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Attorneys for Plaintiff Matanuska-Susitna Borough

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

MATANUSKA-SUSITNA BOROUGH, )

Plaintiff, )

vs. )

STATE OF ALASKA, DEPARTMENT OF )  
 NATURAL RESOURCES; 3.5 Acres, more or )  
 less, as to Parcel 22; 13.6 Acres, more or less, )  
 as to Parcel 27; 36.7 Acres, more or less, as to )  
 Parcel 29; 17.8 Acres, more or less, as to )  
 Parcel 30; 156.1 Acres, more or less, as to )  
 Parcel 31; 156.1 Acres, more or less, as to )  
 Parcel 32; 20.3 Acres, more or less, as to )  
 Parcel 33; 12.1 Acres, more or less, as to )  
 Parcel 34; 12.1 Acres, more or less, as to )  
 Parcel 35; 29.7 Acres, more or less, as to )  
 Parcel 36; and also all other persons or parties )  
 unknown claiming a right, title, estate, lien, or )  
 interest in the real estate described in the )  
 complaint in this action, )

Defendants. )

**AMENDED COMPLAINT FOR  
 CONDEMNATION OR, IN THE  
 ALTERNATIVE, FOR  
 DECLARATORY RELIEF**

Case No. 3PA-15-1623 CI

Port MacKenzie Rail Extension Project  
 Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36  
 Agricultural Covenants

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## I. INTRODUCTION

The Matanuska-Susitna Borough (hereafter “the Borough”), by and through its undersigned counsel, brings this Amended Complaint for taking an interest in real property under the power of eminent domain and for awarding just compensation. The Borough seeks to remove covenants created pursuant to AS 38.05.321(a) (1) that purport to limit use of land subject to the covenants to agricultural purposes. Alternatively, the Borough seeks a declaratory judgment that these restrictive covenants do not preclude the Borough’s use of the real property in question for the Port MacKenzie Rail Extension (“PMRE”) Project.

The PMRE will establish a railway link connecting Port MacKenzie to the main Alaska Railroad line at Houston. The Project is a joint undertaking by the Borough with the Alaska Railroad Corporation (“ARRC”), with the Borough acquiring the necessary right of way. ARRC is constructing the project and, when complete, will operate the new rail line. The ten parcels as to which covenants need to be removed, or declared inapplicable, are within Segment 2 of the PMRE route approved by the Surface Transportation Board (“STB”), in a decision effective December 21, 2011. Segment 2 traverses the Point MacKenzie Agricultural District (“PMAD”).

## II. AUTHORITY, JURISDICTION AND VENUE

1. AS 29.35.030(a) authorizes the Borough to exercise the power of eminent domain under the procedures set forth in AS 09.55.250 – 09.55.460.
2. Jurisdiction is appropriate pursuant to AS 09.55.290, providing that eminent domain proceedings may be commenced in the Superior Court.
3. Venue is proper in the Third Judicial District, where the properties subject to this Amended Complaint are located.

### III. PROPERTY

4. The properties subject to this Amended Complaint are designated as Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36. These Parcels are further described and depicted in Schedules A and B, respectively, attached hereto and by this reference incorporated herein.

5. The Borough has already acquired the easements it needs from the fee simple owners of Parcel Nos. 22, 27, 29, 30, 33, 34 and 36, and has acquired fee simple title to Parcel Nos. 31, 32 and 35. These acquisitions were the result of voluntary, negotiated transactions with the property owners. The property rights acquired in these ten farm properties involved are further identified below:

<u>Parcel #</u>	<u>Owners</u>	<u>Legal Description</u>	<u>Rights Acquired</u>
Parcel 22:	Valley Utilities, LLC	Williams Farm Tract A	Easement
Parcel 27:	Richard W. Gattis	ASLS 80-111 Tract 3	Easement
Parcel 29:	Richard W. Gattis	ASLS 80-111 Tract 5	Easement
Parcel 30:	Flyway Farm, LLC	ASLS 80-111 Tract 7	Easement
Parcel 31:	Borough	ASLS 80-111 Tract 10	Fee
Parcel 32:	Borough	ASLS 80-111 Tract 13	Fee
Parcel 33:	Mark and Karlene Brouillet	ASLS 2002-024 Tract 19A	Easement
Parcel 34:	Stephen M. Sims	ASLS 80-111 Tract 22B	Easement
Parcel 35:	Borough	ASLS 90-111 Tract 22A	Fee
Parcel 36:	Groeschel Family LLC	ASLS 80-111 Tract 36	Easement

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No additional property rights are sought or needed from the present or former owners of these ten parcels. The sole purpose of this action is to remove the use restrictions created by the agricultural covenants.

#### IV. PARTIES

6. Plaintiff. The Plaintiff is the Matanuska-Susitna Borough. Authority for the Borough to bring this Complaint is described above at Paragraph 1.

7. Defendant State of Alaska, Department of Natural Resources. Defendant State of Alaska, Department of Natural Resources ("State"), as the entity with broadest authority to represent the public interest and enforce the agricultural covenants, is named as the appropriate entity to receive just compensation for the Borough's acquisition, since the acquisition involves the taking of a property right belonging to the public, i.e., the covenants are "for the benefit of all Alaska residents." AS 38.05.321(a)(1). The Alaska Department of Natural Resources ("DNR") is the State agency that classified these lands as agricultural and included the covenants in the patents to private landowners, as required by statute.

8. Additional Defendants. By filing this Complaint, the relief herein requested, if granted, shall be applicable to all other persons or parties unknown to the Borough who may claim any right, title, estate, lien, or other interest in the agricultural covenants encumbering the ten parcels

#### V. FIRST CAUSE OF ACTION: EMINENT DOMAIN AND JUST COMPENSATION

9. The Borough incorporates by reference the allegations set forth in Paragraphs 1- 8 above.

10. The agricultural covenants burdening the ten parcels in question constitute an interest in real property. Under AS 09.55.260, "all real property belonging to any person" is subject to be taken. Removing the covenants, or releasing the parcels from the restrictive use limitations the covenants impose, is necessary for the PMRE Project to proceed. The Borough may exercise the power of eminent domain for this purpose.

11. The need for the PMRE Project is summarized in the Decisional Document attached hereto as Schedule D (and incorporated herein by reference). The PMRE will establish a railway link between Port MacKenzie and the ARRC mainline, providing Port customer/shippers efficient railway transportation between the Port and Interior Alaska. The Decisional Document also demonstrates that the project has been located consistent with sound engineering principles and in a manner that promotes the greatest public good while causing the least private injury, through a systematic process that considered the needs of the public, property owners, and the State.

12. The route for the Project is further described in Schedules C, Sheets 1 and 2 (Project Maps), which are attached hereto and incorporated herein by reference.

13. The interest to be acquired in Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36 is a perpetual, full and unrestricted easement and right-of-way removing the use restrictions the covenants impose in the ten parcels more fully described in Schedule A, attached.

14. The Borough previously deposited \$10,000 into the registry of the court for the benefit of the persons entitled thereto when it filed its original complaint in this matter on May 22, 2015, which at the time represented the Borough's estimate of just compensation for removal of the covenants from Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34,

35 and 36. The Borough has since revised its just compensation estimate, based on information brought to its attention by DNR, and is depositing concurrently an additional \$310,600, for a total of \$320,600, or \$700 per acre, to remove the agricultural covenants from Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36.

#### **VI. SECOND CAUSE OF ACTION: DECLARATORY RELIEF**

15. The Borough incorporates by reference the allegations in Paragraphs 2-8 and 11-12 above.

16. In the alternative, the Borough requests a declaratory judgment that the agricultural use restrictions imposed by the covenants created pursuant to AS 38.05.321(a)(1) do not apply to a public entity that acquires property or easements therein for a necessary public project and, more particularly, that these use restrictions do not apply to the property interests the Borough has acquired in Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36 for the PMRE Project.

#### **VII. PRAYER FOR RELIEF**

WHEREFORE, the Borough prays that:

1. The Court confirms the authority and right of the Borough to take a perpetual, full and unrestricted easement and right-of-way that removes or limits the effect of the agricultural covenants in Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36 and confirms the Borough's right to take possession and make use these parcels for the PMRE Project;

2. The Court determines the award of just compensation, if any, that the Borough must pay for such an easement and awards same to the State or other person or persons entitled thereto;

3. The Court alternatively enters a declaratory judgment that the agricultural use restrictions otherwise imposed by the covenants created pursuant to AS 38.05.321(a)(1) do not apply to the Borough with respect to the interests it has already acquired in Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36 such that those parcels may be used for the PMRE Project; and

4. The Court grants the Borough such other and further relief as is just or equitable in the circumstances.

Dated this 15<sup>th</sup> day of September, 2015.

**BOYD, CHANDLER &  
FALCONER, LLP**

By: 

Bruce E. Falconer  
AK Bar No. 8707062

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of September, 2015, a true and correct copy of the foregoing was mailed via U.S. Mail to:

Robert E. McFarlane  
Assistant Attorney General  
Department of Law  
State of Alaska  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501

By:   
Legal Assistant/Secretary  
Boyd, Chandler & Falconer, LLP

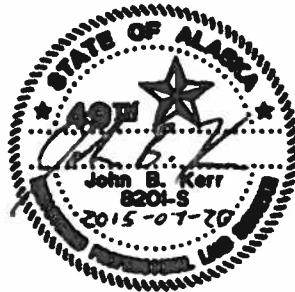
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## Land Description

The metes and bounds description herein was prepared by SurvBase, LLC on July 20, 2015, at the request of the Matanuska-Susitna Borough for the purpose of describing lands within the Port MacKenzie Agricultural District required for the Port MacKenzie Rail Extension. The authorized user of this description is the Matanuska-Susitna Borough. Unauthorized use of this description is prohibited.

SurvBase, LLC will not be responsible for errors made by others in interpreting this description. Schedule B (the parcel plat drawing) is the best representation of the intent of the parties and holds in the event of a discrepancy with the metes and bounds description.

The author of this description is John B. Kerr, PLS, Alaska No. 8201-S.



**BEARINGS:** Are based on high precision Global Navigation Satellite System (GNSS) technology in the NGS REF FRAME: NAD\_83(CORS96) (EPOCH:2003.0000) datum, using Leica GX1230 & ATX1230 receivers, differentially corrected and processed using Leica Geomatics Office software, Versions 6.0 to 8.2. Local plane bearings are orientated to true geodetic North (GRS80) at Longitude 150°00'00" West as determined by GNSS observations adjusted to NGS CORS station TSEA. Distances shown are reduced to horizontal field (ground) distances.

**COORDINATES:** This project is located entirely within the PMRailGRS80 coordinate system, a U.S. Survey Foot local surface (ground) grid coordinate system developed specifically for the Port MacKenzie Rail Extension Project. Found coordinates are based on GNSS observations constrained to the National Spatial Reference System using the CORS reference station TSEA (PID AI0952) in the NGS REF FRAME: NAD\_83(CORS96)(EPOCH:2003.0000) at Lat. 61°11'14.37488" N, Long. 149°53'41.81988" W (equals PMRailGRS80 coordinates of 568498.954 N, 118538.381 E).



**A portion of Tracts 3, 5, 7, 10, 13, 22A, 22B, 26 ASLS 80-111 (82-80); Tract 19A ASLS 2002-24 (2002-121); Tract A Williams Farm Subdivision (2010-32) all lying within Sections 6, 7, and 8 Township 14N Range 4W; Sections 7, 18, 19, 20, 30, 31, and 32 Township 15N Range 4W Palmer Recording District, Third Judicial District, Seward Meridian, Alaska.**

The following-described tract of land is comprised of ten parcels. These parcels are arbitrarily numbered to assist in clarifying this description. The three parcels south of Reddane Avenue (Parcels 27, 29, and 30) are contiguous; the two parcels between Reddane Avenue and Holstein Avenue (Parcels 31 and 32) are contiguous; the four parcels north of Holstein Avenue (Parcels 33, 34, 35, and 36) are contiguous. Parcel 22 is a standalone parcel. Said lands are more specifically described as:

**Commencing at the corner of Sections 6 and 7 T15N R4W AND Sections 1 and 12 T15N R5W marked with a 1979 3-1/4 inch diameter Alaska Division of Lands (ADL) aluminum cap monument;**

**thence S 00°03'46.5" W on a local plane bearing a distance of 31685.80 feet to the corner of Sections 6 and 7 T14N R4W AND Sections 1 and 12 T14N R5W marked with a 1960 3-1/4 inch diameter Bureau of Land Management (BLM) brass cap monument;**

**thence S 89°16'03" E a distance of 2420.12 feet to the quarter corner of Sections 6 and 7 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being a point on the boundary between Tract 3 and Tract 5 Alaska State Land Survey (ASLS) 80-111 (Plat 82-80 Palmer Recording District);**

**thence S 89°15'57" E along the boundary between Tract 3 and Tract 5 ASLS 80-111 a distance of 2640.03 feet to the section corner of Sections 5, 6, 7, 8 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being a point common to the northeast corner of Parcel 27 and the southeast corner of Parcel 29 described below and being the TRUE POINT OF BEGINNING;**

**Portion within Parcel 27**

**thence S 19°21'12" E a distance of 1399.36 feet to a point on the boundary of Tract 3 ASLS 80-111 and Tract C-1A ASLS 87-353 from which the NW 1/16 corner of Section 8 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears S 89°54'26" E a distance of 858.00 feet;**



thence N 89°54'26" W along the boundary between Tract 3 ASLS 80-111 and Tract C-1A ASLS 87-353 a distance of 461.75 feet to the N 1/16 corner of Sections 7 and 8 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument;

thence N 22°33'31" W a distance of 783.32 feet to an angle point on the westerly Parcel 27 boundary;

thence N 00°08'35" W a distance of 600.00 feet to a point on the boundary between Tract 3 and Tract 5 ASLS 80-111, said point being the northwest corner of Parcel 27 and the southwest corner of Parcel 29 described below;

thence S 89°15'57" E along said boundary between Tract 3 and Tract 5 ASLS 80-111 a distance of 300.04 feet to the TRUE POINT OF BEGINNING;

Said Parcel 27 containing 13.6 Acres more or less;

**Portion within Parcel 29**

thence N 89°15'57" W along the boundary between Tract 3 and Tract 5 ASLS 80-111 a distance of 300.04 feet to a point on said tract boundary from which the quarter corner of Sections 6 and 7 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears N 89°15'57" W a distance of 2339.99 feet, said point being the southwest corner of Parcel 29 and the northwest corner of Parcel 27 described above;

thence N 00°08'35" W a distance of 2659.82 feet to an angle point on the westerly boundary of Parcel 29;

thence N 00°07'54" W a distance of 2665.52 feet to a point on the boundary between Tract 5 and Tract 7 ASLS 80-111, said point being the northwest corner of Parcel 29 and the southwest corner of Parcel of 30 described below;

thence S 89°46'21" E along the boundary between Tract 5 and Tract 7 ASLS 80-111 a distance of 300.01 feet to the section corner of Sections 5 and 6 T14N R4W AND Sections 31 and 32 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being the corner of Tract 5 and Tract 6 on the southerly boundary of Tract 7 ASLS 80-111 said point being the northeast corner of Parcel 29 and the southeast corner of Parcel 30 described below and labeled as "Point A" herein and in Schedule B for description purposes;



thence S 00°07'54" E along the boundary between Tract 5 and Tract 6 ASLS 80-111 a distance of 2663.61 feet to the quarter corner of Sections 5 and 6 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being an angle point on said tract boundary;

thence S 00°08'35" E along the boundary between Tract 5 and Tract 6 ASLS 80-111 a distance of 2664.38 feet to the section corner of Sections 5, 6, 7, 8 T14N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being the southeast corner of said tract and the **TRUE POINT OF BEGINNING**;

Said Parcel 29 containing 36.7 Acres more or less;

**Portion within Parcel 30**

Beginning at "Point A" described above being the southeast corner of Parcel 30;

thence N 89°46'21" W along the boundary between Tract 5 and Tract 7 ASLS 80-111 a distance of 300.01 feet to the southwest corner of Parcel 30 and the northwest corner of Parcel 29 described above;

thence N 00°01'24" E a distance of 2589.38 feet to a point on the southerly Reddane Avenue right of way line shown on ASLS 80-111, being the northwest corner of Parcel 30;

thence S 89°47'14" E along said right of way line a distance of 300.00 feet more or less to the section line between Sections 31 and 32 T15N R4W, being the northeast corner of Parcel 30 labeled as "Point B" herein and in Schedule B for description purposes;

thence S 00°01'24" W along said section line a distance of 2589.46 feet to the southeast corner of Parcel 30, "Point A";

Said Parcel 30 containing 17.8 Acres more or less;

**Portion within Parcel 31**

Commencing at "Point B" described above;

thence N 00°01'24" E a distance of 100.00 feet to a point on the northerly Reddane Avenue right of way line shown on ASLS 80-111 marked with a 5/8" diameter rebar with a yellow plastic cap, being the southeast corner of Tract 10 ASLS 80-111, the Southwest corner of Tract C Williams Farm



Subdivision (Plat 2010-32 Palmer Recording District), the southeast corner of and beginning of Parcel 31 labeled as "Point C" herein and in Schedule B for description purposes;

thence N 89°47'14" W along said right of way line a distance of 1300.00 feet to a point on the northerly Reddane Avenue Right of Way and the southwest corner of Parcel 31;

thence N 00°01'29" E a distance of 5229.65 feet to a point on the boundary between Tract 10 and Tract 13 ASLS 80-111 said point being the northwest corner of Parcel 31 and the southwest corner of Parcel 32 described below, from which the westerly corner of Tract 10 and Tract 13 marked with a 1980 3-1/4 inch diameter State of Alaska Department of Natural Resources (SOA DNR) aluminum cap monument bears N 89°46'08" W a distance of 3685.83 feet;

thence S 89°46'08" E along said boundary between Tract 10 and Tract 13 ASLS 80-111 a distance of 1300.59 feet to the quarter corner of Sections 29 and 30 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being the northeast corner of Parcel 31 and the southeast corner of Parcel 32 described below labeled as "Point D" herein and in Schedule B for description purposes;

thence S 00°02'20" W along the boundary between Tract 10 ASLS 80-111 and Tract D Williams Farm Subdivision (Plat 2010-32 Palmer Recording District) a distance of 2639.78 feet to the section corner of Sections 29, 30, 31, 32 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument;

thence S 00°01'24" W along the boundary between Tract 10 ASLS 80-111 and Tract C Williams Farm Subdivision (Plat 2010-32 Palmer Recording District) a distance of 2589.46 feet to the southeast corner of Parcel 31, "Point C";

Said Parcel 31 containing 156.1 Acres more or less;

**Portion within Parcel 32**

Commencing at "Point D" described above;

thence N 89°46'08" W along the boundary between Tract 10 and Tract 13 ASLS 80-111 a distance of 1300.59 feet to a point being the southwest corner of Parcel 32 and the northwest corner of Parcel 31 described above;



thence N 00°01'29" E a distance of 5229.47 feet to a point on the southerly Holstein Avenue right of way line shown on ASLS 80-111, being the northwest corner of Parcel 32;

thence S 89°44'43" E along said right of way line a distance of 1300.00 feet to the northerly corner of Tract 12 and Tract 13 ASLS 80-111, being the northeast corner of Parcel 32 labeled as "Point E" herein and in Schedule B for description purposes;

thence S 00°01'06" W along the boundary between Tract 12 and Tract 13 ASLS 80-111 a distance of 5228.94 feet to the southeast corner of Parcel 32, "Point D";

Said Parcel 32 containing 156.1 Acres more or less;

**Portion within Parcel 33**

Commencing at "Point E" described above;

thence N 82°44'31" E a distance of 773.45 feet to a point on the northerly Holstein Avenue right of way line shown on ASLS 80-111 and southerly boundary of Tract 19A ASLS 2002-24 (Plat 2002-121 Palmer Recording District), being the southeast corner of Parcel 33 labeled as "Point F" herein and in Schedule B for description purposes;

thence N 89°49'46" W along said right of way line and south boundary of said Tract 19A a distance of 767.21 feet to the section line between Sections 19 and 20 T15N R4W, being an angle point on the southerly Parcel 33 boundary;

thence N 89°44'43" W along said right of way line and south boundary of said Tract 19A a distance of 1156.65 feet to the southwest corner of Parcel 33;

thence N 84°33'17" E a distance of 430.00 feet to an angle point on the westerly Parcel 33 boundary;

thence N 88°44'13" E a distance of 385.00 feet to an angle point on the westerly Parcel 33 boundary;

thence N 06°33'17" E a distance of 385.00 feet to an angle point on the westerly Parcel 33 boundary;

thence N 00°02'11" E a distance of 2154.63 feet to the boundary between said Tract 19A and Tract 22B ASLS 80-11, being the northwest corner of Parcel 33;



thence S 89°44'59" E along said boundary between said Tract 19A and Tract 22B a distance of 300.00 feet to the section corner of Sections 17, 18, 19, 20 T15N R4W marked with a 2002 3-1/4 inch diameter SOA DNR aluminum cap monument, being the northeast corner of Parcel 33 and the southeast corner of Parcel 34 described below labeled as "Point G" herein and in Schedule B for description purposes;

thence S 00°02'11" W along the section line between Sections 19 and 20 T15N R4W a distance of 2460.17 feet to an angle point on the easterly Parcel 33 boundary;

thence S 84°34'46" E a distance of 585.19 feet to an angle point on the easterly Parcel 33 boundary;

thence S 67°20'04" E a distance of 200.00 feet to the southeast corner of Parcel 33, "Point F";

Said Parcel 33 containing 20.3 Acres more or less;

**Portion within Parcel 34**

Commencing at "Point G" described above;

thence N 89°44'59" W along the boundary between Tract 19A ASLS 2002-24 and Tract 22B ASLS 80-111 a distance of 200.00 feet to a point being the southwest corner of Parcel 34, from which the section corner of Section 18 and 19 T15N R4W AND Section 13 and 24 T15N R5W marked with a 1960 3-1/4 inch diameter BLM brass cap monument marking the centerline of Guernsey Road bears N 89°44'59" W a distance of 4830.57 feet;

thence N 00°02'32" E a distance of 2639.21 feet to a point on the boundary between Tract 22A and Tract 22B ASLS 80-111 being the northwest corner of Parcel 34 and the southwest corner of Parcel 35 described below, from which the quarter corner of Section 13 T15N R5W and Section 18 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears N 89°43'56" W a distance of 4830.02 feet;

thence S 89°43'56" E along said boundary between Tract 22A and Tract 22B ASLS 80-111 a distance of 200.15 feet to the quarter corner of Sections 17 and 18 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument, being the



southeast corner of Tract 22A and the northeast corner of Tract 22B ASLS 80-111, on the westerly boundary of Tract 21, and the northeast corner of Parcel 34 and the southeast corner of Parcel 35 described below, labeled as "Point H" herein and in Schedule B for description purposes;

thence S 00°02'44" W along the boundary between said Tract 21 and 22B a distance of 2639.15 feet to the southeast corner of Parcel 34, "Point G";

Said Parcel 34 containing 12.1 Acres more or less;

**Portion within Parcel 35**

Commencing at "Point H" described above;

thence N 89°43'56" W along the boundary between Tract 22A and Tract 22B ASLS 80-111 a distance of 200.15 feet to a point being the southwest corner of Parcel 35 and the northwest corner of Parcel 34 described above;

thence N 00°00'49" E a distance of 2639.39 feet to a point on the boundary between Tract 22A and Tract 26 ASLS 80-111 being the northwest corner of Parcel 35 and the southwest corner of Parcel 36 described below, from which the section corner of Sections 7 and 18 T15N R4W AND Sections 12 and 13 T15N R5W marked with a 1980 3-1/4 inch diameter BLM brass cap monument marking the centerline of Guernsey Road bears N 89°43'07" W a distance of 4827.33 feet;

thence S 89°43'07" E along the boundary between Tract 22A and Tract 26 ASLS 80-111 a distance of 200.00 feet to the section corner of Sections 7, 8, 17, 18 T15N R4W marked with an aluminum pipe monument with no cap, being the northeast corner of Parcel 35 and the southeast corner of Parcel 36 described below, labeled as "Point I" herein and in Schedule B for description purposes;

thence S 00°00'38" W along the boundary between Tract 21 and Tract 22A ASLS 80-111 a distance of 2639.34 feet to the southeast corner of Parcel 35, "Point H";

Said Parcel 35 containing 12.1 Acres more or less;

**Portion within Parcel 36**

Commencing at "Point I" described above;

thence N 89°43'07" W along said boundary between Tract 22A and Tract 26 ASLS 80-111 a distance of 200.00 feet to the southwest corner of Parcel 36



and the northwest corner of Parcel 35 described above;

thence N 00°02'49" E a distance of 2463.04 feet to a point of curvature on the westerly Parcel 36 boundary;

thence along a curve concave to the southwest having:

Radius = 2756.93 feet

Arc Length = 3597.01 feet

Delta = 74°45'17"

Chord Bearing = N 37°19'50" W

Chord Length = 3347.26 feet

to a point of tangency on the westerly Parcel 36 boundary;

thence N 74°42'28" W a distance of 560.85 feet to a point of curvature on the westerly Parcel 36 boundary;

thence along a curve concave to the northeast having:

Radius = 2972.93 feet

Arc Length = 77.38 feet

Delta = 1°29'29"

Chord Bearing = N 73°57'44" W

Chord Length = 77.38 feet

to a point on the section line between Sections 6 and 7 T15N R4W on the north boundary of Tract 26 ASLS 80-111 being the northwest corner of Parcel 36, from which the section corner of Sections 6 and 7 T15N R4W AND Sections 1 and 12 T15N R5W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears N 89°42'10" W a distance of 2178.91 feet and the section corner of Sections 5, 6, 7, 8 T15N R4W marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears S 89°42'10" E a distance of 2845.71 feet;

thence S 89°42'10" E along said section line and northerly boundary of said Tract 26 a distance of 762.75 feet to a point on the easterly boundary of Parcel 36;

thence along a non-tangent curve concave to the southwest having:

Radius = 2956.93 feet

Arc Length = 3407.41 feet

Delta = 66°01'29"

Chord Bearing = S 39°47'07" E

Chord Length = 3222.00 feet

to a point of tangency on the easterly Parcel 36 boundary;





thence S 06°46'23" E a distance of 176.19 feet to the quarter corner of Sections 7 and 8 T15N R4W marked with a 6" spike nail;

thence S 00°02'49" W along the section line between Sections 7 and 8 T15N R4W and the easterly boundary of Tract 26 ASLS 80-111 a distance of 2640.05 feet to the southeast corner of Parcel 36, "Point I";

Said Parcel 36 containing 29.7 Acres more or less;

**\*\* END OF CONTIGUOUS PARCELS \*\***

AND

**Portion within Parcel 22**

Commencing at "Point C" described above;

thence S 89°49'16" E a distance of 4049.17 feet to a point on the north boundary of the Reddane Avenue Right-of-Way labeled as "Point J" herein and in Schedule B for description purposes, said point is the **PARCEL 22 TRUE POINT OF BEGINNING** and the westmost corner of Parcel 22 from which a 5/8" diameter rebar with a yellow plastic cap between Tract A and Tract B of Williams Farm Subdivision (Plat 2010-32) on the north Right-of-Way of Reddane Avenue bears N89°49'59"W a distance of 1408.59 feet;

thence N 68°09'57" E a distance of 461.06 feet to an angle point on the northerly Parcel 22 boundary;

thence N 53°51'24" E a distance of 224.11 feet to an angle point on the northerly Parcel 22 boundary;

thence N 36°08'36" W a distance of 25.00 feet to an angle point on the northerly Parcel 22 boundary;

thence N 53°51'24" E a distance of 60.00 feet to an angle point on the northerly Parcel 22 boundary;

thence S 36°08'36" E a distance of 25.00 feet to an angle point on the northerly Parcel 22 boundary;

thence N 53°51'24" E a distance of 219.56 feet to an angle point on the northerly Parcel 22 boundary;



thence N 36°08'36" W a distance of 25.00 feet to an angle point on the northerly Parcel 22 boundary;

thence N 53°51'24" E a distance of 60.00 feet to an angle point on the northerly Parcel 22 boundary;

thence S 36°08'36" E a distance of 25.00 feet to an angle point on the northerly Parcel 22 boundary;

thence N 53°51'24" E a distance of 432.40 feet to the section line between section 32 and 33 T 15N R 4W being the northmost point of Parcel 22 from which the northeast corner of Tract A, which is also the section corner for sections 28, 29, 32, 33 T 15 N R 4 W, bears N 00°01'41" E a distance of 1826.84 feet;

thence along said section line S 00°01'41" W a distance of 142.46 feet to a point on the southerly Parcel 22 boundary from which the 1/4 corner between sections 32 and 33 marked with a 1979 3-1/4 inch diameter ADL aluminum cap monument bears S 00°01'41" W a distance of 670.09 feet;

thence S 53°51'24" W a distance of 414.35 feet to an angle point on the southerly Parcel 22 boundary;

thence S 36°08'36" E a distance of 25.00 feet to an angle point on the southerly Parcel 22 boundary;

thence S 53°51'24" W a distance of 60.00 feet to an angle point on the southerly Parcel 22 boundary;

thence N 36°08'36" W a distance of 25.00 feet to an angle point on the southerly Parcel 22 boundary;

thence S 53°51'24" W a distance of 163.47 feet to an angle point on the southerly Parcel 22 boundary;

thence S 36°08'36" E a distance of 25.00 feet to an angle point on the southerly Parcel 22 boundary;

thence S 53°51'24" W a distance of 60.00 feet to an angle point on the southerly Parcel 22 boundary;

thence N 36°08'36" W a distance of 25.00 feet to an angle point on the southerly Parcel 22 boundary;



thence S 53°51'24" W a distance of 39.95 feet to an angle point on the southerly Parcel 22 boundary;

thence S 59°09'56" W a distance of 355.71 feet to a point on the southerly boundary of Tract A Williams Farm Subdivision and the northerly Reddane Avenue right of way line shown on Plat 2010-32 from which the southwest corner of said tract marked with a 5/8" diameter rebar bears N 89°49'59" W a distance of 1739.65 feet;

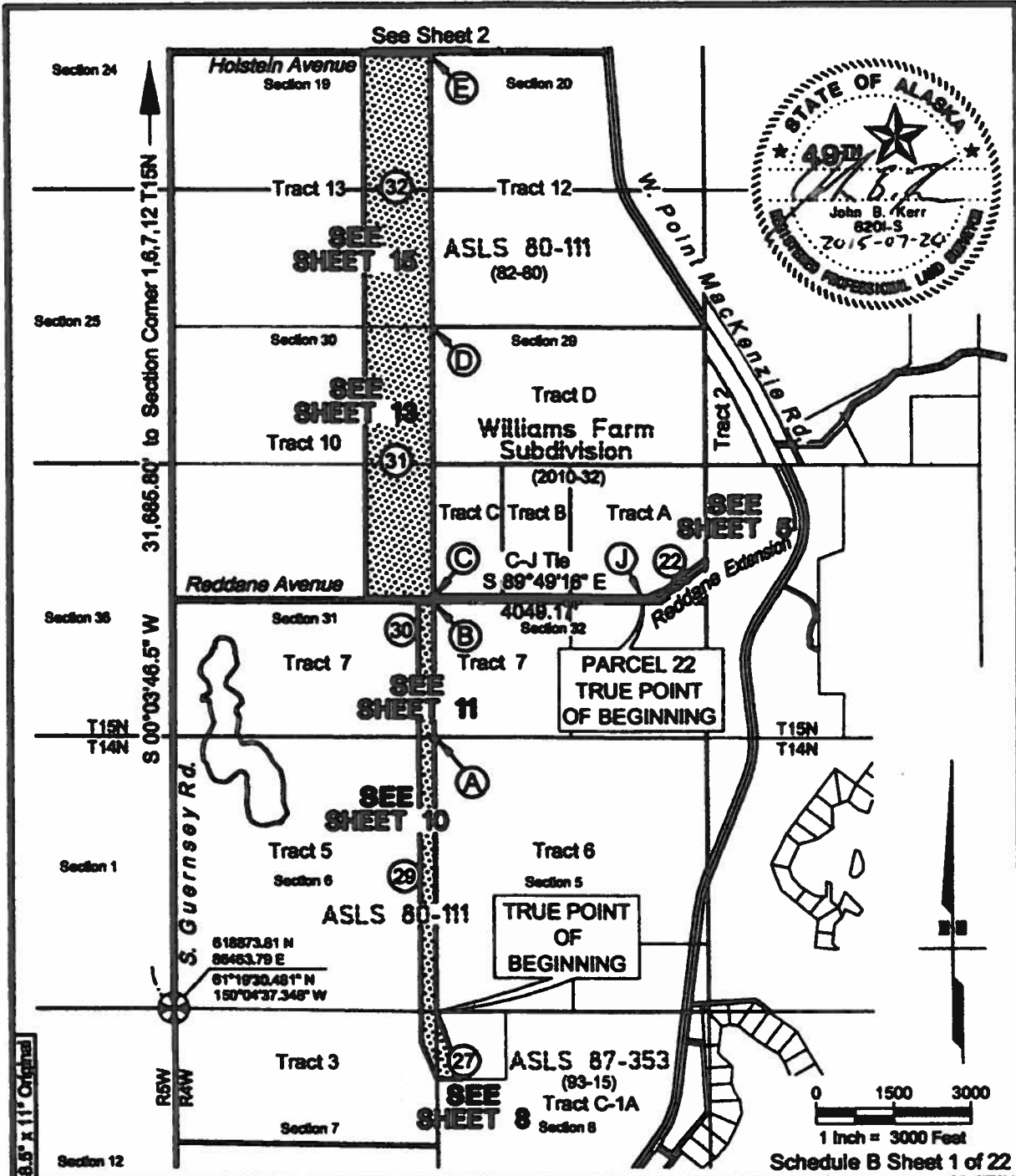
thence N 89°49'59" W a distance of 331.06 feet along the northerly Reddane Avenue right of way line to the TRUE POINT OF BEGINNING.

Said Parcel 22 containing 3.5 Acres more or less;

The acreage of the lands described herein totals 458.0 Acres more or less.

END OF METES AND BOUNDS DESCRIPTION





See Notes and Legend on Sheet 3

See Basis of Bearings and Coordinate System Information on Sheet 4

Matanuska - Susitna Borough

Schedule B Parcel Overview  
RIGHT OF WAY REQUIRED FOR  
Port MacKenzie Rail Extension

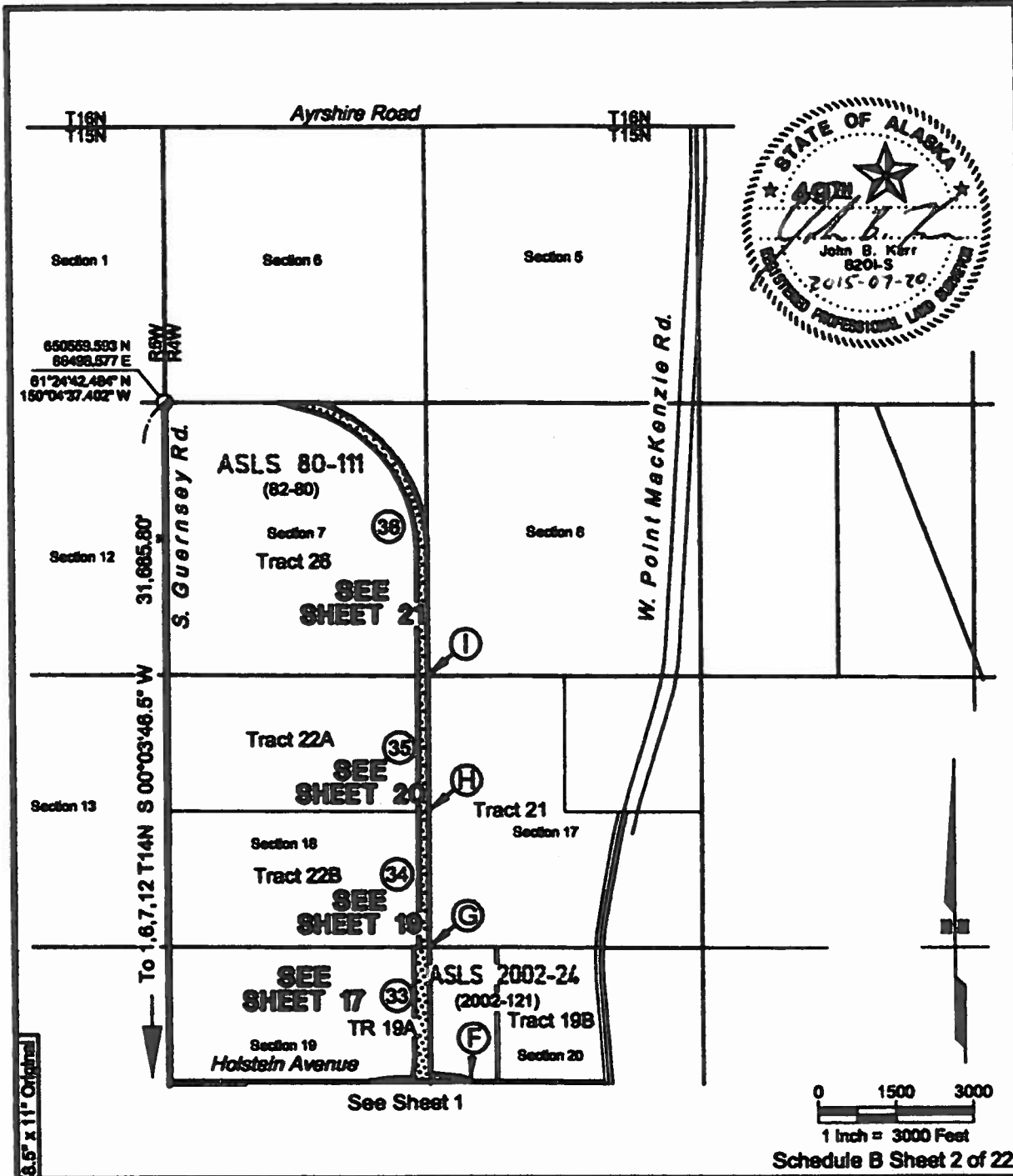
Within Tracts 3, 5, 7, 10, 13, 22A, 22B, 26 ASLS 80-111 (82-80); Tract 19A  
ASLS 2002-24 (2002-121); Tract A Williams Farm Subdivision (2010-32)

Drawn By JEL/KHK

Checked By JBK

TAKE AREA 458.0 Ac.±

Date 07/20/2015



<p><u>See Notes and Legend on Sheet 3</u></p>	<p><b>Matanuska - Susitna Borough</b></p>
<p><u>See Basis of Bearings and Coordinate System Information on Sheet 4</u></p>	<p><b>Schedule B Parcel Overview</b>  <b>RIGHT OF WAY REQUIRED FOR</b>  <b>Port MacKenzie Rail Extension</b></p>
<p>Within Tracts 3, 5, 7, 10, 13, 22A, 22B, 26 ASLS 80-111 (82-80); Tract 19A  ASLS 2002-24 (2002-121); Tract A Willams Farm Subdivision (2010-32)</p>	<p>Drawn By <u>JEL/KHK</u>  Checked By <u>JBK</u>  Date <u>07/20/2015</u></p>
<p>TAKE AREA <u>458.0 Ac.±</u></p>	

**LEGEND**



Port MacKenzie Rail Extension (PMRE) Parcel Number



Metes and Bounds Description Location Identifier



Metes and Bounds Description True Point of Beginning



Existing Section Line Easement (SLE)



Existing Right of Way/Easement



Area of Agricultural Covenant Condemnation / Right of Way Required



Remainder



Found BLM/GLO Mon.



Found Miscellaneous Corner



Found Aluminum Cap Monument



Set Spike from Existing Bearing Trees



**NOTES**

1. This Schedule B drawing consists of 22 sheets.
2. The purpose of Schedule B is to identify lands within the Port MacKenzie Agricultural District required for the Port MacKenzie Rail Extension.
3. Total area of Agricultural Covenant Condemnation is 458.0 Ac.±.
4. On April 19, 1999, Matanuska-Susitna Borough (Borough) submitted an Application to the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water for a right of way easement 300' in width for railroad purposes on Parcel Nos. 27, 30, 31, and 33 assigned Alaska Division of Land (ADL) No. 227588. The State of Alaska, Department of Natural Resources, Division of Agriculture, granted a Public Use Easement for Railroad Purposes, recorded July 16, 1998 at Book 961, Page 083, and re-recorded October 14, 1998 at Book 977, Page 959 for Parcel 29. Parcel 32 was included in the application for ADL 227588 and the patent issued by the state to the previous owners is "subject to a public transportation corridor easement 254 feet wide, along the eastern tract boundary." Parcel Nos. 22, 34, 35, and 36 have no reservations or easements for a railroad right of way. The Administrative Decision issued by the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water, dated April 1, 2013, authorized the Borough to adjudicate ADL 227588 on all ten parcels.
5. Section Line Easements and Other Details Not Shown on Sheets 1 and 2.
6. Section line easements were vacated by Plats 80-106 and 80-107 Palmer Recording District, Third Judicial District, State of Alaska unless shown hereon.
7. Lake meanders digitized from aerial imagery dated 2011.
8. Matanuska Electric Association ROW blanket easements exist on various tracts within the subject area.
9. See Sheet 4 for basis of bearing and coordinate system information.

Schedule B Sheet 3 of 22

<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No.</b>	
<b>RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension</b>	
Within Tracts 3, 5, 7, 10, 13, 22A, 22B, 26 ASLS 80-111 (82-80); Tract 19A ASLS 2002-24 (2002-121); Tract A Williams Farm Subdivision (2010-32)	Drawn By <u>JEL/KHK</u> Checked By <u>JBK</u> Date <u>07/20/2015</u>
TAKE AREA <u>458.0 Ac.±</u>	

**COORDINATE SYSTEM**

SurvBase PMRail GRS80 Coordinate System Parameters  
December 10, 2008



PMRail GRS80 is a low distortion Transverse Mercator projection plane coordinate system suitable for engineering, boundary development, property acquisition, and use in geographic information systems (GIS).

The coordinate system encompasses the Port MacKenzie Rail Extension alternate routes as well as the proposed Knik Arm Bridge and Toll Authority's Knik Arm Crossing project.

The coordinate system is designed to have no scale factor error at the central meridian 90 feet above the GRS80 ellipsoid.

Coordinate System Name: PMRail GRS80  
Projection: Transverse Mercator  
False Northing: 500 000  
False Easting: 100 000  
Origin Latitude: 61°00'00" North  
Central Meridian: 150°00'00" West

(Note: if the software you are using is looking for a purely numeric entry – no "W" - this will be entered as -150)

Ellipsoid: GRS80

(Note to AutoCAD users: Some versions of AutoCAD utilize the "pure" GRS80 ellipsoid –see www.SurvBase for details)

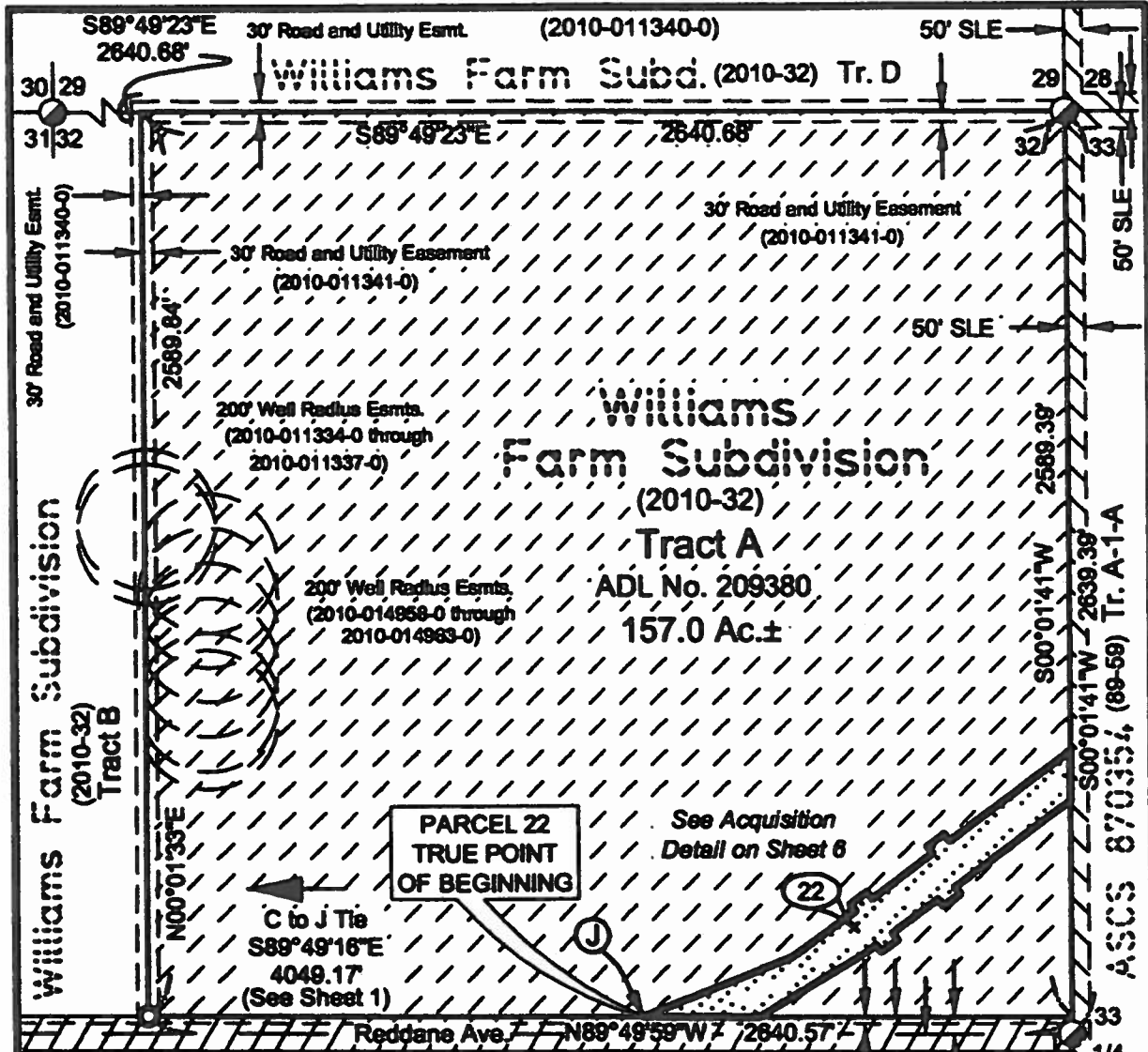
Units: US Survey feet (fts) = 1200 / 3937 meters  
Assigned Project Scale Factor (SF) at Central Meridian = 1.000 004

**BEARINGS:** Are based on high precision Global Navigation Satellite System (GNSS) technology in the NGS REF FRAME: NAD\_83(CORS96)(EPOCH:2003.0000) datum, using Leica GX1230 & ATX1230 receivers, differentially corrected and processed using Leica Geomatics Office software, Versions 6.0 to 8.2. Local plane bearings are orientated to true geodetic North (GRS80) at Longitude 150°-00'-00" West as determined by GNSS observations adjusted to NGS CORS station TSEA. Distances shown are reduced to horizontal field (ground) distances.

**COORDINATES:** This project is located entirely within the PMRailGRS80 coordinate system, a U.S. Survey Foot local surface (ground) grid coordinate system developed specifically for the Port MacKenzie Rail Extension Project. Found coordinates are based on GNSS observations constrained to the National Spatial Reference System using the CORS reference station TSEA (PID A10952) in the NGS REF FRAME: NAD\_83(CORS96)(EPOCH:2003.0000) at Lat. 61°11'14.37488" N, Long. 149°53'41.81988" W (equals PMRailGRS80 coordinates of 568498.954 N, 118538.381 E).

Schedule B Sheet 4 of 22

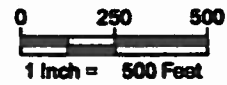
	<b>Matanuska - Susitna Borough</b>
	<b>Schedule B Parcel No.</b> <b>RIGHT OF WAY REQUIRED FOR</b> <b>Port MacKenzie Rail Extension</b>
Within Tracts 3, 5, 7, 10, 13, 22A, 22B, 26 ASLS 80-111 (82-80); Tract 19A ASLS 2002-24 (2002-121); Tract A Williams Farm Subdivision (2010-32)	Drawn By <u>JEL/KHK</u> Checked By <u>JBK</u> Date <u>07/20/2015</u>
<b>TAKE AREA</b> <u>458.0 Ac.±</u>	



ASLS  
80-111  
(82-80)  
Tract 7

100' wide Notice of Public  
Dedication Bk. 395 Pg. 981

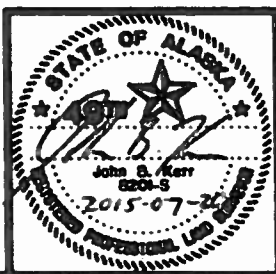
See Notes and  
Legend on Sheet 3



Schedule B Sheet 5 of 22

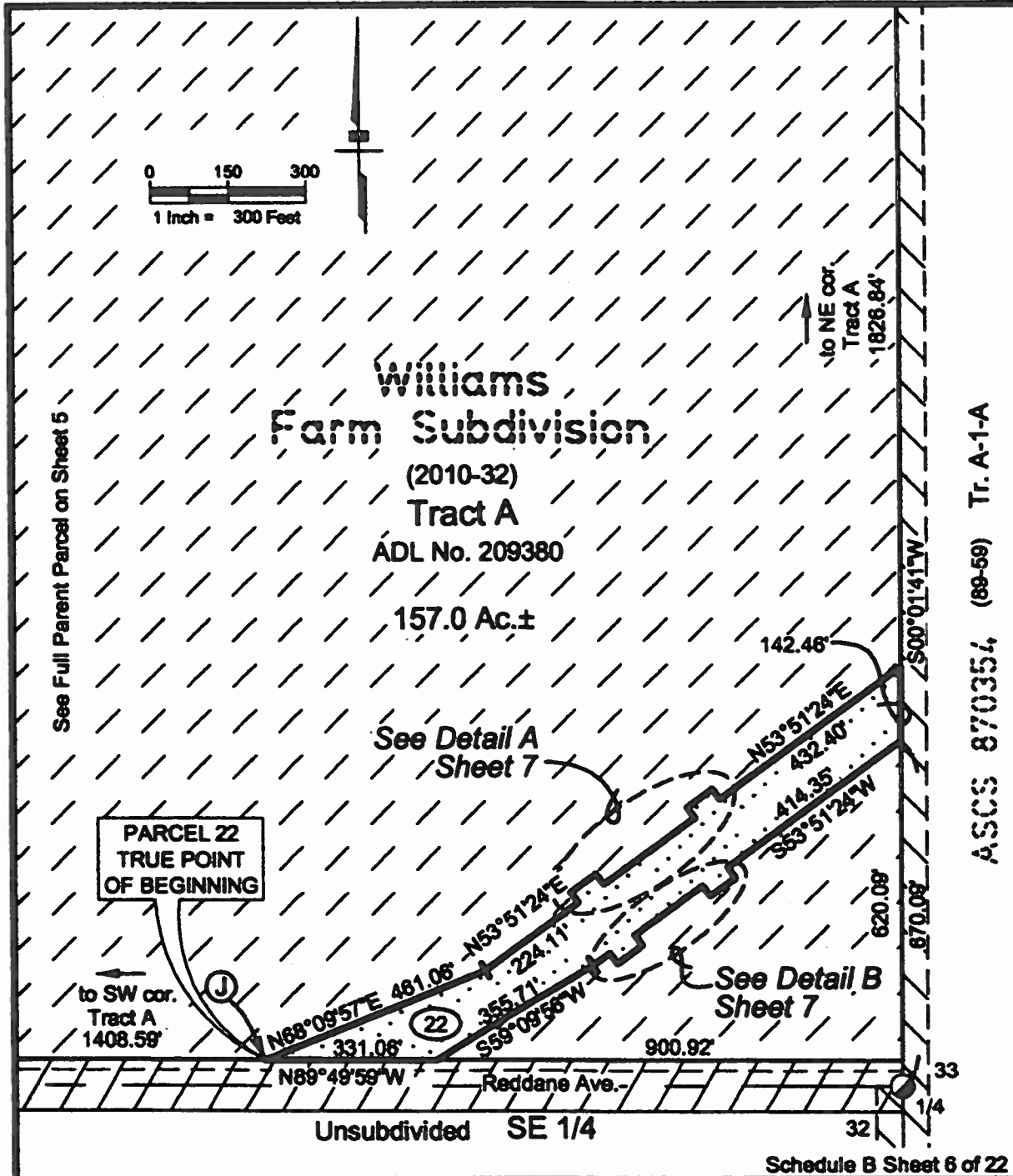
Within Section 32  
T15N R4W S.M.  
Alaska

8.5" x 11" Original



Matanuska - Susitna Borough	
Schedule B Parcel No. 22	
RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension	
<b>CONDEMNATION AREAS</b>	
THIS PARCEL	3.5 Ac.±
FULL SCHEDULE B	458.0 Ac.±
Drawn By	DAS/KHK
Checked By	JBK
Date	07/20/2015





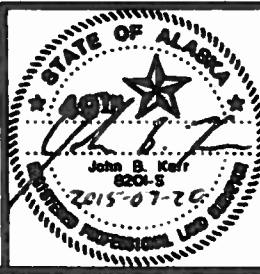
See Full Parent Parcel on Sheet 5

ASCS 870354 (89-59) Tr. A-1-A

See Notes and Legend on Sheet 3

Within Section 32  
T15N R4W S.M.  
Alaska

8.5" x 11" Original

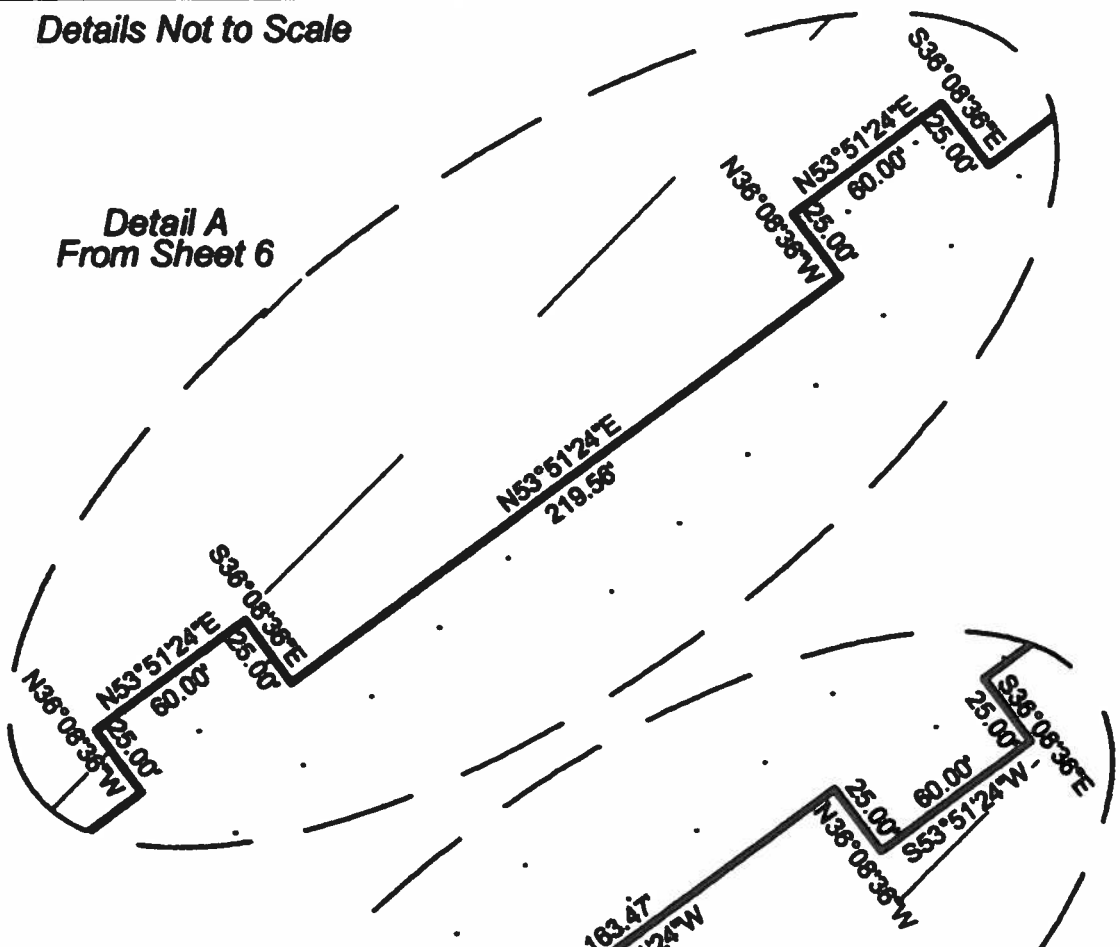


<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No. 22</b>	
<b>RIGHT OF WAY REQUIRED FOR</b>	
<b>Port MacKenzie Rail Extension</b>	
<b>CONDEMNATION AREAS</b>	
THIS PARCEL	<u>3.5 Ac.±</u>
FULL SCHEDULE B	<u>458.0 Ac.±</u>
Drawn By	<u>DAS/KHK</u>
Checked By	<u>JBK</u>
Date	<u>07/20/2015</u>

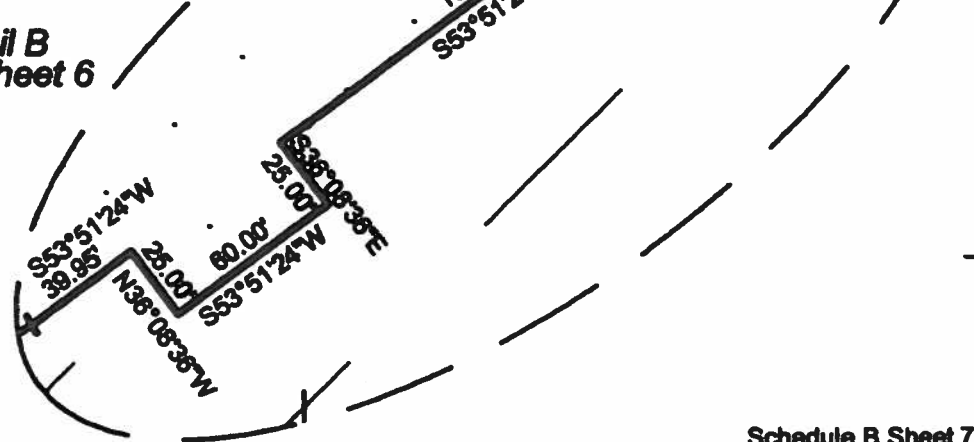
Schedule B Sheet 6 of 22

Details Not to Scale

Detail A  
From Sheet 6



Detail B  
From Sheet 6

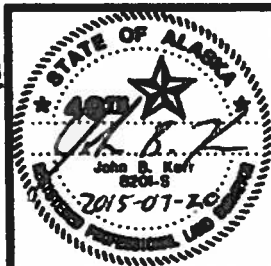


Schedule B Sheet 7 of 22

See Notes and  
Legend on Sheet 3

Within Section 32  
T15N R4W S.M.  
Alaska

8.5" x 11" Original



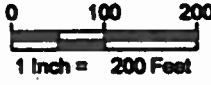
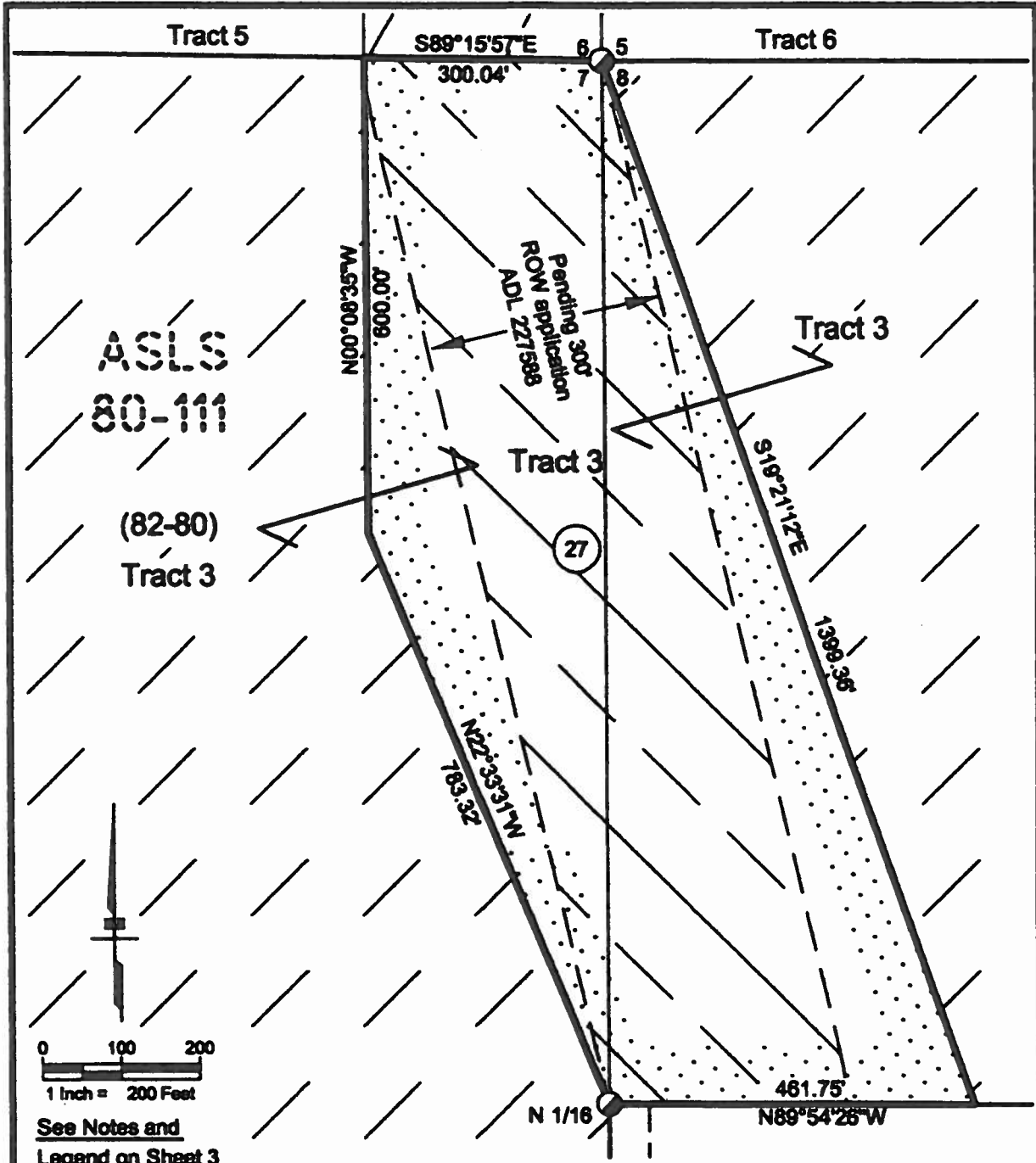
Matanuska - Susitna Borough

Schedule B Parcel No. 22  
RIGHT OF WAY REQUIRED FOR  
Port MacKenzie Rail Extension

CONDEMNATION AREAS	
THIS PARCEL	3.5 Ac.±
FULL SCHEDULE B	458.0 Ac.±

Drawn By	DAS/KHK
Checked By	JBK
Date	07/20/2015





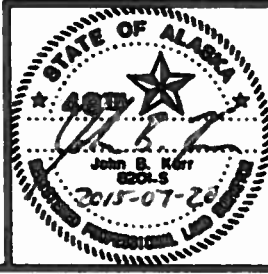
See Notes and Legend on Sheet 3

Detail From Sheet 8

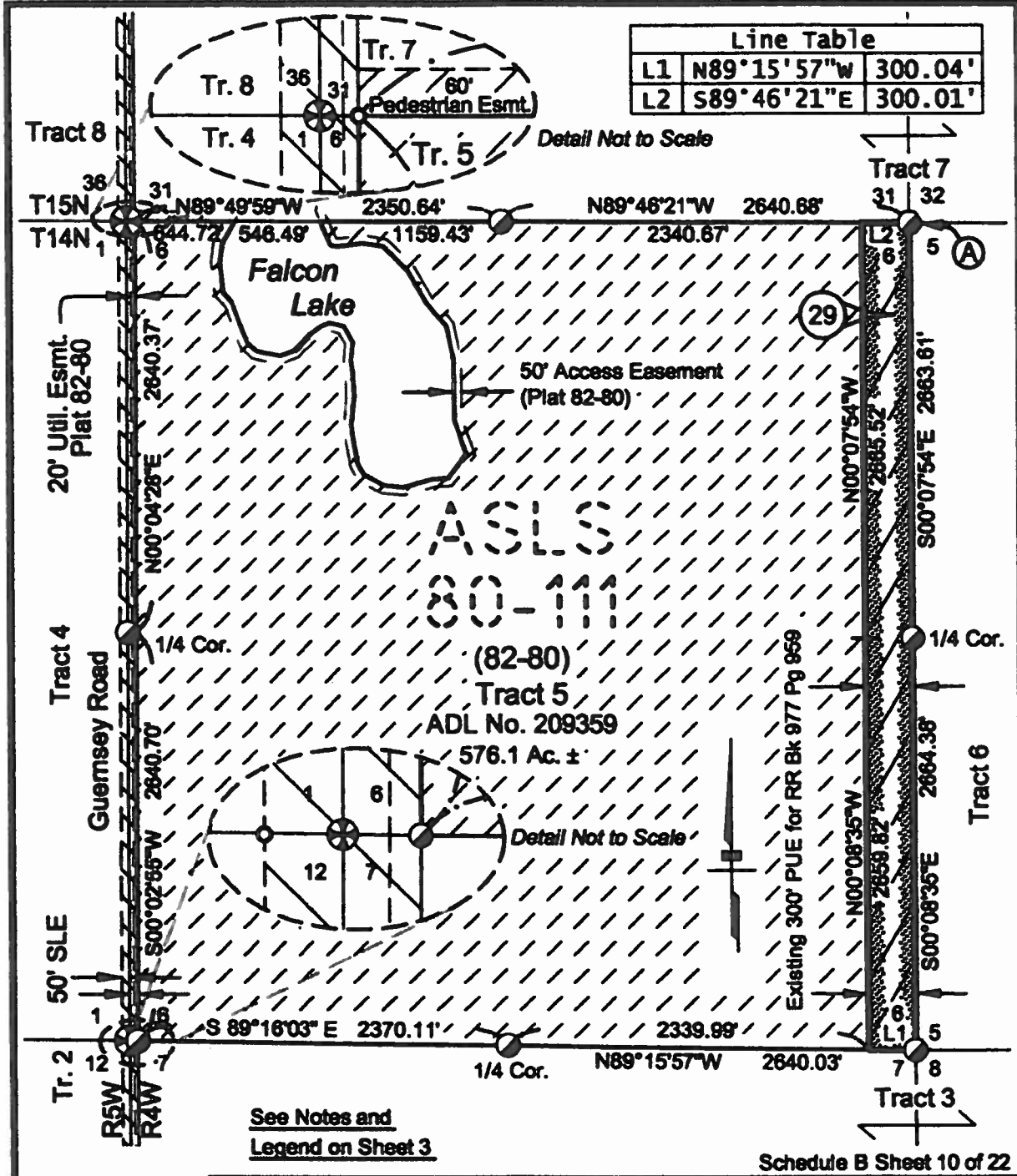
Schedule B Sheet 9 of 22

Within Sections 7 and 8 T14N R4W S.M. Alaska

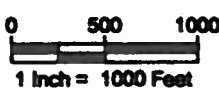
8.5" x 11" Original



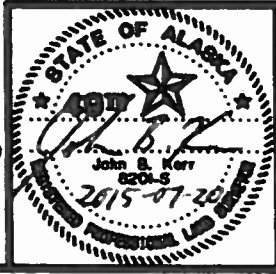
<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No. 27</b>	
<b>RIGHT OF WAY REQUIRED FOR</b>	
<b>Port MacKenzie Rail Extension</b>	
<b>CONDEMNATION AREAS</b>	
THIS PARCEL	<u>13.6 Ac.±</u>
FULL SCHEDULE B	<u>458.0 Ac.±</u>
Drawn By	<u>AMB/JEL</u>
Checked By	<u>JBK</u>
Date	<u>07/20/2015</u>



Within Section 6  
T14N R4W S.M.  
Alaska

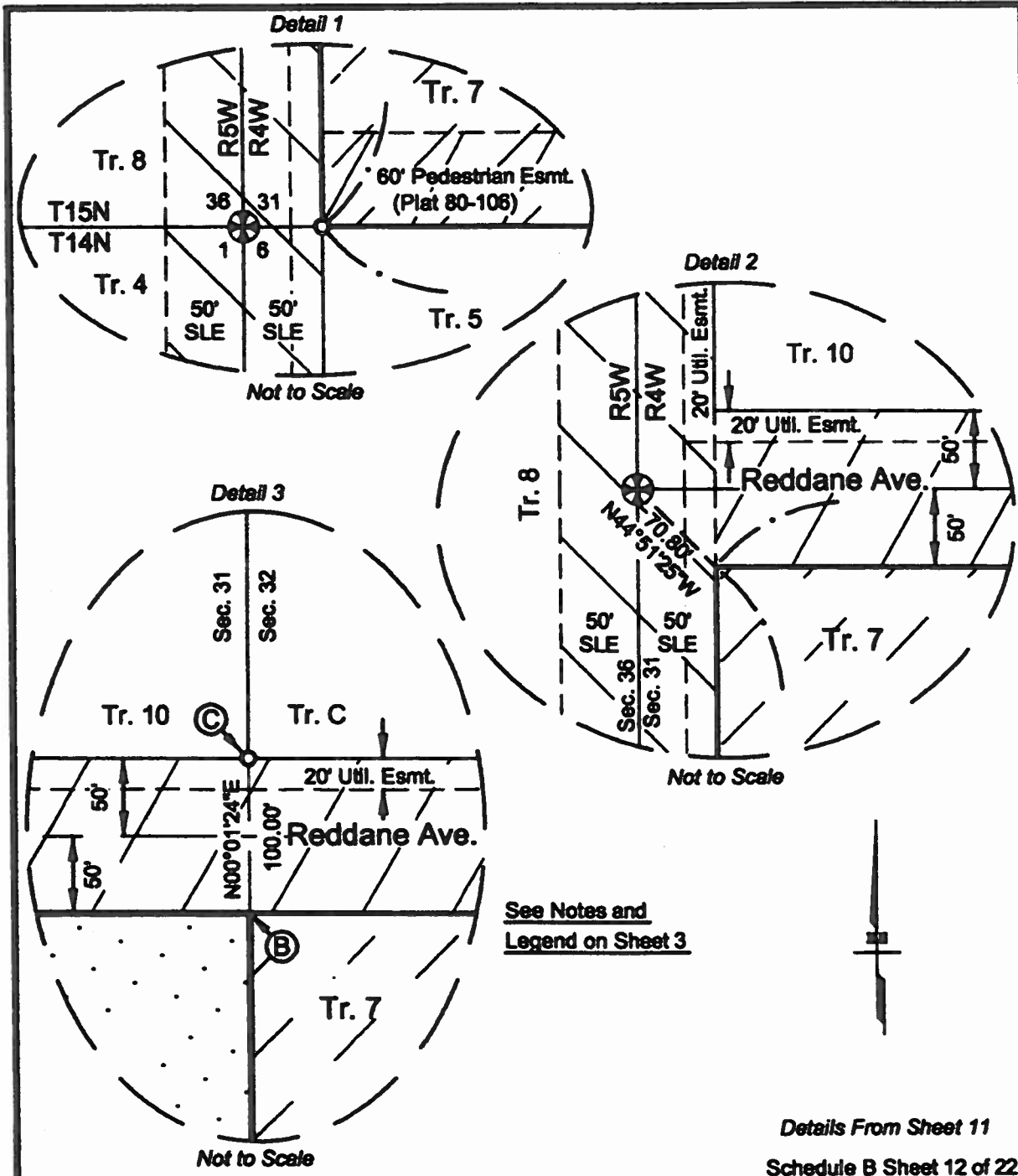


8.5" x 11" Original



<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No. 29</b>	
<b>RIGHT OF WAY REQUIRED FOR</b>	
<b>Port MacKenzie Rail Extension</b>	
<b>CONDEMNATION AREAS</b>	
THIS PARCEL	36.7 Ac.±
FULL SCHEDULE B	458.0 Ac.±
Drawn By	AMB/KHK
Checked By	JBK
Date	07/20/2015





See Notes and  
Legend on Sheet 3

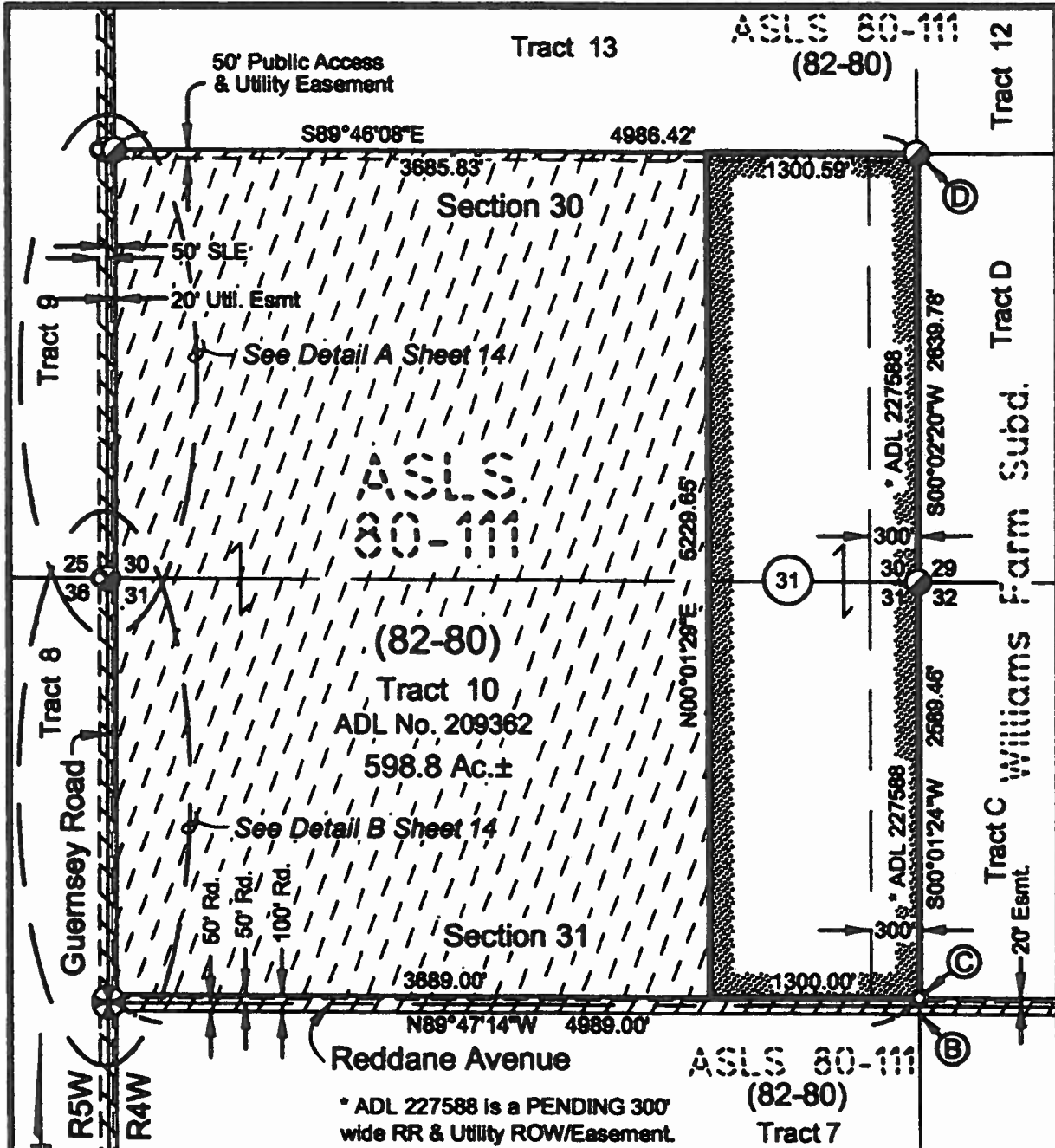


Details From Sheet 11  
Schedule B Sheet 12 of 22

Within Sections 31  
and 32 T15N R4W  
S.M. Alaska  
8.5" x 11" Original



<b>Matanuska - Sleetna Borough</b> <b>Schedule B Parcel No. 30</b> <b>RIGHT OF WAY REQUIRED FOR</b> <b>Port MacKenzie Rail Extension</b>		
<b>CONDEMNATION AREAS</b>		Drawn By <u>JME/AMB/JEL</u>
THIS PARCEL	<u>17.8 Ac.±</u>	Checked By <u>JBK</u>
FULL SCHEDULE B	<u>458.0 Ac.±</u>	Date <u>07/20/2015</u>



See Notes and Legend on Sheet 3

Schedule B Sheet 13 of 22

0 500 1000  
1 Inch = 1000 Feet

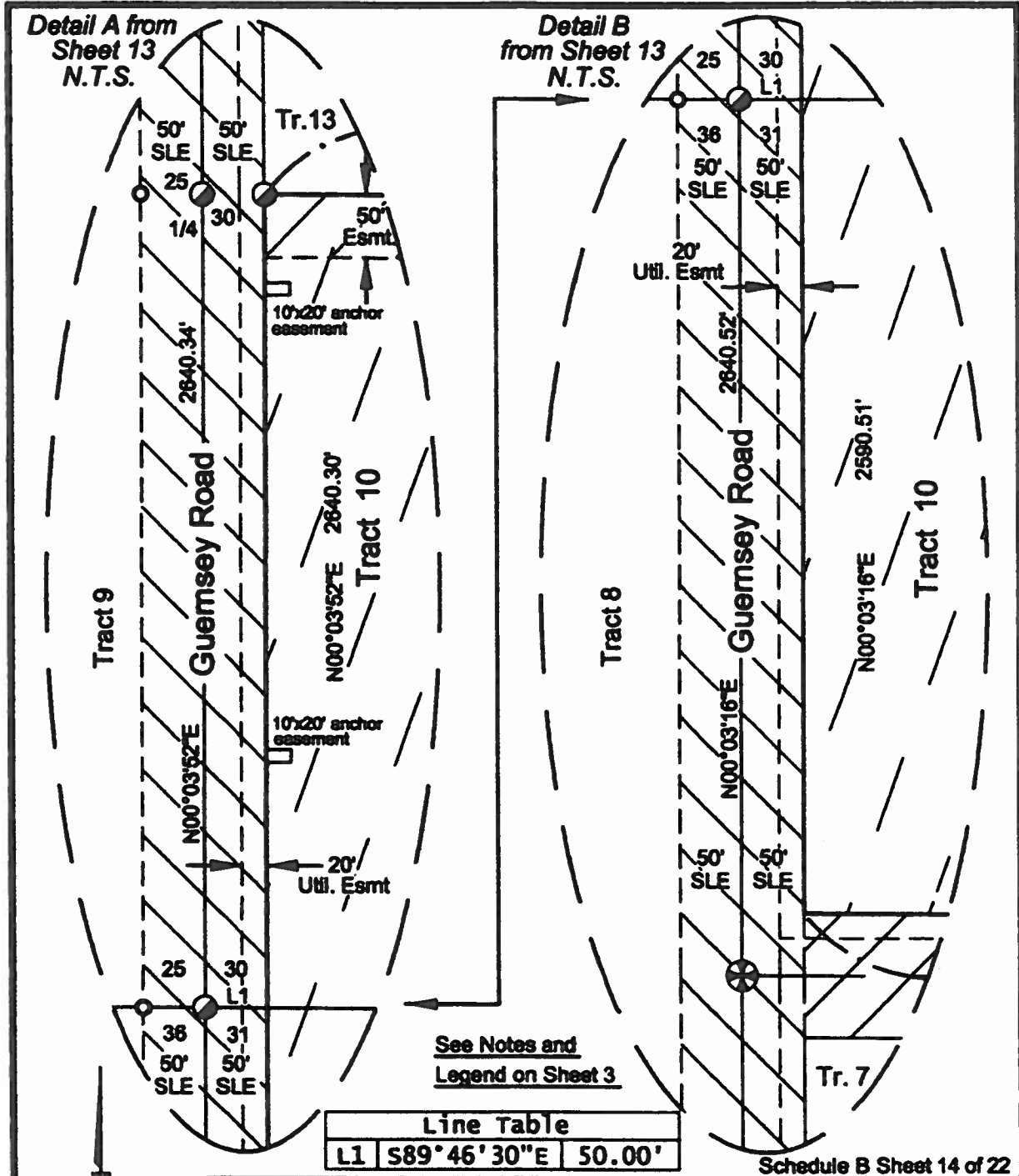
Within Sections 30 and 31 T15N R4W S.M. Alaska

8.5" x 11" Original



Matanuska - Susitna Borough	
Schedule B Parcel No. 31 RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension	
CONDEMNATION AREAS	
THIS PARCEL	156.1 Ac.±
FULL SCHEDULE B	458.0 Ac.±
Drawn By	SGB/AMB
Checked By	JBK
Date	07/20/2015



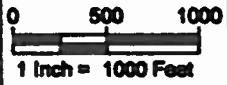
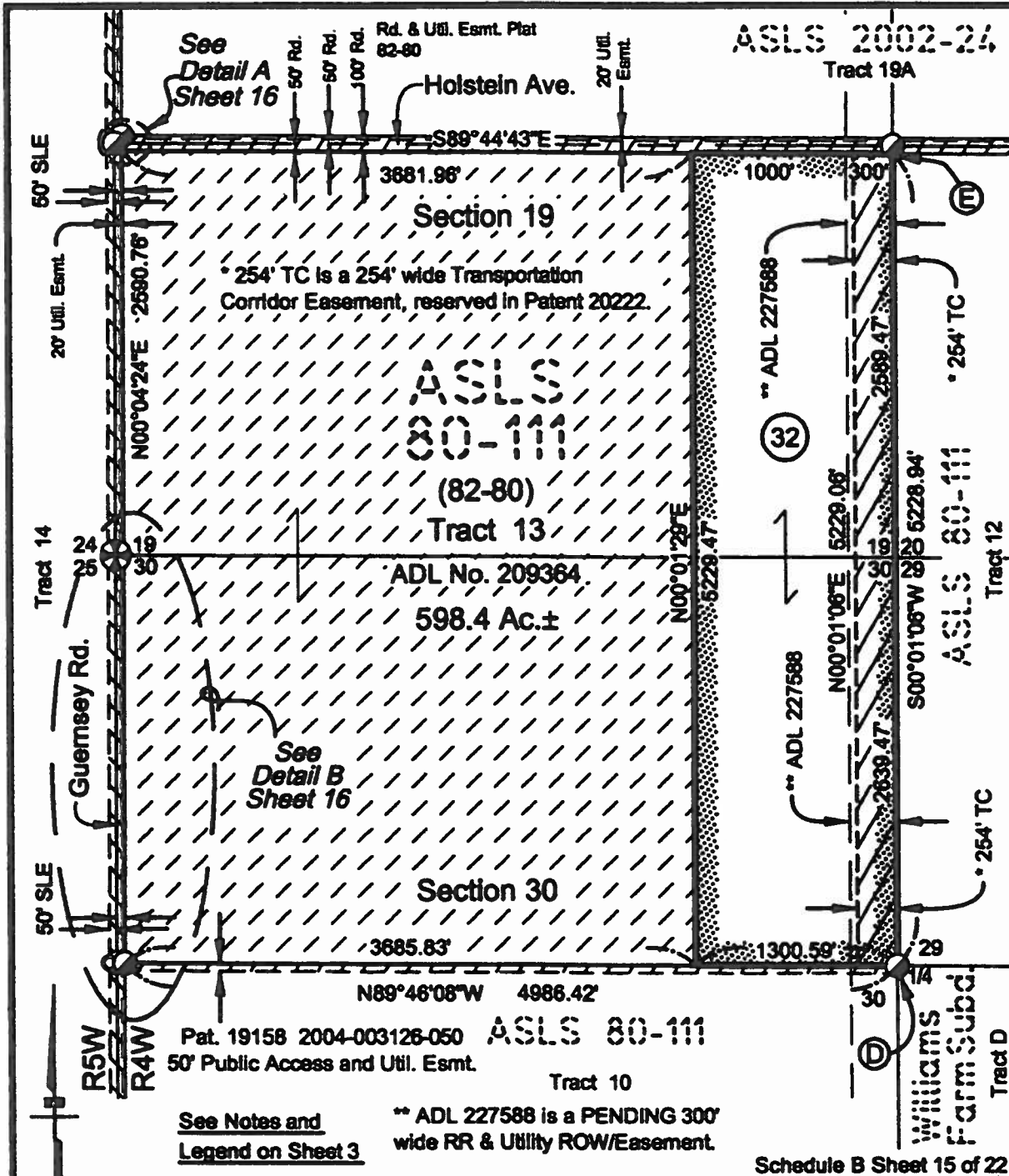


Within Sections 30 and 31 T15N R4W S.M. Alaska

8.5" x 11" Original

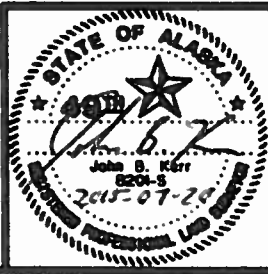


<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No. 31</b>	
<b>RIGHT OF WAY REQUIRED FOR</b>	
<b>Port MacKenzie Rail Extension</b>	
<b>CONDEMNATION AREAS</b>	<b>Drawn By SGB/AMB</b>
THIS PARCEL	156.1 Ac.±
FULL SCHEDULE B	458.0 Ac.±
	<b>Checked By JBK</b>
	<b>Date 07/20/2015</b>

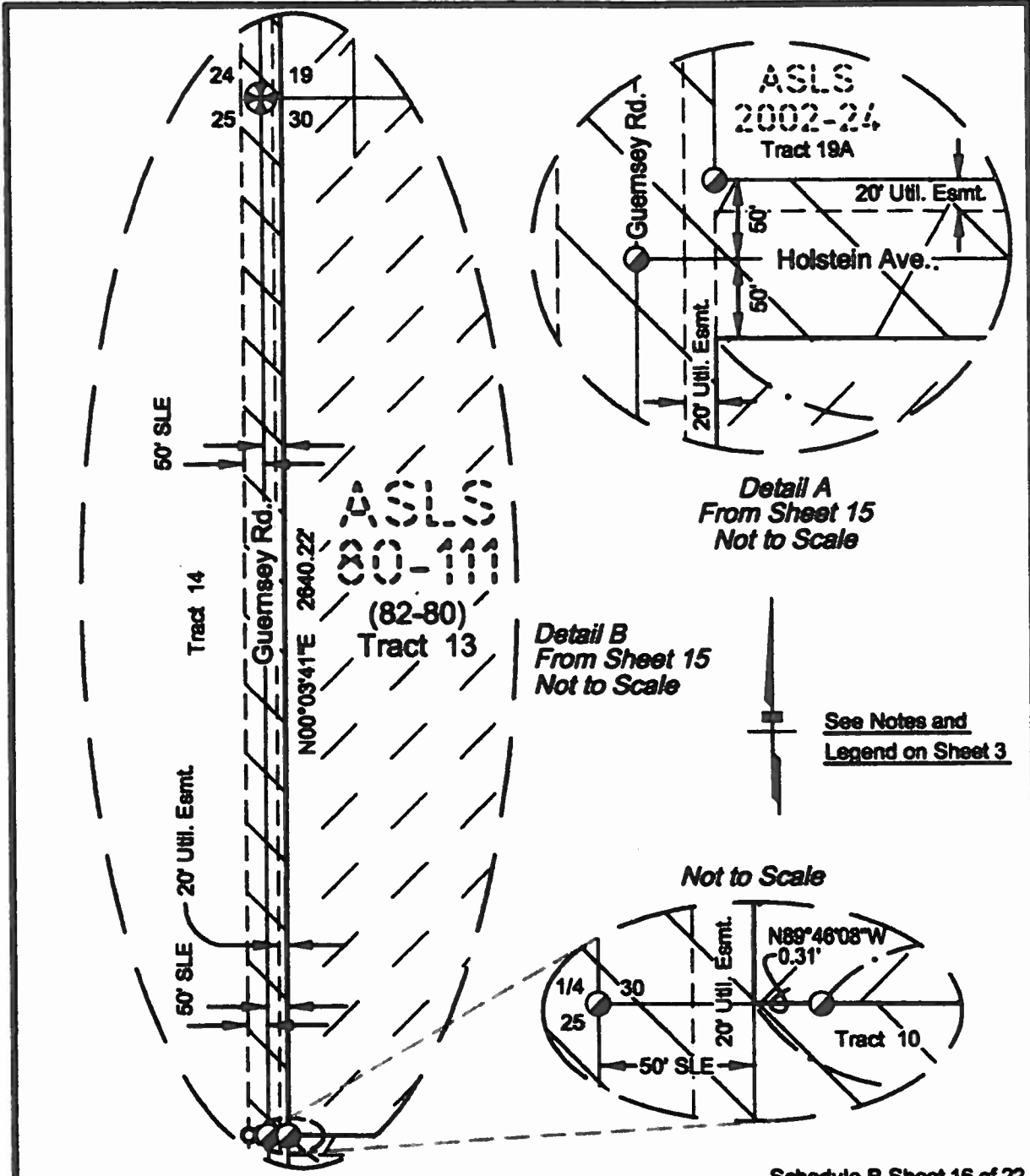


Within Sections 19 and 30 T15N R4W S.M. Alaska

8.5" x 11" Original



Matanuska - Susitna Borough		Drawn By <u>AMB/KHK</u>	
Schedule B Parcel No. 32		Checked By <u>JBK</u>	
RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension			
<b>CONDEMNATION AREAS</b>		Date <u>07/20/2015</u>	
THIS PARCEL	<u>156.1 Ac.±</u>		
FULL SCHEDULE B	<u>458.0 Ac.±</u>		



Detail A  
From Sheet 15  
Not to Scale

Detail B  
From Sheet 15  
Not to Scale

See Notes and  
Legend on Sheet 3

Not to Scale

Schedule B Sheet 16 of 22

Within Sections 19  
and 30 T15N R4W  
S.M. Alaska

8.5" x 11" Original



Matanuska - Susitna Borough

Schedule B Parcel No. 32

RIGHT OF WAY REQUIRED FOR  
Port MacKenzie Rail Extension

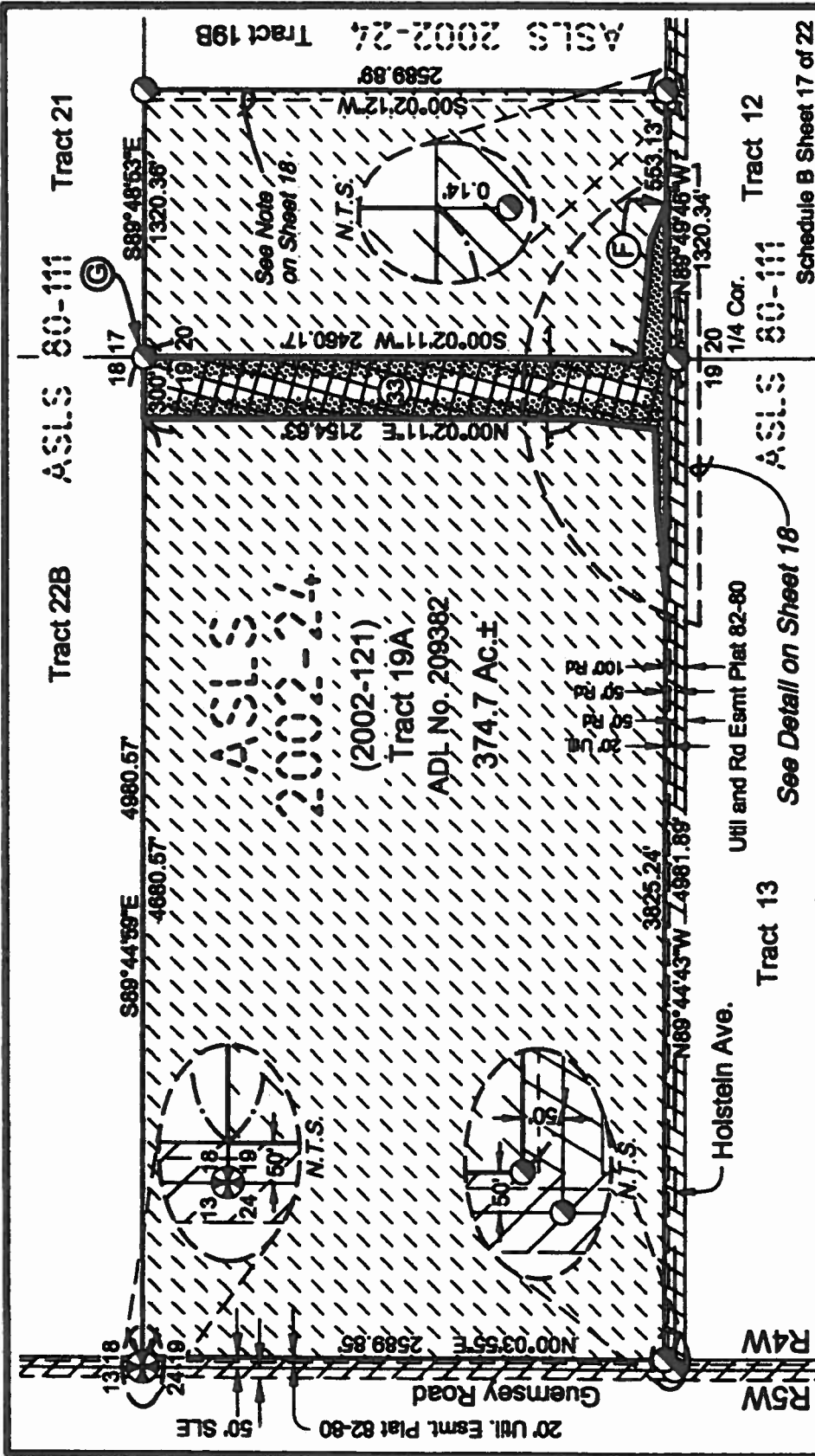
**CONDEMNATION AREAS**

THIS PARCEL	156.1 Ac.±
FULL SCHEDULE B	458.0 Ac.±

Drawn By AMB/KHK

Checked By JBK

Date 07/20/2015



8.5" x 11" Original

Within Sections 19 and 20  
T15N R4W S.M. Alaska

See Notes and  
Legend on Sheet 3

0 400 800  
1 inch = 800 Feet

Pending 300' wide RR & Util.  
ROW Esmt - ADL 227588

STATE OF ALASKA  
JAMES R. BART  
2015-07-20

Matanuska - Susitna Borough  
Schedule B Parcel No. 33  
RIGHT OF WAY REQUIRED FOR  
Port MacKenzie Rail Extension

CONDEMNATION AREAS  
THIS PARCEL 20.3 Ac.±  
FULL SCHEDULE B 458.0 Ac.±

Drawn By AMB/JEL  
Checked By JBK  
Date 07/20/2015

Tract 22B ASLS 80-111 Tract 21  
Tract 19B ASLS 2002-24 Tract 19A  
Tract 13 Tract 12  
ASLS 80-111 Schedule B Sheet 17 of 22

Guemsey Road  
20' Util. Esmt Plat 82-80  
R5W R4W  
Holstein Ave.  
Util and Rd Esmt Plat 82-80  
See Detail on Sheet 18

2589.85  
1318  
2419  
S89°44'59"E 4980.57  
4980.57  
N00°03'55"E 2589.85  
N.T.S.  
13  
18  
19  
24  
50'  
50'  
50'  
N.T.S.  
3825.24  
N69°44'43"W 4861.88  
19 20  
1/4 Cor.  
ASLS 80-111  
500°02'11"E 2154.63  
500°02'11"W 2460.17  
S89°48'53"E 1320.36  
18 17  
20  
2589.89  
500°02'12"W  
N.T.S.  
0.14  
553.13  
N88°49'46"W 1320.34

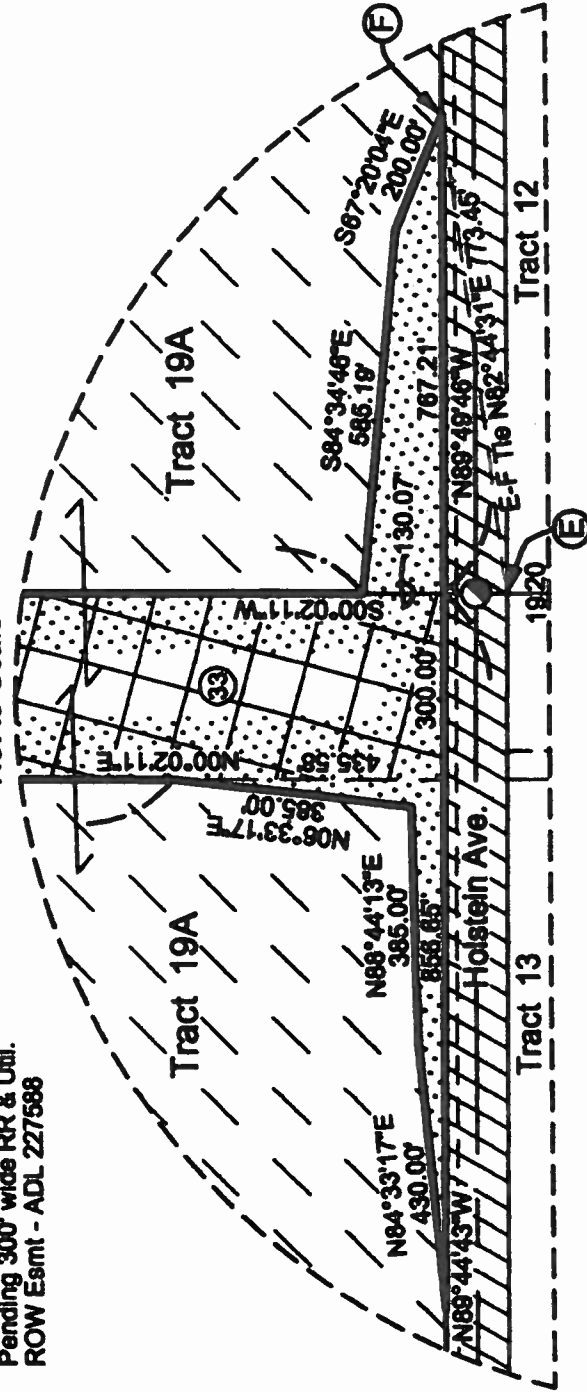
**Note:**

Patent No. 23440 recorded at 2014-023083-0, Palmer Recording District, is subject to a public access and utility easement, 50 feet wide, along the eastern interior parcel line.



Pending 300' wide RR & Util.  
ROW Esmt - ADL 227588

Detail From Sheet 17  
Not to Scale



Schedule B Sheet 18 of 22



Matanuska - Susitna Borough

Schedule B Parcel No. 33  
RIGHT OF WAY REQUIRED FOR  
Port MacKenzie Rail Extension

Drawn By AMBJEL  
Checked By JBK  
Date 07/20/2015

CONDEMNATION AREAS  
THIS PARCEL 20.3 Ac.±  
FULL SCHEDULE B 458.0 Ac.±

See Notes and  
Legend on Sheet 3

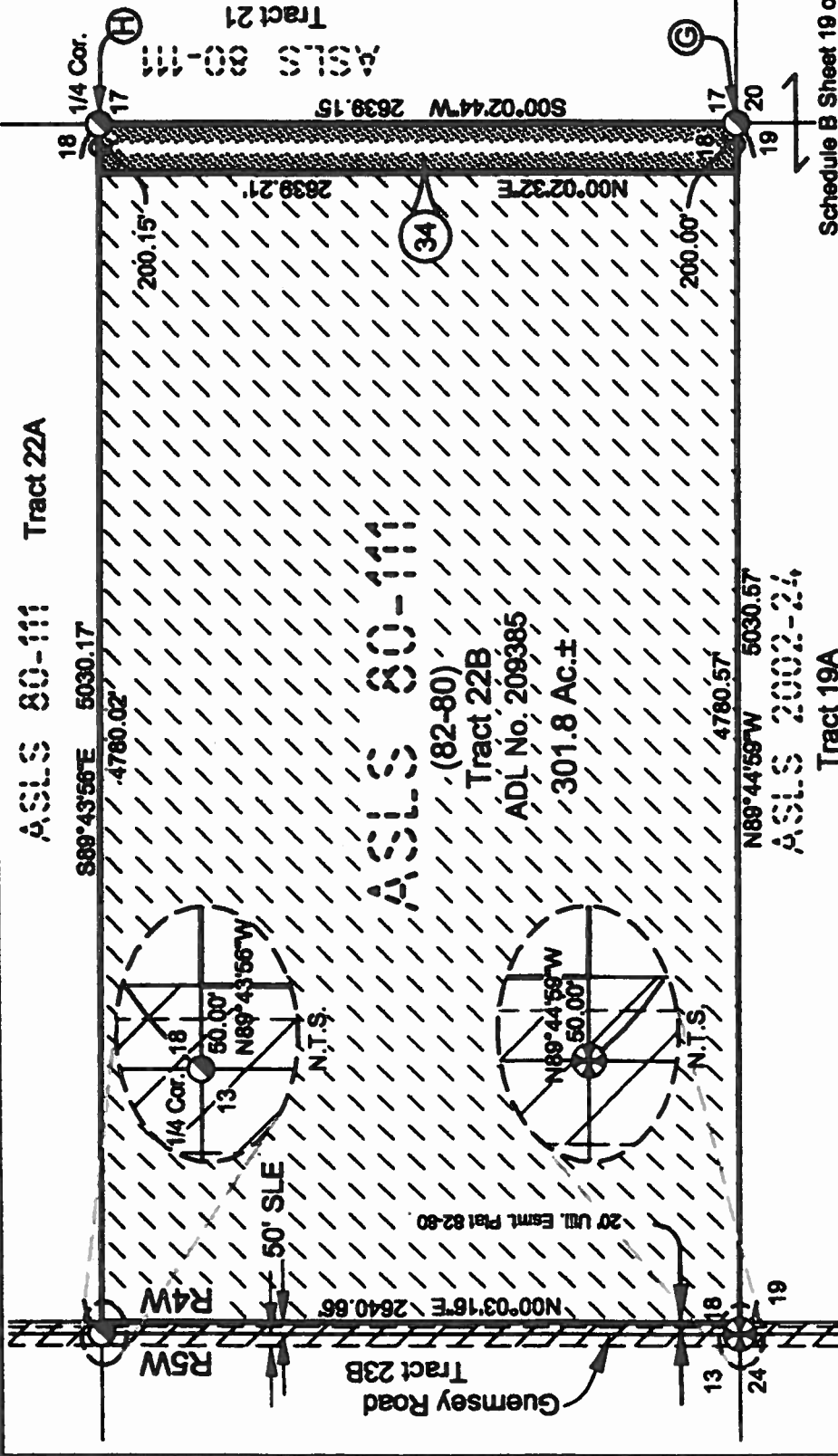


Within Sections 19 and 20  
T15N R4W S.M. Alaska

8.5 x 11" Original

ASLS 80-111 Tract 22A

S89°43'56"E 5030.17'  
4780.02'



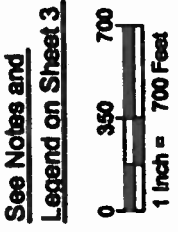
Schedule B Sheet 19 of 22

Matanuska - Suetna Borough	
Schedule B Parcel No. 34	
RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension	
CONDEMNATION AREAS	Drawn By <u>AMB/KH/K</u>
THIS PARCEL	12.1 Ac.± Checked By <u>JBK</u>
FULL SCHEDULE B	458.0 Ac.± Date <u>07/20/2015</u>



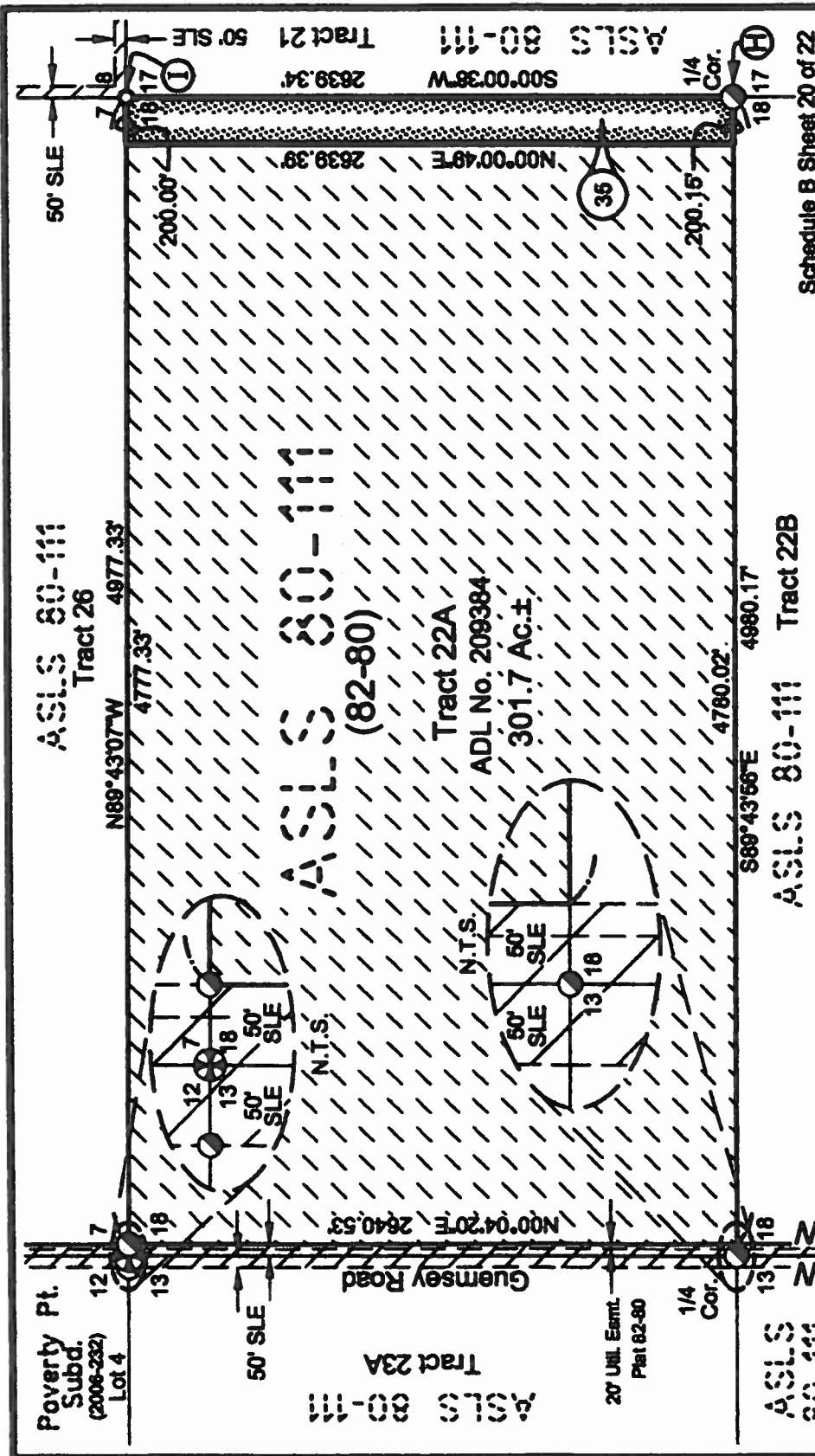
Tract 19A

A blanket easement exists in favor of  
Matanuska Electric Association recorded  
in Book 479 on Page 405.



Within Section 18  
T15N R4W S.M.  
Alaska

8 1/2" x 11" Orient



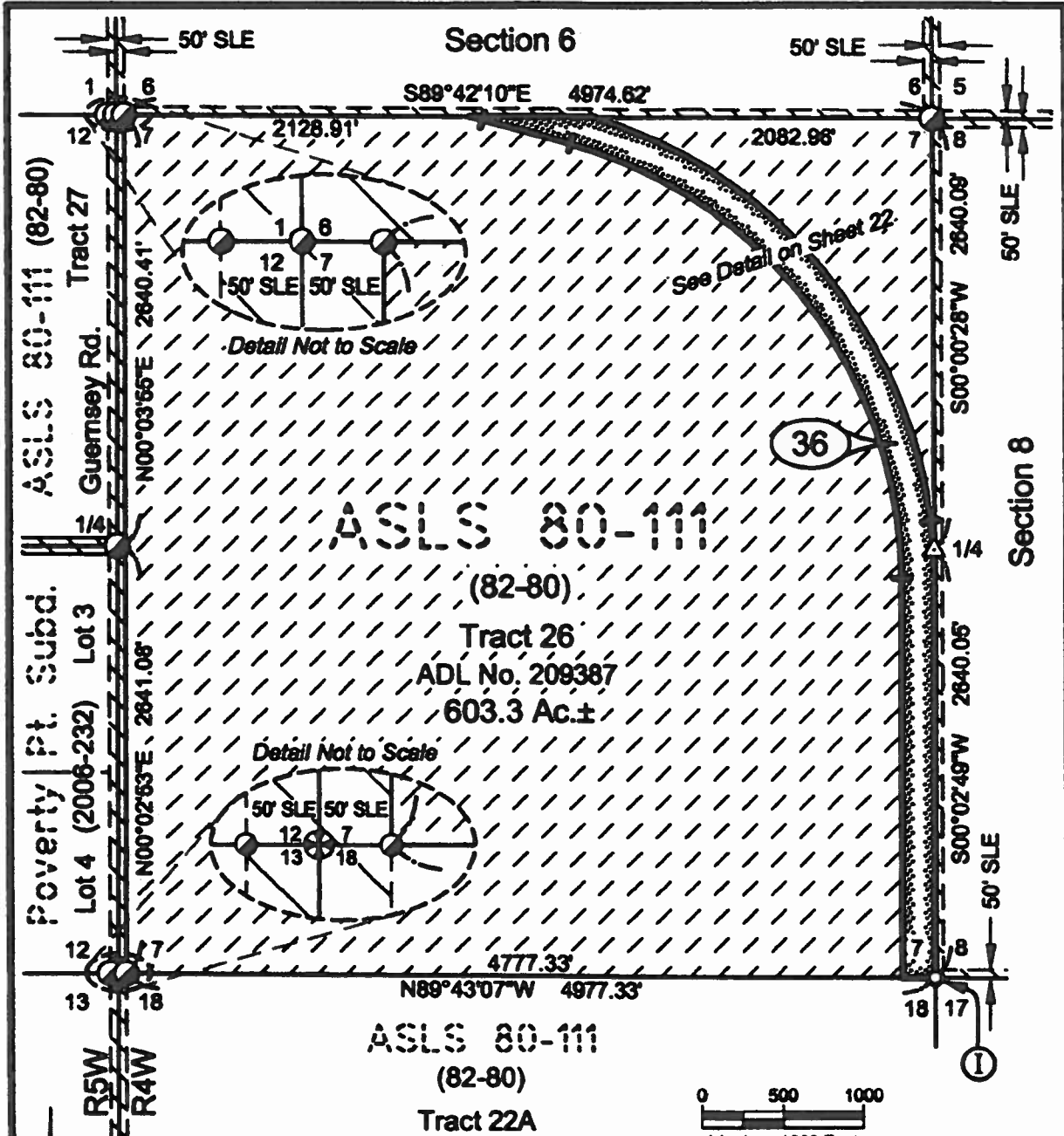
Schedule B Sheet 20 of 22

Matanueka - Sualtina Borough	
Schedule B Parcel No. 95 RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension	
CONDEMNATION AREAS	Drawn By <u>JEL/AMB</u>
THIS PARCEL	Checked By <u>JBK</u>
FULL SCHEDULE B	Date <u>07/20/2015</u>
12.1 Ac.±	
458.0 Ac.±	

See Notes and Legend on Sheet 3

Within Section 18  
T15N R4W S.M.  
Alaska

8.5" x 11" Orient



See Notes and Legend on Sheet 3

Schedule B Sheet 21 of 22

Within Section 7  
T15N R4W S.M.  
Alaska

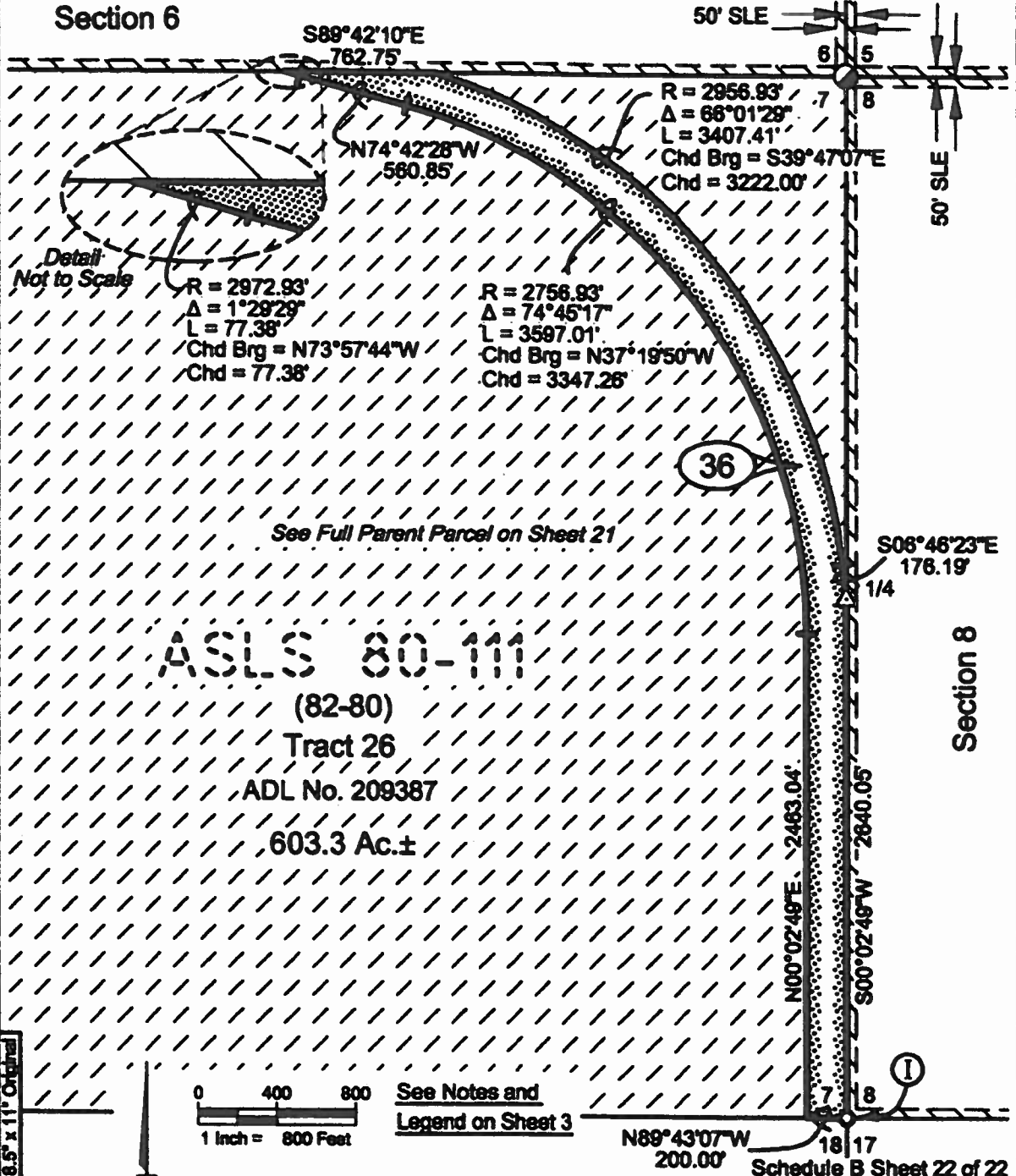
8.5" x 11" Original



<b>Matanuska - Susitna Borough</b>	
<b>Schedule B Parcel No. 36</b>	
<b>RIGHT OF WAY REQUIRED FOR</b>	
<b>Port MacKenzie Rail Extension</b>	
<b>CONDEMNATION AREAS</b>	<b>Drawn By</b> <u>AMB/JEL</u>
<b>THIS PARCEL</b>	<u>29.7 Ac.±</u>
<b>FULL SCHEDULE B</b>	<u>458.0 Ac.±</u>
	<b>Checked By</b> <u>JBK</u>
	<b>Date</b> <u>07/20/2015</u>



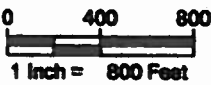
Section 6



ASLS 80-111  
 (82-80)  
 Tract 26  
 ADL No. 209387  
 603.3 Ac.±

See Full Parent Parcel on Sheet 21

8.5" x 11" Original



See Notes and Legend on Sheet 3

N89°43'07"W 200.00' Schedule B Sheet 22 of 22

Within Section 7  
 T15N R4W S.M.  
 Alaska

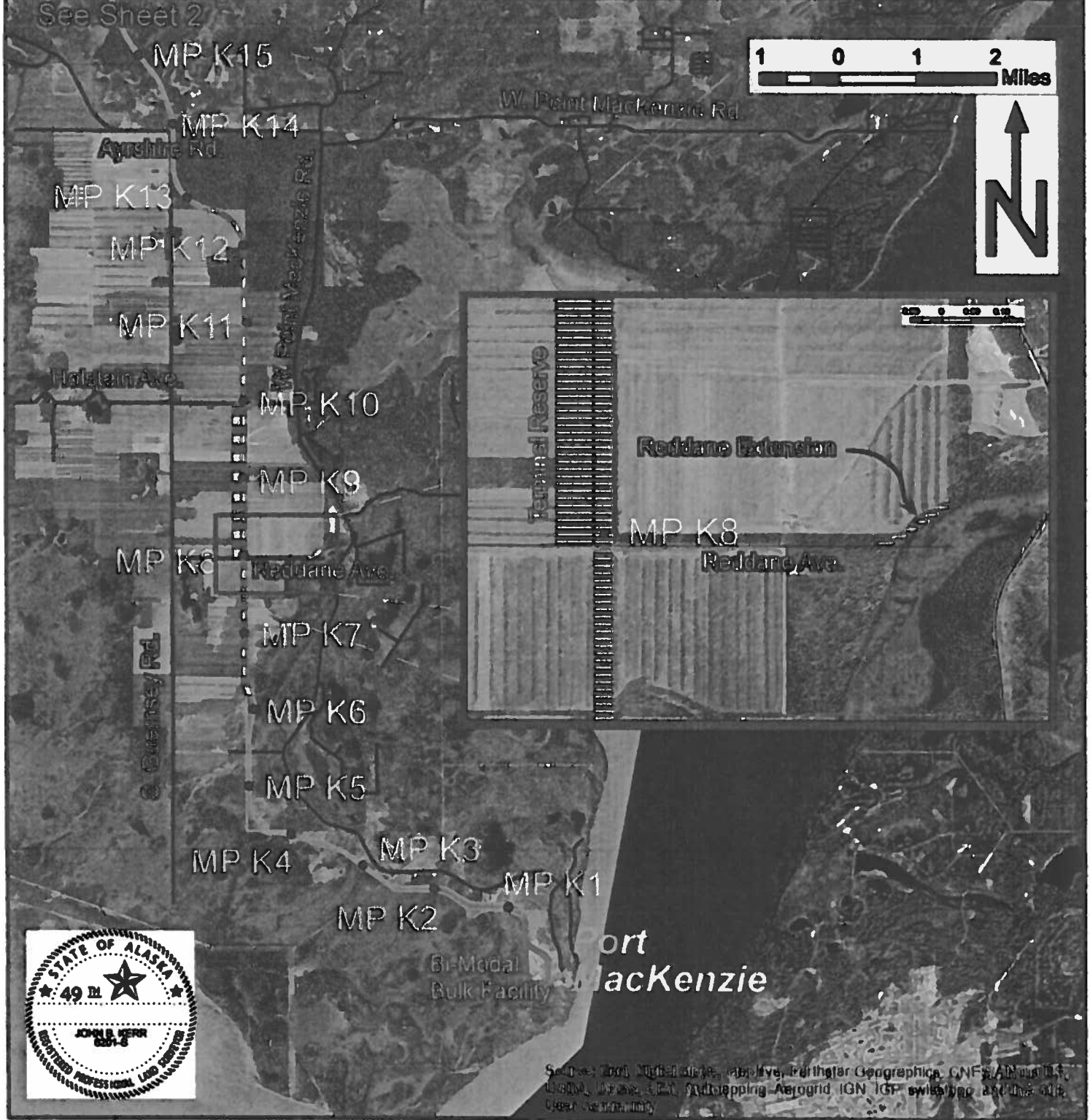


Matanuska - Susitna Borough	
Schedule B Parcel No. 36	
RIGHT OF WAY REQUIRED FOR Port MacKenzie Rail Extension	
CONDEMNATION AREAS	
THIS PARCEL	29.7 Ac.±
FULL SCHEDULE B	458.0 Ac.±
Drawn By	AMB/JEL
Checked By	JBK
Date	07/20/2015

8.5" x 11" Original

# Port MacKenzie Rail Extension Agricultural Covenant Condemnation: Schedule C

See Sheet 2



Source: Topo, Digital Air Photo, Aerial Photo, Bathymetry, Geographical, CNFS, Aerial, USGS, NOAA, USGS, FEMA, Interpol, Aerogrid, IGN, IGP, satellite and other data. Clear copyright.

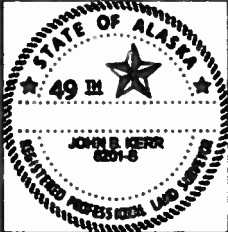
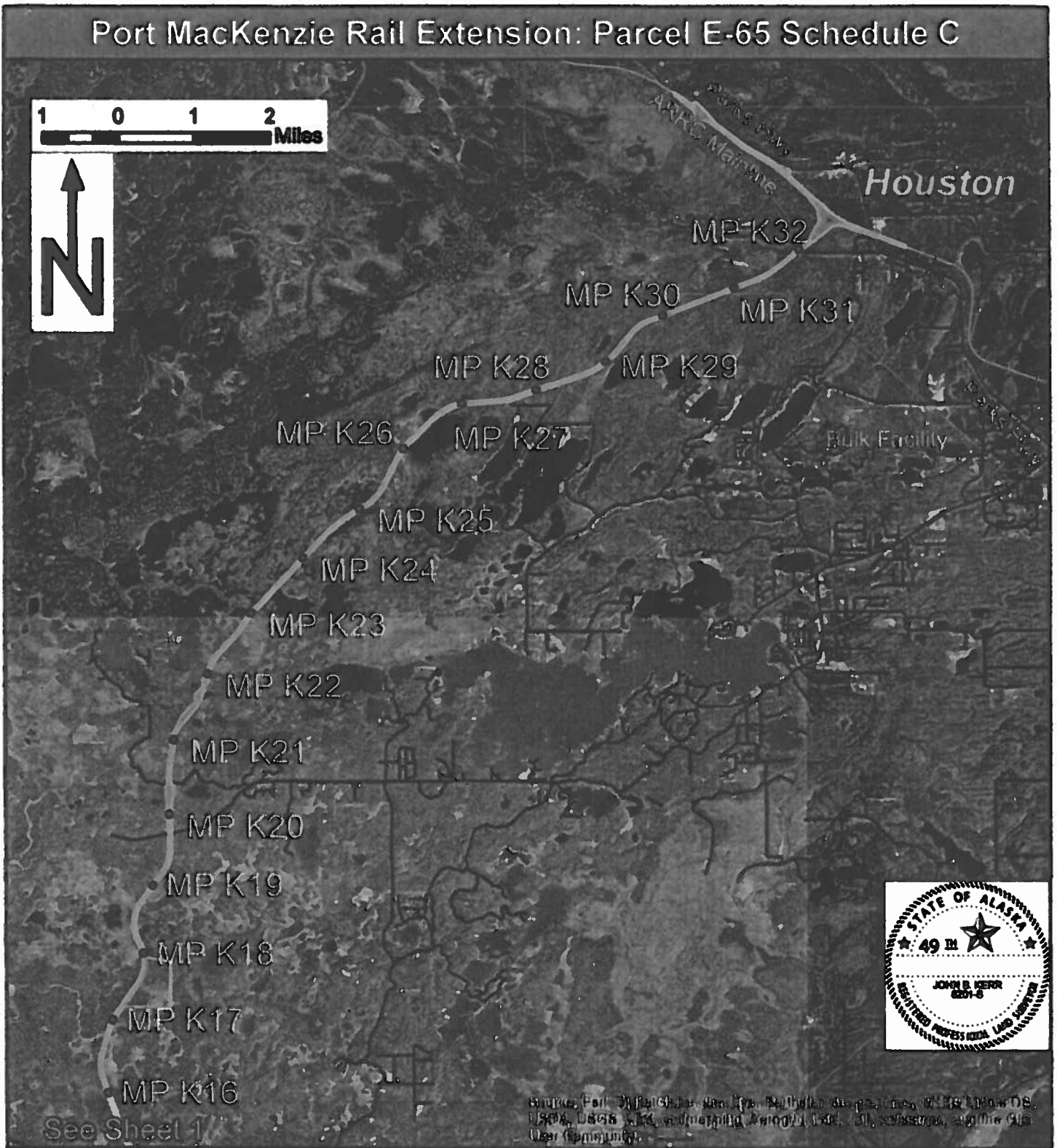
**Sheet 1 of 2**  
 PMRE Related Agricultural Lands  
 Schedule C  
 Prepared By SurvBase, LLC  
 Date: 2015-02-18



**Legend**

- Ag Covenants Required for PMRE
- Port MacKenzie Rail Alignment
- Roads

# Port MacKenzie Rail Extension: Parcel E-65 Schedule C



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See Sheet 1

Sheet 2 of 2  
PMRE Related Agricultural Lands  
Schedule C  
Prepared By SurvBase, LLC  
Date: 2015-02-18



**Legend**  
— Port MacKenzie Rail Alignment  
— AK Railroad Mainline  
— Roads

**MATANUSKA SUSITNA BOROUGH  
CAPITAL PROJECTS DEPARTMENT**

**Port MacKenzie Rail Extension**

**DECISIONAL DOCUMENT**

**I. POINT MACKENZIE AGRICULTURAL DISTRICT**

The Point MacKenzie Agricultural District was designed by the State of Alaska as a 15,000 acre project with 31 tracts that would provide dairy operations or crops in the early 80's. Patents or deeds issued by the state for agricultural land were limited to the agricultural interest only, commonly called "ag rights." On August 5, 1997, a new law went into effect for state agricultural land sales: Chapter 20, SLA 1997 (originally known as "SB 109"). Patents or deeds issued by the state conveyed the state's remaining interest in the land, subject to "a perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of the land for agricultural purposes." AS 38.05.321(a)(1).

On April 19, 1999, Matanuska-Susitna Borough (Borough) submitted an Application to the State of Alaska, Department of Natural Resources, Division of Mining, Land and Water for a right of way easement 300' in width for railroad purposes on Parcel Nos. 27, 30, 31, and 33 assigned Alaska Division of Land (ADL) No. 227688. The State of Alaska, Department of Natural Resources, Division of Agriculture, granted a Public Use Easement for Railroad Purposes, recorded February 19, 2003, at Book 961, Page 063, and re-recorded at Book 977, Page 959 for Parcel 29. Parcel 32 was included in the application for ADL 227688 but the patent issued by the state to the previous owners is "subject to a public transportation corridor easement 254 feet wide, along the eastern tract boundary." Parcel Nos. 22, 34, 35, and 36 have no reservations or easements for a railroad right of way.

**II. PURPOSE**

The purpose of this Decisional Document is to inform the landowners, the court, the State of Alaska, and the public the basis for the decision by the Matanuska-Susitna Borough (Borough) to seek the elimination of restrictive agricultural use covenants (covenants) in the Point MacKenzie Agricultural District (PMAD) on property or rights owned by the Borough which might otherwise preclude use of the property for railway purposes of the Port MacKenzie Rail Extension (PMRE). This document is to demonstrate that the decision to eliminate these covenants for the proposed PMRE is in the public interest and has been reached through a systematic process that reasonably considered the needs of the public, property owners, and the State of Alaska and that the location of the proposed improvements is based on sound engineering principles and promotes the greatest public good while causing the least private injury.

This document summarizes relevant project background information, identifies studies which discuss the design alternatives and impacts considered, describes the Borough's evaluation of public benefits and private loss, and details the necessity for eliminating these covenants.

### III. PROJECT SUMMARY STATEMENT

The Borough and the Alaska Railroad Corporation (ARRC) jointly propose construction and operation of a new rail line to connect the Borough's Port MacKenzie to ARRC's rail system. The Agreement between the Borough and ARRC calls for the Borough to acquire the necessary right of way and for ARRC to build and operate the new rail line. The PMRE involves approximately 35 miles of total railway from Port MacKenzie (Port) to the ARRC mainline just south of Houston, Alaska. The line will ultimately provide improved railway transportation between the Port and Interior Alaska, expanding the regional transportation network. Following National Environmental Policy Act review, the Surface Transportation Board in December 2011 authorized ARRC to build and operate the new rail line. The project proposes a railway with a subgrade suitable for access by construction and railway maintenance equipment. A public road is not included. The project proposes 32+ miles of new railway and terminal reserve, as described in Section IV of this document.

### IV. GENERAL PROJECT INFORMATION

#### A. BACKGROUND

A railway serving the Port MacKenzie area has been under consideration for nearly 30 years. In 2003, the Borough commissioned the MacKenzie-Sustina Borough Rail Corridor Study, a preliminary study of road and railway corridor alternatives that would connect Port MacKenzie to the 470-mile ARRC mainline.<sup>1</sup> A total of 11 corridors were identified and evaluated for that study.

The PMRE project corridor was then reevaluated in 2007 in the Preliminary Environmental and Alternatives Report (PEAR), a comprehensive report produced by ARRC, consultants, and the Borough.<sup>2</sup> In mid-January 2008, ARRC submitted the PEAR to the Surface Transportation Board (STB), which is the lead federal agency on the project with the authority to approve construction of new railways, including extensions, in the United States. Because the project requires federal approval, an Environmental Impact Statement (EIS) was prepared to meet National Environmental Policy Act (NEPA) requirements. The STB, through its Office of Environmental Analysis (OEA) was responsible for preparing the EIS. The STB hired third-party consultant ICF International to assist.

On February 12, 2008, the STB issued a Notice of Intent (NOI) to prepare an

<sup>1</sup> [www.portmacerail.com/documents/RailCorridorStudy2003.pdf](http://www.portmacerail.com/documents/RailCorridorStudy2003.pdf)

<sup>2</sup> [www.portmacerail.com/library.html](http://www.portmacerail.com/library.html)

**EIS, which kicked off the formal environmental review process required under NEPA. The STB held scoping meetings in Knik, Big Lake, Willow, Houston, Wasilla, and Anchorage in March 2008.**

**The STB issued a Draft EIS on March 16, 2010.<sup>3</sup> The Final EIS, which was released by the STB's OEA on March 28, 2011, approved the Mac East Variant and Houston South as the proposed route for the PMRE.<sup>4</sup>**

**Subsequently, in response to issues and comments raised after issuance of the Final EIS, the STB directed OEA to prepare a detailed Environmental Memorandum addressing the additional concerns raised and whether a Supplemental EIS was warranted. That Environmental Memorandum, dated October 11, 2011, concluded that the Final EIS was adequate and that the preparation of a Supplemental EIS was not warranted.<sup>5</sup>**

**The STB issued its Report of Decision (ROD) at Docket No. FD 36095 on November 17, 2011, concluding that "...ARRC may build the environmentally preferred alternative – the Mac East Variant, Connector 3 Variant – Houston – Houston South alternative – subject to compliance with the environmental mitigation measures listed in Appendix 1 of this decision."<sup>6</sup> This decision was effective December 21, 2011.**

## **B. STATEMENT OF NEED**

**The purpose of the PMRE project is to establish a railway link between Port MacKenzie (Port) and the ARRC mainline, providing Port customers/shippers efficient railway transportation between the Port and Interior Alaska. The railway would travel north from the port facility and connect to the existing railway system at a point in Houston. The new railway would be an extension of the ARRC system, which currently connects ports in Seward, Whittier, and Anchorage with Interior Alaska, including Denali National Park, Fairbanks, and North Pole.**

**The proposed railway link is consistent with ARRC's enabling statute, to foster and promote long-term economic growth and development of the State's land and natural resources. It draws from over 30 years of planning documents and studies relating to port development and access. The project would expand and complement the regional transportation network, and represents a milestone in the development of the Port. Specifically, the project will provide transportation via railway for the development of minerals and other natural resources, and provide an alternative for transporting materials and equipment for large construction projects.**

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<sup>3</sup> [www.portmacerail.com/documents/Draft\\_EIS.pdf](http://www.portmacerail.com/documents/Draft_EIS.pdf)

<sup>4</sup> [www.portmacerail.com/documents/Final\\_EIS.pdf](http://www.portmacerail.com/documents/Final_EIS.pdf)

<sup>5</sup> [www.portmacerail.com/documents/EIS\\_ROD.pdf](http://www.portmacerail.com/documents/EIS_ROD.pdf), Appendix 2.

<sup>6</sup> [www.portmacerail.com/documents/EIS\\_ROD.pdf](http://www.portmacerail.com/documents/EIS_ROD.pdf)

The project size and significance to transportation in the area are expected to have additional positive effects both locally and regionally. Among the secondary project benefits projected are increases in employment and expansion of the tax base for communities benefiting from newly stimulated natural resource development and railway freight activity.

The State of Alaska has recognized the need for this project by appropriating general funds and issuing general obligation bonds to pay for project planning, design, and construction:

- \$10 million in State of Alaska general funds that the Alaska Legislature (South Central Rail Extension - Port MacKenzie to Mainline Grant # 08-DC-410) appropriated to the Borough for the Project.
- \$17.5 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant # 09-DC-499) appropriated to the Borough for the Project.
- \$35 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant #11-DC- 291) appropriated to the Borough for the project.
- \$30 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant #12-DC-398) appropriated to the Borough for the project.
- \$23.5 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant #13-DC-630) appropriated to the Borough for the project.
- \$30 million in General Obligation Bond funds (Port MacKenzie Rail Extension Grant #13-GO-010), appropriated to the Borough for the project, as approved by the voters in November, 2012 General Election.
- \$25 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant #14-DC-088) appropriated to the Borough for the project.
- \$13 million in State of Alaska general funds that the Alaska Legislature (Port MacKenzie Rail Extension Grant #15-DC-104) appropriated to the Borough for the project.

Detailed comprehensive evaluations of the need for this project are contained in the following documents, discussed earlier, and by reference are made part of this decisional document:

1. *Preliminary Environmental and Alternatives Report (PEAR)*, dated 2008, prepared by HDR Alaska, Inc. and TNH-Hanson, LLC for the Borough and ARRC<sup>7</sup>
2. *Final Environmental Impact Statement (EIS), Alaska Railroad Corporation Construction and Operation of a Rail Line Extension to Port MacKenzie, Alaska*, Surface Transportation Board, Office of Environmental Analysis, 2011<sup>8</sup>
3. *Environmental Memorandum*, Office of Environmental Analysis (OEA), STB,<sup>9</sup>
4. *Decision Docket No. FD 35025*, Surface Transportation Board (STB), 2011<sup>10</sup>

### C. PROJECT DESIGN

Key construction elements of this project are approximately 35 miles of new railway; ten bridges; two fish passage culverts; eight stream crossings; four crossings of public roads; numerous trail crossings and the rerouting of eight trails and the retirement of seven sections of existing trail; a terminal reserve to facilitate arrival and departure of trains maintenance and fuel storage; additional sidings; construction of a railway connection to ARRC's mainline; and a railway bridge proposed over the Little Susitna River with one main span of 120 feet.

#### Design Standards:

The Port MacKenzie Rail Extension Project has been engineered based on design standards found in the following:

*Manual for Railway Engineering*; American Railway Engineering and Maintenance-of-Way Association, 2007 through 2013 editions

*Alaska Railroad Standard Plans*

*A Policy on Geometric Design of Highways and Streets*; AASHTO, 2001

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<sup>7</sup> [www.portmacrail.com/library.html](http://www.portmacrail.com/library.html)

<sup>8</sup> [www.portmacrail.com/documents/Final\\_EIS.pdf](http://www.portmacrail.com/documents/Final_EIS.pdf)

<sup>9</sup> [www.portmacrail.com/documents/EIS\\_ROD.pdf](http://www.portmacrail.com/documents/EIS_ROD.pdf), Appendix 2

<sup>10</sup> [www.portmacrail.com/documents/EIS\\_ROD.pdf](http://www.portmacrail.com/documents/EIS_ROD.pdf)



**Roadside Design Guide; AASHTO, 2008**

**Highway Preconstruction Manual; Chapter 11, Alaska Department of Transportation and Public Facilities, January 2006**

**Manual on Uniform Traffic Control Devices, 2003 Edition; US Department of Transportation, Federal Highway Administration, 2003**

**D. ALTERNATIVES CONSIDERED**

The 2003 *Matanuska-Susitna Borough Rail Corridor Study*, mentioned earlier, identified 11 potential corridors between Port MacKenzie and the existing ARRC mainline.<sup>11</sup> The corridors generally adhered to the premise of preserving an 800-foot wide corridor to incorporate sufficient right of way (ROW) for the railway and periodic sidings, a four-lane divided highway, utilities, and bicycle pathways. A constraints analysis was conducted, which identified environmental, socioeconomic, and land use constraints in the study area and overlaid them to geographically determine opportunities and challenges for corridor location. This analysis identified potential corridor alternatives recognizing that there might be a need to adjust or eliminate some of the alternatives based on the concerns identified from the public meeting regarding impacts to private property and wetlands. Corridors that affected large amounts of private property and wetlands were eliminated and other corridors were adjusted to avoid these areas where feasible. Several similar corridors were combined to create more desirable routes. Corridor 3, leading to a junction with the existing ARRC mainline just north of Willow, received a considerable amount of support from the public and the Borough as an 800-foot-wide combined railroad, expressway, and utility corridor. Corridor 7 was designed to be a roadway-only corridor and utilized existing planned improvements by the Borough. The result of this 2003 study was the recommendation for further study of Corridors 3 and 7 as separate corridors for rail and road access to the Port. This recommendation was supported by Ordinance Serial No. 05-011(AM) of the Borough Assembly.

In the constraints analysis for the 2008 *Preliminary Environmental and Alternatives Report (PEAR)*, the alternatives considered in 2003 were re-evaluated to confirm that the findings from the 2003 report were still valid, and that conditions had not changed to make one or more of the alternatives previously eliminated more preferable. The 2003 corridors were also evaluated to ensure that there were no other alternatives that should be considered that had been overlooked in the earlier study. Alternative corridors were developed based on reviewing the 2003 corridors, the constraints analysis, and engineering and environmental considerations such as:

- Existing transportation systems

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<sup>11</sup> These are identified on the map attached hereto at Appendix "A".

- The natural environment: wetlands, hydrology, fish and essential fish habitat, wildlife, and geology and soils
- The human environment: land use and land use plans, parks and open space, archaeological and historical properties, socioeconomics, air quality, noise, coastal consistency, energy, public input, and environmental justice
- Safety: crossings of roadways and trails, and hazardous materials and petroleum

All the corridors start at Port MacKenzie at the south and connect to the existing ARRC mainline to the north. Each corridor is composed of a southern and northern segment with a possible connector tying the segments together. The southern segments ran initially through the west and east edges of the Point MacKenzie Agricultural Project (PMAP). Just north of the agricultural area, there were three main northern segments – Willow, Houston, and Big Lake – with Houston having a north or south variant. Connectors link the north and south segments together to create eight possible alignment configurations,<sup>12</sup> as listed below.

1. Mac West – Connection 1 – Willow. This alignment would be 44.8 miles long. It was one of the longest alignments and contains the segments furthest west.
2. Mac West – Connection 1 – Houston – Houston North. This alignment would be 35.1 miles long, was one of the shorter alignments, and is geographically one of the middle alignments.
3. Mac West – Connection 1 – Houston – Houston South. This alignment would be 34.5 miles, was one of the shorter alignments, and is geographically one of the middle alignments.
4. Mac West – Connection 2 – Big Lake. This alignment would be 35.8 miles. It included the southern segment along the west side of the Point MacKenzie Agricultural Project and the most eastern north segment going towards Big Lake.
5. Mac East – Connection 3 – Willow. This alignment would be 45 miles and was the longest. It included the southern segment along the east side of the Point MacKenzie Agricultural Project and the most western north segment going towards Willow.
6. Mac East – Connection 3 – Houston – Houston North. This alignment would be 35.3 miles, was one of the shorter alignments, and is geographically one of the middle alignments.

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<sup>12</sup> These eight alignments configurations are shown on the map attached hereto at Appendix "B".

7. **Mac East – Connection 3 – Houston – Houston South.** This alignment would be 34.7 miles long, was one of the shorter alignments, and is geographically one of the middle alignments.
8. **Mac East – Big Lake.** This alignment would be 31.8 miles long and was the shortest alignment. It included the southern segment along the east side of the Point MacKenzie Agricultural Project and the most eastern north segment going towards Big Lake.

The alignments consist of a nominally 200-foot wide ROW to allow for the track, periodic sidings, and a subgrade width suitable for railway construction and ongoing railway maintenance access. The Borough, ARRC, and their consultant team used quantitative measures to compare the strengths and weaknesses of the alternatives. The project team developed a matrix evaluation based on STB criteria and environmental and engineering criteria specific to the project area. Criteria were selected based on availability of a quantifiable measure and differences in measurements for alternatives that allowed comparison. Criteria in the matrix included poorly or highly compressible soils, number of new road crossings, land availability, number of developed parcels, designated land use, train energy, wetlands, number of anadromous fish stream crossings, high potential for archaeological sites, fragmentation of a designated refuge and recreation area, and construction costs. Based on the results of the matrix, the various alternatives were described by their strengths and weaknesses.

These results were published in the PEAR in January 2008. ARRC subsequently submitted the PEAR for consideration in the STB's NEPA process.

During the NEPA process and in response to public comment, the STB added a new alignment segment within the PMAP: the Mac East Variant. This segment runs from south to north along a section line roughly half way between Point MacKenzie Road and Guernsey Road. Analysis of the alternatives, including the no-build alternative, was completed and the final EIS was issued by the STB on March 26, 2011 recommending the preferred alternative, the Mac East Variant and Houston South route.<sup>13</sup>

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<sup>13</sup> A map showing the Mac East Variant and Houston South route is attached hereto at Appendix "C".

## **E. ALTERNATIVE SELECTED**

As previously explained, the STB Record of Decision (ROD), with an effective date of December 21, 2011, determined that "...ARRC may build the environmentally preferred alternative – the Mac East Variant, Connector 3 Variant – Houston – Houston South alternative – subject to compliance with the environmental mitigation measures listed in Appendix 1" of the ROD.

All of the southern segments, Mac West, Mac East, and the Mac East Variant – the route approved by the STB – impact the Point MacKenzie Agricultural Project (PMAP). The PMAP extends between the Suelina Flats State Game Refuge to the west and the Goose Bay State Game Refuge to the east. Thus, to avoid game refuge impacts, any railway alignment going to Port MacKenzie will of necessity impact the PMAP, with the STB determining that the "environmentally preferred alternative" is to route the rail line along the Mac East Variant within the PMAP.

The specific location of the alignment for the Mac East Variant segment was further detailed during the engineering design of this portion of the project, which for construction purposes has been designated Segment 2. The nominal 200 foot wide railway right of way was located adjacent to and west of a section line for approximately 5.5 miles to utilize land that has long been identified for a transportation corridor, specifically:

1. ADL 227688 Right of Way Easement, 300 feet wide adjacent to and west of the east section line of the following sections, all in Township 15 North, Range 4 West, Seward Meridian:
  - a. North ½ of Section 19
  - b. South ½ of Section 30
  - c. Section 31
2. Transportation Corridor Easement per Alaska Patent 20222, 254 feet wide adjacent to and west of the east section line of the following sections, all in Township 15 North, Range 4 West, Seward Meridian:
  - a. South ½ of Section 19
  - b. North ½ of Section 30
3. Public Use Easement for Railroad Purposes, the east 300', located in Section 6, Township 14 North, Range 4 West, Seward Meridian, recorded February 19, 2003, at Book 981, Page 083, and re-recorded at Book 977, Page 959.

## **V. SPECIFIC PROPERTY INFORMATION**

Construction of the railway grading for Segments 1 and 3 of the PMRE, south and north of Segment 2 respectively, is complete, the necessary Right of Way (ROW) and/or construction license having been acquired earlier through voluntary negotiated transactions.

The Borough has similarly acquired the property rights needed for the Segment 2 rail line through negotiated transactions with private landowners. Between Reddane Avenue and Holstein Avenue, the Borough has also acquired property for the Project from private landowners for a 1,300 foot wide strip, located along the east boundary of Parcels 31 and 32. This strip will be used as the rail corridor, a Terminal Reserve by ARRC for railway yards and facilities for railway maintenance and operations.

The 1,300 foot wide strip also includes a 100 foot wide strip west of the Terminal Reserve for a circulation roadway between Reddane Avenue and Holstein Avenue and an easement for an extension of Reddane Avenue east to connect to Point MacKenzie Road.

The Segment 2 property rights still needed are the removal of restrictive agricultural use covenants encumbering the Borough's property within the PMAP needed for the PMRE which might otherwise preclude use of such property for railway and roadway purposes.

#### A. PARCEL INFORMATION

There are ten farm properties within Segment 2 of the Project that are encumbered by restrictive agricultural use covenants – Parcel Nos. 22, 27, 29, 30, 31, 32, 33, 34, 35 and 36. The Borough has acquired, either in fee or by easement, the property rights needed for the Project from the owners of these parcels, with the exception that the use restrictions created by the covenants still remain.

These ten farm properties<sup>14</sup> are identified as follows:

<u>Parcel #</u>	<u>Owner</u>	<u>Legal Description</u>	<u>Rights Acquired</u>
Parcel 22:	Valley Utilities, LLC.	Williams Farm Tract A	Easement
Parcel 27:	Richard W. Gattis	ASLS 80-111 Tract 3	Easement
Parcel 29:	Richard W. Gattis	ASLS 80-111 Tract 5	Easement
Parcel 30:	Flyway Farm, LLC.	ASLS 80-111 Tract 7	Easement
Parcel 31:	Matanuska-Susitna Borough	ASLS 80-111 Tract 10	Fee
Parcel 32:	Matanuska-Susitna Borough	ASLS 80-111 Tract 13	Fee
Parcel 33:	Mark and Karlene Brouillet	ASLS 2002-024 Tract 19A	Easement
Parcel 34:	Stephen M. Sims	ASLS 80-111 Tract 22B	Easement
Parcel 35:	Matanuska-Susitna Borough	ASLS 80-111 Tract 22A	Fee
Parcel 36:	Gerhard Groeschel, Mgr	ASLS 80-111 Tract 28	Easement

<sup>14</sup> Schedules A, B & C are attached hereto showing the various parcels in Segment 2.

## B. PURPOSE FOR ACQUIRING

As addressed in Section II of this Decisional Document, the purpose of removing the restrictive agricultural use covenants burdening all ten parcels is specifically for constructing the railway and related roadway components of Segment 2 of the PMRE, which will establish a railway link between Port MacKenzie and the ARRC mainline, providing Port MacKenzie customers/shippers efficient railway transportation between the Port and Interior Alaska. It will be an extension of the ARRC system, which currently connects ports in Seward, Whittier, and Anchorage with Interior Alaska, including Denali National Park, Fairbanks, and North Pole. The project will expand and complement the regional transportation network, and aid in development of the Port in addition to providing transportation via rail for the development of minerals and other natural resources, providing an alternative for transporting materials and equipment for large construction projects. Removing the restrictive agricultural use covenants is necessary in order to locate the project along the selected route and ensure that use of the project ROW for its intended purpose within the PMAP does not contravene real property use restrictions.

## C. IMPACT OF THE ACQUISITIONS ON THE PROPERTY

For all ten parcels the principal impact of the acquisitions will be to extinguish the restriction limiting use of the property for agricultural purposes and thereby permit use of the property for the PMRE Project's purposes – a use that otherwise might be precluded by the covenants.<sup>15</sup>

The agricultural use covenants involved here were included in the patents from the State of Alaska to the landowners pursuant to AS 38.05.321. Under that statute, state land classified as agricultural is conveyed subject to "a perpetual covenant for the benefit of all Alaska residents and running with the land that restricts or limits the use of the land for agricultural purposes."<sup>16</sup> An additional covenant included in such conveyances restricts subdivision of the property, if obtained under homestead entry, to parcels of not less than 40 acres each; or, if the land was obtained by purchase, restricting subdivision to

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<sup>15</sup> The Borough does not believe that the covenants are intended to apply to a public entity acquiring land for a necessary public project like the PMRE. The Borough's eminent domain lawsuit will therefore include a cause of action requesting that the court so declare, but in the event the court rules to the contrary, the Borough will eliminate the covenants insofar as they burden the Segment 2 ROW by acquiring them under the authority granted it by AS 09.55.240 et seq.

<sup>16</sup> The statute defines "agricultural purposes" as: (1) the production, for commercial or personal use, of useful plants and animals; (2) the construction of (A) housing for landowners and farm laborers, (B) improvements for animals, or (C) improvements that are reasonably required for or related to agricultural use; (3) the use of gravel reasonably required for or related to agricultural production on the parcel conveyed; and (4) removal and disposition of timber in order to bring agricultural land into use.

not more than four parcels of not less than 40 acres each, and subject to the further restriction that a subdivided parcel may not be further subdivided.<sup>17</sup>

#### **D. SUMMARY OF STATE'S CONCERNS/BOROUGH RESPONSES**

Private landowner concerns were resolved through the negotiations between the Borough and the parcel owners, pursuant to which the Borough acquired the property outright in fee or acquired an easement in the Parcel as needed for the Project, subject to the agricultural covenants.

Representatives of the Borough and the State of Alaska, Department of Natural Resources, Division of Agriculture (State), have met on several occasions to discuss the restrictive agricultural use covenants and their removal. The State has indicated its agreement that the covenants are a property interest that the Borough may acquire by eminent domain and, further, that the State, as the entity with broadest authority to represent the public interest, is the appropriate entity to be compensated for the acquisition of the covenants that encumber the ten parcels in Segment 2, since the acquisition essentially involves the taking of a property right belonging to the public, i.e., the covenants are "for the benefit of all Alaska residents."

An independent study of the impact of the agricultural covenants on market value was prepared by competent, experienced appraiser following standards licensed appraisers are by law required to follow. The study was conducted for the specific purpose of quantifying the impact, if any, that the agricultural covenants have on the market value of lands located in the PMRE project area, based on appraisal instructions developed in consultation with the State. A Review Appraiser reviewed the study and determined that the conclusions reached in the study were appropriate and reasonable, and both the independent study and the Review Appraiser's determination have been shared with the State.

The independent study concluded that the use restrictions imposed by the agricultural covenants do not have any measurable impact on the value of the property such that no quantifiable reduction in value can be attributed to the covenants.

Given the results of the independent study, the Borough has assigned a nominal value of One Thousand Dollars per parcel for a total of Ten Thousand Dollars to be deposited as just compensation for the removal of the agricultural covenants from the ten parcels identified in Section V. A.

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<sup>17</sup> Those who acquired their agricultural lands by purchase and who seek to subdivide into parcels of less than 640 acres must also pay a fee for the right to construct housing on the subdivided parcels, if the subdivided parcel is conveyed to someone other than a member of the landowner's immediate family. The fee is either a set amount (adjusted periodically for inflation) or determined by appraisal of the right to construct housing.

The State and the Borough have agreed that the Borough should condemn the covenants through eminent domain and that the State should be named as a defendant in the eminent domain case, with the State's primary interest being to ensure that the agricultural covenants are removed only from the property necessary for the PMRE Project.

**VI. CONCLUSION**

Consistent with its policy for the acquisition of real property interests, the Borough has made a diligent, conscientious effort through good faith negotiations to acquire the property rights it needs for Segment 2 of the PMRE Project, including the removal of restrictive agricultural use covenants that encumber the ten parcels identified. Based on its discussions with the State, the Borough had determined that further negotiations would not be productive nor consistent with the schedule for construction of the proposed railway improvements, and that any unresolved issues can be determined in a fair and equitable manner through the institution of eminent domain proceedings.

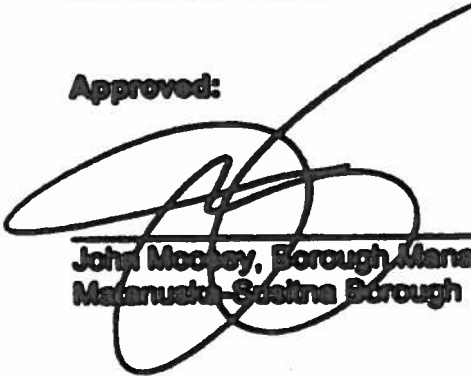
**Recommended:**



\_\_\_\_\_  
**Mike Brown, Capital Projects Director  
Matanuska-Susitna Borough**

Date: 5/15/15

**Approved:**



\_\_\_\_\_  
**John Mochey, Borough Manager  
Matanuska-Susitna Borough**

Date: 5.19.15