

Alaska Mental Health Trust Authority
Trust Land Office
Notice under 11 AAC 99.050 of
Decision to Issue Homer Electric Association Inc. Term Utility Easement – Nikiski
MHT 9200777A & 9200777B

Notice is hereby given that, pursuant to the provisions of AS 38.05.801 and 11 AAC 99, the Executive Director of the Alaska Mental Health Trust Land Office (TLO) has determined that it is in the best interest of the Alaska Mental Health Trust and its beneficiaries to issue a non-exclusive easement of certain Trust land to Homer Electric Association. The basis for this determination is explained in a written best interest decision prepared by the Executive Director pursuant to 11 AAC 99.040.

The Trust land affected by the decision is near Nikiski, Alaska, and is more particularly described as: Township 7 North, Range 11 West, Seward Meridian, Alaska. Section 30: Portion of NE1/4NW1/4, portion of Government Lot 1; Section 33: Portion of SW1/4NE1/4. Easement will occupy an area 100' wide and approximately 2,644' long, containing approximately 6.069 acres. (MH Parcel(s): SM-1162-04, SM-1146-01, SM-1164).

Persons who believe that the written decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020, or any other provision of 11 AAC 99, must provide written comments on or before **4:30 PM, June 14, 2021. Comments should be submitted to the TLO at 2600 Cordova Street, Suite 201, Anchorage, AK 99503, or by fax (907) 269-8905 or email mhtlo@alaska.gov.** Following the comment deadline, the Executive Director will consider timely comments that question the decision on the basis of the best interest of the Alaska Mental Health Trust and its beneficiaries or inconsistency with 11 AAC 99, and the best interest decision may be changed in response to such written comments or other information. Commenting parties will be provided a copy of the final best interest decision after the end of the notice period.

To be eligible to file for reconsideration of the best interest decision, or to file a subsequent appeal to the Superior Court, a person must have submitted written comments during the notice period. Eligible persons will have twenty (20) calendar days after published notice of or receipt of the final written decision to request that the Executive Director reconsider the decision under 11 AAC 99.060(b).

Copies of the written decision are available at the Trust Land Office, or at <https://alaskamentalhealthtrust.org/trust-land-office/>. If you have any questions concerning this action, please contact the Trust Land Office at (907) 269-8658.

In compliance with the Americans with Disabilities Act, the Alaska Mental Health Trust is prepared to accommodate individuals with disabilities. Please contact the Trust Land Office at (907) 269-8658 for assistance. Requests for assistance must be received at least 96 hours prior to the comment deadline in order to ensure that any necessary accommodations can be provided.

The Executive Director of the TLO reserves the right to waive technical defects in this notice or to amend, postpone, or vacate the best interest decision.

DocuSigned by:

Jusdi Doucet

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Jusdi Doucet

Acting Executive Director

5/7/2021

Date

Published Kenai Peninsula Clarion: 5/12/2021

The Alaska Mental Health Trust Authority
Trust Land Office
BEST INTEREST DECISION
Homer Electric Association, Inc. Term Utility Easement – Nikiski

MHT: 9200777A & 9200777B
MH Parcel(s): SM-1162-04, SM-1146-01, SM-1164

In accordance with AS 38.05.801 et seq. and the implementing regulations governing Alaska Mental Health Trust (“Trust”) land management (11 AAC 99), Trust land shall be managed consistently with the responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)). This means that management shall be conducted solely in the best interest of the Trust and its beneficiaries.

In determining the best interest of the Trust and its beneficiaries, and in determining consistency between state law and the Alaska Mental Health Enabling Act, the Executive Director of the Alaska Mental Health Trust Land Office (“TLO”) shall, at a minimum, consider the following interactive Trust management principles in accordance with 11 AAC 99.020:

- Maximization of long-term revenue from Trust land;
- Protection of the corpus;
- Protection and enhancement of the long-term productivity of Trust land;
- Encouragement of a diversity of revenue-producing uses of Trust land; and
- Management of Trust land prudently, efficiently, and with accountability to the Trust and its beneficiaries.

I. Proposed Use of Trust Land. Thirty-year (30) term utility easements authorizing existing 115kv transmission line under 9200777A and installation of new fiber optic line under 9200777B near Nikiski. (See Exhibit A – Record of Survey and Exhibit B – Map)

II. Applicant/File #. Homer Electric Association, Inc. / MHT 9200777A & 9200777B.

III. Subject Property.

A. Legal Description. Township 7 North, Range 11 West, Seward Meridian, Alaska. Section 30: Portion of NE1/4NW1/4, portion of Government Lot 1. Section 33: Portion of SW1/4NE1/4. MHT 9200777A Electric Utility Easement will occupy an area 100’ wide and approximately 2,644’ long, containing approximately 6.069 acres (See Exhibit C – Detailed Legal Description). MHT 9200777B Fiber Optic Utility Easement will occupy central 20’ wide within 9200777A.

B. Settlement Parcel Number(s). SM-1162-04, SM-1146-01, SM-1164.

C. Site Characteristics/Primary Resource Values. The parcels are heavily forested with rolling topography. The primary resource value presently is as vacant; in the future long term surface resource value may be rural residential / recreational.

D. Historical and Existing Uses of the Property. This parcel was conveyed to the Trust in 1996 with the existing electric transmission line in place.

- E. Adjacent Land Use Trends.** The surrounding area is mostly vacant, raw land with rural residential or recreational housing interspersed.
 - F. Previous State Plans/Classifications.** None.
 - G. Existing Plans Affecting the Subject Parcel.** These parcels are in the Rural Zoning District of the Kenai Peninsula Borough and land use is unrestricted.
 - H. Apparent Highest and Best Use.** Existing 115kv high voltage transmission line and installation of new fiber optic line.
- IV. Proposal Background.** The applicant, Homer Electric Association, applied to acquire a utility easement to authorize an existing high voltage transmission line and install new fiber optic cable on the existing pole infrastructure.
- V. Terms and Conditions.** A modified easement agreement will be used for the disposal.
 - A. Term.** An initial term of 30 years with the option to extend.
 - B. Considerations.** The Grantee shall pay an annual fee to the Grantor for 9200777A in the amount of \$3,966/year for 30 years, as well as \$11,898 in back fees for historical use that was unauthorized for proposed activities under 9200777A. The Grantee shall pay an annual fee to the Grantor for 9200777B in the amount of \$1,322/year for 30 years. The total annual fee for both 9200777A & 9200777B is \$5,288/year for 30 years.
 - C. Co-location.** The Grantee may not co-locate third party equipment without TLO approval.
- VI. Resource Management Considerations.** The proposed action is consistent with the key provisions of the Resource Management Strategy guidelines. Protection of the corpus and long-term productivity will be enhanced by terms and conditions in the Easement. Secondary and cumulative impacts are reduced by the terms and conditions. The Easement will not negatively affect the Trust's opportunity to maximize revenues from this site or adjacent Trust lands over time.
- VII. Alternatives.**
 - A. Do Nothing.** Doing nothing would result in a loss of income-generating revenue within an existing, previously constructed, electrical transmission line that is currently being used by Homer Electric Association.
 - B. Alternate Development.** This parcel may be developed for competitive sale in the future, but presently the associated costs, poor access, and development requirements by the local platting authority make any development cost prohibitive. The proposed use would still allow for alternate development in the future. No interest has been expressed for material or mineral development.
- VIII. Risk Management Considerations.**
 - A. Performance Risks.** No additional land disturbance, aside from normal maintenance, is anticipated. The standard easement indemnification language should mitigate unknown liabilities.
 - B. Environmental Risks.** Homer Electric Association shall be responsible for environmental risks associated with use of this utility easement and maintain a

valid commercial general liability insurance policy with the Trust Land Office named as an additional certificate holder. There are no known existing environmental risks.

- C. Public Concerns.** Subject to comments resulting from the public notice, there are no known concerns that suggest the proposed transaction is inconsistent with Trust principles.

IX. Due Diligence.

- A. Site Inspection.** TLO Staff inspected the parcels in June of 2019.
- B. Valuation.** The Trust will receive \$5,288/year as an annual fee for the 30-year term. Fee based on TLO fee structure. Additionally, the Trust will receive a one-time payment of \$11,898 for back fees due to unauthorized historical use.
- C. Terms and Conditions Review.** The proposed Easement will be a standard TLO easement document which is periodically reviewed by the Department of Law or TLO General Counsel to mitigate exposure to risk.

X. Authorities.

- A. Applicable Authority.** AS 37.14.009(a), AS 38.05.801, and 11 AAC 99 (key statutes and regulations applicable to Trust land management and disposal).
- B. Inconsistency Determination.** As the proposed easement is specifically authorized under 11 AAC 99, any relevant provision of law applicable to other state lands is inapplicable to this action if it is inconsistent with Trust responsibilities accepted by the State under the Alaska Mental Health Enabling Act (P.L. 84-830, 70 Stat. 709 (1956)) as clarified by AS 38.05.801 and Alaska Mental Health Trust land regulations (11 AAC 99). 11 AAC 99 includes determinations that certain State statutes applicable to other State land do not apply to Trust land unless determined by the Executive Director, on a case-by-case basis, to be consistent with 11 AAC 99.020. The State Statutes deemed inconsistent with Trust management principles and inapplicable to Trust land by these regulations have not been applied to this decision or this action, including, but not limited to, AS 38.04 (Policy for Use and Classification of State Land Surface), AS 38.05.035 (Powers and Duties of the Director), AS 38.05.300 (Classification of Land), AS 38.05.945 (Notice), AS 38.05.946 (Hearings), and 11 AAC 02 (Appeals). AS 38.05.850 (b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state.

- XI. Trust Authority Consultation.** TLO consultation is defined in statute and regulation under AS 37.14.009(a)(2)(C) and 11 AAC 99.050 and clarified under 11 AAC 99.030(d) which requires the executive director to consult before issuing a public notice of a written decision of best interest.

- XII. Best Interest Decision.** Given the information above and the information contained in the complete record, the Executive Director finds that the proposed transaction is in the best interest of the Trust, subject to the terms and conditions addressed in this decision. The decision is based upon the consideration of the five Trust management principles set out in 11 AAC 99.020 and is in full compliance with 11 AAC 99. This decision does not preclude the TLO from determining that an alternative proposal will serve the best interest of the Trust. A future determination of that nature will require a best interest decision specific to the proposal.
- XIII. Opportunity for Comment.** Notice of this Best Interest Decision will take place as provided under 11 AAC 99.050. Persons who believe that the decision should be altered because it is not in the best interest of the Trust or its beneficiaries, or because the decision is inconsistent with Trust management principles set out in 11 AAC 99.020 or any other provision of 11 AAC 99, must provide written comments to the TLO during the notice period. Following the comment deadline, the Executive Director will consider timely written comments that question the decision on the basis of the best interest of the Trust and its beneficiaries or inconsistency with 11 AAC 99. The Executive Director may then, in his or her discretion, modify the decision in whole or in part in response to such comments or other pertinent information, or affirm the Best Interest Decision without changes. The Best Interest Decision as modified or affirmed will become the final agency action, subject to reconsideration procedures under 11 AAC 99.060. Additional notice will be provided for a substantially modified decision. If no comments are received by the end of the notice period, this Best Interest Decision will be affirmed, and the proposed action taken. (See notice for specific dates.)
- XIV. Reconsideration.** To be eligible to file for reconsideration of this Best Interest Decision, or to file a subsequent appeal to the Superior Court, a person must submit written comments during the notice period.

Persons who submit timely written comments will be provided with a copy of the final written decision and will be eligible to request reconsideration within 20 calendar days after publication of the notice or receipt of the decision, whichever is earlier under 11 AAC 99.060(b). This request must be accompanied by the fee established by the Executive Director under 11 AAC 99.130, which has been set at \$500, to be eligible for reconsideration. The Executive Director shall order or deny reconsideration within 20 calendar days after receiving the request for reconsideration. If the Executive Director takes no action during the 20-day period following the request for reconsideration, the request is considered denied. Denial of a request for reconsideration is the final administrative decision for purposes of appeal to the superior court under AS 44.62.560.

- XV. Available Documents.** Background documents and information cited herein is on file and available for review at the TLO, located at 2600 Cordova Street, Suite 201, Anchorage, Alaska 99503. Phone: (907) 269-8658. Email: mhtlo@alaska.gov.

The disposal action proposed by this decision will occur no less than 30 days after the first publication date of this decision, and after the conclusion of the TLO administrative

process. For specific dates or further information about the disposal, interested parties should contact the TLO at the above address, or visit the website at: <https://alaskamentalhealthtrust.org/trust-land-office/>.

XVI. APPROVED:

DocuSigned by:
Jusdi Doucet
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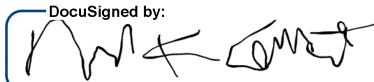
Jusdi Doucet
Acting Executive Director
Alaska Mental Health Trust Land Office

5/4/2021

Date

XVII. CONSULTATION CONCURRENCE:

In accordance with 11 AAC 99.030(d) and the policies of the Alaska Mental Health Trust Authority, the Trust Land Office has consulted with me, and received concurrence to proceed with the above transaction.

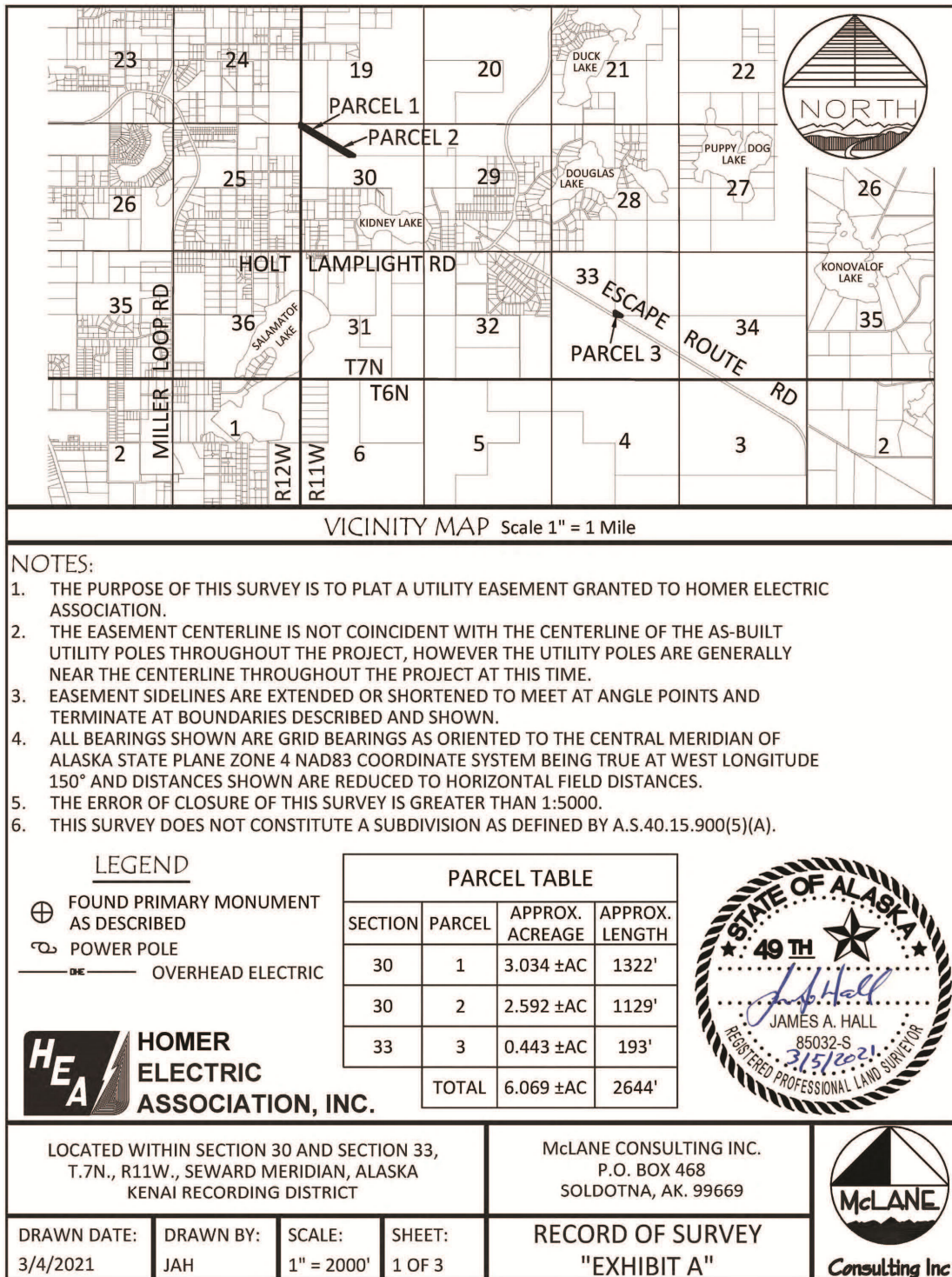
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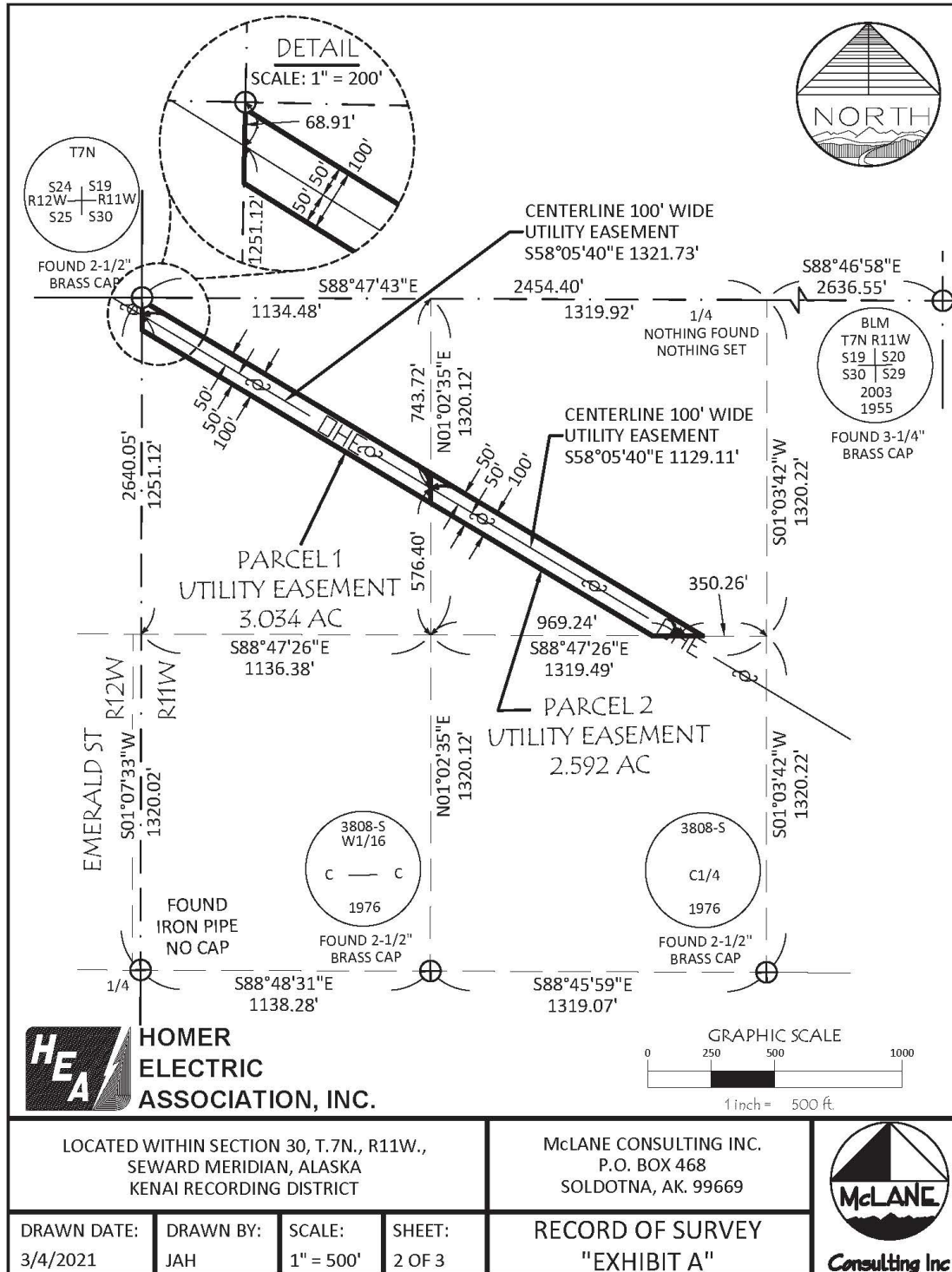
Michael K. Abbott
Chief Executive Officer (CEO)
Alaska Mental Health Trust Authority

5/4/2021

Date

Exhibit A – Record of Survey





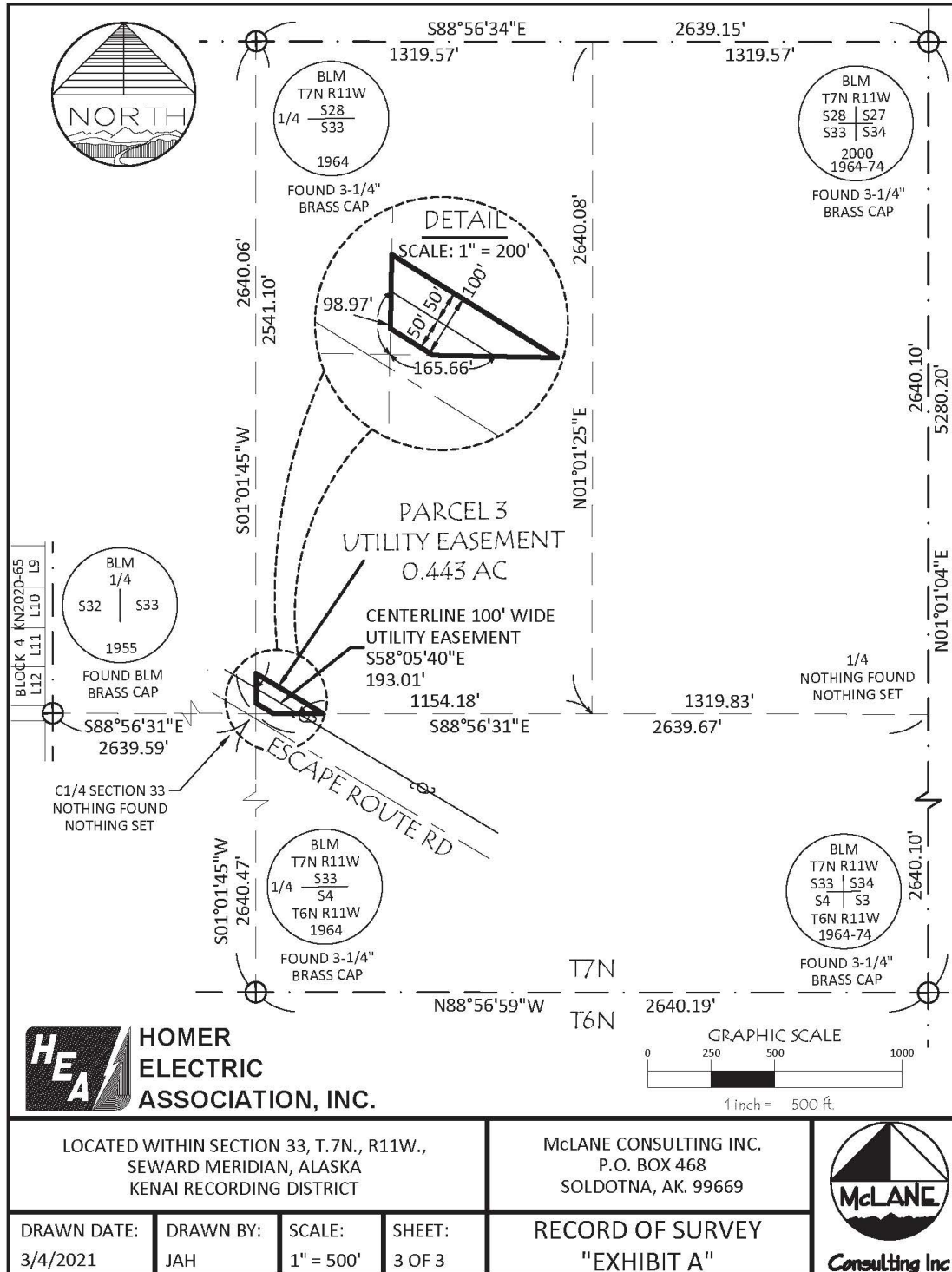
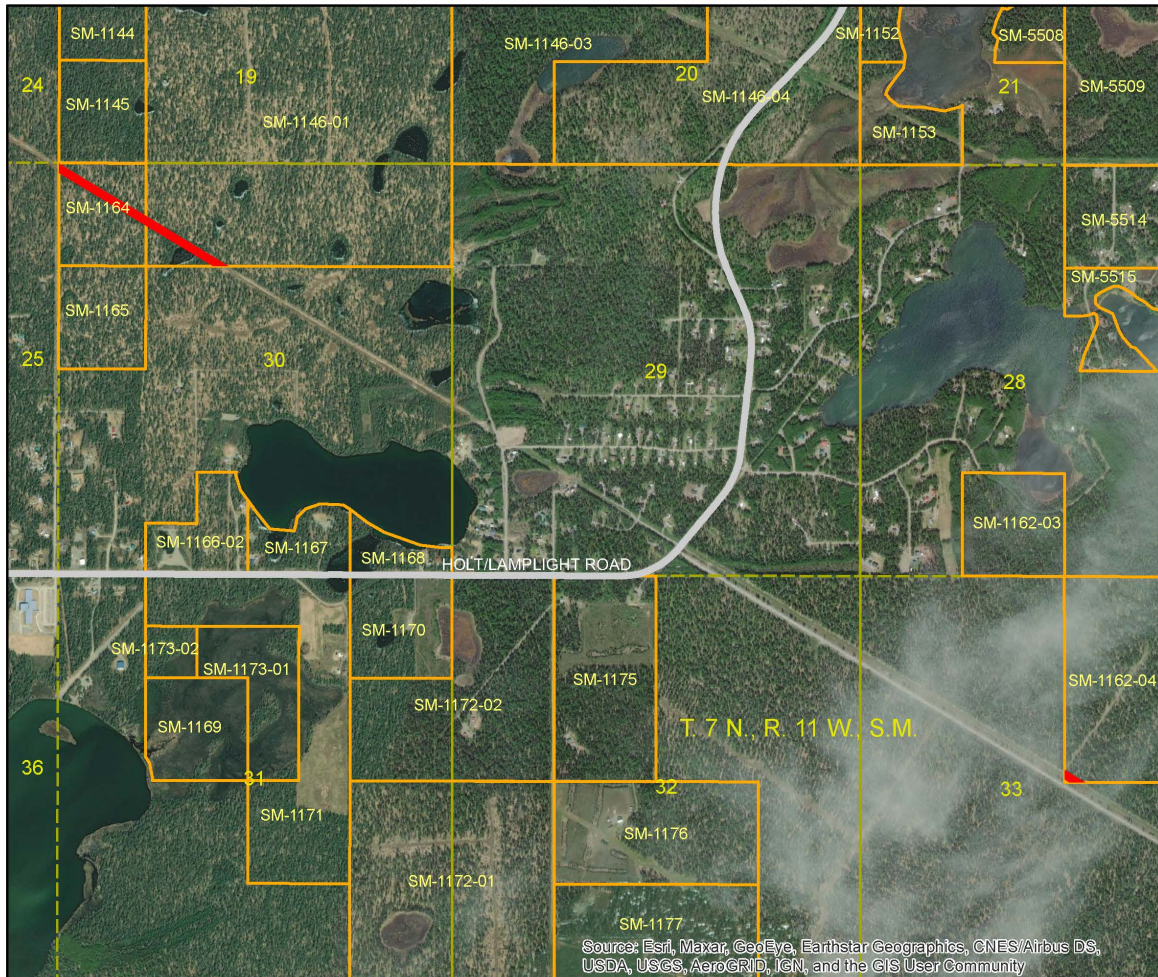


Exhibit B – Map



MHT 9200777A & 9200777B

- Roads
- MHT 9200777A & 9200777B
- Mental Health Parcels

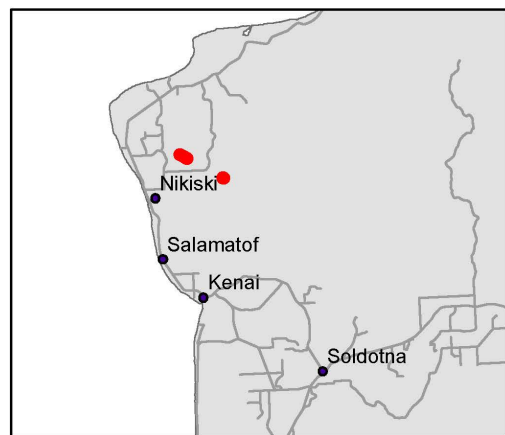
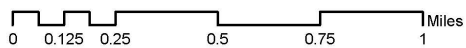


Exhibit C – Detailed Legal Description

PARCEL SM-1164 (PORTION OF)

LEGAL DESCRIPTION:

SITUATED WITHIN GOV'T LOT 1, SECTION 30, TOWNSHIP 7 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, ALASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 30; THENCE SOUTH 01°07'33" WEST, ALONG THE WESTERLY SECTION LINE, A DISTANCE OF 68.91 FEET TO THE **POINT OF BEGINNING** OF THE CENTERLINE FOR A 100-FOOT-WIDE UTILITY EASEMENT;

THENCE DEPARTING SAID SECTION LINE SOUTH 58°05'40" EAST GENERALLY FOLLOWING AS-BUILT UTILITY POLES, A DISTANCE OF 1321.73 FEET TO THE EASTERLY SUBDIVISION LINE OF SAID GOV'T LOT 1 AND THE **POINT OF ENDING**.

THE EASEMENT CENTERLINE IS NOT COINCIDENT WITH THE CENTERLINE OF THE ASBUILT UTILITY POLES THROUGHOUT THE PROJECT; HOWEVER, THE UTILITY POLES ARE GENERALLY NEAR THE CENTERLINE THROUGHOUT THE PROJECT AT THIS TIME. EASEMENT SIDELINES ARE EXTENDED OR SHORTENED TO MEET AT ANGLE POINTS AND TERMINATE AT BOUNDARIES DESCRIBED AND SHOWN ON EXHIBIT "A".

EASEMENT CONTAINS APPROXIMATELY 3.034 ACRES, MORE OR LESS.

PARCEL SM-1146-01 (PORTION OF)

LEGAL DESCRIPTION:

SITUATED WITHIN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4), SECTION 30, TOWNSHIP 7 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, ALASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 30; THENCE SOUTH 88°47'43" EAST, ALONG THE NORTHERLY SECTION LINE, A DISTANCE OF 1134.48 FEET; THENCE DEPARTING SAID SECTION LINE SOUTH 01°02'35" WEST ALONG THE EASTERLY SUBDIVISION LINE OF GOV'T LOT 1 WITHIN SAID SECTION 30, A DISTANCE OF 743.72 FEET TO THE **POINT OF BEGINNING** OF THE CENTERLINE FOR A 100-FOOT-WIDE UTILITY EASEMENT;

THENCE DEPARTING SAID EASTERLY SUBDIVISION LINE SOUTH 58°05'40" EAST GENERALLY FOLLOWING AS-BUILT UTILITY POLES, A DISTANCE OF 1129.11 FEET TO THE **POINT OF ENDING** ON THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4 NW1/4).

THE EASEMENT CENTERLINE IS NOT COINCIDENT WITH THE CENTERLINE OF THE ASBUILT UTILITY POLES THROUGHOUT THE PROJECT; HOWEVER, THE UTILITY POLES ARE GENERALLY NEAR THE CENTERLINE THROUGHOUT THE PROJECT AT THIS TIME. EASEMENT SIDELINES ARE EXTENDED OR SHORTENED TO MEET AT ANGLE POINTS AND TERMINATE AT BOUNDARIES DESCRIBED AND SHOWN ON EXHIBIT "A".

EASEMENT CONTAINS APPROXIMATELY 2.592 ACRES, MORE OR LESS.

PARCEL SM-1162-04 (PORTION OF)

LEGAL DESCRIPTION:

SITUATED WITHIN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (SW1/4 NE1/4), SECTION 33, TOWNSHIP 7 NORTH, RANGE 11 WEST, SEWARD MERIDIAN, ALASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER (NE1/4); THENCE SOUTH 01°01'45" WEST ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER (NE1/4), A DISTANCE OF 2541.10 FEET TO THE **POINT OF BEGINNING** OF THE CENTERLINE FOR A 100-FOOT-WIDE UTILITY EASEMENT;

THENCE DEPARTING SAID WESTERLY LINE SOUTH 58°05'40" EAST GENERALLY FOLLOWING AS-BUILT UTILITY POLES, A DISTANCE OF 193.01 FEET TO THE **POINT OF ENDING** ON THE SOUTHERLY LINE OF SAID NORTHEAST QUARTER (NE1/4).

THE EASEMENT CENTERLINE IS NOT COINCIDENT WITH THE CENTERLINE OF THE ASBUILT UTILITY POLES THROUGHOUT THE PROJECT; HOWEVER, THE UTILITY POLES ARE GENERALLY NEAR THE CENTERLINE THROUGHOUT THE PROJECT AT THIS TIME. EASEMENT SIDELINES ARE EXTENDED OR SHORTENED TO MEET AT ANGLE POINTS AND TERMINATE AT BOUNDARIES DESCRIBED AND SHOWN ON EXHIBIT "A".

EASEMENT CONTAINS APPROXIMATELY 0.443 ACRES, MORE OR LESS.