

AGENDA ITEM E. NEW BUSINESS

ITEM 5 - KENAITZE GOVERNMENT LOTS REPLAT

KPB File No.	2022-009
Plat Committee Meeting:	February 28, 2022
Applicant / Owner:	Kenaitze Indian Tribe of Kenai, Alaska
Surveyor:	Jason Young, Mark A. Aimonetti / Edge Survey and Design, LLC
General Location:	S Spruce Street, City of Kenai

Parent Parcel No.:	047-020-11, 047-020-17, and 047-021-99
Legal Description:	Government Lots 27, 28, 29, 32, 33, and portions of Government Lots 31 and 34
Assessing Use:	Commercial Vacant
Zoning:	General Commercial
Water / Wastewater	City

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will combine multiple government lots and deed parcels to create one lot that will be 5.89 acres.

Location and Legal Access (existing and proposed): The proposed subdivision fronts along the Kenai Spur Highway and has additional access from S Spruce Street. The width for state maintained Kenai Spur Highway varies in this location. S Spruce Street is a city maintained right of way. Portions of S Spruce Street have been dedicated but portions are still within the boundaries of government lots that are subject to the right of way. **Staff recommends the depiction of S Spruce Street be updated to show the government lots boundary extend to the center of S Spruce Street with a varying width label be added to the depiction.**

The block is not compliant. S Spruce Street terminates at the north Kenai Beach parking lot. Steep terrain and low wet areas affect the eastern portion of this subdivision. The ability to obtain a compliant block will be limited. The existing roads in the area are built with the terrain in consideration. **Staff recommends the plat committee concur that an exception nor dedication are required due to terrain, lot wet areas, and surrounding development will limit the ability to improve the block.**

Access easements were present along the shared lot lines of Government Lots 33, 34, and 35 but were vacated in 2013 with the recording of the Kenai Peninsula Borough Planning Commission Resolution 2013-08. The approval required an easement to be granted within Lot 33 to Lot 34. The easement was granted but not defined by width or location. The intent was access to Lot 34, which will no longer be required, and the easement will terminate with recording of the plat. The easement is noted in plat note 7.

KPB Roads Dept. comments	Out of Jurisdiction: Yes Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	The ROW for Kenai Spur Highway is generally as shown on sheet 9 of 13 of Department of Highways Right of Way Map F-021-2(7) Kenai Spur, and appears to be shown correctly. (Of note, there may be a city access road along the south boundary of Lot 33 that isn't shown on the plat. See Book 89, Page 902 and Book 47, Page 150).

Site Investigation: The majority of the subdivision is relatively flat with no low wet areas present. Along the eastern boundary, some wetlands are present and steep slopes that coincide with the wetlands. **Staff recommends the**

wetlands be depicted on the final plat and plat note 1 be reworded to include "including a U.S. Army Corps of Engineers wetland determination if applicable."

The lots currently appear to be mostly cleared and vacant. A church is present on the lot to the south and the parking lot abuts the proposed subdivision. The same owner of Govt. Lot 35 also owns the southern portion of Government Lot 34 and Govt. Lot 127.

KPB River Center review	A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Within City of Soldotna/Kenai Comments: No comments
	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
State of Alaska Fish and Game	No objections. Proposed actions will not affect public access to public lands and waters.

Staff Analysis The subdivision will be combining multiple government lots and deed parcels into one lot. The original patent withheld lands for the Kenai Spur Highway. As some of the lands were deeded, additional access easements or right of way easements were put into effect. The Kenai Peninsula Borough PC Resolution 2013-08 vacated some of the easements.

The certificate to plat excludes 6,125 sq. ft. from Government Lot 33. A deed from the City of Kenai that was recorded in 1967 transferred Lot 33 excepting 6,125 sq. ft. that was being used as an access road. Although the area was approved to be vacated it is technically City property and not a dedicated right of way. The City of Kenai may still have an ownership interest in the 6,125 sq. ft. of land.

Several option would clear up the cloud on the title.

- The surveyor may remove the strip of land in question from the boundary of the subdivision.
- The City of Kenai provide a quit claim deed for the 6,125 square feet of land to the current owner.
- The City of Kenai join the platting process, the certificate to plat removes the reference to the excepted lands, and once recorded the City of Kenai record a quit claim deed relinquishing any interest in the overall tract to the current owner.

Additional reservations to the City of Kenai were also noted within deed located in Book 44 Page 218, Kenai Recording District. The deed lists "excepting and reserving from this conveyance" easements for public improvements. This will also need to be researched to determine if the City of Kenai has any ownership interest in any portion of the north 150 feet of Government Lot 34.

A soils report will be not be required. City water and sewer are present along S Spruce Street. An installation agreement or documentation that one is not needed will be 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 City of Kenai Planning and Zoning reviewed the preliminary plat at their January 26, 2022 meeting. They found the subdivision complied with Municipal Code and approved the plat subject to "Further development of the property shall conform to all federal, State of Alaska, and local regulations." This condition is addressed in plat note 1.

Utility Easements The subdivision is comprised of government lots with no plats of record granting utility easements. Multiple utility easements have been granted by recorded documents. The plat is proposing to grant the code required 10 foot utility easements along the dedicated right of ways.

The easements granted by documents vary. Some state that it is over exiting lines and some have no definite location disclosed. If the document states specific locations, the easement shall be depicted on the plat. Staff would recommend the surveyor and owners work with the utility companies to see if any of the older easements could be terminated and try to clear up the locations of the easements. **Staff recommends the surveyor work with the utility companies to make sure all easements are correctly depicted and in place.**

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	No comments
ENSTAR	No comments or recommendations.
ACS	No objection. Existing facilities must be located and protected during any ground disturbing work.
GCI	Approved as shown

KPB department / agency review:

Addressing	<p>Reviewer: Haws, Derek</p> <p>Affected Addresses: 11823 KENAI SPUR HWY</p> <p>Existing Street Names are Correct: No</p> <p>List of Correct Street Names: KENAI SPUR HWY</p> <p>Existing Street Name Corrections Needed: S SPRUCE ST</p> <p>All New Street Names are Approved: No</p> <p>List of Approved Street Names:</p> <p>List of Street Names Denied:</p> <p>Comments: SPRUCE ST should be S SPRUCE ST. 11823 KENAI SPUR HWY will remain with lot 1A.</p>
Code Compliance	<p>Reviewer: Ogren, Eric</p> <p>Comments: No comments</p>
Planner	<p>Reviewer: Aldridge, Morgan</p> <p>There are not any Local Option Zoning District issues with this proposed plat.</p> <p>Material Site Comments: There are not any material site issues with this proposed plat.</p>

Assessing	Reviewer: Wilcox, Adeena Comments: No Comment
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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 Certificate to Plat states excepting from Lot 32 and Lot 33 the area known as Spruce St. Update description to "Government Lots 27, 28, 29, 32, and 33, excluding the land known as S. Spruce Street."*
 - *Remove "Kenaitze Indian Tribe IRA" as the Certificate to Plat only shows the ownership as Kenaitze Indian Tribe.*
- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
- Staff recommendation:** *Portions of S Spruce Street have not been dedicated. The government lots west of the right of way should extend to the centerline. The 30 foot distances to centerline should remain but add a "width varies" label for the right of way.*

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.*

20.30.030. Proposed street layout-Requirements.

- A. The streets provided on the plat must provide fee simple right-of-way dedications to the appropriate governmental entity. These dedications must provide for the continuation or appropriate projection of all streets in surrounding areas and provide reasonable means of ingress for surrounding acreage tracts. Adequate and safe access for emergency and service vehicle traffic shall be considered in street layout.
- B. Subdivision of land classified as agricultural conveyed subject to AS 38.05.321(a)(2)(B) may provide public access easements in lieu of fee simple dedications if necessary to comply with the minimum lot size restriction of the statute. The public access easements must meet all applicable right-of-way design criteria of Title 20 and are subject to the building setback requirements set forth in KPB 20.30.240.
- C. Preliminary plats fronting state maintained roads will be submitted by the planning department to the State of Alaska Department of Transportation and Public Facilities (DOT) for its review and comments.

Staff recommendation: The southern portion of Government Lot 34 does not have dedicated access. A dedication may be required. An exception has been requested.

20.30.270. Different standards in cities. Where cities have enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply the city standards in lieu of those set forth in this chapter. Any appeal of a city design standard is subject to KPB 21.01.020(E).

Staff recommendation: The City of Kenai does not meet the specified requirements for the application and consideration of different standards.

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: Due to the size of the parcel, and the availability of City water and wastewater services, a soils report will not be required.

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.

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."
- General electric and telephone lines easement, no definite location disclosed, granted to Homer Electric Association, Inc. Recorded on April 14, 1956 and located in Book 1 Page 149, Kenai Recording District. Partial release of the easements was recorded on November 8, 2012, Serial Number 2012-011075-0 KRD."

Make the following changes or correction the note on the plat.

- Plat note 4 – include "Misc" for the volume.
- Either include in plat note 4 or add an additional plat note, "Partial release of the easements was recorded on November 8, 2012, Serial Number 2012-011074-0 KRD."
- Plat note 5 states that it effects former Lot 31. Looking at the document it appears to list several lots except for Lot 31. Either update to the correct lots or remove the specific reference by removing "effecting former Lot 31".
- Plat note 6, include "KRD" for the recording book and page.
- Plat note 7 is for an access easement. Include "KRD" behind the serial number. The easement did not state the termination requirements but with the merger of the lots it will no longer be required. Add to the note, "The easement will terminate with merger of title when this plat is recorded."
- Plat note 8, include "KRD" behind the serial number.
- Plat note 10, include "KRD" behind the serial number.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: Remove “Kenaitze Indian Tribe IRA”. We have authority documents allowing Chelsea Hendriks to sign on behalf of Kenaitze Indian Tribe. The document states it is for FY2021-2022. Prior to printing the mylar the dates of her authority should be reviewed and it may require a new authority document to be issued or another person to sign the plat. Comply with 20.60.190.

EXCEPTIONS REQUESTED:

KPB 20.30.030 – Proposed street layout – requirements (reasonable means of ingress for surrounding acreage tracts.

Surveyor's Discussion: Asking for exception to NOT provide dedicated access to South half of Government Lot 34.

Staff Discussion: Government Lot 34 has been split by deed. Neither parcel has legal access. Staff did not find any record of recorded easements to provide access to the southern portion of Government Lot 34. Additional title research may determine an easement of record.

Surveyor's Findings:

1. South half of Government Lot 34 and Government Lot 35 have same ownership. Lot 35 has dedicated access along Spruce St.
2. Public use access easement previously in place vacated by resolution 2013-004092-0.
3. Majority of South half of Government Lot 34 contains steep slopes and not useable for development.

Staff's Findings:

4. Government Lot 34 was divided into two parcels (the north 150 feet and the remainder) by deed.
5. Easements were granted to access Lot 34 prior to it being split but were subsequently vacated.
6. Neither the north 150 feet of Govt. Lot 34 or the remainder of Govt. Lot 34 have legal access.
7. The certificate to plat did not indicate any easements being present that provide access to the remainder of Govt. Lot 34.
8. A private easement exists granting access to the northern portion of Lot 34.
9. Our Lady of Angels Parish of Archdiocese Anchorage owns the southern portion of Government Lot 34.
10. Our Lady of Angels Parish of Archdiocese Anchorage owns the lot to the west and south.
11. Diocese of Sitka and Alaska Orthodox Church in America, Inc. own the lot to the east.
12. Steep slopes are present along the eastern portion of the southern portion of Government Lot 34.
13. Wetlands are present along the eastern portion of the lot.
14. The north 150 feet of Govt. Lot 34 is being combined with other government lots under common ownership.

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 1,3, 6, 7, and 11 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, 3, 6, 7, and 11 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, 3, 6, 7, and 11 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