report extract attached to D/T (6 th) 2007-001356-0, referencing subordination [2006-005091] by D/T (2 nd) 2005-000475-0, this may be the 2 nd lien position mortgage, (d) this may now be a lien only on Units 814, 816, 818, 820 and development rights.
13	11-6-2006 Condominium Declaration - Amend 2 Phase 2 Units	2006-005162-0	(1) Adds 5 new units [924, 926, 928, 930, 932] for a total of 10 units, (2) amends (correctly) allocated interests. NOTE: Correct Exhibit 2 makes lack of Exhibit 2 on the 1 st amendment to declaration [2006-001475-0] moot.)
14	11-6-2006 Condominium Map Phase 2 Shows Phase 2 Units	2006-75	(1) Shows 5 new Units [924, 926, 928, 930, 932], (2) says Phase 2 units "need not be built" but includes "as built" certificate of completion for these units, (3) <i>does not</i> locate buildings (and thus unit boundaries) vis-a-vis property lines or property corners, (4) does not show metes & bounds description for any land subject to development rights, (5) identifies future phase units as follows: 5 units in Phase 3, 8 units in Phase 4, 7 units in Phase 5, and 6 units in Phase 6.
15	11-21-2006 Unit Deed - 926 Nikora Trust	2006-005947-0	(1) Reconveyed by 2007-000131-0 as to D/T (2 nd) [2005-000475-0], and by 2007-000132-0 as to D/T (3 rd) [2005-005338-0], and by 2007-000129-0 as to D/T (4 th) [2006-005090-0], notice of completion 11-27-2006 [2006-005510-0]. NOTES: (a) No partial reconveyance shown for D/T (1 st) [2004-005741-0], (b) no reconveyance needed for any other D/T.

Date Recorded	Document Name	Recording No.	Comments
16	1-16-2007 Unit Deed - 924 Ammerman	2007-000195-0	(1) Reconveyed by 2007-000782-0 as to D/T (2 nd) [2005-000475-0], and by 2007-000781-0 as to D/T (3 rd) [2005-005338-0], and by 2007-000780-0 as to D/T (4 th) [2006-005090-0], (2) notice of completion 12-13-2006 [2006-005768-0]. NOTES: (a) No partial reconveyance shown for D/T (1 st) [2004-005741-0], (b) no reconveyance needed for any other D/T.
17	1-25-2007 Unit Deed - 930 Neal Farm Ltd Ptnshp	2007-000324-0	(1) Reconveyed by 2007-000660-0 as to D/T (2 nd) [2005-000475-0], and by 2007-000658-0 as to D/T (3 rd) [2005-005338-0], and by 2007-000659-0 as to D/T (4 th) [2006-005090-0], (2) notice of completion 5-10-2007 [2007-001890-0]. NOTES: (a) No partial reconveyance shown for D/T (1 st) [2004-005741-0], (b) no reconveyances needed for any other D/T, (c) recorded after notice of completion, but probably moot (at least as to condominium issues).
18	3-14-2007 Unit Deed - 932 Davidhizar	2007-000902-0	(1) Notice of completion 2-20-2007 [2007-000647-0], (2) reconveyed by 2007-001281-0 as to D/T (3 rd) [2005-005338-0], and by 2007-001288-0 as to D/T (4 th) [2006-005090-0] NOTES: (a) No partial reconveyance shown for D/T (1 st) [2004-005741-0], or for D/T (2 nd) [2005-000475-0], (b) no reconveyances needed for any other D/T.
19	3-29-2007 D/T (5 th) To Welles/Mandarano \$100,000	2007-001144-0	(1) Ambiguous and incorrect legal description = the underlying legal description (thus, <i>no</i> reference to the condominium), and then excepting "condominium units which are no longer owned by trustor" (without identifying either individual units, the condominium by name or recording data per AS 34.08.120), (3) thus, description appears to presume (incorrectly) that the lien is intended as a lien on all of the condominium land, (that is, land that is actually the common elements, independent of any interest in a unit) which would be in violation of AS 34.08.150(d), (4) the only lien possible is on unconveyed units and development rights, (5) but, since no mention is made of development rights, it may not be a lien on those. NOTES: (a) Partial reconveyance for sold Unit 812, (b) no partial recons for unsold Units 814, 816, 818, 820, (c) no partial recons needed for sold Units 702, 704, 706, 708, 710, 924, 926, 928, 930, 932, since those were all created before this D/T recorded, (d) this may be a lien only on Units 814, 816, 818, 820 and <i>perhaps</i> development rights, (e) <i>may</i> have been eliminated by later foreclosures, but questionable because of ambiguous legal descriptions, and I have not checked sufficiency of foreclosure procedures (including whether this beneficiary received notice).

Date Recorded	Document Name	Recording No.	Comments
20 4-13-2007	Fourth D/T (6 th) To Patrick Neal \$250,000	2007-001356-0	<p>(1) Describes Unit 928 (later reconveyed) as Parcel 1, which is OK, (2) but Parcel 2 is ambiguous and incorrect = the underlying legal description of the condominium, and then excepting (a) Quiet Creek Community LLC plat 2005-45 [which was Phase 1 Map], and (b) Quiet Creek LLC Phase II plat 2006-75 [which was Phase 2 Map], (2) an exception for "plats" does not constitute sufficient legal description even if the intent was to exclude created all Phase 1 and Phase 2 units except for Unit 928, per AS 34.08.120, (3) description appears to presume (incorrectly) that the lien is on all of the condominium land (that is, the common elements, independent of any interest in a unit) which would be in violation of AS 34.08.150(f), (4) also, since no mention is made of development rights, it might not be a lien on those.</p> <p>NOTES: (a) Partial reconveyance for sold Unit 812 (created later by Phase 3), and this Unit 928 (when it was sold 4-11-2008), (b) no partial reconveyance for unsold Units 814, 816, 818, 820 (all created after this D/T), (c) no partial recons needed for sold Units 702, 704, 706, 708, 710, 924, 926, 930, 932, (d) on attached extract of title commitment exceptions, the exceptions for declaration and statute incorrectly refers to "Horizontal Property Regimes Act, (e) this may be a lien only on Units 814, 816, 818, 820 and <i>perhaps</i> development rights, (e) <i>may</i> have been eliminated by later foreclosures, but questionable because of ambiguous legal descriptions, and I have not checked sufficiency of foreclosure procedures (including whether this beneficiary received notice).</p>
21 11-16-2007	Condominium Map Phase 3 Shows Phase 3 Units	2007-88	<p>(1) Shows 2 new units [812, 814] making a total of 12, (2) which are only 2 of the 5 originally projected units for Phase 3, (3) includes "as built" certificate of completion for Phase 3 units, (4) <i>does not</i> locate buildings (and thus unit boundaries) vis-à-vis property lines or property corners, (5) now identifies the other 3 units that were projected as part of Phase 3 on earlier Maps as now being part of Phase 4, (6) states projected Phase 4 units "must be built," (7) shows additional clusters of phases to now total 7 phases in all (which change is not mentioned in the declaration amendment), (8) changes phase designations for clusters of future units from that shown on earlier maps: 3 units in Phase 4, 8 units in Phase 5, 7 units in Phase 6, and 6 units in Phase 7 (for a total of 36), (9) does not show metes & bounds description for any land subject to development rights, (10) recorded 1 day before declaration amendment (moo).</p>
22 11-17-2007	Condominium Declaration - Amend 3 Phase 3 Units	2007-004467-0	<p>(1) Adds 2 new units [812, 814] for a total of 12, (2) which are only 2 of the 5 originally projected units for Phase 3, (3) amends (correctly) allocated interests for 12 units, (3) recorded 1 day after declaration amendment (moo), (4) <i>does not</i> correct the number phases to 7 as is shown on the Map 2007-88.</p>
23 12-12-2007	Unit Deed - 812 Fuller	2007-005273-0	<p>(1) Five partial recons: by 2008-000064-0 for D/T (2nd) [2005-000475-0], and by 2008-000063-0 as to D/T (3rd) [2005-005338-0], and by 2008-000068-0 as to D/T (4th) [2006-005090-0], and by 2008-000038-0 for D/T (6th) [2007-001356-0], and by 2007-005360-0 for D/T (6th), (2) notice of completion 12-5-2007 [2007-005153-0].</p> <p>NOTES: (a) No partial reconveyance shown for D/T (1st) [2004-005741-0], (b) no reconveyance needed for any other D/T.</p>

Date Recorded	Document Name	Recording No.	Comments
24	3-3-2008 D/T (7 th) To AK USA FCU \$399,000	2008-000845-0	<p>(1) Describes Unit 814, which is OK, (2) but first part of the description is ambiguous and incorrect = the underlying platted lot and then excepting (a) Quiet Creek Community LLC plat 2005-45 (which was Phase 1 Map), (b) Quiet Creek Community LLC Phase II plat 2006-75 [which was Phase 2 Map], and (c) Quiet Creek Community LLC Phase 3 plat 2007-88 [which was Phase 3 Map], (2) an exception for "plats" does not constitute sufficient legal description even if the intent was to exclude created all Phase 1, Phase 2 and Phase 3 units except for Unit 814 per AS 34.08.120, but this may be a moot issue, since it's clear there was an intent to exclude all units created earlier, (3) description may presume (incorrectly) that the lien is on all of the "remaining" condominium land, independent of any interest in any unit (but which is actually the common elements) which would be in violation of AS 34.08.150(3), (4) also, since no mention is made of development rights, it may not be a lien on those, but the first part of the description suggests that expectation.</p> <p>NOTES: Reconveyed as to sold Unit 928 (even though not needed), (b) not reconveyed as to unsold Units 816, 818, 820 (later added by Phase 4), (c) no reconveyance needed for sold Units 702, 704, 706, 708, 710, 812, 924, 926, 930, 932, (d) this may be a lien only on Units 814, 816, 818, 820 (as to Units 816, 818, 820 because and <i>perhaps</i> development rights, (e) <i>may</i> have been eliminated by later foreclosures (note that lender is the same as with foreclosed mortgages), but questionable because of ambiguous legal descriptions, and I have not checked sufficiency of foreclosure procedures (including whether this beneficiary received notice).</p>
25	4-8-2008 Notice of Completion Unit 814	2008-001410-0	<p>This list does not show notices of completion separately, but in this case: (1) Recording not connected with deed for this unit, (2) unit may have been sold, since there is one reconveyance by [2009-002907-0] for D/T (2nd) [2005-000475-0] on 8-11-2009, which suggests that the unit might have been conveyed, (3) conversely, however, D/T (7th) recorded contemporaneously, and that grantor was the declarant and not a unit purchaser.</p>
26	4-9-2008 Condominium Map Phase 4 Shows Phase 4 Units	2008-14	<p>(1) Shows 3 new units [816, 818, 820] for a total of 15 units, (2) add "as built" certificate of completion for Phase 4 units, (3) <i>does not</i> locate buildings (and thus unit boundaries) vis-à-vis property corners (ties NE corner of building to east property line, but not north-to-south on the property, plus building can rotate from this point), (4) shows future phase clusters same as on Phase 3 Map; 8 units in Phase 5, 7 units in Phase 6, and 6 units in Phase 7 (for a total of 36), (5) recorded 13 days <i>before</i> declaration amendment (moot).</p>
27	4-11-2008 Unit Deed - 928 Nelson	2008-001460-0	<p>(1) Four partial recons: by 2008-001871-0 for D/T (2nd) [2005-000475-0], and by 2008-001281-0 as to D/T (3rd) [2005-005338-0], and by 2008-001870-0 as to D/T (4th) [2006-005090-0], and by 2008-001578-0 for D/T (6th) [2007-001356-0], (2) notice of completion 5-4-2007 [2007-001773-0].</p> <p>NOTES: (a) Burn legal and another typo in another partial recon 2008-001931-0 for D/T (7th) [2008-000845-0] (it describes Unit 9, and shows recording # for T/T as 2008-000843-0, (b) no partial reconveyance shown for D/T (1st) [2004-005741-0], or for D/T (5th) [2007-001144-0], (c) no other partial reconveyances needed for any other D/T.</p>
28	4-22-2008 Condominium Declaration - Amend No. 4 Phase 4 Units	2008-001629-0	<p>(1) Adds 3 new units [816, 818, 820] for a total of 15, (2) amends (correctly) allocated interests for 15 units, (3) recorded 13 days after Map amendment (moot).</p>

Date Recorded	Document Name	Recording No.	Comments
29	10-20-2008 Notice of Default For D/T (4 th)	2008-004057-0	(1) Description is "future development phases" which would be more correctly described as "development rights" but effect is probably the same, (2) expressly excepts Phase 2 and Unit 812 (which was added by Phase 3 amendment, and later conveyed), (3) should have expressly excepted Units 924, 926, 928, 930, 932, since they were also added by reserved development right originally encumbered, but since those were reconveyed, that is moot. NOTE: At this date, the lien is only on Units 814, 816, 818, 820 and development rights to add 21 units. (1) Description is "future development phases" which would be more correctly described as "development rights" but effect is probably the same, (2) expressly excepts Phase 2 and Unit 812 (which was added by Phase 3 amendment, and later conveyed), (3) should have expressly excepted Units 924, 926, 928, 930, 932, since they were also added by reserved development right originally encumbered, but since those were reconveyed, that is moot. NOTE: This trustee's deed presumably intended to convey Units 814, 816, 818, 820 and development rights to add 21 units, subject to D/T (1 st), D/T (2 nd) and maybe later D/Ts depending on factoring in ambiguous descriptions in the other deeds of trust and this document.
30	2-25-2009 Trustee's Deed For D/T (4 th) AK USA FCU	2009-000604-0	
31	4-13-2009 Condominium Declaration - Amend No. 4 Phase 4 AMENDED	2009-001212-0	Appears to be duplicate of 2008-001629-0. No apparent changes.
32	4-13-2009 Condominium Map Phase 4 AMENDED Shows Phase 4 Units	2009-11	Appears to be duplicate of 2008-14, but makes following changes: (1) States that the purpose is to (a) add cross reference (i.e., recording) numbers, (b) depict elements (but not unspecified) that were omitted from 2008-14, (2) Adds the point from NE corner of building to north property line (so now tied to both north and east line, but still <i>does not</i> locate buildings (and thus unit boundaries) vis-à-vis property corners because building can rotate around this point, (3) adds courses and distances along the south line of interior road (which provides access to units added by Phases 1, 2, 3 and 4, (4) labels area north of this line "development rights not reserved," (3) labels building areas north of this line "must be built," (5) labels area south of this line "development rights reserved," (6) labels building clusters south of this line "need not be built," (7) building clusters for future phase units labeled "no unit numbers this date," (8) no longer labels building clusters as Phases 5, 6 and 7, but still shows 21 additional potential units, (9) delineates "parking lot" on south line (within area marked "development rights reserved") as "must be built. The legal description extremely ambiguous and confusing. It's not possible to determine intent. The description starts out with the D/T (2 nd) legal description (the underlying land, with no mention at all of any condominium). Then, it excepts 3 things: (1) it excepts "future development phases" EXCEPT Phase 2 (which would be Units 924, 926, 928, 930, 932), and EXCEPT Unit 812. This has the effect of (a) excluding all development rights (probably not intended), and (b) including Units 812, 924, 926, 928, 930, 932 in the deed - BUT those units have been reconveyed as to this D/T (2 nd), and (2) it excepts Unit 814 - OK, as this unit was already reconveyed, and (3) it excepts Units 816, 818, 820 - OK as these units already reconveyed as to this D/T (2 nd). Since all 15 existing units had either been sold or partially reconveyed, this deed of trust could only have been a lien on development rights (the right to add 21 units), but the legal description in this document would have excluded those development rights.
33	6-29-2009 Notice of Default For DT (2 nd)	2009-002302-0	

Quiet Creek Community Condominium - Document List - Listed Chronologically Based on Date Recorded (1/10/2011)

Date Recorded	Document Name	Recording No.	Comments
34 8-11-2009	Reconveyance Units 814, 816, 818, 820 For D/T (2 nd)	2009-002907-0	(1) Partial reconveyance for D/T (2 nd) [2005-000475-0]. NOTES: (a) No deeds shown for these units, but the partial reconveyance suggests they were sold, (b) also, no notices of completion recorded for three units [816, 818, 820], but notice of completion recorded for Unit 814 [2008-001410-0], (c) conversely, since there is no notices of completion shown (for three of them), that suggests they might not have been sold yet.
35 8-18-2009	Reconveyance of D/T (3 rd)	2009-003006-0	Full reconveyance of D/T (3 rd) [2005-005338-0]: makes issues with this document moot. The legal description extremely ambiguous and confusing. It's not possible to determine intent. The description starts out with the D/T (2 nd) legal description (the underlying land, with no mention at all of any condominium). Then, it excepts 3 things: (1) it excepts "future development phases" EXCEPT Phase 2 (which would be Units 924, 926, 928, 930, 932), and EXCEPT Unit 812. This has the effect of (a) excluding all development rights (probably not intended), and (b) including Units 812, 924, 926, 928, 930, 932 in the deed - BUT those units have been reconveyed as to this D/T (2 nd), and (2) it excepts Unit 814 - OK, as this unit was already reconveyed, and (3) it excepts Units 816, 818, 820 - OK as these units already reconveyed as to this D/T (2 nd). Since all 15 existing units had either been sold or partially reconveyed, this deed of trust could only have been a lien on development rights (the right to add 21 units), but the legal description in this document would have excluded those development rights. But, trustee's deed for D/T (4 th) [2009-000604-0] may have eliminated this D/T based on earlier subordinations. But, same lender, so intent as to both foreclosures unknown.
36 10-9-2009	Trustee's Deed For D/T (2 nd) AK USA FCU	2009-003607-0	Titled "Record of Survey - Quiet Creek Community Lands Withdrawn from Community" - does not represent itself as an amendment to the condominium map. (1) Note states that it is "not a subdivision" although that is the result if withdrawal is effective. Presumably this would not comply to subdivision ordinances even though it appears to create three "lots." (2) Shows "Area A" and "Area B" and "Area C" with surveyed lines separating the portions. Surveyed lines are new - not based on any earlier legal descriptions or map depictions. (3) Area B is portion where 15 condominium units located - but does not identify this as a condominium or as "remaining" condominium land. (4) A note states that "Area B" area increased to "the minimum required under...conditional use permit issued by the City of Homer" although no previous area had ever been shown that needed "increasing." (5) "Area A" & "Area C" are not identified as "withdrawn land" or in any way that it is or is not part of any condominium. (6) Not filed with any amendment to the declaration nor with any cross reference to the declaration or maps, nor to any amendments to either, for the Quiet Creek Community Condominium. (7) No access to "Area C" - appears to be landlocked. (7) Contains no identification of any land that is withdrawn, or any statement to the effect that "Area A" and "Area C" are withdrawn or are intended to be land withdrawn from any condominium.
37 10-17-2011	Record of Survey (not a condominium map)	2011-39	

Date Recorded	Document Name	Recording No.	Comments
38 10-25-2011	Condominium Declaration - Amendment No. 5 WITHDRAWAL OF LAND by Alaska USA Federal Credit Union	2011-003286-0	<p>Purports to withdraw land from the condominium, by AKUSA as successor declarant. (1) States that amended Phase 4 filings (declaration 2009-001212-0, map 2009-11), being recorded by non-owner were invalid and void. (2) The referenced declaration 2009-001212-0 was a duplicate of 2008 recording with no apparent changes, so if it is void that would have no practical effect. (NOTE: This amendment creates the units that AKUSA owns.) (3) But map 2009-11 added details, including a statement that the northerly portion was no longer subject to development rights (this general location of "Area C" withdraw parcel), and a line south of the interior road apparently demarking the area to the south that was still subject to development rights. This line differs from the line shown on map 2011-39. (4) States that AKUSA exercising development rights (apparently all of them) but in particular the right to withdraw land. (5) States that the record of survey 2011-39 "provides a legally sufficient description of the real property" which AKUSA withdraws. (NOTE: This description was only then created, which implies knowledge by AKUSA that the description was not created when and as required by statute.) (6) Does not identify any specific land (either by legal description or reference to any "areas" on the record of survey 2011-39.</p>
39			



Julie Engebretsen

From: Sjwanch@aol.com
Sent: Wednesday, November 23, 2011 11:18 AM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net; georgepjr@hotmail.com
Subject: Alaska USA attempt to replat Quiet Creek common elements

Julie,

Please add the following information to our comments on the attempt by Alaska USA Federal Credit Union to replat the common elements of Quiet Creek Community. George Peters reviewed for us an additional recorded document we had not seen that was listed in the certificate to plat submitted in this case.

Mr. Peters' conclusion is that there is no current right of any party to withdraw any land from the condominium. The corollary of that is that there is no title interest in the property to subdivide the property. As I have stated before, title to the property is fundamental to subdividing and, since Alaska USA has no title, it should not be permitted to process a subdivision plat.

Please let me know when the subdivision application has been returned to Alaska USA for failure to be an appropriate party to submit a subdivision application on the Quiet Creek property.

Sandra

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com

From: georgepjr@hotmail.com
To: sjwanch@aol.com
CC: cassie@kbaytitle.com, billgail@sbcglobal.net
Sent: 11/23/2011 9:36:44 A.M. Alaskan Standard Time
Subj: Quiet Creek Community Condominium - 2009-003613-0

I have reviewed the Transfer of Development and Declarant Rights recorded under No. 2009-003613-0, and it is my opinion that it does not affect the current situation involving the attempted withdrawal of land from the common elements of Quiet Creek Community Condominium by Alaska USA. There is still no current right of any party to withdraw any land from the condominium.

George Peters

Chair, Education Committee

Washington Land Title Association

206-437-5869 (Mobile)

206-2604731 (Fax)



Julie Engebretsen

From: Sjwanch@aol.com
Sent: Monday, November 28, 2011 3:22 PM
To: Julie Engebretsen
Cc: cassie@kbaytitle.com; kathy@kbaytitle.com; taccinelli@rcolegal.com
Subject: Quiet Creek Community Replat
Attachments: FINAL NOTICE.docx

Julie,

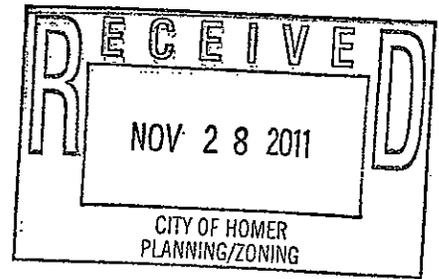
Please add to the comments I previously submitted on behalf of the Quiet Creek Community Association, the attached Notice to the Public of Invalid Amendment and Record of Survey. It was recorded as an amendment to the Declaration for Quiet Creek Community to let the world know that the Quiet Creek Community Association considers both the 5th Amendment to the Declaration and the Record of Survey on which Alaska USA bases its claim to have the authority to replat and withdraw the property that is common element of Quiet Creek to be invalid. Unfortunately, the recorded copy that was e-mailed to me is virtually unreadable, except for the recording information. The Notice was recorded on November 25, 2011, as Document No. 2011-003636-0 in the Homer Recording District. I am attaching an unsigned copy of the document so that you will have the text right away, and one of the unit owners will bring you a hard copy of the recorded document itself.

Please let me know as soon as Alaska USA's replat application is removed from the December 7 agenda. The City simply cannot process a plat application submitted by someone who does not own the property unless it is authorized to do so by all of the property owners and the owners in this case to not so authorize.

Sandra

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
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**DECLARATION
FOR
QUIET CREEK COMMUNITY**

Notice to the Public of Invalid Amendment and Record of Survey

This Notice to the Public is made by the Quiet Creek Community Association, Inc., the association of Unit Owners in Quiet Creek Community, in order to give notice to the public that Amendment No. 5 to Declaration for Quiet Creek Community, recorded October 25, 2011, by Alaska USA Federal Credit Union, under Serial No. 2011-003286-0, is invalid and is an unlawful attempt to withdraw the common elements of Quiet Creek Community. Alaska USA Federal Credit Union has no ownership interest except its undivided interest in the common elements as a Unit Owner.

Alaska USA Federal Credit Union also recorded an invalid record of survey on October 17, 2011, under Plat No. 2011-39, purporting to describe areas of the common elements of Quiet Creek Community being withdrawn by the said invalid Amendment No. 5, and purporting to create a subdivision of the common elements of Quiet Creek Community into three parcels.

The common interest community of Quiet Creek Community was created by the recording of the Declaration for Quiet Creek Community on October 27, 2004, under Serial No. 2004-005284-0, which submitted real property described as:

Tract A, Barnett Subdivision Quiet Creek Addition, according
to Plat No. 2003-56, Homer Recording District, Third Judicial
District, State of Alaska

to AS 34.08, *et seq.*, the Alaska Uniform Common Interest Ownership Act. That Declaration did not describe any portion of the common elements as being subject to withdrawal.

Also, on September 2, 2005, the declarant of the Declaration for Quiet Creek Community filed a Condominium Development Plan and Phase 1 Asbuilt for Quiet Creek Community under Plat No. 2005-45. That Condominium Development Plan did not show any part of Tract A as subject to withdrawal. In addition, subsequent phasing amendments to the Declaration and the Plans did not show any portion of Tract A as being subject to withdrawal. The Association contends that no withdrawal of real property from Quiet Creek Community is now possible.

The purpose of this Notice is to alert the public and any potential purchasers of land described on said invalid Record of Survey as "Area A" or "Area C" that the invalid Amendment No. 5 and invalid Record of Survey (Plat No. 2011-39) did not withdraw any of the common elements from the Quiet Creek Community, nor did those documents divest the title of any unit owners of Quiet Creek Community to any portions of the land shown on the invalid Record of Survey, nor vest title to any portions solely in Alaska USA Federal Credit Union. For further information, contact Sandra J. Wicks, Attorney, at the address listed below.

IN WITNESS WHEREOF, the Quiet Creek Community Association, Inc. has caused this Notice to be executed this ____ day of _____, 2011.

QUIET CREEK COMMUNITY ASSOCIATION, INC.

William Frank, President

STATE OF TEXAS)
)ss.
COUNTY OF _____)

THIS IS TO CERTIFY that on this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Texas, personally appeared WILLIAM FRANK, the President of Quiet Creek Community Association, Inc., and known to me to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document on behalf of Quiet Creek Community Association, Inc., for the uses and purposes therein set forth pursuant to the bylaws or a resolution of the board of directors.

WITNESS my hand and notarial seal the day and year first hereinabove written.

Notary Public in and for Texas
My Commission Expires: _____

AFTER RECORDING RETURN TO:
Sandra J. Wicks, Esq.
3237 W. 31st Avenue
Anchorage, Alaska 99517



Julie Engebretsen

From: Sjwanch@aol.com
Sent: Wednesday, November 30, 2011 4:20 PM
To: Julie Engebretsen
Cc: billgail@sbcglobal.net
Subject: Attempted replat of Quiet Creek Common Elements by Alaska USA
Attachments: SitePlan Declaration P 47.jpg; Letter from George Peters11-14-2011.pdf; QuietCreekCommunityCondominium-Documents List 11-10-2011.pdf; Ullstrom 100509.pdf

Julie Engebretsen
City of Homer

RE: Attempted replat of Quiet Creek Common Elements by Alaska USA

Julie:

Please include the following comments in the packet for the Homer Advisory Planning Commission.

The attorney for Alaska USA has provided comments that in no way prove the credit union has title to the common elements of Quiet Creek Community and a right to withdraw them. Although a copy of the letter analyzing all of the documents to which she refers, that was prepared by the Association's title expert, was provided to her, the attorney for Alaska USA has not attempted to rebut any of that analysis. Our title expert's analysis of the Declaration for Quiet Creek Community, the amendments thereto, the deeds of trust and the trustee's deeds after foreclosure conclude that because of sloppy drafting in the declaration and deeds of trust, no withdrawal rights were reserved and the credit union has no title interest in the common elements. Simply providing copies of the documents to the Homer Advisory Planning Commission and repeating the credit union's mantra that it has title and the right to withdraw the common elements does not make it so.

In case you do not have our title expert's letter and chart analyzing all of the documents readily at hand, I am attaching them to this e-mail.

In addition, I am attaching a copy of the October 5, 2009, letter to Alaska USA from its attorney stating that: "As discussed in our conversation this morning, Alaska USA has elected NOT to retain the declarant's rights and the trustee's deed will therefore NOT contain a statement reserving those rights to Alaska USA. My reading of the statute is that if the deed does NOT contain such a statement, THE DECLARANT RIGHTS CEASE TO EXIST." (Emphasis added.) These statements are found in the second paragraph of the letter. Our expert explains in great detail why there were no rights to reserve because of the problems with the declaration but, even if there were, Alaska USA elected not to reserve them.

I am also attaching the illustration that was an exhibit in the declaration that described the anticipated phases of development of the Quiet Creek Community. As one can see on that illustration, Phase 1 includes all of the land not outlined as part of a future phase. It also shows at the lower end of Phase 1 a parking area that was promised to the unit purchasers. This parking area is essential to the operation of Quiet Creek, and it is in the area of the common elements Alaska USA is attempting to withdraw.

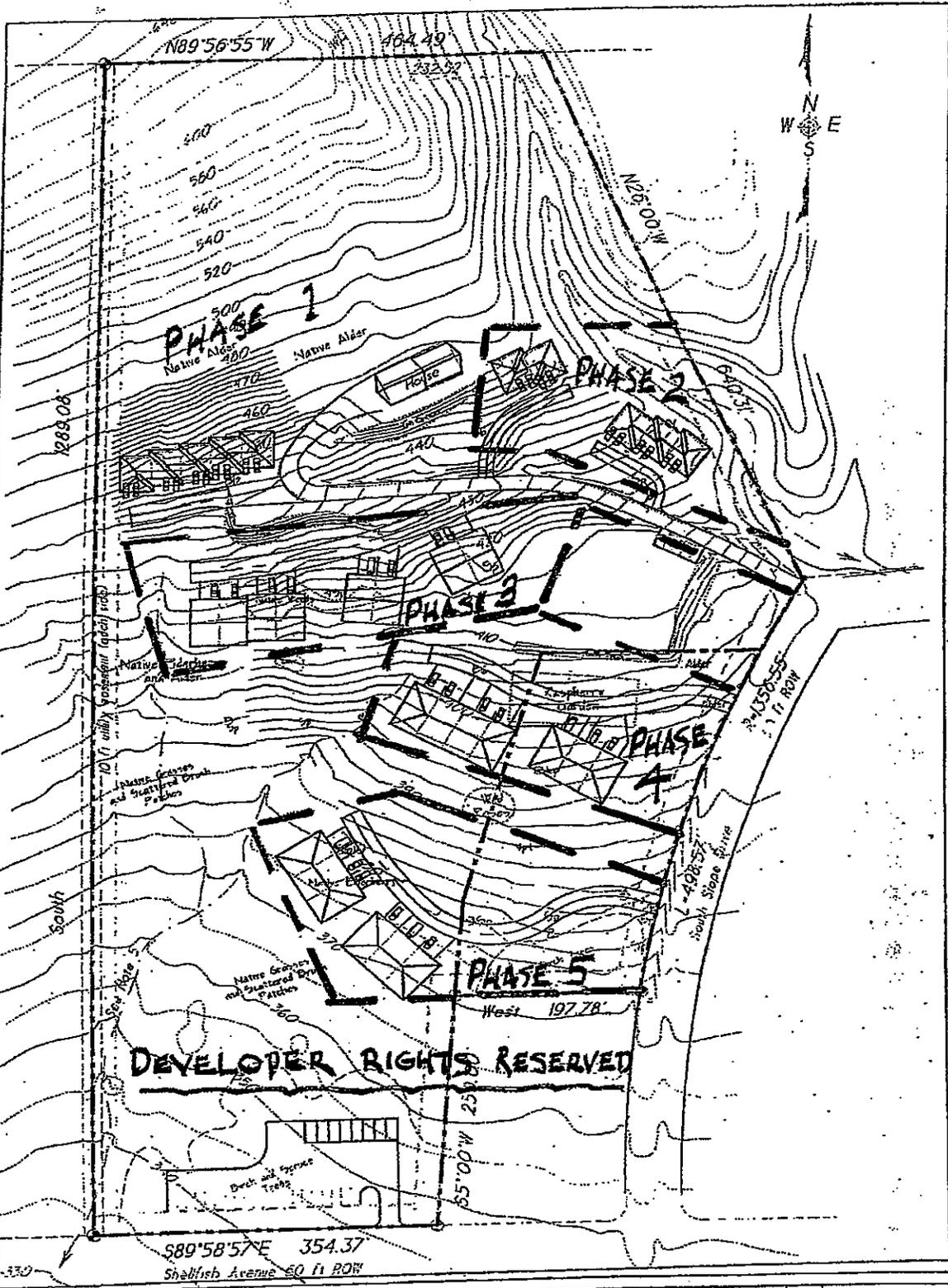
Given that Alaska USA elected not to reserve declarant's rights, and that reserving a right to withdraw would be the only way property could be withdrawn from the common elements (had that right actually been created in the first place), it is incomprehensible that Alaska USA now claims the right to do so.

The Quiet Creek Community Association respectfully requests that the replat requested by Alaska USA be rejected until title to the property proposed for withdrawal, and the right to such withdrawal, are properly established.

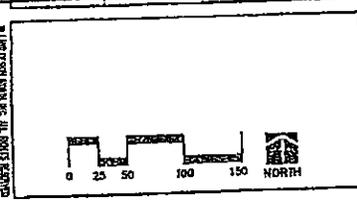
Thank you for considering all of the evidence and coming to a just conclusion.

Sandra J. Wicks, Attorney-at-Law
3237 W. 31st Avenue, Anchorage, Alaska 99517
(907) 243-7661 e-mail: sjwanch@aol.com





DEVELOPER RIGHTS RESERVED



SEAL:

REV.	COMMENT	DATE

DATE: 4/14/04
 JOB NO.: NEA0328
 DRAWN BY: PDB
 CHECKED BY: BA
 DRAWING TITLE:
**QUIET CREEK
 SITE PLAN**
 SHEET NO.: L1





Julie Engebretsen

From: Theodora Accinelli [taccinelli@rcolegal.com]
Sent: Wednesday, November 30, 2011 10:57 AM
To: Julie Engebretsen
Cc: sjwanch@aol.com; Hamilton, David
Subject: Quiet Creek Community - Replat by Alaska USA FCU
Attachments: Trustee's Deed L02.Tract A.10-09-2009.6 pages.pdf; Trustees Deed.L04.Future devel. Tract A.2-25-2009.7 pages.pdf; Kachemak Bay Title.cert to plat 29465. Update2 CP.pdf; DOT1117970 L02.pdf; DOT 111797 L04.pdf; Amendment 5 to Declaration.with PLAT MAP 2011-39 attached.pdf

Ms. Julie Engebretsen
Homer Planning Department
Homer, Alaska

Dear Ms. Engebretsen,

Please include the following documents in the packet of materials for the December 7, 2011 regular meeting on the Homer Advisory Planning Commission:

1. Trustee's Deed 2009-003697 recorded October 9, 2009 for Tract A, Barnett Subdivision Quiet Creek Addition;
2. Trustee's Deed 2009-000604-0 recorded February 25, 2009 for Future Development Phases of Quiet Creek Community which is a portion of Tract A Barnett Subdivision Quiet Creek Addition;
3. Certificate to Plat Update #2 as of November 4, 2011 by Kachemak Bay Title Company which shows title vested in Alaska USA FCU in fee simple;
4. Deed of Trust recorded on February 10, 2005, Document No. 2005-00475-0 for Tract A Barnett Subdivision Quiet Creek Addition;
5. Deed of Trust recorded on November 1, 2006, Document No. 2006-005090-0 on future development phases of Quiet Creek Community, on Tract A Barnett Subdivision Quiet Creek Community;
6. Amendment No. 5 to the Declaration for the Quiet Creek Community withdrawing such lands from the community and Record of Survey Plat No. 2011-39.

As the two Trustee's Deeds show, Alaska USA FCU acquired title to land identified as Area A and Area C on Plat No. 2011-39 through two non-judicial foreclosures conducted in 2009 pursuant to Alaska law. As the entity taking title to the real property, Alaska USA is entitled to withdraw the land from the common interest community or have the land withdrawn by amendment. See AS 34.08.260(k). Further, as a result of the foreclosure, Alaska USA is the successor declarant of the Quiet Creek Community. As successor declarant, Alaska USA has executed the development rights under Section VII, Section 8.1 and 8.3 of the Declaration and has withdrawn such lands from the Quiet Creek Community. See Amendment No. 5 Plat No. 2011-39 and AS 34.08.350. Title to the property is vested in Alaska USA in fee simple. The withdrawn lands are not common elements of the Quiet Creek Community.

The Quiet Creek Community Association claim of ownership and its objections to the re-plat of Alaska USA's real property are not well-taken. The members of the Quiet Creek Community purchased their units fully aware of the credit union's deeds of trust encumbering the land and future development phases, the credit union's right to foreclose on the land and future development phases, the fact that developer's rights were reserved and the

right of the declarant or successor declarant to withdraw land or a portion of land from the community. They were also fully aware of the two foreclosures by the credit union that occurred in 2009.

The re-plat submitted meets the necessary requirements for re-platting the property and complies with Homer land use policies. Therefore, the Homer Advisory Planning Commission should approve the re-plat application of Alaska USA FCU.

Thank you.

Sincerely,

Theodora Accinelli
Attorney for Alaska USA Federal Credit Union
Routh Crabtree Olsen, P.S.
3000 A Street, Suite 200
Anchorage, Alaska 99503
(907) 222-4354 direct line
taccinelli@rcolegal.com

2009-003607-0

Recording Dist: 309 - Homer
10/9/2009 9:52 AM Pages: 1 of 6



Trustee's Deed

Alaska Trustee, LLC, Trustee, Grantor, whose address is 3000 A Street, Suite 200, Anchorage, Alaska 99503, in consideration of the sum of \$542,266.72, receipt of which is hereby acknowledged, hereby conveys and grants without warranty, to Alaska USA Federal Credit Union, Grantee, whose address is 4000 Credit Union Drive, Anchorage, AK 99503, that real property described as:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to the official plat thereof, filed under Plat No. 2003-56, Records of the Homer Recording District, Third Judicial District, State of Alaska

EXCEPTING THEREFROM:

FUTURE DEVELOPMENT PHASES OF QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, excepting therefrom, all of Phase Two, Plat 2006-75 and Unit 812 of Phase 3, Plat 2007-88.

UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial number 2007-004467, and any amendments thereto

UNITS 816, 818 and 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto.

TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities, more commonly known as 4725 S. Slope Drive, Homer, AK 99603.

Grantee was the highest and best bidder at a Deed of Trust sale by public auction held by Alaska Trustee, LLC at 825 W. 4th Ave. (Nesbett Memorial Courthouse), Anchorage, Alaska, on October 1, 2009, in conjunction with other sales scheduled to begin at 10:00 AM. Proceeds from the sale will be applied to sums due under the Deed of Trust executed by Quiet Creek Community LLC, Trustor(s), and Alaska USA Federal Credit Union, Beneficiary, dated February 9, 2005, and recorded on February 10, 2005 under Reception No. 2005-000475-0, of the Homer Recording District, Third Judicial District, State of Alaska.

RETURN TO GRANTEE

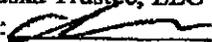
Alaska USA Federal Credit Union
4000 Credit Union Drive, Anchorage, AK 99503
Our File No.: 7243.0003/09.0185

A Notice of Default under the Deed of Trust was recorded June 29, 2009, under Reception No.2009-002302-0, records of the Homer Recording District. Copies of the Notice of Default were mailed to all interested parties by certified mail on July 6, 2009 as reflected in Exhibit A hereto, and posted or delivered to the property on July 7, 2009. Notice of the time and place of sale was delivered for posting on August 10, 2009 in the following places:

U.S. Post Office	Office of the City Clerk	Superior Court Building
3 rd & "C" Streets	632 W. 6 th Avenue	Clerk's Office
Anchorage, Alaska 99501	Anchorage, Alaska 99503	825 W. 4 th Avenue
		Anchorage, AK 99501

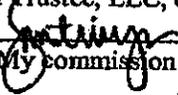
and was published once a week for four consecutive weeks in the Alaska Journal of Commerce, beginning August 16, 2009 as reflected in Exhibit B hereto.

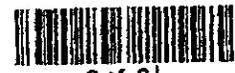
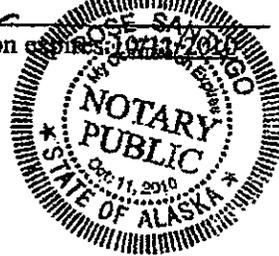
Alaska Trustee, LLC

By: 

Its: Authorized Signatory

State of Alaska; Third Judicial District. This instrument was acknowledged before me on October 1, 2009, by Richard N. Ullstrom of Alaska Trustee, LLC, on behalf of the corporation.


Notary Public for Alaska My commission expires: 10/11/2010



2 of 6
2009-003607-0

EXHIBIT A

AFFIDAVIT OF MAILING

The undersigned is an employee of Alaska Trustee, LLC; and on July 06, 2009, mailed a true and correct copy of the Notice of Default recorded June 29, 2009, under Reception No. 2009-002302-0, in the Homer Recording District, Third Judicial District, State of Alaska, by certified mail, return receipt requested, by depositing it with the United States Post Office at Anchorage, Alaska, to the addressees identified on the attachment hereto. If a taxing entity is involved, a copy of the respective tax lien has been mailed to that entity. A copy of the Notice of Default addressed to "Occupant" was also mailed via regular first-class mail to each known dwelling unit at the property address. The Notice of Default relates to that foreclosure under the Deed of Trust naming Quiet Creek Community LLC, Trustor; recorded on February 10, 2005 under Reception No. 2005-000475-0, and was recorded in the Homer Recording District, Third Judicial District, State of Alaska, describing the following real property:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to the official plat thereof, filed under Plat No. 2003-56, Records of the Homer Recording District, Third Judicial District, State of Alaska

EXCEPTING THEREFROM:

FUTURE DEVELOPMENT PHASES OF QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, excepting therefrom, all of Phase Two, Plat 2006-75 and Unit 812 of Phase 3, Plat 2007-88.

UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial number 2007-004467, and any amendments thereto

09.0185/Quiet Creek Community LLC



3 of 5

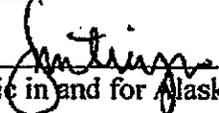
2009-003607-0

UNITS 816, 818 and 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto. TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities, with the street address of: 4725 S. Slope Drive, Homer, AK 99603.



Sola Lee

Subscribed and sworn before me in Anchorage, Alaska this 6 day of July 2009.



Notary Public in and for Alaska

Date My Commission Expires



EXHIBIT "A"

7/6/2009

Interior Surfaces, Inc.
c/o Ross & Miner
327 E Fireweed Lane, Ste. 201
Anchorage, AK 99503

Quiet Creek Community, LLC
41001 Hancock Drive
Homer, AK 99603

Quiet Creek Community, LLC
PO Box 3368
Homer, AK 99603

Alaska USA Federal Credit Union
4000 Credit Union Drive
Anchorage, AK 99503

Alaska USA Federal Credit Union
816 Quiet Creek Drive
Homer, AK 99603

Alaska USA Federal Credit Union
820 Quiet Creek Drive
Homer, AK 99603

Karen R. Berg-Forrester
PO Box 371
Homer, AK 99603

City of Homer
3575 Heath Street
Homer, AK 99603

Four D Carpet One, Inc.
35477 Kenai Spur Highway #103
Soldotna, AK 99669

Robert Weinfurter
dba All Season Plumbing & Heating LL
PO Box 15144
Fritz Creek, AK 99603

Quiet Creek Community LLC
4725 S. Slope Drive
Homer, AK 99603

Quiet Creek Community, LLC
NHN Quiet Creek Drive
Homer, AK 99603

Alaska USA F.C.U
Business Commercial Lending
PO Box 196615
Anchorage, AK 99615

Alaska USA Federal Credit Union
814 Quiet Creek Drive
Homer, AK 99603

Alaska USA Federal Credit Union
818 Quiet Creek Drive
Homer, AK 99603

Calvin W. Forrester
PO Box 371
Homer, AK 99603

C. Michael Hough
3733 Ben Walters Lane #2
Homer, AK 99603

Patrick K. Neal
8210 Lakewood Ranch Blvd.
Bradenton, FL 34202

Tusk Crop dba Libery Electric
PO Box 1730
Homer, AK 99603

B&C Rain Gutters, Ltd.
Scott Cardoza
PO Box 2817
Homer, AK 99603



5 of 6

2009-003607-0

ALASKA Journal of Commerce

Alaska Trustee, LLC

Default Sales

FILE NO: 09.0185 7243.0003

Ad#: 10122932

1541.26

Quiet Ad#10122932

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA, STATE OF ALASKA, THIRD DISTRICT BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Lara Bickford WHO, BEING FIRST DULY SWORN, ACCORDING TO THE LAW, SAYS THAT SHE IS THE Business Manager OF THE ALASKA JOURNAL OF COMMERCE PUBLISHED AT 301 ARTIC SLOPE AVENUE, SUITE 350, IN SAID THIRD DISTRICT AND STATE OF ALASKA AND THAT ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WHICH WAS PUBLISHED IN SAID PUBLICATION

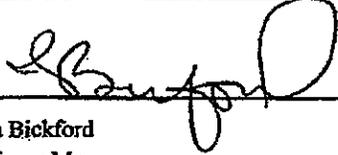
08/16/2009

16th DAY OF AUGUST 2009

AND THERE AFTER FOR 4 CONSECUTIVE WEEK(S) AND THE LAST PUBLICATION APPEARING ON

09/06/2009

6th DAY OF SEPTEMBER 2009



Lara Bickford

Business Manager

SUBSCRIBED AND SWORN BEFORE ME THIS 8th DAY OF September 2009



NOTARY PUBLIC STATE OF ALASKA
MY COMMISSION EXPIRES 6/14/12

NOTARY PUBLIC
BELINDA CUMMINGS
STATE OF ALASKA
My Commission Expires June 14, 2012

ATTACH PROOF OF PUBLICATION HERE

NOTICE OF SALE

Trustee, Alaska Trustee, LLC will sell realty for cash to the highest bidder at 825 W. 4th Ave. (Nesbett Memorial Courthouse) on October 1, 2009, at 10:00 AM with other sales that may be conducted. Proceeds will apply to the Deed of Trust naming Quiet Creek Community LLC, Trustor, Quiet Creek Community LLC, Record Owner, recorded on February 10, 2005 under Reception No. 2005-000475-0, Homer Recording District, Third Judicial District, Alaska, describing: TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to the official plat thereof, filed under Plat No. 2003-56, Records of the Homer Recording District, Third Judicial District, State of Alaska EXCEPTING THEREFROM: FUTURE DEVELOPMENT PHASES OF QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, excepting therefrom, all of Phase Two, Plat 2006-75 and Unit 812 of Phase 3, Plat 2007-88.

UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska; under Plat No. 2007-88; and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial number 2007-004467, and any amendments thereto

UNITS 816, 818 and 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto. TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities, a/k/a 4725 S. Slope Drive, Homer, AK 99803. \$478,875.00 is due, plus interest, advances, etc. Go to alaskatrustee.com or usa-foreclosure.com for status.

Pub: 8/16, 23, 30 & 9/6, 2009.

Ad#10122932



6 of 6

2009-003607-0

CC

A
L
A
S
K
A

2009-000604-0

Recording Dist: 309 - Homer
2/25/2009 10:10 AM Pages: 1 of 7



Trustee's Deed

¹²⁹²⁶⁴⁵
Alaska Trustee, LLC, Trustee, Grantor, whose address is 3000 A Street, Suite 200, Anchorage, Alaska 99503, in consideration of the sum of \$2,084,187.66, receipt of which is hereby acknowledged, hereby conveys and grants without warranty, to **Alaska USA Federal Credit Union**, Grantee, whose address is 4000 Credit Union Drive, Anchorage, AK 99503, that real property described as:

Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88, more commonly known as 4725 S Slope Drive, Homer, AK 99603.

Grantee was the highest and best bidder at a Deed of Trust sale by public auction held by Alaska Trustee, LLC at 825 W. 4th Ave. (Nesbett Memorial Courthouse), Anchorage, Alaska, on February 20, 2009, in conjunction with other sales scheduled to begin at 10:00 AM. Proceeds from the sale will be applied to sums due under the Deed of Trust executed by Quiet Creek Community, LLC, Trustor(s), and Alaska USA Federal Credit Union, Beneficiary, dated October 24, 2006, and recorded on November 01, 2006 under Reception No. 2006-005090-0, of the Homer Recording District, Third Judicial District, State of Alaska.

A Notice of Default under the Deed of Trust was recorded October 20, 2008, under Reception No. 2008-004057-0, records of the Homer Recording District. Copies of the Notice of Default were mailed to all interested parties by certified mail on October 21, 2008 and Additional Mailings on December 17, 2009 as reflected in Exhibit A hereto, and posted or delivered to the property on October 23, 2008. Notice of the time and place of sale was delivered for posting on November 24, 2008 in the following places:

U.S. Post Office	Office of the City Clerk	Superior Court Building
3 rd & "C" Streets	632 W. 6 th Avenue	Clerk's Office
Anchorage, Alaska 99501	Anchorage, Alaska 99503	825 W. 4 th Avenue
		Anchorage, AK 99501

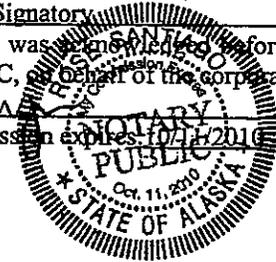
and was published once a week for four consecutive weeks in the Alaska Journal of Commerce, beginning November 30, 2008 as reflected in Exhibit B hereto.

Alaska Trustee, LLC

By: 
Its: Authorized Signatory

State of Alaska; Third Judicial District. This instrument was presented before me on Feb. 20, 2009, by Richard N. Ullstrom of Alaska Trustee, LLC, as Officer of the corporation.

Notary Public for Alaska My commission expires: 10/11/2010



RETURN TO GRANTEE

Alaska USA Federal Credit Union
4000 Credit Union Drive, Anchorage, AK 99503
Our File No.: 7243.0001/08.0793

EXHIBIT A

AFFIDAVIT OF MAILING

The undersigned is an employee of Alaska Trustee, LLC; and on OCTOBER 21, 2008, mailed a true and correct copy of the Notice of Default recorded October 20, 2008, under Reception No. 2008-004057-0, in the Homer Recording District, Third Judicial District, State of Alaska, by certified mail, return receipt requested, by depositing it with the United States Post Office at Anchorage, Alaska, to the addressees identified on the attachment hereto. If a taxing entity is involved, a copy of the respective tax lien has been mailed to that entity. A copy of the Notice of Default addressed to "Occupant" was also mailed via regular first-class mail to each known dwelling unit at the property address. The Notice of Default relates to that foreclosure under the Deed of Trust naming Quiet Creek Community, LLC, Trustor; recorded on November 01, 2006 under Reception No. 2006-005090-0, and was recorded in the Homer Recording District, Third Judicial District, State of Alaska, describing the following real property:

Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88, with the street address of: 4725 S Slope Drive, Homer, AK 99603.

Athena Vaughn
Athena Vaughn

Subscribed and sworn before me in Anchorage, Alaska this 21 day of Oct, 2008.

[Signature] 2-2-2012
Notary Public in and for Alaska Date My Commission Expires



.08.0793/Quiet Creek Community, LLC



2 of 7
2009-000604-0

EXHIBIT "A"

10/21/2008

Quiet Creek Community, LLC
4725 S Slope Drive
Homer, AK 99603

Quiet Creek Community, LLC
816 Quiet Creek Drive
Homer, AK 99603

Quiet Creek Community, LLC
P.O. Box 3368
Homer, AK 99603

Personal Serve/Post
816 Quiet Creek Drive
Homer, AK 99603

Personal Serve/Post
4725 S Slope Drive
Homer, AK 99603

Freda M. Dec
530 Bonanza Avenue
Homer, AK 99603

Nicholas S. Beeker
40889 Belnap Drive
Homer, AK 99603

Karen Berg-Forrester
P.O. Box 371
Homer, AK 99603

William E. Frank
432 Augusta Drive
Rockport, TX 78382

Four D Carpet One Inc
35477 Kenai Spur Highway #103
Soldotna, AK 99669

Nikolai I Basargin dba Final Touch
Painting
P.O. Box 1145
Homer, AK 99603

Quiet Creek Community, LLC
NHN Quiet Creek Drive
Homer, AK 99603

Quiet Creek Community, LLC
818 Quiet Creek Drive
Homer, AK 99603

Personal Serve/Post
NHN Quiet Creek Drive
Homer, AK 99603

Personal Serve/Post
818 Quiet Creek Drive
Homer, AK 99603

Alaska USA F.C.U.
Bus Commerical Lending
P.O. Box 196615
Anchorage, AK 99615

Bill Gardner
P.O. Box 1294
Homer, AK 99603

Patrick K. Neal
8210 Lakewood Ranch Blvd
Bradenton, FL 34202

C. Michael Hough
Attorney for Calvin W. Forrester
3733 Ben Walters Ln #2
Homer, AK 99603

Harlow Lockwood
704 Quiet Creek Drive
Homer, AK 99603

Tuck Corp dba Liberty Electric
P.O. Box 1730
Homer, AK 99603

S & H Enterprises Inc
43961 K Beach Rd Suite C
Soldotna, AK 99669

Quiet Creek Community, LLC
814 Quiet Creek Drive
Homer, AK 99603

Quiet Creek Community, LLC
820 Quiet Creek Drive
Homer, AK 99603

Personal Serve/Post
814 Quiet Creek Drive
Homer, AK 99603

Personal Serve/Post
820 Quiet Creek Drive
Homer, AK 99603

Spenard Builders Supply
P.O. Box 99060
Anchorage, AK 99509

Christopher Morin
P.O. Box 653
Homer, AK 99603

Calvin W. Forrester
P.O. Box 371
Homer, AK 99603

C. Michael Hough
Attorney for Karen Berg-Forrester
3733 Ben Walters Ln #2
Homer, AK 99603

David Fuller
812 Quiet Creek Drive
Homer, AK 99603

Robert Weinfurter dba All Season
Plumbing and Heating LLC
P.O. Box 15144
Fritz Creek, AK 99603

KMH Industries, Inc.
16165 Cliffrocks Court
Colorado Springs, CO 80921



3 of 7

2009-000604-0

EXHIBIT "A"

10/21/2008

Morning Star Elevator
16165 Cliffrocks Court
Colorado Springs, CO 80921

KMH Industries dba
Morning Star Elevator
16165 Cliffrocks Court
Colorado Springs, CO 80921

Todd Timmermans,
Hartig Rhodes Hoge & Lekisch
717 K Street
Anchorage, AK 99501



4 of 7

2009-000604-0

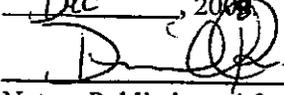
EXHIBIT A
****additional mailings****
AFFIDAVIT OF MAILING

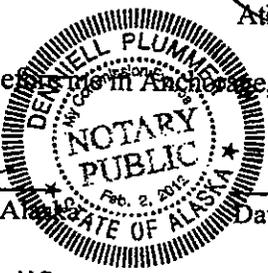
The undersigned is an employee of Alaska Trustee, LLC; and on December 17, 2008, mailed a true and correct copy of the Notice of Default recorded October 20, 2008, under Reception No. 2008-004057-0, in the Homer Recording District, Third Judicial District, State of Alaska, by certified mail, return receipt requested, by depositing it with the United States Post Office at Anchorage, Alaska, to the addressees identified on the attachment hereto. If a taxing entity is involved, a copy of the respective tax lien has been mailed to that entity. A copy of the Notice of Default addressed to "Occupant" was also mailed via regular first-class mail to each known dwelling unit at the property address. The Notice of Default relates to that foreclosure under the Deed of Trust naming Quiet Creek Community, LLC, Trustor; recorded on November 01, 2006 under Reception No. 2006-005090-0, and was recorded in the Homer Recording District, Third Judicial District, State of Alaska, describing the following real property:

Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88, with the street address of: 4725 S Slope Drive, Homer, AK 99603.


Athena Vaughn

Subscribed and sworn before me in Anchorage, Alaska this 17 day of Dec, 2008.


Notary Public in and for Alaska Date My Commission Expires 2.2.2012



08.0793/Quiet Creek Community, LLC

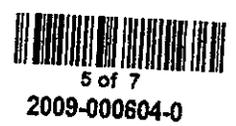


EXHIBIT A
12/17/08

Neal & Company, Inc.
P.O. Box 3368
Homer, Alaska 99603

Diane M. Aamodt
P.O. Box 76
Homer, Alaska 99603

Holmes Weddle & Barcott, PC
Attn: Grant E. Watts
701 W. 8th Avenue, Suite 700
Anchorage, Alaska 99501



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2009-000604-0

ALASKA
Journal of Commerce

Alaska Trustee, LLC
Default Sales

FILE NO:

Ad#: 10111486 7243.0001/08.0793

Quiet Creek IO#08-1971

AFFIDAVIT OF PUBLICATION

UNITED STATES OF AMERICA, STATE OF ALASKA, THIRD DISTRICT BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC THIS DAY PERSONALLY APPEARED Lara Bickford WHO, BEING FIRST DULY SWORN, ACCORDING TO THE LAW, SAYS THAT SHE IS THE Business Manager OF THE ALASKA JOURNAL OF COMMERCE PUBLISHED AT 301 ARTIC SLOPE AVENUE, SUITE 350, IN SAID THIRD DISTRICT AND STATE OF ALASKA AND THAT ADVERTISEMENT, OF WHICH THE ANNEXED IS A TRUE COPY, WHICH WAS PUBLISHED IN SAID PUBLICATION

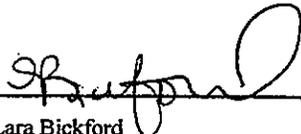
11/30/2008

30th DAY OF NOVEMBER 2008

AND THERE AFTER FOR 4 CONSECUTIVE WEEK(S) AND THE LAST PUBLICATION APPEARING ON

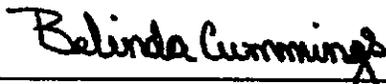
12/21/2008

21st DAY OF DECEMBER 2008



Lara Bickford
Business Manager

SUBSCRIBED AND SWORN BEFORE ME
THIS 22nd DAY OF December 2008



NOTARY PUBLIC STATE OF ALASKA
MY COMMISSION EXPIRES 6/14/12

NOTARY PUBLIC
BELINDA CUMMINGS
STATE OF ALASKA
My Commission Expires June 14, 2012

ATTACH PROOF OF PUBLICATION HERE

NOTICE OF SALE

Trustee, Alaska Trustee, LLC will sell realty for cash to the highest bidder at 825 W. 4th Ave. (Nesbett Memorial Courthouse) on January 20, 2009, at 10:00 AM with other sales that may be conducted. Proceeds will apply to the Deed of Trust naming Quiet Creek Community, LLC, Trustor, Quiet Creek Community, LLC, Record Owner, recorded on November 01, 2006 under Reception No. 2006-005090-0, Homer Recording District, Third Judicial District, Alaska, describing: Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88, a/k/a 4725 S Slope Drive, Homer, AK 99603. \$1,731,000.00 is due, plus interest; advances, etc. Go to alaska-trustee.com or usa-foreclosure.com for status.
Pub: 11/30, 12/7; 14 & 21; 2008;
10#08-1971



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2009-000604-0



Kachemak Bay Title Agency, Inc.

3733 Ben Walters Lane, Suite 1, Homer, Alaska 99603
Phone (907) 235-8196 • Fax (907) 235-2420

CERTIFICATE TO PLAT **UPDATE #2**

Roger Imhoff
PO Box 2588
Homer, AK 99603
ATTENTION:

File No.: 29465
Premium: \$250.00
Tax: \$18.75

Gentlemen:

This is a certificate as of November 4, 2011 at 8:00 A.M. for a plat out of the following property:

PARCEL I:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; and

FUTURE DEVELOPMENT PHASES OF QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska, excepting therefrom, all of Phase Two, Plat 2006-75; all of Phase 3, Plat 2007-88, and all of Phase 4, Plat 2008-14.

PARCEL II:

Unit 702, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL II:

Unit 704, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL IV:

Unit 706, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL V:

Unit 708, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat no. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VI:

Unit 710, QUIET CREEK COMMUNITY, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2005-45, and as identified in the Declaration recorded October 27, 2004, Serial No. 2004-005284, and any amendments thereto,

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VII:

Unit 924, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL VIII:

Unit 926, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL IX:

Unit 928, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL X:

Unit 930, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XI:

Unit 932, QUIET CREEK COMMUNITY LLC, PHASE 2, as shown on survey map and floor plan(s) filed in the Office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2006-75 and as identified in the Declaration recorded October 27, 2004, in Serial No. 2004-005284, and any amendments thereto

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XII:

UNIT 812, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial Number 2007-004467, and any amendments thereto.

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XIII:

UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial Number 2007-004467, and any amendments thereto.

TOGETHER with the limited common areas and facilities appurtenant to and reserved for the use of such Unit; and TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XIV:

UNIT 816, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto.

TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities.

PARCEL XV:

UNITS 818 and 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14 and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto.

TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities.

PROPOSED PLAT: BARNETT SUBDIVISION QUIET CREEK ADDITION NO. 2

This Company certifies that record title is vested in:

ALASKA USA FEDERAL CREDIT UNION as to Parcels I, XIII and XV, an estate in fee simple;

STEPHEN E. NELSON and JANICE L. NELSON, Trustees of THE NELSON TRUST DATED MARCH 2, 2001; as to Parcel II, an estate in fee simple;

HARLOW LOCKWOOD TRUST, HARLOW LOCKWOOD, Trustee, as to Parcel III; an estate in fee simple;

RUSSELL K. GRIFFITH AND MARY ANN GRIFFITH, husband and wife, as tenants by the entirety, as to Parcel IV, an estate in fee simple;

WILLIAM E. FRANK AND GAIL S. FRANK, husband and wife, as tenants by the entirety, as to Parcel V, an estate in fee simple;

CALVIN W. FORRESTER and KAREN R. BERG-FORRESTER, Trustee or Successor Trustees of THE FORRESTER FAMILY TRUST DATED JANUARY 23, 2007, as to Parcel VI, an estate in fee simple;

ROBERT L. AMMERMAN and GAIL M. AMMERMAN, husband and wife, as tenants by the entirety, as to Parcel VII, an estate in fee simple;

THE LEO AND BEVERLY NIKORA TRUST dated January 19, 2001, as to Parcel VIII, an estate in fee simple;

DAVID E. NELSON, a married man, as to Parcel IX, an estate in fee simple

NEAL FAMILY LIMITED PARTNERSHIP, a Florida Limited Partnership, as to Parcel X, an estate in fee simple;

LAVERN R. DAVIDHIZAR and KATHERINE M. DAVIDHIZAR, husband and wife, as tenants by the entirety, as to Parcel XI, an estate in fee simple;

DAVID L. FULLER and JOAN A. FULLER, husband and wife, as tenants by the entirety, as to Parcel XII; an estate in fee simple;

RAY M. BEERY and RANEE BEERY, as Co-Trustees of THE BEERY TRUST, dated March 3, 1992, as to Parcel XIV, , an estate in fee simple.

free from all liens, encumbrances, and objections except for as follows:

This report is restricted to the use of the addressee and is not to be used as a basis for closing any transaction affecting title to said property. Liability of the Agency is limited to the compensation received therefore.

Kachemak Bay Title Agency, Inc.

BY: 
Kathy Oakland
Authorized Signator

NOTE: We will update this certificate to comply with Kenai Peninsula Borough Ordinance 90-38 upon notification from surveyor.

AFFECTS ALL PARCELS:

1. **RESERVATIONS** and exceptions as contained in U.S. Patent, and/or acts authorizing the issuance thereof.
2. **TAXES AND ASSESSMENTS**, if any, due the taxing authority indicated:
Taxing Authority: KENAI PENINSULA BOROUGH/CITY OF HOMER
3. **SUBJECT TO** all limitations, conditions, restrictions, terms and effects of the Uniform Common Interest Ownership Act, A.S. 34.08.010 et. Seq., including any lien for future common assessments created pursuant to A.S. 34.08.470.
4. **SUBJECT TO** any unpaid assessments now due or owing the herein named Homeowner's association as provided for in instrument:
Recorded: October 27, 2004
Serial Number: 2004-005284
Association: Quiet Creek Community Association, Inc., a non-profit corporation
5. **EASEMENT** for electric lines or system and/or telephone lines together with right to enter, maintain, repair and clear shrubbery:
Recorded: January 23, 1968 and February 1, 1977
Volume/Page: 48/77 and 90/166
Granted To: Homer Electric Association, Inc.
Affects: General Easement, no definite location disclosed
6. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2003-56, to the record of which reference is hereby made.
7. **EFFECT** of the notes on said Plat No. 2003-56, to the record of which reference is hereby made.
8. **COVENANTS, CONDITIONS AND RESTRICTIONS** as contained in Declaration of Protective Restrictions:
Recorded: October 19, 1978
Volume/Page: 103/88

AND AMENDMENTS thereto:
Recorded: April 17, 2003
Volume/Page: 2003-001742
9. **COVENANTS, CONDITIONS AND RESTRICTIONS** as contained in Declaration of Protective Restrictions:
Recorded: October 19, 1977
Volume/Page: 94/927

AND AMENDMENTS thereto:
Recorded: June 8, 1978
Volume/Page: 100/61

AND AMENDMENTS thereto:
Recorded: January 11, 1979
Volume/Page: 104/746

10. **COVENANTS, CONDITIONS AND RESTRICTIONS** and/or easements, including terms and provisions thereof, as contained in Declaration submitting said premises to the Common Interest Ownership Act (34.08) of the State of Alaska:
Recorded: October 27, 2004
Volume/Page: 2004-005284

AND AMENDMENTS thereto (Amendment 1):
Recorded: April 10, 2006
Volume/Page: 2006-001475

AND AMENDMENTS thereto (Adding Phase 2):
Recorded: November 6, 2006
Volume/Page: 2006-005162

AND AMENDMENTS thereto (Adding Phase 3):
Recorded: October 17, 2007
Volume/Page: 2007-004467

AND AMENDMENTS thereto (Adding Phase 4):
Recorded: April 22, 2008
Volume/Page: 2008-001629

AND AMENDMENTS thereto (Amending Phase 4):
Recorded: April 13, 2009
Serial No.: 2009-001212

AND AMENDMENTS thereto (Amendment No. 5 to withdraw land)
Recorded: October 25, 2011
Serial No.: 2011-003286

11. **RESERVATION** of oil, gas and mineral rights constructive notice of which is given by recital in deed:
Recorded: March 2, 1973
Volume/Page: 68/337
Reserved By: Milo Kallman and Alta L. Kallman
Language setting out reservation: One-half (1/2) interest in the oil, as and other minerals

FURTHER, no other examination of the excepted title to minerals has been made herein and no insurance nor responsibility therefore is implied or assumed.

12. **AGREEMENT** executed by and between the parties herein named upon the terms conditions therein provided:
Between: Bob Barnett and City of Homer
Dated: May 14, 1999
Recorded: May 20, 1999

Volume/Page: 290/332
Providing: As described therein

13. **RECORD OF SURVEY** on file in District Recorder's Office:
Plat No.: 2011-39

AFFECTS PARCEL I:

14. **THE EFFECT, IF ANY, OF TRANSFER OF DEVELOPMENT AND DECLARANT RIGHTS :**
Recorded: October 9, 2009
Serial No.: 2009-003613
Wherein: Grantor did not have a vested interest in said rights
15. **A SECURED INTEREST** under the provision of the Uniform Commercial Code as disclosed by Fixture Statement recorded in the Office of the District Recorder:
Debtor: Quiet Creek Community, LLC
Secured party: Alaska USA Federal Credit Union
Recorded: September 7, 2011
Serial Number: 2011-002688
16. **PROPER SHOWING** of the authorization for the proposed transaction by the herein named party according to its constitution, charter, discipline or by-laws, including authorization for the party or parties acting on its behalf:
Party: ALASKA USA FEDERAL CREDIT UNION

AFFECTS PARCEL II (Unit 702):

17. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
18. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.
19. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$250,000.00
Dated: September 14, 2010
Recorded: September 21, 2010
Serial No.: 2010-003032
Trustor: Stephen E. Nelson and Janice L. Nelson, husband and wife
Trustee: First American Title of Alaska
Beneficiary: "MERS", a separate corporation that is acting solely as a nominee for Lender Residential Mortgage, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

20. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: NELSON TRUST

AFFECTS PARCEL III (Unit 704):

21. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
22. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.
23. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$325,673.00
Dated: January 12, 2006
Recorded: January 30, 2006
Serial No.: 2006-000372
Trustor: John A. Neal, a married man as his sole and separate property
Trustee: John M. Mercer
Beneficiary: Saxon Mortgage, Inc.

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

NOTE: THE CERTIFICATE OF RELEASE recorded February 1, 2007 as Serial Number 2007-000429 is not sufficient to release the above Deed of Trust. A Substitution of Trustee and Deed of Reconveyance must be signed by the beneficiary and recorded, or in the alternative, a Deed of Reconveyance must be signed by the current Trustee and recorded in order to reconvey the above referenced Deed of Trust.

24. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: HARLOW LOCKWOOD TRUST

AFFECTS PARCEL IV (Unit 706):

25. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
26. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

AFFECTS PARCEL V (Unit 708):

27. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
28. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

AFFECTS PARCEL VI (Unit 710):

29. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2005-45, to the record of which reference is hereby made.
30. **EFFECT** of the notes on said Plat No. 2005-45, to the record of which reference is hereby made.

31. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:

Amount: \$140,000.00
Dated: October 12, 2005
Recorded: October 17, 2005
Serial No.: 2005-005019
Trustor: Calvin W. Forrester and Karen R. Berg-Forrester, husband and wife
Trustee: Kachemak Bay Title Agency, Inc.
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

THE BENEFICIAL INTEREST under said Deed of Trust assigned by instrument:

Dated: October 12, 2005
Recorded: October 31, 2005
Serial No.: 2005-005249
Assigned To: Alaska USA Federal Credit Union, its successors and/or assigns

32. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: FORRESTER FAMILY TRUST

AFFECTS PARCEL VII (Unit 924)

33. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.

34. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.

35. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:

Amount: \$547,500.00

Dated: August 18, 2010

Recorded: September 13, 2010

Serial No.: 2010-002896

Trustor: Robert L. Ammerman and Gail M. Ammerman, husband and wife

Trustee: First American Lenders Advantage - MEC

Beneficiary: "MERS", a separate corporate that is acting solely as a nominee for Lender Quicken Loans, Inc.

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

AFFECTS PARCEL VIII (Unit 926)

36. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.

37. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.

38. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:

Trust: Leo and Beverly Nikora Trust

AFFECTS PARCEL IX (Unit 928):

39. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.

40. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.

41. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:

Amount: \$530,100.00

Dated: April 9, 2008

Recorded: April 11, 2008

Serial No.: 2008-001461

Trustor: David E. Nelson, a married person

Trustee: First American Title of Alaska
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

WAIVER OF HOMESTEAD:

Grantor: Luanne Nelson
Recorded: April 11, 2008
Serial No.: 2008-001462

AFFECTS PARCEL X (Unit 930):

42. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
43. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
44. **PROOF OF COMPLIANCE** with the Alaska Statutes in that a Certificate of Limited Partnership for the herein named limited partnership must be filed with the State of Alaska:
Limited Partnership: NEAL FAMILY LIMITED PARTNERSHIP

AFFECTS PARCEL XI (Unit 932)

45. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2006-75, to the record of which reference is hereby made.
46. **EFFECT** of the notes on said Plat No. 2006-75, to the record of which reference is hereby made.
47. **DEED OF TRUST** to secure an indebtedness of the amount herein stated and any other amounts payable under the terms thereof:
Amount: \$549,000.00
Dated: March 9, 2007
Recorded: March 14, 2007
Serial No.: 2007-000903
Trustor: Lavern Davidhizar and Kathryn Davidhizar, husband and wife
Trustee: First American Title of Alaska
Beneficiary: Alaska USA Mortgage Company, LLC

THE AMOUNT NOW SECURED by said Deed of Trust and the terms upon which the same can be discharged or assumed should be ascertained from the holder of the indebtedness secured.

AFFECTS PARCEL XII (Unit 812):

48. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2007-88, to the record of which reference is hereby made.
49. **EFFECT** of the notes on said Plat No. 2007-88, to the record of which reference is hereby made.

AFFECTS PARCEL XIII (Unit 814)

50. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2007-88, to the record of which reference is hereby made.
51. **EFFECT** of the notes on said Plat No. 2007-88, to the record of which reference is hereby made.

AFFECTS PARCEL XIV (Unit 816):

52. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2008-14, to the record of which reference is hereby made.
53. **EFFECT** of the notes on said Plat No. 2008-14, to the record of which reference is hereby made.
54. **THE EFFECT, IF ANY, OF AMENDED PLAT:**
Recorded: April 13, 2009
Plat No: 2009-11
Wherein: Grantor did not have a vested interest in property
55. **TERMS, CONDITIONS AND PROVISIONS** of the unrecorded trust as set out below:
Trust: THE BEERY TRUST

AFFECTS PARCEL XV (Units 818 and 820):

56. **EASEMENTS, SET-BACKS AND DEDICATIONS** as delineated on Plat No. 2008-14, to the record of which reference is hereby made.
57. **EFFECT** of the notes on said Plat No. 2008-14, to the record of which reference is hereby made.
58. **THE EFFECT, IF ANY, OF AMENDED PLAT:**
Recorded: April 13, 2009

Plat No: 2009-11
Wherein: Grantor did not have a vested interest in property



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2011-003286-0

Recording Dist: 309 - Homer
10/25/2011 8:39 AM Pages: 1 of 5



cc

AMENDMENT NO. 5 TO DECLARATION
FOR
QUIET CREEK COMMUNITY
Declaration Serial Number 2004-005284-0

EXERCISING DECLARANT'S

RIGHT TO WITHDRAW LAND

(NO CHANGE TO ALLOCATED INTERESTS)

After recording, return to:

Alaska USA Federal Credit Union
Business and Commercial Lending
500 W. 36th Avenue, Suite 400
P.O. Box 196615
Anchorage, Alaska 99519-6615

**AMENDMENT NO. 5 TO DECLARATION
FOR
QUIET CREEK COMMUNITY**

**By Successor Declarant
EXERCISING DECLARANT'S RIGHT
TO
WITHDRAW LAND**

WHEREAS, Alaska USA Federal Credit Union is the owner of and Successor Declarant to real property in Homer, Alaska, described as follows:

Future Development Phases of Quiet Creek Community as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004 as Serial Number 2004-005284-0, which is a portion of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, according to Plat No. 2003-56, in the Homer Recording District, Third Judicial District, State of Alaska; EXCEPTING THEREFROM, All of Phase Two, according to Plat No. 2006-75 and Unit 812 of Phase Three, according to Plat No. 2007-88 more commonly known as 4725 S. Slope Drive, Homer, AK 99603; and,

WHEREAS, Alaska USA Federal Credit Union became the owner of and Successor Declarant to such real property pursuant to a Trustee's Deed recorded February 25, 2009, Reception No. 2009-000604-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, Alaska USA Federal Credit Union has since completed and sold on August 28, 2009 Unit 816, QUIET CREEK COMMUNITY, Phase 4 and is no longer the owner of said Unit 816, and further,

WHEREAS, Alaska USA Federal Credit Union is also, except for Unit 816, the owner of and Successor Declarant to real property in Homer, Alaska, described as follows:

TRACT A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to the official plat thereof, filed under Plat No. 2003-56, Records of the Homer Recording District, Third Judicial District, State of Alaska

EXCEPTING THEREFROM:

Future development phases of QUIET CREEK COMMUNITY as referred to in Article VIII in the Declaration for Quiet Creek Community, recorded October 27, 2004, as Serial Number 2004-005284, which is a portion of



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2011-003286-0

Tract A, BARNETT SUBDIVISION QUIET CREEK ADDITION, according to Plat. No. 2003-36, in the Homer Recording District, third Judicial District, State of Alaska, EXCEPTING THEREFROM all of Phase Two, Plat 2006-75 and Unit 812 of Phase 3, Plat No. 2007-88; and UNIT 814, QUIET CREEK COMMUNITY PHASE 3, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2007-88, and as identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 3 Amendment recorded October 17, 2007 as Serial number 2007-004467, and any amendments thereto; and UNITS 816, 818 AND 820, QUIET CREEK COMMUNITY PHASE 4, as shown on the survey maps and floor plans filed in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, under Plat No. 2008-14, and identified in the Declaration recorded October 27, 2004, Serial Number 2004-005284, and Phase 4 Amendment recorded April 22, 2008 as Serial Number 2008-001629, and any amendments thereto; and TOGETHER WITH the limited common areas and facilities appurtenant to and reserved for the use of such unit; AND TOGETHER WITH an undivided interest in the common areas and facilities, more commonly known as 4725 S. Slope Drive, Homer Alaska 99603; and

WHEREAS, Alaska USA Federal Credit Union became the owner of and successor Declarant to such above described real property pursuant to a Trustee's Deed recorded October 9, 2009, Reception No. 2009-003607-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, said Trustee's Deeds described above transferred to Alaska USA Federal Credit Union all right, title to and interest in the Development rights and special Declarant rights under the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, and

WHEREAS, Amended Amendment No.4 was recorded by a third party other than Alaska USA Federal Credit Union on April 13, 2009, Reception No. 2009-001212-0 as was the survey maps and floor plans filed as Plat No. 2009-11 in the office of the Recorder for the Homer Recording District, Third Judicial District, State of Alaska, which recordations took place after the recording of said Trustee's Deed on February 25, 2009, Reception No. 2009-000604-0 Homer Recording District, Third Judicial District, State of Alaska, and

WHEREAS, the third party recording Amended Amendment No. 4 and Plat No. 2009-11 had at that time no vested interest in the property described in the Trustee's Deed recorded on February 25, 2009, and

2011-003286-0
3 of 5

WHEREAS, said Amended Amendment No. 4 and Plat No. 2009-11 are therefore invalid, void, and of no force and effect whatsoever, and

WHEREAS, Alaska USA Federal Credit Union as successor Declarant desires to exercise the Development Rights and Special Declarant Rights pursuant to Article VIII to the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, and

WHEREAS, Section 8.1(b) of the Declaration together with all valid amendments thereto, reserved the Development Right to withdraw by amendment all or any part of the land designated as "Developer Rights Reserved" on the site plan attached to said Declaration as Exhibit I, and including all valid amendments thereto, and

WHEREAS, pursuant to Section 8.1(b) the time period for exercising such rights by successor Declarant has not expired; and

WHEREAS, pursuant to Section 8.2(a) no consents are necessary to withdraw said land; and

WHEREAS, the exercise of such Development Rights Special Declarant Right pursuant to Article VIII to the Declaration for Quiet Creek Community recorded on October 27, 2004, together with all valid amendments thereto, complies with Alaska Statutes, in particular AS 34.08.010 - 34.08.995, pertaining to Common Interest Ownership, and

WHEREAS, Plat No. 2011-39, Record of Survey of Quiet Creek Community Lands Withdrawn From Community, Reception No. 2011-003192-0, Homer Recording District, Third Judicial District, State of Alaska, provides a legally sufficient description of the real property which Alaska USA Federal Credit Union as successor Declarant withdraws;

NOW THEREFORE, Alaska USA Federal Credit Union as successor Declarant hereby exercises its Development Rights pursuant to Section 8.1(b) of the Declaration and withdraws from the Quiet Creek Community those portions of Tract A, BARNETT SUBDIVISION, QUIET CREEK ADDITION, designated on Plat No. 2011-39 as Area A consisting of 9.868 acres and Area C consisting of 3.667 acres, said withdrawn land to be used in accordance with the Homer Land Use Code.

There is no change in the Allocated interests.

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2011-003286-0

No other provision of the Declaration, together with all valid amendments thereto, is amended hereby, except as may be necessarily implied to give full force and effect to this Amendment No. 5.

IN WITNESS WHEREOF, successor Declarant has caused this Amendment No.5 to be executed on this 21st day of October, 2011.

SUCCESSOR DECLARANT ALASKA USA
FEDERAL CREDIT UNION

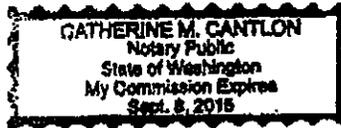
Lorran J. Skinner
By: Lorran J. Skinner
Chief Lending Officer

STATE OF WASHINGTON)
King County) SS:

THIS IS TO CERTIFY that on this 21st day of October, 2011, before me, the undersigned, a Notary Public in and for the State of Washington personally appeared, LORRAN J. SKINNER, known to me and to me known to be the Chief Lending Officer of ALASKA USA FEDERAL CREDIT UNION, and known to me to be the individual named herein and who executed the foregoing AMENDMENT NO. 5 TO DECLARATION FOR QUIET CREEK COMMUNITY on behalf of ALASKA USA FEDERAL CREDIT UNION for the uses and purposes therein set forth.

WITNESS MY HAND and seal the day and year first hereinabove written

Gatherine M. Cantlon
Notary Public in and for the State of Washington
My Commission Expires: 9-8-2015



2011-003288-0
8 of 5



Julie Engebretsen

From: Beverley Nikora [bev@maui.net]
Sent: Wednesday, November 30, 2011 3:18 PM
To: Julie Engebretsen
Cc: leo@nikora.com
Subject: Comment On Proposed Subdivision of Barnett Subdivision

We are opposed to the subdivision identified in the "Notice of Subdivision" sent to us by the City of Homer Planning & Zoning Department on November 17, 2011.

The land in question belongs to the owners of Quiet Creek Condominiums, of which we are one. The land is part of our condominium common element. Alaska USA is attempting to replat land to which it has no right or title interest.

Please reject the plat application, since the petitioner does not own the property.

Leo and Beverley Nikora	and	(760)321-2431
926 Quiet Creek Drive		119 Mission Hills Drive
Homer, AK 99603		Rancho Mirage, CA 92270



Julie Engebretsen

From: william frank [billgail@sbcglobal.net]
Sent: Wednesday, November 30, 2011 2:50 PM
To: Julie Engebretsen
Subject: Quiet Creek Community preplat

Julie

My name is Bill Frank. My wife and I own a condo at Quiet Creek Community in Homer. It is my understanding that Alaska USA Federal Credit Union has applied to re plat the common elements of Quiet Creek. I would like to go on record as being in total opposition to this. I believe that Alaska USA has no right to re-plat any portion of the common elements of Quiet Creek. It is also my belief that Alaska USA has no right to withdraw any portion of Quiet Creek.

This plat application should in my opinion be rejected because Alaska USA does not own the property it is trying to re plat. This property is common elements of Quiet Creek per our deeds and declarations.

Please include my opposition to this re plat in the information provided the Planning Commission on December 7 as we will be unable to attend.

Thank You

Bill Frank



Julie Engebretsen

From: Mary Ann Griffith [griffith@xyz.net]
Sent: Wednesday, November 30, 2011 5:09 PM
To: Julie Engebretsen
Subject: Quiet Creek Community

Dear Julie,

My husband and I bought the first condo in Quiet Creek and moved in September of 2005. I am having a hard time understanding why Alaska USA Federal Credit Union has applied to re plat our common elements. I don't feel they have any right to do this and I am very much opposed to this action. There was a hearing scheduled before and the town withdrew it when they realized the bank didn't own it. I believe the problem is that their lawyer doesn't understand condo real estate law.

I was planning to come to the December 7th meeting but really feel the town should not move forward with this action until the bank gets better legal advice. If you have any questions please call me at 235-1938.

Thank you,

Mary Ann Griffith
706 Quiet Creek Drive
Homer, AK 99603



Julie Engebretsen

From: Steve & Janice Nelson [nelsonloop@charter.net]
Sent: Wednesday, November 30, 2011 5:18 PM
To: Julie Engebretsen
Subject: TIME SENSITIVE - OPPOSED - RE: AK. USA proposal to the city to re plat a portion of Quiet Creek Community (Condo Property) (hearing scheduled for Dec. 7)

Dear Miss Engebretsen,

We submit for inclusion into your comments that we, Mr. & Mrs. Stephen Nelson (homeowners at 702 Quiet Creek), **OPPOSE** the attempt of Alaska USA the replating of any real estate property in the Quiet Creek Community. There is no evidence whatsoever that Alaska USA, or any other entity other than the Quiet Creek Homeowners Association, has the right, in decision or in title to justify an application of the above subject matter to be valid or to go forward. We respectfully request that the the City of Homer reject the Alaska USA application entirely. In addition, without being lengthy here, we firmly believe the applicant does not own the property in question. Thank you for entering these comments into the public comment section.

Respectively Submitted this date November 30, 2011

Stephen E. & Janice L. Nelson 702 Quiet Creek Drive 805-712-6100



Julie Engebretsen

From: Luanne Nelson [ndidentalcare@gmail.com]
Sent: Thursday, December 01, 2011 4:02 AM
To: Julie Engebretsen
Cc: drnelsdds@yahoo.com; Luanne Nelson
Subject: Quiet Creek

Hi Julie -

My name is Dr. David Nelson. My wife and I own a condo at Quiet Creek Community in Homer. It is my understanding that Alaska USA Federal Credit Union has applied to re plat the common elements of Quiet Creek. I would like to go on record as being in total opposition to this. I believe that Alaska USA has no right to re-plat any portion of the common elements of Quiet Creek. It is also my belief that Alaska USA has no right to withdraw any portion of Quiet Creek.

This plat application should in my opinion be rejected because Alaska USA does not own the property it is trying to re plat. This property is common elements of Quiet Creek per our deeds and declarations.

Please include my opposition to this re plat in the information provided the Planning Commission on December 7.

Thank You

Dr. David and Luanne Nelson



Julie Engebretsen

From: kfrealty@alaska.com on behalf of Karen [kfrealty@alaska.com]
Sent: Thursday, December 01, 2011 7:25 AM
To: Julie Engebretsen
Subject: Quiet Creek Community

To whom it may concern: Cal Forrester and I Karen Forrester own a Condominium in Quiet Creek Community in our Forrester Family Trust for which we are the trustees. We are currently travelling across the USA and didn't receive the notices (mail fwdg service), until the evening of the 30th. I understand that is too late for Planning and Zoning packets.

We wish to register our objection to the Alaska USA request for replat of property which they do not own. The current Homeowner's Association, Homeowner's own the remaining common elements of the land in question. We received an 11th hour notice that Alaska USA was withdrawing the undeveloped land by recording a bogus amendment to nullify previous amendments made by the former developer of the Quiet Creek Community. We have retained an Attorney who specializes in Condominium Law in the State of Alaska; who is retaining several experts in the Alaska State Statutes on Condominium Law, or Common interest ownership. We believe absolutely that we will prevail in our proof of ownership.

We are moving swiftly towards this end and do not believe that a rush to replat the land in question will be in the best interest of the City of Homer, or the Homeowner's Association, which coincidentally all but a few are currently out of State travelling. We are permanent residents of Homer and have been for in excess of 35 years and have chosen in our retirement to travel in the winter months. We maintain professional security for our Unit in our absence.

Thank you for your consideration.

Karen and Cal Forrester





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 11-121

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: December 7, 2011
SUBJECT: Eker Estates Too Subdivision Preliminary Plat

Requested Action: Preliminary Plat approval for the creation of two lots from one larger lot.

GENERAL INFORMATION

Applicants:	Robert & Leah Handley Po Box 900 Homer, AK 99603	Patrick Church, RLS PO Box 2080 Homer, AK 99603
Location:	Between Cottonwood Lane and Skyline Drive	
Parcel ID:	17405122	
Size of Existing Lot(s):	5.8 acres	
Size of Proposed Lots(s):	1.82 and 3.887 acres	
Zoning Designation:	Rural Residential District	
Existing Land Use:	Residential	
Surrounding Land Use:	North: Vacant South: Residential/Vacant East: Vacant West: Vacant	
Comprehensive Plan:	Goal 1 Object 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." (4-4)	
Wetland Status:	The 2005 wetland mapping shows no wetland areas.	
Flood Plain Status:	Zone D, flood hazards undetermined.	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	Onsite water and waste water.	
Public Notice:	Notice was sent to 13 property owners of 24 parcels as shown on the KPB tax assessor rolls.	

ANALYSIS:

This subdivision is within the Rural Residential District. This plat creates two smaller lots from one larger lot.

This plat was originally submitted in 2007, prior to the enactment of the current steep slope code, HCC 21.44. At the time, the HAPC determined that the lot could not be subdivided and meet city code requirements for slope. Too much area had been disturbed to allow for any more development. Under current code, the applicant can provide a steep slope site plan, demonstrating the land can be safely developed. The applicant has already submitted some of this information, and is ready to have a qualified firm provide the site plan. *Staff Recommendation: here must be an approved site plan meeting the requirements of 21.44 prior to recording the plat.*

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 plat meets these requirements.

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. There are no public use areas.

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 does meet 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. No major drainage systems are present.

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: The plat meets these requirements. Lots will be served by onsite 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 to be 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. The surveyor submitted a drawing depicting these areas.

PUBLIC WORKS COMMENTS: Public Works had no comments.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter did not have any concerns.

STAFF COMMENTS/RECOMMENDATIONS:

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

1. A steep slope site plan per HCC 21.44 must be submitted and approved prior to final platting.

ATTACHMENTS

1. Preliminary Plat
2. Slope drawing
3. Coble geophysical report

CERTIFICATE OF OWNERSHIP
 I hereby certify that I am the owner of the real property shown and described herein, and that I hereby agree to the split of way and public easements to public use, and grant all easements to the use shown.

Robert Hanley
 P.O. Box 5100
 Homer, Alaska 99603

My Commission Expires _____
 My Commission Expires _____
 My Commission Expires _____

NOTARY'S ACKNOWLEDGMENT
 Subscribed and sworn to before me this _____ day of _____ 2007

My Commission Expires _____
 My Commission Expires _____
 My Commission Expires _____

SURVEYORS CERTIFICATE
 I hereby certify that this survey was performed by me or under my direct supervision, I declare that the information shown herein is true and correct to the best of my knowledge and belief.

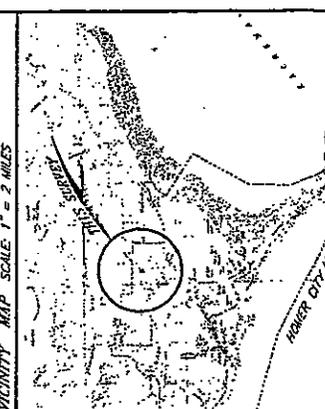
Patrick J. Church
 Date _____

PLAT APPROVAL
 Approved by the Ketchikan Borough Planning Commission at the meeting of _____

KETCHIKAN BOROUGH
 Authorized Official _____

BY _____
 AUTHORIZED OFFICIAL _____

NEARBY MAP SCALE: 1" = 2 MILES
 VICINITY MAP SCALE: 1" = 2 MILES



DATE FEB 2007
 SCALE 1" = 80'
 KPB FILE 2007-_____
 F.I.D. BK. No. 12/19-25
 JOB No. 0286

"EKER ESTATES TWO"
 A REPRAT OF LOT 22, HNGO-43, WITHIN THE SW1/4 NE1/4 Sec. 9, Twp. 6S, Rge. 13W, S.M. HOMER RECORDING DISTRICT WITHIN THE CITY OF HOMER, ALASKA CONTAINING 3.001 ACRES

Patrick J. Church
 Registered Land Surveyor
 (907) 450-7410
 P.O. Box 2000, Homer, Alaska, 99603

LEGEND

- ⊙ 1/8" R/W 2-1/2" ALCOA 15-201, 1990
- ⊙ 2" ALCOA ON 5/8" R/W OF RECORD 15-201, 1990
- ⊙ 5/8" R/W 2-1/2" ALCOA 15-201, 1990
- ⊙ 5/8" R/W 2-1/2" ALCOA 15-201, 1990

NOTES:
 ALL LOT SURVEYS SHALL BE CONDUCTED OR PLACED WITHIN AN EGRESS WAY OR EGRESS WAY WITHIN THE UNITY OF A UNITY TO USE THE PLACEMENT

WASTEWATER DISPOSAL:
 Soil conditions, water table levels and soil slopes in this subdivision have been found suitable for conventional on-site wastewater treatment and disposal systems serving single-family or duplex residences, and meeting the regulatory requirements of the Ketchikan Borough, Alaska Department of Environmental Conservation, and the Alaska Department of Environmental Conservation.

DATE _____
 CONSULTING ENGINEER
 CONSULTING ENGINEERS
 P.O. Box 104
 Homer, AK 99601 (907) 285-4672

DATE _____
 CONSULTING ENGINEER
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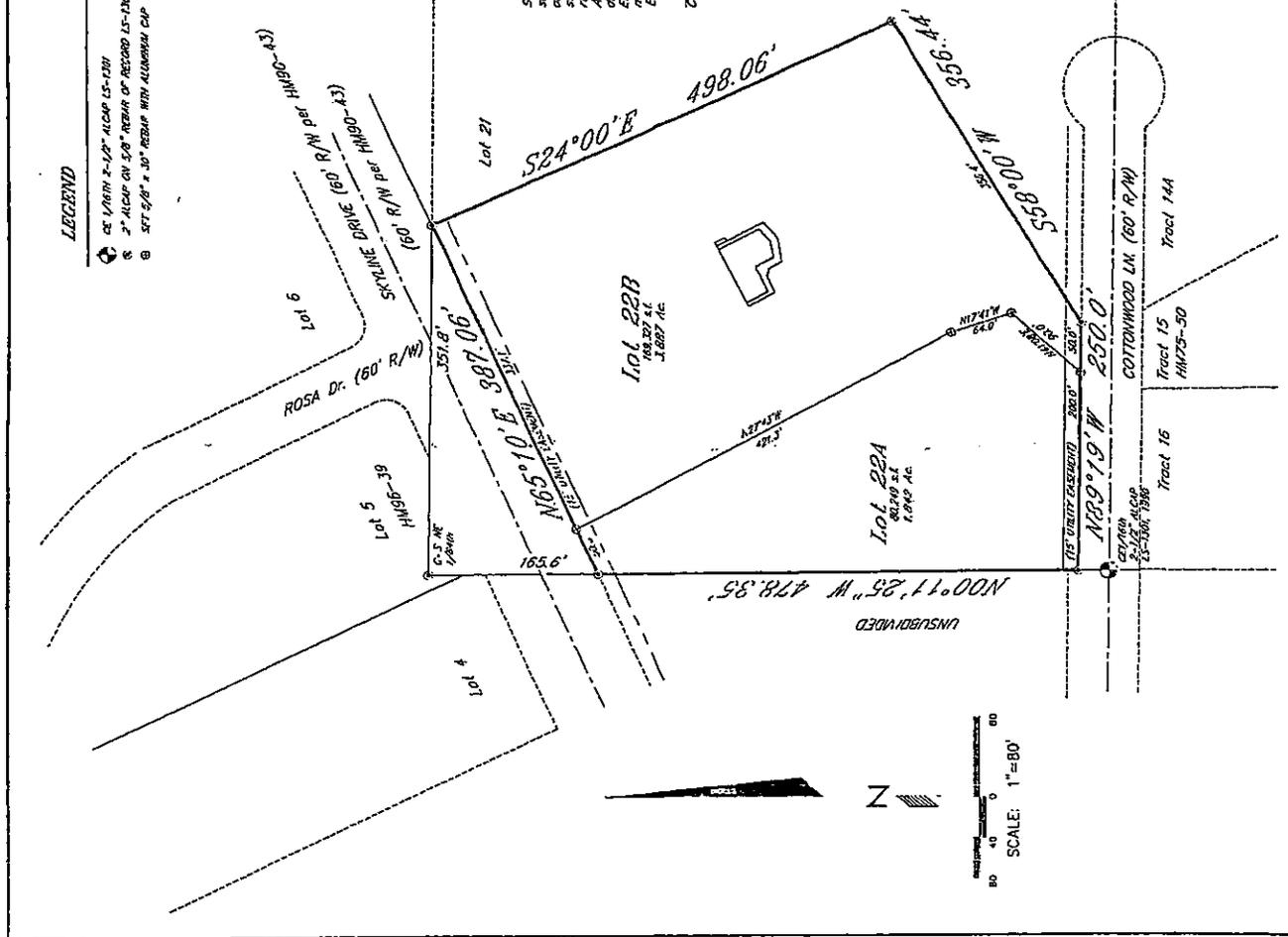
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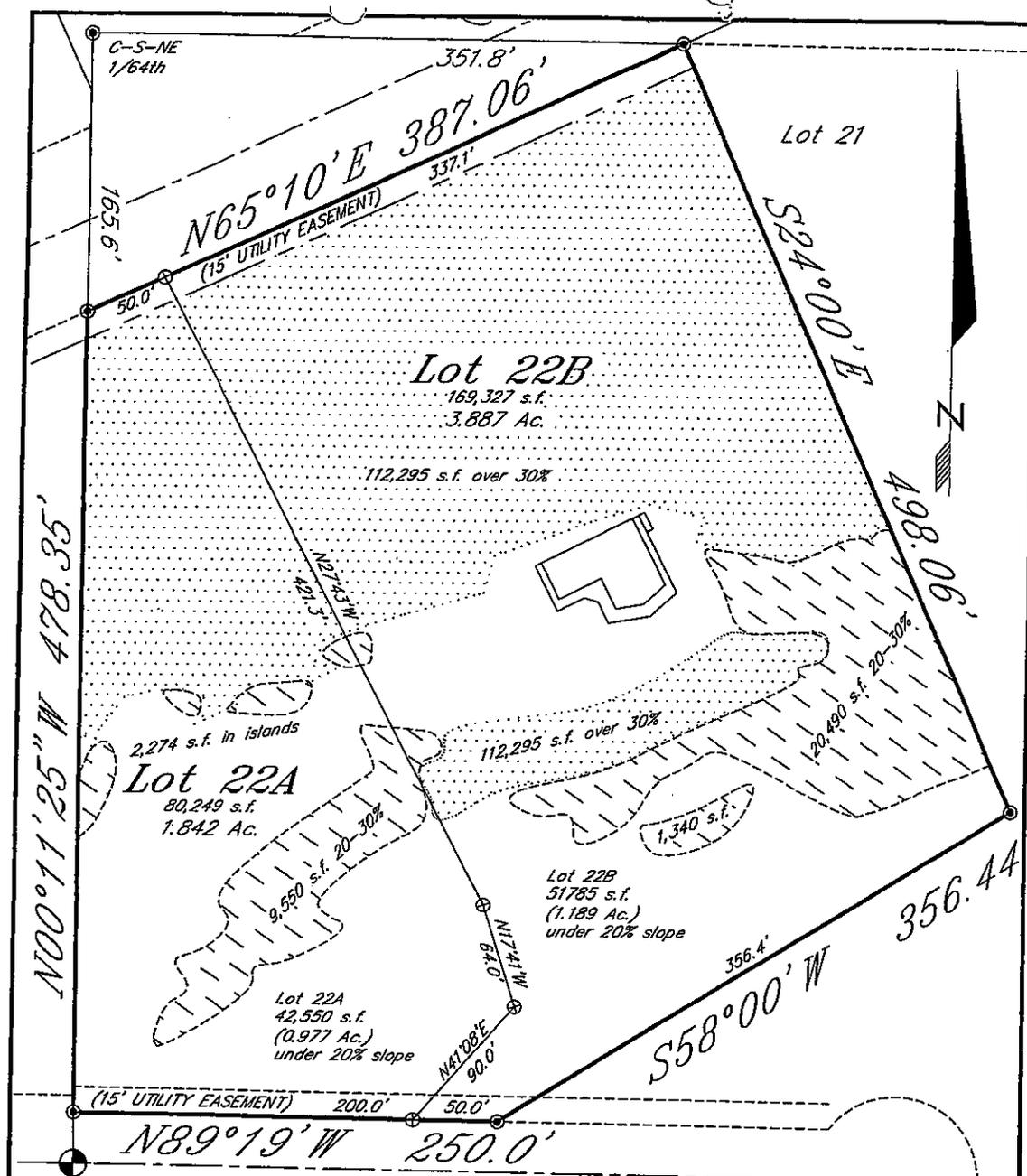
DATE _____
 CONSULTING ENGINEER
 CONSULTING ENGINEERS
 P.O. Box 104
 Homer, AK 99601 (907) 285-4672



REC. DIST	70
Date	70
TIME	7
REQ-ESTED BY:	
ADDRESS	

2011-167



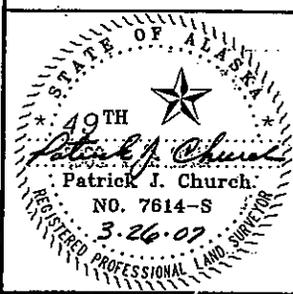


The slopes delineated hereon were determined from a Digital Terrain Model created from a 5' contour map provided by the City of Homer. No field verification has been made.



SCALE: 1"=80'

The property lines shown on the City of Homer photography appears to be shifted some 80' north of the actual boundaries. The photography was oriented and scaled to match the field determined location of existing roadways and houses.



JOB No. 266
 DATE: March 23 2007
 SCALE: 1" = 80'
 KPB FILE 2007-
 FIELD BOOK: 12/19-25

PREPARED FOR:
 City of Homer Planning
 Department

"EKER ESTATES TWO"
 Showing slope areas on LOT 22,
 HM90-43, HOMER, ALASKA

Patrick J. Church
 Registered Land Surveyor
 (907) 235-7388
 P.O. Box 2080, Homer Alaska, 99603



COBLE GEOPHYSICAL SERVICES

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GEOPHYSICAL CONSULTING

Groundwater/Surface Water
Geophysics

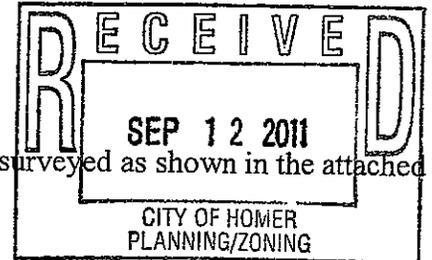
CGS REPORT 7/26/11

Leah Handley
P.O. Box 900
Homer, Alaska 99603

RE: T6S R13W Sec 9 Seward Meridian HM 0900043 Eker Estates Sub Lot 22
Proposed Land Subdivision into Lot 22A and Lot 22B
City of Homer, Alaska

Dear Leah,

This letter seeks to clarify your proposed subdivision referenced above, and surveyed as shown in the attached Figure 1.



The City had already reviewed this proposed subdivision with regards to the steep slope ordinances, and based on the information they had at the time, a former planning commission deemed it necessary for further analysis and investigation should you wish to pursue the subdivision. Based on the background information provided, Coble Geophysical Services (CGS) initially determined that a slope stability analysis was the only method for you to continue with your subdivision plans. This would ensure that a building or structure would not adversely impact neighboring properties and the integrity of the slope based on best management practices.

Therefore, CGS began the data collection for a slope stability analysis in cooperation with Bill Spencer, PE to facilitate the subdivision of your lot in accordance with City ordinances.

As you know, I visited your land in June 2011 to take accurate slope measurements using a micrometer clinometer, and with the assistance of Robert Handley to help locate property boundaries and land features to prepare information for the slope stability analysis. A focus of the initial measurements was on the very steepest parts of your property since this is relevant to City Ordinances on steep slope development.

The CGS field measurements of the subject property had surprising results. It was rare to find a slope exceeding 40% on any part of the proposed Lot 22A, not to mention the property as a whole. Field point-measurements of slope indicated that the steepest slope area in the attached Figure tended to occur in the mid to low thirty percent range on average. Noting staff report PL 07-23S where this subdivision was last considered, it mentioned that 'the approximate slope of the [entire] lot [Lot 22] is 38%'. This report relied on KPB elevation and plat survey data available at the time, although even to date the known KPB plat survey data is extremely inaccurate making field measurements imperative until this area is re-surveyed.

It was noted in the field that Lot 22 had substantial areas that in any analysis are below 20% slope, including areas that are completely level at the other end of the spectrum. It would therefore be surprising if the *average* slope of this property were close to its measured upper limits for this property. After taking the field measurements, CGS field estimates were that the total average slope of Lot 22 would be under 31%.

Therefore it appeared that a slope stability analysis was unnecessary, however a lot of things were left unexplained. In order to find an explanation, CGS looked at the most recent KPB data set, which includes topography derived from LIDAR technology, the most accurate elevation data we have ever had. Surprisingly, the KPB data set also showed that the Handley property included an entire segment of Skyline Drive, as shown in Figure 1 (Appendix A). More importantly for the current analysis, the plat data included the steep slopes of skyline drive in the Handley property. So, CGS returned to the Handley property on 9/6/11 to measure steep slopes along Skyline Drive and determine the actual surveyed property distance from Skyline drive. It turned out that the property line is approximately thirty five feet downslope from the edge of Skyline Drive pavement (forty five feet as measured directly downslope). As can be seen in Figure 1 this strip of land contains some of the highest average slope areas of the hillside.

Figure 2 sets the plat lines close to where they match the field survey for the subject property. This resulting movement of the entire plat grid to match the property boundary better matches the actual road network as well.

As a result, Figure 2 clearly shows the reduction in steep slope area for this parcel, as well as inclusion of far more low-gradient property at the base of the actual property. The pixel-based average slope using an even distribution of slope measurements from the LIDAR data set was then calculated for Figure 2. In this case, there has been earthwork that created areas of steep slope surrounding the house sites, however that is offset by areas created that are level as well. The mean slope for the topographic data derived from LIDAR of the revised Handley plat data shown in Figure 2 is 18 degrees, which yields a mean slope of less than 31%.

The City of Homer's steep slope ordinances rightly seek caution concerning development of steep slope parcels. The ordinances are intended to guard against steep slope failures, soil creep and other results of poor land use practices. Past experience has shown that steep slope developments can severely affect both upgradient and downgradient properties, particularly during strong precipitation events.

In any analysis, Lot 22 does, however, fall under City Ordinance 21.44.020 which applies to lots that have slopes of 15% or greater if the owners plan to fill, excavate, grade or alter the topography of this Lot. While this leads Lot 22 to be in conformance with City ordinance 21.44.030 Steep Slope Development Standards, the following information was also noted in the field which pertains to this situation:

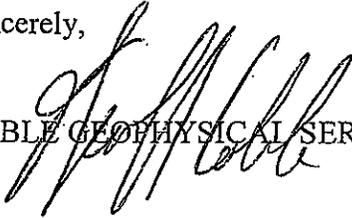
- 1) the current development has weathered severe rain events of the past decade with very little soil creep, evidenced by the good condition of the retaining walls onsite. Owner interviews indicate that these walls have not been altered since construction. Often Homer retaining walls show movement, so this is somewhat surprising given the average slope of the upper part of Lot 22. One reason for this could be the presence of a Tertiary sandstone outcrop on the property, which was exposed just beneath the surface soil on your proposed Lot 22A. Obviously bedrock close to the surface is beneficial to slope stability.
- 2) The proposed development is also located on this bedrock outcrop, and does not undercut or otherwise change the gradient of the property as it currently stands, which was previously determined to be less than 25% of the area of Lot 22. This means that, other than re-direction of surface flow due to a house, no other major changes to the hydrology are being proposed. The land as it stands has weathered severe precipitation events in the last 10 years, and I see no evidence of slope failure on Lot 22.
- 3) The steep slope areas of Lot 22 are entirely covered with well-established vegetation such as wild roses, and no exposed earth or evidence of soil stability problems were visible on Lot 22 from its upper slope area to the driveway and housing development. The type of vegetation may corroborate the additional observation of very little groundwater discharge on Lot 22, with the only significant example found being along the

driveway to the current house. This spring occurs at the base of the steep slope of the attached Figure 1. A small reservoir for this spring has been opened, and excess flow from the reservoir can enter a driveway cross-culvert for surface discharge in a vegetated swale on the opposite side of the driveway.

Therefore the City should allow the Handley subdivision as shown in the attached Figure 1. The future Lot 22A should be held to the development standard for properties of average slopes of >15% and <31%. If they wish to change the development plan as shown in Figure 3 that would go outside the boundaries of 25% developed area the future property owner(s) are always welcome to undertake a slope stability analysis. Of special note in the development plan shown in Figure 3 is leaving the steep slope alone, and the use of the existing flat areas for the building site which as shown will be another dwelling (a common use to Lot 22B, see previous staff report).

Please let me know if you require further information, or if you have any further questions or concerns.

Sincerely,



COBLE GEOPHYSICAL SERVICES

Geoff Coble, M.S., PG
Homer Professional Building
910 East End Rd, Suite #1
Homer, Alaska 99603

APPENDIX A
Site Maps and Analyses





Figure 1. Current Kenai Peninsula Borough Flat Survey Showing Subject Property Including Skyline Drive



○ Figure 2. Actual Property Boundaries That Match Field Survey Markers, Roadways and Reality

NOTICE OF SUBDIVISION

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

Proposed subdivisions under consideration are described as follows:

Barnett Subdivision, Quiet Creek Addition No. 2 Preliminary Plat

→ Eker Estates Too Preliminary Plat

The location of the proposed(s) subdivision is provided on the attached map(s). A preliminary plat showing the proposed subdivision may be viewed at the Planning Department. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the KPB Subdivision Ordinance. A copy of the Ordinance is available from the Planning Department. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, December 7, 2011 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska.

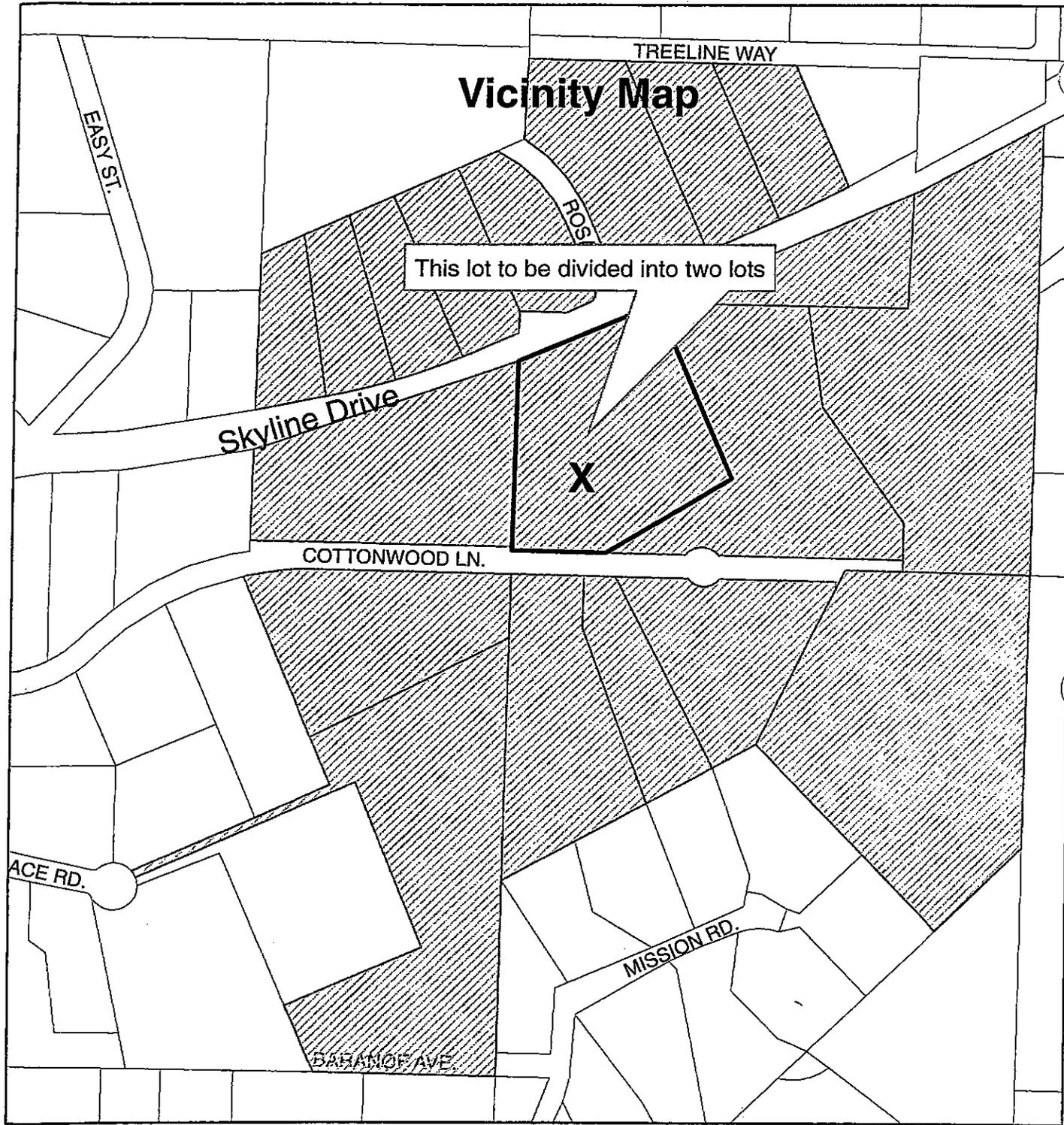
Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting. Written comments can be faxed to 907-235-3118.

For additional information, please contact Julie Engebretsen in the City of Homer Planning and Zoning Office at 235-8121, ext. 2237.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPOSED SUBDIVISION.

VICINITY MAP ON REVERSE

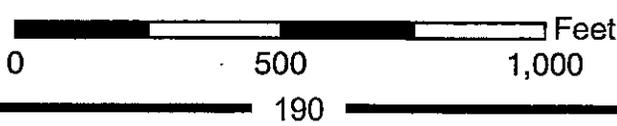
Vicinity Map



City of Homer
Planning and Zoning Department
November 17, 2011

Eker Estates Too Subdivision Preliminary Plat

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



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

**MANAGERS REPORT
NOVEMBER 28, 2011**

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. Pending Contracts: There are two important contracts that expire at the end of this year, the lobbyist contract and the contract for the Animal Shelter with Coastal Animal Care. The money for both contracts is included in the draft budget at the same compensation as this year. I mention this just to make sure Council recalls this has time to propose any changes if they wish. Resolutions approving both contracts will be on the Agenda for the December 12 meeting. They will follow approval of the budget.
2. City Hall Expansion and Renovation Update: The contractor is on pace to finish this job on time and on budget. It also appears that they will achieve their original goal of completing the new expansion by Thanksgiving. Incredible in my opinion. It would be possible for Administration, IT, and Planning to move back toward the end of next week. But, due to a variety of reasons, we have decided that it would be best to delay the move until the beginning of January. This will allow the Clerk's office and Finance to move into the new section of the building while renovation work is being done in their areas. It should be more efficient. The current construction budget contains money for new furniture in the Council Chambers and the public areas. There is no money for furniture in the offices or for things like shelves in the storage areas. The staff is currently putting together a list of important items that need to be purchased now. We would not attempt to refurnish each office in its entirety. But there are desks and computer tables that are really old, dilapidated, and are recommended for replacement by our insurance agent for ergonomics reasons. So, we will put together a list with a price tag and bring it to you at the next meeting for your consideration. We have several ideas about where the money could come from.
3. Dock Fenders / Deep Water Dock: There are several damaged dock fenders on the Deep Water Dock. We originally planned to replace them as part of the cruise ship grant project. However, that grant will take awhile to get rolling and we now have an emergency because the fenders sustained additional damage in the recent storms. One is missing completely. This is an emergency situation and we need to begin engineering and design immediately. We have given the engineers the go-ahead to begin the design work and will follow-up with a budget ordinance at the next meeting.
4. Budget Amendments / Employee Committee: At the time this report was written, two Council members had submitted budget amendments that contained employee contributions to the health insurance plan. The Employee Committee has worked long and hard to come up with a set of alternatives that all employees can vote on. However, since the Council as a body has not yet asked for changes to the employee benefits, the Committee did not think it was necessary or appropriate to simply offer

up a set of concessions. Council has stated that it would like to hear from the Employee Committee if benefit changes are contemplated. So, if the Council is of a mind to look at some changes this year, please do not spend too much time with the details because you could get bogged down really quickly. Just give us a number that you would like to achieve; a dollar amount to be saved. The Committee, after consulting with employees, will come back with recommendations on how to achieve that savings in a way that has the least impact on employees and their families.

5. Lease Rentals: Councilmember Hogan has requested that we provide a full report on what is included in budget line item 5714 ; leases and rentals. We will be ready to provide a report on that at the meeting.
6. Tsunami Warning System Sirens: We had a meeting last week with the Borough Office of Emergency Management, the City of Seward, and the City of Seldovia. The topic was whether to proceed with setting up local control of the siren system as requested by those Cities, now that the National Weather Service has found a way to "regionalize" the tsunami warnings. After much discussion about the cost and level of effort needed to switch to local control, we agreed to stick with the current system on a trial basis but continue to do research on what it would take to institute a local radio activation option to improve redundancy and back-up if the internet goes down.
7. Clean Harbor Award: The City of Homer Port and Harbor department was awarded the first Alaska Clean harbors Award. Congratulations to Bryan and his staff. Rachael Lord from Cook Inlet Keeper will be a visitor at the meeting to discuss this award.
8. Boys and Girls Club: The Boys and Girls Club has requested that they be allowed to remain in the building at least until the end of the school year. Councilmembers Lewis and Howard have sponsored a resolution to accomplish that. The Boys and Girls Club Task Force has been formed and it has been very active raising money for the Club. A sub-committee of the Task Force has begun looking at ways to raise money to fix the building up and elevate the dialog on re-purposing the building.
9. Ice Rink / Ben Walters Park: The Rotary Club has adopted Ben Walters Park. The discussion regarding what the Club might do there has revived an old debate about whether the City should maintain an ice rink on the lake and in fact, whether it is obligated to do so. The City has not maintained a skating area there for at least 22 years and only did so for two years. It stopped doing so primarily for budgetary and liability reasons. Please let me know if you would like to discuss this in more detail at the meeting.