

CLERK'S OFFICE

APPROVED

ANCHORAGE, ALASKA

AO 2011-20

Date: 2-15-11

AN ORDINANCE AUTHORIZING THE RELINQUISHMENT OF A PUBLIC USE AND ACCESS EASEMENT TO ALASKA PACIFIC UNIVERSITY (APU) IN EXCHANGE FOR, AND CONTINGENT UPON, APU GRANTING A REPLACEMENT PARK & TRAIL EASEMENT, BOTH EASEMENTS LOCATED WITHIN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 27, T13N, R3W, S.M., ALASKA.

WHEREAS, APU requests an existing Public Use and Access Easement (tax id 005-101-01, conveyed by APU to the Municipality of Anchorage (Municipality) on December 15, 1985, at Book 1357, Page 0281-0289, be relinquished and replaced with a smaller park and trail easement from APU in approximately the same location, due to continuing conflicts with users of the off-leash dog park at University Lake Park and APU property; and

WHEREAS, the easement to be acquired allows for a trail and installation of fencing along the north limit of the trail, reducing or eliminating contact between dog park users and APU property uses; and

WHEREAS, the Parks and Recreation Department (P&R) has authority and responsibility for the day-to-day management of University Lake Park; and

WHEREAS, in discussing the ongoing conflicts, P&R and APU determined park users would be best served by relinquishing the existing easement and acquiring a replacement easement for a trail and fence; and

WHEREAS, relinquishment of the existing Public Use and Access Easement is contingent upon APU granting a new Park and Trail easement, described below in Section 3, at no cost to the Municipality; and

WHEREAS, P&R considers the easement exchange a reasonable solution to existing use conflicts, and a benefit to both the Municipality, the public, dog park users, and APU; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. The Assembly finds the Public Use and Access Easement to be relinquished, in exchange for a new Park & Trail easement, a substantial benefit to the public, and without substantial value to the Municipality.

Section 2. The easement to be relinquished, described as a Public Use and Access Easement conveyed by APU to the Municipality on December 15, 1985, at Book 1357, Page 0281-0289; and more particularly described as:

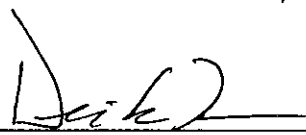
A parcel of land situated within the SE ¼, NW ¼, Section 27, T13N, R3W, Seward Meridian, Alaska; Commencing at the center one-quarter (C1/4) corner Sec. 27, T13 N, R3W, Seward Meridian, Alaska; thence on the east-west quarter section line S 89°57'46" W, 391.82 ft. to the True Point Of Beginning; thence continuing on said quarter section line S 89°57'46" W, 671.38 ft.; thence N 52°34'29" E, 311.70 ft.; thence S 75°13'00" E, 175.01 ft.; thence S 63°08'03" E, 198.47 ft.; thence S 54°50'41" E, 94.9 ft. to the True Point Of Beginning and the end of this description, containing 1.64 acres more or less.

Section 3. The relinquishment of the easement in Section 2 is contingent upon, and in consideration for, APU simultaneously granting a Park and Trail Easement more particularly described as follows:

Lying within a portion of the SE1/4, NW1/4, Section 27, T13N, R3W, Seward Meridian, Alaska; Commencing at the center one-quarter (C1/4) Corner for Sec. 27, T13N, R3W, Seward Meridian; thence on the north line of Tract A, University Lake Subdivision, filed under Plat No. 85-299, S 89°57'46" W 526.56 feet to the True Point of Beginning; thence continuing on said north line S 89°57'46" W 472.60 feet; thence departing said north line of Tract A, N 30°21'10" E 65.98 feet; thence N 36°05'35" E 45.28 feet; thence N 66°49'36" E 60.82 feet; thence S 84°51'29" E 72.17 feet; thence S 76°58'52" E 95.69 feet; thence S 65°03'00" E 211.29 feet to the True Point Of Beginning and the end of this description, containing 34,930 square feet (.802 acres), more or less.

Section 4. This ordinance shall be effective immediately upon passage and approval by the Anchorage Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 15th day of February, 2011.



Chair of the Assembly

ATTEST:



Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects - General Government

AO 2011-20

AN ORDINANCE AUTHORIZING THE RELINQUISHMENT OF A PUBLIC USE AND ACCESS EASEMENT TO ALASKA PACIFIC UNIVERSITY (APU) IN EXCHANGE FOR, AND CONTINGENT UPON, APU GRANTING A REPLACEMENT PARK & TRAIL EASEMENT, BOTH EASEMENTS LOCATED WITHIN THE SOUTHEAST 1/4 OF THE NORTHWEST ¼ OF SECTION 27, T13N, R3W, S.M., ALASKA.

Sponsor: MAYOR
Preparing Agency: Project Management & Engineering Division
Others Impacted: Parks & Recreation Department, Real Estate Department

CHANGES IN EXPENDITURES AND REVENUES:

(In Thousands of Dollars)

	FY11	FY12	FY13	FY14	FY15
Operating Expenditures					
1000 Personal Services					
2000 Supplies					
3000 Other Services					
4000 Debt Service					
5000 Capital Outlay					

TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -
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Add: 6000 Charge from Others

Less: 7000 Charge to Others

FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -
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REVENUES:

CAPITAL:

POSITIONS:

PUBLIC SECTOR ECONOMIC EFFECTS:

none

PRIVATE SECTOR ECONOMIC EFFECTS:

none

Prepared by: Vicki Gerken

Telephone: 343-8187



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 72-2011

Meeting Date: February 1, 1011

FROM: MAYOR

SUBJECT: AN ORDINANCE AUTHORIZING THE RELINQUISHMENT OF A PUBLIC USE AND ACCESS EASEMENT TO ALASKA PACIFIC UNIVERSITY (APU) IN EXCHANGE FOR, AND CONTINGENT UPON, APU GRANTING A REPLACEMENT PARK & TRAIL EASEMENT, BOTH EASEMENTS LOCATED WITHIN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 27, T13N, R3W, S.M., ALASKA.

APU requests an existing Public Use and Access Easement, conveyed by APU to the Municipality of Anchorage (Municipality) on December 15, 1985, at Book 1357, Page 0281-0289, be relinquished and replaced with a smaller park and trail easement in the approximate same location. The request is made as the result of Dog Park user conflicts with APU property uses (**Exhibit A**). The Parks and Recreation Department (P&R) reviewed the request and determined park users would be best served by reducing and relocating the existing 71,438.40 square foot (1.640 acre) Public Use and Access Easement. Safety, parking, environmental impacts, ski trail grooming conflicts, spillover affects from off-leash dogs and trespass are some of the concerns APU discussed with the Municipality since the off-leash dog park at University Lake Park was created.

To address these concerns, P&R proposes relinquishing the existing easement in exchange for a replacement park and trail easement; the relinquishment is contingent upon APU granting the Municipality the new easement at no additional cost to the Municipality. The new easement relocates the trail nearer to the north bank of University Lake and reduces the impact on the Alaska Pacific University property. The new park and trail easement contains 34,930 square feet (0.802 acre) (**Exhibit B**).

THE ADMINISTRATION RECOMMENDS AN ORDINANCE AUTHORIZING THE RELINQUISHMENT OF A PUBLIC USE AND ACCESS EASEMENT TO ALASKA PACIFIC UNIVERSITY (APU) IN EXCHANGE FOR, AND CONTINGENT UPON, APU GRANTING A REPLACEMENT PARK & TRAIL EASEMENT, BOTH EASEMENTS LOCATED WITHIN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 27, T13N, R3W, S.M., ALASKA.

Prepared by: J. W. Hansen, Deputy Director
Project Management & Engineering Division
Approved by: Ron Thompson, P.E., Public Works Director
Concur: John Rodda, Director, Parks & Recreation Department
Concur: Dennis A. Wheeler, Municipal Attorney
Concur: George J. Vakalis, Municipal Manager
Respectfully Submitted: Daniel A. Sullivan, Mayor

PUBLIC USE AND ACCESS EASEMENT

This easement grant is made between ALASKA PACIFIC UNIVERSITY (hereinafter "University" or "Grantor") and the MUNICIPALITY OF ANCHORAGE (hereinafter "Municipality" or "Grantee").

The following recitals are a material part of this instrument:

A. Grantor is conveying to Grantee real property as described on Exhibit "A," attached hereto, hereafter referred to as "Parcel 1."

B. Grantor is the owner of real property as described on Exhibit "B," attached hereto, hereafter referred to as "Parcel 2."

To be relinquished

C. Grantor wishes to grant and Grantee wishes to receive an easement over, under, and across that part of Parcel 2 as described on Exhibit "C," attached hereto and hereafter referred to as the "Easement Premises."

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, promises, agreements, covenants, representations, and restrictions are made:

1. Grant of Easement. The Grantor hereby grants to the Grantee a perpetual public use and access easement to the Easement Premises.

2. Permissible Use of Easement Premises.

(a) By the Grantee. Development on the Easement Premises by Grantee shall be limited to landscaping, shoreline regrading, trail construction, and similar improvements necessary to improve public access, use and enjoyment of the lake and parkland for recreational and park purposes. No permanent structures shall be allowed. Any development shall require review and prior written approval by Grantor. In addition, all development, if approved, shall be made solely at the Grantee's expense. Further, Grantee agrees to indemnify Grantor for any liability as to such development described in Section 4 below.

(b) By the Grantor. Nothing in this agreement restricts Grantor from entering upon this easement for the purpose of improving access to University Lake to enhance or achieve its own recreational or athletic program objectives which may require lake access. However, Grantor agrees to coordinate such improvements with Grantee to insure that the Grantee's access and use of the easement will not be unreasonably denied or unnecessarily restricted.

3. Maintenance and Management of the Easement Premises. Maintenance and management of the easement shall be the responsibility of Grantee and shall be accomplished in accordance with standard Municipality park maintenance and management practices and procedures, including providing security and enforcement of Municipality Park Regulations and Municipality laws.

Grantee agrees to restrict motor vehicle and motorized access from entry upon the Easement Premises except as may be required by Grantee for park maintenance or construction.

4. Indemnification. Grantee agrees to indemnify and

hold harmless Grantor from any claims, suits, proceedings, actions, damages, costs, expenses, judgments, settlements, and fees (including attorneys' fees), arising out of or based upon (a) the use of the Easement Premises by any party or individual, for the purposes described in Section 2(a) above; (b) the development of the Easement Premises as described in Section 2(a) above; (c) the maintenance and/or management of the Easement Premises as described in Section 3; and (d) any breach, act, or omission of Grantee, its agents, representatives, and assigns, under this agreement.

In the event third parties make a claim of any nature against Grantor, Grantor shall promptly notify Grantee in writing by registered or certified mail, return receipt requested, of such claim and Grantee shall be obligated to defend such claim and to pay all costs and attorneys' fees, and to satisfy any award, judgment, or settlement obtained by such claimant. In the event a prejudgment attachment is attempted, Grantee shall similarly be obligated to defend and protect Grantor and Grantor's interest in the property.

5. Restrictive Covenant. Any breach of the restrictive covenant attached hereto as Exhibit "D" and incorporated by reference herein is a breach of covenant herein.

6. Remedies. Any covenants, conditions or restrictions contained herein may be enforced by any appropriate action at Grantor's option, and Grantor may avail itself of any remedies available to Grantor under statute, law or equity, including without limitation actions seeking damages or injunctive (equitable) relief.

7. Waiver and Forbearance. Except the extent that Grantor may have otherwise agreed in writing, no waiver by Grantor of any breach by Grantee of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by Grantor to seek a remedy for any breach of Grantee be deemed a waiver of Grantor of its rights or remedies with respect to such breach.

8. Successors in Interest. This easement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the parties hereto.

9. Changes. No modifications, amendments, deletions, additions or alterations of this agreement shall be effective unless in writing and signed by all of the parties hereto or such representatives of the parties as have been duly authorized to make such changes.

10. Entire Agreement. This written agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all other prior or contemporaneous agreements, oral or written, between the parties not included herein.

11. Applicable Law. This agreement and the respective rights and obligations of the parties shall be construed and interpreted in accordance with the laws of the State of Alaska.

12. Severability. The invalidity or enforceability of any particular provision of this agreement shall not affect the remaining and hereof, and, in any such event, this agreement shall be construed and interpreted in all respects as if such

invalid or enforceable provision were omitted.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 4th day of December, 1985.

GRANTOR:
ALASKA PACIFIC UNIVERSITY

GRANTEE:
MUNICIPALITY OF ANCHORAGE

By: Henry G. Weller
Its: President

By: Peter Scholes
Its: Property Management Officer

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

"
The foregoing instrument was acknowledged before me this 4th day of December, 1985, by Henry G. Weller, the President of ALASKA PACIFIC UNIVERSITY, a corporation, on behalf of the corporation.

Louis A. Benoit
Notary Public in and for Alaska
My Commission Expires: November 8, 1989

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

The foregoing instrument was acknowledged before me this 4th day of December, 1985, by Peter Scholes, the Property Management Officer of MUNICIPALITY OF ANCHORAGE, a corporation, on behalf of the corporation.

Edith M. Menzies
Notary Public in and for Alaska
My Commission Expires: July 18, 1986

EXHIBIT "A"

Tract A, University Lake Subdivision.

EXHIBIT "B"

S. 1/2 N.W. 1/4, Sec. 27, T. 13 N., R. 3 W., S.M., AK.

To be relinquished

EXHIBIT "C"ACCESS EASEMENT

A parcel of land situated within the S.E. 1/4 N.W. 1/4, Sec. 27, T. 13 N., R. 3 W., Seward Meridian, Alaska being more particularly described as follows:

Commencing at the center one-quarter (C1/A) corner Sec. 27, T. 13 N., R. 3 W., Seward Meridian, Alaska, thence along the east-west quarter section line S. 32°57'46" W., 391.82 ft. to the true point of beginning; thence continuing along said quarter section line S. 32°57'46" W., 671.38 ft.; thence N. 52°34'29" E., 175.01 ft.; thence S. 75°13'00" E., 175.01 ft.; thence S. 63°08'03" E., 198.47 ft.; thence S. 54°50'00" E., 94.90 ft. to the true point of beginning, containing 1.640 acres more or less.

TRACT A

LAKE

SW 1/4 SEC. 27
T13N R3W

To be relinquished

ACCESS EASEMENT

NW 1/4 SEC. 27
T13N R3W

TRUE POINT OF BEGINNING

E/W 1/4
SEC. LINE

CV4 SEC 27

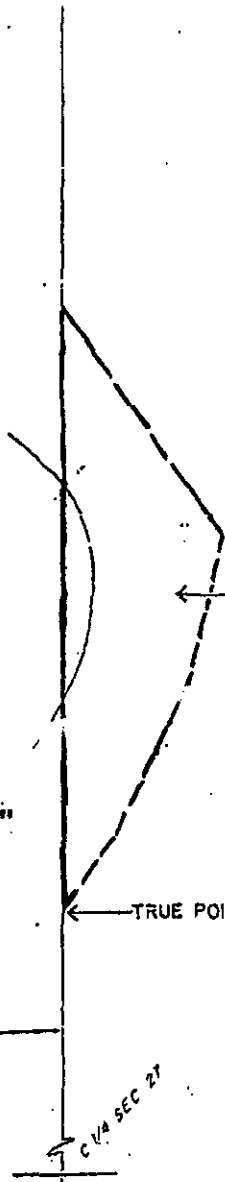


EXHIBIT "D"

STATUTORY WARRANTY DEED
(AS 34.15.030)

The Grantor, ALASKA PACIFIC UNIVERSITY, for and in consideration of the sum of TEN and NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid, conveys and warrants to the Grantee, ANCHORAGE, an Alaska Municipal Corporation, whose mailing address is P.O. Box 129650, Anchorage, Alaska 99519-6650, the following described real estate:

Tract A, University Lake Subdivision, according to Plat No. 85-299, filed in the office of the District Recorder on November 27, 1985, Anchorage Recording District, Third Judicial District.

located in the State of Alaska, subject to all easements, covenants, restrictions, and reservations of record, all restrictions and reservations contained in the patent to said real estate, and all applicable zoning laws.

In addition, Grantor and Grantee hereby expressly covenant that:

1. The real property described above shall be used by Grantee, its successors and assigns, exclusively as a community or neighborhood park, open space, or public outdoor recreation area which may, but need not, include any or all of the following: (a) public opportunity for contact with the natural environment including, but not limited to the lake and stream now existing on said property, (b) play apparatus for pre-school and older children, (c) play and sports fields for football, soccer, baseball, and other field sports, (d) open space for passive recreation including, but not limited to, walks, benches, and shade gardens, (e) multi-purpose courts for tennis, basketball, handball and similar sports, (f) boat docks for canoes, rowboats, and other similar, small, non-motorized watercraft, (g) picnic areas including, but not limited to, tables, platforms, outdoor grills, shelters, and similar facilities, (h) restrooms, telephone booths, trash containers, paved and unpaved parking and driveways and other facilities which are reasonably necessary to the uses of the property previously described, and (i) bleachers or seating for not more than one hundred (100) persons per field or court.
2. Development on the real property described above by Grantee shall be limited to the improvements described above together with landscaping, shoreline regrading, trail construction, and similar improvements necessary to improve public access, use and enjoyment of the lake and parkland for recreational and park purposes.
3. Maintenance and management of the real property by the Grantee shall be accomplished in accordance with standard park maintenance and management practices and procedures of the Grantee, including providing security and enforcement of Municipal laws and park regulations.

4. Grantee agrees to restrict motor vehicle and motorized access from entry upon the real property except for parking and as may be required by Grantee for park maintenance or construction. No motorized watercraft shall be permitted on the lake.
5. This covenant is intended to and shall run with the land and be binding upon all successors in interest to the Grantee in perpetuity.
6. This covenant may be enforced by any taxpayer of the Municipality of Anchorage by the bringing of an action for injunctive or any other relief provided at law, by equity or by statute in the Superior Court for the Third Judicial District of the State of Alaska or similar subsequently created court providing, however, that reversion of the real property to Grantor, its successors or assigns, shall not be a remedy for any breach of this covenant.

DATED this 4th day of December, 1985.

at Anchorage, Alaska.

GRANTOR:

Harvey A. Odeh
 Alaska Pacific University
 Title: President
 Date: December 4, 1985

STATE OF ALASKA)
) ss:
 THIRD JUDICIAL DISTRICT)

85082918
 32 CC
 RECORDED-FREE
 ANCHORAGE REC
 DISTRICT

Dec 5 3 35 PM '85

REQUESTED BY ATG
 ADDRESS _____

The foregoing instrument was acknowledged before me this 4th day of December, 1985, by Harvey A. Odeh of Alaska Pacific University, an Alaskan Corporation, on behalf of the corporation.

David H. Brainerd
 Notary Public in and for Alaska
 My commission expires: November 8, 1987

GRANTEE:

APPROVED AS TO FORM:

Peter Scholes
 Municipality of Anchorage
 Title: Mayor
 Date: 12/4/85

STATE OF ALASKA)
) ss:
 THIRD JUDICIAL DISTRICT)

Ronald L. Baird
 Ronald L. Baird
 Assistant Municipal Attorney
 Date: 12/4/85

The foregoing instrument was acknowledged before me this 4th day of December, 1985, by Peter Scholes of Municipality of Anchorage, an Alaskan Corporation, on behalf of the corporation.

Bill Mauthe
 Notary Public in and for Alaska
 My commission expires: 5/24/86

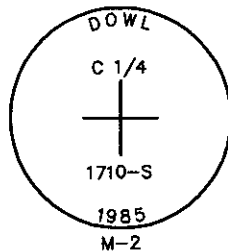
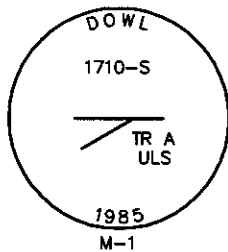
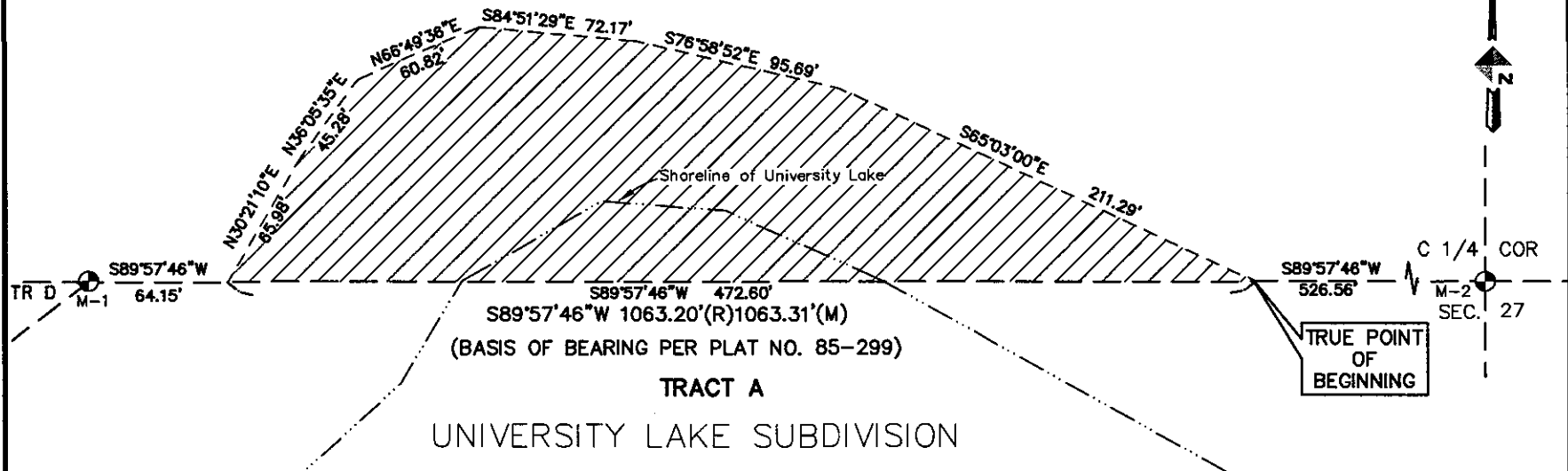
Return to
 Municipality of Anchorage
 P O Box 199650
 Anch. Ak. 99519-1650

STATUTORY WARRANTY DEED


Page 2

[illegible]

SE1/4, NW1/4, SECTION 27
TOWNSHIP 13 NORTH, RANGE 3 WEST, S.M.



EASEMENT AREA = +/- 34,930 SQ. FT.

 **DOWL HKM**

DOWL PROJ. No. 59900.01 PH6	SCALE: 1"=60'
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UNIVERSITY LAKE PARK AND TRAIL EASEMENT

LYING WITHIN A PORTION OF THE
SE1/4, NW1/4, OF SECTION 27
TOWNSHIP 13 NORTH, RANGE 3 WEST, S.M.,
ANCHORAGE REC. DIST. STATE OF ALASKA.

EXHIBIT 'B'

DATE: 11-02-10

PARCEL 1

Content ID: 009784**Type:** Ordinance - AO

AN ORDINANCE AUTHORIZING THE RELINQUISHMENT OF A PUBLIC USE AND ACCESS EASEMENT TO ALASKA PACIFIC UNIVERSITY (APU) IN

Title: EXCHANGE FOR, AND CONTINGENT UPON, APU GRANTING A REPLACEMENT PARK & TRAIL EASEMENT, BOTH EASEMENTS LOCATED WITHIN THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 27, T13N, R3W, S.M., ALASKA.**Author:** maglaquijp**Initiating Dept:** PME**Review Depts:** ParksRec, Legal**Keywords:** APU, Dog, Park**Date Prepared:** 1/7/11 3:13 PM**Assembly Meeting** 2/1/11**Date:****Public Hearing** 2/15/11**Date:**

Workflow Name	Action Date	Action	User	Security Group	Content ID
Clerk_Admin_SubWorkflow	1/21/11 1:55 PM	Exit	Joy Maglaqui	Public	009784
MuniManager_SubWorkflow	1/21/11 1:55 PM	Approve	Joy Maglaqui	Public	009784
MuniManager_SubWorkflow	1/21/11 1:54 PM	Checkin	Joy Maglaqui	Public	009784
Legal_SubWorkflow	1/20/11 5:09 PM	Approve	Rhonda Westover	Public	009784
Finance_SubWorkflow	1/20/11 3:59 PM	Approve	Lucinda Mahoney	Public	009784
OMB_SubWorkflow	1/19/11 3:05 PM	Approve	Cheryl Frasca	Public	009784
ParksRec_SubWorkflow	1/15/11 12:49 PM	Approve	Elizabeth Stanley	Public	009784
Public_Works_SubWorkflow	1/10/11 9:23 AM	Approve	Ron Thompson	Public	009784
PME_SubWorkflow	1/10/11 8:32 AM	Approve	Jerry Hansen	Public	009784
AllOrdinanceWorkflow	1/7/11 3:26 PM	Checkin	Sharilyn Mumaw	Public	009784