Kenai Peninsula Borough
Planning Commission

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

JULY 12, 2021
7:30 P.M.
UNAPPROVED MINUTES

CALL TO ORDER
Chair Martin called the meeting to order at 7:32 p.m.

ROLL CALL
Commissioners Present
Syverine Bentz, Anchor Point/ Ninilchik
Paulette Bokenko-Carluccio, City of Seldovia
Jeremy Brantley, Sterling
Davin Chesser, Northwest Borough
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

With 10 members of an 11-member commission in attendance, a quorum was present.

Staff Present
Melanie Aeschliman, Planning Director
Scott Huff, Platting Manager
Marcus Mueller, Land Management Officer
Samantha Lopes, River Center Manager
Bryan Taylor, Planner
Ann Shirnberg, Administrative Assistant
Julie Hindman, Platting Specialist

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

*3. Plat Granted Administrative Approval
a. Baranoff Terrace Subdivision Johnson-Quale Addition; KPB File 2019-082
b. Big Dipper Ranch; KPB File 2020-153
c. Bremond Farms Estates Bella Woods Phase 2; KPB File 2016-022P2
d. Gerhart Homestead 2020 Replat; KPB File 2020-149
e. Lakewood Estates 2021 Replat; KPB File 2021-035
f. Rex W. Eagle Homestead 2021 Replat; KPB File 2021-033
g. Seater View Subdivision; KPB File 2009-085
h. Surreal Subdivision 2021 Replat; KPB File 2021-002
i. Valhalla Heights 2021 Replat; KPB File 2021-077

*6 Commissioner Excused Absences
a. Pamela Gillham, Ridgeway

*7 Minutes
a. June 28, 2021 Planning Commission Meeting Minutes

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas. Hearing no one wishing to comment, Chair Martin returned the discussion to

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the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Venuti 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	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

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

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - Banta Sub Addition No 1 Lot 14 Block 1 Utility Easement Vacation

KPB File No.	2021-084V
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Mark and Micki Salinas of Ninilchik, AK.
Surveyor:	None
General Location:	Barbara Drive, Ninilchik

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: Vacate the 10-foot wide utility easement on the north side of Lot 14 Block 1 Banta Subdivision Addition No. 1.

Petitioner statement: *I plan to build a high tunnel on the north side of my property, which would be on the easement. I cannot start dirt work or build unless the easement is removed. This piece of ground is the only place on my property that is conductive to placing a high tunnel.*

There are no utilities or roads on the easement.

Notification: Notice of vacation mailings were sent by regular mail to 12 owners of property within 600 feet. Notice of the proposed vacation was emailed to 6 agencies and interested parties.

The public notice has been posted on the Planning Department's bulletin board at the KPB Administration Building.

Staff Analysis: The request is to vacate the 10 foot wide portion of the utility easement within Lot 14. The total width of the easement is 20 feet. The 10 feet within Lot 13 will remain in place. Plat HM 78-21 granted a 20 foot utility easement centered on the shared lot line of Lot 13 and Lot 14. The easement is approximately 370 feet in length and does not affect the entire length of the side lot line.

The parent plat granted a 5 foot utility easement along the eastern lot line adjoining Barbara Drive (originally named Barbara Street). A 5 foot by 20 foot utility easement was also granted by document to Homer Electric Association.

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Per KPB 20.30.060(D) the front ten feet adjoining rights-of-way shall be designated as a utility easement. When the subdivision was created 10 feet was not required and only 5 feet was granted. A 10 foot by 10 foot utility easement should remain adjoining Barbara Drive within 10 feet of the north boundary line.

Comments were provided by the petitioner from utility providers and the Kenai Peninsula Borough Roads Department. It should be noted the map presented had the 5 foot easement labeled as well as the HEA easement. Comments were in support of the 10 foot along the property line but objected to any vacation of easements along the right of way. Staff wants to note that the petition is only for the 10 foot utility easement along the northern property line. If this vacation is approved, all other easements will remain in place.

The Kenai Peninsula Borough Road Service Area reviewed the easement request and had no objection to the 10 foot utility easement vacation on the north boundary. They did object to any utility easements being vacated that adjoin Barbara Street.

Utility provider review:

HEA	HEA would likely object to the vacation of the 5 ft. wide easement running along your east property line. ("The Road") since there is an existing electrical pedestal (small green box) that appears to be within this easement. In addition, the 5 foot easement along the east property line allows HEA to maintain industry standard tree clearing around the overhead electrical facilities that prevents outages and reduces threats to public safety. The 10 ft. wide easement along the north property line however is not currently utilized by HEA and as such HEA would have no objection to vacating this easement should you choose to pursue this request with the borough. I have also attached a copy of a HEA specific easement granted by a deed that was recorded at Book 259 Page 174 of the Homer Recorder's District. This easement is the anchor easement I was referring to on the phone. The easement width stated is 5 ft. (2.5 ft. on either side of the aluminum guy wire, extending 20 ft. onto the property from the east property line common with Barbara Dr. This easement cannot be vacated through the Kenai Peninsula Borough since it was granted by HEA by deed and is being utilized by HEA for the continued use of the down-guy and anchor to support the utility pole.
ENSTAR	Does not object to the vacation of a portion of utility easement dedicated by Banta Subdivision, according to Plat No. 78.21 …,including the portion of utility easement ten feet (10ft) in width located along the north boundary of Lot 14 Block 1 of said subdivision, but excluding the portion five feet (5ft) in width located along the east boundary fronting Barbara Street right of way of said Lot 14 Block 1.
ACS	Alaska Communications has no objection to vacating the PUE along the northern edge of the parcel described. Alaska Communications has no cable or equipment in this easement, nor are there any plans to use this easement in the future.
GCI	No objection vacating the 10' easement on the north side of Addition No. 1 and Resubdivision of Lot 4 Block 1 Banta Subdivision. Also known as 14585 Barbara Drive, GCI wo. 21-0340-14.

Findings:

1. Per the petition, the utility easement proposed to be vacated is not in use by a utility company.
2. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation.
3. Banta Subdivision Addition No 1 and Resubdivision of Lot 4 Block 1 Banta Subdivision (Plat HM 78-21), granted a 10' wide utility on the north boundary of Lot 14 Block 1 for +/- 370'.
4. No surrounding properties will be denied utilities.
5. A 10 foot utility easement will remain in place along the southern boundary of Lot 13 Block 1 as granted by Plat HM 78-21.
6. A 5 foot utility easement was granted along Barbara Drive (Barbara Street) by Plat HM 78-21 and will remain in place.

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7. An easement was granted by recorded document to Homer Electric Association that will continue to allow them access and maintenance for existing guy wire and anchor.
8. Current code requires 10 foot utility easements along dedicated right of ways.
9. The Kenai Peninsula Borough Roads Service Board has no objection as long as easements remain along Barbara Drive.
10. The proposed lot is along the bluff of Cook Inlet. The easement is not needed to extend utilities to neighboring lots to the west.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends approval of the utility easement alteration as petitioned, subject to:

1. Grant utility easements requested by the owners.
2. A 10 foot by 10 foot easement will remain along Barbara Drive within 10 feet of the north boundary.
3. Finalizing the approval of the easement alteration by either;
   a. The recording of a subdivision plat within 12 months or,
   b. The recording of a utility easement alteration resolution within 90 days of the adoption of the resolution by the Planning Commission, with the following requirements:
      i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.
      ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
      iii. The Planning Department is responsible for filing the Planning Commission resolution.

20.65.070 Alteration of platted utility easements

E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement 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. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.

F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

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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 Venuti moved, seconded by Commissioner Ruffner to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

ITEM 2 - RIGHT OF WAY VACATION
Townsite English Bay USS 4901
C Street adjoining Lot 1 Block 2 Right of Way Vacation

KPB File No.	2021-085V
Planning Commission Meeting:	July 12, 2021
Applicant / Owner:	Village Council Nanwalek Village of Nanwalek, Alaska
Surveyor:	Kenton Bloom / Seabright Surveying
General Location:	C Street, Nanwalek, AK
Legal Description:	C Street / Townsite English Bay USS 4901/ Seldovia Recording District / Section 35, Township 09 South, Range 16 West, S.M.

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: The proposed right of way vacation, and dedication, will adjust the right of way to encompass the existing travel way as well as alleviate the encroachment of the Nanwalek Village community building into the right of way. The adjustment of the dedicated right of way will allow future construction on the Nanwalek Village community building to be completed without creating an encroachment into the right of way.

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 seven owners within 600 feet of the proposed vacation.

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

- State of Alaska Dept. of Fish and Game
- State of Alaska DNR
- State of Alaska DOT

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- Library of Seldovia
- Post Office of Seldovia
- Alaska Communication Systems (ACS)
- ENSTAR Natural Gas
- General Communications Inc., (GCI)
- Homer Electric Association (HEA)

Legal Access (existing and proposed): The right of way vacation and dedication is located within Nanwalek. The portion of C Street proposed for vacation is accessed from Chicklouk Street to the north and Saints Sergus and Herman Street to the south. Chicklouk Street is a 40 foot wide right of ways that have been improved but is not maintained. Access to the south is from Saints Sergus and Herman Street which is a 60 foot wide right of way that has been improved and is maintained by the State of Alaska.

C Street is an improved roadway but a portion is located outside of the dedicated right of way and within Lot 3. The proposed vacation, if approved, will be finalized with a plat that will dedicate right of way centered on the existing travel way.

The design for the subdivision was created in 1967 and recorded in 1971. The block length fits into the design of the village and if the block indeed is short of the minimum qualification staff will ask for the Plat Committee to concur that this subdivision, which is to correct an encroachment issue, is not able to improve the block length.

KPB Roads Dept. comments	Comments not available at the time the staff report was prepared.
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed the ROW vacation, for interpretation of any existing State ROW. Since this does not appear to be a State Road, we have no comment on this ROW vacation.

Site Investigation: The area proposed to be vacated and the new dedication do not appear to have any low wet areas. The area is within Flood Zone C which is minimal flood risk.

Contour information is not available for the area. The top of the cliff is depicted on Lot 3 Block 3. If any steep slopes are found in the proposed right of way dedication when the field survey is performed they will need to be depicted and additional easements may be required.

Floodplain Hazard Review	Comments not available at the time the staff report was prepared.
Anadromous Waters Habitat Protection District Review	Comments not available at the time the staff report was prepared.
State Parks Review	Comments not available at the time the staff report was prepared.

Staff Analysis: U.S. Survey No. 4901 was recorded in 1971 and the plat provided public right of way dedications. Lot 1 Block 2 and Lot 3 Block 3 is owned by the Nanwalek Village. The Nanwalek IRA Council issued a letter authorizing Chief Kvasnikoff to pursue this action and authority to sign all required documents to finish this vacation.

If the vacation is approved a subdivision plat will be required as property boundaries are being altered. The vacated portion of C Street will attach to Lot 1 Block 2 to the north. Additional right of way will be required to be dedicated from Lot 3 Block 3 so that the right of way will remain 40 feet in width. The sketch in the application depicts an additional right of way dedication at the south corner of Lot 1 Block 2 so that the travel way will be within a right of way.

Lot 3 Block 3 is owned by the Bureau of Indian Affairs (BIA). Proper documentation will be required with the plat submittal to show who has the authority to sign on behalf of BIA and they will need to sign the application as well as the final mylar.

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Per Kenai Peninsula Borough Comprehensive Plan 2019 a focus area is Historic Preservation. The right of way width of 40 feet does not comply with KPB subdivision standards but can be found to support the Comprehensive Plan as the minimum width helps maintain the character of historic towns, districts and properties while encouraging commercial, tourist, and cultural development. The Village of Nanwalek is defined within the Comprehensive Plan as a federally recognized Alaska Native tribe. The ability for them to further develop their village community building is supported by the Comprehensive Plan and the proposed vacation is being initiated by them and has the village council's support.

Lot 3 Block 3 is approximately 14,810 square feet in size. The granting of additional right of way will further reduce the square footage of this lot. Due to the steep slopes along the western boundary and the reduced size, this lot may be greatly limited on future use.

The vacation will not pose any access issues as the right of way is currently constructed and used just not within the dedicated area. The new dedications will place the existing gravel road within a dedication. This will eliminate any encroachment issues as shown on the sketch.

The letter submitted states the new dedication will include the utility corridor. Current utility information was not available to staff. The utility providers for the area have been notified to be able to provide comment. **Staff recommends** any utility easements requested by the utility providers be granted on the plat, or work with the utility providers to provide the necessary easements.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021.

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: The right of way is constructed and used but not fully within the dedicated area.

2. A road is impossible or impractical to construct, and alternative access has been provided;
   Staff comments: The road is already constructed and the new alternative right of way will allow the existing access to remain where it is located.

3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
   Staff comments: The area is part of the Nanwalek Village as created by U.S. Survey No. 4901. All neighboring lots front on dedicated right of ways. The surrounding area has been improved and additional right of ways do not appear to be needed. Comments from the utility providers should be considered to determine if additional utility easements will be needed.

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: The right of way does not provide access to a public area or water body. The Nanwalek Village community building is located on Lot 1 Block 2. Moving the location of the right of way will allow an addition to be constructed to the village building.

5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

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Staff comments: This vacation will not limit opportunities for interconnectivity and additional right of way will be dedicated so that the location is shifted to be centered on the existing travel way.

6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: All lots in the area have access via Chicklouk Street, Saints Sergus and Herman Street, and the remaining portion of C Street. The nearby right of ways have been improved.

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 shift in the location of the right of way will provide equal or superior access.

If approved, a plat will finalize the proposed right of way vacations. The plat has not been submitted at the time the staff report was prepared. An exception to right-of-way width (KPB 20.30.120) will be required. Additional exceptions may be required based on the final size of the new lots. Any wastewater systems in place or plans should be noted and included with submittal of the plat. Exceptions may include lots minimum size (KPB 20.30.200) and portions of wastewater disposal (KPB 20.40).

KPB department / agency review:

Planner – Bryan Taylor	
Code Compliance – Eric Ogren	
Addressing – Derek Haws	
Assessing – Matt Burns	
City Advisory Comments	N/A
Advisory Planning Commission	N/A

Utility provider review:

HEA	
ENSTAR	No comments or recommendations.
ACS	A comment was received and was in the desk packet stating they had no objection as long as there was an agreement with the landowner to relocate the ACS cables affected by the realignment of the right-of-way.
GCI	

RECOMMENDATION:

Based on consideration of the merits as per KPB 20.65.050(F) as outlined by Staff comments, Staff recommends approval of the right of way vacation as petitioned, subject to;

4. Consent by KPB Assembly.
5. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
6. Grant utility easements requested by the utility providers.
7. Dedication of right of way to keep the right of way width a minimum of 40 feet wide.
8. 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).

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

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cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.

I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.

J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

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

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

END OF STAFF REPORT

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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 Ruffner moved, seconded by Commissioner Ecklund to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

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 given by Scott Huff.

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
- State of Alaska DNR
- State of Alaska DOT
- State of Alaska DNR Forestry
- Kachemak Bay Advisory Planning Commission
- Emergency Services of Kachemak
- Homer Kenai Peninsula Borough Office

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- Post Office of Homer
- Ninilchik Traditional Council
- Alaska Communication Systems (ACS)
- ENSTAR Natural Gas
- General Communications Inc, (GCI)
- Homer Electric Association (HEA)
- 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	This vacation only affects the applicant and the Road Service Area has no comments at this time.
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

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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:

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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,

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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.

15. 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:

9. Consent by KPB Assembly.
10. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
11. Grant utility easements requested by the utility providers.
12. 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).

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

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plat must be recorded within one year of the vacation consent.

J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

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

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

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Gary Nelson, Ability Surveys; 152 Dehel Ave., Homer, AK 99603: Mr. Nelson was the surveyor on this project and 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 Venuti moved, seconded by Commissioner Ruffner to approve the vacation as petitioned based on the means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough code.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

4. PC Resolution 2021-24; Trail Creek Bridge Replacement
Petition: USAD Forest Services
PIN 125-324-07 & 125-324-01
Moose Pass Area

Conditional Use Permit Anadromous Waters Habitat Protection District

KPB File No.	2021-24
Planning Commission Meeting:	July 12, 2021
Applicant	USDA Forest Service
Mailing Address	33599 Ranger Station Spur Seward, AK 99664
Legal Description	Section 24, T004N, R001W, Meridian Seward. USGD Seward B-7 NE
Physical Address	Lower Creek Trail
KPB Parcel Number	12532407, 12532404

Staff report given by Samantha Lopez

Project Description
The USDA Forest Service is seeking a Conditional Use Permit to replace the existing two-span timber-structured bridge that spans Trail Creek near the Trail Lake Campground on the Chugach National Forest's Seward Ranger District. The replacement bridge will be a single span, pre-stressed concrete bridge. The proposed work includes the removal of the existing concrete pier located in the middle of Trail Creek.

Project Details within the 50-foot Habitat Protection District
1. Remove old concrete abutments and bridge.
2. Construct a new 30-foot wide by 145-foot long pre-stressed concrete girder bridge.
3. Project involves the excavation of existing material within the HPD to accommodate a rock retaining wall to be installed on the northern end of the bridge and a concrete abutment to be installed on the southern end of the bridge.
4. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.

General Standards
Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:
1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;

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2. Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough;
3. The development of the use or structure shall not physically damage the adjoining property;
4. The proposed use or structure is water-dependent;
5. Applicant's or owner's compliance with other borough permits and ordinance requirements.

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), the construction of transportation and utility infrastructure may be approved as a conditional structure/use within the habitat protection district.
3. Pursuant to 21.18.081(D) General Standards, staff finds that the proposed project meets the five general standards.
4. Pursuant to KPB 21.18.020(A), this chapter was established to protect and preserve the stability of anadromous fish through controlling shoreline alterations and disturbances along anadromous waters and to preserve nearshore habitat.
5. Pursuant to KPB 21.18.20(A)(5), one purpose of this chapter was established to separate conflicting land uses.
6. Pursuant to KPB 21.18.020(B)(2), this chapter provides a guide for growth and development along anadromous waters through regulating improved access to and within the Habitat Protection District.
7. Pursuant to KPB 21.06.081(D)(3), the proposed work will occur on the applicant's property and shall not have an adverse effect on adjoining properties.
8. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
   "…a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways."
9. The River Center found the application complete and scheduled a public hearing for July 12, 2021.
10. Agency review was distributed on June 15, 2021. No comments or objections have been received from resource agencies to date.
11. Pursuant to KPB 21.11.030, public notice was mailed to all property owners within a radius of 300 feet of the project on June 29, 2021. A total of 1 mailing was sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on July 1, 2021 and July 8, 2021.
13. The applicant is currently in compliance with Borough permits and ordinances.

Permit Conditions

1. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
2. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
3. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to Trail Creek.
4. The replacement of the bridge must be designed and installed to meet KPB floodplain requirements.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The existing bridge and pier will be disposed of in an upland site outside the 50-foot habitat protection district.
7. The River Center shall be notified at least 3 days prior to the start of the project.
8. Slopes exceeding a 4:1 slope will require topsoil to be placed and native seed planted.
9. If treated wood is used, it must be certified as nontoxic to plants and animals by an independent laboratory or other appropriate agency.

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10. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
11. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
12. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
13. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
14. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
15. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

Recommendation

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for any habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2020-27.

Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Griffith Berg, Forest Engineer, Chugach National Forest Services: Mr. Berg is the staff officer for engineering for the Chugach Forest and made himself available for any questions the commission may have on this project.

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 Morgan to adopt PC Resolution 2021-24 approving a conditional use permit to remove the existing two-span timber bridge & construct a single-span concrete bridge on a parcel within the 50-foot Habitat Protection District of Trail Creek.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

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AGENDA ITEM E. NEW BUSINESS

5. Resolution 2021-046: A resolution classifying 420 acres of Borough land located within Section 1, T05S, R14W, Seward Meridian, Alaska as rural & agriculture.

Staff report given by Marcus Mueller.

The Planning Commission held a public hearing for Resolution 2021-046 on June 14, 2021 and passed a motion recommending to the borough assembly approval of the resolution by 7-4 vote.

On June 15th, the borough assembly held a public hearing and passed a motion to postpone the resolution in order that it could go back to the Anchor Point Advisory Planning Commission (APC).

The Anchor Point APC met on July 8, 2021. The APC's recommendation was to approve Resolution 2021-06, classify 420 acres of borough land located within SEC 1, R05Sm R14W, S.M., Alaska, as rural & agriculture.

This is back before the commission to allow inform them of the Anchor Point APC recommendations and the commission to take or not to take any action based on the APC's recommendations.

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 Ruffner moved, seconded by Commissioner Ecklund to take no action on this item.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

6. Ordinance 2021-28: An ordinance authorizing a lease to Robert Gibson, DBA Alaska Land & Cattle Company for approximately 280 acres of Borough land in the Basargin Road area for agricultural use.

Staff report given by Marcus Mueller.

The borough owns approximately 280 acres of land near Basargin Road, which has been classified as Agriculture and Resource Management per KPB resolutions 2017-024 and 2020-020. The land is bisected by Basargin Road, the Eagle Lake Material Site Haul Road, and by two designated trails.

Mr. Robert Gibson, DBA Alaska Land and Cattle Company, has applied for an agricultural lease of the land.

The lease rates were set by ordinance 2021-01, which are included in the borough's schedule of rates and fees.

The proposed lease is based on a farm management and development plan, which was provided as an attachment to the lease. The proposed term is 20 years. The farm management plan states that the proposed use of this land will be for grazing cattle and hay production. The applicant is proposing no permanent fences and the fencing style will be for rotational grazing. There will be a barnyard site development of approximately three acres.

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Several recreational trails on this property are managed by a community trail management agreement with Snomades. Those trail areas are excluded from charge under this lease.

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 Venuti moved, seconded by Commissioner Ruffner to forward to the Assembly a recommendation to adopt Ordinance 2021-28 authorizing a lease to Robert Gibson, DBA Alaska Land & Cattle Company for approximately 280 acres of Borough land in the Basargin Road area for agricultural use.

Commissioner Bentz had a question for staff related to the Kachemak Bay APC comment about not be able to make a recommendation because they did not have a copy of the farm management plan to review. She wondered if this plan is only made available to borough staff, the Commission and Assembly. Would APCs not have an opportunity to review them? Mr. Mueller replied he did not received the farm management plan until July 8th and it was not distributed until today, so it was not available for the Kachemak Bay APC meeting. It would be typical practice for the farm management plan to be available for review by an APC.

Commissioner Bentz then stated that she had heard from several individuals in the area who expressed concerns about fencing and interactions of livestock with surface waters and asked if the farm management plan addressed those concerns. Mr. Mueller replied that he believed they are and the lease is also structured to address those issues. In areas where there are designated recreational trails, fencing will not be allowed. He is aware that in the winter, in particular, there is significant use across this property and there will be some area of fencing but not in the designated trail areas. The lessee will also be provided with signage to guide and help with conflict reduction. Regarding concerns related to surface waters, sensitive areas such as along Swift Creek and the Swift Creek Canyon area have been excluded from this lease. The proposed stock water will come from a spring development with watering point away from the spring itself. Water will be drawn by a hammer pump and moved to stock tanks.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

7. **Ordinance 2021-27: An ordinance authorizing a WISP tower and ground lease agreement at certain locations with SPITwSPOTS Inc.**

Staff report given by Marcus Mueller.

SpitwSpots, Inc. is a peninsula based commercial broadband communications provider. SpitwSpots, Inc., has requested to enter into a lease agreement for new Wireless Internet Service Provider (WISP) Tower and Ground Lease Agreement on certain borough land in Sterling and Funny River. The sites under consideration are the CES Sterling Station #3, the CES Funny River Station #5, the Sterling Solid Waste Transfer Site, and the Funny River Solid Waste Transfer Site. The use at the Funny River Solid Waste Transfer would be in the form of collocation of equipment on an existing KPB owned tower. The other locations proposed would be new single provider WISP towers owned by SpitwSpots.

The WISP Tower and Ground Lease Agreement proposes in-kind services as payment in lieu of cash payments for all operation sites. The Agreement has been negotiated with a focus on their infrastructure and service value to the borough with regard to specific borough entity internet expansion and connectivity needs

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as well as the general community benefit from expanded internet connectivity and availability borough-wide. The KPB IT department has evaluated the communication link strategy and determined certain benefits and cost savings would be produced. In the event that communications services are discontinued, the leases would revert to cash rent.

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 Ruffner moved, seconded by Commissioner Morgan to forward to the Assembly a recommendation to adopt Ordinance 2021-27 authorizing a WISP tower and ground lease agreement at certain locations with SPITwSPOTS Inc.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

8. **Marijuana Concentrate Manufacturing Facility License**
   Applicant: Leaf & Larf, LLC dba Purgatory Cannabis
   Landowner: Zan Inc.
   Parcel ID#: 017-160-41
   Location: 43280 Kenai Spur Hwy., Kenai, AK 99611
   Legal Description: T 6N R 12W SEC 14 SEWARD MERIDIAN KN PORTION OF GOVT LOT 106 LYING EAST OF NORTH KENAI RD

Staff report given by Bryan Taylor.

Mr. Taylor noted that Commissioner Ecklund has asked for additional information on State licensing requirements and he shared the following information:

AS 17.38 – Regulation of Marijuana

AS 17.38 was passed by citizen's initiative on the November 4, 2014 ballot. The initiative directed the Marijuana Control Board (created by the Alaska Legislature by a bill signed in May, 2015) to adopt regulations governing commercial marijuana establishments and then regulate the newly formed industry. The Marijuana Control Board adopted regulations in 3 AAC 306 at the end of 2015, and those regulations became effective February 21, 2016.

3 AAC 306
Regulation of Marijuana Industry
-Selected Requirements Relevant to Local Government Review-

Licenses (3 AAC 306.305-110)

- Types of marijauna establishments: retail store, cultivation facility, product manufacturing facility, testing facility.
- AMCO Board will NOT issue any license if
  - premises is located within **500ft** of school ground, a recreation or youth center, a building in which religious services are regularly conducted, or a correctional facility.
  - Premises is within a liquor license premises.
  - Local government protests on grounds that local ordinance prohibits MJ establishment.

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- Application for license must include an **Operating Plan** that includes plans for security; inventory tracking o fall MJ and MJ products; employee qualification and training; waste disposal; transportation and delivery of MJ and MJ products; signage and advertising. Board may application if the operating plan does not adequately demonstrate applicant will comply with regulations.
- Within 60 days of notice of an application, a local government may offer protest or conditional protest.
    - If the Board imposes a condition that a local government recommends, the local government shall assume responsibility for monitoring compliance with the condition unless the Board approves otherwise.
    - The Board may hold a public hearing of its own initiative or in response to protest to ascertain the reaction of the public or local government to an application.

Operating Requirements for all Marijuana Establishments (3 AAC 306.700-770)

- Handler Permit: Each employee must take a basic education course to receive a handler permit good for three years.
- Operations: Must operate in accordance with the operating plan approved by the Board.
- Licensed Premise: Each license is issued for a specific premises. Premises for two MJ licenses may overlap with regard to office, employee breakroom, bathroom, non-MJ storage rooms.
- Restricted Access: Access must be restricted to any area where a marijuana product is grown, processed, tested, stored, or stocked.
- Security Systems: Must have ID badges for employees; security lighting, alarms; continuous video monitoring.
- Video Surveillance: must have continuous video surveillance and keep records for a minimum of 40 days.
- Inspections: Premises must be available to inspection up request from director, employee or agent of Board, or officer enforcing this chapter.
- Inventory Tracking: Must use an inventory tracking system capable of sharing information with the Board's tracking system.
- Health and Safety Standards: Marijuana establishment is subject to inspection by local fire department, building inspector, or code enforcement officer *to confirm that health and safety concerns are not present*.
- Waste Disposal: Marijuana waste must be rendered unusable before it leaves the MJ establishment.
- Standardized Scales: MJ establishment shall use scales in compliance with state Weights and Measures Act (AS 45.75.080).
- Transportation: All transport of MJ or MJ products must be tracked in inventory system.
- Signs, Merchandise, Advertisements, Promotions: Not more than three signs visible to the general public from ROW. Two of three must be placed in window or attached to exterior of premises. Each sign must not exceed 4,800 square inches (roughly 5.5'X6').

Marijuana Product Manufacturing Facilities (3 AAC 306.500-570)

- Must demonstrate establishment will operate in compliance with local ordinances.
- Must apply for a food safety permit from the ADEC
- Operating plan must include: equipment and solvents, gases, chemicals, and processes used to create concentrates; list of each product that will be processed in premises; packaging to be used for each product type; sample labels for products; plan for waste disposal.
- Each product to be manufactured must receive approval.
- Laboratory testing of random samples of products is required.
- Potency limits may not exceed five milligrams of active tetrahydrocannabinol (THC) per serving and not more than 10 serving per packaged unit for consumption.
- Labeling and packaging requirement including not targeting individuals under 21 years of age.

Purgatory Cannabis application background information: On October 26, 2020, the borough received notification from the Alcohol and Marijuana Control Office (AMCO) that the applicant had initiated the application to the state for a Marijuana Concentrate Manufacturing Facility license. On October 29, 2020, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed

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manufacturing facility on the above-described parcel. The AMCO notified the borough that the application was complete on June 4, 2021. Staff has reviewed the completed license that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.

2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.

3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.

4. The proposed facility is not located within a local option zoning district.

5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.

    - The site plan indicates that the approach is or will be constructed to a minimum width of 24 feet where it accesses the right-of-way.
    - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
    - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
    - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.

6. The signed acknowledgement form indicates that the proposed facility will not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,
- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition that a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support the conditions.

PUBLIC NOTICE: Notice of the application was mailed on June 23, 2021, to the 19 landowners of the parcels within 300 feet of the subject parcel. Public notice of the hearing on the application was published in the July 1, 2021 & July 8, 2021 issues of the Peninsula Clarion.

STAFF RECOMMENDATION

Staff recommends that the planning commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.

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3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

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 Ruffner moved, seconded by Commissioner Venuti to forward to the Assembly the application for a marijuana cultivation facility license for Leaf & Larf, LLC., dba Purgatory Cannabis with staff's findings and recommending the three conditions be placed on the state license.

Commissioner Fikes noted there have been an increase in new marijuana businesses like this in the area. She asked staff if there is any way to gather information on the health effects of edible marijuana products. Mr. Taylor replied he could not answer that but h could contact AMCO and see if they have any data on this topic.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

AGENDA ITEM E. NEW BUSINESS

9. Conditional Land Use Permit Modification; PC Resolution 2021-26
Applicant: Cook Inlet Region Inc. / Land Owner: Cook Inlet Region
Parcel ID#: 06508118
Sterling Area

Staff report given by Bryan Taylor.

GENERAL OVERVIEW: On June 22, 2021, the applicant submitted payment and a modification application for a material site. The applicant wishes to modify the existing conditional land use permit for material extraction on the above property, approved by the planning commission on March 27, 2017, and extended on May 4, 2021. The modification is to expand the permitted extraction area by approximately 61 acres as shown on the site plan submitted with the application. The application states that the expanded area is to support an Alaska Department of Transportation improvement project for the Sterling Highway. A copy of the application is included as **Attachment A**. Vicinity, aerial, topography, land use and ownership maps are included here as **Attachments B – F**.

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

1) Location of modification: The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).

2) Lifespan: The original permit application stated an expected lifespan of 15 years. No change is proposed.

3) Buffers: In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.

4) Reclamation: No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader

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and dozer. Seeding would be applied each season to areas that achieve final grade.

5) Depth of excavation: The maximum depth of proposed excavation is 20 feet, the same as the original permit.

6) Type of material: Gravel will be mined from the proposed expansion area.

7) Voluntary permit conditions: Berms along the north, south, west, and east edges of the proposed expansion area.

8) Site plan: The original site plan prepared by McLane Consulting Inc. was submitted as part of the modification application with markups and annotations indicating proposed modifications. The original plan included a north arrow, scale, and preparer's name, date and seal. The property has not been subdivided or changed ownership since the original site plan was developed in 2017, so the modified site plan was considered sufficient by staff. Required site plan elements are as follows:

a-b): addressed above.
c) encumbrances: In addition to Tikahtnu, Kenai Keys, and Deniigi Way roads, the site plan shows a section line easement along the southern property boundary.
d) points of ingress/egress: The proposed modification would add a 26-foot wide ingress/egress from the excavation area directly onto the Sterling Highway.
e) haul routes: ingress/egress for the expanded extraction area would be directly onto the Sterling Highway.
f) test holes/depth of groundwater: The application states that 32 test holes have been dug throughout the property and that the water table is greater than 20 feet below original ground. The original site plan shows test well locations in the permitted excavation area.
g) location of neighboring wells: The site plan shows one well south of the property. No wells are within 300 feet of the proposed expansion area.
h) waterbodies/wetlands: no waterbodies or wetlands are indicated on the site plan.
i) surface water protection measures: No measures were indicated on the site plan.
j) processing areas: One 4.8-acre processing area was identified south of Deniigi Way on the original site plan. No modification of the processing area is proposed.
l-m): addressed above
n) boundary staking: with the original permit, the property corners were located and the property boundary flagged at visible intervals within 300 feet of the excavation areas.

PUBLIC NOTICE: Notice of the application was mailed on June 22, 2021, to the 255 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**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the July 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 March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
   D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
   E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster

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in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.

F. 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. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
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 excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
      50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
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 4.8-acre processing area that is located greater than 300 feet from the parcel 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 no wells within 300 feet of an excavation area.
   B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
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 does not seek and exemption to excavate within the water table.
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.
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 permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
10. *Subdivision.* KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a

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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. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
    B. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
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. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
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. Borough staff will regularly monitor the material site to ensure compliance with this condition.

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.

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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, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.
   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.
8. 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.
9. 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.
10. 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.
11. 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.
12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does 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.
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,

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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.

Andrea Jacuk, Land Manager; Cook Inlet Region Inc., POB 93330, Anchorage, AK 99509-3330: Ms. Jacuk noted she and her family are members of the Kenaitze Tribe. Her grandfather grew up fishing the Kenai River, as did his father. The Kenai River is especially important to her and her family. CIRI owns 7% of the bank space on the Kenai River, which is a cultural cornerstone for their shareholders. CIRI has been a good steward of these privately held lands for decades. CIRI is the largest private landowner on the Kenai Peninsula, owning over 33,000 acres of surface estate. Of these 33,000 acres, only 600 acres have been developed for resource or other commercial development purposes, which is less than 2% of CIRI landholdings. The other 98% of these lands have been kept in a raw and undeveloped state. She understands community members have concerns about the development of this material site. They met with community members in 2017 to hear and address their concerns and as a result implemented additional mitigation efforts. None of the mitigation efforts will change with their proposed modification. This is a simple modification to an already approved permit. The sole purpose for modifying this permit is to provide low cost sand and gravel resources for the Sterling Highway reconstruction project. This material site is the best currently permitted source available for the project. The proximity to the project will minimized impact to borough maintained roads, ultimately increasing the life of these roads compared to other resources in the Kenai or Soldotna areas. This modification seeks to move the excavation area. The area for excavation under the prior CLUP has shown to have insufficient structurally competent gravel resources. This modification meets all conditions of KPB code. Scarcella Construction is a respected and experienced operator who has met not only all KPB requirements but also all the additional requirements within the CIRI lease agreement. Scarcella has submitted their operation plans to CIRI, which either meets or exceeds the requirements of the already approved CLUP. CIRI will have direct oversight of the operator to ensure their interests as landowners are met. Scarcella is contractually obligated to comply with borough code at all times. The revised extraction area is 30 feet higher vertically from the water table and is further away from the Kenai River and residential neighborhoods as well as being closer to the Sterling Hwy. CIRI has met all the requirements of borough code and state statute in regards to this permit modification.

Bill Elam, KPB Assemblyman: Mr. Elam stated appreciates all the efforts CIRI has put in to meet all the requirements of code with this CLUP modification application. He noted over the last several weeks he has been contacted by a number of the folks that live in the area of this gravel pit and they have expressed concerns about this application. Some have concerns about surface water issues as well as potential issues for their well water. They have also expressed concerns about the increase in traffic and dust in their neighborhoods. He told them that he would reach out to the commission to request a delay in this process to allow the residents time to get their water tested to create some benchmarks. This information would be important if there were to be any water issues in the future. This seems to be a reasonable request to him.

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Marc Walch; 32280 Moonshine Drive, Soldotna, AK 99669: Mr. Walch stated he owns property across the river from this material site. Moonshine Drive is directly across the river from Bings Landing. He noted he is a professional environmental engineer. One page 335 of the meeting packet under the heading of *Surface Water Protection Measures* he noted it states that *no measure were indicated on the site plan*. He expressed concerns that a 60+ acre gravel mine within the drainage basin of the Kenai River would have significant impact. He reviewed the topo map provided in the report and it was not sufficient for him to determine the true slope and elevations of the area. As a resident, he is as concerned about gravel pits as the applicant made it sound like they are environmentally conscience and prepared. Putting a gravel pit in this area sets a dangerous precedent and he and his neighbors are opposed to it.

Mark Hughes: 11094 Bluff Creek Circle, Anchorage, AK 99515: Mr. Hughes and his wife just recently built their retirement home in the Bings Landing Subdivision. They have owned their lot there since 1993. He wanted to know if most of the gravel that will be mined would be go to the Cooper Landing Bypass project. If so he noted there is a gravel pit, about four miles east from Cooper Landing near the power substation where Scarcella Construction is currently staged. It appears to him there is still plenty of gravel in that area that could be used. The area is not heavily populated and it does not border the Kenai River. Why truck gravel over 30 miles? If this pit is not acceptable, why can't a pit be put in along the bypass area instead? If the gravel from the CIRI pit is not only going to be used for the bypass project, what other large-scale project are planned? What has been approved already in 2017 was a late night deal because nobody in Bings Landing Subdivision knew it was approved until this new application was received. It feels to him that somebody is trying to do this thing without tell everyone and that is not right. This pit does not make environmental sense; there is a lot of gravel in other places. This shows no respect to the surrounding community and to those that want to enjoy the river. Who wants to see a gravel pit while they are floating the river? This gravel pit should have never been approved and he would ask that the commission not approve this modification and repeal the approval that was granted by in 2017.

Gretchen Cuddy; 2439 Karluc Street, Anchorage, AK 99508: Ms. Cuddy stated she owns property on Furrier Ave., which is near this gravel pit. Her father built the cabin on this property in 1983. She would question the statement made by the applicant that the water table in the area is 30 feet higher. She stated on her property, they have issues with their well; it is almost like an artesian well. She has concerns how this gravel pit will affect their well. She agrees with what others have testified to about not knowing that this pit was approved in 2017. She only learned about this pit when she received notice about this current application. She is not in favor of this application. Commissioner Fikes asked Ms. Cuddy when was the last time she had her well water tested. She asked if she had observed any changes in her well since the material site was approved in 2017. Ms. Cuddy replied her well is not running at this time. Commissioner Fikes then asked if this was a seasonal property, or did they live on it year round. Ms. Cuddy replied that it was a season property but that they did visit it throughout the year.

Eric Rosenberg; 32350 Moonshine Drive, Soldotna, AK 99669: Mr. Rosenberg runs a business on his property called Kings of the Kenai Fishing Cabins. When this was approved back in 2017, area one of the material site had a buffer zone of .7 acres that directly buts the river. He is concerned because there has not been a hydrology report. There are environmental concerns, noise issues and the lack of visual buffers. His property sits high on a bluff and he is concerned he will be able to look directly down into this proposed pit. When he asked Mr. Taylor about this issue, he could not tell him if folks on Moonshine were going to experience any visual disturbances. He reached out to CIRI with some of his concerns and questions and was not pleased with the answers he received. He believes the planning that has gone into this project is lacking. There has been a lack of noticing to and input from area residents. It would have helpful if they had done this before presenting their application for modification. He recognizes that regulations here in Alaska are not as stringent as in other places in the US, but he would ask that the commission deny this application for modification.

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 Bentz to adopt PC Resolution 2021-26 granting a modification to a conditional land use permit issued to cook Inlet Region, Inc.

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Commissioner Fikes stated she would support a motion to postpone allowing further testimony from folks living along Furrier Avenue. She would like to know whether or not they have experienced any impacts from the material site since it was approved in 2017. They have heard from several folks who live on Moonshine but she would like to hear from others in the area.

Commissioner Brantley stated he would also support postpone action on this item. He had received several phone calls from people in the Sterling area who did not received notice on this and thought they should have. There were also folks who were not able to join the Zoom meeting this week because of technology issues or were out of town.

Commissioner Ruffner noted the closest section of this material site to residential housing and the river is area one. He was curious if there has been any activity in that area to date. CIRI Representative Ms. Jacuk stated they have concluded the gravel sources in that area is not structurally competent gravel for the current phase of the Sterling Highway Reconstruction project. That is why they submitted the modification application. Since the permit has been approved in 2017, there have been no operations on this land whatsoever. Commissioner Ruffner then asked if CIRI had considered relinquishing those undeveloped areas where the gravel was not up to competency. Ms. Jacuk stated they had considered that but have not come to a conclusion yet. Commissioner Ruffner noted area one is the closest area to residential housing and the river, which are the two main concerns expressed by the testifiers tonight. He would encourage CIRI to consider relinquishing that area.

Commissioner Ecklund said she thought area one, which Commissioner Ruffner referred to, was one of the new sites being proposed for development. Ms. Jacuk replied the application before them tonight is adding a regarding third area, it is the third area that they are proposing to develop. Commissioner Ecklund then stated the CLUP approved in 2017 states that five acres a year would be reclaimed and she asked if that had been done. Ms. Jacuk replied there has been no operations on areas one or two, so no reclamation has been required. Commissioner Ecklund then asked staff whose responsibility is it to mail out notices. Mr. Taylor replied code requires notice to be sent to property owners within a ½-mile radius of the site. Two hundred and fifty-five notices were mailed out to area property owners. The addresses used are the ones the borough has on file for tax notices and to date only two notices had been returned. Commissioner Ecklund then stated she would be in support of postponing action on this item, to at least allow residents time to get their wells tested. She too has concerns about how close this material site is to the river.

Commissioner Fikes asked that since no activity has taken place on this material site, she wondered if there was any bonding required on the first permit. Mr. Taylor replied since there has been no operations conducted on the site no bond required has been required. He then noted if there is an approved permit and operations began, it would disqualify them from the State exemption and bonding would be required.

Commissioner Brantley stated if the applicant relinquished area one he believes it would go a long way with public. He would encourage them to consider that option.

Commissioner Ruffner agreed with Commissioner Brantley and he would encourage the applicant to consider relinquishing area one.

AMEMDMENT: Commissioner Ruffner moved, seconded by Commissioner Brantley to postpone this item until it is brought back by staff.

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

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Gillham				

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AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Carluccio informed the commission that the plat committee heard and approved 5 plats.

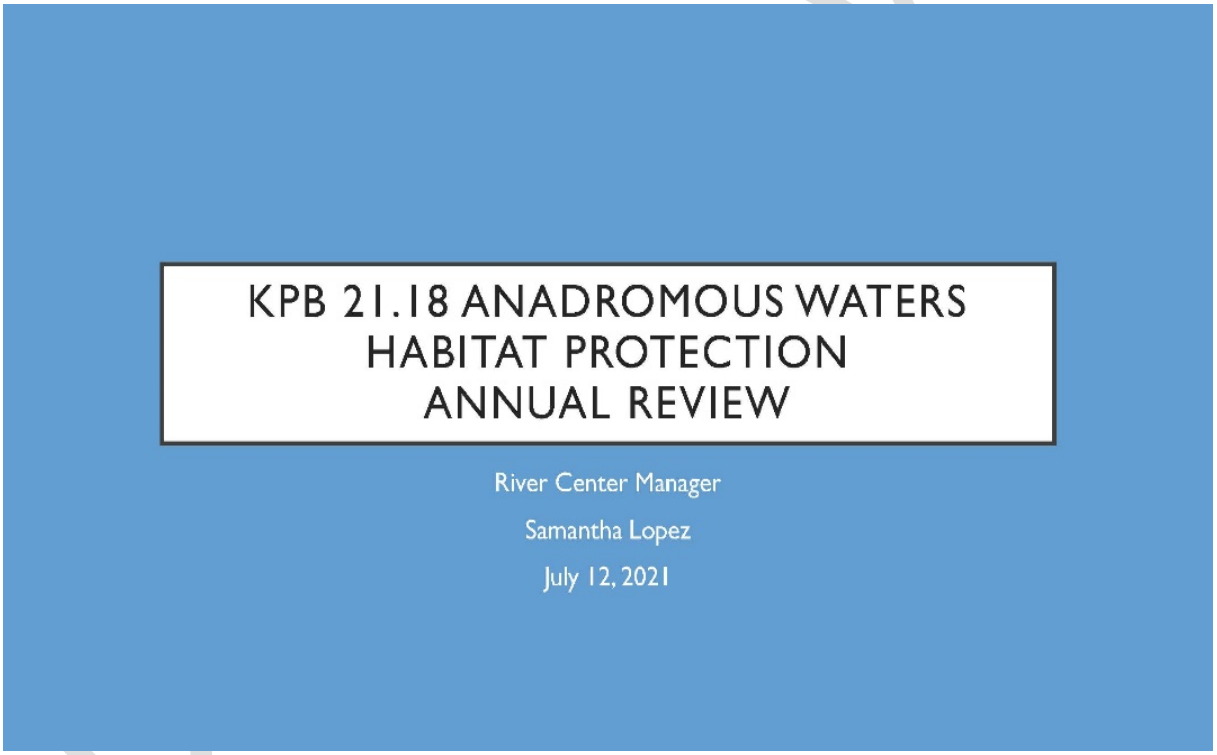
AGENDA ITEM G. OTHER

1. Plat Committee members for August/September 2021.
   Plat Committee members for the August 9, 2021 Plat Committee meeting are:
   - Cindy Ecklund
   - Virginia Morgan
   - Diane Fikes
   - Franco Venuti

AGENDA ITE H. PUBLIC PRESENTATION

1. KPB 21.18 Anadromous Habitat Waters Protection Annual Review

Samantha Lopez, River Center Manager gave the following presentation to the commission:



DONALD E. GILMAN RIVER CENTER

The Donald E. Gilman River Center is a multi-agency permitting, information, and education center.

We house four permitting agencies, streamlining the permitting process

KPB 21.18 issues permits for:

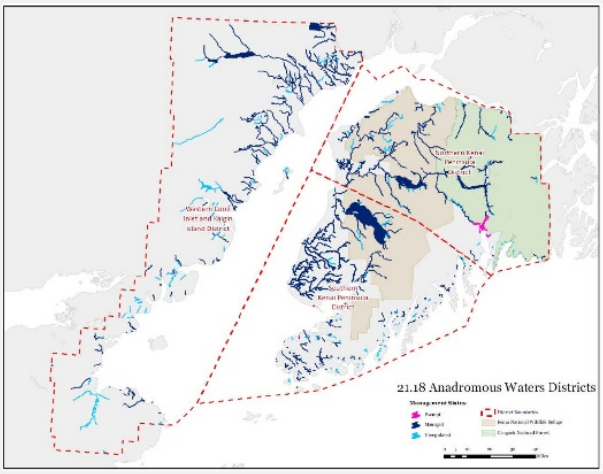
- Filling & grading
- Building construction
- Bank restoration
- Vegetation management
- Infrastructure projects

21.18 ANADROMOUS WATERS DISTRICTS

Habitat Protection District

"all lands within 50 horizontal feet of anadromous water bodies"

- We manage 793 anadromous rivers, creeks, lakes
- 2,337 miles of streams & rivers
  - Over 28,000 acres
- 70 lakes



THE PURPOSE OF 21.18

Before & after restoration

4

PERMITTED PROJECTS

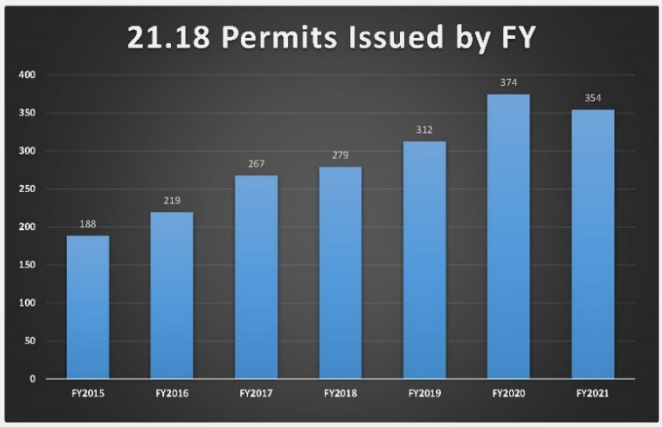
- Bank Restoration
  - Spruce Tree Revetments
  - Root Wads
  - Brush Layering
  - Elevated, light-penetrating walkways (ELP's)
- Vegetation Management
- Infrastructure
  - Culverts
  - Bridges
  - Roads

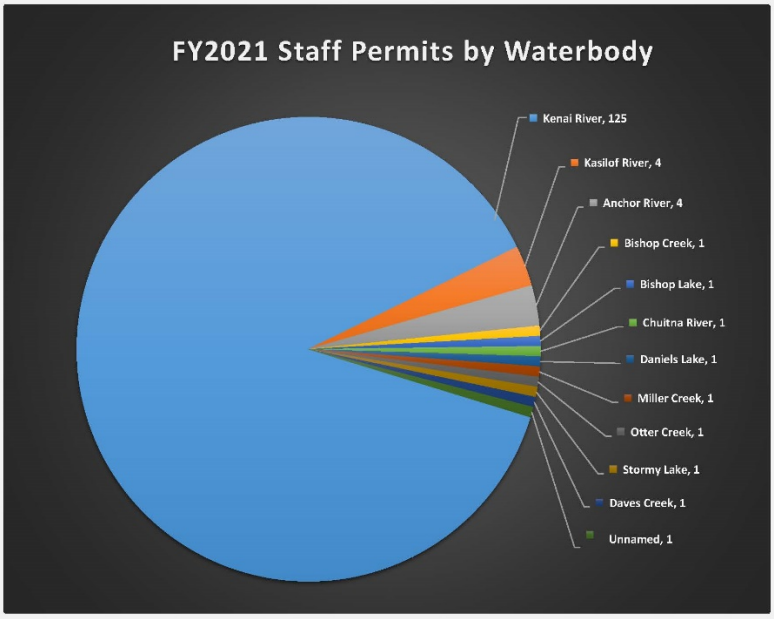
21.18 IN 2021

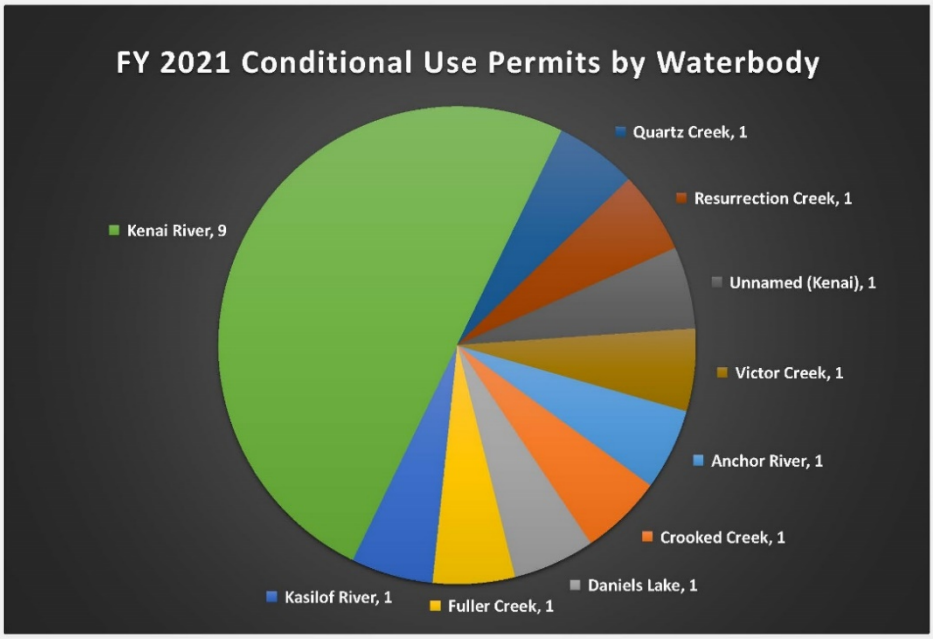
- Anadromous Waters Habitat Protection Work Group
  - 8 meetings (March 2020 – January 2021)
  - Assembly finalized code revisions 5/4/2021
- Permits (354)
  - 194 Minor Veg Permits
  - 142 Staff Permits
  - 18 Conditional Use Permits

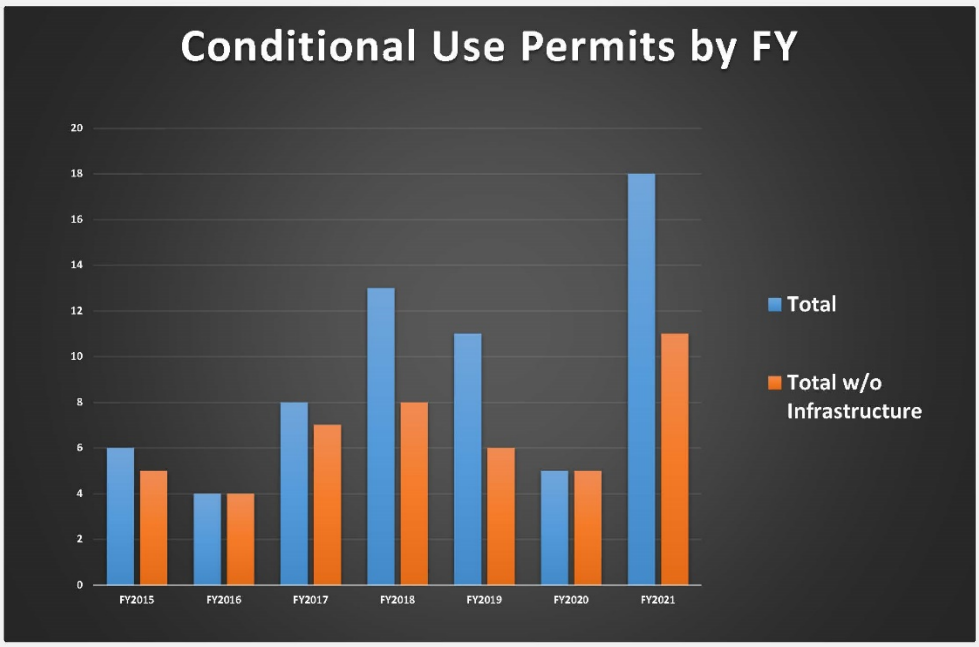
21.18 - TYPES OF PERMITS

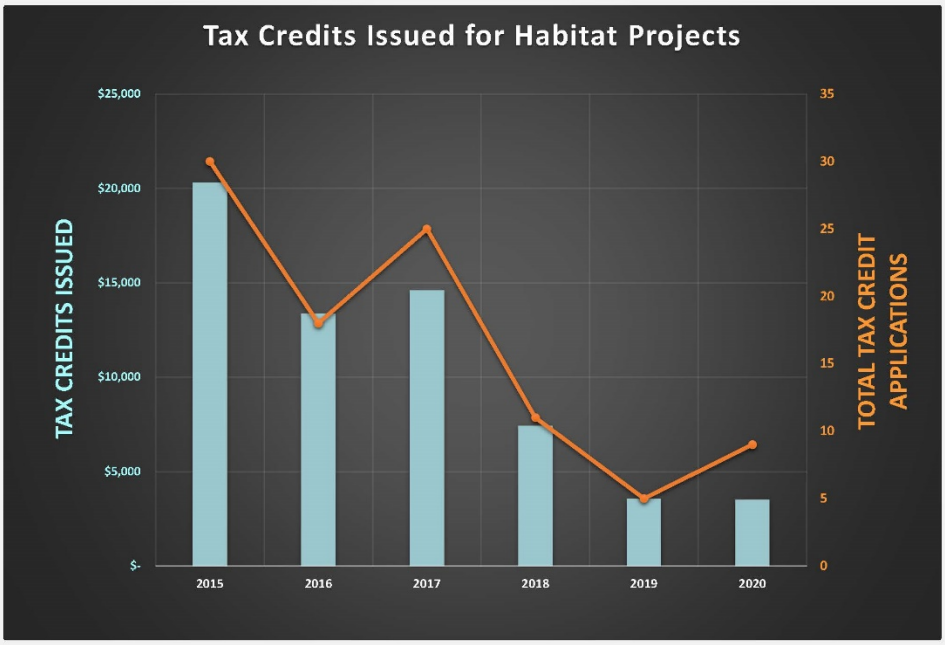
1. Minor Veg Management
2. Staff
   a) New Projects
   b) Prior-Existing
3. Conditional Use
4. Commercial Activity

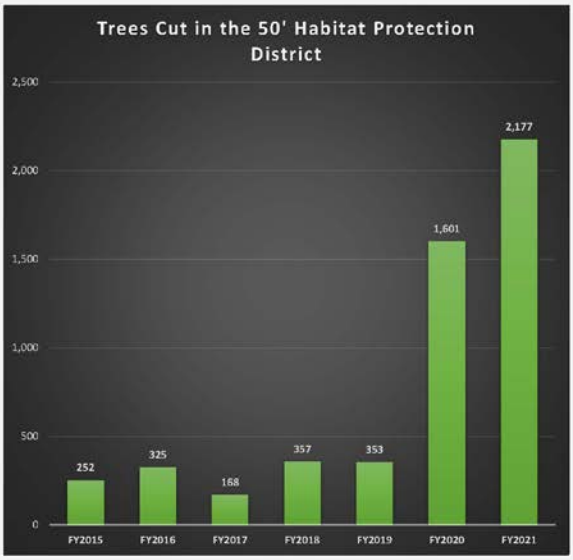


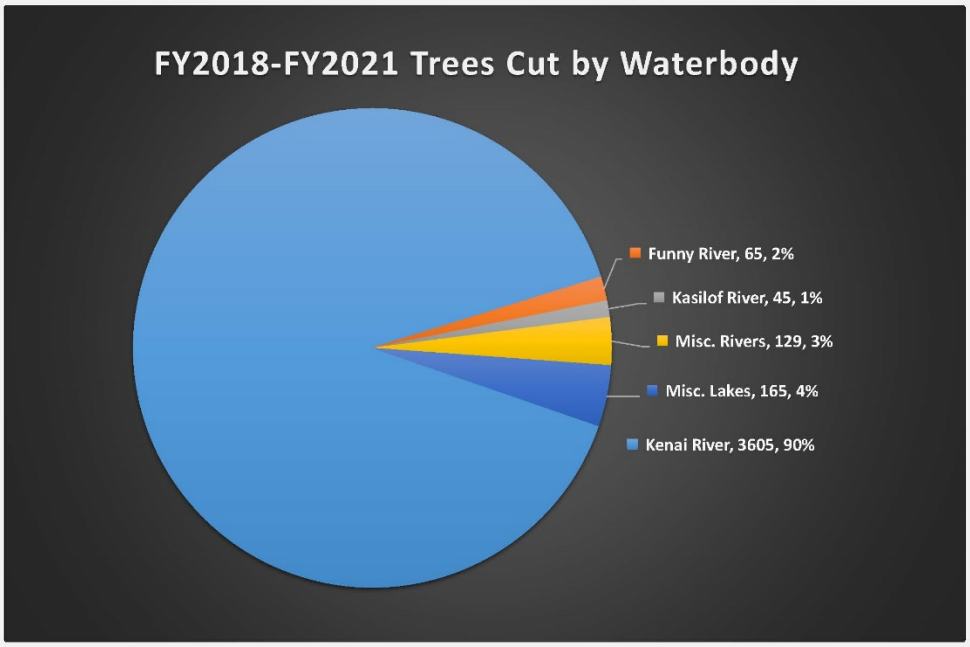

FY2021 Staff Permits by Waterbody
Kenai River, 125
Kasilof River, 4
Anchor River, 4
Bishop Creek, 1
Bishop Lake, 1
Chuitna River, 1
Daniels Lake, 1
Miller Creek, 1
Otter Creek, 1
Stormy Lake, 1
Daves Creek, 1
Unnamed, 1

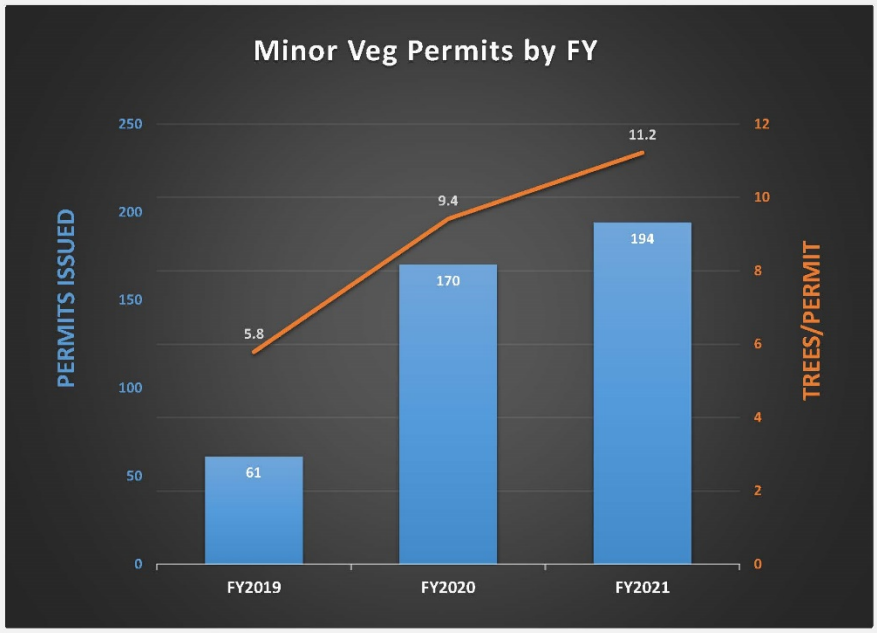

FY 2021 Conditional Use Permits by Waterbody
Quartz Creek, 1
Resurrection Creek, 1
Kenai River, 9
Unnamed (Kenai), 1
Victor Creek, 1
Anchor River, 1
Crooked Creek, 1
Daniels Lake, 1
Kasilof River, 1
Fuller Creek, 1


Conditional Use Permits by FY
20
18
16
14
12
10
8
6
4
2
0
FY2015
FY2016
FY2017
FY2018
FY2019
FY2020
FY2021
Total
Total w/o Infrastructure


Tax Credits Issued for Habitat Projects
TAX CREDITS ISSUED
$25,000
$20,000
$15,000
$10,000
$5,000
$-
TOTAL TAX CREDIT APPLICATIONS
35
30
25
20
15
10
5
0
2015
2016
2017
2018
2019
2020

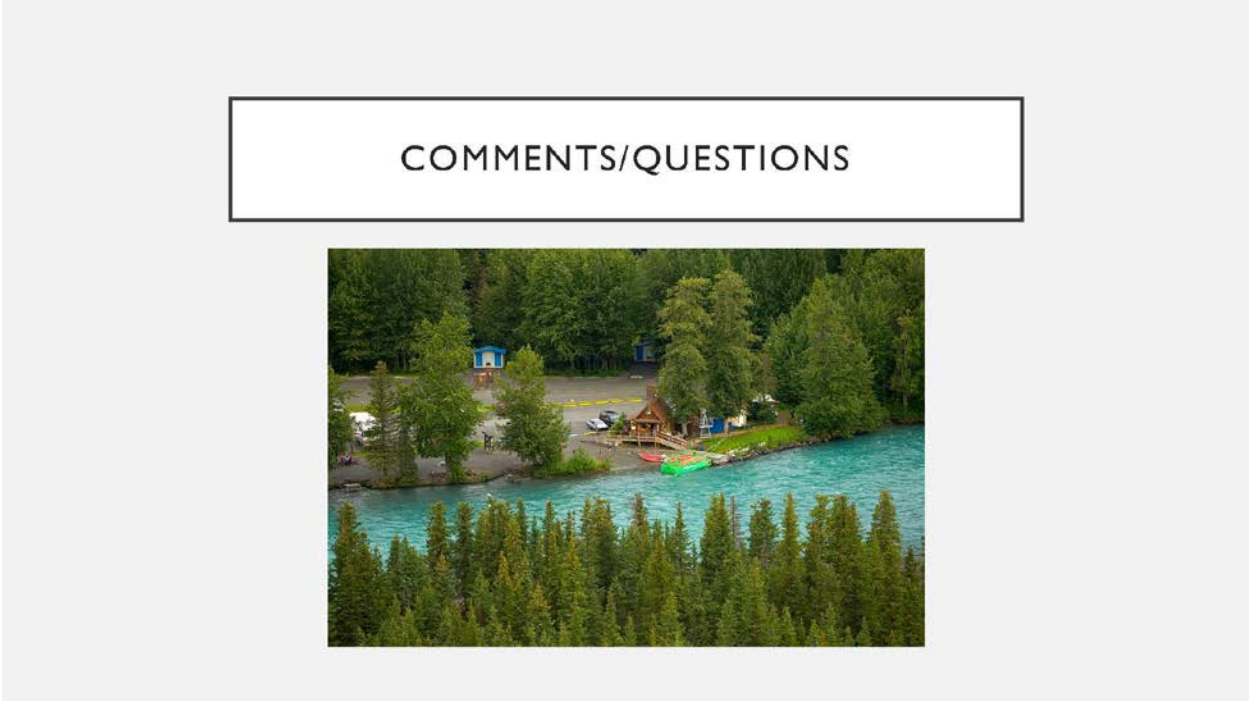

Trees Cut in the 50' Habitat Protection District
2,500
2,000
1,500
1,000
500
0
252
325
168
357
353
1,601
2,177
FY2015
FY2016
FY2017
FY2018
FY2019
FY2020
FY2021


FY2018-FY2021 Trees Cut by Waterbody
Funny River, 65, 2%
Kasilof River, 45, 1%
Misc. Rivers, 129, 3%
Misc. Lakes, 165, 4%
Kenai River, 3605, 90%



THINGS TO CONSIDER

- Permits rebounded from 2020 dip
- Address additions/deletions to the ADFG Anadromous Waters Catalog
  - 3-year review
  - Last updated in 2014
  - Evaluate whether updates are appropriate to the list of currently Borough-managed anadromous streams
- Trees cut within 50' HPD have increased 7x
  - Outreach
  - Agency Coordination



AGENDA ITEM I. DIRECTOR'S COMMENTS

River Center Updates:

- At the end of June, the River Center sent out approximately 1600 letters to property owners on the Kenai River informing them about the 50-foot Habitat Protection District and 21.18 permitting requirements. We have received numerous calls and feedback, and are planning to send additional letters to property owners on other waterbodies.

Planning:

- An appeal has been filed in the River Resources Gravel Pit Case ** please be cognizant of that if any members of the public contact any commissioners on that issue**.

- Mayor Pierce plans to re-introduce the exact gravel pit ordinance that the PC recommended approval, which failed at the assembly level, and was tabled. Since this PC did recommend approval of the exact same ordinance that will be introduced, the mayor does not intend to send the ordinance back before the PC.

- We are working through a resolution for the PC city seats. Currently, we are working with the City of Homer and City of Seldovia on those seats. We can anticipate that on the back end of this there will be a code change ordinance that sets out the current city seats in code so that this issue has some finality. I will update you further when we have something concrete.

- Additionally, during this process it has come to our attention that vacancies on the KPB Planning Commission are handled differently depending on whether the vacancy is for an at-large seat or city seats. It is important that all vacancies on the KPB Planning Commission are noticed and handled in the same way. The KPB planning commission is a borough function; therefore, the borough will now handle the noticing and application process for vacancies. When the vacancy is for what is known as a city seat, the borough will send all applications and supporting documentation, it receives from the applicant to the respective cities. The cities will then determine which applicants have the experience and expertise necessary to represent city interests and provide a final list of recommendations to the KPB mayor. The KPB mayor will then appoint a name

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from the list provided by the cities. So effective 7/7/21 we are going to handle the noticing and application process for all vacancies. That will likely mean we will currently have a short delay in filling a current open unfilled city seat on the PC for the beginning of August.

- One interpretation issue that I can ask Sean to speak to if needed is; During this process, we have also determined that neither borough code nor state statute require that city seats be filled by a resident of the city or that at-large seats be filled only by residents of the areas outside the cities. In short, this means that as long as the applicant is otherwise qualified and eligible, all borough residents may apply for a vacancy on the KPB Planning Commission. This should substantially open up the pool of qualified and experienced applicants to the benefit of all.

- We are working on getting the monitors set up in the chambers to show relevant maps and will have a laser available in the near future. This will aid all in attendance and online a unified view of the maps we are discussing during the meetings.

- I received a proposed project plans for review for Funny River Road Pavement Preservation project from the State of Alaska Department of Transportation and Public Facilities. The proposed plan will start at milepost 0-milepost 17.2 it is a reclaiming, paving, adding new signage, and striping.

Land Management:

- On July 6th the assembly approved the land classification and land sale ordinances as originally proposed, after much discussion surrounding public comments and the planning commission's recommendations. Amendments were proposed to remove the parcels in Homer from classification and sale. Those amendments were defeated on 4-4 votes, with one member absent. Assembly member Dunne gave notice of reconsideration of the Classification resolution. A motion to reconsider the land classification resolution will be raised at the August 3rd assembly. If the motion to reconsider passes, then the Assembly can rehash the classification resolution. If changes are made to the classification resolution, then land management will work with the legal department to determine the effects on, and proper handling of, parcels in relation to the land sale.

Platting:

- We are shooting for a PC training in collaboration with Legal at the August 23 meeting.

AGENDA ITEM J. COMMISSIONER COMMENTS

Commissioner Ruffner informed the commission that he would not be able to attend the August 9, 2021 Planning Commission meeting.

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 9:24 p.m.

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Ann E. Shirnberg
Administrative Assistant

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