

Kenai Peninsula Borough Planning Commission

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

**May 24, 2021
7:30 P.M.
UNAPPROVED MINUTES**

CALL TO ORDER

Chair Martin called the meeting to order at 8:20 p.m.
(Meeting started late due to appeal hearing running over time)

ROLL CALL

Commissioners Present

Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kaslof/Clam Gulch
Franco Venuti, City of Homer

With 9 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Bryan Taylor, Borough Planner
Ann Shirnberg, Administrative Assistant
Avery Harrison, Administrative Assistant

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *2. Planning Commission Resolution 2021-016V
- *3. Plat Granted Administrative Approval
 - a. Seashore Bluffs; KPB File 2017-043R1
 - b. Inglima Tract 2019 Replat: KPB File 2019-139
- *4. Plats Granted Final Approval
 - a. Marion Subdivision 2021 Replat; KPB File 2021-038
- *6 Commissioner Excused Absences
 - a. Syverine Bentz, Anchor Point/ Ninilchik
 - b. Davin Chesser, Northwest Borough
- *7 Minutes
 - a. May 10, 2021 Plat Committee Meeting
 - b. May 10, 2021 Planning Commission Meeting

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas.

Scott Huff requested that that item D6 – River Quest 2021 Replat, be removed from the agenda. There are

missing signatures on the application which makes the plat an incomplete submittal.

Hearing no one else wishing to comment, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Ecklund to remove item D6 from the agenda.

Seeing and hearing no objection or further discussion, the motion was carried by:

MOTION PASSED BY UNANIMOUS CONSENT:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Bentz, Chesser				

MOTION: Commissioner Carluccio moved, seconded by Commissioner Ecklund to approve the consent agenda and the regular agenda.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Bentz, Chesser				

AGENDA ITEM D. NEW BUSINESS

Chair Martin asked Ms. Shirnberg to read the procedure for public testimony.

AGENDA ITEM D. NEW BUSINESS

GROUPED AGENDA

Staff report given by Scott Huff

A. Simple or non-controversial. The type of plats grouped are lot splits, creating a small number of lots, replats, no exceptions required and no public comments were received. – 3 Plats

3. Poage Subdivision Chaloux Replat
KPB File: 2021-059
Segesser Surveys / Chaloux
Location: on Robert Ave.
Funny River Area / Funny River APC
4. Don's Place Subdivision Heazlett Replat
KPB File: 2021-060
Segesser Surveys / Heazlett
Location: on Eagle Ave.
Nikiski Area
5. Bos'N Landing 2021 Replat
KPB File: 2021-062
McLane Consulting Group / Edward N. Krohn Estate
Location: off Lou Morgan Rd., on Starboard Beam Cir. & Focsle Cir.
Sterling Area

Staff recommends the Commission determine whether any members of the public, surveyors or Commission members wish to speak to any of the plats in this group and remove the specific plats from the group, voting on the remainder of plats in the group in a single action to grant preliminary approval to the

plats subject to staff recommendations and the conditions noted in the individual staff reports.

END OF STAFF REPORT

Chair Martin 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 Ecklund moved, seconded by Commissioner Carluccio to grant preliminary approval based on staff recommendations and compliance with borough code to Poage Subdivision Chaloux replat, Don's Place Subdivision Heazlett Replat and Bos'N Landing 2021 Replat.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Bentz, Chesser				

AGENDA ITEM D. NEW BUSINESS

ITEM 3 – POAGE SUBDIVISION CHALOUX REPLAT

KPB File No.	2021-059
Planning Commission Meeting:	May 24, 2021
Applicant / Owner:	Daniel and Ronell Chaloux of Soldotna, Alaska
Surveyor:	John Segesser / Segesser Surveys
General Location:	Funny River / Funny River APC
Parent Parcel No.:	066-431-10, 066-431-11
Legal Description:	Lots 10 and 11 of Poage Subdivision No. 3, KN 86-52
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will combine two lots to create one parcel that will be 2.204 acres.

Legal Access (existing and proposed):

The proposed subdivision is on the corner of Kids Queen Court and Robert Avenue E. Per KPB GIS data, Kids Queen Court, a 60 foot wide borough cul-de-sac, is not constructed. Robert Avenue E, a 60 foot wide borough right of way, appears to be partially improved but is not maintained by the Kenai Peninsula Borough. Robert Avenue E is accessed off Lake Road, a 100 foot wide right of way that is constructed and maintained by the borough.

The subdivision is within a compliant and closed block.

KPB Roads Dept. comments	Within jurisdiction; no comment
SOA DOT comments	No comment

Site Investigation:

Per KPB GIS data, there are steep slopes located along the eastern portion of the subdivision.

Per KPB GIS data, there are no wetlands or bodies of water within the proposed subdivision.

Per KPB GIS imagery there may be a structure that crosses the interior lot line. The proposed preliminary plat will remove any potential with the residence crossing a property boundary line between Lots 10 and 11.

Floodplain Hazard Review	Not within a flood hazard area
Anadromous Waters Habitat Protection District Review	Not within a AWHPD
State Parks Review	No comment

Staff Analysis

The proposed subdivision will be combining two lots from Poage Subdivision No. 3, KN 86-52. The parent plat established a 20 foot building setback from the dedicate right of way and granted the building setback as a utility easement with clearing restricted to the front 10 feet. This has been depicted and noted on the preliminary plat. **Staff recommends** plat note 3 include a reference to the document that granted the easement, i.e. "granted by KN 86-52".

As outlined in KPB 20.40.020(A), a soils analysis report will not be required and an engineer will not need to sign the plat. The proposed platting action is vacating lot lines to create fewer lots and the parent plat was signed by DEC. **Staff recommends** the plat note currently in place on the plat be removed and replaced with *"WASTEWATER DISPOSAL: The parent subdivision for lots resulting from this platting action was approved by the Alaska Department of Environmental Conservation on March 4, 1986. Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation."*

The parent plat contained a covenant note that all lots except for 15, 25, and 26 could not have a mobile home. **Staff recommends** the following plat note be added "Covenant noted on Plat KN 86-52 states no mobile homes on any of the subdivision lots. The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170."

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.

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.

Utility Easements

Staff recommends that a note or label be added that the 20 foot utility was granted by Plat KN 86-52 and grant any easements requested by utility providers.

Utility provider review:

HEA	No comment
ENSTAR	No comment
ACS	
GCI	No comment

KPB department / agency review:

Addressing – Derek Haws	Affected Addresses: 33125 Robert Avenue E. Existing street name corrections needed: Robert Avenue should be Robert Avenue E and Lake Street should be Lake Road. 33125 Robert Avenue E will remain with Lot 10A
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	There are no local option zoning district issues or material site issues associated with this subdivision.
Assessing – Adeena Wilcox	No comments.
City Advisory Comments	N/A
Advisory Planning Commission	

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

KPB 20.25.070 - Form and contents required.

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: Update Lake Street to Lake Road. Include the directional suffix for Robert Avenue E.

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: Correct the location of the subdivision within the vicinity map.

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: Correct the status label for Tract 14 located north of Robert Avenue E.

KPB 20.40 -- Wastewater Disposal

☒ 20.40.010 Wastewater disposal.

Platting Staff Comments: Revise the wastewater disposal note to comply with 20.40.020(B)(2).

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.

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

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

**Passed by Grouped Agenda*

AGENDA ITEM D. NEW BUSINESS**ITEM 4 – DON'S PLACE SUBDIVISION HEAZLETT REPLAT**

KPB File No.	2021-060
Planning Commission Meeting:	May 24, 2021
Applicant / Owner:	James and Susan Heazlett
Surveyor:	John Segesser / Segesser Surveys
General Location:	On Eagle Avenue / Nikiski area

Parent Parcel No.:	013-215-27, 013-215-28, 013-215-29, 013-215-30, 013-215-31
Legal Description:	Lots 28, 29, 30, 31, 32, Block 1, Don's Place Subdivision KN 83-44
Assessing Use:	Residential
Zoning:	Unrestricted
Water / Wastewater	On - Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will combine five lots to create one 4.60 acre lot.

Legal Access (existing and proposed):

The proposed subdivision fronts along Eagle Avenue, a 60 foot wide right of way, with Bluejay Circle, a 50 foot right of way. Eagle Avenue and Bluejay Circle are constructed and maintained by the Kenai Peninsula Borough. Two routes provide access to the subdivision. Sunset Street connects Eagle Avenue to the Kenai Spur Highway. Eagle Avenue also connects to the Kenai Spur Highway by way of Marhenke Street, Rediske Avenue, and Rector Street.

Bluejay Circle that abuts this subdivision was originally named Bluejay Place. Several street names have been changed by Street Name Resolutions. The correct street names are reflected on the preliminary plat.

Bluejay Circle is approximately 375 feet long and was dedicated as a 50 foot wide right of way ending in a cul-de-sac. Bluejay Circle is the only access to four lots and provides alternative access to two corner lots. Lot 28, which is included in this subdivision, appears to have a driveway off Bluejay Circle. Per KPB GIS imagery and KPB Assessing records Lot 27 is the only lot on Bluejay Circle to have improvements. The roads department had no comment on the preliminary plat. ***Staff recommends the planning commission concur that additional right of way width for Bluejay Circle is not required as the dedicated right of way is sufficient to provide access to the four lots.***

The parent lots are part of a subdivision that divided lands around multiple lakes. The placement of right of ways and creating lots along the lakes created blocks that are incomplete as there are several right of ways ending in cul-de-sacs. Due to the lake and the subdivision design, the block length is not compliant. ***Staff recommends the planning commission concur that an exception to KPB 20.30.170 Block Length is not required as this platting action cannot provide right of way dedications to help with block length due to the location of the lake and existing development.***

KPB Roads Dept. comments	Within jurisdiction; The RSA has no comments at this time
SOA DOT comments	Not on State road system; no comment

Site Investigation:

The preliminary plat has an unnamed lake to the south. Per KPB GIS data, there are areas along the lake and within parent lot 31 and 32 that may have low wet areas or standing water. The parent plat also used witness markers, which generally means the area contains water, low wet areas, or steep terrain. ***Staff recommends the low wet areas be depicted as well as labeled and provide source for the ordinary high water. Place a note on the final plat indicating 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.

It appears that improvements exist on Lots 28, 29, 30, and 31. This platting will remove the interior lot lines so that all improvements on one parcel.

Floodplain Hazard Review	Not within flood hazard area, no comments.
Anadromous Waters Habitat Protection District Review	Not within a HPD, no comments.
State Parks Review	No comments.

Staff Analysis

This preliminary plat will combine five lots that were created by Don's Place Subdivision Amended KN 83-44. The parent plat, which was 160 acres in size, dedicated multiple rights of way and created 102 lots and tracts.

Per KPB 20.60.200(A), "all subdivisions shall be surveyed except subdivisions which only eliminate existing property lines." This plat will not require a field survey. If a field survey is not performed, a plat note should be added to reflect that. In addition, the record from which all bearings and distances are taken from shall be noted and any computed information must be noted as such. **Staff recommends** a plat note be added if a field survey is not performed "A field survey was not performed for this subdivision as allowed by KPB 20.60.200(A)." and that all record information site the source.

Per KPB 20.40.020(A)(2), a wastewater review is not required if "The plat increases lot size by 1,000 square feet or more of area suit for conventional development." Plat note 7 addresses that a soils analysis report is not available or required. **Staff recommends** reword plat note 7 to state, "The purpose of this platting action is to combine 5 lots into 1, which will provide greater available wastewater disposal area as described by 20.40.020(A). An Engineer's Subdivision and Soils Report is not available for this subdivision. Soil conditions may be unsuitable for onsite wastewater treatment. Wastewater treatment and disposal systems must meet the regulatory requirements of the Alaska Department of Environmental Conservation."

Notice of the proposed plat was mailed to the beneficial interest holder on May 12, 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.

The property is not within an advisory planning commission.

Utility Easements

The parent plat granted a 10 foot utility easement adjoining the right of way. The easement of record has been noted on the preliminary plat.

Plat note 5 refers to an easement granted to Homer Electric Association. **Staff recommends** the plat note be updated to include "no definite location stated."

Utility provider review:

HEA	No comments
ENSTAR	No comments
ACS	
GCI	No comments

KPB department / agency review:

Addressing – Derek Haws	Affected Addresses: 51280 Bluejay Circle, 51481 Eagle Avenue. Existing street names are correct. 51280 Bluejay Circle and 51481 Eagle Avenue will remain on Lot 28A.
Code Compliance – Eric Ogren	No comments.

Planner – Bryan Taylor	There are no local option zoning district issues or material site issues associated with this subdivision.
Assessing – Adeena Wilcox	No comments.
City Advisory Comments	N/A
Advisory Planning Commission	N/A
Nikiski EMS	No issues

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.

- 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: *Revise the legal description to '... Don's Place Subdivision Amended, Plat 83-44 ...'*

KPB 20.30 Design Requirements

Platting staff comments: *Staff reviewed the plat and all the items required by 20.30 were met, unless otherwise noted below:*

20.30.240. Building setbacks.

- A. A minimum 20-foot building setback shall be required for dedicated rights-of-way in subdivisions located outside incorporated cities.

A. The setback shall be graphically depicted and labeled on the lots; if such depiction will interfere with the legibility of the plat, a typical lot showing the depiction and label may be provided on the plat, clearly indicating that the typical setback applies to all lots created by the plat.

B. The setback shall be noted on the plat in the following format:
Building setback- A setback of 20 feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

C. When a subdivision is affected by a Local Option Zoning District (LOZD), an approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback – This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

Staff recommendation: *Depict and label the 20 foot building setback adjoining the right of way.*

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: *Soils analysis not required per 20.40.020(A)(2).*

Staff recommendation: *Update the wastewater disposal note and 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.

20.60.110. Dimensional data required.

B. The natural meanders of ordinary high water (or mean high water line as applicable) is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.

Staff recommendation: Provide a plat note that states, 'The natural meanders of ordinary high water (or mean high water line as applicable) is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.' Comply with 20.60.110.

20.60.130. Boundary of subdivision. The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data. The boundary of the subdivided area shall clearly show what survey markers, or other evidence, was found or established on the ground to determine the boundary of the subdivision. Bearing and distance ties to all survey markers used to locate the subdivision boundary shall be shown.

Staff recommendation: Boundary is causing overstrikes on symbols and needs revised.

20.60.170. Other data required by law.

B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat. The borough will not enforce private covenants, easements, or deed restrictions. The borough will not enforce private covenants, easements, or deed restrictions.

Staff recommendation: Update the KPB reference to 20.60.170(B) to note that KPB will not enforce covenants, easements, or deed restrictions. Comply with 20.60.170.

20.60.200. Survey and monumentation.

- **Staff recommendation:** The symbols used on the face of the plat should match in size to those in the legend. Comply with 20.60.200

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

**Passed by Grouped Agenda*

AGENDA ITEM D. NEW BUSINESS**ITEM 5 – BOS'N LANDING 2021 REPLAT**

KPB File No.	2021-062
Planning Commission Meeting:	May 24, 2021
Applicant / Owner:	Edward N Krohn Estate
Surveyor:	James Hall / McLane Consulting Inc.
General Location:	Lou Morgan Road, Starboard Beam Circle, Focsle Circle, Sterling area
Parent Parcel No.:	063-560-37, 063-560-50
Legal Description:	Tract A Bos'n Landing Subdivision Krohn Addition, KN 2002-104 Lot 13 Block 2 Bos'n Landing Subdivision Part Two KN 77-148
Assessing Use:	Residential
Zoning:	Unrestricted
Water / Wastewater	On site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 1.22 acre lot and a 27.43 acre tract into eight lots ranging in size from 1.578 acres to 2.822 acres. Two tracts will also be created and will be 5.1 acres and 5.782 acres.

Legal Access (existing and proposed):

The two tracts will have access via State DOT maintained Lou Morgan Road, a 60 foot right of way. All other lots will have access by way of Starboard Beam Circle and Focsle Circle. Both are 60 foot wide dedicated right of ways that end with cul-de-sacs and located off Focsle Drive. Per KPB GIS data, Starboard Beam Circle and Focsle Circle are constructed but not maintained by the Kenai Peninsula Borough at this time. The Kenai Peninsula Borough maintains Focsle Drive, which connects to Lou Morgan Road. Proposed Lot 9A fronts Focsle Circle and Sir Martin Road. Sir Martin Road is constructed and maintained by the borough but access may be difficult due to terrain and an anadromous stream.

There is a public access easement that affects the subdivision. The document granting the easement is noted in plat note 4.4. Referring to parent plats, plat KN 2002-104 depicted the public access easement as a 20 foot easement along Lou Morgan Road. **Staff recommends** the boundary of the subdivision be corrected to match KN 2002-104 showing Lou Morgan Road as a 60 foot wide right of way. This platting action will dedicate 20 feet of right of way to match the easement per KN Bk. 127 Pg. 918. **Staff recommends** a certificate of acceptance be added to the plat for the State of Alaska DOT to sign the acceptance of the Lou Morgan Road right of way dedication.

Block length is not compliant as it exceeds the maximum length and close. Due to the turns of Lou Morgan Road, improvements, and already existing cul-de-sacs, requiring a dedication to comply with block length will create other issues and code requirement conflicts such as double frontage. The only area a dedication could occur and not conflict with existing dedications is along the western boundary. The intent would be to connect between two sections of Lou Morgan Road. The ability to get a full dedication will be difficult as there is currently a structure located to the south that would be close to the dedication. **Staff recommends** the planning commission concur that an exception is not required due to any required dedications would not improve the block and create other concerns and code issues.

KPB Roads Dept. comments	Within jurisdiction, no comments
SOA DOT comments	The ROW for the Lou Morgan Road, aka Jet Drive, a state road, is 50' each side of centerline and is correctly depicted.

Site Investigation:

The preliminary plat depicts the contours and the steep slopes are shaded. The areas of inundation are shown within proposed Lots 9A and 10A bordering an unnamed anadromous stream. **Staff recommends**

the following plat note be added to the plat:

“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.”

The subdivision is affected by a areas identified as ‘Depression’ and ‘Riverine’. The correct note is on the plat to alert the land owners that any development may require approval from Local, State or Federal agencies.

Floodplain Hazard Review	Not within a flood hazard area.
Anadromous Waters Habitat Protection District Review	Is totally or partially within HPD.
State Parks Review	No comments.

Staff Analysis

The parent parcels have been involved in several subdivisions and changes through the years. The most recent plat, KN 2002-104, combined ten lots into one tract. The preliminary plat will divide that tract into a similar design that previously existed. The biggest change is the inclusion of Lot 13 Block 2, resulting in a change from the former design for the creation of Lots 12A and 13A.

The new lots will require a soils analysis report to be submitted for review and approval by staff. An engineer will need to sign the final plat.

The two tracts are larger than 200,000 square feet and appear to provide multiple areas that are greater than 20,000 square feet of contiguous area for the placement of a wastewater system. A soils analysis report is not required for the two tracts. The correct wastewater disposal notes are provided on the plat. Due to a recent code change, **Staff recommends** the note for the tracts be revised to remove the reference to a nominal 5 acres.

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

Per plat KN 87-84, “20’ building set back shall be the utility easement except that clearing is restricted to front 10’ of the set back.” Tracts A-2 and a portion of Tract A-1 are subject to the 20 foot utility easement along Lou Morgan Road. This utility easement coincides with the building setback and the public access easement. **Staff recommends** the easement of record per KN 87-84 be depicted and labeled.

There are numerous utility easements granted through the years that are depicted and labeled with the source. Per KPB Code 20.30.060(D), the front ten feet adjoining rights-of-way shall be designated as a utility easement. **Staff recommends** a plat note be added that identifies the 10 foot adjoining rights-of-way is a utility easement.

Utility provider review:

HEA	No comments
ENSTAR	No comments
ACS	
GCI	No comments

KPB department / agency review:

Addressing – Celina Robinson	Affected addresses: 37360 Focsle Circle, 36538 Lou Morgan Road Existing Street names shown are correct.
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	37360 Focsle Circle will remain with Lot 12A 36538 Lou Morgan Road will remain with Tract A-1
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	There are no local option zoning district issues or material site issues associated with this subdivision.
Assessing – Adeena Wilcox	No comments.
City Advisory Comments	N/A
Advisory Planning Commission	N/A

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.

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 block designation, Block 2, needs added to Lot 13 description.*

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 comments: *View could be adjusted so the subject subdivision is closer to the center of the vicinity map. This is only a suggestion.*

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 propose 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: *Provide status labels for the parcels to the east of Lot 9A.*

20.30.240. Building setbacks.

A. A minimum 20-foot building setback shall be required for dedicated rights-of-way in subdivisions located outside incorporated cities.

D. The setback shall be graphically depicted and labeled on the lots; if such depiction will interfere with the legibility of the plat, a typical lot showing the depiction and label may be provided on the plat, clearly indicating that the typical setback applies to all lots created by the plat.

E. The setback shall be noted on the plat in the following format:

Building setback- A setback of 20 feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

F. When a subdivision is affected by a Local Option Zoning District (LOZD), an approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback – This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning

Department.

Staff recommendation: *Depict and label the 20 foot building setback on all dedicated right of ways.*

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: Remove nominal 5 acres from the wastewater disposal 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.*

20.60.040. 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 the State of Alaska DOT to accept the 20 foot right of way dedication on Lou Morgan Road.*

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 in addition to those mentioned within the staff report.

- *No access to state maintained rights-of-way permitted unless approved by the State of Alaska Department of Transportation.*

Correct plat note 4.1 as it currently starts a sentence with "And".

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

**Passed by Grouped Agenda*

AGENDA ITEM D. NEW BUSINESS

ITEM 1 – BARNETT’S SOUTH SLOPE SUBDIVISION QUIET CREEK PARK REPLAT LOTS 35, 36 & 37

KPB File No.	2021-057
Planning Commission Meeting:	May 24, 2021
Applicant / Owner:	Gary E. Harris, Derotha Ferraro, Courtney Martin, and Patrick Carter all of Homer, Alaska
Surveyor:	Stephen Smith / Geovera, LLC
General Location:	City of Homer

Parent Parcel No.:	177-021-27, 177-021-28, 177-02129
Legal Description:	Lots 35, 36, and 37 of Barnett's South Slope Subdivision Quiet Creek Park Unit 2, HM 2018-40
Assessing Use:	Residential
Zoning:	Rural Residential District
Water / Wastewater	City water and sewer

Staff report given by Scott Huff.

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will reconfigure three lots within Barnett's South Slope Subdivision Quiet Creek Park Unit 2 into two lots that will be 0.785 acres and 0.714 acres.

Legal Access (existing and proposed):

The subdivision is accessed from Nelson Avenue (north) which is a 60 foot right of way with a paved road that is maintained by the City of Homer. Nelson Avenue (north) connects with East End Road and connects with South Slope Drive with access to East Hill Road.

Nelson Avenue (south) is a 30 foot dedication that has not been improved and is under the jurisdiction of the City of Homer. Nelson Avenue (south) is not used for access to this subdivision or for neighboring parcels.

The subdivision is not located within a block that complies with the KPB block length requirement. Both Nelson Avenue dedications and Sanjay Court define the block.

KPB Roads Dept. comments	Out of jurisdiction; no comments
SOA DOT comments	No comment

Site Investigation:

This subdivision is affected by sloping terrain with limited areas for placement of buildings. The parent plat indicates that the subdivision is affected by wetland area (per Alaska Corps of Engineers Jurisdictional Determination) and a 20 foot drainage easement centered on the depicted drainage way. Per KPB GIS data there are no wetlands or bodies of water within the subdivision. The plat contains the correct development notes stating that development is subject to the City of Homer zoning regulations and the

Army Corps of Engineers shall be contacted before development.

Floodplain Hazard Review	Not within flood hazard zone; no comments
Anadromous Waters Habitat Protection District Review	Is not within an AWHPD; no comments
State Parks Review	No comments

Staff Analysis

The City of Homer Planning Commission reviewed the subject plat at their April 7, 2021 meeting. They recommended approval subject to the following conditions:

1. Include a plat note stating property owners should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation if any. Property owners are responsible for obtaining all required local, state, and federal permits.
2. Carry over the parent plat drainage and wetland information.

Per the City of Homer staff report, city water and sewer are available. Homer public works stated they would not require abandonment of a set of water and sewer services due to the newly constructed and paved Nelson Avenue. A soils analysis report will not be required.

The City of Homer staff report noted that “the proposed application will benefit since the Comprehensive Plan outlines more development for less vehicular traffic but due to the physical characteristics of the lots more green space will be beneficial to address the slope and drainage issues.”

A preliminary subdivision has been submitted for the lots abutting the western boundary of this subdivision. The proposed design will not impact this plat. Provide correct lot depiction and labels if recorded prior to this 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 new lot common lot line will more closely follow the existing drainage and provide more usable area for the two lots.

CORRECTIONS / EDITS

KPB 20.25.070 – Form and contents required.

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 name is compliant but very long. Would recommend removing the lots from the name. Suggestion would be Barnett's South Slope Subdivision Quiet Creek Park 2021 Replat or other approved name.

Correct the parent parcel description to Lots 35, 36, and 37.

H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding or storm water overflow, and the line of ordinary high water. This information may be provided on an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

Staff recommendation: Depict and label the wetland area, drainage, and 20 foot drainage

easement per HM 2018-40.

20.30.180. Pedestrian ways required when. Pedestrian ways not less than 8 feet wide shall be required in blocks longer than 600 feet where reasonably deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities.

Staff Comments: A 10 foot wide pedestrian access easement per HM 2019-23, within Lot 8-A-1, provides a connection from the end of Nelson A

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 comments: *The City of Homer does not meet the specified requirements for the application and consideration of different standards.*

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: This platting action will connect to an existing city supplied wastewater system that has been approved by the City of Homer. The correct wastewater disposal note is on the plat.

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.*

20.60.080. Improvements-Installation agreement required. A final plat of a subdivision located within city limits shall not be recorded with the district recorder prior to compliance with any city ordinances concerning the installation of improvements. Evidence of compliance shall be provided by the subdivider in the form of a written statement from the appropriate city official that improvements required by city ordinance are or will be installed. Evidence of compliance shall be a part of the final plat submission and the time for action required by KPB 20.60.210 shall not commence until evidence of compliance is submitted.

Staff comments: The City of Homer report states that a installation agreement is not required.

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.

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

- *The borough will not enforce private covenants, easements, or deed restrictions per KPB 20.60.170(B).*
- *Within plat note 8 include the additional amendment serial number of 2020-001089-0.*

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *Per the certificate to plat Mr. Harris took title as Gary Harris and Gary E. Harris. Both names shall be noted on his signature line. Example: Gary E. Harris, aka Gary Harris. The owners signature lines should note the former lots. Comply with 20.60.190.*

Utility Easements

The utility easements of record have been depicted or referenced by a plat note.

Staff recommends that a label be added for the depiction of the easement that adjoins Nelson Avenue (north) as granted per HM 2018-40.

Staff recommends that the front 15 feet along Nelson Avenue (south) and 20 feet within 5 feet of side lot lines be depicted and labeled as granted per HM 2018-40.

Staff recommends to grant any utility easements as requested by the utility providers.

Utility provider review:

HEA	No comment
ENSTAR	No comment
ACS	
GCI	No comment

KPB department / agency review:

Addressing – Derek Haws	Affected Addresses 839 NELSON AVE 851 NELSON AVE 875 NELSON AVE Comments: CITY OF HOMER WILL ADVISE ON AFFECTED ADDRESSES.
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	This plat is located within the City of Homer and is not subject to local option zoning districts or material site review by KPB.
Assessing – Adeena Wilcox	No comments.
Advisory Planning Commission	N/A

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

EXCEPTIONS REQUESTED:

A. KPB 20.30.120 Streets – width requirements (Nelson Avenue south)

Surveyor's Discussion: The city of Homer considers the Nelson Avenue South half right-of-way to be not constructible to city standards. I confirmed this with Julie Engebretsen at the Homer planning department. Ms. Engebretsen indicated that exceptions to the dedication of the north half of the right-of-way within all phases of the Quiet Creek Park plats were recommended by the planning staff and the Homer planning commission. This plat involves lots that were part of the original exception to the 30 foot adjoining right-of-way dedication.

Staff Discussion: Nelson Avenue (south) is a 30 foot right of way. Nelson Avenue (south) is under City of Homer jurisdiction. The parent plat (HM 2018-40) was granted an exception to not provide the matching 30 foot dedication. This platting action will be reducing the number of lots and will not change the access pattern to the subdivision.

Currently Nelson Avenue (south) contains a drainage that runs to Kallman Road.

All lots in Barnett's South Slope Subdivision use Nelson Avenue (north) for access. Lot 8-A-1 uses Sanjay Court for physical access. Lots 23 and 24A use Heidi Court for physical access.

A matching 30 foot right of way dedication will remove +/- 5,220 sq. ft. combined from proposed Lot 35-A and 36-A.

If denied, this platting action will be required to provide a matching 30 foot right of way dedication for Nelson Avenue (south).

Findings:

1. Nelson Avenue (south) is a 30 foot right of way.

2. Nelson Avenue (south) is under City of Homer jurisdiction. T
3. The parent plat (HM 2018-40) was granted an exception to not provide the matching 30 foot dedication.
4. This platting action will be reducing the number of lots and will not change the access pattern to the subdivision.
5. Currently Nelson Avenue (south) contains a drainage that runs to Kallman Road.
6. All lots in Barnett's South Slope Subdivision use Nelson Avenue (north) for access.
7. Lot 8-A-1 uses Sanjay Court for physical access.
8. Lots 23 and 24A of AA Mattox Subdivision use Heidi Court for physical access.
9. A matching 30 foot right of way dedication will remove +/- 5,220 sq. ft. combined from proposed Lot 35-A and 36-A.
10. The City of Homer Planning Commission reviewed and approved this preliminary plat on April 7, 2021.

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 1-10 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 1-10 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 1-10 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.

EXCEPTIONS REQUESTED:

B. KPB 20.30.170 Blocks – Length requirements

Surveyor's Discussion: The city of Homer considers the Nelson Avenue South half right-of-way to be not constructible to city standards. I confirmed this with Julie Engebretsen at the Homer planning department. Ms. Engebretsen indicated that exceptions to the dedication of the north half of the right-of-way within all phases of the Quiet Creek Park plats were recommended by the planning staff and the Homer planning commission. This plat involves lots that were part of the original exception to the 30 foot adjoining right-of-way dedication.

For the reasons stated above, dedicating a right-of-way connection between Nelson Avenue and the 30 foot wide Nelson Avenue South half right-of-way would be unnecessary.

Staff Discussion: The subdivision is not located within a block that complies with the KPB block length requirement. Both Nelson Avenue dedications (north and south) and Sanjay Court define the block. Development patterns, terrain issues, and drainages limit the location where right of way dedications can be made.

Sanjay Court will be extended with future phases of Barnett's South Slope Subdivison Quiet Creek Park, but is approved to terminate in a cul-de-sac.

Homer High School is located to the southwest and will not be able to provide an extension of right of way.

If denied, this platting action will be required to provide a 60 foot wide right of way connection between Nelson Avenue (north) and Nelson Avenue (south).

Findings:

1. The subdivision is not located within a block that complies with the KPB block length requirement.
2. Both Nelson Avenue dedications (north and south) and Sanjay Court define the block.
3. Development patterns, terrain issues, and drainages limit the location where right of way dedications can be made.
4. Sanjay Court will be extended with future phases of Barnett's South Slope Subdivison Quiet Creek Park, but is approved to terminate in a cul-de-sac.
5. Homer High School is located to the southwest and will not be able to provide an extension of right of way.
6. A 60 foot wide right of way dedicaioth will remove +/- 15,300 sq. ft. of land from this subdivision.
7. A 60 foot wide right of way will remove area that can be used for the construction of residential buildings.

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 1-7 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 1-7 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 1-7 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

Commissioner Venuti informed Chairman Martin that he was requesting recusal from this item as he had acted on this item as a member of the City of Homer's Planning Commission. Chairman Martin approved his request.

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

MAIN MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to grant preliminary approval to Barnett's South Slope Subdivision Quiet Creek Park Replat Lots 35, 36 & 37 based on staff recommendations and compliance to borough code.

AMENDMENT A MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to grant exception request to KPB 20.30.120-Street Width Requirements, for Nelson Avenue South, citing findings 1-10 in support of standards one, two & three.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT A MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Recused	1	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner						
Recused	Venuti						
Absent	Bentz, Chesser						

AMENDMENT B MOTION: Commissioner Ecklund moved, seconded by Commissioner Carluccio to grant exception request to KPB 20.30.170-Block Length Requirements, citing findings 1-7 in support of standards one, two & three.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT B MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Recused	1	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner						
Recused	Venuti						
Absent	Bentz, Chesser						

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MAIN MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Recused	1	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner						
Recused	Venuti						
Absent	Bentz, Chesser						

AGENDA ITEM D. NEW BUSINESS**ITEM 2 – BARNETT’S SOUTH SLOPE SUBDIVISION QUIET CREEK PARK LOT 38 REPLAT**

KPB File No.	2021-058
Planning Commission Meeting:	May 24, 2021
Applicant / Owner:	Travis and Megan Drake, Echo Trading Company, LLC all of Homer, Alaska
Surveyor:	Stephen Smith / Geovera, LLC
General Location:	City of Homer

Parent Parcel No.:	177-021-56, 177-021-30
Legal Description:	Lot 38 of Barnett’s South Slope Subdivision Quiet Creek Park Unit 2, HM 2018-40 and Tract E-1 of Barnett’s South Slope Subdivision Quiet Creek Park Unit 3, HM 2020-46
Assessing Use:	Residential
Zoning:	Rural Residential District
Water / Wastewater	City water and sewer

Staff report given by Scott Huff.

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will reconfigure a common lot line between a tract and a lot. The Tract will decrease from 6.904 acres to 6.477 acres and the lot will increase from 16,796 sq. ft. to 35,414 sq. ft.

Legal Access (existing and proposed):

The subdivision is accessed from Nelson Avenue and Sanjay Court, both of which are 60 foot right of ways under the jurisdiction of the City of Homer. Nelson Avenue is a paved road. Nelson Avenue connects to South Slope Drive, which provides access to East Hill Road. Nelson Avenue also connects to East End Road.

This plat is not extending Sanjay Court right of way but future subdivision phases will complete the Sanjay Court right of way. Construction of Sanjay Court is in progress. A 30 foot public access and utility easement, per HM 2019-002214-0, extends from the end of Sanjay Court dedication to provide legal and physical access to Lot 8-A-1.

The subdivision is not located within a block that complies with the KPB block length requirement.

The subdivision is not located within a block that complies with the KPB block length requirement.

KPB Roads Dept. comments	Out of jurisdiction; no comments
SOA DOT comments	No comment

Site Investigation:

This subdivision is affected by sloping terrain, drainages, and wetlands.

Proposed Tract E-1-A has a drainage easement granted by HM 2018-40 and HM 2020-46. Per KPB GIS data there are no wetlands or bodies of water within the subdivision. Parent plats depict areas identified as wetlands based on the Army Corps of Engineer determination. **Staff recommends** any area shown as wetlands per the parent plats be carried forward. The proper note about contacting the Army Corps of Engineers before development is on the plat.

Slopes greater than 20 percent are depicted on the plat and are located along the western boundary of proposed Tract E-1-A.

Floodplain Hazard Review	Not within flood hazard zone; no comments
Anadromous Waters Habitat Protection District Review	Is not within an AWHPD; no comments
State Parks Review	No comments

Staff Analysis

The proposed subdivision is within a phased development that was started in 2014 and obtained final approval in 2018. Lot 38 was created with Unit 2, HM 2018-40. Lot E-1 was created from of Unit 3, HM 2020-46. The portion of Tract E-1 being added to Lot 38 was designed as Lot 39. This plat will not increase the number of lots that have been approved.

City water and wastewater services are being extended within this phased development and all lots are required to connect to the city utilities.

Future phase will extend Sanjay Court. The submittal states the developers of the subdivision are working on the construction of roads and installation of utilities for the next phase. City water and sewer are available from Nelson Avenue and Sanjay Court. A soils analysis report will not be required.

The City of Homer Planning Commission reviewed the subject plat at their March 17, 2021 meeting. They recommended approval subject to the following conditions:

3. Include a plat note stating "Property owners should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation if any. Property owners are responsible for obtaining all required local, state, and federal permits."
4. Carry forward any relevant plat notes from the parent plats.

Notice of the proposed plat was mailed to the beneficial interest holder on May 12, 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.

A preliminary plat has been submitted that abuts the eastern boundary of this subdivision. The design of that plat will not impact this subdivision design. If the plat to the east is finalized prior to the finalization of this plat **Staff recommends** the correct status labels are shown.

Utility Easements

The drainage easement and public access easement of record have been correctly depicted and noted.

This plat will extend the 15 foot utility easement along the northwest boundary of Lot 38-A to align with the future extension of Sanjay Ct. **Staff recommends** a label or plat note be added to state that this portion of the easement is being granted by this plat.

Staff recommends the plat depict or note the easement of record granted to ENSTAR per documents HM 2021-001579-0.

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.

Utility provider review:

HEA	No comment
ENSTAR	
ACS	
GCI	No comment

KPB department / agency review:

Addressing – Derek Haws	No affected addresses, no other comments.
Code Compliance – Eric Ogren	No comments.
Planner – Bryan Taylor	This is located within the City of Homer and not subject to local option zoning districts material site reviews by KPB.
Assessing – Adeena Wilcox	No comments.
Advisory Planning Commission	N/A

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****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 name is compliant but Staff would recommend removing the lot from the name. Suggestion would be Barnett's South Slope Subdivision Quiet Creek Park Drake Replat.*

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 propose 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: *Correct the lots status labels for the parcels north of Nelson Avenue (Lot 18 to 16, 19 to 17, 20 to 18 and Tract C to Lot 19).*

J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

Staff recommendation: *Rename the large Tract to E-2 to reduce the length of the lot identifier.*

20.30.180. Pedestrian ways required when. Pedestrian ways not less than 8 feet wide shall be required in blocks longer than 600 feet where reasonably deemed necessary to provide circulation or access to schools, playgrounds, shopping centers, transportation or other community facilities.

Staff comments: *A 10 foot wide pedestrian trail easement is located on the south boundary. Per HM 2019-23 a 10 foot wide pedestrian trail easement is located on the north boundary of Lot 8-A-1 and provides a connection from Nelson Avenue (south) to the Homer High School property.*

Staff recommendation: *Depict and label the 10 foot wide pedestrian access easement per HM 2019-23.*

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 comments: *The City of Homer does not meet the specified requirements for the application and consideration of different standards.*

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: This platting action will connect to an existing city supplied wastewater system that has been approved by the City of Homer. The correct wastewater disposal note is on the plat.

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.

20.60.080. Improvements-Installation agreement required. A final plat of a subdivision located within city limits shall not be recorded with the district recorder prior to compliance with any city ordinances concerning the installation of improvements. Evidence of compliance shall be provided by the subdivider in the form of a written statement from the appropriate city official that improvements required by city ordinance are or will be installed. Evidence of compliance shall be a part of the final plat submission and the time for action required by KPB 20.60.210 shall not commence until evidence of compliance is submitted.

Staff recommendation: Provide a copy of the installation agreement or provide documentation from the City of Homer that an installation agreement is not required.

20.60.170. Other data required by law.

A. The plat shall show all other data that are or may be required on the plat by statute or ordinance.

B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat. The borough will not enforce private covenants, easements, or deed restrictions. The borough will not enforce private covenants, easements, or deed restrictions.

Staff recommendation: This subdivision is affected by covenants, conditions, restrictions, and or easement of record per HM 2018-003491-0 and HM 2018-003524-0. Provide a plat note stating, 'Per KPB 20.60.170(B) The borough will not enforce private covenants, easements, or deed restrictions. The borough will not enforce private covenants, easements, or deed restrictions.' Comply with 20.60.170.

20.60.190. Certificates, statements, and signatures required.

Staff recommendation:

- An additional Certificate of Ownership is required for the Drakes as the current wording only references Echo Trading Company LLC and Delta Storage and Transfer.

- As this plat is obtaining separate approval, the Plat Approval note can be edited to only reference the approval date for this platting action.

- Within the Certificate of Ownership, identify which lot each signer is the owner of.

Comply with 20.60.190.

EXCEPTIONS REQUESTED:

KPB 20.30.030 Proposed Street Layout (projection of Sanjay Court)

KPB 20.30.170 Blocks – Length requirements

Surveyor's Discussion: The 30 foot wide public access easement within the adjoining parcel to the south of this plat (HM 2018-003011-0) was vacated by plat HM 2019-23. The current parcel to the south (Lot 8-A-1 HM 2020-3) has functional access by way of a 30 foot public access, utility and maintenance easement (HM 2019-002214-0) through proposed Tract E-1-A. The final phase of the previously approved subdivision within proposed Tract E-1-A is in the final stages of construction. The Unit 4 plat will dedicate the Sanjay Court 60 foot right-of-way that terminates in a cul-de-sac.

Staff Discussion: These two sections of code are being combined into one exception request as both deal

with the extension and connection of right of ways.

Due to terrain, development plans with cul-de-sacs, and existing right of way and improvements the ability to create a closed block is limited. A dedication within former lot 38 will not improve the block and will create additional block width issues. Tract E-1-A is proposed to be further subdivided as part of a phased development plan that will include the extension of Sanjay Court and terminate in a cul-de-sac.

The original phased development approved without a through dedication.

The City of Homer Planning Commission reviewed, and approved, this plat at their March 17, 2021 meeting.

If denied, a 60 foot right of way will be required to be extended from Sanjay Court and provide a connection to another right of way.

Surveyor Findings:

1. The 30 foot wide public access easement within the adjoining parcel to the south of this plat (HM 2018-003011-0) was vacated by plat HM 2019-23.
2. The current parcel to the south (Lot 8-A-1 HM 2020-3) has functional access by way of a 30 foot public access, utility and maintenance easement (HM 2019-002214-0) through proposed Tract E-1-A.
3. The final phase of the previously approved subdivision within proposed Tract E-1-A is in the final stages of construction. The Unit 4 plat will dedicate the Sanjay Court 60 foot right-of-way that terminates in a cul-de-sac.

Staff Findings:

4. The block is limited due to terrain, development plans with cul-de-sacs, and existing right of ways.
5. A dedication within former lot 38 will not improve the block and will create additional block width issues.
6. The original phased development approved without a through dedication.
7. The City of Homer Planning Commission reviewed, and approved, this plat at their March 17, 2021 meeting.

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 1-7 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 1-7 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 1-7 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

Commissioner Venuti informed Chairman Martin that he was requesting recusal from this item as he had acted on this item as a member of the City of Homer's Planning Commission. Chairman Martin approved his request.

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

MAIN MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund to grant preliminary approval to Barnett's South Slope Subdivision Quiet Creek Park Replat Lot 38 based on staff recommendations and compliance to borough code.

AMENDMENT MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund to grant exception request to KPB 20.30.030 Proposed Street Layout for Sanjay Court & KPB 20.30.170-Block Length Requirements citing finds 1-7 in support of standards one, two and three.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Recused	1	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner						
Recused	Venuti						
Absent	Bentz, Chesser						

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	8	No	0	Recused	1	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner						
Recused	Venuti						
Absent	Bentz, Chesser						

AGENDA ITEM D. NEW BUSINESS

7. Review of the KPB Plat Committee preliminary approval of Bluff Haven Estates 2021 Replat on April 12, 2021; KPB File No. 2021-030; Geovera, LLC/ Evensen

Staff report given by Scott Huff.

Bluff Haven Estates 2021 Replat was heard and approved by the Kenai Peninsula Borough Plat Committee on April 12, 2021. A request was received by Ennis Dixon on April 23, 2021 to have the plat committee preliminary approval be reviewed by the full Planning Commission. This request was done in accordance with KPB 2.40.080. Staff sent a letter to Mr. Dixon requesting the portions of code he was requesting to be reviewed. At the time the staff report was prepared a response had not been received.

All information presented to the Plat Committee on April 12, 2021 is being presented to the full Planning Commission in the packet. Per KPB Code 2.40.080(C), this review shall be heard de novo.

Additional information was provided by one of the testifiers after the hearing. This information regarding bluff and erosion is within this packet. In addition, the Kachemak Bay APC heard this item at their February 4, 2021 meeting. Per the unapproved minutes, concerns that were similar to those discussed at the plat committee were discussed at their meeting. The APC unanimously recommended that all the lots within the subdivision should conform to KPB minimum lot size of 40,000 sq. feet.

The approval of the preliminary plat was based on staff recommendations and compliance with borough code. The staff report did state that the design would need to be adjusted so that all lots meet the minimum 40,000 square feet. A soils analysis report is also required to show the area available for septic installation, including 100 foot radius from proposed wells and a 50 foot setback from the top of steep bluffs. If the soils analysis fails to show adequate area, a redesign will be required to meet all requirements.

The main concerns brought before the plat committee had to do with the bluff and steep terrain in the area as well as the lot being under 40,000 square feet. The plat committee granted preliminary approval subject to compliance with borough code.

The subdivision is located at the top of the Homer Bluffs. In regards to terrain and slope issues, code does not have any specific areas relating only to steep terrain. The code does have requirements when right of way is being dedicated or if additional dedication is needed due to terrain. The top of the bluff is depicted on the plat within Lot 2-A as required. Steep slopes do not appear to be within the proposed subdivision. There are steep slopes north of the proposed subdivision and very steep slopes south of the subdivision.

There are additional wastewater disposal requirements regarding terrain and steep slopes. These requirements are not KPB Code but are DEC requirements. The soils analysis report must demonstrate that the proposed subdivision can adequately provide onsite well and wastewater disposal per the DEC requirements. The final plat design may need to be adjusted to comply with DEC requirements. If the soils analysis report can demonstrate that lots containing less than 40,000 square feet is adequate and safe, the owner/surveyor may bring the final plat back to the plat committee for approval. The final plat, along with the soils analysis report, would have to demonstrate to the satisfaction of the plat committee that a smaller lot size is adequate and safe, per KPB Code 20.30.200(B).

STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AS APPROVED BY THE PLAT COMMITTEE**
- 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 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

STAFF REPORT - Plat Committee Meeting: April 12, 2021

Bluff Haven Estates 2021 Replat
KPB File No. 2021-030; Geovera, LLC/ Evensen

Location:	Bluff Road near MP 168.5 Sterling Highway
Proposed Use:	Residential
Water/Sewer:	On Site
Zoning:	Residential Rural Unrestricted
Assessing Use:	Residential
Parent Parcel Number(s):	173-580-20, 173-580-21

Supporting Information:

The proposed plat will create four lots ranging in size from 1.098 acres to 0.900 acres from two 2 acre lots. Lot 3-B is 39,204 sq. ft. and will need to be adjusted to meet the 40,000 sq. ft. minimum lot size. A soils report is required, and an engineer will sign the plat. The soils report will be required to show the area available for septic installation, including 100 foot radius from proposed wells and a 50 foot setback from the top of steep bluffs. The parent subdivision was approved without a wastewater soils analysis report.

The subdivision is accessed from Bluff Road, a 60 foot wide dedicated right of way that is improved but not maintained by KPB. A 60 foot public access easement, granted by CIRI Inc., provides a connection from dedicated Bluff Road to the Sterling Highway.

The constructed roadway appears to affect a portion of proposed Lot 3-A. **Staff recommend** the surveyor verify the location of the travel way and if necessary provide additional right of way dedication, or a public access easement, to encompass the travel way.

The subdivision is located at the top of the Homer Bluffs. The edge of the bluff affects Lot 2-A and is depicted on the preliminary plat. The parcel to the south is a 96 acre parcel and is also affected by the bluff. Approximately 7.38 acres of usable lands are located above the steep slopes.

This subdivision is located in an open block. **Staff recommends** that the plat committee concur that an exception to KPB 20.30.170 – Block length is not required as this plat is not able to provide a right of way dedication to help with block length due to topographic features and existing access.

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.

Kachemak Bay 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.

KPB Department/Agency Review Comments

- KPB Addressing/Street Name Review: No addresses will be affected by this platting action.
- KPB Assessing: No comment.

- KPB Code Compliance: No comments.
- KPB Planner: There are no local option zoning issues or material site issues associated with this proposed plat.
- KPB Roads Dept.: Within KPB jurisdiction, no comment.
- State Parks: No comments.

KPB 20.25.070 - Form and contents required.

Platting staff comments: Staff reviewed the plat and all the items required by 20.25.070 were met, unless otherwise noted below:

A. Within the Title Block

3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

Staff recommendation: Within the title block add the second owner, Krystal S. Evenson and confirm the address for Krystal S. Evenson as KPB records show PO Box 1252 Homer, AK as the mailing address.

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 Homer City Limits within Section 15.

G. Status of adjacent lands, 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: Depict and label Government Lot 3 and Government Lot 4 located to the south of the subdivision.

M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

Platting Staff Comments: The top of the steep bluff has been depicted and labeled.

KPB 20.25.080. Petition required.

Platting staff comments: Staff reviewed the plat and all the items required by 20.25.080 were met, unless otherwise noted below.

KPB 20.30 Design Requirements

Platting staff comments: Staff reviewed the plat and all the items required by 20.30 were met, unless otherwise noted below:

20.30.060. Easements-Requirements.

A. The planning commission may require easements it determines necessary for the benefit of the public. Such easements include, but are not limited to, lateral support (slope) easements, drainage easements for ditching or protection of a drainage, and utility easements. Required easements do not need to be for road purposes.

B. Upon submittal of a preliminary plat, the planning department shall provide a copy to public utility companies for their comments-and recommended design of utility easements. If the property is subject to existing natural gas or petroleum pipeline easements, a copy shall also be furnished to the appropriate company for comment.

C. The subdivider bears the responsibility for coordination with the utility companies during the design and development phases. When a subdivider and the utility company cannot agree on easements, the final plat will be taken to the planning commission for determination of easements.

D. Unless a utility company requests additional easements, the front ten feet of the building setback shall be designated as a utility easement, graphically or by note.

Platting Staff Comments: The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process.

Comments from GCI, were not available when the staff report was prepared.

HEA, ACS, and ENSTAR supplied reviews of no comments / no objections / no concerns.

Staff recommendation: grant utility easements requested by the utility providers and the Committee should concur that granting the easements requested by the utility providers satisfy 20.30.060.

20.30.100. Cul-de-sacs.

C. Temporary turnarounds and self-vacating turnarounds shall not be granted or reserved on plats.

Platting Staff Comments: Parent plat HM 76-94 granted two 50' temporary turnarounds at the east end and west end of Bluff Road. The turnaround area has been shown and noted.

20.30.170. Blocks-Length requirements. Blocks shall not be less than 330 feet or more than 1,320 feet in length. Along arterial streets and state maintained roads, block lengths shall not be less than 800 feet. Block lengths shall be measured from centerline intersections.

Staff recommendation: concur that an exception to KPB 20.30.170 – Block length is not required as this plat is not able to provide a right of way dedication to help with block length due to topographic features and existing access.

KPB 20.40 -- Wastewater Disposal

Platting Staff Comments: A wastewater soils analysis report will be required for the four new lots within this subdivision.

Staff recommendation: comply with 20.40.

KPB 20.60 – Final Plat

Platting staff comments: Staff provided additional information to portions of 20.60 as noted below.

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

20.60.010. Preparation requirements generally. The final plat shall be prepared in accordance with this chapter and the preliminary plat as approved. Information required for the preliminary plat by KPB 20.25.070 shall be included on the final plat except that the information required by KPB 20.25.070 (K) - (N) shall not be included. The approximate dimensions required by KPB 20.25.070(J) shall be replaced with accurate dimensions as required by KPB 20.60.110 and KPB 20.60.120. If the final plat contains only a portion of the preliminary plat, it must comply with KPB 20.25.110(B).

Staff recommendation: comply with 20.60.010.

20.60.020. Filing-Form and number of copies required. The subdivider shall file a standard number of prints as determined by the planning director. All prints shall be folded as required by KPB 20.25.030 except those to be recorded with the district recorder.

Platting Staff Comments:

Staff recommendation: submit one full-sized paper copy of the plat for final review prior to submittal of the mylar. Electronic submittals are not acceptable for final reviews.

20.60.030. Certificate of borough finance department required.

Platting Staff Comments: All taxes levied on the property within the subdivision shall be paid prior to recordation of the final plat. If approval is sought between January 1 and the tax due date, there shall be on deposit with the borough finance department an amount sufficient to pay the entire estimated real property tax for the current year. Prior to filing of the final plat, a certificate to this effect shall be provided by the borough finance director or his designee upon request by the planning director. Estimated tax payments shall be applied to the actual bill as of July 1 or such earlier date as the taxes due have been determined.

Taxes owed may include special assessments for utility or road assessment districts established by KPB ordinance.

Staff recommendation: comply with 20.60.030.

20.60.070. Plat specifications. The final subdivision plat shall be clearly and legibly drawn to scale on good quality polyester film at least 3 mm in thickness. All lines, letters, figures, certifications, acknowledgements and signatures shall be clear and legible. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Sheets shall be one of these sizes: 8 1/2" x 14"; 11" x 17"; 18" x 24"; and 24" or 30" x 36". When more than one sheet is required, an index map shall be provided on the first sheet showing the entire subdivision and indicating the portion contained on each sheet. Each sheet shall show the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all sheets shall be the same size. Indelible ink or sealant shall be used to insure permanency.

Staff recommendation: *comply with 20.60.070.*

20.60.110. Dimensional data required.

A. The bearing and length of every lot line, block line, and boundary line shall be shown. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Information shall be shown for all curves, including radius, central angle, arc length, chord length and chord bearing. The initial point of survey shall be shown and labeled.

Staff recommendation: *comply with 20.60.110.*

20.60.120. Accuracy of measurements. All linear measurements shall be shown to the nearest 1/10 foot, and angular measurements shall be at least to the nearest minute. All lot areas shall be shown to the nearest 10 square feet or to the nearest 1/1,000 of total acres. Meander lines, dry land areas and submerged land areas shall be shown in addition to total area when applicable. All boundary closures shall be to a minimum accuracy of 1:5,000. Boundary and lot closure computations must be submitted with the final plat.

Platting Staff Comments: KPB will verify closure complies with 20.60.120.

Staff recommendation: *provide boundary and lot closure computations with the paper final plat.*

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.

Platting Staff Comments:

Staff recommendation: *comply with 20.60.150.*

20.60.160. Easements.

A. The plat shall clearly show the location, width, and use of all easements. The easements must be clearly labeled and identified and, if already of record, the recorded reference given. If public easements are being granted by the plat, they shall be properly set out in the owner's certification of dedication.

1. Special purpose easements being granted by the plat shall be clearly defined for allowed use. Special purpose easements may require a signed acceptance statement on the plat.

B. Private easements may not be granted on the plat.

Platting Staff Comments:

Staff recommendation: *comply with 20.60.160.*

20.60.170. Other data required by law.

A. The plat shall show all other data that are or may be required on the plat by statute or ordinance.

Staff recommendation: *comply with 20.60.170.*

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *comply with 20.60.190.*

20.60.200. Survey and monumentation.

Staff recommendation: *comply with 20.60.200*

20.60.210. Approval-Authority-Certificate issued when.

Platting Staff Comments: If the Plat Committee conditionally approves the preliminary plat, staff will comply with, and follow, 20.60.210.

20.60.220. Administrative approval.

Platting Staff Comments: *If the Plat Committee conditionally approves the preliminary plat and the final plat conforms to the conditions, staff will issue an administrative approval with notice to the Planning Commission as set forth in 20.60.220.*

The planning director may refer the final plat to the planning commission when:

- 1. Major redesign was a condition of preliminary approval by the planning commission or the advisory planning commission of the city in which the subdivision is located;*
- 2. Final approval by the commission was a condition of preliminary approval; or*
- 3. The planning director determines there are other conditions to support referral to the commission.*

STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO ABOVE 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 10 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

Chair Martin opened the meeting for public comment.

Joseph Evensen; 308 Ocean Drive Loop, Homer AK 99603: Mr. Evensen is the applicant. Mr. Evensen informed the commission that he had modified his plat to bring it into compliance so all lots now meet minimum size requirements. He noted that all engineering test have been completed and he believes that his plat now achieves all borough code requirements for subdividing. He then 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 Ecklund moved, seconded by Commissioner Fikes to grant preliminary approval to Bluff Haven Estates 2021 Replat based on staff recommendations and compliance to borough code.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	2
Yes	Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Bentz, Chesser				

AGENDA ITEM E. OLD BUSINESS

- D1. Conditional Land Use Permit Modification
 PC Resolution 2021-10
 Applicant & Landowner: River Resources, LLC
 Parcel Numbers: 135-243-13 &-29
 Location: 34386 Patson Road
 Legal Description: T 5N R 10W SEC 34 SEWARD MERIDIAN KN NW1/4 SE1/4
 EXCLUDING PATSON PROPERTIES PART 1, T 05N R 10W SEC 34
 SEWARD MERIDIAN KN 2019068 PATSON PROPERTIES 2019
 REPLAT TRACT C1

Staff given by Bryan Taylor.

During consideration of PC Resolution 2021-10 at the Planning Commission's April 12, 2021, meeting, Mr. Taylor was asked by the commission to review ADNR's data to see if there were any wells within the vicinity of the Rivers Resources LLC approved material site along Kenai River Avenue that were not represented within the Well Log Tracking System (WELTS).

Mr. Taylor conducted a site visit to inspect lands in the vicinity of the material site along Kenai Avenue, Marcus Street, and Patson Road/Circle. He did not find evidence of any water wells along Kenai River Avenue south of the material site. At the end of Marcus Street (approximately ¼ mile east of the material site), there are two residences on parcels 135- 243-17, belonging to Michael and Ann Gravier, and 135-243-06, belonging to William and Karen Ferguson. Only one well is shown in the WELTS inventory in this area, located on the Gravier property.

Along Patson Road/Circle to the north of the material site, there is new construction, which appears to have begun this season. Since the field surveys represented on the site plan for the River Resources LLC modification application, there have been two resubdivisions of Tracts of land along the river. Copies of the new plats are included in the desk packet. Several of the parcels have new homes under construction. In addition to the seasonal residence shown on the site plan, there appears to be nine other homes newly constructed or under construction along Patson Road/Patson Circle. Any new wells installed along with construction are not yet represented within the WELTS inventory or shown the applicant's site plan. However, as shown within the site plan, the proposed excavation below the water table will not be within 300 feet of these properties.

Conditional Land Use Permit for a Material Site

STAFF REPORT

PC MEETING: April 12, 2021

GENERAL OVERVIEW: The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on December 16, 2019, to allow for gravel extraction below the groundwater elevation. A copy of the application, including the required water monitoring information, is included as **Attachment A**. The applicant is also requesting an exemption for dewatering as part of the extraction activities. Dewatering will only be conducted within the permitted material site and water will not leave the property.

KPB 21.29.050(A)(5) provides that the planning commission may approve excavation in the water table provided the applicant completes certain water monitoring requirements carried out by an independent civil engineer or professional hydrogeologist, submits the monitoring data, and has certification by the engineer or hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources.

As required by KPB 21.29.050(A)(5), McLane Consulting has certified that the excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources. The excavation and reclamation site plan submitted with the application states that monitor wells will be maintained and measurements recorded for the life of the material site. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

According to the modification application received on March 3, 2021, the applicant seeks to excavate an area of approximately 31.2 acres to a maximum depth of 32' below original ground. The groundwater elevation data provided indicates that groundwater elevation is approximately 17' below original ground. The aquifer-confining layer of dense blue-gray silt is estimated to be approximately 35' below original ground and approximately 30' thick.

As in the original application, primary ingress and egress to the site is directly onto Funny River Road, a state maintained road, with alternate access proposed to Kenai River Avenue, a City of Soldotna maintained road, and then to Funny River Road. The groundwater excavation plan for the site is the same as the phased development originally approved, with material being excavated in the southern portion of the parcel and working northerly. Dewatering will be localized and will remain within the same property to re-enter the groundwater table. The required buffers will remain the same. As originally permitted, the impacted area remains at approximately 52 acres, with excavation within the water table on approximately 31.2 acres; the annual quantity of material expected to be removed is 45,000cy; and, the site has an expected lifespan of 40 years.

PUBLIC NOTICE: Public notice of the application was mailed on March 19, 2021 to the 233 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Public comments received prior to the packet deadline are included as **Attachment H**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the April 12, 2021, meeting.

FINDINGS OF FACT:

1. *Procedural Findings.*

- A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
- B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- C. On December 16, 2019, the planning commission passed resolution 2019-39, which approved a conditional land use permit to River Resources, LLC, for material extraction on KPB tax parcels #135-243-13 & 135-243-29.
- D. On February 26, 2021, River Resources, LLC, submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcels #135-243-13 & 135-243-29 to allow for excavation below groundwater elevation. After a request from staff, additional information was provided on March 3, 2021.
- E. KPB 21.29.050(A)(5) provides the conditions upon which the planning commission may permit excavation within the water table greater than a 300-foot distance from a water source. Conditions include installation of at least three monitoring wells, completion of monitoring requirements, certification by a qualified independent civil engineer or professional hydrogeologist that the excavation will not negatively impact the quantity of an aquifer serving existing sources, and a prohibition on operations breaching an aquifer confining layer.
- F. The applicant contracted McLane Consulting to measure groundwater monitor wells and analyze the data in accordance with KPB 21.29.050(A)(5).
- G. McLane Consulting collected groundwater elevation measurements in three month intervals from five monitor wells over the course of one year.
- H. From the measurements and data from the Alaska Department of Natural Resources, McLane Consulting determined the flow direction at the site to be northwesterly, and the flow rate, or hydraulic conductivity, to be typical of dense gravel and coarse sand.
- I. As required by KPB 21.29.050(A)(5)(a), McLane Consulting has certified that the

- excavation plan proposed by the applicant will not negatively impact the quantity of the aquifer serving the existing water sources.
- J. The excavation and reclamation site plan states that at least three monitor wells will be maintained and measurements recorded for the life of the material site.
 - K. A staff site visit was conducted on March 25, 2021.
 - L. In accordance with KPB 21.29.050(A)(4-5), all excavation between 300 and 100 horizontal feet of existing wells must remain at least two feet above groundwater.
 - M. In accordance with KPB 21.29.050(A)(4), material extraction is prohibited within 100 horizontal feet of wells existing prior to the original permit issuance.
 - N. A public hearing of the planning commission was held on April 12, 2021, and notice of the application was mailed on March 19, 2021, to the 233 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Soldotna requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the March 31, 2021, & April 7, 2021, issues of the Peninsula Clarion.
 - O. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
- 2. *Parcel boundaries.* KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site and has verified that stakes have been placed along the permit boundaries.
 - 3. *Buffer zone.* KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each property boundary that will provide visual and noise screening to adjacent properties:
50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 - 4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 17.9-acre processing area that is located 300 feet from the permit boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
 - 5. *Water source separation.* KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - A. The site plan shows three wells with 300 feet of permit area but none of them is within 100 feet of the proposed excavation.
 - B. An exemption has been requested for dewatering within the permitted area. If granted, borough staff will regularly monitor the site to ensure that dewatering takes place only within the permitted material site.
 - C. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement between 100 and 300 feet of a water source.
 - D. The requirement that the permittee post a bond of \$30,000 for liability to potential accrued damages for dewatering activities will be met by permit condition number 8.
 - 6. *Excavation in the water table.* KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the

planning commission.

- A. This modification seeks permission to excavate within the water table.
 - B. Five monitoring tubes have been installed to monitor ground water within the permitted site. At least three wells will be maintained and measurements taken for the life of the material site.
 - C. Data and interpretation for groundwater elevation, flow direction, and flow rate for the subject parcel, measured in three month intervals by a qualified independent civil engineer at least one year prior to the modification application has been provided.
 - D. Certification by a qualified, independent engineer that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources has been provided.
7. *Waterbodies.* KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - A. There are no water bodies within 100 feet of the proposed extraction. The Kenai River and its associated floodplain and riparian wetland is approximately 350 feet north of the proposed material site at its closest point.
8. *Fuel storage.* KPB 21.29.050(A)(7) provides that fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
9. *Roads.* KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - A. The original submitted site plan indicates that the haul route will be directly to Funny River Road, a state maintained road. Two alternate access points are proposed to Kenai River Avenue, a Soldotna City maintained road, then to Funny River Road.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
12. *Hours of operation.* KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
13. *Reclamation.* KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
 - A. Updated drawings for the original reclamation plan were submitted with the modification application. The reclamation plan indicates that reclamation will be completed annually before the growing season ends (September), that seeding will be applied as necessary each season to areas that achieve final grade in order to minimize erosion and dust, and that the southwesterly portions of the site will be utilized for future buildings.
 - B. The site plan indicates that the reclamation will include recontouring using strippings, overburden, waste import and topsoil to a condition that allows for reestablishment of

- natural vegetation, slopes no steeper than 2:1, with slopes covered with a minimum of 4 inches of topsoil mix and seeded. Reclamation slopes within water table will be the same where above the water table, with unseeded slopes no steeper than 2:1 below the water table.
- C. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
 - D. The permittee is exempt from the state bond requirements until he exceeds a disturbed area of 5 acres or he extracts more than 50,000 cubic yards per year.
14. *Other permits.* KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
- A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
15. *Voluntary permit conditions.* KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
- A. No additional conditions have been volunteered.
16. *Signage.* KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
- A. Operations under the permit have already commenced.

STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

1. Filing of the PC Resolution 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.
2. The Planning Department is responsible for filing the Planning Commission resolution.
3. The applicant will provide the recording fee for the resolution to the Planning Department.
4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
5. The conditions of the modified permit will replace those of the original permit.

PERMIT CONDITIONS

1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 Northern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation to be replaced by a sight limiting minimum six-foot high fence when excavation is within 50 feet of the permit boundary and its associated utility easement, if applicable. The fence will be replaced with a minimum six-foot high berm with 2:1 slopes when excavation in that area is exhausted.
 Southern boundary - 50 feet of undisturbed natural vegetation.
 These buffers shall not overlap an easement.
3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
5. The permittee shall not operate any equipment which conditions or processes material within 300

- feet of the property boundaries.
6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table between 100 and 300 horizontal feet of any water source existing prior to the issuance of this permit.
 8. Prior to dewatering, the permittee shall post a bond for liability for potential accrued damages pursuant to KPB 21.29.050(A)(4)(d) in the amount of \$30,000.
 9. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
 10. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
 11. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
 12. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
 13. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
 14. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
 15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
 16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
 17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
 18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records

preparation fee. (KPB Code 21.25.100)**END OF STAFF REPORT**

Chair Martin opened the meeting for public comment.

Kyle Foster; Foster Construction; P.O. Box 3036 Soldotna AK 99669: Mr. Foster is the applicant. He noted that the commission may not be aware, but the Soldotna/Kenai areas are running low on gravel sources. Being able to excavate below the water table will double the quantity of gravel that the pit can produce. Currently the material site has 15 feet of gravel above the water table and about the same amount of gravel below the water table. Being able to excavate below the water table will double the life of this pit. Doubling the life of this pit will mean they will not have to go out and find other sources of gravel creating yet another gravel pit. He believes that this gravel deposit is so rich that he and his brother will not be able to mine all the material from this site. If they receive the permit allowing them to mine below the water table, his children and grandchildren could still be mining in this pit. He and his brother are just trying to maximize the amount of gravel they can mine on their land. He noted currently there are numerous mines in the area that have been permitted to do this kind of mining and he and his brother would like to be permitted to do the same.

Billie Hardy; 41937 River Park Dr., Soldotna AK 99669: Ms. Hardy's property is about 1500' from this material site. She noted that she had gather 21 signatures from landowners in this area opposing the proposed modification to this permit. She also noted that she agrees with the comments submitted by Pat Nolden, Mike Pomplin, William Ferguson, Michael Gravier & Dale McBride. She would request that de-watering be denied due to the real probability of damage to wells and flooding of septic systems within the area. She would also request that any commissioner involved with quarrying both currently and in the past recuse themselves from voting on this permit. She also stated if the modification to the permit is granted, in spite of the evidence against it, the bonding requirements should be increased to 1.25 million and that well monitoring be done both inside and outside of the pit in compliance to borough code. She would ask the commission to help protect their wonderful neighborhood and homes.

Commissioner Carluccio asked Ms. Hardy how she came up with the 1.25 million dollar figure for the bond. Ms. Hardy replied that Dale McBride submitted a lengthy written comment to the commission, which was included in the desk packet, and he had quite a bit of good documentation that he used to come up with that figure.

Joseph Hardy; 41937 River Park Dr., Soldotna AK 99669: Mr. Hardy stated he is not necessarily against de-water or mining into the aquifer, but he would insist that proper procedure be followed. In reviewing the materials with this application, it is not clear that the applicant has met the well testing requirements, which is four wells tests, ninety days apart, within a year. These tests are required to occur before that submittal of the application. He also believes that wells adjacent to the pit be tested and monitored. There should be concerns not only for what happens within the pit, but also the effects of the pit on the surrounding properties. He also agrees with Ms. Hardy that some members of the commission should recuse themselves from voting on this matter. He also noted that code requires an independent engineer/hydrologist be used to complete the report. He is not casting any aspersions on McLane Consult but they have been doing business with the applicant for years and he does not believe that using them meets code requirements. Someone completely independent of this project and applicant is needed to produce the required reports. He also has concerns about water pollution. At the last meeting, he noted Mr. Ruffner stated there is quite a few feet of filter bed, but that filter bed only works for solids. Water dissolved solids do not get filter out by the rock bed. He noted that California has had serious problems with these types of contaminates and he would hate to see it happen here. Years ago when he work for ARCO they had developed an additive for gasoline that was to reduce air pollution. It turned out that all it really did was contaminate the water systems. He stills has concerns regarding ingress/egress issues coming off Kenai River Avenue that have not been addressed. He also believes the fine structure and bond amount are inadequate. The fine amount needs to be high enough to be an economic stop and not just a regular cost of doing business.

Ann Gravier; 34540 Marcus St., Soldotna AK 99669: Ms. Gravier stated that she had reviewed all the

materials and testimony from the last two meetings and does not really have anything new to add. She did however want to add some perspective to what has been said. She noted that Mr. Foster had talked about how de-watering would extend the life of the pit, and what that would mean to his business and his family. She believes this perspective also applies to the other area homeowners and their concerns about impacts to their wells and property values, as well as impacts to the Kenai River and the environment. Impacts to well can be catastrophic for homeowners. She understands it is within the rights of the applicant to apply for the permit to go into the aquifer, but she also believes that just because you can do something does not mean that you should.

Gina DeBardelaben, McLane's Consulting Group; P.O. Box 468, Soldotna AK 99669: Ms. DeBardelaben was the engineer for this project. She noted at the last meeting she gave the commission a lot of information verbally, which might have been a little overwhelming. This time she has submitted additional information in written form to address some of the issues brought up at the last meeting. She then apologized for an error in her letter from the April 12, 2021 meeting. The monitoring wells were installed in September of 2019; they were a part of the original conditional land use application. At the time of the initial application, the question was asked of the applicant if they planned to mine into the water table, and the applicant's response at that time was undetermined. She added it is not an uncommon practice to continue well monitoring with the idea of possibly seeking a permit to mine into the water table. She also stated they had submitted several photos showing the reclamation of several material sites, which have mined into the water table, that have been turned into manmade lakes. She noted that since the April meeting another well has been installed and the information on the well was included in the desk packet. There are two separate requests in this application, one is to mine into the water table and the other is de-watering. While both of these requests are contained in the one resolution, she would ask that they be considered separately. She understands the concerns expressed by the area residents regarding impacts to wells. Code states that we have to study and recognize wells within 300' of the property, and that is what has been shown on the various exhibits. However, the de-watering plan included with the application shows potential well drawdown impacts on wells up one mile from the property. The figures used in the de-watering plan are based on maximum uses. The applicant states that he sees no situation where the de-watering would last more than 10 days – in most cases it would be a maximum of 5 days. They chose to use 10 days for the de-watering plan figures to show the maximum drawdown effects. They are not planning to remove the water from the property. In most cases where there has been drawdown effects to wells, it is in situations where the water being removed from the site or is being used in processing. The applicant has no plans to use this water as a part of their mining processes. The water from the de-watering process will be pumped into a holding cell on the same property allowing it to go back into the water table.

Rick Weed; 34054 Snow Lane, Soldotna AK 99663: Mr. Weed stated he would like the commission to take into consideration the futures of all property owners in the area and not just the future of the applicant. There is only one opinion regarding the effects of water drawdown and that is from the engineer hired by the applicant. He believes her opinion she should not be considered independent because the applicant hired her. Code states that the report should come from an independent engineer. When this permit came to the commission a year ago, folks were not happy about it then. At that time, it was stated that they would not be digging in the water table. Now less than a year later they back asking to do that. He believes that this request should have been a part of the initial application.

Lillian Weed; 34065 Snow Lane, Soldotna AK 99669: She asked if this pit is going to go on for 40-50 years she wondered where the reclamation is going to come into play. She also stated the applicant wants to leave this pit to his grandchildren, well she has grandchildren that she would like to leave her property to one day and she would like it to be worth something. She too questions whether the engineer should be considered independent since the applicant hired them. She would like to see a study done by a truly independent engineer.

Kyle Foster; Foster Construction; P.O. Box 3036 Soldotna AK 99669: Mr. Foster stated there would be no above ground discharge of water. They will be pumping water directly into another cell on the property allowing the water to seep back into the water table. He also stated the formulas used by McLane's are the same formulas that will be used by any other engineer, math is math. He also noted the water table moves throughout the year. If you look at the water table data that was supplied in the application you will see that the water table has moved in some case up to 4'. Their operation would have a manmade impact

on water table movement of less than an inch. He noted the permit application process does not allow him to apply for both gravel extraction and gravel extraction within the water table at the same time. They are two separate permit processes. Reclamation is very important his company. He shared that his father had a pit for Angler Drive that he reclaimed and he is currently in the process of selling as lake front property. He has included in the packet photos of this project showing their reclamation work.

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Gillham to adopt PC Resolution 2021-10 granting modification to an existing conditional land use permit for a material site to allow for excavation within the water table on Tract C1, Patson Properties 2019 Replat, according to Plat 2019-68, and the NW ¼, SE ¼, SEC 37, T 05N R 10W, S.M., excluding Patson Road right-of-way.

Commissioner Ruffner stated his thoughts on this permit have not really changed from the last meeting. He appreciated the additional work done by the engineer on modeling the effect of de-watering on the water table levels. He has had concerns in the past where there was de-watering but no recharging and its effects on water table levels. That is not what the applicant is proposing in this case. Following the code and knowing what he knows about the groundwater industry he will be inclined to support this permit modification. If he thought there was something that was going to hurt the neighboring wells or the Kenai River he would be the first one to raise an objections.

Commissioner Ecklund thanked McLane Consulting for adding the additional drawings and information. She noted originally she came from northern Minnesota where there are open pit iron ore mines that have been reclaimed that are now beautiful tourist attractions. However while the mines were operational they were ugly. She understands no one wants the dust and the noise from these operations in their neighborhoods; however, she also understands the need for gravel. She had a question for staff and wanted to know whose role is it to hire the independent engineer. Mr. Taylor responded code states that an independent engineer is required to do the testing and prepare the report. Past precedent has been that the applicant hires and bears the cost of the engineer. He noted that code does not define what would be considered an independent engineer. Commissioner Ecklund also noted there were concerns expressed regarding the required bond amount and what it exactly covers. She noted there were comments made about a bond from DNR and again she wanted to know what that bond covered. Mr. Taylor stated DNR oversee bonding for reclamation work and the bonding required by the borough code is for liability for surrounding property owners. He also noted code does not give direction on what the amount of the bond should be. He recommend a bond amount of \$30,000 based on the replacement costs for the number wells within 300' of the pit that were in existence at the time of the application. He noted at the time of the application there were three wells within the vicinity of the pit and the approximate replacement cost of a well was \$10,000. Commissioner Ecklund then noted currently there is new construction going on in the area and so there will be more than three well in the vicinity. Are the costs of replacing these well not considered in the bond amount since they occurred after the application had been submitted? Mr. Taylor replied that if the commission had concerns about the bond amount they could amend the resolution and have the bond amount set at an amount deemed appropriate by the Planning Director.

Commissioner Carluccio asked about the definition of an impartial and independent in reference to the engineer. Since the engineer from McLane is being employed by the applicant, how can she be considered impartial and independent? Mr. Taylor replied that code does not give a definition for impartial and independent. Past practice has been the applicant would contact these services with engineers outside of their company and that had been deemed acceptable by this body. Commissioner Carluccio then stated that this had not ever been brought up before and perhaps this is something that should be considered. Just because it has been done one way in the past does not mean they have to keep doing it that way. Now that it has been brought up, it does give her some pause and makes her wonder if an engineer hired by the applicant should be considered impartial and independent. Mr. Taylor replied it would raise a red flag if it were a situation where the company directly employed the engineer. In this case, the only option available for the applicant is to contract those services with an outside consultant. He then asked the commission if they would like change this would they like to give him direction to look into in this matter for future application.

Commissioner Ecklund then asked if the term impartial is used in code or was the term just one used by some of the commenters tonight. Ms. Aeschliman replied that KPB 21.29.050(5a) states *that excavation in the water table may be permitted with the approval of the planning commission based on certification by a qualified independent civil engineer or professional hydrogeologist that the excavation plan will not negatively impact the quantity of an aquifer serving existing water sources*. Commissioner Ecklund then stated that it would be helpful if the term independent was better defined. An engineer hired by the applicant to do the work does not really sound very independent to her.

Commissioner Brantley stated that he felt the intent of code was directed at larger operations that have their own engineers on staff. He believed the intent here was that the engineer not be in the employment of the applicant. Perhaps one way to resolve this issue would be for the application fee to be increased to cover the cost of having the borough contract with an engineer. Mr. Taylor thanked the commissioner for his suggestion. He then noted the topic of the borough hiring the engineer came up in some of the comments but current code does not require or direct staff to hire the engineer.

Ms. Aeschliman noted that licensed civil engineers have guidelines they have to adhere to and not doing so could jeopardize their license.

Chair Martin then stated that this topic would be a discussion point for revising the material site ordinance and not for this specific application.

AMENDMENT MOTION: Commissioner Ecklund moved, seconded by Commissioner Fikes to change the requirement of the bonding to a dollar amount to be set by the Planning Director.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

AMENDMENT MOTION FAILED BY MAJORITY VOTE:

Yes	4	No	5	Absent	2
Yes	Carluccio, Ecklund, Morgan, Venuti				
No	Brantley, Fikes, Gillham, Martin, Ruffner				
Absent	Bentz, Chesser				

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

MOTION FAILED BY MAJORITY VOTE:

Yes	4	No	5	Absent	2
Yes	Brantley, Gillham, Martin, Ruffner				
No	Carluccio, Ecklund, Fikes, Morgan, Venuti				
Absent	Bentz, Chesser				

Commissioner Ecklund cited the following findings to be attached their decision:

1. The bond was not high enough based on the number of surrounding wells.
2. KPB Code needs to define impartial and independent more clearly.
3. The well monitoring timeline is in question as to whether or not it meets borough code.

AGENDA ITEM K. DIRECTOR'S COMMENTS

AGENDA ITEM L. COMMISSIONER COMMENTS

Commission Morgan stated that she appreciates being able to attend meetings via Zoom. However she did notice some issues related to the new microphone system that made meeting video a bit dizzying. She will be definitely be more aware of how she uses the microphone when she is in chambers.

Commissioner Ecklund noted that material site extraction permits are one of the most contentious items that come before the commission. The commission has worked hard to try to address some of the most pressing issues through the establishment of a material site working group. The group had made a number

of recommendations and unfortunately, it did not go anywhere. The permit tonight dealt with dewatering and she felt the pressure to be more careful folks water and that they can get new wells should something happen. She also believes that in cases like this there should be more monitoring and care is taken in these type of situations.

Commissioner Ruffner stated that he appreciates how folks have a choice as to whether or not to attend these meetings in person. He knows that dealing with all the new technology can be frustrating but he know that things will be get better as time moves on. He also noted that he is happy to be meeting back in person and he feels totally comfortable doing so.

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 9:50 p.m.

Ann E. Shirnberg
Administrative Assistant