

**ITEM 3 - RIGHT OF WAY VACATION
VACATE COVE VIEW COURT and ADJOINING 10 FOOT UTILITY EASEMENT
STANLEY'S MEADOW 2021, HM 93-60**

KPB File No.	2021-086V1
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Cecil R. and Ina L. Jones of Fritz Creek, Alaska and Billy Ray and Stephanie Joy Jones of Homer, Alaska
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Fritz Creek Area / Kachemak Bay APC
Legal Description:	Perkins Road, Stanley's Meadow No. 11 Plat 93-60 Homer Recording District, Section 34, Township 04 South, Range 11 West, S.M.

STAFF REPORT

Specific Request / Purpose as stated in the petition: Vacate Cove View Court right of way. Petitioner's statement, 'Lots are being replatted.'

Notification: Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

Public hearing notices were sent by regular mail to 8 owners within 600 feet of the proposed vacation.

16 public hearing notices were emailed to agencies and interested parties as shown below;

- | | |
|---|------------------------------------|
| State of Alaska Dept. of Fish and Game | Post Office of Homer |
| State of Alaska DNR | Ninilchik Traditional Council |
| State of Alaska DOT | Alaska Communication Systems (ACS) |
| State of Alaska DNR Forestry | ENSTAR Natural Gas |
| Kachemak Bay Advisory Planning Commission | General Communications Inc, (GCI) |
| Emergency Services of Kachemak | Homer Electric Association (HEA) |
| Homer Kenai Peninsula Borough Office | Library of Homer |

The notice was placed on the Planning Commission board at the Kenai Peninsula Borough George A. Navarre Administration Building. The notice was emailed to the Post Office and Library of Homer with a request for the notice to be posted.

Legal Access (existing and proposed): Cove View Court is located off East End Road at milepost 17.5. Access is from East End Road to Ratone Street, to Elmers Way to Perkins Road. All access right of ways are at least 60 feet in width and are a combination of dedicated right of ways and section line easements. A travel way is constructed to the south portion of Perkins Road but is not maintained by KPB Roads Department.

Perkins Road originally continued north and connected to a northern section. A section of Perkins Road was vacated in 1993 and the northern section terminates in a cul-de-sac.

The proposed plat that will finalize the vacation of Cove View Court shows the four lots being combined into two lots that will both have access from Perkins Road (southern portion).

The block is incomplete and distances do not comply with Kenai Peninsula Borough code. Perkins Road is a dead end and does not connect to another right of way. Along Elmers Way, the distance from Perkins Road to Skidoo Street is approximately 3,840 feet. Due to terrain and the layout of the lots in the area, the subdivision will not be able to provide a dedication to improve the block length or create a complete block.

KPB Roads Dept. comments	
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed the right of way vacation for interpretation of any existing State ROW. Since these do not appear to be State roads, we have no comment on this ROW vacation.

Site Investigation: The plat submitted with this vacation depicts the Kenai Watershed Forum ecosystem identified as riverine. The riverine ecosystem appears to be location within a portion of Cove View Court and Perkins Road.

The slopes greater than 20 percent are shaded. The steep slopes affect a portion of Cove View Court and Perkins Road.

Floodplain Hazard Review	Not within a floodplain area.
Anadromous Waters Habitat Protection District Review	Not within a HPD.
State Parks Review	No comments.

Staff Analysis: Cove View Court is a 60 foot wide right of way cul-de-sac that is approximately 512 feet long. The intersection with Perkins Road is 120 feet in width. Cove View Court has dedicated on Stanley’s Meadow No. 11, Plat HM 91-47. Cove View Court was also shown on Stanley’s Meadow No. 11 ADEC Power-Trip Replat, Plat HM 93-60. That plat created the current lot configuration. Cove View Court is not improved.

The proposed lot reconfiguration will reduce four lots to two lots. Both proposed lots will have legal access from Perkins Road. Cove View Court does not help with block length or provide legal access to any other lots.

Access to these lots will be difficult due to steep terrains within Perkins Road. The usable area of the parcels is limited due to steep terrain and wet areas. The parcel to the north could be further subdivided and provide additional access. Steep slopes and low wet areas will need to be considered with any new right of way dedications.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021. The subdivision plat, when recorded, will finalize the right of way vacation.

20.65.050 – Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
 - 1. The right-of-way or public easement to be vacated is being used;
Staff comments: Cove View Court is unconstructed and does not appear to be used for access.
 - 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: An alternate right of way will not be needed, as the proposed subdivision plat will create two lots that both will have legal access to Perkins Road. Steep slopes affect portions of the Cove View Court. Access to this right of way may be difficult due to the slopes within Perkins Road. Additional easements may be required along Perkins Road due to terrain.

3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: The lots fronting Cove View Court are not developed but with the reduction of four lots to two lots, the cul-de-sac right of way is not needed. Lot 8-A appears to be used as an agricultural parcel.

The surrounding area is a mixture of residential lots and agricultural parcels. Legal access is available to all nearby parcels.

Utility companies have been contacted for review.

4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
Staff comments: This does not provide access to a waterbody or public interest area.
5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: Cove View Court is a cul-de-sac that does not provide interconnectivity to other right of ways.
6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: Cove View Court does not provide a use to the general public.
7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
Staff comments: The utility easements adjoining Cove View Court will be vacated with this action. The vacation of the easements on the property lines, as depicted on the application, will require a separate application and will be reviewed by the KPB Planning Commission at a later meeting.
8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
Staff comments:

If approved, Stanley’s Meadow 2021 will finalize the proposed right of way vacations. The Plat Committee will review Stanley’s Meadow 2021 on August 9, 2021. The platting action will require exceptions to 20.30.170 – blocks-length requirements and 20.30.190 – Lots-dimensions for the depth to width ratio of both lots.

KPB department / agency review:

Planner – Bryan Taylor	
Code Compliance – Eric Ogren	No comments
Addressing – Derek Haws	No addresses affected.
Assessing – Matt Bruns	
Advisory Planning Commission – Kachemak Bay	Minutes were not received prior to staff report being written. Any comments or minutes received will be available in the desk packet.

Utility provider review:

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

RECOMMENDATION:

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

1. Consent by KPB Assembly.
 2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
 3. Grant utility easements requested by the utility providers.
 4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
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KPB 20.65.050 – Action on vacation application

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

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

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

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

- *Strategy 1. Near – Term: Collaborate with the AK Department of Transportation, incorporated cities within the borough, utility providers, other agencies overseeing local services, and existing communities located adjacent to the undeveloped areas that are appropriate for future growth, to align plans for future expansion of services to serve future residential development and manage growth.*

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

- Focus Area: Transportation

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

END OF STAFF REPORT