MEMORANDUM

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

THRU: Peter A. Micciche Borough Mayor

FROM: Robert Ruffner, Planning Director

DATE: March 26, 2024

RE: Right-Of-Way Vacation KPB File 2024-022V: Vacate the approximate 184' of the end of the cul-de-sac of Shalom Lane between Lots 4, 5, 6 & Tract A of Immanuel Subdivision (Plat KN 2022-46) & Associated Utility Easement

In accordance with AS 29.40.140, no vacation of a borough right-of-way and/or easement may be made without the consent of the Borough Assembly.

During their regularly scheduled meeting of March 25, 2024 the Kenai Peninsula Borough Planning Commission granted approval of the above proposed vacation by unanimous vote based on the means of evaluating public necessity established by KPB 20.65 (8-Yes, 1-Absent). The petitioner is being sent to you for your consideration and action.

A draft copy of the unapproved minutes of the pertinent portion of the meeting and other related materials are attached.

- March 25, 2024 Draft PC Minutes
- March 25, 2024 Meeting Packet Materials
- Petition Form

ITEM #2 - RIGHT OF WAY VACATION VACATE THE APPROXIMATE 184' OF THE END OF THE CUL-DE-SAC OF SHALOM LANE BETWEEN LOTS 4, 5,6 AND TRACT A OF IMMANUEL SUBDIVISION AND ASSOCIATED UTILITY EASEMENT

KPB File No.	2024-022V
Planning Commission Meeting:	March 25, 2024
Applicant / Owner:	David and Christina Hall & Terrance Rais
Surveyor:	James Hall / McLane Consulting, Inc
General Location:	De Busk Drive in Nikiski
Legal Description:	Shalom Lane in Immanuel Subdivision KN 2022-46

Staff report given by Platting Manager Vince Piagentini.

Chair Brantley opened the item for public comment. Seeing and hearing no one wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Staggs moved, seconded by Commissioner Gillham to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, based on staff recommendations and subject to the five conditions as set forth in the staff report.

Hearing no objection or further discussion, the motion was carried by the following vote: MOTION PASSED BY UNANIMOUS VOTE:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Staggs, Tautfest, Venuti
Absent – 1	Slaughter

ITEM #3 – CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A FOOT BRIDGE WITHIN THE 50-FOOT HABITATE PROTECTION DISTRICT OF PTARMIGAN CREEK

PC Resolution Number	2024-05
Planning Commission Meeting:	March 25, 2024
Applicant	USDA Forest Service
KPB Tax Parcel ID	125-321-05
	T 4N R 1E SEC 30 SEWARD MERIDIAN SW GOVT LOTS 1 THRU
Legal Description:	4 & NE1/4 NE1/4 & W1/2 NE1/4 & E1/2 W1/2

Staff report given by Planner Morgan Aldridge.

Chair Brantley opened the item for public comment.

Hampton Coogle, Project Manager; 161 E. 1st Avenue, Anchorage, AK 99501: Mr. Coogle is the project manager for this installation and made himself available for questions.

Seeing and hearing no one else wishing to comment, public comment was closed and discussion was opened among the committee.

MOTION: Commissioner Morgan moved, seconded by Commissioner Staggs to adopt Planning Commission Resolution 2024-05, granting a conditional use permit pursuant to KPB 21.18 for the construction of a footbridge within the 50-Foot Habitat Protection District Ptarmigan Creek.

Hearing no objection or further discussion, the motion was carried by the following vote: **MOTION PASSED BY UNANIMOUS VOTE**:

Yes - 8	Brantley, Epperheimer, Fikes, Gillham, Morgan, Staggs, Tautfest, Venuti
Absent – 1	Slaughter

E. NEW BUSINESS

 Right-Of-Way Vacation; KPB File 2024-022V McLane Consulting Group / Rais, Hall Request: Reconfigures the Shalom Lane cul-de-sac by vacating & relocating the current bulb & associated utility easements Nikiski Area / Nikiski APC











KPB File 2024-022V T 07N R 11W SEC 04 Nikiski

The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.





KPB File 2024-022V 2/27/2024



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KPB 2024-022V

AGENDA ITEM E. NEW BUSINESS

ITEM #2 - RIGHT OF WAY VACATION VACATE THE APPROXIMATE 184' OF THE END OF THE CUL-DE-SAC OF SHALOM LANE BETWEEN LOTS 4, 5,6 AND TRACT A OF IMMANUEL SUBDIVISION AND ASSOCIATED UTILITY EASEMENT

KPB File No.	2024-022v
Planning Commission Meeting:	March 25, 2024
Applicant / Owner:	David and Christina Hall & Terrance Rais
Surveyor:	James Hall / McLane Consulting, Inc
General Location:	De Busk Dr in Nikiski
Legal Description:	Shalom Lane in Immanuel Subdivision KN 2022-46

STAFF REPORT

Specific Request / Purpose as stated in the petition: The current use is by the same property owner who also owns Lot 4 KN 2022-46. Lot 5 and 6 will also be combined to provide additional acreage for wastewater treatment systems and water well separation. All surrounding parcels remain with legal access. Alternate cul-de-sac will be dedicated.

Notification: The public hearing notice was published in the March 22nd issue of the Peninsula Clarion as part of the Planning 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 Nikiski Post Office of Nikiski

Seven certified mailings were sent to owners of property within 300 feet of the proposed vacation. No receipts had been returned when the staff report was prepared.

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

Eighteen public hearing notices were emailed to agencies and interested parties as shown below:

State of Alaska Dept. of Fish and Game State of Alaska DNR State of Alaska DOT State of Alaska DNR Forestry Nikiski Advisory Planning Commission Emergency Services of Nikiski Kenai Peninsula Borough Office Kenai Peninsula Borough Land Management Nikiski Community Council Alaska Communication Systems (ACS) ENSTAR Natural Gas General Communications Inc, (GCI) Homer Electric Association (HEA)

Legal Access (existing and proposed):

The proposed vacation is at the end of the Shalom Lane a 60 foot dedication. Shalom Lane is off De Busk Dr a varied width dedication coming off Holt Lamp Light Rd a 100 foot dedication.

The vacation will be finalized by the plat Immanuel Subdivision No. 2 that will dedicate a new end to the cul-de-sac for Shalom Lane.

Block length is currently not compliant. The new subdivision will add a dedication, bringing the block into compliance.

KPB Roads Dept. Comments	Out of Jurisdiction: No Roads Director: Griebel, Scott Comments: No RSA Comments
SOA DOT comments	No Comment

Site Investigation:

The area of the vacation is not located near any steep terrain. The proposed vacation are is along a small ridge line with a drop to the northeast.

There is an area of inundation identified to the north of the proposed vacation. Several lakes surround the property proposed for the future subdivision. The area is not in a flood hazard area according to the River center review.

	A. Floodplain Reviewer: Hindman, Julie Floodplain Status: Not within flood hazard area Comments: No comments
KPB River Center review	B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: Is NOT within HPD Comments: No Comment
	C. State Parks Reviewer: Comments: No Comment

Staff Analysis:

The plat Immanuel Subdivision KN 2022-46 is a division of Government Lot 14 of Section 4, Township 7 North, Range 11 West, SM, Alaska. Immanuel Subdivision KN 2022-46 dedicated the right-of-way for Shalom Lane culde-sac.

Adjacent land to the cul-de-sac are Lots 5, 6 and Tract A from Immanuel Subdivision KN 2022-46. These parcels along with the vacation will be included in the new subdivision Immanuel Subdivision No 2, that will also include a new dedication for the bulb of the Shalom Lane cul-de-sac.

Homer Electric Associate has sent a comment that an electric line has been installed in the 10' utility easement along the cul-de-sac being proposed for vacation in Lots 4 & 5 of Immanuel Subdivision the parent plat. HEA has request that this portion of the 10' utility easement not be vacated. The comment is included in the packet. *Staff recommends:* the Commission not to vacate the 10' utility easement along lots 4 & 5 Immanuel Subdivision KN 2022-46, unless other arrangements can be made to relocate the electric line and any other utilities installed at owners' expense.

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:** Not in use
 - 2. A road is impossible or impractical to construct, and alternative access has been provided; **Staff comments** A road is possible, but a more practical end is being proposed.
 - The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
 Staff comments: No, houses are not in yet. Utilities have been installed in utility easements
 - 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: No access to a lake, river or public area is being vacated.
 - 5 The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped; Staff comments: No
 - 6. Other public access, other than general road use, exist or are feasible for the right-of-way; **Staff comments:c**No
 - 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: A utility is installed in the utility easement, outside the proposed vacation.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated. **Staff comments:** No

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 April 2, 2024 meeting.

If approved, Immanuel Subdivision No. 2 will finalize the proposed right of way vacations. The Plat Committee is scheduled to review Immanuel Subdivision No. 2 on next available meeting possible.

KPB department / agency review:

	Reviewer: Leavitt, Rhealyn Affected Addresses: NONE
	Existing Street Names are Correct: Yes
Addressing	List of Correct Street Names: DEBUSK DR, SHALOM LN
	Existing Street Name Corrections Needed:
	All New Street Names are Approved: No List of Approved Street Names: N/A
Code Compliance	Reviewer: Ogren, Eric
	Comments: No comments
	Reviewer: Raidmae, Ryan There are not any Local Option Zoning District issues with this proposed
	plat.
Planner	
	Material Site Comments:
	There are not any material site issues with this proposed plat.
	Reviewer: Windsor, Heather
Assessing	Comments: No comment
Advisory Planning Commission	

Utility provider review:

HEA	HEA has request the easement in Lot 4 & 5 not be vacated, comment is in the packet.
ENSTAR	
ACS	No objections
GCI	No comments or objections
SEWARD ELECTRIC	N/A
CHUGACH ELECTRIC	N/A
TELALASKA	N/A

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(D) 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 including a submittal to and approval by the Plat Committee.
- 3. Grant utility easements requested by the City Council and 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 20.65.050(I)).
- 5. Not vacating the 10' utility easement along Lots 4 & 5 Immanuel Subdivision KN 2022-46 unless other arrangements are made by the owners and utility companies. Movement of any utilities will be at owners expense.

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
 - 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
 - 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
 - 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









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Aerial with 5-foot Contours



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KPB 2024-022V



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 * (907) 714-2200 * (907) 714-2378 Fax

PETITION TO VACATE PLATTED RIGHT OF WAY / PLATTED PUBLIC EASEMENT / PLATTED PUBLIC AREA

ODEIC EASEMENT / FORTIED FOE

PUBLIC HEARING REQUIRED

Upon receipt of complete application with fees and all required attachments, a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

Initially, a sketch may be included with the vacation petition for review by the Planning Commission. After the Planning Commission takes action on the vacation, a Subdivision Plat must be prepared by a licensed land surveyor. The plat will be processed in accordance with KPB 20.10.080. Platting authority is vested in the Planning Director.

SUBMITTAL REQUIREMENTS

A platted right of way vacation (ROWV) application will be scheduled for the next available	e pl	annlı	1g	
commission meeting after a complete application has been received.				
- \$500 non-refundable fee to help defray costs of advertising public hearing. Plat fee	es v	vill b	e in	
addition to the vacation fees.				
- City Advisory Planning Commission. Copy of minutes at which this item was acted on,	alor	ng wi	th a	
copy of City Staff Report.				
SHALOM LN platted public right of way proposed to be vacated	was			
dedicated by the plat of IMMANUEL Subdivision, filed a	s Pla	at No		
2022-46 in the KENAI Recording District.				
- 3 copies of the plat or map showing the platted right of way to be vacated. Must not explanately a state of the platted right of way to be vacated. Must not explanately a state of the platted right of the platted r	xcee	ed 11	x	
17 inches in size. Area to be vacated must be clearly depicted. Proposed alternative pub	lic a	cces	s to	
be shown and labeled on the sketch.				
- REASON FOR VACATING The petitioner must attach a statement with reasonable justif	- REASON FOR VACATING The petitioner must attach a statement with reasonable justification for			
the vacation of the platted right of way / platted easement / platted public area.				
Has the platted right of way been fully or partially constructed? Yes 🗸 No				No
Is the platted right of way used by vehicles / pedestrians / other?		Yes	1	No
Is alternative right-of-way being provided?	\checkmark	Yes		No
Are there utility easements associated with the right of way to be vacated?	1	Yes		No
Is the platted right of way and or associated utility easement in use by any utility company?		Yes	1	No
If so, which utility provider?				

LEGAL DESCRIPTION ADJOINING LAND:

Lot, Block, Subd. or street address LOT 5, 6 AND TRACT A KN2022-46		
Section, township, range SECTION 4, T7N, R11W, SM AK		
City (if applicable) General area DE BUSK AVE IN NIKISKI		

The petition must be signed by owners of a majority of the land affected by the platted right of way proposed to be vacated. Each petitioner must include address and legal description of his/her property. Attach additional signature sheets if needed.

	Submi	tted	by:
--	-------	------	-----

Land Owner	$\rho \sim \rho$
Name (printed): Terence Rais	Signature Journe Kan
e-mail: TRais @, Fox AK. com	Address:
Owner of:	1007 2nd St. Kenal. At 99611

Land Owner:

Name (printed):	Signature
e-mail:	Address:
Owner of:	

FOR OFFICE USE ONLY		
RECEIVED BY	DATE SUBMITTED	KPB FILE #



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 * (907) 714-2200 * (907) 714-2378 Fax

PETITION TO VACATE PLATTED RIGHT OF WAY / PLATTED PUBLIC EASEMENT / PLATTED PUBLIC AREA

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Initially, a sketch may be included with the vacation petition for review by the Planning Commission. After the Planning Commission takes action on the vacation, a Subdivision Plat must be prepared by a licensed land surveyor. The plat will be processed in accordance with KPB 20.10.080. Platting authority is vested in the Planning Director.

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co	mmission meeting after a complete application has been received.				
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	addition to the vacation fees.				
	- City Advisory Planning Commission. Copy of minutes at which this item was acted on,	alon	g wit	h a	
	copy of City Staff Report.				
\checkmark	SHALOM LN platted public right of way proposed to be vacated	was			
	dedicated by the plat of IMMANUEL Subdivision, filed as	s Pla	t No.	1	
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\checkmark	- 3 copies of the plat or map showing the platted right of way to be vacated. Must not en	cee	d 11	х	
	17 inches in size. Area to be vacated must be clearly depicted. Proposed alternative pub	lic a	ccess	to	
	be shown and labeled on the sketch.				
./	- REASON FOR VACATING The petitioner must attach a statement with reasonable justif	icati	on fo	or	
V	the vacation of the platted right of way / platted easement / platted public area.			und in	
Ha	is the platted right of way been fully or partially constructed?		Yes	1	No
Ist	the platted right of way used by vehicles / pedestrians / other?		Yes	1	No
_	alternative right-of-way being provided?	1	Yes		No
Ar	e there utility easements associated with the right of way to be vacated?	1	Yes		No
Ist	the platted right of way and or associated utility easement in use by any utility company?		Yes	\checkmark	No
	If so, which utility provider?				

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Lot, Block, Subd. or street address LOT 5, 6 AND TRACT A KN2022-46	
Section, township, range SECTION 4, T7N, F	R11W, SM AK
City (if applicable)	General area DE BUSK AVE IN NIKISKI

The petition must be signed by owners of a majority of the land affected by the platted right of way proposed to be vacated. Each petitioner must include address and legal description of his/her property. Attach additional signature sheets if needed.

Submitted by:

Land Owner	
Name (printed): David Hall	Signature build bolk
e-mail: allagapeelectric Ohoma	Address:
Owner of:	-0474

Land Owner:

Name (printed): Christina Hall	Signature one beell
e-mail: akaqueelectrice hotmail.co	Address:
Owner of:	

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KPB FILE #