

ITEM 1 - Falls Creek Estates Unit 5

KPB File No.	2021-110
Plat Committee Meeting:	August 23, 2021
Applicant / Owner:	Richard L and Lana J Metcalf of Soldotna, Alaska
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Fritz Creek and Falls Creek / KACHEMAK BAY APC

Parent Parcel No.:	185-210-48
Legal Description:	That portion of Lot 2 US Survey No 4720, EXCEPTING THEREFROM Falls Creek Estates Unit 1 Plat HM 80-12, Falls Creek Estates Unit 2 plat HM 83-100, Falls Creek Estates No. 4 plat HM 96-53 and Falls Creek Estates 2018 plat HM 2018-36.
Assessing Use:	Residential
Zoning:	Rural Unrestricted
Water / Wastewater	On Site

STAFF REPORT

Specific Request / Scope of Subdivision: The proposed plat will subdivide a 61.76 acre parcel into four lots ranging in size from 5.274 to 23.320 acres. A 30 foot wide right of way dedication of Bush Drive is being given to make it a 60 foot wide right of way.

Legal Access (existing and proposed): This is a large acreage subdivision with multiple access points. All access points originate off East End Road, a state maintained right of way.

Access from the south is near milepost 18 of East End Road. Morrison Drive is a 60 foot wide right of way maintained by the borough. The first approximate 1,080 feet of Morrison Drive is not dedicated and crosses through CIRI land. A patent to CIRI states several right of ways existed but without further research staff is unsure if the patent is referring to Morrison Drive. Staff did not find any ADLs for the right of way. Shrub Drive and Furrow Road both connect Morrison Drive to the subdivision boundary. Both Shrub Drive and Furrow Road are 60 foot wide right of ways that provide access to the subdivision from the south. Shrub Drive and Furrow Road appear to be partially constructed but are not maintained by KPB. Shrub Drive provides access to proposed Tract L. Furrow Road provides access to proposed Tracts M and N.

The northerly access is from mile post 20 of East End Road. Falls Creek Road is a dedicated 60 foot wide right of way that is maintained by the borough until the intersection with Via Hermosa Drive. Falls Creek Road continues approximately 620 feet from that intersection and provides access to the subdivision. At the end of the Fall Creek Road, there is a 30 foot half width dedication for Bush Drive. This plat will be granting a matching 30 feet right of way to bring Bush Drive into compliance. Bush Drive connects to Linda Lane. Bush Drive provides access to proposed Tracts M and O.

Staff records indicate that there are not any section line easements within the subdivision boundary as the date of entry predated the section survey. There appears to be section line easements outside of the subdivision boundary. Plat note 4 notes that there are 50 foot section line easements on all section lines. The section lines are shown with both dashed and solid line styles. *Staff recommends verify if there are any section line easements within the subdivision. If they are present, depict and label the section line easements. Update the section line style to be the same and the line style can be added to the legend.*

The block length is not compliant. Due to terrain, exiting development, and the size of this subdivision it is not a closed block. An exception has been requested.

An exception has been requested to not continue the dedication of Shrub Drive or Furrow Road at this time.

KPB Roads Dept. comments	Within jurisdiction, no comments
SOA DOT comments	No comments

Site Investigation: This is a large acreage subdivision with steep slopes and drainage gullies. The bottom of the gullies are affected by creeks and wetlands. The plat indicates the wetlands areas with a hatching pattern and the steep slopes are shaded grey. The surveyor did prepare an additional plat sheet for preliminary review that includes the contour lines. The majority of the subdivision has either steep slopes, wetlands, or a combination of both. Plat note 5 directs owners to contact the Army Corps of Engineers prior to development.

Floodplain Hazard Review	Not within flood hazard area. No regulatory mapped floodplain areas intersect this parcel.
Anadromous Waters Habitat Protection District Review	Is not within HPD. No comments.
State Parks Review	No comments.
State Fish and Game	No objection.

Staff Analysis This is a large acreage subdivision creating four tracts. The smallest tract will be Tract O with 5.3 acres. The remaining three tracts will be 16.4, 16.6, and 23.3 acres.

The property included in this subdivision was originally Lot 2 of U.S. Survey 4720 that was completed in 1964-1965. In 1980, the first plat was recorded that subdivided original Lot 2. Per the certificate to plat, this survey is for Lot 2 excluding plats HM 80-12, HM 83-100, HM 96-53, and HM 2018-36. An additional plat was also recorded, HM 92-49. The lots included in that plat were replatted with HM 96-53. There is no reference to HM 92-49 within the certificate to plat. HM 2018-36 was a replat of two lots from HM 96-53. That plat is however mentioned in the certificate to plat. **Staff recommends owners or surveyor discuss with the title company to clarify which plats should be listed as excluded subdivision from Lot 2 U.S. Survey 4720**

All parcel will be 200,000 sq. ft. is size of larger and will not require a soils analysis report.

Per the preliminary Certificate to Plat, beneficial interest holders do not affect the proposed plat. Notification per KPB 20.25.090 will not be required unless the final Certificate to Plat states the property is affected by beneficial interest holders.

Kachemak Bay Advisory Planning Commission minutes were not available when the staff report was prepared (KPB 21.02.020). These will be provided with the desk packet if available.

Utility Easements As this is the remainder of a previous subdivision, there have not been any utility easements granted with the subdivision boundary. The certificate to plat does not indicate any recorded easements for the property. Plat note 1 does state the intention to grant 10 feet utility easements along right of ways.

The affected utility providers were emailed the subdivision plat public hearing notice as part of the routine notification process. **Staff recommends to grant utility easements requested by the utility providers or work with the utility providers to obtain approval. Revise plat note 1 to read, "The front 10 feet adjacent to dedicated right of ways is granted as a utility easement." Depict the easements being granted.**

Utility provider review:

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

KPB department / agency review:

Addressing – Derek Haws	Affected Addresses: 32940 Falls Creek Road (Address will be deleted and new addresses will be assigned upon request.) Street names listed are correct
Code Compliance – Eric Ogren	No comments
Planner – Bryan Taylor	There are not any Local Option Zoning District issues or material site issues with this proposed plat.
Assessing – Matt Bruns	No concerns from Assessing Department
Advisory Planning Commission	Comments note received when the staff report was prepared.

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

STAFF RECOMMENDATIONS
CORRECTIONS / EDITS

Along Bush Drive there are overstrikes needing to be corrected.

KPB 20.25.070 - Form and contents required.

- A. Within the Title Block
1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat.
 2. Legal description, location, date, and total area in acres of the proposed subdivision;
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor.
- Staff recommendation:** *Update the legal description to match the Certificate to Plat by including Falls Creek Estates 2018, HM 2018-36.*
- C. The location, width, and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
- Staff recommendation:** *Make the section line styles the same and add to the legend. Provide a label for the 25 foot right of way easement from HM 77-22 that adjoins Tract M. Match the text style for the road names.*
- G. The status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the propose subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;
- Staff recommendation:** *Correct the recording number for the lots south of Morrison Drive as the plat number is cut-off. Some subdivisions have the name listed, recording number listed, or combination. The labels can be edited to be consistent. Add "unsubdivided" for the parcel located southeast of the subdivision.*

KPB 20.30 Design Requirements

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

20.30.100. Cul-de-sacs.

A. Streets designed to have one end permanently closed shall be no more than 1000 feet long. The closed end of the cul-de-sac shall have a suitable turnaround with a minimum radius of 50 feet to the property line. The turnaround shall be constructible to a 4 percent grade or less.

B. Hammerhead or T -type turnarounds may be allowed on a case-by-case basis. Adequate turning radii, width and depth must be provided for road maintenance and emergency vehicle access. Plans must be reviewed with a recommendation by emergency service providers and the KPB Road Service Area Board prior to submittal for planning commission review.

C. Temporary turnarounds and self-vacating turnarounds shall not be granted or reserved on plats.
Staff recommendation: *If the exception requests for right of way continuation are approved, the plat will be subject to KPB 20.30.100 Cul-de-sac and the plat will be required to provide a turnaround area at the end of Furrow Road and Shrub Drive. Staff recommends the turnaround area be an eyebrow or a hamer head type turn around. This will allow a turnaround area to be constructed if needed as well as allowing the right of way to be extended in the future. Staff recommends a plat note be added that states the right of ways are not dead ends and may be extended in the future. Comply with 20.30.100.*

20.30.240. Building setbacks.

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

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

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

C. When a subdivision is affected by a Local Option Zoning District (LOZD), an approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:
Building setback – This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

Staff recommendation: *Depict and label the 20 foot building setback.*

KPB 20.40 -- Wastewater Disposal

20.40.010 Wastewater disposal.

Platting Staff Comments: Lots are over 200,000 square feet and a soils analysis report is not required.

Staff recommendation: *Correct wastewater disposal note by removing “or nominal 5 acres”. Comply with 20.40.*

KPB 20.60 – Final Plat

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

20.60.040. Dedication of public use lands. Any land shown on a plat as a street, public park or other public area must be dedicated on the final plat to a tax exempt governmental entity. If the governmental entity is not the Kenai Peninsula Borough, the governmental entity shall be required to execute an acceptance of the dedication on the plat.

Staff recommendation: *Provide a Certificate of Acceptance for right if way dedications to be signed by borough authorized official.*

20.60.180. Plat notes.

A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.

B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required, Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

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

- *Add a note for any exceptions granted.*

Revise the following plat notes

- *Plat note 1: Update to "The front 10 feet adjoin dedicated right of ways is granted as a utility easement."*
- *Plat note 4: Update to "The depicted section lines are subject..."*
- *Wastewater Disposal note: remove "or nominal 5 acres".*

20.60.190. Certificates, statements, and signatures required.

Staff recommendation: *Provide a Certificate of Acceptance to be signed by borough for right of way dedications. Comply with 20.60.190.*

EXCEPTIONS REQUESTED:

KPB 20.30.030 – Proposed street layout – requirements (Shrub Drive and Furrow Road)

KPB 20.30.170 – Block – Length requirements

Surveyor's Discussion: Shrub Drive, we feel the extension is not warranted at this time as it would serve no purpose. The adjacent Tract 3 (HM 2012-56) is sufficiently served by right of way access and is an agricultural tract subject to subdivision restriction by State of Alaska covenants. Tract L of this plat could provide additional right-of-way during a future subdivision if warranted, though steep canyons prohibit extending across Tract L.

Furrow Road was dedicated by HM 83-100. A portion of that dedication adjacent to Lot 16 exceeds 35% for nearly 100 feet. For that reason it seems pointless to perpetuate the dedication by adding to it. Steep canyon conditions make it impossible to meet borough code provisions for gradients of roadways to extend Furrow Road or otherwise make blocks comply with code.

If the borough requires some sort of cul-de-sac, we feel the location should be addressed in a request and a code exception be provided (with a plat note) making it clear the cul-de-sac would not be a deterrent or prohibit future right-of-way connection or extension.

Staff Discussion: The two sections of code are being combined into one exception request as both deal with dedication of right of ways. The plat committee can choose to review each item separately if they choose.

Shrub Drive is a 60 foot wide right of way that ends at proposed Tract L and Tract 3 of Deja Vu Subdivision, HM 2012-056. If continuation of Shrub Drive is required, it will be a 30 foot dedication with the matching 30 foot half dedication to be dedicated when Tract 3 is further subdivided. Plat HM 2012-056 states the property is for agricultural purposes and restricted by the State of Alaska. Tract 3 is currently 52 acres and by state restrictions, the lot cannot be smaller than 40 acres. This will greatly limit the ability to receive a matching dedication.

Furrow Road was originally dedicated as Falls Creek Road on Falls Creek Estates Unit 2, HM 83-100. That plat provided the full 60 foot dedication. The current dedication will end at proposed Tract M. Tract M contains large areas with steep slopes and wetlands.

The block is large and not closed. The area contains a lot of steep slope areas and wetlands and ravines. The area tends to have cul-de-sacs to provide access but due to terrain make it difficult to continue the right of ways. The creeks, ravines, and wetlands create a natural division of the subdivision resulting in portions of the subdivision being accessed from different locations.

If denied, this platting action will require a 30 foot half width right of way dedication for Shrub Drive along the southwest boundary and a right of way connection between Furrow Road and Falls Creek Road.

Surveyor Findings:

1. Tract 3 (HM 2012-56) is sufficiently served by right of way access.
2. Tract 3 (H 2012-56) is an agricultural tract subject to subdivision restriction by State of Alaska covenants.
3. Tract L of this plat could provide additional right-of-way during a future subdivision if warranted
4. Steep canyons prohibit extending right of way across Tract L.
5. A portion of Furrow Road dedication adjacent to Lot 16 exceeds 35% for nearly 100 feet.
6. Steep canyon conditions make it impossible to meet borough code provisions for gradients of roadways to extend Furrow Road or otherwise make blocks comply with code.

Findings:

7. Shrub Drive is a 60 foot wide right of way that is approximately 470 feet long.
8. Falls Creek Estates Unit 2, HM 83-100, and Deja Vu Subdivision, HM 2012-056, dedicated Shrub Drive.
9. Tract L is 16.36 acres and can be further subdivided.
10. Per KPB GIS data and imagery, Shrub Drive is being used to access Lot 17.
11. Tract 3 is part of Deja Vu Subdivision, HM 2012-56, which contains a plat note that patent states land is for agricultural purposes. Further subdivision of Tract 3 may be restricted which would limit the ability to receive a matching dedication.
12. Furrow Road is a 60 foot wide right of way that is approximately 1,000 feet long.
13. Fall Creek Estates Unit 2, HM 83-100, dedicated Furrow Road.
14. Tract M is 23.32 acres and can be further subdivided.
15. Tract M contains steep slopes and wetlands.
16. The continuation of Furrow Road is limited by terrain.
17. Per KPB GIS data and imagery, a trail has been constructed near the Furrow Road right of way but follows the natural terrain and is not wholly within the dedicated right of way.
18. The surveyor has requested that any required cul-de-sacs not be permanently closed to allow for future projects.
19. A 'eyebrow' cul-de-sac with a squared off end, or a T-type turnaround or hammerhead turn around would allow for an adequate turn around area that would also allow for an extension of the right of way in the future.
20. Per KPB 20.30.100(C), temporary turnarounds and self-vacating turnarounds shall not be granted or reserved on plats.
21. No lots are being denied access.
22. All neighboring parcels front on a dedicated right of way.

Staff reviewed the exception request and recommends granting approval **subject to** T-type or hammerhead style turnaround areas be provided at the end of Shrub Drive and Furrow Road with a plat note that states these right of ways are not dead end road and can be extended in the future.

Staff recommends the Committee select the findings they determine are applicable, make additional findings if needed, tie the findings to the following standards, and vote on the exception in a separate motion.

Unless prohibited under this title, the commission (committee) may authorize exceptions to any of the requirements set forth in this title. Application for an exception shall present the commission (committee) with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. All exceptions must be requested and granted at the time of preliminary plat approval. Exceptions may

not be requested with a final plat submittal.

The commission (committee) shall make findings of fact meeting the following standards before granting any exception:

1. That special circumstances or conditions affecting the property have been shown by application;
Findings 1-6, 10, 11, 14-17, 19, 21, 22 appear to support this standard.
2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
Findings 1-6, 10, 11, 14-17, 19, 21, 22 appear to support this standard.
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.
Findings 1-6, 10, 11, 14-17, 19, 21, 22 appear to support this standard.

Staff recommendation: place notes on the final plat indicating any exceptions granted by the Plat Committee with the meeting date.

RECOMMENDATION:

SUBJECT TO EXCEPTION(S) GRANTED, STAFF RECOMMENDS:

- **GRANT APPROVAL OF THE PRELIMINARY PLAT SUBJECT TO STAFF RECOMMENDATIONS, AND**
- **COMPLIANCE WITH KPB 20.25.070 (FORM AND CONTENTS), KPB 20.25.080 (PETITION REQUIRED), KPB 20.30 (DESIGN REQUIREMENTS); AND KPB 20.40 (WASTEWATER DISPOSAL), AND**
- **COMPLIANCE WITH KPB 20.60 TO ENSURE ADMINISTRATIVE APPROVAL OF THE FINAL PLAT.**

NOTE: 20.25.120. - REVIEW AND APPEAL.

A PARTY OF RECORD MAY REQUEST THAT A DECISION OF THE PLAT COMMITTEE BE REVIEWED BY THE PLANNING COMMISSION BY FILING A WRITTEN REQUEST WITHIN 15 DAYS OF NOTIFICATION OF THE DECISION IN ACCORDANCE WITH KPB 2.40.080.

A DECISION OF THE PLANNING COMMISSION MAY BE APPEALED TO THE HEARING OFFICER BY A PARTY OF RECORD WITHIN 15 DAYS OF THE DATE OF NOTICE OF DECISION IN ACCORDANCE WITH KPB 21.20.250.

END OF STAFF REPORT