



**City of Gustavus**  
P.O. Box 1  
Gustavus, AK 99826  
Phone: (907) 697-2451

December 12, 2023

Jeffrey "JD" Hoyle  
Officer of the General Counsel  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Dear Mr. Hoyle,

RE: Public Access to Falls Creek Hydroelectric Project Lands, Gustavus, AK

Thank you for including the City of Gustavus in facilitated negotiations with the Olneys (Bear Track Inn).

Enclosed is a Memorandum with a detailed history of the FERC licensing of the Falls Creek Hydro Project and the public access requirement. We welcome the opportunity to participate in a dispute resolution process regarding the public's right of access along the Hydro Road.

1. Since 2009, when the Project was completed, the public has exercised unfettered access on the Hydro Road, including vehicular access to the parking lot at the top, which was designed for recreational users.
2. When the Bear Track Inn property management changed, the new managers posted signs prohibiting access, blocking access with their vehicle, and instigating verbal confrontations with recreational hikers. The posted signs were in the public easement.
3. For 13 years the community has openly and continuously accessed the Falls Creek Hydro area in all seasons with the knowledge, consent, and encouragement of the prior manager.
4. The community of Gustavus has supported public funding for the Project, incurring expenses for construction of the Hydro Project, improvements to Rink Creek Road to allow development of the Hydro Road, and maintenance of the Hydro Road through their electrical bills.
5. Consideration to changing the scope of public access will require consultation with the stakeholders, including the National Park Service and the City of Gustavus

Sincerely,

Shelley K. Owens  
Mayor, City of Gustavus, Alaska

Cc: Jason Custer  
Vice-President, Regulatory & Government Affairs, AP&T



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## MEMORANDUM

TO: Jeffrey "JD" Hoyle  
FROM: Shelley K. Owens, Mayor, City of Gustavus  
RE: Public Access to Falls Creek Hydroelectric Project Lands, Gustavus, AK.  
Reference: Project 11659  
DATE: December 12, 2023

We, the undersigned current mayor and three former mayors of the City of Gustavus, ask the Federal Energy Regulatory Commission (FERC) to support, confirm, and defend the public interest in continued, unfettered recreational access to the Falls Creek Hydroelectric Project via the project access or "spur" road (locally known as the "Hydro Road") from its intersection with Rink Creek Road to the project entry gate, in Gustavus, Alaska.

Public access via this route is a condition of the FERC License Order Project No. 11659-002 of October 29, 2004. It has been assured by the Project's original owner, the Gustavus Electric Company and by its successor, the Alaska Power and Telephone Company (AP&T) through purchase in 2009 of access and utility easements for the project as required by the Public Access and Recreation Plan.

For thirteen years, while the Bear Track Inn was managed by Janie Olney, the public enjoyed uncontested use of the Hydro Road. However, since September 2022, the subsequent managers, David and Michelle Olney, have attempted to restrict or block public access along the road, which was constructed partially within an easement the Olney family sold to the Project in 2009. The Olneys have contacted hikers on the road, demanding they sign a permission form, and at times they have physically blocked the road. While many hikers ignore the Olneys' harassment, others have been discouraged from recreational use.

AP&T, as operator and maintainer of the road, has sought a resolution with the Olneys without success. The issue has now festered for over one year and needs to be resolved. The City of Gustavus defends the public interest and requests a clear statement from FERC that unfettered public access to the project via the purchased access easements in accordance with the Public Access and Recreation Plan must be continued.

### **Background:**

Public interest in access to the Falls Creek Hydroelectric Project area is strong in Gustavus. In addition to hydroelectric power, the public has an interest in these lands

for recreation, health, and economic (tourism) benefits. Many hike to the intake, the waterfalls, the powerhouse, and the viewpoint at the Y crossroads. Others enjoy berry picking along the road on State of Alaska lands or climb further up into Glacier Bay National Park to hike, ski, and camp. Soundscape recorders capture the May-June dawn chorus. Photographers hike up late on a summer evening to catch the sunset at the Y. Public access values have been acknowledged since the earliest days of the project, when a land exchange with the National Park enabled Project development.

The FERC License Order states: “The project access road would begin at the terminus of Rink Creek Road” (P 33, Item 85). Since the access road opened some fourteen years ago, Gustavus residents and visitors have freely enjoyed year-around motorized and pedestrian access to the Project boundary gate and, beyond the gate, non-motorized access on Project roads and public lands. The intent to include motorized access along the Hydro Road is evidenced by the FERC requirement of a parking area for recreational users at the top of the Hydro Road.

The legal basis for public access to and recreation in the Falls Creek Hydroelectric Project area is found in the Federal Power Act (FPA), Section 4e, requiring FERC to give **equal consideration to other beneficial public uses**, including environmental and recreational concerns. This stipulation is reflected in the Final Environmental Impact Statement (FEIS) of June 17, 2004, and in the FERC License Order, Project No. 11659-002, of October 29, 2004. It is a requirement of the FERC license that the Project have an approved road management plan (Article 417) and a public access and recreation plan (Article 418). The Project bought easements for the road to meet **all** the requirements of the project.

**The easements were intended and assumed to serve the Project as a whole, not just pieces of it.** Therefore, the power company has both the right and the duty to grant motorized public access along the Hydro Road and to defend unfettered public access against infringement by the Olney family—owners of the Bear Track Inn. The power company paid for and is granted access by the property owners (20090912 Easement for Access & Utilities) and the company in turn grants access to the public, as required by the FERC License Order of 2004. *It is the project owner, not the private landowner, that controls access to the project facilities* (FEIS Section 4, p 197).

During the Project development and licensing process, the Olney family (The Bear Track Inn) joined the Sierra Club and other groups in filing a Motion to Intervene in opposition to the issuance of a license for the Falls Creek Hydroelectric Project. Their objections were addressed and refuted in the FEIS and FERC License Order.

Their opposition to the Project did not prevail. In expressing opposition to the terms of the FEIS and FERC License, the Olney family was no doubt aware of the legal requirements for public access to the project recreation area. *When they sold and signed an easement to Gustavus Electric Company in 2009, they were aware of these conditions.* They do not now have the legal right to deny or limit requirements stipulated by FPA section 4e as expressed in the FERC License Order and developed by the power company. FERC requires that the Project owner have control over access (FEIS Section 4, p 197). The FEIS states that the City of Gustavus, the National Park Service (NPS), and other entities have a role in collaborating with the electric company in developing a management plan for access and recreation (for example, FEIS Section 4, pp 164,200; Section 6, pp 14-15).

In 2015, after AP&T bought the utility from the Gustavus Electric Company, AP&T reviewed the compliance status of the Falls Creek Hydro Project with the FERC-license-required Public Access and Recreation Plan. The company involved stakeholders, the National Park Service (NPS), Alaska Department of Fish and Game, Alaska Department of Natural Resources, and the City of Gustavus.

Its June 15, 2015, report identified a few compliance shortcomings. The report recommended corrective actions and some adjustments to the Plan requirements, based on experience to that date. One change was to eliminate reference to a second gate and lower parking area at the start of the spur access road that was originally intended to control traffic during construction. That gate and parking had not been constructed and was deemed no longer necessary.

Clearly, public access in accordance with the Plan was intended to be continued. Since acquiring the utility, AP&T has worked diligently to meet that expectation. Over the past year, the City of Gustavus has encouraged AP&T to assure unfettered public access via the Hydro Road.

If the terms of public access are to be changed, the City of Gustavus and the NPS must be consulted. The City has a long and continuing interest in the Project. The Gustavus Strategic Plan (2005) and Resolutions 2005-14 and 2008-12 supported public use and public funding for the project. The multiple interests of the City in the project lands and the need for City government in the area are documented in the 2010 "Petition for Annexation to the City of Gustavus by Legislative Review" and were acknowledged by the State of Alaska Local Boundary Commission in permitting the City to annex lands incorporating the Falls Creek Hydro Project. The recently completed Backcountry and Wilderness Management Plan for Glacier Bay National Park and Preserve acknowledges visitor interest in Park lands adjoining the project area and conceptualizes a trail from there up Excursion Ridge.

**The present conflict:**

David and Michelle Olney in summer 2022 succeeded David's mother, Janie Olney, as managers of the Bear Track Inn. In September 2022, they posted a sign (photo attached) at the Hydro Road entrance claiming it as their private road and insisting that public users request and sign a permission form (photo attached) from the Olney family prior to use.

They apparently assumed the road was substantially constructed within the easement on their property, but an as-built survey (copy attached) commissioned in summer 2023 by AP&T shows that remarkably little of the road is on Olney property. Indeed, the first section where they posted their restricting signs and attempted to block vehicular access is entirely within the platted public access easement of the adjacent Bear Track Ridge Subdivision. It is not on Olney property.

For over a decade before 2022, the public enjoyed uncontested access and, to our observation, without any abuse that would invite contest. The Olneys have alleged vandalism and disturbance of their property, which they attribute to users of the Hydro Road. They have produced no evidence regarding the alleged vandalism, the culprits, or their motives. We are unaware of any material harm caused to neighboring

properties or the Project area by recreational hikers. Occasional vandalism or disruptive behavior unfortunately occurs to both public and private property across Gustavus, as in other municipalities. All property owners have a right to file complaints with the Alaska State Troopers about illegal activity affecting their properties. If Olney properties have experienced vandalism, we doubt it is related to public recreational use of the Hydro Road and there is no reasonable pretext for restricting public use.

While access and recreation are an integral part of the Project with its multiple beneficial public uses, it appears that the Olneys are now trying to severely limit public visitation and corner the project area exclusively for their lodge guests. Ironically, the Bear Track Inn website has for years featured the Falls Creek hike as one of the “top hiking trails in Gustavus,” acknowledging that “Falls Creek is part of a hydroelectric project created for the City of Gustavus.” <https://beartrackinn.com/blog/top-hiking-trails-in-gustavus/> (accessed 20231208) And yet, the Olneys this year asked the Gustavus Visitors Association (GVA) to not list the hydro hike on the GVA visitor map. (The GVA map nevertheless continues to indicate the hiking opportunity there.)

Since last fall, Hydro Road hikers have reported numerous occasions of harassment by the Olneys on the Hydro Road including beyond the entrance gate on project lands. Yet on July 26, 2023, a hiking group witnessed Michelle Olney in the Bear Track Inn van driving two Inn guests past the Project gate up the hill despite the posted “No motorized vehicles” sign.

The Olney family does not own property beyond the gate, and they are granted no special motorized access in the Road Management Plan or Public Access and Recreation Plan. For years, Bear Track Inn visitors have enjoyed walking the road as members of the public. The Inn’s website information on hiking trails has a photo of Bandit, Janie Olney’s dog, at the Upper Falls. Many of us have hiked the road with Bandit and Inn guests and even Janie during her years as the Inn’s owner/manager. It is unreasonable that 14 years of public access could be eliminated unilaterally by a change in ownership of a portion of the adjoining easement property.

In a meeting at Gustavus City Hall in August 2023 with then-mayor Mike Taylor, David Olney vented concerns that increasing public use of the Hydro Road would detract from his promotion of the Bear Track Inn as a “remote wilderness lodge”—an argument that failed to impress regulatory agencies in 2004. He said he feared that the road would turn into a “freeway.” The Road Management Plan would hardly enable such a traffic upgrade from the single-lane gravel road.

Advertising claims aside, the Bear Track Inn is located in a growing second-class city, in a growing city neighborhood, at the end of a city-maintained road, and less than 10,000 feet from an airport with jet service. The public should not be held hostage to the Inn’s advertising image. The lodge itself is located about 200 yards from the road, and visitors are brought there in a van that travels through the city. The lodge owns approximately 98 acres of undeveloped land (Bear Track Inn website), but the only developed access to upland property is the Project access road, developed in large part with public funding. Ratepayers of Gustavus pay for the maintenance of the Hydro Road through their electric bills. They do not expect to pay for a private access road for the Bear Track Inn. *In addition to the originally stated project development intent,*

over 13 years of uncontested public use qualifies it for a "presumption of permissive public use."


**Summary:**

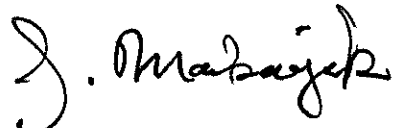
The public has a long-standing legitimate interest in unfettered 24/7 year-round access to the Falls Creek Hydroelectric Project area, and that this access should not be controlled or limited in any way by the Olney family or other landowners along the Hydro Road. AP&T has sought, without success so far, to resolve the issue in accordance with the terms of its FERC Project license. We appreciate AP&T's efforts to assure unfettered public access. Recreational users have a duty to respect private property along the access route and the inholdings within the Project zone. Respect must extend also to State and NPS values on their lands adjacent to the Project.


The City of Gustavus supports the replacement **UTILITY AND PUBLIC ACCESS EASEMENT AGREEMENT** proposed and provided to you by AP&T's attorney Jim Clark in a memorandum dated December 7, 2023. The Agreement would assure the public's interest in continued unfettered public access to the Falls Creek Project lands, but to assure that there is no ambiguity, it should be amended to include that the "pedestrian and vehicular" access provided in paragraph 6 to the Grantee should be added to the provision for Public Access in paragraph 7. If the Olney's refuse, we maintain that the original easement has been, and should continue to be, sufficient to allow the intended pedestrian and vehicular public access. AP&T as the operator and maintainer of the road should declare that public access is granted and remove the conflicting road signage.


The City of Gustavus, on behalf of its residents and visitors from around the world, appreciates FERC's consideration of these public access issues. Please confirm that the shared understanding of the City of Gustavus and AP&T that the FERC license issued to AP&T does not provide authority to the Olneys or other adjacent property owner(s) to control public access on the Hydro Road.

Sincerely,

  
Shelley K. Owens, JD  
Mayor, City of Gustavus

  
Jim Mackovjak  
Former Mayor (2010-2011)  
Current Council Member

  
Mike Taylor, MS  
Former Mayor (2014-2016, & 2021-2023)  
Current Council Member

  
Karen Colligan-Taylor, PhD  
Former Mayor (2011-2012)

Copy: Mr. Jason Custer  
Vice President, AP&T Company

Attachments follow



Sign posted by the Olneys in 2022 at the start of the Hydro Road. The road here is entirely within the public access and utility easement for the Track Ridge Subdivision. It is not on Olney property.

**REVOKABLE EASEMENT AND USE AGREEMENT**

WHEREAS, Bear Track Inn LLC ("Grantor"), An Alaska Limited Liability Company owns certain property located at Gustavus, Alaska, First Judicial District, more particularly described as Beginning a point where the west boundary Lot 1, Section 3, T40S, R59E, CRM intersects with Rink Creek Rd, thence north a strip of Lot 1 fifteen feet wide along the west boundary of Lot 1 to the SW corner of the SE 1/4 of the NE 1/4 of Section 3. Thence a strip of land fifteen feet wide northerly along the West boundary of the SE 1/4 of the NE 1/4 of Section 3, T40S, R59E, CRM to the northwest corner of the SE 1/4 of the NE 1/4 of Section 3. Thence a strip of land fifteen feet wide East along the North boundary of the SE 1/4 of the NE 1/4 of the Northeast corner of the SE 1/4 of the NE 1/4 of Section 3.

WHEREAS, \_\_\_\_\_ ("Guest") is requesting to utilize road access to the Falls Creek Hydro Electric Project road ("ROAD"), and

NOW THEREFORE, for other valuable consideration Grantor hereby, grants temporary ROAD access for a period of \_\_\_\_\_ day(s) (not to exceed 90 days) access to Guest based on the following restrictions:

Whereas, the hours of use of ROAD are restricted to 8 am to 5 pm.

The transport of gravel, rock or other earth material from the State-owned lands across this ROAD easement is forbidden without the express written consent of the Grantor.

Whereas, Guest shall not use, deposit, or permit the use or deposit of any hazardous or toxic waste or material or other harmful substances on Grantor's land or ROAD.

Whereas, Guest shall not leave their vehicle overnight or camp on Grantor's land or ROAD.

Whereas, Guest shall not exceed five (5) miles per hour or drive in a hazardous manner on Grantor's ROAD.

Whereas, Guest shall not drive with ATV's or motorcycles on Grantor's land or ROAD.

Whereas, Guest shall not materially interfere with the normal operation and activities of adjoining lands use of adjoining land.

Whereas, Guest shall not carry, transport or discharge weapons on ROAD or Grantor's land.

Whereas, Guest will act in an honorable and respectful manner with Grantor or any agents of Grantor.

Whereas, Guest ROAD access can be revoked verbally without cause by Grantor at any time.

Olney Permission form given to hikers—front side.

Whereas, this Revocable Grant of Easement does not encompass the grant of easement by other land owner's ROAD rights and may further be restricted by other owner's rights.

This Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property, from whatever cause, arising out of use by Guest of this temporary easement herein granted or of the improvements or personal property thereto or thereon, including any liability for injury or death to the person or property.

Guest shall be responsible for any damage to the adjoining lands of Grantor or third parties resulting from installation, operation, and maintenance of the rights herein granted, including, but not limited to, soil erosion or damage resulting therefrom. Guest shall promptly repair and restore to original condition any of Grantor's property or ROAD, including, but not limited to, roads, utilities, buildings, and fences that may be damaged or destroyed in connection with the exercise of the easement herein granted.

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral presentations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing or orally by Grantor.

Grantee \_\_\_\_\_ Bear Track Inn LLC.  
By \_\_\_\_\_ Signature: Grantor, David or Michelle Olney

Email Address \_\_\_\_\_ Date \_\_\_\_\_

Vehicle Make, Model \_\_\_\_\_

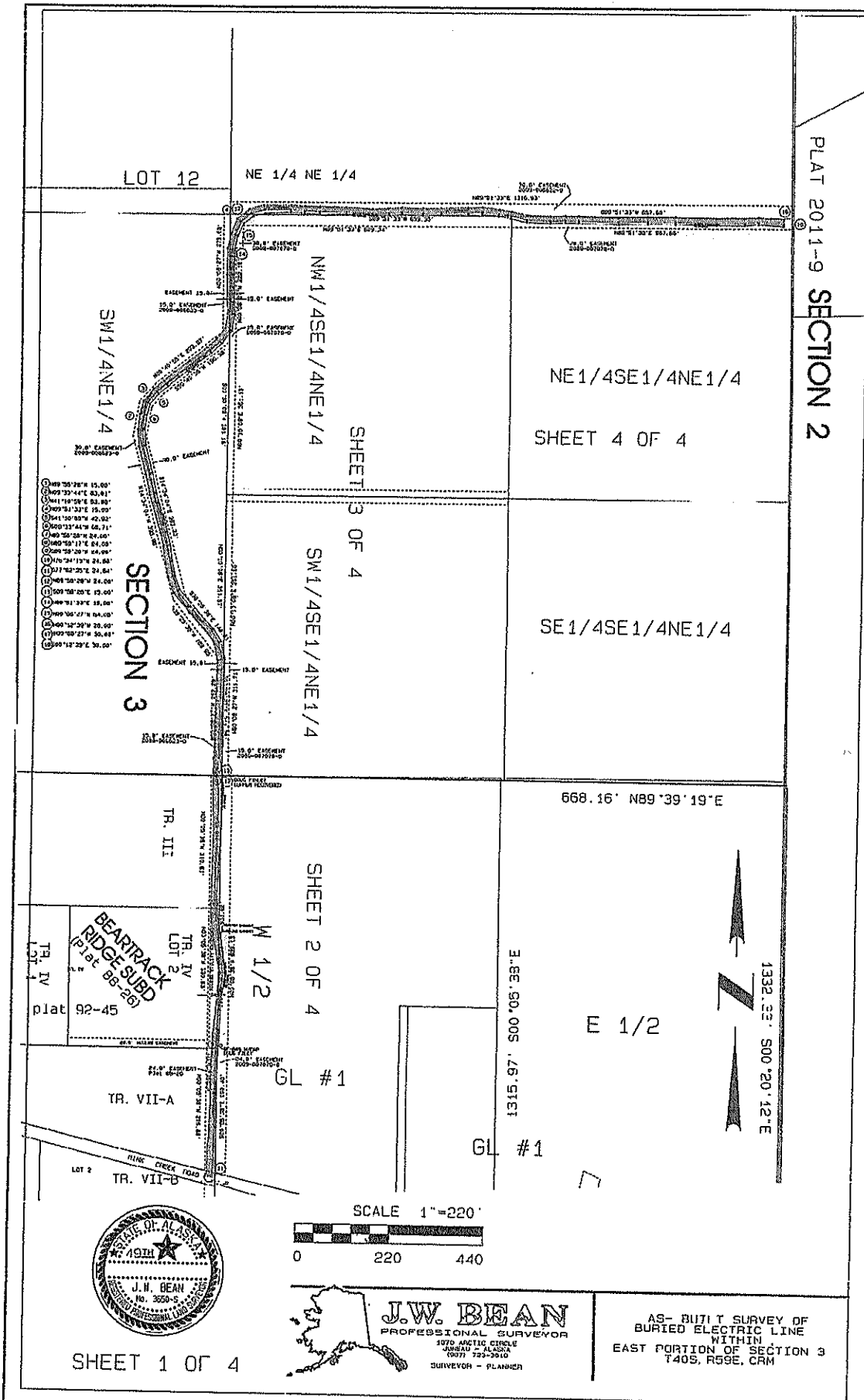
Vehicle Color and License Plate \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Olney Permission Form—back side

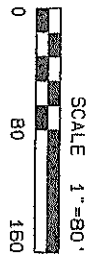




Note: orange highlighting indicates portions of road in Olney easement. SKO

15.0' EASEMENT  
2009-007070-0

12 DOUG FINLEY  
CORNER RECOVERED



SHEET 2 OF 4

- 7 N89°58'28\"W 24.00'
- 8 N89°59'17\"E 24.00'
- 9 S89°59'20\"W 24.00'
- 10 N76°34'13\"W 24.68'
- 11 S77°02'35\"E 24.64'
- 12 N89°58'28\"W 24.00'

TR. III

N00°05'38\"W 310.61'

BEARTRACK  
RIDGE SUBD

TR. IV  
LOT 2

N00°05'38\"W 330.63'

W 1/2

REACTOR CABINET  
POLICE CABINET

51.666 M. BE. 50.00N

20.0' ACCESS EASEMENT

24.0' EASEMENT  
Plat 08-26

RE-BAR W/CAP  
DOUG FILEY  
24.0' EASEMENT  
2009-007070-0

GL # 1

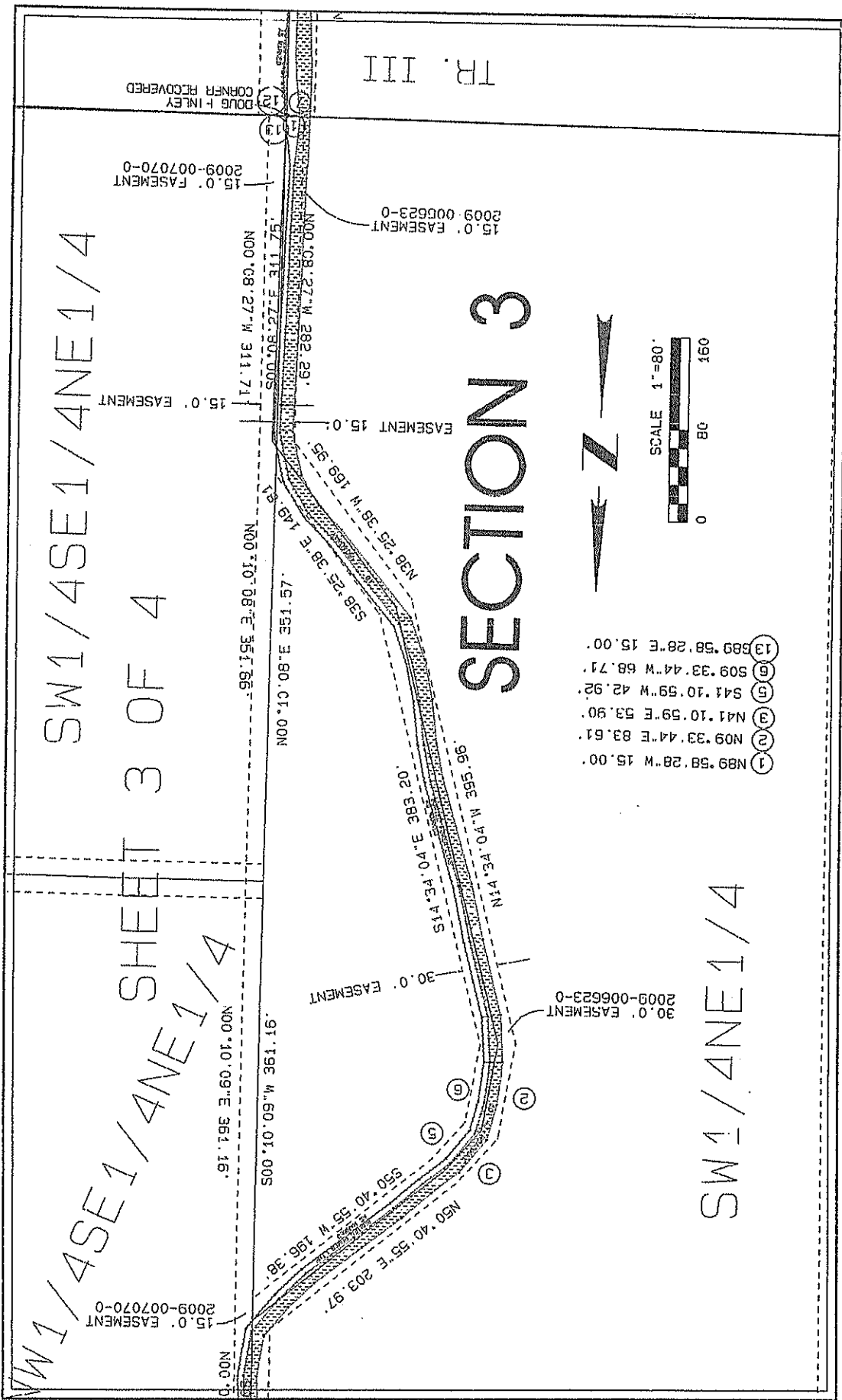
TR. VII-A

N00°05'38\"W 286.66'

S00°00'58\"E 292.40'

LOT 2  
RINK CREEK ROAD  
TR. VII-B

11



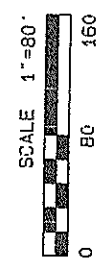
SW1/4SE1/4NE1/4

SHEET 3 OF 4

SW1/4SE1/4NE1/4

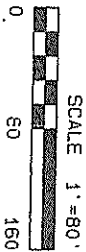
# SECTION 3

SW1/4NE1/4



- ① N89°58'28" W 15.00'
- ② N09°33'44" E 83.61'
- ③ N41°10'59" E 53.90'
- ④ S41°10'59" W 42.92'
- ⑤ S09°33'44" W 68.71'
- ⑥ S09°58'28" E 15.00'

NE 1/4 NE 1/4



30.0' EASEMENT  
2009-006622-0  
N89°51'33\"/>

589°51'33\"/>

26.0' EASEMENT  
2009-007070-0  
N89°51'33\"/>

26.0' EASEMENT  
2009-007070-0

NW 1/4 SE 1/4 NE 1/4

N89°51'33\"/>

589°51'33\"/>

N89°51'33\"/>

30.0' EASEMENT  
2009-007070-0

15.0' EASEMENT  
2009-007070-0

15.0' EASEMENT  
2009-007070-0

- ④ N89°51'33\"/>
- ⑭ N89°51'33\"/>
- ⑮ N00°08'27\"/>
- ⑯ N00°12'39\"/>
- ⑰ N00°08'27\"/>
- ⑱ S00°12'39\"/>

SHEET 4 OF 4

NE 1/4 SE 1/4 NE 1/4

PLAT

SECTION 2

19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1

LOT 12

15.0' EASEMENT  
2009-006623-0

15.0' EASEMENT  
2009-006623-0

222.16

15.0' EASEMENT  
2009-007070-0