

Kenai Peninsula Borough Planning Commission

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

**January 10, 2022
7:30 P.M.
APPROVED MINUTES**

CALL TO ORDER

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

ROLL CALL

Commissioners Present

Syverine Bentz, District 9 – South Peninsula
Jeremy Brantley, District 5 – Sterling/Funny River
Diane Fikes, City of Kenai
Pamela Gillham, District 1 - Kalifornsky
Blair Martin, District 2 - Kenai
Franco Venuti, City of Homer

With 6 members of a 8-member seated commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
Sean Kelley, Borough Attorney
Walker Steinhage, Deputy Borough Attorney
Scott Huff, Platting Manager
Marcus Mueller, Land Management Manager
Julie Hindman, Platting Specialist
Samantha Lopez, KRC Manager
Eric Ogren, Code Compliance
Avery Harrison, LMD Administrative Assistant
Ann Shirnberg, Planning Administrative Assistant

AGENDA ITEM C. CONSENT & REGULAR AGENDAS

***3. Plats Granted Administrative Approval**

- a. ASLS 2020-08 Fitz Creek Heights Subdivision; KPB File 2021-011
- b. ASLS No. 2019-34 Tract A ASLS 96-42; KPB File 2021-019
- c. Barnett's South Slope Subdivision Quiet Creek Park 2021 Replat; KPB File 2021-057
- d. Birchwood Subdivision Sherman Addition No. 2; KPB File 2021-090
- e. Bunnell's Subdivision Haige 2021 Replat; KPB File 2021-134
- f. Eventyr Subdivision Number 3; KPB File 2020-079
- g. Falls Creek Estates Unit 5; KPB File 2021-110
- h. Fowler's Bench; KPB File 2021-067
- i. Green Forest Subdivision Carew Addition; KPB File 2021-106
- j. Hylen 2021 Addition; KPB File 2021-024
- k. Jack Foster Subdivision 2018 Addition Phase 2; KPB File 2018-012R1P2
- l. Mansfield Subdivision Wolter 2021 Replat; KPB File 2021-121
- m. McFarland Subdivision 2021 Replat; KPB File 2021-130
- n. S&S Subdivision; KPB File 2021-112
- o. Skyline Drive Subdivision No. 7A; KPB File 2021-083
- p. Townsite of Kenai Kenaitze Courthouse Replat; KPB File 2021-118
- q. USS 4901 C Street ROW Vacation 2021 Replat; KPB File 2021-085

- *4. Plats Granted Final Approval (20.10.040)**
 a. Dahler Subdivision Revis Replat; KPB File 2021-155

- *6. Commissioner Excused Absences**
 a. Virginia Morgan, District 6 – East Peninsula
 b. Robert Ruffner, District 7 – Central
 c. City of Soldotna, Vacant
 d. City of Seward, Vacant
 e. City of Seldovia, Vacant
 f. District 3 – Nikiski, Vacant
 g. District 8 – Homer

- *7. Minutes**
 a. December 13, 2021 Planning Commission Meeting Minutes

Chair Martin asked if anyone wished to speak to any of the items on the consent agenda. Hearing no one wishing to comment he brought it back to the commission for a motion.

MOTION: Commissioner Gillham moved, seconded by Commissioner Bentz to approve the consent and regular agendas

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				
Absent	Morgan, Ruffner				

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

AGENDA ITEM D. OLD BUSINESS

1. Remand Hearing: CLUP Modification Application
 Applicant: Cook Inlet Region, Inc.
 Tax Parcel ID 065-081-18
 Sterling Area

Staff report given by Sean Kelley

The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Court's remand decision. The Commission should not discuss the merits of the application during the scheduling discussion.

On December 2, 2021, Administrative Law Judge Rebecca Kruse entered an *Order for Remand* in the matter of *Rosenberg v. Cook Inlet Region, Inc.* (CIRI) regarding a conditional land use permit (CLUP) modification application filed by CIRI. The order highlights that the KPB Planning Commission decision on appeal states "[c]ompliance 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 the KPB 21.29.040."

The Order for Remand, at page 2-3, provides that:

"On remand, in light of the superior court's holding in *Billben*, the Planning Commission should review CIRI's CLUP modification application to determine whether it meets the standards of KPB 21.29.040, not merely whether it includes the mandatory conditions in KPB 21.29.050 – similar to how the Commission reviewed CIRI's CLUP application in 2017.

It does not appear that the Commission's understanding of its discretion under KPB 21.29.040 impacted the development of the factual record. Thus, Commission should be able to review CIRI's CLUP modification on remand without opening the record for new evidence. If the Commission determines that it has insufficient facts to proceed, however, the Borough Code does not prohibit opening the record.

One issue where the record is lacking relates to a procedural argument raised by CIRI in its opening statement. As CIRI points out, only a party of record may appeal a Planning Commission decision. One of the requirements to be a party of record is to own land within the "notification radii." It is thus unclear from the record whether Mr. Rosenberg had the right to appeal the Planning Commission's decision. A list of the landowners within the half mile radius who were mailed notice would clear up any question about who is a potential party of record."

Mr. Kelley then referred to page R18 in the appeal record, which shows a list of individuals and/or entities that had received notification regarding this application, and he noted that Mr. Rosenberg's name is on that list.

The Planning Commission should determine when to set a remand hearing and the procedure that will be followed on remand, including whether or not the Commission finds it necessary to open the record for new evidence.

END OF STAFF REPORT

Commissioner Brantley asked Mr. Kelley if the commission chose to reopen the record would regular public hearing noticing be required. Public noticing requirements would affect the date of the hearing. He then asked if the record is not opened could this be scheduled for the next meeting. Mr. Kelley replied that he believed regardless of whether or not the matter would be opened up for new evidence or public testimony the meeting should be publicly noticed. He then noted that this could also heard at a special meeting outside of the regular meeting schedule, and both remanded hearings could be done at the same meeting. He would suggest if the matter is reopened that the date be pushed out to March as it is possible that six new commission members may be coming on to the commission in February. This would allow the new commissioners time to get up to speed on this matter.

Commissioner Brantley stated that he does not believe the record or public testimony needs to be reopened.

Commissioner Fikes stated she feels the same as Commissioner Brantley and that the record does not need to be reopen. She also would support a special meeting for these items.

Chair Martin asked Ms. Shirnberg what would be the earliest date the hearings could be schedule to meeting noticing requirements. Ms. Shirnberg replied any time during the week of January 24, 2022. If they wanted to wait until the new commissioners come on board then we would be talking about a meeting sometime in March.

Chair Martin then asked the commission what would be the pros & cons of having new commissioners jump into this matter midstream vs. hearing this matter the week of January 24th.

Commissioner Fikes asked for Mr. Kelley's opinion on Chair Martin's question. Mr. Kelley replied this was a decision for the commission to debate. It is a question of whether or not the commission wishes to wait for new commissioners to be seated but also recognizing that the applicants have a desire to see the matter move forward. If the hearing were to be reopened, the new commission members would have the opportunity review the appeal record. Then the new commissioners could provide testimony as to whether or not they feel comfortable with the information in order to make a decision on the matter. The hearing date could then be set for February or March. If the commission feels those who are currently seated have the background needed to make the decision, you could set a hearing date before February.

MOTION: Commissioner Venuti moved, seconded by Commissioner Brantley to set the remand hearing for Cook Inlet Region CLUP modification application for Tuesday, January 25, 2022.

Commissioner Venuti stated he felt the commission currently seated has the information needed to make a decision on this matter. He believed it could be daunting for new commissioners to come in midstream

and have to make a decision.

Commissioner Bentz asked Ms. Shirnberg if she knew of any excused absences of commissioners for the week of January 24th. Ms. Shirnberg replied that the only absence that she was currently aware of for that week was Commissioner Ruffner.

Commissioner Fikes stated she is fine with a special meeting being set for these matters for January 25, 2022.

Commissioner Gillham stated she would be available the January 25, 2022 if she could attend via Zoom. She believes that the commission should move forward on this matter as quickly as possible.

Chair Martin stated he is available January 25th if he could attend via Zoom.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				
Absent	Morgan, Ruffner				

Mr. Kelley reminded the commission they needed to decide on a time and whether or not to open the record.

Chair Martin stated that those issues could be addressed after they discuss the second issue.

2. Remand Hearing: CLUP Application
Applicant: Beachcomber, LLC
Tax Parcel ID 169-010-67
Anchor Point Area

Staff report given by Sean Kelley.

The purpose of this scheduling discussion is for the Planning Commission to set a date to consider this matter consistent with the Superior Court's decision. The Commission should not discuss the merits during the scheduling discussion.

On September 2, 2021, Kenai Superior Court Judge Jason M. Gist issued a *Memorandum Decision and Order* in the matter of *Hans Bilben, et al. v. Kenai Peninsula Borough, Planning Commission, and Beachcomber LLC, et al.*, Appeal Case No. 3KN-20-00034CI (the "decision"). The Court's decision is attached. Two excerpts from the remand decision, at page 15 of 17 and page 17 of 17, are provided to highlight the direction and guidance from the Court:

"Having reviewed the record in this case, this court agrees that the findings of fact in Resolution 2018-23 are supported by substantial evidence. However, the court finds that the findings of fact related to the Buffer Zone in Section 17 of the Resolution are legally insufficient under KPB 21.29.050(A)(2). Under that Code section, "[t]he vegetation and fence shall be of sufficient height and density to provide visual and noise screening of the proposed use as deemed appropriate by the planning commission ... " The findings of fact in Section 17 of the Resolution detail what conditions are imposed on the CLUP, and those findings repeatedly indicate that some of the proposed conditions will "increase visual and noise screening."" (See, decision at page 15.)

"The Commission did not specifically find whether the conditions imposed on the CLUP were *deemed appropriate* to satisfy the standards set forth in KPB 21.29.040. By all accounts from the record, it appears that the Commission operated under the incorrect assumption that KPB 21.29.040 was "necessarily satisfied" so long as the CLUP contained conditions in KPB 21.29.050. It is unclear from the record whether the Commission deemed the conditions appropriate to satisfy those standards. For these reasons, the case is REMANDED back to the Commission for further review and/or clarification. If the Commission does in fact deem the conditions set forth in Resolution 2018-23 appropriate to satisfy the standards set forth in KPB 21.29.040, then it shall

grant the CLUP. If, however, the Commission finds that no conditions in KPB 21.29.050 could adequately minimize visual and noise impacts to the standards set forth in KPB 21.29.040, then it may deny the CLUP.” (Emphasis original). (See, decision page 17.)

The Planning Commission should determine when to set a remand hearing and the procedure that will be followed on remand, including whether or not the Commission finds it necessary to open the record for new evidence.

Mr. Kelley then noted that in the meeting packet was a comment from Mr. Bilben requesting that record and public comment be reopened.

END OF STAFF REPORT

Commissioner Fikes stated that she would like to see this meeting be in person and via Zoom and that both items be addressed at the meeting. She suggested a meeting start time of 7:30 pm. She also does not believe that the record or public testimony needs to be open on this matter.

MOTION: Commissioner Gillham moved, seconded by Commissioner Venuti to set the remand hearing for Beachcomber, LLC CLUP application for Tuesday, January 25, 2022 at 7:30 PM, for the commission to hear both remanded hearing at this meeting and to not open the record or open public comment on either matter.

Commission Brantley requested to be recused from participating in this matter as he has a conflict of interested. He noted that he had not voted on any matters related to the Beachcomber CLUP application. Chair Martin excused Commissioner Brantley from participating in this matter

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - UTILITY EASEMENT ALTERATION BARABARA HEIGHTS SUBDIVISION (KN 79-6) LOT 6 BLOCK 14

KPB File No.	2021-156V
Planning Commission Meeting:	January 10, 2021
Applicant / Owner:	Christina and Russell Griffith of Kenai, Alaska
Surveyor:	Jason Young, Mark Aimonetti / Edge Survey & Design, LLC
General Location:	Marrs Lane, Seldovia Village

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: The petitioner would like to vacate the utility easements as depicted on the preliminary plat to allow for more useable space for the landowner of the parcel. Easements being vacated are along steep terrain and will not be needed for utilities. Easements granted per parent plat in a general manner covering all interior lot lines. The easements are not practical on these parcels.

Notification: Notice of vacation mailings were sent by regular mail to 22 owners of property within 600 feet. Notice of the proposed vacation was emailed to eight agencies and interested parties.

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

Staff Analysis: Barabara Heights Subdivision (Plat SL 79-6) is located within the Seldovia Village and not within the City of Seldovia. Barabara Heights Subdivision was completed in 1979 and subdivided over 1,000 acres of Seldovia Native Association lands.

Barabara Heights Subdivision granted utility easements with the following plat note. "Easements for public utilities are herein provided 15 feet on each side of every lot line, for a total width of 30 feet along common interior lot lines, excepting along dedicated streets where easement width shall be 20 feet, adjacent to the street right-of-way."

The proposed utility easement alteration is for Lot 6 Block 14 of Barabara Heights Subdivision. This is a triangle shaped lot. The proposal will be to remove the 15 foot utility easement along the side lot lines only. The 20 foot utility easement will remain in place adjoining Marrs Lane.

The lot is within Block 14. Nine lots are within Block 14 and it is defined by Marrs Lane, Mine Loop Road. Per KPB records all original utility easements within that block are still in existence. 15 foot utility easements will remain in place on adjoining lots 5 and 7.

A prior existing use permit for a material site affects Lot 4 Block 14, located south of the proposed utility easement vacations.

A preliminary plat has been submitted, Barabara Heights Subdivision Griffith Addition KPB File 2021-156. The plat will subdivide the existing lot and will finalize the utility easement alteration. The preliminary plat is scheduled for the January 10, 2022 Plat Committee meeting.

Utility provider review:

HEA	No objections
ENSTAR	No objections
ACS	No objections
GCI	Approved as shown

Findings:

1. 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. No surrounding properties will be denied utilities.
4. The Road Service Area had no comment.
5. Barabara Heights Subdivision, Plat SL 79-6, granted 15 foot utility easements along each interior lot line.
6. Barabara Heights Subdivision, Plat SL 79-6, granted 20 foot utility easements along all dedicated right of ways.
7. The 20 foot wide utility easement adjoining the dedicated right of way will remain.
8. The 15 foot utility easements within Lot 5 and Lot 7, and adjoining the side lot lines will remain.
9. Portions of the utility easements are affected by slopes over 20 percent grade.
- 10.

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 utility providers.
2. 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*
 - 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.*

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

Jonathan Kennedy, POB 236, Seldovia, AK 996603: Mr. Kennedy is a neighboring landowner and wanted to make sure that the vacation of this utility easement would not affect him. Mr. Huff replied that the utility easement being vacated was within the parcel owner's boundaries and would not affect him.

Chair Martin hearing no one else wishing to comment, closed public comment and discussion was opened among the commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Brantley to approve the vacation a petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendation and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				

**ITEM 2 - UTILITY EASEMENT ALTERATION
KACHEMAK VISTA SUBDIVISION (HM 83-93) LOTS 2 AND 3**

KPB File No.	2021-023V
Planning Commission Meeting:	January 10, 2021
Applicant / Owner:	Josepho Adele Family Trust of Solana Beach, California
Surveyor:	Gary Nelson / Ability Surveys
General Location:	Skyline Drive and Taylor Avenue / Kachemak APC

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: I am asking for this alteration because I am uniting my two adjacent lots into one residential parcel and do not need the utility easement. Thank you for your attention to this matter.

Notification: Notice of vacation mailings were sent by regular mail to 11 owners of property within 600 feet. Notice of the proposed vacation was emailed to eight agencies and interested parties.

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

This is within the Kachemak Bay Advisory Planning Commission boundary. Minutes were not available when the staff report was prepared. The minutes will be provided in the desk packet if available.

Staff Analysis: Kachemak Vista Subdivision, Plat HM 83-93, subdivided an aliquot parcel into five lots and one tract. The plat created Lots 2 and 3 and granted a 20 foot by 100 feet utility easement centered on the common lot line. 10 foot utility easements were also granted adjoining the dedicated right of way named Taylor Avenue.

The Kenai Peninsula Borough Plat Committee heard and approved the preliminary plat Kachemak Vista Subdivision 2021 on April 12, 2021. The plat will combine Lots 2 and 3 from Kachemak Vista Subdivision into one lot. If approved the utility easement will be finalized by the plat Kachemak Vista Subdivision 2021. The 10 foot utility easement adjoining Taylor Avenue will remain in place.

Utility provider review:

HEA	No objection
ENSTAR	No objection
ACS	No objection
GCI	No objection

Findings:

11. The petition does state that the utility easement proposed to be vacated is not in use by a utility company.
12. ACS, ENSTAR, GCI, and HEA provided written non-objection to the proposed vacation of the utility easement.
13. Kachemak Vista Subdivision, Plat HM 83-93, granted a 10' wide utility easement adjoining the north boundaries of lots 1, 2, 3, 4 and 5.
14. Kachemak Vista Subdivision, Plat HM 83-93, granted a 20' by 100' wide utility easement centered on the common boundary of Lot 2 and Lot 3.
15. Kachemak Vista Subdivision No. 2, Plat HM 97-48, combined Lots 4 and 5 of Kachemak Vista Subdivision and vacated a similar utility easement.
16. The easement provides the utility company to place a utility line that will serve Lots 2 and 3, which are being combined into one lot.

17. No surrounding properties will be denied utilities.

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:

3. Grant utility easements requested by the utility providers.
4. 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.**

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- *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.*

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, closed public

comment and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Gillham to approve the vacation a petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendation and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				

**ITEM 3 - RIGHT OF WAY VACATION
426 FOOT PORTION OF ARNESON AVENUE
INCLUDING ASSOCIATED UTILITY EASEMENTS**

KPB File No.	2021-160V
Planning Commission Meeting:	January 10, 2022
Applicant / Owner:	Freddie's Roadhouse Inc., Freddie Pollard Jr, and Sheila K. Best all of Kenai, Alaska
Surveyor:	Jason Schollenberg / Peninsula Surveying, LLC
General Location:	Marquis Street, Arneson Avenue, and Matson Street, Ninilchik
Legal Description:	S1/2 NE1/4 SE1/4 Excluding portion within ROWs, (Parcel 1 of Plat Waiver) per Resolution 93-7 (HM 93-15) and Tracts 3 and 4, Anna's Acres, Plat HM 2007-126, Homer Recording District, Section 9, Township 2 South, Range 12 West

Staff report given by Scott Huff.

Specific Request / Purpose as stated in the petition: We would like to vacate a portion of Arneson Avenue, beginning at Matson Street and extending 424' to the west. There is also a 10' utility easement along each side of the ROW that we would like vacated.

Arneson Avenue is located in a fairly remote area, near the end of Oil Well Road. It currently has not been constructed and it is not being used. There is an existing shop that is built in the section of ROW that we would like to vacate. This vacation would solve the problem of this encroachment. We are offering better access through a new dedication, labeled as Freddie Lane on the preliminary plat. Freddie Lane would follow an existing driveway back to Arneson Avenue.

Notification: Public notice appeared in the December 30, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the January 6, 2022 issue of the Homer News as part of the Commission's tentative agenda.

The public notice was posted on the Planning Commission bulletin board at the Kenai Peninsula Borough George A. Navarre Administration building. Additional notices were mailed to the following with the request to be posted for public viewing.

Library of Ninilchik

Post Office of Ninilchik

Fourteen certified mailings were sent to owners of property within 600 feet of the proposed vacation. Four receipts had been returned when the staff report was prepared.

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

State of AK Dept. of Fish & Game
State of AK DNR
State of AK DOT
State of AK DNR Forestry

Kenai Peninsula Borough Land Management
Kenai Peninsula Borough Office
Emergency Services of Ninilchik
ENSTAR Natural Gas

Ninilchik Traditional Council
General Communications Inc. (GCI)

Alaska Communication Systems (ACS)
Homer Electric Association (HEA)

Legal Access (existing and proposed): The right of way proposed to be vacated is located in the Ninilchik area within the Caribou Hills recreational area. The property is located near Mile 16 of Oil Well Road, a 100 foot wide right of way maintained by the borough. Access to Arneson Avenue is from Anderson Avenue to Matson Street, both of which are 66 foot wide dedicated right of ways. Anderson Avenue and Matson Street are improved roads but are not maintained by KPB.

A driveway from Matson Street that extends through the 18 acre parcel provides physical access to Tracts 1-4 of Anna's Acres, Plat HM 2007-126. Tracts 1-4 contain multiple cabin improvements.

A structure is located within Arneson Avenue. A new 60 foot wide right of way dedication is proposed over the existing driveway that is being used for physical access.

The proposed vacation will affect two blocks. Both blocks will be closed. The northern block, defined by Arneson Avenue, Marquis Street, Anderson Avenue, Matson Street, and proposed Freddie Lane, will be compliant with block lengths. The southern block, defined by Arneson Avenue, Marquis Street, Boley Avenue, seismic line right of way, Matson Street, and proposed Freddie Lane, will have one section of the block longer than allowable lengths by 100 feet. The right of way for both blocks are affected by steep terrain. The right of way vacation and new right of way dedication will not hinder, or improve, the block length issue.

KPB Roads Dept. comments	Out of Jurisdiction: No Roads Director: Uhlin, Dil Comments: No comments
SOA DOT comments	

Site Investigation: The right of way to be vacated does not contain any steep slopes or low wet areas. The new proposed dedication is over an existing drive and does not contain any steep slopes or low wet areas.

KPB River Center review	<p>A. Floodplain Reviewer: Carver, Nancy Floodplain Status: Not within flood hazard area Comments: No comments</p> <p>B. Habitat Protection Reviewer: Aldridge, Morgan Habitat Protection District Status: IS totally or partially within HPD Comments:</p> <p>C. State Parks Reviewer: Russell, Pam Comments: No Comments</p>
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Staff Analysis: The proposed vacation is within the Caribou Hills area. Right of Way Map, Plat HM 84-115, referred to as the Ninilchik ROW Map, subdivided thirteen sections. The plat dedicated 66 foot wide right of ways centered on seismograph lines as well as 66 foot right of ways on all 1/16 and 1/4 aliquot lines and section lines. Arneson Avenue was created by plat HM 84-115.

Right of Way Map HM 84-115 is a paper plat with no field survey. Terrain was not considered with the right of way dedications and many right of ways are affected by steep terrain or low wet areas. Local trails, although often crossing private lands, are used for physical access. Subsequent subdivisions have divided lands and provided right of ways dedications in practical areas or where trails were already being used for access.

The existing 18 acre parcel on the north of Arneson Avenue was created by a plat waiver per PC Resolution 93-7. Tracts A, B, C, and D were created by Winer Wonderland, Plat HM 2000-64. Tracts 1, 2, 3, and 4, located to the south of Arneson Avenue were created with the recording of Anna's Acres, HM 2007-126.

A dedicated right of way centered on the unnamed seismograph line exists to the south.

Freddie's Roadhouse Inc. is the owner of the parcels north of Arneson Avenue. Freddie Pollard Jr. and Sheila K. Best, owners of Freddie's Roadhouse, own the four lots south of Arneson Avenue.

When right of way is vacated it attaches to the lot or land bordering the area in equal proportions. The proposed sketch shows the vacated area not being attached in equal proportions. The final plat will require owner acknowledgement that states they understand and agree to allow the vacated right of way to be attached to the neighboring parcels as depicted. This will allow the improvements to be within the parcel boundary and not create an encroachment.

The proposed vacation is not within an advisory planning commission boundary.

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 area to be vacated is not currently being used due to structures within the right of way.
 2. A road is impossible or impractical to construct, and alternative access has been provided;
Staff comments: The terrain allows for a road to be constructed but the existing structures do not allow a roadway to be constructed. An alternative access is being provided over an existing travel way.
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
Staff comments: This is located in a recreational area. Multiple right of way dedications were granted in 1984 which provide legal access.
 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 interest area or provide a connection between existing trails.
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
Staff comments: The proposed vacation would limit interconnectivity but a new right of way dedication will provide an equal or superior access with interconnectivity to adjacent parcels to the south. Proposed Tract 3A will 30 feet of frontage on Arneson Avenue. This will be addressed during the platting process.
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
Staff comments: The use of the existing right of way is limited due to the structures that have been constructed, but pedestrian access is feasible. The proposed dedicated right of way will provide superior access for pedestrian or all-terrain vehicle use.
 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: New utility easements will be granted along the new dedicated right of way. Staff requests that any issues or concerns by the utility companies be addressed and possible utility easements may need to be granted.

8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

Staff comments: existing structures limit the use of the existing right of way. The proposed right of way dedication will provide superior public access.

A KPB Planning Commission decision denying a vacation application is final. A KPB Planning Commission decision to approve the vacation application is subject to consent or veto by the KPB Assembly, or City Council if located within City boundaries. The KPB Assembly, or City Council must hear the vacation within thirty days of the Planning Commission decision.

The Assembly will hear the vacation at their scheduled February 1, 2022 meeting.

If approved, a plat will finalize the proposed right of way vacations. The Plat Committee is scheduled to the review plat on January 24, 2022.

KPB department / agency review:

Planner	Reviewer: Aldridge, Morgan There are not any Local Option Zoning District issues with this proposed plat. Material Site Comments: There are not any material site issues with this proposed plat.
Code Compliance	Reviewer: Ogren, Eric Comments: No comments
Addressing	Reviewer: Haws, Derek Affected Addresses: 17637 MATSON ST Existing Street Names are Correct: Yes List of Correct Street Names: MATSON ST ARNESON AVE MARQUI ST Existing Street Name Corrections Needed: All New Street Names are Approved: Yes List of Approved Street Names: FREDDIE LN List of Street Names Denied: Comments: 17637 MATSON ST on TRACT B will be changed to a FREDDIE LN address.
Assessing	Reviewer: Bruns, Matthew Comments: No concerns from Assessing Dept.

Utility provider review:

HEA	
ENSTAR	No objections.
ACS	
GCI	

RECOMMENDATION:

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

5. Consent by KPB Assembly.
6. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
7. Grant utility easements requested by the utility providers.
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 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, closed public comment and discussion was opened among the commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Gillham to approve the vacation a petitioned based on the means of evaluating public necessity established by KPB 20.65, subject to staff recommendation and compliance with borough code.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				

ITEM 4 – ORDINANCE 2022-01 AUTHORIZING A COMMUNICATION TOWER AGREEMENT WITH VERTICAL BRIDGE S3 ASSETS, LLC

Staff report given by Marcus Mueller.

Vertical Bridge S3 Assets, LLC owns and operates a 120' wireless communications tower at Nikiski Fire Station 1. The tower was constructed in 2000 and authorized under a land use permit for the purpose of providing wireless communication services. The land use permit is in good standing and Vertical Bridge S3 Assets, LLC has requested to enter into a lease.

A Communications Site Lease Agreement has been negotiated using standard practices for the parcel acquired by the Nikiski Fire Service Area. The benefits of the lease would go to the service area. The service area board will provide its recommendations to the assembly prior to public hearing on this ordinance.

END OF STAFF REPORT

Chair Martin opened the meeting for public comment. Hearing no one wishing to comment, closed public comment and discussion was opened among the commission.

MOTION: Commissioner Gillham moved, seconded by Commissioner Bentz to forward to the Assembly a recommendation to adopt Ordinance 2022-01, authorizing a communications site lease agreement with Vertical Bridge S3 Assets, LLC at Nikiski Fire Station 1.

Hearing no objection or further discussion, the motion was carried by the following vote:

MOTION PASSED BY UNANIMOUS VOTE:

Yes	6	Absent	2	Vacant	6
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Venuti				

AGENDA ITEM F. **PLAT COMMITTEE REPORT** – Commissioner Brantley informed the commission that the Plat Committee reviewed and approved 10 plats.

AGENDA ITEM G. **OTHER**

Ms. Shirnberg informed the commission that there would be no Plat Committee needed for the January 24, 2022 meeting.

AGENDA ITEM H. **PUBLIC COMMENT/PRESENTATION**

1. Update on Sterling Hwy Project MP 45-60: Jonathan Tymick, from the State of Alaska DOT gave a brief update on this project.
2. Mass Timber Sale Project, Dakota Truitt, Land Management:

MASS TIMBER SALE PROJECT:

Wood Utilization and Forest Management of the Kenai Peninsula Borough's Beetle-impacted Forests



Land Management Agent
Dakota Truitt
January 10, 2022

PURPOSE

- **Introduce KPB's Forest Management intent**

- **Express the value of our forests**

- **Upcoming Actions**

- Public Engagement
- Authorization of Timber Sales
- Hire KPB Forester
- Release Timber Sales
- Identify and Pursue Funding
 - Infrastructure Investment and Jobs Act



1



2



SITUATION

Major Forest Disturbance and Spruce Stand Collapse

- Today it is evident that the SBB impacts are severe and far ranging
- Action must be taken to protect our communities and to preserve the health of our forests into the future
- Selective timber harvest techniques can provide multiple benefits to our forested land

3



MASS TIMBER SALE PROJECT

• Short Term Goals

- Authorization for Timber Sales
- Initiate Active Forest Management
- Utilize local labor

• Long-Term Goals

- Forest Management plan
- Cross-boundary Forest Health & Fire Adaptation
- Mandatory Reforestation
- Legacy Forestry infrastructure
- Sustainable market

4



PRIMARY OBJECTIVES

- 1. Utilize KPB's forest resources that are rapidly deteriorating due to this SBB forest health epidemic**
- 2. Reduce economic and ecological costs to Borough residents**
- 3. Improve quality of land for determining best and highest use for the Borough- sale/ classification**

5



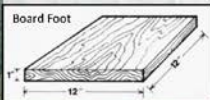
SECONDARY OBJECTIVES

- 4. Improve fire resiliency and protect infrastructure**
- 5. Improve forest health**
- 6. Match our neighboring public land managers efforts in addressing this forest health issue, cooperative cross-boundary management**
- 7. Maintain access for Borough residents**
- 8. Improve wildlife habitat quality**

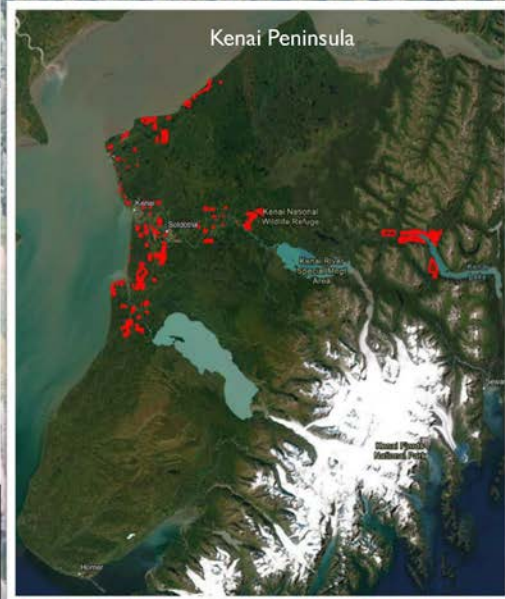
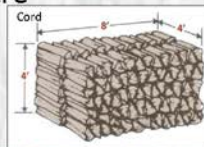
6

KPB Owned/Managed Land

- More than 150,000 acres affected by SBB on the Kenai Peninsula
- **~21,000 acres** of Forested Land between Cooper Landing, Kenai, Soldotna
- Mixed forest stands of birch, aspen, spruce
- The spruce volumes currently average:
 - 500- 1000 merchantable BF per acre
 - 0.5- 1 merchantable cords per acre
 - 6- 20 cords of fuelwood per acre



Limited Forest Inventory data available



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TIMBER VOLUME & VALUE

21,000 acres (ID'd on KPB lands) x Avg 500 to 1000 BF per acre=
~10.5 MMBF (10,752 cords) to 21 MMBF (21,504 cords)

TOTAL merchantable volume

Avg value of white spruce sawlogs= \$36.90/cord x Avg cord/Acre=
~\$400,000 to \$800,000 merchantable timber

~\$400,000 to \$800,000 of Spruce Timber value for the Landowner being lost to SBB

All Economic evaluations are estimates only

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TIMBER VALUE

- December 2020
 - Spruce sawlogs = **\$36.90/cord**
 - Spruce Fuelwood= **\$25.60/cord**
- December 2021
 - Mat-Su Borough is currently conducting Timber Sales for **\$5/cord**
 - AK Division of Forestry Kenai/ Kodiak Area Sells **\$10/cord** of fuelwood
 - Chugach National Forest Sells Spruce logs for **\$5/cord**
- Significant reduction of up to **86.5%** in value of timber by not harvesting susceptible trees prior to infestation
- Profit Incentives for the Industry:
\$5/cord on the landscape, \$250/ cord in the marketplace

*All Economic evaluations are estimates only *

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ASSETS NOW vs. LIABILITY LATER

- Service Contracts vs. Timber Sales
 - Paying a contractor for stands to be thinned, as any apparent timber value has diminished
- Treatment rates vary case to case
 - Private Contractor: **\$450/acre**
 - USFS: **\$1800 /acre**
 - AK DOF: **\$2000/ acre**



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RISK

FIRE

- Loss of life
- Infrastructure loss
 - Roads, Utilities, Buildings
- Loss of forest resources/products
- Loss of forest industry jobs



2019 Swan Lake Fire on Sterling Highway

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COST OF WILDLAND FIRE

- 2019 Swan Lake Fire Cost ~\$46 million
 - ~167,000 acres burned in high severity fire
 - ~1.7 million tons of wood total
- 2014 Funny River Fire Cost ~\$6.1 million
 - ~200,000 acres burned in high severity fire
 - ~2 million tons of wood total



Cost of timber sales < Cost of service contracts < Cost of fire response and potential infrastructure loss
OR Collapsed Forest for next Generation

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FEDERAL FUNDING OPPORTUNITIES

- KPB submitted a \$35 million funding request in April 2021 called the **SBB Response Request** that was not directly funded.
- **Infrastructure Investment and Jobs Act:** Federal Funding that KPB will be actively pursuing to support our SBB Mitigation and reforestation.

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CROSS-BOUNDARY COLLABORATIVE FOREST MANAGEMENT

- **Planning & Action towards Forest Management**
 - Community Wildfire Protection Plans
 - ALAH 5-Year Plan
 - Sterling Strategic Fuelbreak
 - Kenai Strategic Fuelbreak
 - Nikiski Strategic Fuelbreak
 - Soldotna Strategic Fuelbreak
 - Homer Strategic Fuelbreak
- **Partners & Potential Partners**
 - Kenai National Wildlife refuge
 - AK Division of Forestry
 - AK Department of Fish & Game
 - US Forest Service
 - Chugach National Forest
 - Chugachmuit
 - NRCS
 - Soil & Water Conservation Districts
 - Native Corporations
 - Private landowners
 - Industry Contractors

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LEGISLATIVE PROCESS

- Ordinance 2000-050

KENAI PENINSULA BOROUGH
ORDINANCE 2000-50

AN ORDINANCE AUTHORIZING EMERGENCY HARVEST OF SPRUCE BARK BEETLE KILLED TIMBER IDENTIFIED AS REPRESENTING A FOREST FIRE HAZARD AND AMENDING KPB 17.50.060 TO PROVIDE FOR OVER-THE-COUNTER DISPOSAL OF FOREST RESOURCES WHEN NO QUALIFYING PROPOSALS ARE RECEIVED IN RESPONSE TO REQUESTS FOR PROPOSALS FOR BIDS



- New Ordinance Authorizing Forest Management is needed
 - Any land classification
 - Broad prescription types for multiple management objectives
 - Affected areas identified - parcels/ units
 - Authorize Timber Sales
- Public Process
 - APC Meetings → Planning Commission Public Hearings → Assembly Public Hearings
- Public Engagement informs Policy

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PUBLIC ENGAGEMENT

- Planning Commission Presentation on January 10th kicks off our public engagement
- Press Release this week:
 - Open House Public Meetings: General Presentations about SBB Mitigation & Forest Management on February 8th, and 23rd 2022
 - Timber Industry Meeting on March 2nd, 2022
 - All Lands All Hands Meeting on March 16th, 2022
 - Cooper Landing, Kalifornsky, Moose Pass, Funny River APC Presentations in February- March 2022

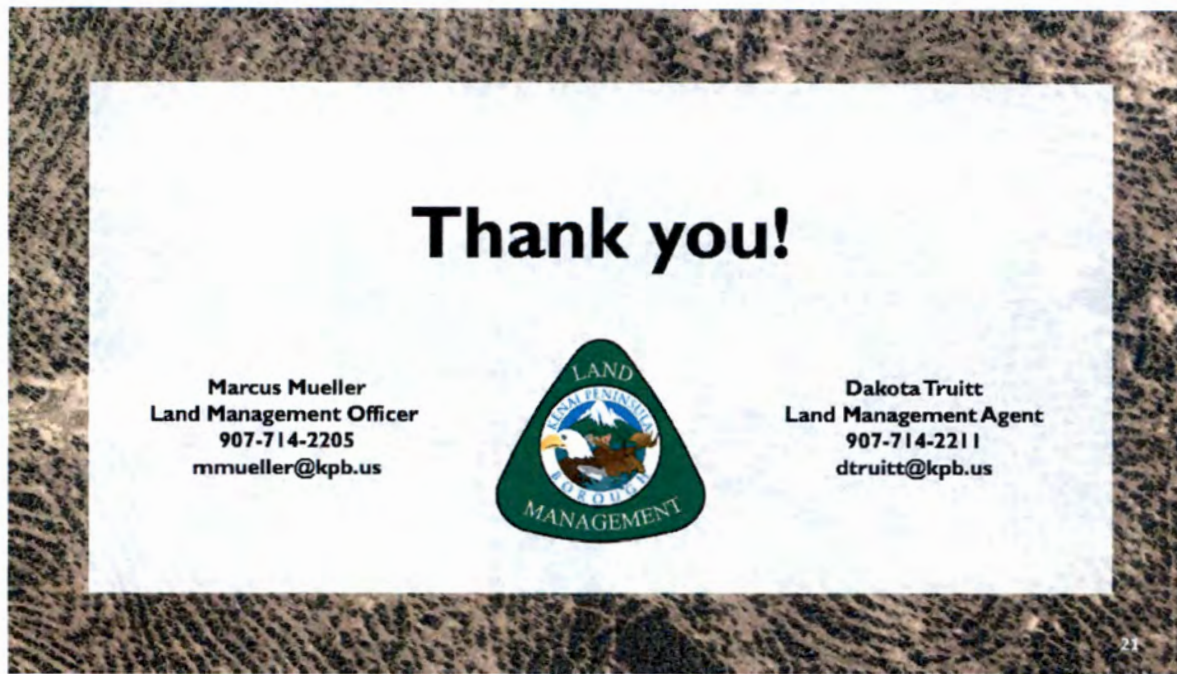
SCHEDULE of ACTIONS

- Public Engagement Campaign → Spring 2022
- Develop Legislation based on public input → Spring 2022
- Authorization of Timber Sales → Summer 2022
- Hire KPB Forester → Summer 2022
- Implementation of Authorization of Timber Sales → Winter 2022
- Identify and Pursue Funding → Ongoing

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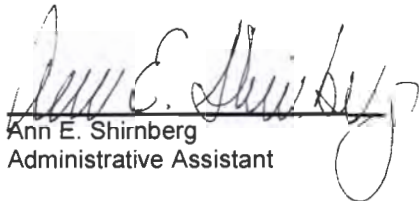
TIMELINE



**AGENDA ITEM I. DIRECTOR'S COMMENTS**

Director Aeschliman introduced new deputy attorney Walker Steinhage to the commission and informed him that Mr. Steinhage will be the attorney working with the Planning Department and Planning Commission.

AGENDA ITEM J. COMMISSIONER COMMENTS - None**AGENDA ITEM M. ADJOURNMENT – Commissioner Venuti moved to adjourn the meeting 8:55 p.m.**


Ann E. Shirnberg
Administrative Assistant