

Kenai Peninsula Borough Planning Commission

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

August 23, 2021
7:30 P.M.
UNAPPROVED MINUTES

CALL TO ORDER

Chair Martin called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
Jeremy Brantley, Sterling
Cindy Ecklund, City of Seward
Diane Fikes, City of Kenai
Pamela Gillham, Ridgeway
Blair Martin, Kalifornsky Beach
Virginia Morgan, East Peninsula
Robert Ruffner, Kasilof/Clam Gulch
Franco Venuti, City of Homer

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

Staff Present

Melanie Aeschliman, Planning Director
Sean Kelly, Legal Representative
Marcus Mueller, Land Management Officer
Samantha Lopez, River Center Manager
Morgan Aldridge, Resource Planner
Ann Shirnberg, Administrative Assistant
Avery Harrison, Administrative Assistant
Julie Hindman, Platting Specialist

AGENDA ITEM B. ROLL CALL

1. Oath of Office

Ms. Shirnberg invited Commissioner Ruffner to recite the oath of office.

- *3. Plat Granted Administrative Approval
 - a. Chigmit Vista Estates Lynch Addition; KPB File 2020-138
- *6. Commissioner Excused Absences
 - a. Davin Chesser, Northwest Borough
- *7. Minutes
 - a. August 9, 2021 Planning Commission Meeting Minutes

Chair Martin asked if anyone present wanted to speak to any of the items on the consent or regular agendas. Ms. Shirnberg informed Chair Martin that Commissioner Chesser notified her that he was unable to attend the meeting due to work obligations. Chair Martin noted that Commissioner Chesser's absence was excused. Hearing no one wishing to comment, Chair Martin returned the discussion to the

Commission.

MOTION: Commissioner Ecklund 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	9	No	0	Absent	1
Yes	Bentz, Brantley, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Chesser				

AGENDA ITEM E. NEW BUSINESS

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

AGENDA ITEM E1

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)

KPB File No.	2021-111V
Planning Commission Meeting:	August 23, 2021
Applicant / Owner:	Alexander Douthit of Kenai, Alaska
Surveyor:	James Hall / McLane Consulting Inc.
General Location:	City of Kenai
Legal Description:	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 given by Scott Huff.

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
State of Alaska DNR

Post Office of Kenai
Nikiski Community Council

State of Alaska DOT
 State of Alaska DNR Forestry
 Emergency Services of Kenai
 Kenai Peninsula Borough Land Management
 Library of Kenai

Alaska Communication Systems (ACS)
 ENSTAR Natural Gas
 General Communication Inc. (GCI)
 Homer Electric Association (HEA)

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 form 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 of 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.*

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.

Commissioner Brantley asked to be recused from this vote. He had done work for the petitioner on this

parcel. Chair Martin approved Commissioner Brantley's request to be recused.

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	8	Recused	1	Absent	1
Yes	Bentz, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Recused	Brantley				
Absent	Chesser				

AGENDA ITEM E2

Conditional Use Permit – Anadromous Waters Habitat Protection District

KPB File No. 2021-27
Planning Commission Meeting: August 23, 2021
Applicant Sharon Keating
Mailing Address 134 Sierra Heights St
Soldotna, AK 99669
Legal Description T 5N R 10W SEC 19 SEWARD MERIDIAN KN 0970046
Physical Address POACHER'S COVE MOORE ADDN AMENDED LOT 177B
KPB Parcel Number None
057-487-84

Staff report given by Morgan Aldridge.

Project Description

A Conditional Use Permit is sought pursuant to KPB 21.18 for the construction of a recreational structure within the 50-foot Habitat Protection District of the Kenai River, as established in KPB 21.18.040.

Background Information

Applicant proposes to remove a prior-existing trailer and replace with a new, two-story residential structure with a footprint measuring 17 by 37 feet. The portion of the structure that falls within the HPD is not along the flowing waters of the main stem of the Kenai River, but along the KPB regulated canal. The new structure will be built in compliance with the current FEMA Floodplain standards and will be elevated in accordance with the KPB Floodplain Permit 12812.

Project Details within the 50-foot Habitat Protection District

1. Construction of 17 by 37 foot cabin partially on prior existing structure footprint.
2. The footprint of this structure within the HPD will expand by approximately 150 square feet.
3. Placement of sonotubes into HPD to elevate in accordance to KPB Floodplain Permit RC #12812.
4. Revegetate any areas that are disturbed with the construction.

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;

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)(10) construction of an addition to a principal structure 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(B)(5), one purpose of this chapter was established to separate conflicting land uses.
6. Pursuant to KPB 21.18.081(B)(10)
 - a. The parcel boundaries were defined prior to January 1, 2012.
 - b. The parcel is served by a public sewer system or sewage holding tank or septic system, provided the holding tank or septic system are located entirely outside the Habitat Protection District.
 - c. The parcel has an area of .3 acres or less and less than 4,000 square feet of total developed impervious coverage.
 - d. The parcel has less than 4,000 square feet of suitable development area outside the habitat protection district.
 - e. On the portion of the parcel within the Habitat Protection District, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation, or 3,000 square feet of area able to sustain native vegetation, whichever is less.
 - f. The standard for development is to first utilize suitable parcel areas outside the habitat protection district. Within the Habitat Protection District, it is preferred to minimize impact by preserving the nearshore areas which may sustain native vegetation.
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 August 23, 2021.
10. Agency review was distributed on August 5, 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 August 11, 2021. A total of 62 mailings were sent.
12. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on August 12, 2021 and August 19, 2021.
13. The applicant is currently in compliance with Borough permits and ordinances.

Permit Conditions

1. Construction techniques and best management practices shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to the Kenai River.
2. The structure must be designed and installed to meet KPB 21.06 Floodplain Management requirements.

3. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
4. 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.
5. Storage or use of fuel is prohibited within 50-feet of any open water.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. 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.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. 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)).
10. 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).
11. 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.
12. 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.

Bernard Szymaniak; P.O. Box 337, Verdi, NV 89439: Mr. Szymaniak owns the lot next door. He stated he does not see this permit creating any issues for his property. He does question why this permit would be issued when others have been told they cannot build in the HPD. He believes that a structure is something that is a part of the ground and does not agree that an RV should be considered an existing structure. He would just ask for fairness, that all should be treated the same.

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 Fikes to adopt PC Resolution 2021-27 granting a conditional use permit pursuant to KPB 21.18 for the construction of a recreational cabin within the 50-foot Habitat Protection District of the Kenai River.

Commissioner Ruffner informed the commission he had corresponded with the River Center earlier about some questions he had regarding this permit. He then asked staff if they would address the small lot

provision in code. He believed this provision is being used for this permit and not the prior existing use provision. He was not sure if this permit met the requirements for approval under the small lots provision. For instance, code states that 50% of the lot in the HPD, the total impervious coverage may not exceed 50% of the area able to sustain native vegetation. In looking at aerial imagery, it appears this lot does not meet that requirement as it shows there is no vegetation on the lot.

Ms. Lopez (River Center Manager) replied the project meets the requirements of KPB 21.18.081(B)(10). She then reviewed those requirements for the commission.

Commissioner Ruffner still was unclear as to what the numbers being used associated with this permit. He again noted that the imagery supplied in the staff report shows that there is no vegetation on this lot. If the lot is supposed to be able to sustain 50% native vegetation, he does not see how this can be met with the information they have before them. He stated he felt it would be helpful if in the future, if these numbers were contained in the staff report so that they could determine if any addition mitigation steps might be necessary. Commissioner Ruffner then asked staff if the definition for impervious surfaces included gravel pads.

Ms. Lopez replied the working group redefined the definition of impervious surfaces earlier this year and the group adopted the new definition. The new definition was specific to water penetration. In her opinion, she believes that water can pass through gravel pads.

Commissioner Ruffner replied that he remember working on this definition as a member of the working group. He stated he believed by almost every definition, gravel pads are considered an impervious surface.

Commissioner Ecklund then asked if the commission could add a condition requiring the applicant to plant native vegetation in the same amount as the increase of impervious surface that would be created by the new structure.

Mr. Kelly (Borough Attorney) replied that according to KPB 21.18.081(E) it is within the purview and authority of the commission to add conditions. He then noted this section of code specially states such conditions may include specifications for the type of vegetative shore cover.

Commissioner Ecklund then asked staff what is the difference in impervious surface area between the existing structure and the new proposed structure. Ms. Lopez replied that it is 150 sf. Commissioner Ecklund then asked if there was 150 sf available on the lot to plant native vegetation. Ms. Lopez replied that could be tricky, as the applicant does not actually own the land all the way down to the water's edge. There is a thin strip of land adjacent to the parcel that runs along the channel that is owned by the HOA, and it is the responsibility of landowner to maintain that strip of land on behalf of the HOA. Therefore, that strip of land is not included within the scope of this permit. She did note that it is part of the applicant's mitigation plan to plant vegetation on the narrow strip of land along the channel owned by the HOA. She did not include that information in the staff report because it could not be included with this permit; the activities were not going to be done on the parcel applying for the permit. She then noted that a permit is not needed to plant within the HPD.

Chair Martin then asked staff if they have a verbal agreement with the applicant that they will plant along the channel strip of land. Ms. Lopez replied that they do. Chair Martin replied that information does change how he views this permit. Ms. Lopez then apologized for not adding that information to the staff report.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	1
Yes	Bentz, Brantley, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Chesser				

AGENDA ITEM E3

Ordinance 2021-08 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 by Marcus Mueller

The Planning Commission at its regularly scheduled meeting on July 12, 2021 recommended approval of Ordinance 2021-28 to the assembly by unanimous vote.

Ordinance 2021-28 authorizes an agricultural lease to Alaska Land & Cattle Company. The agricultural lease is structured to authorize use and development according to a Farm & Rangeland Development Plan.

During the initial review of Ordinance 2021-28, the Farm and Rangeland Development Plan was not available to the Kachemak Bay Advisory Planning Commission (K-Bay APC), and the plan was presented to the Planning Commission as a laydown just prior to the July 12, 2021 meeting. The KPB Assembly postponed action on Ordinance 2021-28 in order that the K-Bay APC could review the plan and to allow the Planning Commission to consider the K-Bay APC comments.

The KPB Assembly additionally asked for clarification on aspects of the original plan, which the applicant has attempted to address in a plan amendment.

The meeting schedule for Ordinance 2021-28 taking into consideration the amended Farm & Rangeland Development Plan is as follows:

- | | |
|------------------------------------|-------------------|
| • Kachemak Bay APC Special Meeting | August 19, 2021 |
| • KPB Planning Commission | August 23, 2021 |
| • KPB Assembly Hearing | September 7, 2021 |

The K-Bay APC held a special meeting on August 19, 2021 to review the Farm and Rangeland Development Plan. Mr. Gibson attended the meeting to answer any questions. At this meeting, the K-Bay APC recommended approval of this agricultural lease.

END OF STAFF REPORT

Chair Martin noted public comment was closed on this item. He then invited Mr. Gibson to the podium to answer any questions from commission.

Commissioner Bentz asked Mr. Gibson about the proposed location for the water holes and wanted to know what those water sources would look like. For instance, will they be ponds? Mr. Gibson replied he plans to try water dousing to find the best locations for waterholes. He will also look for natural depressions in the ground where water can accumulate via rain and snow. The reason for multiple waterholes is when fencing is put up it restricts cattle movement you must make sure there is a source of water within the area. He also noted it is very labor intensive to drive cattle. He does not want to have to drive cattle from one location to another in order to water them. He is looking for three locations for waterholes. One is a natural spring west of Basargin Road; the other two will most likely be located in higher locations. The higher locations will allow for better drainage and reduce the muddy areas that come from livestock congregating around waterholes. The locations for these two holes has not been determined but will be within the general area east of the haul road that goes up to East End Services gravel pit. Another possible option would be to pump water from the spring to another location using a method called ram pumping. Ram pumping is an ingenious way of pumping water uphill, which does not require electricity. He stated that he is planning to run about 50-75 head of cattle.

Commissioner Bentz asked staff if there was a plan for the borough to submit a water rights application on this property. Mr. Mueller replied property owners have access to water on the land without having to apply for water rights. It has been the practice of the borough to seldom apply for water rights. The only cases where he is aware of the borough applying for water rights has been with school facilities. Commissioner Bentz replied in cases related to agricultural leases it might be wise for the borough to consider longer-term water uses and apply for water rights. Not only would this provide valuable information on water use and water availability for borough properties, but this information would be valuable for regional planning

purposes as well. She understands this is not a part of the application before them tonight; however, she would encourage Land Management to consider this with future applications.

Chair Martin asked the commission if any believed that there was a need to amend their earlier motion. Seeing or hearing no comment from the commission, he moved on to the next item on the agenda.

AGENDA ITEM E4

PC Resolution 2021-28: Establishing the Appeal Procedure for Appeals of the Planning Director's Decision on Reconsideration to Uphold a Prior Decision Approving a Nonconforming Use Application within C&H Estates LOZD.

Staff report given by Sean Kelley.

Two appeals have been filed appealing the KPB Planning Director's Decision to the decision issued July 6, 2021 by KPB Planning Director Melanie Aeschliman to approve in part and deny in part a nonconforming use application for five (5) nonconforming uses of Lot 35A, C & H Estates, according to Plat 80-23, Homer Recording District (KPB Parcel ID #174-410-45).

Borough code does not provide an appeal procedure for appeals of staff decisions. Mr. Kelley then noted there is a plan to amend KPB 21.20 to add a section for appeals of staff decisions but that has not happened yet so a resolution setting a procedure for this hearing is required.

This resolution would establish a procedure for the parties and planning commission to follow for these two consolidated appeals (this "appeal").

Mr. Kelley noted that he will be advising the Planning Commission in this matter, and Acting Borough Attorney Patty Burley will be representing the Planning Department. A copy of this resolution was emailed to: (1) the KPB Planning Director; (2) Appellant Cutlers; and (3) Appellant/Applicant Lang.

This resolution provides a possible procedure for this appeal. The appellants, respectively, may submit their own proposed procedure and/or propose alternatives to the procedure proposed by this resolution. Mr. Kelly then noted that comments had been received from appellant Cutler and appellant Lang and neither had objections the procedure as laid out in the resolution. Appellant Lang did request the hearing be schedule for some time in October as he will be unavailable for the month of September.

There is also a place in the resolution for the commission to set an evidence deadline and hearing date.

END OF STAFF REPORT

Mr. Kelley made himself available for any questions the commission may have.

Commissioner Fikes asked what would happen if the commission takes no action on this resolution. Mr. Kelley replied since an appeal has already been filed, the option to take no action is not possible. Code states that a decision of the planning director may be appealed to the Planning Commission. Code does not address the procedure for hearing appeals of administrative decisions, which is why the resolution is needed. Commissioner Fikes asked if this resolution is just affirming the process from the last resolution. Mr. Kelley replied this is the second appeal from C&H LOZD; the earlier resolution was specific to the first case. This second resolution is similar to the first resolution but also includes some recommend changes from the commission from the previous hearing discussion. For instance instead of having a separate rebuttal and closing statements he has combined them into one rebuttal/closing statement as was recommended on the floor by the commission. He felt best practice in this situation was to set a specific procedure for this new appeal.

Chair Martin opened the meeting for public comment.

Craig Cutler, 40130 Portlock Drive, Homer AK, 99603: Mr. Cutler wanted to know if the resolution was going to be the agreed upon hearing procedure. He stated that he had no issues with the procedure laid

out in the resolution and he was fine with hearing being scheduled for some time in October.

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 Brantley to adopt PC Resolution 2021-28: establishing the appeal procedure for appeals of the Planning Director's decision approving a nonconforming use application within the C&H Estates LOZD.

Commissioner Ecklund read into the record the hearing procedure as laid out in Section Two of the resolution.

Chair Martin stated if the commission was fine with the hearing procedure then all they had to do was set the hearing date. Mr. Kelley pointed out there were two dates that needed to be decided on. One date was the cutoff for the submission of evidence, which he recommended be 10 before the hearing date. The second date was the actual hearing date.

Commissioner Ruffner stated he would amend his motion to include the cutoff for the submission of evidence be 10 days before the hearing date. Chair Martin asked Commissioner Ruffner if he would also include in his amendment the date for the hearing. Commissioner Ruffner replied that he would.

Commissioner Ruffner noted having the hearing before the regularly Planning Commission meeting made the hearing feel rushed. Mr. Kelley replied it was within the commission's prerogative to schedule the hearing on a day outside of the regular meeting day and that it did not have to be in-person necessarily; it could be done via Zoom or a combination of both Zoom and in-person.

Commissioner Fikes noted if the hearing were scheduled before the regular meeting, she would not be able to attend, as it would conflict with her work schedule. She was not able to participate in the last hearing because of this.

Commissioner Ruffner stated he would support the hearing being both in-person and Zoom and on a day other than a regular meeting day, so all the commissioners could attend. He suggested October 18th as possible hearing date, all the commission agreed that October 18th would work.

Commissioner Ruffner as the maker of the motion and Commission Brantley as the seconded agreed to amend the motion to include the following:

- October 8, 2021 as the cutoff for the submission of evidence
- October 18, 2021 at 7:30 PM for the hearing

AMENDED MOTION: Commissioner Ruffner moved, seconded by Commissioner Brantley to adopt PC Resolution 2021-28: establishing the appeal procedure for appeals of the Planning Director's decision approving a nonconforming use application within the C&H Estates LOZD; setting October 8, 2021 as the cutoff date for the submission of evidence and October 18, 2021 at 7:30 PM as the date and time for the hearing.

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

MOTION AS AMENDED PASSED BY UNANIMOUS VOTE:

Yes	9	No	0	Absent	1
Yes	Bentz, Brantley, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
Absent	Chessier				

AGENDA ITEM F. PLAT COMMITTEE REPORT

Commissioner Ecklund informed the commission the plat committee approved 5 preliminary plats.

AGENDA ITEM G. OTHER

1. Plat Committee members for September 13, 2021 Plat Committee meeting.
 - Cindy Ecklund
 - Robert Ruffner
 - Jeremy Brantley
 - Franco Venuti

AGENDA ITEM H. PUBLIC PRESENTATION - None**AGENDA ITEM I. DIRECTOR'S COMMENTS**

Ms. Aeschliman informed the commission the Sean Kelley would be their legal representative for Planning Commission matters and the Patti Burley would be the legal representative for planning department staff.

AGENDA ITEM J. COMMISSIONER COMMENTS -None

AGENDA ITEM M. ADJOURNMENT – Commissioner Ecklund moved to adjourn the meeting at 8:50 p.m.

Ann E. Shirnberg
Administrative Assistant