

Kenai Peninsula Borough
Office of the Borough Clerk

MEMORANDUM

TO: Brent Johnson, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: Johni Blankenship, Borough Clerk (JB)

FROM: Michele Turner, Deputy Borough Clerk (MT)

DATE: August 23, 2022

RE: Ordinance 2022-38: Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire and Classify a 30-Foot-Wide Tract of Land (Mayor)

Per KPB 22.40.050(F), the borough clerk, or the clerk's designee in his or her absence, has the authority to revise pending resolutions and ordinances prior to assembly action, by filling in any blanks in the legislation stating advisory board recommendations made concerning the legislation. This serves as our memorandum to advise the assembly of same.

Conforming to the advisory board's actions, the last two Whereas clauses have been updated to read:

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

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

Thank you.

From: Cooper Landing Advisory Planning Commission
To: jaeger06@hotmail.com; [Tymick, Jonathan J \(DOT\)](mailto:Tymick.Jonathan.J@DOT.alaska.gov); [Cindy Ecklund](mailto:Cindy.Ecklund@DOT.alaska.gov); [Baski, Sean M \(DOT\)](mailto:Baski.Sea.M@DOT.alaska.gov); [Mueller, Marcus](mailto:Mueller.Marcus@DOT.alaska.gov); ygalbraith@gmail.com; [Planning Dept.](mailto:Planning.Dept.@DOT.alaska.gov); jette.cadieux@gmail.com; [Laura Johnson](mailto:Laura.Johnson@DOT.alaska.gov); [Virginia Morgan](mailto:Virginia.Morgan@DOT.alaska.gov); [David Story](mailto:David.Story@DOT.alaska.gov); brandonandheather@live.com; [Kathy Recken](mailto:Kathy.Recken@DOT.alaska.gov); [Fletcher, Sandra](mailto:Fletcher.Sandra@DOT.alaska.gov); [Carver, Nancy](mailto:Carver.Nancy@DOT.alaska.gov)
Subject: <EXTERNAL-SENDER>Re: 2022 08 03 CLAPC Unapproved Minutes
Date: Thursday, August 4, 2022 9:24:31 AM
Attachments: [1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf](#)

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On Thu, Aug 4, 2022 at 9:23 AM Cooper Landing Advisory Planning Commission <cooperlandingapc@gmail.com> wrote:

Commissioners:

Attached are the Unapproved Minutes from our August 3, 2022 Regular Meeting. The support documents include all but the document titled *1. Chugach Electric Daves Creek Substation MAP 7.13.2022.pdf*. Due to size limitations it will be sent as a second email.

Also attached are the approved minutes from June 8, 2022

Please note that the CLAPC voted by roll call as follows:

- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. "Cozy Bear" property.**
 - Recommend the removal of the deed restriction on the land.
 - All approve.
- **Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.**
 - Recommend supporting the ordinance if:
 1. The 30' greenspace is maintained in its entirety
 2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
 - All approve.
- **Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.**
 - Recommend approval of the permit application as proposed.
 - All approve.

Please let me know if you have questions or need more information.

Cheers,
David

**COOPER LANDING ADVISORY PLANNING COMMISSION
REGULAR MEETING
LOCATION: ZOOM TELECONFERENCE OR
COOPER LANDING COMMUNITY HALL
WEDNESDAY, AUGUST 3, 2022
6:00 PM
UNAPPROVED MINUTES**

1. CALL TO ORDER – 6:00 p.m.
2. ROLL CALL – J. Cadieux, C. Degernes, H. Harrison, K. Recken, D. Story present. Laura Johnson and Yvette Galbraith excused.
 - a. Members of Public present: Ray Wilkes, Todd Donahue, Candy Fitzpatrick
 - b. Agency Representatives: Sean Baski ADOT&PF, Cynthia Lowe HDR, Nancy Carver, KPB, Alice Rademacher, HDR, Marcus Mueller, KPB, Alvin Talbert, ADOT&PF
3. APPROVAL OF AGENDA – K. Recken moves to approve as written. C. Degernes seconds. All approve by roll call vote.
4. APPROVAL OF MINUTES for June 08, 2022 – H. Harrison moves to approve as written. K. Recken seconds. All approve by roll call vote.
5. CORRESPONDENCE – none
6. PUBLIC COMMENT/PRESENTATION WITHOUT PREVIOUS NOTICE – none.
7. REPORT FROM BOROUGH
 - a. DOT&PF Sterling Hwy MP 45-60 Project report and questions/answers. Sean Baski, PE, Project Manager and Design Manager, AKDOT&PF.
 - i. Finalizing negotiations for Stage 3 and 4 Early Work Package – the embankment for the east and west side of the bridge.
 - ii. Pioneer roads were largely done on the east side and are working on finishing them on the west side in the next couple weeks.
 - iii. Bridge girder selection is complete. The design of the bridge itself will continue. 6.5 million tons of steel or about \$30-40 million dollars in raw steel cost so far.
 - iv. Archeological work is ongoing. Expected completion next year. Monitoring will be a part of project construction throughout.
 - v. Q: K. Recken asked about the archeological information and whether it will eventually be shared with the public.

1. A: S. Baski said that as part of the agreement the project has contracted with a group that will transcribe that information for public use but that will not necessarily include the locations of findings etc.
- vi. Stage 5 – western intersection – is aiming to be at 75% design late this year or early next year.
- vii. Stage 1A was anticipated to be completed this year but some of the archeological findings may stretch that into next year.
- viii. Q: Ray Wilkes asked whether the west end will be at a point where it is paved before winter.
 1. A: S. Baski said that is expected to be the case but he would follow up with the group if it is not anticipated to be so.
- b. Nancy Carver, KPB Report:
 - i. Noted that there are three seats on the CLAPC that will be up at the end of the month. One member of the group has already submitted a letter to continue on the commission.
 - ii. The KPB is looking at adjusting the APC structure and whether they might be community councils instead. She suggested Cooper Landing residents and APC members research the benefits, detriments to this model in anticipation of that inquiry from the KPB.

8. OLD BUSINESS - none

9. NEW BUSINESS

1. Ordinance 2022-XX An Ordinance Authorizing the Release of a Commercial Deed Restriction on a Parcel of Land Located in Cooper Landing Originally Conveyed by the Kenai Peninsula Borough. “Cozy Bear” property.
 1. M. Mueller said, in general, that the KPB will have restrictions and how to modify them on the parcels that are given out. This particular deed during the land sale had the general practice at the time that included land restrictions. These kinds of restrictions are no longer placed on land sales that are made today. This is a proposal to remove the commercial deed restriction that was placed at the time of the original land sale. The reason for the request is from R. Wilkes and S. Kuzinski because of their pending sale which is running into issue from the mortgage provider due to the classification.
 1. K. Recken said that it is her understanding that commercial land has restrictions on it while residential does not.

1. M. Mueller said this is not zoning. It would go from a commercial deed restriction to the deed not having a deed restriction at all.
2. K. Recken asked what restrictions that commercial restrictions have.
 1. M. Mueller said that it can only be used for commercial purposes.
2. J. Cadieux stated that the community still has an interest in how the land might be utilized, for example, the community may not want an industrial site set up in that location but, of course, once the deed restriction is removed it is entirely up to the land owner.
3. R. Wilkes said that when the land was sold by the borough there was no land use zoning restrictions and it is still the case so the deed restriction is irrelevant anyway. He said that he ran into issue during the financing for the land and that the title company said that they had run into this issue a fair bit.
4. J. Cadieux asked if R. Wilkes was familiar with the Cooper Landing Land Use Plan.
 1. He said yes. He said that the place was built as a single-family residence though it has been used off and on as a B&B and that a number of documents state the highest and best use of the land is as a single-family residence.
5. H. Harrison moves to recommend the removal of the deed restriction on the land. D. Story seconds. All approve by roll call vote.
2. Ordinance 2022-XX An Ordinance Authorizing the Release of a Portion of a Conservation Easement Deed Restriction on a Parcel of Land Located in Cooper Landing and to Acquire a 30-Foot-Wide tract of Land and Classify Three, 30-Foot-Wide Tracts of Land as Government. "Three Bears" property.
 1. M. Mueller reported for KPB
 2. Replating the frontage of A,B, and C tracts. Two borough properties and one private: Tract A is the Transfer Station, Tract C is where QAP is staging for the MP 45-60 Project and is slated to be used as commercial property according to the local land management plan, and Tract B is Three Bears' property.
 3. This facilitates a frontage road from Quartz Creek Rd. to the Solid Waste Transfer Site.
 4. The frontage road concept was brought up by DOT to address safety concerns and reduce the number of highway turnouts on the new alignment and the surrounding areas.
 5. Three Bears has interest because the frontage road occupies the some of the same space as a conservation easement along this area.

6. This ordinance deals with parts of that starting with Tract B it would authorize the release of the conservation easement as it is written and is framed as a modification of a deed restriction. The three sides other than the one facing Dena'ina Creek would be released from the conservation easements that exist on that deed.
7. The 30' strip of land on the new alignment side would be conveyed from Three Bears to KPB and the cost of it would be, at least in part, considered the cost of the release of the deed restriction for the conservation easements.
8. To apply government designation to the newly created tracts A2, B2, C2 and would be managed in the public interest.
9. This ordinance would take effect when the new plat is recorded.
10. M. Mueller said that when the KPB conveyed Tract B originally the value of the conservation easement was not included. In this ordinance the value of the conservation easement and frontage road language is meant to help explain the process of making all parties whole
11. Q: K. Recken asked what "management for public benefit" means.
 1. A: M. Mueller said that the way he sees that rolling out is the Cooper Landing planning processes – functions of APC etc. – would mean the management of that would be deliberative. The immediate management of it would be no different than the current – managing the vegetation as is there would be some spruce bark beetle mitigations etc. but that this might be where a community sign might be placed.
 2. Q: K. Recken asked about whether we were losing the conservation easement on the road side.
 1. A: M. Mueller said that the management of that strip is to maintain community interests for green space
 2. The ordinance states: "Whereas classifying the 30-foot tracts of land created by the Quartz Creek Subdivision Outfitters Way Replat as "government" would hold the land for community gateway greenspace uses that are beneficial to the public, providing for consistent management decisions under public processes."
 3. J. Cadieux stated there is no doubt that there is fear in the community of losing this greenspace even when it comes time to put a walking biking path etc.
12. R. Wilkes said that just from the sounds of it there is a 50' conservation easement that exists right now. If they do away with that easement and put a frontage road there it would end up with no trees in between the two roads.
 1. M. Mueller said that the clearing of Tract C has currently maintained tree cover 75' from the edge of the right-of-way

so there would still be 30' of greenspace with the proposed changes.

13. S. Baski shared his screen to show some of the designs of the proposed layout of the frontage road and the edges of its ditches and fill slopes.
14. Q: J. Cadieux asked how much of the new alignment ROW would be treed.
 1. A: S. Baski said that there is no guarantee that there will be any trees within that right-of-way other than what is explicitly noted in the project requirements.
15. Q: D. Story asked about the active transportation component of the frontage road design. People will be attempting to walk and bike in this travel corridor whether we plan for them or not.
 1. A: S Baski indicated no specific accommodation has been included in preliminary design.
16. Q: J. Cadieux seconded with a question about the KPB's intention to provide for safe active transportation. Just because the mistake has been made to not account for active transportation on frontage roads elsewhere doesn't mean we need to repeat that mistake. 60' has provided for these shared functions in other places and should probably do so in this one.
 1. Our community has already made it clear that we need to accommodate for safe active transportation in this corridor. If we recommend for this ordinance tonight we are not precluding that this wouldn't be included in the design but it cannot be at the expense of the greenspace because it is very clear that there is no guarantee of any treed buffer on the DOT ROW.
 2. Q: Can we make our recommendation include guaranteed integrity of the greenspace be maintained and accommodation for a separated pathway that would accommodate non-vehicular traffic?
 3. A: S. Baski said that when dealing with 60' of space it appears there is a lot of room there but actually there isn't. Ultimately compromises would have to be made if an active transportation facility were included. In urban areas it includes curbs and gutters to gain additional space but in the rural context it becomes less desirable and often just a paved shoulder is considered adequate.
 4. As of right now there has not been an official ask from the community to include those facilities.
17. Q: J. Cadieux asked whether the design speed would play into the width required for the shoulders.
 1. A: S Baski said not really.
18. Q: M. Mueller asked whether expanding the KPB Tract C ROW to 70' would make the concept more viable?

1. A: S Baski acknowledged it may.
2. K Recken and II Harrison reiterated that the proposed extra 10' could not be taken from the 30' greenspace.
19. D. Story moved to recommend supporting the ordinance if
 1. The 30' greenspace is maintained in its entirety
 2. Design of final plat includes a separated pathway within the right of way corridor along its length that connects to the Phase 1B separated pathway and is not within the maintained greenspace.
 3. II. Harrison seconds. All approve by roll call vote.
3. Conditional Use Permit to Chugach Electric Association to use rip rap and create a new alignment of Quartz Creek near the Dave's Creek Substation to keep water away from the substation.
 1. Cynthia Lowe is the project manager with IIDR.
 1. She said they are trying to protect the upstream edges of the substation with rip rap. It will extend out about 100' to encourage Quartz Creek to flow back into its main channel.
 2. The intent is a one-time fix that would address future climatic or flood occurrences.
 3. If sinkholes keep developing as they have done in the last couple weeks they may need to add more rock to the front edge or go deeper with the rock and fabric. They have already re-designed to accommodate the sink holes and may need to again. The extension of rip rap in the current drawing before the APC has already been modified to sweep back closer to the CEA line and not as near the main Quartz Creek branch.
 2. C. Degernes moves to recommend approval of the permit application as proposed. K. Recken seconds.
 1. Q: K. Recken asked about the design plans should the sinkholes grow.
 2. A: C. Lowe explained the holes have already grown and the plans now include geotextile below almost 6-foot depth of class three rip rap to protect the station.
 3. All approve by roll call vote.

10. PLAT REVIEW - none

11. INFORMATION and ANNOUNCEMENTS - none

12. COMMISSIONER'S COMMENTS - none

13. ADJOURNMENT – C. Degernes moves to adjourn, K. Recken seconds. All approve. 7:56 p.m.

For more information or to submit comments please contact:

David Story, Secretary Treasurer or Janette Cadieux, Chair, P.O. Box 694, Cooper Landing, 99572 CooperLandingAPC@gmail.com

Turner, Michele

From: Shirnberg, Ann
Sent: Tuesday, August 23, 2022 7:49 AM
To: Blankenship, Johni; Turner, Michele
Subject: August 22nd PC Recommendations to the Assembly

Good Morning Johni,

Last night at their regularly scheduled planning commission meeting of August 22, 2022 the commission unanimously (12-Yes, 0-No, 2-Vacant) recommend that the Assembly adopt the following ordinance:

- Ordinance 2022-38: Authorizing the release of a portion of a conservation easement deed restriction on a parcel of land located in Cooper Landing and to acquire a 30-foot-wide tract of land and classify three 30-foot-wide tracts of land as government.

Thank You,

Ann Shirnberg
Administrative Assistant
Planning Department
(907) 714-2215

KENAI PENINSULA BOROUGH
144 North Binkley Street
Soldotna, Alaska 99669



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