

SUBJECT: INFORMING THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY OF THE INTENT TO CONVEY BOROUGH-OWNED REAL PROPERTY WITH A FAIR MARKET VALUE LESS THAN \$25,000 FOR PURPOSE OF LIMITING BOROUGH LIABILITY ACROSS, OVER AND UNDER A PRIVATE ACCESS EASEMENT GRANTED BY THE BOROUGH IN ACCORDANCE WITH MSB 23.10.110 (MSB007482).

AGENDA OF: November 17, 2020

ASSEMBLY ACTION:

Presented to the assembly 11-17-20
(BSC)

MANAGER RECOMMENDATION: For information only.

APPROVED BY GEORGE HAYS, ACTING BOROUGH MANAGER:

| Route To: | Department/Individual | Initials | Remarks |
|-----------|--------------------------------|------------------------------|---------|
| | Originator | <i>MSC</i> | |
| | Community Development Director | <i>EP</i> | |
| | Finance Director | <i>OK</i> | |
| | Borough Attorney | <i>GA for N.S. 11/3/2020</i> | |
| | Borough Clerk | <i>for LRM 11-9-20</i> | |

ATTACHMENT (S): Fiscal Note ☐ No ☒ Yes
Maps (2 pp)
Original Manager's Decision, 2019 (2 pp)
Manager's Decision of Letter of Intent (2 pp)
Letter of Intent (1 pp)
Memorandum for Record (2 pp)
Recorded Private Access Easement (10 pp)

SUMMARY STATEMENT: The private access easement granted over Borough-owned land and approved by Manager's Decision in 2019 to access land sold in a Borough land sale, was based upon the unsafe, existing legal access to the parcel sold. The private easement location follows a small, unauthorized trail along a swamp and makes sense due to terrain limits within the existing legal access to the west. Also, of note is the fact that both the Borough and private land was regularly used for illicit activities, dumping,

and squatting. The private easement provided for much safer ingress/egress to Susitna Parkway; did not limit public access to adjacent Borough lands; and helped alleviate the problematic issues plaguing both Borough and private property through private control of the access. Private easements across Borough land are allowed under MSB 23.10.110 in accordance with adopted policies and procedures. The Borough does not grant private easements readily or very often, and applies significant due diligence and review for such requests.

The private easement previously granted provided that it was "an exclusive easement" with the authority to "control access" by a "fence or gate." In other words, the easement granted more than just access to the Grantee's adjacent property, it granted the authority to exclude the public. Liability concerns were raised by the Borough Attorneys Office about the Grantee blocking the public from access across MSB property. The granting of an access easement including the authority to exclude third parties from that easement in perpetuity functionally amounts to a grant of a fee simple interest in the property. As such, it makes more sense to deed a fee simple interest to the property, rather than an easement, thereby eliminating liability of the underlying property owner, in this case the MSB, for what occurs on the property. This legislation carries out that transfer of a fee simple interest for what was already functionally a fee simple transfer of an easement with the authority to exclude the public from the easement area. It should be noted that the Borough Attorneys Office was not afforded an opportunity to review the proposed transfer prior to the Manager's Decision in 2019.

The Acting Borough Manager performed a site visit with the Daniels on July 10, 2020 and concurred the legal access on the west had significant topographic constraints and intersected with Susitna Parkway at an unsafe location due to a large hill with limited line of sight. The private easement was subsequently granted and recorded at Serial No. 2020-022296-0 on September 9, 2020.

Further discussion with the Deputy Borough Attorney and Administration regarding the Borough's underlying interest and potential liability was agreed that the best solution was to subdivide the Borough parcel and convey the easement area and swamp on the east side of the easement to the Daniels to alleviate these concerns. The swamp, as valued by the Borough Assessor, was determined to be of equitable value to the amount paid by the Daniels for the easement area and associated costs - being approximately \$7,000+. No money will be exchanged between the Daniels and the Borough. The Daniels completed all requirements of the original 2019 approval wherein the easement was surveyed and fair market value was paid by the Daniels for the easement area and all associated costs.

A new Manager's Decision dated August 19, 2020 upheld the 2019 Manager's Decision to grant the private easement and outlined the process to subdivide and convey the easement area and swamp to the Daniels. A Memorandum for Record was included supporting the original Manager's Decision.

Pursuant to MSB 23.10.010, the Manager is authorized to approve land disposals having a fair market value equal to or less than \$25,000, with public notice and notification to the Assembly. Land Management is in the preliminary process to subdivide the Borough parcel wherein public notice will be completed and upon such, the land will be conveyed to the Daniels and the private easement vacated. There were no objections to granting the private easement under MSB 23.05.030 public notice in 2019.

**MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE**

Agenda Date: November 17, 2020

SUBJECT: Informing the Matanuska-Susitna Borough Assembly of the intent to convey Borough-owned real property with a fair market value less than \$25,000 for purpose of limiting borough liability across, over and under a private access easement granted by the Borough in accordance with MSB 23.10.110 (MSB007482).

ORIGINATOR: Nancy Cameron, Land and Resource Management

| | |
|--|---------------------------------------|
| FISCAL ACTION (TO BE COMPLETED BY FINANCE) | FISCAL IMPACT <u>YES</u> NO |
| AMOUNT REQUESTED <u>\$</u> | FUNDING SOURCE <u>Land Management</u> |
| FROM ACCOUNT # | PROJECT |
| TO ACCOUNT : | PROJECT # |
| VERIFIED BY: <u>Kurt Wiland</u> | CERTIFIED BY: |
| DATE: <u>11/02/2020</u> | DATE: |

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY2020 | FY2021 | FY2022 | FY2023 | FY2024 | FY2025 |
|--------------------|--------|--------|--------|--------|--------|--------|
| Personnel Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land/Structures | | | | | | |
| Grants, Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | | | | | | |

| | | | | | | |
|---------|--|-----------|--|--|--|--|
| CAPITAL | | <u>\$</u> | | | | |
|---------|--|-----------|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING:

(Thousands of Dollars)

| | | | | | | |
|---------------------|--|--|--|--|--|--|
| General Fund | | | | | | |
| State/Federal Funds | | | | | | |
| Other | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-Time | | | | | | |
| Part-Time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary) * No revenue generated from transfer. NO future expenses.

PREPARED BY: _____ PHONE: _____

DEPARTMENT: Chesenne Hurd DATE: _____

APPROVED BY: _____ DATE: _____



Matanuska-Susitna Borough



- Legend**
- Road Mileposts
 - Roads**
 - Highway
 - Major Road
 - Medium Road
 - Minor Road
 - Ramp
 - Primitive Road
 - Private Road
 - Alaska Railroad
 - Mat-Su Borough Boundary
 - Incorporated Cities
 - Parcels
 - Government Lot Lines
 - ROW and Easements
 - ROW Road
 - ROW RR
 - ROW Easement
 - Section line easement
 - Lakes and Rivers
 - Streams
 - 100 year Flood Zone
 - Section Lines

1: 4,514



Notes

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THIS MAP IS NOT TO BE USED FOR NAVIGATION

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Miles

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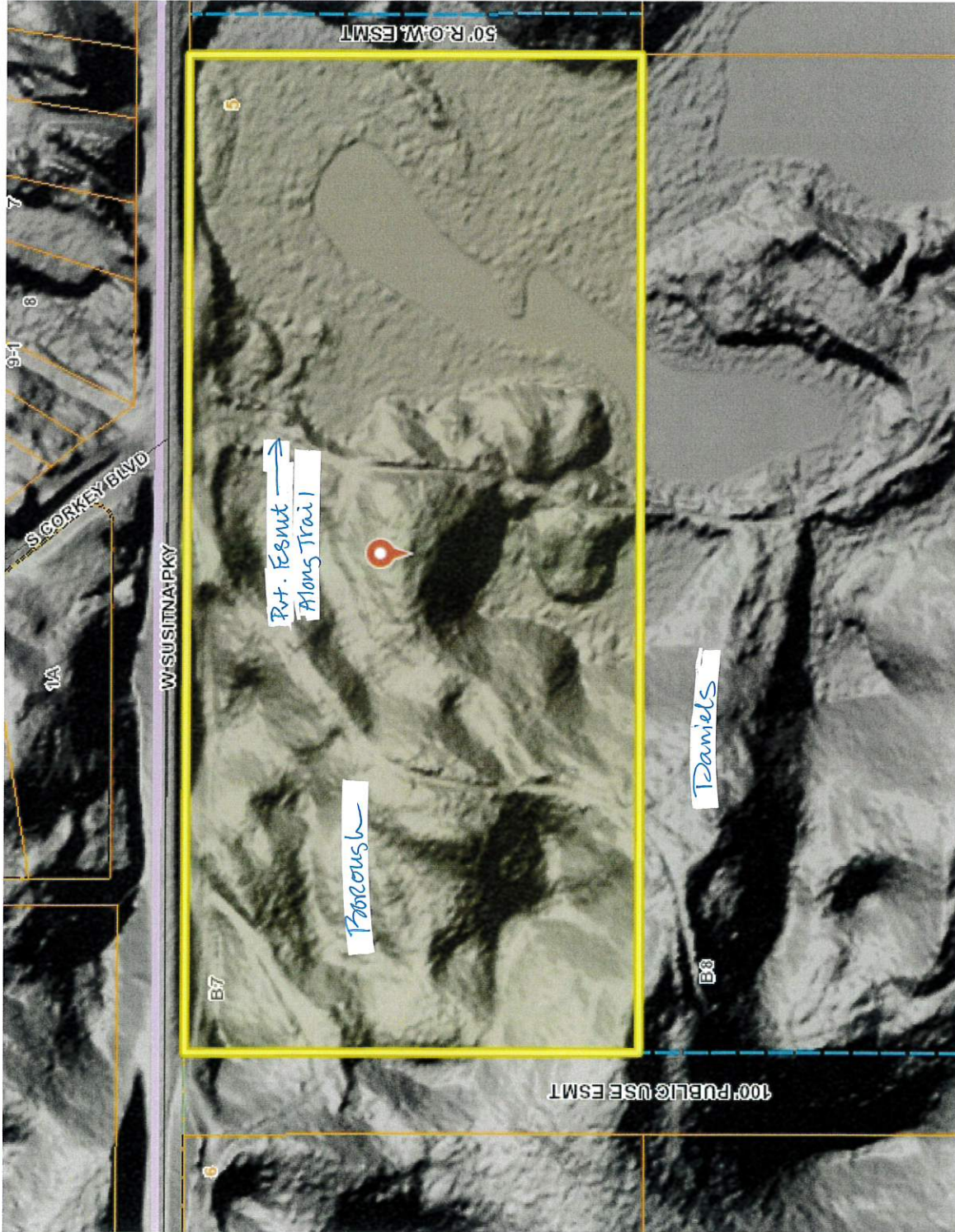
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Reported on 10/27/2020 09:19 AM

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Matanuska-Susitna Borough



- Legend**
- Road Mileposts
 - Roads
 - Highway
 - Major Road
 - Medium Road
 - Minor Road
 - Ramp
 - Primitive Road
 - Private Road
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Miles

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MATANUSKA-SUSITNA BOROUGH

Community Development Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 745-9869 • Fax (907) 745-9635

E-mail: lmb@matsugov.us

MEMORANDUM

DATE: July 23, 2019

TO: John Moosey, Borough Manager

THRU: Eric Phillips, Community Development Director

FROM: Nancy Cameron, Land Management Agent *MSC*

SUBJECT: Private easement across borough land

SUMMARY

Land & Resource Management Division proposes to dedicate a 30' wide access private easement over an existing constructed traveled way across borough land to provide legal access to the south adjacent borough parcel sold in the 2016 OTC borough land sale. The sale property has been transferred to a new owner with plans to reside on the property full time.

DISCUSSION

The sale parcel was originally sold with access from Susitna Parkway via the 100 wide pole portion within its west boundary. Even though this access was reserved, there is a significant drop in elevation within the pole portion making constructed access difficult. Additionally, entering onto Susitna Parkway from this reserved access point is hampered due to a large hill which affects the line of sight for traffic on the Parkway.

Both the sale parcel and borough parcel where legal access is now requested remain undeveloped. There are several unauthorized trails traversing both borough parcels – one of which the proposed private easement is to overlay. The affected borough parcel has over 1,000 feet of frontage on Susitna Parkway so development or access for the remainder of land owned by the borough will not be impeded in any way. The location of the proposed easement provides a safer access onto Susitna Parkway and leads directly to the borough parcel which has been transferred to the new owner.

Fair market value will be paid by the applicant based upon the 2019 tax assessed value and square footage required for the easement. The borough will retain the right to revert and vacate the easement if it is ever abandoned.

Public notice and inter-department review revealed no objection to the easement as proposed.

AUTHORITY

MSB 23.10.110 (A) In accordance with policies adopted by assembly ordinance, the manager may negotiate and approve the grant, reservation, or dedication of public or private easements upon borough-owned land or the acquisition of easements by the borough for the benefit of the public; and (C) Easements for private purpose place a burden on the borough-owned land and may be approved when the borough has substantiated the applicant's need for the easement, and it is in the borough's interest to approve the easement, and the borough is compensated at fair market value for the easement.

RECOMMENDATION

The Community Development Department recommends the Borough Manager approve by Manager's Decision the public and private easements as described in the attached drawing under the administrative authority of the Borough Manager provided by MSB code, with the following conditions:

- 1) Applicant shall submit a legal drawing of the easement areas stamped by a registered Alaska land surveyor, in a format suitable for recording with said easement either monumented or tied to existing monumentation; and
- 2) The borough shall have a reversionary right and right to revoke without compensation over the private easement area as stated in the private easement document; and
- 3) The borough shall not be responsible to maintain, improve, or provide borough services in the easement area, nor does dedication impose any liability on the borough for the condition of the area dedicated or warranty therein; and
- 4) Petitioner shall pay fair market value to the borough for the total square footage of the private easement area based upon the current tax assessed value; and
- 5) Petitioner shall apply for all necessary local, state, and federal permits required prior to recordation of easement documents, and provide verification of said applications (Petitioner has made application to ADF&G for water crossing); and
- 6) Applicant shall pay for all other associated costs to include, but not be limited to: public notice costs, surveyor costs, recording fees, and any permits required by local, state or federal laws.

Manager's Decision:

☒ Request Approved

☐ Request Denied



John Moosey, Borough Manager



Date



MATANUSKA-SUSITNA BOROUGH

Community Development Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 745-9869 • Fax (907) 745-9635

E-mail: lmb@matsugov.us

MEMORANDUM

DATE: August 19, 2020

TO: George Hays, Acting Borough Manager *GH*

THRU: Eric Phillips, Community Development Director

FROM: Nancy Cameron, Land Management Agent *NC*

SUBJECT: Letter of Intent to Convey Property to Pat/Jennifer Daniels (MSB007482)

DISCUSSION

A private easement allowing access over Borough land identified as 16N04W02B007 was approved by the John Moosey in 2019 and subsequently upheld by you in 2020. Further discussion amongst staff and legal regarding how best to mitigate any risks to the Borough resulted in a decision that subdividing the Borough parcel and conveying to the Daniels any and all interest the Borough has in the easement and swamp to the east if they were amenable. The Daniels are responsive to this process and agree as long as there is something in writing from the Borough to assure their access is secured and no additional costs is incurred by them.

The Assessor's office reviewed the proposed area to be conveyed, containing 7 acres +/-, and determined a range of value between \$7,000-\$10,000. The Daniels have paid over \$7,000 for the easement area and survey required by the Borough; therefore, staff has determined an equitable value has been paid by the Daniels for the acreage and no further costs will be charged to them. The Assessor concurs with this determination.

AUTHORITY

MSB 23.10.020 (A) The manager is authorized to approve land disposals having a fair market value equal to or less than \$25,000 per transaction; and (B) comply with public notice and applicable requirements of this title and inform the assembly through an informational memorandum of the proposed action, to include identity of applicant, essential terms of sale, price, and comments received from the public and community council, if any.

RECOMMENDATION

The Community Development Department recommends the Borough Manager approve by Manager's Decision the Letter of Intent outlining the Borough's process to subdivide and convey the 7 acres to the Daniels by following these steps:

- 1) Execution and recordation of Private Access Easement.
- 2) Initiate public notice regarding intent to convey property to the Daniels.
- 3) Obtain platting approval of subdivision of the Borough property (B007).
- 4) Convey to the Daniels the fee simple interest of the private easement area and that portion of B007 lying east of the easement.
- 5) Vacate the Private Access Easement by document.

Manager's Agreement:

 X Yes

 No


George Hays, Acting Borough Manager

8/25/2020
Date

Im 20-213



MATANUSKA-SUSITNA BOROUGH
• COMMUNITY DEVELOPMENT DEPARTMENT •
LAND MANAGEMENT DIVISION
350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488
PHONE 861-7869

August 18, 2020

LETTER OF INTENT

Patrick & Jennifer Daniels
Sent Via Email: patdinalaska@yahoo.com / jamcgrath@yahoo.com

Dear Pat and Jennifer,

The Borough Manager approved your application in 2019 for a private easement within Borough owned property identified as 16N04W02BN007 in order to safely access your property to the south. This approval was upheld on July 23, 2020 by George Hays, Acting Borough Manager. Upon further review and discussion by Borough staff the Borough would like to propose a secondary step to secure this access in perpetuity by providing fee simple ownership to you for the access and land to the east of the access.

The Borough proposes to re-plat our property identified as 16N04W02B007 which includes the current physical access overlain with the private easement. In doing this, B007 would be subdivided at the west extent of the easement boundary to create a new lot of record, being approximately 7 acres +/- (to include the private easement and all land east) which will be combined with your property identified as 16N04W02B008. The 7-acre area within B007 will be conveyed to you by Quitclaim Deed. There will be several platting forms requiring your signature, but the Borough will handle all platting submittals and requirements to effect subdivision and conveyance. It is anticipated the subdivision process will take several months to complete after preliminary plat submittal is accepted by the Platting Division.

Based upon Mr. Hays' directive and Land Managements' concurrence, the Private Access Easement will be recorded immediately and upon recordation of the new subdivision and conveyance of that portion of B007 to you, the Private Access Easement will be subsequently vacated. Recording the Private Access Easement ensures and protects your right to private access to your property as previously approved in 2019 and upheld in 2020 regardless of the subdivision/conveyance process and time of completion.

The Borough Assessor's range of value for the approximate 7 acres and your previous payment for the easement area and associated costs are found to be equitable; therefore, the Borough proposes no further payment will be required from you for conveyance of the easement and additional acreage, or for the subdivision process.

Please feel free to contact me directly at 861-7848 or by email at nancy.cameron@matsugov.us should you have any questions.

Respectfully,

Nancy Cameron
Land Management Agent

Im 20-213



MATANUSKA-SUSITNA BOROUGH
Office of the Acting Borough Manager
350 East Dahlia Avenue • Palmer, AK 99645
Phone (907) 861-8405 • Fax (907) 861-8669
George.Hays@matsugov.us

MEMORANDUM for Record

DATE: July 23, 2020

TO: Whom It May Concern

RE: Previous Manager's Decision Approving a Private Easement across Borough Land


SUMMARY: A Manager's Decision was signed on July 23, 2019, by Borough Manager John Moosey, conditionally approving a 30' wide private access easement across Borough land. Once the conditions were met, this approval provided Patrick and Jennifer Daniels an easement in order to construct a private driveway to their landlocked property. The private easement document was forwarded to the Borough Attorney in 2020 for review. The Deputy Attorney provided an opinion that asserts the following: giving the Daniels' a private easement would deny full public access across public lands, could provide some risk of liability for the Borough, and was not good public policy. The Borough Land Management Division researched this subject and noted that we have approved at least 17 private easements in the last 20 years, so there is significant precedent for this authorization in cases where the situation warrants it.

DISCUSSION: There is already a dedicated 100' Public Use Easement (PUE) within the west boundary of the affected Borough property that provides the "legal access" to the Daniels' property, however physical access via that PUE has significant topography challenges and an unacceptable line of sight for ingress and egress onto the main roadway of West Susitna Parkway. The private access easement, approved by the previous Borough Manager, would follow an existing trail to the Daniels' proposed home site. That trail, over which the private easement follows, is neither dedicated nor authorized by the Borough at this time. This private access easement would provide a safe method for ingress and egress from their property onto West Susitna Parkway and a legal means for the Daniels' to control access to their property over this trail. It would not prevent other citizens from accessing the remainder of this Borough property, as there are other similar trails onto this property near the proposed Daniels' easement.

SUPPORT FOR DECISION: I conducted a site visit on July 10, 2020, accompanied by Patrick and Jennifer Daniels. We walked the entire trail where the proposed private access easement would be. We also walked up the hill to the dedicated 100' Public Use Easement within the west boundary of the affected Borough property. We reviewed the access concerns related to the legal access provided and the justification for the private easement area. The following findings support the 2019 Manager's Decision:

- 1) Public access to the Borough land surrounding the Daniels' property is not prohibited or impeded by approval of this 30' private access easement because there are other trails accessible from West Susitna Parkway. There is also approximately 1,000' of frontage along the Parkway for access to the Borough property.
- 2) The existing Public Use Easement access on the West side of the property is not a safe point for ingress or egress from West Susitna Parkway. The point of ingress/egress on this easement is just under the crown of a steep hill on the West Susitna Parkway. Any kind of road entering West Susitna Parkway at that point would not be safe. On the other hand, the ingress/egress point for the proposed 30' private access, referenced in this document, is along a relative flat, straight stretch of road, which is across the road from S. Corkey Boulevard. At that point, the line of sight is clear and it provides a safe ingress/egress point.
- 3) The lengthy process for authorizing the private easement, including a professional survey, was followed by the Daniels' in accordance with MSB Title 23 code and adopted Land and Resource Management Division Policy and Procedures.
- 4) There were no objections from inter-department review or from public citizens for the private easement to be allowed.
- 5) The Daniels' have met all the conditions set forth in the 2019 Manager's Approval letter.

CONCLUSION: Given the evidence outlined above; the July 23, 2019, Borough Manager's Decision, to Support and Approve the Private Use Easement across Borough property, identified as 16N04W02B007 (MSB007482), appears to be reasonable and there is not enough justification to warrant overturning that Manager approved decision.


George W. Hays
Acting Borough Manager

MSB # 007482
SEC.02, T16N, R04W, S.M.**PRIVATE ACCESS EASEMENT**

KNOW ALL MEN BY THESE PRESENTS, that the GRANTOR being the MATANUSKA-SUSITNA BOROUGH, a municipal corporation organized and existing under the laws of the state of Alaska, whose address is 350 East Dahlia Avenue, Palmer, Alaska 99645, for good valuable consideration, the receipt of which is hereby acknowledged, does hereby grant without warranty unto the GRANTEEES, PATRICK AND JENNIFER DANIELS, whose address of record is P.O. Box 521655, Big Lake, Alaska 99652, an easement appurtenant, under the terms and conditions set forth herein, being more particularly described as follows:

A portion of land lying entirely within U.S. Gov't Lot 5, Section 2, Township 16 North, Range 4 West, Seward Meridian, Palmer Recording District, Third Judicial District, State of Alaska, and more particularly described as:

The north 592.00 feet, less the west 100.00 feet of said U.S. Gov't Lot 5.

Parcel as described encompasses 16.55 acres more or less inclusive of a section line easement on the north boundary.

(hereinafter known as "servient parcel")

for the purposes of constructing, inspecting, maintaining, repairing and replacing a private access driveway, that meets or exceeds requirements for the benefit of the Grantees' property more particularly described as follows:

All that portion of U.S. Gov't Lot 5, Section 2, Township 16 North, Range 4 West, Seward Meridian, Palmer Recording District, Third Judicial District, State of Alaska

Excepting Therefrom

The north 592.00 feet, less the west 100.00 feet of said Gov't Lot 5.

Parcel as described thus encompasses 21.34 acres more or less inclusive of a section line easement on the northerly most boundary.

(hereinafter known as "dominant parcel").

Im 20-213

This easement is granted to provide a private access driveway through the servient parcel as shown and described in Exhibit "A" attached hereto.

Section One. Terms of Easement Appurtenant.

- A. This easement appurtenant is an exclusive use easement for the purposes stated.
- B. In the event the easement is not maintained or is abandoned such that use of the easement area by vehicle is no longer possible, or if alternate equivalent access is established as a primary private access driveway serving the dominant parcel, the Grantor reserves the right to terminate the easement appurtenant by giving 90 days written notice to the Grantees.
- C. The rights granted herein shall be possessed and enjoyed by the Grantees as long as the private access is constructed, maintained, and in use.
- D. Controlled access of the easement by the Grantees, if any, shall be by a clearly visible fence or gate installed by Grantees. Controlled access by wire, cable, or chain is prohibited.

Section Two. Further Conveyance of Easement Required.

The easement appurtenant, unless terminated as set forth in Section One, shall be construed to run with the dominant parcel whether or not specifically conveyed. The Grantees are expressly prohibited from retaining the easement appurtenant as a separate right upon the Grantees' sale and conveyance of the dominant parcel.

Section Three. Rights Specifically Reserved to the Grantor.

The Grantor, as owner of the servient parcel, and including its employees, contractors, or representatives, shall have the permanent right of ingress and egress as necessary to ensure that the easement appurtenant is being used for the purposes expressed herein and for other reasonable and lawful land management activities or other lawful activities. Except for the uses exclusively granted by this easement appurtenant, the Grantor reserves the right to grant such other easements for public uses that may be necessary. In exercising its rights under this section, Grantor agrees not to interfere or impair the use and enjoyment of the easement appurtenant granted herein, or cause damage to any improvements that may be constructed thereon by Grantees.

Grantor reserves the right to grant additional easement(s) for public or private use that cross or run parallel to any portion of the easement appurtenant and shall provide 90 days written notice to Grantees if such additional easement(s) is planned.



Section Four. Compliance with Laws.

Grantees shall comply with all applicable laws, ordinances and regulations now or hereafter affecting or pertaining to the use of the easement appurtenant and servient parcel.

Section Five. Disclaimers and No Warranties.

A. Disclaimer of Representations. There are no warranties expressed or implied associated with this grant of easement. Except as expressly set forth in this document the Grantor has made no representations as to nature, extent, condition, or existence of conditions located on the servient parcel for any purpose, including the uses allowed under the easement. The Grantees acknowledge they have entered into this agreement without representation or warranty by the Grantor of any kind or nature relating to the servient parcel that is subject to this easement. Grantees accept the easement in an "AS IS" present condition based solely on its own inspection and acknowledges the location, construction, and maintenance of a private driveway, is undertaken at their own risk.

B. No Warranties of Title. There are no warranties of title associated with this easement grant. This easement grant is subject to all valid existing rights, if any.

Section Six. Modification of Easement.

Any modification of this easement or additional obligation assumed by any party in conjunction with the easement shall be binding only if evidenced in writing, approved in accordance with law and signed by each party or an authorized representative of each party.

Section Seven. Taxes and Other Obligations.

Grantees shall pay all taxes that may arise as a result of this easement and shall pay other obligations such as local improvement district payments arising because of the dominant parcel's use of the servient parcel.

Section Eight. Role of Attorneys and Tax Advisors.

All parties to this easement have been advised to or have obtained the separate or independent advice of legal counsel, accountants, and tax advisors with regard to the legal, financial, and tax ramifications of this easement.

Section Nine. Indemnification and Insurance.

Grantees jointly and severally, do agree and shall indemnify, defend and hold Grantor harmless from and against any and all claims arising from Grantees' use of the servient parcel or from the conduct of its business or from any activity, work or thing which may be permitted or suffered by Grantees in or about the servient parcel and shall further indemnify, defend and hold Grantor

Im 20-213



harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Grantees' part to be performed under the provisions of this agreement or arising from any negligence of Grantees and from any and all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Grantees and Grantor as used within this section include the employees, officers, agents, servants, invitees or independent contractors or other contractors who are directly responsible respectively to each.

Section Ten. Restoration, Closure, and Removal.

A. Restoration of Premises. After the installation of the private driveway, or subsequent maintenance or closure and removal thereof, the Grantees, their employees, representatives, or contractors shall remove all equipment and other property placed on the premises by and for the Grantees, fill and level all ditches, ruts, and depressions caused by construction or removal operations and remove and properly dispose of all debris resulting there from.

B. Removal of Improvements. In the event this easement is terminated and reverts to the Grantor, the Grantees jointly and severally, at their sole cost and expense shall properly close, remove and revegetate private driveway, and remove all improvements situated thereon, and restore the servient parcel to a condition equivalent to that which existed prior to the recording of this easement. If Grantees fail to properly close, remove, and revegetate the area used within the servient parcel, after due notice from the Grantor, Grantor may close, remove and revegetate the same and seek reimbursement for the cost of such closure, removal, and other incidental and consequential expenses from Grantees.

Section Eleven. Encumbrances and Mortgages.

Grantee shall not at any time, mortgage, encumber or grant any deed of trust, mortgage, or assignment of other security interest for security or other purposes (collectively encumbrance) covering this easement or any interest or improvement thereon, without the prior written consent from the Grantor, which consent shall not be unreasonably withheld. No encumbrance shall constitute a lien on the fee title estate of the Grantor and indebtedness secured thereby shall at all times be and remain inferior and subordinate to all the conditions, covenants, and obligations of this easement and to all the rights of the Grantor hereunder.

Section Twelve. Successors in Interest.

All of the rights, terms, covenants, conditions, and agreements herein contained shall in every case be binding upon the respective legal representative, successors, and assigns of the parties hereto and shall inure to their benefit.

IM 20-213



Section Thirteen. Assemblage and Vacation Prohibited.

Property lines between the Dominant Parcel and the Servient Parcel may not be vacated or the property combined without express written authorization by the Grantor.

Section Fourteen. Headings.

The headings contained in this agreement are merely for convenience and shall not be used in construing this agreement.

Section Fifteen. Construction.

This easement shall be deemed to have been jointly drafted by both parties. It shall be construed according to the fair intent of the language as a whole, not for or against any party. Any rule of legal construction, which provides that doubts or ambiguities in this easement are to be resolved or construed against the drafter of the agreement, shall be inapplicable. This easement shall in no way be construed as a joint venture or a private-public partnership between the Grantee(s) and the Grantor for any purposes.

Section Sixteen. Choice of Law.

This easement shall be governed by, construed and enforced in accordance with the laws of the state of Alaska, Third Judicial District.

Section Seventeen. Provisions.

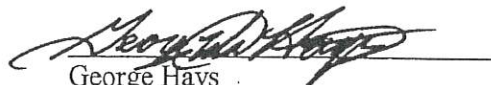
Any provision of the Easement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Easement.

So Granted and Executed by Grantor this 25th day of August, 2020

ATTEST

MATANUSKA-SUSITNA BOROUGH

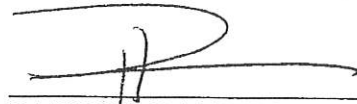



George Hays
Acting Borough Manager


Im 20-213



Agreement and acceptance acknowledged by Grantee this 8th day of September, 2020.



PATRICK DANIELS



JENNIFER DANIELS

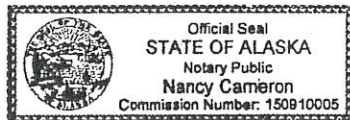
GRANTEE'S ACKNOWLEDGMENT

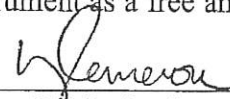
STATE OF ALASKA)
) ss.
Third Judicial District)

On the 8th day of September, 2020, Patrick Daniels, personally appeared before me,
____ who is personally known to me
☒ whose identity I proved on the basis of A.D.L.
____ whose identity I proved on the oath/affirmation of _____,
a credible witness

and acknowledged before me that he signed the foregoing instrument as a free and voluntary act
for the uses and purposes therein mentioned.

(SEAL)





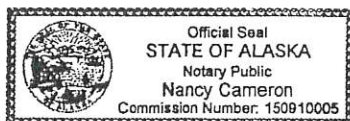
Notary Public for State of Alaska
My commission expires: 9-10-23

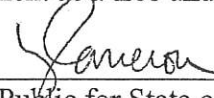
STATE OF ALASKA)
) ss.
Third Judicial District)

On the 8th day of September, 2020, Jennifer Daniels, personally appeared before me,
____ who is personally known to me
☒ whose identity I proved on the basis of A.D.L.
____ whose identity I proved on the oath/affirmation of _____,
a credible witness

and acknowledged before me that she signed the foregoing instrument as a free and voluntary act
for the uses and purposes therein mentioned.

(SEAL)





Notary Public for State of Alaska
My commission expires: 9-10-23

RETURN TO:
MSB/Land Mgmt
350 East Dahlia Avenue
Palmer, AK 99645



**Legal Description of
Road and Access Easement
Exhibit "A"**

The purpose of the legal description is to describe a private Access Easement within Parcel 1 Waiver Resolution Serial No. 2005-078 PWM, NW ¼, NE ¼, Section 2, Township 16 North, Range 4 West, Seward Meridian, Alaska, and more particularly as follows:

Part One (1):

Commencing at the witness corner (WC 341.22' West of the North ¼ section 2); Thence S 0° 11' 14" W for 33.00 feet to the TRUE POINT OF BEGINNING; Thence S 89° 48' 47" E along section line easement for 77.45 feet; Thence S 00° 11' 14" W for 5.00 feet to a point of curve; Said curve turning to the right through an angle of 90° 00' 00", having a radius of 30.00 feet, and whose long chord bears S 45° 11' 14" W for a distance of 42.43 feet to a point of intersection with a non-tangential line; Thence N 66° 51' 26" W for 51.28 feet; Thence N 89° 43' 48" W for 66.44 feet to a point of curve; Said curve turning to the left through an angle of 75° 55' 37", having a radius of 30.00 feet, and whose long chord bears S 50° 55' 25" W for a distance of 36.91 feet to a point of intersection with a non-tangential line; Thence N 87° 32' 10" W for 30.03 (common line with part 2) feet; Thence N 00° 16' 13" E for 37.25 feet to a point on section line easement; Thence S 89° 43' 47" E along section line easement for 202.19 feet to the true point of beginning.

AND;

Part Two (2):

Beginning at the midpoint of a line in part one; Said line bears N 87° 32' 10" W for 30.03; Thence S 0° 15' 01" E for 40.31 feet; Thence S 31° 15' 41" W for 41.58 feet; Thence S 30° 36' 11" W for 44.12 feet; Thence S 22° 00' 26" W for 49.37 feet; Thence S 2° 34' 57" W 33.96 feet; Thence S 9° 56' 28" E for 52.02 feet; Thence S 1° 17' 12" W for 45.20 feet;

Im 20-213



Thence S 12° 36' 52" W for 37.85 feet; Thence S 14° 06' 42" W for 43.87 feet; Thence S 19° 49' 44" W for 37.68 feet; Thence S 18° 09' 31" W for 39.87 feet; Thence S 14° 19' 34" W for 28.61 feet; Thence S 2° 33' 44" W for 50.91 feet to the south line of parcel 1, center line point of end 30 foot wide said easement. Set 12" spikes 9 feet west and 5 feet east of centerline end easement.

Containing 21,008 square feet more or less, as shown on attached map herewith and made a part thereof.



DATE 7-06-2020

Im 20-213





DATED: 07/06/2020

SURVEYOR'S CERTIFICATE:

I hereby certify that I am a Registered Professional Land Surveyor in the State of Alaska and that all dimensional and other details are true and correct to the best of my knowledge.

ACCESS EASEMENT

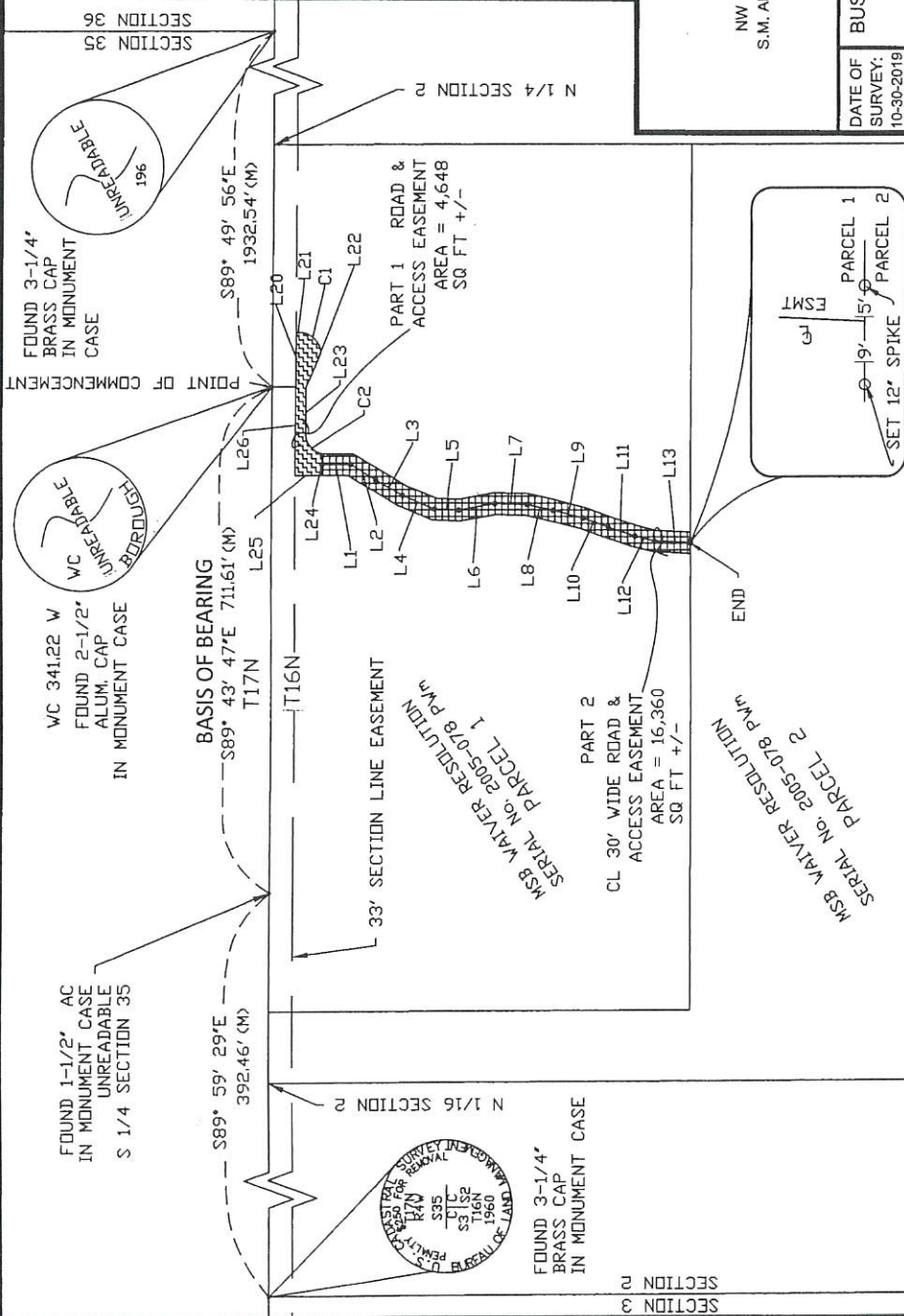
LOCATED IN
PARCEL 1
NW 1/4, NE 1/4, SECTION 2, T 16 N, R 4 W,
S.M. ALASKA, PALMER RECORDING DISTRICT

DATE OF
SURVEY:
10-30-2019

BUSH CONSTRUCTION SURVEYS

P.O. BOX 876390
WASILLA, ALASKA

PG. 3
OF
4



Im 20-23



DATED: 07/06/2020

SURVEYOR'S CERTIFICATE:

I hereby certify that I am a Registered Professional Land Surveyor in the State of Alaska and that all dimensional and other details are true and correct to the best of my knowledge.

ACCESS EASEMENT

LOCATED IN
PARCEL 1
NW 1/4, NE 1/4, SECTION 2, T 16 N, R 4 W,
S.M. ALASKA, PALMER RECORDING DISTRICT

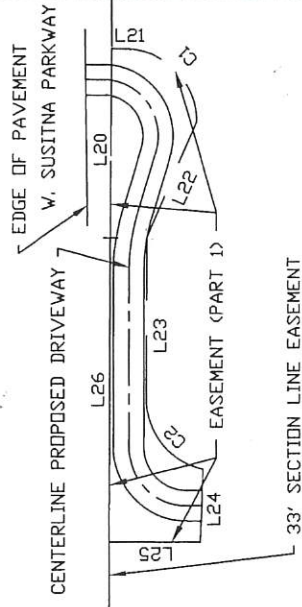
DATE OF
SURVEY:
10-30-2019

BUSH CONSTRUCTION SURVEYS

P.O. BOX 876390
WASILLA, ALASKA

PG. 4
OF
4

DRIVEWAY DETAIL



| Part 1 Line and Curve Table | | | |
|-----------------------------|--------|--------|---------------|
| Line# | Curve# | Length | Bearing/Delta |
| L20 | | 77.45 | S89° 48' 47"E |
| L21 | | 5.00 | S0° 11' 14"W |
| C1 | | 47.12 | S0° 00' 00" |
| L22 | | 51.28 | N65° 51' 26"W |
| L23 | | 66.44 | S89° 43' 48"E |
| C2 | | 39.76 | S75° 55' 37" |
| L24 | | 30.03 | N87° 32' 10"W |
| L25 | | 37.25 | N0° 16' 13"E |
| L26 | | 202.19 | S89° 43' 47"E |

| Part 2 Line Table | |
|-------------------|--------|
| Line # | Length |
| L1 | 40.31 |
| L2 | 41.58 |
| L3 | 44.12 |
| L4 | 49.37 |
| L5 | 33.96 |
| L6 | 52.02 |
| L7 | 45.20 |
| L8 | 37.85 |
| L9 | 43.87 |
| L10 | 37.68 |
| L11 | 39.87 |
| L12 | 28.61 |
| L13 | 50.91 |

LEGEND

(M) MEASURED THIS SURVEY.
(CL) CENTERLINE.

- NOTES
1. DISTANCES ARE US SURVEY FEET.
 2. A TITLE REPORT WAS NOT OBTAINED FOR THIS SURVEY.
 3. ONLY EASEMENTS SHOWN ON RECORD MAP ARE SHOWN HERE, OTHER ENCUMBRANCES MAY EXIST.
 4. THIS SURVEY DOES NOT CONSTITUTE A SUBDIVISION AS DEFINED BY A.S. 40.15.900 (5X4).



Dm 20-213