

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

December 13, 2021
7:30 P.M.
UNAPPROVED MINUTES

CALL TO ORDER

Chair Ruffner called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Jeremy Brantley, Sterling
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 5 members of an 14-member commission (eight seats currently filled) in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Sean Kelley, Borough Attorney
Scott Huff, Platting Manager
Julie Hindman, Platting Specialist
Samantha Lopez, KRC Manager
Eric Ogren, Code Compliance
Avery Harrison, LMD Administrative Assistant
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. AK State Land Survey No. 2020-10 Captain Cook North Subdivision.; KPB File 2021-052
- b. Baleen Cove Subdivision; KPB File 2021-045
- c. Bodnar Subdivision 2021 Replat; KPB File 2021-114
- d. Cliff House Acres Subdivision; KPB File 2021-041
- e. Emery Subdivision; KPB File 2021-100
- f. Kings Creek 2021 Replat; KPB File 2021-081
- g. McReed Subdivision 2021 Replat; KPB File 2021-093
- h. Moose Range Ridge Estates Oehler Replat; KPB File 2020-155
- i. Poage Subdivision Chaloux Replat; KPB File 2021-059
- j. Self Subdivision Bilben Replat; KPB File 2021-092

***4. Plats Granted Final Approval (20.10.040)**

- a. Jeffery Park Subdivision No. 4; KPB File 2021-139

***6. Commissioner Excused Absences**

- a. Diane Fikes, City of Kenai
- b. Pamela Gillham, Ridgeway
- c. Blair Martin, Kalifornsky
- d. City of Soldotna, Vacant
- e. City of Seward, Vacant
- f. Northwest Borough, Vacant

***7. Minutes**

- a. November 29, 2021 Plat Committee Meeting Minutes
- b. November 29, 2021 Planning Commission Meeting Minutes

Vice Chair Ruffner asked Ms. Shirnberg to read the consent agenda items into the record. He then asked if anyone wished to speak to any of the items on the consent agenda.

MOTION: Commissioner Brantley moved, seconded by Commissioner Bentz to approve the consent agenda and move agenda item D1 to the end of new business and approving the regular agenda as amended.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

Chair Ruffner asked Ms. Shirnberg to read the procedures for public testimony.

AGENDA ITEM E. NEW BUSINESS**ITEM E1 - PORCUPINE LAKE SUBD NO 6**

KPB File No.	2021-152
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	Gerald Johnson Brent Johnson Judith Johnson, all of Clam Gulch, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Cohoe Loop Road, Cohoe area

Parent Parcel No.:	137-010-66
Legal Description:	Government Lot 2 lying southwesterly of Cohoe Loop Road and Government Lot 5 in Section 9, Township 2 North, Range 12 West, excluding therefrom Porcupine Lake Subdivision No. 4, Plat KN 2005-1 and Porcupine Lane, Plat KN 79-116
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 40-acre parcel into three tracts that will be 5.1, 9.2, and 23.7 acres.

Location and Legal Access (existing and proposed): The subdivision is located near mile 2 of Cohoe Loop Road.

This plat will dedicate a 60 foot wide right of way between Tract H and Tract I to provide legal and physical access to Tract J. The right of way dedication appears to encompass an existing travel way.

This plat will dedicate a portion of Swan Lake Drive in the southeast corner of the subdivision. Swan Lake Drive is a road located off Cohoe Loop Road. Although not is a fully dedicated right of way, a travel way does exist from Cohoe Loop Road to Tract E located south of this subdivision. Porcupine Lake Subdivision #3, KN 2000-66, dedicated a 30 foot wide and 100 foot long portion of Swan Lake Drive. This plat is proposing to dedicate the matching 30 foot width and an angle to allow the existing road to be within the dedication. ***Staff recommends that a detail sketch may be necessary to clearly depict the dimensions of the Swan Lake Road right of way dedication.***

An exception has been requested to not dedicate additional right of way for Swan Lake Drive or along the

eastern boundary.

The block is defined by section line easements and partial dedications. Cohoe Loop Road, McReed Avenue, Henning Street, and section line easement define the block. An additional dedication is located to the north, Porcupine Lane, which is currently not a through dedication and does not improve the block. The block exceeds allowable lengths and is not closed due to lacking dedications. Multiple lakes are within the block. The future continuation of proposed Bottleneck Lake Road, in addition to future dedications of Swan Lake Drive will improve the block configuration.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Cohoe Loop Road is as shown on State of Alaska Department of Highways Right of Way Map Alaska Project S-0461(1) sheet 4 of 11, and appears to be shown correctly based on recovered concrete ROW monuments from adjacent plat 2005-1. Staff recommends that a reference be added to the plat for the Right of Way Map.

Site Investigation: Steep terrain, lakes, and areas with low wet lands affect this subdivision. The plat depicts the contour information and provides shading for slopes greater than 25 percent. Except near the intersection with Cohoe Loop Road, steep slopes do not affect the location of proposed Bottleneck Road. An existing travel way has been constructed within the proposed Bottleneck Lake Road. Per KPB Code, grades shall not exceed 10 percent or 4 percent within 130 feet of any centerline intersection. **Staff recommends** that the committee concur that cross-sections and centerline profiles are not required for Bottleneck Road as there is already a constructed travel way within this proposed right of way.

Bottleneck Lake forms the northeast boundary of this subdivision. The plat is providing the 2002 Ordinary High Water Line as the boundary. **Staff recommends** the source of the OHW line be stated on the face of the plat or within a plat note and the following plat note be added "The natural meanders of ordinary high water is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders."

Additional wetlands are depicted within Tract H. Per KPB GIS data, there are additional drainage ways within proposed Tract J. **Staff recommends** all low wet areas be depicted and labeled with the following plat note added, "Any person developing the property is responsible for obtaining all required local, state, and federal permits, including a U.S. Army Corps of Engineers wetland determination if applicable."

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The proposed subdivision will subdivide a remainder portion of Government Lots. The surrounding lots are large acreage tracts and this plat will create similar sized parcels.

The three tracts will all be greater than 200,000 square feet. A soils analysis report will not be required and an engineer will not need to sign the plat.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

Utility Easements The plat is proposing to grant easements adjoining all dedicated right of ways as outlined in KPB Code. Overhead power lines are depicted on the plat. Plats for surrounding areas showed power lines and granted 20 foot utility easements centered on the lines. As the lot within this subdivision has not been previously surveyed, utility easements have not been granted at this time. If existing easements are in place they will need to be depicted and noted on the plat. Any easements granted by this plat will need to be depicted and labeled. **Staff recommends** the surveyor/owners work with the utility companies to determine if easements exist or grant easements over the existing lines.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or objections
ACS	
GCI	Approved as shown.

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: COHO LOOP RD Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: BOTTLENECK LAKE RD Comments: BOTTLENECK LAKE RD exceeds maximum street name length of 17 characters including spaces. Staff recommends using the name BOTTLENECK RD for the newly dedicated ROW.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>
Advisory Planning Commission	

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation:

- The subdivision description should be updated. "Portion of Government Lot 2 lying southwesterly of Cohoe Loop Road and Government Lot 5 excluding therefrom Porcupine Lake Subdivision #4, Plat KN 2005-1 and Porcupine Lane, Plat KN 79-116, within NE ¼ Section 9, Township 2 North, Range 12 West, S.M., State of Alaska, Kenai Recording District."
- KPB Assessing records show a different mailing address for Brent and Judith Johnson. Please update.
- The scale appears to be slightly off.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Scale appears to be off. Adjust character spacing in Sterling Hwy as the "I" and "N" appear to overlap.

- G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation:

- Add "Portion" or "PTN" to the Government Lot located north of Cohoe Loop Road.
- Add "Unsubdivided" to the lot located to the southeast of the subdivision.
- Correct the suffix for Swan Lake Drive.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: All lots larger than 200,000 square feet. Soils analysis not required. Provide correct wastewater disposal note. "WASTEWATER DISPOSAL: Lots which are at least 200,000 square feet in size may not be suitable for onsite wastewater treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

Staff recommendation: final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

- 20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

Staff recommendation: Provide a certificate of acceptance for right of ways being dedicated.

20.60.180. Plat notes.

- A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

Staff recommendation: *Place the following notes on the plat.*

- *"No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation."*
- *Roads must meet the design and construction standards established by the borough in order to be considered for certification and inclusion in the road maintenance program (KPB 14.06).*
- *Add a plat note for any exceptions granted.*

Update plat note 3, "...No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; and Department of the Interior..."

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *comply with 20.60.190.*

EXCEPTIONS REQUESTED:

KPB 20.30.030 – proposed street layout-requirements & KPB 20.30.170 – blocks-length requirements

Surveyor's Discussion: Exceptions requested for ROW dedication matching Swan Lake Road or along east boundary due to steep grades and lack of need for providing access to other properties. ROW dedication to provide access from Bottleneck Lake Road to Tract D, would require additional subdivision and both lots J & D will have the same owner.

Staff Discussion: The subdivision is within a non-compliant block as it currently is not closed and the distances are all larger than the allowable limits. Dedications could help improve the block length as well as provide additional access to large acreage lots. Swan Lake Drive is a small portion of a right of way. The proposed right of way dedication will atop existing travelways. Large acreage tracts are being created that can be further subdivided in the future where they can provide access that complies with subdivision standards and fits with the terrain and site features.

Denial of the exception will require dedications along the south and eastern boundary of the subdivision as well as a continuation of Bottleneck Lake Road so that a connection with Sean Lake Drive would be possible in the future.

Findings:

1. The tracts are large enough to be further subdivided in the future.
2. Lakes are found along the east border of the subdivision and within a portion of the western area of Tract J.
3. The lakes make it difficult to acquire closed blocks.
4. The subdivision contains areas with steep slopes.
5. The subdivision contains areas with low wet areas.
6. The proposed dedications are within areas that provide feasible construction.
7. Proposed Bottleneck Lake Road appears to be over an existing travelway.
8. The three tracks will have access via the proposed right of way.
9. The right of way proposed has a turnaround area but can be extended in the future if Tract J is further subdivided.
10. The design, length, and suffix proposed indicate future extension of the right of way is possible.
11. One of the owners of this subdivision owns the 50 acre lot located south of the subdivision.
12. The eastern portion of Swan Lake Drive is dedicated along a constructed travelway.
13. The proposed plat will dedicate a portion of Swan Lake Drive to match past dedication.
14. The proposed plat is dedicating a portion of Swan Lake Drive atop the constructed travelway.
15. A continuation of Swan Lake Drive within this subdivision will not match the current travelway.
16. A continuation of Swan Lake Drive along the southern boundary will cross steep areas.
17. A dedication along the eastern boundary will result in crossing steep slopes and will end at Bottleneck Lake.

Staff reviewed the exception request and recommends granting approval.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;
Findings 1-5, 8-11, 15-17 appear to support this standard.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
Findings 1-5, 8-11, 15-17 appear to support this standard.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
Findings 1-5, 8-11, 15-17 appear to support this standard.

Staff recommendation: place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND**
- **COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND**
- **COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.**

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Brantley to grant preliminary approval to Porcupine Lake Subdivision No. 6 based on staff recommendations and compliance with borough code.

AMENDMENT: Commission Venuti moved, seconded by Commissioner Brantley to grant exception request to KPB 20.30.030-Proposed Street Layout Requirements & KPB 20.30.170-Block Length Requirements citing findings 1-5, 8-11 & 15-17 in support of standards one, two & three.

Hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM E2 - TOWLE SUBDIVISION 2021 REPLAT

KPB File No.	2021-153
Plat Committee Meeting:	December 13, 2021
Applicant / Owner:	Robert S. Rima, Jr. of Cooper Landing, AK
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Near mile 48 of the Sterling Highway in the Cooper Landing area

Parent Parcel No.:	119-020-08, 119-020-09, 119-020-10
Legal Description:	Lots 13 thru 17 of Towle Subdivision No. 1 (Unrecorded) within H.E.S. 95
Assessing Use:	Residential / Lodge
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The plat will be reconfiguring five lots into two lots that will be 1.2 acres and 1.5 acres.

Location and Legal Access (existing and proposed): The subdivision is located near mile 48 of the Sterling Highway in Cooper Landing. Both lots will have access from the Sterling Highway. The lots are also located along the Kenai River, providing water access.

Three existing driveways are depicted on the preliminary plat and may be removed for the final plat.

The block does not comply with code. Due to the proximity of the Kenai River, the narrow area between the river and the highway, the ability to acquire a closed block with compliant lengths will not be possible.

Staff recommends the plat committee concur that an exception is not needed, as there are no dedications that can be granted to improve the block.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Sterling Highway is as mentioned on Right of Way Deed Book 9, Page 88 SRD and appears to be shown correctly. (We do not currently have mapping for this section of highway.)

Site Investigation: Contours are shown on the plat. The land is sloping towards the Kenai River with a drainage that crosses through the middle of the subdivision. The new lot boundary will generally follow the existing drainage. Areas with steep slopes exist near the shore of the Kenai River and the slopes greater than 25 percent are depicted with shading. Per KPB GIS data, there are no low wet areas on the plat. Plat

note 5 states that there are no low wet areas except for the depicted creek and the Kenai River.

The plat shows the ordinary high water line from 2019. **Staff recommends** the source information for the ordinary high water line be noted.

A portion of Lot 15 is within a flood plain. The areas should be depicted and labeled with the required plat note to be added. The subdivision also is located along the Kenai River. The Anadromous Waters Habitat note must be added. **Staff recommends** depict any flood hazard areas and provide the correct plat notes regarding flooding and anadromous waters habitat protection districts.

KPB River Center review	<p>A. Floodplain</p> <p>Reviewer: Carver, Nancy Floodplain Status: IS in flood hazard area Comments: Flood Zone: AE,X (shaded),Floodway Map Panel: 02122C-1380E In Floodway: False Floodway Panel:</p> <p>B. Habitat Protection</p> <p>Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: KPB\maldrige</p> <p>C. State Parks</p> <p>Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The parent lots are within Homestead Entry Survey No. 95. The survey for those lands was completed in 1919 and created 108.84 acres along the Kenai River and within the Chugach National Forest. The lots within this subdivision were considered the Towle Subdivision No. 1 and the lots were created by deeds of record. A subdivision plat was never recorded. Another Towle Subdivision No. 1 exists but does not contain the lots within the proposed subdivision. Record of surveys have been completed for Lots 13 through 15. The final acreage will need to be verified and may not match current KPB records due to the lack of surveys and changes with the water boundary of the Kenai River.

In the past, the KPB Assessing department allowed lots to be combined for tax purposes, but they are legally separate lots. Per KPB Assessing and GIS records, the lots are shown as three parcels instead of the five. Lot 13 is shown as a single lot while Lots 14 and 15 are combined as well as Lots 16 and 17 being combined.

The current lot configurations are narrow lots that do not comply with the current 3:1 depth to width ratio standard. Multiple improvements cross the parcel boundaries. Encroachment easements were granted by the land owner for the buildings and improvements that cross the parcel boundaries. The replatting of the lot lines will terminate the easement with merger of title. **Staff recommends** that a plat note be added stating, 'Encroachment easements of record as recorded in Bk. 85 Pg 517 and Serial No. 2011-000496-0 Seward Record District will be terminated with merger of title with the recording of this subdivision plat.'

The lots are increasing in size and a soil analysis report will not be required.

Notice of the proposed plat was mailed to two beneficial interest holders on November 19, 2021. The beneficial interest holder will be given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

Cooper Landing Advisory Planning Commission minutes were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available.

Fixed wing imagery indicates structure(s) are very close to the lot line of proposed Lot 15A and lot 18. It is the duty of a surveyor to report any encroachments found during a survey to his client. **Staff recommends**

*the surveyor confirm whether an encroachment affects the replat. If a permanent structure or structures cross a lot line, **staff recommends** a plat note be placed on the final plat to indicate that acceptance of the plat by the Borough does not indicate acceptance of any encroachments.*

Utility Easements As the parcels involved have not been part of a recorded subdivision plat, the only existing utility easements have been granted by recorded documents. There is currently an easement to Chugach Electric with no definite location. **Staff recommends** a plat note be added with the document information for the easement granted to Chugach Electric Association, Inc.

An easement has been recorded for the benefit of Chugach Electric that is located on the east 10 feet of the south 200 feet of Lot 17. This easement is depicted. **Staff recommends** the label state that the easement was granted by Book 76 Page 273 of the Seward Recording District or refer to a plat note that provides the information for the creation of the easement.

The plat will be granting the required utility easements as set out in KPB Code. They are depicted and labeled within the drawing and identified within plat note 1.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or objections.
ACS	
GCI	Approved as shown
SEWARD ELECTRIC	
CHUGACH ELECTRIC	
TELALASKA	

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 18364 STERLING HWY 18368 STERLING HWY 18374 STERLING HWY 18404 STERLING HWY Existing Street Names are Correct: Yes List of Correct Street Names: STERLING HWY Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: 18364 STERLING HWY will remain with lot 13A 18368 STERLING HWY will remain with lot 13A 18374 STERLING HWY will remain with lot 15A 18404 STERLING HWY will remain with lot 15A</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>
Advisory Planning Commission	Comments not received when staff report was prepared.

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

STAFF RECOMMENDATIONS**CORRECTIONS / EDITS****KPB 20.25.070 – Form and contents required**

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

A. Within the Title Block

1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
2. Legal description, location, date, and total area in acres of the proposed subdivision;
3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.

Staff recommendation:

- The lots being replatted are currently shown as part of the Towle Subdivision No. 1, which was never recorded. Update the description to "Lots 13 – 17 of Towle Subdivision No. 1 (unrecorded) within H.E.S. 95, located in SW1/4 of Section 28, ..."
- The scale appears to be off. Please verify before submitting the final for review.
- The Certificate to Plat states the owner is Robert J. Rima, Jr. The deeds attached do show Robert S. Rima, Jr. Work with the title company to correct the name. On the plat, update "SR" to "JR".
- The name of the business may remain in the title block but for the signature line and the notary, he will be signing, as an individual as that is how title was taken.

D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;

Staff recommendation: Depict and label the boundary for Chugach National Forest.

G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff recommendation: The Sterling Highway is shown as 66 feet wide in this area. Provide status labels and lot line depictions to the parcels south of the Sterling Highway.

N. Apparent encroachments, with a statement indicating how the encroachments will be resolved prior to final plat approval;

Staff recommendation: The existing buildings cross property boundaries and encroachment easement have been recorded to resolve this issue in the past. With all the lands under common ownership the easement has been terminated with merger of title. The bridge depicted on the plat crosses over the lot line. An easement for the bridge is not required at this time as both lots are under common ownership. If the lots are to be sold separately, **Staff encourages** the landowner to consider granting an easement for the bridge.

KPB 20.30 – Subdivision Design Requirements

Staff recommendation: final plat submittals must comply with 20.30. Additional information, revisions, and/or corrections are required as noted below.

20.30.280. Floodplain requirements.

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source.
- B. Any area of the subdivision within the floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.

- C. All subdivisions which are wholly or partially located within flood hazard areas as defined by KPB 21.06.030 must comply with KPB 21.06.050 standards for Floodplain Management.
- D. All subdivisions or replats within the Flood Insurance Rate Map (FIRM) area or SMFDA, as amended, as defined by KPB 21.06.020, shall contain the following note:

FLOOD HAZARD NOTICE:

Some or all of the property shown on this plat has been designated by FEMA or the Kenai Peninsula Borough Seward Mapped Flood Data Area as a flood hazard area district as of the date this plat is recorded with the district recorder's office. Prior to development, the Kenai Peninsula Borough floodplain administrator should be contacted for current information and regulations. Development must comply with Chapter 21.06 of the Kenai Peninsula Borough Code.

- E. All subdivisions or replats that include any portion of the mapped floodway shall contain the following note:

FLOODWAY NOTICE:

Portions of this subdivision are within the floodway. Pursuant to KPB Chapter 21.06, all development (including fill) in the floodway is prohibited unless certification by an engineer or architect is provided demonstrating that encroachments shall not result in any increases in flood levels during the occurrence of the base flood discharge.

- F. Each plat within a city which has met the requirements of this section shall contain the following statement: "The first finished and habitable floor of a building constructed within a floodplain shall be built at or above the 100-year flood level."
- G. This section applies to all cities which adopt a resolution requesting participation in the FEMA floodplain program and which are subsequently recognized by the state as participants.
- H. A city may adopt an ordinance as part of its building code with greater restrictions than those set forth in KPB 20.30.280(A). A note shall be placed on the plat to indicate that the developer is responsible for contacting the city to determine the restrictions prior to any development.

Staff recommendation: *Comply with 20.30.280*

- 20.30.290. Anadromous Waters Habitat Protection District. If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

Platting Staff Comments:

Staff recommendation: *comply with 20.30.290.*

KPB 20.40 – Wastewater Disposal

Staff recommendation: *final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.*

- 20.40.010 Wastewater disposal.

Platting Staff Comments: Per KPB 20.40.020(A)(2), a soils analysis report will not be required as the lots will be increasing and adding more than 1,000 square feet of suitable area. Add plat note "WASTEWATER DISPOSAL: Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

Staff recommendation: *comply with 20.40.*

KPB 20.60 – Final Plat

Staff recommendation: final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

20.60.180. Plat notes.

C. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

D. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required. Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

Staff recommendation: Place the following notes on the plat.

- "No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation."
- The natural meanders of ordinary high water is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.
- Acceptance of this plat by the Kenai Peninsula Borough does not indicate acceptance of any encroachments.
- Subject to a right of way easement granted to Chugach Electric Association, Inc., to construct, operate, and maintain an electric transmission and/or telephone distribution line as found in Seward Recording District Book 33R Page 310. No definite location defined.

Plat note 3 needs the word "Amendment" correct in the second to last line.

RECOMMENDATION:

STAFF RECOMMENDS:

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Brantley to grant preliminary approval to Towle Subdivision 2021 Replat based on staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM E3 - FAUERBACH COURT RIGHT OF WAY VACATION AND ASSOCIATED UTILITY EASEMENTS AND ANCHOR EASEMENT

KPB File No.	2021-150V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James E. Glendening of Kenai, Alaska and Daniel John Sims of Columbia Falls, Montana
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Russell Ave., Keener Dr., and Bartolowitz St. / Clam Gulch
Legal Description:	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: Lots are being combined with an associated replat, eliminating the need for this ROW.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Clam Gulch

Post Office of Clam Gulch

Fourteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Six receipts had been returned when the staff report was prepared.

Seventeen public hearing notices were mailed to agencies and interested parties as shown below:

State of AK Dept. of Fish & Game

Ninilchik Traditional Council

State of AK DNR

Alaska Communication Systems (ACS)

State of AK DOT

ENSTAR Natural Gas

State of AK DNR Forestry

General Communications Inc. (GCI)

Central Emergency Services

Homer Electric Association (HEA)

Legal Access (existing and proposed): Fauerbach Court a 60 foot wide and 350 feet in length right of way that ends in a cul-de-sac. Fauerbach Court is unconstructed and not maintained by KPB Roads Department. It is located off of Bartolowitz Street, a 60 foot wide right of way that is only partially constructed and not maintained by the borough.

A replat has been submitted that will reconfigure four lots into three. Proposed Lot 4A and 27A will have access via Bartolowitz Street. Lots 5 and 6 will be combined into proposed Lot 5A and will have access from Keener Drive. Keener Drive is a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way located

near mile 117 of the Sterling Highway.

No new dedications are proposed.

The block is irregular in design. The block does close but the block length exceeds code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. As the right of way proposed for vacation is a cul-de-sac, it does not improve block lengths or help provide a closed block. The vacation will not affect the block requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: The right of way and lots adjoining this right of way are not affected by low wet areas. The right of way is free of any steep slopes. There are steep slopes that will divide the newly proposed Lot 5A and access to the northern portion may be more difficult without the right of way. Vacating the right of way may reduce the ability or design options for Lot 5A to be further subdivided.

River Center Review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments
River Center Review	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments
	C. State Parks Reviewer: Russell, Pam Comments: No Comments

Staff Analysis: The subdivision is located in the Clam Gulch area and is not within an advisory planning commission boundary. It is located near mile 117 of the Sterling Highway.

The subject parcels and right of way were originally subdivided by Clam Gulch Heights, Plat KN 72-61. That plat created aliquot description lots. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, further subdivided the parcels and dedicated Shady Court. Resolution SN 2005-07 renamed Shady Court to Fauerbach Court.

Fauerbach Court provides the only legal access to Lot 5 and provides a secondary access to Lots 4, 6, and 27. A replat, Clam Gulch Heights 2021 Addition KPB File 2021-150, has been submitted. The proposed plat will combine Lots 5 and 6 into one lot with access from Keener Drive. Lot 4 and Lot 27 will continue to have access via Bartolowitz Street.

A 20 foot building setback was put in place adjoining Fauerbach Court. The parent plat granted the full setback as a utility easement. A 10 foot by 30 foot anchor easement was also granted within Lot 5 along the cul-de-sac, which extends beyond the granted easement by 10 feet. The proposal includes vacating the associated utility easement and the anchor easement. A 20 foot utility easement will be granted along the new lot line boundaries abutting Bartolowitz Street. Review has been sent to the utility companies for comment and staff recommends that requested easements be worked out with the utility companies and be granted.

20.65.050 – Action on vacation application

D. The planning commission shall consider the merits of each vacation request and in all cases the

planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is currently not constructed and does not appear to be used.
2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The road is relatively flat and contains no wet lands. Alternative access is provided by previously dedicated right of ways.
3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: Additional right of ways are in place, as well as utility easements, to provide adequate access and utilities to all surrounding parcels.
4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: This right of way does not provide access to any water body or area with public interest.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed vacation will not limit opportunities for interconnectivity with adjacent parcels and adequate right of ways and utility easements have been dedicated.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other public access does not appear to be needed as the cul-de-sac provides access to private property.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: Utility easements will be provided that exceed requirements but follows the parent plat dedications. Any requested easements from utility providers shall be worked out with the land owners before final plat approval.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: The right of way provided access to four lots. The reconfiguration proposed will allow all lots to have adequate access.

If approved, the plat Clam Gulch Heights 2021 Addition will finalize the proposed right of way vacations. The Planning Commission is scheduled to review the plat on December 13, 2021. If the vacation is approved, the consent by the Kenai Peninsula Borough Assembly is required. The Assembly must hear the vacation within thirty days of the Planning Commission decision. The Assembly should hear the vacation at their January 4, 2022 meeting.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

Utility provider review:

HEA	No comments.
ENSTAR	No comments or objections.
ACS	No objections
GCI	Approved as shown.

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

1. Consent by KPB Assembly.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.**
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.**
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Venuti to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM E4 - CLAM GULCH HEIGHTS 2021 ADDITION

KPB File No.	2021-150
Plat Commission Meeting:	December 13, 2021
Applicant / Owner:	James E. Glendening of Kenai, Alaska Daniel John Sims of Columbia Falls, Montana
Surveyor:	Jerry Johnson / Johnson Surveying
General Location:	Keener Drive, Bartolowitz Street and Fauerbach Court, Clam Gulch

Parent Parcel No.:	137-370-04, 137-370-05, 137-370-06, 137-370-07
Legal Description:	Lots 4, 5, 6 and 27, Clam Gulch Heights Glendening 1979 Subdivision Plat No 81-135
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat creates three lots from four lots and finalizes a right of way vacation of Fauerbach Court including the associated utility easements.

Location and Legal Access (existing and proposed): The subdivision is located in the Clam Gulch area, near mile 117 of the Sterling Highway. The four parent lots have access from Fauerbach Court, a 60 foot wide right of way that ends in a cul-de-sac. Former Lot 6 has secondary access from Keener Drive.

If approved by the KPB Planning Commission and the KPB Assembly, this plat will finalize the vacation of Fauerbach Court.

The new lot configuration will result in Bartolowitz Street providing access to proposed lots 4A and 27A. Bartolowitz Street is a 60 foot wide right of way that is partially constructed and not maintained by the borough. Proposed Lot 5A is the combination of Lots 5 and 6 and will have access off Keener Drive, a 50 foot wide borough maintained right of way. Both Keener Drive and Bartolowitz Street are located off Russell Avenue, a 60 foot wide borough maintained right of way that connects to the Sterling Highway.

The block is irregular in design. The block does close but some of the lengths exceed code requirements. Sterling Highway, Russell Avenue, Bartolowitz Street, Kizer Avenue, Glendening Street, and Sesame Avenue define the block. Fauerbach Court is a cul-de-sac, intended to remain permanently closed, and does not provide any improvement to the block requirements. **Staff recommends the Planning Commission concur that an exception is not required, as any required dedications will not improve the block.**

Keener Drive was dedicated on Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135. It was dedicated as a 50 foot wide right of way without a cul-de-sac at the end. Beary Tracts #2, Plat KN 2008-88, provided the cul-de-sac right of way dedication. The cul-de-sac is in alignment with the 50 foot width of Keener Drive.

Keener Drive will provide access to four lots. Three of the four lots have other access available. Keener Drive is constructed and maintained by the Kenai Peninsula Borough. Per KPB Code, right of ways widths shall be a minimum of 60 feet. Additional dedication of 10 feet is required to create a compliant right of way. If this plat were to dedicate 10 feet, or 5 feet with the expectation to receive 5 feet from the lots on the other side of the right of way, it will not align with the platted cul-de-sac. **Staff recommends that the Planning Commission concur that an exception is not required and additional right of way dedication is not required at this time as KPB already maintains this road, it serves four parcels, and any right of way dedication will not align with the cul-de-sac bulb.**

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	No comments.

Site Investigation: The subdivision does not contain any low wet areas. Contours are present with shading for the areas with steel slopes over 25 percent. The steeper slopes are not located along the right of ways. The steep slopes will be located within proposed Lot 5A and 27A. The access to Lot 5A will be from Keener Drive.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam – No Comment</p>
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Staff Analysis The plat will be finalizing a right of way vacation and associated utility easements. The current lot configuration and right of way dedication were created by Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135.

Lot 5 and 6 will be combined along with a portion of the cul-de-sac to create Lot 5A and will be 4.007 acres. Lot 4 and Lot 27 will both receive half of the right of way being vacated. Lot 4 will be Lot 4A and will increase from 1.85 acres to 2.071 acres. Lot 27 will be Lot 27A and will increase from 1.729 acres to 1.953 acres.

A soils report will not be required. Per KPB 20.40.020(A)(2), lots increasing in size by 1,000 square feet or more of area suitable for conventional development, a wastewater system review is not required.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

The property is not within an advisory planning commission.

Utility Easements Clam Gulch Heights, Plat KN 72-61, did not grant any utility easements within the proposed subdivision. Clam Gulch Heights Glendening 1979 Subdivision, Plat KN 81-135, granted the area affected by the 20 foot building setback as the limits for the utility easements. A 20 by 30 anchor easement was also granted within Lot 5 off the bulb for Fauerbach Court.

The right of way vacation will include the vacation of the utility easements adjoining Fauerbach Court as well as the 10' x 30' anchor easement. A 20 foot wide utility easement will remain in place adjoining Bartolowitz Street within the vacated right of way. Full 20 foot utility easements will be adjoin Bartolowitz Street and Keener Drive rights-of-way.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends** to grant utility easements requested by the utility providers or work with the utility providers to obtain approval.

Utility provider review:

HEA	
ENSTAR	No comments or objections
ACS	No objections.
GCI	Approved as shown.

KPB department / agency review:

Addressing	<p>Affected Addresses: 55450 FAUERBACH CT 17635 BARTOLOWITZ ST 17610 KEENER DR 17615 BARTOLOWITZ ST</p> <p>Existing Street Names are Correct: Yes</p> <p>List of Correct Street Names: FAUERBACH CT BARTOLOWITZ ST KEENER DR KIZER AVE</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 55450 FAUERBACH CT will be deleted. 17635 BARTOLOWITZ ST will remain with lot 4A. 17610 KEENER DR will remain with lot 5A. 17615 BARTOLOWITZ ST will remain with lot 27A.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

The subdivision plat has been reviewed and generally complies with the 2019 Kenai Peninsula Borough Comprehensive plan.

STAFF RECOMMENDATIONS

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required

Staff recommendation: final plat submittals must comply with 20.25.070. Additional information, revisions, and/or corrections are required as noted below.

- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
Staff recommendation: Update the label for C.G. Wayside to Clam Gulch Road. Provide a label for Clam Gulch Recreational Area that is within sections 20, 28, and 29.

KPB 20.40 – Wastewater Disposal

Staff recommendation: final plat submittals must comply with 20.40. Additional information, revisions, and/or corrections are required as noted below.

20.40.010 Wastewater disposal.

Platting Staff Comments: Soils report is not required as all lots are increasing by more than 1,000 square feet. Add the required plat note.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

Staff recommendation: final plat submittals must comply with 20.60. Additional information, revisions, and/or corrections are required as noted below.

20.60.150. Utility easements.

A. The utility easements approved by the planning commission shall be clearly shown on the final plat in dimensioned graphic form or as a note.

B. The following note shall be shown on the final plat:

No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.

Staff recommendation: Provide a plat note for the utility easement of record as recorded in Bk. Misc. 3 Pg. 128a, Kenai Recording District. Comply with 20.60.150.

20.60.180. Plat notes.

E. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

F. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

Staff recommendation: Place the following notes on the plat.

- Subject to covenants, conditions, and restrictions recorded within the Kenai Recording District in Book 513 Page 542 and amended in Book 536 Page 510.
- The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170.
- Easement for electric lines or system and/or telephone lines together with right to enter, maintain, repair and clear shrubbery granted to Homer Electric Association, Inc. in Book Misc. 3 Page 128a within the Kenai Recording District. No definite location given.
- WASTEWATER DISPOSAL: Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

Within plat note 1, correct the recording number to 81-135.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Make sure the former lots are listed with the signature lines. Comply with 20.60.190.

KPB 20.70 – Vacation Requirements

Staff recommendation. Plat must be recorded within one year from Assembly consent or new petition will be required for the right of way vacation.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND
- COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND
- COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Jerry Johnson, Johnson Surveying; P.O. Box 27, Clam Gulch, AK 99568: Mr. Johnson was the surveyor on this project and made himself available for questions.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Venuti to grant preliminary approval to Clam Gulch Heights 2021 Addition based on staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM E5 - ENDICOTT DRIVE CUL-DE-SAC RIGHT OF WAY VACATION

KPB File No.	2021-151V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	James Markley Willingham and Pandora Bane Willingham of Soldotna, AK
Surveyor:	James Hall / McLane Consulting, Inc.
General Location:	Kalifornsky Beach Road, Endicott Drive and Jan Avenue, City of Soldotna
Legal Description:	Lot 1 Block 1 Slikok Creek Alaska Subdivision Plat No K-1361

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition:

Right of way vacation: Endicott Drive as it extends north to the Kenai River has a 75 foot radius cul-de-sac that encumbers Lot 1 Block 1 K1361. KPB Code 20.30.100 requires a minimum 50 foot radius cul-de-sac design.

Current right of way width is 50 feet with additional 10 foot "walkway" per KN 79-21 for a 60 foot wide r/w for access to the Kenai River.

Proposed vacation is approximately 1,940 square feet.

No alternate r/w is being dedicated. The vacated r/w is a sliver edge of an of an over-size cul-de-sac that encumbers a smaller lot.

Reasoning: Property is encumbered by an over-sized cul-de-sac design that is not constructed nor used.

Property is situated between steep slopes to the Kenai River, 80 foot R/W of Endicott Drive on the south and 60 foot R/W of Endicott Drive on the east as it extends to the Kenai River.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Soldotna

Post Office of Soldotna

Nine certified mailings were sent to owners of property within 300 feet of the proposed vacation. Three receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to eight owners within 600 feet of the proposed vacation.

Sixteen public hearing notices were mailed to agencies and interested parties as shown below:

State of AK Dept. of Fish & Game

Ninilchik Traditional Council

State of AK DNR

Alaska Communication Systems (ACS)

State of AK DOT

ENSTAR Natural Gas

State of AK DNR Forestry

General Communications Inc. (GCI)

Central Emergency Services

Homer Electric Association (HEA)

Legal Access (existing and proposed): The proposed vacation is a portion of an unnamed right of way that is in extension of Endicott Drive where the road intersects Kalifornsky Beach Road near mile 21. The dedicated right of way extends north from the intersection of Endicott Drive and Jan Avenue to the Kenai River.

At the intersection, the constructed Endicott Drive is located to the west while constructed Jan Avenue is to the east. The proposed vacation of the cul-de-sac bulb is to the north of the intersection. The road is being referred to as Endicott Drive although Endicott Drive turns to the west.

The vacation will remove of the 75 foot radius bulb located on the west side of the 50 foot wide dedicated right of way. This will result in the right of way extending to the Kenai River with a constant width of 50 feet with an adjoining 10 foot walkway right of way.

Per KPB data, a 50 foot section line easement coincides with the 50 foot dedication with a 33 foot section line easement adjoining to the east. This provides a 83 foot wide public access.

The block is not closed due to the Kenai River. The block length along Endicott Drive exceeds allowable lengths. The subject lot is a corner lot and is bordered by right of way along the south and east. The Kenai River borders along the north. This parcel cannot provide any additional right of way dedications to improve the block. The vacation of the portion of the cul-de-sac will not change the existing block configuration.

KPB Roads Dept. comments	Out of Jurisdiction: Yes Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: Steep slopes are present to the north where sloping to the river edge. As this property is along the Kenai River, it will be subject to the Anadromous Waters Habitat Protection District. This is within the City of Soldotna; they do not participate in the FEMA program.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis: The right of way was dedicated on Slikok Creek Alaska Subdivision, K1361, recorded in 1963. It was dedicated as a 50 foot wide right of way with a 75 foot radius bulb at the end on the top of the river bank. K-Beach Park Subdivision Addition No. 2, KN 79-21, is located to the east of the dedication. That plat dedicated an additional 10 foot right of way designated as a walkway. The access width to the

river to 60 feet.

While the bulb proposed to be vacated does provide a potential turn around area for vehicles, the 50 foot wide right of way adjacent to the bulb contains steep slopes making the construction of a turnaround area for vehicle use difficult within this portion of the right of way.

The parent plat did not grant utility easements adjoining the rights of way. Per plat note 2 of the preliminary plat, a 10 foot utility easement will be granted adjoining all right of ways.

Per KPB GIS imagery from 2021, it appears that improvements, (possibly a raised bed garden) on Lot 1 may be very close to the right of way or possibly within the portion to be vacated. Additionally, a set of stairs appear to be constructed with a platform along the river. Staff is unable to determine if the walkway is within the right of way or within the boundary of Lot 1.

The proposed lot is showing an increase in acreage that is more than the area within the vacated right of way. This is due to the meander line information used on the original plat. K1361 states, "The natural meanders along the Kenai River form the bounds of the lots adjoining the river. The traverse line, as shown, is for survey computations and data only. All corners, as set on said traverse line, are witness corners being on the extension of lot lines and the natural meanders." Due to the steep terrain, the additional portion of the lot was not designated nor were any additional measurements or bearings given to help make the depiction more accurate. The surveyor is showing more recent meander information from the west and east and using that to compute a more accurate meander for this lot.

The City of Soldotna Planning and Zoning Commission heard the vacation at their November 3, 2021 meeting. Per the staff report prepared for that meeting, the Director of Public Works had no objection and stated the 75 foot radius was excessive. That 50 foot is usually good in commercial areas while 30 foot in residential areas can be done. The Director of Streets and Maintenance had no objection to the vacation and stated an important culvert is in that area to drain parts of Kalifornsky Beach Road and Endicott Drive and could cause some issues with development. The City of Soldotna Planning and Zoning Commission approved the vacation.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The public is not using the area proposed to be vacated.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: A 83 foot wide public access will remain to the river. Steep terrain is located within the right of way where near the proposed vacation. Endicott Drive and Jan Avenue are constructed streets and provide a turnaround area.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: 10 foot utility easements will be granted along dedicated right of ways. Additional requests were not made by the City of Soldotna Streets and Maintenance. Owners are to work with the utility companies to ensure all utility easement needs are met. Dedicated right of way provides legal access to all nearby parcels.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: The 83 foot wide access to the Kenai River will remain in place.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The right of way ends at the Kenai River and will not connect with other right of ways.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Although affected by steep terrain, the public can use this access to the Kenai River.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: Grant requested utility easements.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments: This is a right of way managed by the City of Soldotna and the State of Alaska DNR. Any vacation of the Section Line Easement would require review and approval by the State of Alaska.

If approved, a right of way vacation plat (Slikok Creek 2021 Replat) will finalize the proposed right of way vacation. As allowed under KPB 20.10.080, the planning director may review the preliminary vacation plat. If for any reason, the preliminary plat may not be reviewed as a vacation plat it will be scheduled for review by the Plat Committee.

If approved by the Kenai Peninsula Borough Planning Commission, the decision will be forwarded to the City of Soldotna to be heard by their City Council. They will have 30 days to review the decision and either consent or veto the vacation.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 476 ENDICOTT DR Existing Street Names are Correct: Yes List of Correct Street Names: ENDICOTT DR Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: City of Soldotna will advise on affected address.
Assessing	Reviewer: Wilcox, Adeena Comments: Property improvements appear to be in the public right of way. This parcel is not considered river frontage.

Utility provider review:

HEA	No comments.
ENSTAR	No comments or objections
ACS	
GCI	Approved as shown.

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

5. Consent by Soldotna City Council.
6. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
7. Grant utility easements requested by the Soldotna City Council and utility providers.

8. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination or residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*

- *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

James Markley; 476 Endicott Dr., Soldotna, AK 99669: Mr. Markley is the landowner requesting the right-of-way vacation and made himself available for any questions the commission might have.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Venuti to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM 6 - KOTO COURT RIGHT OF WAY VACATION AND ASSOCIATED UTILITY EASEMENTS

KPB File No.	2021-154V
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	Marshall Martin of Soldotna, Alaska
Surveyor:	John Segesser / Segesser Surveys, Inc.
General Location:	Murray Lane, Sterling area
Legal Description:	Lots B1 AND B2 Murray Subdivision Buck Addition, Plat KN 2017-59

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: My client, Marshall Martin, wants to vacate the line between Lots B1 and B2 and include the vacation of Koto Court. Koto Court was dedicated to provide legal access to Lot B2 and does not provide access to the adjoining property.

Notification: Public notice appeared in the December 2, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the December 9, 2021 issue of the Peninsula Clarion as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Soldotna

Post Office of Sterling

Twenty-five certified mailings were sent to owners of property within 300 feet of the proposed vacation. Eleven receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to 20 owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were mailed to agencies and interested parties as shown below:

State of AK Dept. of Fish & Game
State of AK DNR

Ninilchik Traditional Council
Alaska Communication Systems (ACS)

State of AK DOT
State of AK DNR Forestry
Central Emergency Services

ENSTAR Natural Gas
General Communications Inc. (GCI)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The proposed vacation is for Koto Court, a 60 foot wide right of way that is approximately 275 feet long and ends with a cul-de-sac. Koto Court is currently unconstructed and not maintained. Three lots abut Koto Court, Lots B1 and B2 of Murray Subdivision Buck Addition, KN 2017-59, and Lot 2D of Murray Subdivision Reed Addition, KN 2003-17.

If approved, Murry Lane will be the legal access for Lot 2D as well as proposed Lot B1A. Lot B1A will be the combined parcels of Lot B1 and Lot B2.

Murray Lane is a dedicated right of way with varying width. The portion abutting the area included in the petition is 100 foot wide. Murray Lane is constructed and maintained by the State of Alaska. Murray Lane connects to the Sterling Highway near mile post 89.

No new dedications are proposed. Lot 2D, adjoining the north boundary of Koto Court, has a driveway to Murray Lane.

The block is not closed and is not compliant. Murray Lane, Dudley Avenue, Dayspring Street, and Hallelujah Drive define the block. A vacation has removed the section line easements that would have provided a closed and compliant block. Murray Lane ends at an intersection with Lakeshore Drive while Hallelujah Drive ends at a lot. This block is bordered by Longmere Lake and the ability to get a closed block will be difficult due to existing structures and low wet areas. The distance along Dayspring Street exceed allowable lengths. When the plat is reviewed, staff will request that the plat committee concur that an exception to block length requirements is not required as this subdivision will not be able to provide any dedications to improve the block length. Koto Court is a cul-de-sac and by KPB code definitions is to be permanently closed. Approval or denial of the vacation of Koto Court will not affect block compliance.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	DOT ROW Engineering has no comments.

Site Investigation: The right of way area and the lots abutting do not contain any low wet areas. Steep slopes are not present.

River Center Review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis: Koto Court was dedicated on Murray Subdivision Buck Addition, Plat KN 2017-59. That plat dedicated the right of way and created the current lot configurations for Lots B1 and B2. The land within this proposal has been part of past subdivisions starting with the creation of a 16 acre tract with Murray Tract "A", Plat KN 76-26. Several subdivisions that subdivided that original Tract A and then lot reconfigurations have occurred until Plat KN 2017-59 created the current configuration.

Murray Subdivision Buck Addition, Plat KN 2017-59, dedicated Koto Court as a 60 foot wide cul-de-sac. Three lots abut the right of way, Lot 2D of Murray Subdivision Reed Addition (Plat KN 2003-17), and Lot B1 and Lot B2 of Murray Subdivision Buck Addition.

Murray Subdivision Buck Addition, Plat KN 2017-59, granted 15 foot utility easements along dedicated right of ways. The proposed vacation includes the associated utility easements. All utility easements along the Koto Court dedication will be vacated. A 15 foot wide utility easement adjoining Murray Lane will remain in place including the area within the vacated Koto Court right of way.

Murray Subdivision Replat of Lot 2 and Martin 1986 Subdivision of Tract A-1 and Replat of Tract D, Plat KN 88-38, granted a 20 foot utility easement centered on the common boundary of Lot 2D and former Lot 5D. This 10 foot utility easement was carried forward on Murray Subdivision Martin Addition No. 2, Plat KN 2007-85, and Murray Subdivision Martin Addition No. 3, Plat KN 2013-124. The dedication of Koto Court was atop the utility easement. Utilities within a right of way are allowable with the correct permitting.

This application requests all associated utility easements to be vacated and that would include the easement granted by Plat KN 88-38 located on the north 10 feet of Koto Ct. If the owners wish to leave that easement intact or a utility provider requests the easement remain, it must be depicted and noted. **Staff recommends** that a plat note be added that states, 'The 10 foot utility easement granted per KN 88-38, where located within Koto Court, will be vacated with the recording of this plat.'

The proposed vacation is not within an advisory planning commission boundary.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
1. The right-of-way or public easement to be vacated is being used;
Staff comments: The right of way is not constructed and does not appear to be used.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: Koto Court is possible to construct as it is not affected by steep terrain or wetlands. No alternative access is proposed as all lots, and proposed lots, abutting Koto Court will have access via Murray Lane.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The area has been subdivided with all sufficient right of way dedications to provide legal access to all parcels.
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: The right of way does not provide access to any public interest area or water body.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: This is a cul-de-sac with no intention to be further extended and will not limit interconnectivity.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Other use is not needed. The current right of way provides access to private lands and does not connect to any public lands or provide connection to walkways or pedestrian easements.
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may

approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: 15 foot wide utility easements will remain along Murray Lane. The 10 foot utility easement per KN 88-38, where located within Koto Court, will be vacated with this platting action. The utility providers did not request any additional utility easement.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: The proposed lot configuration will provide that all lots front on a dedicated right of way.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly or City Council will hear the vacation at their scheduled January 4, 2022 meeting.

If approved, a subdivision plat will finalize the proposed right of way vacations. A preliminary plat has not been submitted at this time.

KPB department / agency review:

Planner	
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: None Existing Street Names are Correct: Yes List of Correct Street Names: SEWARD AVE LENORA CT DAYSPRING ST MURRAY LN KOTO CT Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied: Comments: No addresses affected.
Assessing	Reviewer: Wilcox, Adeena Comments: No comment

Utility provider review:

HEA	No comments
ENSTAR	No comments or objections
ACS	
GCI	Approved as shown

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends APPROVAL as petitioned, subject to:

9. Consent by KPB Assembly.
10. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
11. Grant utility easements requested by the utility providers.
12. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

Goal 3. Preserve and improve quality of life on the Kenai Peninsula Borough through increased access to local and regional facilities, activities, programs and services.

- *Focus Area: Energy and Utilities*
 - o *Objective A - Encourage coordination of residential, commercial, and industrial development with extension of utilities and other infrastructure.*
 - *Strategy 1. Near – Term: Maintain existing easements (especially section line easements) in addition to establishing adequate utility rights of way or easements to serve existing and future utility needs.*
 - *Strategy 2. Near – Term: Maintain regular contact with utility operators to coordinate and review utility easement requests that are part of subdivision plat approval.*
 - *Strategy 3. Near – Term: Identify potential utility routes on Borough lands.*
- *Housing*
 - o *Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.*
 - *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

- *Focus Area: Transportation*
 - o *Objective B. Ensure new roads are developed in alignment with existing and planned growth and development.*
 - *Strategy 2. Near – Term: Establish subdivision codes that dictate road construction standards to accommodate future interconnectivity and/or public safety.*
 - *Strategy 3. Near – Term: Identify areas of anticipated growth to determine future access needs.*

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Brantley to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendations and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

ITEM E7 - Shady Acres Lot 14 Plat Waiver

KPB File No.	2021-149
Planning Commission Meeting:	December 13, 2021
Applicant / Owner:	Rebecca A. Turner of Homer, Alaska Sheryl Combs, Sheela Lloyd, and Joyce Matthews all of Anchorage, Alaska
Surveyor:	None
General Location:	Wahoo Street, Leann Avenue, Solitude Street and Ashley Avenue / Funny River

Parent Parcel No.:	066-050-26
Legal Description:	Lot 14 Shady Acres, Plat No KN 2003-100
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On-Site

Staff report given by Scott Huff.

Specific Request / Scope of Subdivision: The proposed plat waiver will subdivide a 23.568 acre lot into four aliquot lots being 5.9 acres more or less.

Location and Legal Access (existing and proposed): The parent lot is 24 acres with dedicated right of way bordering along all sides. Leann Avenue (60 feet wide), Solitude Street (60 feet wide), Ashley Avenue (30 feet wide), and Wahoo Street (60 feet wide) define the block and surround the lot.

Some clearing appears to exist within portions of the right of ways. Per KPB GIS data, none of the right of ways are maintained. Leann Avenue is located near mile 14 of Funny River Road, a state maintained right of way. To the west of the subdivision, Ashley Avenue intersects Rabbit Run Road, a state maintained right of way that intersects with Funny River Road and Leann Avenue.

An 80 acre private parcel is located to the south of Ashley Avenue and will be required to provide a matching dedication when subdivided in the future.

A 33 foot section line easement is located within the area of the Leann Avenue right of way and will affect Lot 14A and 14B.

The block is closed and compliant to length requirements.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
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Site Investigation: The subject area is relatively flat and contains no low wet areas.

Improvements appear to be in place within the area that will be designated as Lot 14A.

The property north of Leann Avenue has been subdivided and is the Funny River Grove local option zoning district. The subject property is not within a local option zoning district.

The parcel is not affected by a material site.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No comments</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis The proposed plat waiver will subdivide a 23.57 acre lot into four aliquot parcels. The parent parcel is Lot 14 of Shady Acres, Plat KN 2003-100. Shady Acres was a subdivision of an aliquot parcel that was 80 acres in size. That subdivision dedicated the 60 foot wide Wahoo Street as well as 30 foot wide dedications for Leann Avenue, Solitude Street, and Ashley Avenue.

Each of the proposed lots are over 200,000 square feet. A soils analysis report is not required.

Funny River Advisory Planning Commission minutes were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available.

The 20 foot building setback per KN 2003-100 will carry forward with the plat waiver.

Lot 14 will be subdivided by aliquot division with the boundary lines established at the midpoint of the north, east, south and west boundaries and extended to the opposite boundary midpoint location. Lot 14A will be the northwest aliquot division, Lot 14B will be the northeast aliquot division, Lot 14C will be the southwest aliquot division, and Lot 14D will be the southeast aliquot division.

Utility Easements Shady Acres, Plat KN 2003-100, granted 10 foot utility easements adjoining the dedicated right of ways. An additional 100 foot wide electrical transmission line easement is within the lot and will remain within proposed Lot 14D. No new utility easements will be granted and all existing utility easements will remain in place.

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek Affected Addresses: 34475 LEANN AVE</p> <p>Existing Street Names are Correct: Yes List of Correct Street Names: LEANN AVE WAHOO ST ASHLEY AVE SOLITUDE ST</p> <p>Existing Street Name Corrections Needed: All New Street Names are Approved: No List of Approved Street Names: List of Street Names Denied:</p> <p>Comments: 34475 LEANN AVE will remain with lot 14A.</p>
Code Compliance	<p>Reviewer: Ogren, Eric Comments: No comments</p>
Planner	
Assessing	<p>Reviewer: Wilcox, Adeena Comments: No comment</p>

Advisory Planning Commission	Comments not received when staff report was prepared
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The applicants wish to replat a 23.57 acre lot into four 5.90 +/- acre lots. If the Plat Waiver is approved, staff recommends the sketch be recorded with the resolution, as an attachment to and as the final page of the resolution. The following are the requirements to qualify for a plat waiver as outlined in KPB Code.

KPB 20.10.050 – Plats-Required when – Waivers

- A. Waiver standards. A plat, prepared and submitted in accordance with the applicable provisions of this title, is required for all subdivisions of land, except for subdivisions which qualify under the provision of AS 29.40.090(b), provided an application is submitted with satisfactory evidence to support a finding that:
1. A single existing division of property is not subdivided into more than four lots.
The sketch shows four lots. This condition has been met.
 2. Legal and physical access is provided to a public highway or street for each lot created by the subdivision.
The property adjoins Wahoo Street (60'), Leann Avenue (60'), Solitude Street (60') and Ashley Avenue (30') as dedicated by the parent plat (KN 2003-100). The right-of-way match for Ashley Avenue will be obtained with the 80 acre parcel to the south when subdivided. This condition has been met.
 3. The subdivision does not contain or require a dedication of a street, public right-of-way, or other area.
No additional public right-of-way or other area is required to be dedicated. This condition has been met.
 4. The subdivision does not require a vacation of a public dedication of land.
The subdivision is not vacating a public dedication of land. This condition has been met.
 5. The subdivision does not require a variance from KPB Title 20 Subdivision regulations.
No exceptions to KPB Code are required. This condition has been met.
 6. Each lot created by the subdivision is five acres or larger.
Each new parcel will be 5.90 +/- acre lots. This condition has been met.
- B. Notice. In addition to the requirements for notice by publication in this title, all beneficial interest holders in the land subject to the plat waiver application who have not provided written non-objection to the plat waiver shall be given notice of the waiver application and the planning commission hearing at least 30 days prior to the planning commission meeting where the waiver will be considered. Applications for plat waivers within a city shall be submitted to the city by the subdivider for comment at least 30 days prior to submittal to the borough for planning commission consideration.
Platting staff comments: *The property is not within a city. The Certificate to Plat did not contain any beneficial interest holders. This condition has been met.*
- C. All plat waivers must meet the following requirements:
1. A certificate of ownership for plat waiver, which meets the requirements of KPB 20.60.190(A)(2) for a certificate to plat, shall be submitted with the application. The certificate of ownership shall be updated and be current to no earlier than three business days prior to the planning commission meeting where the waiver is scheduled for consideration.
Platting staff comments: *A Certificate to Plat was provided with the submittal. This condition has been met.*
 2. A certificate from the borough finance department must be obtained indicating that all taxes due and payable on the land subject to the waiver application have been paid.
Platting staff comments: *The 2021 borough property taxes have been paid. If the resolution is not recorded prior to December 31, 2021, the estimated taxes for 2022 will be required to be paid in full prior to recording of Plat Waiver Resolution 2021-36. This condition has been met.*

- D. Upon satisfactory showing by the subdivider that all provisions of KPB 20.10.050 (A), (B), and (C) have been met a waiver of the preparation, submission for approval, and recording of a plat shall be granted by resolution of the commission which shall be recorded in the appropriate district within 30 days after adoption or the waiver shall lapse. The applicant shall pay a plat waiver fee in the amount listed in the current Kenai Peninsula Borough Schedule of Rates, Charges and Fees, and recording fees. **All of the requirements of KPB 20.10.050 have been met.**

Staff recommendation: the Planning Commission adopt KPB PC Resolution 2021-36, thereby approving the requested plat waiver, subject to:

1. Submittal of a certificate from the borough finance department that all taxes due and payable on the land subject to the waiver application have been paid.
2. Submit an updated Certificate to Plat current to no earlier than three business days prior to the planning commission meeting and is valid for 30 days.
3. The Planning Department is responsible for filing the Planning Commission resolution.
4. The applicant will provide the recording fee for the resolution and exhibit drawing to the Planning Department.
5. File the PC Resolution, with the exhibit drawing, in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
6. The Plat Waiver will be recorded within 30 days after adoption or the waiver shall lapse.
7. The Plat Waiver is subject to all notes, easements, set-backs, and dedications as delineated on Plat No. 2003-100.

Staff Note: A plat waiver does not constitute a survey. A field survey and monumentation of lot lines is not performed. A Record of Survey will be required to find true property boundaries.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

GRANT APPROVAL OF THE PLAT WIAVER SUBJECT TO STAFF RECOMMENDATIONS AND SUBJECT TO THE CONDITIONS LISTED.

NOTE: 20.25.120. - REVIEW AND APPEAL.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment. Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-36 granting a plating waiver for certain lands within Lot 14, Shady Acres (Plat KN 2003-100), KPB File 2021-149.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

**D1 – Remand Hearing
River Resources CLUP Modification; PC Resolution 2021-10**

Attorney Sean Kelley reviewed the hearing procedures as set out in the Oct 18, 2021 Planning Commission hearing decision. He noted the applicant would be given 15 minutes to speak. After the applicant speaks

the public will be allowed to testify and each person will be given 3 minutes with public testimony being capped at a total of 45 minutes.

Vice Chair Ruffner opened the meeting for public comment.

Kyle Foster, Applicant; 34717 Sentinel Street, Soldotna, AK 99669: Mr. Foster addressed some of the comment and concerns from the neighboring landowners. He noted that the photo submitted by the Fergusons showing water in the bottom of a gravel pit was not his pit, the pit in the photo is the City of Soldotna pit. Mr. Foster then noted that the City of Soldotna has a permit that allows them to mine into the water table and for dewatering. He then noted the aerial photo submitted by Mr. McBride is of a pit he owns. This particular pit has a sediment pond and they have a wash plant on site to wash their aggregate gravel. These are approved activities under the CLUP they have on this property. He also noted that the City of Soldotna was contacted and they did not express any objections to this project. They also have all the field survey notes related to the monitoring wells, which have been surveyed seven times. He noted that their excavation and dewatering would be done in relatively small steps. It would be done in small areas, maybe 50' x 50' area. This would be a small-scale operation. Their reclamation plan would be to eventually turn this area in to a residential subdivision.

Gina DeBardelaben, McLane Consulting; P.O. Box 468, Soldotna, AK 99669: Ms. DeBardelaben is the engineer on this project. She noted that Coble Geophysical Service (CGS) makes many unsubstantiated and broad-stroke statements in the CGS Memo dated 12/3/21. They do not include site-specific support for the statements, analysis of the publicly available data, or of applicant provided data. Much of their data and statements are based on 2003 & 2006 well studies for the City of Soldotna. Well E, that is referenced many times, is located 3500' from the River Resource site and is a different lower confined aquifer.

The Planning Commissioner requested that information be provided regarding the location of existing wells in relation to the dewatering area. A map was provided to the commission and found on page 102 of the packet contains this information. The map shows offsets from the proposed dewatering. The yellow line on the map is the property line; inside of that line is a magenta line, which shows the proposed excavation & dewatering areas. The other lines shown on the map are 300', 500' & 1000' from the excavation area. The used DNR WELTS tracking system, Kraxberger & Smith well drilling records to determine which properties had wells on them, the depths of the wells, whether they draw their water from the confined or unconfined aquifers and their exact locations; which were located by McLane surveying crews. There were no wells within the 300' setback area. The closest well was the City of Soldotna well at 312' and this well is not part of the City water system, their maintenance department uses it for onsite water only. The next closest well was the McBride's well at 378' from the excavation area.

Another area that the CGS report gets wrong is the groundwater contours and the groundwater flow direction. The groundwater flow northwesterly, towards the Kenai River. This is clearly represented on the map on page 102 of the packet and on maps submitted with the MCLUP application submitted back in April. Her best guess is that CGS failed to recognize that the map on page 102 is rotated 90 degrees and so when he referred to it in his report he noted the groundwater is flowing towards the airport. CGS also did not glean from the record that the wells shown on this exhibit are monitoring wells and are not drill and encased wells with pumps. These wells are strictly used to measure groundwater elevation and utilizing balers to extract water samples.

She then noted that there are 10 wells within a 1000' radius of the extraction area. There was only one well they could not find a well log on. The other nine wells harvest their water from the confined aquifer. The existing strata within the excavation area is consistent and within a singular unconfined aquifer. The next adjacent aquifer is a confined aquifer with 40' to 60' of aquitar separation. The River Resources proposed extraction area would be within the unconfined aquifer. This will allow the water from the dewatering pond to quickly infiltrate back into the unconfined aquifer.

Ms. Debardelaben noted groundwater hydraulic conductivity was defined, as well as aquifer transmissivity and aquifer storability, and was provided during the April 2021 public hearing. These figures were utilized in the Thesis Equation to calculate the pump drawdowns for the previously submitted Excavation Dewater Plan. She computed this number using the computation tool on the State of Utah Division of Water Rights website.

Much of CGS's report is pertinent to City of Soldotna Well E, how it interacts with the confined aquifer, and how that may be affected if the aquitar is disturbed. According to CGS, Well E has a large effect on wells

up to a 9000' radius. River Resource' proposed dewatering potential drawdown does not exceed a 1000' radius. Recharging the confined aquifer is a slow process it can take months or years. Dewatering in the unconfined aquifer does not function the same. The re-watering will be readily reintroduced to immediately recharge the unconfined aquifer.

Coble on page three of his memo states that this area has a safe drinking water supply. Ferguson's water results are from March of 2021. She noted that the Ferguson's well draws from the confined aquifer and is over 1500' from this property. The report shows that there is no detection of arsenic. She then noted that the City of Soldotna Water Quality Report 2020 documents that all four of the city wells, including Well E and the distribution system test no detection for arsenic during the monitoring period. Well E is in an unconfined aquifer. This shows that there is no arsenic in either aquifer and negates that statement that the city utilizes Well E to bring city water into EPA standards and that arsenic is even a concern in River Resources excavation aquifer.

Turbidity and hydrocarbon contaminant are valid concerns that are only briefly suggested by any of the involved parties and was the only concern expressed from the City of Soldotna. Both turbidity and hydrocarbons are monitored through ADEC permit processes. Turbidity is quickly settled in sediment ponds and filtration through sandy gravel substrates, as seen in the aerial photos submitted by the applicant. There are multiple rules and regulations set forth by ADEC for protection and monitoring of hydrocarbons. A brief glimpse at a few of these are any spills over 1-gallon are reportable, fuel storage exceeding 100-gallons must have secondary containment, notice of intents must be filed for excavation dewatering within 1500' of a contaminated site or non-construction related discharge, and well separation distances. Best management practices are required by ADEC as well, i.e. spill kits onsite, secondary containment under maintenance and pumps, proper hazardous materials containment and signage.

Ms. DeBardelaben referred to the map on page 148 of the packet. On the map, the material sites are highlighted in pink. She noted some of these sites are active and some are reclaimed. The map shows the River Resources & City of Soldotna material sites and an area that was once an open pond and is now reclaimed with cabins on it. All of these sites have entered the groundwater at some time. There are historical photos of the area that show that this type of work has been ongoing in this area for over 40 years, the ADEC shows no cataloged cases of groundwater contamination or well damage on these sites or any of the neighboring properties.

We interact with aquifers every day, by installing basements, ditches, culverts, residential and commercial wells, bridges, oil & gas development and septic systems. Septic systems and leach fields are installed immediately above shallow, unconfined aquifers. We load septic systems with human wastes, household solvents and many other things. The ADEC only requires that they be 100' from a residential well and 200' from commercial water systems. The Alaska Department of Environmental Conservation allows for excavation in the groundwater and dewatering. The US Corp of Engineers, who has jurisdiction over waters of the US, allows for excavation in water tables and dewatering.

Commissioner Brantley then asked the applicant if they had kept up the well logs. Ms. DeBardelaben stated that the monitoring wells were installed in September of 2019 and have been surveyed seven times. The most recent survey was just a couple of months ago. When averaged the groundwater flow remained the same and moved in the same directions. There was one variable, whether it was a mismeasurement or some water perched she could not be sure. It might have been that the electronic tape picked up a lens of water at a slightly higher level. Mr. Coble noted this variable in his report and they believe that this was an anomaly.

Commissioner Bentz noted that there had been a number of comments from the public on how the proposed dewatering plan, with the plan to excavate 50' x 50' cells around the property, how this plan could influence the groundwater table and how far would that influence be felt. Specifically how this influence would affect area wetlands, seepage effects or runoff into the river. Ms. DeBardelaben noted that the dewatering plan estimated the dewatering process during a ten-day period there would be a drawdown at 300' from the excavation area of approximately 1/10 of a foot, which is considered minimal, in the unconfined aquifer. She again noted that all the residential wells draw from the confined aquifer, which is below the unconfined aquifer, so the wells would not see any effect from the dewatering process. Drawdown in the unconfined aquifer within 300' from the excavation area should not exceed 1/10 of a foot. The closest wetlands to the excavation area are approximately 1000' away and should not be negatively affected by the drawdown.

Joseph L. Kashi; 205 W. Beluga Ave., Soldotna, AK 99669: Mr. Kashi is the attorney representing

landowner Dale McBride. He noted that he had submitted a written report to the commission and he would have to try to summarize the findings since he only has been allotted three minutes to speak. Regarding Well E, it has been their position that the aquifer in that area has been so inadequately characterized. There is a potential that the confined aquifer could be negatively impacted. He does not believe that the commission has adequate data to make this decision. He believes that this decision should be postponed until there is sufficient data. Why is there such a rush to make a decision on this matter? It is the middle of winter, there is a geophysicist, who is very familiar with this area, stating in his report that there is not enough data to know what the cumulative effect will be. He believes that the ultimate cumulative effect would be removing most of the aquifer downstream, upon which the seepage in the wetlands would occur. It could negatively affect the aquifer that many landowners in the area depend on. The Coble report states eleven possible negative impacts should the aquifer upstream be destroyed or compromised. When you go into the water table, you mix thing up and expose the water table, potentially damaging the water supply. There is no rush to permit these activities; there is plenty of gravel that can be mined on the surface.

Commissioner Ruffner noted he did not see where the City of Soldotna had stated that they had any concerns regarding impacts to their well. He asked Mr. Kashi if he had received any communications from the city expressing concerns with this permit. Mr. Kashi stated that he had sent the city a copy of the Coble report. He contacted the city last Friday to ask if he could get copies of any correspondence related to this permit and he had not heard back from them. Therefore, he cannot answer Commissioner Ruffner's question with any specifics. He noted that he does not know if the city has had the chance to review the Coble report. Again, Mr. Kashi stated he does not understand what the rush is to make a decision on this tonight. He does not believe that the commission has the information they need to move forward. He also noted that the ADEC has identified two contaminated sites in the area, one at the old city gravel pit and the other at the old mechanical shop. State regulations say that you cannot go into the water table within 1000' of a contaminated site and both these sites are within 1000' of this material site.

Geoff Coble, Coble Geophysical Service; P.O. Box 1637, Homer AK 99603: Mr. Coble is a professional hydro-geologist and geophysicist. He stated that he is very familiar with the groundwater in the Soldotna area. He stands by the report that he submitted and encouraged the commission to take the time to read it. He reviewed the McLane report and he had few comment about the way the groundwater potentials were drawn, which is how you determine the flow direction. He does have issue when you take out a certain well reading and say that it is perched when it reads water low. No one would want someone to excavate into the aquifer that you are using for water when the effects of that have not been fully modeled. He believes that it is likely that the area well will be affected by this proposed action. Just saying that there is a confined aquifer and that there will not be any damage to it. To determine that requires a pumping test that has not been done. You cannot just label it a confining layer and that it completely seals off from the unconfined aquifer. More often than not, there are ways to get through that layer. You also need to think about what the consequences will be if there is a spill or some other disaster over a public water supply. What is being proposed here is to excavate the unconfined aquifer, all the way down to the confining layer. In figure 4 of his report, you can see how the Kenai River for its buffer uses the water in that aquifer. McLane's report states that other have excavated into the confining layer and so they should be able to do so as well. There is a cumulative effect to allowing more to do so.

Commissioner Ruffner asked Mr. Coble if he knew how thick the confining layer was. Mr. Coble replied could not state for sure, he would recommending that a pumping test be conduct to know for sure. The thickness of the confining layer cannot be determined by doing well tests.

Ann Gravier; 34540 Marcus Street, Soldotna, AK 99669: Ms. Gravier is a neighboring landowner. She noted that the application submitted evidence including engineering modeling data that indicated little or no impact to nearby or adjacent properties. As an area resident, if she could be assured, by the information that was provided, she would not have any objections to the permit. Given what has been presented, she does object to this permit. She would ask that the commission review the reports in light of the validity of the results. As you have heard, different experts can have differing opinions. As a decision maker, taking the information provided at face value, she would ask, what do we know about the margin of error related to the results. What kind of risk is the commission willing to take in approving this application? After all a model is just something that mimics man's understanding of natural process to varying degrees of success. For example, weather forecasting is just modeling and we all know how accurate those forecasts can be. Another example would be floodplain mapping and we know that Mother Nature does not always follow the lines of a manmade map. The purpose of her statement tonight is to not debate the information provide but to present the perspective that modeling is not facts. She would ask that the commission give this deep consideration and understand that the true risk of the proposed activity most likely has not been fully

realized. We do not yet fully understand the potential risks and the range of this proposed activity and that is why as an area resident she is not in favor of this application.

Michael Gravier; 34540 Marcus Street, Soldotna, AK 99669: Mr. Gravier is a neighboring landowner. He noted that this summer the water table on his property came up to cover about 3" of the plant stands on his property. He suspects that this was not modeled as his property is a distance greater from the gravel pit than what has been discussed. His property is approximate 1800' from this pit. The increase of the water level is not from the river or an increase in rainfall, so it must be groundwater. He noted that Mr. Coble report shows what could happen if they mess with or take gravel out. The water will not be able to flow so easily and it could start backing up. Given the location of his property, he is concerned that it could possibly back-up and cover his property. The modeling did not predict the rise of the water table on his property, so in this case we know that the modeling was not accurate. Models are just that model, they are not necessarily reality. If the weatherman says it is not going to snow, you go outside, and it is snowing, the model was not correct and it is the snow that is real.

Hearing no one wishing to comment, public comment was closed and discussion was opened among the commission.

MOTION: Commissioner Brantley moved, seconded by Commissioner Bentz to go into adjudicative session and requested legal counsel Sean Kelley and Administrative Assistant Ann Shirnberg join the commission for the session.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

Commission went into adjudicative session at 8:54 PM.

Commission came back into session at 10:47 PM.

MOTION: Commissioner Bentz moved seconded by Commissioner Brantley to adopt PC Resolution 2021-37, granting a modification to a conditional land use permit for a material site to allow excavation within the water table and an exception for de-watering with a copy of the resolution to be distributed within 10 days.

Vice Chair Ruffner noted again for the public that a copy of this resolution with conditions would be made available within 10 days.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	5	Absent	3	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Morgan, Ruffner, Venuti				
Absent	Fikes, Gillham, Martin				

AGENDA ITEM F. **PLAT COMMITTEE REPORT** – Plat Committee did not meet.

AGENDA ITEM G. **OTHER**

Ms. Shirnberg asked for volunteers for the Plat Committee for January, February & March

- Commissioner Brantley
- Commissioner Bentz (January Only)
- Commissioner Venuti

Vice Chair Ruffner noted that if there is not enough folks to sit a plat committee those agenda items will just have to be moved to the Planning Commission meeting;

AGENDA ITEM H. PUBLIC COMMENT

Mr. Kashi asked if with the adoption of Ordinance 2021-41, increasing the planning commission to fourteen seats, were there enough commissioners present tonight for a quorum. He noted that there were only five commissioner present tonight. Mr. Kelley replied that a quorum was present since a quorum is based on seated/appointed commissioners. The commission has eight seated commissioners so a requirement for a quorum would be five members.

AGENDA ITEM I. DIRECTOR'S COMMENTS

Director Aeschliman noted for the commission that on December 7, 2021 the Assembly enacted Ordinance 2021-41 increasing the planning commission to fourteen seats. In the report is a map showing the new districts and a tentative membership roster showing what seats the current commissioner will be representing. At the next several meeting she will be bringing information for the commission to discuss on how we will move forward seating the new commissioners.

AGENDA ITEM J. COMMISSIONER COMMENTS - None

AGENDA ITEM M. ADJOURNMENT – Commissioner Venuti moved to adjourn the meeting 10:58 p.m.

Ann E. Shirnberg
Administrative Assistant