

**PLANNING DEPARTMENT  
STAFF ANALYSIS  
CONDITIONAL USE**

**DATE:** July 11, 2022

**CASE NO.:** 2022-0034

**APPLICANT:** Spinell Homes, Inc.

**REPRESENTATIVE:** Tony Hoffman, Boutet Company

**REQUEST:** Conditional use for a 56-unit Residential Planned Unit Development (PUD) in the R-3 district, in accordance with AMC 21.07.110H., with variances.

**LOCATION:** Checkpoint Subdivision, Tract A2 per Plat 2018-39

**COMMUNITY COUNCIL:** Northeast

**TAX NUMBER:** 006-421-41

**SITE:** ±6.6 acres

**CURRENT LAND USE:** Undeveloped

**UTILITIES:** Served by public water and sewer

**ZONING:** R-3, mixed residential district

**COMPREHENSIVE PLAN:**  
Classification: “Single and Two-Family Residential” in the *Anchorage 2040*  
“Low to Medium Intensity Residential” per the *East Anchorage District Plan*

**SURROUNDING AREA**

	NORTH	EAST	SOUTH	WEST
Zoning:	R-4	R-3	R-2M	I-1
Land Use:	Undeveloped	Multifamily Residential	Manufactured Home Community	Industrial; Vacant

## **REQUEST**

Spinell Homes is requesting conditional use approval for a 56-unit residential planned unit development (PUD) on 6.6 acre in Northeast Anchorage. This housing project already obtained building permit approval as multiple structures on a single tract of land before the previous owner declared bankruptcy. All of the underground utilities (sewer, water, electrical, natural gas, and fire hydrants) are already installed. The new owner, Spinell Homes, restarted the project and is seeking to convert the condominium project into a single-family development on fee simple lots. A separate case (Case S12667) is reviewing the preliminary plat of this property.

The R-3 district allows up to 40 dwelling units per acre (or 55 dwelling units per acre with a PUD), and the proposed development has a residential density of 8.4. The developer is seeking to build compact housing with single-family homes on individual lots, as opposed to multifamily buildings or townhouses. This involves four zoning variances from AMC 21.07.110H., *Conditional use for a Residential PUD*, the PUD standards and one variance from AMC 21.07.060E.2.b., *Sidewalks*, a development and design standards.

## **AGENCY COMMENTS**

State and Municipal reviewing agencies have no objection to the petitioner's request.

## **PUBLIC COMMENTS**

A total of 707 public hearing notices were mailed on June 15, 2022. No public comments were received. The Northeast Community Council did not comment on the application.

## **Pre-Application Conference**

A pre-application conference was held on January 4, 2022, as required by 21.03.020B., and the application was accepted by the Planning Department on February 2, 2022.

## **Community Meeting**

A community meeting was held with the Northeast Community Council on January 19, 2022, in accordance with 21.03.020C. A summary of the community meeting is included with the application.

## **FINDINGS**

### **AMC 21.03.080D. Conditional Uses - Approval Criteria.**

**The planning and zoning commission may approve a conditional use application if, in the judgment of the commission, all of the following criteria have been met in all material matters:**

**1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations.**

The standard is met.

The 2014 *East Anchorage District Plan* identifies the site as “Low to Medium Intensity Residential”, which supports a range of housing types from single-family to multifamily buildings. The *Anchorage 2040 Land Use Plan*, which was adopted in 2019, shows the site as “Single and Two-Family Residential”. *Anchorage 2040* reduced the intended housing density from the previous plan. In this case, the policies of *Anchorage 2040* govern because it is the most recently adopted plan.

There are several policies in *Anchorage 2020* that are relevant to this conditional use:

- *General Land Use Policy 7: Avoid incompatible uses adjoining one another.*

This site is surrounded by multifamily housing, a manufactured home community, industrial uses, and undeveloped land that is zoned R-4. The proposed compact single-family housing development will be different from much of the surrounding land uses and housing styles, but it will add diversity to the housing options and increase the desirability of living in the area.

- *Residential Policy 14: Conservation of residential lands for housing is a high community priority. New residential development at densities less than identified in the Neighborhood and District Plans is discouraged. No regulatory action under Title 21 shall result in a conversion of dwelling units or residentially zoned property into commercial or industrial uses unless consistent with an adopted plan.*

The land is zoned R-3, which allows development of up to 30 dwelling units per acre. The *Anchorage 2040 Land Use Plan* designate this site for “Single and Two-Family Residential”. This project implements *Anchorage 2040* by requesting single-family detached homes on individual lots.

The applicable *Anchorage 2040 Land Use Plan Map* policy is:

- *Policy 4.3: Promote balanced neighborhoods with diverse infill housing, and provide opportunities for development of affordable and accessible housing that avoids creating areas of concentrated low-income housing.*

This housing development promotes balanced neighborhoods by providing single-family homes in a multifamily family residential area. The undeveloped tract to the north is zoned R-4, which allows the highest

density of any residential zoning district. The manufactured home community to the south is zoned R-2M. The R-3 zoning to the east is developed with duplexes.

**2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district-specific standards set forth in chapter 21.04.**

The standard is met.

This project will have detached homes on individual lots. The compact single-family residential development proposed in this PUD is consistent with the purpose of the R-3 district and the use-specific standard which limits townhouse buildings to a maximum of 250 feet in length.

The R-3 district is a multifamily residential district that allows gross densities of up to 40 dwelling units per acre, but also allows single-family detached houses. AMC 21.04.020G.1., *R-3: Mixed Residential District*, states:

*“It is intended primarily for multifamily and townhouse dwellings characterized by low-rise multistory buildings. It allows a higher percentage of lot coverage than the R-2M zone, while also maintaining the residential living environment with landscaping, private/common open spaces, and other amenities for residents. This district provides greater housing opportunities and efficient use of residential land near commercial, community activity centers, town centers, and areas well served by transit.”*

**3. The proposed use is consistent with any applicable use-specific standards set forth in chapter 21.05.**

The standard is met.

AMC 21.07.110D., *Standards for Some Single-Family and Two-Family Residential Structures*, has four requirements for single-family residential developments. The first requirement is for there to be six noticeably different housing models. This application includes a plan sheet showing the front building elevation and floor plans for six different housing models in compliance with the requirement.

The second requirement of single-family residential developments is for there to be easily visible primary entrances that are roofed and connect to driveways by paved pathways. The proposed homes will meet both of these requirements.

The third requirement is for the garage to not exceed 67 percent of the total width of the building. Of the six different proposed house designs, none will have garages that exceed the maximum allowed width as a percent of the house.

The fourth requirement is for windows and primary entrance doors to comprise a

minimum of ten percent of the street facing elevation. Each of the house plans for this development exceeds the minimum requirement for window and primary entrance doors.

- 4. The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts.**

The standard is met.

The site size, location, and topography are adequate for the proposed PUD. This housing development will have a residential density of 8.4 dwelling units per acre, which is higher in density than other single-family developments in town. No mitigation is needed to address potential negative impacts on surrounding residential developments because they are higher density than this one.

- 5. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district.**

The standard is met.

This is a conditional use for a residential use in a in a residential zoning district (R-3). The proposed use is a residential development, which will not limit or prevent the use of surrounding properties.

- 6. The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts).**

The standard is met.

This conditional use for a PUD is compatible with neighboring properties which are a mix of uses, including vacant residential land, duplexes, multifamily housing, and industrial.

The noise and light generated by this site will not have a negative impact on surrounding areas because this is a residential development with an internal street.

- 7. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible.**

The standard is met.

No adverse impacts from this residential development are anticipated to affect neighboring properties. No special requirements are needed.

8. **The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability, impacts on pedestrian, bicycle, and transit circulation, and safety for all modes.**

The standard is met.

The site plan shows all 56 lots accessing a new private street named Takotna Loop. Whisperwood Park Drive is a local road that provides access to Newell Street and Turpin Street, which are both classified in the *Official Streets and Highways Plan* as neighborhood collector streets. PeopleMover has routes 31 and 92 serving this area.

9. **The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services.**

The standard is met.

The site is located within the Building Service, Fire, Police, and EMS service areas. Public water and sewer, electric lines, natural gas, and fire hydrants are already installed.

#### **AMC 21.07.110H. Conditional Use for a Residential Planned Unit Development.**

1. **Intent and Approval**

**A residential planned unit development (PUD) is intended to allow flexibility for residential development in the zoning ordinance and to achieve the creation of a more desirable environment than would be possible through a strict application of the zoning ordinance. A residential PUD shall be processed as a conditional use in accordance with section 21.03.080. The planning and zoning commission shall evaluate the proposed planned unit development in accordance with the conditional use approval criteria at section 21.03.080D., and the following additional criteria:**

- a. **Creative use of the land, imaginative architectural design, a consolidation of usable open space and recreation areas and the preservation of natural features.**

This residential PUD is a creative use of a single tract of land in an otherwise multifamily residential area. These will be single-family homes with garages on platted lots. The site borders R-4 to the north, R-3 to the

east, R-2M to the south, and I-1 to the west. The housing style and architecture will increase property values for all of the residential uses in the area. There are no significant natural features that need protection at this site.

**b. The mixing of compatible land uses, residential densities and housing types within the neighborhood**

The site plan is compatible with the surrounding neighborhood. This development adds to the diversity of housing types in the neighborhood. Most of the housing in the area are townhouse-style multifamily buildings. The residential development directly to the east is duplex-style multifamily. There is a manufactured home community to the south. The residential tract of land to the north is undeveloped.

**c. The efficiency of the configuration of utilities, vehicular circulation and parking facilities.**

The site plan has an efficient configuration of utilities, vehicular circulation, and parking facilities. Public water and sewer, electric lines, natural gas, and fire hydrants are already installed.

There will be no large parking areas because each lot has individual driveways and garages.

**d. Enhancing the surrounding environment.**

This project enhances the surrounding neighborhood by bringing new single-family home construction in a compact design. The site plan will retain individual yards as well as common open spaces.

**e. Maintaining population densities and lot coverage that are consistent with available public services and the comprehensive plan.**

This site will bring 56 homes to this 6.6-acre tract of land. The population density and lot coverage of buildings is consistent with available public services and the comprehensive plan. *Anchorage 2040* designates this tract for single- and two-family development.

**2. Minimum Standards**

**All planned unit developments shall meet the following minimum standards. In addition, the planning and zoning commission may require compliance with such other design standards relating to the construction, design, and placement of buildings, landscaping, streets, roadways, walkways, drainageways, and other site design features as it may deem necessary. A PUD shall comply with any special limitations of the zoning district.**

**a. Minimum Site Area.**

**The minimum site area for a PUD shall be 2.0 acres for PUDs located entirely in the R-2M, R-3, and R-4 zoning districts. If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, R-7, GR-1, GR-2, GR-2A, GR-3, GR-4, or GR-5 zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres.**

The petition site contains approximately 6.6 acres, which is greater than the 2-acre requirement for a PUD.

**b. Open Space**

**A minimum of 30 percent of the site shall be reserved as open space which shall meet the following standards:**

The landscape plan shows 41 percent of the site as open space, which exceeds the requirement of 30 percent.

**i. At least one-half of such open space shall be contiguous.**

See the variance discussion beginning on page 16.

**ii. The open space shall not include public or private streets or rights of way; parking facilities, driveways, other motor vehicle circulation areas, loading areas, or refuse collection areas; slopes over 15 percent; 50 percent of designated snow storage areas; drainage easements, ditches, swales, or other areas intended to collect and channel water.**

The open space drawing shows required open space overlapping a storm drain easement and two snow storage areas. These areas should be considered open space because they will function as open space and meet the intent of the code. The storm drain easement is an underground pipe, so the land will function as open space.

Similarly, the snow storage areas will be open space for the residents for two reasons: 1) Snowplows will pile snow on the sides of Tokotna Loop before piling snow in designated snow storage areas; and 2) The two designated snow storage areas will have no snow in the summer months.

**iii. In class A districts, no portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below.**

See variance discussion beginning on page 16.

- iv. In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.v. and b.vi. below.**

This is a Class A (urban) district, so the standard is not applicable.

- v. A minimum of 12 percent and a maximum of 50 percent of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units.**

See variance discussion beginning on page 16.

- vi. In multistory buildings, balconies or decks may be used in lieu of individual yards provided that the total area of all balconies or decks is not less than the total yard area otherwise required.**

Not applicable.

**c. Design**

- i. Any nonresidential use permitted in a PUD shall be compatible with the residential nature of the development. Parking areas which are intended to serve nonresidential uses shall be separated from those designed to serve residential areas. Unless nonresidential and residential uses are combined within a single structure, nonresidential uses shall be separated from dwelling units by L2 buffer landscaping.**

This development will only be a residential use. No nonresidential use is being proposed for this development.

- ii. Pedestrian walkways shall connect residential and nonresidential uses within a PUD.**

There are no nonresidential uses in this development. The houses will have walkways to individual driveways, and the driveways connect to Takotna Street. There will be a sidewalk on one side of Takotna Street.

- iii. L2 buffer landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district or a right-of-way designated for collector or greater capacity on the Official Streets And Highways Plan.**

The application requests a variance from the L2 buffer landscape requirement.

- iv. Common open space with L3 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any abutting lot is greater than 150 percent of the average lot size along that lot line of the PUD.**

The petitioner is requesting a variance from the L3 Screening Landscaping requirement. The landscape plan shows a six-foot-high sight obscuring wood fence in place of the landscaping on the east, south, and west sides.

- v. Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building.**

The structure heights will be approximately 25 feet, which requires 12.5 feet of separation between houses. The applicant is seeking a variance to allow a minimum of ten feet separation between structures.

- vi. Each dwelling unit shall be provided with either heated parking, or at least one electrical outlet that is convenient to the required parking space(s).**

Each house will have a heated garage and an exterior electric outlet.

- d. Access and Connectivity**  
**PUDs shall comply with 21.07.060, *Transportation and Connectivity*.**

This residential development will be served by a new internal street that connects to Whisperwood Park Drive. The street will have a sidewalk on one side, which is the same as Shageluk Street, Ophir Drive, and Skwentna Drive to the east. The street system provides adequate street connectivity throughout the area.

- e. Utility installation.**  
**All new utilities shall be installed underground.**

The utilities are already installed, and they are underground.

- f. Homeowners' agreements. Any PUD which will involve the formation of a horizontal property regime under the terms of AS 34.07.030 et seq. or any mandatory homeowners' or similar association must submit for review by the commission the articles of incorporation and bylaws of any such association prior to the sale of any property subject to the association. The planning and zoning commission may require any provisions necessary to ensure that the provisions and intent of this title are met.**

The application includes an example of homeowners' agreements from a similar project. A final version will be recorded with the sale of each home.

**3. Development Options**

**The following provisions allow the developer of the PUD to propose changes from the provisions of the underlying zoning district with regard to density, allowed uses, and dimensional standards. The extent of the changes to the standards shall be determined by the planning and zoning commission in accordance with the approval criteria of subsection F.1. above.**

- a. Density The number of dwelling units per acre allowable on the gross are of a PUD shall be determined by the planning and zoning commission. However, in no event shall the number of dwelling units per acre exceed the maximums established by the following schedule:**

<b>TABLE 21.07-12</b>	
<b>Zoning District</b>	<b>Dwelling Units per Acre (gross area)</b>
R-1 and R-5	8
R-1A	6
R-2A	12
R-2D	15
R-2M	22
R-3	55
R-4	110
R-6	2
R-7	4.5
R-8	0.5
R-9	1.0
GR districts	As determined by the planning and zoning commission

The R-3 district is permitted to have a maximum of 55 dwelling units per acre (gross area). This development will have 8.4 dwelling units per acre, which is well below the maximum allowed, but this density will implement the "Single and Two-Family" designation in *Anchorage 2040*.

**b. Uses**

**The applicant may propose any residential use, and in class A zoning districts, may propose any commercial use that is allowed in the R-4 district in table 21.05- 1. A PUD may not include the storage or use of mobile homes or quonset huts. Any nonresidential use must be specifically authorized as to its exact location, type, and size. In no**

**event shall the total gross floor area of all nonresidential uses exceed 10 percent of the total gross floor area of the PUD.**

No nonresidential uses are being proposed with this application.

**c. Dimensional Standards**

- i. Height limitations in the R-1, R-1A, R-2A, R-2D, R-2F, R-2M, R-6, R-7, R8, R-9, GR-1, GR-2, GR-2A, GR-3, GR-4, or GR-5 zoning districts may be exceeded by an additional five feet. Height limitations in the R-3 and R-4 districts may be exceeded by an additional 10 feet.**

The maximum height allowed in the R-3 district is 35 feet. The houses in this development will not exceed 30 feet in height.

- ii. The applicant may propose changes to minimum lot area, maximum lot coverage, and minimum setbacks for the PUD.**

The minimum lot area for single-family detached houses in the R-3 district is 6,000 square feet. The smallest lot in this PUD will be 2,838 square feet. The largest lot will be 7,639 square feet, and the median lot size will be 3,977 square feet.

The maximum lot coverage for single-family detached houses in the R-3 district is 40 percent. This PUD will adhere to the R-3 maximum lot coverage and not exceed 40 percent.

The minimum lot width for single-family detached homes in the R-3 district is 50 feet. This development will have a minimum lot width of 35 feet.

The R-3 setbacks from lot lines for single-family detached homes are 20 feet in the front yard, 5 feet in the side yards, and 10 feet in the rear yards. This PUD will not change any of the R-3 setbacks.

**TABLE 21.06-1: TABLE OF DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS**  
(Additional standards may apply. See district-specific standards in Chapter 21.04 and use-specific standards in Chapter 21.05.)

Use	Minimum lot dimensions <sup>1</sup>		Max lot coverage (%)	Minimum Setback Requirements (ft)			Max number of principal structures per lot or tract <sup>2</sup>	Maximum height of structures (ft)
	Area (sq ft)	Width (ft)		Front	Side	Rear		
<b>R-3: Mixed Residential District</b>								
Dwelling, single-family attached	3,000	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	35
Dwelling, single-family detached	6,000	50	40	20	5	10	1	35
Dwelling, townhouse	2,000	20 (30 on corner lots)	60	20	N/A on common lot line; otherwise 5	10	1	35
Dwelling, two-family	6,000	50	40	20	5	10	1	
Dwelling, multi-family, three or four units	6,000	50	40	10	5, unless the abutting lot has a lower-density residential zoning, in which case 10	10 if abutting an alley; otherwise 20	More than one principal structure may be allowed on any lot or tract in accordance with subsection 21.07.110F.2.	
Dwelling, multifamily, five or six units	8,500							
Dwelling, multifamily, seven or more units	9,000 + 1,000 for every unit over 7 units							
All other uses	6,000	50	40	20	10	20	1	

**VARIANCE NUMBER 1**

The first variance requested is from AMC 21.07.060E.2.b., *Sidewalks*, to allow there to be a sidewalk on only one side of the street. The code states:

*“In all class A zoning districts except for industrial districts, sidewalks shall be installed on both sides of all streets (local, collector, arterial, public or private, including loop streets). Where indicated in the comprehensive plan, a pathway may replace a sidewalk on one side. In industrial zoning districts, a sidewalk shall be installed on one side of all local streets, and on both sides of local streets if the new sidewalks would connect to existing sidewalks on both ends and the needed sidewalk length is no greater than one quarter mile.”*

**AMC 21.03.240 Variances**

**G. Approval Criteria.**

**The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:**

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.**

The standard is met.

The intent of the code requirement is to promote walkability in all places, whether they be residential, commercial, or industrial areas. In this case, the residential development would benefit from a narrower street profile with more yard area and less pavement. The fact that there will only be a sidewalk on one side of the street does not reduce the walkability of the development. The narrowing of the road will reduce paving and promote a sense of place that is special to this compact development. This will be a very walkable neighborhood.

**b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard.**

The standard is met.

The granting of the variance provides more flexibility for the siting of the houses. A narrower streetscape will allow larger yards and less impervious spaces. This is supported by *Anchorage 2020* and *Anchorage 2040* policies that promote compact housing and a range of housing types for mixed-income neighborhoods.

**c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard.**

The standard is met.

Sidewalks increase the value of neighborhoods and make pedestrians safer. On this street, neighborhood value will be increased with more open space and less pavement. Furthermore, pedestrian safety will not be sacrificed because this short looping street will retain a sidewalk on one side.

**d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.**

The standard is met.

The loss of one sidewalk will not adversely affect the adjacent properties. The remaining sidewalk will connect to the sidewalk on Whisperwood Park Drive, and both Newell Street and Whisperwood Park Drive will have sidewalks on both sides. This private street only serves 56 houses.

**e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies.**

This standard is met.

The granting of the variance does not change the character of the zoning district and is in keeping with the intent of the code. This residential development will still have a sidewalk and the variance will help create a compact neighborhood for these 56 homes. Also, the variance does not allow an unpermitted use in the R-3 district.

- f. Persons with disabilities are provided with access as required by the Americans with Disabilities (ADA) and reasonable accommodation; and**

The standard is substantially met.

The variance will make ADA accessibility marginally more difficult because people with physical challenges will need to cross the street to find the safety of the sidewalk. Still, the sidewalk will be available to those people.

- g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.**

The standard is met.

The elimination of one sidewalk on such a small street is not likely to create an adverse effect on health, safety, and welfare for the people who live in this residential development. All of the Municipal and State agencies support the granting of the variance.

- h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.**

Not applicable

## **VARIANCE NUMBER 2**

The second variance requested is from AMC 21.07.110H.2.b., *Open Space*, to allow individual yards to count as open space. The code states:

- b. *Open Space*  
*A minimum of 30 percent of the site shall be reserved as open space which shall meet the following standards:*

The property contains 289,502 square feet, so the 30 percent open space requirement is 86,850 square feet. The open space exhibit shows open space over 41 percent (119,074 square feet) of the site, which exceed the requirement by 32,224 square feet.

- i. *At least one-half of such open space shall be contiguous.*

One-half of the total open space is required to be contiguous. Half of the total open space is 44,993 square feet. The open space exhibit shows 74,149 square feet of contiguous open space, exceeding the code requirement. However, the contiguous open space is in the rear yards and some of those yards may have fences. The applicant is seeking a variance from the contiguous open space requirement to allow the backyards to count for this standard.

- ii. *The open space shall not include public or private streets or rights of way; parking facilities, driveways, other motor vehicle circulation areas, loading areas, or refuse collection areas; slopes over 15 percent; 50 percent of designated snow storage areas; drainage easements, ditches, swales, or other areas intended to collect and channel water.*

The open space areas are shown on the open space exhibit included in the packet. Two prohibited areas are shown as open space; however, they are open space for all practical purposes. The storm drain easement on the southwest corner of the site is not allowed to be considered as open space. That would make sense if there was a ditch or drainage swale or pond in that location, but the storm drain easement will have an underground pipe. Therefore, the storm drain easement will function as open space and should be considered open space for the purposes of the requirement. Similarly, the snow storage areas will function as open space for a majority of the year for a residential development like this one.

- iii. *In class A districts, no portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below.*

The applicant is seeking a variance from this requirement for all open space areas to have 2,000 square feet of area and be 30 feet wide at the smallest dimension. Many of front and rear yards shown on the open space exhibit do not meet this requirement.

- iv. *In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.v. and b.vi. below.*

This is a Class A district, so the standard is not applicable.

- v. *A minimum of 12 percent and a maximum of 50 percent of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units.*

A maximum of 50 percent of the open space may be for residents of individual dwellings. This site plan relies on individual yards for most of the open space, which exceeds the maximum allowed. The applicant is seeking a variance from this standard.

#### **AMC 21.03.240 Variances**

##### **G. Approval Criteria.**

**The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:**

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.**

The standard is met.

The purpose of the code requirements for open space is to limit the size of buildings and parking lots, and to promote green spaces. The goal of the open space requirements is to create enjoyable places to live for the residents of a multifamily residential developments. The requirements limit the amount of deck and balcony areas that can count as the open space. Also, the open spaces are intended to be usable, so the code does not allow steep slopes to count as open space.

The code requirements were written for multifamily developments and did not foresee the use of single-family homes because they have less residential density. This development relies on a combination of common open space areas and individual yards, and the result will be ample usable yards. The site plan provides open space equal to the code requirement, but in a different form that could only be possible in a single-family-style development. This result will be an enjoyable place to live for the future residents.

- b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard.**

The standard is met.

The granting of the variance is the only way to allow single-family development of the site without reducing the number of homes. This site plan provides 56 new houses and open space for each home. *Anchorage*

*2020* and *Anchorage 2040* have policies that support infill housing and more compact neighborhoods, which are often more affordable.

- c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard.**

The standard is met.

The site plan relies on individual yards to meet the open space requirement, which makes sense for the single-family detached homes in this development. The emphasis on common open spaces can only be achieved with a multifamily residential development. This neighborhood will have no front yard fences, which will create a place to live that is typically only found on larger lots in other parts of town (e.g. Kempton Hills and Bayshore).

- d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.**

The standard is met.

The granting of the variance will not adversely affect the use of other properties around this development.

- e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies.**

This standard is met.

The site plan shows more open space than is required, but it uses individual yards instead of open space tracts. This will not change the character of the zoning district in a negative way. The variance does not allow an unpermitted use in the R-3 district.

- f. Persons with disabilities are provided with access as required by the Americans with Disabilities (ADA) and reasonable accommodation; and**

The standard is met.

The variance does not affect ADA accessibility.

- g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.**

The standard is met.

The allowance for individual yards to make up the open space requirement has a positive effect on the people who will live in this development because it means more housing in a compact neighborhood.

- h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner’s or user’s ability to continue to communicate adequately and effectively with the public through the use of the sign.**

Not applicable

**VARIANCE NUMBER 3**

The third variance requested is from AMC 21.07.110H.2.c.iii., *Design*, to allow a reduction in landscaping along the west lot boundary adjoining the Newell Street right-of-way from L2 buffer landscaping to one tree per lot. The code states:

*“L2 buffer landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district, or a right-of-way designated for collector or greater capacity in the Official Streets and Highways Plan.”*

<b>TABLE 21.07-1: LANDSCAPING SPECIFICATIONS</b>			
<b>TYPE OF LANDSCAPING</b>	<b>BED WIDTH OR AREA/LOCATION REQUIRED</b>	<b>PLANT MATERIALS REQUIRED</b>	<b>OPTIONAL DESIGN STANDARDS</b>
<b>SITE PERIMETER LANDSCAPING REQUIREMENTS</b>			
<b>Buffer Landscaping (L2)</b>	Minimum average planting bed width shall be 15 feet, with minimum width at any point not less than 10 feet, except as modified by the Optional Design Standards, in which case the overall minimum planting bed width shall be 10 feet.	Provide 2 trees and 6 shrubs per 20 linear feet of property line requiring buffer landscaping. At minimum, 1/2 of all trees shall be coniferous. Distribute trees and shrubs evenly along the length of the planting bed. All areas within the planting bed shall be covered with living ground cover, turf, or mulch. If relying on existing vegetation to meet these requirements, use of a site-obscuring or screening fence as an optional design standard is not allowed. All trees, shrubs, and ground covers shall be chosen for suitable hardiness and length of season for the specific area to be planted.	A 6-foot high ornamental sight-obscuring or screening fence may be used in lieu of 5 feet of planting bed width on side or rear property lines, but not along streets or street rights-of-way. The fence shall be situated within or on the edge of the planting bed, except where utilities or existing conditions create a conflict. Trees may be substituted with an equal number of shrubs at 6 feet minimum planting height in utility easements with overhead lines.

**AMC 21.03.240 Variances**

**G. Approval Criteria.**

**The application must state with particularity the relief sought and must**

**specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:**

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.**

The standard is met.

The Newell Street right-of-way alignment runs along the west boundary of the petition site, and Newell Street is designated in the *Official Streets and Highways Plan* as a “Neighborhood Collector.” The intent of the code requirement is to buffer residential PUDs from busy streets with landscaping. In this case, the code requirement is excessive and would reduce the open space allotted to each of the houses. This development will provide one tree and a fence as buffering.

- b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard.**

The standard is met.

The purpose of the regulation is to promote quality housing, but 15 feet of landscaping is unnecessary. If this undeveloped section of Newell Street is built someday in the future, then the fence and tree will provide adequate buffering for the 13 houses on the west side of this development.

- c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard.**

The standard is met.

For this residential development of single-family homes, the proposed fence and tree are more appropriate buffering than the code required L2 Buffer Landscaping standard. Neighborhood livability is not diminished by the choice of a fence over a wide planting bed.

- d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.**

The standard is met.

The use of adjacent properties will not be affected by the replacement of L2 Buffer Landscaping with a six-foot sight obscuring wood fence. The fence is a better alternative for these homes along the Newell Street right-of-way alignment.

- e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies.**

This standard is met.

The character of the zoning district will not change with the proposed reduction in landscaping. The fence provides better privacy than landscaping because the fence blocks views into the backyards of homes. The fence will give residents year-round security, in a way that landscaping cannot. The variance does not allow an unpermitted use.

- f. Persons with disabilities are provided with access as required by the Americans with Disabilities (ADA) and reasonable accommodation; and**

The standard is met.

The variance does not change ADA accessibility.

- g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.**

The standard is met.

The variance has a positive effect on the people who will live in these homes.

- h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.**

Not applicable

#### **VARIANCE NUMBER 4**

The fourth variance requested is from AMC 21.07.110H.2.c.iv., *Design*, to allow a reduction in perimeter landscaping around the site. The code states:

*“Common open space with L3 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any abutting lot is greater than 150 percent of the average lot size along that lot line of the PUD.”*

TABLE 21.07-1: LANDSCAPING SPECIFICATIONS			
TYPE OF LANDSCAPING	BED WIDTH OR AREA/LOCATION REQUIRED	PLANT MATERIALS REQUIRED	OPTIONAL DESIGN STANDARDS
<b>SITE PERIMETER LANDSCAPING REQUIREMENTS</b>			
<b>Screening Landscaping (L3)</b>	Minimum planting bed width of 30 feet, except as allowed by the Optional Design Standards.	Provide 3 trees and 10 shrubs per 20 linear feet of property line requiring screening landscaping. At minimum, 75% of all trees shall be coniferous. Trees and shrubs shall be evenly distributed along the frontage. All areas within the planting bed shall be covered with living ground cover, turf, or mulch. All trees, shrubs, and ground covers shall be chosen for suitable hardiness and length of season for the specific area to be planted.	On side or rear property lines, but not along streets or street rights-of-way, planting bed width may be reduced by 10 feet with provision of an eight-foot high ornamental screening fence.

**AMC 21.03.240 Variances**

**G. Approval Criteria.**

**The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:**

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.**

The standard is met.

L3 Screening Landscaping is excessive for single-family residential neighborhood. The L3 Screening Landscape standard requires a minimum planting bed width of 30 feet. This is the landscape standard that is used to buffer utility substations from residential developments.

- b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard.**

The standard is met.

Site perimeter landscaping is normally required for single-family homes, so 30 feet of landscaped area is unnecessary along the east and south sides of this development. The landscape plan shows trees with each lot and a group of plantings on the north boundary along Whisperwood Park Drive. This is appropriate landscaping for the type of residential development being proposed.

- c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard.**

The standard is met.

The residents of this development will benefit from residential landscaping, primarily lawns, as opposed to an abundance of plantings and a wide planting bed width. The landscape plan for this development is preferable to the code requirement for L3 Screening Landscaping along the east and south sides of this development.

- d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.**

The standard is met.

The landscape plan will not adversely affect the use of adjacent properties which are residential to the north, east, and south. The industrial zoning to the west will not be affected either.

- e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies.**

This standard is met.

The reduction in landscaping will not change the character of the R-3 zoning district. The landscape plan shows the type of plantings that are typical of this type of residential development. The variance does not allow an unpermitted use.

- f. Persons with disabilities are provided with access as required by the Americans with Disabilities (ADA) and reasonable accommodation; and**

The standard is met.

The variance does not change ADA accessibility.

- g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.**

The standard is met.

The variance will not have a negative effect on the residents of this development.

- h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly**

**diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.**

Not applicable

**VARIANCE NUMBER 5**

The fifth variance requested is from AMC 21.07.110H.2.c.v., *Design*, to allow building to be separated by a minimum of ten feet. The code states:

*"Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building."*

**AMC 21.03.240 Variances**

**G. Approval Criteria.**

**The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:**

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.**

The standard is met.

The intent of the regulation is for tall multifamily buildings to have sufficient separation to prevent crowding. In this case, the petitioner is simply requesting to meet the R-3 zoning side yard setback, which is five feet from property lines. Each single-family home will have a minimum separation of ten feet, which is more than adequate since these are not apartment buildings.

- b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard.**

The standard is met.

The R-3 side yard setback of five feet equates to a minimum of ten feet between every single-family home. Larger setbacks would shrink the size of homes. The proposed setbacks achieve the housing goals of the comprehensive plan better than the PUD standard.

- c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard.**

The standard is met.

The proposed ten-foot separation between buildings results in benefits to the neighborhood that are better than the PUD required setbacks of half the building height. These will be modest-sized homes and ten feet is a common side yard setback for single-family detached homes (e.g. R-1, single family district).

- d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code.**

The standard is met.

The land uses on adjacent properties are not affected by this small reduction in PUD side yard setbacks. There will be no negative affect on surrounding properties.

- e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies.**

This standard is met.

The character of the zoning district will not change as a result of this variance. The variance is a very small amount of space, however, this will provide a substantial improvement to the future homes. This is not related to a prohibited use in this zoning district.

- f. Persons with disabilities are provided with access as required by the Americans with Disabilities (ADA) and reasonable accommodation; and**

The standard is met.

Not applicable

- g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.**

The standard is met.

The variance will not adversely affect the health, safety, and welfare of the people of the municipality. For homes that are 25 feet tall, the PUD standard setback would be 12.5 feet. This is excessive because ten feet is the standard setback for the R-3 district.

- h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly**

**diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.**

The standard is met.

Not applicable

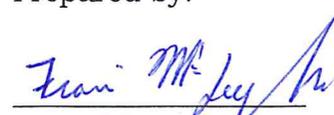
**DEPARTMENT RECOMMENDATION**

- A. The Department recommends APPROVAL of the variance from AMC 21.07.060E.2.b., *Sidewalk*, to allow Takotna Street to have a sidewalk on only one side.
- B. The Department recommends APPROVAL of the variance from AMC 21.07.110H.2.b., *Open Space*, to allow individual yards to count as open space.
- C. The Department recommends APPROVAL of the variance from AMC 21.07.110H.2.c.iii., *Design*, to allow a reduction in landscaping along the west lot boundary adjoining the Newell Street right-of-way from L2 buffer landscaping to one tree per lot.
- D. The Department recommends APPROVAL of the variance from AMC 21.07.110H.2.c.iv., *Design*, to allow a reduction in landscaping around the perimeter of the site.
- E. The Department recommends APPROVAL of the variance from AMC 21.07.110H.2.c.v., *Design*, to allow building to be separated by a minimum of ten feet.
- F. The Department recommends APPROVAL of the conditional use for a residential planned unit development, subject to the following condition:
  - 1. This approval is subject to all standards for a residential planned unit development in AMC Title 21, the petitioner's application, narrative, submittals, and the plans on file at the Planning Division.
  - 2. A notice of zoning action and a final approved site plan shall be filed with the State Recorder's Office. Proof of such shall be submitted to the Planning Department.

Reviewed by:

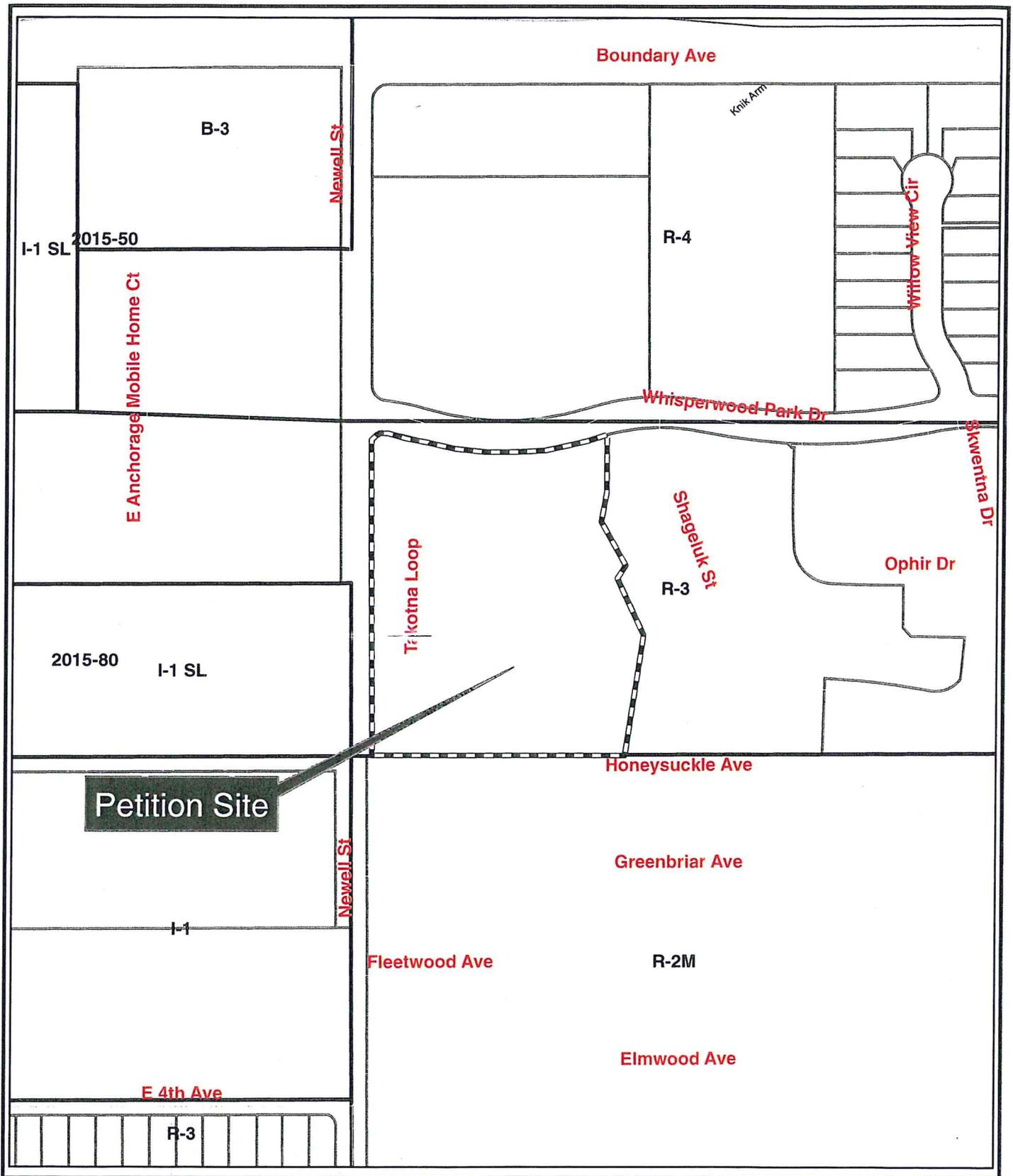
  
Craig H. Lyon  
Director

Prepared by:

  
Francis McLaughlin  
Senior Planner

Parcel ID No. 006-421-41

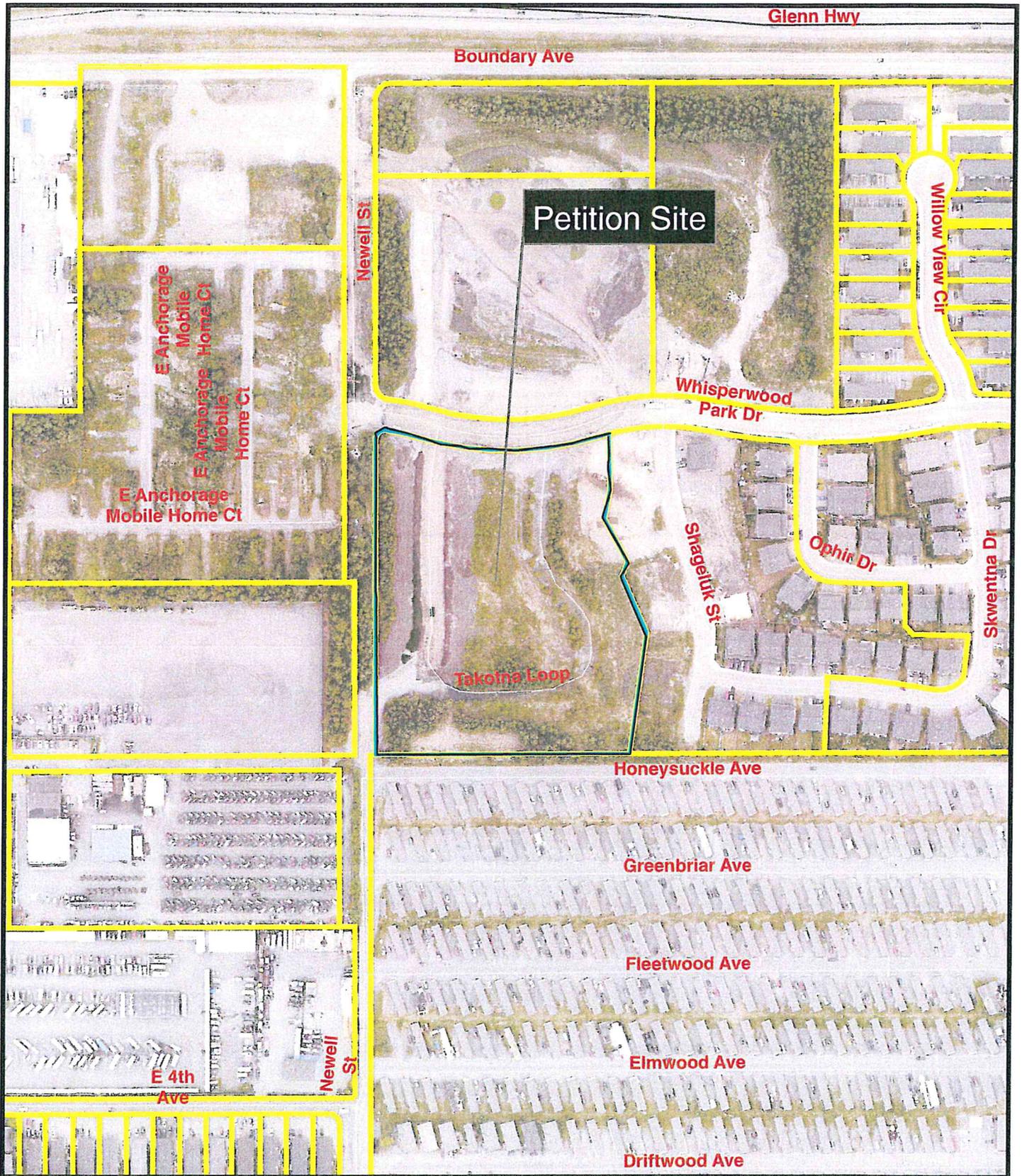
# 2022-0034



Municipality of Anchorage  
Planning Department

Date: 5/24/2022





# Application

# Application for Conditional Use

Municipality of Anchorage  
 Planning Department  
 PO Box 196650  
 Anchorage, AK 99519-6650

PETITIONER*		PETITIONER REPRESENTATIVE (if any)	
Name (last name first) <b>Spinell Homes</b>		Name (last name first) <b>The Boutet Company</b>	
Mailing Address <b>1900 West Northern Lights</b>		Mailing Address <b>601 E. 57th Place, Suite 101</b>	
<b>Anchorage, AK., 99517</b>		<b>Anchorage, AK., 99518</b>	
Contact Phone – Day <b>907-343-1600</b>	Evening	Contact Phone – Day <b>907-522-6776</b>	Evening
E-mail <b>andre@spinellhomes.com</b>		E-mail <b>thoffman@tbcak.com</b>	

\*Report additional petitioners or disclose other co-owners on supplemental form. Failure to divulge other beneficial interest owners may delay processing of this application.

PROPERTY INFORMATION		
Property Tax # (000-000-00-000): <b>0064214100014</b>		
Site Street Address:		
Current legal description: (use additional sheet if necessary) <b>Tract A2, Checkpoint Subd., Plat 2018-39</b>		
Zoning: <b>R-3</b>	Acreage: <b>6.657</b>	Grid #: <b>SW1238</b>

CONDITIONAL USE APPROVAL REQUESTED	
Use: <b>Residential Planned Unit Subdivision (A.M.C. 21.07.110.H)</b>	
<input checked="" type="radio"/> New conditional use	<input type="radio"/> Amendment to approved conditional use      Original Case #:

I hereby certify that (I am)(I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 21 of the Anchorage Municipal Code of Ordinances. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff or the Planning and Zoning Commission for administrative reasons.

Signature   Owner  Representative      Date 1/30/22  
 (Representatives must provide written proof of authorization)

Tony Hoffman  
 Print Name

Accepted by: <b>FM</b>	Poster & Affidavit <b>2 affidavits</b>	Fee: <b>\$14,350</b>	Case Number: <b>2022-0034</b>	Meeting Date:
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**COMPREHENSIVE PLAN INFORMATION**

**Improvement Area (per AMC 21.08.050B.):**  Class A  Class B

**Anchorage 2040 Land Use Designation:**  
 Neighborhood (Residential)  Center  Corridor  
 Open Space  Facilities and Institutions  Industrial Area

**Anchorage 2040 Growth Supporting Features:**  
 Transit-supportive Development  Greenway-supported Development  
 Traditional Neighborhood  Residential Mixed-use

**Eagle River-Chugiak-Peters Creek Land Use Classification:**  
 Commercial  Industrial  Parks/opens space  
 Public Land Institutions  Marginal land  Alpine/Slope Affected  
 Special Study  Residential at \_\_\_\_\_ dwelling units per acre

**Girdwood- Turnagain Arm**  
 Commercial  Industrial  Parks/opens space  
 Public Land Institutions  Marginal land  Alpine/Slope Affected  
 Special Study  Residential at \_\_\_\_\_ dwelling units per acre

**ENVIRONMENTAL INFORMATION** (All or portion of site affected)

Welland Classification:  None  "C"  "B"  "A"  
 Avalanche Zone:  None  Blue Zone  Red Zone  
 Floodplain:  None  100 year  500 year  
 Seismic Zone (Harding/Lawson):  "1"  "2"  "3"  "4"  "5"

**RECENT REGULATORY INFORMATION** (Events that have occurred in last 5 years for all or portion of site)

Rezoning - Case Number:  
 Preliminary Plat  Final Plat - Case Number(s): 2018-39  
 Conditional Use - Case Number(s):  
 Zoning variance - Case Number(s):  
 Land Use Enforcement Action for  
 Building or Land Use Permit for Master F&G C15-2197, AWWU PS16-007  
 Wetland permit:  Army Corps of Engineers  Municipality of Anchorage

**SUBMITTAL REQUIREMENTS**

(One copy of applicable items is required for initial submittal; additional copies required after initial submittal)  
 1 copy required:  Signed application (original)  Ownership and beneficial interest form  
 Watershed sign off form  Underlying plat  
 Special limitations from the underlying zoning, if applicable

16 copies required:

- Signed application (copies)
- Map of area surrounding petition site within 500 feet, including zoning and existing uses
- Map of existing conditions, to scale, including:
  - land uses                       structures                       utilities                       vegetation                       soils
  - natural features                       drainage                       topography                       site access                       pedestrian facilities
  - vehicle circulation and driveways                       easements and/or reservations
- Project narrative explaining:
  - the project                       planning objectives                       facility operations
  - an analysis of how the proposal meets the standards on page 3 of this application
  - construction and operation schedule                       final ownership
  - gross and net density (PUDs only)
- Site plan(s) to scale depicting, with dimensions:
  - building footprints                       parking areas                       vehicle circulation and driveways
  - pedestrian facilities                       lighting                       grading                       landscaping
  - loading facilities                       fences                       drainage                       required open space
  - snow storage area or alternative strategy                       trash receptacle location and screening detail
  - easements                       significant natural features                       freestanding sign location(s)
- Building plans to scale depicting, with dimensions:
  - floor plans                       building elevations                       exterior colors and textures
- Summary of community meeting(s)

(Additional information may be required.)

**GENERAL CONDITIONAL USE STANDARDS (AMC 21.03.080D.)**

The Planning and Zoning Commission may only approve the conditional use if the Commission finds that **all** of the approval criteria are satisfied. Each standard must have a response in as much detail as it takes to explain how your project satisfies the standard. The burden of proof rests with you.

1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations;
2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district-specific standards set forth in chapter 21.04;
3. The proposed use is consistent with any applicable use-specific standards set forth in chapter 21.05;
4. The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts;
5. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;
6. The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
7. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible;
8. The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability, impacts on pedestrian, bicycle, and transit circulation, and safety for all modes; and
9. The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services.

**SPECIFIC CONDITIONAL USE STANDARDS (AMC 21.05)**

Certain conditional uses have detailed standards that relate only to that type of conditional use. When there are detailed standards, the Planning and Zoning Commission may only approve the conditional use if the Commission finds that **all** general standards listed in the previous section and detailed standards listed for that conditional use in AMC 21.05 are satisfied. Each detailed standard must have a response in as much detail as it takes to explain how your project satisfies the standard. The burden of proof rests with you.

# Authorization Certificate

Date: 3/22/2022

Current Project Legal:

Tract "A" Checkpoint Subdivision, Plat 2018-39

Proposed Legal: Lots 1-56 and Tracts 1 and 2, Checkpoint Subdivision

Type of Authorization: Preliminary Plat and Conditional Use Applications

Statement:

I hereby authorize Tony Hoffman of The Boutet Company Inc. to represent me in the Municipality of Anchorage Platting Applications of the above described property.

Thank you,

**Andre Spinelli**

Digitally signed by Andre Spinelli  
DN: cn=Andre Spinelli, o, ou,  
email=andre@spinellhomes.com, c=US  
Date: 2022.03.24 11:48:12 -08'00'



# Birch Meadow Subdivision

## Planned Unit Development

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### Narrative

#### Proposal:

Attached is the following narrative, attached project maps and documents for our proposed Planned Unit Development of Checkpoint Subdivision, Tract A2 (MOA Parcel I.D.# 00642141000). We are requesting review and approval of the project under a Conditional Use Application, *A.M.C. 21.07.110.H. "Conditional Use for a Residential Planned Unit Subdivision"*. The proposed development is for 56 units, all single family detached dwellings on individual lots, which creates a density of 8.4 dwelling units per acre. This density is well below the maximum allowed density of the existing R-3 zoning<sup>1</sup>. The internal road (Takotna Loop) will be privately owned and maintained. The property owner and developer is Spinell Homes. The project engineer is Triad Engineering, and the surveyor/planner is The Boutet Company.

The project is already permitted as a multiple family project on a single large tract (i.e. condominium or apartment style). The underground utilities and road for Phase 1 were mostly constructed in 2021 but not completed. As lending regulations for condominium projects have evolved over the last decade it has made condo development of this type increasingly difficult. The rules regarding phasing and percentages of sold units with in a phase prior to closing that make sense when looking at apartment style buildings do not work well for single family detached home developments. The regulations slow down the build out of the development and ultimately result in increasing the cost of the project. This is why we are proposing to use the CUP process to create fee simple lots that are slightly smaller than those allowed by right in the R-3 but consistent with the Goal 4 of the 2040 Land Use Plan and supported by several of the recommended actions for Goal 4 but specifically called out in Action 4-17. Action 4-17 states "Amend Title 21 to allow small-lot subdivisions enabling more forms of small lot housing as an alternative to large multi-unit buildings in multifamily districts." These lots will be served by a private road maintained by The Homeowners Association with a mixture of private and public utilities located within the road. The Association Declarations will include rules similar to those required in the Unit Lot Section of Title 21 or a typical condominium project of this type. They define maintenance responsibilities and create a higher standard designed to help sustain property values.

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<sup>1</sup> A.M.C. 21.07.110 H.3.a states the maximum dwelling units for the R-3 zoning (in a PUD) is 55.

# Birch Meadow Subdivision Planned Unit Development



**The underlying density and layout of the project, which is already approved, will not change through this application.** This process is meant to bring a new, more affordable housing type not currently available in the new construction market in a faster and more economical way.

To accommodate the existing plan approvals and the utilities that are in place, we will be seeking the following zoning and subdivision design variance requests:

21.07.060.E.2.b Sidewalks. As mentioned, the road improvement plans are approved (with sidewalk on one side of the road). We feel a second sidewalk is not warranted in this situation, and it is out of character for the nature and scale of this 56 unit neighborhood. **We are requesting that the development proceed with sidewalk on one side of the development, as approved by Private Development.**

21.07.110 H.2.c.iii Conditional Use for a Residential Planned Unit Development, Landscaping. The requirement for L2 buffer landscaping is excessive in this area, particularly Newell Street. The likelihood of Newell ever being utilized is very slim. In addition, there is existing vegetation in the ROW adjacent to this property that can be utilized. The attached landscape plan demonstrates that the development plan exceeds the code required landscaping in parklets, rear yard tree planting and other areas. **We are requesting the landscaping improvements be approved, as shown on the landscape plan and landscape variance submitted with this application.**

21.07.110 H.2.c.iv Conditional Use for a Residential Planned Unit Development, Landscaping Screening landscaping is an excessive amount of landscaping to place between 2 residential uses of similar scale and density. Also, the landscape table 21.07-2 indicates no required landscaping between R-3 developments such as this. The attached landscape plan demonstrates that the development plan exceeds the code required landscaping in parklets, rear yard tree planting and other areas. **We are requesting the landscaping improvements be approved, as shown on the landscape plan and landscape variance submitted with this application.**

21.07.110 H.2.c.v Conditional Use for a Residential Planned Unit Development, Building Separation. Since this development will be single family on an individual lots, the required setback in the CUP code (1 ½ times the height of the tallest adjacent building) is excessive, given that the required setback for multi family buildings is 5 feet in the R-3 zone. **We are requesting the elimination of this CUP requirement, as it does not match what is required in the zoning setback required in code (5 feet). See attached zoning variance.**

21.08.040A.i Private Streets We will be requesting a variance from the subdivision code requirement for publicly dedicated roadways. Private roads are appropriate for this scale and size of development. **We are requesting a subdivision variance from this code section to allow the private streets.**

## Lot Dimension Standards Proposed

- Minimum Lot Size: **We are requesting a minimum lot size of 2,800 s.f. (Average lot size is 3,975 s.f.)**

# Birch Meadow Subdivision Planned Unit Development



- Minimum Lot Width: **We are requesting a minimum lot width of 35 feet. (The average lot width is 38 feet)**

## Background and History:

Spinell Homes became involved in the Checkpoint Subdivision back in 2014 when they bought this property, and others in the area, out of foreclosure from the previous owner. Since then, Spinell has built more than 60 condominiums in the immediate area, including the Lauren Glen condominium development adjacent to this project on the east boundary.

## Overview:

The Checkpoint Subdivision area is located south of the Glenn Highway, between Newell Street and Turpin. The Checkpoint "Development" area is comprised of 4 different large tracts:

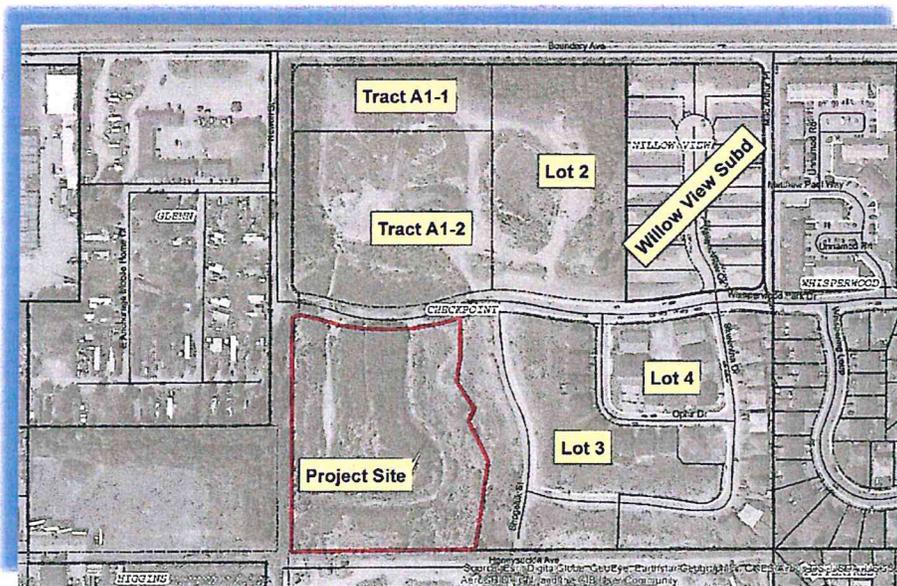
Tracts A2 (this application) plat 2018-39

Tracts A1-2 and A1-1 plat 2020-30

Lots 2, 3 and 4, plat 2012-47

Willow View Estates, Lots 1-20 and Blk 1 (a subdivision of Lot 1, Checkpoint Subdivision, plat 2012-96).

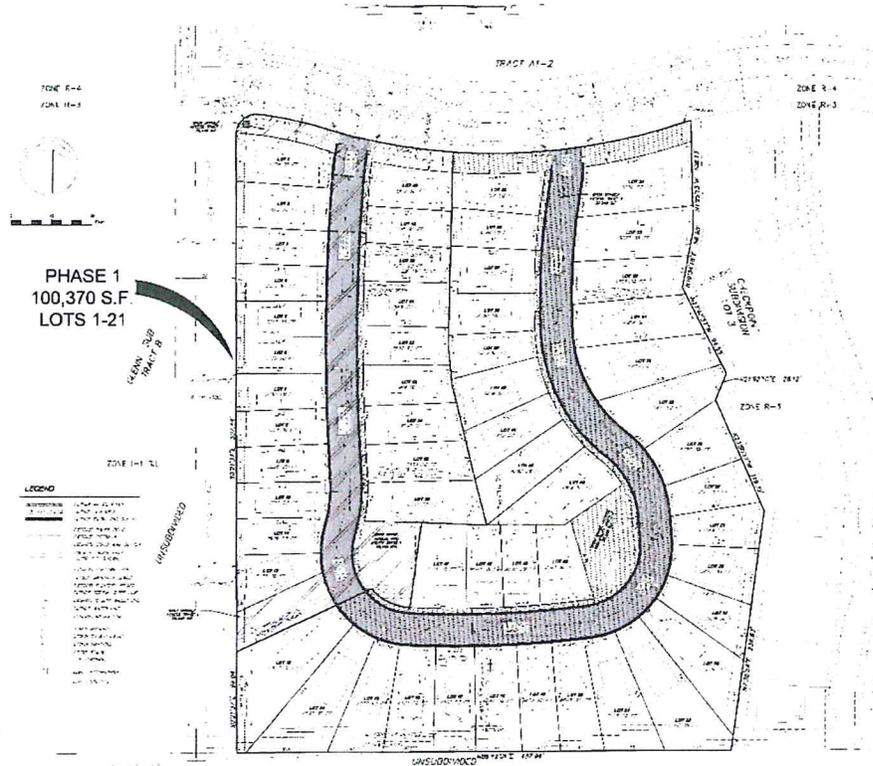
The immediate area is being developed as multi family buildings, some as condominiums and others as apartments



# Birch Meadow Subdivision Planned Unit Development



Our proposal will provide single family homes, situated on their own lots. The water, sewer and storm drain are installed for all of Phase 1 and are designed to accommodate the single family home sites as designed.



The entire, larger area between Turpin and Newell Street (approx 73 acres) is comprised of Multi Family developments.



**Phasing:** The current phasing plan is to develop the 21 lots indicated as Phase 1 in the summer of 2022. All the utility infrastructure for phase 1 (water, sewer, storm, gas and electric) is in place. The pad grading is complete, and the road only needs to finished. The remaining units will be built out in 2-3 years, as market demands dictate. See the phasing plan submitted with the plat application.

# Birch Meadow Subdivision Planned Unit Development



This proposal is for a Planned Unit Development, utilizing the design criteria and building concepts proposed herein. All the utilities, the road network and other infrastructure have been approved in the following plan sets:

Private Development Plans (Takotna Road):

- MOA Master Fill and Grade C15-2197
- AWWU Private System PS16-007

Newell Street and Whisperwood Park Drive right of way improvements:

- Subdivision Agreement 16-005
- AWWU Private Development WS20-002

**Statistics:** The building concept currently is configured for approximately 59,138 s.f. of building unit “footprint” space, with 56 buildings planned. The current plan has 94,774 s.f. of open space, as defined by AMC 21.07.110 H.2.b There is 66,496 s.f. total area of impervious coverage (asphalt, sidewalk and curb).

The community will be a shared common cost community governed by a Homeowners Association. The Homeowners Association will be responsible for snow removal, road maintenance, grounds maintenance, and will have rules that govern exterior maintenance.

The development consists of single family homes, situated on small, fee simple owned lots. The architecture to all the buildings will be craftsman styling which will create uniformity throughout the development. Large open areas are incorporated into the design to increase the openness of the development. Additionally, mounding and landscaping will be used to provide visual buffers that will reduce the impact of the building density within the development.

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## **RESPONSES TO APPROVAL CRITERIA**

### **General Conditional Use Standards (AMC 21.03.080D)**

1. *The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations. **The 2040 Land Use plan indicates the area as “Single Family and Two-Family” Neighborhood , which is what we are proposing.***
2. *The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district specific standards set forth in chapter 21.04. **Single family higher density development is a permitted use in R-3 zoning.***
3. *The proposed use is consistent with any applicable use-specific standards set forth in chapter 21.05; **Per the Table of allowed uses (21.05-1) Single Family Detached Dwelling are a permitted use in the R-3 zoning***
4. *The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts; **The scale and density of the proposed development are appropriate for the area and are harmonious with surrounding growth patterns.***

# Birch Meadow Subdivision Planned Unit Development



5. *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district; **The proposed development will not impede any future developments surrounding it.***
6. *The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts); **The developments south, east and north are being developed as multi family housing, similar in scale and density as this one. On the west, any impacts will be mitigated by Newell Street (a collector street).***
7. *Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible; **This development will create no impacts (noise, traffic, pollution or otherwise) that is greater than the adjacent developments of the same type. The compact design and density allowed in R-3 helps mitigate any off site impacts***
8. *The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability impacts on pedestrian, bicycle, and transit circulation, and safety for all modes. **The development is adjacent to Whisperwood Park Drive, which is a collector and provides immediate access to public transportation and school bus routes. Additionally, the subdivision is situated on a closed loop road, and no driveway access will be permitted onto Whisperwood.***
9. *The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services. **All utilities (water and sewer) are currently installed (or will be) and available for fire response. The transportation system (People Mover) has a stop on Boundary Street at Newell Street. And the development is close to Ptarmagin Elementary, Clark Middle School and Bartlett High School, and bus service is available for all 3 schools. The development is located well within the police and fire service areas.***

Following are the responses to 21.07.110 H (Conditional Use for a Residential Planned Unit Development)

1. **Intent and Approval** *A residential planned unit development (PUD) is intended to allow flexibility for residential development in the zoning ordinance and to achieve the creation of a more desirable environment than would be possible through a strict application of the zoning ordinance....*
  - a. *Creative use of the land, imaginative architectural design, a consolidation of usable open space and recreation areas, and the preservation of natural features. **The design utilizes the existing approvals in hand and is in harmony with the surrounding land uses. Also, if we utilized the maximum density allowed in R-3 zoning, it would create substantially more units (20 d.u.a. could be created if townhouse style was utilized). The use of the single family type plans allows for more open space around the units. The act of approving the variances and applications will allow for the best use of the property***
  - b. *The mixing of compatible land uses, residential densities, and housing types within the neighborhood. **This plan follows the R-3 densities of the developments to the east, and the Trailer Park to the south. The development plan is compatible to the adjacent existing and future planned housing projects.***
  - c. *The efficiency of the configuration of utilities, vehicular circulation, and parking facilities. **The utilities and road alignment are designed to allow full use of Whisperwood Drive on the***

# Birch Meadow Subdivision Planned Unit Development



north boundary. Both Newell Street and Whisperwood Park Drive are fully improved Roads, and Newell Street is designated as a Collector on the OSHP plan, which provides good connectivity to and from the neighborhood. Parking is provided in the individual home garages and in the driveways.

- d. *Enhancing the surrounding environment...* This development will match the existing building style of the surrounding areas, and will also provide more open space for the homeowners than is usually available in condominium developments
- e. *Maintaining population densities and lot coverage that are consistent with available public services and the comprehensive plan.* As mentioned before, the development in the surrounding area has been multi family style homes, as either apartment rentals or condominiums. The density if this subdivision is in harmony with the surrounding areas, but will provide fee simple lots for homebuyers that don't want to live in an apartment or condominium style building
- f. *Homeowners' Agreements.* Any PUD which will involve the formation of a horizontal property regime under the terms of AS 34.07.010 et seq. or any mandatory homeowners' or similar association shall submit for review by the commission the articles of incorporation and bylaws of any such association prior to the sale of any property subject to the association. The commission may require any provisions necessary to ensure that the provisions and intent of this title are met. **There will be a Homeowners Association for the development which will cover common area landscaping and other maintenance as needed. A copy of the HOA documents will be provided to planning before recording. A copy of a very similar development by Spinell Homes, which will be a model for this development, has been provided to review.**

## 2. **Minimum Standards:** All planned unit developments shall meet the following minimum standards

- a. *Minimum Size Area.* The minimum site area for a PUD shall be 2.0 acres for PUDs located entirely in the R-2M, R-3, and R-4 zoning districts. **The development is 6.657 acres, so it is compliant.**
- b. *Open Space:* A minimum of 30 percent of the site shall be reserved as open space which shall meet the following standards: **SEE ATTACHED OPEN SPACE VARIANCE FOR RESPONSES TO ITEMS "i" THROUGH "vi" BELOW**  
**Site Area= 289,952 s.f. X 30%=89,985 s.f. min. required 94,774 s.f. shown**
  - i. *At least one-half of such open space shall be contiguous:*
  - ii. *The open space shall not include public or private streets or rights of way; parking facilities, driveways, other motor vehicle circulation areas, loading areas, or refuse collection areas; slopes over 15 percent; 50\_percent of designated snow storage areas; drainage easements, ditches, swales, or other areas intended to collect and channel water*
  - iii. *In class A districts, no portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b1v. and b.v. below*
  - iv. *In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.v. and b.vi. below;*
  - v. *A minimum of 12 percent and a maximum of 50 percent of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units*
  - vi. *In multistory buildings, balconies or decks may be used in lieu of individual yards provided that the total area of all balconies or decks is not less than the total yard area otherwise required.*

# Birch Meadow Subdivision Planned Unit Development



c. Design:

- i. Any nonresidential use permitted in a PUD shall be compatible with the residential nature of the development. Parking areas which are intended to serve nonresidential uses shall be separated from those designed to serve residential areas. Unless nonresidential and residential uses are combined within a single structure, nonresidential uses shall be separated from dwelling units by L2 buffer landscaping. **N/A There are no nonresidential uses in this development**
- ii. Pedestrian walkways shall connect residential and nonresidential uses within a PUD. **N/A There are no nonresidential uses in this development**
- iii. L2 buffer landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district or a right-of-way designated for collector or greater capacity on the Official Streets And Highways Plan. **See zoning landscape variance request.**
- iv. Common open space with L3 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any abutting lot is greater than 150 percent of the average lot size along that lot line of the PUD. This standard cannot be met. **See zoning landscape variance request.**
- v. Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building. **See zoning landscape variance request.**
- vi. Each dwelling unit shall be provided with either heated parking, or at least one electrical outlet that is convenient to the required parking space(s). **Every house will have at least one outside electrical outlet and a garage.**

d. Access and connectivity (applicable items of 21.07.060 Transportation and Connectivity are listed with responses)

**21.07.060 D. Streets and On Site Connectivity:**

1. Standards: Street standards 21.08.030F2, F4 and F5 are met
2. Parking Lots: **N/A**
3. Street Connectivity:

b. Internal Street Connectivity:

- i. Block length: **standard is met**
- ii. No cul de sacs are in the plan

c. External Street connectivity.

i. **The design allows for connectivity to Whisperwood Park Drive. Additionally, the design has been reviewed and approved by MOA P.D. review agencies.**

ii. **The development has already built the extension of Newell Street from Whisperwood Park Drive to Boundary Avenue.**

d. **Vehicular access to public streets: Complies**

e. **Connection to vacant land: The construction of Whisperwood Park Drive and Newell Street to the north has provided access to all surrounding properties, including the vacant properties to the north and west**

f. **Neighborhood connections from cut through traffic: The internal road (Takotna Loop) is a loop road, which has no direct connection to surrounding subdivisions.**

g. **Pedestrian Connectivity: N/A**

**E. Standards for Pedestrian Facilities:**

2. **Sidewalks: Sidewalks are provided**

# Birch Meadow Subdivision Planned Unit Development



21.07.110H2.e Utility Installation: All utilities have been installed underground.

### 3. Development Options:

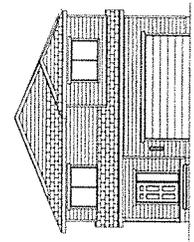
- a. **Density:** The density of this development (8.4 d.u.a.) is far below the R-3 maximum that is indicated in Table 21.07-12 (55 D.U.A.)
- b. **Uses:** This development will be conventional single family homes. No non-residential uses are intended.
- c. **Dimensional Standards:**
  - i. **Height limitations in the R-3 and R-4 districts may be exceeded by an additional 10 feet** We are requesting a maximum height limitation of 30 feet. We can add a plat note that states maximum building height of 30 feet (similar to the R-2M) if staff feels that is appropriate
  - ii. **Proposed standards for this development:**
    1. **Lot size:** We are requesting a minimum lot size of 2,800 s.f. (Average lot size is 3,975 s.f.) The minimum lot size proposed is 2,838 s.f.. The largest lot is 7,639 s.f. and the median lot size is 3,977 s.f.
    2. **Lot width:** We are requesting a minimum lot width of 35 feet.
    3. **Minimum Setbacks:** We are requesting that the minimum setbacks are 5' from the property line, the minimum per standard R-3 and R-2M zones.



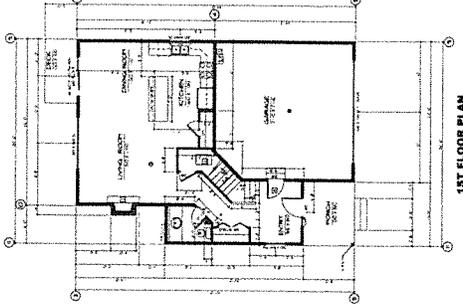
*Spawell*  
HOMES, Inc.

1900 W. NORTHERN LIGHTS BLVD.  
ANCHORAGE, ALASKA 99517  
907-344-5676 FAX 907-344-1976  
ALL DIMS. DRAWINGS AND/OR ASSUMPTIONS PRESENTED  
ON THESE PLANS ARE THE EXCLUSIVE PROPERTY OF SPAWELL  
HOMES, INC. ANY UNAUTHORIZED REPRODUCTION OR USE IS  
STRICTLY PROHIBITED.

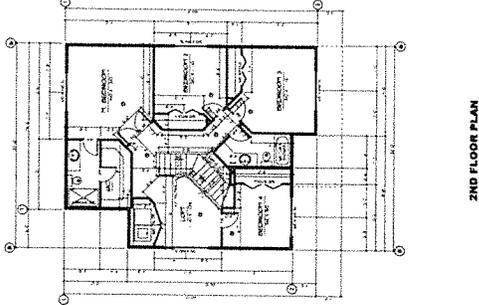
BIRCH MEADOW



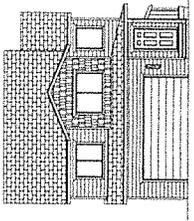
1924 FOXGLOVE



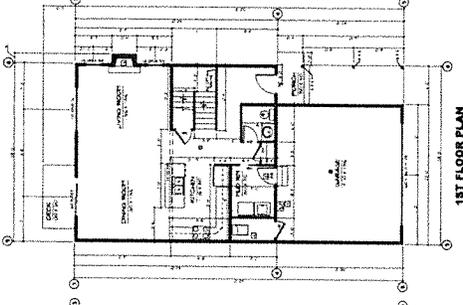
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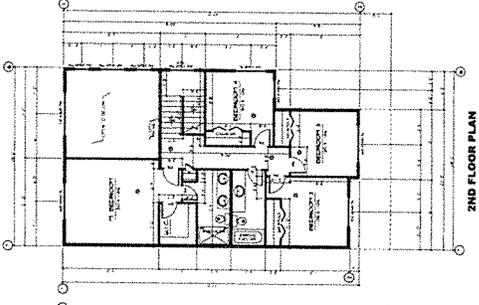
2ND FLOOR PLAN



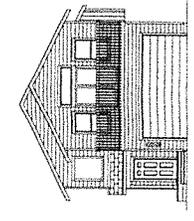
1910 BIRCH



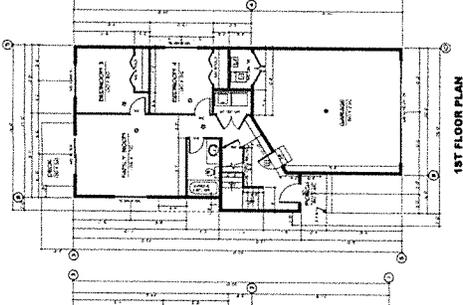
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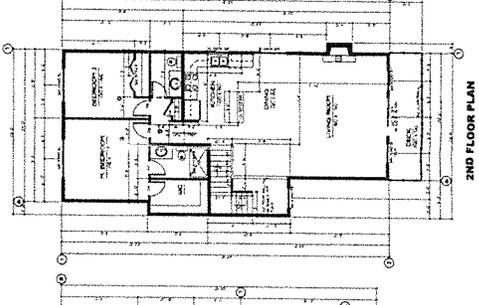
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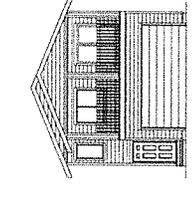
1856 ROSE X DE



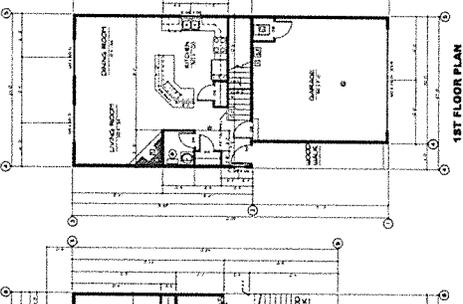
1ST FLOOR PLAN



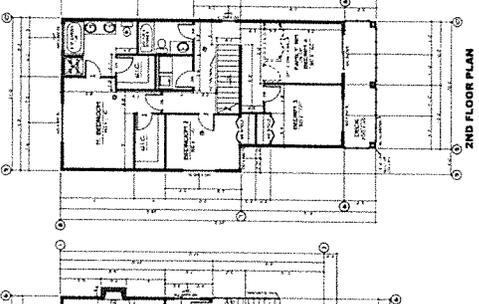
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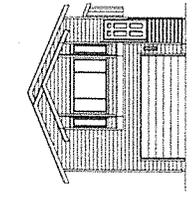
1888 SNOWFLOWER



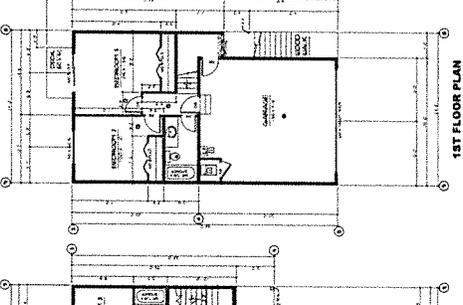
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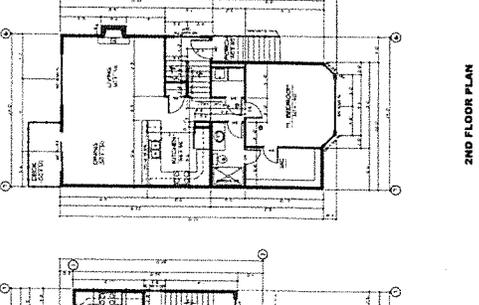
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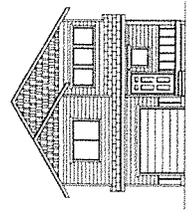
1452 FORGET ME NOT



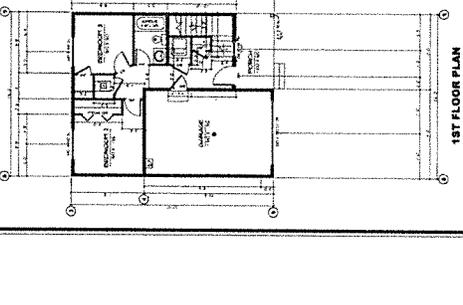
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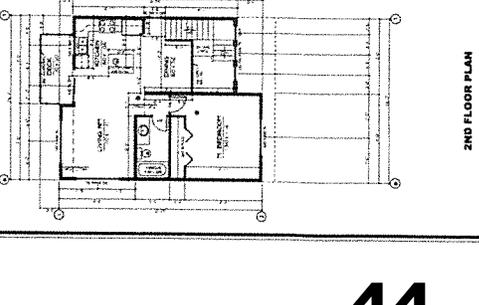
2ND FLOOR PLAN



1193 CROWBERRY



1ST FLOOR PLAN

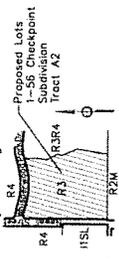


2ND FLOOR PLAN

# Landscape Permit Summary

LANDSCAPING REQUIREMENTS (Title 21)

Zoning: R3  
Adjacent zoning: R4



21.07.080 E. 10.b. Types of Landscaping 4.  
Trees for residential development.  
Applicable Standards:  
Minimum: 1 tree  
Min 20 trees/acre. 2" cal. and min. 6'  
tall coniferous trees  
Landscaping Summary:  
North Property Line = 478 1/2' along  
shrubs  
Whisperwood. Requires 34 trees and 144  
shrubs  
Shown: 34 trees, 207 shrubs  
East Property Line  
Landscaping not required  
South Property Line:  
Landscaping not required

West Property Line = 618 1/2'.  
Requires 39 trees, 229 shrubs  
Whisperwood. Requires 63 additional shrubs along  
Whisperwood Drive.  
Applicable Standards:  
Individual lots each have 1 tree/lot.  
Acreage: 6.6 acres  
Requires: min. 48 trees, Shown 190  
trees including 2 trees/lot

21.07.2 Min. Site Perimeter Landscaping  
North property line adjacent to Whisperwood  
requires L1 - Visual Enhancement  
Landscaping:  
East property line adjacent to R3 does  
not require landscaping  
South property line adjacent to R2M  
does not require landscaping.  
West property line adjacent to Newell  
Street requires L1-Visual Enhancement  
undveloped right-of-way and existing  
vegetation, planting in other portions of  
the site better meets landscape  
requirements

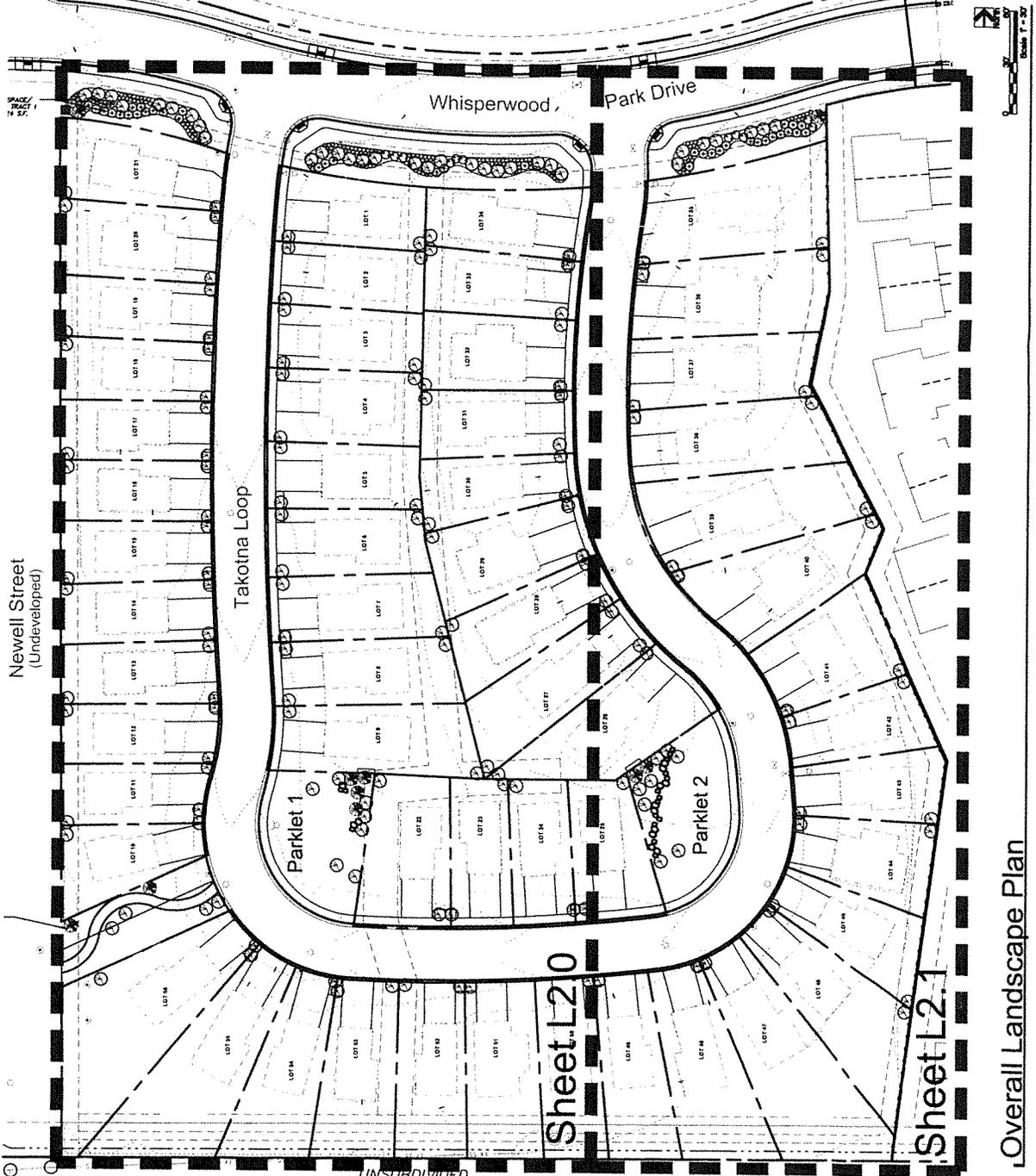
L1. Visual Enhancement Landscaping  
Applicable Standards:  
Average planting bed = 8' (min  
width)  
1 tree + 6 shrubs/20 ft

## Plant Schedule

Common Name	Botanical Name	Quantity	Spacing (ft)	Size	Notes
Trees					
Birch	Betula papyrifera	88	8' o.c.	2" cal.	See Note 3
Birch-Transplant	Betula papyrifera	92	8' o.c.	as shown	See Note 4
Spruce	Picea pungens	10		6' tall	See Note 4
Shrubs					
Serviceberry	Aamelanchier alnifolia	38	5' o.c.	24" tall	Nursery grown
Spiraea	Spiraea 'Gold Flame'	158	28" o.c.	12" tall	Nursery grown
Rosa	Rosa rugosa	11	28" o.c.	24" tall	Nursery grown

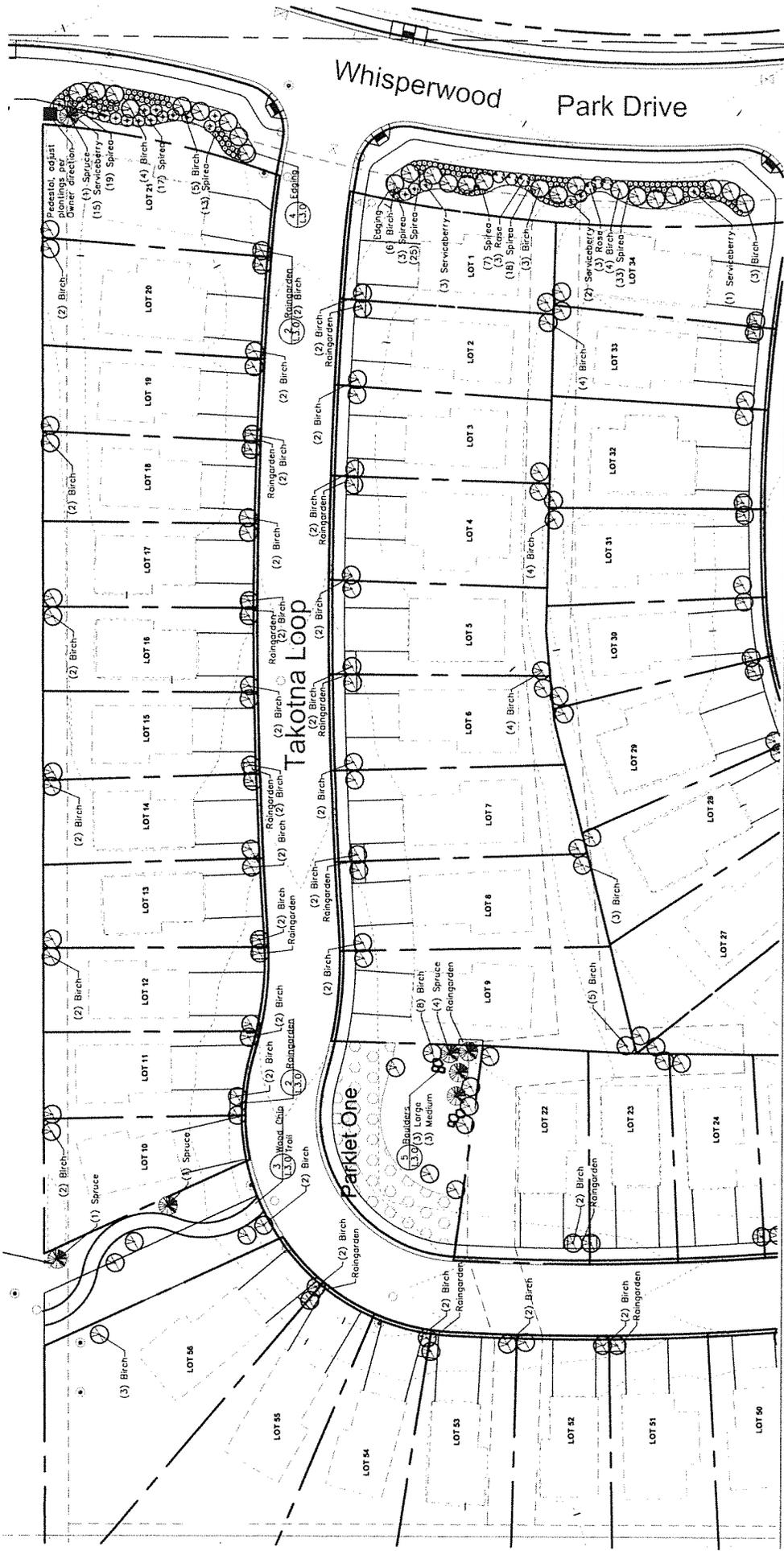
## Notes

- All plants shall meet American Standard for Nursery Stock (ANSI Z601-1-2014), AmericanHort. 2130 Steile Court, Columbus OH 43215 www.AmericanHort.org.
- All plants to be field located by the Contractor for Owner approval prior to planting. Landscape Architect/Owner adjust localities as required to avoid utilities, drainage swales or existing vegetation. Plants shall be weed free at time of planting.
- Birch shall be 1/2 foliage and 1/2 trunk. (Does not include transplanted birch).
- Birch-Transplant: includes existing birch and related groundcover plants. On-site birch to be transplanted per Owner approval. Size varies from less than 1" cal. to over 2". group smaller trees as possible to avoid root disruption. Transplant using standards and guidelines recommended for nursery practices related to transplanting.
- Mulch continuously throughout all planting beds with 3" deep shredded bark mulch, approved compost or as determined by Owner. See details.
- Completely pre-fill all planting beds with water and allow to drain. Contact Owner if beds do not drain within 3 hours, do not plant in poorly drained soils.
- Topsoil and seed all disturbed areas. DO NOT SEED PLANTING BEDS. Use MASS Schedule A Seed Mix. All seeded areas shall receive 4-inches of topsoil measured after compaction, transition to existing grade.
- All plant species to be hardy and known to thrive in Alaska. Substitutions only approved by Owner approval. Mayday (Prunus padus) and Canada Reed (Prunus virginiana) or plants listed on the Selected Invasive Plant Species of Alaska list, USFS, 2007 shall not be used.
- Landscape warranty period shall be 1 year. Replace all dead or dying plants within 7 days of notification.



earthscape  
1000 W. 15th St.  
Anchorage, AK 99501  
phone: 907.279.2688

L1.0 Landscape Plan  
Birch Meadow Subdivision  
Whisperwood Park Drive  
Anchorage, Alaska  
March 14, 2022



See Sheet L2.1

Landscape Plan

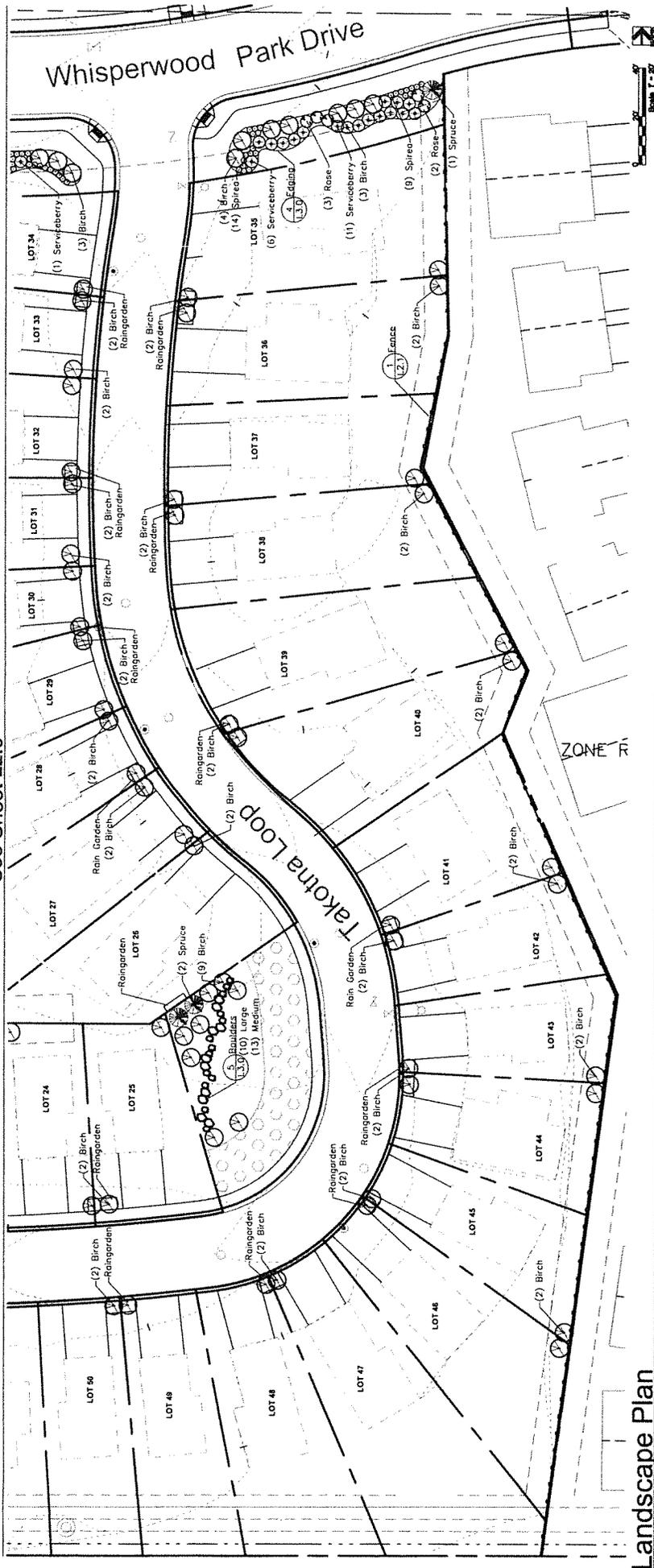


**L2.0 Landscape Plan**  
**Birch Meadow Subdivision**  
 Whisperwood Park Drive  
 Anchorage, Alaska  
 March 14, 2022

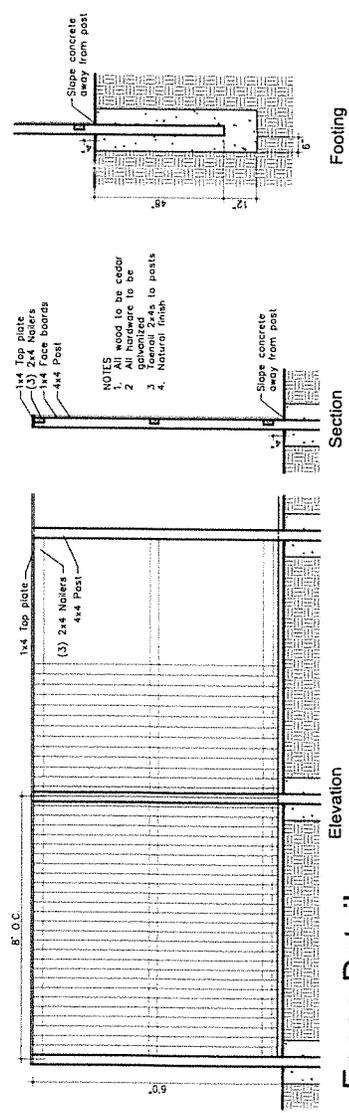


**earthscAPE**  
 1643 West 10th Avenue  
 Anchorage, AK 99501  
 Phone: 807-279-2688

See Sheet L2.0



Landscape Plan



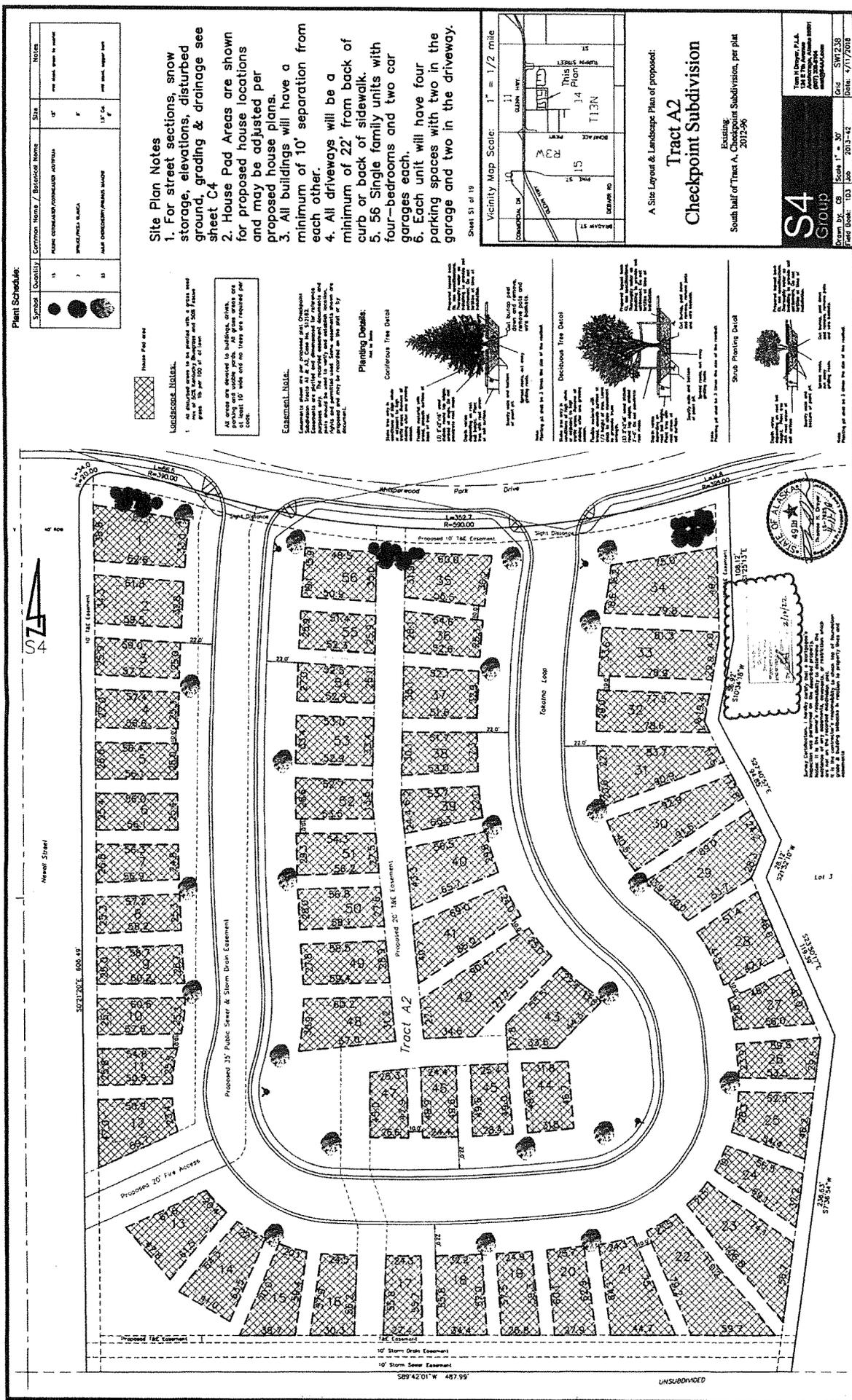
Fence Detail

**earthscape**  
 1633 West 10th Avenue  
 Anchorage, Alaska 99501  
 Phone 907.279.2888

**Birch Meadow Subdivision**  
 Whisperwood Park Drive  
 Anchorage, Alaska  
 March 14, 2022

**L2.1 Landscape Plan**





**Plant Schedule:**

Symbol	Quantity	Common Name / Botanical Name	Size	Notes
●	15	PLANT SPECIES A	12"	See notes on sheet C4
●	7	PLANT SPECIES B	12"	See notes on sheet C4
●	13	PLANT SPECIES C	12"	See notes on sheet C4

**HOUSE PAD AREA**  
 1" = 10' PER 100' OF LOT

**LANDSCAPE NOTES:**  
 1. All areas are to be planted with 1" plants, one per 100 sq. ft. of house pad area and 500 plants per 100' of lot.

**EXISTING NOTES:**  
 1. All areas are to be planted with 1" plants, one per 100 sq. ft. of house pad area and 500 plants per 100' of lot. No trees are to be removed.

**PLANTING DETAILS:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**CONIFEROUS TREE DETAIL:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**DECIDUOUS TREE DETAIL:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**SHrub PLANTING DETAIL:**  
 1. All shrubs are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The shrubs are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**Site Plan Notes**  
 1. For street sections, snow storage, elevations, disturbed ground, grading & drainage see sheet C4  
 2. House Pad Areas are shown for proposed house locations and may be adjusted per proposed house plans.  
 3. All buildings will have a minimum of 10' separation from each other.  
 4. All driveways will be a minimum of 22' from back of curb or back of sidewalk.  
 5. 56 Single family units with four-bedrooms and two car garages each.  
 6. Each unit will have four parking spaces with two in the garage and two in the driveway.

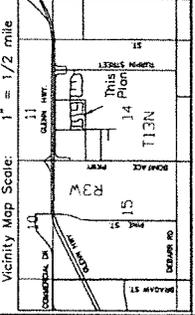
**EXISTING NOTES:**  
 1. All areas are to be planted with 1" plants, one per 100 sq. ft. of house pad area and 500 plants per 100' of lot.

**PLANTING DETAILS:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**CONIFEROUS TREE DETAIL:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**DECIDUOUS TREE DETAIL:**  
 1. All trees are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The trees are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.

**SHrub PLANTING DETAIL:**  
 1. All shrubs are to be planted in 10' x 10' pits. The pits are to be filled with topsoil and mulch. The shrubs are to be planted in the pits and the pits are to be covered with a 2" layer of mulch.



**A Site Layout & Landscape Plan of proposed:**  
**Tract A2**  
**Checkpoint Subdivision**

Existing:  
 South half of Tract A, Checkpoint Subdivision, per plat 2013-96

**S4 GROUP**  
 49th St  
 75 13 E  
 3024 18 W  
 3025 16 W  
 33 50 17 E  
 37 35 54 W

Tom H. Dwyer, P.E.  
 49th St  
 75 13 E  
 3024 18 W  
 3025 16 W

Scale: 1" = 30'  
 Date: 03/13/14

SWP239  
 Date: 07/17/2013

# Application for Design Variance

Municipality of Anchorage  
 Planning Department  
 PO Box 196650  
 Anchorage, AK 99519-6650



PETITIONER*		PETITIONER REPRESENTATIVE (if any)	
Name (last name first) <b>Spinell Homes</b>		Name (last name first) <b>The Boutet Company</b>	
Mailing Address <b>1900 West Northern Lights</b>		Mailing Address <b>601 East 57th Place, Suite 102</b>	
<b>Anchorage, AK., 99517</b>		<b>Anchorage, AK., 99518</b>	
Contact Phone – Day <b>907-343-1600</b>	Evening	Contact Phone – Day <b>907-522-6776</b>	Evening
E-mail <b>Andre@spinellhomes.com</b>		E-mail <b>thoffman@tbcak.com</b>	

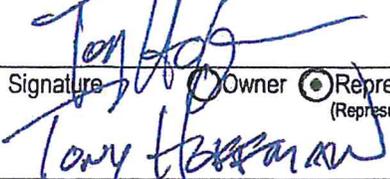
\*Report additional petitioners or disclose other co-owners on supplemental form. Failure to divulge other beneficial interest owners may delay processing of this application.

PROPERTY INFORMATION		
Property Tax # (000-000-00-000): <b>0064214100014</b>		
Site Street Address:		
Current legal description: (use additional sheet if necessary) <b>Tract A2, Checkpoint Subd., Plat 2018-39</b>		
Zoning: <b>R-3</b>	Acreage: <b>6.657</b>	Grid #: <b>SW1238</b>

PETITIONING FOR
Relief from the requirement to: <b>Comply with the dimensional standards for open space requirements for required open space</b>

CODE CITATIONS
<b>AMC 21. 07.110 H b</b>
<b>AMC 21.</b>

I hereby certify that (I am)(I have been authorized to act for) owner of the property described above and that I am petitioning for variance in conformance with Title 21 of the Anchorage Municipal Code of Ordinances. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the variance. I understand that the burden of evidence to show compliance with the variance standards rests with me, the applicant. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff or the Urban Design Commission for administrative reasons.

Signature 	<input type="radio"/> Owner <input checked="" type="radio"/> Representative <small>(Representatives must provide written proof of authorization)</small>	Date <b>3/29/22</b>
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Print Name <b>Tony Hoffmann</b>	Accepted by	Poster & Affidavit	Fee	Case Number:	Meeting Date:
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RECENT REGULATORY INFORMATION <small>(Events that have occurred in last 5 years for all or portion of site)</small>	
<input type="checkbox"/> Rezoning - Case Number:	
<input type="checkbox"/> Preliminary Plat <input checked="" type="checkbox"/> Final Plat - Case Number(s):	2018-39
<input type="checkbox"/> Conditional Use - Case Number(s):	
<input type="checkbox"/> Zoning variance - Case Number(s):	
<input type="checkbox"/> Land Use Enforcement Action for	
<input type="checkbox"/> Building or Land Use Permit for	
<input type="checkbox"/> Wetland permit: <input type="checkbox"/> Army Corps of Engineers <input type="checkbox"/> Municipality of Anchorage	

APPLICATION REQUIREMENTS	
<small>(One of each applicable item is required for initial submittal, additional copies are required after initial submittal)</small>	
1 copy required:	<input type="checkbox"/> Signed application (original)
16 copies required:	<input type="checkbox"/> Signed application (copies) <input type="checkbox"/> Variance narrative, addressing: <ul style="list-style-type: none"> <li><input type="checkbox"/> The need for the variance</li> <li><input type="checkbox"/> The effect of granting the variance</li> <li><input type="checkbox"/> An analysis of how the proposal meets the variance standards below</li> </ul> <input type="checkbox"/> As-built survey showing existing conditions, to scale (no more than 2 years old) <input type="checkbox"/> Proposed plot plan, site plan, or building elevations, to scale (new construction) <input type="checkbox"/> Photographs or renderings
<small>(Additional information may be required.)</small>	

VARIANCE STANDARDS	
<p>The Urban Design Commission may only grant a variance if the Commission finds that <b>all</b> of the following 8 standards are substantially met. Each standard must have a response in as much detail as it takes to explain how your property's condition satisfies the standard. The burden of proof rests with you.</p>	
<ul style="list-style-type: none"> <li>a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard;</li> <li>b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;</li> <li>c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard;</li> <li>d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;</li> <li>e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies;</li> <li>f. Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; and</li> <li>g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.</li> <li>h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.</li> </ul>	



**The Story of Checkpoint Tract A2:  
“From Site Condominiums to Small Lot Single Family Homes”**

In 2004 an ambitious drywall contractor aspired to be a land developer. He purchased a large tract of land and began development of duplex style condominiums. He mostly completed development of one phase and partially developed another before things got bad and he gave the project back to the previous owner. This out of state landowner then turned to local developers for help. Spinell and Hultquist Homes both assisted the owner for a couple of years on various portions of the project to obtain acceptance by the MOA and allow for home sites to be sold. The owner found that he had no appetite for trials and tribulations of land development and lot sales, so he eventually divided up the pieces and sold them to Spinell Homes and Hultquist Homes separately. Both home builders began building and selling the duplex style homes on the existing home sites. Hultquist then began to develop a five-acre piece into a 4 plex lots. Spinell Homes decided to move in the opposite direction and convert Tract A2 which was previously planned for more duplex style buildings into detached single-family homes to diversify the housing types in the area. The existing engineered plans were revised and permits updated for the new plan.

These single-family homes are currently planned to be sold as condominiums, but this application is an attempt to convert the project into fee simple housing. The Anchorage 2040 Land Use Plan specifically supports this action in goals 4-10 and 4-17 below.

4-10	Amend Title 21 to reduce restrictions that currently deter construction of compact housing types; and expand provisions that allow for compact housing types, including small-lot housing, cottage houses with shared courtyards, townhouses, and small-scale garden apartments. Determine appropriate measures through a meaningful, collaborative public process and make subject to site development standards including standards for neighborhood compatibility.	OECD, Planning, DevServ, PRIV, AWWU	1-3	HMA
4-17	Amend Title 21 to allow small-lot subdivisions enabling more forms of small-lot housing as an alternative to large multi-unit buildings in multifamily districts.	Planning, DevServ, Traffic, PRIV, AWWU	Now	AB Comp Plan, HMA

Although this housing type is supported in the Land Use Plan, goal 4-17 specifically states that Title 21 should be changed to accomplish this. Recently restrictions in the Unit Lot Subdivision section of Title 21 were removed as an attempt at this. We started this process looking at the Unit Lot option along with Cluster Lot and Narrow Lot Subdivision Standards but after much analysis and several meetings between Planning Staff and the Development Team we finally decided that the Planned Unit Development (PUD) process was not a perfect fit but the best one available in code today.

There are arguably several benefits to fee simple home ownership but a major benefit in this case is a substantial cost savings in reduced paperwork. When banks loan money to a home buyer purchasing a condominium there are a more restrictive set of rules that apply designed as consumer protections but geared toward large multi-unit buildings. For example, the bank will not loan the money for the purchase of the home until 50% (most lenders) or 75% (some lenders) of the homes in that phase are under contract to be purchased and a phase cannot be



added to the project until all homes in that phase are substantially completed. The financial risk involved with large phases is too great so a cautious developer would likely end up creating fourteen phases with four units per phase to complete these 56 homes.

To create the initial Planned Community documents which this project will still require as the road and open spaces will still be owned and maintained in common as well as design guidelines and neighborhood rules and restrictions put in place to ensure the sustainability of the community it typically cost approximately \$15,000. Each additional phase however typically cost \$5,000 which raises the development cost by \$1,250 per unit or \$70,000 total. Approval of this case will likely save this community \$70,000 worth of paperwork. This savings is not going directly to the buyers or the developer but will go back into the project in the form of trees. Attached there are two landscape plans. One is the currently approved plan with 30 trees and 15 shrubs. The other is the proposed landscape plan with 190 trees and 207 shrubs. To move closer toward compliance with the landscaping requirements of a PUD we have proposed adding 160 trees and 192 shrubs. This amount of landscaping comes at a large cost and will certainly exceed any savings from less paperwork but will add great value to the neighborhood.

Unfortunately, all this landscaping still does not meet the requirements of the PUD which is why the project requires variance from the landscaping requirements. Like the financing rules previously mentioned the PUD code also appears to have been crafted with larger multi-unit buildings in mind. This is not uncommon in the planning world which is why several jurisdictions have created Cottage Housing or Small Lot Ordinances for their multi-family zoning districts to spur more fee-simple housing to create new opportunities for homeownership while not increasing the density of the underlying zoning district.

Continuing with the square peg round hole theme the application also includes a variance from the open space requirements for PUD's in Title 21. This project requires 86,985 square feet of open space and 50% of that or 43,492 square feet is required to be common open space. Our design provides approximately 154,555 square feet of open space. 20,691 square feet of this is code compliant common open space consisting of two small parks, a buffer along the collector road and a landscaped pathway through the utility and access easement connecting to the neighborhood to the South.

The remaining 133,864 square feet of our open space consists of the yards minus the estimated average size house and driveway. Of this yard space approximately 28,544 square feet is front yard space. We are proposing that the front yards be considered as a semi-private-public space and considered an alternative equivalent compliance per 21.07.010.D. Neighborhood design guidelines will not allow the fencing of front yards to promote visual and physical accessibility



allowing for more interaction between residence to socializing and play together. We feel this alongside the abundance of private open space in the rear yards should be considered to meet the intent of the open space requirements of the code. To summarize:

<b>Required</b>	<b>SQFT</b>	<b>Provided</b>	<b>SQFT</b>
Total Open Space Required	86,985	Total Open Space Provided	154,555
Common Open Space Required	43,492	Common Open Space Provided	20,691
		Semi-Private-Public Opens Space Provided	28,544

In conclusion there are several elements of this plan that do not conform with Title 21 as written today. We have put together a project that aims to achieve the goals of the Land Use Plan, optimizes construction administration and programming for the developer and provides the home buyers with superior product with more options for competitive financing. Please support this project.

Sincerely,  
The Team at Spinell Homes Inc.

Birch Meadow Subdivision  
ZONING DESIGN VARIANCE NARRATIVE  
Open Space Requirements  
*Conditional Use for a Planned Unit Development*  
(A.M.C. 21.07.110 H.2.b)

Anchorage Municipal Code AMC 21.07.110 H.2b states that "A minimum of 30 percent of the site shall be reserved as open space which shall meet the following standards..."

After which 6 dimensional criteria are outlined that must be met for the open space to be compliant.

**A variance is requested to allow the inclusion of front yard areas as open space that is reserved for homeowners, and for relief from items b.i, b.ii, b.iii, and b.v. .**

*Following are the open space requirements and calculations for each item:*

AMC 21.07.110 H.2b A minimum of 30% of the site shall be reserved as open space and shall meet the following requirements:  
Project site=289,502 s.f. 30%=86,850 minimum. 154,555 s.f. is provided on the plan

- i. *1/2 of all open space shall be contiguous: 86,850 s.f. X 50%= 43,425 s.f. minimum. 69,312 s.f. contiguous is shown on the east and south boundaries of the subdivision. However, the contiguous open space in the rear yards may be fenced in the future by the homeowners, and may not meet the strict interpretation of the criteria.*
- ii. *Open Space shall not include.....The drainage easement in the southwest area is being counted in the calculation, and we are seeking partial relief from the strict interpretation of this requirement. There are no ABOVE GROUND drainage facilities in this area, and this area will be utilized as a park area by resident and will be a gravel pedestrian connection to Newell Streel (when it gets built) in the future. None of the designated snow storage areas were utilized in the open space calculations.*
- iii. *In class A districts, no portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below; a large amount of the open space provided is in the front yards, and will act as a community open space for children, and will create an open atmosphere for the community. A restriction against fences in the front yards will be placed in the homeowner documents.*
- iv. **N/A**
- v. *A minimum of 12 percent and a maximum of 50 percent of required open space shall consist of yards which shall be reserved for the residents of individual dwelling units; **We are proposing inclusion of the open space that is provided as yard space in the front and side yard areas (indicated as "PRIVATE OPEN SPACE" and SEMI PRIVATE (133, 864 s.f. total) of the homes into the overall calculation. While this far exceeds the maximum of the criteria, portions of it could still be considered as common open space in the calculation.***

**Narrative:** The front yards will be planted with birch trees and rain gardens creating a compact area designed with function, quality of life and community interaction in mind. **Fences will not be permitted** beyond the front face of the buildings to promote visual accessibility. The front yards of a neighborhood serve as a semi-private-public open space allowing for visual and physical accessibility as well as communication and interaction amongst neighbors to socialize and foster a healthy community. To guarantee the front yards will continue to function as an open space, **regulations prohibiting front yard fences will be put in place in the HOA documents** that prohibit construction of fences in the front yards.

We are pursuing a variance since we are requesting addition of the front yard areas into the calculation, as well as the rear yards which may be fenced in the future. While these areas may not fit into the strict interpretation of the criteria, these areas will definitely be utilized as open spaces for the homeowners, whether in common or as private areas. Also, by combining all these elements of open space, **we are well in excess of the requirement.** While an argument can be made that the rear yards are also private open space, providing assurances that the front yards will remain open and without fences is a way to ensure they will remain so in the future.

Undoubtedly, this development will have numerous kids playing in each other's front yards because there are no fences, and in turn that will create the sense of community that is intended by the common open space requirement.

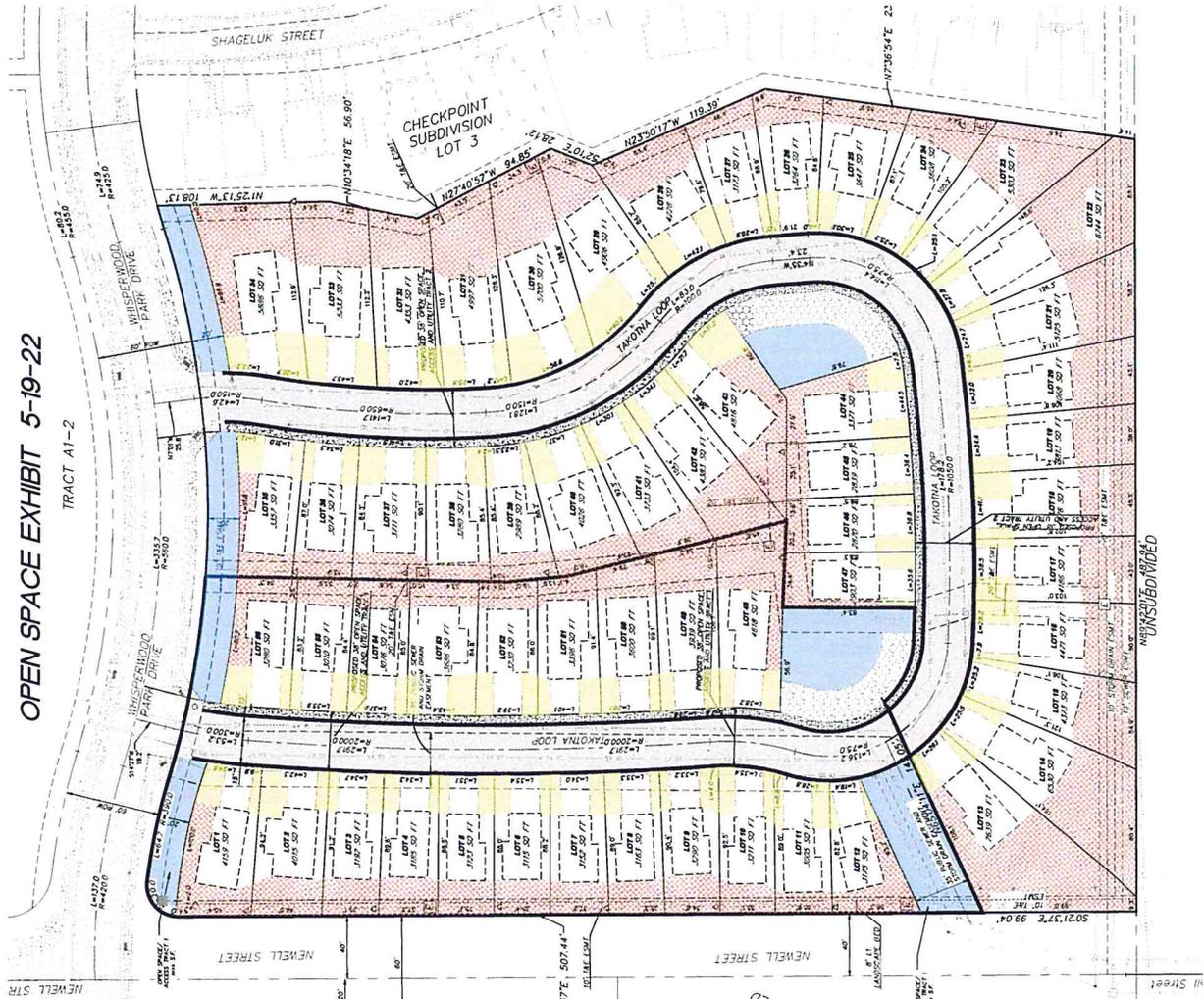
Refer to the open space exhibit.

## Variance Standards

- a. *The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard.* **The design of the project, with open front yards and outer perimeter areas, will achieve the desired effect of an open development.**
- b. *The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;* **The Anchorage 2040 Land Use Plan is targeted at changes in support of this variance. Goals 4-10 and 4-17 specify changes in Title 21 to implement flexibility in housing plans, styles and development. LUP 4.2 promotes "innovative compact housing types and options" which is what we are seeking to accomplish.**
- c. *The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard;* **Creating a large front yard open common space in the subdivision will give the subdivision a feeling of wide open spaces, and will promote neighborhood interaction.**
- d. *The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;* **Since this subdivision is fronted on a "closed loop" road, adjacent properties are not affected.**
- e. *The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies;* **Granting this variance request will not change the character of the zoning district or the character of the adjacent developments. It will enhance the proposed subdivision, and promote interaction of the residents.**
- f. *Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation;* **All ADA compliancy issues were reviewed by Municipal Private Development at the time of approval. Granting this variance will not have any effect on ADA compliance.**
- g. *The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.* **There will be no detrimental effects to the health safety or welfare of the public. The open nature of the development, in addition to the "closed loop" road system, will both help promote children to engage in outdoor activities and exercise, and provide a safe environment for walking and other outdoor activities.**
- h. *In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.* **N/A**

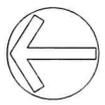
# OPEN SPACE EXHIBIT 5-19-22

TRACT A1-2



**OPEN SPACE LEGEND**

	PRIVATE OPEN SPACE 74,149 S.F.
	SEMI PRIVATE OPEN SPACE (FRONT YARDS) 28,544 S.F.
	COMMON AREA OPEN SPACE (PARK AREAS) 16,381 S.F.



GLENN SUB TRACT B

**LEGEND**

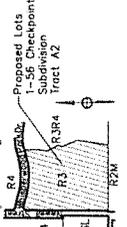
	FUTURE WATER MAIN
	FUTURE CURB AND GUTTER
	FUTURE SIDEWALK
	EXISTING PAVED ROAD
	EXISTING SIDEWALK
	EXISTING DRIVEWAY
	EXISTING DRIVEWAY (4-700 S.F. SIGN)
	EXISTING ELEC. LINE
	FUTURE SANITARY SEWER
	FUTURE STORM WATER LINE
	FUTURE WATER LINE
	EXISTING WATER LINE
	SEWER MANHOLE
	STORM WATER BASIN
	STORM MANHOLE
	WATER VALVE
	FIRE HYDRANT
	ELEC. TRANSFORMER
	ELEC. PESTICIDE

Consolid Drive

# Landscape Permit Summary

LANDSCAPING REQUIREMENTS (Title 21)

Zoning: R3  
Adjacent zoning: R4



21.07.080 E. 10.b. Types of Landscaping 4.  
Trees for residential development.  
Applicable Standards:  
Individual lots shall have min. 1 tree  
with a cal. of min. 4" and min. 6'  
tall coniferous trees.  
Landscaping Summary  
North Property Line = 478' 11" along  
Whisperwood. Requires 34 trees and 144  
shrubs.  
Shown: 34 trees, 207 shrubs  
East Property Line  
Landscaping not required  
South Property Line:  
Landscaping not required  
West Property Line = 618' 11"  
Requires 39 trees, 229 shrubs  
Shown: 156 trees spread throughout  
the site, 100 shrubs along  
Whisperwood Drive.  
Applicable Standards:  
Individual lots each have 1 tree/lot.  
Acreage: 6.6 acres  
Requires min. 46 trees. Shown 190  
trees including 2 trees/lot.

21.07.2 Min. Site Perimeter Landscaping.  
North property line, along Whisperwood  
Drive. Visual Enhancement  
Landscaping.  
East property line adjacent to R3 does  
not require landscaping.  
South property line, adjacent to R2N  
West property line, adjacent to Newell  
Street requires L1-Visual Enhancement  
Landscaping however with the  
existing landscaping and existing  
vegetation, planting in other portions  
of the site better meets landscape  
requirements.  
L1. Visual Enhancement Landscaping  
Applicable Standards:  
Min. average planting bed = 8' (min  
width 5', max 50' run)  
1 tree + 9 shrubs/20' 11"

## Plant Schedule

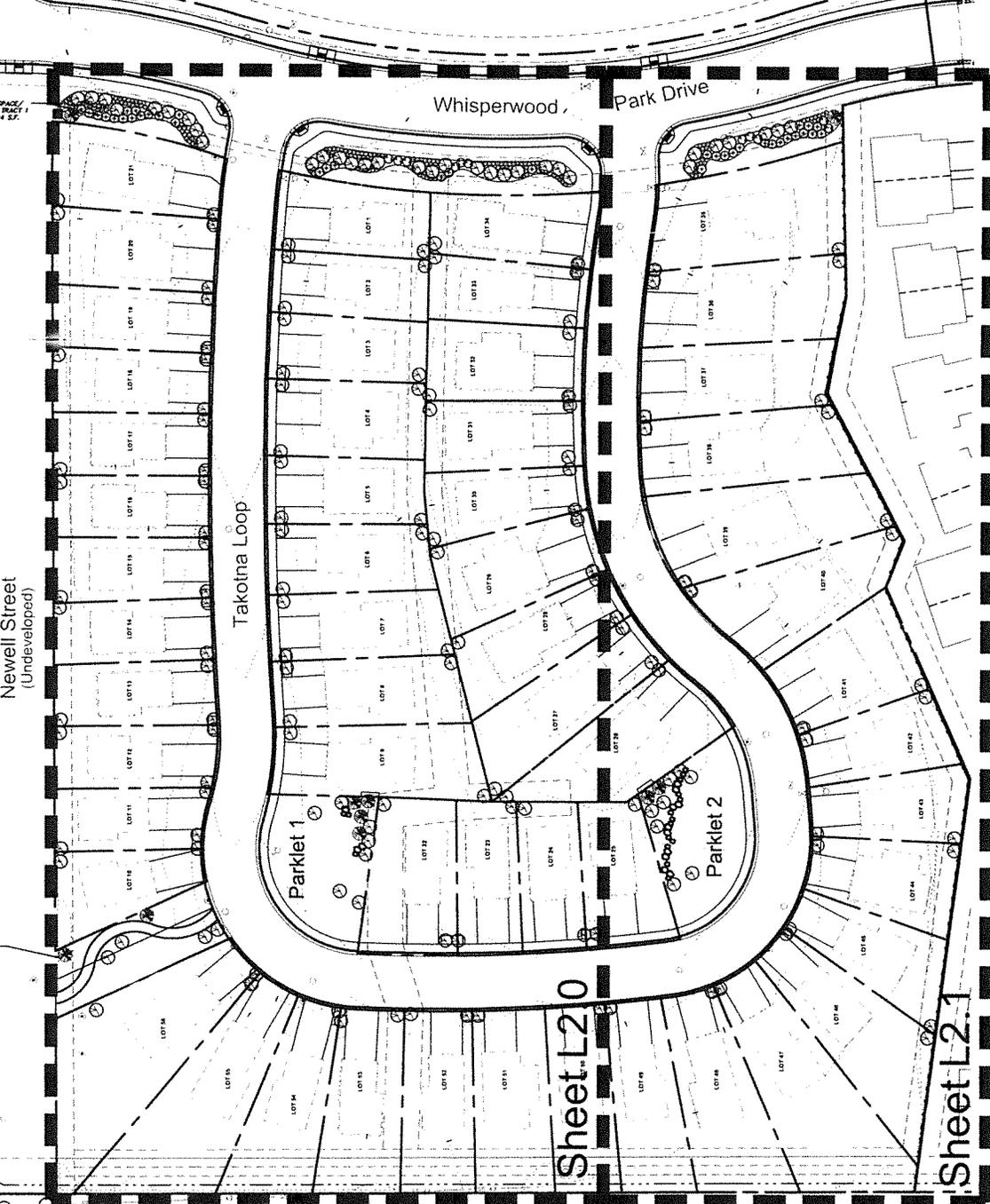
Common Name	Botanical Name	Quantity	Spacing (ft)	Size	Notes
<b>Trees</b>					
Birch	<i>Betula papyrifera</i>	88	8' o.c.	2" cal.	See Note 3
Birch-Transplant	<i>Betula papyrifera</i>	92	8' o.c.	varies	See Note 4
Spruce	<i>Picea pungens</i>	10	as shown	6' tall	See Note 4
<b>Shrubs</b>					
Serviceberry	<i>Amelanchier alnifolia</i>	38	5' o.c.	24" tall	Nursery grown
Spiraea	'Gold Flame'	158	28" o.c.	12" tall	Nursery grown
Rosa	<i>Rosa rugosa</i>	11	28" o.c.	24" tall	Nursery grown

## Notes

- All plants shall meet American Standard for Nursery Stock (ANSI Z60.1-2014), American Hort. 2130 Stella Court, Columbus OH 43215 www.AmericanHort.org
- All plants to be field located by the Contractor for Owner approval prior to planting. Container plants shall be field located by the Contractor as required to avoid utilities, drainage swales or existing vegetation. Plants shall be well tree at time of planting.
- Birch shall be 1/2 foliage and 1/2 trunk. (Does not include transplanted birch).
- Birch-Transplant: includes existing birch and related groundcover plants. On-site birch to be transplanted per Owner approval. Site trees shall be the 1" cal. over 2" group smaller trees as possible to avoid root disruption. Transplant using standards and guidelines recommended for nursery practices related to transplanting.
- Mulch continuously throughout all planting beds with 3" deep shredded bark mulch, approved compost or as determined by Owner. See details.
- Completely pre-fill all planting beds with water and allow to drain. Contact Owner if beds do not drain within 3 hours, do not plant in poorly drained soils.
- Topsoil and seed oil disturbed areas. DO NOT SEED PLANTING BEDS. Use MASS Schedule A Seed Mix. All seeded areas shall receive 4-inches of topsoil measured after compaction, transition to existing grade.
- All plant species to be hardy and known to thrive in Alaska. Substitutions only approved by Owner approval. Norway (Prunus padra) and Canada Red (Prunus virginiana) or plants listed on the Selected Invasive Plant Species of Alaska list, USFS, 2007 shall not be used.
- Landscaping warranty period shall be 1 year. Replace all dead or dying plants within 7 days of notification.

**L1.0 Landscape Plan**  
**Birch Meadow Subdivision**  
Whisperwood Park Drive  
Anchorage, Alaska  
March 14, 2022





Overall Landscape Plan

# Application for Design Variance

Municipality of Anchorage  
 Planning Department  
 PO Box 196650  
 Anchorage, AK 99519-6650



PETITIONER*		PETITIONER REPRESENTATIVE (if any)	
Name (last name first) <b>Spinell Homes</b>		Name (last name first) <b>The Boutet Company</b>	
Mailing Address <b>1900 West Northern Lights</b>		Mailing Address <b>601 East 57th Place, Suite 102</b>	
<b>Anchorage, AK., 99517</b>		<b>Anchorage, AK., 99518</b>	
Contact Phone – Day <b>907-343-1600</b>	Evening	Contact Phone – Day <b>907-522-6776</b>	Evening
E-mail <b>Andre@spinellhomes.com</b>		E-mail <b>thoffman@tbcak.com</b>	

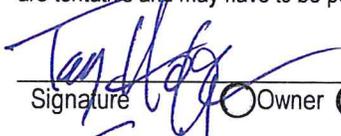
\*Report additional petitioners or disclose other co-owners on supplemental form. Failure to divulge other beneficial interest owners may delay processing of this application.

PROPERTY INFORMATION		
Property Tax # (000-000-00-000): 0064214100014		
Site Street Address:		
Current legal description: (use additional sheet if necessary) <b>Tract A2, Checkpoint Subd., Plat 2018-39</b>		
Zoning: R-3	Acreage: 6.657	Grid #: SW1238

PETITIONING FOR
Relief from the requirement to: Build sidewalk on both sides of the street; Relief from the CUA requirement to install L2 landscaping on Newell Street; Relief from the CUA requirement to install L3 screening landscaping on the boundary; relief from the CUA requirement to provide a setback 1 1/2 times the bldg height

CODE CITATIONS
AMC 21. 07.060.E.2.b (Sidewalks)
AMC 21. .07.110 H.2.c.iii and c.iv (PUD Landscaping) AMC 21.07.110H.2.c.v (PUD Setbacks)

I hereby certify that (I am)(I have been authorized to act for) owner of the property described above and that I am petitioning for variance in conformance with Title 21 of the Anchorage Municipal Code of Ordinances. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the variance. I understand that the burden of evidence to show compliance with the variance standards rests with me, the applicant. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff or the Urban Design Commission for administrative reasons.

Signature   Owner  Representative (Representatives must provide written proof of authorization) Date **4/12/22**

Print Name **Tony Hoffman**

Accepted by:	Poster & Affidavit:	Fee:	Case Number:	Meeting Date:
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RECENT REGULATORY INFORMATION <small>(Events that have occurred in last 5 years for all or portion of site)</small>	
<input type="checkbox"/>	Rezoning - Case Number:
<input type="checkbox"/>	Preliminary Plat <input checked="" type="checkbox"/> Final Plat - Case Number(s): 2018-39
<input type="checkbox"/>	Conditional Use - Case Number(s):
<input type="checkbox"/>	Zoning variance - Case Number(s):
<input type="checkbox"/>	Land Use Enforcement Action for
<input checked="" type="checkbox"/>	Building or Land Use Permit for Master F&G C15-2197, AWWU PS16-007
<input type="checkbox"/>	Wetland permit: <input type="checkbox"/> Army Corps of Engineers <input type="checkbox"/> Municipality of Anchorage

APPLICATION REQUIREMENTS <small>(One of each applicable item is required for initial submittal, additional copies are required after initial submittal)</small>	
1 copy required:	<input type="checkbox"/> Signed application (original)
16 copies required:	<input type="checkbox"/> Signed application (copies) <input type="checkbox"/> Variance narrative, addressing: <ul style="list-style-type: none"> <li><input type="checkbox"/> The need for the variance</li> <li><input type="checkbox"/> The effect of granting the variance</li> <li><input type="checkbox"/> An analysis of how the proposal meets the variance standards below</li> </ul> <input type="checkbox"/> As-built survey showing existing conditions, to scale (no more than 2 years old) <input type="checkbox"/> Proposed plot plan, site plan, or building elevations, to scale (new construction) <input type="checkbox"/> Photographs or renderings
<small>(Additional information may be required.)</small>	

VARIANCE STANDARDS	
<p>The Urban Design Commission may only grant a variance if the Commission finds that <b>all</b> of the following 8 standards are substantially met. Each standard must have a response in as much detail as it takes to explain how your property's condition satisfies the standard. The burden of proof rests with you.</p>	
<ul style="list-style-type: none"> <li>a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard;</li> <li>b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;</li> <li>c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard;</li> <li>d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;</li> <li>e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies;</li> <li>f. Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; and</li> <li>g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.</li> <li>h. In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign.</li> </ul>	

Birch Meadow Subdivision  
ZONING DESIGN VARIANCE NARRATIVE  
Sidewalk Requirements  
(A.M.C. 21.07.060E.2.b)

Anchorage Municipal Code AMC 21.07.060E.2.b states that “In all class A zoning districts except for industrial districts, sidewalks shall be installed on both sides of all streets (local, collector, arterial, public or private, including loop streets). Where indicated in the comprehensive plan, a pathway may replace a sidewalk on one side. In industrial zoning districts, a sidewalk shall be installed on one side of all local streets, and on both sides of local streets if the new sidewalks would connect to existing sidewalks on both ends and the needed sidewalk length is no greater than one quarter mile.).....”

**We are requesting that the private roads be installed as designed and approved with sidewalks on one side of the street.**

**Variance Standards**

- a. *The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard. The design of the project, with sidewalks on one side create a compact development allowing for more front yard space. They will still still have a full width road.*
- b. *The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard; The need for more housing, and more compact housing styles is clearly stated in the 2040 comprehensive plan. Policy 4.2 states “Allow and encourage innovative compact housing types and a variety of housing options that respond to changing preferences.” And Goal 4 of the 2040 plan states “Anchorage’s neighborhoods provide a range of places to live, meeting the housing needs of residents at all income levels, household sizes, interests, ages, abilities, and races and ethnicities. “ To that end, Action item 4-10 states “Amend Title 21 to reduce restrictions that currently deter construction of compact housing types; and expand provisions that allow for compact housing types, including small-lot housing, cottage houses with shared courtyards, townhouses, and small-scale garden apartments”. Until that is done, the CUP process is the only way to accomplish this goal.*
- c. *The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; The road cross section with one sidewalk allows for a more compact development, which ultimately provides more housing and is a benefit to the community.*
- d. *The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code; The current housing project to the east already is developed with one sidewalk. The trailer park immediately south (4 Seasons Mobile Home Park) has no sidewalks. This variance will be in harmony with the adjacent residential development, and will not affect their use at all.*
- e. *The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies; Granting this variance request will not change the character of the zoning district or the character of the adjacent developments.*
- f. *Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; All ADA compliancy issues have been reviewed by Municipal Private Development in the initial approval.*
- g. *The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality. There will be no detrimental effects to the health safety or welfare o the public. The plan with one sidewalk has already been thoroughly reviewed and approved by all the Municipal agencies.*
- h. *In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner’s or user’s ability to continue to communicate adequately and effectively with the public through the use of the sign. N/A*

Birch Meadow Subdivision  
ZONING DESIGN VARIANCE NARRATIVE  
Conditional Use Application for a  
Residential Planned Unit Development Requirements -Building Setback  
(A.M.C. 21.07.110 H.2.c.v)

Anchorage Municipal Code AMC 21.07.110 H.2.c.v states that “Any two adjacent buildings within a PUD shall be separated from each other by a distance equal to one-half the height of the taller building”

**We are requesting that the subdivision plan be approved with the elimination of this requirement and allow the standard R-3 building setbacks to govern the homes .**

**Variance Standards**

- a. *The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard. The lots and building pads, as designed have a 5’ setback from the side lot lines. The required setback from property lines in the R-3 zone, for a detached single-family building is 5 feet. In this design scenario, where we are trying to develop a subdivision with smaller, compact lots, the difference of an additional 3-5 feet on the side yard will create a loss of approximately 10-15 homesites, creating an undesirable development density.*
- b. *The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard; The need for more housing, and more compact housing styles is clearly stated in the 2040 comprehensive plan. Policy 4.2 states “Allow and encourage innovative compact housing types and a variety of housing options that respond to changing preferences.”*
- c. *The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; This variance will allow for the denser home development, which typically results in lower house prices, which is a desirable effect.*
- d. *The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code; The adjacent development to the east (Lauren Glen) is separated by 20’ rear yard setbacks, and will not be affected by this minor change at all.*
- e. *The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies; This variance will not change the character of the R-3 zoning it lies within. In fact, by allowing the variance the development will be able to maintain a density closer to the traditional R-3 zoning, which is usually multifamily buildings separated by 10 feet.*
- f. *Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; This variance will have no impact on ADA facilities in the area.*
- g. *The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality. Granting this variance will have no effect on the health and welfare of the community. It complies with the fire code separation, allowing for effective fire response.*
- h. *In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign. N/A*

Birch Meadow Subdivision  
ZONING DESIGN VARIANCE NARRATIVE  
Conditional Use Application for a  
Residential Planned Unit Development Requirements -Landscaping  
(A.M.C. 21.07.110 H.2.c.iii and c.iv)

Anchorage Municipal Code AMC 21.07.110 H.2.c.iii states that “L2 buffer landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district or a right-of-way designated for collector or greater capacity on the Official Streets And Highways Plan.).....” and Anchorage Municipal Code AMC 21.07.110 H.2.c.iv states “Common open space with L3 screening landscaping shall be provided along any lot line abutting a residential neighborhood where any abutting lot is greater than 150 percent of the average lot size along that lot line of the PUD.”

**We are requesting that the attached landscape plan (4 sheet plan by Earthscape) be approved as it is designed. The attached landscape plan demonstrates that the proposed development plan exceeds the code required landscaping in parklets, rear yard tree planting and other areas. Also, it should be pointed out that the proposed landscape plan far exceeds the plan as currently approved by the Municipality for the subdivision (see S4 landscape plan approved 2-10-22).**

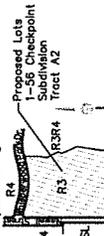
### Variance Standards

- a. *The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard. **See attached landscape plan for alternative design.***
- b. *The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard; **The attached landscape plan for alternative design demonstrates that we can exceed the code required landscaping in parklets, rear yard tree planting and other areas***
- c. *The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; **The landscape plan will develop landscaping that will be more visible, and provide more screening and other benefits than what would be required by strict adherence to the code.***
- d. *The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code; **The proposed landscaping will not affect the adjacent properties, and will provide more landscaping than already exists in the area.***
- e. *The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies; **The proposed landscaping does not have any effect of changing the residential character of the area.***
- f. *Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; **Persons with ADA requirements will not be affected by this variance.***
- g. *The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality. **There is no effect on health and welfare to the public by this requested variance.***
- h. *In evaluating the request for a variance from the maximum sign height, the urban design commission may consider whether there are special topographic circumstances that would result in a material impairment of visibility of the sign from the adjacent roadway which significantly diminishes the owner's or user's ability to continue to communicate adequately and effectively with the public through the use of the sign. **N/A***

# Landscape Permit Summary

LANDSCAPING REQUIREMENTS (Title 21)

Zoning: R3  
Adjacent zoning: R4



## 21.07.2 Min. Site Plan/Landscaping

North property line, along Whisperwood requires L1 - Visual Enhancement  
East property line adjacent to R3 does not require landscaping.  
South property line, adjacent to R2M requires L1 - Visual Enhancement  
West property line adjacent to Newell Street requires L1 - Visual Enhancement  
Undeveloped right-of-way and existing landscaping shall be maintained along the site better meets landscape requirements.

## L1. Visual Enhancement/Landscaping

Applicable Standards:  
Min. average planting bed = 8' (min width 5', max 50' run)  
1 tree + 6 shrubs/20 lf

21.07.080 E.10.b. Types of Landscaping 4.  
Trees for residential development.  
Individual lots shall have min. 1 tree, min. 20 trees/acre, 2' cal. and min. 6' tall container trees

## Landscaping Summary

North Property Line = 478 lf. along shrubs  
Shown: 34 trees, 207 shrubs  
Landscaping not required

## South Property Line

Landscaping not required  
Requires 39 trees, 229 shrubs  
Shown: 156 trees spread throughout site + 63 additional shrubs along Whisperwood Drive.

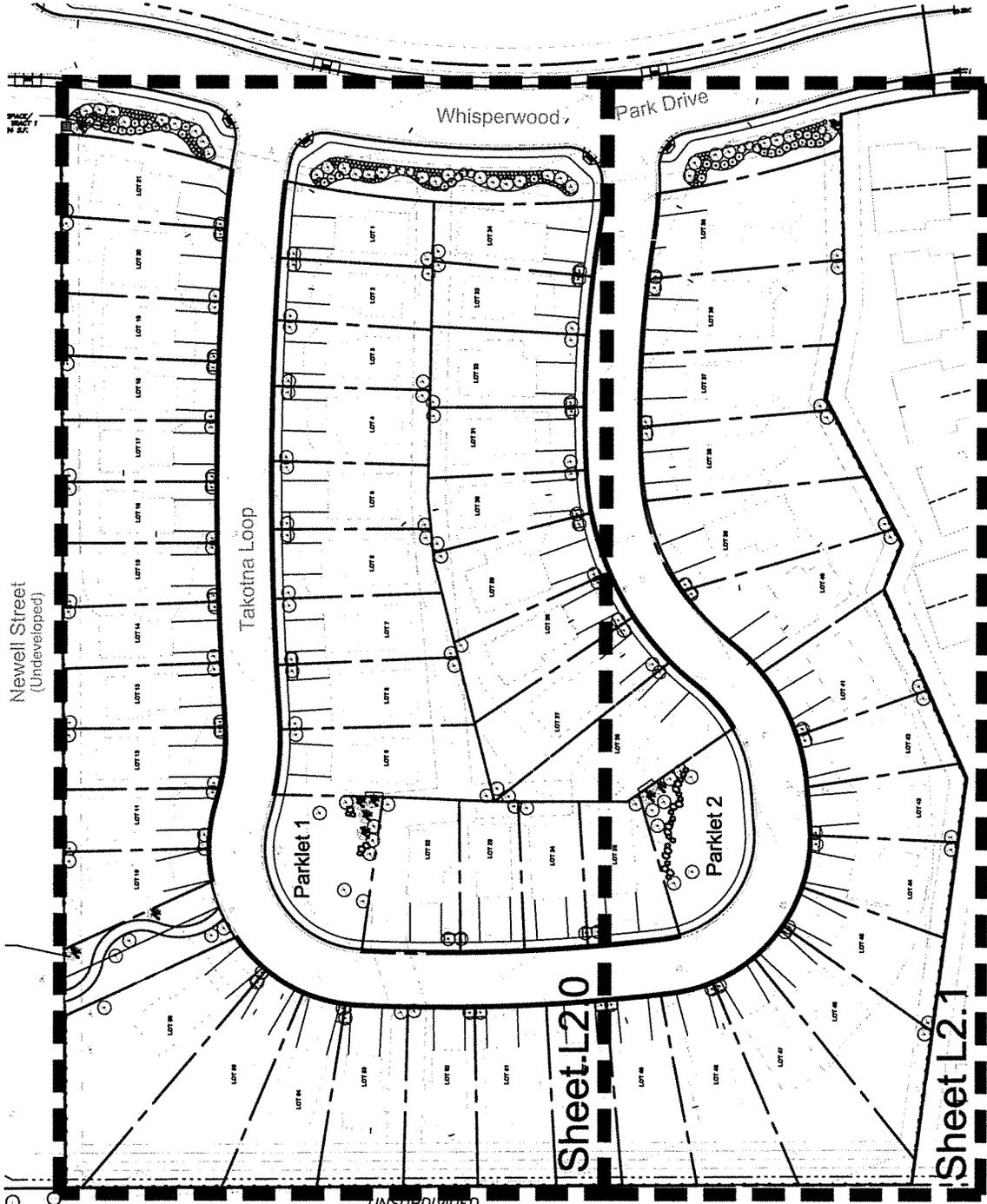
Applicable Standards:  
Individual lots each have 1 tree/lot.  
Average: 6.6 trees  
Requires min. 46 trees. Shown 190 trees including 2 trees/lot.

## Plant Schedule

Common Name	Botanical Name	Quantity	Spacing (ft)	Size	Notes
Trees					
Birch	Betula papyrifera	88	8' o.c.	2" cal.	See Note 3
Birch-Transplant	Betula papyrifera	22	8' o.c.	2" cal.	See Note 4
Spruce	Picea pungens	10	as shown	8' tall	See Note 4
Shrubs					
Serviceberry	Amelanchier alnifolia	38	8' o.c.	24" tall	Nursery grown
Spirea	Spiraea prunifolia	35	28" o.c.	12" tall	Nursery grown
Rose	Rosa rugosa	11	28" o.c.	24" tall	Nursery grown

## Notes

- All plants shall meet American Standard for Nursery Stock (ANSI Z60.1-2014), Amendment 1, 2008 Edition, Columbus OH 43215 www.AmericanHS.org.
- All plants to be field located by the Contractor for Owner approval prior to planting. Landscape Architect/Owner adjust locations as required to avoid utilities, drainage swales or existing vegetation. Plants shall be weed free at time of planting.
- Birch shall be 1/2 foliage and 1/2 trunk. (Does not include transplanted birch).
- Birch-Transplant: includes existing birch and related groundcover plants. On-site birch to be transplanted per Owner approval. Size varies from less than 1" cal. to over 2", group smaller trees as possible to avoid root disruption. Transplant using standards and guidelines recommended for nursery practices related to transplanting.
- Mulch continuously throughout all planting beds with 3" deep shredded bark mulch, approved compost or as determined by Owner. See details.
- Completely pre-fill all planting beds with water and allow to drain. Contact Owner if beds do not drain within 3 hours, do not plant in poorly drained soils.
- Topsoil and seed all disturbed areas. DO NOT SEED PLANTING BEDS. Use MASS Schedule A Seed Mix. All seeded areas shall receive 4-inches of topsoil measured after compaction, transition to existing grade.
- All plant species to be hardy and known to thrive in Alaska. Substitutions only approved by Owner approval. Mayday (Prunus padus) and Canada Red (Prunus virginiana) or plants listed on the Selected Invasive Plant Species of Alaska list, USFS, 2007 shall not be used.
- Landscape warranty period shall be 1 year. Replaces all dead or dying plants within 7 days of notification.



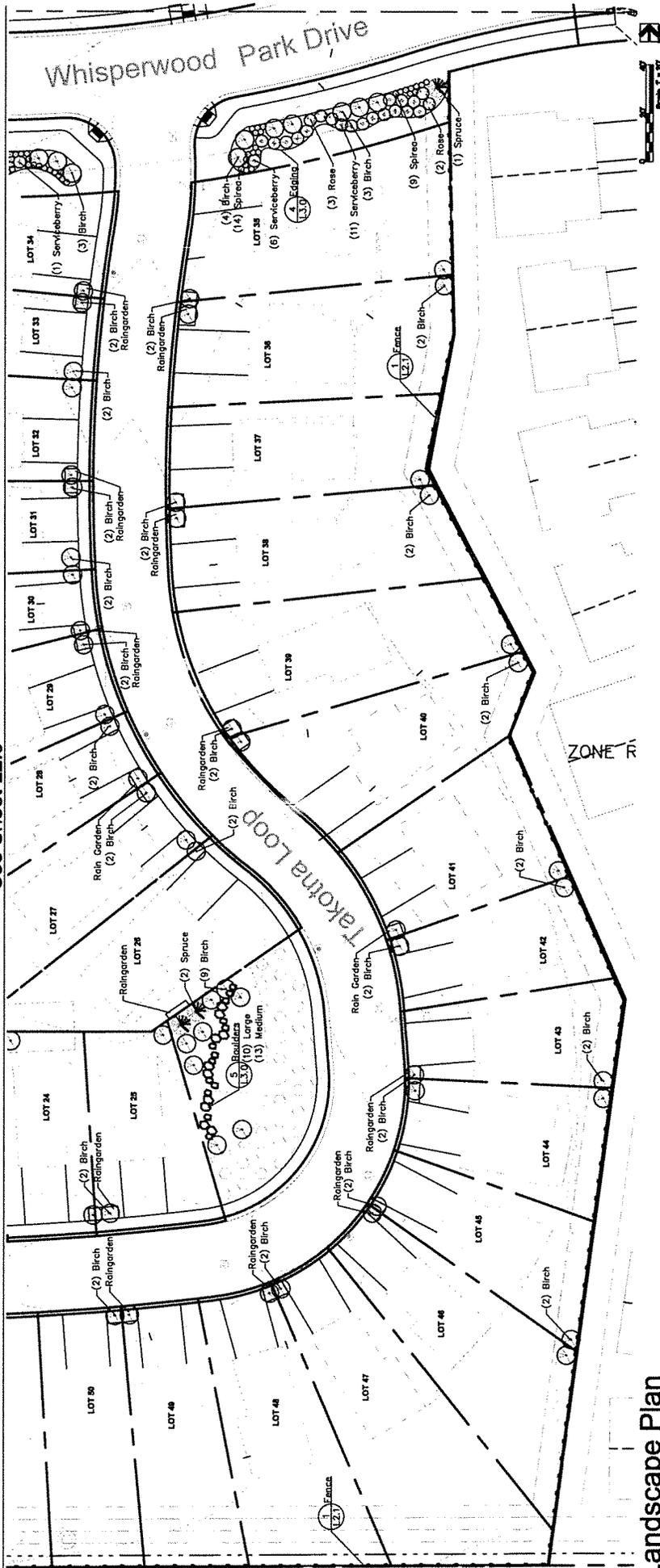
**earthscapE**  
Anchorage, AK 99501  
phone: 907.279.2888

**L1.0 Landscape Plan**  
**Birch Meadow Subdivision**  
Whisperwood Park Drive  
Anchorage, Alaska  
March 14, 2022  
Rev. 002

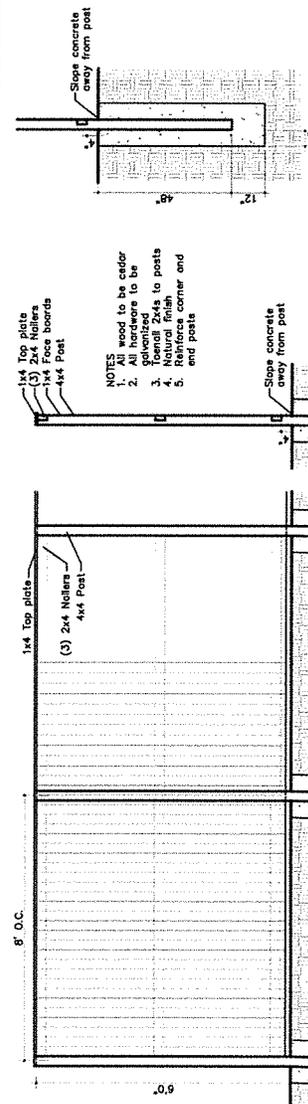
Overall Landscape Plan



See Sheet L2.0



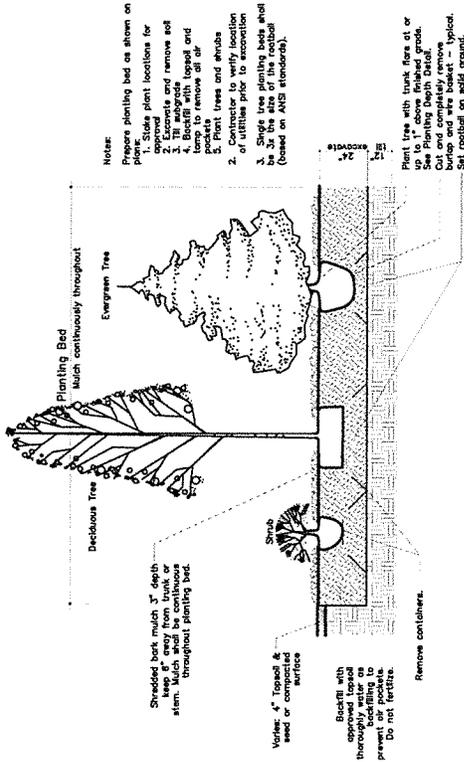
Landscape Plan



earthscape  
 1643 West 10th Avenue  
 Anchorage, Alaska 99501  
 Phone: 207.278.2650

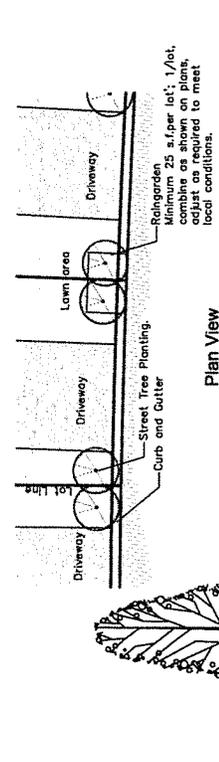
**Birch Meadow Subdivision**  
 Whisperwood Park Drive  
 Anchorage, Alaska  
 March 14, 2022  
 Rev. 04/22

Fence Detail



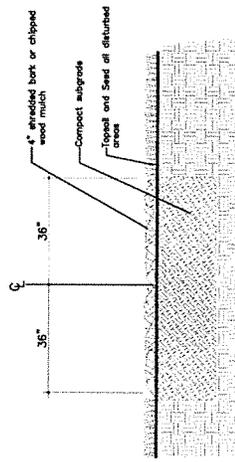
### Planting Bed, multiple plants

## 1 Plant Bed Details



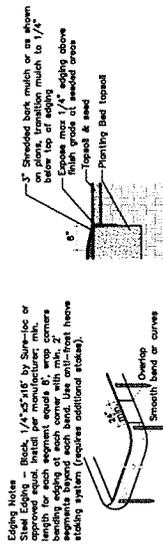
### Rain Garden Detail

## 2 Rain Garden Detail



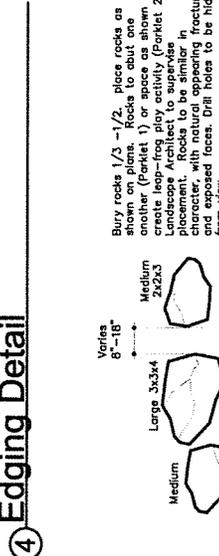
### Wood Chip Trail Detail

## 3 Wood Chip Trail Detail



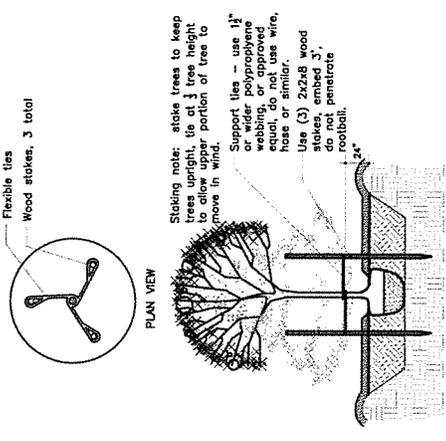
### Edging Detail

## 4 Edging Detail



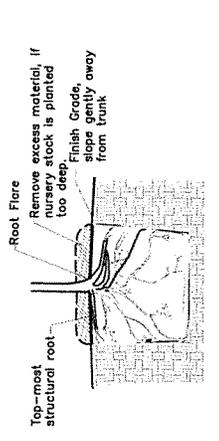
### Boulder Detail

## 5 Boulder Detail



### Tree Staking Detail

## 6 Tree Staking Detail



### Planting Depth Detail

## 7 Planting Depth Detail

**earthscape**  
landscape architecture  
1943 West 100th Avenue  
Anchorage, Alaska 99515  
Phone: 907.279.2688

**L3.0 Landscape Details**  
**Birch Meadow Subdivision**  
Whisperwood Park Drive  
Anchorage, Alaska  
March 14, 2022  
Rev. 0022

**Plant Schedule:**

Symbol	Quantity	Common Name / Botanical Name	Size	Notes
	15	15' TREE	15'	See notes, trees to remain
	7	7' TREE	7'	See notes, trees to remain
	22	22' TREE	22'	See notes, trees to remain

**Landscaping Notes:**  
 1. All trees are to be planted at 10' spacing, with 5' offset from sidewalk and 10' from 10' wide and no trees are required for curb.  
 2. All trees are to be planted at 10' spacing, with 5' offset from sidewalk and 10' from 10' wide and no trees are required for curb.

**Planting Details:**  
 - 15' Tree  
 - 7' Tree  
 - 22' Tree

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 - 15' Tree  
 - 7' Tree  
 - 22' Tree

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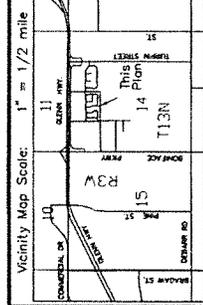
**Planting Details:**  
 - 15' Tree  
 - 7' Tree  
 - 22' Tree

**Planting Details:**  
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 - 7' Tree  
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**Planting Details:**  
 - 15' Tree  
 - 7' Tree  
 - 22' Tree

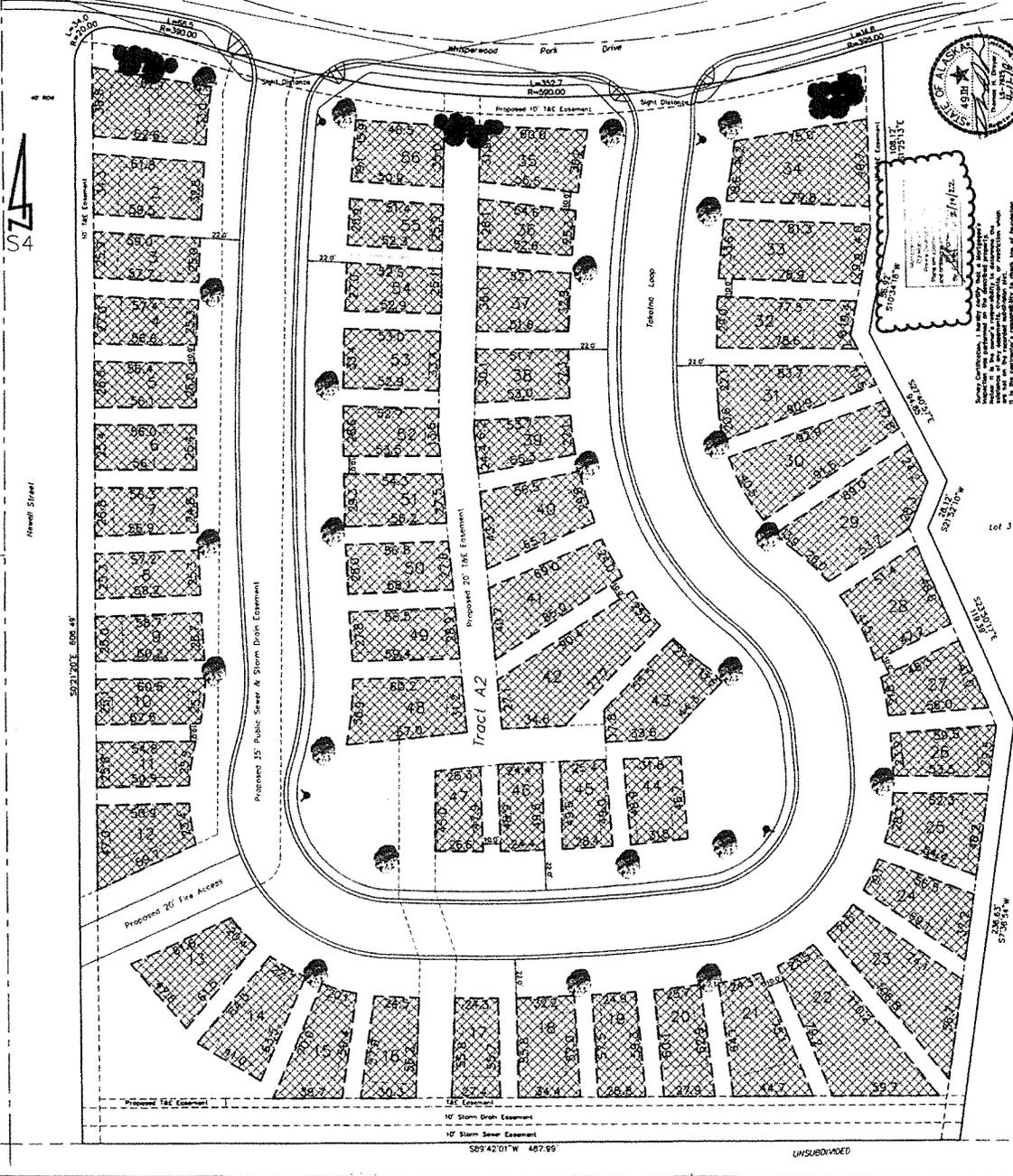
**Site Plan Notes**  
 1. For street sections, snow storage, elevations, disturbed ground, grading & drainage see sheet C-4  
 2. House Pad Areas are shown for proposed house locations and may be adjusted per proposed house plans.  
 3. All buildings will have a minimum of 10' separation from each other.  
 4. All driveways will be a minimum of 22' from back of curb or back of sidewalk.  
 5. 56 Single family units with four-bedrooms and two car garages each.  
 6. Each unit will have four parking spaces with two in the garage and two in the driveway.

**Planting Details:**  
 - 15' Tree  
 - 7' Tree  
 - 22' Tree



A Site Layout & Landscape Plan of proposed:  
**Tract A2**  
**Checkpoint Subdivision**  
 Existing:  
 South half of Tract A, Checkpoint Subdivision, per plat 2012-96

**S4 Group**  
 1000 N. 10th St., Suite 100  
 Oklahoma City, OK 73102  
 Phone: (405) 233-1111  
 Fax: (405) 233-1112  
 Email: info@s4group.com  
 Date: 4/11/2018  
 Sheet: 1 of 3  
 Job: 2013-42  
 Drawn By: CS  
 Field Book: 103



**Notes:**  
 1. All trees are to be planted at 10' spacing, with 5' offset from sidewalk and 10' from 10' wide and no trees are required for curb.  
 2. All trees are to be planted at 10' spacing, with 5' offset from sidewalk and 10' from 10' wide and no trees are required for curb.



The Boutet Company, Inc.  
601 E. 57th Place, Suite 102  
Anchorage, Alaska 99518

Phone 907.522.6776  
Fax 907.522.6779

1/21/2021

T'Shailla Baker, President  
Northeast Community Council  
Phone: 907.231.2458  
Email: [northeastcommunitycouncil@gmail.com](mailto:northeastcommunitycouncil@gmail.com)  
Subject: Zoom presentation for Checkpoint Subdivision

Dear Ms. Baker:

This letter will serve as the written summary of the of our presentation to the local residents regarding the planned subdivision and development of the property located at the corner of Newell Street and Whisperwood Park Drive.

The owner/petitioner (Andre Spinelli) and myself made a brief presentation to the attendee of the zoom meeting Wednesday night (1/19/2022). Notifications for the meeting were sent out 12/23/2021. There was one local resident from Skwetna Drive that attended the meeting.

The presentation by the petitioner included the proposed subdivision and Conditional Use application process' that will be utilized to get the entitlement. In summary, the subdivision application will create fee simple lots instead of multiple homes on a single, large tract. It was pointed out during the presentation that the **development is already approved as a condominium style development**, the only difference being the creation of 56 small lots. There will be no change to road or utility layouts that are already approved.

Questions and concerns voiced by the attendee included:

- **How long will it take for the development to be built?**
  - *Answer: The development will take approximately 2-3 years after approval to be built out.*
- **Will this plan mean that the homeowner dues will be increased?**
  - *Answer: No. This development of 56 homes will only encompass the homes within its boundaries*
- **Will the planned development block or extend the roads in the area (specifically Shageluk or Newell Street)?**
  - *Answer: No. There are no plans to extend Shageluk south into the 4 Seasons Trailer Park. Additionally, it is not inside the boundaries of this subdivision. Newell Street, on the west side of the subdivision, is a "collector" road and will not be developed or extended south as part of this subdivision.*

Thank you for the opportunity to present to the council. Please do not hesitate to contact either Andre Spinelli (907-343-1600) or myself if you have any questions.

Sincerely  
Tony Hoffman, PLS  
The Boutet Company  
[thoffman@tbca.com](mailto:thoffman@tbca.com)

**Community Meeting  
Announcement**

You are invited to listen to a brief presentation regarding a proposed single family lot subdivision, located south of Whisperwood Park Drive, east of Newell Street and north of Four Season Trailer Park. The legal description is Tract A2, Checkpoint Subdivision. Tax i.d. 006-421-41-000. The subdivision plat approval will also include a *Conditional Use Permit for Residential Planned Unit Development (PUD)*.

Visit the Spinell Homes website at [www.spinellhomes.com](#) for more information in the weeks to come.

Contact Andre Spinelli at (907)343-1600

or

Tony Hoffman at (907)522-6776

**Date: Thursday, January 19th, 2022.  
7:00 P.M. (Alaska Time)**

Join Zoom Meeting  
<https://us06web.zoom.us/j/82222753384>

Meeting ID: 822 2275 3384  
Passcode: 653213  
One tap mobile  
+16699006833,,82222753384#,,, \*653213# US  
(San Jose)  
+12532158782,,82222753384#,,, \*653213# US  
(Tacoma)

Dial by your location

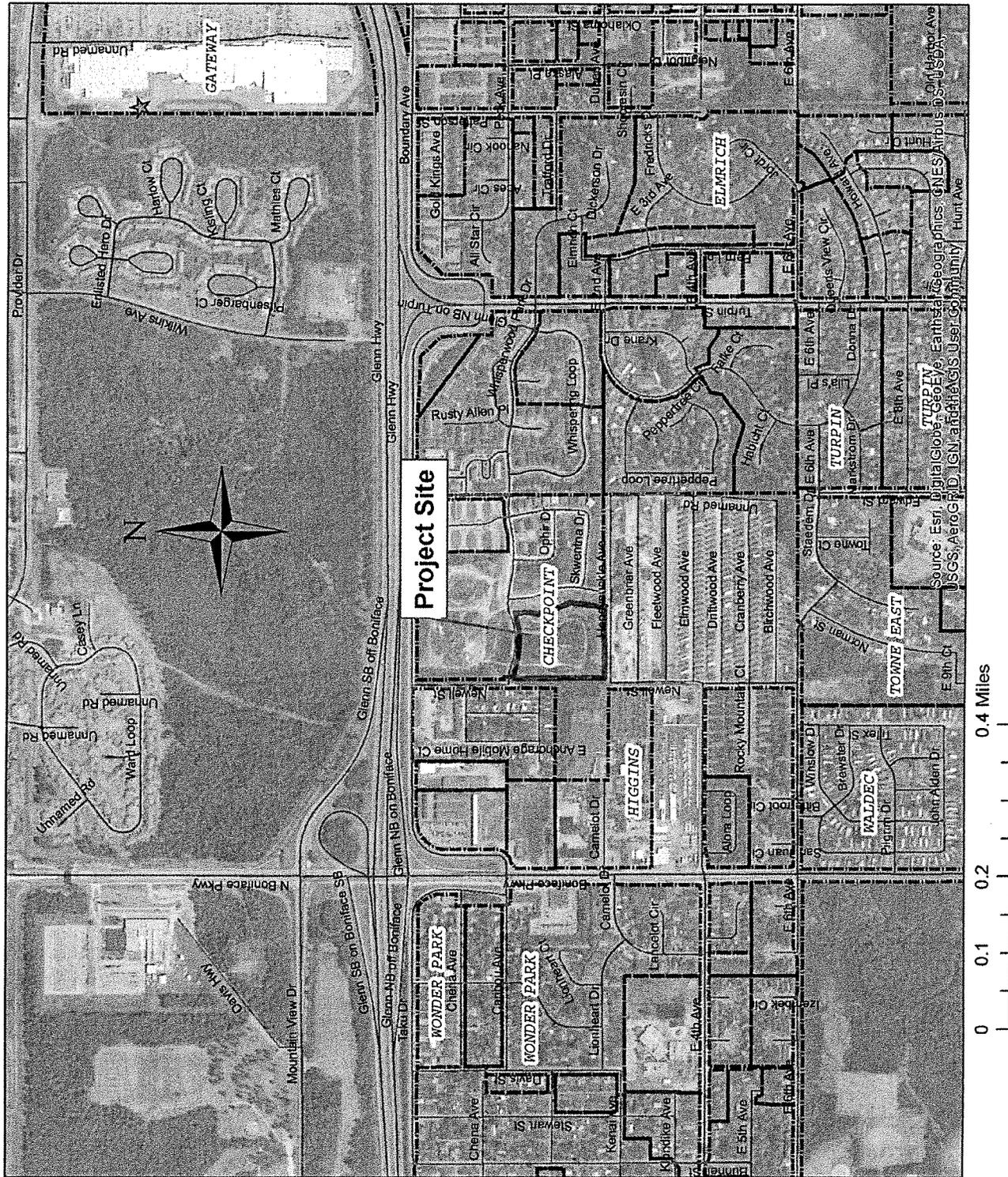
+1 669 900 6833 US (San Jose)  
+1 253 215 8782 US (Tacoma)  
+1 346 248 7799 US (Houston)  
+1 929 205 6099 US (New York)  
+1 301 715 8592 US (Washington DC)  
+1 312 626 6799 US (Chicago)

[Recipient Name]  
[Address]  
[City, ST ZIP Code]

Boutet Company

601 East 57<sup>th</sup> Place, Suite 102  
Anchorage, AK, 99518

# Project Location Map



**BYLAWS  
OF  
OWLS NEST OWNERS ASSOCIATION, INC**

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**BYLAWS  
OF  
OWLS NEST OWNERS ASSOCIATION, INC.**

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**ARTICLE I  
INTRODUCTION**

These are the Bylaws of OWLS NEST OWNERS ASSOCIATION, INC. Terms that are capitalized herein are defined in Article I of the Declaration.

**ARTICLE II: EXECUTIVE BOARD**

**Section 2.1 - Number and Qualification; Termination of Declarant Control.**

- (a) The affairs of the Common Interest Community and the Association shall be governed by an Executive Board which shall consist of at least three (3) persons, the majority of who, excepting the Directors appointed by the Declarant, shall be Lot Owners. If any Lot is owned by a partnership or corporation, any officer, partner or employee of that Lot Owner shall be eligible to serve as a Director and shall be deemed to be a Lot Owner for the purposes of the preceding sentence. Directors shall be elected by the Lot Owners except for those appointed by the Declarant. At any meeting at which Directors are to be elected, the Lot Owners may, by resolution, adopt specific procedures for conducting the elections, not inconsistent with these Bylaws or the Corporation Laws of the State of Alaska.
- (b) The terms of at least one-third ( $\frac{1}{3}$ ) of the Directors shall expire annually, as established in a resolution of the Lot Owners setting terms.
- (c) Section 7.5 of the Declaration shall govern appointment of Directors of the Executive Board during the period of Declarant Control.
- (d) The Executive Board shall elect the officers. The Directors and officers shall take office upon election.
- (e) At any time after Lot Owners other than the Declarant are entitled to elect a Director, the Association shall call and give not less than ten (10) nor more than sixty (60) days' notice of a meeting of the Lot Owners for this purpose. Such meeting may be called and the notice given by any Lot Owner if the Association fails to do so.

**Section 2.2 - Powers and Duties.** The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws and Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Lot Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents other than managing agents and independent contractors;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association's Declaration, Bylaws or Rules in the Association's name on behalf of the Association or two (2) or more Lot Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to Section 34.08.430 of the Act;
- (k) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and regulations of the Association;
- (l) Impose a reasonable charge for the preparation and recording of an amendment to the Declaration, a resale certificate required by Section 34.08.590 of the Act or a statement of unpaid assessments;
- (m) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- (n) Assign the Association's right to future income, including the right to receive Common Expense assessments;
- (o) Exercise any other powers conferred by the Declaration or Bylaws;
- (p) Exercise any other power that may be exercised in the State of Alaska by a legal entity of the same type as the Association;

- (q) Exercise any other power necessary and proper for the governance and operation of the Association; and
- (r) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 2.3 - Standard of Care. In the performance of their duties, the officers and members of the Executive Board are required to exercise the care required of fiduciaries of the Lot Owners.

Section 2.4 - Additional Limitations. The Executive Board shall be additionally limited pursuant to **Article XXI** of the Declaration.

Section 2.5 - Manager. The Executive Board may employ a Manager for the Common Interest Community at a compensation established by the Executive Board, to perform such duties and services as the Executive Board shall authorize. The Executive Board may delegate to the Manager only the powers granted to the Executive Board by these Bylaws under Subsections 2.2(c), (e), (g) and (h). Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Executive Board or to fulfill the requirements of the budget.

Section 2.6 - Removal of Directors. The Lot Owners, by a two-thirds ( $\frac{2}{3}$ ) vote of all persons present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any Director of the Executive Board with or without cause, other than a Director appointed by the Declarant.

Section 2.7 - Vacancies. Vacancies in the Executive Board caused by any reason other than the removal of a Director by a vote of the Lot Owners, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum, in the following manner:

- (a) as to vacancies of Directors whom Lot Owners other than the Declarant elected, by a majority of the remaining such Directors constituting the Executive Board;
- (b) as to vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

**Section 2.8 - Regular Meetings.** The first regular meeting of the Executive Board following each annual meeting of the Lot Owners shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Lot Owners at the meeting at which such Executive Board shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the Directors shall be present. The Executive Board may set a schedule of additional regular meetings by resolution and no further notice is necessary to constitute such regular meetings.

**Section 2.9 - Special Meetings.** Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least three (3) business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

**Section 2.10 - Location of Meetings.** All meetings of the Executive Board shall be held in **Eagle River, Alaska**, unless all Directors consent in writing to another location.

**Section 2.11 - Waiver of Notice.** Any director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

**Section 2.12 - Quorum of Directors.** At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 2.13 - Consent to Corporate Action.** If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Directors or committee constitutes a quorum for such action, such action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The Secretary shall file such consents with the minutes of the meetings of the Executive Board.

### **ARTICLE III: LOT OWNERS**

**Section 3.1 - Annual Meeting.** Annual meetings of Lot Owners shall be held on a date set by the Executive Board after notice to all Lot Owners. At such meeting, the Directors shall be elected by ballot of the Lot Owners, in accordance with the provisions of Article II. The Lot Owners may transact other business at such meetings as may properly come before them.

**Section 3.2 - Budget Meeting.** Meetings of Lot Owners to consider proposed budgets shall be called in accordance with **Sections 16.4 and 16.5** of the Declaration. The budget may be considered at Annual or Special Meetings called for other purposes as well.

**Section 3.3 - Special Meetings.** Special meetings of the Association may be called by the president, by a majority of the members of the Executive Board, or by Lot Owners comprising at least **twenty percent (20%)** of the votes in the Association.

**Section 3.4 - Place of Meetings.** Meetings of the Lot Owners shall be held at a suitable place convenient to the Lot Owners as may be designated by the Executive Board or the president.

**Section 3.5 - Notice of Meetings.**

- (a) Notice of meetings regarding material amendments or extraordinary actions must be served at least twenty-five (25) days in advance to all Lot Owners.
- (b) At least ten (10) days' notice is required for meetings other than those stated in 3.5(a).

The Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot, or to the mailing address designated in writing by the Lot Owner. **The notice must state the purpose of the meeting and contain a summary of any material amendment or extraordinary action proposed. The notice shall also include a proxy that can be cast in lieu of attendance at the meeting.** No action shall be adopted at a meeting except as stated in the notice.

**Section 3.6 - Waiver of Notice.** Any Lot Owner may, at any time, waive notice of any meeting of the Lot Owners in writing, and such waiver shall be deemed equivalent to the receipt of such notice.

**Section 3.7 - Adjournment of Meeting.** At any meeting of Lot Owners, a majority of the Lot Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to another time.

**Section 3.8 - Order of Business.** The order of business at all meetings of the Lot Owners shall be as follows:

- (a) Establish quorum (or check-in procedure).
- (b) Proof of notice of meeting.
- (c) Approval of minutes of preceding meeting.
- (d) Reports.
- (e) Establish term of memberships of the Executive Board (if required and noticed).
- (f) Election of inspectors of election (when required).

- (g) Election of Directors of the Executive Board (when required).
- (h) Ratification of Budget (if required and noticed).
- (i) Unfinished business.
- (j) New business.
- (k) Adjourn.

Section 3.9 - Voting.

- (a) If only one (1) of several Lot Owners of a Lot is present at a meeting of the Association, the Lot Owner present is entitled to cast the vote allocated to the Lot. If more than one (1) of the Lot Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority in interest of the Lot Owners. There is majority agreement if any one (1) of the Lot Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by another owner of the Lot.
- (b) The vote allocated to a Lot may be cast under a proxy duly executed by a Lot Owner. If a Lot is owned by more than one (1) person, each Lot Owner of the Lot may vote or register protest to the casting of votes by the other Lot Owners of the Lot through a duly executed proxy. A Lot Owner may revoke a proxy given under this Section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date of execution, unless otherwise provided in the proxy.
- (c) The vote of a corporation or business trust may be cast by any officer of such corporation or business trust in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The Person presiding over the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust owner is qualified so to vote.
- (d) The vote allocated to a Lot owned by the Association may not be cast.

Section 3.10 - Quorum. Except as otherwise provided in these Bylaws, the Lot Owners present in person or by proxy, but no less than **twenty percent (20%)** of the votes entitled to vote at the meeting, at any meeting of Lot Owners, shall constitute a quorum at such meeting.

## ARTICLE IV: OFFICERS

Section 4.1 - Designation. The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary. The president and vice president, but no other officers, need be Directors. Any two (2) offices may be held by the same person, except the offices of president and secretary. The office of vice president may be held by the President or Treasurer.

Section 4.2 - Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organization meeting of each new Executive Board and shall hold office at the pleasure of the Executive Board.

Section 4.3 - Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause, and his or her successor may be elected at any regular meeting of the Executive Board, or at any special meeting of the Executive Board called for that purpose.

Section 4.4 - President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Lot Owners and of the Executive Board. He or she shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Alaska, including, but not limited to, the power to appoint committees from among the Lot Owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. He or she may fulfill the role of treasurer in the absence of the treasurer. The president, as attested by the secretary, may cause to be prepared and may execute amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.5 - Vice President. The vice president shall take the place of the president and perform his or her duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Executive Board shall appoint some other Director to act in the place of the president, on an interim basis. The vice president shall also perform such other duties as may be imposed upon him or her by the Executive Board or by the president.

Section 4.6 - Secretary. The secretary shall keep the minutes of all meetings of the Lot Owners and the Executive Board. He or she shall have charge of such books and papers as the Executive Board may direct and he or she shall, in general, perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Alaska. The secretary may cause to be prepared and may attest to execution by the president of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.7 - Treasurer. The treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial

data. He or she shall be responsible for the deposit of all monies and other valuable effects in such depositories as may from time to time be designated by the Executive Board, and he or she shall, in general, perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Alaska. He or she may endorse on behalf of the Association for collection only, checks, notes and other obligations, and shall deposit the same and all monies in the name of and to the credit of the Association in such banks as the Executive Board may designate. He or she may have custody of and shall have the power to endorse for transfer on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others.

Section 4.8 - Agreements, Contracts, Deeds, Checks, etc. Except as provided in Sections 4.4, 4.6, 4.7, and 4.9 of these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by such other person or persons as may be designated by the Executive Board.

Section 4.9 - Resale Certificates and Statements of Unpaid Assessments. The treasurer, assistant treasurer, or a Manager employed by the Association, or, in their absence, any officer having access to the books and records of the Association, may prepare, certify, and execute resale certificates in accordance with Section 34.08.590 of the Act and statements of unpaid assessments in accordance with Subsection 34.08.470(h) of the Act.

The Association may charge a reasonable fee for preparing resale certificates and statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish resale certificates and statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Lot for which the certificate or statement is furnished.

## ARTICLE V: ENFORCEMENT

Section 5.1 - Abatement and Enjoinment of Violations by Lot Owners. The violation of any of the Rules and regulations adopted by the Executive Board, or the breach of any provision of the Documents shall give the Executive Board the right, after Notice and Hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

- (a) to enter the Lot in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist therein) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Documents, and the Executive Board shall not thereby be deemed liable for any manner of trespass; or
- (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 5.2 - Fine For Violation. The Executive Board may levy a fine against a Lot Owner of up to fifty dollars and zero cents (\$50.00) per day for each day that a violation of the Documents or Rules occurs or persists, provided that Notice and Hearing must be provided before any portion of such fine may be assessed against a Lot Owner.

#### **ARTICLE VI: INDEMNIFICATION**

The Directors and officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in Sections AS 10.20.051(b) and AS 10.20.011(14) of the Alaska Statutes, the provisions of which are hereby incorporated by reference and made a part hereof.

#### **ARTICLE VII: RECORDS**

Section 7.1 - Records and Audits. The Association shall maintain financial records. The financial records shall be maintained and audited in accordance with **Article XXI** of the Declaration. The cost of the audit shall be a Common Expense unless otherwise provided in the Documents.

Section 7.2 - Examination. All records maintained by the Association or by the Manager shall be available for examination and copying by any Lot Owner, by any holder of a Security Interest in a Lot, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

Section 7.3 - Records. The Association shall keep the following records:

- (a) An account for each Lot which shall designate the name and address of each Lot Owner, the name and address of each mortgagee who has given notice to the Association that it holds a Security Interest on the Lot, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account, and the balance due.
- (b) An account for each Lot showing any other fees payable by the Lot Owner.
- (c) A record of any capital expenditures in excess of three thousand dollars and zero cents (\$3,000.00) approved by the Executive Board for the current and two (2) next succeeding fiscal years.
- (d) A record of the amount, and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project.
- (e) The most recently regularly prepared balance sheet and income and expense statement, if any, of the Association.

- (f) The current operating budget adopted pursuant to Subsection 34.08.460(a) of the Act and ratified pursuant to the procedures of Subsection 34.08.330(c).
- (g) A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant.
- (h) A record of insurance coverage provided for the benefit of Lot Owners and the Association.
- (i) A record of any alterations or improvements to a Lot or Limited Common Element which violate any provisions of the Declarations of which the Executive Board has knowledge.
- (j) A record of any violations, with respect to any portion of the Common Interest Community, of health, safety, fire or building codes or laws, ordinances, or regulations of which the Executive Board has knowledge.
- (k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements.
- (l) Annually the Association shall prepare a balance sheet showing the financial condition of the Association as of a date not more than four (4) months prior thereto, and a statement of receipts and disbursements for twelve (12) months prior to that date. The balance sheet and statement shall be kept for at least ten (10) years from such date in the principal office of the Association.
- (m) Tax returns.
- (n) Minutes of proceedings of incorporators, Lot Owners, Directors, committees of Directors and waivers of notice.

Section 7.4 - Form Resale Certificate. The Executive Board shall adopt a form resale certificate to satisfy the requirement of Section 34.08.590 of the Act.

#### **ARTICLE VIII: MISCELLANEOUS**

Section 8.1 - Notices. All notices to the Association or the Executive Board shall be delivered to the office of the Manager, or if there is no Manager, to the office of the Association, or to such other address as the Executive Board may hereafter designate from time to time, by notice in writing to all Lot Owners and to all holders of a Security Interest in the Lots who have notified the Association that they hold a Security Interest in a Lot. Except as otherwise provided, all notices to Lot Owners, shall be sent to his or her address as it appears in the records of the Association. All notices to holders of a Security Interest in the Lots shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Association. All notices shall

be deemed to have been given when mailed except notices of changes of address which shall be deemed to have been given when received.

Section 8.2 - Fiscal Year. The Executive Board shall establish the fiscal year of the Association.

Section 8.3 - Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.4 - Office. The principal office of the Association shall be on the Property or at such other place as the Executive Board may from time to time designate.

#### ARTICLE IX: AMENDMENTS TO BYLAWS

The Bylaws may be amended only pursuant to the provisions of Article XIV of the Declaration.

Certified to be the Bylaws adopted by consent of the Directors of OWLS NEST OWNERS ASSOCIATION, INC. dated the 22 day of March, 2021.

By: Pam Woodke  
Pam Woodke  
Its: Secretary

CC



*Anchorage Recording District*

**DECLARATION  
OF  
OWLS NEST**

*-A Planned Community within Owls Nest Subdivision (Plat No. 2021-21),  
located in Eagle River, Alaska-*

**AFTER RECORDING, RETURN TO:**  
KLONDIKE PROPERTY MANAGEMENT  
*c/o Audrey Kirn*  
P.O. Box 112871  
Anchorage, Alaska 99511

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**DECLARATION  
FOR  
OWLS NEST**

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Declarant, **MISSION HILLS, LLC**, an Alaska limited liability company, with an office address of *1900 West Northern Lights, Suite 200, Anchorage, Alaska 99517*, does hereby submit the real property in Anchorage, Alaska described in **SCHEDULE A-1**, to the provisions of the Uniform Common Interest Ownership Act, Title 34, Chapter 08, of the Alaska Statutes, for the purpose of creating the planned community of **OWLS NEST** and making the Improvements shown in the Plat attached as **SCHEDULE A-3**.

**ARTICLE I  
DEFINITIONS**

In the Documents, the following words and phrases shall have the following meanings:

Section 1.1 - Act. The Uniform Common Interest Ownership Act, Title 34, Chapter 08 of the Alaska Statutes, as it may be amended from time to time.

Section 1.3 - Allocated Interests. The share of the Common Expense liability and the votes in the Association allocated to Lots in Owls Nest. The Allocated Interests are described in **ARTICLE VIII** of the Declaration and listed in **SCHEDULE A-2**.

Section 1.3 - Association. *Owls Nest Owners Association, Inc.*, a non-profit corporation organized under Title 10, Chapter 20 of the Alaska Statutes. It is the Association of Lot Owners for Owls Nest.

Section 1.4 - Bylaws. The Bylaws of the Association, as they may be amended from time to time. Neither such Bylaws nor any amendments to such Bylaws need be recorded in the property records.

Section 1.5 - Common Elements. Each portion of the Common Interest Community, other than a Lot. The Common Elements are interest in real property owned by the Association.

Section 1.6 - Common Expenses. The expenses or financial liabilities for the operation of the Common Interest Community. These include:

- a. expenses of administration, maintenance, repair or replacement of the Common Elements;
- b. expenses declared to be Common Expenses by the Documents;



- c. expenses agreed upon as Common Expenses by the Association;
- d. such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements; or
- e. any other real or personal property acquired or held by the Association.

Section 1.7 - Common Interest Community. The real property described in **SCHEDULE A-1**, subject to the Declaration.

Section 1.8 - Declarant. MISSION HILLS, LLC, an Alaska limited liability company, and its successor as defined in Subsection AS 34.08.990(12) of the Act.

Section 1.9 - Declaration. This Document, including any amendments.

Section 1.10 - Design Guidelines and Specifications. The Property is subject to requirements for the design, appearance, materials, fenestration and color of the structures and Improvements as described in the Design Guidelines and Specifications contained in **ARTICLE IX**.

Section 1.11 - Director. A member of the Executive Board.

Section 1.12 - Documents. The Declaration, the Plat(s) recorded and filed pursuant to the provisions of the Act, the Articles of Incorporation, the Bylaws, and the Rules, if any, as they may be amended from time to time. Any attachment, schedule, or certification accompanying a Document is a part of that Document.

Section 1.13 - Dwelling. A building on a Lot that is designated and constructed for use as a residence.

Section 1.14 - Executive Board. The Board of Directors of the Association.

Section 1.15 - Improvements. Any construction, structure, fixture or facility existing or to be constructed on the land included in the Common Interest Community including, but not limited to, buildings, trees and shrubbery, paving, signage, utility wires, pipes, nature trails and light poles.

Section 1.16 - Lot. A Lot created by a Plat approved and filed in accordance with the Municipality of Anchorage plat requirements. Each Lot is a "Unit" as defined in AS 34.08.990(32).

Section 1.17 - Lot Owner. A Person, including the Declarant, who owns a Lot. Lot Owner does not include a Person having only a Security Interest in a Lot. A Lot Owner is a "unit owner" as defined in AS 34.08.990(33).



Section 1.18 – Maintain, Repair, and Replace. To Maintain, Repair, and Replace (or to perform Maintenance, Repair and Replacement) is the act of addressing and correcting deterioration, decay, wear and tear, and obsolescence.

Section 1.19 - Majority or Majority of Lot Owners. The Lot Owners of more than fifty percent (50%) of the voting interest in the Association.

Section 1.20 - Manager. A person, firm or corporation employed or engaged to perform management services for the Common Interest Community and the Association.

Section 1.21 - Notice and Comment. The right of Lot Owners to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in **Section 20.1** of the Declaration.

Section 1.22 - Notice and Hearing. The right of Lot Owners to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in **Section 20.2** of the Declaration.

Section 1.23 - Person. An individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 1.24 - Plat. The Plat as may be amended from time to time and attached as **SCHEDULE A-3** to the Declaration.

Section 1.25 - Property. The land, all Improvements, easements, rights and appurtenances which have been submitted to the provisions of the Act by the Declaration.

Section 1.26 - Public Offering Statement. The current Document prepared pursuant to AS 34.08.530 as it may be amended from to time, and provided to purchasers.

Section 1.27 - Rules. Regulations for occupancy of the Lots and use of the Common Elements and for the conduct of Persons within the Common Interest Community, adopted by the Executive Board pursuant to the Declaration.

Section 1.28 - Security Interest. An interest in real estate created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.29 – Special Declarant Rights. Right reserved for the benefit of the Declarant pursuant to **ARTICLE VII**.



**ARTICLE II**  
**NAME AND TYPE OF COMMON INTEREST COMMUNITY,**  
**ASSOCIATION AND MEMBERSHIP**

Section 2.1 - Name and Type of Common Interest Community. The name of the Common Interest Community is *Owls Nest*. *Owls Nest* is a *Planned Community*.

Section 2.2 - Association. The name of the Association of Lot Owners is *Owls Nest Owners Association, Inc.*, a non-profit corporation organized under the nonprofit corporations laws of the State of Alaska.

Section 2.3 - Membership in Association. Every Person who is a record Lot Owner of any Lot in the Common Interest Community is a member of the Association. Membership and voting rights in the Association are appurtenant to, and inseparable from, ownership of a Lot.

**ARTICLE III**  
**DESCRIPTION OF LAND**

The entire Common Interest Community is situated in Eagle River, Alaska, and is located on the real property described in **SCHEDULE A-1**.

**ARTICLE IV**  
**NUMBER OF LOTS; LOT BOUNDARIES**

Section 4.1 - Number of Lots. The Common Interest Community upon creation contains **twenty-nine (29) Lots**, as shown on the Plat attached as **SCHEDULE A-3**.

Section 4.2 - Lot Boundaries. The Lot boundaries are the boundaries of the Lots, as shown on the Plat attached hereto as **SCHEDULE A-3**.

**ARTICLE V**  
**COMMON ELEMENTS**

The Common Elements in *Owls Nest* are each portion of the Common Interest Community, other than a Lot, and include without limitation: (1) Tract A & Tract B; (2) a *cluster mailbox* located at the corner of Lot 5 and Lot 6, located in Tract B within the 7' wide Road Easement ("**7' R.E.**"), as identified and labeled as "**Cluster Mailbox**" on the Plat ("**Cluster Mailbox**"); (3) a *paved concrete sidewalk and curb* located on the internal road in Tract B within the 7' R.E, in the location shown on the Plat attached hereto as **SCHEDULE A-3**, and as identified and labeled as "**Paved Road or Sidewalk**" on the Plat ("**Paved Road or Sidewalk**"); (4) any personal property owned by the Association; and (5) any portion of the Property designated as a Common Element on **SCHEDULE A-3** to the Declaration. The Declarant shall convey Tract A and Tract B to the Association.



**ARTICLE VI**  
**MAINTENANCE, REPAIR AND REPLACEMENT**

Section 6.1 - Common Elements. The Association shall be responsible for the Maintenance, Repair and Replacement of all Common Elements.

Section 6.2 - Lots. Each Lot Owner shall Maintain, Repair and Replace in a good and workmanlike manner, at his or her own expense, all portions of his or her Lot, including the Dwelling and any structures, landscaping, driveways or other Improvements within the Lot. Lot Owners shall maintain each Improvement on their Lot in a neat, clean and presentable condition.

Section 6.3 – Failure to Maintain, Repair, and Replace.

- a. If a Lot Owner fails to Maintain, Repair or Replace his or her Lot, or Improvements on the Lot, after the Lot Owner knew, or should have known, that such Maintenance, Repair, or Replacement was needed, and such failure causes damage to another Lot and/or the Common Elements, then:
  - i. The Lot Owner shall reimburse the Lot Owner of the damaged Lot (the “Affected Lot Owner”) for the cost of restoring the damaged Lot in excess of any insurance proceeds received by the Affected Lot Owner, whether the portion results from the application of a deductible or otherwise;
  - ii. The Lot Owner shall reimburse the Association for the cost of restoring the damage to the Common Elements in excess of any insurance proceeds received by the Association under its insurance policy, whether the portion results from the application of a deductible or otherwise.
- b. If the Association fails to Maintain, Repair or Replace the Common Element or any other portion of the Common Interest Community for which it is responsible after the Association knew, or should have known, that such Maintenance, Repair, and Replacement was needed, and such failure causes damage to a Lot:
  - i. If the damage is covered by the Association’s insurance policy, the Association shall restore it in accordance with **ARTICLE XIX** of the Declaration; or
  - ii. If the damage is not covered by the Association’s insurance policy, the Association shall reimburse the Lot Owner of the damaged Lot for the reasonable cost of restoring the damage.
- c. If a Lot Owner fails to Maintain, Repair, or Replace a Lot, and such failure creates a condition that threatens another Lot or the Common Elements, the Association may take such actions as are necessary to correct such condition without prior notice or



with only such prior notice as can reasonably be given consistent with the threat. If the Association does take such action, the Lot Owner shall reimburse the Association for the cost of correcting the condition.

Section 6.4 – Access. Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of: (i) correcting any condition threatening a Lot or the Common Elements; (ii) performing installations, alterations or repairs; and (iii) reading, repairing, replacing utility meters and related pipes, valves, wires and equipment, provided that requests for such entry are made in advance and that any such entry is at a time reasonably convenient to the affected Lot Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, regardless of whether the Lot Owner is present at the time.

Section 6.5 – Enforcement. In the event that a Lot Owner should fail to perform any obligation required in this Section as may be determined by the Executive Board, then the Executive Board may provide for the performance of any such neglected obligation, by whatever reasonable means it may determine in its sole discretion. In case of an emergency, as determined by the Executive Board, it may act immediately; and in all other cases, the Executive Board may act hereunder following thirty (30) days written notice to the Lot Owner. All expenses incurred by the Association, as a result of acting under this Section shall be chargeable to the Lot Owner as provided for under **Section 16.2** hereof.

## **ARTICLE VII**

### **SPECIAL DECLARANT RIGHTS**

Section 7.1 - Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised anywhere within the Common Interest Community:

- a. to complete Improvements shown on the Plat filed with the Declaration and any amendments thereto, and to complete Improvements on the Property required by the Municipality of Anchorage;
- b. to maintain one (1) or more structures within Lots owned by the Declarant as model homes, management offices, or sales offices. The specific location may change from time to time as Dwellings on Lots are developed and sold. Declarant may delegate this right to persons who purchase Lots for construction and sale;
- c. to use or grant easements through the Common Elements, for the purpose of making Improvements within the Common Interest Community; and
- d. to appoint or remove an officer of the Association or an Executive Board member during a period of Declarant Control, subject to the provisions of **Section 7.5** of the Declaration.



Section 7.2 – Other Reserved Rights.

- a. *Construction; Declarant's Easement.* The Declarant reserves the right to perform repair and construction work, and to store materials in secure areas, on Common Elements and on Lots owned by Declarant, and the further right to control all such work and repairs on Lots, and the right of access thereto, until its completion of the work on the Lots. All work may be performed by the Declarant without the consent of approval of the Executive Board or any Lot Owner. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in the Declaration.
- b. *Signs and Marketing.* The Declarant reserves the right to post signs and displays on Lots to promote sales of Lots and Dwellings, and to conduct general sales activities, in a manner that will not unreasonably disturb the rights of Lot Owners.
- c. *Declarant's Personal Property.* The Declarant reserves the right to retain all personal property and equipment used in sales, management, construction and maintenance of the Property that has not been represented as property of the Association. The Declarant reserves the right to remove from the Property, promptly after the sale of the last Lot, any and all personal property and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 7.3 - Declarant Control of Association.

- a. Subject to **Section 7.3.b**, there shall be a period of Declarant Control of the Association, during which the Declarant, or Persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant Control terminates no later than the earlier of:
  - i. sixty (60) days after conveyance of seventy-five percent (75%) of the Lots in Owls Nest to Lot Owners other than the Declarant;
  - ii. two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business;
  - iii. seven (7) years following the first conveyance of a Lot to a Lot purchaser.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event, the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded



instrument executed by the Declarant, be approved by the Declarant before they become effective.

- b. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots in Owls Nest to Lot Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board, shall be elected by Lot Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Lot Owners other than the Declarant, not less than thirty-three-and-one-third percent (33<sup>1</sup>/<sub>3</sub>%) of the members of the Executive Board must be elected by Lot Owners other than the Declarant.
- c. Not later than the termination of any period of Declarant Control, the Lot Owners shall elect an Executive Board of at least three (3) members, all of whom shall be Lot Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office on election.
- d. Notwithstanding any provision of the Declaration or the Bylaws of the Association to the contrary, following notice under AS 34.08.390, the Lot Owners, by a two-thirds (2/3) vote of all Persons present and entitled to vote at a meeting of Lot Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 7.4 - Time Limitations on Special Declarant Rights. Except for Special Declarant Rights that may terminate earlier by statute and unless previously terminated by an amendment to the Declaration executed by the Declarant, Special Declarant Rights terminate at the latest to occur of the following:

Such time as the Declarant;

1. is no longer obligated under any warranty or obligation;
2. no longer owns a Lot;
3. no longer holds any Security Interest in any Lot; or
4. no assignee of Special Declarant Rights owns a Lot.

Section 7.5 - Interference with Special Declarant Rights. Neither the Association nor any Lot Owner may take an action or adopt any rules that will interfere with, or diminish, any Special Declarant Right without the prior written consent of the Declarant.

Section 7.6 - Assignment of Special Declarant Rights and Other Rights Reserved. The Declarant may transfer any or all of its Special Declarant Rights and all of its rights reserved under this ARTICLE VII through an Assignment of Special Declarant Rights or an Assignment of Declarant Reserved Rights.



**ARTICLE VIII**  
**ALLOCATED INTERESTS**

Section 8.1 - Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as **SCHEDULE A-2**. These Allocated Interests have been allocated in accordance with the formulas set out in this **ARTICLE VIII**. These formulas are to be used in reallocating the Allocated Interest of Lots if Lots are; (i) added; (ii) combined; or (iii) subdivided.

Section 8.2 - Formulas for the Allocation of Interests. The Allocated Interests allocated to each Lot are calculated on the following formulas:

- a. *Common Expense Liability for Common Elements & Percentage Share of Common Expenses.* Except as provided in **ARTICLE XII**, each Lot in the Common Interest Community shall be allocated an equal share of the liability for Common Expenses. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Lots under **ARTICLE XII** of the Declaration.
- b. *Votes in the Association.* Each Lot in the Common Interest Community shall have one (1) equal vote. Any specified percentage, portion or fraction of Lot Owners, unless otherwise stated in the Documents, means the specified percentage, portion, or fraction of all of the votes as allocated in **Schedule A-2**.
- c. *Multiple Ownership of a Lot.* When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as determined among those Lot Owners, but in no event shall more than one (1) vote be cast with respect to any such Lot. Any votes cast with regard to any such Lot in violation of this provision shall be null and void.

Section 8.3 - Membership. Every Lot Owner is a member of the Association. If a Lot is owned by more than one (1) Person, all of the Lot Owners of such Lot will have the benefits of membership in the Association, subject to such reasonable Rules and restrictions as the Executive Board shall determine from time to time. The membership rights of a Lot Owner which is not a natural Person may be exercised by any authorized officer, director, partner, trustee or Manager.

**ARTICLE IX**  
**RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

Section 9.1 - Use Restrictions. Subject to the Special Declarant Rights reserved under **ARTICLE VII** of this Declaration, each Lot is restricted to residential use as a single-family residence. No building shall be erected, altered, placed, or permitted to remain on any Lot, other than one (1) single-family Dwelling with an attached double car or larger attached garage, and a single detached outbuilding conforming to the requirements in **Section 9.2**, below. No business or commercial activity shall be maintained or conducted on any Lot, except that professional and



administrative occupations may be carried on within Dwellings on Lots, so long as there exists no external evidence thereof.

Section 9.2 - Occupancy Restrictions. All Lots are subject to the following occupancy restrictions.

- a. *Architectural Control and Penalty.* No construction, clearing or site grading shall begin on any Lot until the Declarant has approved the proposed activity in writing. A Lot layout plan showing house, driveway and clearing limit locations shall be plotted in compliance with the requirements of this ARTICLE IX by a registered surveyor at the Lot Owner's expense. This surveyor-certified plot plan shall be delivered by a Lot Owner to the Declarant thirty (30) days prior to anticipated commencement of construction. After initial construction of the Dwelling commences on any Lot, plans for any additions, modifications, outbuildings or fences shall be submitted by the Lot Owner to the Declarant thirty (30) days prior to anticipated commencement of construction. Construction may not begin until written approval of the plot plan is received. A penalty of One Hundred Dollars (\$100.00) per day may be assessed by the Executive Board against a Lot Owner for unapproved construction activities.
- b. *Dwelling Cost, Quality and Size.* Unless otherwise approved in writing by the Declarant and the Executive Board, no Dwelling shall be permitted on any Lot at a cost of less than seventy-two percent (72%) of appraised value of the structure and Lot combined. The intention and purpose of this covenant is to assure that all Dwellings shall be of a quality of workmanship and materials substantially the same, or better, than that which can be produced on the date this Declaration is recorded, at the minimum cost stated here for the minimum permitted Dwelling size. All Dwellings, with the exception of ranch-style Dwellings, must have at least one thousand five hundred (1,500) square feet of living area, not including garage area or outbuilding area. Ranch-style Dwellings must have at least one thousand two hundred (1,200) square feet of living area, not including garage area or outbuilding area.
- c. *Permanent, Detached Structures (Outbuildings).* A single detached outbuilding, no larger than twelve (12) feet by ten (10) feet and no greater than twelve (12) feet in height, may be constructed on a Lot. Outbuildings must be permanently affixed to the ground and built in accordance with the Anchorage Municipal Code ("AMC"). The siding of the outbuilding must be similar to that of the Dwelling, and the structure must be located on the Lot and finished so as to blend into the surroundings as much as possible. Metal, aluminum or similar structures shall not be allowed.
- d. *Siding, Roofs and Colors.* No metal buildings shall be constructed or maintained on any Lot. T1-11 or sheet wood siding may be used in construction of Dwellings, or permanent detached structures, only on a side that is not visible from any street or where visibility is completely blocked due to major offsets in the Dwelling.



Chimneys shall be enclosed with framing when visible from the street. In order to maintain design harmony within the Common Interest Community, and to preserve the value, attractiveness, livability, and desirability of the Common Interest Community, all paint, stain and roof colors, materials and textures must comply with those approved by the Declarant.

- e. *Slope Stabilization and Sedimentation Control.* Slopes shall be stabilized, and sedimentation shall be controlled at all times during construction. All construction shall comply with the Municipality of Anchorage, the Alaska Department of Environmental Conservation and the EPA Storm Water Pollution Prevention Plan requirements.
  
- f. *Driveways, Structure Locations, Clearing Limits and Setback Lines.* Driveway and structure locations and clearing limits are to be staked according to the Lot layout plan approved by the Declarant. Structures must be located outside of the following setbacks:  
  
Front Yard: Minimum of twenty (20) feet.  
Secondary Front Yard: Minimum of ten (10) feet.  
Side Yard: Minimum of five (5) feet.  
Rear Yard: Minimum of ten (10) feet.
  
- g. *Completion of Exteriors.* All Dwellings must be enclosed, and exteriors finished, within twelve (12) months of the time construction on the Lot begins. This timeframe may be extended for compelling reasons and for factors not reasonably foreseen by the Lot Owner, at the discretion of the Declarant, to avoid hardship. No building shall be occupied prior to the completion of the exterior.
  
- h. *Temporary Construction Structures.* Temporary construction structures up to two hundred (200) square feet in area may be permitted with the written approval of the Declarant. These structures shall be for use only during the construction phase on a Lot, not to exceed one (1) year, and shall be promptly removed when no longer needed, or within thirty (30) days of a written request for removal by the Declarant. Portable toilet facilities shall be provided on any Lot under construction, unless a toilet facility available to the construction workers is located within three hundred (300) feet of the construction site.
  
- i. *Driveway Paving and Location of Utilities.* All driveways shall be paved with black asphalt or grey concrete, unless otherwise approved in writing by the Declarant. Utility installations shall be underground and located within the approved clearing limits or existing cleared areas. Any utility connections or work that disturbs or damages subdivision open spaces, pathways, roads, curbs or buffer vegetation must be repaired or replaced by the Lot Owner.



- j. *Lawns and Landscaping.* All Lot Owners shall submit a Landscape Plan to the Declarant for approval. All disturbed areas on a Lot shall be landscaped by the Lot Owner with trees, shrubs, mulch and grass, and seeded, weather permitting, not later than the first growing season after completion of construction of the primary structure on the Lot. Tree planting, especially in the front yard shall be emphasized. Steep slopes (steeper than 1 1/2: 1) shall be stabilized with rock work or retaining walls. All lawns are to be maintained free of weeds, mowed and trimmed whenever growth exceeds four inches (4"). Lot Owners shall plant, mow and maintain the unpaved road right-of-way next to their Lot. Fertilizer shall be used sparingly, not more than twice yearly, to minimize adverse runoff water quality.
- k. *Trees.* No live trees may be removed from any Lot, except those trees within the Declarant approved clearing limits on that Lot, or as required by **Subsection 1**, below. It is the intent of this provision that all Persons purchasing Lots shall do their utmost to maintain the live trees and the natural wooded surroundings of their properties. It shall be the responsibility of each Lot Owner to inform any construction personnel of these requirements and require them to take the necessary time and expense to make certain that: (1) no more than four (4) inches of dirt is placed over any live tree roots; (2) damaged roots and trees are painted with protective sealer to prevent dehydration; (3) root feeding of damaged trees is done in a timely fashion; (4) tree surgery is done on all trees deemed unsafe or unsightly to correct the condition; and (5) roots exposed by machinery, etc., are covered by four (4) inches of topsoil within thirty (30) days of their exposure. The Lot Owner, at Lot Owner's expense, shall be responsible to replant, within one (1) year of completion of construction, any trees outside of the approved clearing limits killed as the result of construction activity. Minor tree surgery to enhance views is allowed. Infested, diseased or dead trees shall be removed immediately, except when weather/snow cover does not permit their safe removal. Stumps shall be trimmed flush with the ground level or removed and covered by soil and revegetated immediately as weather conditions permit.
- l. *Sight Distance.* No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines or, in the case of a rounded property corner, from the intersection of the property lines adjacent to the street, if extended in a straight line. The same sight line limitations shall apply on any Lot within ten (10) feet of the intersection of a street property line with the edge of driveway pavement. No trees shall be permitted to remain within such clear vision areas, unless the foliage is trimmed to a sufficient height to prevent obstruction of sight lines.
- m. *Drainage.* Any alteration of natural drainage is the responsibility of the party changing grades. A Lot Owner changing the grade shall make provision for water



runoff so that it does not negatively impact other Lot Owners or the Common Elements.

- n. *Fences.* Whenever practicable, hedges, shrubs or trees shall be used for screening. Fences to be constructed at the time of construction of the Dwelling on the Lot shall be shown and approved as part of the Lot layout approval. For approval of a fence to be constructed after initial construction of the Dwelling on a Lot, the Lot Owner shall submit, at least thirty (30) days before the anticipated commencement of fence construction, a plan showing the location of the fence and the proposed fence design. Dog runs shall only be permitted behind the house on a Lot and, when permitted, shall be concealed by a wooden fence. Fences are to be constructed of wood materials only; unless, other fencing materials that maintain the architectural integrity and design harmony within Owls Nest are approved. Weather treated construction grade materials such as fir and hemlock may be used for posts and stringers but only cedar or redwood may be used for the facing. The fence shall be constructed so that posts and stringers are located on the inside of the fence (facing the interior of the Lot) and facings or rails are on the outside of the fence. Fences shall not exceed six feet (6') in height. No fences are permitted in the front yard of a Lot.
- o. *Signs.* No sign of any kind shall be displayed to public view on any Lot, except a sign of not more than six (6) square feet advertising the Lot for sale or rent, except signs used by the builder or Declarant to advertise the properties during the construction or sales period. No signs shall be nailed or affixed to trees. Any sign shall comply with the current zoning regulations applicable to signs.
- p. *Animals.* Lot Owners may maintain pets in their Lots in accordance with all applicable laws and codes of the Municipality of Anchorage governing residential neighborhoods. All pets shall be chained, fenced, or otherwise restrained at all times. No pet shall be allowed to run freely. The Lot Owner is responsible for removing its pets' feces from all areas of the Planned Community (i.e. Lots, open spaces, streets, bike trails, sidewalks, etc.).
- q. *Nuisances.* No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance or danger to the neighborhood. Lot Owners shall contain or control their animals to the extent necessary to eliminate nuisance (including but not limited to barking dogs) to their neighbors. Use of snow machines, off-road use of motorcycles or any other all-terrain vehicle within the Common Interest Community is expressly prohibited. The Executive Board shall have the authority to establish a fine schedule and levy fines in a sufficient amount to deter continuation of any activity determined by the Executive Board to be a nuisance.
- r. *Easements.* Easements for the installation and maintenance of utilities and drainage



facilities are reserved as shown on the recorded plats. Within these easements, no structure, planting other than ground cover, or other material, which may: (i) damage or interfere with the installation and maintenance of utilities; (ii) change the flow of drainage facilities in the easement, or; (iii) obstruct or retard the flow of water through drainage channels in the easements, shall be placed or allowed to remain. The easement on each Lot, and all Improvements in it, shall be maintained continuously by the Lot Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. No live vegetation shall be disturbed in any perimeter buffer easements, except where utilities and storm drainage structures are to be installed, and all disturbed areas must be revegetated with approved landscaping.

- s. *Waste Material.* No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All such matter shall be kept in sanitary containers. Construction waste shall be kept to a minimum on site and removed to the satisfaction of the Declarant and the Executive Board, consistent with professional building industry standards. No incinerators or other equipment for storage or disposal of garbage, trash, rubbish or other waste may be kept, maintained or located at the exterior of any Dwelling except: (1) in a storage shed, completely enclosed and located or connected to the exterior wall of the Dwelling; or, (2) on the day of garbage pickup. No outside burning shall be allowed without the Executive Board's written approval.
  
- t. *Vehicles.* No vehicle or recreational vehicle may be abandoned or allowed to remain on any Lot for more than thirty (30) days if it is not in operating condition, and all vehicles on any Lot must be licensed. No equipment such as bulldozers, work trucks and road graders may be parked on any Lot or street, except during that time it is actually working in that area of the Common Interest Community in a continuous manner. All Lot Owners shall comply with the parking ordinances of the Municipality of Anchorage, which are applicable to residential neighborhoods. No vehicle or recreational vehicle shall be parked to block a bike trail or sidewalk.
  
- i. Storage of Vehicles (Excluding Recreational Vehicles). Except as set forth below, all boats, motorcycles, trailers, snow machines, all-terrain vehicles, cross-country vehicles of any type, midget cars and all other similar types of property must be stored, located, and maintained behind the front of the Dwelling and within the Dwelling setback lines contained in this ARTICLE IX. No airplanes, ultra-light aircraft, helicopters or other similar devices or parts thereof shall be kept within the Common Interest Community. All permitted storage shall be in such a manner as to preserve the character of Owls Nest. No stored vehicle shall be covered in any manner with tarpaulins or other unsightly coverings as determined, in its sole discretion, by the Declarant.



- ii. Parking and Storage of Recreational Vehicles. One (1) RV, travel trailer, camper, motor home or other vehicle used for recreational purposes (such as camping) equipped with living facilities may be parked on the driveway that:
  - A. it is used by the Lot Owner on a regular basis for recreational use during the summer months and not used as a Dwelling;
  - B. it is parked in compliance with additional rules for parking and use as may be promulgated;
  - C. no generator is used to supply energy to the RV, travel trailer, camper, motor home or other vehicle used for recreational purposes; and
  - D. shall not be covered in any manner with tarpaulins or other coverings not made for the sole purpose of covering or protecting an RV, travel trailer, camper, motor home or other vehicle used for recreational purposes.
  
- u. *Fuel Storage.* **Fuel storage is prohibited.** No Lot or street may be used for the storage of any equipment, materials or merchandise used or to be sold in a business or trade.
  
- v. *Mailboxes.* Lot Owners shall use the Cluster Mailboxes approved by the U.S. Postal Service and provided for the Common Interest Community by the Declarant.
  
- w. *Antennae and Satellite Dishes.* Declarant imposes the following restrictions relating to the installation of satellite dishes and antennae, provided that compliance with these restrictions does not: (i) unreasonable delay or prevent installation, maintenance or use; (ii) unreasonably increase the cost of installation, maintenance, or use; or (iii) preclude reception of an acceptable quality signal to the Lot Owner.
  - i. *Unacceptable Locations.* Except as otherwise provided herein, antennas and satellite dishes shall not encroach upon Common Elements, another Lot, or the setbacks for structures contained in this **ARTICLE IX**.
  - ii. *Shielded from View.* Antennas and satellite dishes shall be located in a place shielded and/or screened from the streets and screened from view to the public or from other Lots, to the maximum extent possible.
  - iii. *Safety and Non-Interference.* Installation shall comply with reasonable safety standards and may not interfere with cable, telephone or electrical systems of neighboring Lots.



- iv. *Maintenance.* Lot Owners are responsible to maintain, repair and replace their satellite dish or antenna.
- v. Except as otherwise provided herein, antennas and satellite dishes shall not encroach upon Common Elements, another Lot or the setbacks contained
- x. *Drones.* A drone is defined as a powered aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide lift, and flies autonomously, or is remotely piloted, and can either be expandable or recoverable. Said definition is intended to include, but not be limited to, remote controlled "quad-copters" and other widely available aerial devices. No Person or entity may operate a drone on or above any portion of the Common Interest Community without the written permission of the Executive Board, which permission may be granted or denied in the Executive Board's sole discretion. In the event the Executive Board grants a request to operate a drone, the Executive Board may impose reasonable conditions and restrictions on the use of the drone, including, but not limited to the time, place and manner in which the drone may be operated.
- y. *Common Elements.* Lot Owners are prohibited from the following activities in the Common Elements:
  - i. Disposing of lawn or yard waste.
  - ii. Cutting, mowing, harvesting, or disturbing the trees, shrubbery or other natural vegetation.
  - iii. Creating trails.
  - iv. Placing structures in the Common Elements.
  - v. Storing any materials in the Common Elements, including but not limited to, wood piles, equipment, household items or any other similar materials.

Section 9.3 - Restrictions on Alienation. A Lot may not be conveyed pursuant to a time-sharing plan. A Lot may not be leased or rented for a term of less than thirty (30) days. All leases and rental agreements shall be in writing and are subject to the requirements of the Documents and the Association. All leases of a Lot shall include a provision which sets forth that the tenant recognizes the Association as landlord, but solely for the purpose of the Association having power to enforce a violation of the provisions of the Documents against the tenant, provided that the Association first gives the Lot Owner notice of its intent to enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

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**ARTICLE X**  
**ADDITIONS, ALTERATIONS AND IMPROVEMENTS**

**Section 10.1 - Additions, Alterations and Improvements Require Declarant Approval.**

- a. No Lot Owner may make any structural addition, exterior structural alteration, or exterior structural Improvement in or to any part of the Common Interest Community without the prior written consent thereto of the Declarant, in accordance with **Section 10.1.c** below.
- b. Subject to **SECTION 10.1.a**, a Lot Owner:
  - i. May make any other Improvements or alterations to the interior of his Lot that does not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Elements.
  - ii. May not change the appearance of the Common Elements, the exterior appearance of a Lot, or any other portion of the Common Interest Community, without permission of the Declarant.
  - iii. After acquiring an adjoining Lot or an adjoining part of an adjoining Lot, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Elements. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries.
- c. A Lot Owner must submit a written request to the Declarant for approval to do anything requiring approval under **Section 10.1.a** or **10.1.b** above. The Declarant shall answer any written request for such approval, within thirty (30) days after the request therefore. The approval of a written request may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by reason of reasonable dissatisfaction of the Declarant with the location of the proposed structure, the elevation, color scheme, finish, design, proportions, architecture, shape, height, style and appropriateness of the proposed structure or alteration, the material used therein, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Declarant, will render the proposed alteration or Improvement inharmonious or out of keeping with the general plan of improvement of the Common Interest Community.
- d. Improvements erected or maintained upon the Lots, other than as approved by the Declarant, shall be deemed to have been undertaken without the approval of the Declarant as required by the Declaration. The approval of the Declarant of any plans



or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Declarant of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications. No member of the Declarant shall be liable to any Person for his or her decisions or failure to act in making decisions as a member of said Declarant. Upon approval of the Declarant, it shall be conclusively presumed that the location and height of any improvement does not violate the provisions of this Declaration.

- e. All additions, alterations and Improvements to the Lots shall not, except pursuant to prior approval by the Declarant, cause any increase in the premiums of any insurance policies carried by the Association or by the Lot Owners of any Lots, other than those effecting the change.

#### **ARTICLE XI** **EASEMENTS AND LICENSES**

Section 11.1 – Recorded Easements and Licenses. The easements or licenses to which the Common Interest Community is presently subject to, are recited in SCHEDULE A-1. In addition, the Common Interest Community is subject to the easements or licenses granted by the Declarant pursuant to ARTICLE VII.

#### **ARTICLE XII** **COMBINING, SUBDIVIDING & RELOCATING BOUNDARIES BETWEEN ADJOINING LOTS**

Section 12.1 – Application and Amendment. The boundaries between adjoining Lots may be relocated by an amendment to the Declaration upon application to the Association by the Members whose adjoining Lot boundaries are being relocated. A relocation of boundaries between adjoining Lots shall not alter the Allocated Interests of any Lot.

Section 12.2 – Combining and Subdividing Lots. A Lot may be subdivided into two (2) or more smaller Lots, and contiguous Lots may be combined into a single Unit, by an amendment to the Declaration upon application to the Association by the Lot Owner(s) of the Lots being subdivided or combined. Upon combining or subdividing any Lots, the Allocated Interests of all Lots in the Common Interest Community shall be reallocated, in accordance with Section 8.2 of the Declaration.

Section 12.3 – Recording Amendments. After receipt of an application under this Article XII, the Association shall, with reasonable promptness, prepare and record: (a) an amendment to the Declaration that identifies the Lots involved, states the action(s) being taken, states the reallocations of Allocated Interests, and indicates the Association's consent; and (b) surveys or plans necessary to show the combined, subdivided or altered boundaries of the Lot(s), as the case may be, and the dimensions and identifying numbers of such Lot(s).

An amendment to the Declaration combining or subdividing Lots shall be executed by the Lot



Owner of the Lots being combined or subdivided, and on behalf of the Association by an officer of the Association designated for that purpose, or in the absence of designation, by the President of the Association.

An amendment to the Declaration relocating the boundaries between adjoining Lots must be executed by the Lot Owners affected by the relocation and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected Lots shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

The applicants will pay for the costs of preparation of the amendment, surveys or plans, recording costs, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

### **ARTICLE XIII** **AMENDMENTS TO DECLARATION**

Section 13.1 - General. Except in cases of amendments that may be executed by the Association under Section 34.08.740 (Eminent Domain) or Section 34.08.260 (Termination of Common Interest Community) of the Act; or by certain Lot Owners under **ARTICLE XII** (Relocation of Boundaries Between adjoining Lots), the Declaration may be amended only by vote or agreement of Lot Owners to which at least **sixty-seven percent (67%)** of the votes in the Association are allocated.

Section 13.2 - Execution of Amendments. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with the Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of the designation, by the president of the Association.

Section 13.3 - Recordation of Amendments. Each amendment to the Declaration must be recorded in the Anchorage Recording District, and the amendment is effective only upon recording. An amendment must be indexed in the grantee's name in the name of the Common Interest Community and the Association and in the name of the parties executing the amendment.

Section 13.4 - Limitations of Challenges. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is recorded.

Section 13.5 - Special Declarant Rights. Provisions in the Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

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**ARTICLE XIV**  
**AMENDMENTS TO BYLAWS**

The Bylaws may be amended only by two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Lot Owners, at any meeting duly called for such purpose.

**ARTICLE XV**  
**TERMINATION**

Termination of the Common Interest Community may be accomplished only by the procedures specified in Section 34.08.260 of the Uniform Common Interest Ownership Act, which section is adopted herein by reference.

**ARTICLE XVI**  
**ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

Section 16.1 - Apportionment of Common Expenses. Except as provided in Section 16.2, all Common Expenses shall be assessed against all Lots in accordance with their percentage interest in the Common Expenses as shown on SCHEDULE A-2 to the Declaration.

Section 16.2 - Common Expenses Attributable to Fewer than all Lots.

- a. Any Common Expense for services provided by the Association to an individual Lot, either required by the Declaration or provided at the request of the Lot Owner, shall be assessed against the Lot which benefits from such service.
- b. An assessment to pay a judgment against the Association may be made only against the Lots in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.
- c. If a Common Expense is caused by the willful misconduct, failure to comply with the Documents, or the gross negligence of any Lot Owner, tenant, or a guest or invitee of a Lot Owner or tenant, the Association may, after Notice and Hearing, assess the portion of that Common Expense in excess of any insurance proceeds received by the Association under its insurance policy, whether that portion results from the application of deductible or otherwise, exclusively against the Lot owned by such Lot Owner.
- d. Fees, including attorney's fees, charges, late charges, fines, collection costs and interest charged against the Lot Owner pursuant to the Documents are enforceable as Common Expense assessments.

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Section 16.3 - Lien.

- a. The Association has a lien on a Lot for an assessment levied against the Lot or fines imposed against the Lot Owner, from the time the assessment or fine becomes due. Fees, charges, late charges, collection costs, including reasonable attorney's fees, fines and interest charged pursuant to any of the Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- b. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) a lien and encumbrance recorded before the recordation of the original Declaration described above in the introductory paragraph of this Document; (2) a first Security Interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in Subsection (2) of this Section if the common expense assessment based on the periodic budget adopted by the Association, pursuant to **Section 16.4**, would have become due in the absence of acceleration during the six (6) months immediately preceding the institution of an action to enforce the Association's lien. This does not affect the priority of mechanic's or materialmen's liens, or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provisions of AS 09.38.010, as it may be amended from time to time.
- c. Recording of the Declaration constitutes a record notice and perfection of the lien. Further recording of a claim of lien for assessments under this Section is not required.
- d. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided that if an Lot Owner subject to a lien under this Section files a petition for relief under the US Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under §362 of the US Bankruptcy Code is lifted.
- e. This Section does not prohibit an action to recover sums for which the Association has a lien; nor does it prohibit the Association from taking a deed in lieu of foreclosure.
- f. When the Association acquires a judgment or decree in any action brought under this Section, such judgment or decree shall include an award to the Association for actual collection costs and reasonable attorney's fees.



- g. A judgment or decree in an action brought under this Section is enforceable by execution under AS 09.35.010, as it may be amended from time to time.
- h. The Association's lien must be foreclosed as a lien is foreclosed under AS 34.35.005, as it may be amended from time to time.
- i. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Lot Owner to collect all sums alleged to be due from that Lot Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments based on a periodic budget adopted by the Association pursuant to **Section 16.4**.
- j. The purchaser at a foreclosure sale initiated by the holder of a Security Interest in a Lot is not liable for any unpaid assessments against the Lot which became due before the sale, other than the assessments which are prior to that Security Interest under **Section 16.3.b**, above. Any unpaid assessments not satisfied from the proceeds of sale become common expenses for which all the Lot Owners, including the purchaser, may be assessed. For the purposes of this paragraph, "the purchaser" shall include, but not be limited to, any holder of a Security Interest in a Lot which obtains title to a Lot.
- k. Any payments received by the Association to discharge a Lot Owner's obligation may be applied to the oldest balance due.
- l. The Association may acquire, hold, lease, mortgage and convey a Lot foreclosed upon pursuant to this Section for unpaid assessments.
- m. A lien under this Section shall not be affected by any sale or transfer of a Lot except as provided in **Subsection j**, above.

Section 16.4 - Budget Adoption and Ratification. The Executive Board shall adopt a proposed budget for the Common Interest Community, and shall, within thirty (30) days after adoption, provide a summary of the budget to each Lot Owner. The Executive Board shall set a date for a meeting of the Lot Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Lot Owners rejects the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Lot Owners continues until the Lot Owners ratify a budget proposed by the Executive Board.

Section 16.5 - Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one



enumerated in **Section 16.2**, in an amount greater than fifteen percent (15%) of the current annual operating budget, the Executive Board shall submit such common expenses to the Lot Owners for their consideration and comment in the same manner as a budget under **Section 16.4**, above; provided, however, that such assessment can be considered at a special meeting as long as the notice required for annual meetings is provided to the Lot Owners.

**Section 16.6 - Certificate of Payment of Common Expense Assessments.** The Association upon written request shall furnish to a Lot Owner a statement in recordable form setting out the amount of unpaid assessments against his or her Lot. The statement must be furnished within ten (10) business days after receipt of the request and is binding upon the Association, the Executive Board and each Lot Owner.

**Section 16.7 - Payment of Common Expenses.** All common expenses assessed under this Article shall be due and payable quarterly.

**Section 16.8 - Acceleration of Common Expense Assessments.** In the event of a default for a period of ten (10) days by any Lot Owner in the payment of any Common Expense assessment levied against his or her Lot, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable. The holder of a first Security Interest in a Lot which has acquired title to any Lot as a result of a foreclosure of its Security Interest shall be exempt from the application of this Section.

**Section 16.9 - Commencement of Common Expense Assessments.** Common Expense assessments shall begin on the first day of the month following the month in which conveyance of a Lot to a Lot Owner occurs, except that reasonably reduced assessments may be allocated to any unsold Lots, for a period not exceeding sixty (60) days after conveyance of the first Lot in each phase. Said reduction in Declarant assessments for unsold Lots include management fees and any other costs deemed unnecessary for unsold Lots.

**Section 16.10 - No Waiver of Liability for Common Expenses.** No Lot Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the assessments are made.

**Section 16.11 - Personal Liability of Lot Owners.** The Lot Owner of a Lot, at the time a Common Expense assessment or portion thereof is due and payable, is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Lot unless he or she agrees to assume the obligation.

**Section 16.12 - Reserves.** As part of the adoption of the regular budget pursuant to **Section 16.4**, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of Improvements within the Common Elements, based upon the Improvement's age, remaining life and estimated replacement cost.



Section 16.13 - Capitalization of the Association. At the closing of a Lot, each Lot Owner shall be required to pay an amount equal to two (2) months of the Common Expense assessment, at the rate in effect at the time of the sale, in order to establish the *working capital fund*, which is to be used until there are sufficient funds from the Common Expense assessments to cover all on-going operating expenses. Such payments to this fund shall not be considered *advance payments* of the Common Expense assessments. Each Lot's share is collected at the time the sale of the Lot is closed, and then transferred to the Association for deposit to a segregated fund. Within sixty (60) days after conveyance of the first Lot from Declarant to a Lot Owner, the Declarant shall pay each unsold Lot's share of the working capital fund to the Association. Declarant shall be reimbursed for this payment from the funds collected at closing when the unsold Lots are sold. The working capital fund may be discontinued when the following occurs: (1) the Declarant has completed its transfer of control to the Association; and (2) the Association has demonstrated, at a minimum, a two (2) year history of financial viability to include the establishment of adequate reserves.

**ARTICLE XVII**  
**RIGHT TO ASSIGN FUTURE INCOME**

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Lot Owners to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose.

**ARTICLE XVIII**  
**PERSONS AND LOTS SUBJECT TO DOCUMENTS**

Section 18.1 – Compliance with the Documents. All Lot Owners, tenants, mortgagees and occupants of Lots shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or entering into of a lease or entering into occupancy of a Lot constitutes agreement that the provisions of the Documents are accepted and ratified by such Lot Owner, tenant, mortgagee or occupant, and all such provisions recorded in the records of the Anchorage Recording District, Third Judicial District, State of Alaska, are covenants running with the land and shall bind any Persons having at any time any interest in such Lot.

Section 18.2 – Adoption of Rules. The Executive Board may adopt Rules regarding the use of the Common Elements, and the use and occupancy of Lots. Further, the Executive Board may adopt Rules consistent with the Declaration for the assessment of fines against Lot Owners for any violation or action of a Lot Owner of the provisions of the Declaration, Bylaws, Rules or regulations of the Association.

**ARTICLE XIX**  
**INSURANCE**

Section 19.1 - Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not



reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners at their last known address.

Section 19.2 - Property Insurance.

- a. Property insurance shall be maintained on any personal property or insurable Common Element Improvements owned by the Association. Selecting the deductible and allocation of responsibility for payment of the deductible shall be according to the policy established by the Executive Board.
- b. *Risks Insured Against.* The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.
- c. The name of the insured shall be substantially "OWLS NEST OWNERS ASSOCIATION, INC."
- d. **Lot Owners shall maintain such insurance as they may choose insuring the insurable Improvements located within their Lot.** Lot Owners are encouraged to insure their Improvements and personal property.

Section 19.3 - Liability Insurance. The Association shall maintain liability insurance, including medical payments insurance, in an amount determined by the Executive Board covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association. Insurance policies carried pursuant to this Section shall provide that:

- a. Each Lot Owner is an insured Person under the policy with respect to liability arising out of membership in the Association;
- b. The insurer waives the right to subrogation under the policy against a Lot Owner or member of the household of a Lot Owner;
- c. An act or omission by a Lot Owner, unless acting within the scope of the Lot Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;
- d. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance;
- e. The insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Lot Owner, and each holder of a Security Interest to



whom a certificate or memorandum of insurance has been issued at their last known address.

Section 19.4 - Fidelity Insurance. The Association shall obtain a fidelity insurance policy.

Section 19.5 - Workers' Compensation Insurance. The Executive Board shall obtain and maintain Workers' Compensation Insurance if required, to meet the requirements of the laws of the State of Alaska.

Section 19.6 - Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 19.7 - Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Lot Owners.

Section 19.8 - Premiums. Insurance premiums shall be a Common Expense.

Section 19.9 - Deductibles. Except as provided in Section 6.3 and Section 16.2, any deductibles for insurance coverage maintained by the Association shall be paid by the Association as a Common Expense.

## ARTICLE XX

### RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 20.1 - Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules, whenever the Documents require that an action to be taken after "Notice and Comment" and at any other time the Executive Board determines, then the Lot Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Lot Owner in writing and shall be delivered personally or by mail to all Lot Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Lot Owners. The notice shall be given not less than **ten (10) days** before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Lot Owner to be heard at a formally constituted meeting.

Section 20.2 - Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Lot Owners whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. The notice shall be given in writing and shall be delivered personally or by mail, not less than **ten (10) days** before the hearing date. At the



hearing, affected Persons shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Persons shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 20.3 - Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of Persons other than the Executive Board by filing a written notice of appeal with the Executive Board within **ten (10) days** after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

Section 20.4 - Mediation and Arbitration.

- a. *Mediation Clause.* No Lot Owner shall commence an arbitration proceeding under the provisions of **Section 20.4.b** below unless such Lot Owner shall first give a written notice (a "**Dispute Notice**") to the Association stating the nature of the dispute. The parties shall attempt in good faith to resolve the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association in effect on the date of this Agreement. If the dispute has not been resolved by mediation as provided above within sixty (60) days after the delivery of the Dispute Notice, the dispute shall be determined by arbitration in accordance with the provisions of **Section 20.4.b**.
- b. *Arbitration Clause.* Any controversy, claim or dispute of whatever nature arising between Lot Owners or between Lot Owners and the Association, including but not limited to those arising out of or relating to the Declaration and associated documents or the construction, interpretation, performance, breach, termination, enforceability or validity of the Declaration, whether such claim existed before or arises on or after the date of the Declaration, including the determination of the scope of the Declaration to arbitrate, that is not settled through mediation as provided in **Section 20.4.a** above shall be determined by arbitration, by one arbitrator in Eagle River, governed and administered by the American Arbitration Association under its Commercial Arbitration Rules. Judgment upon the arbitration award may be entered in any court having jurisdiction. The arbitrators shall award the prevailing party reasonable expenses and costs including reasonable attorneys' fees plus interest on the amount due at the legal rate provided in AS 45.45.010(a). The arbitrator's decision shall be final and binding and judgment may be entered thereon. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with arbitrator's award, the other party is entitled reasonable expenses and costs including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.



**ARTICLE XXI**  
**EXECUTIVE BOARD**

Section 21.1 - Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, the Bylaws or the Articles of Incorporation. The Executive Board shall have, subject to the limitations contained in the Declaration and the Nonprofit Corporations Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but are not limited to, the following:

- a. Adopt and amend Bylaws, Rules and regulations;
- b. Adopt and amend budgets for revenues, expenditures and reserves;
- c. Collect assessments for Common Expenses from Lot Owners;
- d. Hire and discharge managing agents;
- e. Hire and discharge employees, independent contractors, and agents, other than managing agents;
- f. Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules in the Association's name on behalf of the Association or two (2) or more Lot Owners on matters affecting the Common Interest Community;
- g. Make contracts and incur liabilities;
- h. Regulate the use, maintenance, repair, replacement and modification of the Common Elements and of signage for the delegated trail as shown on **Schedule A-3**;
- i. Cause additional Improvements to be made as part of the Common Elements;
- j. Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 34.08.430 of the Act;
- k. Grant easements for any period of time, including permanent easements, and leases, licenses and concessions through or over the Common Elements;
- l. Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements and for services provided to Lot Owners;



- m. Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of the Declaration, Bylaws, Rules and regulations of the Association;
- n. Impose a reasonable charge for the preparation and recordation of amendments to the Declaration, the filing and recording of a plat or plan that accompanies an amendment, resale certificates, or a statement of unpaid assessments;
- o. Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- p. Assign the Association's right to future income, including the right to receive Common Expense assessments;
- q. Exercise any other powers conferred by the Declaration or the Bylaws;
- r. Exercise any other power that may be exercised in this state by legal entities of the same type as the Association;
- s. Exercise any other power necessary and proper for the governance and operation of the Association; and
- t. By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Lot Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Lot Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 21.2 - Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of the term.

Section 21.3 - Minutes of Executive Board Meetings. The Executive Board shall permit any Lot Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after such meeting.

Section 21.4 - Inspection of Books. The Association shall maintain current copies of the Declaration, Bylaws, Rules, books, records and financial statements. The Association shall permit any Lot Owner to inspect the books and records of the Association during normal business hours.



Section 21.5 - Financial Statements. The Association shall provide any Lot Owner who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association.

Section 21.6 - Professional Management & Resale Certificates. Notwithstanding anything in the foregoing Article, the Common Interest Community shall be managed by a professional management company at all times. All Resale Certificates shall be prepared by the property management company hired by the Association.

## **ARTICLE XXII** **EXECUTIVE BOARD MEETINGS**

Section 22.1 - Access. All meetings of the Executive Board, at which action is to be taken by vote at such meeting will be open to the Lot Owners, except as hereafter provided.

Section 22.2 – Meetings and Notice of Meetings. Regular meetings may be set by a schedule appointed by resolution of the Executive Board and no further notice will be required. Special meetings of the Executive Board may be called by the president or by a Majority of the Directors on at least three (3) business days' notice to each member of the Executive Board. The notice will be hand-delivered, emailed or mailed and will state the time, place and purpose of the meeting.

Section 22.3 - Executive Sessions. Meetings of the Executive Board may be held in executive session, without giving notice and without the requirement that they be open to Lot Owners where the action taken at the executive session involves personnel, pending litigation, contract negotiations, or enforcement actions, or where no action is taken at the executive session requiring the affirmative vote of Directors.

## **ARTICLE XXIII** **CONDEMNATION**

If part or all of the Common Interest Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 34.08.740 of the Act.

## **ARTICLE XXIV** **MISCELLANEOUS**

Section 24.1 - Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

*[THIS AREA INTENTIONALLY LEFT BLANK]*



Section 24.2 - Gender. The use of the masculine gender refers to the feminine and neutral genders and the use of the singular includes the plural and vice versa, whenever the context of the Documents so require.

Section 24.3 - Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 24.4 - Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 24.5 - Conflict. The Documents are intended to comply with the requirements of the Alaska Nonprofit Corporations Act, and with the Uniform Common Interest Ownership Act, to the extent that the requirements of AS 34.08.030 are met. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between the Declaration and any other Document, the Declaration shall control.

Section 24.6 - Rights of Action. The Association and any aggrieved Lot Owner shall have a right of action against Lot Owners for failure to comply with the provisions of the Documents, or with decisions of the Association which are made pursuant to the Documents. Lot Owners shall also have such rights of action against the Association.

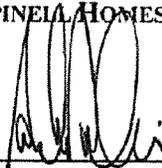
Section 24.7 - Violations of Restrictions. The Association may assess fines for violations of any restriction of the Declaration in accordance with rules adopted by the Association and amended from time to time.

Section 24.8 - Use of the Lots Must Comply With All Local, Federal, and State Laws or Ordinances. The Improvements on a Lot and the use of the Lots must comply with all local, federal, and state laws or ordinances unless the restrictions contained in the Declaration are more restrictive than the laws or ordinances, in which case, the uses of the Lots shall comply with the more restrictive covenants.

IN WITNESS WHEREOF, the Declarant has caused the Declaration to be executed this 26 day of March, 2021.

DECLARANT:

MISSION HILLS, LLC  
By: SPINELLI HOMES, INC., *its Member*

  
\_\_\_\_\_  
By: Andre Spinelli  
Its: Authorized Agent

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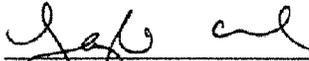
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STATE OF ALASKA )  
 )  
THIRD JUDICIAL DISTRICT ) ss.

THIS IS TO CERTIFY that on this 26<sup>th</sup> day of March, 2021, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **ANDRE SPINELLI**, to me known and known to me to be the **AUTHORIZED AGENT** of **SPINELL HOMES, INC.**, the **MEMBER** of **MISSION HILLS, LLC**, and known to me to be the person who signed the foregoing instrument, on behalf of said corporation, and he acknowledged to me that he signed and sealed the same as a free act and deed of the said corporation for the uses and purposes therein expressed pursuant to its bylaws or a resolution of its Executive Board.

WITNESS my hand and official seal on the day and year in this certificate first above written.



  
\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: 12-14-23

*[APPROVAL OF LENDER APPEARS ON FOLLOWING PAGE]*



APPROVAL OF LENDER - NORTHRIM BANK

The undersigned is the beneficiary under the following instrument:

- 1. *Commercial Construction Deed of Trust*, including the terms and provisions thereof, securing the amount shown together with any other amounts due thereunder, between MISSION HILLS, LLC, as Trustor/Borrower, and NORTHRIM BANK, as Beneficiary/Lender, recorded on July 23, 2020 as Serial No. 2020-031900-0, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

approves the foregoing Declaration and the undersigned agrees and acknowledges that any foreclosure or enforcement of any other remedy available to the undersigned under said Deeds of Trust shall not render void or otherwise impair the validity of the Declaration and the covenants running with the land described in the Declaration.

DATED this 26<sup>th</sup> day of March, 2021.

Northrim Bank  
Joe Moran  
 By: Joe Moran  
 Its: AVP Construction Loan Officer

STATE OF ALASKA )  
 ) ss.  
 THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 26<sup>th</sup> day of March, 2021, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Joe Moran, known to me to be the AVP Const. Loan officer of NORTHRIM BANK, and known to me to be the person who signed the foregoing instrument, on behalf of NORTHRIM BANK and they acknowledged to me that they signed and sealed the same as a free act and deed for the uses and purposes therein expressed pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal on the day and year in this certificate first above written.



Lezlie Arnold  
 Notary Public in and for Alaska  
 My Commission Expires: 12-14-23



**SCHEDULE A-1**  
**DESCRIPTION OF THE COMMON INTEREST COMMUNITY**

Lots 1-29, and Tracts A&B, *Owls Nest Subdivision*, according to the official plat thereof, Plat No. 2021-21, records of the Anchorage Recording District, Third Judicial District, State of Alaska.

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**THE RECORDING DATA FOR RECORDED EASEMENTS & LICENSES**  
**APPURTENANT TO OR INCLUDED IN THE COMMON INTEREST COMMUNITY**

1. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
2. Reservations and exceptions as contained in U.S. Patent Number 1136670, recorded November 9, 1958 in Book 98 at Page 210 and/or in Acts authorizing the issuance thereof.
3. Taxes and/or assessments, including penalties and interest, if any, owing the Municipality of Anchorage.
4. Any questions that may arise due to shifting or change of the high-water mark or high-water line of an unnamed creek. (Affects Parcel No. 2)
5. Any prohibition or limitation on the use, occupancy or improvements of the land resulting from the right of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water. (Affects Parcel No. 2)
6. Any adverse claim based upon the assertion that some portion of said land is tide or submerged lands or has been created by artificial means or has accreted to such portion so created. (Affects Parcel No. 2)
7. Rights of the public and of governmental entities in and to that portion of the premises herein described lying below the high-water mark of an unnamed creek. (Affects Parcel No. 2)
8. Reservation of section line easement 33 feet in width along each side of the section line as provided by 43 U.S.C. 932.
9. Rights of the public and governmental agencies in and to any portion of said land included within the boundaries of any street, road and/or highway.
10. 10. Covenants, conditions, restrictions and easements, including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as set forth Warranty Deed recorded August 1, 1961 in Book 226 at Page 274 and Warranty Deed recorded April 25, 1966 in Book 323 at Page 266. (Affects Parcel No. 1)
11. Right of Way Easement, including terms and provisions thereof, granted to MATANUSKA ELECTRIC ASSOCIATION, INC., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone

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- distribution line or system by instrument recorded January 5, 1962 in Book 40 at Page 55. (Blanket Easement)
12. Right-of-Way Easement, including terms and provisions thereof, granted to MATANUSKA TELEPHONE ASSOCIATION, INC., and its assigns and/or successors in interest, to construct, operate and maintain an electric transmission and/or telephone distribution line or system by instrument recorded February 26, 1976 in Book 83 at Page 777. (Blanket Easement)
  13. State of Alaska Water Rights, Permit and Certificate of Appropriation, ADL 212249-C, including the terms and provisions thereof, recorded December 30, 1981 in Book 685 at Page 19. (Affects Parcel No. 1)
  14. Covenants, conditions, restrictions, setback requirements and easements for Eagle Crossing East Master Community (a Planned Master Community), including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as set forth in an instrument recorded March 16, 2000 in Book 3607 at Page 779; as amended by an instrument recorded on September 30, 2005 as Serial No. 2005-070841-0; and as amended by an instrument recorded on February 9, 2006 as Serial No. 2006-003486-0, records of the Anchorage Recording District, Third Judicial District, State of Alaska.
  15. Assignments and Assumptions of Permits and Agreements, including terms and provisions thereof, by and between Eagle Crossing Development Company and Driftwood Bay, LLC, recorded April 1, 2004 as Instrument No. 2004-021965-0. (Affects Parcel No. 2)
  16. Amended and Restated Covenants, conditions, restrictions, setback requirements and easements for Eagle Crossing (A Planned Community), including the terms and provisions thereof, but omitting any covenants, conditions or restrictions, if any, indicating a preference limitation or discrimination based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry or source of income, as set forth in applicable state or federal laws, except to the extent that said covenants, conditions or restrictions are permitted by applicable law, as set forth in an instrument recorded June 4, 2004 as Instrument No. 2004-041296-0. (Affects Parcel No. 2)
  17. Limitations, conditions, restrictions, terms and effects of the Uniform Common Interest Ownership Act of the State of Alaska, A.S. 34.08.01 O et seq., including any lien for future common assessments created pursuant to A.S. 34.08.470. (Affects Parcel No. 2)
  18. Subject to any dues, assessments or title transfer fees owing to the Eagle Crossing East Master Association. (Affects Parcel No. 2)
  19. Right-of-Way Easement, including terms and provisions thereof, granted to ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc. and its assigns and/or successors in interest, to construct, lay, maintain, operate, alter, repair, remove and replace pipelines including metering facilities, thereto for the transportation of natural gas under, upon, over and through said lands and appurtenances thereto, by instrument recorded October 23, 2006 Instrument No. 2006-071555-0. (Affects Parcel No. 2)
  20. Notice of Subdivision Agreement, including the terms and provisions thereof, by and between the Municipality of Anchorage and Driftwood By, LLC, recorded November 2, 2006 as Instrument No. 2006-074362-0; as amended by an instrument recorded on November 20, 2008 as Serial No. 2008-064449-0; as amended by the Assignment of Subdivision Agreement to Northrim Bank, Inc., including the terms and provisions



- thereof, recorded January 13, 2017 as Serial No. 2017-001704-0, and re-recorded January 19, 2017 as Serial No. 2017-002419-0. (Affects Parcel No. 2)
21. State of Alaska Water Rights, Certificate of Reservation, LAS 14315, including the terms and provisions thereof, recorded August 17, 2011 as Serial No. 2011-038457-0. (Affects Parcel No. 2)
  22. Private Storm Drain Easement for a drainage system and appurtenances thereto, including the terms and provisions thereof, granted to Driftwood Bay, LLC, recorded September 16, 2014 as Serial No. 2014-037420-0; as amended by Amendment No. 1 to Private Storm Drain Easement, including the terms and provisions thereof, recorded August 7, 2017 as Serial No. 2017-030683-0 and re-recorded August 18, 2017 as Serial No. 2017-032454-0. (Affects Parcel 2 - see document for area affected)
  23. NOTES as recited on Plat(s) of said Subdivision. (Affects Parcel No. 2)
  24. SLOPE EASEMENTS as dedicated and reserved on the Plat(s) of said Subdivision. (Affects Parcel No. 2)
  25. EASEMENTS as shown on the Plat(s) of said Subdivision. (Affects Parcel No. 2)
  26. Right-of-Way Easement for natural gas pipelines and appurtenances thereto, including the terms and provisions thereof, granted to ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc., recorded January 20, 2016 as Serial No. 2016-002385-0. (Blanket Easement as to a portion of Parcel No. 2)
  27. Notice of Subdivision Agreement, including the terms and provisions thereof, by and between the Municipality of Anchorage and Mission Hills, LLC, recorded September 13, 2019 as Instrument No. 2019-033188-0.
  28. Water Main Extension Agreement, including the terms and provisions thereof, by and between the Municipality of Anchorage and Mission Hills, LLC, recorded February 24, 2020 as Instrument No. 2020-006770-0.
  29. Sanitary Sewer Main Extension Agreement, including the terms and provisions thereof, by and between the Municipality of Anchorage and Mission Hills, LLC, recorded February 24, 2020 as Instrument No. 2020-006771-0.
  30. Easement for natural gas pipelines and appurtenances thereto, including the terms and provisions thereof, granted to ENSTAR Natural Gas Company, a division of SEMCO Energy, Inc., recorded September 3, 2020 as Instrument No. 2020-040278-0. (Blanket Easement)
  31. Subject to the Operating Agreement for Mission Hills LLC and interests disclosed thereby.

*[SCHEDULE A-2 APPEARS ON FOLLOWING PAGE]*



**SCHEDULE A-2**  
**TABLE OF INTERESTS**

<u>Plat No.</u>	<u>Lot</u>	<u>Percentage Liability for Common Expense</u>	<u>Votes in the Affairs of the Association</u>
2021- <u>21</u>	1	3.44%	1
2021- <u>21</u>	2	3.44%	1
2021- <u>21</u>	3	3.44%	1
2021- <u>21</u>	4	3.44%	1
2021- <u>21</u>	5	3.44%	1
2021- <u>21</u>	6	3.44%	1
2021- <u>21</u>	7	3.44%	1
2021- <u>21</u>	8	3.44%	1
2021- <u>21</u>	9	3.44%	1
2021- <u>21</u>	10	3.44%	1
2021- <u>21</u>	11	3.44%	1
2021- <u>21</u>	12	3.44%	1
2021- <u>21</u>	13	3.44%	1
2021- <u>21</u>	14	3.44%	1
2021- <u>21</u>	15	3.44%	1
2021- <u>21</u>	16	3.44%	1
2021- <u>21</u>	17	3.44%	1
2021- <u>21</u>	18	3.44%	1
2021- <u>21</u>	19	3.44%	1
2021- <u>21</u>	20	3.44%	1
2021- <u>21</u>	21	3.44%	1
2021- <u>21</u>	22	3.44%	1
2021- <u>21</u>	23	3.44%	1
2021- <u>21</u>	24	3.44%	1
2021- <u>21</u>	25	3.44%	1
2021- <u>21</u>	26	3.44%	1
2021- <u>21</u>	27	3.44%	1
2021- <u>21</u>	28	3.44%	1
2021- <u>21</u>	29	3.44%	1
<b>TOTALS</b>	<b>29 Lots</b>	<b>100%</b>	<b>29 Votes</b>

\*Allocations are subject to rounding to result in 100%.

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**SCHEDULE A-3  
PLANNED COMMUNITY PLAT**

**LOTS 1-29, AND TRACTS A&B  
OF  
OWLS NEST**

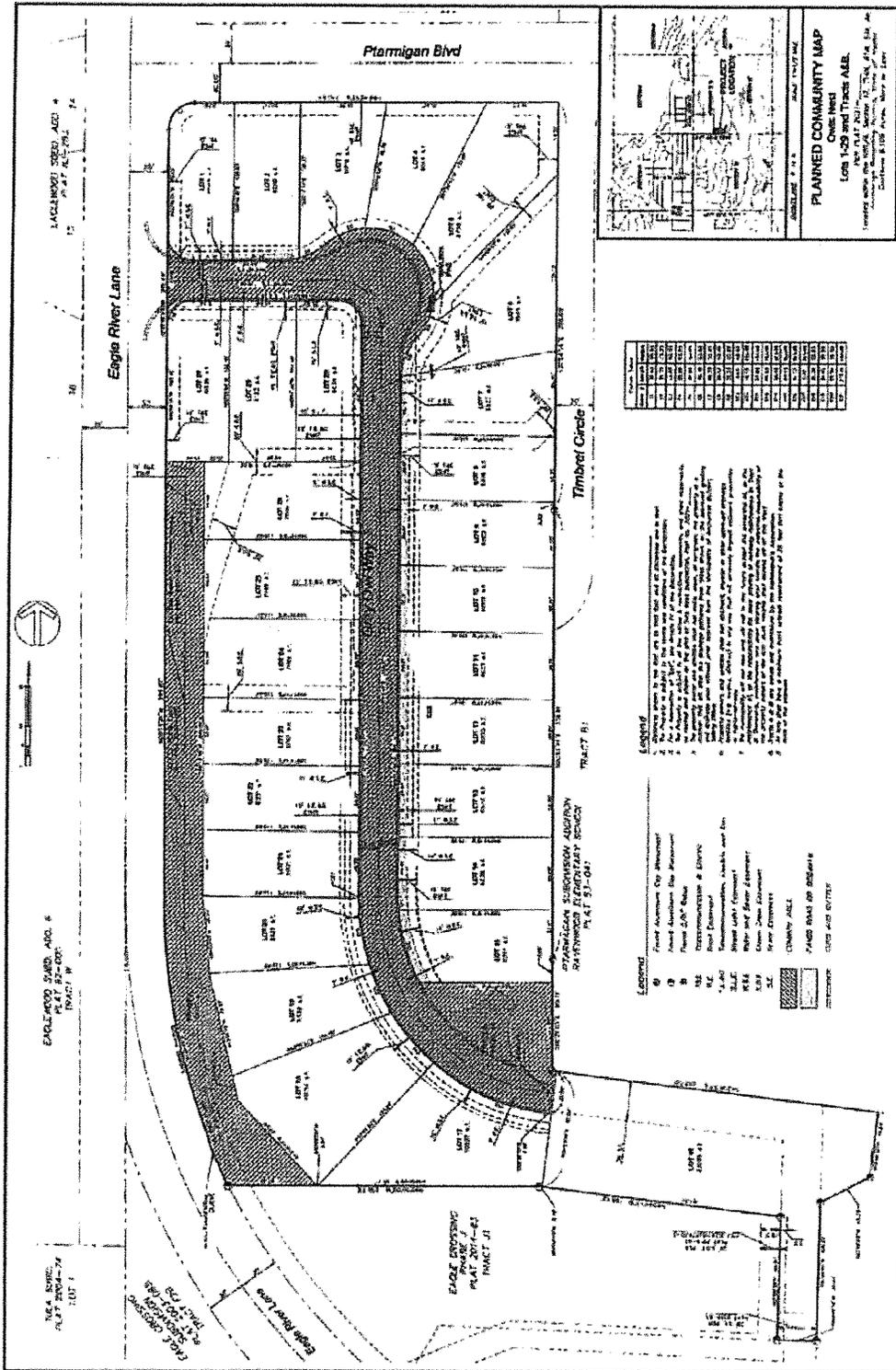
*A Planned Community located on  
Lots 1-29, and Tracts A & B,  
Owls Nest Subdivision  
according to the official plat thereof, Plat No. 2021-21, records of the Anchorage Recording  
District, Third Judicial District, State of Alaska.*

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**PLANNED COMMUNITY MAP**  
 OWLS NEST  
 LOT 1-20  
 PLAT 2017-01  
 Located within the NW1/4, Section 23, T14N, R10E, S14W  
 County of Lake of the Ozarks, Missouri

Lot No.	Area (Ac.)	Area (Sq. Ft.)
1	0.10	6,900
2	0.10	6,900
3	0.10	6,900
4	0.10	6,900
5	0.10	6,900
6	0.10	6,900
7	0.10	6,900
8	0.10	6,900
9	0.10	6,900
10	0.10	6,900
11	0.10	6,900
12	0.10	6,900
13	0.10	6,900
14	0.10	6,900
15	0.10	6,900
16	0.10	6,900
17	0.10	6,900
18	0.10	6,900
19	0.10	6,900
20	0.10	6,900

**LEGEND**

1. The property is subject to the terms and conditions of the Declaration.
2. The property is subject to the terms and conditions of the Declaration.
3. The property is subject to the terms and conditions of the Declaration.
4. The property is subject to the terms and conditions of the Declaration.
5. The property is subject to the terms and conditions of the Declaration.
6. The property is subject to the terms and conditions of the Declaration.
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**LEGEND**

- 1. Front Accession City Street
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- 20. Front Accession City Street

DECLARATION - OWLS NEST  
 S403719117368



**THE FOLLOWING PAGES ARE ENLARGEMENTS OF THE PLAT**

DECLARATION - OWLS NEST  
S403719117368

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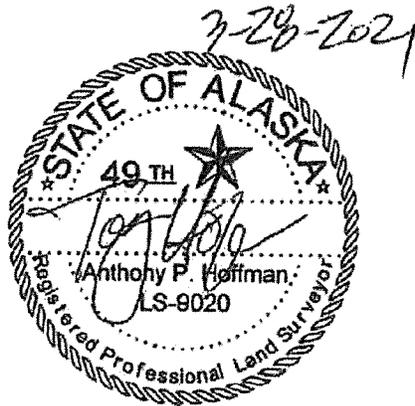
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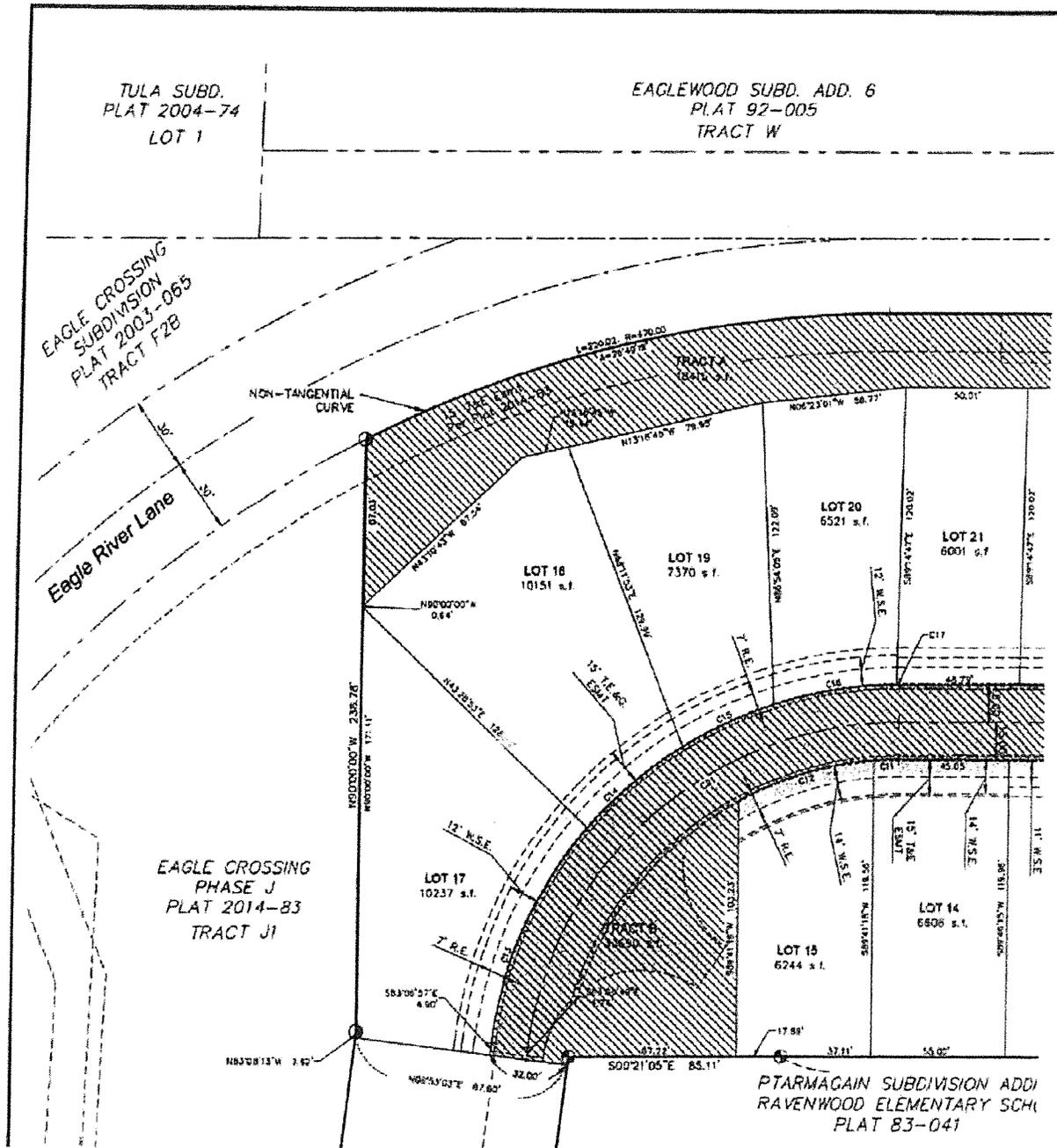
**SURVEYOR'S CERTIFICATE**

Section 34.08.170 of the Alaska Uniform Common Interest Ownership Act requires that a certification be made which states that the plat contains the information as set forth in Section 34.08.170.

I do hereby certify that the planned community plat of Owls Nest, is a true and correct layout of the Lots and that the information as required by Alaska Statute 34.08.170 is provided for on this plat filed herewith.

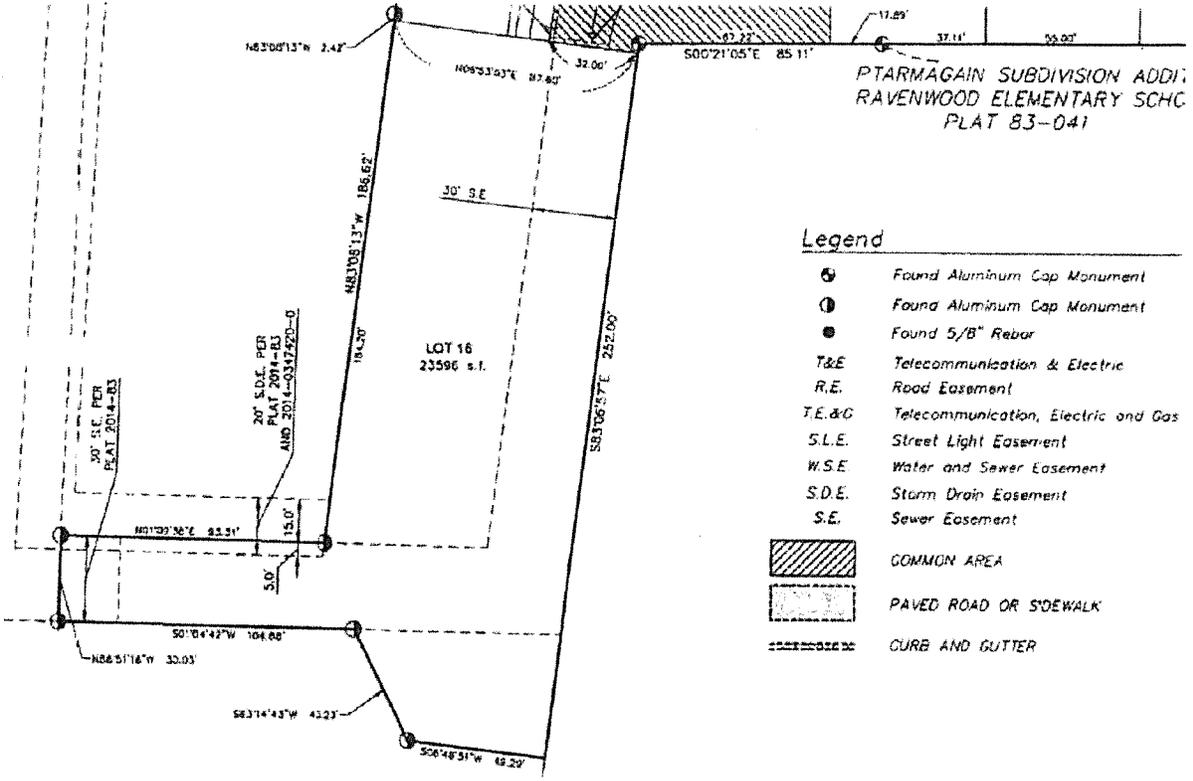
Signature: *Anthony Hoffman*  
Printed Name: ANTHONY HOFFMAN  
Registered Land Surveyor No. LS 9020





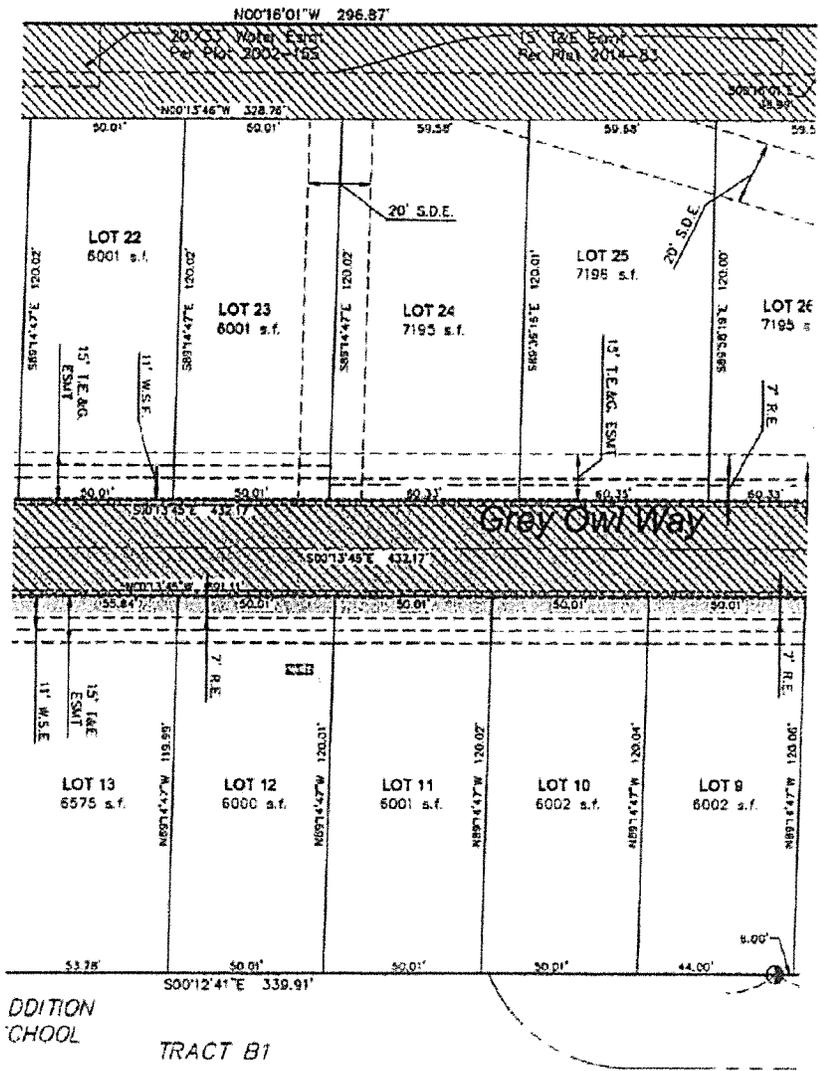
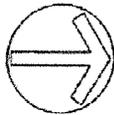
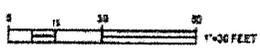
DECLARATION - OWLS NEST  
 S403719117368





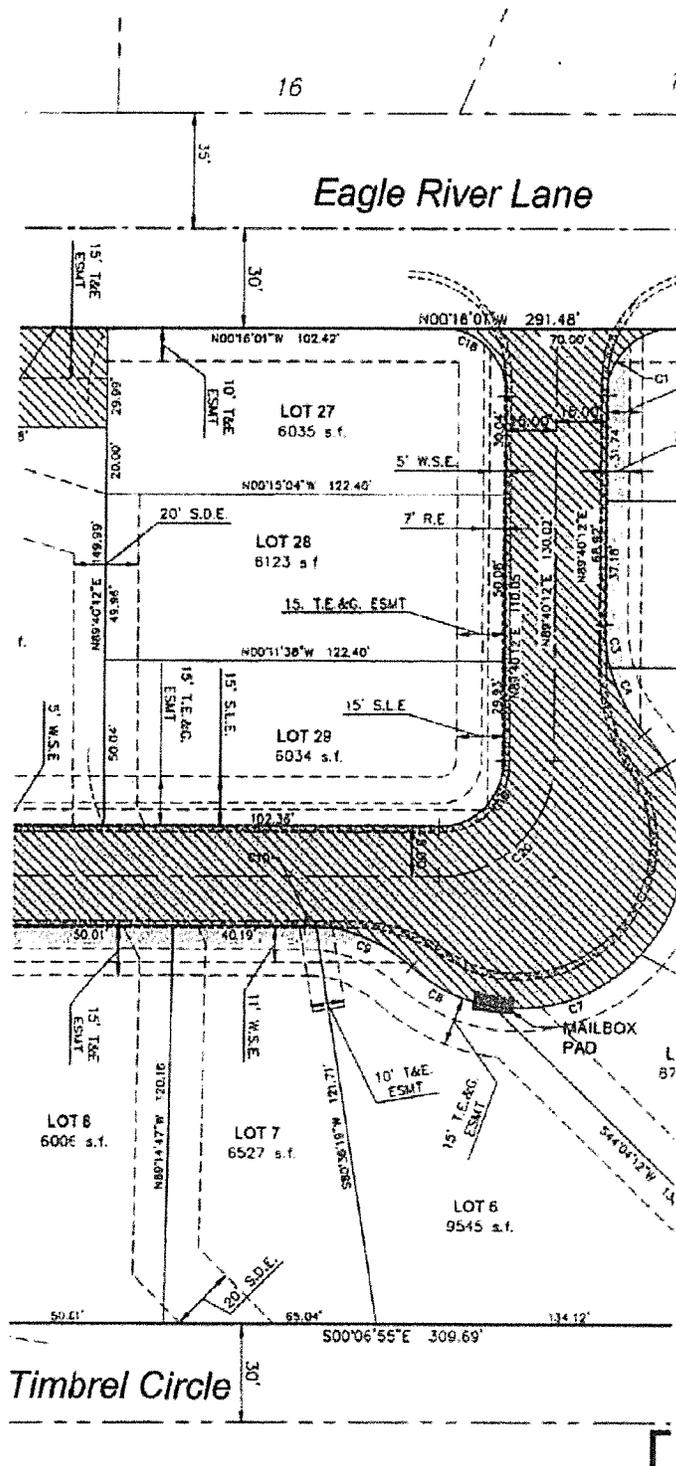
DECLARATION - OWLS NEST  
S403719117368





DECLARATION - OWLS NEST  
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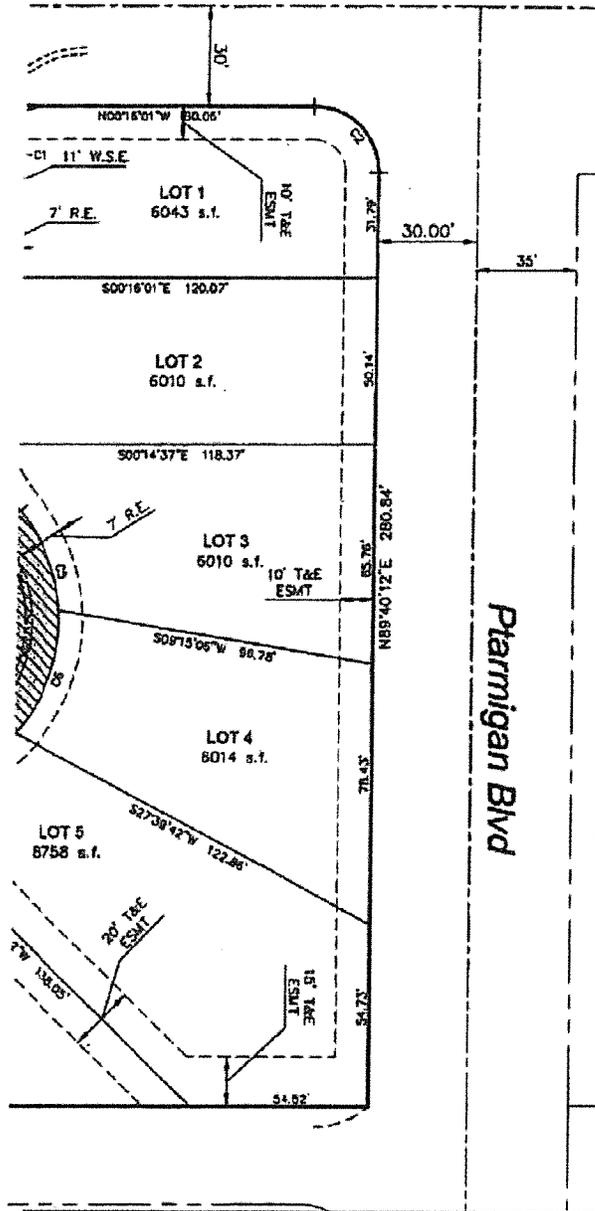
PAGE 50



Page 50 of 5,  
2021-016894-0

135

EAGLEWOOD SUBD. ADD. 4  
PLAT 83-263  
15 14



DECLARATION - OWLS NEST  
S403719117368

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Curve Table		
Curve #	Length	Radius
C1	31.44	20.00
C2	31.39	20.00
C3	13.07	50.00
C4	22.86	50.00
C5	32.84	50.00
C6	40.19	50.00
C7	49.29	50.00
C8	28.17	50.00
C9	32.53	50.00
C10	3.40	50.00
C11	10.13	135.00
C12	57.80	135.00
C13	96.03	165.00
C14	50.19	165.00
C15	40.13	165.00
C16	51.13	165.00
C17	1.22	165.00
C18	31.39	20.00
C19	31.45	20.00
C20	55.04	35.00
C21	217.16	150.00

DECLARATION – OWLS NEST  
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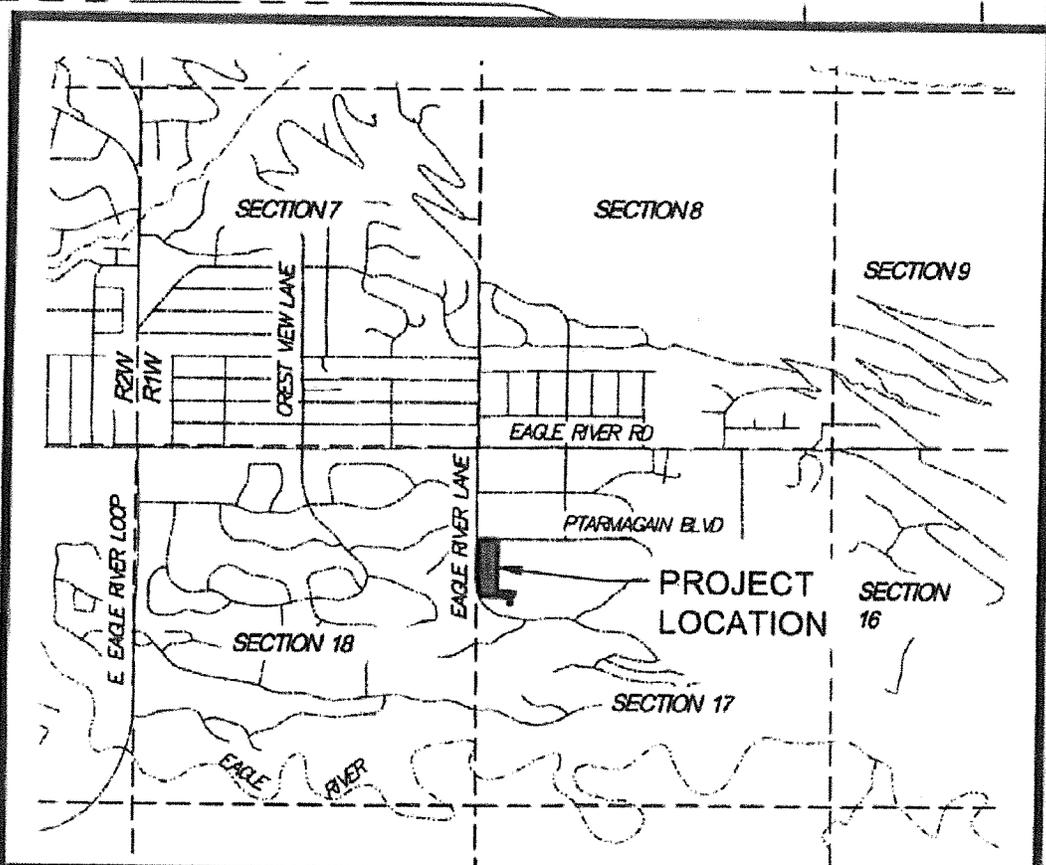
Page 52 of 54  
2021 – 016894 – 0

**137**

## Legend

1. Distances shown to the foot are to that foot and all distances are in feet.
2. The Property is subject to the terms and conditions of the Declaration.
3. For a description of "Lot", see Article IV of the Declaration.
4. The Property is subject to all the notes & restrictions, easements, and slope easements, as recited and shown on the plat of Owls Nest Subdivision, Plat No. 2021-21.
5. The property owner and utilities shall not raise, lower, or re-grade the property in a manner that will alter the drainage patterns from those shown on the approved grading and drainage plan without prior approval from the Municipality of Anchorage Building Safety Office.
6. Property owners and utilities shall not obstruct, impede or alter approved drainage facilities (e.g. swales, ditches) in any way that will adversely impact adjacent properties or rights-of-way.
7. The municipality will not now and will not in the future accept the ownership of, or the maintenance of, or the responsibility for snow plowing or roadway maintenance in Tract B. Ownership, maintenance and snow clearing shall remain the collective responsibility of the property owners of the lots which receive their access off of this tract.
8. Tracts A & B are owned and maintained by the homeowner's Association.
9. All lots shall have a minimum front setback requirement of 20 feet that begins at the back of the sidewalk.





VICINITY MAP T. 14 N.

SCALE: 1"=1/2 MILE

# PLANNED COMMUNITY MAP

## Owls Nest

Lots 1-29 and Tracts A&B,

PER PLAT 2021-21

Located within the NW1/4, Section 17, T14N, R1W, S.M. Ak.  
Anchorage Recording District, State of Alaska  
Contains 6.108 Acres, More or Less

SHEET: 1 of 1

Drawn By: TH

Scale: 1"=30'

Date: 3/27/2021



# Departmental and Public Comments

# MUNICIPALITY OF ANCHORAGE



Development Services Department

Private Development Section

*Mayor Dave Bronson*

## MEMORANDUM

### Comments to Planning and Zoning Commission Applications/Petitions

**DATE:** June 20, 2022  
**TO:** Francis McLaughlin, Senior Planner  
**FROM:** Judy Anunciacion, Private Development Engineer  
**SUBJECT:** PZC Case 2022-0034

**Case 2022-0034** – Conditional Use for a Residential Planned Unit Development per AMC 21.07.115B with Variances to provide relief from specific PUD requirements to include open space, building spacing, site perimeter landscaping requirements and Variance from AMC 21.07.060E.2. to install sidewalks on one side of the street.

**Department Recommendations:** Private Development has no objection to the Conditional Use for a Residential Planned Unit Development per AMC 21.07.115B and recommends approval of the variances from 21.07.115B for the Planned Unit Development and the variance from AMC 21.07.060E.2. to install sidewalks on one side of the street.



---

## MEMORANDUM

**DATE:** June 20, 2022

**TO:** Current Planning Division Supervisor,  
Planning Department

**THRU:** Kristen A. Langley, Traffic Safety Section Supervisor,  
Traffic Engineering Department

**FROM:** Randy Ribble, Assistant Traffic Engineer

**SUBJECT:** **2022-0034 Conditional Use for a Residential Plan Unit Development per AMC 21.07-115B with Variance to provide relief from the specific Plan Use Development requirements to include open space, building spacing, site perimeter landscaping and Variance from AMC 21.07.060 E.2 for side walk on one side of the street.**

### **Checkpoint Subdivision**

Traffic Engineering has reviewed the application narrative and recommends approval of the conditional use for this Residential Planned Unit Development with the following comments.

This proposed 56-unit subdivision is anticipated to provide approximately 504 average daily trips. This is right at the threshold for requirement to provide sidewalks on each side of the proposed right of way or roadway easement. This project was originally approved with building permit C15-2197 which showed similar number of dwelling units with a sidewalk being provide on one side of this internal loop roadway. The only change in the development is in the size of lots for Residential Planned Unit Development which has created a need to have variances for both Plan Unit Development requirements and number and location of sidewalks within the development.

### **Variance (Side Walk on Both sides of the street)**

AMC 21.07.060 would trigger development of sidewalks at ADT greater than 500 Trip. This development is right at the threshold, however with the previously approved plans and no change to number of units. Traffic Engineering has no objection to approval of the variance to provide only a single side walk for this development as currently shown in the application.

### **Variance (Specific Plan Requirements for Planned Unit Development)**

Traffic Engineering has no objection for approval of variance from specific requirements of 21.07.115. These have no impacts to adjacent private street requirements.



**Municipality of Anchorage**  
**Project Management and Engineering**  
**MEMORANDUM**



---

**DATE:** June 13, 2022

**To:** Dave Whitfield

**FROM:** Kyle Cunningham

**SUBJECT:** Cases 2022-0034, S12667 & 2022-0071: Comments from Watershed Management Services.

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JUN 14 2022

Watershed Management Services (WMS) has the following comments for the April 18, 2022 Planning and Zoning Commission hearing:

- 2022-0034 – Tract A2, Checkpoint Subdivision (Plat 2018-39);
  - Provide a SWPPP to Private Development for review prior to the start of construction.
  - Prior to recording a final plat, resolve with Private Development the need for and location of drainage easements. This is needed to allow existing drainage patterns to cross the new property lines and to allow for future drainage improvements to connect to the best reasonable public storm drain system.
- S12667 – Tract A2, Checkpoint Subdivision (Plat 2018-39);
  - WMS has no further comments on or objections to this request.
- 2022-0071 – Lots 1-D & 1-E, Mackentie Addition, a resubdivision of Lot 1, Block C, North Star Subdivision (Plat P-220A).
  - WMS has no comments on or objections to this request.

**Kimmel, Corliss A.**

---

**From:** Walters, Michael S.  
**Sent:** Monday, June 13, 2022 6:27 PM  
**To:** Blake, Lori A.; Kimmel, Corliss A.  
**Subject:** 2022-0034 Request for Reviewing Agency Comments

RECEIVED

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All:

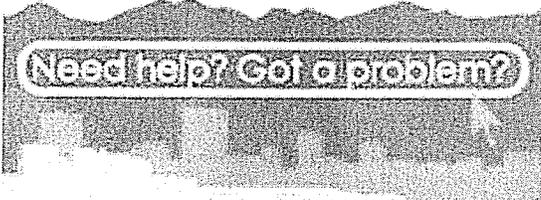
ROW has the following comments for case number 2022-0034:

ROW has no comment or objections on the proposed action.

Regards,

Michael S Walters  
Senior Plan Reviewer  
Right of Way Section  
[michael.walters@anchorageak.gov](mailto:michael.walters@anchorageak.gov)  
Office: 907-343-8197  
Cell: 907-727-7637  
Fax: 907-249-7910

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An online tool for Anchorage





THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

Department of Transportation and  
Public Facilities

Program Development and Statewide Planning  
Anchorage Field Office

4111 Aviation Avenue  
P.O. Box 196900  
Anchorage, AK 99519-6900  
Main number: 907-269-0520  
Fax number: 907-269-0521  
Website: dot.state.ak.us

June 7, 2022

David Whitfield, Current Planning Manager  
MOA, Community Development Department  
Planning Division  
P.O. Box 196650  
Anchorage, Alaska 99519-6650

[Sent Electronically]

Re: MOA Zoning Review

Dear Mr. Whitfield:

The Alaska Department of Transportation and Public Facilities (DOT&PF) has reviewed the following zoning cases and has no comments:

- **2022-0034 – Tract A2, Checkpoint Subd, Plat 2018-39 Conditional Use and Design Variances**  
Please note that DOT&PF does have multiple comments on the associated Plat Case #S12667.

All properties accessing DOT&PF roads must apply to Right-of-Way for a driveway permit, subject to provisions listed in 17 AAC 10.020. Any previously issued driveway permits become invalid once the property undergoes a platting action and must be reissued.

We recommend the petitioner verify all section line easements and DOT&PF road rights-of-way adjacent to their property. For assistance, the petitioner may contact the Engineering group within the Right of Way section in DOT&PF at (907) 269-0700. The petitioner is liable to remove any improvements within the easements and rights-of-way that impede the operation and maintenance of those facilities even if they are not shown on the plat, so it is in the petitioner's best interest to identify the exact locations and widths of any such easements or rights-of-way before they improve the property.

If any section line easements or road rights-of-way exist within the bounds of their plat, we recommend the petitioner dedicate them. If there is an existing right-of-way or easement, the petitioner is unable to develop that portion of the property yet continues to pay property taxes on it; dedicating will remove that cost to the petitioner.

*"Keep Alaska Moving through service and infrastructure."*

# MEMORANDUM

DATE: June 6, 2022  
TO: Dave Whitfield, Planning Manager, Planning Section, Planning Division  
FROM: Alex Prosak, P.E., Civil Engineer II, Planning Section, AWWU  
RE: Zoning Case Comments  
Hearing date: July 11, 2022  
Agency Comments due: June 13, 2022

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JUN 06 2022

AWWU has reviewed the materials and has the following comments.

**2022-0034** TRACT A2, CHECKPOINT SUBDIVISION (PLAT 2018-39), Conditional Use for a Residential Planned Unit Development per AMC 21.07.115B with Variances to provide relief from specific PUD requirements to include open space, building spacing, site perimeter landscaping requirements and Variance from AMC 21.07.060E.2 to install sidewalks on one side of the street, Grid SW1238

1. AWWU water and sanitary sewer are available to this lot.
2. AWWU has no objection to these conditional use variance requests.

**2022-0071** LOTS 1-D & 1-E, MACKENTIE ADDITION, A RESUBDIVISION OF LOT 1, BLOCK C, NORTH STAR SUBDIVISION (PLAT P-220A), Request to rezone two (2) parcels of land from R-2M (Mixed Residential) District to I-1 (Light Industrial) District, Grid SE4815

1. AWWU water is available to the parcels.
2. AWWU sanitary sewer is not available to the parcels.
3. AWWU has no objection to this rezone request.

If you have any questions pertaining to public water or sewer, please call 786-5694 or send an e-mail to [alex.prosak@awwu.biz](mailto:alex.prosak@awwu.biz)



**Kimmel, Corliss A.**

---

**From:** Wilson, Karleen K.  
**Sent:** Thursday, June 2, 2022 11:36 AM  
**To:** Blake, Lori A.; Kimmel, Corliss A.  
**Subject:** EW-2022-0034 Request for Reviewing Agency Comments  
**Attachments:** 2022-0034 Routing Coversheet.pdf

RECEIVED

JUN 02 2022

No comments from addressing.

Regards,

Karleen Wilson  
Addressing Official  
907.343.8168 (desk)  
907.343.8466 (shared Addressing)  
Official Address Map

**From:** Stewart, Gloria I. <gloria.stewart@anchorageak.gov>  
**Sent:** Tuesday, May 31, 2022 12:58 PM  
**Cc:** Stewart, Gloria I. <gloria.stewart@anchorageak.gov>  
**Subject:** 2022-0034 & S12667 Request for Reviewing Agency Comments

Hello all. Attached please find our Routing Coversheets for the above referenced cases (2022-0034 Conditional Use with Variances) & (S12667 Long Plat) which are scheduled as Public Hearings to be heard before the Planning and Zoning Commission on 07/11/2022. You may review the routing materials by clicking the links below, scrolling to bottom of page and selecting Reviewing Agency Routing preceded by the case no. of interest. **PLEASE REMIT COMMENTS EITHER BY MAIL OR EMAIL AS FOLLOWS:** by email to Corliss Kimmel & Lori Blake ([corliss.kimmel@anchorageak.gov](mailto:corliss.kimmel@anchorageak.gov) & [lori.blake@anchorageak.gov](mailto:lori.blake@anchorageak.gov)) or by USPS to the address listed in the upper right hand corner of the Routing Cover Sheet.

2022-0034      <https://www.muni.org/CityViewPortal/Planning/Status?planningId=17531>.

S12667      <https://www.muni.org/CityViewPortal/Planning/Status?planningId=17534>.



Planning Department  
MUNICIPALITY OF ANCHORAGE

Gloria I. Stewart  
Senior Planning Technician +  
Planning Department  
Current Planning Division - Zoning & Platting  
Email: [gloria.stewart@anchorageak.gov](mailto:gloria.stewart@anchorageak.gov)  
Phone: (907) 343-7934  
4700 Elmore Road, Anchorage, AK 99507  
[www.muni.org/planning](http://www.muni.org/planning)

# Affidavit of Posting and Historical Information



# AFFIDAVIT OF POSTING

CASE NUMBER: 2022-0034

I, JASON JACOBSON hereby certify that I have posted a Notice as prescribed by Anchorage Municipal Code 21.03.020H.5. on the property that I have petitioned for conditional use with variances. The notice was posted on 6/1/2022 which is at least 21 days prior to the public hearing on this petition. I acknowledge this Notice(s) must be posted in plain sight and displayed until all public hearings have been completed.

Affirmed and signed this 1 day of JUNE, 2022.

[Handwritten Signature]  
Signature

### LEGAL DESCRIPTION

Tract or Lot: A2

Block: \_\_\_\_\_

Subdivision: Checkpoint

