



	Approved	Denied
Date Action Taken:	1/22/07	
Other:		
Verified by: <i>H. Smith</i>		

WASILLA CITY COUNCIL ACTION MEMORANDUM

AM No. 07-03

TITLE: VACATION OF PUBLIC USE EASEMENT FOR NEW ALIGNMENT OF WEST AVIATION AVENUE

Agenda of: January 22, 2007

Date: January 10, 2007

Originator: Archie Giddings, Public Works Director

Route to:	Department	Signature/Date
X	Public Works & Recreation Facility Maintenance Director	<i>[Signature]</i> 1/10/07
X	Deputy Administrator Planning, Economic Development, Human Resources	<i>S. Harley</i> 1-10-07
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR DIANNE M. KELLER: *Dianne Harley*

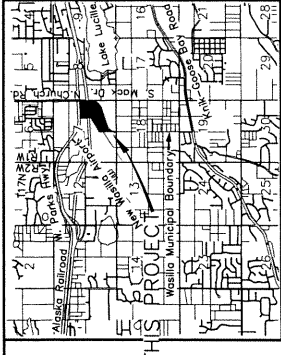
FISCAL IMPACT: yes \$ _____ or no Funds Available yes no
Account name/number:

Attachments: Record of Survey Preliminary Plat, 2006 Court Order

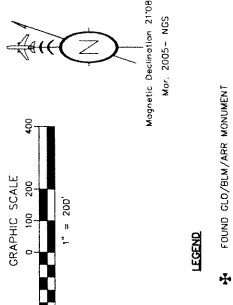
SUMMARY STATEMENT: This action is consistent with the eminent domain court order for the Sports Complex property that includes takings for S. Mack Drive and West Aviation Avenue. The proposed vacation (hatched area on plat) reflects the first proposed road alignment to the airport in 2000. In 2002, the Airport Master Plan identified the alignment for S. Mack Drive and an improved alignment for the airport access road. The West Aviation Avenue 100 foot wide easement as shown on the attached plat will be used instead of the "hatched" alignment which is to be vacated.

Note- The original court order in 2003 contained an error with respect to West Aviation Avenue that prevented platting of the airport access road. The attached 2006 court order corrects the error whereby West Aviation Avenue can now be established on its new alignment.

ACTION: To approve vacation of public use easement for new alignment of West Aviation Avenue.



VICINITY MAP SCALE 1" = 1 MILE
 Metanuska-Sutula Borough Tax Map No. 00 and HOOD, 2004
 Ranges 1 & 2 West, Seward Meridian, Alaska



Magnetic Declination 210'8" E
 Mar. 2005 - NOS

LEGEND

- FOUND OLD/BLM/ARR MONUMENT
- FOUND RUNWAY C/L MONUMENT
- FOUND OTHER PRIMARY MONUMENT
- SECONDARY MONUMENT SET PREVIOUSLY
- SECONDARY MONUMENT TO BE SET BEFORE RECORDING THIS DOCUMENT

SURVEY NOTES

- This survey does not constitute a subdivision per AS 34.065.010.
- The purpose of this survey is to determine the boundary of the property shown on the Record of Survey No. 2005-1599-C, in a Corrected Order signed by Judge Peter Mohlstedt on July 28, 2006, in the resolution of Case No. 3AN-02-13590-C.
- This survey was performed in April, 2005 and completed in December, 2005. The survey was conducted using GPS RTK, GPS and conventional total station (tape-based surveying) techniques. Post processing of GPS data was done using Topcon Tools, v. 3.06.492.
- The Basis of Bearings is True North as determined from GPS. The Basis of Distances is the Ground Positioning System (GPS) as determined from the line between the Runway Centerline Monuments as shown on the Record of Survey No. 2005-1599-C, which was surveyed and dated 02/07/1992 and fixed at Plat No. 92-6. All other bearings are local bearings as oriented to the Basis of Bearings and distances shown are reduced to horizontal ground distances.

SURVEYOR'S CERTIFICATE

I hereby certify that I am properly Registered and Licensed to practice Land Surveying in the State of Alaska, and that this plat represents a survey of the land shown hereon actually made or taken and that all dimensions and other details are correct to the extent shown hereon.

Date: _____
 Registration Number: 8726-LS
 Stephen Stol, Registered Land Surveyor

RECORD OF SURVEY

SURVEYED BY: McCintock Land Assoc., Inc.
 11840 Business Blvd. No. 205
 Eagle River, AK 99577
 907.694.4489

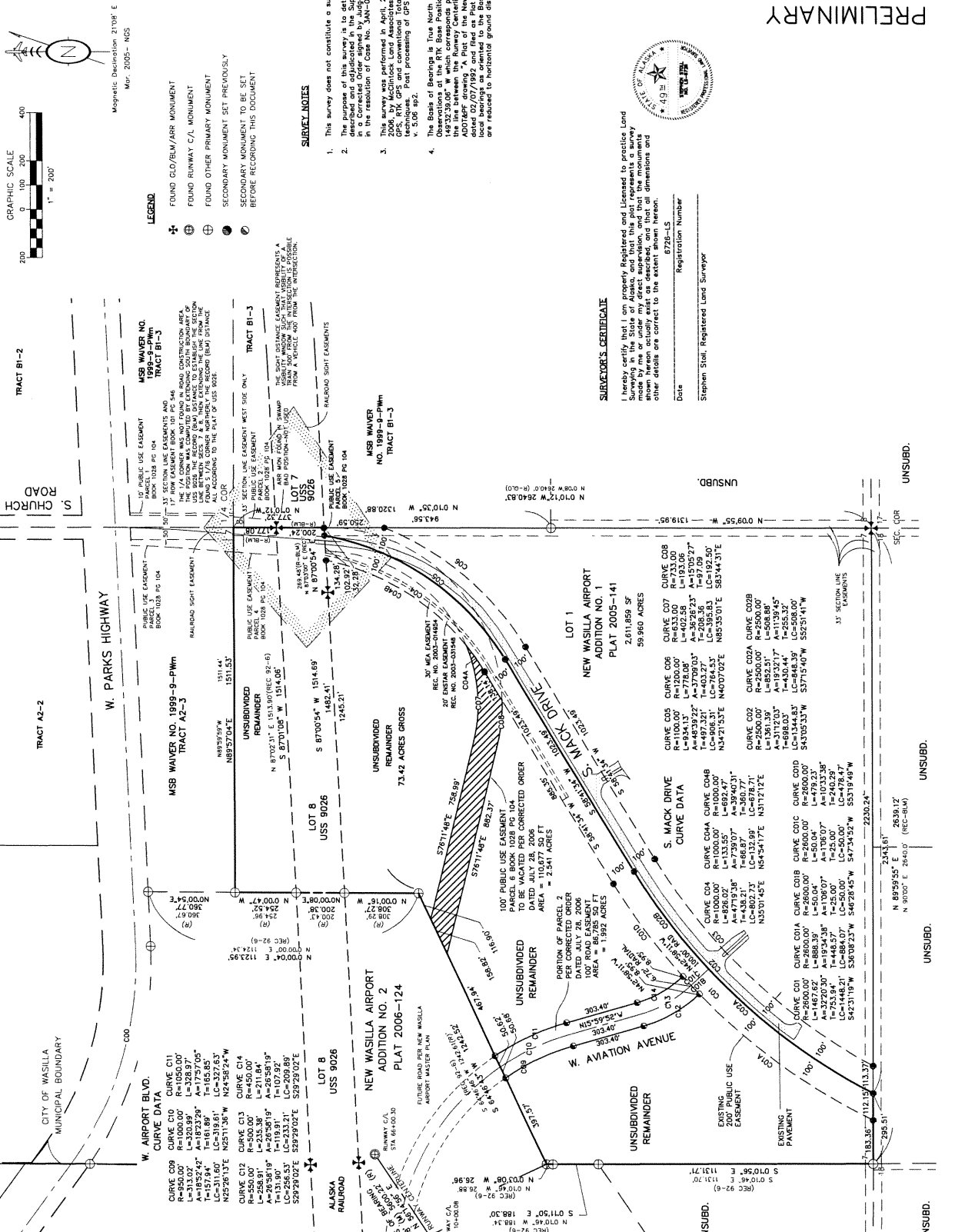
City of Wasilla, Alaska
 299 E. Herring Ave.
 Wasilla AK 99654
 907.373-8050

Record of the Survey of
W. AVIATION AVENUE
 VACATION OF A PORTION OF W. AVIATION AVE.
 AND DEDICATION OF A REALIGNMENT
 OF W. AVIATION AVE.

LYING WITHIN
 THE UNSUBDIVIDED REMAINDER OF
 SAID PARCEL CONTAINING
 73.42 acres, more or less
 AND ALL ACCORDING TO
 A CORRECTIVE ORDER DATED JULY 28, 2006,
 CASE NO. 3AN-02-13590-CI (ANCHORAGE)
 Palmer Recording District, Third Judicial District, Alaska

DRAWN: _____ DATE: 1/05/2007 SCALE: 1" = 200'
 CHECKED: CK, SMS DATE: 1/05/2007 SHEET: 1 OF 1

PRELIMINARY



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

CITY OF WASILLA, an Alaskan)
 municipal corporation)
)
 Plaintiff,)
)
 vs.)
)
 THE NATURE CONSERVANCY, a District of)
 Columbia non-profit corporation, GARY)
 LUNDGREN, THE ALASKA RAILROAD, and)
 Certain Parcels of Land Located in)
 the City of Wasilla, Alaska)
)
 Defendants.)

RECEIVED
 JUL 31 2006
 Birch Horton
 Bittner & Cherot

Case No. 3AN-02-13590 CI

**CORRECTED ORDER DETERMINING AUTHORITY AND NECESSITY
 AND GRANTING MOTION TO CONFIRM/DETERMINE
 TITLE & POSSESSION TO PARCELS 1 - 6**

This Court has completed a hearing to determine authority and necessity for the taking of the following property, and having made findings of fact and conclusions of law on the record on March 10, 2003.

The properties covered by this order are those properties described as follows:

Parcels 1 through 6, inclusive, in this action, and as shown on the portion of the Preliminary Plat dated May 6, 2002, of the New Wasilla Airport addition No. 1, Consisting of Lots B-1A, B-1B, D-2A, D-2B, and D-2C a proposed subdivision of Lots D2 and B1 and Lots 7 and 8, U.S. Survey No. 9026, located in Sections 7 and 8, Township 17 North, Range 1 West, Seward Meridian, Palmer Recording District, Third Judicial District, State of Alaska. This portion of the preliminary plat is attached as Exhibit A to this order.

BIRCH, HORTON, BITTNER AND CHEROT
 ATTORNEYS AT LAW
 1127 WEST SEVENTH AVENUE
 ANCHORAGE, ALASKA 99501-3399
 TELEPHONE (907) 276-1550 • FACSIMILE (907) 276-3680

JAN 25 2006

Parcel 1 is the future location of the Wasilla Sports Complex, presently under design and construction, and is also identified as Lot D-2C on the proposed plat referenced above.

Parcel 2 is a 200-foot wide road easement for South Mack Drive and a 100-foot wide road easement for Airport Boulevard, as shown on the proposed plat referenced above.

Parcels 3 through 6, inclusive, are sight line easements necessary to construct the road crossing the Alaska Railroad at grade as shown on the proposed plat referenced above.

On March 10, 2003, this Court, among other things, made the following findings of fact and conclusions of law on the record:

(1) The City of Wasilla, Alaska, is a first class city, organized and existing under the laws of the State of Alaska, and has the authority under the applicable statutes of the State of Alaska to take property for public use, with or without the use of a declaration of taking. With respect to Parcels 1 - 6 referenced in this order, the City of Wasilla is authorized by law to utilize the declaration of taking procedure.

(2) The City of Wasilla has shown that it has properly and adequately exercised the authority granted to it by the applicable statutes of the State of Alaska and the applicable provisions of the Wasilla Municipal Code, to take property for public use, either with or without the use of a declaration of taking.

(3) The City of Wasilla has demonstrated the necessity for the taking of Parcels 1 - 6 referenced in this order. In particular, the 59.96 acre taking for the construction of the sports complex is necessary and appropriate for the sports

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complex as it is presently designed and will be constructed. The two-hundred foot right of way is necessary and appropriate for South Mack Drive as the road is anticipated to be constructed and will probably be constructed in the near future.

(4) The City of Wasilla believed it owned the subject property under circumstances of the competing claims presently in litigation in which the City of Wasilla had originally been determined to be the owner of Lot D2. The interests of affected private property owners, both those who might claim an interest in the property itself and the owners of land adjacent to the property were not focused on by the City because of these circumstances.

(5) The City of Wasilla had performed an appropriate analysis of the various alternatives for these public projects, and consideration of the public benefits and private injuries involved, as set forth in the Decisional Document dated December 9, 2002, and the testimony provided at the hearing. Again, the City's analysis was in the context of believing it owned the property. Within that context it has narrowed and limited the scope and effect of its project to fit within the property available.

(6) The deposit of estimated just compensation made pursuant to Alaska Civil Rule 72(h)(2)(D) may be adequate to protect the parties at this time, but without a current appraisal the court cannot find it to be sufficient at this time. The City shall prepare and submit a current appraisal of the properties subject to this order, and adjust the deposit of just compensation to be in accord with the amount specified by the appraisal.

In accord with the foregoing,

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IT IS ORDERED, ADJUDGED AND DECREED that the motion of the City of Wasilla to confirm and/or determine, as applicable, title and right to possession of the properties listed above is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that title and the right of possession to Parcels 1 - 6, inclusive, is vested in the City of Wasilla, with the right to compensation for their interests, as those interests are subsequently determined in City of Wasilla v. The Nature Conservancy, U.S. District Court Case No. A99-591CV (JWS), and The Nature Conservancy v. Lundgren, Alaska Superior Court Case No. 3AN-02-9223 CI, vested in the parties entitled thereto. This title and right of possession is based on the City's authority to use and use of the power of eminent domain, both with and without the use of a declaration of taking.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction to review and adjust the amount of the deposit of estimated just compensation upon the completion of the appraisal presently being done on the properties, if there is any disagreement as to the applicability of or compliance with Paragraph (6) above, on the motion of any of the parties to this case.

DATED this 28th day of July, 2006.

Peter A. Michalski
PETER MICHALSKI
Superior Court Judge

i certify that on 7/28/06 a copy
of the above was mailed to each of the following
their addresses of record: Tervoren
Miller

A. Stanley
Administrative Assistant

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 25th day of
January, 2006, a true and correct copy of the
foregoing was served by first class mail on:

Steven S. Tervooren, Esq.
Hughes Bauman Pfiffner Gorski & Seedorf, LLC
3900 "C" Street, Suite 1001
Anchorage, AK 99503

BIRCH, HORTON, BITTNER AND CHEROT

By: Chris Hedberg
Chris Hedberg

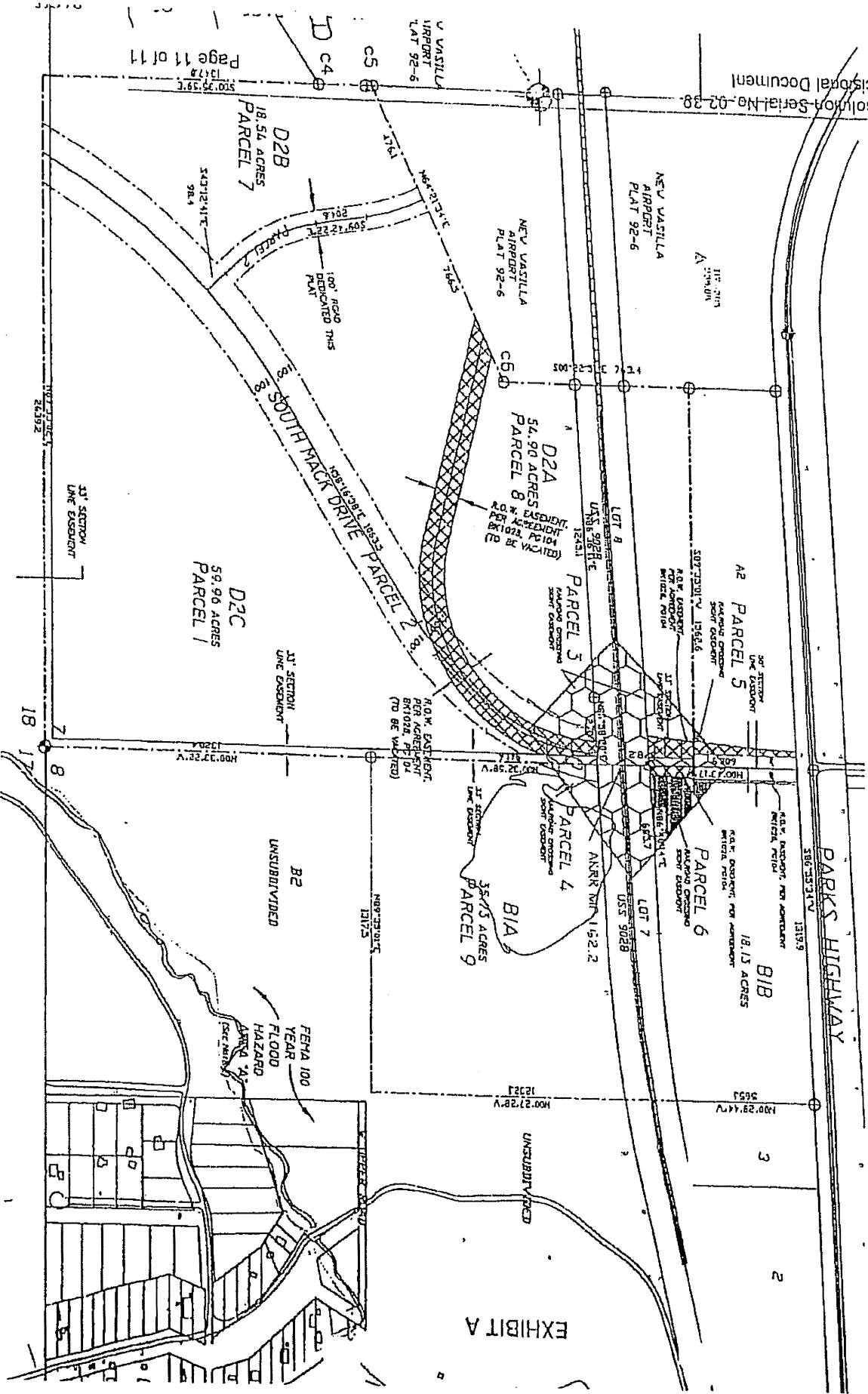


EXHIBIT A