PENINS

Kenai Peninsula Borough

144 North Binkley Street Soldotna, AK 99669

Meeting Agenda Planning Commission

Blair Martin, Chair – Kalifornsky Beach
Robert Ruffner, Vice Chair – Kasilof/Clam Gulch
Syverine Abrahamson-Bentz, Parliamentarian – Anchor Point/Ninilchik
Jeremy Brantley – Sterling
Paulette Bokenko-Carluccio – City of Seldovia
Cindy Ecklund – City of Seward
Pamela Gillham – Ridgeway
Davin Chesser – Northwest Borough
Diane Fikes – City of Kenai
Virginia Morgan – East Peninsula
Franco Venuti – City of Homer

Monday, August 9, 2021

7:30 PM

Betty J. Glick Assembly Chambers

Zoom ID 208-425-9541

The hearing procedure for the Planning Commission public hearings are as follows:

- 1) Staff will present a report on the item.
- 2) The Chair will ask for petitioner's presentation given by Petitioner(s) / Applicant (s) or their representative 10 minutes
- 3) Public testimony on the issue. 5 minutes per person
- 4) After testimony is completed, the Planning Commission may follow with questions. A person may only testify once on an issue unless questioned by the Planning Commission.
- 5) Staff may respond to any testimony given and the Commission may ask staff questions.
- 6) Rebuttal by the Petitioner(s) / Applicant(s) to rebut evidence or provide clarification but should not present new testimony or evidence.
- 7) The Chair closes the hearing and no further public comment will be heard.
- 8) The Chair entertains a motion and the Commission deliberates and makes a decision.

All those wishing to testify must wait for recognition by the Chair. Each person that testifies must write his or her name and mailing address on the sign-in sheet located by the microphone provided for public comment. They must begin by stating their name and address for the record at the microphone. All questions will be directed to the Chair. Testimony must be kept to the subject at hand and shall not deal with personalities. Decorum must be maintained at all times and all testifiers shall be treated with respect.

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF CONSENT AND REGULAR AGENDA

All items marked with an asterisk (*) are consent agenda items. Consent agenda items are considered routine and non-controversial by the Planning Commission and will be approved by one motion. There will be no separate discussion of consent agenda items unless a Planning Commissioner so requests in which case the item will be removed from the consent agenda and considered in its normal sequence on the regular agenda.

If you wish to comment on a consent agenda item or a regular agenda item other than a public hearing, please advise the recording secretary before the meeting begins, and she will inform the Chairman of your wish to comment.

1. Time Extension Request

KPB-3390 Kee's Tern Subdivision; KPB File 2013-023

Attachments: 1. MAP Aerial

2. Plat preliminary

3. Plat phase 1 KN 2015-25

4. Staff Report Kee's Turn 2013-023 TE 071521

5. Letter City of Kenai Approval 072921

6. Letter to City of Kenai 072821

7. Time Extension Request 2021

2. Planning Commission Resolutions

<u>KPB-3391</u> Eventyr Subdivision No. 3 UEV; KPB File 2020-079V

PC Resolution 2021-25

Attachments: 1.Staff report Evntyr Sub Number 3 UEV Resolution Adoption 2020-079V

2.Resolution 2021-25

3. Packet Eventyr Subdivision Number 3 UEV

3. Plats Granted Administrative Approval

<u>KPB-3392</u> Kimbrel Subdivision 2020 Replat; KPB File 2020-150

Attachments: Kimbrel Subdivision 2020 Replat KPB 2020-150

<u>KPB-3393</u> Munger Subdivision No. 4; KPB File 2019-046

<u>Attachments:</u> Munger Subdivision No. 4 KPB 2019-046

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<u>KPB-3394</u>	Ridgewood Estates Sub Unit 2 Tract 5-A 2020 Replat KPB File 2020-047
Attachments:	Ridgewood Estates Subd Unit 2 Tract 5-A 2020 Replat KPB 2020-047
KPB-3395	Terrace View Farm Replat; KPB File 2019-150
Attachments:	Terrace View Farm Replat KPB 2019-150
KPB-3396	The Meadows; KPB File 2020-031R
Attachments:	The Meadows KPB 2020-031R1
<u>KPB-3397</u>	TKC Subdivision; KPB File 2021-065
Attachments:	TKC Subdivision KPB 2021-065
KPB-3398	Chigmit Vista Estates Lynch Addition; KPB File 2020-138
Attachments:	Chigmit Vista Estates Lynch Addition KPB 2020-138

- 4. Plats Granted Final Approval (KPB 20.10.040)
- 5. Plat Amendment Request
- 6. Commissioner Excused Absences
- 7. Minutes

<u>KPB-3399</u> July 12, 2021 Planning Commission Meeting Minutes

Attachments: PC Minutes 071221 Draft

D. OLD BUSINESS

<u>KPB-3400</u> CLUP Modification; Applicant/Landowner: CIRI

Tax Parcel ID# 065-081-18; Sterling Area

Attachments: 1.PC Memo 072721

2.Staff Report CIRI 071221 3.Desk Packet Materials 071221

E. NEW BUSINESS

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1. Stanley's Meadow 2021 UEV; KPB File 2021-086V KPB-3401 Fitz Creek Area 1. MAP Vicinity with inset Attachments: 2. MAP Aerial Map 3. Plat Prelim KPB 2021-086V Reduced 4. Staff Report Stanleys Meadow 2021 KPB 2021-086V 5. MAP utility lines 6. Plat Parent HM 93-60 UE Also Dedicate Portion 7. Plat Parent HM 91-47 UE Dedicated 8. Plat Parent HM 81-84 2. Carl F Ahlstrom Subdivision RPM's Replat Number 2 UEV KPB-3402 KPB File 2021-054V 1. MAP Vicinity with inset Attachments: 2. MAP Aerial Map 3. Plat Prelim KPB 2021-054V Reduced 4. Staff Report Carl F Ahlstrom Sub RPM's Replat No 2 UEV KPB 2021-054V 5. MAP utility map 6. Plat Parent KN 2017-66 7. Plat Parent KN 216 3. KPB-3403 An Unnamed Private Road in Section 24, T04S, R11W, Seward Meridian **ESN 202** Fox River Community 1.Staff Report SN2021-04 Attachments: 2.Street Name Resolution SN2021-04 3.Basemap AR21 SN2021-04 4.Petition SN2021-04 5.PLAT HM199306 6. Vicinity & Aerial Maps 7. Public Hearing Notice SN2021-04

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4. KPB-3404 Ordinance 2021-32: An ordinance authorizing a negotiated lease at fair

market value with Edward & Kathleen Martin, DBA Cozy Inn, In

Kenai for a parking area.

Attachments: 1.Cozy Inn Lease MEMO

2.Cozy Inn Lease ORD
3.Cozy Inn Lease MAP
4.Cozy Inn LEASE

5.Cozy Inn Development Plan

5. <u>KPB-3405</u> Ordinance 2021-31: An ordinance authorizing an amendment to a

master land lease development agreement with the AK Dept. of Transportation & Public Facilities in support of the Sterling Highway MP 45-60 Construction Project near Cooper Landing to include a staging area at Tract C Quartz Creek Subdivision and appraisal

provisions.

Attachments: 1.DOT - Quartz Lease MEMO

2.DOT - Quartz Lease ORDINANCE

3.DOT - Quartz Master Lease Amendment

4.DOT - Master Lease Attachments 3&4

F. PLAT COMMITTEE REPORT

G. OTHER

H. PUBLIC COMMENT/PRESENTATION

(Items other than those appearing on the agenda or scheduled for public hearing. Limited to five minutes per speaker unless previous arrangements are made)

I. DIRECTOR'S COMMENTS

J. COMMISSIONER COMMENTS

K. ADJOURNMENT

MISCELLANEOUS INFORMATIONAL ITEMS NO ACTION REQUIRED

NEXT REGULARLY SCHEDULED PLANNING COMMISSION MEETING

The next regularly scheduled Planning Commission meeting will be held Monday, [INSERT DATE] in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 North Binkley Street, Soldotna, Alaska at 7:30 p.m.

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ADVISORY PLANNING COMMISSION MEETINGS

Anchor Point -- Zoom -- February 4, 2021-- 7:00 p.m.

Cooper Landing -- Zoom -- February 4, 2021-- 6:00 p.m.

Funny River -- Zoom -- February 4, 2021-- 7:00 p.m.

Kalifornsky -- Zoom -- February 4, 2021-- 6:00 p.m.

Kachemak Bay -- Zoom -- February 4, 2021-- 7:00 p.m.

Moose Pass -- TBD

Hope / Sunrise -- Zoom -- February 4, 2021-- 7:00 p.m.

NOTE: Advisory planning commission meetings are subject to change. Please verify the meeting date, location, and time with the advisory planning commission chairperson. Chairperson contact information is on each advisory planning commission website. Links to the websites can be found on the Planning Department website.

CONTACT INFORMATION KENAI PENINSULA BOROUGH PLANNING DEPARTMENT

Phone: 907-714-2215

Phone: toll free within the Borough 1-800-478-4441, extension 2215

Fax: 907-714-2378

e-mail address: planning@kpb.us

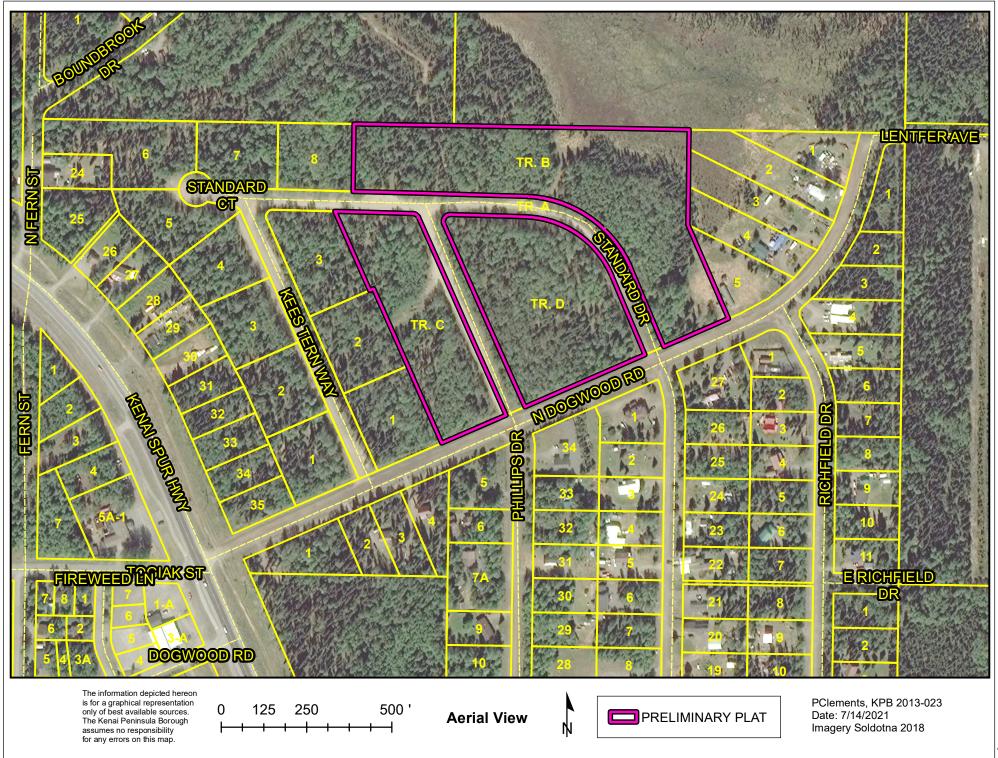
website: http://www.kpb.us/planning-dept/planning-home

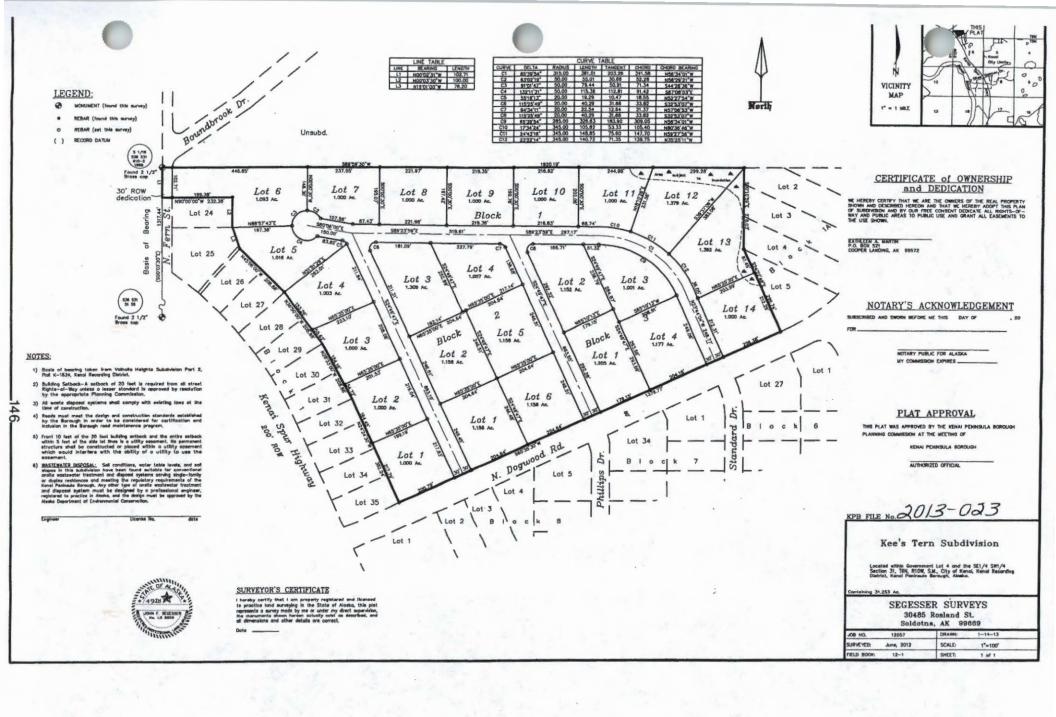
A party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances. An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the filing and records preparation fees. Vacations of right-of-ways, public areas, or public easements outside city limits cannot be made without the consent of the borough assembly.

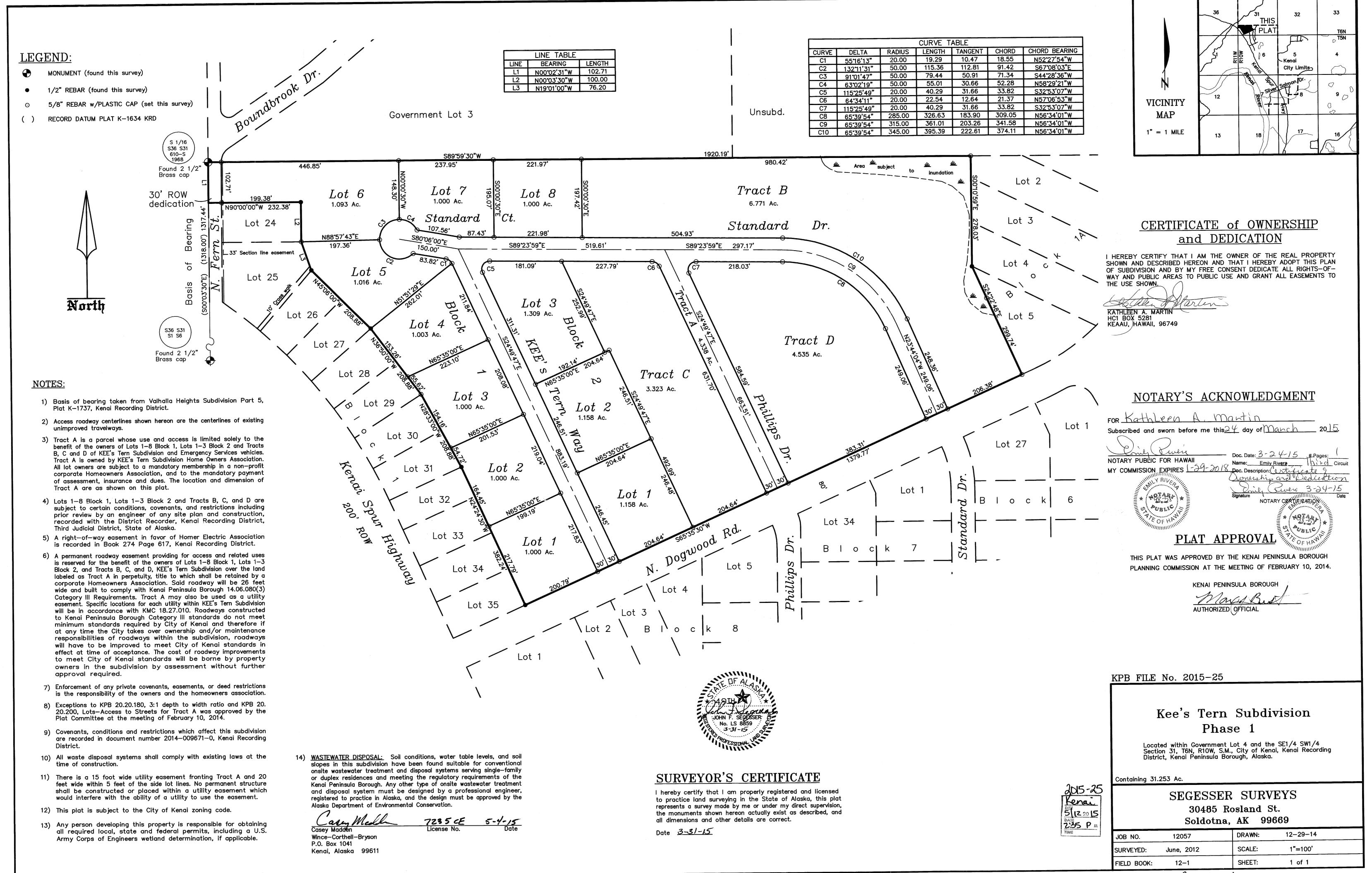
Vacations within city limits cannot be made without the consent of the city council. The assembly or city council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received within the specified period, it shall be considered that consent was given.

A denial of a vacation is a final act for which the Kenai Peninsula Borough shall give no further consideration. Upon denial, 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.

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1. Time Extension Request

a. Kee's Tern SubdivisionKPB File 2013-023; [Segesser / Martin]Location: City of Kenai

STAFF REPORT PC Meeting: August 9, 2021

2013

A preliminary plat was submitted to the Kenai Peninsula Borough Planning Department on January 15, 2003. The plat would create 24 lots and dedicate several rights of way. The intent was to finalize through phases. The KPB Plat Committee conditionally approved this subdivision on February 11, which was valid through February 11, 2014.

2014

On January 21, a revised preliminary plat was submitted for KPB Plat Committee review. The revised design still created 24 lots but the rights of way were to be a tract to provide private access. Conditional preliminary approval was granted on February 10, which was valid through February 10, 2015.

2015

On February 2, a time extension was requested by the surveyor, stating that the plat was in final stages. A 1-year time extension was granted by the KPB Planning Commission on February 23, extending preliminary approval to February 23, 2016.

Phase 1 of this plat was recorded on May 12, extending preliminary approval to May 12, 2016.

2016

On May 9, the surveyor requested a one-year time extension, stating that future lots may be recorded in this phased subdivision. That request was approved by the KPB Planning Commission on June 13, extending preliminary approval to June 13, 2017.

2017

On April 24, the surveyor requested a two-year time extension, stating that the owner has not yet decided to finalize the plat. The request was heard and approved by the KPB Planning Commission on June 12, extending preliminary approval to June 12, 2019.

2019

On May 24, the surveyor requested a one-year time extension, stating that the owner has not decided to finalize the subdivision. The request was heard and approved by the KPB Planning Commission on July 15, extending preliminary approval to July 15, 2020.

2020

On May 15, the surveyor requested a one-year time extension, stating that the owner has not decided to finalize the subdivision.

Notice of the time extension request was emailed and mailed to the City of Kenai on May 18, 2020. The City of Kenai Planning and Zoning Commission has reviewed and given the City Planner approval to submit a letter approving the time extension request at their June 10, 2020 meeting.

The request was heard and approved by the KPB Planning Commission for a one-year time extension extending to July 13, 2021.

2021

On June 20, the surveyor requested a two-year time extension, stating that the owner is finalizing the plat.

Notice of the time extension request was emailed to the City of Kenai on July 14, 2021.

The City of Kenai Planning and Zoning Commission heard the time extension at their regularly scheduled meeting on July 28, 2021. The City Planner was authorized to submit a letter approving the time extension request. The Kenai Planning and Zoning Commission did not object to the time extension to February 11, 2023. Anything beyond that date will be 10 years from the initial preliminary plat approval date and any phases not recorded will require a new preliminary plat application.

There have been no changes in the area that would affect this plat. Per the approved preliminary design there are 13 lots not yet created.

Approval of the requested time extension would extend preliminary approval to February 11, 2023, which is 10 years after the initial preliminary plat approval. The owner is put on notice that any future platting actions for this subdivision that are not finalized before February 11, 2023 must comply with current KPB Title 20 Subdivisions.

This subdivision currently contains private streets. If all phases are not completed prior to the 10 year limit, the subdivision will be required to comply with Chapter 20.80 – Private Streets and Gated Communities. The required compliance with that portion of code may require public right of way dedications that will need approval from the City of Kenai and will require action by the Kenai Peninsula Borough Plat Committee/Planning Commission.

STAFF RECOMMENDATIONS: Extend preliminary plat approval to February 11, 2023, subject to the following:

- 1. Copy of plat with current utility reviews being submitted with the final plat.
- Plat must comply with Kenai Peninsula Borough Code up to February 11, 2014.
- 3. Any future time extensions granted will be required to comply with current subdivision code at the time of submittal including Chapter 20.80.

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 notice of the decision; using the proper forms; and, be accompanied by the \$300 filing and records preparation fee.

END OF STAFF REPORT



July 29, 2021

Peggy Clements, Platting Technician pclements@kpb.us Kenai Peninsula Borough 144 North Binkley Street Soldotna, AK 99669

RE: Kee's Tern Subdivision

Time Extension Request KPB File 2013-023

Dear Ms. Clements:

This letter is in response to the letter that you submitted to the City of Kenai dated July 14, 2021, requesting that the City of Kenai Planning and Zoning Commission concur with a two-year time extension to finalize the plat for Kee's Tern Subdivision. The Planning and Zoning Commission held their regularly scheduled meeting on July 28, 2021, and authorized me to draft and send a letter to you supporting the request by the developers of Kee's Tern Subdivision for a two-year time extension to finalize the plat. However, Commissioners in the past have voiced concern with the numerous extensions granted to the developer over the years without much backing rationale for the extensions. The Commission was made aware of the Kenai Peninsula Borough's new Code change to put a time limit for finalizing plats, and that a two-year extension would align the project with the new code limit of 10 years for finalizing plats.

Please be advised that the Kenai Planning and Zoning Commission does not object to the two-year time extension for Kee's Tern Subdivision. It is the understanding of the Planning and Zoning Commission, that under the current section of code, the approval for Kee's Turn Subdivision cannot be extended beyond February 11, 2023, which is 10 years from the initial preliminary plat approval date. If all phases are not recorded before February 11, 2023 a new preliminary plat application must be submitted and the plat must comply with current subdivision standards.

If you have any further questions regarding the time extension, please feel free to contact me at 907-283-8235 or rfoster@kenai.city.

Sincerely,

Ryan Foster, Planning Director

Charlie Pierce Borough Mayor

July 28, 2021

City of Kenai Planning and Zoning Commission 210 Fidalgo Avenue Kenai, AK 99611

Planning and Zoning Commissioners:

RE: Time Extensions

A time extension is to be heard tonight for Kees Tern Subdivision. It has been brought to our attention that there have been some concerns regarding the time extension process. We apologize as a staff member could not be present but we hope this letter will provide some additional insight for this specific subdivision and for any future, ones you may be requested to review.

The Kenai Peninsula Borough Planning Commission approved Kees Tern Subdivision on February 11, 2013. A revised preliminary was then approved on February 10, 2014. This subdivision was reviewed under old Kenai Peninsula Code (20.04 – 20.28). The Kenai Peninsula Borough adopted a new Chapter 20 that took effect of February 12, 2014. This subdivision, as well as a few others, are still being reviewed under the old code, pre-2014.

KPB 20.12.090, pre-2014, covered the approval and expiration restrictions. It allowed time extensions to be requested but did not place any restrictions on how many or how long they may continue. In addition, the recording of a phase would also extend the expiration by a year. Phases are to be reviewed under the code the main design was approved. The code does allow the Planning Commission to require a new preliminary plat submittal if there are road system changes or if the owners let the approval lapse for a long period. The code does not restrict granting time extensions for lapsed approvals. This portion of code also does not mention needing to have the time extension reviewed by the cities. As time progressed, it was determined that the recommendation by the cities is important as they have their own infrastructures to consider and changes in the area may have occurred. Platting Staff forwards items under this old code to the cities for review and recommendations.

In 2014, the new title 20 was adopted. The code for approval and expirations was KPB 20.25.110. The section of code for approvals did not change reference number by the code that took effect on April 1, 2021. The 2021 code changes to that section were housekeeping and

July 28, 2021 Page 2

clarification but the implementation of the code has been the same. Instead of an initial one-year approval, plats are granted a two-year approval. State plats are issued an initial four-year approval due to additional agency reviews and approvals. The owners or surveyor may request two time extensions, each 2 years. This process allows for up to six years to finalize a plat. It also clarified that phases still extend the approval but they must meet the code in effect at the time the phase is submitted. This code also requires the owner or surveyor to forward their request to the city and submit to the borough the city decision. At the borough level, the Planning Director may grant the time extensions unless they wish to present it to the Planning Commission for approval. If the approval lapses a new application must be presented and a new hearing must occur.

With two changes, having taken affect for Title 20 it has been determined these lingering pre-2014 code files need to become compliant to current code. As time extensions are requested, they are being allowed to continue under the code that they were approved until they reach the 10-year mark. As they begin to age, we are including in the staff report a warning that they are approaching a time where they will need to conform to current code. Once they are 10 years old staff is recommending to the Planning Commission that they be subject to current code. If approved they are then limited to only two more time extensions. Failure to finalize will then require them to submit a new application, which means they must start the process over under current code if they wish to continue.

When a time extension is presented to you to review, we are requesting information that may affect the previously approved plan. Changes such as new road construction requirements, new utilities installed, requirements for utility extension, zoning changes, or any infractions to municipal code. An example would be that when the subdivision was approved the utilities were not present in that area. They may now be installed and the city wishes to request an installation agreement. When the city reviews a time extension it is a recommendation and requests for conditions may be presented. Please note that pre-2014 goes before the Planning Commission while the Planning Director reviews newer code plats. If the city has requirements, the Director can refer it back to the Planning Commission for approval.

In regards to Kees Tern Subdivision, this time extension will allow them two more years under old code. Any future time extensions granted will require current code compliance. This subdivision has some additional issues as it was approved with private right-of-ways that were created as a tract. If this subdivision is not finalized before expiring and changes are required to the right of way tract it will have to fall under current code, which now includes private streets and gated communities, KPB 20.80. As outlined in KPB 20.80.005, Chapter 20.80 does not apply within the boundary of an incorporated city. Concerns about the tract would be discussed and handled if failure to finalize prior to the ten-year mark occurs.

July 28, 2021 Page 3

The Kenai Peninsula Borough Planning Department staff has been working hard the last few years trying to keep all old code file current to allow them the opportunity to finalize their projects. Staff also recognizes that allowing projects to linger can affect others in their designs or for cities, planning their infrastructure. We are closing in on the window for any old remaining files to remain active and all files will soon have limitations to finalize.

I hope this letter helps address some concerns and questions you may have. If you have any questions regarding our process or code, please let me know.

Scott Huff Platting Manager

Kenai Peninsula Borough Planning Department 144 North Binkley Street Soldotna, Alaska 99669

Phone: (907) 714-2200 Fax: (907) 714-2378 RECEIVED

KPB PLANNING DEPT.

JUN 29 2021

TIME EXTENSION REQUEST FORM

V	Name of Subdivision: KEEs Tern	
V	Location of Subdivision: City of Kenai	_
V	KPB Number: 2013-023	
	Date of Planning Commission Approval(s)	
	<u>2-11-13</u> <u>6-12-17</u>	
	2-10-14	
	2-23-15	
V	Reason for time extension request. Owner is finalizing the plat.	
Date	e: 2-29-21	
Sign	nature of Surveyor/Property Owner:	

Source: Resolution 89-27

AGENDA ITEM E. NEW BUSINESS

ITEM 2.a - Eventyr Subdivision Number 3 Utility Easement Vacation

KPB File No. 2020-079V Planning Commission Meeting: August 9, 2021

Applicant / Owner:Molly E. Hannigan of Kenai, Alaska

Christopher Johnson of Kenai, Alaska

Surveyor: Jason Young / Edge Survey and Design, LLC

General Location: City of Kenai

STAFF REPORT

<u>Staff Analysis:</u> This item is back before the Planning Commission to adopt a Resolution to finalize a previously approved utility easement vacation.

The Planning Commission granted approval of the utility easement vacation at the August 24, 2020 KPB Planning Commission meeting. The recording of a subdivision plat depicting the vacation or the recording of a resolution can complete the vacation of a utility easement. Approval of a utility easement vacation expires in one year.

The Plat Committee granted approval of Eventyr Subdivision Number 3 at the August 10, 2020 Plat Committee meeting. The intent was to finalize the vacations with the recording of the subdivision plat. The surveyor and owners are working on completing the plat but will not be able to finalize prior to the one year approval to vacate the utility easement.

Adoption of Resolution 2021-25 will finalize the approved utility easement vacations.

RECOMMENDATION:

Staff recommends adoption of PC Resolution 2021-25 to finalize the utility easement alteration as approved on August 24, 2020, subject to:

- 1. Grant utility easements requested by the Kenai City Council and utility providers on the final subdivision plat.
- 2. 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.

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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.

END OF STAFF REPORT

UTILITY EASEMENT ALTERATION CHECKLIST complete items are marked with a check box - \boxtimes

20.65.070. Alteration of platted utility easements

use, the p	Where platted utility easements are reserved for the purpose of providing utility services by an agency or utility provider and dedicated to the public use in the same manner as public rights-of-way, public access, or public easement granted for public planning commission shall review and act upon all requests to alter, including removal, platted utility easements. For purposes of easements covered by this section, the KPB 20.90.010 definition for Utility Easement controls.					
2. the u juris 3. sam 4. encr 5.	The petitioner shall include the following items when submitting a request to alter a platted utility easement. A petition, provided by KPB Planning Department, signed by the owner of the land subject to the platted utility easement as wn on the borough tax rolls. Comments from the city advisory commission if applicable, and the jurisdictional authority of a dedicated right-of-way when utility easement adjoins a dedicated right of way. A petition to alter a platted utility easement will not be approved if a city with dictional authority objects to the alteration. Comments or non-objection from all appropriate utility providers. Affected utility providers must initial or comment on the e sketch or submittal that is provided to the borough. A sketch showing the alteration of the platted utility easement. If the alteration of the utility easement is due to an oachment, then an as-built survey or site survey must be submitted with the petition. Appropriate application fee. Applicant statement containing the reasons for the alteration of the platted utility easement.					
C.	Notice shall be sent per KPB 20.10.100.					
D. easemen	When the application is complete, the planning commission will take action on the requested alteration of the platted utility t, either approving or denying the request.					
the final original p	A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No tion or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of denial action except in the case where new evidence or circumstances exist that were not available or present when the etition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility t with documentation that the issues have been resolved, accompanied by a new fee.					
F. Alaska R	An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the ules of Appellate Procedure.					
G.	Approval of an application under this section expires in 12 months.					
H.	Upon approval, the alteration of a utility easement can be finalized by either. 1. Recording of a subdivision plat which complies with Chapter 20.					
	2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees.					
	END OF LITH ITY FASEMENT ALTERATION CHECKLIST					

KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2021-25 KENAI RECORDING DISTRICT

Vacate the 10 foot wide utility easement adjoining the south property line of Lot 4, Eventyr Subdivision (Plat KN 83-149), vacate the 10 foot wide utility easement along the north property lines of Lots 5 and 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the west 10 feet abutting Linwood Lane, and vacate the 10 foot wide utility easement along the east property line of Lot 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the south 10 feet abutting Lawton Drive.; within SW1/4 Section 34, Township 6 North, Range 11 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPB File 2020-079V.

WHEREAS, Molly E. Hannigan of Kenai, AK and Christopher Johnson of Kenai, AK requested the vacation of 10 foot wide utility easement adjoining the south property line of Lot 4, Eventyr Subdivision (Plat KN 83-149), vacate the 10 foot wide utility easement along the north property lines of Lots 5 and 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the west 10 feet abutting Linwood Lane, and vacate the 10 foot wide utility easement along the east property line of Lot 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the south 10 feet abutting Lawton Drive.

WHEREAS, per KPB 20.30.060(A) – Easements – Requirements, the planning commission may require easements it determines necessary for the benefit of the public. Such easements include, but are not limited to, lateral support (slope) easements, drainage easements for ditching or protection of a drainage, and utility easements. Required easements do not need to be for road purposes.

WHEREAS, per KPB 20.30.060(D) – Easements – Requirements, unless a utility company requests additional easements, the front ten feet of the building setback shall be designated as a utility easement, graphically or by note.

WHEREAS, affected utility companies provided written non-objection to the proposed vacation; and

WHEREAS, per the petition, the easement is not in use by any utility companies; and

WHEREAS, the proposed vacation will not deny utility easement(s) to surrounding properties; and

WHEREAS, The City Council of the City of Kenai heard the vacation and approved it at their August 19, 2020 regularly scheduled meeting.

WHEREAS, on August 24, 2020, the Kenai Peninsula Borough Planning Commission considered the background information, all comments received, and recommendations from KPB Planning Department staff regarding the proposed vacation; and

WHEREAS, the Planning Commission has found that vacating the utility easement will not be detrimental to the public interest; and

WHEREAS, 20.70.140 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish vacations by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

<u>Section 1.</u> Vacate the 10 foot wide utility easement adjoining the south property line of Lot 4, Eventyr Subdivision (Plat KN 83-149), vacate the 10 foot wide utility easement along the north property lines of Lots 5 and 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the west 10 feet abutting Linwood Lane, and vacate the 10 foot wide utility easement along the east property line of Lot 6, Eventyr Subdivision No. 2 (Plat KN 86-75), excluding the south 10 feet abutting Lawton Drive, are hereby vacated.

Section 2. That an exhibit drawing or asbuilt survey, prepared by a licensed surveyor, showing the location of the portion of the utility easement being vacated be attached to, and made a part of this resolution, becoming Page 2 of 2.

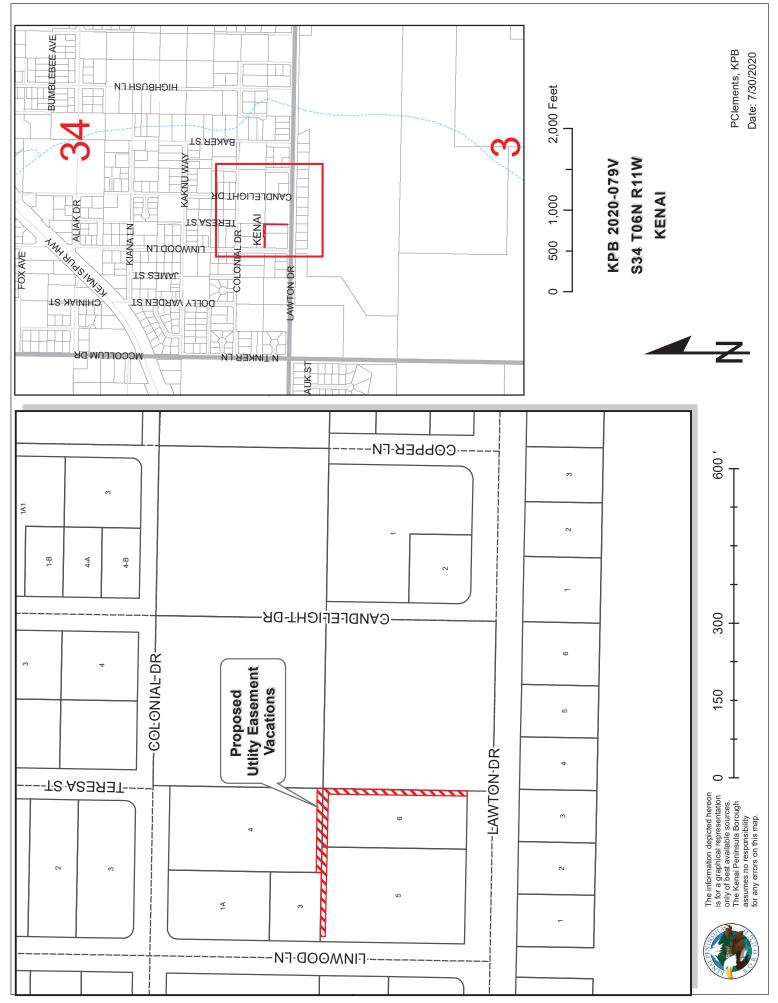
<u>Section 3.</u> That this resolution is eligible for recording upon being signed by the Planning Commission chairperson and will be deemed void if not recorded within 90 days of adoption.

<u>Section 4.</u> That this Resolution becomes effective upon being properly recorded with petitioner being responsible for payment of recording fee.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH ON THIS 9th DAY OF AUGUST 2021.

ATTEST:	Blair J. Martin, Chairperson Planning Commission
Ann Shirnberg Administrative Assistant	
Return to: Kenai Peninsula Borough Planning Department 144 North Binkley Street Soldotna, Alaska 99669	

Kenai Peninsula Borough Planning Commission Resolution 2021-25







Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

Kimbrel Subdivision 2020 Replat

KPB File 2020-150

Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on January 11, 2021. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 12, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 12

by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 4-1-2024

STATE OF ALASKA SANDRA KAYE FLETCHER **NOTARY PUBLIC**

MY COMMISSION EXPIRES: 4-1-24

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department

Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

Munger Subdivision No. 4

KPB File 2019-046

Iliamna Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on May 13, 2019. Approval for the plat is valid for two years from the date of approval.

On March 23, 2021, a time extension request was approved extending the plat approval date for two years through May 13, 2023.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 9, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 9 by Scott A. Huff.

2021

Notary Public for the State of Alaska

STATE OF ALASKA SANDRA KAYE FLETCHER MY COMMISSION EXPIRES: 41-24

My commission expires: 41 2024

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

Ridgewood Estates Subd Unit 2 Tract 5-A 2020 Replat

KPB File 2020-047

Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on June 22, 2020. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 16, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 16 th day of gold 2021 by Scott A. Huff.

Santra Karge Tlateles.
Notary Public for the State of Alaska

My commission expires: 4-1-2024

STATE OF ALASKA SANDRA KAYE FLETCHER NOTARY PUBLIC MY COMMISSION EXPIRES:

4-1-24

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

Terrace View Farm Replat

KPB File 2019-150

Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on March 15, 2021 Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 12, 2021.

14

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this // day of Ouly 2021 by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 4-1-2024

STATE OF ALASKA SANDRA KAYE FLETCHER NOTARY PUBLIC

MY COMMISSION EXPIRES:

4-1-24

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

The Meadows

KPB File 2020-031R1

Homer Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on September 14, 2020. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 7, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 7th day of Quely by Scott A. Huff.

My commission expires: 4-1-2024

STATE OF ALASKA SANDRA KAYE FLETCHER **NOTARY PUBLIC**

MY COMMISSION EXPIRES: 4-1-24

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



Planning Department

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Charlie Pierce Borough Mayor

ADMINISTRATIVE APPROVAL

Subdivision:

TKC Subdivision

KPB File 2021-065

Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on June 14, 2021. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 29, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 29 day of 2021 by Scott A. Huff.

Sandra Kaye I Notary Public for the State of Alask

My commission expires: 4-1- 2024

STATE OF ALASKA SANDRA KAYE FLETCHER MY COMMISSION EXPIRES: 41-24 NOTARY PUBLIC

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.



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Charlie Pierce Borough Mayor

2021

ADMINISTRATIVE APPROVAL

Subdivision:

Chigmit Vista Estates Lynch Addition

KPB File 2020-138

Kenai Recording District

The Kenai Peninsula Borough Planning Commission conditionally approved the preliminary subdivision plat on November 30, 2020. Approval for the plat is valid for two years from the date of approval.

The final plat complied with conditions of preliminary approval and KPB Title 20 (Subdivisions); therefore, per KPB 20.60.220, administrative approval has been granted by the undersigned on July 29, 2021.

Scott A. Huff

Platting Manager

State of Alaska

Kenai Peninsula Borough

Signed and sworn (or affirmed) in my presence this 27 day of 1

by Scott A. Huff.

Notary Public for the State of Alaska

My commission expires: 44-2024

STATE OF ALASKA SANDRA KAYE FLETCHER NOTARY PUBLIC

MY COMMISSION EXPIRES:

The survey firm has been advised of additional requirements, if any, to be complied with prior to recording. After the original mylar has been signed by the KPB official, it must be filed with the appropriate district recorder within ten business days by the surveyor or the Planning Department.

Kenai Peninsula Borough Planning Commission

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

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

CALL TO ORDER

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

ROLL CALL

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

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

Staff Present

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

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *3. Plat Granted Administrative Approval
 - a. Baranoff Terrace Subdivision Johnson-Quale Addition; KPB File 2019-082
 - b. Big Dipper Ranch; KPB File 2020-153
 - c. Bremond Farms Estates Bella Woods Phase 2; KPB File 2016-022P2
 - d. Gerhart Homestead 2020 Replat; KPB File 2020-149
 - e. Lakewood Estates 2021 Replat; KPB File 2021-035
 - f. Rex W. Eagle Homestead 2021 Replat; KPB File 2021-033
 - g. Seater View Subdivision; KPB File 2009-085
 - h. Surreal Subdivision 2021 Replat; KPB File 2021-002
 - i. Valhalla Heights 2021 Replat; KPB File 2021-077
- *6 Commissioner Excused Absences
 - a. Pamela Gillham, Ridgeway
- *7 Minutes
 - a. June 28, 2021 Planning Commission Meeting Minutes

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

Planning Commission Unapproved Minutes July 12, 2021

the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Venuti to approve the consent agenda and the regular agenda.

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1	
Yes	Bent	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	m				

AGENDA ITEM E. NEW BUSINESS

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

AGENDA ITEM E. NEW BUSINESS

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

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

Staff report given by Scott Huff,

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

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

There are no utilities or roads on the easement.

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

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

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

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

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

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

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

Utility provider review:

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

Findings:

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

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

RECOMMENDATION:

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

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

20.65.070 Alteration of platted utility easements

- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.
- F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

Planning Commission Unapproved Minutes July 12, 2021

END OF STAFF REPORT

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1	
Yes	Bent	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	ım				

AGENDA ITEM E. NEW BUSINESS

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

KPB File No. 2021-085V

Planning Commission Meeting: July 12, 2021

Applicant / Owner: Village Council Nanwalek Village of Nanwalek, Alaska

Surveyor: Kenton Bloom / Seabright Surveying

General Location: C Street, Nanwalek, AK

Legal Description: C Street / Townsite English Bay USS 4901/ Seldovia Recording

District / Section 35, Township 09 South, Range 16 West, S.M.

Staff report given by Scott Huff.

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

<u>Notification:</u> Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20.65.050 - Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
 - The right-of-way or public easement to be vacated is being used;
 Staff comments: The right of way is constructed and used but not fully within the dedicated area.
 - 2. A road is impossible or impractical to construct, and alternative access has been provided; **Staff comments:** The road is already constructed and the new alternative right of way will allow the existing access to remain where it is located.
 - 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed:
 - **Staff comments:** The area is part of the Nanwalek Village as created by U.S. Survey No. 4901. All neighboring lots front on dedicated right of ways. The surrounding area has been improved and additional right of ways do not appear to be needed. Comments from the utility providers should be considered to determine if additional utility easements will be needed.
 - 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
 Staff comments: The right of way does not provide access to a public area or water body. The Nanwalek Village community building is located on Lot 1 Block 2. Moving the location of the right of way will allow an addition to be constructed to the village building.
 - 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

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

- 6. Other public access, other than general road use, exist or are feasible for the right-of-way; **Staff comments:** All lots in the area have access via Chicklouk Street, Saints Sergus and Herman Street, and the remaining portion of C Street. The nearby right of ways have been improved.
- 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: The shift in the location of the right of way will provide equal or superior access.

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

KPB department / agency review:

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

Utility provider review:

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

RECOMMENDATION:

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

- 4. Consent by KPB Assembly.
- 5. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
- 6. Grant utility easements requested by the utility providers.
- Dedication of right of way to keep the right of way width a minimum of 40 feet wide.
- 8. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other

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

- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

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

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

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

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

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

END OF STAFF REPORT

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1	
Yes	Benta	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	m				

AGENDA ITEM E. NEW BUSINESS

ITEM 3 - RIGHT OF WAY VACATION VACATE COVE VIEW COURT and ADJOINING 10 FOOT UTILITY EASEMENT STANLEY'S MEADOW 2021, HM 93-60

KPB File No. 2021-086V1

Planning Commission Meeting: July 12, 2021

Applicant / Owner: Cecil R. and Ina L. Jones of Fritz Creek, Alaska and Billy Ray and Stephanie Joy Jones of Homer, Alaska

Surveyor: Gary Nelson / Ability Surveys

General Location: Fritz Creek Area / Kachemak Bay APC

Perkins Road, Stanley's Meadow No. 11 Plat 93-60 Homer

Legal Description: Recording District, Section 34, Township 04 South, Range 11

West, S.M.

Staff report given by Scott Huff.

<u>Specific Request / Purpose as stated in the petition:</u> Vacate Cove View Court right of way. Petitioner's statement, 'Lots are being replatted.'

<u>Notification:</u> Public notice appeared in the July 1, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the July 8, 2021 issue of the Homer News as part of the Commission's tentative agenda.

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

Public hearing notices were sent by regular mail to 8 owners within 600 feet of the proposed vacation.

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

- · State of Alaska Dept. of Fish and Game
- State of Alaska DNR
- State of Alaska DOT
- State of Alaska DNR Forestry
- Kachemak Bay Advisory Planning Commission
- Emergency Services of Kachemak
- Homer Kenai Peninsula Borough Office

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

The notice was placed on the Planning Commission board at the Kenai Peninsula Borough George A. Navarre Administration Building. The notice was emailed to the Post Office and Library of Homer with a request for the notice to be posted.

<u>Legal Access (existing and proposed):</u> Cove View Court is located off East End Road at milepost 17.5. Access is from East End Road to Ratone Street, to Elmers Way to Perkins Road. All access right of ways are at least 60 feet in width and are a combination of dedicated right of ways and section line easements. A travel way is constructed to the south portion of Perkins Road but is not maintained by KPB Roads Department.

Perkins Road originally continued north and connected to a northern section. A section of Perkins Road was vacated in 1993 and the northern section terminates in a cul-de-sac.

The proposed plat that will finalize the vacation of Cove View Court shows the four lots being combined into two lots that will both have access from Perkins Road (southern portion).

The block is incomplete and distances do not comply with Kenai Peninsula Borough code. Perkins Road is a dead end and does not connect to another right of way. Along Elmers Way, the distance from Perkins Road to Skidoo Street is approximately 3,840 feet. Due to terrain and the layout of the lots in the area, the subdivision will not be able to provide a dedication to improve the block length or create a complete block.

KPB Roads Dept. comments	This vacation only affects the applicant and the Road Service Area has
	no comments at this time.
SOA DOT comments	The SOA Central Region Right of Way Engineering section has reviewed
	the right of way vacation for interpretation of any existing State ROW.
	Since these do not appear to be State roads, we have no comment on this
	ROW vacation.

<u>Site Investigation:</u> The plat submitted with this vacation depicts the Kenai Watershed Forum ecosystem identified as riverine. The riverine ecosystem appears to be location within a portion of Cove View Court and Perkins Road.

The slopes greater than 20 percent are shaded. The steep slopes affect a portion of Cove View Court and Perkins Road.

Floodplain Hazard Review	Not within a floodplain area.
Anadromous Waters Habitat	Not within a HPD.
Protection District Review	
State Parks Review	No comments.

<u>Staff Analysis:</u> Cove View Court is a 60 foot wide right of way cul-de-sac that is approximately 512 feet long. The intersection with Perkins Road is 120 feet in width. Cove View Court has dedicated on Stanley's Meadow No. 11, Plat HM 91-47. Cove View Court was also shown on Stanley's Meadow No. 11 ADEC Power-Trip Replat, Plat HM 93-60. That plat created the current lot configuration. Cove View Court is not improved.

The proposed lot reconfiguration will reduce four lots to two lots. Both proposed lots will have legal access

from Perkins Road. Cove View Court does not help with block length or provide legal access to any other lots

Access to these lots will be difficult due to steep terrains within Perkins Road. The usable area of the parcels is limited due to steep terrain and wet areas. The parcel to the north could be further subdivided and provide additional access. Steep slopes and low wet areas will need to be considered with any new right of way dedications.

If the vacation is approved it will be forwarded to the Kenai Peninsula Borough Assembly to be reviewed on August 3, 2021. The subdivision plat, when recorded, will finalize the right of way vacation.

20.65.050 - Action on vacation application

- D. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:
 - The right-of-way or public easement to be vacated is being used;
 Staff comments: Cove View Court is unconstructed and does not appear to be used for access.
 - 9. A road is impossible or impractical to construct, and alternative access has been provided; Staff comments: An alternate right of way will not be needed, as the proposed subdivision plat will create two lots that both will have legal access to Perkins Road. Steep slopes affect portions of the Cove View Court. Access to this right of way may be difficult due to the slopes within Perkins Road. Additional easements may be required along Perkins Road due to terrain.
 - 10. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;

Staff comments: The lots fronting Cove View Court are not developed but with the reduction of four lots to two lots, the cul-de-sac right of way is not needed. Lot 8-A appears to be used as an agricultural parcel.

The surrounding area is a mixture of residential lots and agricultural parcels. Legal access is available to all nearby parcels.

Utility companies have been contacted for review.

- 11. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;

 Staff comments: This does not provide access to a waterbody or public interest area.
- 12. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;

 Staff comments: Cove View Court is a cul-de-sac that does not provide interconnectivity to other right of ways.
- 13. Other public access, other than general road use, exist or are feasible for the right-of-way; **Staff comments:** Cove View Court does not provide a use to the general public.
- 14. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists,

the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.

Staff comments: The utility easements adjoining Cove View Court will be vacated with this action. The vacation of the easements on the property lines, as depicted on the application, will require a separate application and will be reviewed by the KPB Planning Commission at a later meeting.

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

Staff comments:

If approved, Stanley's Meadow 2021 will finalize the proposed right of way vacations. The Plat Committee will review Stanley's Meadow 2021 on August 9, 2021. The platting action will require exceptions to 20.30.170 – blocks-length requirements and 20.30.190 – Lots-dimensions for the depth to width ratio of both lots.

KPB department / agency review:

Planner – Bryan Taylor	
Code Compliance – Eric Ogren	No comments
Addressing – Derek Haws	No addresses affected.
Assessing – Matt Bruns	
Advisory Planning Commission –	Minutes were not received prior to staff report being written. Any
Kachemak Bay	comments or minutes received will be available in the desk packet.

Utility provider review:

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

RECOMMENDATION:

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

- Consent by KPB Assembly.
- 10. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
- 11. Grant utility easements requested by the utility providers.
- 12. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.65.050 – Action on vacation application

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final

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.

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- Housing
 - Objective D. Encourage efficient use of land, infrastructure and services outside incorporated cities by prioritizing future growth in the most suitable areas.
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Goal 4. Improve access to, from and connectivity within the Kenai Peninsula Borough

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

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

<u>Gary Nelson, Ability Surveys; 152 Dehel Ave., Homer, AK 99603</u>: Mr. Nelson was the surveyor on this project and made himself available for questions.

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1	
Yes	Benta	z, Brantl	ley, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	m				

AGENDA ITEM E. NEW BUSINESS

4. PC Resolution 2021-24; Trail Creek Bridge Replacement

Petition: USAD Forest Services PIN 125-324-07 & 125-324-01 Moose Pass Area

Conditional Use Permit Anadromous Waters Habitat Protection District

KPB File No. 2021-24

Planning Commission Meeting: July 12, 2021

Applicant USDA Forest Service

Mailing Address 33599 Ranger Station Spur

Seward, AK 99664

Legal Description Section 24, T004N, R001W, Meridian Seward. USGD

Seward B-7 NE

Physical Address Lower Creek Trail

KPB Parcel Number 12532407, 12532404

Staff report given by Samantha Lopez

Project Description

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

Project Details within the 50-foot Habitat Protection District

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

General Standards

Pursuant to 21.18.081(D) General Standards, the following standards shall be met before conditional use approval may be granted:

1. The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;

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

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

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

Permit Conditions

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

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

Recommendation

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

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

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

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

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

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent		
Yes	Benta	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	ım				

AGENDA ITEM E. NEW BUSINESS

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

Staff report given by Marcus Mueller.

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

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

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

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

END OF STAFF REPORT

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	11	No	0	Absent	1	
Yes	Bentz	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	m				

AGENDA ITEM E. NEW BUSINESS

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

Staff report given by Marcus Mueller.

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

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

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

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

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

END OF STAFF REPORT

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

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

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1	
Yes	Bentz	, Brantle	ey, Car	luccio, Ch	nesser	Ecklund, Fikes Martin, Morgan, Ruffner, Venuti
Absent	Gillha	ım				

AGENDA ITEM E. NEW BUSINESS

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

Staff report given by Marcus Mueller.

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

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

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

END OF STAFF REPORT

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1	
Yes	Bent	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti
Absent	Gillha	ım				

AGENDA ITEM E. NEW BUSINESS

8. Marijuana Concentrate Manufacturing Facility License Applicant: Leaf & Larf, LLC dba Purgatory Cannabis

Landowner: Zan Inc. Parcel ID#: 017-160-41

Location: 43280 Kenai Spur Hwy., Kenai, AK 99611

Legal Description: T 6N R 12W SEC 14 SEWARD MERIDIAN KN PORTION OF GOVT LOT 106

LYING EAST OF NORTH KENAI RD

Staff report given by Bryan Taylor.

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

AS 17.38 - Regulation of Marijuana

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

3 AAC 306

Regulation of Marijuana Industry

-Selected Requirements Relevant to Local Government Review-

Licenses (3 AAC 306.305-110)

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

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

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

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

Marijuana Product Manufacturing Facilities (3 AAC 306.500-570)

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

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

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

- 1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
- 2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
- 3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
- 4. The proposed facility is not located within a local option zoning district.
- 5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
 - The site plan indicates that the approach is or will be constructed to a minimum width of 24 feet where it accesses the right-of-way.
 - The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
 - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
 - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
- 6. The signed acknowledgement form indicates that the proposed facility will not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

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

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

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

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

STAFF RECOMMENDATION

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

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

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

END OF STAFF REPORT

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

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

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

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

MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1				
Yes	Bent	z, Brantl	ey, Ca	rluccio, C	hesser	Ecklund, Fikes	, Gillham, Mar	tin, Morgan,	Ruffner, Venuti
Absent	Gillha	m							

AGENDA ITEM E. NEW BUSINESS

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

Staff report given by Bryan Taylor.

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

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

- 1) Location of modification: The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).
- **2) Lifespan:** The original permit application stated an expected lifespan of 15 years. No change is proposed.
- **3) Buffers:** In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.
- **4)** Reclamation: No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader

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

- **5) Depth of excavation**: The maximum depth of proposed excavation is 20 feet, the same as the original permit.
- 6) Type of material: Gravel will be mined from the proposed expansion area.
- **7) Voluntary permit conditions:** Berms along the north, south, west, and east edges of the proposed expansion area.
- **8)** Site plan: The original site plan prepared by McLane Consulting Inc. was submitted as part of the modification application with markups and annotations indicating proposed modifications. The original plan included a north arrow, scale, and preparer's name, date and seal. The property has not been subdivided or changed ownership since the original site plan was developed in 2017, so the modified site plan was considered sufficient by staff. Required site plan elements are as follows:
 - **a-b):** addressed above.
 - **c) encumbrances**: In addition to Tikahtnu, Kenai Keys, and Deniigi Way roads, the site plan shows a section line easement along the southern property boundary.
 - **d) points of ingress/egress**: The proposed modification would add a 26-foot wide ingress/egress from the excavation area directly onto the Sterling Highway.
 - **e) haul routes:** ingress/egress for the expanded extraction area would be directly onto the Sterling Highway.
 - f) test holes/depth of groundwater: The application states that 32 test holes have been dug throughout the property and that the water table is greater than 20 feet below original ground. The original site plan shows test well locations in the permitted excavation area.
 - **g) location of neighboring wells:** The site plan shows one well south of the property. No wells are within 300 feet of the proposed expansion area.
 - h) waterbodies/wetlands: no waterbodies or wetlands are indicated on the site plan.
 - i) surface water protection measures: No measures were indicated on the site plan.
 - **j) processing areas:** One 4.8-acre processing area was identified south of Deniigi Way on the original site plan. No modification of the processing area is proposed.

I-m): addressed above

n) boundary staking: with the original permit, the property corners were located and the property boundary flagged at visible intervals within 300 feet of the excavation areas.

<u>PUBLIC NOTICE</u>: Notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the July 12, 2021, meeting.

FINDINGS OF FACT:

- 1. Procedural Findings.
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster

- in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
- F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
- 2. Parcel boundaries. KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
- 3. Buffer zone. KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
 - 50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
- 4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
- 5. Water source separation. KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - A. The site plan shows no wells within 300 feet of an excavation area.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
- 6. Excavation in the water table. KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
 - A. This modification does not seek and exemption to excavate within the water table.
- 7. Waterbodies. KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - A. There are no water bodies within 100 feet of the proposed extraction.
- 8. Fuel storage. KPB 21.29.050(A)(7) provides that fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
- 9. Roads. KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - A. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
- 10. Subdivision. KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a

parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.

- A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
- 11. *Dust control.* KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
- 12. Hours of operation. KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
- 13. Reclamation. KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
 - A. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - B. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
- 14. Other permits. KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
- 15. *Voluntary permit conditions*. KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
- 16. Signage. KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.

STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- The applicant will provide the recording fee for the resolution to the Planning Department.
- 4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
- The conditions of the modified permit will replace those of the original permit.

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:

Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.

These buffers shall not overlap an easement.

- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 9. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 10. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
- 12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
- 15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50,

- a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
- 18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

Chair Martin opened the meeting for public comment.

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

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

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

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

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

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

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

MOTION: Commissioner Ruffner moved, seconded by Commissioner Bentz to adopt PC Resolution 2021-26 granting a modification to a conditional land use permit issued to cook Inlet Region, Inc.

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

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

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

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

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

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

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

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

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

AMENDMENT MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1						
Yes	Bent	z, Brantl	ley, Ca	rluccio, C	hesser	Ecklund, Fikes	, Gillham,	Martin,	Morgan,	, Ruffner,	Venuti
Absent	Gillha	am	•					•			

AGENDA ITEM F. PLAT COMMITTEE REPORT

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

AGENDA ITEM G. OTHER

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

AGENDA ITE H. PUBLIC PRESENTATION

1. KPB 21.18 Anadromous Habitat Waters Protection Annual Review

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

KPB 21.18 ANADROMOUS WATERS HABITAT PROTECTION ANNUAL REVIEW

River Center Manager
Samantha Lopez
July 12, 2021

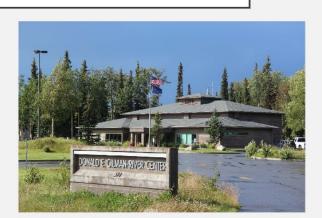
DONALD E. GILMAN RIVER CENTER

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

We house four permitting agencies, streamlining the permitting process

KPB 21.18 issues permits for:

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

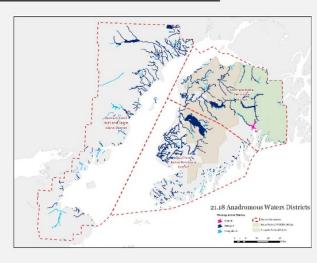


21.18 ANADROMOUS WATERS DISTRICTS

Habitat Protection District

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

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



THE PURPOSE OF 21.18





Before & after restoration



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





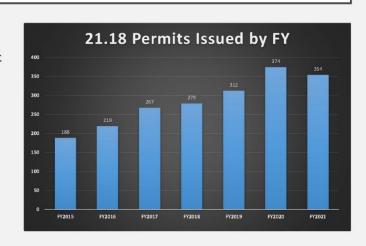


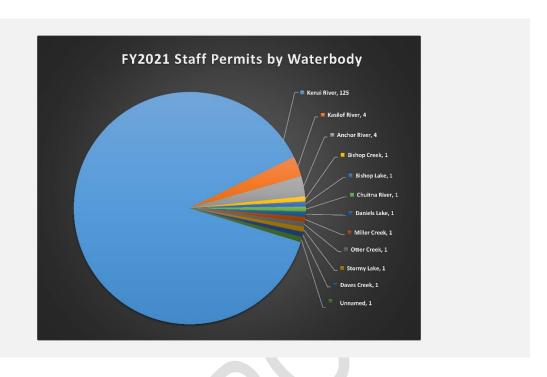
21.18 IN 2021

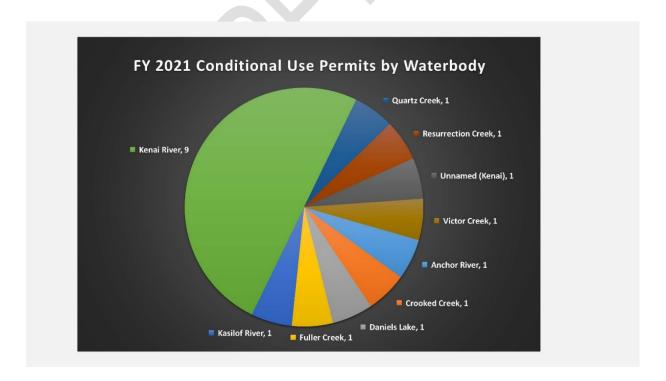
- Anadromous Waters Habitat Protection Work Group
 - 8 meetings (March 2020 January 2021)
 - Assembly finalized code revisions 5/4/2021
- Permits (354)
 - 194 Minor Veg Permits
 - 142 Staff Permits
 - 18 Conditional Use Permits

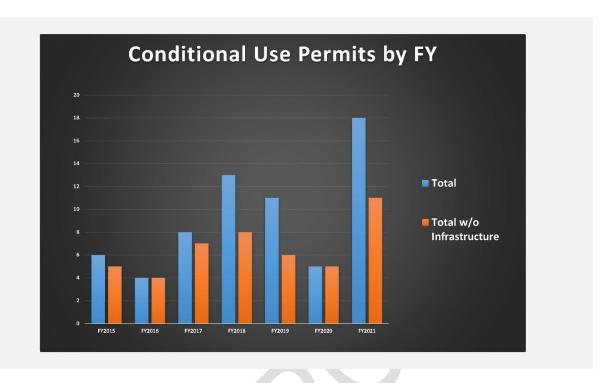
21.18 - TYPES OF PERMITS

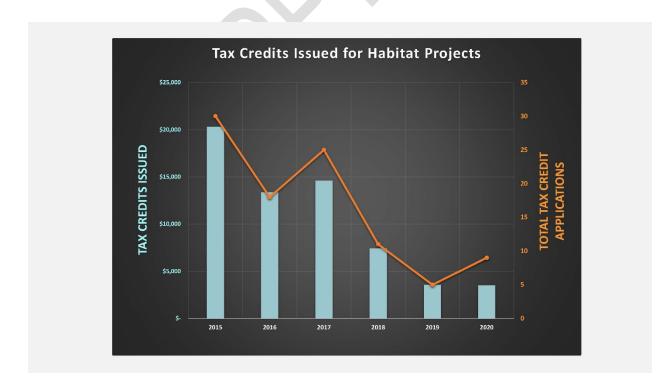
- I. Minor Veg Management
- 2. Staff
 - a) New Projects
 - b) Prior-Existing
- 3. Conditional Use
- 4. Commercial Activity

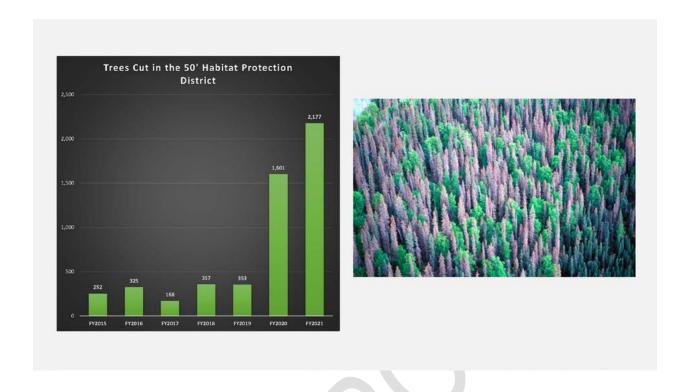


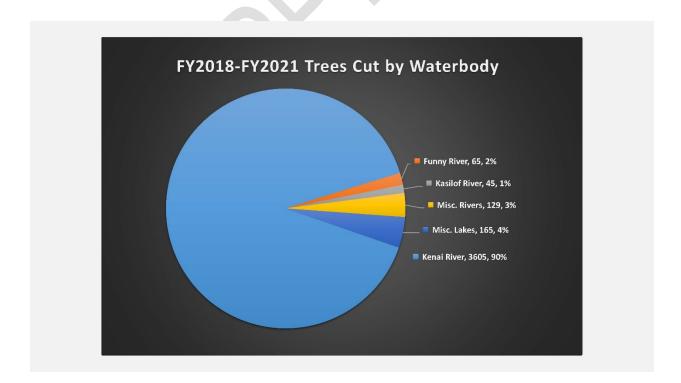


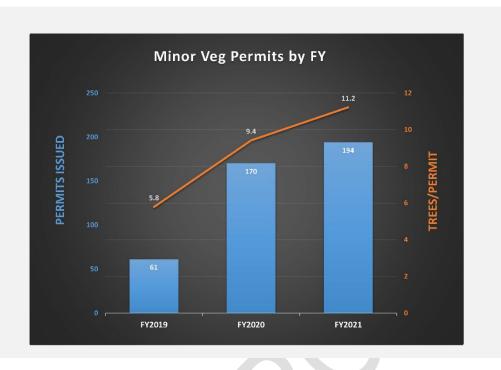












THINGS TO CONSIDER

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



COMMENTS/QUESTIONS



AGENDA ITEM I. DIRECTOR'S COMMENTS

River Center Updates:

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

Planning:

- An appeal has been filed in the River Resources Gravel Pit Case ** please be cognizant of that if any members of the public contact any commissioners on that issue**.
- Mayor Pierce plans to re-introduce the exact gravel pit ordinance that the PC recommended approval, which failed at the assembly level, and was tabled. Since this PC did recommend approval of the exact same ordinance that will be introduced, the mayor does not intend to send the ordinance back before the PC.
- We are working through a resolution for the PC city seats. Currently, we are working with the City of Homer and City of Seldovia on those seats. We can anticipate that on the back end of this there will be a code change ordinance that sets out the current city seats in code so that this issue has some finality. I will update you further when we have something concrete.
- Additionally, during this process it has come to our attention that vacancies on the KPB Planning Commission are handled differently depending on whether the vacancy is for an at-large seat or city seats. It is important that all vacancies on the KPB Planning Commission are noticed and handled in the same way. The KPB planning commission is a borough function; therefore, the borough will now handle the noticing and application process for vacancies. When the vacancy is for what is known as a city seat, the borough will send all applications and supporting documentation, it receives from the applicant to the respective cities. The cities will then determine which applicants have the experience and expertise necessary to represent city interests and provide a final list of recommendations to the KPB mayor. The KPB mayor will then appoint a name

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

- One interpretation issue that I can ask Sean to speak to if needed is; During this process, we have
 also determined that neither borough code nor state statute require that city seats be filled by a
 resident of the city or that at-large seats be filled only by residents of the areas outside the cities.
 In short, this means that as long as the applicant is otherwise qualified and eligible, all borough
 residents may apply for a vacancy on the KPB Planning Commission. This should substantially
 open up the pool of qualified and experienced applicants to the benefit of all.
- We are working on getting the monitors set up in the chambers to show relevant maps and will
 have a laser available in the near future. This will aid all in attendance and online a unified view of
 the maps we are discussing during the meetings.
- I received a proposed project plans for review for Funny River Road Pavement Preservation project from the State of Alaska Department of Transportation and Public Facilities. The proposed plan will start at milepost 0-milepost 17.2 it is a reclaiming, paving, adding new signage, and striping.

Land Management:

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

Platting:

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

AGENDA ITEM J. COMMISSIONER COMMENTS

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

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

Ann E. Shirnberg Administrative Assistant

Kenai Peninsula Borough Page 40

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Planning Department

MEMORANDUM

TO: Blair Martin, Planning Commission Chair

Kenai Peninsula Borough Planning Commissioners

THRU: Melanie Aeschliman, Planning Director

Samantha Lopez, River Center Manager

FROM: Bryan Taylor, Planner

DATE: July 27, 2021

RE: Addendum to CIRI CLUP Modification Application PC Resolution 2021-26

On July 27, 2021, we received an addendum to the above application. The applicant proposes the following voluntary condition be added to their application:

Applicant shall be limited to disturbing 20 acres during the first two years of the permit. The open area shall be reclaimed upon completion of excavation activities.

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Modification of a Conditional Land Use Permit for a Material Site

STAFF REPORT

PC MEETING: July 12, 2021

Applicant: Cook Inlet Region, Inc. Landowner: Cook Inlet Region, Inc.

Parcel Number: 065-081-18

Legal Description: East ½, East ½ of the West ½, and the Northwest ¼ of the Northwest ¼ of Section

16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the

Sterling Highway right-of-way.

Property Location: Approximately at MP 79.5 of the Sterling Highway

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

KPB 21.29.030(A) REQUIRED APPLICATION ITEMS

- 1) Location of modification: The applicant seeks to excavate and an additional area of approximately 61 acres in an area bounded by the Sterling Highway to the north, Kenai Keys Road to the east, Deniigi Way to the south, and Tikahtnu Road to the west (see Attachment A).
- **2) Lifespan:** The original permit application stated an expected lifespan of 15 years. No change is proposed.
- **3) Buffers:** In addition to buffers in the original permit, the proposed 61-acre expansion area would be buffered on all sides by 50 feet of natural vegetation and 6-foot earthen berms.
- **4) Reclamation**: No modification to the reclamation plan is proposed. The original application indicated that 5-25 acres would be reclaimed each year before the end of September using a loader and dozer. Seeding would be applied each season to areas that achieve final grade.
- **5) Depth of excavation**: The maximum depth of proposed excavation is 20 feet, the same as the original permit.
- **6) Type of material**: Gravel will be mined from the proposed expansion area.
- **7) Voluntary permit conditions:** Berms along the north, south, west, and east edges of the proposed expansion area.
- **8) Site plan**: The original site plan prepared by McLane Consulting Inc. was submitted as part of the modification application with markups and annotations indicating proposed modifications. The original plan included a north arrow, scale, and preparer's name, date and seal. The property has not been subdivided or changed ownership since the original site plan was developed in 2017, so the modified site plan was considered sufficient by staff. Required site plan elements are as follows:
 - a-b): addressed above.
 - c) encumbrances: In addition to Tikahtnu, Kenai Keys, and Deniigi Way roads, the site plan

shows a section line easement along the southern property boundary.

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

<u>PUBLIC NOTICE:</u> Notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within ½ mile of the subject parcel, pursuant to KPB 21.25.060. A copy of the public notice and notice radius map are included as **Attachment G**. Any public comments received by the Planning Department prior to the hearing will be included as desk packet items at the July 12, 2021, meeting.

FINDINGS OF FACT:

- 1. Procedural Findings.
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - B. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
- 2. Parcel boundaries. KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near proposed excavation areas in the original permit were flagged.
- 3. Buffer zone. KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers

for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:

50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.

- 4. *Processing.* KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
- 5. Water source separation. KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - A. The site plan shows no wells within 300 feet of an excavation area.
 - B. Borough staff will regularly monitor the material site to ensure compliance with the two-foot vertical separation from the water table requirement.
- 6. Excavation in the water table. KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
- A. This modification does not seek and exemption to excavate within the water table.

 7. Waterbodies. KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - A. There are no water bodies within 100 feet of the proposed extraction.
- 8. Fuel storage. KPB 21.29.050(A)(7) provides that fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.
- 9. Roads. KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - A. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
- 10. Subdivision. KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a parcel subject to a conditional land use or counter permit requires the permittee to amend their permit.
 - A. Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
- 11. Dust control. KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
- 12. Hours of operation. KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - A. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.

- 13. Reclamation. KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
 - A. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - B. Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
- 14. Other permits. KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.
 - A. Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement.
- 15. Voluntary permit conditions. KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - A. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
- 16. Signage. KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
 - A. Borough staff will regularly monitor the material site to ensure compliance with this condition.

STAFF RECOMMENDATION

In reviewing the modification application, staff has determined that the requirements for modification have been met and that the six standards contained in KPB 21.29.040 will be met. Staff recommends that the planning commission approve the modification to the conditional land use permit with listed conditions and adopt the findings of fact subject to the following:

- 1. Filing of the PC Resolution in the appropriate recording district after the deadline to appeal the Planning Commission's approval has expired (15 days from the date of the notice of decision) unless there are no parties with appeal rights.
- 2. The Planning Department is responsible for filing the Planning Commission resolution.
- 3. The applicant will provide the recording fee for the resolution to the Planning Department.
- 4. Driveway permits must be acquired from either the state or borough as necessary prior to the issuance of the material site permit.
- 5. The conditions of the modified permit will replace those of the original permit.

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:
 - Northern, southern, eastern, and western boundaries 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter

for the 61-acre expanded extraction area.

These buffers shall not overlap an easement.

- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
- 6. The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table
- 8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 9. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 10. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
- 12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
- 15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB

- 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
- 18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

NOTE: Any party of record may file an appeal of a decision of the Planning Commission in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. A "party of record" is any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use, or enjoyment of real property owned by them who appeared before the planning commission with either oral or written presentation. Petition signers are not considered parties of record unless separate oral or written testimony is provided (KPB Code 21.20.210.A.5b1). An appeal must be filed with the Borough Clerk within 15 days of the notice of decision, using the proper forms, and be accompanied by the \$300 filing and records preparation fee. (KPB Code 21.25.100)

END OF STAFF REPORT

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce Borough Mayor

PC Resolution #	-
App. Complete	-

KPB 21.29 Conditional Land Use Permit Modification Application

For a Sand, Gravel or Material Site

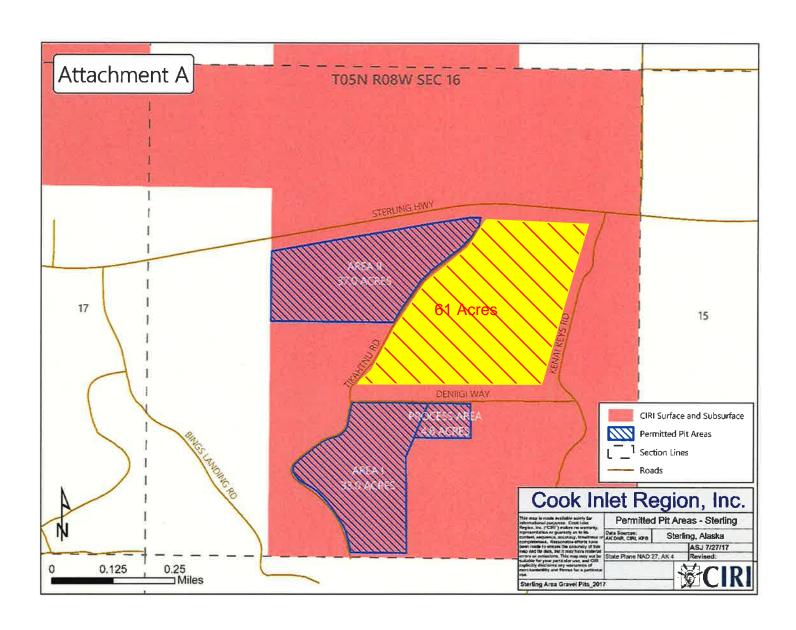
1.	APPLICANT INFORMATION				
	Applicant Cook Inlet Region, Inc.	Landowner Same as Applicant			
	Address PO Box 93330	Address			
	City, State, Zip_Anchorage, AK 99509-3330	City, State, Zip			
	Telephone 907-263-5150 Fax	TelephoneFax			
	Cell Phone 907-240-6861	Cell Phone			
	ul • • · · ·	Email			
11.	CURRENT PERMITTED PARCEL INFORMATION				
	KPB Tax Parcel ID# 065-081-18 Township	Range 8W Section16			
	SubdivisionLot	Block Parcel acreage			
	Legal Description T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4 NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681				
III. INFORMATION/DOCUMENTATION "Check" boxes below to indicate items included.					
	\$300.00 permit processing fee payable to: Kenai Peninsula Borough. (Include Parcel # on check comment line.)				
	Site Plan Diagram, to scale, showing:				
	□ parcel boundaries				
	□ existing required buffers				
	□ existing and/or proposed processing area(s)				

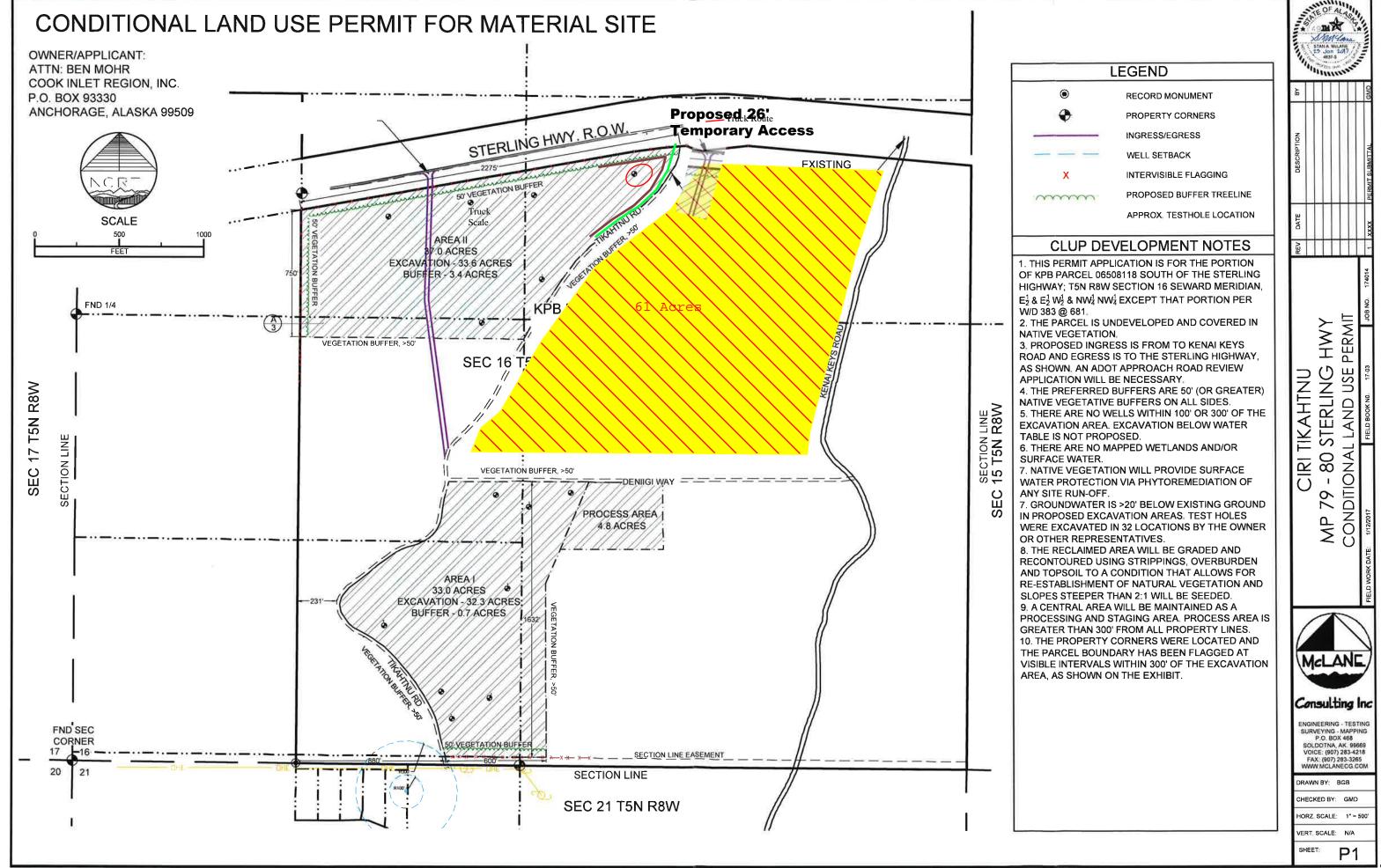
Permit Modification Worksheet

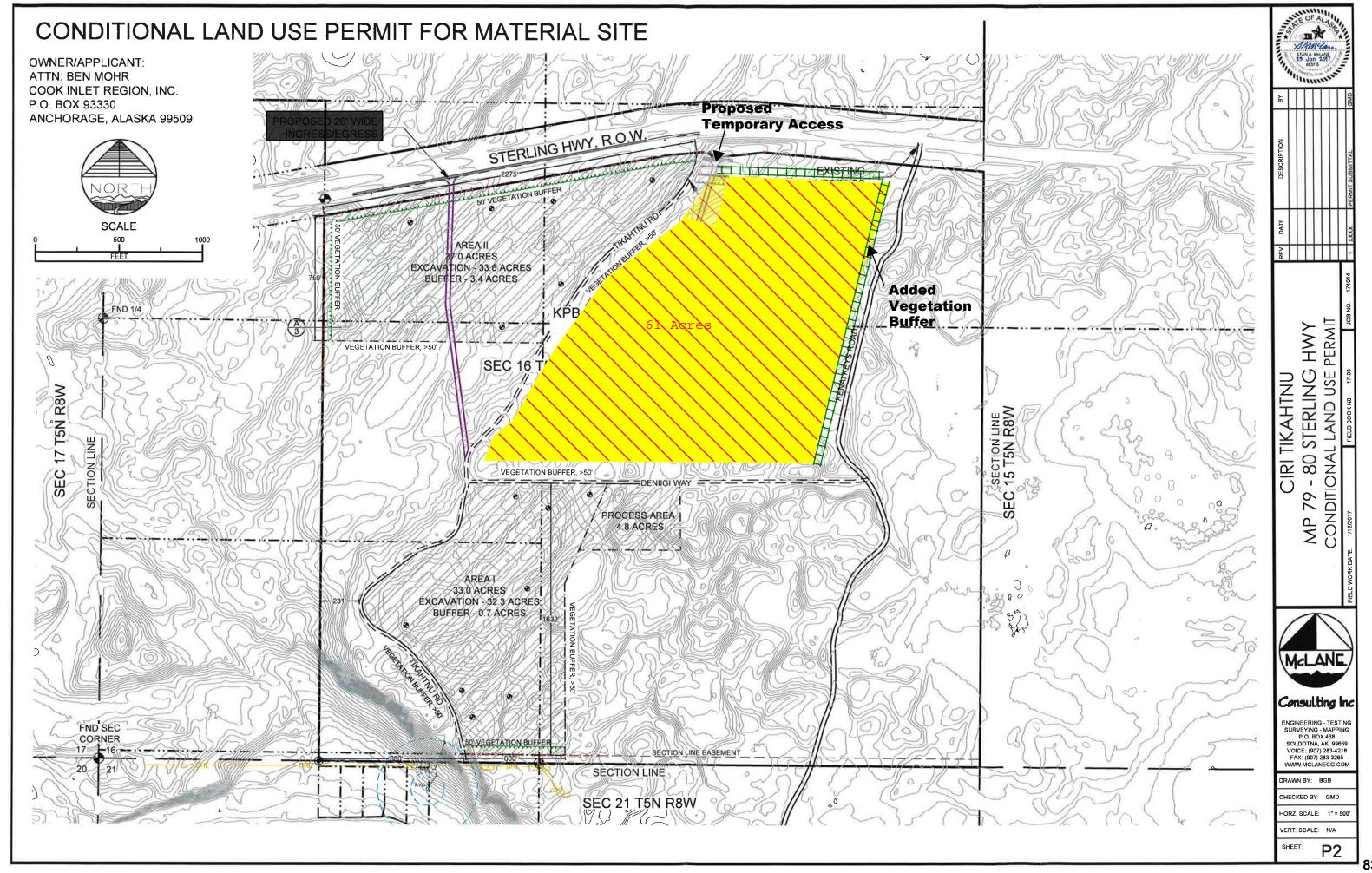
Ap	oplicant <u>Coo</u>	k Inlet Region, Inc.	_Own	er <u>Same</u>	as app	licant		
CI	IDDENIT DED	MITTED KPB Tax Parcel ID # 065-081-18	Par	cel Acre	age ani	or 600		
							harling high	
1.		Reason(s) for requesting permit modification: Excavation of material to improve the Sterling highway, competent to meet Alaska Transportation Department specifications for highway						
		•				ay		
	construction	1			>			
2.	Additional	cumulative acres to be disturbed (excavation	plus st	ockpiles	s, berms	s, etc.) 6	61 acres	
3.		type(s) of material to be mined (circle all that						
4.		equipment to be used (circle all that apply):						
5.		on(s) is requested on current permit buffers:	-		The Park Control of the Pa			
CU	RRENT PERM	ЛІТ REQUIRED BUFFERS – "check" all types, an	d circle	e all dire	ections	that ap	ply:	
	□ /	50 ft. of natural or improved vegetation		N	S	E	W	
		minimum 6 ft. earthen berm		N	S	Е	W	
		minimum 6 ft. fence		N	S	Е	W	
		other	_	N	S	Е	W	
М	<i>ODIFIED</i> BUF	FER REQUEST, if applicable – "check" all types,	, and c	ircle all	directio	ons that	apply:	
		50 ft. of natural or improved vegetation		N	(S)	E	W	
	ď	minimum 6 ft. earthen berm	1	N	S	E	W	
		minimum 6 ft. fence		N	S	E	W	
		other		N	S	E	W	
6				lv permi	itted pa	rcel?	ves	X no
	6. Permit modification is requested due to subdivision of originally permitted parcel?yesXno 7. Permit modification to enter the water table is requested? yesXno							
8.	20.5							
О.		groundwater: More than 20 ft.					*	
9.	Voluntary A. Berms	permit conditions proposed (additional buffer along North (Sterling Highway), West (Tikahtr	rs, dust nu Roa	t contro d) and E	I, limite ast (Ke	ed hour: ani Key	s of operations of some state of some some some some some some some some	on, etc.): e of
	excavat			100				
	В.		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		and the second second			

	all encumbrances on parcel, including ea	asements		
	points of ingress and egress			
	existing permitted extraction area(s)			
	proposed additional extraction area(s) a	nd/or other requeste	d permit modifications(s)	
	a north arrow and diagram scale			
	preparer's name and date			
□ <u>Perr</u>	nit Modification Worksheet (attached)			
IV. CER	TIFICATION STATEMENT			
	information contained on this form and a ough staff to enter onto the property for			ledge. I grant permission fo
Appli	Weltle cant Signature	June 21, 2021 Date	Property Owner Signature	 Date
			(required if not applicant)	

Exhibit A Map of Contract Area

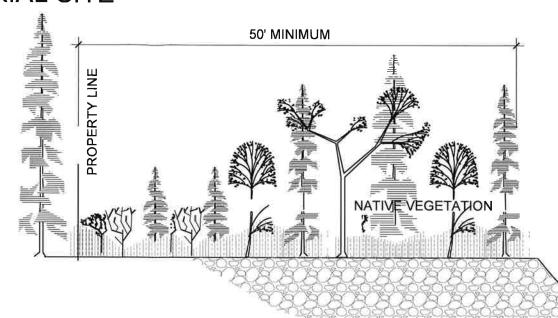






CONDITIONAL LAND USE PERMIT FOR MATERIAL SITE

OWNER/APPLICANT: ATTN: BEN MOHR COOK INLET REGION, INC. P.O. BOX 93330 ANCHORAGE, ALASKA 99509

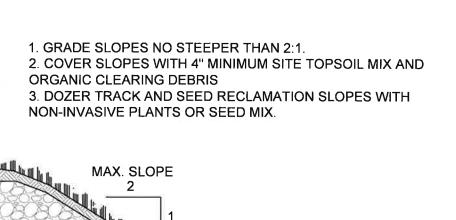


ACTIVE WORK FACE

A

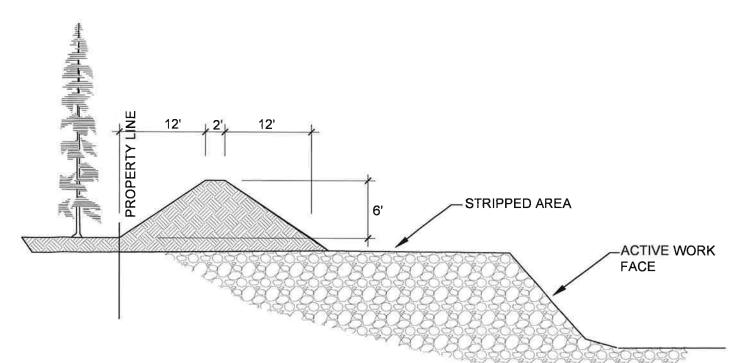
VEGETATION BUFFER

SCALE: 1" = 10 FT.



RECLAMATION SLOPE

SCALE: 1" = 10 FT.



EARTHEN BERM BUFFER

SCALE: 1" = 10 FT.

DESCRIPTION BY

CIRI TIKAHTNU MP 79 - 80 STERLING HWY CONDITIONAL LAND USE PERMIT

McLANE

Consulting Inc

ENGINEERING - TESTING SURVEYING - MAPPING P.O. BOX 468 SOLDOTNA, AK. 99669 VOICE: (907) 283-421 FAX: (907) 283-3265 WWW.MCLANECG.COM

DRAWN BY: BG

HORZ, SCALE: 1" = 500'

SHEET: P3

___8

2021-004891-0

Recording Dist: 302 - Kenai 5/5/2021 01:54 PM Pages: 1 of 1



Return to: Suzanne Settle PO Box 93330 Anchorage, AK 99509-3330

EXTENSION OF CONDITIONAL LAND USE PERMIT FOR MATERIAL EXTRACTION

Pursuant to KPB 21.29, the Kenai Peninsula Borough Planning Department hereby extends for a period of 5 years the conditional land use permit for material extraction described below, subject to the conditions of the said permit and the procedures set forth in KPB code.

Permittee: Cook Inlet Region, Inc. PO Box 93330 Anchorage, AK 99509-3330

Legal Description:

T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4

NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681

Parcel: 065-081-18

Property Owner: Cook Inlet Region, Inc. PO Box 93330 Anchorage, AK 99509-3330

Permit Information: Permit #2017-08

Excavation acreage: Approximately 70.7 Date of issue: 03/27/2017

Recorded as: 2017-006765-0 in the Horner recording district

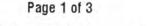
New Expiration date: 3/27/2027

KPB Planning Director: Www. Dis Chille. D.

SEE ORIGNAL PERMIT FOR CONDITIONS



Recording District 302 Kenai 08/31/2017 03:05 PM P





KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2017-08 KENAI RECORDING DISTRICT

A

AS

A resolution granting approval of a conditional land use permit to operate a sand, gravel, or material site for a parcel described as the East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.

- WHEREAS, KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough; and
- WHEREAS, KPB 21.25.040 provides that a permit is required for a sand, gravel or material site; and
- WHEREAS, on February 24, 2017 the applicant, Cook Inlet Region, Inc., submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 065-081-18, which is located within the rural district; and
- WHEREAS, public notice of the application was mailed on March 6, 2017 to the 184 landowners or leaseholders of the parcels within one-half mile of the subject parcel pursuant to KPB 21.25.060; and
- WHEREAS, public notice of the application was published in the March 16, 2017 & March 23, 2017 issues of the Peninsula Clarion; and
- WHEREAS, a public hearing was held at the March 27, 2017 meeting of the Kenai Peninsula Borough Planning Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

- KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a
 permit has been obtained from the Kenai Peninsula Borough.
- 2. KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
- On February 24, 2017 the applicant, Cook Inlet Region, Inc., submitted a conditional land use permit application to the Borough Planning Department for KPB Parcel 065-081-18, which is located within the rural district.
- KPB 21.29 provides that a conditional land use permit is required for material extraction that disturbs more than 2.5 cumulative acres.
- The proposed total disturbed area is approximately 70.7 acres, consisting of two excavation areas of about 33 acres each and a processing area of about 5 acres.
- 6. To meet material site standard 21.29.040(A1), the proposed activity must protect against aquifer disturbance by maintaining a 2-foot vertical separation from the seasonal high water table and by ensuring that no material extraction takes place within 100 horizontal feet of any existing water source.
- 7. The test holes on the property indicate that the ground water is greater than 20 feet below existing grade.
- The applicant's intended depth of excavation is up to 20 feet below the existing grade.
- 9. The site plan indicates that there is a well located within 300 feet of the property but none within 100 feet of the proposed excavation.
- To meet material site standard 21.29.040(A2), the proposed activity must be conducted in a manner to protect against physical damage to adjacent properties by complying with the required permit conditions of KPB 21.29.050.
- 11. To meet material site standard 21.29.040(A3), the proposed activity must be conducted in a manner which minimizes the off-site movement of dust by complying with required permit condition KPB 21.29.050(10), Dust Control.
- 12. The submitted site plan indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
- 13. To meet material site standard 21.29.040(A4), the proposed activity must be conducted in a manner which minimizes noise disturbance to other properties by complying with permit

condition KPB 21.29.050(2), Buffer Zone; KPB 21.29.050(3), Processing; and KPB 21.29.050(11), Hours of Operation.

14. The site plan and application proposes the following buffers:

North: 50-foot vegetated buffer. South: 50-foot vegetated buffer. East: 50-foot vegetated buffer. West: 50-foot vegetated buffer.

These buffers will reduce the noise disturbance to other properties.

- 15. The site plan indicates that material processing will take place greater than 300 feet from the property boundaries. Rock Crushing is not allowed to take place between 10:00 p.m. and 6:00 a.m. These material processing restrictions will reduce the noise disturbance to other properties.
- 16. To meet material site standard 21.29.040(A5), the proposed activity must be conducted in a manner which minimizes visual impacts by complying with the permit condition KPB 21.29.050(2), Buffer Zone.
- 17. The site plan and application proposes the following buffers:

North: 50-foot vegetated buffer. South: 50-foot vegetated buffer. East: 50-foot vegetated buffer. West: 50-foot vegetated buffer.

These buffers will reduce the visual impacts to adjacent properties.

- 18. To meet material site standard 21.29.040(A6), the proposed activity must be conducted in a manner which provides for alternate post-mining land uses by complying with the permit condition KPB 21.29.050(12).
- 19. The applicant has submitted a reclamation plan that omits KPB 21.29.060(C3), which requires the placement of a minimum of four inches of topsoil with a minimum organic content of 5% and precludes the use of sticks and branches over 3 inches in diameter from being used in the reclamation topsoil. These measures are generally applicable to this type of excavation project.
- 20. The inclusion of the requirements contained in KPB 21.29.060(C3) is necessary to meet the material site standard contained in KPB 21.29.040(A6).
- 21. The bonding requirement of KPB 21.29.050(12b) will apply to this material site unless it qualifies for exemption from the state bond requirements pursuant to AS 27.19.050.
- 22. A public hearing of the Planning Commission was held on March 27, 2017 and notice of the meeting was published, posted, and mailed in accordance with KPB 21.25.060 and KPB 21.11.

SECTION 2. That the land use and operations are described and shall be conducted as follows:

- A. A portion of KPB Tax Parcel Number 065-081-18. The material site area within the parcel is approximately 70.7 acres.
- B. The East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.
- C. The applicant, Cook Inlet Region, Inc., proposes to: 1. Extract gravel and sand from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

PERMIT CONDITIONS

- The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall maintain the following buffers:

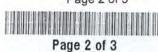
North: 50-foot vegetated buffer. South: 50-foot vegetated buffer. East: 50-foot vegetated buffer.

West: 50-foot vegetated buffer.

These buffers shall not overlap an easement.

- 3. The permittee shall maintain at least a 2:1 slope between the inner buffer zones and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- Rock Crushing shall not take place between 10:00 p.m. and 6:00 a.m.
- The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 6. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 7. The permittee shall not dewater either by pumping, ditching or any other form of draining unless an exemption is granted by the planning commission.
- 8. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 10. The permittee shall notify the planning department of any further subdivision or return to acreage of this parcel. The planning director may issue a written exemption from the permit amendment requirement if it is determined that the subdivision is consistent with the use of the parcel as a

Page 2 of 3



material site and all original permit conditions can be met.

11. The permittee shall apply water or calcium chloride, as needed, on haul roads within the boundaries of the subject parcel.

The permittee shall reclaim the site as described in the reclamation plan for this parcel with the 12. addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning

13. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.

The permittee is responsible for determining the need for any other municipal, state or federal 14. permits and acquiring the same. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.

- 15. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- This conditional land use permit is subject to review by the planning department to ensure 16. compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.

17. Once effective, this conditional land use permit is valid for five years. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BORØUGH ON DAY OF YNAR

> fair J. Martin, Chairberson Planning Commission

Patti Hartley

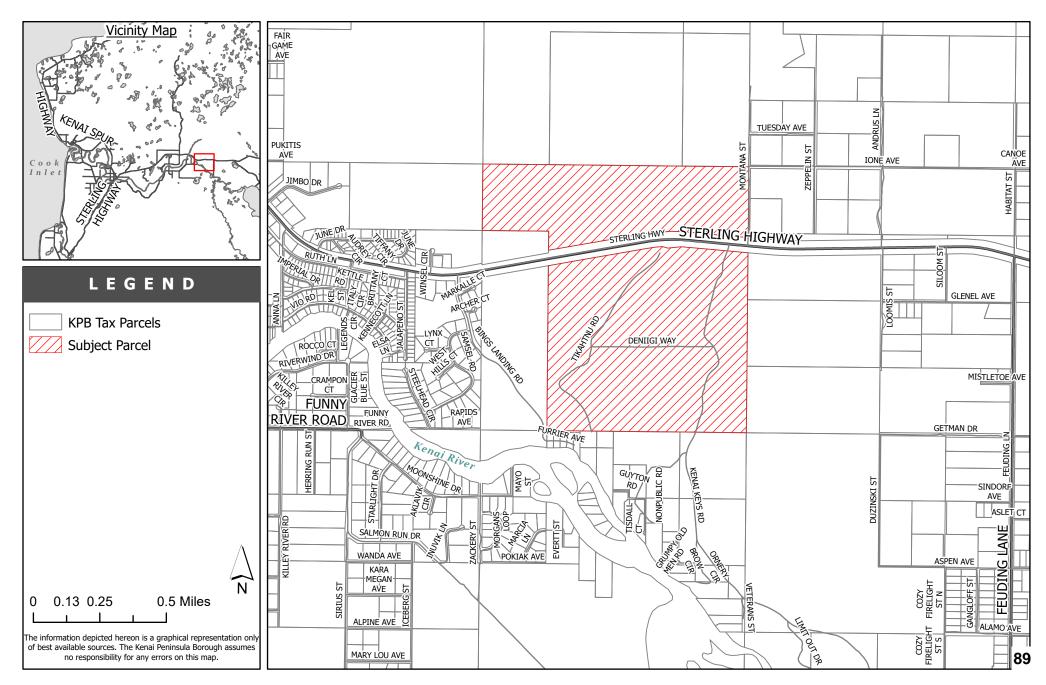
Administrative Assistant

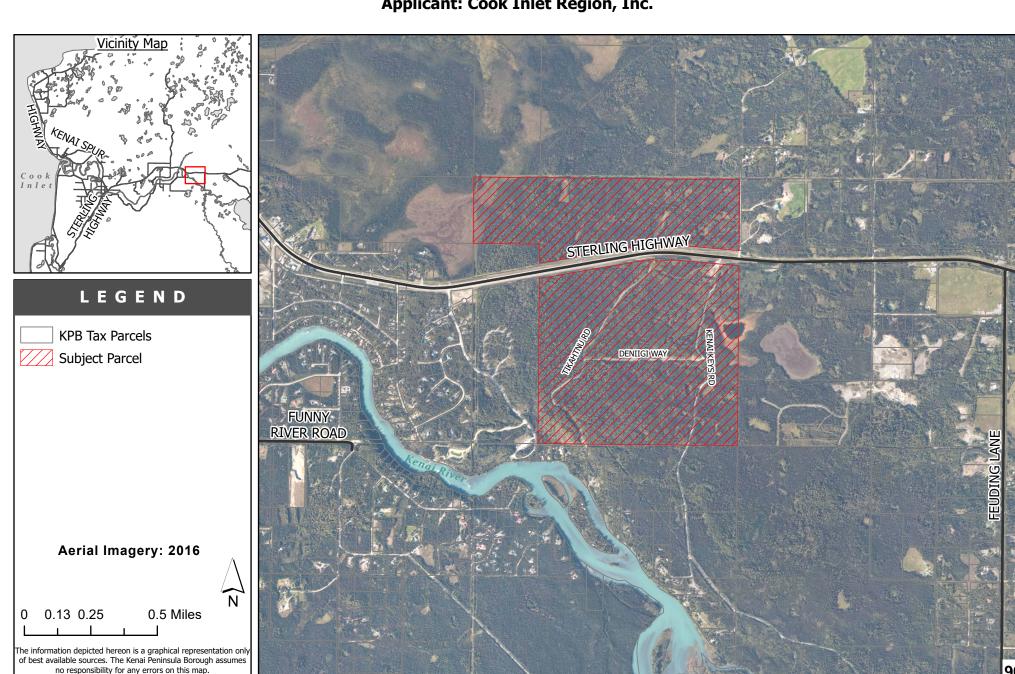
PLEASE RETURN Kenai Peninsula Borough Planning Department 144 North Binkley St. Soldotna, AK 99669

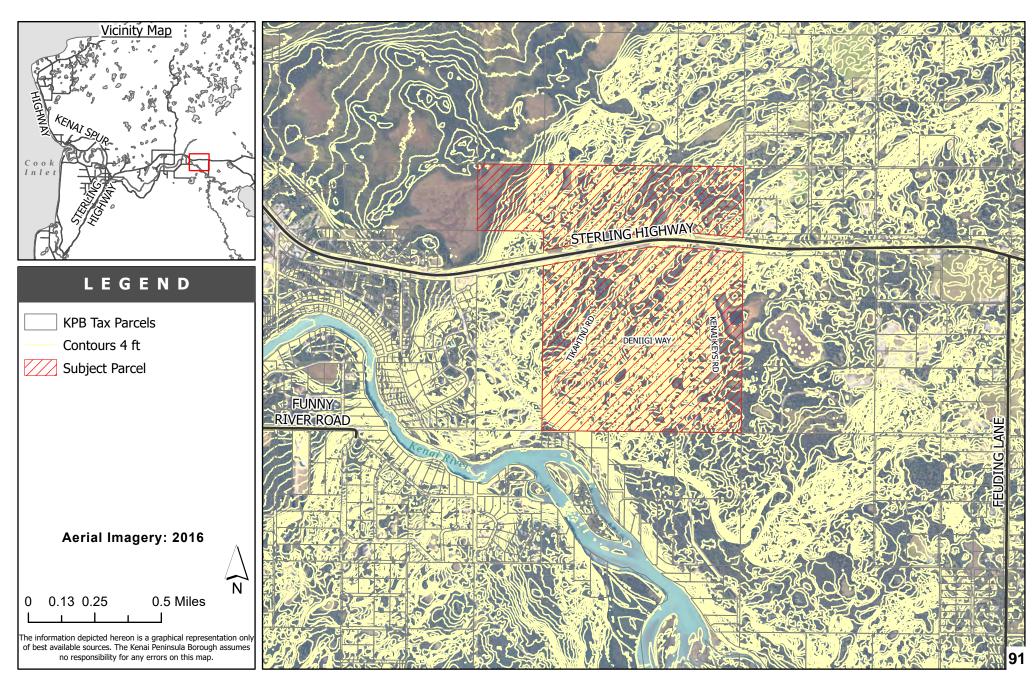
Kenai Peninsula Borough Planning Commission Resolution 2017-08

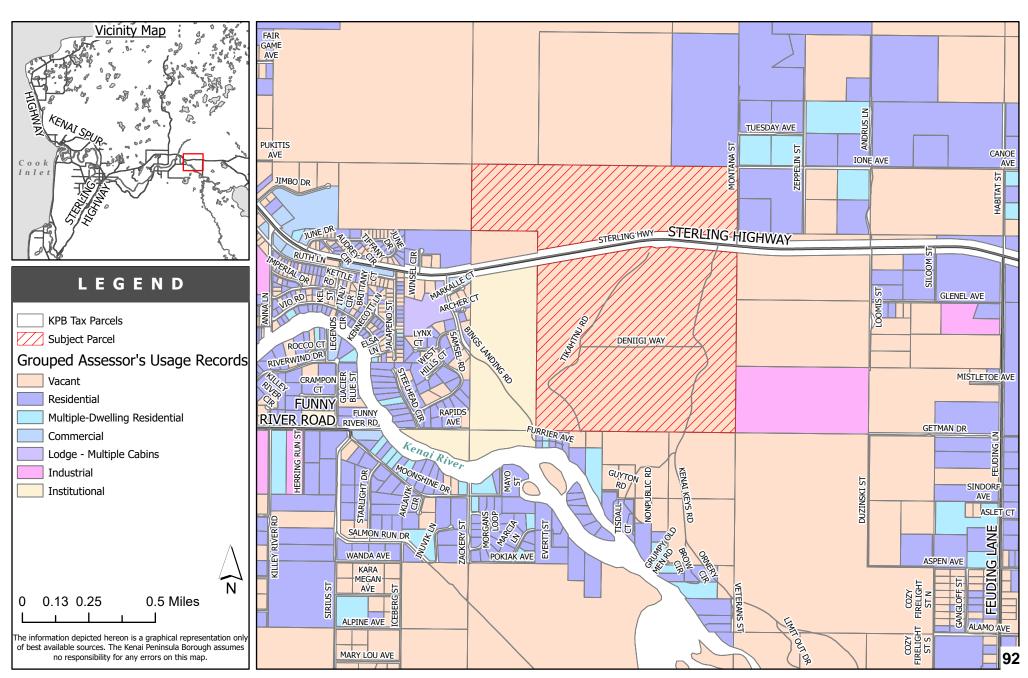
Page 3 of 3

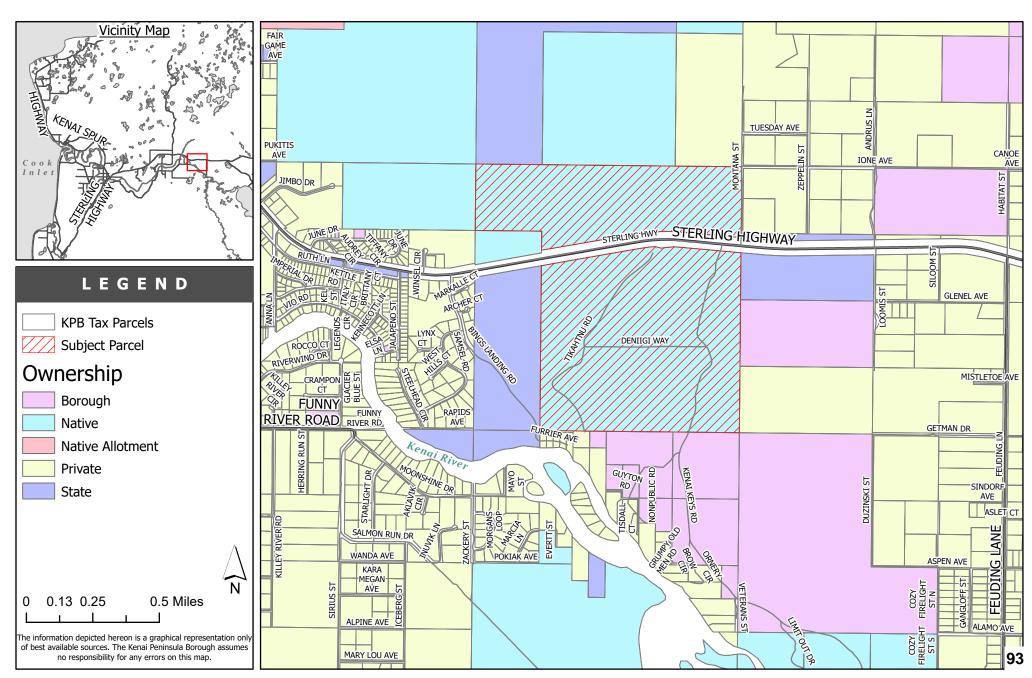












Charlie Pierce Borough Mayor

«OWNER» «ATTENTION» «ADDRESS» «CITYSTATEZIP»

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING

Public notice is hereby given that an application to modify an approved conditional land use permit for material extraction has been received for a parcel in the Soldotna area. This notice is being sent to landowners located within ½ mile of the subject property. All members of the public are invited to comment. Details of the application under consideration are as follows:

Applicant: Cook Inlet Region, Inc. **Landowner:** Cook Inlet Region, Inc.

Parcel Number: 065-081-18

Legal Description: T 5N R 8W SEC 16 SEWARD MERIDIAN KN E1/2 & E1/2 W1/2 & NW1/4

NW1/4 EXCEPT THAT PORTION PER W/D 383 @ 681

Location: Sterling Highway mile 79.5

Proposed Land Use: The applicant wishes to modify an existing material site permit to add

an additional 61 acres to the permitted extraction area.

KPB Code: Conditional land use permit modification applications for material extraction are reviewed in accordance with KPB Code 21.25 and 21.29. Copies of these ordinances are available from the Planning Department or at: www.kpb.us

Public Hearing: A hearing will be held by the Kenai Peninsula Borough Planning Commission to consider the application on **Monday**, **July 12**, **2021**, commencing at 7:30 p.m., or as soon thereafter as business permits.

Please be aware that due to the recent COVID-19 pandemic and based on CDC guidelines, the meeting will not be physically open to the public. Instructions are as follows: The meeting will remain open to the public. The Planning Commissioners, along with staff members, will be attending via teleconferencing. The public will be able to listen or participate with the same methods. The meeting will be held through Zoom. To join the meeting from a computer visit https://zoom.us/j/2084259541. To attend the Zoom meeting by telephone call toll free 1-888-788-0099 or 1-877-853-5247. When calling in you will need the Meeting ID of 208 425 9541. If you connect by computer and do not have speakers or a microphone, connect online and then select

phone for audio. A box will come up with the toll free numbers, the Meeting ID, and your participant number. Instructions will be posted on the Planning Commission's webpage prior to the meeting. https://www.kpb.us/planning-dept/planning-commission

If you have question or experience technical difficulties, please contact the Planning Department at (907) 714-2200.

Public Comment: Those wishing to comment may come to the above meeting to give testimony or may submit a written statement addressed to Planning Commission Chairman, 144 N Binkley St, Soldotna, AK 99669. A statement addressed to the chairman may also be emailed to btaylor@kpb.us. Please provide written statements by Thursday, July 9, 2021.

The staff report will be available on the Planning Commission website a week prior to the meeting. <u>For additional information</u> please call the planning department at <u>(907) 714-2200</u>, or 1-800-478-4441 (toll free within the Borough).

Kenai Peninsula Borough Planning Commission -- July 12, 2021 Modification to Conditional Land Use Permit for a Material Site

MISTLETOE AVE GETMAN TS TATIBAH SINDORF AVE **FEUDING LANE** TR FIOLDINAD GLENEL AVE ASPEN AVE ZŚ SILOOM FIRELIGHT ST N COZK IONE AVE TS SIMOOL ANDRUS LN DUZINSKI ST ZEPPELIN ST TUESDAY AVE VETERANS ST TS ANATHOM ORNERY BROW STERLINGHIGHWAY CIR 98/W WOW DUBLIC RO GUYTON RD TISDALL CT____TO EVERTT ST OYAM T2-POKLAK AVE EINES LANDING RO MOOWSHINEDR ZACKERY ST RAPIDS AVE Kengi TN INNNIK MINSEL CIR ENDS WINSEL KLAVIK MARY LOU AVE ICEBERG ST **WANDA AVE** ALPINE AVE MEGAN AVE KARA AC THOURATS CIR CRAMPON TS BUJB GLACIER-JIMBO DR ıΕÜ HERRING RUN ST KILLEY RIVER CIR NJ ANNA The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map. 0.5 Miles Vicinity Map Z **KPB Tax Parcels** Ш Subject Parcel U m 0.13 0.25

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Applicant: Cook Inlet Region, Inc. Parcels: 065-081-18

Modification to Conditional Land Use Permit for a Material Site

Applicant: Cook Inlet Region, Inc.

Parcels: 065-081-18

b MISTLETOE AVE ASLET TS TATIBAH **FEUDING LN** SINDORF AVE FEUDING LANE ALAMO / GLENEL AVE **GETMAN DR** TS FIOLDINAD **ASPEN AVE** FIRELIGHT N T2 IS MOOTIS FIRELIGHT STS COZY TS SIMOOL ANDRUS LN DNZINSKI ZL LIMIT OUT DR **TEPPELIN ST** ₩. STERLING HWY STERLING HIGHWAY TUESDAY VETERANS ST TS ANATINOM OTO ON NIW KENAI KEYS RD DENIIGI WAY иоиьпвгіс вр TISDALL DA-UNTHANIT EVERTT ST POKIAK AVE 4007 - 6229 1009 OYAM MORGANS MARKALLEY SAMSEL RD RAPIDS AVE ZACKERY ST MOONSHINE DR NS JIH MINIKIN LYNX STEELHEAD MINZEL CIR CIB SALMON RUN DR CEBERG ST MARY LOU AVE TS ONEGALIAL TALABENO ST.

TA WANDA AVE ALPINE AVE KARA MEGAN AVE RIVER RD CT CT CT EVENT AD THOLIARTS RIVER ROAD ROCCO CT L SIRIUS ST JIMBO DR невкійс вии st PUKITIS AVE KILLEY RIVER RD NJ ANNA The information depicted hereon is a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map. Properties within 1/2 mile 0.5 Miles icinity Map Z **KPB Tax Parcels** ш Subject Parcel U Ш 0.13 0.25 0

Kenai Peninsula Borough Planning Commission -- July 12, 2021

KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION 2021-26 KENAI RECORDING DISTRICT

A resolution granting modification to a conditional land use permit for a material site to allow for additional excavation are on property described as the East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way

- WHEREAS, the KPB Planning Commission approved PC Resolution 2017-08 on March 27, 2017, which established a conditional land use permit for material extraction on KPB tax parcel ID# 065-081-18; and
- WHEREAS, on June 22, 2021, the applicant, Cook Inlet Region, Inc., submitted an application to modify the existing conditional land use permit by expanding the area for excavation by 61-acres south of the Sterling Highway within KPB Parcel 065-081-18; and
- **WHEREAS,** KPB Chapter 21.29.090 provides for the modification of material site permits when changes in operations approved in the original permit are proposed; and
- WHEREAS, notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels pursuant to KPB 21.25.060; and
- WHEREAS, public notice of the application was published in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion; and
- WHEREAS, public notice was sent to the postmaster in Sterling requesting that it be posted at the post office; and
- WHEREAS, a public hearing of the Planning Commission was held on July 12, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Planning Commission makes the following findings of fact pursuant to KPB 21.25 and 21.29:

Findings of Fact

- Procedural Findings.
 - A. KPB 21.25 allows for land in the rural district to be used as a sand, gravel or material site once a permit has been obtained from the Kenai Peninsula Borough.
 - KPB 21.29 governs material site activity within the rural district of the Kenai Peninsula Borough.
 - C. On March 27, 2017, the planning commission passed resolution 2017-08, which approved a conditional land use permit to Cook Inlet Region, Inc., for material extraction on KPB tax parcel #065-081-18.
 - D. On June 22, 2021, Cook Inlet Region, Inc., submitted to the KPB Planning Department an application to modify its existing conditional land use permit for parcel #065-081-18 to add an additional 61-acre excavation area.
 - E. A public hearing of the planning commission was held on July 12, 2021, and notice of the application was mailed on June 22, 2021, to the 255 landowners or leaseholders of the parcels within one-half mile of the subject parcels. Public notice was sent to the postmaster in Sterling requesting that it be posted at the Post Office. Public notice of the application was scheduled for publication in the July 1, 2021, & July 8, 2021, issues of the Peninsula Clarion.
 - F. Compliance with the mandatory conditions in KPB 21.29.050, as detailed in the following findings, necessarily means that the application meets the standards contained in KPB 21.29.040.
- Parcel boundaries. KPB 21.29.050(A)(1) provides that all boundaries of the subject parcel shall
 be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the
 excavation perimeter.
 - A. Permit condition number 1 requires the placement of stakes. Borough staff has inspected the proposed site. With the original permit, the property boundaries near

proposed excavation areas in the original permit were flagged.

- 3. Buffer zone. KPB 21.29.050(A)(2) provides that a buffer zone shall be maintained around the excavation perimeter or parcel boundaries.
 - A. Permit condition number 2 requires that the permittee maintain the following buffers for each excavation area identified on the site plan that will provide visual and noise screening to adjacent properties:
 - 50 feet of undisturbed natural vegetation with additional 6-foot earthen berms around the expanded 61-acre excavation area.
- 4. *Processing*. KPB 21.29.050(A)(3) provides that any equipment which conditions or processes material must be operated at least 300 feet from the parcel boundaries.
 - A. The original permit site plan indicates a 4.8-acre processing area that is located greater than 300 feet from the parcel boundaries. Borough staff will regularly monitor the material site to ensure compliance with this setback requirement.
- 5. Water source separation. KPB 21.29.050(A)(4) provides that all permits shall be issued with a condition that prohibits any material extraction within 100 horizontal feet of any water source existing prior to original permit issuance. Excavation within the water table shall not be within 300 feet of a water source. There shall be no dewatering by either pumping, ditching or some other form of draining without an exemption from the planning commission. In the event an exemption is granted, the contractor must post a bond for liability for potential accrued damages.
 - a. The site plan shows no wells within 300 feet of an excavation area.
 - Borough staff will regularly monitor the material site to ensure compliance with the twofoot vertical separation from the water table requirement.
- 6. Excavation in the water table. KPB 21.29.050(A)(5) provides that excavation in the water table greater than 300 horizontal feet of a water source may be permitted with the approval of the planning commission.
- a. This modification does not seek and exemption to excavate within the water table.
 7. Waterbodies. KPB 21.29.050(A)(6) provides that an undisturbed buffer shall be left and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains. In order to prevent discharge, diversion, or capture of surface water, an additional setback from lakes, rivers, anadromous streams, and riparian wetlands may be required.
 - a. There are no water bodies within 100 feet of the proposed extraction.
- 8. Fuel storage. KPB 21.29.050(A)(7) provides that fuel storage for containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
 - Borough staff will regularly monitor the material site to ensure compliance with this condition.
- Roads. KPB 21.29.050(A)(8) provides that operations shall be conducted in a manner so as not to damage borough roads.
 - a. The original permit indicates that the material site haul route is Deniigi Way and Kenai Keys Road to Sterling Highway. The modified site plan also indicates a new secondary access directly to Sterling Highway. The permittee must provide dust suppression to the portion of the haul route that is located on site.
- Subdivision. KPB 21.29.050(A)(9) provides that any further subdivision or return to acreage of a
 parcel subject to a conditional land use or counter permit requires the permittee to amend their
 permit.
 - Borough planning staff reviews all subdivision plats submitted to the Borough to ensure compliance with this requirement.
- 11. Dust control. KPB 21.29.050(A)(10) provides that dust suppression is required on haul roads within the boundaries of the material site by application of water or calcium chloride.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
- 12. Hours of operation. KPB 21.29.050(A)(11) provides that rock crushing equipment shall not be operated between 10:00 p.m. and 6:00 a.m.
 - a. If Borough staff becomes aware of a violation of this requirement, action will be taken to ensure compliance.
- 13. Reclamation. KPB 21.29.050(A)(12) provides that reclamation shall be consistent with the reclamation plan approved by the planning commission. The applicant shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement shall not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
 - a. No modification of the reclamation plan was proposed. As in the original permit, the permittee shall reclaim the site as described in the reclamation plan for this parcel with the addition of the requirements contained in KPB 21.29.060(C3) and as approved by the planning commission.
 - Borough staff will inspect the material site once the reclamation has been completed to ensure compliance with the reclamation plan.
- 14. Other permits. KPB 21.29.050(A)(13) provides that permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits.

- Any violation federal, state or local laws, applicable to the material site operation, reported to or observed by Borough staff will be forwarded to the appropriate agency for enforcement
- 15. Voluntary permit conditions. KPB 21.29.050(A)(14) provides that conditions may be included in the permit upon agreement of the permittee and approval of the planning commission.
 - a. In addition to the 50-foot vegetation buffer, 6-foot earthen berms will be placed around the 61-acre expanded extraction area.
- 16. Signage. KPB 21.29.050(A)(15) provides that for permitted parcels on which the permittee does not intend to begin operations for at least 12 months after being granted a conditional land use permit, the permittee shall post notice of intent on parcel corners or access.
 - a. Borough staff will regularly monitor the material site to ensure compliance with this condition

SECTION 2. That the material site operations are described and shall be conducted as follows:

- A. A portion of KPB Tax Parcel Number 065-081-18. The expanded material site area overall within the parcel is approximately 131.7 acres.
- B. The East ½, the East ½ of the West ½, and the Northwest ¼ of the Northwest ¼, of Section 16, Township 5 North, Range 8 West, Seward Meridian, Alaska, excluding the Sterling Highway right-of-way.
- C. The applicant, Cook Inlet Region, Inc., proposes to: 1. Extract gravel and sand from the subject parcel; 2. Reclaim the site to a stable condition upon depletion of material.

SECTION 3. That the existing permit conditions are hereby replaced by the following:

PERMIT CONDITIONS

- 1. The permittee shall cause the boundaries of the subject parcel to be staked at sequentially visible intervals where parcel boundaries are within 300 feet of the excavation perimeter.
- 2. The permittee shall maintain the following buffers around the excavation perimeter or parcel boundaries as shown in the approved site plan:

Northern, southern, eastern, and western boundaries - 50 feet of undisturbed natural vegetation. The addition of a 6-foot earthen berm around the perimeter for the 61-acre expanded extraction area.

These buffers shall not overlap an easement.

- 3. The permittee shall maintain a 2:1 slope between the buffer zone and pit floor on all inactive site walls. Material from the area designated for the 2:1 slope may be removed if suitable, stabilizing material is replaced within 30 days from the time of removal.
- 4. The permittee shall not allow buffers to cause surface water diversion which negatively impacts adjacent properties or water bodies.
- 5. The permittee shall not operate any equipment which conditions or processes material within 300 feet of the property boundaries.
- The permittee shall not extract material within 100 horizontal feet of any water source existing prior to issuance of this permit.
- 7. The permittee shall maintain a 2-foot vertical separation from the seasonal high water table.
- 8. The permittee shall maintain an undisturbed buffer, and no earth material extraction activities shall take place within 100 linear feet from a lake, river, stream, or other water body, including riparian wetlands and mapped floodplains.
- 9. The permittee shall ensure that fuel storage containers larger than 50 gallons shall be contained in impermeable berms and basins capable of retaining 110 percent of storage capacity to minimize the potential for uncontained spills or leaks. Fuel storage containers 50 gallons or smaller shall not be placed directly on the ground, but shall be stored on a stable impermeable surface.
- 10. The permittee shall conduct operations in a manner so as not to damage borough roads as required by KPB 14.40.175, and will be subject to the remedies set forth in KPB 14.40 for violation of this condition.
- 11. The permittee shall notify the planning department of any further subdivision or return to acreage of this property. Any further subdivision or return to acreage may require the permittee to amend this permit.
- 12. The permittee shall provide dust suppression on haul roads within the boundaries of the material site by application of water or calcium chloride.
- 13. The permittee shall reclaim the site as described in the reclamation plan for this parcel and as approved by the planning commission.
- 14. The permittee shall post a bond to cover the anticipated reclamation costs in an amount to be determined by the planning director. This bonding requirement does not apply to sand, gravel or material sites for which an exemption from state bond requirements for small operations is applicable pursuant to AS 27.19.050.
- 15. The permittee is responsible for complying with all other federal, state and local laws applicable to the material site operation, and abiding by related permits. These laws and permits include, but are not limited to, the borough's flood plain, coastal zone, and habitat protection regulations, those state laws applicable to material sites individually, reclamation, storm water pollution and other applicable Environmental Protection Agency (EPA) regulations, clean water act and any other U.S. Army Corp of Engineer permits, any EPA air quality regulations, EPA and ADEC

- water quality regulations, EPA hazardous material regulations, U.S. Dept. of Labor Mine Safety and Health Administration (MSHA) regulations (including but not limited to noise and safety standards), and Federal Bureau of Alcohol, Tobacco and Firearm regulations regarding using and storing explosives.
- 16. The permittee shall operate in accordance with the application and site plan as approved by the planning commission. If the permittee revises or intends to revise operations so that they are no longer consistent with the original application, a permit modification is required in accordance with KPB 21.29.090.
- 17. This conditional land use permit is subject to review by the planning department to ensure compliance with the conditions of the permit. In addition to the penalties provided by KPB 21.50, a permit may be revoked for failure to comply with the terms of the permit or the applicable provisions of KPB Title 21. The borough clerk shall issue notice to the permittee of the revocation hearing at least 20 days but not more than 30 days prior to the hearing.
- 18. The modification does not change the effective date of the permit. The conditional land use permit is valid for five years from the effective date of the original permit. A written request for permit extension must be made to the planning department at least 30 days prior to permit expiration, in accordance with KPB 21.29.070.

ADOPTED BY THE PLANNING COMM	IISSION OF THE KENAI PENINSULA BOROUGH C
THISDAY OF	, 2021.
	Blair J. Martin, Chairperson
ATTEST:	Planning Commission
Ann Shirnberg	
Administrative Assistant	
PLEASE RETURN Kenai Peninsula Borough	

Planning Department 144 North Binkley St. Soldotna, AK 99669

Taylor, Bryan

From: Eric F. Rosenberg < ERosenberg@rosenberg-fayne.com>

Sent: Thursday, July 1, 2021 9:08 AM

To: Taylor, Bryan

Subject: <EXTERNAL-SENDER>Fwd: Commnets on 065-081-18

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Can you confirm receipt.

Eric F. Rosenberg Rosenberg & Fayne 5400 Kenilworth Avenue Riverdale, Maryland 20737 301-864-2900 301-864-2903--fax 301-980-5598--mobile erosenberg@rosenberg-fayne.com

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Begin forwarded message:

From: "Eric F. Rosenberg" < ERosenberg@rosenberg-fayne.com>

Date: June 30, 2021 at 9:03:57 AM AKDT

To: btaylor@kpb.com

Cc: Rick Scheifelbien <rick@anchorconstruction.info>, Meatzbart@aol.com, Christine Price

<4rosenbergs@gmail.com>

Subject: Commnets on 065-081-18

Chairman Blair Martin Kenai Peninsula Borough Peninsula Planning Board

Re: 065-081-18 Cook Inlet Region, inc

Dear Chairman Martin:

I am writing you with regard to the proposal to allow CIR to expand the gravel pit directly in eye sight and down from the commercial property I own and operate at 3235 Moonshine Drive, Soldotna, Alaska 99669. This project is in Full view of my commercial property and not a single person though to reach out which is deep concerning to me how this process is being undertaken.

This expansion is a poor idea for the following reason and needs to be rejected outright.

- 1. My property elevation is 292 feet and would look directly into the Pit in violation of 21.29 and is a visual disturbance that cannot be abated. No one has taken the time to evaluate these issues prior to an expansion request which is disturbing at best but shows putting profits over people. I trust my rights, are equal to those of others and if that is accurate, there can be no way to approve the expansion without suggesting, there is favoritism to CIR. Are you not troubled by the lack of preparation? How hard would it have been to travel to affected areas beforehand and talk to us. It tells me that someone is rushing or undue influence is in play. I am interested in the influence CIR has over the board or its independence but before I go asking these questions, I will allow you time tp respond.
- 2. My property can already hear the traffic from Sterling Highway. A gravel pit will amplify the sounds and there is no noise abatement that can be done to rectify this. Has the audio calculation been done pursuant to the federal MSHA guidelines? Again, why hasn't anyone asked for the effects of the noise. Are you concerned about the PIT noise to residents or the river and wildlife or has that been overlooked. Again, is this profits over people? When is someone going to come and do the audio testing or is that not a requirement?
- 3. I can tell you from personal experience that any ground disturbance within .75 miles of the river causes major wash outs on the bluff. Are you concerned what a washout or an environmental hazard could cause and damage the River. What environmental studies have been done on the issues of noise, accidents, and traffic. The Kenai River is famous and in pristine condition, why is the Board willing to take a chance on a project so close to the River and risk it. I am worried that there is something else going on that we would approve a project so close to our most Prized River. Please do not let a quick dollar influence the decision to risk Nature. Does the board want to over look the River and what it means to Alaska? What is the point of expanding the road to Kenai if you are going to risk destroying the River? What is being done to prevent environmental issues? There are others areas to get gravel that can benefit CIR, please vote to have them use their other subsidies.

I ask that you reject this project as it cannot be done with any acceptable risk and my Rights are Equal to others and there is no way to follow the statutory requirements. What about my neighbors and the issues that they have?

Should this project not be rejected I will file an Injunction in Federal Court for the Environmental Concerns and in State Court for breaches of my right to Quiet Enjoyment so I would ask that you pass this along to the Project Manager who didn't think to even contact the folks most affected in Soldotna let alone Sterling.

Please done allow Profits to Come before People..

I am available anytime to discuss this further.

I can be reached at 301-980-5598.

Eric F. Rosenberg

Eric F. Rosenberg Rosenberg & Fayne LLP 5400 Kenilworth Avenue Riverdale, Maryland 20737 Telephone: (301) 864-2900 Facsimile: (301) 864-2903

ERosenberg@rosenberg-fayne.com www.rosenberg-fayne.com



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Taylor, Bryan

From: Mark and Cindy <mrhceh@gci.net>
Sent: Wednesday, July 7, 2021 10:23 PM

To: Taylor, Bryan; Hibbert, Brent; Derkevorkian, Richard; Bjorkman, Jesse; Cox, Tyson; Elam,

Bill; Carpenter, Kenn; Johnson, Brent; Ichesle@kpb.us; Dunne, Willy; Pierce, Charlie

Cc: Niki Pereira; cindy Hamlin E; stutzer@gci.net

Subject: <EXTERNAL-SENDER>Land Use Permit for Material Extraction - Sterling Highway mile

79.5

Attachments: Gravel Pit 2021.docx

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Kenai Peninsula Borough Planning Commission Chairman, Assembly Members, and Mayor:

Thank you for notifying us by US Postal Service mail, at our primary residence in Anchorage, regarding the Cook Inlet Region, Inc. application to modify an approved conditional land use permit for material extraction near our recently constructed home in Sterling. The information in the letter has taken us by surprise as we were never informed, nor given any opportunity to comment about the original land use permit that was granted in this area for material extraction.

For the past 28 years, we have enjoyed recreating on the property at West Hills Court and the beautiful surrounding area. So much so that we decided to build a home on the property and make it part of our retirement plan. Construction on our home at West Hills Court was completed in March 2018 and we have been residing there on a part-time basis for vacations, weekends and holidays year round. Upon my retirement in September 2022, our plan was to downsize from our home in Anchorage and relocate to our home in Sterling. Your public notice letter has come as a shock to us. An expansion of a material extraction project (gravel pit) near our home will threaten our financial investment and disrupt our dream of a safe, quiet, peaceful retirement.

We have many questions and concerns about this short-notice request to expand the "material extraction" site. Two weeks notice for public comment is unfair and insufficient. Have there been any studies performed regarding noise, air quality, water/well disruption, roadway degradation, traffic hazards, impact on wildlife, fisheries, the river? Why is an Alaska Native corporation harvesting gravel from this beautiful, pristine area? Isn't there another area with less impact on people, fish, wildlife, the river? One of CIRI's values includes "honor - do the right thing the right way. Honor is the heartbeat of the company." This project doesn't align with honor and isn't prudent stewardship of Alaska resources?

We join our Bing's Landing Subdivision neighbors (see attachment) and strongly object to the application to modify (expand) the land use permit for material extraction for the parcel number 065-081-18. Please consider our concerns and please be prepared to respond to our questions at the upcoming public hearing scheduled July 12, 2021 at 7:30pm via Zoom.

Thanks for your time and attention to this important matter.

Respectfully submitted, Cindy E. Hamlin and Mark R. Hughes 32177 West Hills Court Sterling, AK 99672

Taylor, Bryan

From: Claire Lewis <siwela.claire@gmail.com>
Sent: Thursday, July 8, 2021 11:42 AM

To: Taylor, Bryan

Cc: Aeschliman, Melanie; Elam, Bill; ray@longlivethekings.com; krpga1@gmail.com;

ben@krsa.com; shannon@krsa.com; Planning Dept,; kakillian@att.net

Subject: <EXTERNAL-SENDER>Fwd: Kenai Borough Planning 7/12/21 Meeting Agenda Parcel

Number 065-081-18

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Subject: Kenai Borough Planning 7/12/21 Meeting Agenda Parcel Number 065-081-18

July 8, 2021

Brian Taylor, Borough Planner Kenai Peninsula Borough 144 N. Binkley St. Soldotna, AK, 99669

Dear Brian,

This is a request to delay the planned agenda item at the Borough Planning meeting scheduled Monday, July 12th at 1930. My husband and I received our notification on 6/24/21 in the mail, since our home is in Anchorage, yet we own two undeveloped acres in the Bings Landing Subdivision. Our lots are within a ½ mile of the planned gravel/ "material extraction" from 61+ acres. The time line of 2 ½ weeks from when we received our letter, is not enough time to voice concerns for this planned development by CIRI.

Our current Anchorage home is on well and septic and water preservation is dear to our neighbors and us. We live within a ½ mile of a past gravel excavation that took place in the 1970's, in the now neighborhood called Westpark Subdivision. It is unknown if our well water is linked to the 7+acre aquifer that was exposed during the 1970s gravel mining in Westpark; yet, many reports and data collection exist due to this aquifer exposure and wells impacted. In the 1970s, 2 private wells noticed sediment and contamination that occurred within weeks of gravel excavation in Westpark. When the gravel excavation went below the water table, disturbing the clay/soil/ and sand layers, their clear well water turned, brown, silty and sandy within weeks of excavation. I understand the developer did not intend harm to drinking water, yet it happened.

When my husband and I met 4 years ago with other Bings Landing neighbors, we expressed concern for the potential impact to well water to the CIRI, Kenaitze Tribe, and Foster Brother representatives (all reaping the benefit of money from the most recent gravel excavation). Our concern for impact to well water with "material excavation"/gravel has **Not** changed.

The meeting delay request, is so all stakeholders concerned by this development have time to gather information and voice concerns. I have cc:d key members of the Borough and other Kenai River water stewards in this letter. Presumably, these below members do not drink water from the Kenai River; however, their enjoyment of the Kenai River via fishing guide services and preservation of the river is at risk of impaction by noise, erosion of the embankment, and other known side effects when this proposed extensive gravel excavation takes place nearby.

We cannot personally afford to legally fight CIRI on their proposed development, but the Kenai Borough can and should be observant of existing home/Well owners, land owners, and Kenai River users, (all tax payers to the Borough), and take time to listen to concerns before bulldozing the issue forward. Again, we ask the meeting be delayed, and necessary time outside the busy summer season, be given to concerned citizens impacted by the proposed development.

Respectfully,

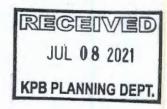
Claire and Dan Lewis

Land owners of Bings Landing Sub Part 1 Lot 1 and 6, Blk 3 907-306-6978

cc: Melanie Aeschliman, Planning Director, Kenai Borough
Bill Elam, Assembly Representative, Bings Landing
Ray Debardelaben, President of Kenai River Professional Guide Association/KRPGA
Ben Mohr, Director of Kenai River Sports Fishing Association/ KRSA
Shannon Martin, KRSA

and Ken Sterling, Bings homeowner (whose 7/8 submitted letter we support!!)

July 8, 2021



Melanie Aeschliman, Planning Director Brian Taylor, Borough Planner Kenai Peninsula Borough 144 N. Binkley St. Soldotna, AK. 99669

Cc: Jeremy Brantley PO Box 1444 Soldotna, AK. 99669

We, some residents of the Bing's Landing subdivision, are writing to you to ask for a postponement of agenda item E.9 on July 12th, Conditional Land Use Permit Modification, Parcel ID #06508118.

The first permit issued several years ago was highly contested by surrounding residents. After many meetings with CIRI and Foster Construction where our concerns were placated then never fully addressed, the borough planning commission forged ahead and released the permit. Now CIRI has come back with plans to grow the gravel pit.

We have MANY concerns with the borough process and timeline from permit application to public notice and, finally, permit approval. This permit application was filed on June 22, 2021. Public notice started hitting mailboxes near the end of June and into the first of July. The planning commission meeting to address the permit is July 12, 2021. The brief timing of this, from application to approval, is no small matter! We are the residents saddled with the impact of this for many years. It's rare you will find a lawyer among us. We are common citizens who have worked hard, and many have put their life savings into where we live and our preferred way of living in this quiet, pristine area. WE CANNOT MOUNT A PROPER RESPONSE TO THESE ASSAULTS ON OUR WAY OF LIVING IN LESS THAN THREE WEEKS!!!

This permit application comes at the beginning of our busiest season for us common folks! It's summer. The fish are coming in. Families are coming in. Many of us travel around our state to enjoy the short summer we experience up here. Even the planning commission takes time off from its' duties in the summer to do the very thing we are trying to do. We write this letter to you on Thursday before the upcoming meeting on Monday. It took us this long to get a few of our ducks in a row just to mount a request for a postponement. We are asking you to postpone this until AT LEAST August. September would be better as that moves us more out of the busy summer season.

Our concerns related to the permit you originally extended to CIRI for the original gravel pit were brushed aside; the noise, the dust, the water table issues, etc. It is our understanding that

residents surrounding the big gravel pit south of us (used to facilitate roadwork) are having well and water problems. We are in the process of verifying that information. This was one of our biggest concerns. If true, the borough is complicit in approving material extraction sites without allowing enough time for testing, environmental and other impact studies, nor the requirement thereof.

We Alaskans hate zoning and regulation. However, when our elected and appointed official's side with business in a way that excludes or minimizes the impact to residential and recreational users, we must address it. This issue happens all over the Kenai Peninsula Borough and in other non-incorporated areas of Alaska.

There is plenty of gravel in areas that are not adjacent to residential and pristine designated recreational areas. We understand they are more expensive to utilize, but something must give here. We, the taxpayers of this borough, need more of an opportunity to have a voice in what happens around us.

In addition to all the above-mentioned issues, this upcoming meeting is not even available for face-to-face public comment. It is now only open to phone or zoom as an option. Many of us do not have capability for zoom meetings. Hearing our voices over the phone reduces the impact of our testimony as you do not have the capability to see our facial expressions. Just because the meeting room was occupied the night of the planning commission meeting does not excuse you from making accommodations for the public to address you personally.

We are imploring you to give this permit application more time before approving it. The borough's rules do not give sufficient time to mount a defense against one of the biggest corporation's in Alaska. It's time to decide who you serve, the small taxpayers, or the big corporations?

Please postpone this meeting at least one month, if not two!

Ken Killian Bing's Landing Subdivision Sterling, Alaska 90チ- るるマー6188

Bing's Landing Subdivision Sterling, Alaska

Name Lisa Smith	Signature
Address 37220 Steelhead Cio Sterling, AR 99672	rle
Die 801-372-4479 bdilish @ gmail. wm	
Name	Signature
Address	
Phone	Email

Name Yulia Vasilyeva	Signature Re
Address 32/23 WH:115 CE.	Sterling AL
Phone <u>925-588-4144</u>	Sterling AL Email UL: tracs6cp6601, m
Name Alexei Wassiller	Signature /
Address 32123 W HILB Ct SI	erling AK
Phone 408 - 772 - 0406	Email accessiver & Shoplobaline
	Signature
Address	
Phone	Email
Name	Signature
Address	<u></u>
Phone	Email
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Email

•	· Int
Name Tim and Denise Mai	Signature Seuse Mat
Address 37865 Books	ed Steelhead Ct
Phone (907) 2607564	Email Inactin & Vele. Net
Name John & Lind: Holson	Signature Linda Hodson
Address 3:15+ Rapies GY	е
	Email wehodone grail, com
Name ROBERT PERFORM	Signature Int CIR STERLING AL 9967 Z
Address 37198 S(REE)(ITCH)	CIL STRUCTURE THE GLOT E
Phone (907) 830-0888	Email fishcrazy@reagon.com
Name Niki Pereira	Signature MikiPercia
Address 37195 Steellwad Ci	r. Sterling, AK 99672
Phone 907-830-6543	Email <u>niklnuk@gci.net</u>
Name	Signature
Address	
Phone	Email
Name	
Address	
Phone	Email

Name Charles K. Clasby Signature Market	ly
Address 32167 West Hills Ct. Sterling, AK 996	22
Phone 907-230-05/L Email Calman. CK @gmail.	Com
Name Larel Schiefe / beis Signature Land Schiefe	
Address 37105 Steelhead Circle Sterling, AK 9	9672
Phone 907-260-3577 Email Karol 3510 0 Hot	mil.com
Name Richard Shiefelbein Signature R. I I I I I	
Address 37/05 Streethers Circle Storling, AK	
Phone 907 260-3577 Email Nicko Packer Constru	etin info
Name Kathleen G. Fagle Signature Kathlen Co.	hall
Address 37065 Steelhead arcke Sterling AK	99672
Address 37065 Steelhead Circle Sterling AK Phone 916-539-1342 Email Kgfbgle 1951@g	mail.com
Name Ken Killian Signature Kennet Killian	
Address 37468 SAMSEL Rd STERKING AL 99672	
Address 37468 SAMSEL 7d STERKING AL 99672 Phone 907-332-6188 Email **AKILIAN @ ATT. No.	oT
Name Signature	
Address	
Phone	

Subject:

Land Use Permit for Material Extraction - Sterling Highway mile 79.5

Date:

Wednesday, July 7, 2021 at 10:22:31 PM Alaska Daylight Time

From:

Mark and Cindy

To:

btaylor@kpb.us, bhibbert@kpb.us, rderkevorkian@kpb.us, jbjorkman@kpb.us,

tysoncox@kpb.us, belam@kpb.us, kcarpenter@kpb.us, bjohnson@kpb.us, lchesle@kpb.us,

wdunne@kpb.us, cpierce@kpb.us

CC:

Niki Pereira, cindy Hamlin E, stutzer@gci.net

Attachments: Gravel Pit 2021.docx

Kenai Peninsula Borough Planning Commission Chairman, Assembly Members, and Mayor:

Thank you for notifying us by US Postal Service mail, at our primary residence in Anchorage, regarding the Cook Inlet Region, Inc. application to modify an approved conditional land use permit for material extraction near our recently constructed home in Sterling. The information in the letter has taken us by surprise as we were never informed, nor given any opportunity to comment about the original land use permit that was granted in this area for material extraction.

For the past 28 years, we have enjoyed recreating on the property at West Hills Court and the beautiful surrounding area. So much so that we decided to build a home on the property and make it part of our retirement plan.

Construction on our home at West Hills Court was completed in March 2018 and we have been residing there on a part-time basis for vacations, weekends and holidays year round. Upon my retirement in September 2022, our plan was to downsize from our home in Anchorage and relocate to our home in Sterling. Your public notice letter has come as a shock to us. An expansion of a material extraction project (gravel pit) near our home will threaten our financial investment and disrupt our dream of a safe, quiet, peaceful retirement.

We have many questions and concerns about this short-notice request to expand the "material extraction" site. Two weeks notice for public comment is unfair and insufficient. Have there been any studies performed regarding noise, air quality, water/well disruption, roadway degradation, traffic hazards, impact on wildlife, fisheries, the river? Why is an Alaska Native corporation harvesting gravel from this beautiful, pristine area? Isn't there another area with less impact on people, fish, wildlife, the river? One of CIRI's values includes "honor - do the right thing the right way. Honor is the heartbeat of the company." This project doesn't align with honor and isn't prudent stewardship of Alaska resources?

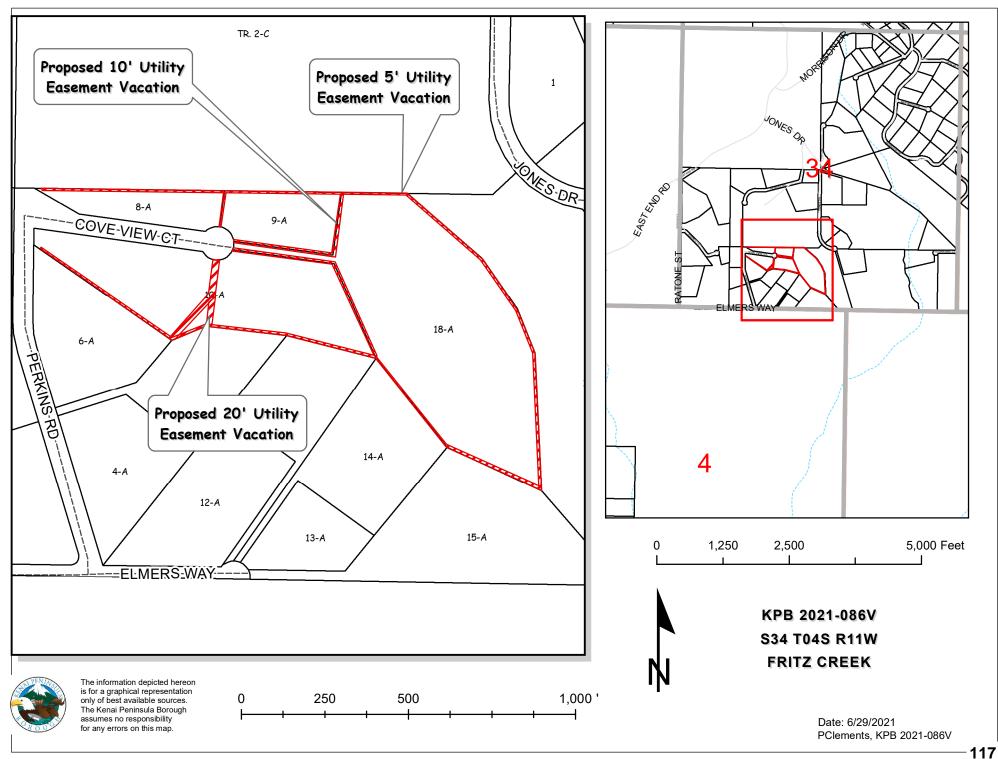
We join our Bing's Landing Subdivision neighbors (see attachment) and strongly object to the application to modify (expand) the land use permit for material extraction for the parcel number 065-081-18. Please consider our concerns and please be prepared to respond to our questions at the upcoming public hearing scheduled July 12, 2021 at 7:30pm via Zoom.

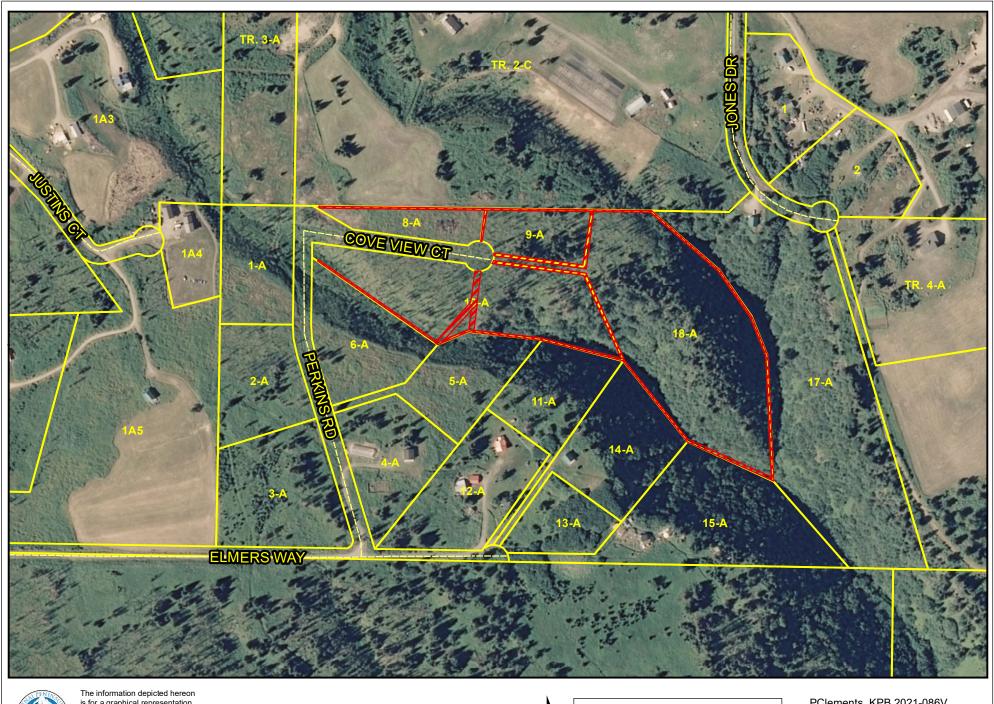
Thanks for your time and attention to this important matter.

Respectfully submitted, Cindy E. Hamlin and Mark R. Hughes 32177 West Hills Court Sterling, AK 99672

Name Lary L. Bailey	Sterling AK 99677
Address Po Box 1265	Sterling AK 99677
	Email 94h7772@hotmail.com
Name Roxie Little	Signature Que Sittle Sterling. Of 9967
Address 2 1432 Somwell	locations and and
Phone 363 COSO	Email 105 FOX 3 D. 9 Mail.
Name David Skieens	Signature
Address PO Box 421 Sterling	AK 99672
Phone 907 242 1343	
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Email

Name Permy Hershberger	Signature B74
Address 37060 Steel head Circ	Le Sterling AK 79672
Phone 330-827-1622	Email plhersh 60 egnall. com
Name Linda Hershberger	Signature Linda Herskberger
Address 37060 Steelhead Circl	e Sterling AK 99672
Phone 330 827 1024	Email Ichershlosagmail.com
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Email
Name	Signature
Address	
Phone	Fmail







The information depicted hereon is for a graphical representation only of best available sources. The Kenai Peninsula Borough assumes no responsibility for any errors on this map.

Aerial View



Utility Easement Vacation

PClements, KPB 2021-086V Date: 6/29/2021 Imagery FixedWing 2012-2013

CERTIFICATE OF OWNERSHIP We hereby certify that we are the owners of the real property shown and described hereon, and that we hereby adopt this plan of subdivision, and by our free consent dedicate all public rights-of-way and grant all easements to the use shown. *INA L. JONES (LOT 8-A)* P.O. BOX 15401 FRITZ CREEK, AK 99603 CECIL R. JONES (LOT 8-A) P.O. BOX 15401 FRITZ CREEK, AK 99603 BILLY RAY JONES STEPHANIE JOY JONES AKA BILLY R. JONES AKA STEPHANIE J. JONES NOTARY'S ACKNOWLEDGEMENT FOR LOTS 9-A, 10-A, 18-A For CECIL R. JONES AND INA L. JONES 33675 PERKINS RD. 33675 PERKINS RD. Homer, AK 99603 Acknowledged before me this ____ day of _ Homer, AK 99603 Notary public for Alaska My Commission Expires NOTARY'S ACKNOWLEDGEMENT For BILLY RAY JONES AND STEPHANIE JOY JONES Acknowledged before me this ____ day of _ HM99-30 BLK 1 TR-2-C Notary public for Alaska My Commission Expires S89°56'47"E 1121.04' LOT 8-B10 1.617 AC. 20, & VACATING UTIL. ESMTS. AS SHOWN \triangleright HM93-& 10' UTILITY ESMT. PER HM91-47 60 PERKIN PLAT APPROVAL UTIL. ESMT. VACATION HATCHING TYP. This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of KENAI PENINSULA BOROUGH TYPICAL POTENTIAL WETLANDS SEE NOTE 5 Authorized Official VICINITY MAP SCALE: 1"= 1/2 MILE LOT 6-ATHIS PLAILOT 5-A333 4 NOTES LOT 14-A 1. A BUILDING SETBACK OF 20 FEET IS REQUIRED FROM ALL STREET RIGHTS-OF-WAY UNLESS A LESSER STANDARD IS APPROVED BY RESOLUTION OF THE APPROPRIATE PLANNING COMMISSION. 2. ADJACENT TO PERKINS ROAD RIGHT-OF-WAY IS A 20 FEET WIDE STANLEY'S MEADOW 2021 BUILDING SETBACK AND ROAD SLOPE EASEMENT, AND A 10 FEET WIDE UTILITY EASEMENT (PER HM91-47 & 93-60). VACATING COVE VIEW COURT 3. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED RIGHT-OF-WAY & A REPLAT OF LOTS WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE 8-A, 9-A, 10-A, 18-A STANLEY'S ABILITY OF A UTILITY TO USE THE EASEMENT. MEADOW NO. 11 ADEC POWER-TRIP REPLAT (HM93-60), 4. SOLID GREY HACHING REPRESENTS SLOPES STEEPER THAN 20 WITHIN SW1/4 SECTION 34, T4S, R11W, S.M., PERCENT, BASED ON CONTOURS PUBLISHED ON KENAI PENINSULA KENAI PENINSULA BOROUGH, HOMER BOROUGH GIS TERRAIN VIEWER. RECORDING DISTRICT, STATE OF ALASKA CONTAINING 15.652 ACRES 5. WETLAND HATCHING IS BASED ON KENAI WATERSHED FORUM WETLAND MAPPING PUBLISHED ON KENAI PENINSULA BOROUGH GIS OWNERS: TERRAIN VIEWER. BILLY R. and STEPHANIE J. JONES PLAT # 33675 PERKINS RD. HOMER, AK 99603 Rec Dist CECIL R and INA L. JONES KPB 2021-086V P.O. BOX 15401 FRITZ CREEK, AK 99603 Date ABILITY SURVEYS GARY NELSON, PLS DRAWING: *5281_5155* (907) 235-8440 DATE JOB No. 5281 6-11-21 SCALE 1"= 100" GRID No. AR-21 KPB FILE No. 20<u>2</u>1- _ 152 DEHEL AVE., HOMER ALASKA 99603

AGENDA ITEM E. NEW BUSINESS

ITEM 1 - Stanley's Meadow 2021 Utility Easement Vacations

KPB File No. 2021-086V Planning Commission Meeting: August 9, 2021

Applicant / Owner: Cecil R., Ina L., Billy Ray and Stephanie Joy Jones of Homer, Alaska

Surveyor: Gary Nelson / Ability Surveys **General Location:** Fritz Creek/ Kachemak APC

STAFF REPORT

Specific Request / Purpose as stated in the petition:

- Vacate a 20' utility easement within Lot 10A Stanley's Meadow No. 11 (HM 93-60)

Vacate 5' utility easements along each side of interior lot lines of Lots 8-A, 9-A, 10-A Stanley's Meadow No.
 11 ADEC Power-Trip Replat (HM 93-60) and each side of former lot line between Lots 7 and 10 Stanley's Meadow No.
 11 (Plat HM 91-47)

Utility easements granted by Stanley's Meadow No. 11 ADEC Power-Trip Replat (Plat HM 93-60) and Stanley's Meadow No. 11 (Plat HM 91-47.

A subdivision replat has been submitted showing the vacation of the interior utility easements, vacation of Cove View Court right of way, and the replatting of 4 lots into 2 lots.

<u>Notification:</u> Notice of vacation mailings were sent by regular mail to 21 owners of property within 600 feet. Notice of the proposed vacation was emailed to 6 agencies and interested parties.

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

<u>Staff Analysis:</u> A plat has been submitted to reconfigure 4 lots into two lots. The plat for Stanley's Meadow 2021, KPB File 2021-086, is scheduled to be reviewed at the August 9, 2021 Plat Committee meeting. This petition is to vacate utility easements that run along the former lot lines.

The Planning Commission approved the vacation of Cove View Court, and the utility easements associated with the right of way, at the meeting of July 12, 2021. The vacation will be heard by the Kenai Peninsula Borough Assembly on August 3, 2021 where they may consent or veto the Planning Commission decision.

The property was originally part of Alaska State Land Survey No. 79-225, plat HM 80-50. The purpose of plat HM 80-50 was to transfer state lands to private ownership.

The land was then subdivided by Stanley's Meadow No. 3, plat HM 81-84. Plat HM 81-84 granted several utility easements including a 40 foot wide utility easement which is defined as 10 feet on both sides of two parallel power lines.

Stanley's Meadow No. 11, plat HM 91-47, further subdivided the property. Plat HM 91-47 granted 10 foot easements along each side of existing power lines, 5 foot utility easements along each side of all interior lot lines, a 20 foot utility easement within lots 7 and 10, and 10 foot utility easements along all dedicated right of ways. Plat 91-47 also contained a note that any utility easements granted by plat HM 81-84 that were not utilized were vacated.

Stanley's Meadow No. 11 ADEC Power-Trip Replat, plat HM 93-60 reconfigured a lot line and extended the 20 foot utility easement previously granted. A new utility easement was granted 5 feet of each side on the new lot line.

Page 1 of 3

A plat has been submitted to vacate Cove View Court and reconfigure 4 lots into 2 lots. Both lots will have access from Perkins Road. The approval of the right of way vacation included the vacation of the 10 foot utility easements that adjoined Cove View Court.

This hearing is to review the vacation of the 5 foot utility easements granted along the interior lot lines and the 20 foot wide utility easements that was granted by HM 91-47 and HM 93-60. The approval of this utility easement vacation will remove utility easements from the interior of the proposed lots. A 10 foot utility easement along Perkins Road will remain in place. Additionally, Homer Electric Association requested that the 10 foot easement on either side of the existing power lines that are within current Lot 18-A remain in place.

Utility provider review:

Othicy provid	<u>401 10 110 111 </u>
HEA	No objection to ROW and utility easement vacations as shown. Carry forward note #4 of Plat
	#93-60 HRD. "10 utility easement exists along each side of all powerlines."
	Request the powerline across Lot 18-A be shown on the replat.
ENSTAR	No objections to the proposed vacation of the utility easements as shown on Stanley's
	Meadow 2021 preliminary plat.
ACS	No objections to the ROW, Lot Line, and PUE vacations shown on the plat.
RSA	No objection as this time.

Findings:

- 1. The petition states that the utility easements proposed to be vacated is not in use by a utility company.
- 2. KPB RSA, ACS, ENSTAR, and GCI provided written non-objection to the proposed vacations.
- 3. HEA has no objection to the utility easement vacations as shown, though requests to carry forward note #4 of Stanley's Meadow No 11 ADEC Power-Trip Replat (Plat HM 93-60) "10" UTILITY EASEMENT EXISTS ALONG EACH SIDE OF ALL POWER LINES".
- 4. Stanley's Meadow No 11 (Plat HM 91-47) and Stanley's Meadow No 11 ADEC Power-Trip Replat (Plat HM 93-60), granted a 20' wide utility easement within the boundary of Lot 7 and Lot 10.
- 5. Stanley's Meadow No 11 (Plat HM 91-47) granted 5' utility easements along each side of all interior lot lines.
- 6. Stanley's Meadow No. 11 ADEC Power-Trip Replat (Plat HM 93-60) granted 5' utility easements along each side of all interior lot lines.
- 7. Stanley's Meadow No 11 (Plat HM 91-47) granted a 10' utility easement along each side of all existing power lines, guys and anchors.
- 8. Stanley's Meadow No 11 ADEC Power-Trip Replat (Plat HM 93-60) replatted lots 1-18 per Stanley's Meadow No 11 (Plat HM 91-47) which carried forward the 5' utility easement along each side of the former lot 7 and former lot 10 for 100', now located in the lower middle of lot 10-A, HM 93-60.
- 9. Stanley's Meadow No. 3 (Plat HM 81-84) granted 10' utility easements along each side of existing powerlines which is within Lot 18-A (proposed Lot 9-B).
- 10. No surrounding properties will be denied utilities.
- 11. A 10 foot utility easement will remain on Perkins Road after Cove View Ct. is vacated.

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:

Page 2 of 3

- i. An exhibit drawing showing, and dimensioning, the utility easement alteration area, prepared, signed and sealed by a licensed land surveyor. The exhibit drawing will be attached to, and recorded with, the resolution.
- ii. The applicants will provide the recording fee for the resolution and its attachment to the Planning Department.
- iii. The Planning Department is responsible for filing the Planning Commission resolution.

20.65.070 Alteration of platted utility easements

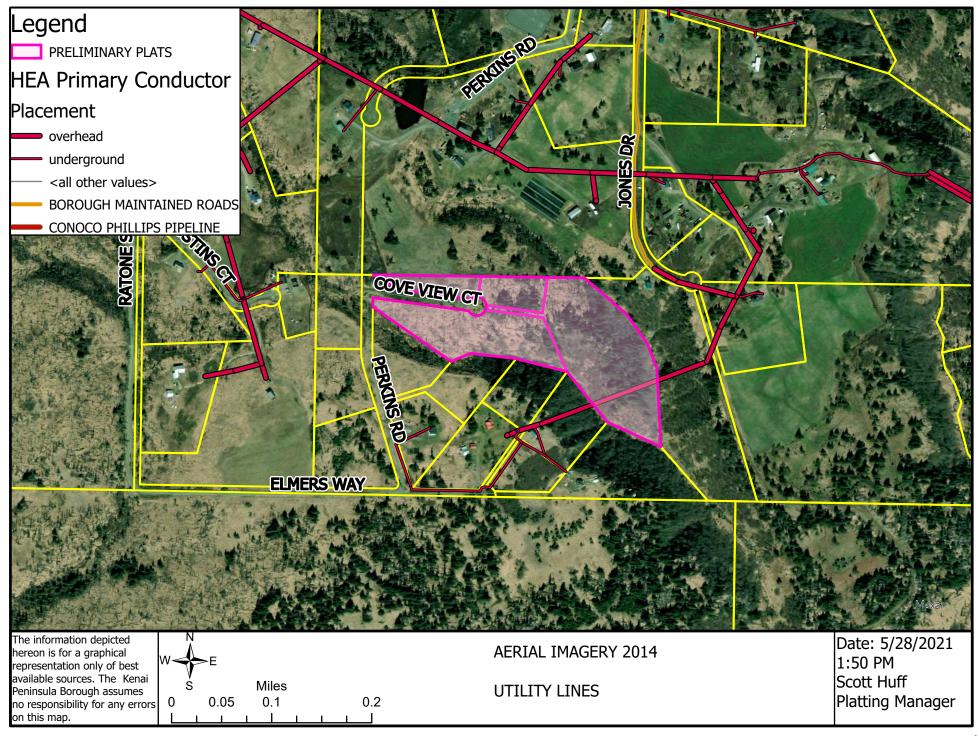
- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.
- F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

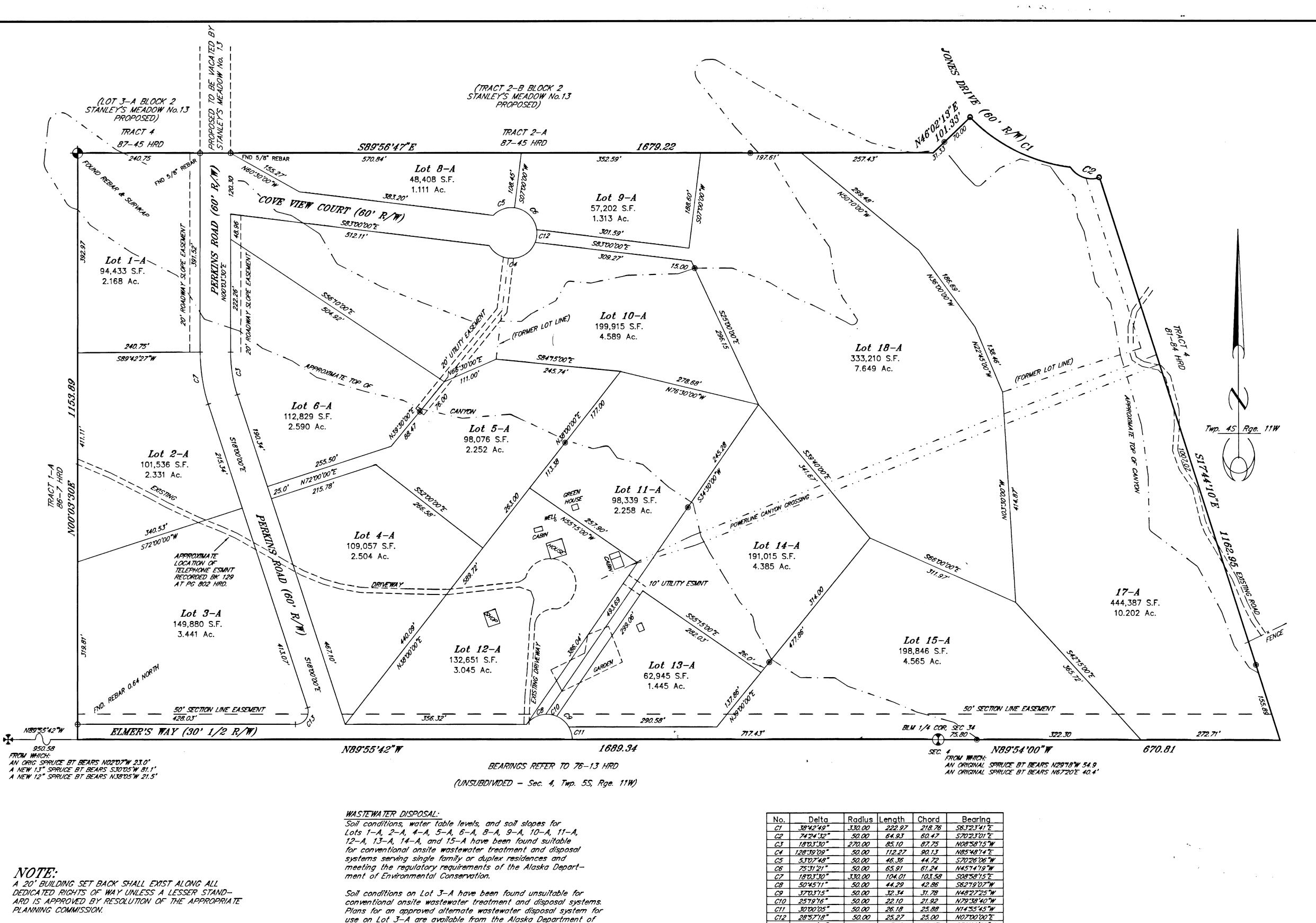
The 2019 Kenai Peninsula Borough Comprehensive Plan adopted November, 2019 by Ordinance No. 2019-25. The relevant objectives are listed.

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

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

END OF STAFF REPORT





NO DIRECT ACCESS TO STATE MAINTAINED RIGHTS OF WAY IS PERMITTED UNLESS APPROVED BY THE STATE OF ALASKA DEPARTMENT OF TRANSPORTATION.

NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.

A 10' UTILITY EASEMENT EXISTS ALONG EACH SIDE OF ALL EXISTING POWERLINES, GUYS AND ANCHORS.

A 5' UTILITY EASEMENT EXISTS ALONG EACH SIDE OF ALL INTERIOR LOT LINES. A 10' EASEMENT EXISTS ALONG ALL RIGHTS OF WAY.

NO STRUCTURES ARE PERMITTED WITHIN THE PANHANDLE PORTION OF FLAG LOTS

Wastewater treatment and disposal systems for Lot 17-A must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

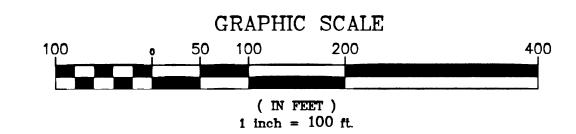
Environmental Conservation.

Any other type of wastewater treatment and disposal systems for these lots must be approved by the Alaska Department of Environmental Conservation.

Subject to any noted restrictions, the Alaska Department

of Environmental Conservation approves this Subdivision EEAI Let Jorque Name and Title of Alaska Department of Environmental Conservation Approving official

No.	Delta	Radius	Length	Chord	Bearing
C1	3842'49"	330.00	222.97	218.76	56323'41"E
C2	74"24'32"	50.00	64.93	60.47	57023'01"E
C3	1803'30"	270.00	85.10	87.75	NO8'58'15"W
C4	128'39'09"	50.00	112.27	90.13	N85°48'14"E
C5	5307'48"	50.00	46.36	44.72	570'26'06"W
<i>C6</i>	75'31'21"	50.00	65.91	61.24	N4574'19"W
CT	1803'30"	330.00	104.01	103.58	S08'58'15"E
<i>C8</i>	504511"	50.00	44.29	42.86	56279'07"W
<i>C9</i>	3703'15"	50.00	32.34	31.78	N48"27"25"W
C10	2579'16"	50.00	22.10	21.92	N79'38'40"W
C11	30000'05"	50.00	26.18	25.88	N14"55"45"W
C12	285718"	50.00	25.27	25.00	N0700'00"E
C13	10804'17"	25.00	47.16	40.47	536°02°09"W



HOMER ME 12-14 1093 REQUESTED BY: JERRY ANDERSON ADDRESS P.O. BOX 1981 ESPAÑOLA, NEW MEXICO 87532

KPB FILE No. _93-056

CERTIFICATE OF OWNERSHIP

I hereby certify that I am the owner of the real property shown and described hereon, and that I hereby adopt this plan of subdivision, and by my free consent dedicate all rights of way and public areas to public use, and grant all easements to the use shown.

Weamon IT. Local. DIAMOND F. LOOSLI P.O. BOX 3073 VALDEZ, ALASKA 99686 Helen L. HELEN L. LOOSLI

NOTARY'S ACKNOWLEDGEMENT

FOR DIAMOND & HELEN LOOSLI

Subscribed and swom to before me this _____ day of July 1993

april 23 1997 Notary public for Alaska My Commission Expires

SURVEYORS CERTIFICATE

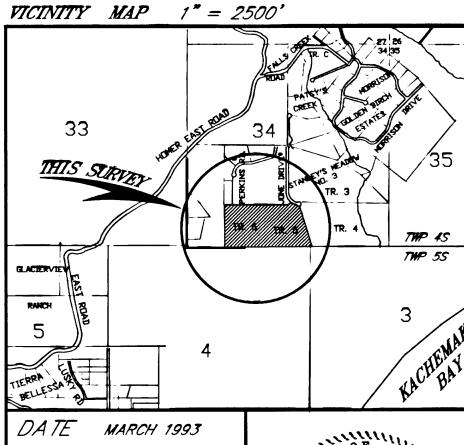
I hereby certify that this survey was performed by me or under my direct supervision. I declare that the information shown hereon is true and correct to the best of my knowledge and belief.

6-11-93 Jerry A. Anderson PLS No. 3686

PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of May 10, 1993 KENAI, PENINSULA BOROUGH

Authorized Official

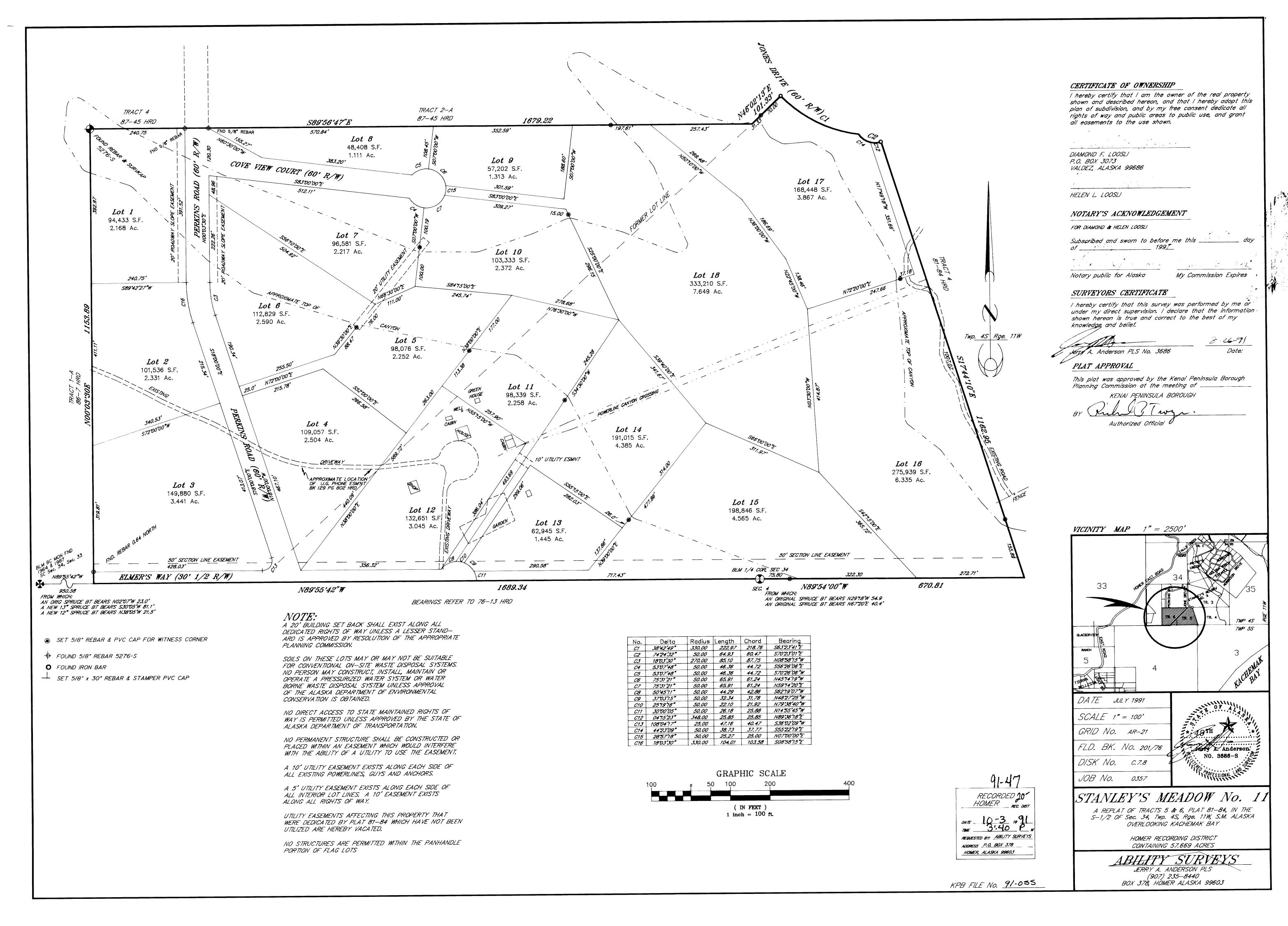


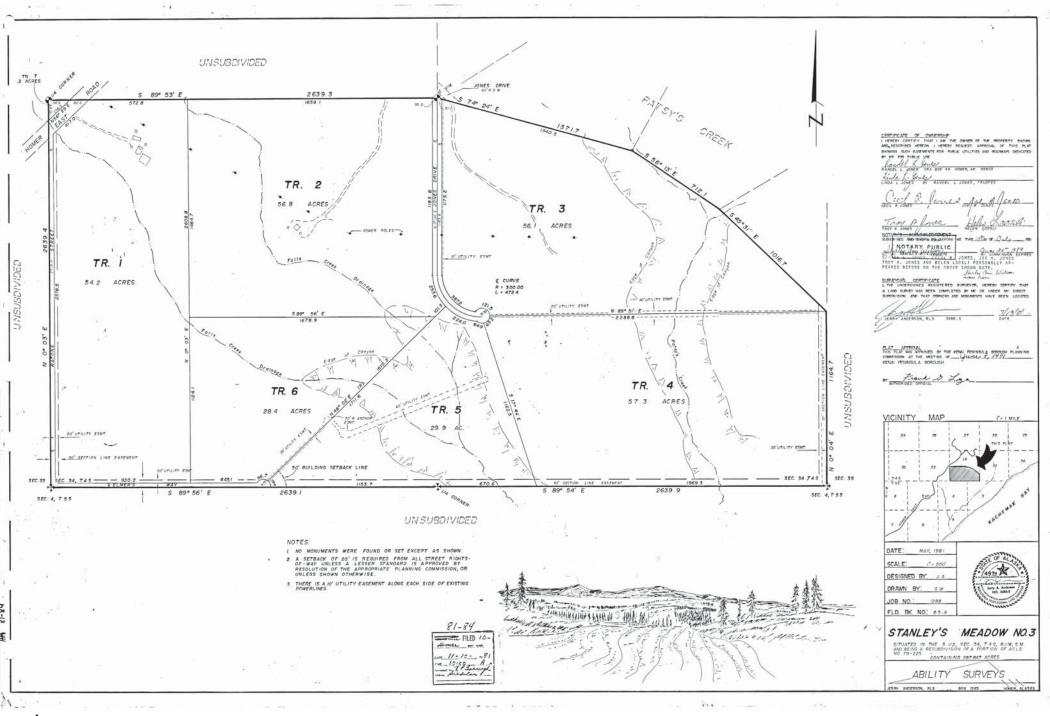
* 49 TH SCALE 1" = 100' GRID No. AR-21 Jerry A. Anderson FLD. BK. No. 201/76 NO. 3686-S DISK No. C.7.8 JOB No. 0357-1

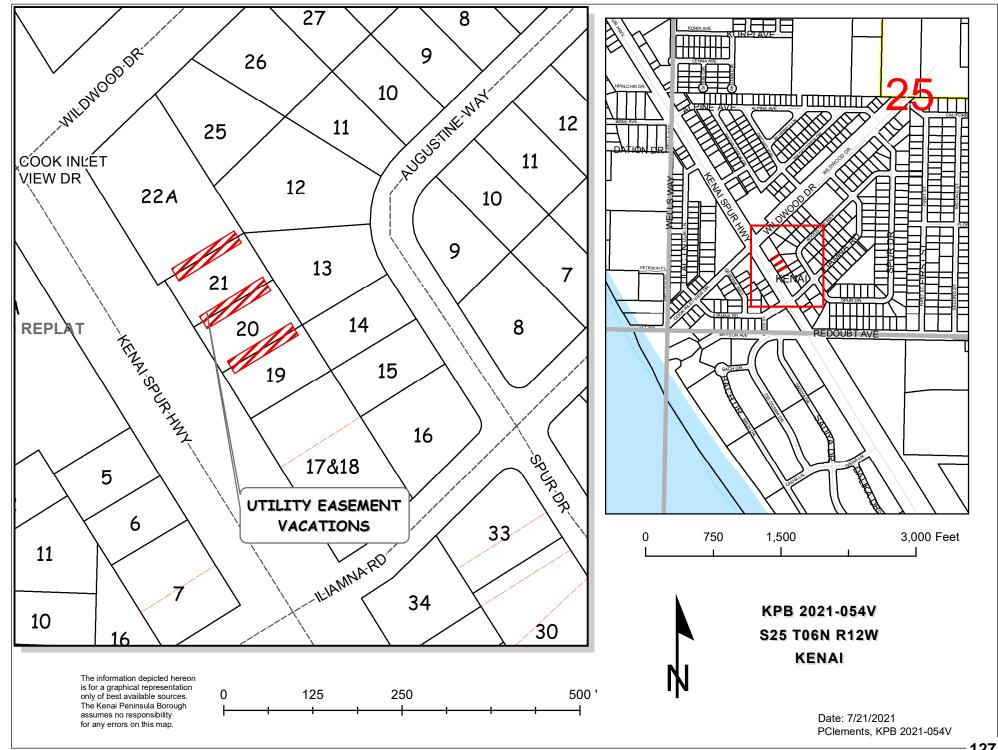
STANLEY'S MEADOW No. 1 ADEC POWER-TRIP REPLAT

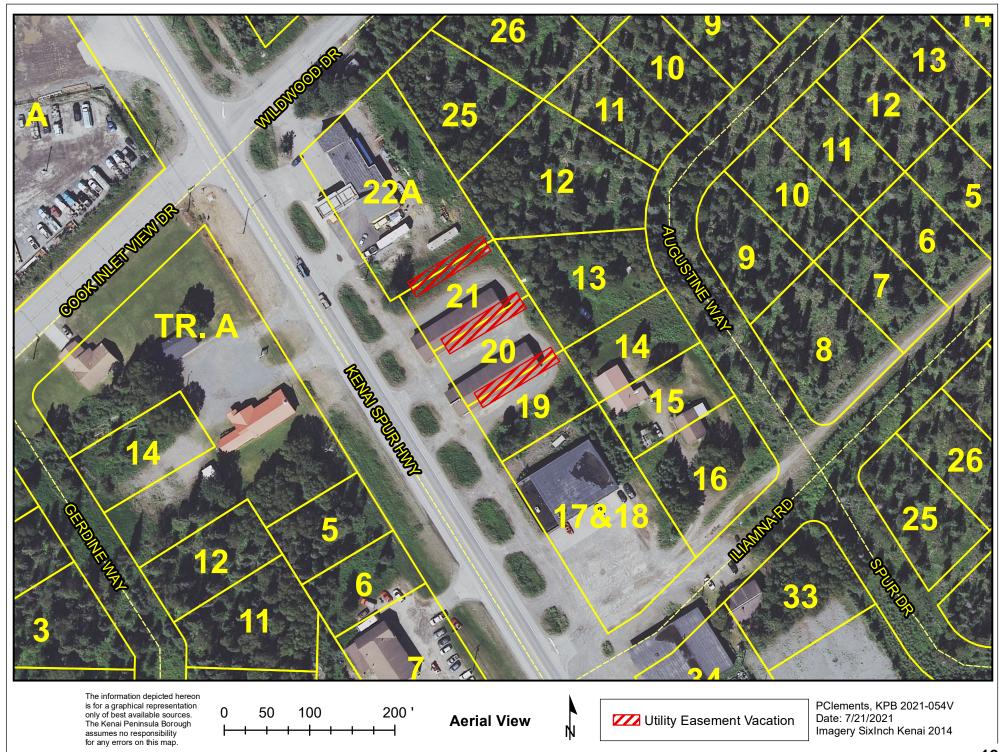
A REPLAT OF LOTS 1 THROUGH 18, PLAT 91-47, IN THE S-1/2 OF Sec. 34, Twp. 4S, Rge. 11W, S.M. ALASKA OVERLOOKING KACHEMAK BAY, EAST OF HOMER ALASKA HOMER RECORDING DISTRICT CONTAINING 57.669 ACRES

JERRY A. ANDERSON PROFESSIONAL LAND SURVEYOR (505) 747-1025 PO BOX 1981, ESPANOLA NEW MEXICO 87532









LEGEND:

- 2 1/2" BRASS. CAP MON. 6940-S 2001 RECORD
- 2 1/2" BRASS, CAP MON. 445-E 1965 RECORD
- 6 5/8" REBAR W/PLASTIC CAP L-11795 RECORD
- 5/8" REBAR RECORD
- () RECORD DATUM PLAT 2017-66 KRD

NOTES

- Bosis of bearing taken from Carl F. Ahlstrom Subdivision RPM's Replot, Plat 2017-66, Kenai Recording District.
- Further development of the property shall conform to all federal, State of Alaska, and local regulations.
- 3) Development must meet City of Kenai Chapter 14 Zoning Requirements:
- 4) An easement for electric lines or system and/or telephone lines granted to Homer Electric Association Inc. is recorded in Book 2 Page 54, Kenoi Recording District. No definite location disclosed.
- An easement for electric lines or system and/or telephone lines granted to Kenai Power Corporation is recorded in Book 2 Page 31, Kenai Recording District. No definite location disclosed.
- 6) This property is subject to a reservation of easement for highway purposes, and any assignments or uses thereof for recreational, utility or other purposes, as disclosed by Public Land Order No. 601, dated August 10, 1949; and amended by Public Land Order Number No. 757, dated October 10, 1959; Public Land Order No. 1613, dated April 7, 1958; Department of the Interior Order Number 2565, dated October 16, 1951, Amendment Number 1 thereto, dated July 17, 1952 and Amendment Number 2 thereto, dated September 15, 1956, filed in the Federal Register.
- Na private access to State maintained ROW's permitted unless approved by the State of Alaska Department of Transportation.
- 8) Front 15 feet adjacent to rights—of—way is also a utility easement. No permanent structure shall be constructed or placed within a utility easement which would interfere with the ability of a utility to use the easement.
- WASTEWATER DISPOSAL: Plans for wastewater disposal, that meet regulatory requirements are on file at the Department of Environmental Conservation.

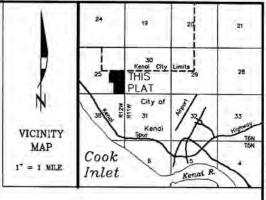


SURVEYOR'S CERTIFICATE

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, this plat represents a survey made by me or under my direct supervision, the monuments shown hereon actually exist as described, and all dimensions and other details are correct,

Date ____





CERTIFICATE of OWNERSHIP and DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADOPT THIS PLAN OF SUBDIVISION AND BY MY FREE CONSENT DEDICATE ALL RIGHTS-OF-WAY AND PUBLIC AREAS TO PUBLIC USE AND GRANT ALL EASEMENTS TO THE USE SHOWN.

JOHN MELLISH, INDIVIDUALLY
JOHN MELLISH, REGISTERED AGENT OF RPM LLC
14096 KENAI SPUR HIGHWAY
KENAI JASKA 90512

NOTARY'S ACKNOWLEDGEMENT

NOTARY PUBLIC FOR ALASKA MY COMMISSION EXPIRES

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF

KENAI PENINSULA BOROUGH

AUTHORIZED OFFICIAL

KPB FILE No.

Carl F. Ahlstrom Subdivision RPM's Replat Number 2

A resubdivision of Lots 19, 20, and 21 Block 13 Carl F. Alstrom Subdivision, Plat K-216, excepting therefrom that portion conveyed to the State of Alaska, Department of Highways by instrument recorded February 4, 1971, in Book 61 at Page 239, and Lot 22A Block 13 Carl F. Alstrom Subdivision RPM's Replat Plat 2017-66, Kenai Recording District.

Located within the SW1/4 Section 25, T6N, R12W, S.M., City of Kenoi, Kenoi Peninsula Boraugh, Alaska.

Owner RPM LLC 14096 Kenai Spur Highway Kenai, Alaska 99611		
DRAWN: 3-17-21		
SCALE: 1"=50"		
SHEET: 1 of 1		

AGENDA ITEM E. **NEW BUSINESS**

ITEM 2 - Carl F Ahlstrom Subdivision RPM's Replat Number 2 Utility Easement Vacation

KPB File No. 2021-054V

Planning Commission Meeting: August 9, 2021

Applicant / Owner: RPM's LLC and John Mellish of Kenai, Alaska Surveyor: John Segesser / Segesser Surveys, Inc.

General Location: City of Kenai

STAFF REPORT

Specific Request / Purpose as stated in the petition: Vacate 10' utility easements along the side lot lines of Lots 19, 20, 21, Block 13, Carl F. Ahlstrom Subdivision (Plat KN-216) and Lot 22A, Block 13, Carl F. Ahlstrom Subdivision RPM's Replat (Plat KN 2017-66) excluding the 15 feet adjoining Kenai Spur Highway and the 10 feet adjoining the northeast boundary.

Located within Section 25, Township 6 North, Range 12 West, Seward Meridian, Alaska, within the Kenai Peninsula

The petitioner is in the process of vacating lot lines to create one parcel.

Notification: Notice of vacation mailings were sent by regular mail to 45 owners of property within 600 feet. Notice of the proposed vacation was emailed to 7 agencies and interested parties.

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

Staff Analysis: The commission is hearing the vacation of several utility easements proposed to be finalized by the Carl F. Ahlstrom Subdivision RPM's Replat Number 2, KPB File 2021-054. The plat committee held a public hearing for the preliminary plat on June 14, 2021 and approved the plat. The plat will be combining four lots into one lot. This vacation will vacate utility easements that adjoin the parent lot lines.

Carl F. Ahlstrom Subdivision (KN-216) was filed in 1955 and created the lots within this subdivision. KN-216 granted 10 foot utility easement adjoining all side lot lines. Carl F. Ahlstrom Subdivision RPM's Replat, KN 2017-66 combined Lots 22-24 into one lot, Lot 22A. Plat KN 2017-66 also finalized the vacation of the utility easements adjoining the former lot lines. Lot 22A is now being replatted with Lots 19-21.

There are several buildings on the lots and the owner wishes to not have 20 foot utility easements running through the middle of the new lot. A 15 foot utility easement will be granted along the Kenai Spur Highway. Plat KN 2017-66 granted 15 foot utility easements along Lot 22A adjoining the Kenai Spur Highway and Wildwood Drive, excluding the area affected by a permanent sturcture. 10 foot utility easements will remain from plat K-216 along the south boundary and along the northeast boundary.

The City of Kenai reviewed the preliminary plat at their March 24, 2021 meeting. The plat was approved subject to the Kenai City Council declaring the utility easements not being needed for public purposes and approve the vacations as shown on the preliminary plat.

Utility provider review:

HEA No comments **ENSTAR**

No comments or objections

ACS No objections

GCI No response received prior to staff report being written.

Findings:

- 1. The petition states that the utility easement proposed to be vacated is not in use by a utility company.
- 2. ACS, ENSTAR, and HEA provided written non-objection to the proposed vacation.
- 3. City of Kenai Planning and Zoning approved the plat with the depicted utility easement vacations on March 24, 2021.
- 4. Carl F. Ahlstrom Subdivision, K-216, granted 10 foot utility easements adjoining all lot lines.
- 5. Carl F. Ahlstrom Subdivision RPM's Replat, KN 2017-66, vacated the interior 10 foot utility easements along the side lot lines of Lots 22-24 of Plat K-216.
- 6. Plat KN 2017-66 granted 15 foot utility easements along Kenai Spur Highway, excluding the area affected by permanent structures, and Wildwood Drive within Lot 22A.
- 7. Plat K-216 granted 10 foot utility easements along the northeast boundary of the proposed replat.
- 8. The preliminary plat will grant a 15 foot utility easement along the Kenai Spur Highway adjacent to parent lots 19-21.
- 9. No surrounding properties will be denied utilities.
- 10. The vacation will acquire consent from Kenai City Council as outlined in their Municipal Code 22.05.110.

RECOMMENDATION:

Based on consideration of the merits as outlined by Staff comments and Staff findings, Staff recommends <u>APPROVAL</u> of the utility easement alteration as petitioned, subject to:

- 1. Grant utility easements requested by the Kenai City Council and 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

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

END OF STAFF REPORT

20.65.070. Alteration of platted utility easements

- A. Where platted utility easements are reserved for the purpose of providing utility services by an agency or utility provider and are not dedicated to the public use in the same manner as public rights-of-way, public access, or public easement granted for public use, the planning commission shall review and act upon all requests to alter, including removal, platted utility easements. For purposes of types of easements covered by this section, the KPB 20.90.010 definition for Utility Easement controls.
 - B. The petitioner shall include the following items when submitting a request to alter a platted utility easement.
 - 1. A petition, provided by KPB Planning Department, signed by the owner of the land subject to the platted utility easement as shown on the borough tax rolls.
 - 2. Comments from the city advisory commission if applicable, and the jurisdictional authority of a dedicated right-of-way when the utility easement adjoins a dedicated right of way. A petition to alter a platted utility easement will not be approved if a city with jurisdictional authority objects to the alteration.
 - 3. Comments or non-objection from all appropriate utility providers. Affected utility providers must initial or comment on the same sketch or submittal that is provided to the borough.
 - 4. A sketch showing the alteration of the platted utility easement. If the alteration of the utility easement is due to an encroachment, then an as-built survey or site survey must be submitted with the petition.
 - Appropriate application fee.
 - 6. Applicant statement containing the reasons for the alteration of the platted utility easement.

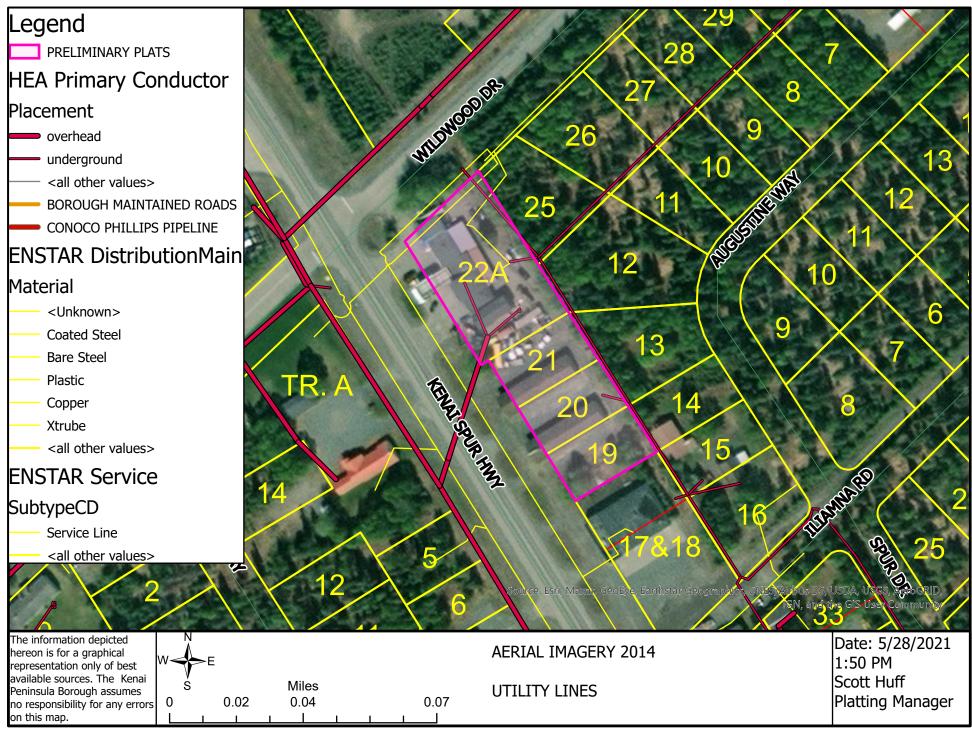
Staff recommends:

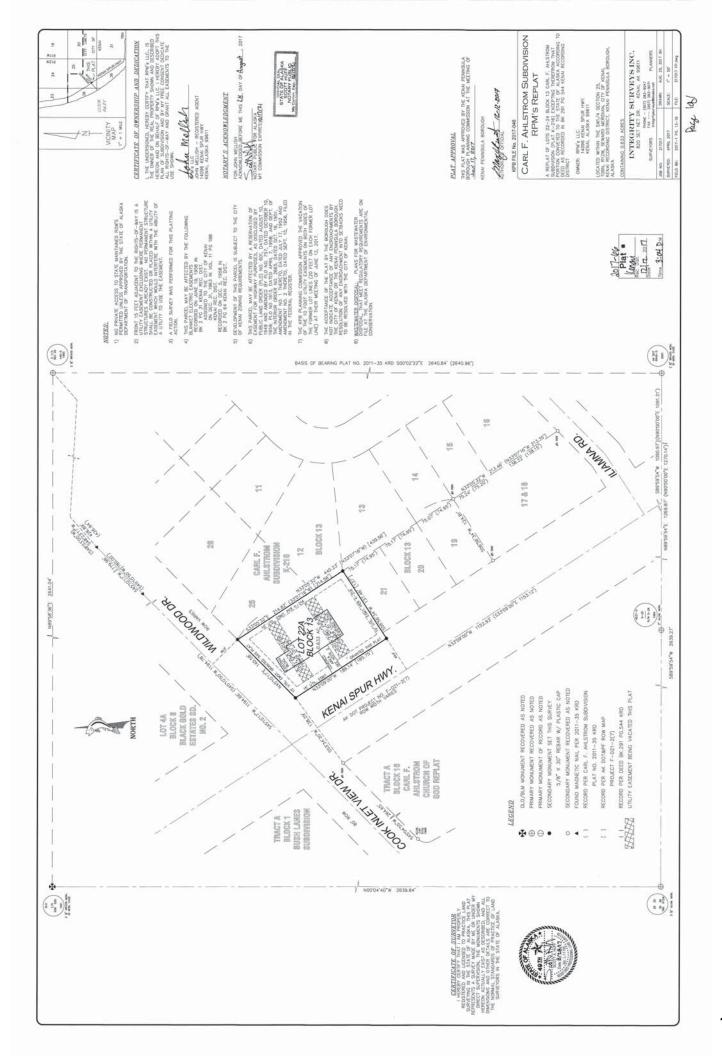
 \boxtimes

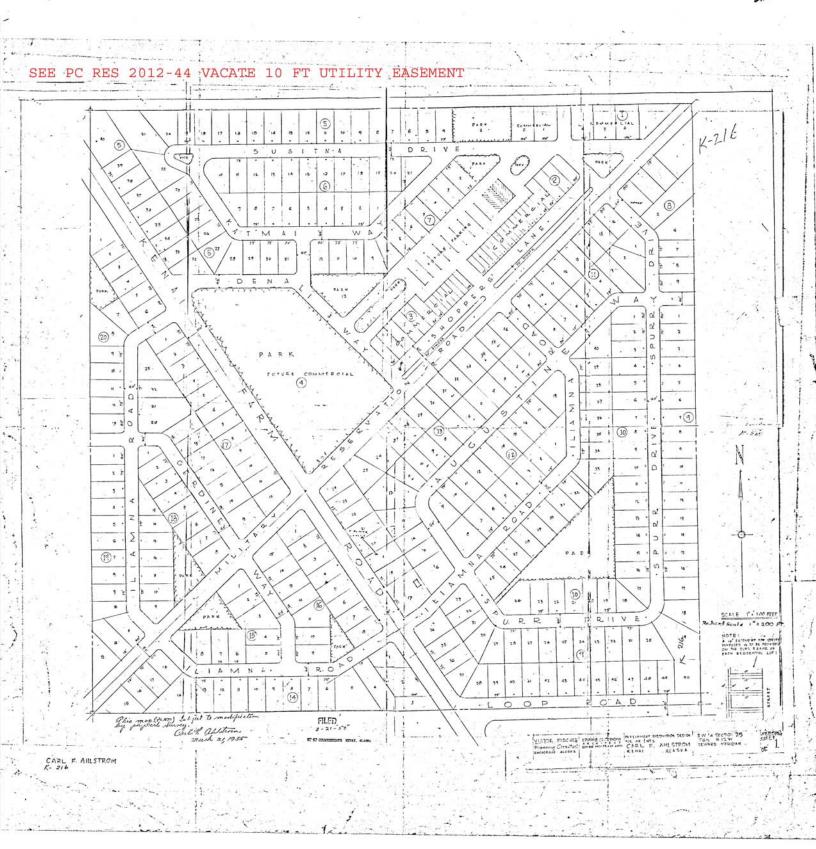
\boxtimes	C.	Notice shall be sent per KPB 20.10.100.
	D. easemen	When the application is complete, the planning commission will take action on the requested alteration of the platted utility it, either approving or denying the request.
	the final o	A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No ion or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of denial action except in the case where new evidence or circumstances exist that were not available or present when the etition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility 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.
- ☐ G. Approval of an application under this section expires in 12 months.
- ☐ H. Upon approval, the alteration of a utility easement can be finalized by either.
 - 1. Recording of a subdivision plat which complies with Chapter 20.
 - 2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees.

END OF UTILITY EASEMENT ALTERATION CHECKLIST







AGENDA ITEM E NEW BUSINESS

2. An unnamed private road in Section 24, T04S, R11W; Seward Meridian, Kenai Peninsula Borough, AK; in the Fox River Community; ESN 202

STAFF REPORT PC MEETING: August 9, 2021

Applicant: David Reutov of Homer, AK

Existing right-of-way names: None

Name proposed by petitioner: Silver Falls Dr

Reason for Change: Private road that will serve multiple addresses

Background:

Name	unnamed
ESN	202
Community	Fox River
YR Named	n/a
Constructed	Yes
Total Lots	2
Residential	2
Commercial	0
E911 Address	1
Mailing	1

Review and Comments:

Notice was sent by mail to the owners of the two parcels fronting the unnamed private road, as listed on the KPB tax roll.

No comments from property owners were received by the writing of this staff report.

The road name request has been emailed to the Kenai Peninsula Borough Road Maintenance for review. The KPB Roads Department supplied a statement that the Road Service Area has no objections at this time.

Staff Discussion:

A petition was received from one of the property owners accessed by the 1,800 ft unnamed private road. The petition included signatures from 2 out of 2 landowners fronting the private road.

The unnamed private road can be found in the Fox River area and currently provides access to one E911 address. The property owner anticipates several additional family homes will be added to this property in the future. The petitioner has stated that the unnamed private road has been constructed and that the name Silver Falls Dr has been used informally for many years.

The petition contained no additional suggested names. Silver is on the prohibited names list because there are 19 instances of the word silver used for street naming within the Borough; however, none are within neighboring ESNs.

The petitioner has stated that the chosen name meets borough code and the requirements of the borough street naming procedure which do not reference the prohibited names list.

STAFF RECOMMENDATION: Choose a different road name (staff preference) or name the unnamed private road **Silver Falls St** due to north-south direction by the adoption of Resolution SN 2021-04.

END OF STAFF REPORT

KENAI PENINSULA BOROUGH PLANNING COMMISSION RESOLUTION

RESOLUTION SN 2021-04

NAMING A CERTAIN PRIVATE ROAD WITHIN SECTION 24, T04S, R11W; SEWARD MERIDIAN; WITHIN EMERGENCY SERVICE NUMBER (ESN) 202

WHEREAS, a procedure has been developed to help implement the Enhanced 9-1-1 Street Naming and Addressing project; and

WHEREAS, eliminating duplicate and sound-alike street names will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, adding a post directional or changing the name of portions of jump streets will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, naming private roads that provide access to three or more structures will enable 9-1-1 Emergency Services to respond to emergencies in an efficient timely manner, thereby avoiding delays in providing necessary emergency services; and

WHEREAS, per KPB 14.10.060, the naming of an unnamed road will not constitute a legal dedication for public right-of-way or for road maintenance purposes; and

WHEREAS, on April 12, 2021 public hearings were held by the Kenai Peninsula Borough Planning Commission to address all concerns about the proposed private road naming; and

WHEREAS, Chapter 14.10 of the Kenai Peninsula Borough Code of Ordinances authorizes the Planning Commission to accomplish private road naming by Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH:

<u>Section 1</u>. That the private road listed below is named as follows:

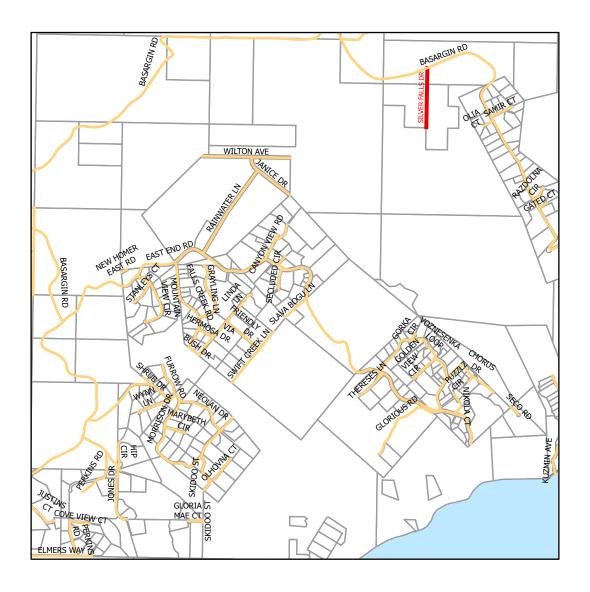
DESCRIPTION	FROM	ТО	BASE MAP
a. An unnamed private road in Section 24, T04S, R11W; Seward Meridian, Kenai Peninsula Borough, AK; in the Fox River Community; ESN 202	Unnamed	Silver Falls DR	AR21

- Section 2. That according to Kenai Peninsula Borough Code of Ordinance 14.10.030, the official street name map, 1:500 scale series base map, AR21; is hereby amended to reflect these changes.
- Section 3. That the map showing the location of the named private road be attached to, and made a permanent part of this resolution.
- <u>Section 4</u>. That this Resolution takes effect immediately upon adoption.

OF AUGUST 2021.		
	Blair J. Martin, Chairperson Planning Commission	
State of Alaska Kenai Peninsula Borough		
Signed and sworn to (or affirmed) i	in my presence this day of	2021 by
Notary Public		
My Commission expires		

ADOPTED BY THE PLANNING COMMISSION OF THE KENAI PENINSULA BOROUGH THIS 9th DAY

Private Road Naming Resolution SN 2021-04



PETITION FOR RENAMING A STREET

Existing Road Name: NONE	
Proposed Road Name: SILVER FALLS DR	
Name of Primary Petitioner: David F REUTOV	
Identify the Owners of Land affected (include mortgage holders, contrac corporation or partnership, provide the needed authority to sign):	t holders and, if owned by a
Name (print): David F Reutov	
Signature: Of The Signature of the Signa	
Mailing Address: POBOX 3609 Homer F	x 99603
Legal Description:	
Name (print): Feodor Martushev Signature:	Phone: 299-1331
Signature:	
Mailing Address: PO.Box 2148 Home	
Legal Description:	•,
Name (print): Filip Martusher	Phone:
Signature:	_
Mailing Address:	
Legal Description:	
Name (print):	Phone:
Signature:	_
Mailing Address:	
Legal Description:	
Name (print):	Phone:
Signature:	
Mailing Address:	
Legal Description:	
·	

To be	conside	red cor	nplete, the application must be accompanied by the following i	tems:					
1.	Petition signed by property owners (see instructions).								
2.	A map	nap showing the road to be named and surrounding property.							
3.	The fi	The filing and sign fees are established by KPB Planning Commission Resolutions 96-22 and 8 3, as follows:							
	(A)	For n	ame changes or naming of public street dedications other that	n those nan	ned durin				
				Check Applica	ble Boxes				
		(1)	Street Naming Petition and Hearing Advertising Fee	\$300					
		(2)	Installation of each new Borough Service Area Sign, Post, etc. (per sign)	\$150					
		(3)	Replacement of existing Borough Service Area Sign, due to change where no post is needed. (per sign)	\$ 80					
			The minimum fee shall be either a combination of 1 a 1 and 3 above; however, all signs that need to be ch and / or maintained by a Borough Service Area must for upon completion of the project.	nanged					
	(B) For Private Road Naming:								
		(1)	Street Naming Petition and Hearing Advertising Fee	\$300	X				
		(2)	Installation of each new Borough Service Area sign,	\$150					

Additionally, if the Right-of-Way was created by a document other than a recorded plat, a copy of that document must be submitted with this application.

TOTAL FEE SUBMITTED

Replacement of existing Borough Service Area Sign,

due to change where no post is needed. (per sign)

If no signs are required

NOTE: INCOMPLETE APPLICATIONS WILL BE RETURNED.

I, the undersigned, hereby affirm that all information made part of this application is true, correct and complete to the best of my knowledge.

Signature R

6-24-21 Date 6-24-21

\$ 80

No Fee

PAGE 2

(4)



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

PETITION TO NAME / RENAME A STREET

Kenai Peninsula Borough Planning Department
ATTENTION: E911 Addressing Officer
144 North Binkley Street Soldotna, AK 99669-7520 (907) 714-2200

Petitioner's Name: (Please Print) David F RCuto	√	_
Mailing Address: POBOX 3609 Hos	mer AK	99603
E-mail Address: <u>frantartic og mail</u>		_
Telephone: 907 - 235 - 3609		_
Current Street Name: The Basaron P	Φ	_
Proposed Street Name: 511ver F	Falls DR	2
Location of Current Street: Township: Range:	Section	n:
Subdivision:	·	
The Right-of-Way is: (Please Check)	Public	Private
Is the Right-of-Way in use?	☐ Yes	M No
Is the road constructed?	Yes	□ No
Is there a street sign along the Right-of-Way?	☐ Yes	No
Reason for Requested Change: 1000 private	road	to
multiple adresses.		
List Throe (2) Chaiges for a year Street Name in and a street was		
List Three (3) Choices for a new Street Name, in order of preference 1.	•	
2.		and the second
3.		
New Name Suggestions must not be on the Road Inventory List which https://www.kpb.us/images/KPB/PLN/911/Roa	ch can be found a d_Inventory.pdf	ti

New Street Names must be checked, and approved by the E911 Addressing Officer by email addressing@kpb.us; fax 714-2378; or phone 714-2200.



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

STREET NAMING PROCEDURE KENAI PENINSULA BOROUGH

STREET NAMING PROCEDURE

To name or rename a street requires action by the Planning Department, the Kenai Peninsula Borough Planning Commission, and the person requesting the change. The following outlines how the process works and the areas of responsibility.

THE PLANNING DEPARTMENT

The Planning Department will process all formal requests to name or rename public or private rights-of- way. The Department will accept applications to name or rename a right-of-way upon receipt of a petition signed by at least 75% of the owners of land fronting that roadway.

The petition must include a map showing the location of the right-of-way, the required fees, if applicable, and the proposed new name. The new name must not create a duplicate with any name already in the Road Inventory, the Road Inventory list can be found here:

https://www.kpb.us/images/KPB/PLN/911/Road Inventory.pdf

The new name must be checked and approved by the E911 Addressing Officer of the Kenai Peninsula Borough Planning Department.

Email:

addressing@kpb.us

Fax:

714-2378

Phone:

714-2200

Mail:

KPB PLANNING DEPT, 144 NORTH BINKLEY STREET, SOLDOTNA, AK 99669

THE KENAI PENINSULA BOROUGH PLANNING COMMISSION

A public hearing before the Planning Commission will be scheduled in accordance with KPB Code of Ordinances, Chapter 14.10, and a public notice announcing the hearing will be placed in a local newspaper.

The Planning Commission will act by resolution after the public hearing and consultation with affected property owners, agencies, and other interested parties. Written notification of the Planning Commission's decision will be sent to the previously identified property owners, agencies, and interested parties.

The Planning Commission has final authority to approve or deny the petition.

THE PETITIONER

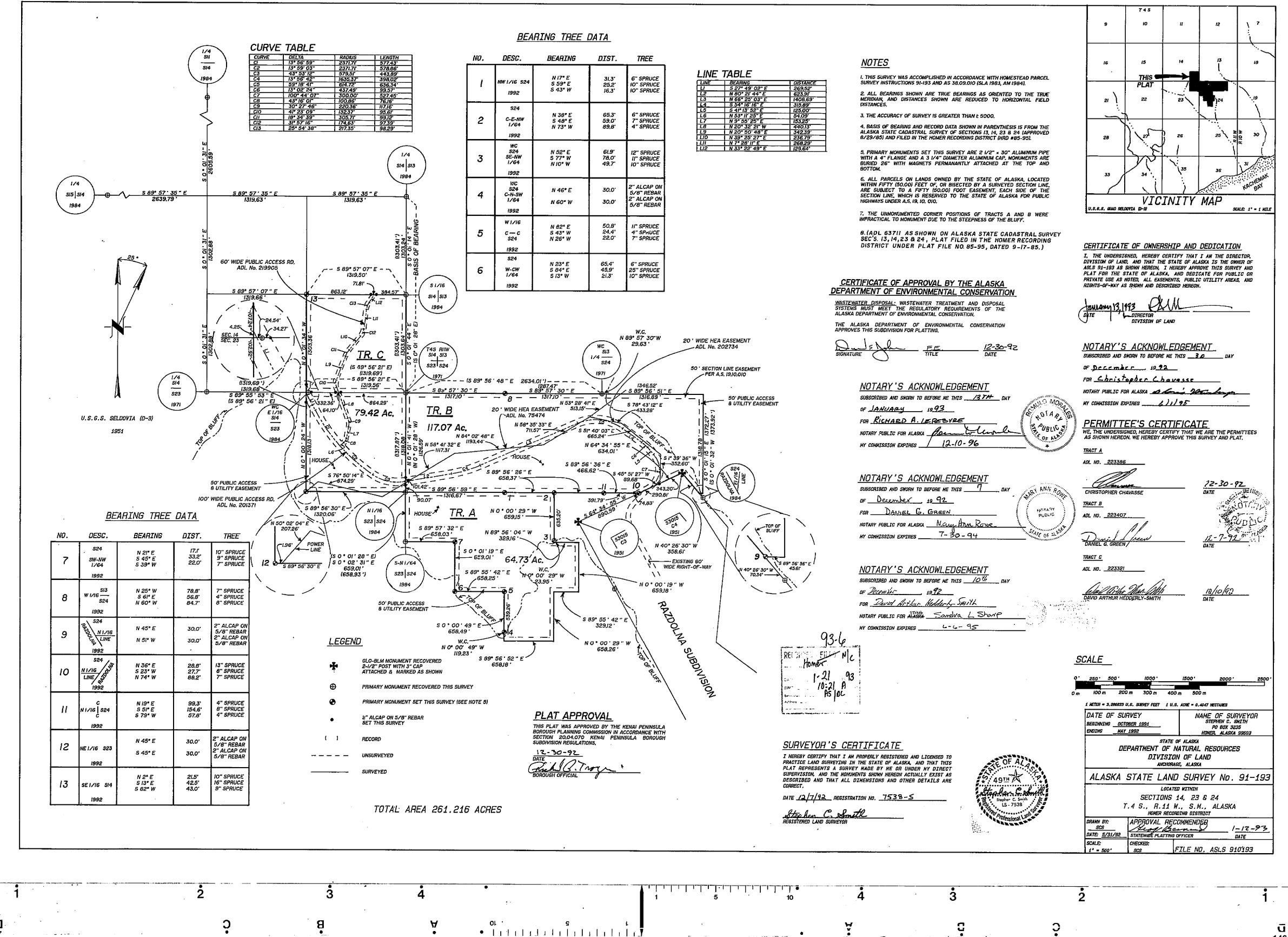
It is the petitioner's responsibility to provide all information and documentation as requested on the application.

DEFINITIONS

Public Right-of-Way: A right-of-way for public use dedicated by either plat or document.

Private Road: A non-dedicated, non-platted right-of-way. An easement may be required. A driveway is may be considered a private road if the driveway provides access to three or more structures.

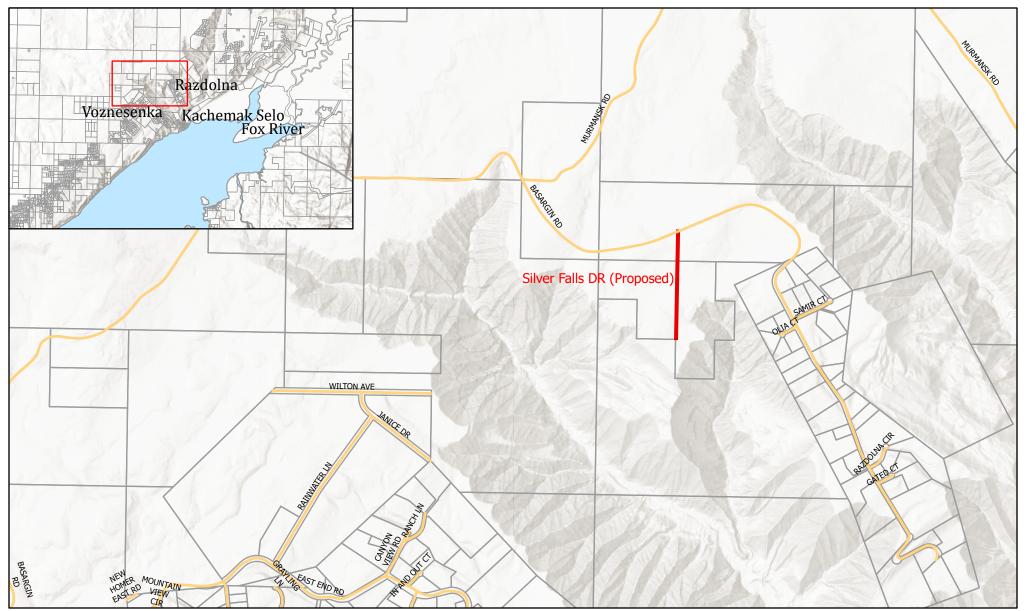
Duplicate Street Name: A name that sounds similar to or identical to the name of any other street within the Borough Road Inventory. A different suffix (street, avenue, etc.) does not constitute a different name (KPB 14.10.040).



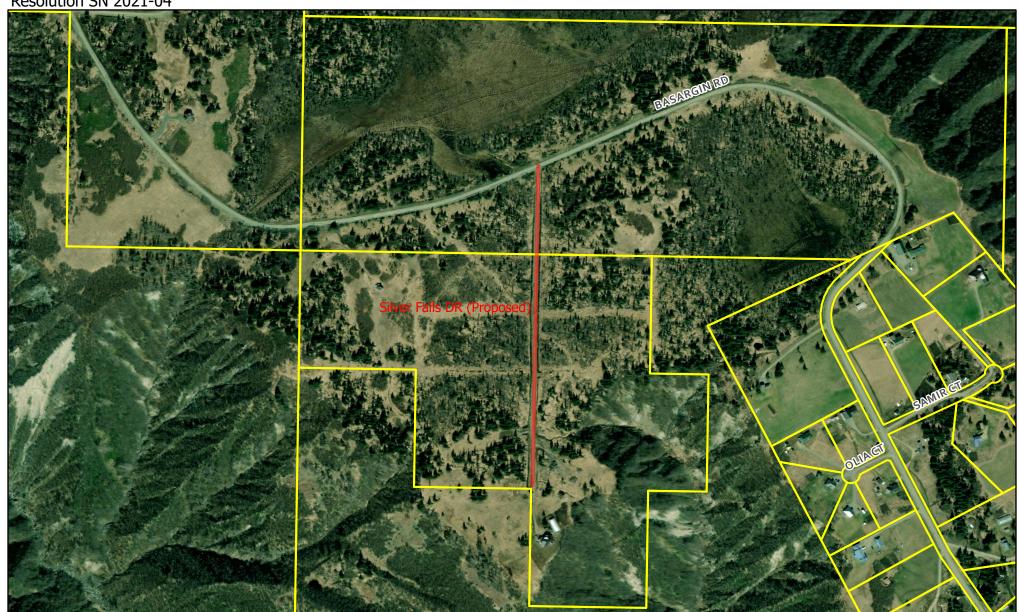
-146

Date: 6/28/2021

Private Road Naming Resolution SN 2021-04



Private Road Naming Resolution SN 2021-04



Charlie Pierce Borough Mayor

PENINSULA CLARION

KENAI PENINSULA BOROUGH PLANNING COMMISSION NOTICE OF PUBLIC HEARING TO NAME A PRIVATE ROAD

Public notice is hereby given that a petition was received to name a private road in the Fox River area. Area under consideration is described as follows:

- A. Location: Unnamed private road; Section 24, T04S, R11W; Seward Meridian, Kenai Peninsula Borough, AK; in the Fox River Community; ESN 202 Reason for Renaming: Private road that will serve multiple addresses; Proposed Name: Silver Falls 8F
- B. Purpose as stated in petition: Long private road to multiple addresses
- C. Petitioner(s): David Reutov

Public hearing will be held by the Kenai Peninsula Borough Planning Commission on **Monday, August 9, 2021**, commencing at **7:30 p.m.**, or as soon thereafter as business permits. The meeting is being held in the Betty J. Glick Assembly Chambers of the Kenai Peninsula Borough George A. Navarre Administration Building, 144 N. Binkley Street, Soldotna, Alaska.

Meeting materials may be found at https://www.kpb.us/planning-dept/planning-commission as well as any updates to meeting procedures.

Anyone wishing to testify, but cannot attend the zoom meeting, may submit a written statement to the attention of Addressing, Kenai Peninsula Borough Planning Department, 144 N. Binkley Street, Soldotna, Alaska 99669. The Planning Department recommends that written comments be received by **Friday, August 6, 2021.** [Written comments may also be sent by email to the address below or by Fax to 907-714-2378].

For additional information contact Addressing (addressing@kpb.us), Planning Department, 714-2200 (1-800-478-4441 toll free within Kenai Peninsula Borough).

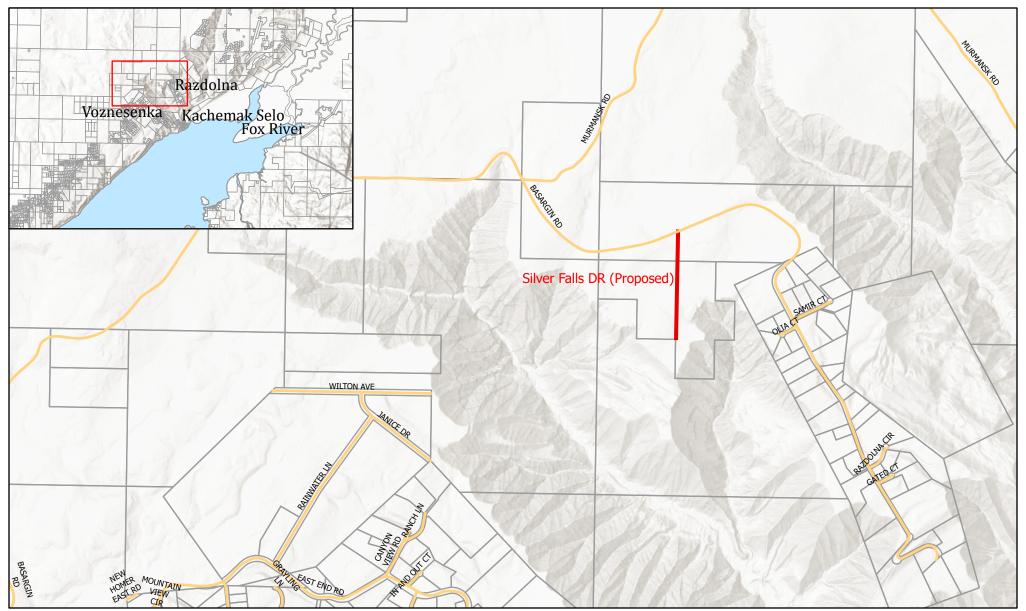
New name suggestions must not be on the 911 Street Naming Master Street Address Guide List: https://www.kpb.us/images/KPB/PLN/911/Road Inventory.pdf AND new name suggestions must be checked and approved by the Planning Department.

PLEASE NOTE: The Planning Commission may approve a name suggested by landowners, interested parties, or the planning staff. An entirely different name can also be suggested and approved by the Commission during the public hearing.

PLEASE NOTE: Upon adoption of a street name change resolution, no reapplication or petition concerning the name of the same street may be filed within one calendar year of the final adoption, except in the case where new evidence or circumstances exist that were not available, present or reasonably ascertainable when the original resolution was adopted (KPB 14.10.050).

Date: 6/28/2021

Private Road Naming Resolution SN 2021-04



Kenai Peninsula Borough

Planning Department - Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President

Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor \mathcal{U}

Melanie Aeschliman, Planning Director

FROM: Marcus A. Mueller, Land Management Officer — M & M

DATE: July 22, 2021

RE: Ordinance 2021-____, Authorizing a Negotiated Lease at Fair Market

Value with Edward and Kathleen Martin, dba Cozy Inn, in Kenai for a

Parking Area (Mayor)

Ed and Kathleen Martin have applied for a negotiated lease of borough-owned land for a parking area adjacent to their property. The Martins' stated purpose is to operate their property for housing students undergoing job training in a local construction academy. In order to serve their customers and meet the zoning requirements of the City of Kenai (City), they would need 16 parking spaces that they do not have space for on the land that they own.

The adjacent borough-owned land is classified as residential and is zoned by the City as Rural Residential. A use as a parking area would require compliance with City zoning regulations and the applicants are willing to go through the permitting processes.

The area being proposed measures 130' of frontage along Lawton Drive and 194' from the center of the street, the north 50' of which is a section line easement serving Lawton Drive. The net area is approximately 0.43 acres after subtracting the Lawton Drive section line right-of-way. A City storm water drain easement (30'wide) also crosses the lease area, but may be compatible with the simple surface use of parking.

The KPB Planning Commission will hold a public hearing on August 9th and will forward its recommendations to the assembly.

The initial appraised rental value will also be reported to the assembly as soon as it is available. Your review and consideration of this ordinance is appreciated.

Introduced by:	Mayor
Date:	08/03/21
Hearing:	08/17/21
Action:	
Vote:	

KENAI PENINSULA BOROUGH ORDINANCE 2021-

AN ORDINANCE AUTHORIZING A NEGOTIATED LEASE AT FAIR MARKET VALUE WITH EDWARD AND KATHLEEN MARTIN, DBA COZY INN, IN KENAI FOR A PARKING AREA

- **WHEREAS,** Edward and Kathleen Martin are owners of Lots 1 & 2, Block 4, Inlet View Subdivision 1st Revision, Plat KN-1515 in the City of Kenai; and
- **WHEREAS**, the Martins own and plan to operate Cozy Inn on the property in conjunction with a local construction academy job training program, to house the students; and
- WHEREAS, the Martins property lacks sufficient space for customer parking; and
- **WHEREAS**, the borough owns an adjacent large parcel that is classified as Residential and zoned Rural Residential; and
- **WHEREAS**, the Martins have applied for a negotiated lease of an area to be improved and serve as a parking area; and
- **WHEREAS,** the Martins would be responsible for acquiring any necessary conditional use permits required by the City of Kenai for the proposed use; and
- **WHEREAS**, the KPB Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended ______;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

- **SECTION 1.** Pursuant to KPB 17.10.100(I) and 17.10.120(D), the assembly finds that leasing approximately 0.58 Gross/ 0.43 Net acres of borough land more particularly described in Section 2 below at fair market value to Edward and Kathleen Martin, DBA Cozy Inn, for a parking area is in the best interest of the borough based on the following findings of fact:
 - A. The proposed use is compatible with the land classification and zoning, subject to City of Kenai conditional use permitting.
 - B. The lease of land would support local business and job training and would provide a revenue stream to the Land Trust Fund.

C. The configuration of the proposed lease would allow for future development of the remaining borough-owned land.

SECTION 2. Subject land lease is described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56′00″E a distance of 180.00 feet to the point of beginning; thence S 00°09′00″E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56′00″E a distance of 130.00 feet; thence N 00°09′00″W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56′00″W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area; and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District.

- **SECTION 3.** That the assembly additionally makes an exception to KPB 17.10.110 requiring notice of a disposition of land. This exception is based on the following findings of facts pursuant to KPB 17.10.230:
 - 1. Special circumstances or conditions exist.
 - A. The purpose of advertising, pursuant to KPB 17.10.110, is to notify the public of an opportunity to purchase or lease borough land. However, because the authorization of this ordinance is for a sole source lease, advertising will not serve a useful purpose.
 - 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this chapter.
 - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not affect any substantial property right as this is public land with previous seasonal field uses.
 - 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area.
 - A. Making an exception to advertising, pursuant to KPB 17.10.110, will not be detrimental or injurious to any public or private parties as leasing the subject land is subject to the acquisition of city of Kenai conditional use permits which address such matters.

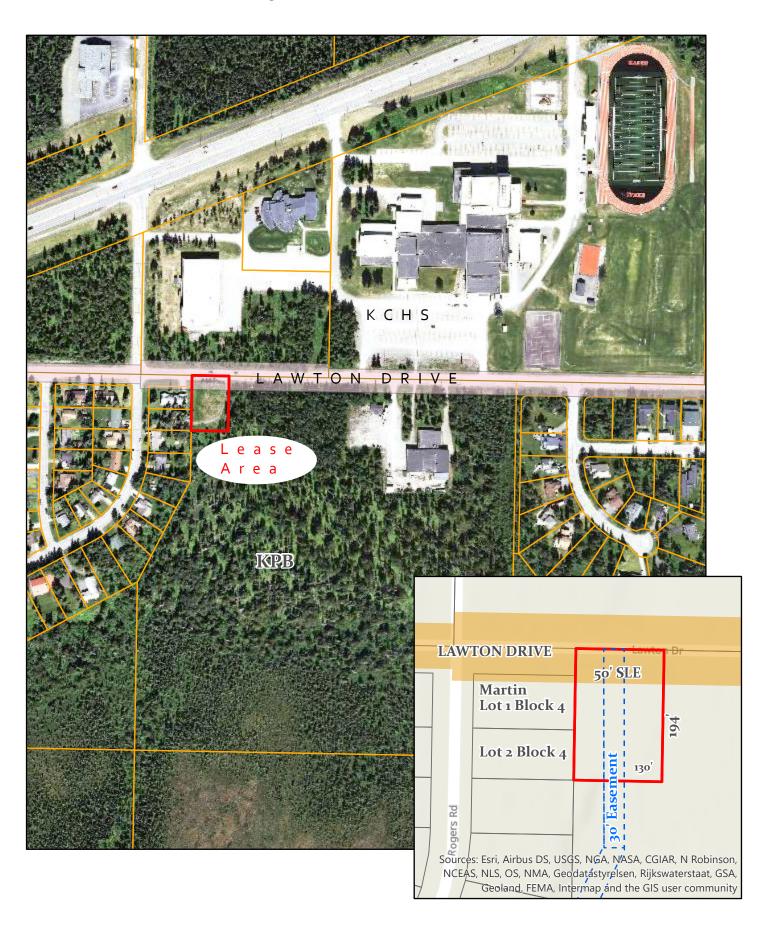
SECTION 4.	Based on the foregoing, the mayor is hereby authorized, pursuant to KPB
	17.10.100(I) and 17.10.120(D) to lease the land described in Section 2 above to
	Edward and Kathleen Martin, DBA Cozy Inn, for a term of 10 years with a 10-year
	renewal option at fair market value as determined by appraisal methods contained
	in the lease. The authorization is for lease solely to Edward and Kathleen Martin,
	DBA Cozy Inn, and they may not assign any rights to negotiate or enter an
	agreement for lease with any other person or entity without obtaining prior approval
	in accordance with the lease.

- **SECTION 5.** That the mayor is authorized to execute a lease substantially similar to the one attached, and sign any documents necessary to effectuate this ordinance.
- **SECTION 6**. That Kathleen Martin, DBA Cozy Inn shall have 180 days to execute the lease document from the date of enactment of this ordinance.
- **SECTION 7.** That this ordinance shall take effect immediately upon its enactment.

ENACTED BY	THE ASSEMBLY	OF T	THE KENA	AI PENINSULA	BOROUGH	THIS
DAY OF	, 2021.					

	Brent Hibbert, Assembly President
ATTEST:	
Johni Blankenship, MMC, Borough Clerk	

Parking Area Lease Map



KENAI PENINSULA BOROUGH REAL PROPERTY LEASE

This LEASE (hereinafter called this "Lease"), for good and valuable consideration, and pursuant to Ordinance 2021-___, enacted _____, 2021, is made and entered into by and between the KENAI PENINSULA BOROUGH, an Alaska municipal corporation whose address is 144 North Binkley Street, Soldotna, Alaska 99669, (hereinafter called "KPB"), and Edward and Kathleen Martin d.b.a. Cozy Inn, whose address is 35555 Kenai Spur Highway, PMB 471 Soldotna, Alaska 99669 (hereinafter called "Lessee").

I. DESCRIPTION OF REAL PROPERTY

This Lease grants Lessee use of the real property (hereinafter called "Property") described as follows:

Beginning for reference at the N ¼ Corner of Section 4, T5N, R11W, Seward Meridian, thence N 89°56'00''E a distance of 180.00 feet to the point of beginning; thence S 00°09'00''E a distance of 194.00 feet along the east boundary of Inlet View Subdivision 1st Revision, Plat KN1515, to the southeast corner of Lot 2 Block 4 Inlet View Subdivision 1st Revision; Thence N 89°56'00''E a distance of 130.00 feet; thence N 00°09'00''W a distance of 194.00 feet to the north boundary of Section 4; Thence S 89°56'00''W a distance of 130.00 feet to the point of beginning;

Subject to a Section Line Easement along the north 50' of the land lease area; and

further subject to a Stormwater Drain Facility Easement benefitting the City of Kenai per book 578, page 907, Kenai Recording District;

Containing 0.43 acres +/- acres in Net.

II. PURPOSE OF LEASE

Pursuant to Ordinance 2021-___ the purpose of this lease is for parking area (hereinafter called "ACTIVITIES"). The allowed uses shall be in conformance with of the Lessee's Development Plan (, and the terms and conditions of any city zoning permits.

<u>Development Plan</u>

The Lessee's Development Plan illustrates the type and location of improvements, basic design and construction standards, landscaping features, location of utilities, and the nature of uses. The Development Plan approved under this lease describes the scope

Kenai Peninsula Borough, Alaska Real Property Lease –Martin/Cozy inn of ACTIVITIES authorized by the lease. The initial approved development plan is incorporated by reference as Attachment A.

a. <u>Modification of Development Plan</u>. The Development Plan may be modified by mutual agreement as necessary to advance the purposes of this lease. Modifications of Lessee's development plan may be made through the written approval of the KPB Mayor of a modified development plan submitted by Lessee to KPB in writing at least 60 days prior to anticipated modification of ACTIVITIES. Approved modifications shall be attached to this lease and effective upon the Mayor's written approval.

Ingress and Egress

Lessee may, at any time, have ingress and egress directly from Lessee's own property. As a revocable matter of permission, Lessee may have ingress and egress along the existing driveway from Lawton Drive to the east of the lease area, until such time as permission is revoked in writing by KPB. Lessee has the option of developing a new driveway directly to Lawton Drive along the frontage of the lease area, subject to any permitting requirements of the local road authority.

III. RECITALS AND RIGHTS RESERVED TO KPB

- 1. Nothing contained herein creates or implies any additional property interests, including easements or rights-of-way in the Property beyond the terms and conditions of this Lease.
- 2. The KPB reserves the right to require improvements to be removed by the Lessee at the termination of the Lease.
- 3. Lessee shall not develop beyond what is specified in the development plan, unless approved in writing by KPB.
- 4. KPB reserves the right to authorize other land uses on the Property by easement or permit which do not unreasonably interfere with Lessee's use.

IV. TERMS AND CONDITIONS

- 1. <u>Lease Term</u>. This lease is for term of ten (10) years commencing September 1, 2021 and with an option to renew, by written mutual agreement, for a renewal term of ten (10) years.
- 2. <u>Lease Rental</u>. The annual lease rental for the first 5 years of this lease is \$______, which is based on 8 percent of the fair market appraisal of the net leased area. The annual lease rental for each successive 5-year period of the lease shall be set

at 8 percent of the fair market value. The KPB Assessing Department shall conduct the appraisal. Should lessee dispute the value of KPB's appraisal, then Lessee may obtain an appraisal from a professional independent fee appraiser upon which the parties can agree to adopt one appraisal, and if no agreement is reached then then the rate shall be set at the average of the two appraisals.

3. Defense and Indemnification.

The Lessee shall indemnify, defend, save and hold the borough, its elected and appointed officers, agents and employees, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees resulting from Lessee's performance or failure to perform in accord with the terms of this permit in any way whatsoever. The Lessee shall be responsible under this clause for any and all claims of any character resulting from Lessee or Lessee's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' performance or failure to perform this agreement in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions by the borough or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, Lessee shall not be responsible for any damages or claims arising from the sole negligence or willful misconduct of the borough, its agents, or employees.

4. <u>Insurance</u>

Insurance coverage required under this Lease shall be primary and exclusive of any other insurance carried by the Borough. Minimum levels of insurance coverage required under this Lease shall remain in effect for the life of this Lease and shall be a part of the contract price. If Lessee's policies contain higher limits, the KPB shall be entitled to coverage to the extent of such higher limits. There shall be no cancellation or material change of the insurance coverages, or intent not to renew the insurance coverages as specified in this Lease, without thirty (30) calendar days' prior written notice to the Borough. Certificates of Insurance, acceptable in form and content, will be delivered to the Borough at the time of submission of the signed Lease and updated certificates shall be provided upon insurance coverage renewal, where applicable.

At its option, the Borough may request copies of required policies and endorsements. Such copies shall be provided within (10) TEN CALENDAR DAYS of the Borough's request. All insurance required hereunder shall be maintained in full force and effect with insurers with Best's rating of AV or better and be licensed and admitted in Alaska. All policies required shall be written as primary policies and not contributing to nor in excess of any coverage the Borough may choose to maintain. By requiring insurance herein, the Borough does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on the liability of the Lessee

under the indemnities granted to the Borough in paragraph 3 of this Lease.

- 4.1 Commercial General Liability. Lessee shall provide and maintain, Commercial General Liability Insurance (CGL). The CGL Policy shall be written on an occurrence basis and with a limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) each occurrence and aggregate. CGL insurance shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, broad form property damage, independent contractors, products-completed operations, personal injury and advertising injury, explosion, collapse, underground hazards, and liability assumed under a contract including the tort liability of another assumed in a business contract. This policy shall name the KPB as Additional Insured. To the extent damages are covered by commercial general liability insurance, subrogation shall be waived.
- 4.2 Workers' Compensation. Lessee shall provide and maintain, for all of its employees engaged in work under this Lease, Workers' Compensation Insurance in accordance with the laws of the State of Alaska. The Lessee shall be responsible for Workers' Compensation Insurance for any subcontractor(s) who directly or indirectly provides services under this Lease. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Subrogation shall be waived.
- 4.3 Auto Liability. Lessee shall provide and maintain, Auto Liability Insurance (ALI). The Auto Liability Policy shall include a Combined Single Limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Underinsured and Uninsured Motorists limit of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); Coverage shall include Non-Owned and Hired Car coverage. This policy shall name the KPB as Additional Insured. To the extent damages are covered by auto liability insurance, subrogation shall be waived.
- 5. Waste. Lessee shall not commit waste or injury upon the lands leased herein.
- 6. <u>Fire Protection</u>. Lessee shall take all reasonable precautions to prevent, and take all reasonable actions to suppress destructive and uncontrolled grass, brush, and forest fires on the land under agreement, and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the demised premises are located.

- 7. <u>Safety</u>. Lessee shall be solely responsible for maintaining the premises in a safe and fit condition. Lessee is responsible for the safety of all persons conducting activities on the property under this lease. Lessee agrees to provide the public with information regarding rules and regulations and other information pertaining to the property and the lease.
- 8. <u>Sanitation</u>. Lessee shall comply with all laws, regulations or ordinances promulgated for the promotion of sanitation. The subject property shall be kept in a clean and sanitary condition and every effort shall be made to prevent pollution of the waters and lands. Sanitary facilities shall be in accordance with the State of Alaska, Department of Environment Conservation regulations.
- Hazardous Materials and Hazardous Waste. Storage, handling and disposal of hazardous waste shall not be allowed on lands under lease from KPB per KPB Code, Section 17.10.240(H).

Lessee shall comply with all applicable laws and regulations concerning hazardous chemicals and other hazardous materials, and shall properly store, transfer and use all hazardous chemicals and other hazardous materials and not create any environmental hazards on the lands leased herein. In no event may Lessee utilize underground storage tanks for the storage or use of hazardous chemicals or other hazardous materials.

Should any hazardous chemicals or hazardous materials of any kind or nature whatsoever, or hazardous wastes be released upon the subject lands during the term of this lease, Lessee shall IMMEDIATELY report such release to the KPB Planning Director or other appropriate KPB official and to any other agency as may be required by law, and Lessee shall, at its own cost, assess, contain and clean up such spilled materials in the most expedient manner allowable by law.

As used herein, "hazardous chemical" means a chemical that is a physical hazard or a health hazard.

As used herein, "hazardous material" means a material or substance, as defined in 49 C.F.R. 171.8, and any other substance determined by the federal government, the state of Alaska or KPB, to pose a significant health and safety hazard.

As used herein, "hazardous waste" means a hazardous waste as identified by the Environmental Protection Agency under 40 C.F.R. 261, and any other hazardous waste as defined by the federal government, the state of Alaska or KPB.

The covenants and obligations described in this article shall survive the termination of this lease.

- <u>10. Compliance With Laws</u>. The Lessee agrees to comply with all applicable federal, state, borough, and local laws and regulations.
- 11. Easements and Rights-of-Way. This Lease is subject to all easements, rights-of-way, covenants and restrictions of which Lessee has actual or constructive notice. KPB reserves and retains the right to grant additional easements for utility and public access purposes across the property and nothing herein contained shall prevent KPB from specifically reserving or granting such additional easements and rights-of-way across the property as may be deemed reasonable and necessary.

As the parties agree that this is a reserved right which is reflected in the annual lease rental, in the event that KPB grants future additional easements or rights-of-way across the property, it is agreed and understood that Lessee shall receive no damages for such grant.

- 12. Inspections. Lessee shall allow KPB, through its duly authorized representative, to enter and inspect the leased premises at any reasonable time, with or without advance notice to Lessee, to ensure compliance with the terms and conditions of this lease. KPB's right to enter and inspect shall be exercised at KPB's sole discretion and the reservation or exercise of this right, and any related action or inaction by KPB, shall not in any way impose any obligation whatsoever upon KPB, and shall not be construed as a waiver of any rights of KPB under this agreement.
- 13. <u>Property Taxes</u>. Lessee shall timely pay all real property taxes, assessments and other debts or obligations owed to KPB. Pursuant to KPB Code, Section 17.10.120(F) this agreement will terminate automatically should Lessee become delinquent in the payment of any such obligations.
- 14. <u>Assignments</u>. Lessee may assign this Lease only if approved in advance by KPB. Applications for assignment shall be made in writing on a form provided by the Land Management Division. The assignment shall be approved if it is found that all interests of KPB are fully protected. The assignee shall be subject to and governed by the terms and conditions of this lease and applicable laws and regulations.
- 15. <u>Cancellation</u>. At any time that this Lease is in good standing it may be canceled in whole or in part upon mutual written agreement by the Lessee and either the KPB Mayor or Planning Director when applicable.

This Lease is subject to cancellation in whole or in part if improperly issued through error in procedure or with respect to material facts.

Lease lands shall be utilized for the purposes of the development, management,

and maintenance of the SPARC facility within the scope of the terms and conditions of the lease and in conformity with the lessee's development plan, applicable classification, and any land use or comprehensive plans. Utilization or development for other than the allowed uses shall constitute a violation of the lease and will become subject to cancellation.

Failure on the part of the lessee to substantially complete the development plan of the land or to not be consistent with the proposed use and terms and conditions of the lease within two years of the anniversary date of said lease shall constitute grounds for cancellation.

16. Termination. Upon termination of this Lease, Lessee covenants and agrees to return the property to KPB in a neat, clean and sanitary condition, and to immediately remove all items of personal property subject to the terms and conditions of Paragraph 23 below. All terms and conditions set out herein are considered to be material and applicable to the use of the property under this Lease. Subject to the following, in the event of Lessee's default in the performance or observance of any of the agreement terms, conditions, covenants and stipulations thereto, and such default continues thirty (30) calendar days after written notice of the default, KPB may cancel this lease, or take any legal action for damages or recovery of the property. No improvements may be removed during the time in which the contract is in default.

In the event Lessee breaches any provisions prohibiting the release of hazardous chemicals, hazardous materials or hazardous waste upon the property, and fails to immediately terminate the operation causing such release upon notice from KPB, then KPB may immediately terminate this lease agreement without notice to Lessee prior to the effective date of the termination.

- 17. <u>Violation</u>. Violation of any of the terms of this lease may expose Lessee to appropriate legal action including forfeiture of lease interest, termination, or cancellation of its interest in accordance with state law.
- 18. <u>Notice of Default</u>. Notice of the default, where required, will be in writing and as provided in the Notice provision of this Lease.
- 19. Entry or Re-entry. In the event that the Lease is terminated, canceled, or forfeited, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the agreement term, KPB or its agents, servants or representative, may immediately or any time thereafter, enter or re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either without judicial action where appropriate, by summary proceedings or by a suitable action or proceeding at law or equity without being

liable for any damages therefor. Entry or re-entry by KPB shall not be deemed an acceptance of surrender of the contract.

20. Removal or Reversion of Improvements upon Termination of Lease.

Improvements on the property owned by Lessee shall, within ninety (90) calendar days after the termination of the agreement, be removed by Lessee; provided such removal will not cause injury or damage to the land; and further provided that the Mayor, or Planning Director when applicable, may extend the time for removing such improvements in cases where hardship is proven. The Lessee may dispose of its improvements to a succeeding lessee with the consent of the KPB mayor.

If any improvements and/or chattels that are not removed within the time allowed, such improvements and/or chattels shall revert and absolute title shall vest in KPB. Upon request, the Lessee shall convey said improvements and/or chattels by appropriate instrument to KPB.

- 21. Rental for Improvements or Chattels not Removed. Any improvements and/or chattels belonging to the Lessee or placed on the land during its tenure with or without its permission and remaining upon the premises after the termination of the contract shall entitle KPB to charge a reasonable rent therefor.
- 22. <u>Resale</u>. In the event that this Lease agreement should be terminated, canceled, forfeited, or abandoned, KPB may offer said lands for sale, lease, or other appropriate disposal pursuant to the provisions of KPB Code, Chapter 17.10 or other applicable regulations.
- 23. Notice. Any notice or demand, which under the terms of this Lease must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address shown on the contract. However, either party may designate in writing such other address to which such notice of demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed received when deposited in a U.S. general or branch post office by the addressor.

All notices shall be sent to both parties as follows:

<u>LESSOR</u>

Kenai Peninsula Borough Planning Director 144 N. Binkley Soldotna, AK 99669-7599 <u>LESSEE</u>

Edward and Kathleen Martin, DBA Cozy Inn 35555 Kenai Spur Highway, PMB 471 Soldotna, AK 99669

- 26. Responsibility of Location. It shall be the responsibility of the Lessee to properly locate its self and its improvements on the leased lands.
- 27. <u>Liens and Mortgages</u>. Lessee shall not cause or allow any liens of any kind or nature whatsoever to attach to the property during the term of this lease. In the event that any prohibited lien is placed against the property, Lessee shall immediately cause the lien to be released. Lessee shall immediately refund to KPB any monies that KPB may, at its sole discretion, pay in order to discharge any such lien, including all related costs and a reasonable sum for attorneys' fees.

For the purpose of interim financing or refinancing of the improvements to be placed upon the leased premises, and for no other purpose, a lessee may, upon written approval of the KPB, encumber by mortgage, deed of trust, assignment or other appropriate instrument, the lessee's interest in the leased premises and in and to the lease, provided said encumbrance pertains only to the leasehold interest.

- 28. Non-Waiver Provision. The receipt of payment by KPB, regardless of KPB's knowledge of any breach by Lessee, or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this agreement, shall not be deemed to be a waiver of any provision of the agreement. Failure of KPB to enforce any covenant or provision herein contained shall not discharge or invalidate such covenant or provision or affect the right of KPB to enforce the same in the event of any subsequent breach or default. The receipt by KPB of any payment of any other sum of money after notice of termination or after the termination of the agreement for any reason, shall not reinstate, continue or extend the agreement, nor shall it destroy or in any manner impair the efficacy of any such notice of termination unless the sole reason for the notice was nonpayment of money due and the payment fully satisfies the breach.
- 29. <u>Jurisdiction</u>. Any suits filed in connection with the terms and conditions of this Lease, and of the rights and duties of the parties, shall be filed and prosecuted at Kenai, Alaska and shall be governed by Alaska law.
- 30. <u>Savings Clause</u>. Should any provision of this Lease fail or be declared null or void in any respect, or otherwise unenforceable, it shall not affect the validity of any other provision of this Lease or constitute any cause of action in favor of either party as against the other.
- 31. <u>Binding Effect</u>. It is agreed that all covenants, terms, and conditions of this agreement shall be binding upon the successors, heirs and assigns of the original parties hereto.

KENAI PENINSULA BOROUGH

- 32. <u>Full and Final Agreement</u>. This agreement constitutes the full and final agreement of the parties hereto and supersedes any prior or contemporaneous agreements. This agreement may not be modified orally, or in any manner other than by an agreement in writing and signed by both parties or their respective successors in interest. Lessee avers and warrants that no representations not contained within this agreement have been made with the intention of inducing execution of this agreement.
- 33. <u>Warranty of Authority</u>. Lessee warrants that the person executing this agreement is authorized to do so on behalf of Soccer Association of Homer.

Charlie Pierce, Mayor Dated:	
Dated	
ATTEST:	APPROVED AS TO LEGAL FORM
	AND SUFFICIENCY:
Johni Blankenship	Sean Kelley
Borough Clerk	Deputy Borough Attorney
Lessee	
Edward Martin Jr. Dated:	Kathleen Martin Dated:

NOTARY ACKNOWLEDGMENT

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT)ss.)
	as acknowledged before me thisday of Pierce, Mayor of the Kenai Peninsula Borough, an Alaska of the corporation.
	Notary Public in and for Alaska My commission expires:
	ΓARY ACKNOWLEDGMENT
STATE OF ALASKA))ss.
THIRD JUDICIAL DISTRICT)
<u> </u>	cknowledged before me thisday of larin Jr, DBA Cozy Inn.
	Notary Public in and for Alaska My commission expires:
<u>NO1</u>	TARY ACKNOWLEDGMENT
STATE OF ALASKA))ss.
THIRD JUDICIAL DISTRICT)

Kenai Peninsula Borough, Alaska Real Property Lease –Martin/Cozy inn

Page 11 of 11

0 0	acknowledged before me this	day of
202	1, by <u>Kathleen Martin</u> , DBA Cozy Inn	
	Notary Public in and for Al	acka
	My commission expires:	aska

Kathleen A. Martin DBA Cozy Inn

Mailing Address: 35555 Kenai Spur Hwy., PMB 471 Soldotna, AK 99669
Physical Address: 702 Lawton Drive Kenai, AK 99611

Email: keeconstructionllc@yahoo.com

Phone: (907)252-8163

July 1, 2021

Julie Denison, Land Management Technician Kenai Peninsula Borough 144 N. Binkley Street Soldotna, AK 99669

Re: Letter Dated 6/29/2021 via certified mail 7019 2280 0000 7385 7087

Application for Land Use Permit and Negotiated Lease

APN: 04901048

Dear Ms. Denison,

In regards to your letter requesting more information as noted above:

<u>To clarify</u>, the Land Use Permit and Negotiated Lease are both requested for the proposed use of the NW corner of APN 04901048 as parking for student vehicles. Specifically, the students are all adults attending Commercial Drivers License and/or Basic Civil Construction courses.

<u>HOWEVER</u>, they are NOT attending these courses at 35555 Kenai Spur Highway in Soldotna; that is the location of our mail box. They are attending courses held at our 37200 Thomas Street property in Sterling, AK.

<u>Types and quantity of vehicles</u> anticipated is unclear you said; the vehicles will be the students privately owned vehicles (cars, vans, pick-up trucks, SUVs). There can be up to 8 students in each class, so up to a total of 16 (8x2) student vehicles parking on the requested property (Marcus Mueller computes .5 acres) at any one time. Each class last 3 weeks, so the specific vehicles parking on property will change as new classes begin with new students.

Development Plan

USE: Parking of Student owned vehicles as described above.

Nature of Improvements: Clearing, use of existing on-site material or imported gravel to meet requirements & log humpers.

Estimated value of improvements: \$5,000.00

The property, APN: 04901048, had been cleared/used in the past by the former owners of Irene's B&B. Some trees have begun to grow in the area again as you would have noticed on your site visit. We would like to mulch some of said trees to provide a flat parking area. A 34' vegetation boarder of second growth can be left within the 50' ROW (we would like to do this if you don't object). The area would be designated as a parking area so that each student can be assigned a specific parking space. The property would be kept clean with regular litter patrols and maintained to keep plant life, like trees, from re-growing in the area we clear. The estimated value of the improvements is \$5,000.00

In your letter you also asked that we not materially interfere with or hinder the City of Kenai's ability to manage storm water. The City of Kenai's storm water line is located underground in this area. We will not be constructing anything onto the site, nor will we be fencing in the site; we are simply asking to park privately owned vehicles on the site. City of Kenai Municipal Code 14.20.250 you provided (4A) states bumper guards should be used where needed; we can use

lengths of log that can be rolled/moved out of their way should they need to dig up their line for replacement or maintenance. A durable, well drained and dust free surface can be accomplished with gravel. We have no intention of hindering any City of Kenai employee(s) from access to do his/her/their job(s).

Site Plan Drawing (see Exhibits A, B & C)

Exhibit A - detailed drawing

Exhibit B - smaller in scale to give a clearer view of the property/project as a whole

Exhibit C - Photo taken from KPB map site to show exact location of old entrance/exit used by Irene's B&B.

In your letter you state that the property is located within the City of Kenai and the west half is zoned Rural residential; the east half is zoned Education – please provide me with the documentation. The Kenai Peninsula Borough map site list the property uses as "Institutional." I spoke with Marcus Mueller about this and we both understood this property to be "educational" in use and therefore a good fit as we are intending its use to be for the parking of students' vehicles.

You go on to say the parcel is subject to a 50' wide section line easement along the north boundary. I have made multiple calls to you for further information/clarification because I need to know where the 50' starts/originates to avoid the totality of it (the photo you provided is too digitalized to see even the roadway clearly and there are no labeled reference points). I understand you may be busy, but without a point of origin a layman can understand, I have to assume it begins at the centerline of Lawton Drive. If this is true, half the width of the road (16'4") plus a 34 foot vegetation buffer will avoid the 50' section line easement.

If I am incorrect as to where the 50' section line easement begins, we can shift the area on the Site Plan Drawing, with your assistance to identify where it actually is, to make it avoid the area.

As you can see on the Site Plan Drawing enclosed, I have drawn out 24 (12'x20') parking spaces in a herringbone pattern. A typical personally owned pick-up truck measures 6.9'x20' – this will allow for plenty of space to open doors without denting/scratching the vehicle that may be in the neighboring spaces. We can keep the design at 24 spaces to allow for future class growth or we can eliminate spaces to avoid the 50' section line easement if necessary. The parking spaces can also be shifted west to east if necessary; we are willing to work with you to accomplish whatever will work.

To clarify that we read and are planning to be consistant with the City of Kenai Municipal Code 14.20.250 Off Street Parking and Loading Requirements:

(a) For commercial development, there shall be provided at the time of construction of any main building or at the time of the alteration, enlargement, or change in use of any main building, permanently maintained off-street parking facilities for the use of occupants, employees, or patrons of such building. It is the joint and several responsibility of the owner and/or occupant of any main building or structure to provide, and thereafter maintain, minimum free off-street parking facilities as required in this section.

We purchased an existing structure built in 1976 that was used as Irene's B&B. We are trying to provide parking as required that the prior owners did not have.

- (b) No existing parking area and no parking area provided for the purpose of complying with the provisions of this chapter shall hereafter be relinquished or reduced in any manner below the requirements herein established.

 OK.
- (1) Site Plan Submission. A site plan showing all parking and loading areas shall accompany all applications for building permits. The plan shall show dimensions of spaces, curb cuts, and other information necessary to determine compliance with the provisions of this chapter. The administrative official shall approve or reject the site plan on the basis of compliance with the requirements of this chapter. No certificate of zoning compliance and building permit shall be issued unless the parking site plan is approved.

We do not need a building permit. A site plan has been included to show the dimensions of spaces. A curb cut is not necessary to utilize the egress from our 436 Rogers Road lot (back yard). A curb cut will be necessary if the Kenai Peninsula Borough is willing to allow us to utilize the old access shown in Exhibit C (marked with blue dot) off of Lawton Drive.

(2) Joint Parking Areas. Where there is more than one (1) use in a single structure or on a site (e.g., doctor, attorney, and retail grocery) or two (2) or more separate instances of the same use, off-street parking requirements shall be the sum of the requirements for the various uses; provided however, that where two (2) or more uses provide a single joint parking area, and their total required spaces totals twenty (20) or more, the minimum requirement will be seventy-five percent (75%) of the sum of the requirements for the various computed separately.

Doesn't apply; no joint parking area.

(3) Location of Parking. Any parking space provided pursuant to this section shall be on the same lot with the main use it serves or on an adjoining lot except that the Commission, by a conditional use permit as specified in this chapter, may allow parking spaces on any lot if it is determined that it is impractical to provide parking on the same or adjoining lot.

Impractical; need 16 spaces. That is why we have applied to lease property from the adjoining lot.

- (4) Design Standards.
- (A) All parking lots shall be provided with a durable, well-drained, and dust-free surface and shall have appropriate bumper guards where needed;

This can be accomplished with gravel. If the City of Kenai wants us to have bumper guards we can use logs that can be rolled/moved out of their way if they should need to dig up their line for repair/replacement.

(B) Parking areas and front yards as defined in KMC 14.20.320(b), which includes the required parking spaces, in commercial use areas shall not be used for storage, repair work or any purpose other than parking, landscaping, signage, or sales displays. A non-conforming use of parking areas and front yards prohibited by this section shall be made to conform to this section within a period of one (1) year after adoption of the ordinance codified in this section. OK.

Exception: Semi-trailers or containers may be parked in these areas for no more than thirty (30) consecutive days to facilitate unloading. Trucking terminals and bona fide construction sites are exempt; N/A No semi-trailers

- (C) Any lighting of parking lots shall be arranged to reflect away from public rights-of-way and from any adjoining residential areas; No lighting
- (D) Curb cuts shall be located so as to avoid traffic hazards and shall be approved by the administrative official; OK please let me know if a curb cut at the afore mentioned old entrance/exit point on Exhibit C would be considered a traffic hazard. I don't believe it would be.
- (5) Interpretation of Space Requirements. If a use is not specifically mentioned in this section, the administrative official shall determine the most similar use which is specifically mentioned. Parking requirements shall be the same as for that use; OK.

- (6) Exception to this Section—Public Parking Lots. Notwithstanding other provisions of this section, when a use is located within three hundred feet (300') of an existing or planned public lots, the off-street parking requirements of this chapter may be met if under the procedures specified in this chapter, the Commission issues a conditional use permit stating that the following conditions have been met: The closest Public Parking lot is the City of Kenai Multipurpose Facility (9775 Kenai Spur Hwy.). It is across Lawton Drive from our property and does not abut our property. I have no idea what types of events they may host, how much "extra" parking area they may have, etc.
- (A) The public parking lot exists within reasonable distance of the use, or plans for the public parking lot are sufficiently advanced to give reasonable assurance that the lot will be in use within one (1) year of the time of issuance of the conditional use permit;
- (B) The owner and/or occupant of the use in question shall sign a covenant agreeing to join an assessment district to pay for the public parking lot;
- (C) The public parking lot has or will have sufficient capacity to accommodate the use in question plus other parking needs of existing and potential uses within a reasonable distance of the lot. The Commission shall use the off-street parking requirement as cited above to estimate the parking spaces needed within a reasonable distance of the lot.
- (7) Off-Street Loading. Every building or structure used for business, trade, or industry and normally requiring truck loading or unloading with respect to the use, shall provide space as herein indicated for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public alley, or, if there is no alley, to a street. Off-street loading and unloading space shall be in addition to and not considered as meeting a part of the requirement for off-street parking space. Off-street loading and unloading space shall not be used or designed, intended, or constructed to be used in a manner to obstruct or interfere with the free use of any street or adjoining property. The minimum off-street loading and unloading space required for specific uses shall be as follows: No off-street loading.
- (A) Retail business and service establishments shall provide one off-street loading and unloading space at least ten feet (10') wide and thirty-eight feet (38') long with a fourteen-foot (14') height clearance per building;
- (B) Industrial plants shall provide one off-street loading and unloading space for each twenty thousand (20,000) square feet of gross floor area. Each loading space shall be minimum of twelve feet (12') wide and fifty feet (50') long with a fourteen-foot (14') height clearance;
- (C) Trucking terminals shall provide one off-street loading and unloading space for every five thousand (5,000) square feet of total floor area used for storage, warehousing, and shipping. Each loading space shall be a minimum of fourteen feet (14') wide and sixty-five feet (65') long with fourteen-foot (14') clearance.
- (8) Off-Street Parking Requirements.

DWELLING AND LODGING

Lodges, rooming/boarding houses, dormitories, bed and One (1) per principal dwelling unit and breakfast, and other structures containing sleeping rooms other than, or in addition to dwelling units Mobile home parks Motels, hotels and cabin rentals

MINIMUM NUMBER OF PARKING **SPACES REQUIRED**

one (1) per guest room or one for every two (2) beds whichever is greater. Two (2) per mobile home. One (1) per unit plus two (2) spaces.

DWELLING AND LODGING

MINIMUM NUMBER OF PARKING SPACES REQUIRED

Multiple-family dwellings, retirement homes and other One (1) per efficiency unit; and two (2) places containing multiple dwelling units Single-family dwellings, two-family dwellings and child care homes

per other units.

Two (2) per dwelling units.

Development & Construction Timetable

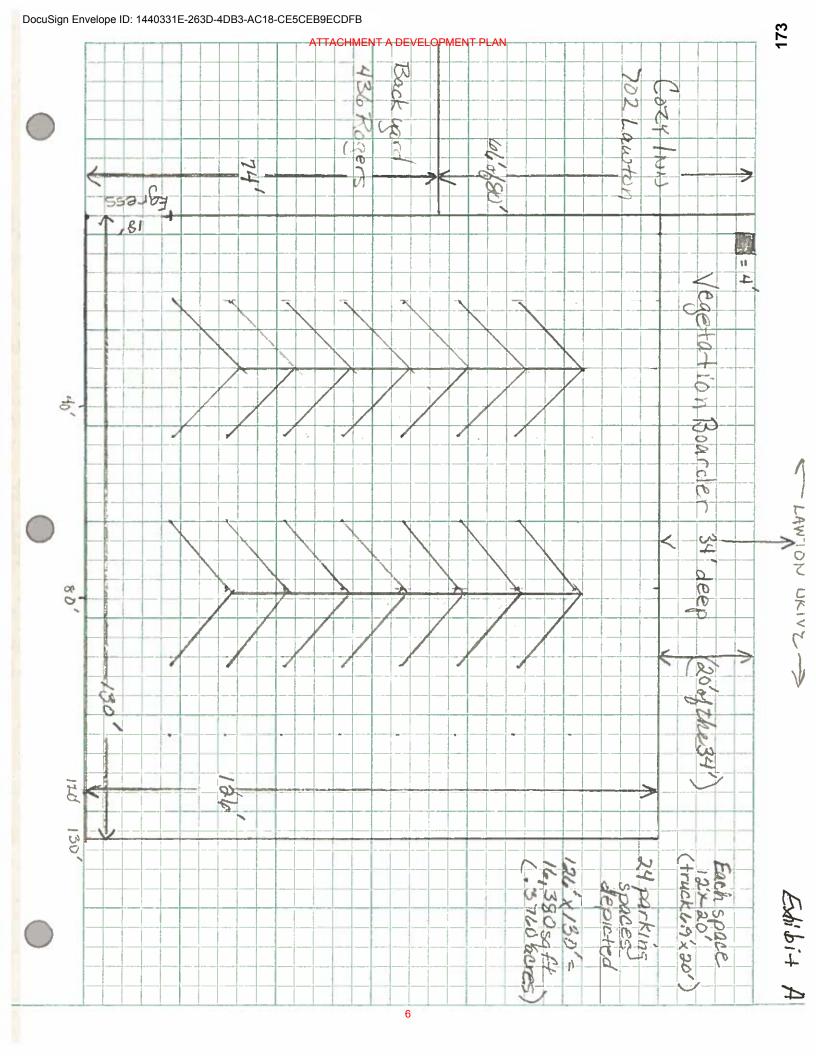
The 2 storage buildings you mentioned as in trespass have been moved; they were placed there by the prior owners apx. 21 years ago. We had our 2 lots surveyed so we could be assured that we moved them completely onto our property. See photo below. We are ready for your site visit.



Sincerely,

Kathleen A. Martin, Owner

(907)252-8163



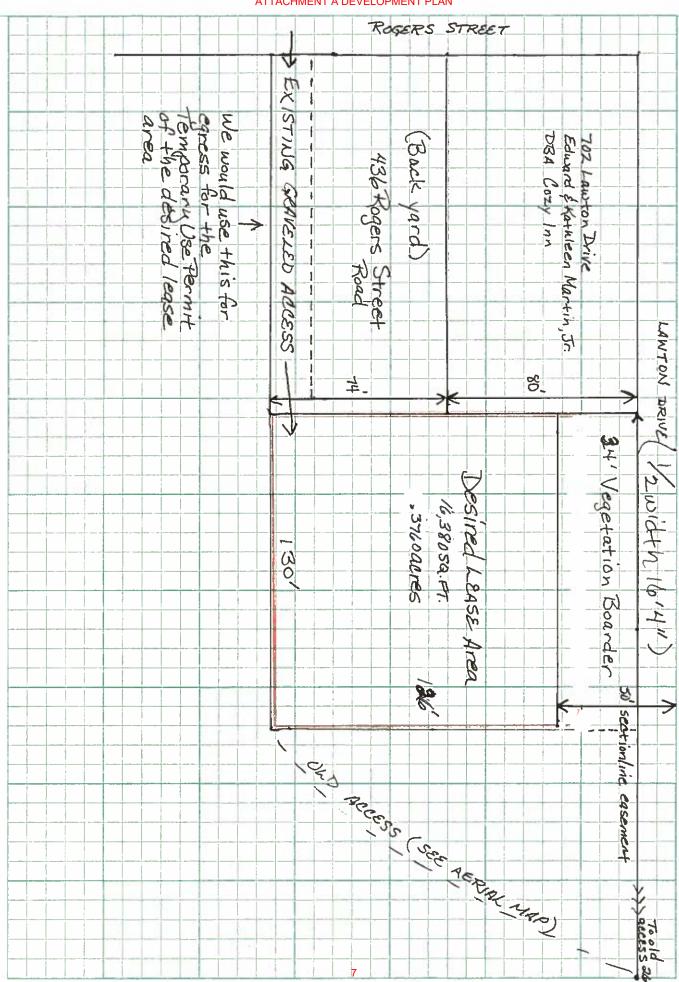
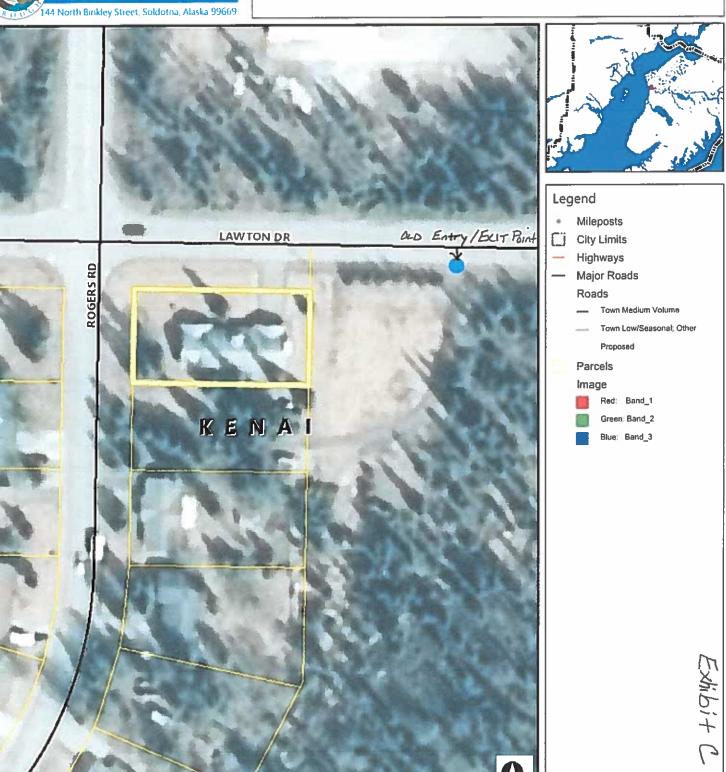


Exhibit B



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. It is not to be used for navigation.

Notes

Map of 702 Lawton Drive, 436 Rogers Road and 750 Lawton Drive

DATE PRINTED: 7/6/2021

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Hibbert, Assembly President

Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor \mathcal{L}

Melanie Aeschliman, Planning Director

FROM: Marcus A Mueller, Land Management Officer ______

DATE: July 22, 2021

RE: Ordinance 2021-____, Authorizing an Amendment to a Master Land

Lease Development Agreement with Alaska Department of Transportation and Public Facilities in Support of the Sterling Highway MP 45-60 Construction Project Near Cooper Landing to Include a Staging Area at Tract C Quartz Creek Subdivision and Appraisal

Provisions (Mayor)

Alaska Department of Transportation and Public Facilities (DOT&PF) is actively working on the Sterling Highway MP 45-60 Construction Project which follows the Juneau Creek Alternative near Cooper Landing.

KPB Land Management has been working with the project team as it seeks to implement this major project. DOT&PF has entered into a Master Lease that includes three project staging and disposal sites on borough owned or managed land. A fourth site related to the project had been proposed to be leased by a DOT&PF contractor. However, DOT&PF now requests that the lease of this fourth site, located at Tract C Quartz Creek Subdivision, be included in DOT&PF's Master Lease.

In discussions, DOT&PF has indicated that it would like to have the ability to go through an appraisal process on Tract C as well as the other sites. An appraisal process would conform to DOT standards and would protect KPB's interests in receiving a fair market rent for the surface use of the KPB land.

This ordinance would authorize an amendment to DOT's Master Lease to include Tract C Quartz Creek Subdivision and to provide for rental rates to be adjusted to the appraised fair market rental value once DOT completes such appraisals.

Your consideration is appreciated.

Introduced by:	Mayor
Date:	8/3/2021
Hearing:	8/17/2021
Action:	

KENAI PENINSULA BOROUGH ORDINANCE 2021-

AN ORDINANCE AUTHORIZING AN AMENDMENT TO A MASTER LAND LEASE DEVELOPMENT AGREEMENT WITH ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES IN SUPPORT OF THE STERLING HIGHWAY MP 45-60 CONSTRUCTION PROJECT NEAR COOPER LANDING TO INCLUDE A STAGING AREA AT TRACT C QUARTZ CREEK SUBDIVISION AND APPRAISAL PROVISIONS

- **WHEREAS,** the State of Alaska Department of Transportation and Public Facilities ("DOT&PF") is actively working on the Sterling Highway MP 45-60 construction project near Cooper Landing; and
- WHEREAS, Ordinance 2021-14 authorized the lease of multiple staging and disposal sites on borough lands to DOT&PF under a Master Land Lease Development Agreement ("Master Lease"); and
- **WHEREAS,** Ordinance 2021-13 authorized the lease of Tract C Quartz Creek Subdivision to one of DOT&PF's contractors, Kiewit Infrastructure West Company, for staging in support of the state project; and
- WHEREAS, DOT&PF has requested that the lease of Tract C be issued directly to DOT&PF and that state procurement methods for valuation be included as an overall provision of the Master Lease; and
- **WHEREAS**, the Master Lease can be amended to include Tract C and to provide for methods of valuation consistent with state procurement standards; and
- **WHEREAS**, state procurement standards for land valuation would protect the borough's interests in fair compensation for the use of borough land; and
- **WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of August 9, 2021 recommended ______;
- NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:
- **SECTION 1.** That the assembly finds that leasing to DOT&PF the parcel of land described as Tract C Quartz Creek Subdivision pursuant to KPB 17.10.100(I) is in the best

interest of the borough to support the highway project which will significantly improve road access to and from the western half of the borough and provide revenue to the borough..

- **SECTION 2.** That the provisions of KPB 17.10.080-.090 and KPB 17.10.110-.240 governing classification, disposition, and leasing of borough lands and related natural resources shall not apply to this lease to DOT&PF in cooperation with the Sterling Highway MP 45-60 project.
- SECTION 3. Based on the foregoing, the mayor is hereby authorized pursuant to KPB 17.10.100(I) to amend the Master Lease to include Tract C Quartz Creek Subdivision for project staging and to amend the lease rental provisions to include appraisal methods for establishing or adjusting rent for all sites included in the Master Lease, substantially in the form of the amendment document accompanying this ordinance. The authorization is only for a lease of the property to the DOT&PF, and it may not assign any rights to negotiate or enter an agreement for lease to any other person or entity.
- **SECTION 4.** The mayor is authorized to execute a lease amendment substantially similar in form to the Master Lease Amendment No. 1 form approved by the assembly.
- **SECTION 5**. DOT&PF shall have 120 days from the time of enactment of this ordinance to execute the lease document.
- **SECTION 6.** That revenue from the subject lease shall be deposited in the Land Trust Fund.
- **SECTION 7.** That the authorization to lease Tract C provided by Ordinance 2021-13 is superseded by this ordinance.
- **SECTION 8.** That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2021.

	Brent Hibbert, Assembly President
ATTEST:	
Johni Blankenship, MMC, Borough Clerk	

Master Land Lease Development Agreement AMENDMENT NO 1

KPBL# 21-0501-01

WHEREAS, KPB and DOT&PF have entered in a certain Master Land Lease Development Agreement (the "Agreement") serialized KPBL# 21-0501-01 for multiple staging and disposal sites associated with the Sterling Highway MP 45-60 project; and

WHEREAS, KPB and DOT&PF desire to amend the Master Land Lease Development Agreement to include an additional site known as Tract C Quartz Creek Subdivision and to include appraisal provisions for the establishment of adjustment of rents on all sites included in the Agreement;

NOW THEREFORE.

The Kenai Peninsula Borough, an Alaska municipal corporation, whose address is 144 N. Binkley Street, Soldotna, AK 99669 (hereinafter "KPB" or "Lessor"), and the State of Alaska, Department of Trasnporation and Public Facilities, whose address is 4111 Aviation Avenue, Anchorage, AK 99519 (hereinafter "DOT&PF" or "Lessee") enter into this Master Land Lease Development Agreement Amendment No 1 (Amendment No 1) and agree herein to amend the Agreement as follows (bold underline indicates amended language):

Amend Section I (2) to update contact information as follows:

2. **Authorized Contact.** All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party's own risk. KPB staff do not have authority to bind the KPB. Any material amendments or changes to the Agreement must be approved in writing signed by the KPB Mayor.

KPB DOT&PF

Kenai Peninsula Borough
Attn: Land Management Division
Mailing Address: 144 N. Binkley St.

Soldotna, AK 99669

DOT&PF Central Region Construction

Attn: **Jonathan Tymick**4111 Aviation Avenue
Anchorage, AK 99519-6900

Amend Section II (5) as follows:

- II. Leased Property Description; Term; Rent
- 5. The Property. The KPB leases to DOT&PF and DOT&PF leases from the KPB, the following

AMENDMENT NO. 1 to Master Land Lease Development Agreement KPB and DOT&PF described Property in an "as-is" condition. The KPB makes no specific warranties, express or implied, concerning the title, condition, or use of the Property, including survey, soils, wetlands, access, or suitability for any use, including those uses authorized by the Agreement, unless otherwise specified in this Agreement:

West #1 Staging and Disposal Site; 14.0 acres +/-, located within the N1/2 Section 27, T5N, R4W, S.M. AK

West #2 Staging and Disposal Site; 4.6 acres +/-, located within the N1/2 Section 26, T5N, R4W, S.M. AK

East #2 Staging and Disposal Site; 4.7 acres +/-, located within Tract A USS 5105 situated within Section 30, T5N, R3W, S.M. AK

<u>Tract C Quartz Creek Subdivision, Plat No 94-11, Seward Recording District; 15.81</u> acres +/-

Each Site more particularly described and depicted in Attachment 3- Site Survey Drawings.

Amend Section II (7) as follows:

7. Term.

7.1. Initial Term. The Initial Term of this Agreement shall be for a period of 5 years commencing on May 1, 2021 and terminating on April 30, 2026. The initial term as applied to Tract C Quartz Creek Subdivision commences August 15, 2021.

Amend Section II (8) as follows:

8. Rent.

8.1. Surface Use Rent ("Rent"). The Rent for the use of the surface area of the Property is shown on the table below, for the first year of the Agreement, payable on the commencement date of the lease and each anniversary thereof. This Rent shall increase annually at 3% per annum.

SITE DESCRIPTION	AREA	INITIAL RENT
West #1 Staging and Disposal Site	14.0 acres +/-	\$8,400/YR
West #2 Staging and Disposal Site	4.6 acres +/-	\$5,520/YR
East #2 Staging and Disposal Site	4.7 acres +/-	\$5,640/YR
Tract C Quartz Creek Subdivision	15.81 acres +/-	\$35,640/YR

TOTAL <u>\$55,200/YR</u>

8.2. Material Extraction and Disposal. The consideration, fees or royalties associated with

AMENDMENT NO. 1 to Master Land Lease Development Agreement KPB and DOT&PF

- material extraction, disposal, and reclamation under the Agreement shall be set forth in Attachment 1 Materials Extraction and Disposal Terms & Conditions.
- 8.3. Rent for Tract C Quartz Creek Subdivision is prorated for the initial partial year through April 30, 2022 as (258 days divided by 365)x(\$35640)= \$25,192.10.
- 8.4. Rent for each site may, at any time, be adjusted to the appraised fair market rental value. DOT&PF may have the sites appraised according to DOT&PF appraisal standards as to the fair market value or fair market rental value. In the case of a fair market value appraisal, 8% of the appraised fair market value will be used as the lease rate. Upon acceptance of the appraisal by each party the appraised fair market rent will be adopted and any rental adjustment payment, or reimbursement due either party will be made within 60 days for the annual period in which the appraisal is conducted. The adjusted rent shall then increase annually at 3% per annum.

Amend Section III (9) as follows:

- 9. <u>Authorized Uses</u>. The Agreement is entered into for the use of the Property for the following authorized uses:
 - 9.1. Subject to Section 11 below, Rights Reserved by KPB, DOT&PF shall have exclusive surface use and possession of the Property. The surface uses shall be governed by this Master Lease. Surface uses include, but are not limited to, staging of personnel and equipment, material processing operations, temporary facilities, and related uses reasonably necessary to support completing the Project. Authorized uses specifically include those described in Attachment 4- Staging/Disposal Operations Plan.
 - 9.2. Subject to the terms set forth in Attachment 1, Materials Extraction and Disposal Agreement, DOT&PF may use the Property to dispose, develop, process, explore, excavate, crush, stockpile, remove, gravel, soil, and other natural resource materials on the Property. The reclamation obligations set forth in Attachment 1 survive termination of the Agreement.
 - 9.3. Terms specific to Tract C Quartz Creek Subdivision
 - a. Subject to reclamation obligations, DOT&PF shall have the right to develop Tract C sufficient for its authorized uses included importing clean, construction grade gravel fill material, installation of utilities, installation of DEC approved septic system or holding tanks, drilling of on-site water wells, and installation of road approaches, pads, and durable surfaces. DOT&PF shall conserve topsoil on site and maintain such material available for site reclamation at the end of the Agreement.
 - b. <u>Vegetated Buffers/ Clearing Plan. Uses of Tract C under this agreement are subject to preserving certain vegetated buffers along the perimeter of the subject to preserving certain vegetated buffers along the perimeter of the</u>

AMENDMENT NO. 1 to

Master Land Lease Development Agreement
KPB and DOT&PF

property. Prior to commencement of the Agreement, a clearing plan had been agreed upon and implemented through which certain areas of vegetation were preserved. The cleared area shall be available for DOT&PF's development and use under this agreement. No further clearing or expansion of use into vegetated areas will take place unless first approved by KPB in writing. Vegetated areas may be incorporated into DOT&PF's storm water management practices. Individual trees within the vegetated buffer that are a substantial hazard risk may be removed by DOT&PF as necessary without changing the buffer status.

c. Site Closure.

- 9.3.c.1. Notwithstanding KPB 17.10.240, prior to termination of this

 Agreement the KPB reserves the right, at KPB's sole option, to require

 Lessee to restore the site to a natural condition, free of contamination,
 to leave the site in a condition suitable for use by another, or any
 combination thereof. KPB declares an intent for the site to be useful for a commercial business subdivision at the end of the Agreement.
- 9.3.c.2. Pre-closure Inspection. KPB and Lessee will jointly inspect the site for the purpose of KPB determining the condition that site will be left in prior to termination of Agreement. KPB and Lessee shall agree in writing the condition that site will be left in prior to termination of Agreement. KPB, at its sole discretion, may require Lessee to take any or all of the actions listed in paragraphs A and B of this section.
 - A. Removal of Improvements. The KPB may require

 Lessee to remove any and all improvements including septic systems, utilities, imported materials, and closure of wells.
 - B. Reclamation. Site shall be reclaimed by adding organic topsoil material to bring site to a consistent topographic level as adjacent features and then planted with local plant species.
- 9.3.c.3. Post-closure Inspection. KPB and Lessee will jointly inspect site to confirm site is left in a condition acceptable to KPB and KPB will issue a document to Lessee affirming its findings.

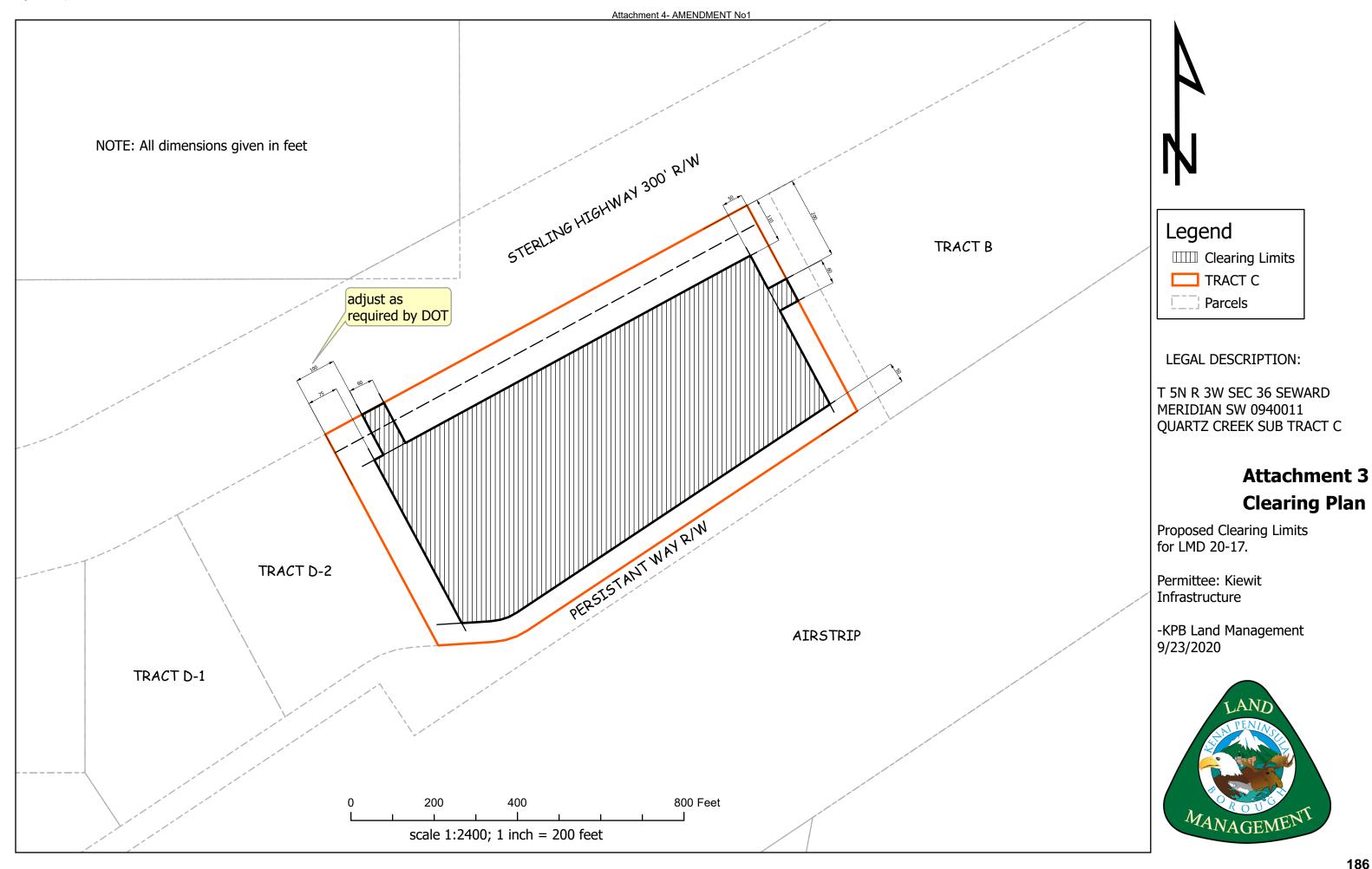
Except as expressly set forth and amended herein, all remaining covenants, terms, and conditions of the Agreement, as amended, shall remain in full force and effect.

LESSOR: Kenai Peninsula Borough	LESSEE: State of Alaska, Department of Transportation and Public Facilities
By: Charlie Pierce Its: Mayor	By:
Date:	Date:
ATTEST:	APPROVED AS TO FORM AND LEGAL SUFFICIENCY:
Johni Blankenship, Borough Clerk	Sean Kelley, Deputy Borough Attorney
KPB NOTARY	ACKNOWLEDGMENT
STATE OF ALASKA)	
) ss. THIRD JUDICIAL DISTRICT)	
and sworn, personally appeared <u>Charlie Pie</u> Borough, and who acknowledged to me that	ay of, 2021, in and for the State of Alaska, duly commissioned rce, known to me to be the Mayor, Kenai Peninsula the foregoing instrument was executed freely and rough, for the uses and purposes therein set forth
IN WITNESS WHEREOF, I have hereunto s and year written above.	et my hand and affixed my official seal the day
	Notary Public in and for Alaska Commission expires:

DOT&PF NOTARY ACKNOWLEDGMENT

STATE OF ALASKA			
(THIRD JUDICIAL DISTRICT)	SS.		
the undersigned, a Notary Pupersonally appeared Department of Transportation me that the foregoing instrum Alaska, Department of Transportation	day of, 2021, before me, ablic in and for the State of Alaska, duly commissioned and sworn,, known to me to be the, and Public Facilities, State of Alaska, and who acknowledged to ment was executed freely and voluntarily on behalf of the State of portation and Public Facilities, for the uses and purposes therein and by said State of Alaska to do so.		
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year written above.			
	Notary Public in and for Alaska		
	My Commission Expires:		

Attachment 1 to Lease Agreement



Attachment 4- AMENDMENT No1

Project Number: OA33028/CFHWY00684

Date: 1/20/2021

Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC

Tract C Lease Application

ATTACHMENT 4 to Lease Agreement

Prepared For:

Kenai Peninsula Borough Land Management Division

Attachment 4- AMENDMENT No1

Section Page

Prepared By:
Kiewit Infrastructure West Co.
2000 W. International Airport Rd. C-6
Anchorage, AK 99502

Contents

Section	Page
Acronyms and Abbreviations	ii
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Existing Improvements	2
Proposed Permanent Improvements	3
Plan for Future Use	4
SWPPP and SPCC	4

Acronyms and Abbreviations

ADOT&PF Alaska Department of Transportation & Public Facilities

KIWC Kiewit Infrastructure West Co.

KPB Kenai Peninsula Borough

SWPPP Storm Water Polution Prevention Plan

APDES Alaska Pollutant Discharge Elimination System

SPCC Spill Prevention Control and Countermeasure

HMA Hot Mix Asphalt

Introduction

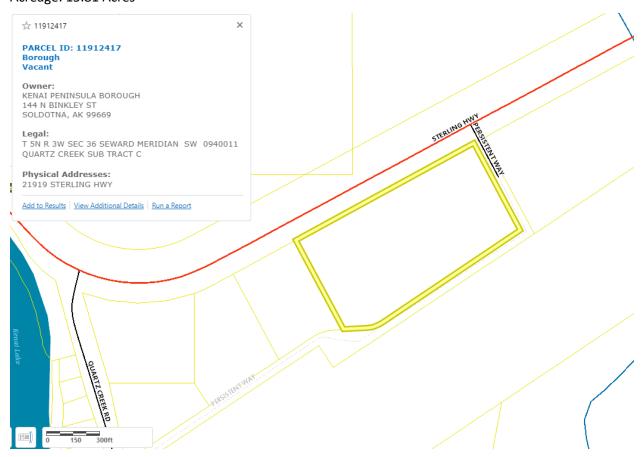
KIWC proposes a negotiated lease of Tract C.

The parcel known as Tract C is described as the following:

Legal Description: T 5N R 3W SEC 36 SEWARD MERIDIAN SW 0940011 QUARTZ CREEK SUB TRACT C

Physical Address: 21919 Sterling Hwy

Tax Parcel ID: 11912417 Acreage: 15.81 Acres



The proposed primary use for this parcel under the negotiated lease is to develop a temporary project field office; and temporary materials and equipment laydown area to facilitate construction activities for the Sterling Highway MP 45-60 Sunrise to Skilak Lake Rd Phases 2-5 CM/GC Project for AKDOT&PF.

The proposed term for the negotiated lease is April 2021 until the highway project competion. The project is anticipated to be completed by the end of year 2025.

Existing Improvements

Under existing KPB Land Use Permit LMD 20-17, KIWC has completed 10.8 Acres of timber clearing and salvage; and soil sampling at Tract C during the week of November 16th, 2020. The current condition of the parcel is shown in the photo below.



Figure 1 - Site Photo 11/20/2020

A copy of Land Use Permit LMD 20-17 is attached.

Prior to the work performed in 2020 under the land use permit, the parcel existed as a wooded lot with a paved driveway apron access at the intersection of Persistence Way and Sterling Hwy leading to a single lane gravel road.

Proposed Permanent Improvements and Temporary Structures

During the lease, KIWC proposes to develop Tract C to be a working field office. Site work including utility installation and earthwork will be required to facilitate access and installation of the temporary office structures. A portion of this work may be considered permanent improvement for integration into the future development plan.

Proposed permanent improvements include the following:

- Utility Installation
 - Electric Service (Chugach Electric Association Inc.)
 - Phone Service (TelAlaska)
 - Leach Field Sewage System
 - Potable Drinking Water Well System
- Site Earthwork
 - Grubbing
 - Drainage
 - Grading and placing gravel for a driveable working surface

The preliminary plan for the site is shown below in Figure 2. This plan includes several temporary structures that are planned to be removed by the end of the lease term.

Proposed temporary structures include the following examples:

- Job office consisting of mobile trailer units
- Area Lighting
- Fencing and Entrance Gates
- Hot Mix Asphalt (HMA) Plant
- Concrete Batch Plant
- Bathroom facilities
- Parking area
- Secondary Access to Sterling Hwy
- Materials testing lab
- Maintenance facility
- Fuel Storage

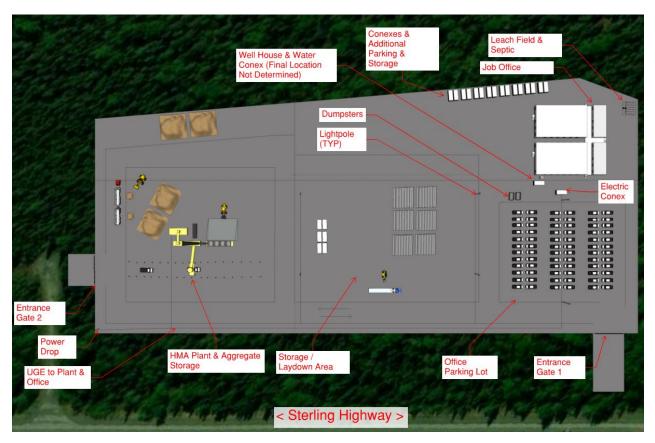


Figure 2 - Preliminary Site Layout

Plan for Future Use

KIWC intends to cooperate with KPB's future development plan for Tract C. Engineering resources will be available.

SWPPP and **SPCC**

The site work at Tract C including ground disturbing work, will be performed and maintained in adherence with the APDES Construction General Permit (CGP) and the project SWPPP and SPCC Plan programs for the duration of the lease. Documentation for this program will be located at the project office. Reporting of spills or discharges will follow the protocols listed in the program.