

Introduced by:	Mayor
Date:	08/23/22
Hearing:	09/06/22
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-38**

**AN ORDINANCE AUTHORIZING THE RELEASE OF A PORTION OF A
CONSERVATION EASEMENT DEED RESTRICTION ON A PARCEL OF
LAND LOCATED IN COOPER LANDING AND TO ACQUIRE AND CLASSIFY
A 30-FOOT-WIDE TRACT OF LAND**

- WHEREAS,** Tract B Quartz Creek Subdivision, according to Plat No. 94-1, Seward Recording District, was purchased by Three Bears Alaska, Inc. (“Three Bears”), who is planning development of the parcel; and
- WHEREAS,** the State of Alaska, Department of Transportation & Public Facilities (DOT&PF) is working to develop and implement plans for the Sterling Highway MP 45-60 Project, which includes reconfiguring the Quartz Creek Road intersection and rearranging direct access from the new highway and its transitions; and
- WHEREAS,** the Kenai Peninsula Borough (KPB) owns Tracts A & C of Quartz Creek Subdivision and is working with DOT&PF and Three Bears to plan a frontage road serving Quartz Creek Subdivision; and
- WHEREAS,** Tract B Quartz Creek Subdivision, owned by Three Bears, was originally deeded from KPB in accordance with Ordinance 1991-20; and
- WHEREAS,** at the time of the original conveyance, the deed was subject to the following Conservation Easement Deed Restriction: “... pursuant to Ordinance 1991-20, a 50-foot conservation easement around the perimeter of the parcel wherein no live, naturally existing vegetation over 3” in diameter shall be removed except for a 50-foot wide entry and a 50-foot wide exit”; and
- WHEREAS,** the conservation easement was an element of the original plat, which has been approved to be vacated in part, subject to actions contained in this ordinance; and
- WHEREAS,** the proposed plat, Quartz Creek Subdivision Outfitters Way Replat, would dedicate a frontage road with a 30-foot setback from the DOT right-of-way with said features occupying the same space as the conservation easement on the northern perimeter of Tract B, and into Three Bears unencumbered property; and

WHEREAS, the frontage road setback creates a 30-foot tract of land designed as a greenspace to maintain vegetation and community gateway aesthetics, which is consistent with the purpose of the conservation easements; and

WHEREAS, the approved plat would vacate the conservation easements on Tract B along the west and south perimeter, but maintain the conservation easement along the east perimeter which runs along Dena'ina Creek, an anadromous stream; and

WHEREAS, the 30-foot tract of land created out of Tract B is proposed to be conveyed from Three Bears back to KPB which, along with the benefits of the frontage road design, accounts for the value of the conservation easements being released; and

WHEREAS, classifying the 30-foot tracts of land created by the Quartz Creek Subdivision Outfitters Way Replat as "government" would hold the land for community gateway greenspace uses that are beneficial to the public, providing for consistent management decisions under public processes; and

WHEREAS, public notice has been published as to the modification of a deed restriction per KPB 17.10.130(F)(2), and as to classification pursuant to KPB 17.10.080; and

WHEREAS, the Cooper Landing Advisory Planning Commission at its regularly scheduled meeting of August 3, 2022, recommended approval by unanimous consent; and

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of August 22, 2022, recommended approval by unanimous consent;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That pursuant to KPB 17.10.130(F)(4), the mayor is hereby authorized to release the conservation easement deed restriction on the north, west and south perimeter sides of Tract B Quartz Creek Subdivision, according to the official plat thereof, filed under Plat Number 94-1, Records of the Seward Recording District, Third Judicial District, State of Alaska, as created in that Quitclaim Deed recorded May 13, 1998, as Book 90, Page 831, Seward Recording District, with such release of interests conforming to Quartz Creek Subdivision Outfitters Way Replat, based on the following Findings of Fact:

- a. The purpose of the conservation easement deed restriction on the north, west and south perimeter sides is replaced by the 30-foot-wide tract of land being conveyed back to KPB.

- b. The frontage road proposed by DOT&PF competes for space with the conservation easement, and setting the frontage back 30', with KPB holding the land interests of that tract, preserves the aesthetic intent of the easement and provides for the continuation of planning and management of that corridor under public processes.
- c. The frontage road proposed by DOT&PF addresses traffic safety concerns and provides for public traffic to efficiently navigate on and off the local roads and to serve the property, residential, and business interests in the area.
- d. The value of the 30-foot-wide tract of land and the benefits of the cooperative frontage road design accounts for the value of the conservation easement being released, going back to the terms of the original conveyance of Tract B.
- e. Public notice of the proposed actions was delivered and published in accordance with KPB 17.10.130(F)(2).

SECTION 2. That pursuant to KPB 17.10.040, the mayor is hereby authorized to acquire from Three Bears a 30-foot-wide tract along the north boundary of Tract B, Quartz Creek Subdivision, also known as Tract B2 Quartz Creek Subdivision Outfitters Way Replat.

SECTION 3. That the terms of the acquisition shall be an equal exchange for the conservation easement deed restriction release as described in Section 1 and that Three Bears shall convey the Tract to KPB.

SECTION 4. That the purpose of the acquisition is for community gateway greenspace, to facilitate implementation of a frontage road serving KPB-owned tracts of land, and to cooperate with the DOT&PF in making traffic improvement and safety upgrades along the Sterling Highway corridor.

SECTION 5. That the 30-foot-wide tracts of land located between the Outfitters Way frontage road and the Sterling Highway right-of-way described as Tracts A2, B2, and C2 Quartz Creek Subdivision Outfitters Way Replat are hereby classified as "government".

SECTION 6. The mayor is authorized to sign a release of deed restriction, respective to Tract B Quartz Creek Subdivision, and any other documents necessary to effectuate the intents and purposes of this ordinance.

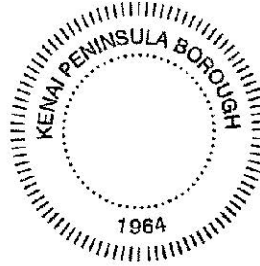
SECTION 7. That this ordinance shall become effective upon recordation of the Quartz Creek Subdivision Outfitters Way Replat in the Seward Recording District.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF SEPTEMBER, 2022.

Brent Johnson
Brent Johnson, Assembly President

ATTEST:

John Blankenship
John Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
No: None
Absent: None