

ITEM 1 - RIGHT OF WAY VACATION

VACATE A 60' BY 254' PORTION OF WILDWOOD DRIVE ON THE SOUTHEAST BOUNDARY OF LOT 4-A BLOCK 8, BLACK GOLD ESTATES SUBDIVISION NO. 2 (PLAT KN 84-76)

<b>KPB File No.</b>	2021-111V
<b>Planning Commission Meeting:</b>	August 23, 2021
<b>Applicant / Owner:</b>	Alexander Douthit of Kenai, Alaska
<b>Surveyor:</b>	James Hall / McLane Consulting Inc
<b>General Location:</b>	City of Kenai
<b>Legal Description:</b>	Wildwood Drive, Black Gold Estates Subdivision No. 2 Plat KN 84-76, Kenai Recording District, Section 25, Township 06 North, Range 12 West, S.M.

STAFF REPORT

**Specific Request / Purpose as stated in the petition:** Vacate a portion of the frontage road along Wildwood Drive. Wildwood Drive is a dedicated right of way that is constructed and paved and provides legal access from the Kenai Spur Highway. The westerly portion of the right of way is 120 feet in width with the majority of the right of way 180 feet in width. The frontage road has not been improved and is not being used for access.

This right of way was originally dedicated by Black Gold Estates Subdivision (amended) in 1962. The right of way was dedicated as a frontage road to provide access to the residential lots. Black Gold Estates Subd No. 2 (KN 84-76) replatted 9 lots and vacated alleyways to create one parcel that is 3.085 acres in size.

**Notification:** Public notice appeared in the August 12, 2021 issue of the Peninsula Clarion as a separate ad. The public hearing notice was published in the August 19, 2021 issue of the Peninsula Clarion as part of the Commission’s tentative agenda.

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

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

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

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

**Legal Access (existing and proposed):** Lot 4-A Block 8 fronts the Kenai Spur Highway a state maintained right of way with a width of 150 feet abutting the lot. Any access to Kenai Spur Highway required approval from SOA DOT. Lot 4-A Block 8 fronts on Wildwood Drive, a City of Kenai maintained right of way.

There are no proposed dedications, as it will reduce the right of way width down to 120 feet from 180 feet.

The block is irregular in shape but does comply with length requirements and is closed. Wildwood Drive, Kenai Spur Highway, an unnamed 60 foot right of way, Windflower Drive, and an unnamed 60 foot right of way, that appears to be an extension of Orchid Way, define the block. Windflower Drive and Wildwood Drive are maintained

by the City of Kenai and Kenai Spur Highway is maintained by the State of Alaska. Other right of ways are not maintained or unconstructed.

No lots will be denied access if the vacation is approved.

KPB Roads Dept. comments	Out of jurisdiction, no comments
SOA DOT comments	Wildwood Drive is not a state road so we have no comments.

**Site Investigation:** The right of way proposed to be vacated is not affected by steep terrain or wetland areas. It does not appear that the right of way has been improved or is being used for vehicular access. There does appear to be local ATV trails that cut across Tract 4-A Block 8.

Floodplain Hazard Review	Within City of Soldotna/Kenai, no comments
Anadromous Waters Habitat Protection District Review	Is not within HPD, no comments
State Parks Review	No comments

**Staff Analysis:** The proposed vacation is along Wildwood Drive. The Wildwood complex was constructed in 1953 as a military communications base. In 1974, Wildwood was turned over to the Kenai Native Association as part of the native land settlement. In 1983, the State of Alaska began a lease with option to purchase, converted the structures, and opened the Wildwood Pretrial Facility.

Wildwood Drive was considered as a Federal Military right of way while it was operating as a military base. A subdivision, Black Gold Estates Subdivision (Plat KN 1335), subdivided the Carl F. Ahlstrom Homestead and it depicted the Wildwood Station Road as a military road. That plat was recorded in 1962. In 1964 the plat was revised, Black Gold Estates Subdivision Amended (Plat KN 1399). The amended plat depicted the federal right of way but provided a 60 foot wide right of way running adjoining the north edge of Wildwood Drive. This was to be a frontage road to provide access to the residential lots created by the plat.

When the ownership and use of the Wildwood Complex changed so did the ownership of the right of ways. The Wildwood Complex is under State of Alaska ownership and management but the right of way leading to the property is under the City of Kenai jurisdiction. Several right of ways intersect Wildwood Drive and private lots have direct access. Wildwood Drive right of way ends at the Wildwood Complex.

In 1984, the owner of nine lots combined the lots and vacated alleyways with the recording of Black Gold Estates Subdivision No. 2, Plat KN 84-76. This plat combined the land to create the current lot configuration for Lot 4A Block 8.

Wildwood Drive has a 120 foot width at the intersection of Kenai Spur Highway. Approximately 185 feet from the intersection, the width increases to 180 with the addition of the frontage right of way and continues at that width until it ends at the complex. While it was intended to be used as a frontage road, it was not constructed as such and there is no road name associated other than Wildwood Drive.

The proposed vacation will leave a width of 120 feet for Wildwood Drive. The portion being vacated will be combined back to Lot 4-A

No access to surrounding lots will be affected.

The original plats did not grant any utility easements along or abutting the proposed portion of the right of way vacation. The replat, KN 84-76, did grant a 10 foot utility easement along the eastern boundary. That easement stopped at the right of way dedication as right of ways may be used for utilities. To comply with subdivision code, the plat that will finalize the vacation will be required to grant 10 foot utility easements adjoining the right of ways. This requirement will provide a connection from the previously granted utility easement to Wildwood Drive.

The City of Kenai Planning and Zoning Commission reviewed the plat that will finalize the vacation, Black Gold Estates 2021 Replat, at their July 28, 2021 meeting. They have some conditions for the plat and stated the Kenai City Council must declare the right of way is not needed and approve the vacation.

The Kenai City Council will hear this at their September 2021 meeting if approved by the Planning Commission.

#### **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:** This portion was intended to be a frontage road but has not been improved and is not being used for public access. Wildwood Drive will remain and has been improved. The remaining right of way is being used and will provide public access.
  2. A road is impossible or impractical to construct, and alternative access has been provided;  
**Staff comments:** Wildwood Drive will remain 120 feet wide abutting the vacation area and provides an alternate access for the public.
  3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;  
**Staff comments:** The surrounding area has been subdivided with adequate right of ways and utility easements to provide access to all neighboring lots.
  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 frontage road does not provide access to a lake, river, or other area with public interest as it only provides access to private lands.
  5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;  
**Staff comments:** There are additional right of ways within the parent subdivision as well as alleys to provide interconnectivity of public access and utilities.
  6. Other public access, other than general road use, exist or are feasible for the right-of-way;  
**Staff comments:** The width of Wildwood Drive will provide adequate width for other uses, such as pedestrian walkways or placement of utility lines, as needed.
  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 vacation has been sent to the utility companies for review and comments. Utility providers have existing lines in this area. No new utility easements were requested. This platting action will provide a minimum of 10 foot utility easements adjoining all right of ways.
  8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.  
**Staff comments:** This section of the frontage road has not been improved and it not required as the separate lots have been replatted into one parcel.

If approved, Black Gold Estates 2021 Replat will finalize the proposed right of way vacation. The preliminary plat has not been submitted to schedule for a Plat Committee meeting at the time the staff report was prepared. If the sole purpose of the plat is to depict the area approved for vacation the preliminary plat may be submitted under KPB 20.10.080 – Vacation Plat. The plat will be reviewed by staff for completeness and will not require approval from the Planning Commission. If any exceptions from KPB code are requested the plat will need to be submitted for review by the Plat Committee and may not be reviewed under KPB 20.10.080.

**KPB department / agency review:**

Planner – Bryan Taylor	This is located within the City of Kenai and not subject to local option zoning districts or material site review by KPB.
Code Compliance – Eric Ogren	No comments
Addressing – Derek Haws	Affected Addresses: 14224 Kenai Spur Highway (will remain with Lot 4B – Block 8) Existing street names shown are correct
Assessing – Matt Bruns	No concerns from Assessing Department.

**Utility provider review:**

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

**RECOMMENDATION:**

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

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

**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 plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition

concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.

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

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

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

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

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

- *Focus Area: Transportation*
  - o *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.*

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**END OF STAFF REPORT**