

SUBJECT: MATANUSKA-SUSITNA BOROUGH ASSEMBLY PROVIDING CONSENT AND APPROVAL FOR AN ACCESS EASEMENT AND WAIVER OF LIABILITY FOR AGRICULTURAL RIGHTS PROPERTIES SOLD UNDER FORMER TITLE 13, LOCATED WITHIN LOTS 1 AND 2, ROY/CRAWFORD SUBDIVISION (MSB000502).

AGENDA OF: April 18, 2023

ASSEMBLY ACTION:

*adopted without objection
5-2-23*

AGENDA ACTION REQUESTED: Introduce and set for public hearing.

Route To Department/Director	Signature	Comments
Originator	<i>Tracy K. McDaniel</i>	
Department Director	<i>x [Signature]</i>	
Finance Director	<i>x [Signature]</i>	
Borough Attorney	<i>x [Signature]</i>	
Borough Manager	<i>x [Signature]</i>	
Borough Clerk	<i>x [Signature] 4/19/23</i>	<i>[Signature]</i>

ATTACHMENT (S) : Fiscal Note: YES ____ NO X
 Access Easement and Waiver of Liability (7 pp)
 MSB Notice of Consent and Approval of an Access
 Easement and Waiver of Liability (1 pp)
 Ordinance Serial No. 23-034 (2 pp)

SUMMARY STATEMENT:

This legislation is sponsored by the Borough Manager at the request of the Borough Attorney to obtain final Assembly consent to an easement to resolve a dispute over access to a parcel of property.

As noted in the attached Access easement, Ms. Hall and Mr. Aspen

each own separate parcels of adjoining property. Ms. Hall's property is what is colloquially called an "MSB Ag Parcel." There is an access road across Ms. Hall's property to Mr. Aspen's property, but Ms. Hall or the prior owners of her property never formally granted permission for the access road. After Mr. Aspen bought his property, he started working on the access road, but stopped when Ms. Hall told him to. Mr. Aspen sued the person who sold him the property, and later added Ms. Hall and the Borough to the lawsuit. The Borough was part of the lawsuit because Ms. Hall's does not own all the property interests in her parcel. Because of the agricultural status of Ms. Hall's property, the Borough was an 'indispensable party' to the lawsuit. Ms. Hall has agreed to grant an access easement to Mr. Aspen. However, before such an easement can be finalized, the Matanuska-Susitna Borough needs to approve the easement. As part of the deed to her property, Ms. Hall is subject to restrictions on the property to ensure its use for agricultural purposes. Ms. Hall cannot grant property interests to others without the Borough's consent.

Borough staff has determined that the grant of the access easement does not materially impact the agricultural use of Ms. Hall's property, and the Borough Attorney's Office agrees with this assessment. The Borough Attorney's Office, along with staff, were involved in the negotiations for the easement, and assisted in providing language to restrict its use to ensure that Ms. Hall's property remains agricultural in nature. The Borough has already agreed to this approach and provided direction to the Borough Attorney. The grant of this easement will be the final part to settle and dismiss that part of the lawsuit brought by Mr. Aspen against Ms. Hall and the Borough.

RECOMMENDATION OF ADMINISTRATION:

Staff recommends approval of the ordinance.

**After Recording Return to:**

Ashburn & Mason, P.C.

1227 W 9th Avenue, Ste. 200

Anchorage, Alaska 99501

ACCESS EASEMENT AND WAIVER OF LIABILITY

This Access Easement and Waiver of Liability ("Easement") is entered into by and between Alicia Hall, whose address is 7643 N Quaking Aspen Road, Palmer, Alaska, 99645 ("Hall") and Bart Aspen, whose address is 8000 N Quaking Aspen Road, Palmer, Alaska, 99645 ("Aspen"). This Agreement shall become effective on the date it is recorded, shall run with the land and shall inure to and be for the benefit of all owners and future owners of the subject real properties described below.

RECITALS:

A. Hall is the owner of the following described real property, subject to certain conditions and restrictions by the Matanuska-Susitna Borough ("Borough") recorded in the Palmer Recording District at Book 140 and Page 296, Seward Meridian, Alaska:

Lots 1 and 2, Crawford/Roy Subdivision, according to the official plat filed under Plat No. 2012-98, in the records of the Palmer Recording District, Third Judicial District, State of Alaska ("Hall Property").

B. Aspen is the owner of the following described real property:

The Northeast one-quarter of the Northwest one-quarter (NE1/4, NW1/4), Section 7, Township 18 North, Range 3 East, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

Government Lot Ten (10), Section 6, Township 18 North, Range 3 East, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska (collectively the "Aspen Property").

C. The Aspen Property is accessed using the existing access road ("Access Road"), a portion of which crosses the Hall Property. The Access Road was constructed by Daniel Linden and a former title owner of the Hall and Aspen Properties. The Access Road is described and depicted on the attached Exhibit A, which is intended to show its historic and existing location.

D. By executing this Easement, the parties agree to memorialize in writing the unrecorded perpetual Access Road easement.

For and in consideration of the terms, conditions and mutual considerations stated herein, and incorporating the above recitals, the parties agree as follows:

1. Easement.

- (a) Subject to the provisions stated in this Easement, Hall, on behalf of herself and her successors and assigns, grants to Aspen, and his successors and assigns, guests, licensees, tenants and invitees, a perpetual, non-exclusive easement to use and maintain that portion of the Access Road that is located on the Hall Property for vehicular and pedestrian ingress and egress, and for connectivity of utilities. The parties agree that the Easement is intended to run from the historical centerline of the Access Road, as depicted in Exhibit A, and shall extend ten (10) feet to either side of the centerline of the Access Road.
- (b) The Easement is valid so long as the Aspen Property is not further subdivided or used for multifamily development under Borough code, or the Easement is otherwise used in a manner inconsistent with its present use.
- (c) This Easement does not grant the right to use any portion of the Hall Property or the Aspen Property for any purpose other than described herein. Aspen, and subsequent title owners shall not expand the Access Road beyond its current boundaries as depicted in Exhibit A, the width of which is clarified in subsection (a) and (b) above, except if ordered to by any governmental entity, such as to ensure emergency vehicle access, and only then after notice to all parties.

2. General Conditions of Easement Grant; Release of Liability.

- (a) Maintenance. Hall shall have no obligation to maintain the portion of the Access Road on the Hall Property. Aspen agrees to maintain the portion of the Access Road on the Hall Property in good and safe condition. All maintenance activities shall be performed in a manner that does not accelerate erosion to the underlying property. This Easement shall not permit any further embankment work, except as absolutely necessary for ingress and egress, and only then after notice to Hall and integration of conditions by Hall necessary to ensure structural integrity to the Hall Property.
- (b) Release of Liability. Aspen, on behalf of himself, his successors and assigns, and any anyone authorized to use the Access Road through this Easement, voluntarily releases, forever discharges, and agrees to hold harmless and indemnify Alicia Hall, her successor and assigns, from any liability, claims, demands, actions or rights of actions, except for intentional or grossly negligent misconduct in violation of this Easement, which are related to, arise out of, or are in any way connected with granting of the Easement or the condition of the Access Road.



Users of the Access Road agree to assume and accept all risks associated with the Access Road, which is not built or maintained to Borough standards.

- (c) **Indemnity.** Except in the event of willful misconduct or grossly negligent acts or omissions of Hall or her agents, Aspen agrees to indemnify Hall from any and all causes of action, liability and damages arising from the use of the portion of the Access Road on the Hall Property by anyone using the Easement to access the Aspen Property.
- (d) **Private use; Binding Effect.** Nothing in this Agreement shall be deemed to be a gift, dedication or grant or any portion of the Hall Property to the general public. This Easement shall run with the properties described herein and shall be a benefit to and binding upon the undersigned and any future owners who shall hereafter acquire title to said properties.
- (e) **Amendment.** This Easement may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the consent of all parties, or their successors in title, and then only by written instrument duly executed and acknowledged by such parties, which amendment shall be duly recorded in the Palmer Recording District.
- (f) **Partial Invalidity.** If any portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court to be so, the remaining portions shall remain in full force and effect.
- (g) **Breach.** It is expressly agreed that no breach of this Easement shall entitle the owners of any portion of the Hall Property, to cancel, rescind or otherwise to terminate this Agreement, except as provided herein, but this shall not affect or limit in any manner any other rights or remedies which any party may otherwise have under law.
- (h) **Remedies.** In the event of any violation or breach or threatened violation or breach of this Easement, in addition to the other remedies provided under law, each party, and their successors and assigns shall have the right to enjoin such violation or threatened violation. Any suit for injunctive relief shall not require a bond to proceed.
- (i) **Miscellaneous.** The captions and section headings are inserted for convenience purposes only and shall not be used to expand or diminish the provisions. This Easement may be executed in counterparts. Any dispute regarding this Easement shall be brought in a court of competent jurisdiction in Palmer, Alaska.

3. **Consent of the Borough.** The parties shall cooperate with each other to obtain any consent required by the Borough to achieve the stated intent of this Easement. If required to re-record the Easement with the consent of the Borough, the parties shall do so or shall execute any documentation required by the Borough to effectuate the intent of this Easement. Aspen shall be



responsible for any costs incurred in obtaining Borough approval and recordation fees.

Signatures to follow.

IM No. 23-084
Ordinance Serial No. 23-034

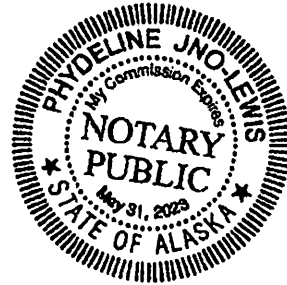


Alicia Hall
ALICIA HALL

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me on October 19th, 2022 by
Alicia Hall.

Phydeline Jno-Lewis
Notary Public for the State of Alaska
My Commission Expires: 5/31/2023



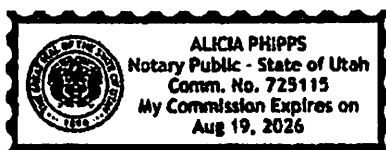
IM No. 23-084
Ordinance Serial No. 23-034



[Signature]
BART ASPEN

STATE OF Utah)
Grand County) ss:

The foregoing instrument was acknowledged before me on October 11, 2022 by Bart Aspen.

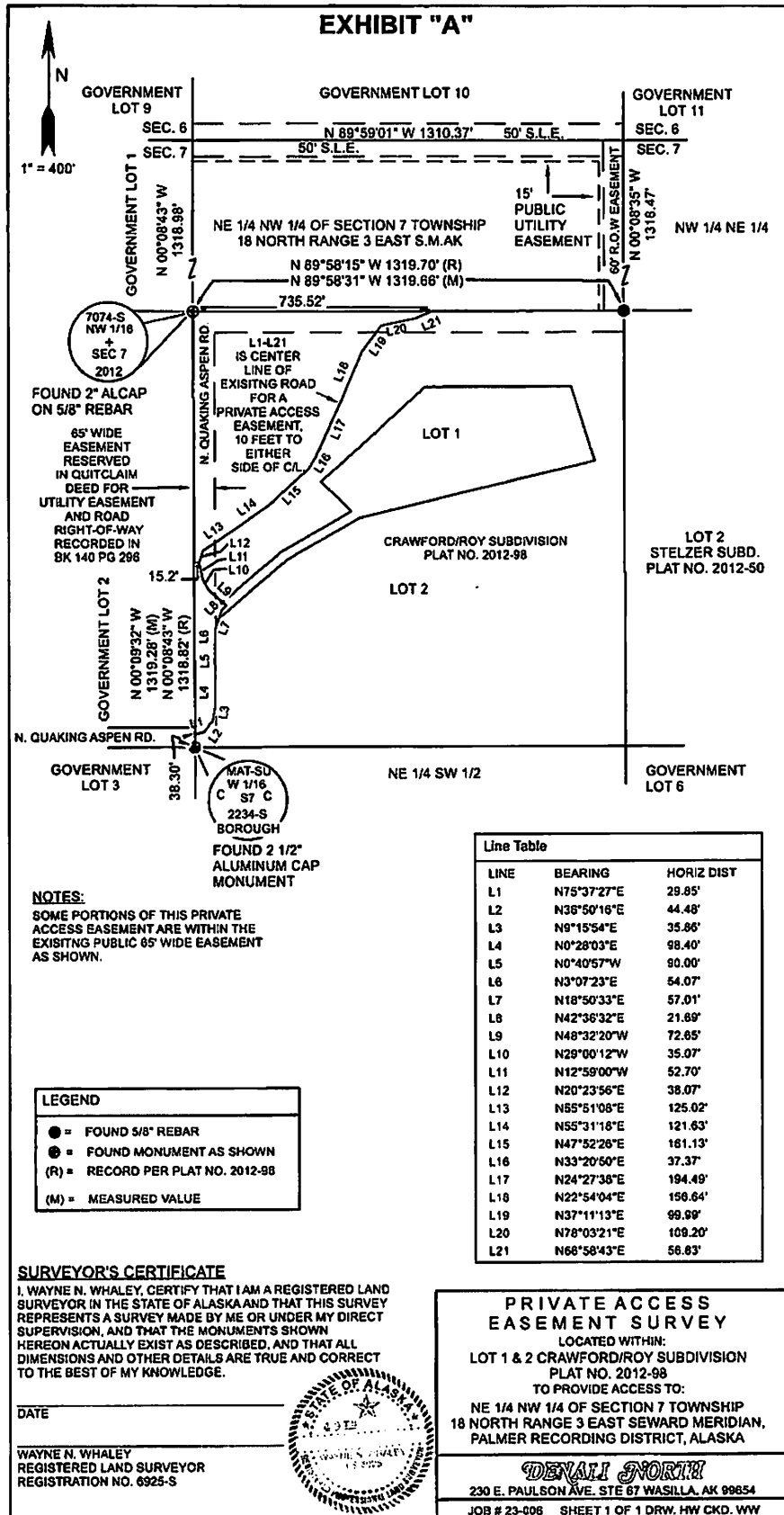


[Signature] Alicia Phipps
Notary Public for the State of Utah
My Commission Expires: 08/19/2026

Exhibit A – Legal Description/Diagram of Access Road



EXHIBIT "A"



Traverse PC

IM No. 23-084

Ordinance Serial No. 23-034



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311-2023-004676-0

MATANUSKA-SUSITNA BOROUGH
NOTICE OF CONSENT AND APPROVAL TO AN
ACCESS EASEMENT AND WAIVER OF LIABILITY

MSB000502

NOTICE IS HEREBY GIVEN that the MATANUSKA-SUSITNA BOROUGH, a municipal corporation, whose address is 350 E. Dahlia Avenue, Palmer, Alaska 99645, consents and approves the request by Alicia Hall, whose address is 7643 N. Quaking Aspen Road, Palmer, Alaska 99645, as owner of the Agricultural Rights, an Access Easement and Waiver of Liability for the following described farm unit parcel:

Lots 1 and 2 Crawford/Roy Subdivision as Plat 2012-98, located in the Palmer Recording District,
Third Judicial District, State of Alaska.

This notice is given to provide a record that consent of the borough has been obtained by Ordinance Serial No. 23-034 as required under Section 4, Alienation of Property, in the Conditions and Restrictions to Agricultural Rights Deed, recorded March 31, 1977 in Book 140, Page 296, Palmer Recording District. This consent and authorization becomes effective upon recording of this document.

Dated this ____ day of _____, 2023.

Michael Brown, Manager

STATE OF ALASKA)
)ss.
Third Judicial District)

On April ____, 2023, Michael Brown, Borough Manager of the Matanuska-Susitna Borough, who is personally known to me, appeared and acknowledged before me that he signed the NOTICE OF CONSENT AND APPROVAL TO AN ACCESS EASEMENT AND WAIVER OF LIABILITY on behalf of the municipal corporation.

[SEAL]

Notary Public for State of Alaska
My commission expires:_____

Return to:
Matanuska-Susitna Borough, Land & Resources Management Division
350 E. Dahlia Avenue
Palmer, AK 99645